

Clearinghouse Rule 06-062

**State of Wisconsin
Department of Workforce Development
Equal Rights Division**

**Procedures for Civil Rights Complaints
Chapters DWD 218 to 225**

The Wisconsin Department of Workforce Development proposes an order to amend ss. DWD 218.01, 218.03(2), 218.08(3), 218.19(1), 220.02(11), 220.04(3), 220.11(1), 220.22(1), 221.03(2), 221.20(1), 224.03(2), 224.09(3), 224.20(1), 225.01(1)(m), 225.06(2), 225.12(3), and 225.23(1); and to create ss. DWD 218.25, 220.25, 221.23, 224.24, 225.27 and ch. DWD 223, relating to procedures for civil rights complaints and affecting small businesses.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 103.005 (1), 106.50 (1s), 106.52 (2), 111.375 (1), 230.89 (1) and 227.11 (2) (a), Stats.

Statutes interpreted: Sections 101.055 (8), 103.10, 106.50 (6), 106.52 (4) and (5), 106.54, 111.39, and 230.85, Stats.

Explanation of agency authority. The Wisconsin Fair Employment Act is located at Subchapter II of Chapter 111, Stats. Section 111.375 (1), Stats., provides that the department may make, amend, and rescind such rules as are necessary to carry out the subchapter.

The Wisconsin Open Housing Law is found at s. 106.50, Stats. Section 106.50 (1s), Stats., provides that the department may promulgate such rules as are necessary to carry out the section.

Section 106.52 (2), Stats., provides that the department may promulgate such rules as are necessary to carry out protections under s. 106.52, Stats., relating to public places of accommodation or amusement.

Section 230.89 (1), Stats., requires the division to promulgate rules to carry out its responsibilities for enforcement of provisions commonly referred to as the “whistleblower law.” The “whistleblower law” protects state employees from retaliation for disclosure of information under certain circumstances.

Under s. 103.10 (12), Stats., the department has responsibility for administrative enforcement of the family or medical law.

Section 106.54 (5), (6) and (7), Stats., provides that the Equal Rights Division shall receive certain types of complaints and process them in the same manner as fair employment complaints under s. 111.39, Stats. These types of complaints are:

- Retaliation for reports to the Board on Aging and Long-Term Care under s. 16.009 (5) (d), Stats.
- Retaliation for reporting the abuse of an elderly person to a state or county agency under s. 46.90 (4) (b), Stats.
- Retaliation for reporting abuse in care and service residential facilities under s. 50.07 (3) (b), Stats.
- Retaliation against a health care worker who reports that the quality of health care provided by a health care facility or provider violates any law, rule, or standard established by a professionally recognized accrediting or standard-setting body and poses a potential risk to public health or safety under s. 146.997, Stats.
- Failure to comply with re-employment rights after National Guard, state defense force, or public health emergency service under s. 21.80 (7) (b), Stats.

Section 106.56 (4) (a), Stats., relating to discrimination because of a physical condition or developmental disability in post-secondary education, provides that the department shall review and investigate complaints with all the powers provided under s. 111.39, Stats., which relates to the department's powers and duties under the Wisconsin Fair Employment Act.

Section 101.055 (8), Stats., provides protection for public employees exercising their rights under the Public Employee Safety and Health Law, which is otherwise administered by the Department of Commerce. Employees who believe they have been discharged or discriminated against because they have exercised rights under the law may file a complaint with the Equal Rights Division. If the Equal Rights Division determines that there is probable cause, it shall conduct a hearing, issue a decision, and order appropriate relief. Section 106.54 (4), Stats., also directs the Equal Rights Division to review complaints of discrimination against public employees exercising their rights with respect to occupational safety and health matters under s. 101.055 (8), Stats.

Section 103.005 (1), Stats., provides that the department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings.

Summary of the proposed rules. The proposed rules will amend the fair employment rules in Chapter DWD 218 to specify the types of complaints that ss. 106.54 (5), (6), and (7) and 106.56, Stats., direct the Equal Rights Division to receive and process in the same manner as fair employment complaints under s. 111.39, Stats.

2005 Wisconsin Act 25 amends the Wisconsin Open Housing Law at s. 106.50 (6) (c) 2., Stats., to provide that the Attorney General shall represent complainants in cases in which the Equal Rights Division has made an initial determination of probable cause. The proposed rules will amend the open housing rules in Chapter DWD 220 to reflect this new requirement.

The Division proposes to create a new rule chapter at Chapter DWD 223 to provide procedures for processing discrimination or retaliation complaints by public employees exercising their rights under the Public Employee Safety and Health Law under s. 101.055 (8), Stats. The proposed rule chapter is based on the fair employment rules in Chapter DWD 218,

except time frames for certain actions are shorter because s. 101.055 (8), Stats., provides that the Equal Rights Division shall process cases in shorter time frames. For this reason, the proposed rules provide that appeals of preliminary determinations or findings of no probable cause must be filed within 10 days, rather than 20 days. The proposed rules provide that the notice of hearing shall be sent no less than 20 days before the hearing, rather than 30 days. The requirement that parties submit witness and exhibit lists 10 days before hearing is eliminated. Also, unlike the fair employment statute, s. 101.055 (8) provides that decisions and orders of the Equal Rights Division are subject to judicial review under Chapter 227, Stats., rather than review by the Labor and Industry Review Commission.

All rules administered by the Civil Rights Bureau in the Equal Rights Division will be amended to provide that complaints and other documents may be filed by facsimile transmission. A faxed document will be considered to be filed on the date of transmission as recorded by the division's facsimile machine, except documents filed by fax after regular business hours or a day the offices of the division are closed shall be considered to be filed on the next business day of the division. Documents may not be filed by electronic mail unless expressly authorized by the equal rights officer or the administrative law judge assigned to the case. All rules will also be amended to provide that hearings may be recorded with either digital equipment or tape recording equipment. The rules administered by the Civil Rights Bureau are:

- Chapter DWD 218, relating to fair employment and other issues designated in ss. 106.54 (5), (6), and (7) and 106.56, Stats.
- Chapter DWD 220, relating to fair housing.
- Chapter DWD 221, relating to public accommodations.
- Chapter DWD 224, relating to whistleblower protection.
- Chapter DWD 225, relating to family and medical leave.

The proposed Chapter DWD 223, relating to public employee safety and health, also contains the same provisions on fax and email communications and recording with digital equipment.

Chapters DWD 218, 224, and 225 are amended to clarify that the respondent does not need to file an answer for an appeal of an initial determination of no probable cause.

Summary of factual data and analytical methodologies. Sections 16.009 (5) (d), 46.90 (4) (b), 50.07 (3) (b), 146.997, 21.80 (7) (b), and 106.56, Stats., provide that complaints under these provisions shall be processed in the same manner as fair employment complaints. Chapter DWD 218, relating to fair employment, is amended for clarity to include these references.

Section 101.055 (8), directs the Equal Rights Division to process complaints of retaliation under the public employee health and safety law. There is no statutory directive on how these complaints are to be processed, and the Equal Rights Division does not currently have a rule that covers these complaints. A new rule chapter is created to provide clear authority for the division's procedures on processing the complaints.

Chapter DWD 220, relating to fair housing, is updated to reflect a change in 2005 Wisconsin Act 25.

All rules administered by the Equal Rights Division are amended to provide procedures on filing documents by fax and email and to allow digital recordings of hearings. These changes reflect technological advances.

Comparison with federal law. Employment discrimination complaints may be filed by mail or in person at the nearest Equal Employment Opportunity Commission office. Fair housing complaints may be filed by online form, telephone, or mail with the Department of Housing and Urban Development. Complaints regarding disability discrimination against students in a post-secondary institution may be filed with the Office of Civil Rights in the Department of Education by online form, mail, fax, or in person. The Office of Civil Rights encourages customers to use e-mail or fax to communicate with staff when possible. Complaints regarding reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 may be filed with the Department of Labor Veterans Employment and Training Service in writing using a prescribed paper form or an electronic form.

Comparison with rules in adjacent states. Michigan. A complaint may be filed by personal delivery or by mail. The case in support of a discrimination charge is presented at the hearing by a department attorney or a member of the department's staff, or upon notice from the claimant, by the claimant or his or her counsel subject to the right of the department to present other or additional evidence or argument. Verbatim stenographic notes of the hearing are made and kept by a competent reporter.

Iowa. Any document, including a complaint of discrimination, may be filed in person or by mail, fax, or courier service. The case in support of a discrimination complaint is presented at the hearing by a commission attorney.

Illinois. The Department of Human Rights receives complaints and conducts an investigation to determine whether there is probable cause. The department accepts documents served personally or by telefax, U.S. mail, or private delivery service. Hearings on discrimination complaints are conducted by the Human Rights Commission. The commission rule on filing discusses the requirements of filing documents by mail. It is not clear if other types of filing are allowed. The commission arranges for a record of the proceedings to be made, transcribed and filed in the commission's office.

Minnesota. Filing is accomplished by delivery of the charge to the department's office. The Attorney General represents a charging party after the department determines that there is probable cause that discrimination occurred.

Effect on small business. The proposed rules may affect small businesses as defined in s. 227.114 (1), Stats., in the manner that documents may be filed in a discrimination case. No reporting, bookkeeping, or other professional skills are required for compliance with the proposed rules.

Agency contact person. LeAnna Ware, Civil Rights Bureau Director, Equal Rights Division, Dept. of Workforce Development, leanna.ware@dwd.state.wi.us, (608) 266-1997.

Place where comments are to be submitted and deadline for submission. Comments may be submitted to Elaine Pridgen, Office of Legal Counsel, Dept. of Workforce Development, P.O. Box 7946, Madison, WI 53707-7946 or elaine.pridgen@dwd.state.wi.us. The comment deadline is June 28, 2006.

SECTION 1. DWD 218.01 is amended to read:

DWD 218.01 Purpose. The purpose of this chapter is to implement the ~~law prohibiting~~ provisions of ss. 111.31 to 111.395, 16.009 (5) (d), 46.90 (4) (b), 50.07 (3) (b), 146.997, 21.80 (7) (b), and 106.56, Stats. Sections 111.31 to 111.395, Stats., prohibit employment discrimination, unfair honesty testing, and unfair genetic testing; Section 16.009, Stats., prohibits retaliation for reports to the Board on Aging and Long Term Care. Section 46.90, Stats., prohibits retaliation for reporting the abuse of an elderly person to a state or county agency. Section 50.07 (3) (b), Stats., prohibits retaliation for reports of abuse in care and service residential facilities. Section 146.997, Stats., prohibits retaliation against health care workers who report certain information about a health care facility or health care provider. Section 21.80 (7) (b), Stats., provides reemployment rights after national guard, state defense force, or public health emergency service. Section 106.56, Stats., prohibits discrimination on the basis of physical condition or developmental disability in post-secondary education. The goal of this chapter is to provide a constructive, impartial and speedy procedure for resolving disputes arising under the law these laws, and to work toward the goal of eliminating employment discrimination, unfair honesty testing and unfair genetic testing in this state.

SECTION 2. DWD 218.03 (2) is amended to read:

DWD 218.03 (2) WHERE TO FILE COMPLAINTS. (a) A complaint may be filed in person with any division office, or it may be mailed or sent by facsimile transmission to one of the following division offices:

(a) 1. Equal Rights Division, 201 East Washington Avenue, Madison, WI 53702. Facsimile number: 608-267-4592.

(b) 2. Equal Rights Division, 819 North 6th Street, Milwaukee, WI 53203. Facsimile number: 414-227-4084.

(b) A complaint filed by facsimile transmission must conform with the requirements of s. DWD 218.25 (1).

SECTION 3. DWD 218.08 (3) is amended to read:

DWD 218.08 (3) CERTIFICATION TO HEARING ON ISSUE OF PROBABLE CAUSE; RIGHT TO STIPULATE THAT CASE BE DECIDED ON MERITS. If a timely appeal is filed, the division shall issue a notice certifying the matter to hearing. A hearing on the issue of probable cause shall be noticed and conducted in accordance with the provisions of ss. DWD 218.11 and 218.13 to 218.20, except that the parties may stipulate prior to the hearing that the administrative law judge may decide the case on the merits. If a hearing on the issue of probable cause is requested in a case in which the initial determination also found probable cause with respect to one or more issues the department may, with the consent of the parties, consolidate the hearing on probable cause and the hearing on the merits.

SECTION 4. DWD 218.19 (1) is amended to read:

DWD 218.19 Record of hearing. (1) METHOD OF RECORDING HEARING. A stenographic, electronic, or other record of oral proceedings shall be made at all hearings conducted under this chapter. Any party wishing to have a court reporter present to transcribe the proceedings shall be permitted to do so at their own expense. If the hearing is ~~tape recorded,~~ recorded on tape or digitally, the original ~~tapes~~ recording shall remain in the division for 5 years following the hearing, after which ~~they~~ it may be discarded.

SECTION 5. DWD 218.25 is created to read:

DWD 218.25 Filing of documents by facsimile transmission or electronic mail. (1)

FILING OF DOCUMENTS BY FACSIMILE TRANSMISSION. (a) Except where otherwise directed by the division, documents may be filed by facsimile transmission. Documents filed by facsimile transmission should include a cover sheet setting forth all of the following information:

1. The name of the sender.
2. The individual to whom the transmission is directed, if that individual is known.
3. The number of pages being transmitted, including the cover sheet.

(b) The date of transmission recorded by the division's facsimile machine shall constitute the date of filing of a document under this section, except that documents filed by facsimile after the regular business hours of the division as established by s. 230.35 (4) (f), Stats., or on a day when the offices of the division are closed pursuant to s. 230.35 (4) (a), Stats., shall be considered filed on the next business day of the division.

(2) FILING OF DOCUMENTS BY ELECTRONIC MAIL. Documents may be filed by electronic mail only if expressly authorized by the equal rights officer or the administrative law judge assigned to the case.

SECTION 6. DWD 220.02 (11) is amended to read:

DWD 220.02 (11) "Probable cause" means a reasonable ground for belief, supported by facts and circumstances strong enough in themselves to warrant a prudent person to believe, that discrimination probably has been or is being committed. In making a determination of probable cause, the department shall consider whether the facts concerning the alleged discrimination are sufficient to warrant the initiation of a civil action.

SECTION 7. DWD 220.04 (3) is amended to read:

DWD 220.04 (3) WHERE TO FILE COMPLAINTS. (a) A complaint may be filed in person with any division office, or it may be mailed or sent by facsimile transmission to one of the following division offices:

(a) 1. Equal Rights Division, 201 East Washington Avenue, Madison, WI 53702. Facsimile number: 608-267-4592.

(b) 2. Equal Rights Division, 819 North 6th Street, Milwaukee, WI 53203. Facsimile number: 414-227-4084.

(b) A complaint filed by facsimile transmission must conform with the requirements of s. DWD 220.25 (1).

SECTION 8. DWD 220.11 (1) is amended to read:

DWD 220.11 Charge of discrimination. (1) WHEN CHARGE SHALL BE ISSUED. If the department makes an initial determination that there is probable cause to believe that housing discrimination occurred as alleged in the complaint, or if it issues a decision finding probable cause after a hearing, it shall issue a charge on behalf of the complainant and shall refer the charge to the attorney general as required by s. 106.50 (6) (c) 2., Stats. The charge may be incorporated into an initial determination finding probable cause under s. DWD 220.08 (2) or into a decision of an administrative law judge finding probable cause under s. DWD 220.23 (1).

SECTION 9. DWD 220.22 (1) is amended to read:

DWD 220.22 Record of hearing. (1) METHOD OF RECORDING HEARING. A stenographic, electronic, or other record of oral proceedings shall be made at all hearings conducted under the act. Any party wishing to have a court reporter present to transcribe the

proceedings shall be permitted to do so at their own expense. If the hearing is ~~tape-recorded,~~ recorded on tape or digitally, the original ~~tapes~~ recording shall remain in the division for 5 years following the hearing, after which ~~they~~ it will be discarded.

SECTION 10. DWD 220.25 is created to read:

DWD 220.25 Filing of documents by facsimile transmission or electronic mail. (1)

FILING OF DOCUMENTS BY FACSIMILE TRANSMISSION. (a) Except where otherwise directed by the division, documents may be filed by facsimile transmission. Documents filed by facsimile transmission should include a cover sheet setting forth all of the following information:

1. The name of the sender.
2. The individual to whom the transmission is directed, if that individual is known.
3. The number of pages being transmitted, including the cover sheet.

(b) The date of transmission recorded by the division's facsimile machine shall constitute the date of filing of a document under this section, except that documents filed by facsimile after the regular business hours of the division as established by s. 230.35 (4) (f), Stats., or on a day when the offices of the division are closed pursuant to s. 230.35 (4) (a), Stats., shall be considered filed on the next business day of the division.

(2) FILING OF DOCUMENTS BY ELECTRONIC MAIL. Documents may be filed by electronic mail only if expressly authorized by the equal rights officer or the administrative law judge assigned to the case.

SECTION 11. DWD 221.03 (2) is amended to read:

DWD 221.03 (2) WHERE TO FILE COMPLAINTS. (a) A complaint may be filed in person with any division office, or it may be mailed or sent by facsimile transmission to one of the following division offices:

(a) 1. Equal Rights Division, 201 East Washington Avenue, Madison, WI 53702. Facsimile number: 608-267-4592.

(b) 2. Equal Rights Division, 819 North 6th Street, Milwaukee, WI 53203. Facsimile number: 414-227-4084.

(b) A complaint filed by facsimile transmission must conform with the requirements of s. DWD 221.23 (1).

SECTION 12. DWD 221.20 (1) is amended to read:

DWD 221.20 Record of hearing. (1) METHOD OF RECORDING HEARING. A stenographic, electronic, or other record of oral proceedings shall be made at all hearings conducted under this chapter. Any party wishing to have a court reporter present to transcribe the proceedings shall be permitted to do so at their own expense. If the hearing is ~~tape record,~~ recorded on tape or digitally, the original ~~tapes recording~~ shall remain in the division for 5 years following the hearing, after which ~~they~~ it will be discarded.

SECTION 13. DWD 221.23 is created to read:

DWD 221.23 Filing of documents by facsimile transmission or electronic mail. (1)
FILING OF DOCUMENTS BY FACSIMILE TRANSMISSION. (a) Except where otherwise directed by the division, documents may be filed by facsimile transmission. Documents filed by facsimile transmission should include a cover sheet setting forth all of the following information:

1. The name of the sender.
2. The individual to whom the transmission is directed, if that individual is known.
3. The number of pages being transmitted, including the cover sheet.

(b) The date of transmission recorded by the division's facsimile machine shall constitute the date of filing of a document under this section, except that documents filed by facsimile after the regular business hours of the division as established by s. 230.35 (4) (f), Stats., or on a day when the offices of the division are closed pursuant to s. 230.35 (4) (a), Stats., shall be considered filed on the next business day of the division.

(2) **FILING OF DOCUMENTS BY ELECTRONIC MAIL.** Documents may be filed by electronic mail only if expressly authorized by the equal rights officer or the administrative law judge assigned to the case.

SECTION 14. Chapter DWD 223 is created to read:

Chapter DWD 223

PUBLIC EMPLOYEE SAFETY AND HEALTH

DWD 223.01 Purpose. The purpose of this chapter is to implement the law prohibiting employers from discharging or discriminating against public employees because they have exercised their rights under the public employee safety and health law, s. 101.055 (8), Stats.

DWD 223.02 Definitions. When used in this chapter:

(1) "Act" means the public employee safety and health provisions contained in s. 101.055 (8), Stats.

(2) "Administrative law judge" means the examiner appointed to conduct hearings under the act.

(3) “Complainant” means the person who files a complaint alleging that an action prohibited by the act has been committed.

(4) “Day,” when used in time computations in this chapter, means a calendar day, except that if the last day of the time period is a Saturday, Sunday, or legal holiday, the last day shall be the next business day.

(5) “Division” means the equal rights division of the department of workforce development.

(6) “Filing” means the physical receipt of a document.

(7) “Person” includes, but is not limited to, one or more individuals, partnerships, associations, corporations, joint stock companies, trusts, unincorporated organizations, trustees, or trustees or receivers in bankruptcy.

(8) “Probable cause” means a reasonable ground for belief, supported by facts and circumstances strong enough in themselves to warrant a prudent person to believe, that a violation of the act probably has been or is being committed.

(9) “Respondent” means the person or agency alleged to have committed an action prohibited by the act.

DWD 223.03 Complaints. (1) WHO MAY FILE COMPLAINTS. A complaint may be filed by any person or by the person’s duly authorized representative. A complaint filed by a representative shall state that the representative is authorized to file the complaint.

(2) WHERE TO FILE COMPLAINTS. (a) A complaint may be filed in person with any division office, or it may be mailed or sent by facsimile transmission to one of the following division offices:

1. Equal Rights Division, 201 East Washington Avenue, Madison, WI 53702. Facsimile number: 608-267-4592.

2. Equal Rights Division, 819 North Sixth Street, Milwaukee, WI 53203. Facsimile number: 414-227-4084.

(b) A complaint filed by facsimile transmission must conform with the requirements of s. DWD 223.22 (1).

(3) FORM AND CONTENT OF COMPLAINT. A complaint shall be written on a form that is available at any division office or on any form acceptable to the department. Each complaint shall be signed by the person filing the complaint or by the person's duly authorized representative. The signature constitutes an acknowledgment that the party or the representative has read the complaint; that to the best of that person's knowledge, information, and belief the complaint is true and correct; and that the complaint is not being used for any improper purpose, such as to harass the party against whom the complaint is filed. Each complaint shall contain all of the following information:

(a) The name and address of the complainant.

(b) The name and address of the respondent.

(c) A concise statement of the facts, including pertinent dates, constituting the alleged violation of the act.

(4) ASSISTANCE BY THE DEPARTMENT. The department shall, upon request, provide appropriate assistance in completing and filing complaints.

(5) DATE OF FILING OF COMPLAINT DEFERRED BY ANOTHER AGENCY. A complaint which is deferred to the department by a federal or local agency with which the department has a work sharing agreement complies with the requirements of sub. (3) and is considered filed when received by the federal or local agency.

(6) AMENDMENT OF COMPLAINT. A complaint may be amended, subject to the approval of the department. If the complaint is amended prior to the issuance of an initial determination, the department shall investigate the allegations of the amended complaint. If the complaint is amended after the case has been certified to hearing, the chief of the hearing section or the administrative law judge may remand the complaint to the investigation section to conduct an investigation and issue an initial determination as to whether probable cause exists to believe that the respondent has violated the act as alleged in the amended complaint. An amended complaint shall be dismissed if it does not meet the requirements of s. DWD 223.05 (1).

(7) WITHDRAWAL OF COMPLAINT. A complaint may be withdrawn at any time. A request for withdrawal shall be in writing and shall be signed by the complainant or by the complainant's duly authorized representative. Upon the filing of a request for withdrawal, the department shall dismiss the complaint by written order. Such dismissal shall be with prejudice unless otherwise expressly stated in the order.

DWD 223.04 Notification of respondent. (1) WHEN NOTICE IS TO BE SENT. The department shall serve a copy of a complaint that meets the requirements of s. DWD 223.03 upon each respondent prior to the commencement of any investigation.

(2) CONTENT OF NOTICE. The notice shall include a copy of the complaint, which shall indicate on its face the date the complaint was filed. The notice shall direct the respondent to respond in writing to the allegations of the complaint within a time period specified by the department. The notice shall further state that, if the respondent fails to answer the complaint in writing, the department may make an initial determination as to whether a violation of s. 101.055 (8) (ar), Stats., has occurred based only on the department's investigation and the information supplied by the complainant.

DWD 223.05 Preliminary review of complaints. (1) REVIEW OF COMPLAINT. The department shall review every complaint filed to determine all of the following:

- (a) Whether the complainant is protected by the act.
- (b) Whether the respondent is subject to the act.
- (c) Whether the complaint states a claim for relief under the act.
- (d) Whether the complaint was filed within the time period set forth in the act.

(2) PRELIMINARY DETERMINATION DISMISSING COMPLAINT. The department shall issue a preliminary determination dismissing any complaint, or any portion of a complaint, that fails to meet the requirements of sub. (1). The department shall send the order of dismissal by first class mail to the last-known address of each party and to their attorneys of record.

(3) APPEAL OF PRELIMINARY DETERMINATION. The complainant may appeal from an order dismissing a complaint under sub. (2) by filing a written appeal with the department. The appeal shall be filed within 10 days of the date of the order and shall state specifically the grounds upon which it is based. If a timely appeal is filed, the department shall serve a copy of the appeal upon all other parties. The matter shall be referred to the hearing section of the division for review by an administrative law judge. The administrative law judge shall issue a decision which shall either affirm, reverse, modify, or set aside the preliminary determination. The department shall serve the decision on the administrative law judge upon the parties. If the decision reverses or sets aside the preliminary determination, the complaint shall be remanded for investigation. If the decision affirms the preliminary determination, it may be appealed to circuit court if it is a final decision and order as defined in s. DWD 223.20 (2).

DWD 223.06 Investigations. (1) CONDUCT OF INVESTIGATION. The department shall investigate all complaints that satisfy the review under s. DWD 223.05 (1). In conducting

investigations under this chapter, the department may seek the cooperation of all persons to provide requested materials to the department; to obtain access to premises, records, documents, individuals, and other possible sources of information; to examine, record, and copy necessary materials; and to take statements of persons reasonably necessary for the furtherance of the investigation. The department may subpoena persons or documents for the purpose of the investigation. Subpoenas may be enforced pursuant to s. 885.11, Stats.

(2) **ADVISING COMPLAINANT TO AMEND COMPLAINT.** If, during an investigation, it appears that the respondent has discharged or otherwise discriminated against the complainant in a manner that is not alleged in the complaint, the department may advise the complainant that the complaint should be amended.

DWD 223.07 Initial determination. (1) GENERAL. At the conclusion of the investigation, the department shall issue a written initial determination which shall state whether or not there is probable cause to believe that the complainant has been discharged or otherwise discriminated against in violation of the act as alleged in the complaint. This initial determination shall set forth the facts upon which its conclusion is based and shall be served upon the parties.

(2) **INITIAL DETERMINATION OF PROBABLE CAUSE.** If the department initially determines that there is probable cause, it shall certify the case to hearing. A hearing on the merits shall thereafter be noticed and conducted in accordance with the provisions in ss. DWD 223.11 to 223.19.

(3) **INITIAL DETERMINATION OF NO PROBABLE CAUSE.** If the department initially determines that there is no probable cause, it may dismiss those allegations. The department shall, by a notice to be incorporated in the initial determination, notify the parties and their attorneys of record of the complainant's right to appeal as provided in s. DWD 223.08.

DWD 223.08 Appeal of initial determination of no probable cause. (1) WHEN FILED.

Within 10 days after the date of an initial determination finding that there is no probable cause, a complainant may file a written request for a hearing on the issue of probable cause. The request for hearing shall state specifically the grounds upon which the appeal is based. The department shall notify the respondent that an appeal has been filed within 10 days of receiving the appeal.

(2) DISMISSAL FINAL IF NO APPEAL FILED. If no timely written request for a hearing is filed, the initial determination's order of dismissal shall be the final determination of the department.

(3) CERTIFICATION TO HEARING ON ISSUE OF PROBABLE CAUSE; RIGHT TO STIPULATE THAT CASE BE DECIDED ON MERITS. If a timely appeal is filed, the division shall issue a notice certifying the matter to hearing. A hearing on the issue of probable cause shall be noticed and conducted in accordance with the provisions of ss. DWD 223.11 and 223.13 to 223.19, except that the parties may stipulate prior to the hearing that the administrative law judge may decide the case on the merits. If a hearing on the issue of probable cause is requested in a case in which the initial determination also found probable cause with respect to one or more issues the department may, with the consent of the parties, consolidate the hearing on probable cause and the hearing on the merits.

DWD 223.09 Private settlement and conciliation. The parties may enter into an agreement to settle the complaint at any time during the proceedings, with or without assistance by the department. The department may assist the parties to reach a settlement agreement. The parties shall notify the department immediately upon reaching a settlement.

DWD 223.10 Dismissal of complaint for lack of jurisdiction or other procedural basis following certification to hearing. A complaint may be dismissed based upon the conditions set

forth in s. DWD 223.05 (1) or for any other procedural basis after the case is certified to hearing under either s. DWD 223.07 (2) or 223.08 (3). In determining whether to dismiss the complaint, the administrative law judge may consider documents and affidavits presented by any party and may hold a hearing to allow the parties to establish facts that may have a bearing on whether the complaint should be dismissed. If the administrative law judge issues an order dismissing the complaint under this section, a certified copy of the order and a notice of appeal rights shall be sent by first class mail to the last known address of each party and to their attorneys of record.

DWD 223.11 Notice of hearing. (1) CONTENT. In any matter that has been certified to hearing following an initial determination of probable cause under s. DWD 223.07 (2) or an appeal of an initial determination of no probable cause under s. DWD 223.08 (3), the department shall advise the parties and their representatives and attorneys of record in writing by first-class mail, of the specific time, date, and place established for the hearing. The notice of hearing shall fully identify the parties and the case number. It shall specify a time and date for hearing not less than 20 days after the date of mailing of the notice of hearing. The notice of hearing shall specify the nature of the violation of s. 101.055 (8) (ar), Stats., that is alleged to have occurred and shall state the legal authority on which the hearing is based. A copy of the complaint shall be attached to the notice of hearing.

(2) PLACE OF HEARING. The hearing shall be held in the county where the alleged violation of the law occurred, or at another location with the consent of the parties. For purposes of this subsection, the county where the alleged violation of law occurred is the county where the respondent resides or where the alleged violation of law occurred.

DWD 223.12 Answer. (1) WHEN REQUIRED. Within 14 days after the date of a notice of hearing on the merits, each respondent shall file with the hearing section of the division an

answer to the allegations of the complaint upon which there is a finding of probable cause, along with a certification that a copy of the answer has been mailed to all other parties.

(2) CONTENT OF ANSWER. The answer shall contain the respondent's current address. It shall also contain a specific admission, denial, or explanation of each allegation of the complaint. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, the respondent shall so state and this shall have the effect of a denial. Admissions or denials may be all or part of an allegation, but shall fairly meet the substance of the allegation. Any affirmative defense relied upon, including the statute of limitations, shall be raised in the answer unless it has previously been raised by a motion in writing. Failure to raise an affirmative defense in the answer may, in the absence of good cause, be held to constitute a waiver of such a defense.

DWD 223.13 Pre-hearing conference. In any case which has been certified to hearing, a pre-hearing conference may be held in accordance with the provisions of s. 227.44 (4), Stats.

DWD 223.14 Pre-hearing discovery. (1) WHEN DISCOVERY MAY BEGIN. Discovery may not be used prior to the time that a matter is certified to hearing, except that the taking and preservation of evidence shall be permitted prior to certification to hearing under the circumstances set forth in s. 227.45 (7), Stats.

(2) DISCOVERY DIRECTED TO A PARTY NOT REPRESENTED BY LEGAL COUNSEL. In the case of discovery directed to a party who is not represented by legal counsel, the party seeking that discovery shall, not less than 10 days prior to conducting the discovery, state in writing that it intends to seek discovery. The party seeking discovery shall send this notice to the party who is not represented by legal counsel and to either the chief of the hearing section or the administrative law judge, if one has been assigned to the case. All copies of

demands for discovery and notices of depositions shall be filed with the department at the time they are served upon the party from whom the discovery is sought. Copies of responses to discovery by an unrepresented party and the original transcript of any deposition of an unrepresented party shall be filed with the department by the party which instituted those discovery requests as soon as practicable after the discovery has been taken.

(3) SCOPE, METHOD, AND USE OF DISCOVERY. The scope of discovery, the methods of discovery, and the use of discovery at hearing shall be the same as set forth in ch. 804, Stats.

(4) FAILURE TO COMPLY WITH DISCOVERY REQUESTS; DUTY TO CONSULT WITH OPPOSING PARTY. The administrative law judge may compel discovery, issue protective orders, and impose sanctions in the manner provided under ch. 804, Stats. All motions to compel discovery or motions for protective orders shall be accompanied by a statement in writing by the party making the motion that, after consultation in person or by telephone with the opposing party and sincere attempts to resolve their differences, the parties are unable to reach agreement. The statement shall state the date and place of such consultation and the names of all parties participating in the consultation.

(5) FILING WITH DEPARTMENT. Copies of discovery requests and responses to discovery requests need not be filed with the division, except as required under sub. (2).

DWD 223.15 Subpoenas and motions. (1) SUBPOENAS. The department or a party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of documents. A subpoena issued by an attorney shall be in substantially the same form as provided in s. 805.07 (4), Stats., and shall be served in the manner provided in s. 805.07 (5), Stats. Witnesses summoned by a subpoena who are not employees of the civil service as defined in s. 230.03 (6), Stats., shall be entitled to the witness and mileage fees set forth in s. 814.67 (1)

(a) and (c), Stats. The cost of service, witness, and mileage fees shall be paid by the person issuing the subpoena. Subpoenas may be enforced pursuant to s. 885.11, Stats.

(2) MOTIONS. Motions made during a hearing may be stated orally and shall, with the ruling of the administrative law judge, be included in the record of the hearing. All other motions shall be in writing and shall state briefly the relief requested and the grounds upon which the moving party is entitled to relief. All written motions shall be filed with the administrative law judge assigned to the case. Any briefs or other papers in support of a motion, including affidavits and documentary evidence, shall be filed with the motion. Any party opposing the motion may file a written response. All written motions shall be decided without further argument unless requested by the administrative law judge.

DWD 223.16 Disqualification of the administrative law judge. Upon the administrative law judge's own motion, or upon a timely and sufficient affidavit filed by any party, the administrative law judge shall determine whether to disqualify himself or herself because of personal bias or other reason. The administrative law judge's determination shall be made a part of the record and decision in the case.

DWD 223.17 Hearings. (1) PROCEDURE. Hearings shall be conducted in conformity with the act and the provisions of ch. 227, Stats.

(2) POSTPONEMENTS AND CONTINUANCES. All requests for postponements shall be filed with the administrative law judge within 10 days after the notice of hearing, except where emergency circumstances arise after the notice is issued but prior to the hearing. The party requesting a postponement shall mail a copy of the request to all other parties at the time the request is filed with the division. Postponements and continuances may be granted only for good cause shown and shall not be granted solely for the convenience of the parties or their attorneys.

(3) APPEARANCE OF PARTIES. Parties may appear at the hearing in person and by counsel or other representative.

(4) FAILURE TO APPEAR AT HEARING. If the complainant fails to appear at the hearing, either in person or by a representative authorized to proceed on behalf of the complainant, the administrative law judge shall dismiss the complaint. If the respondent fails to appear at the hearing, the hearing shall proceed as scheduled. If, within 10 days after the date of hearing, any party who failed to appear shows good cause in writing for the failure to appear, the administrative law judge may reopen the hearing.

DWD 223.18 Record of hearing. (1) METHOD OF RECORDING HEARINGS. A stenographic, electronic, or other record of oral proceedings shall be made at all hearings conducted under the act. Any party wishing to have a court reporter present to transcribe the proceedings shall be permitted to do so at their own expense. If the hearing is recorded on tape or digitally, the original recording shall remain in the division for 5 years following the hearing, after which it may be discarded.

(2) REQUIREMENTS FOR PREPARATION OF TRANSCRIPTS. Any party may file a transcript of the hearing with the division. The transcript shall be prepared by an independent, reputable court reporter or transcriptionist. The transcript shall include a certification by the transcriptionist that it is an original, verbatim, transcript of the proceedings.

(3) COST FOR TRANSCRIPTION OF RECORD. Transcription of the record for purposes other than judicial review shall be at the expense of any party who requests the transcription. For the purpose of judicial review, the department shall prepare at its own expense and provide to the court a transcript of the record, unless a transcript has already been prepared at the expense of the parties. If a transcript has been provided to the court for the purpose of judicial review, the

department shall provide a copy of the transcript at no cost to any party that submits a sworn affidavit of indigency and the inability to obtain funds to pay for a transcript.

DWD 223.19 Decision and order. (1) GENERAL. After the close of the hearing, including any briefs that may be allowed by the administrative law judge, the administrative law judge shall prepare a formal written decision that shall include findings of fact, conclusions of law, and an order, and which may be accompanied by an opinion. If the administrative law judge allows briefs to be filed after the close of the hearing, the requirement in s. 101.055 (8) (c), Stats., that the department shall issue its decision and order within 30 days of the hearing is waived.

(2) DECISION AND ORDER AFTER HEARING ON THE ISSUE OF PROBABLE CAUSE. After a hearing on the issue of probable cause, the administrative law judge shall issue a decision and order that dismisses the allegations of the complaint or that orders that the case be certified for a hearing on the merits of the complaint, depending upon the administrative law judge's findings and conclusions on the issue of probable cause. If the decision of the administrative law judge determines that no probable cause exists, a certified copy of the decision and order and a notice of appeal rights shall be sent by first class mail to the last known address of each party and to their attorneys of record. A decision and order finding no probable cause may be appealed to circuit court if it is a final decision and order as defined in s. DWD 223.20 (2).

(3) DECISION AND ORDER AFTER HEARING ON THE MERITS. After a hearing on the merits, the administrative law judge shall issue a decision and an order which shall either dismiss the allegations of the complaint or shall order such action by the respondent as shall effectuate the purposes of the act, depending upon the administrative law judge's findings and conclusions on the merits of the complaint. A certified copy of the decision and order and a notice of appeal

rights shall be sent by first class mail to the last known address of each party and to their attorneys of record.

DWD 223.20 Appeal rights. (1) NOTICE OF APPEAL RIGHTS. Every decision and order of an administrative law judge under s. DWD 223.30 shall be accompanied by a separate notice advising the parties of their rights to seek judicial review under ch. 227, Stats.

(2) JUDICIAL REVIEW. Any party may seek judicial review of a final decision and order of the administrative law judge as provided in s. 101.055 (8) (d), Stats. Only final decisions and orders of the administrative law judge may be appealed. A final decision is one that disposes of the entire complaint and leaves no further proceedings on that complaint pending before the division.

DWD 223.21 Pay status and witness fees for state employee parties and state employee witnesses. (1) PAY STATUS OF STATE EMPLOYEE PARTIES. State civil service employees who, as parties, are interviewed as part of investigations or who appear at pre-hearing conferences, conciliation sessions, or hearings, whether held in person or via telephone, shall do so without loss of state salary and with reimbursement by the employing agency for travel expenses in accordance with the uniform travel schedule amounts established under s. 20.916 (8), Stats.

(2) PAY STATUS OF STATE EMPLOYEE WITNESSES. State civil service employees who are interviewed as part of investigations or who attend hearings as witnesses, whether held in person or via telephone, shall do so without loss of state salary and with reimbursement by the employing agency for travel expenses in accordance with the uniform travel schedule amounts established under s. 20.916 (8), Stats., unless the administrative law judge determines that their testimony was or would have been irrelevant, immaterial, or unduly repetitious.

(3) WITNESS FEES FOR STATE CIVIL SERVICE EMPLOYEES. State civil service employees who attend hearings as witnesses shall be entitled only to that compensation specified in sub. (2).

DWD 223.22 Filing of documents by facsimile transmission or electronic mail. (1)

FILING OF DOCUMENTS BY FACSIMILE TRANSMISSION. (a) Except where otherwise directed by the division, documents may be filed by facsimile transmission. Documents filed by facsimile transmission should include a cover sheet setting forth all of the following information:

1. The name of the sender.
2. The individual to whom the transmission is directed, if that individual is known.
3. The number of pages being transmitted, including the cover sheet.

(b) The date of transmission recorded by the division's facsimile machine shall constitute the date of filing of a document under this section, except that documents filed by facsimile after the regular business hours of the division as established by s. 230.35 (4) (f), Stats., or on a day when the offices of the division are closed pursuant to s. 230.35 (4) (a), Stats., shall be considered filed on the next business day of the division.

(2) FILING OF DOCUMENTS BY ELECTRONIC MAIL. Documents may be filed by electronic mail only if expressly authorized by the equal rights officer or the administrative law judge assigned to the case.

SECTION 15. DWD 224.03 (2) is amended to read:

DWD 224.03 (2) WHERE TO FILE COMPLAINTS. (a) A complaint may be filed in person with any division office, or it may be mailed or sent by facsimile transmission to one of the following division offices:

(a) 1. Equal Rights Division, 201 East Washington Avenue, Madison, WI 53702. Facsimile number: 608-267-4592.

(b) 2. Equal Rights Division, 819 North 6th Street, Milwaukee, WI 53203. Facsimile number: 414-227-4084.

(b) A complaint filed by facsimile transmission must conform with the requirements of s. DWD 224.24(1).

SECTION 16. DWD 224.09 (3) is amended to read:

DWD 224.09 (3) CERTIFICATION TO HEARING ON ISSUE OF PROBABLE CAUSE; RIGHT TO STIPULATE THE CASE BE DECIDED ON MERITS. If a timely appeal is filed the division shall issue a notice certifying the matter to hearing. A hearing on the issue of probable cause shall be noticed and conducted in accordance with the provisions of ss. DWD 224.12 and 224.14 to 224.21, except that the parties shall stipulate prior to the hearing that the administrative law judge may decide the case on the merits. If a hearing on the issue of probable cause is requested in a case in which the initial determination also found probable cause with respect to one or more issues the division may, with the consent of the parties, consolidate the hearing on probable cause and the hearing on the merits.

SECTION 17. DWD 224.20 (1) is amended to read:

DWD 224.20 Record of hearing. (1) METHOD OF RECORDING HEARING. A stenographic, electronic, or other record of oral proceedings shall be made at all hearings conducted under subch. III of ch. 230, Stats.. Any party wishing to have a court reporter present to transcribe the proceedings shall be permitted to do so at their own expense. If the hearing is ~~tape recorded~~, recorded on tape or digitally, the original ~~tapes recording~~ shall remain in the division for 5 years following the hearing, after which ~~they~~ it may be discarded.

SECTION 18. DWD 224.24 is created to read:

DWD 224.24 Filing of documents by facsimile transmission or electronic mail. (1)

FILING OF DOCUMENTS BY FACSIMILE TRANSMISSION. (a) Except where otherwise directed by the division, documents may be filed by facsimile transmission. Documents filed by facsimile transmission should include a cover sheet setting forth all of the following information:

1. The name of the sender.
2. The individual to whom the transmission is directed, if that individual is known.
3. The number of pages being transmitted, including the cover sheet.

(b) The date of transmission recorded by the division's facsimile machine shall constitute the date of filing of a document under this section, except that documents filed by facsimile after the regular business hours of the division as established by s. 230.35 (4) (f), Stats., or on a day when the offices of the division are closed pursuant to s. 230.35 (4) (a), Stats., shall be considered filed on the next business day of the division.

(2) FILING OF DOCUMENTS BY ELECTRONIC MAIL. Documents may be filed by electronic mail only if expressly authorized by the equal rights officer or the administrative law judge assigned to the case.

SECTION 19. DWD 225.01 (1)(m) is amended to read:

DWD 225.01 (1) (m) The words "~~a 12-month period~~", "a 12-month period," as used in s. ~~103.10 (3) (b)~~ 103.10 (3) (a) and (4) (b), Stats., mean a calendar year commencing ~~immediately after midnight~~ at 12:01 a.m. on January 1 and ending at midnight on December 31 each year.

SECTION 20. DWD 225.06 (2) is amended to read:

DWD 225.06 (2) WHERE TO FILE COMPLAINTS. (a) A complaint may be filed in person with any division office, or it may be mailed or sent by facsimile transmission to one of the following division offices:

~~(a)~~ 1. Equal Rights Division, 201 East Washington Avenue, Madison, WI 53702. Facsimile number: 608-267-4592.

~~(b)~~ 2. Equal Rights Division, 819 North 6th Street, Milwaukee, WI 53203. Facsimile number: 414-227-4084.

(b) A complaint filed by facsimile transmission must conform with the requirements of s. DWD 225.27 (1).

SECTION 21. DWD 225.12 (3) is amended to read:

DWD 225.12 (3) CERTIFICATION TO HEARING ON ISSUE OF PROBABLE CAUSE; RIGHT TO STIPULATE THAT CASE BE DECIDED ON MERITS. If a timely appeal is filed, the division shall issue a notice certifying the matter to hearing. A hearing on the issue of probable cause shall be noticed and conducted in accordance with the provisions of ss. DWD 225.15 and 225.17 to 225.24, except that the parties may stipulate prior to the hearing that the administrative law judge may decide the case on the merits. If a hearing on the issue of probable cause is requested in a case in which the initial determination also found probable cause with respect to one or more issues, the department may, with the consent of the parties, consolidate the hearing on probable cause and the hearing on the merits.

SECTION 22. DWD 225.23 (1) is amended to read:

DWD 225.23 Record of hearing. (1) METHOD OF RECORDING HEARING. A stenographic, electronic, or other record of oral proceedings shall be made at all hearings

conducted under the act. Any party wishing to have a court reporter present to transcribe the proceedings shall be permitted to do so at their own expense. If the hearing is ~~tape recorded,~~ recorded on tape or digitally, the original ~~tapes recording~~ shall remain in the division for 5 years following the hearing, after which ~~they~~ it may be discarded.

SECTION 23. DWD 225.27 is created to read:

DWD 225.27 Filing of documents by facsimile transmission or electronic mail. (1)

FILING OF DOCUMENTS BY FACSIMILE TRANSMISSION. (a) Except where otherwise directed by the division, documents may be filed by facsimile transmission. Documents filed by facsimile transmission should include a cover sheet setting forth all of the following information:

1. The name of the sender.
2. The individual to whom the transmission is directed, if that individual is known.
3. The number of pages being transmitted, including the cover sheet.

(b) The date of transmission recorded by the division's facsimile machine shall constitute the date of filing of a document under this section, except that documents filed by facsimile after the regular business hours of the division as established by s. 230.35 (4) (f), Stats., or on a day when the offices of the division are closed pursuant to s. 230.35 (4) (a), Stats., shall be considered filed on the next business day of the division.

(2) FILING OF DOCUMENTS BY ELECTRONIC MAIL. Documents may be filed by electronic mail only if expressly authorized by the equal rights officer or the administrative law judge assigned to the case.

SECTION 24. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro), Stats.