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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 19-003

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### 2. Form, Style and Placement in Administrative Code

a. The treatment clause to the proposed rule should be revised to reflect the amendment of s. DWD 295.02 (2) (b) 23.

b. Throughout the proposed rule, the agency should assign sequential numbering to each rule section. The use of the decimal system allows for the insertion, when needed, of new rule sections without the necessity of renumbering existing rule sections or subunits. [See s. 1.03 (5) (b), Manual.]

c. The agency should insert “on” in the title of the UGESP in s. DWD 296.02 (22). The correct title is the “Uniform Guidelines on Employee Selection Procedures”.

d. Section DWD 296.32 refers to s. DWD 295.23 regarding the procedure under which a sponsor may file a “written appeal”. This provision states that a sponsor “may file a request for a hearing” and does not mention a written appeal. The agency should consider harmonizing the language in each provision to prevent confusion.

e. In SECTION 3 of the proposed rule, if the agency intends for the rule to become effective following publication, the agency should cite the effective date provision provided in s. 227.22 (2), Stats. [s. 1.02 (4), Manual.]

f. For consistency, use “shall” exclusively and not interchangeably with “will” or “should”, such as in ss. DWD 296.04 (3) and 296.10 (3).

g. The agency should add a period at the end of s. DWD 296.05 (3).

- h. The agency should bold the (1) in s. DWD 296.10 (1).
- i. The agency should create “s. DWD 296.14 (5) (b)” instead of “s. DWD 296.14 (5) 2.”.
- j. In s. DWD 296.28 (3) (c) and throughout, do not capitalize the names of state or federal departments or agencies, other than the University of Wisconsin. [See s. 1.01 (4), Manual.]

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

- a. In SECTION 1, the reference to 29 CFR 30.3 (b) should instead be to 29 CFR 30.3 (c).
- b. The second (a) should be deleted in the Note to s. DWD 296.02 (3), and the following corrections should be made to the quoted language:
  - (1) The word “group” on page 6, line 14, should be singular.
  - (2) The agency should insert “internal” before “auditing” on page 6, line 18.
- c. The reference to s. 106.01 (8), Stats., in s. DWD 296.02 (21) should instead be to s. 106.001 (8), Stats.
- d. The reference to s. DWD 296.28 in s. DWD 296.04 (2) (e) should instead be to s. DWD 296.30.
- e. The agency should review the quoted section of 29 CFR 30.10 (b) in s. DWD 296.20 (2) (Note), as it appears to be quoted inaccurately in several instances.
- f. The reference to s. DWD 296.30 (2) (b) 1. in s. DWD 296.32 should instead be to s. DWD 296.30 (2) (b) 2.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

- a. In the plain language analysis, some inaccuracies exist in the description of the differences between the current rule and the proposed rule. The definition of “respondent” is also created, so it should be added to the list of differences. The definitions of “apprenticeship program” and “sponsor” are also amended, so they should be added to the list of differences.
- b. “The” can be deleted before “participation in clinical research” in s. DWD 296.02 (11) (d).
- c. The meaning of the phrase “or family member using an assisted reproductive technology” is unclear in s. DWD 296.02 (11) (e).
- d. The agency should add a comma after “family members” in s. DWD 296.02 (11) (f).
- e. The clarity of the proposed rule would be improved by deleting the comma at the end of s. DWD 296.02 (14).
- f. The verb “maintains” needs a subject in s. DWD 296.02 (16).
- g. Instead of “right or return” the agency should substitute “right of return” or “right to return” in s. DWD 296.04 (1) (b).
- h. Instead of “hours or work” the agency should substitute “hours of work” in s. DWD 296.04 (1) (g).

- i. The agency should delete the comma after “registered apprenticeship program” in s. DWD 296.04 (2) (b) (intro).
- j. The agency should replace “or describe” with “to describe” in s. DWD 296.04 (2) (b) 1.
- k. “Recruitments” in “recruitments efforts for apprentices” should be singular in s. DWD 296.04 (2) (c) (intro).
- l. “Constitute unlawful harassment” should be “constitutes unlawful harassment” in s. DWD 296.04 (2) (d) 1. b.
- m. The agency should add a comma after “disability” in s. DWD 296.04 (2) (d) 2.
- n. To improve clarity, the agency should rephrase “shall provide separate or single user restrooms and changing facilities to assure privacy between sexes” in s. DWD 296.04 (2) (d) 2.
- o. The agency should delete the comma after “apprentices” and add a comma after “program” in s. DWD 296.04 (2) (e).
- p. “Apprentices” should be plural and not possessive in s. DWD 296.04 (5) (a).
- q. “Reinterested” is not in the dictionary and its intended meaning is unclear in s. DWD 296.10 (1).
- r. The agency should replace “their” with “its” to refer to a sponsor in s. DWD 296.10 (2).
- s. The agency should delete the comma after “section” in s. DWD 296.10 (4).
- t. Consider improving the clarity of s. DWD 296.10 (5) (d) by replacing “if it would have the effect” with “in a way that would have the effect” or similar language.
- u. The agency should add a comma after the second-to-last item in a list of at least three items, such as in ss. DWD 296.10 (5) (e) (Note) and (6), 296.24 (2), 296.28 (1) (b) 1, (2), and (3) (a) 4. a., and c., and (b).
- v. The agency should delete “in” from the phrase “in working with the department” in ss. DWD 296.10 (5) (f), and (6), and 296.12 (1).
- w. “Reasonable expected” in s. DWD 296.10 (6) should be “reasonably expected”.
- x. The agency should consider adding “or a particular racial minority group” for consistency in the second listing of “women, Hispanics or Latinos” in s. DWD 296.10 (6).
- y. Instead of “racial, sex, or ethnic group”, the agency should consider “sex, racial group, or ethnic group” in s. DWD 296.12 (1).
- z. The agency should add clarifying words such as “shall be” after “the utilization goal established in this paragraph” in s. DWD 296.14 (1).
- aa. The agency should refer to “s. DWD 296.12 or 296.14” in s. DWD 296.16 (1).
- bb. The agency should add a comma after “apprenticeship opportunities” in s. DWD 296.16 (1) (a) 1.

cc. The agency should pluralize “pre-apprenticeship programs” and “community-based organizations” in s. DWD 296.16 (1) (a) 4.

dd. The agency should add a comma after “document” in s. DWD 296.16 (1) (b).

ee. The agency should replace “regardless if” with “regardless of whether” in s. DWD 296.18 (1).

ff. “Implemented” in s. DWD 296.18 (3) is confusing; the agency should replace it with something like “integrated”.

gg. The agency should delete the comma after “s. DWD 296.05” in s. DWD 296.22 (1).

hh. The agency should delete “the opportunity” and the comma after “one-time invitation to each current apprentice” in s. DWD 296.22 (3).

ii. The agency should add “status” after “update their disability” in s. DWD 296.22 (3).

jj. The agency should delete the comma after “U.S. Department of Labor” in the Note to s. DWD 296.22 (3), and correct the spelling of “disabililty” in the cited web address.

kk. The agency should replace “only used” with “may not use the information except” or language to that effect before “in accordance with this chapter” in s. DWD 296.22 (5).

ll. The agency should delete “the” before “applicants” in s. DWD 296.22 (6).

mm. The agency should delete the comma after “under this section” in s. DWD 296.22 (7) (a).

nn. The agency should add a comma before “no later than 2 years after January 18, 2018” in s. DWD 296.22 (7) (a).

oo. The agency should delete “the” before “January 18, 2018” in s. DWD 296.22 (7) (b).

pp. The agency should add a comma before “as defined under s. DWD 296.01 (12)” in s. DWD 296.22 (7) (b).

qq. The agency should add “provided to applicants and apprentices” before “under s. DWD 296.22” in s. DWD 296.24 (1) (b).

rr. The agency should add a comma after “hours of training provided” in s. DWD 296.24 (1) (c).

ss. The agency should add “filed with” before “other enforcement agencies” in s. DWD 296.24 (1) (c).

tt. The agency should add “date of the” before “personnel action involved” and “as” before “necessary to determine compliance” in s. DWD 296.24 (4).

uu. The agency should add a comma after “confidential medical record” in s. DWD 296.24 (5) (intro.).

vv. The agency should add “of” before “the laws” and also before “the ADA” in s. DWD 296.24 (5) (c).

ww. In s. DWD 296.24 (6), instead of “a sponsor shall allow access to the department,” consider “a sponsor shall allow the department access,” if this reflects the intended meaning.

xx. The agency should replace “the places of business” with “its places of business” in s. DWD 296.24 (6).

yy. The agency should add a comma after “complaint investigations” in s. DWD 296.24 (6).

zz. The agency should delete the comma after “include in the notice” in s. DWD 296.26 (3).

aaa. The agency should delete the comma after “in whole” in s. DWD 296.26 (4) (b) 2.

bbb. The agency should change “a sponsor” to “the sponsor” in s. DWD 296.26 (4) (c).

ccc. The agency should change “being retaliated against” to “been retaliated against” and change “as described under s. DWD 296.34” to “in violation of s. DWD 296.34” in s. DWD 296.28 (1) (a).

ddd. The agency should delete the comma after “including” in s. DWD 296.28 (1) (c) 2.

eee. The agency should add “The description shall” before “include” in the second sentence of s. DWD 296.28 (1) (c) 3. Consider deleting or rewriting the third sentence, as the meaning is unclear.

fff. The agency should delete the comma before “of their right to file a complaint” in s. DWD 296.28 (2).

ggg. The agency should delete “to” before “identify the procedures to file” in s. DWD 296.28 (2).

hhh. The agency should add “shall” before “be provided in the application” in s. DWD 296.28 (2).

iii. The agency should add “include” before “the following specific wording,” and delete the comma after “the following,” in s. DWD 296.28 (2).

jjj. For clarity, the agency should add a comma after “additional information” and delete the comma after “if necessary” in s. DWD 296.28 (3) (a) 2.

kkk. “Provide” in s. DWD 296.28 (3) (a) e. seems like a new directive, not part of the list of things to include in an investigation. Consider creating a new provision if this is a separate requirement from the investigation.

lll. The agency should replace “on its own discretion” with “at its own discretion” in s. DWD 296.28 (3) (c) (intro.).

mmm. The agency should consider rewriting s. DWD 296.30 (2) (intro.) to read: “The department may take enforcement action if a violation under sub. (1) occurs, including any of the following:”.

nnn. The agency should change the semicolon to a comma after “the date the sponsor is notified” and delete the commas before and after the phrase “if the sponsor submits a written response to the findings of noncompliance” in s. DWD 296.30 (2) (b) 1.

ooo. The agency should change “take” to “taking” in s. DWD 296.30 (2) (c) (intro.).

ppp. The agency should change “permits the intimidation or retaliation against” with “permits intimidation of or retaliation against,” and add “action” before “under s. DWD 296.30,” in s. DWD 296.34 (2).