

# Wisconsin Human Resources Handbook

## Chapter 430

### Employee Grievance Procedure

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#### Sec. 430.010 Introduction

The State encourages continuing informal communication between employees and management. The State also recognizes the value of a formal grievance procedure. It is the policy of the State and the responsibility of the Administrator to ensure that an established written grievance procedure relating to adverse employment actions is available to state employees for the disposition of employee grievances.

This grievance procedure shall ensure each employee may, without prejudice, express and present a grievance through proper channels. During the grievance process, the grievant and the employer shall make efforts to resolve the grievance by seeking a mutually acceptable solution to the matter grieved. This chapter sets forth the procedures by which employees may challenge adverse employment action pursuant to s.230.445, Wis. Stats..

**Note:** Grievance procedures for represented Public Safety Employees – employees in positions classified as State Patrol Troopers and State Patrol Inspectors - are described in their collective bargaining agreement and are not subject to any provisions contained in this chapter. The grievance procedure relating to conditions of employment required by Wis. Stat. s. 230.04(14) is in Wis. Admin. Code Ch. ER 46 and is not subject to any provisions in this chapter.

#### Sec. 430.020 Statutory Authority

1. Section 230.445(2), Wis. Stats., provides: “An employee may file a complaint under this section concerning the application of a law, rule, or policy to an adverse employment decision against an employee.”
2. Section 230.44(1)(c), Wis. Stats., provides:  
“**Appeal procedures.** (1) Appealable Actions and Steps. Except as provided in par. (e), the following are actions appealable to the commission under s. 230.45(1)(a):  
...  
(c) *Demotion, layoff, suspension or discharge.* If an employee has permanent status in class, or an employee has served with the state as an assistant district attorney or an assistant state public defender for a continuous period of 12 months or more, the employee may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission as the final step in the state employee grievance process established under s. 230.445, if the appeal alleges that the decision was not based on just cause.”

**Sec. 430.030 Definitions**

1. “Administrator” means the Administrator of the Department of Administration, Division of Personnel Management.
2. “Adverse employment decision” means a decision by management to demote, layoff, suspend without pay, discharge, or reduce the base pay of an employee.
3. “Employee” means a state employee who has obtained permanent status in class or an employee who has served with the state as an assistant district attorney or an assistant public defender for a continuous period of twelve (12) months or more.
4. “Permanent status in class” means the rights and privileges attained upon successful completion of a probationary period required upon appointment to a permanent, seasonal, or sessional position.

**Sec. 430.040 Grievable Actions**

**1. Adverse Employment Decisions**

Per Wis. Stat. s. 230.445, employees may file a formal grievance contesting only the following adverse employment decisions if the employee alleges the action was taken without just cause:

- demotion
- layoff
- suspension (including letters in lieu of suspension\*)
- discharge
- reduction in base pay

Employees must use the DPM Adverse Employment Action Employee Grievance form (DOA-15802) to file grievances (Attachment #1) contesting an adverse employment decision by the employer. Grievances may be filed electronically per the procedure set forth by your agency.

\*Note: Letters in lieu of suspension will only be issued for exempt employees where FLSA rules prohibit unpaid suspensions.

**2. Conditions of Employment**

Employees may file a grievance on issues related to conditions of employment, as defined in Wis. Admin. Code Ch. ER 46. Grievances filed under the provisions of Ch. ER 46 shall follow the procedures, rules and scope of Ch. ER 46. The procedures, rules and scope of this handbook chapter are not applicable.

Employees must use DPM Conditions of Employment – Employee Grievance form (DOA-15805) to file grievances (Attachment #2) related to conditions of employment. Grievances may be filed electronically per the procedures set forth by the agency.

### **Sec. 430.050 Non-Grievable Actions Appealable Directly to the WERC**

The following actions are not grievable under this grievance procedure but can be appealed directly to the Commission (WERC) per ss. 230.44 or 230.45, Wis. Stats.

1. Decision made or delegated by the administrator;
2. Decision made or delegated by the director;
3. Illegal action or abuse of discretion relating to the hiring process in the classified service;
4. Noncompetitive appointment of certain disabled veterans;
5. Discretionary performance awards excluding performance awards under s. 230.12(5) or under s. 230.04(19) which includes the methodology and results used to determine the award or the amount awarded;
6. Determination that a person was discharged from the unclassified service for just cause under s. 230.337;
7. Decisions affecting Milwaukee County employees by the department of health services;
8. Decisions affecting certain county employees by the department of children and families;
9. Denial of hazardous duty pay per s. 230.36(4).

### **Sec. 430.060 Non-Grievable Actions Appealable Directly to the Division of Equal Rights**

The following actions are not grievable under this grievance procedure but can be appealed directly to the Division of Equal Rights (ERD) per s. 230.45, Wis. Stats.

1. Discrimination complaints under s. 111.375;
2. Complaints of retaliatory disciplinary actions under s. 230.85;
3. Whistle Blower complaints under 230.81.

### **Sec. 430.070 Grievance Procedure**

The grievance procedure for employees consists of the following steps. The usual management designee responding to the step will be:

- First step – Appointing Authority or designee. This will normally be the agency Human Resources Director, Employment Relations Section Chief, or designee. Employees will contact their human resources office to determine the appropriate contact and the appropriate method of filing;
- Second step – Department of Administration (DOA), Division of Personnel Management (DPM).

Grievances not resolved or settled at Step 1 or 2 of the process may be appealed to the WERC under Wis. Stat. § 230.445(3)(c) if the appeal alleges the decision grieved was not based on just cause. Grievances may not be appealed to the WERC without first completing the preceding steps in the grievance procedure.

### **Sec. 430.080 Grievance Submittal and Response Time**

An employee may file a grievance under this chapter concerning the application of a law, rule, or policy to an adverse employment decision against the employee. If an employee does not file a grievance or an appeal by an applicable deadline as described below, the employee waives his or her right to further appeal the adverse employment decision under this procedure and the grievance will be considered as having been adjudicated on the basis of the last preceding employer response.

#### **Step 1 Process**

A formal grievance must be filed with the designated employer representative no later than 14 calendar days from the date the grievant first became aware, or should have become aware (with the exercise of reasonable diligence) of the matter being grieved. Wis. Stat. s. 230.445(3)(a)1. A grievance must be filed using DPM form DOA-15802, Attachment #1, at both Step 1 and Step 2 of the process. The form must be

filed electronically, in person, or by U.S.P.S. mail. If the grievance is mailed via U.S.P.S. the postmark denotes the date of submittal.

Upon receipt of the grievance by management and prior to the grievance hearing, the employee may designate a representative in writing. Upon such written designation, the representative will then be authorized to discuss the specifics of the grievance with the agency designee. Management will arrange a time, date, and place for the grievance to be heard with the grievant. It is the grievant's responsibility to inform his or her representative of the time, date and place of the hearing. Management will not schedule the hearing with the representative.

Management shall meet with the grievant in person, unless upon mutual agreement an alternative method of meeting is determined. Management shall issue a decision, in writing, using DPM form DOA-15803 (Attachment #3), not later than 14 days after the receipt of the Step 1 grievance. If management fails to issue a decision within 14 days, the employee may advance their grievance to Step 2 of the process on the 15<sup>th</sup> day.

### **Step 2 Process**

A Step 1 grievance decision may be appealed to Step 2, DPM, using DOA-15802 (Attachment #1) no later than 14 days from the date of decision in Step 1 or within 15 calendar days of the date on which the grievance should have been answered if no response was issued at the first step of the process. If filing electronically, the grievance must be sent to the DPM grievance mailbox: [DOADPMGrievance@wisconsin.gov](mailto:DOADPMGrievance@wisconsin.gov).

If the step 2 grievance is filed timely, DPM will review the grievance and the written decision from step 1. DPM will issue a written decision no later than 30 days after the receipt. If DPM does not issue a decision within 31 days after receipt of the step 2 grievance, the employee may appeal their grievance to the WERC.

### **WERC**

An employee or appointing authority may appeal a decision issued by DPM to the WERC. The appeal must be filed no later than 14 days after receiving DPM's response. Wis. Stat. s. 230.445(3)(c).

DOA Legal counsel shall represent management before the WERC in an employee advanced appeal.

### **Sec. 430.090 WERC Appeal Filing Process**

Chapters ERC 91 and 92, Wis. Adm. Code, identify the procedures for filing appeals of Step 2 grievance responses with the WERC. Further information on the filing process can be found at <http://werc.wi.gov/>.

### **Sec. 430.100 Miscellaneous**

1. A grievant may be assisted by a representative of his or her choosing at any step of the grievance process. A representative cannot file or advance a grievance on the employee's behalf or dictate the scheduling of a grievance hearing.
2. The grievant and the management designee can agree in writing to:
  - a. Extend a time frame for filing or responding
  - b. Meet or confer in a manner other than in person.
3. Neither the first step hearing nor the second step may be waived.
4. The appointing authority or DPM may consolidate grievances when a reasonable basis for consolidation exists.
5. Limited term, probationary, and project employees are prohibited from filing a grievance.
6. Employees must be notified in writing of these grievance procedures and any changes which may occur

through the agency's policies, procedures, handbook, or other format. Agency policies must identify, at a minimum, where electronic grievances are filed, which position(s) in the agency are responsible for the first step hearing, the time frames, the filing form, and any other requirements.

### **Sec. 430.110 Use of Paid Work Time by Employees for Preparing and Presenting Grievances**

When requested in advance, agencies are required to allow 30 minutes of conference or preparation time for the grievant and representative. This time will occur directly prior to the grievance hearing and is without loss of pay. The grievance hearing will be held with the grievant during scheduled work hours whenever possible. If the hearing need take place outside of normal work hours, the time spent by the grievant and his or her representative (if a state employee) during the meeting and 30 minutes prior to the meeting, if requested, will be without loss of pay.

Any and all expenses 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 and not the employer.

### **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 DPM Administrator can enforce this prohibition by order under s. 230.04(3), Wis. Stats.

### **Sec. 430.130 Limitations of Relief Granted**

Agencies and the commission are prohibited from granting relief that is retroactive beyond 14 days immediately preceding the filing of the grievance at the first step.

### **Sec. 430.140 Administrative Information**

This chapter was originally issued in June 1997 as Chapter 340 of the *Wisconsin Personnel Manual*.

This chapter was revised and reissued in October 2001 as Chapter 430 of the *Wisconsin Human Resources Handbook*.

This chapter was revised and reissued In December 2003 to remove the references to the State Personnel Commission and insert references to the Wisconsin Employment Relations Commission.

This chapter was revised and reissued in December 2011 due to the enactment of 2011 Wisconsin Act 10 and approval of the 2011-13 Compensation Plan.

This chapter was revised and reissued in April 2012 to modify time frames and clarify the responsibilities of grievants.

This chapter was revised and reissued in July 2016 due to the enactment of 2015 Wisconsin Act 150.

**Attachment 1:** Adverse Employment Action Employee Grievance form

**Attachment 2:** Condition of Employment Employee Grievance form

**Attachment 3:** Employer Grievance Decision form

Attachment #1

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DIVISION OF PERSONNEL MANAGEMENT  
DOA-15802 (C07/2016)  
PREVIOUSLY OSER-DCLR-22



Grievance Number – For Agency/DPM use only
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Wis. Stats s.230.445

**ADVERSE EMPLOYMENT ACTION  
EMPLOYEE GRIEVANCE**

**Step 1:** To commence a grievance, this form must be submitted to the Appointing Authority or your Department's designated grievance representative within 14 days of your notice of the adverse employment action being grieved.

**Step 2:** To appeal a Step 1 decision, this form must be submitted to the Division of Personnel Management at [DOADPMGrievance@wisconsin.gov](mailto:DOADPMGrievance@wisconsin.gov) or 101 East Wilson St., 4<sup>th</sup> Floor, PO Box 7855, Madison, WI 53707-7855 within 14 days of the date provided in the "Date Returned" box on the Step 1 Decision. If the appointing authority or designee does not issue a written decision within 15 days after the receipt of the grievance at Step 1, the employee may appeal their grievance to DPM.

Please Check One This is a <b>Step 1</b> Grievance Commencement <input type="checkbox"/> This is a <b>Step 2</b> Grievance Appeal of Employer <b>Step 1</b> Decision <input type="checkbox"/>		
Last Name, First Name, MI		Agency/Division
Employing Unit	Work Unit	Supervisor
Headquarter Location		Hours of Work
Classification		Preferred Email Address
Home Address		Preferred Telephone
Adverse Employment Action/Subject of Grievance (Please Check One) <input type="checkbox"/> 1-Day Suspension <input type="checkbox"/> 3-Day Suspension <input type="checkbox"/> 5-Day Suspension <input type="checkbox"/> Demotion <input type="checkbox"/> Discharge <input type="checkbox"/> Layoff <input type="checkbox"/> Reduction in Base Pay		
Grievance Summary		
Relief Sought		
Date Submitted	Received By (For Agency/DPM Use Only)	Date Received

**Attachment #2**

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DIVISION OF PERSONNEL MANAGEMENT  
DOA-15805 (C07/2016)



Grievance Number – For Agency use only
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**PER WIS. ADMIN. CODE ER 46**

**CONDITION OF EMPLOYMENT  
EMPLOYEE GRIEVANCE REPORT**

**INSTRUCTIONS**

**Step 1:** To commence a grievance, this form must be submitted to your employer designated grievance representative within 30 days of your awareness of the condition of employment being grieved.

**Step 2:** To appeal a Step 1 decision, a Step 2 grievance must be submitted to your employer designated next level grievance representative within 7 days from receipt of the Step 1 decision.

**Step 3:** To appeal a Step 2 decision, a Step 3 grievance must be submitted to your employer identified appointing authority or designee within 7 days from receipt of the Step 2 decision. Refer to Wis. Admin. Code ER 46 for further instructions.

Please Check One			
This is a <b>Step 1</b> Grievance <input type="checkbox"/>		This is a <b>Step 2</b> Grievance <input type="checkbox"/>	
This is a <b>Step 3</b> Grievance <input type="checkbox"/>			
Last Name, First Name, MI		Telephone	Email
Agency/Division		Employing Unit	Work Unit
Headquarter Location	Classification	Supervisor	Hours of Work
Condition of Employment Being Grieved			
Grievance Summary and Relief Sought			
Date Submitted	Received By		Date Received

**EMPLOYER REPRESENTATIVE RESPONSE**

Employer Representative (or Designee)	Date Grievance Heard	Date of Response & Method of Return
Grievance Response and Rationale		

**APPEAL RIGHTS:** If you are dissatisfied with the decision received from the employer representative you may advance your grievance to the next step. See Wis. Admin. Code ER 46 for instructions.

Attachment #3

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DIVISION OF PERSONNEL MANAGEMENT  
DOA-15803 (C07/2016)



Grievance Number – For Agency/DPM use only
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**EMPLOYER GRIEVANCE DECISION**

STEP 1   
STEP 2

Management Representative Name (Last, First)		Title	
Grievant Name (Last, First, MI)			
Grievant Representative Name & Contact Information			
Date Grievance Received	Date Heard	Date Returned	Method of Return
Subject of Grievance <input type="checkbox"/> 1-Day Suspension <input type="checkbox"/> 3-Day Suspension <input type="checkbox"/> 5-Day Suspension <input type="checkbox"/> Demotion <input type="checkbox"/> Discharge <input type="checkbox"/> Layoff <input type="checkbox"/> Reduction in Base Pay			
Grievance Decision			
Rationale			

**INSTRUCTIONS: If dissatisfied with the decision, the grievance may be appealed.**

**ADVERSE EMPLOYMENT GRIEVANCES:**

**Appeal of a Step 1 Decision:** A timely appeal of a Step 1 decision must be submitted to DPM at [DOADPMGrievance@wisconsin.gov](mailto:DOADPMGrievance@wisconsin.gov) or 101 East Wilson St., 4<sup>th</sup> Floor, PO Box 7855, Madison, WI 53707-7855 within 14 days of the date provided in the "Date Returned" box on the Step 1 decision. If the appointing authority or designee does not issue a written decision within 15 days after the receipt of the grievance at Step 1, the employee may appeal their grievance to DPM.

**Appeal of a Step 2 Decision:** A timely appeal of a Step 2 Decision must be filed with the Wisconsin Employment Relations Commission no later than 14 days after receiving DPM's decision. If DPM does not issue a written decision within 31 days after receiving the grievance the grievance may be appealed to the WERC.

**CONDITIONS OF EMPLOYMENT GRIEVANCES:** Refer to Wisconsin Administrative Code Chapter ER 46 for further instructions.