

WISCONSIN HUMAN RESOURCES HANDBOOK

CHAPTER 430

GRIEVANCE PROCEDURES FOR NONREPRESENTED CLASSIFIED EMPLOYEES

Sec. 430.010	Introduction	Sec. 430.100	Miscellaneous
Sec. 430.020	Statutory Authority	Sec. 430.110	Use of Paid Work Time by Nonrepresented Employees for Investigating, Preparing, and Presenting Non-contractual Grievances
Sec. 430.030	Grievance		
Sec. 430.040	Non-Grievable Actions		
Sec. 430.050	Management Rights		
Sec. 430.060	Grievance Steps		
Sec. 430.070	Actions Grievable to Third Step Only	Sec. 430.120	Retaliation Prohibited
Sec. 430.080	Grievance Submittal and Response Time	Sec. 430.130	Limitations of Relief Granted
Sec. 430.090	Grievances Appealable Directly to the Personnel Commission	Attachment:	Nonrepresented Grievance Form

Sec. 430.010 Introduction

Wisconsin statutes (Wis. Stats.), along with the Wisconsin Administrative Code (Wis. Adm. Code), provide nonrepresented employees the right to grieve specific actions which affect their conditions of employment. This policy chapter is intended to provide agencies with guidance in administering the related policies. The statutes and code will govern in the event of any conflict with this policy chapter.

Note: Grievance procedures for represented employees are described in their respective collective bargaining agreement.

Sec. 430.020 Statutory Authority

Section 230.04(14), Wis. Stats., requires the Office of State Employment Relations (OSER) Director to establish, by rule, the scope and minimum requirements of a state employee grievance procedure relating to conditions of employment. The OSER Director has created Chapter ER 46, Wis. Adm. Code, which has as its express purpose:

“ . . . 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.”

Agencies must have a grievance procedure which meets the minimum requirements found within Chapter ER 46, Wis. Admin. Code. If an agency desires a grievance procedure that differs from that found in s. ER 46.06, Wis. Adm. Code, in order to promote the goals and policies of Chapter ER 46, Wis. Adm. Code more efficiently, the agency must first obtain approval of the OSER Director.

According to s. ER 46.13, Wis. Adm. Code, nothing prevents an employee from informally discussing with the employer any matter of concern. If both parties agree, informal resolution of grievable matters can be explored and is encouraged through a pre-filing procedure.

Sec. 430.030 Grievance

Nonrepresented permanent and project employees may file a formal complaint through the agency grievance procedure. A grievance is a 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 Chapter ER 46, Wis. Adm. Code.

Most grievances relate to the following :

- Conditions of Employment
 - Compensation for overtime hours
 - Vacation, holidays, and length of service benefits (eligibility for or computation of)
- Overtime
- Co-workers' conduct affecting employee
- Layoff
- Treatment by management affecting employee
- Discipline
- Seniority
- Unsafe equipment

Other subjects may be grieved to the extent they are not excluded by Section 430.040 of this Chapter, are under the employer's control, and within the limitations of Chapter ER 46, Wis. Adm. Code.

Sec. 430.040 Non-Grievable Actions

Actions not grievable under this procedure include, but are not limited to, the following:

1. Classification transactions that are appealable under s. 230.44, Wis. Stats. (Also see WHRH Chapter 420);
2. Delegation of an action by the OSER Director to an appointing authority;
3. Termination of limited term employees (LTE) or project employees;
4. The reassignment of a career executive employee under ch. ER-MRS 30, Wis. Adm. Code; Be sure this stays consistent with ER 30 revisions
5. A demotion, suspension, discharge, removal, layoff, or reduction in base pay;
6. A personnel action after certification which is related to the hiring process;
7. Denial of hazardous employment benefits under s. 230.36(4), Wis. Stats;
8. The failure of a supervisor to process a reclassification request;
9. Agency written rules and policies;
10. Release of probationary employees;
11. Oral reprimands;

12. Conditions of employment which are management rights of the employer under s. ER 46.04, Wis. Adm. Code (See Section 430.050 of this Chapter); and
13. Matters related to wages, hours of work, and types of fringe benefits to which an employee is entitled.

Sec. 430.050 Management Rights

Management possesses the sole right to operate an agency to carry out the statutory mandate and goals assigned to the agency and all management rights repose in management, however, such rights must be exercised consistently. Nothing in Ch. ER 46 Wis. Adm. Code, (Grievance Procedure) is intended to interfere with the sole right of an agency to carry out its statutory mandate and goals, which include:

1. Using personnel, methods, and means to carry out the statutory mandate and goals of the agency.
2. Determining the size and composition of the work force.
3. Managing and directing the employees of the agency.
4. Hiring, promoting, transferring, assigning or retaining employees.
5. Establishing reasonable work rules.
6. Taking disciplinary action against an employee for just cause.
7. Laying off employees due to lack of work or funds or organizational changes.

Sec. 430.060 Grievance Steps

A grievance procedure for non-represented employees may have the following steps. The usual management designee responding is noted after each step:

- Pre-filing – first line supervisor;
- First step – first line supervisor;
- Second step – division administrator level; and
- Third step – agency head level, in consultation with the agency human resources manager and the agency legal counsel in the case of disciplinary matters.

The fourth step is the Wisconsin Employment Relations Commission (WERC) only if the grievant alleges abuse of discretion in applying Chapter 230 (subchp. I, Administrative Services, and II, Civil Service), rules promulgated thereunder, or agency rules, policies or procedures.

Sec. 430.070 Actions Grievable to Third Step Only

Grieving the following actions cannot proceed beyond the third step:

1. Written reprimands;
2. Performance evaluations; and
3. Discretionary compensation adjustment awards (evaluation methodology).

Sec. 430.080 Grievance Submittal and Response Time

A formal grievance must be presented to management no more than 30 calendar days from the date the grievant first became aware, or should have become aware (with the exercise of reasonable diligence) of the matter grieved.

When the grievant works in a different city than the responding designee, the postmark denotes the date of submittal or response. Grievances not appealed within the prescribed time limits at any step of the grievance procedure are completed based on the last response. Grievances which are not answered within the prescribed time limits may be grieved to the next step within seven (7) calendar days after a grievance should have been answered by respondent.

Example: If a grievance at Step 2 is not answered within prescribed time limits, the grievant may proceed directly to Step 3.

1. Informal resolutions are encouraged through a pre-filing process. The supervisor and employee should identify and discuss the matter in a mutual attempt to resolve the issue.
2. The Step 1 management designee must meet with the employee, supply a written response on the grievance form **and** deliver it to the grievant within 7 calendar days of receipt of the written grievance form from the employee.
3. If the grievant is dissatisfied with the answer in Step 1, the grievance must be submitted to Step 2 within 7 calendar days from receipt of the answer in Step 1 or within 7 calendar days of the date on which the response should have been answered if no response was issued at the first step of the process.

The Step 2 management designee must meet with the employee and supply a written response on the grievance form **and** deliver it to the grievant within 7 calendar days of receipt of the grievance at Step 2.

4. If the grievant is dissatisfied with the response in Step 2, the grievance must be forwarded to the Step 3 management designee within 7 calendar days from the receipt of the answer in Step 2 or within 7 calendar days of the date on which the response should have been answered if no response was issued at the second step of the process.

The Step 3 management designee will meet with the grievant, supply a written response on the grievance form **and** deliver it to the grievant within 21 calendar days from receipt of the grievance at Step 3.

5. If the grievant is dissatisfied with the response at Step 3, the grievant may appeal to the WERC, if the issue is appealable. Such appeal must be made in writing and filed (actual receipt at the WERC) within 30 calendar days after service of a decision issued at Step 3 or within 30 calendar days after the last day on which the agency could have served a timely decision, whichever is sooner.

Sec. 430.090 Grievances Appealable Directly to the Wisconsin Employment Relations Commission

Decisions of the appointing authority may be grieved to the WERC only if they allege that the employer abused discretion in applying: (1) subch. II of Ch. 230 or the rules of the Administrator promulgated under that subchapter; (2) subch. I and II of Ch. 230 or the rules of the OSER Director promulgated under those subchapters; or (3) written agency rules, policies or procedures, except decisions on transactions identified in Sec. 430.040, 430.050 and 430.060.

Sec. 430.100 Miscellaneous

1. A grievant may be assisted by a representative of his/her own choosing in person, by telephone, or by teleconference.
2. The grievant and respondent can agree in writing to:
 - Waive a step or multiple steps within the procedure
 - Extend a time frame for filing or responding--does this have to be noted in writing ?
3. A single grievance form may be used for more than one employee if the grievants are grieving the same issue or circumstance. The grievance is declared as a group grievance at Step 1 and is signed by all grieving employees.
4. The appointing authority may consolidate grievances where a reasonable basis for consolidation exists.

5. Limited Term Employees are prohibited from filing a grievance.

Sec. 430.110 Use of Paid Work Time by Nonrepresented Employees for Investigating, Preparing, and Presenting Non-contractual Grievances

It is recognized that a nonrepresented employee who files a grievance with the WERC under s. 230.45(1), Wis. Stats., may need time to prepare for the presentation of his/her case. The employer is required by s. ER 46.09, Wis. Adm. Code, to permit, upon receiving reasonable notice, a state employee and his/her representative a reasonable period of time, as determined by the appointing authority, during normal work hours to investigate, prepare, and present a grievance without loss of pay.

Any expense incurred by the grievant or his/her representative in investigating, preparing, or presenting a grievance shall be the sole responsibility of the grievant or representative.

Time spent preparing grievances outside the employee's regularly scheduled hours of work, or any travel or other expenses incurred by the grievant are not the responsibility of the employer.

Nonrepresented employees must be notified in writing of the agency's grievance procedures and any changes that may occur through the agency's policies and procedures handbook or other format. Agency policies must identify, at a minimum, which positions in the agency are responsible for each of the first three steps, the time frames, the filing form, and any other requirements.

Sec. 430.120 Retaliation Prohibited

Agencies are prohibited from retaliating against a grievant, representative, or witness who participates, or is scheduled to participate in proceedings, for using the grievance procedure. The OSER Director can enforce this prohibition by order under to s. 230.04(3), Wis. Stats. A grievant, witness, or representative may also have protection against retaliation under s. 230.83, Wis. Stats.

Sec. 430.130 Limitations of Relief Granted

ER 46.11, Wis. Adm. Code prohibits agencies from granting relief that is retroactive beyond 30 days immediately preceding filing the grievance at the first step .

Attachment: Nonrepresented Grievance Form (use of this form is discretionary)

