



State of Wisconsin Employment Relations Commission

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INSTRUCTIONS FOR STATE CIVIL SERVICE DISCIPLINARY APPEALS

These instructions apply to state cases brought under § 230.44(1)(c), Stats., appealing a demotion, layoff, suspension, discharge, or reduction in base pay to the Wisconsin Employment Relations Commission as the final step in the state employee grievance process established at § 230.445, Stats.

In such disciplinary appeals, the employee (Appellant) and the employing agency (Respondent) should follow these instructions, unless the Commission's appointed Examiner in the case directs otherwise.

Representatives

Each party may use the representative of its own choosing. Also, any Appellant may represent him- or herself. The Examiner must be notified immediately of any changes in representation.

Prehearing Conference

The Examiner will hold a telephone prehearing conference involving both parties for the purpose of preparing for hearing. The date and time of the conference, in addition to instructions for connecting to the telephone conference line, are set forth in a Preliminary Order issued by the Examiner. Participation by both parties in this prehearing conference is required.

Discovery

Discovery is a procedure that allows either party in a case to request information and documents necessary to prepare for a hearing. Discovery is authorized and discovery methods are described at Wis. Admin. Code § ERC 93.03, § 227.45, Stats., and Chapter 804, Stats.

As part of discovery, the Respondent will make mandatory disclosures to the Appellant, consisting of material created or considered by the Respondent in connection with the discipline being appealed.

Any other specific discovery requirements or limitations that apply in a case will be established by the Examiner, as needed.

Depending on what the parties decide, discovery may occur using formal procedures pursuant to Chapter 804, Stats., or discovery may be handled through very informal requests from one side to the other. Any discovery request must be copied to the Examiner, but discovery responses should be exchanged only between the parties.

Witness and Exhibit Disclosures

Wis. Admin. Code § ERC 94.02 requires each party to provide the names of witnesses and copies of exhibits to the opposing party and Examiner at least 3 working days before hearing. The failure to comply with this deadline may result in the exclusion of undisclosed witnesses or documents at hearing.

Preparation of Hearing Exhibits

Each party must prepare 4 copies of any exhibits to be offered at hearing: one for itself, one for the opposing party, one for the Examiner, one for the witness. If there are more than 50 pages of exhibits, they should be placed in a three-ring or other suitable binder. Multiple-page exhibits that are not paginated should be paginated by hand. Exhibits should be pre-marked, with Respondent exhibits starting with “Ex. 1” and Appellant exhibits starting with “Ex. 101.”

Witnesses Attendance

Each party is responsible for making sure its witnesses attend the hearing. For the purpose of directing a witness to appear at hearing, an Examiner may issue letters of appearance to persons who are state employees and subpoenas to persons who are not state employees. Any party may request the issuance of letters of appearance from the Examiner; and any non-attorney party or representative may request the issuance of subpoenas from the Examiner. Any such request must be submitted to the Examiner no later than 10 days prior to hearing, and each witness name in the request must be accompanied by a physical mailing and email address. Each party is responsible for the service of any subpoena (including any necessary witness / mileage fees) as provided at Wis. Admin. Code § ERC 93.05.

Elected officials and department heads will not be subject to subpoena without prior approval from the Examiner.

Generally, witnesses will wait outside of the hearing room until they are called to provide testimony. Advocates should be certain to have witnesses available at the hearing location, as the hearing will not be delayed awaiting the arrival of a witness.

Hearing

Parties should be prepared for the hearing date to be set at the prehearing conference. Requests to reschedule a hearing will not be granted, absent extraordinary circumstances.

The hearing will be open and accessible to the public, unless the Appellant requests that it be closed or the Examiner determines that there is good cause for closing the hearing.

Arguments

The Examiner will establish whether the parties may make oral or written arguments at the conclusion of the hearing, as well as the deadlines for any written submissions.

The Record

The standard practice is to make an audio recording of the hearing. Either party or both may decide to employ a court reporter to create a transcript of the hearing. In the event that a court reporter is used, the transcript will become part of the official record of the hearing. Transcript copies for the Examiner / Commission should be in the condensed, 4-to-1 format.

Applicable Law

The statutes, administrative rules, and case law relevant to these proceedings may be found on the WERC website: <http://werc.wi.gov/site/>.

Prohibition Against *Ex Parte* Communications

Communications with the appointed Examiner or anyone else on the Commission’s staff regarding the merits of a case are not permitted outside of the presence of the opposing party. Any communications with the Examiner should be initiated via email, copying the other side.

Mediation

The option of voluntarily resolving a case and any available mediation services may be discussed with the Examiner at any time.