

## Chapter ER 46

### GRIEVANCE PROCEDURE

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**Note:** Corrections made under s. 13.93 (2m) (b) 6., Stats., Register December 2003 No. 576.

**ER 46.01 Policy.** (1) Although the state encourages continuing informal communication between employees and management, it recognizes the value of a formal grievance procedure in a sound management program under s. 230.04 (14), Stats. It is the policy of the state and responsibility of the administrator to ensure that an established written grievance procedure relating to conditions of employment is available to state employees who are not covered by a collective bargaining agreement under subch. V of ch. 111, Stats., for the disposition of employee grievances.

(2) This grievance procedure shall ensure that each employee may, without prejudice, express and present a grievance through proper channels with the assurance of timely and thorough consideration.

(3) During the formal grievance procedures, the grievant and employer shall make efforts to resolve the grievance by seeking a mutually acceptable solution to the matters grieved.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; correction in (1) under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717; **CR 18-006: am. (1) Register July 2018 No. 751, eff. 8-1-18.**

**ER 46.02 Definitions.** In this chapter:

(1) "Decision" means the written response to a grievance by the employer representative, which includes the rationale for the response.

(2) "Employee" means a state employee in the classified civil service under s. 230.08 (3), Stats., except a limited term employee or an employee covered by a collective bargaining agreement under subch. V of ch. 111, Stats.

(3) "Employer" means an agency defined under s. 230.03 (3), Stats., in which the employee is or has been employed.

(4) "Grievance" means a written complaint by an employee requesting relief in a matter which is of concern or dissatisfaction relating to conditions of employment and which is subject to the control of the employer and within the limitations of this chapter.

(5) "Grievant" means an employee who has filed a grievance.

(6) "Group grievance" means a grievance filed by more than one grievant which involves like circumstances and facts for the grievants involved.

(7) "Relief" means a specific remedy directly affecting a grievant.

(8) "Retaliation" means any action taken by an employer in order to adversely affect the employee's conditions of employment, when such action is taken because of the employee's exercise of rights under this chapter.

(9) "Step" means a level of management authority where a grievance may be pursued.

(10) "Work rule" means a written regulation promulgated by the employer within its discretion which regulates the conduct of employees as it affects their employment.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; am. (4) and (6) to (8), Register, May, 1988, No. 389, eff. 6-1-88.

**ER 46.03 Scope.** (1) Under this chapter, an employee may grieve issues which affect his or her conditions of employment, including any matter on which the employee alleges that coercion or retaliation has been practiced against the employee except as provided in sub. (2).

(2) An employee may not use this chapter to grieve:

(a) A personnel action or decision of the director or the administrator that is directly appealable to the Wisconsin Employment Relations Commission under s. 230.44, Stats.;

(b) An action delegated by the director or by the administrator to an appointing authority that is directly appealable to the Wisconsin Employment Relations Commission under s. 230.44, Stats.;

(c) A demotion, suspension without pay, discharge, removal, layoff, or reduction in base pay that is grievable under s. 230.445, Stats.;

(d) A personnel action after certification which is related to the hiring process that is appealable to the Wisconsin Employment Relations Commission under s. 230.44, Stats.;

(e) Denial of hazardous employment benefits under s. 230.36 (4), Stats.;

(f) The reassignment of a career executive employee under s. ER-MRS 30.07 (1);

(g) The failure of a supervisor to process a reclassification request.

(h) An oral reprimand;

(hg) A written instruction related to job performance or work conduct;

(hr) The evaluation methodology used by an employer to determine a discretionary pay award or the amount of the award;

(i) The content of written agency rules and policies;

(j) A condition of employment which is a right of the employer as defined in s. ER 46.04; or

(k) Any matter related to wages, hours of work, and fringe benefits.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; reprinted to correct an error in (2) (b), Register, September, 1984, No. 345; am. (1), (2) (i) and (j), cr. (2) (k), Register, May, 1988, No. 389, eff. 6-1-88; correction in (2) (f) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466; correction in (2) (a), (b) under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717; **CR 18-006: am. (2) (b) to (d), cr. (2) (hg), (hr), Register July 2018 No. 751, eff. 8-1-18.**

**ER 46.04 Management rights.** (1) Nothing in this chapter is intended to interfere with the sole right of the employer to carry out its statutory mandate and goals under s. 111.90, Stats.

(2) For the purpose of this chapter, the management rights of the employer include, but are not limited to, the following:

(a) Utilizing personnel, methods and means to carry out the statutory mandate and goals of the agency.

(b) Determining the size and composition of the work force.

(c) Managing and directing the employees of the agency.

(d) Hiring, promoting, transferring, assigning or retaining employees.

- (e) Establishing reasonable work rules.
- (f) Taking disciplinary action for just cause against an employee.
- (g) Laying off employees due to lack of work or funds or organizational changes.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; CR 18-006: am. (1) Register July 2018 No. 751, eff. 8-1-18.

**ER 46.05 Form and filing of the grievance.** (1) Grievances shall be submitted to the designated employer representative on the forms provided by the employer.

(2) Only one subject matter shall be covered in any one grievance.

(3) A grievance shall describe:

(a) The condition of employment which is the subject of the grievance.

(b) The facts upon which the grievance is based.

(c) The relief sought by the employee.

(4) Employees may not initiate a group grievance.

(5) The employer may consolidate grievances where a reasonable basis for consolidation exists.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; am. (3) (a), Register, May, 1988, No. 389, eff. 6-1-88; CR 18-006: am. (4) Register July 2018 No. 751, eff. 8-1-18.

**ER 46.06 Procedures and time limits.** (1) All grievances shall be filed with the employee's appointing authority, or designee, no later than 14 calendar days from the date the employee first became aware or should have become aware of the matter grieved.

(2) Grievances shall be pursued in accordance with the following steps and time limits:

(a) *First step.* Within 14 calendar days of receipt by the appointing authority, or designee, of the timely grievance from the employee under sub. (1), the appointing authority, or designee, shall conduct any investigation he or she deems necessary, meet with the employee in person, and issue a written decision.

(b) *Second step.* 1. If the grievant is dissatisfied with the decision received from the appointing authority at the first step under par. (a), the decision may be grieved to the administrator, or his or her designee, no later than 14 calendar days after the date of the appointing authority's decision under par. (a).

2. Within 30 calendar days after the date the employee files a timely grievance with the administrator under subd. 1., the administrator, or designee, shall review the grievance and issue a written decision.

(3) If the last day on which a grievance is to be filed or a decision is to be grieved or served is a Saturday, Sunday, or legal holiday, or the day specified in s. 230.35 (4) (a) 10., Stats., the grievance may be filed or the decision may be grieved or served on the next day which is not a Saturday, Sunday, or legal holiday, or the day specified in s. 230.35 (4) (a) 10., Stats.

(5) The employer and grievant may mutually agree in writing to waive the time limits at any step under sub. (2).

(7) The employer and grievant may conduct the first step meeting under sub. (2) (a) by telephone, videoconference, or by other comparable means.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; CR 18-006: am. (1), (2) (a), (b), r. (2) (c), (4), (6), am. (7) Register July 2018 No. 751, eff. 8-1-18.

**ER 46.07 Wisconsin Employment Relations Commission.** (1) If the grievant is dissatisfied with the decision received from the administrator or designee at the second step under s. ER 46.06 (2) (b) 2., the decision may be grieved to the commission only if it alleges that the employer abused its discretion in applying subch. II of ch. 230, Stats., or the rules of the director promulgated under that subchapter, subchs. I and II of ch. 230, Stats., or the rules of the administrator promulgated under

those subchapters, or written agency rules, policies, or procedures, except that decisions involving the following personnel transactions may not be grieved to the commission:

(a) A written instruction;

(b) A performance evaluation; or

(c) The evaluation methodology used by an employer to determine a discretionary pay award, or the amount of the award.

(2) Grievances to the commission must be filed within 14 calendar days after receipt of a decision issued at the second step of the grievance procedure under s. ER 46.06 (2) (b) 2., or within 15 calendar days after the last day on which the employer could have served a timely decision, whichever is sooner.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; reprinted to correct an error in (1) (c), Register, September, 1984, No. 345; am. (1) (intro.), Register, May, 1988, No. 389, eff. 6-1-88; correction in (1) (intro.) under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717; CR 18-006: am. (1) (intro.), (a), (2) Register July 2018 No. 751, eff. 8-1-18.

**ER 46.08 Failure to meet time limits.** (1) The employer shall reject any grievances not filed or any decision not grieved in accordance with the time limits set forth in this chapter. Any decision not grieved in a timely manner shall be decided on the basis of the last preceding decision.

(2) If the grievance is not answered within the time limits set forth in this chapter, the grievant may proceed to the next step under s. ER 46.06 (2) within 14 calendar days after the last day on which the grievance could have been timely answered.

(3) If the grievance at the second step under s. ER 46.06 (2) (b) 2. is not answered within the time limits set forth in this chapter, the grievant may proceed directly to the Wisconsin employment relations commission in accordance with s. ER 46.07.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; CR 18-006: am. (2), (3) Register July 2018 No. 751, eff. 8-1-18.

**ER 46.09 Grievant representation.** (1) Each employee may have assistance by a representative of his or her own choice during the grievance procedure.

(2) The administrator may allow a reasonable, yet limited, period of time without loss of pay for the employee and representative, if a state employee, to prepare for a grievance.

(4) Any expense incurred by the grievant or representative in investigating, preparing or presenting a grievance shall be the responsibility of the grievant or representative.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; CR 18-006: am. (1), r. and recr. (2), r. (3) Register July 2018 No. 751, eff. 8-1-18.

**ER 46.10 Retaliation prohibited.** No employer may retaliate against a grievant, representative, or witness who participates or is scheduled to participate in proceedings, for using the grievance procedure. This section may be enforced by order of the administrator under s. 230.04 (3), Stats.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; correction under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717.

**ER 46.11 Retroactivity.** No employer may grant any relief retroactive to more than 14 calendar days prior to the filing of the grievance at the first step under s. ER 46.06 (2) (a).

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84; am. Register, May, 1988, No. 389, eff. 6-1-88; CR 18-066: am. Register June 2018 No. 750, eff. 7-1-18.

**ER 46.12 Notification of employees.** The employer shall provide written notice to employees within the agency of the existence and content of the grievance procedure and any changes thereto.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84.

**ER 46.13 Informal discussions.** Nothing in this chapter precludes an employee from informally discussing with the employer any matter of concern, whether grievable or not.

**History:** Cr. Register, February, 1984, No. 338, eff. 3-1-84.