

Chapter PC 2

FILING AND PROCESSING COMPLAINTS

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PC 2.01 Time limits and address for filing complaints. All complaints shall be filed according to the appropriate time limits established by statute or rule and shall be filed at the offices of the commission. The time limit for filing complaints with the commission pursuant to Wisconsin's fair employment act or the elder abuse reporting law shall be the period set forth in s. 111.39 (1), Stats.

Note: The mailing address of the commission is:
 State Personnel Commission
 131 W. Wilson St., Room 1004
 Madison, WI 53703

The Wisconsin fair employment act provides that complaints under that act be filed "no more than 300 days after the alleged discrimination, unfair honesty testing or unfair genetic testing occurred." s. 111.39 (1), Stats.

Complaints of retaliation relating to occupational safety and health are to be filed "within 30 days after the employee received knowledge of the discrimination or discharge." s. 101.055 (8) (b), Stats.

Complaints of retaliation under the "whistleblower law" must be filed "within 60 days after the retaliatory action allegedly occurred or was threatened or after the employee learned of the retaliatory action or threat thereof, whichever occurs last." s. 230.85 (1), Stats.

Complaints under the family medical leave act are to be filed "within 30 days after the violation occurs or the employee should reasonably have known that the violation occurred, whichever is later." s. 103.10 (12) (b), Stats.

History: Cr. Register, August, 1987, No. 380, eff. 9-1-87; am. Register, May, 1996, No. 485, eff. 6-1-96.

PC 2.02 Complaints. (1) CONTENT. Complaints should identify the name, address and telephone number of the complainant, the name of the respondent agency, the facts which constitute the alleged unlawful conduct and the statutory basis of the allegation.

Note: See the note in s. PC 1.02 (9), for listing of potential statutory bases.

(2) FORM. Complaints shall be written on a form available from the commission or on any other form that is acceptable to the commission. The complaint shall be signed, verified and notarized.

(3) AMENDMENT. A complaint may be amended by the complainant, subject to approval by the commission, to cure technical defects or omissions, or to clarify or amplify allegations made in the complaint or to set forth additional facts or allegations related to the subject matter of the original charge, and those amendments shall relate back to the original filing date.

(4) ASSISTANCE. Appropriate assistance in completing complaint forms, including notarization, shall be provided by the commission in the commission's offices.

History: Cr. Register, March, 1980, No. 291, eff. 4-1-80; r. and recr. Register, August, 1987, No. 380, eff. 9-1-87; am. (1), Register, May, 1996, No. 485, eff. 6-1-96.

PC 2.03 Notice to respondents. (1) Except where prevented by the anonymity requirement of s. 111.375 (1), Stats., the commission shall serve a copy of the complaint upon each respondent prior to the commencement of any investigation.

(2) When the commission invokes s. 111.375 (1), Stats., and preserves a complainant's anonymity, the commission shall serve the respondent with a general statement describing the complaint.

History: Cr. Register, August, 1987, No. 380, eff. 9-1-87.

PC 2.04 Answers. Respondents may file written answers within 20 days after service of the complaint. If no answer is filed, every material allegation of the complaint is in issue. However, as

part of an investigation, the commission may require that respondents file an answer to a complaint within a time period specified by the commission and may require that the answer include a statement regarding each allegation in the complaint, the respondent's version of the underlying facts, copies of documents relating to the allegations and the assertion of any legal defenses to the allegations. The commission may modify the specified period for good cause shown.

History: Cr. Register, August, 1987, No. 380, eff. 9-1-87; am. Register, May, 1996, No. 485, eff. 6-1-96.

PC 2.05 Investigations. (1) METHODS. The commission shall determine the nature and scope of the investigation and shall impartially obtain and analyze information relevant to the complaint. The commission may obtain information by methods including, but not limited to, fact-finding conference, interview, on-site inspection, inspection of documents or examination of written submissions of parties and witnesses. To carry out its investigation, the commission may use all those methods of discovery specified in ch. 804, Stats., issue subpoenas and subpoenas duces tecum and require answers as provided in s. PC 2.04.

(2) INTERVIEWS. The commission may require that an interview with any employee, except a management or supervisory employee who is a party to or is immediately involved in the subject matter of the complaint, be conducted outside the presence of the appointing authority or any representative or agent thereof unless the employee voluntarily requests that presence. An appointing authority shall permit an employee to be interviewed without loss of pay and to have an employee representative present at the interview. An appointing authority of an employee to be interviewed may require the commission to give the appointing authority reasonable notice prior to the interview. In scheduling interviews, the commission shall consider the programmatic needs of the appointing authority. As used in this subsection, "management or supervisory employee" includes persons who served in management or supervisory positions at the time of the events that comprise the basis of the complaint.

(3) TIME LIMIT FOR RESPONDING TO COMMISSION'S DISCOVERY REQUESTS. A party shall respond to the commission's discovery requests within 30 days after service unless the commission grants an extension or modification for good cause shown.

(4) SANCTIONS. (a) The commission shall notify the party from whom discovery is sought that the failure to answer or produce requested information necessary for an investigation may result in the imposition of those sanctions set forth in pars. (b), (c) and (d).

(b) If a complainant fails to answer or to produce requested information necessary for an investigation, the commission may dismiss the complaint or make an appropriate inference and issue an initial determination. In the alternative, at any hearing arising out of the complaint the hearing examiner or commission may exclude any evidence which should have been offered in response to the discovery request.

(c) If a respondent fails to answer or to produce requested information necessary for an investigation, the commission may make an appropriate inference, analyze the available evidence

and issue an initial determination. If probable cause is ultimately found, conciliation is unsuccessful and a hearing on the merits of the complaint is convened, the hearing examiner or commission may exclude any evidence which should have been offered in response to the discovery request.

(d) If a respondent fails to file an answer when required by the commission under s. PC 2.04, the hearing examiner or the commission may invoke those sanctions described in par. (c).

History: Cr. Register, August, 1987, No. 380, eff. 9-1-87.

PC 2.06 Fact-finding conferences. Upon the agreement of the parties, the commission may convene fact-finding conferences in order to obtain information, to identify those matters in dispute and to explore the possibility of a negotiated settlement. At least 10 days prior to the conference, notice of the conference shall be provided to all parties. A fact-finding conference is not a contested case hearing. A member of the commission's staff shall conduct and control the conference.

History: Cr. Register, August, 1987, No. 380, eff. 9-1-87.

PC 2.07 Initial determinations. (1) WHEN ISSUED. At the conclusion of each investigation and absent a settlement between the parties or other final disposition of the complaint, the commission shall make an initial determination as to whether probable cause exists as to each claim raised in a complaint. The initial determination shall be in writing and shall be served on the parties along with an explanation of any time limits for obtaining review of the initial determination.

(2) PROBABLE CAUSE DETERMINATIONS. Upon either an initial determination of probable cause following investigation or a find-

ing of probable cause following hearing, the commission shall seek to resolve the dispute between the parties by conciliation unless either party waives conciliation in writing. If conciliation is waived or is unsuccessful, the complaint may proceed to hearing on the issue of whether a violation occurred as alleged in the complaint.

Note: See the note in s. PC 1.02 (9), for listing of statutory bases over which the commission has jurisdiction.

(3) NO PROBABLE CAUSE DETERMINATIONS. Within 30 days after the service of an initial determination of no probable cause as to any claim raised in a complaint, a complainant may file, with the commission, a written request for hearing on the issue of probable cause as to that claim. If, after a hearing, the commission finds probable cause as to the claim and reverses the initial determination, the complaint shall be processed under sub. (2).

(4) MIXED DETERMINATIONS. When a complaint includes 2 or more claims and findings of both probable cause and no probable cause have resulted, those claims for which probable cause has been found shall be processed under sub. (2), and those claims for which no probable cause has been found shall be processed under sub. (3), except that the parties may agree to process the entire complaint under sub. (2) as if probable cause had been found as to all claims.

History: Cr. Register, August, 1987, No. 380, eff. 9-1-87; am. (2), Register, May, 1996, No. 485, eff. 6-1-96.

PC 2.08 Conciliation conferences. At any time during the pendency of a complaint, the commission may seek to effectuate a settlement between the parties by convening a conciliation conference.

History: Cr. Register, August, 1987, No. 380, eff. 9-1-87.