

CR 84-229

# RULES CERTIFICATE

STATE OF WISCONSIN )  
 ) SS  
DEPT. OF INDUSTRY, )  
LABOR & HUMAN RELATIONS)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Howard S. Bellman, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to Equal Opportunities - Fair Employment Practice were duly approved and adopted by this department on \_\_\_\_\_.

*(Subject)*  
*(Date)*

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 2:00 pm in the city of Madison, this 16<sup>th</sup> day of April A.D. 1985.

Howard S. Bellman  
Secretary

**RECEIVED**  
APR 17 1985  
1:30 pm  
Revisor of Statutes  
Bureau

07-1-85

# ORDER OF ADOPTION

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 111.375(1) and 227.027, Stats., the Department of Industry, Labor and Human Relations hereby  creates;  amends;  repeals and recreates; and  repeals and adopts rules of Wisconsin Administrative Code chapter(s):

Ind. 88 Equal Opportunities - Fair Employment Practice  
(Number) (Title)

The attached rules shall take effect on upon publication in the  
official state newspaper, pursuant to section  
227.026, Stats.

Adopted at Madison, Wisconsin, this 16<sup>th</sup>  
day of April, A.D., 1985.

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

Howard B. Bellman  
Secretary

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ORDER OF THE  
DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS  
ADOPTING, AMENDING OR REPEALING RULES

To repeal Ind. 88.22(1), (2) (3) (5) and (7); to renumber Ind. 88.18(4); to amend Ind. 88.01(2) and Ind. 88.10; and to create Ind. 88.18(4) relating to age, honesty testing and computation of interest.

ANALYSIS

Ind. 88.01 (2) presently defines individuals protected against age discrimination to mean individuals at least 40 but less than 70 years of age pursuant to s. 111.33 (1) stats. (1981-82). The rule is amended to bring it into conformity with a recent amendment to s. 111.33(1) stats. which became effective September 1, 1984. The amendment removes the age discrimination cap of 70 and extends the prohibition against employment discrimination on the basis of age to individuals age 40 and over.

Ind. 88.10 concerning notice of hearing presently omits the word "testing" from the phrase unfair honesty testing. The amendment corrects the omission in that provision of the word "testing" to bring the rule into conformity with s. 111.39(4)(b) stats.

Ind. 88.18(4) relating to service of the examiner's decisions is renumbered Ind. 88.18(5) to allow for the more logical placement of newly created (Ind. 88.18(4) concerning the computation of interest.

Newly created Ind. 88.18(4) is required to bring the rules into conformity with Anderson v. LIRC 111 Wis 24 260, 330 N W 2nd 594 (1983) where the supreme court ordered that back pay awards under the fair employment act should be increased to reflect the accrual of interest at the rate of 7 percent per annum and by Wilmot Teachers Assn. v. Wilmot Union High School District, Case IX, No. 28278 MP1233, Decision No. 18820-B, decided December 12, 1983 by the Wisconsin employment relations commission in which the commission held that the interest rate referred to in the Anderson Case was based upon the statutory rate of interest set forth in s. 814.04(2) stats. which rate of interest since the Anderson Case had increased to 12 percent.

Finally, Ind. 88.22(1), (2), (3), (5) and (6) which is concerned with rules for the exemption of bona fide executive and high policy making employees from the age discrimination prohibition mandated by s. 111.33(2)(C) stats., is amended to bring the rule into conformity with statutory changes deleting the exemptions set forth in s. 111.33(2)(c) resulting from the passage of 1983 Wisconsin act 391 (1983) senate bill (116) which became effective September 1, 1984.

Pursuant to authority vested in the department of industry, labor and human relations by s. 111.375(1) stats., the department of industry, labor and human relations hereby adopts rules interpreting ss. 111.31-111.395, stats. as follows:

Section 1: Ind. 88.01(2) are amended to read:

Ind. 88.01 (2) "Age" in reference to individuals protected against age discrimination under the act means individuals ~~who-are-at-least 40 but-less than-70~~ years of age and over.

Ind. 88.10 Notice of hearing. If conciliation fails to resolve the dispute or is waived, the department shall serve a notice of hearing and a copy of the complaint on each party. The notice shall fully identify the parties and the case number. It shall specify a time and date of hearing not less than 30 days after service of the notice of hearing, and a place of hearing either in the county of the respondent's residence or in the county in which the discrimination or unfair honesty testing appears to have occurred. It shall specify the nature of the discrimination or unfair honesty testing which appears to have occurred, and shall state the legal authority on which the hearing is based.

Section 2: Ind. 88.18(4) of the Wisconsin administrative code is renumbered to read:

Ind. 88.18(5) SERVICE. A copy of the examiner's summary of proceedings, decision and order shall be served on the parties.

Section 3: Ind. 88.18(4) of the Wisconsin administrative code is created to read:

Ind. 88.18(4) COMPUTATION OF INTEREST. Interest on any award made pursuant to this subchapter shall be added to that award and computed at an annual rate of 12% simple interest. Interest shall be computed by calendar quarter. Interest shall begin to accrue on the last day of each calendar quarter, or portion thereof in the back pay period on the amount of back pay attributable to that calendar quarter, or portion thereof, after statutory set-offs or other amounts actually received during that calendar quarter, or portion thereof, and shall continue to accrue until the date of compliance with the back pay order.

Ind. 88.18(5) SERVICE. A copy of the examiner's summary of proceedings, decision and order shall be served on the parties.

NOTE: In Anderson v. Labor and Industry Review Commission, 111 Wis 2d 245, 260, 330 NW 2d 594 (1983), the court held that back pay awards under the act should be increased to reflect the accrual of interest at the rate of 7 percent per annum. In Wilmot Union High School District, case IX, Decision No. 18820-B, (Dec 12, 1983), the WERC concluded that the interest rate cited by the court in the Anderson case of 7% for back pay awards was based on s. 814.04(2) stats. a statutory rate of interest which had since changed and is currently 12% per annum.

Section 4: Ind. 88.22(1), (2), (3), (5) and (6), are repealed.

(6)

GRP 4/17

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The attached rule shall take effect on publication pursuant to Section 227.026(1) (intro.), Stats.

The Wisconsin Department of Industry, Labor and Human Relations

April 16, 1985

Office of the Secretary  
201 E. Washington Avenue  
P.O. Box 7946  
Madison, Wisconsin 53707  
Telephone 608/266-7552

Gary Poulson  
Assistant Revisor of Statutes  
for Administrative Rules  
411 West, State Capitol  
Madison, Wisconsin

Douglas LaFollette  
Secretary of State  
Room 271, GEF-1  
201 East Washington Avenue  
Madison, Wisconsin

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 84-229

RULE NO. Ind 88

RELATING TO: Equal Opportunities - Fair Employment Practice

Pursuant to section 227.023, Stats., agencies are required to file a certified copy of every rule adopted by the agency in the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you.

- 1. Order of Adoption.
- 2. Rules Certificate Form.
- 3. Rules in Final Draft Form.

Pursuant to section 227.016 (6), Stats., a summary of the final regulatory flexibility analysis is also included.

Respectfully submitted,



Howard S. Bellman  
Secretary

cc: Agency Contact Person

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APR 17 1985

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