

Chapter Ind 88

EQUAL OPPORTUNITIES

Fair Employment

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History: Chapter Ind 88 as it existed on October 31, 1969 was repealed and a new chapter Ind 88 was created Register, November, 1969, No. 167, eff. 12-1-69.

Ind 88.01 Definitions. (1) The terms employes, employer, commission, labor organization, discrimination, discriminatory practice, serve, service, findings, recommendations, probable cause, unlawful and order, as used herein shall have the same meaning set forth in the act.

(2) The term "act" as used herein shall mean the Wisconsin Fair Employment Act, sections 111.31-111.37 Wis. Stats.

History: Cr. Register, November, 1969, No. 167, eff. 12-1-69.

Ind 88.02 Complaint. (1) **CHARGES BY AGGRIEVED PERSONS.** Any person claiming to be aggrieved by an alleged discriminatory practice or act contrary to the provisions of the act, may, by himself or through his duly authorized representative make, sign and file a complaint with the commission. A complaint deferred to the commission by the equal employment opportunity commission pursuant to the civil rights act of 1964 shall be deemed a complaint filed by an aggrieved person.

(2) **WHERE TO FILE.** (a) Complaints may be filed with any office of the Department of Industry, Labor and Human Relations.

(b) After a complaint is filed and found to be in proper order, the complaint shall be assigned to a field representative in the equal rights division for investigation.

(3) **FORM.** Complaints shall be in writing, signed and sworn to before a notary public duly authorized by law to administer oaths or take acknowledgments. Complaint forms prepared by the commission will be supplied by the commission upon request. Appropriate assistance in filling out forms will be made available to aggrieved persons by the commission.

(4) **CONTENT.** Each complaint shall contain:

(a) The full name and address of the person making the complaint (hereinafter called the complainant).

(b) The full name and address of the person against whom the complaint is made (hereinafter called the respondent).

(c) A plain and concise statement of the facts constituting the alleged unlawful discriminatory practice or act.

(d) The date or dates of the alleged unlawful discriminatory practice or act.

(5) **TIME OF FILING.** A complaint should be filed as soon as possible after the date of the alleged discriminatory practice or act.

(6) **AMENDMENT AND WITHDRAWAL.** A complaint may be amended or withdrawn at any time with and subject to the approval of the commission or its designated agent and under such terms as the commission or agent shall direct.

(7) **NOTICE TO RESPONDENT.** Upon the filing of a complaint, the commission shall serve a copy thereof upon the respondent promptly and prior to the commencement of the investigation. Upon request the commission may in a proper case and upon such terms as are just permit the complainant to file a supplemental complaint setting forth transactions, occurrences or events which allegedly have occurred after the filing of the original or amended complaint.

History: Cr. Register, November, 1969, No. 167, eff. 12-1-69.

Ind 88.03 Investigations. (1) **INITIAL DETERMINATION.** An agent of the commission shall promptly investigate all duly filed complaints. The agent shall promptly make and issue to the complainant and respondent an initial determination in writing setting forth the basis thereof as to whether or not there is probable cause to believe that discrimination has been or is being committed.

(2) **PROBABLE CAUSE DEFINED.** By probable cause is meant such competent evidence as would lead a quasi-judicial officer to believe within reasonable probabilities that a full hearing would establish the fact of unlawful discrimination by a preponderance of the evidence.

(3) **DISMISSAL OF COMPLAINT.** Upon completion of the investigation, if the agent finds that there is no probable cause to believe that an act of discrimination has occurred, he shall dismiss the complaint and promptly notify the complainant and the respondent in writing of such action. Thereafter application for reopening of proceedings may be had in accordance with section Ind 88.12. Application for a review of a commission order may be made in accordance with the provisions of chapter 227, Wis. Stats.

History: Cr. Register, November, 1969, No. 167, eff. 12-1-69.

Ind 88.04 Conference, conciliation and persuasion. (1) **CONFERENCE, CONCILIATION AND PERSUASION.** If upon investigation the commission's agent determines that there is probable cause to believe that the charge is true, the agent shall notify the complainant and the respondent in writing of the fact of determination, and shall endeavor to eliminate such alleged unlawful practice through means of conference, conciliation and persuasion.

(2) **CONCILIATION.** If, as a result of said conference, conciliation and persuasion, the commission's agent is able to effect the elimination of any unlawful discriminatory practice or act, he shall prepare a written conciliation agreement which shall set forth all measures

to be taken by any party, as in the judgment of the agent will effectuate the purposes of the act.

History: Cr. Register, November, 1969, No. 167, eff. 12-1-69.

Ind 88.06 Issuance of notice of hearing. (1) **NOTICE OF HEARING.** If the agent is unable to eliminate the alleged discriminatory practice or act through conference, conciliation or persuasion, said agent shall cause to be issued and served upon the respondent a copy of the complaint as the same may have been amended or supplemented together with a notice of hearing which shall specify the nature of the discrimination which appears to have been committed and require the respondent to answer the complaint at a hearing before an examiner. The notice shall specify a time of hearing not less than 10 days after service of the complaint and a place of hearing within either the county of the respondent's residence or the county in which the alleged discrimination appears to have occurred. Service of notice of hearing, and accompanying complaint may be made upon the complainant and respondent therein named by delivering to and leaving with each a copy of such notice and accompanying complaint or by mailing on the date of issuance copies thereof to the last known addresses of the complainant or respondent as they appear on the records of the commission.

History: Cr. Register, November, 1969, No. 167, eff. 12-1-69.

Ind 88.07 Answer. (1) **FILING OF ANSWER.** The respondent shall by himself or his duly authorized representative answer the complaint as the same may have been amended or supplemented. The answer shall be in writing and signed by the respondent or his duly authorized representative under oath and filed with the Equal Rights Division within ten days from the date of service of the complaint, as the same may have been amended or supplemented. A copy of the answer shall be transmitted to the complainant by the Division.

(2) **CONTENTS.** The answer should admit such allegations in the complaint that are true, contain a specific denial of each and every allegation of the complaint that is controverted by the respondent as the same may have been amended or supplemented, or a denial (in a proper case) of any knowledge or information sufficient to form a belief as well as a statement of any matter constituting a defense. The answer shall contain the post office address of the respondent.

History: Cr. Register, November, 1969, No. 167, eff. 12-1-69.

Ind 88.08 Hearings. (1) **HEARINGS.** Where the commission on its own motion deems such hearing appropriate or required by law, the commission shall designate an examiner to conduct such hearing. Such hearing shall be conducted promptly and shall afford the complainant and respondent reasonable opportunity to be heard. Hearings shall be public, subject to the authority of the examiner to maintain order. All testimony at the hearing shall be taken down by a reporter appointed by the commission. Hearings shall be conducted in conformity with these rules and with the provisions of chapter 227, Wis. Stats., relating to hearing procedures, practices and evidence as applicable to agencies. The commission or examiner may continue or adjourn a hearing to a later date or to a different place by announcement thereof at the hearing or by appropriate notice to the parties.

(2) **PROCEDURE.** In any case in which a hearing is conducted by an examiner the procedure shall be as follows:

(a) The examiner designated to conduct the hearing shall cause to be issued and served upon the complainant and respondent a copy of the complaint and a written notice of hearing requiring the complainant and the respondent to appear at such hearing and give evidence relative to the complaint. The notice of hearing shall specify the date of issuance and a time of hearing not less than 10 days after service of the notice of hearing and complaint, the names of the complainant and respondent, their last known addresses as they appear on the records of the commission, the place of hearing and the examiner designated to conduct the hearing.

(b) The scope of the hearing shall be limited to the merits of the complaint.

(3) **ACCELERATION OF HEARING.** The parties to the proceedings may consent by written stipulation to a hearing within less than 10 days after the service of the complaint and notice of hearing.

(4) **APPEARANCE OF PARTIES.** Either party may be present at the hearing with or without counsel and at the discretion of the examiner be allowed to call, examine and cross examine witnesses and introduce papers, documents or other evidence in person or by counsel.

(5) **WRITTEN EXCEPTIONS, REQUEST FOR ORAL ARGUMENT.** Each party shall be allowed a period of 20 calendar days following issuance of said recommended findings in which to file written exceptions to such summary and proposed findings and decision and to request oral arguments thereon.

(6) **COMMISSION FINDINGS.** Following the filing of written exceptions and request for oral arguments the commission shall notify the parties of a time and place for hearing oral arguments. If after hearing, the commission finds that the respondent has engaged in discrimination in violation of the act, the commission shall make written findings and recommend such action by the respondent as will effectuate the purpose of the act and shall serve a certified copy of the findings and recommendations on the respondent together with an order requiring the respondent to comply with the recommendation. If the commission finds that the respondent has not engaged in discrimination as alleged in the complaint, it shall serve a certified copy of its findings on the complainant together with an order dismissing the complaint.

(7) **FINDINGS CONTRARY TO RECOMMENDATIONS.** The commission findings may be made upon the basis of the hearing agent's summary and the written exceptions, filed therein as provided in section 227.12, Wis. Stats. In instances where the commission's findings are contrary to the recommendations of the hearing agent, its decision shall include a statement of fact and ultimate conclusions relied upon in rejecting the recommendations of the hearing officer.

(8) **SERVICE OF DECISION.** Every decision when made, signed and filed shall be served forthwith, by personal delivery or mailing, of a certified copy to each party to the proceedings or to his attorney of record.

(9) **MOTIONS AND OBJECTIONS AT HEARING.** Motions made during the hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, shall be stated orally and shall, with the ruling of the examiner be included in the stenographic report of the hearing.

(10) **MOTIONS BEFORE AND AFTER HEARING.** All motions other than those made during the hearing shall be in writing stating briefly the order or relief applied for and the grounds for such motion. The original and 3 copies of the motion and of the answer thereto, if any, shall be filed with the executive secretary of the commission. All motions shall be decided by the commission or its duly authorized agent without argument thereon unless the commission or hearing agent shall determine to hear oral argument or take testimony in which event the commission shall notify the parties of such fact and of the time and place for such argument and for the taking of such testimony.

(11) **WAIVER OF HEARING.** With the consent in writing of the parties and notice to all parties an order may be made without holding any hearing or the making of any findings of fact or conclusions of law.

(12) **BRIEFS.** The commission shall permit the parties to file briefs within such time limit as the commission may determine.

History: Cr. Register, November, 1969, No. 167, eff. 12-1-69.

Ind 88.09 Witnesses. (1) **SUBPOENAS AND SUBPOENAS DUCES TECUM.** The commission or its duly authorized agent may issue subpoenas and subpoenas duces tecum on its own motion or issue the same upon proper application for use by any party to a proceeding, whenever necessary to compel the attendance of witnesses and the introduction of books, records, correspondence, documents or other evidence which relates to any matter scheduled for hearing before it. Service shall be in the manner prescribed by law for service of subpoenas.

(2) **FAILURE TO OBEY SUBPOENA.** On the failure of any person to obey a subpoena or subpoena duces tecum issued by the commission or its duly authorized hearing agent, the commission may refer the matter to the attorney general's office for purposes of seeking an order from the court for such person to show cause why he should not be held in contempt.

History: Cr. Register, November, 1969, No. 167, eff. 12-1-69.

Ind 88.10 Orders. (1) **CONTENTS OF ORDER.** An order of the commission issued after a hearing is concluded shall set forth its findings of fact, its decision and in a proper case in its discretion an opinion containing the reason for said decision.

(2) **NOTICE OF RIGHT TO REVIEW.** Any order issued by the commission shall have printed thereon reference to chapter 227, Wis. Stats., which prescribes the rights of judicial review of any party.

History: Cr. Register, November, 1969, No. 167, eff. 12-1-69.

Ind 88.11 Certification. The chairman of the commission or such other person or persons as may be delegated by the commission is authorized and empowered to certify all documents or records which are a part of the files and records of the commission.

History: Cr. Register, November, 1969, No. 167, eff. 12-1-69.

Ind 88.12 Reopening of proceedings. (1) **APPLICATION FOR RECONSIDERATION.** Within 15 days from the date of the commission's order, any party may apply for reconsideration of the dismissal of the complaint or of the terms of conciliation or other order issued pursuant thereto. The application shall be in writing, under oath and state specifically the grounds upon which it is based. Such application may be granted or denied at the discretion of the commission.

(2) **REOPENING OF PROCEEDINGS.** Within 15 days after the issuance of a finding or order, the commission may, upon its own motion or upon application, of any party, for good cause shown or whenever justice so requires, or where an order or decision was made upon default of a party affected thereby, reopen any closed proceedings upon notice to all parties and take such action as it may deem necessary.

History: Cr. Register, November, 1969, No. 167, eff. 12-1-69.

Ind 88.13 Posting provision of act. Every place of employment, employment agency and labor organization subject to the act, shall post and keep posted in conspicuous places upon its premises where notices to patrons, employes and applicants for employment are customarily posted, a poster prepared and distributed by the commission relating to the public policy contained in the fair employment act.

History: Cr. Register, November, 1969, No. 167, eff. 12-1-69.

Ind 88.20 Pregnancy and maternity leave. No additional or different benefits or restrictions may be applied for job-related purposes to temporary disability because of pregnancy or childbirth than are applied to other temporary disabilities. No woman employe or applicant who requires or may require maternity leave should be in a better or worse position in relation to job-related practices or benefits than any other employe or applicant who requires or may require leave for any other temporary disability.

(1) "Maternity leave" is leave for that period of time a woman is medically unable to perform her job because of childbearing or complications of pregnancy. Maternity leave is to be distinguished from "leave for childbearing" (temporary leave for care of an infant) which is not covered by section Ind 88.20.

(2) A pregnant employe has a right to a maternity leave if an employer grants leave to any other employe affected by any other temporary disability.

(3) An employer may not set an arbitrary time when maternity leave shall begin or end, unless such time restrictions apply equally to leaves for any other temporary disability. However, an employer may demand medical evidence of an employe's physical ability to perform her job before and after maternity leave if the employer demands such evidence from employes requiring leave for any other temporary disability.

(4) Reinstatement rights following maternity leave shall be the same as in cases of leave for any other temporary disability.

(5) Employes on maternity leave shall be treated in the same manner as employes on leave for any other temporary disability in relation to pension plans, vacations, seniority, insurance coverage, and any other peripheral benefit.

(6) Employee on maternity leave shall be entitled to receive any accumulated sick pay, vacation benefits, or benefits under an employer's temporary disability or wage continuation system paid to employees on leave for any other temporary disability.

(7) If an employer provides maternity insurance coverage to wives of male employees, such coverage must also be provided for female employees.

(8) Wherever applicable, section Ind 88.20 shall apply with equal force and effect to labor organizations, employment and licensing agencies.

History: Cr. Register, April, 1972, No. 196, eff. 6-1-72.

Emergency eff - 5/12-72

Ind 88.50 Post-employment records. An employer subject to Wisconsin's fair employment chapter 111, sub chapter 2, may make and keep such post-employment records as will enable said employer to determine statistically the age, race, color, handicap, sex, creed, national origin or ancestry of his employees. Such records shall not be obtained by way of identifying race, color or creed on an employment application form or pre-employment inquiry, and shall not be made part of the individual record of any employee.

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History: Cr. Register, November, 1969, No. 167, eff. 12-1-69.

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