



## State of Wisconsin Employment Relations Commission

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### **INITIAL GUIDELINES FOR EXPEDITED PROCESSING OF STATE CIVIL SERVICE DISCIPLINARY APPEALS** **October 2016**

2015 Wisconsin Act 150 establishes new deadlines that will affect the handling of certain civil service appeals over which the Commission has jurisdiction under §§ 230.44(1)(c) and 230.45(1)(a), Stats. The purpose of this document is to describe procedures the Commission has implemented to comply with these requirements. These procedures may be revised in the future as needed.

#### **What New Deadlines Have Been Enacted?**

The newly created § 230.445(3)(c), Stats., establishes the following deadlines for the processing of state civil service disciplinary cases:

1. Commission ruling on any procedural defects – within 10 days of appeal filing date.
2. Prehearing conference held at which hearing date is set – within 20 days of appeal filing date.
3. Discovery complete – within 60 days of appeal filing date.
4. Commission rulings on all motions – 30 days prior to appeal hearing.
5. Commission decision issued – within 120 days of appeal filing date.

Under the revised statute, deadlines 1, 2, 3, and 4 are to be extended and continuances of hearings are to be granted only under “extraordinary circumstances.” §§ 230.445(3)(c)2.d and e, Stats.

#### **How Will the Commission Process Cases to Meet These Deadlines?**

The cases to which these new deadlines apply will be processed on an expedited schedule. As a practical matter, to accomplish issuance of Commission decisions within 120 days of the appeal filing date, the schedule will necessarily require case processing that is more expedited than other deadlines introduced by Act 150 would require. The statutorily imposed 20-day deadline for holding prehearing conferences and the 60-day deadline for completing discovery, for example, will not be sufficiently expedited in most cases to allow for the issuance of a Commission decision within 120 days of filing. The following is a sample timeline that would allow a case to progress in a timely manner:

<b><u>Day</u></b>	<b><u>Event</u></b>
00	Appeal filed
07	Deadline for prehearing conference to be held
10	Deadline for mandatory disclosures
20	Written discovery requests completed
30	Written discovery responses and all other discovery completed
40	Hearing concluded
50	Deadline for oral / written post-hearing arguments
80	Proposed Decision and Order issued
85	Deadline for filing any objection to Proposed Decision and Order
90	Response to any objections due
120	Commission Decision and Order issued

Although not every disciplinary case will proceed on this exact schedule, it represents the timeframe under which such cases generally will need to be processed to comply with the statutory deadlines.

To manage these timelines, the parties to an appeal subject to Act 150 deadlines will receive a preliminary scheduling order that will establish dates for the following:

- A prehearing conference date and time;
- A deadline for mandatory disclosures; and
- Deadlines by which discovery requests must be made and discovery must be completed.

Consistent with § 990.001(4), Stats., any deadline that occurs on a Saturday, Sunday, or legal holiday will be pushed back to the Commission's next business day. All other necessary deadlines and date adjustments will be set by the appointed hearing examiner.

The mandatory disclosures referenced here will require the Respondent to provide to the Appellant, without awaiting a discovery request, any document, electronically stored information, and tangible thing created or considered by the Respondent in connection with the personnel transaction that is the subject matter of the appeal.

Pursuant to the new statutory requirement, hearing dates will be established at the prehearing conference, and such dates will only be adjusted under extraordinary circumstances.

### **What Type of Cases Will Be Affected?**

The five new deadlines set forth at § 230.445, Stats., and the corresponding expedited procedures, apply only to certain cases brought before the Commission.

First, these changes only apply to civil service cases involving agencies of the State of Wisconsin and the employees of those agencies. They do not apply to any case involving municipal subdivisions of the State.

Second, the deadlines apply only to demotions, suspensions, discharges, layoffs, and reductions in base pay, over which the Commission has jurisdiction pursuant to §§ 230.44(1)(c) and 230.45(1)(a), Stats. The new deadlines (and therefore the expedited procedures) do not apply to other civil service matters over which the Commission has jurisdiction under other subsections of § 240.44(1), Stats., such as hiring decisions, classification decisions, and hazardous duty pay decisions.

Third, these new deadlines and procedures apply only to cases involving adverse employment actions taken against employees on or after July 1, 2016. 2015 Wisconsin Act 150, §§ 95(6) and 96(1).

### **Will the Employment Relations Commission Administrative Code Chapter Be Revised?**

The Commission is in the process of reviewing its administrative code to determine what revisions may be appropriate given these statutory changes. To the extent that any current code provision conflicts with the new statutory requirement, the statute controls.