

## Chapter 17 Dispute Resolution

### 17.01 Classified Grievances and Appeal

#### Grievance Procedure

A grievance is a written statement from a permanent or project employee or a group of such employees, which alleges that a demotion, layoff, suspension, discharge, reduction in base pay or written reprimand was without just cause. Additionally, an employee may file a grievance through this procedure contesting an action where the employee alleges the Employer abused its discretion in applying written agency rules, policies or procedures.

Non-grievable actions include:

1. Decisions made or delegated by the administrator that are appealable to the commission under Wis. Stat. 230.44(1)(a);
2. Decisions made or delegated by the director that are appealable under Wis. Stat. 230.44(1)(b);
3. Personnel actions that are appealable to the commission under Wis. Stat. 230.44(d);
4. Personnel actions under Wis. Stat. 230.275 that are appealable to the commission under Wis. Stat. 230.44(1)(dm);
5. Determinations that a person was discharged from the unclassified service for just cause under Wis. Stat. 230.337;
6. Delegation of an action by the OSER Director to an appointing authority;
7. Termination of limited term (LTE) or project employees;
8. The reassignment of a career executive employee under ch. ER-MRS 30, Wis. Adm. Code;
9. The failure of a supervisor to process a reclassification request;
10. The content of written agency rules and policies;
11. Release of probationary employees;
12. Oral reprimands;
13. A condition of employment which is a management right of the employer under s. ER 46.04, Wis. Adm. Code;
14. Any other matters related to wages, hours of work, types of fringe benefits, and other conditions of employment that are not expressly grievable under this chapter. Examples of such matters include, but are not limited to, discretionary merit compensation, allegations of missed overtime, assignment of overtime, and scheduling of work; and
15. Performance evaluations.

A grievance may be denied if it fails to allege a grievable issue.

The grievance procedure was established to ensure an employee's right to express grievances through proper channels without prejudice or retaliation and to assure timely and thorough consideration by the employer.

The employee has the right to assistance from a representative of his/her choice at any step in this process.

After providing reasonable notice to the employer, campus employees and their representatives are permitted a reasonable amount of time to investigate, prepare and present a grievance without loss of pay during normally scheduled work hours. The employer has the ability to determine whether the time requested by the representative is a reasonable request. Time spent preparing grievances outside of the employee's regularly scheduled hours of work, or any travel or other expenses incurred by the grievant or representative are not the responsibility of the employer.

Grievances may be conducted via teleconference or video conference, if the required employee representative is not located near the employee's work location. It is not reasonable to request a representative that requires significant travel time to the employee's work location (e.g. outside of Madison).

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### **Summary of General Procedures**

Employees are encouraged to discuss the matter with the immediate supervisor prior to filing a written grievance. This allows the facts and circumstances surrounding the subject to be fully discussed, potentially resolving the matter prior to the filing of a grievance.

#### **Step 1: Employee Submits a Written Grievance Within the College, School or Division**

An employee may submit a written grievance to the first-line supervisor within 30 calendar days from the date the employee first became aware, or should have become aware (with the exercise of reasonable diligence), of the matter grieved. If the employee does not feel comfortable submitting the grievance to the first-line supervisor, they may submit the grievance to the College, School or Division Human Resources Office. The grievance must be filed by the aggrieved employee, and may not be filed on that employee's behalf by a representative. Group grievances must be signed by each grievance group member.

A grievance must be filed using the multi-ply OSER grievance form (Form #OSER-DCLR 222 Rev. 12/2011). Employees may contact their human resources representative or stop by 21 N. Park Street - room 5100 for a copy of this form.

The form must include the specific employer action being grieved, identify the rule, admin code or policy being violated, and the relief sought. The grievance must be signed and dated by the grievant. A grievance may be denied should it fail to fulfill these requirements.

The supervisor, or divisional HR will meet with the employee and return a written decision to the employee within 21 calendar days of receipt of the grievance.

#### **Step 2: Grievance May be Appealed to Classified Human Resources**

If the employee is not satisfied with the Step 1 decision or if the supervisor or divisional HR fails to respond within the time limit, the grievance may be appealed to Classified Human Resources within seven calendar days of receipt of, or deadline for receipt of, the Step 1 decision. The Classified Human Resource Office representative will meet with the employee to discuss the grievance and return a written decision to the employee within 21 calendar days of receipt of the appeal.

An employee may grieve a discharge beginning with the second step of the grievance procedure.

This second step is the final step of the grievance process for written reprimands and grievances regarding the application of written agency rules, policies or procedures.

#### **Step 3: Grievance May be Appealed to OSER for Settlement**

If the employee is not satisfied with the Step 2 decision or if Classified Human Resources fails to respond within the time limit, the grievance may be appealed to the Office of State Employment Relations (OSER). OSER will generally review and discuss the grievance. If the grievance is not resolved, OSER will send a written notice to the grievant within 21 calendar days from the receipt of the grievance at Step 3.

If an unresolved grievance is not appealed to the Wisconsin Employment Relations Commission, it shall be considered terminated on the basis of the second step answer. The issue as stated by the grievant in the second step shall constitute the sole and entire subject matter to be heard by the commission, unless the parties agree to modify the scope of the hearing.

#### **WERC: Wisconsin Employment Relations Commission (WERC)**

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If the grievance is not resolved in Step 3, the grievance may be appealed to the Wisconsin Employment Relations Commission. The appeal must be received by the Commission within 30 calendar days of receipt of, or deadline for receipt of, the Step 3 decision. WERC appeals must include a cover letter containing: the grievant's address, telephone numbers, and email address at work and at home, the grievant representative's address, telephone numbers, and email address at work and at home, the name of the state agency that took the action being appealed, the facts forming the basis for the appeal, the reason the grievant believes the action to be improper, the relief or remedy requested and a copy of the employer's last grievance response. The WERC will schedule a formal hearing and issue a written decision that is final and binding on both parties. The WERC decision may be appealed to the appropriate State Circuit Court.

### **Appeals Directly to Wisconsin Employment Relations Commission (WERC)**

Wisconsin law permits appeals of personnel actions taken by the Administrator, State Division of Merit, Recruitment and Selection, and by UW Campuses. The WERC hears these appeals.

Actions that may be appealed rather than grieved include, but are not limited to, the following:

#### **Reclassification & Reallocation Actions**

If Classified Human Resources denies or modifies a formal reclassification request or implements a reallocation transaction, the employee in the position being affected may appeal the decision to the WERC. The appeal must be within 30 calendar days after the effective date of the action or within 30 calendar days after the employee is notified of the action, whichever is later. The rationale for the appeal should be clear and concise within the correspondence to the WERC.

#### **Campus Non-Delegated Actions**

If Classified Human Resources denies or modifies a formal reclassification request, the employee may appeal the decision to the Division of Merit Recruitment and Selection, OSER within 30 calendar days after the effective date of the action or within 30 calendar days after the employee is notified of the action, whichever is later.

If the Division of Merit Recruitment and Selection, OSER denies or modifies a formal reclassification request or implements a reallocation transaction, the employee in the position being affected may appeal the decision to the WERC. The appeal must be within 30 calendar days after the effective date of the action or within 30 calendar days after the employee is notified of the action, whichever is later. The rationale for the appeal should be clear and concise within the correspondence to the WERC.

#### **Action of an Appointing Authority Related to the Hiring Process after Certification**

Actions, which are related to the hiring process and are taken by an appointing authority after certification of the eligible candidates, and which are alleged to be illegal or an abuse of discretion, may be appealed to the WERC. Appeals must be filed within 30 calendar days after the effective date of the action or within 30 calendar days after the employee is notified of the action, whichever is later.

#### **Appeals to Equal Rights Division, Department of Workforce Development**

Complaints alleging employment discrimination because of color, race, age, sex, marital status, sexual orientation, national origin, creed, ancestry, handicap, or arrest or conviction record may be filed with the Equal Rights Division, Department of Workforce Development within 30 calendar days after the alleged discrimination occurred.

#### **Denial of Benefits for Employment Related Injury – Hazardous Employment Wis. Stat 230.36**

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An employee denied benefits for injury allegedly suffered from hazardous employment may appeal to the WERC within 30 calendar days after the effective date of the action or within 30 calendar days after the employee is notified of the action, whichever is later.

### **Wisconsin Employment Relations Commission Procedures**

Written Appeals may be filed by mail or in person with the WERC (1457 East Washington Avenue, Madison, Wisconsin 53707) within the time limits specified in above sections. Employees should contact the WERC directly, (608) 266-1381, to receive information on the procedures for filing an appeal, including any applicable filing fees.

In grievance cases, employees are given a reasonable amount of time during normally scheduled work hours to prepare for the grievance. If more preparation time is needed, such leave (paid or unpaid) will be at the discretion of the employing unit in accordance with work requirements and good management practices.

The Commission will schedule a pre-hearing conference after receipt of the appeal in grievance cases. At that time, the specific issues will be defined and an attempt made to settle the case. If settlement is not reached, the case will be scheduled for a formal hearing before a hearing examiner. A final order will be issued to all parties with the Commission's decision. This order is legally binding, but may be further appealed to the appropriate State Circuit Court by either party.

Additional information for grievance procedure for classified employees may be found in the Office of State Employment Relations, Wisconsin Human Resources Handbook, [Chapter 430](#).