

CR 93-110

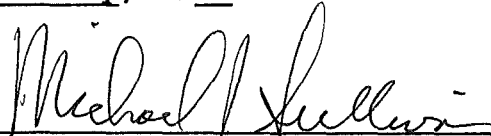
STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF CORRECTIONS )

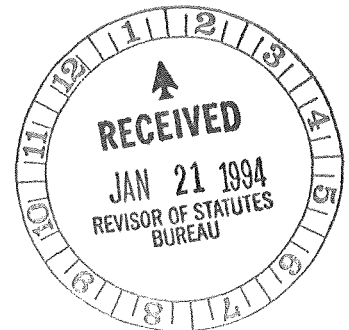
I, Michael J. Sullivan Secretary of the Department of Corrections and custodian of the official records, certify that the annexed rules, relating to , were duly approved and adopted by this Department on .

I further certify that this copy has been compared by me with the original on file in this Department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Corrections 149 E. Wilson Street in the city of Madison, this 21st day of January, 1994.

SEAL

  
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Michael J. Sullivan, Secretary



4-1-94

ORDER OF  
THE DEPARTMENT OF CORRECTIONS  
ADOPTING A RULE

To repeal and recreate ch. DOC 313 relating to prison industries.

Analysis Prepared by the Department of Corrections

The department's rules for the operation of prison industries are repealed and recreated by this order to redefine work rules, discipline, termination, employe evaluations and compensation.

Work rules are defined and the section authorizing discipline has been changed to provide that prison industries may discipline an employe for a violation of a work rule, whether the violation occurred on or off the job. Employes may be suspended without pay as part of a system of progressive discipline.

Employe evaluations were previously required at least once a month and now must be done as frequently as necessary to provide adequate training and assure that the employe is meeting expectations. The evaluation criteria have been changed to include "productivity level" and "contributions beyond usual job duties".

Overtime pay is based on hours in excess of 40 hours per week, rather than 8 hours per day. The bonus based on revenues has been removed and in its place, the department is authorized to establish monetary awards. A pay differential is permitted for employes who work between 6:00 P.M. and 6:00 A.M. Part-time employment and piece-rate compensation are authorized. Employes working in programs certified by the federal Private Sector/Prison Industry Enhancement Certification Programs must be paid a wage comparable to that paid in the private sector for similar work.

Sick leave is based on 4 days per quarter rather than 20 days per year. Pay rates for inmates on sick leave for work and non-work related illnesses are clarified.

The proposed order permits prison industries to provide products or services which do not unfairly compete with Wisconsin-based businesses.

Prison Industries is required to provide parity in employment opportunities for male and female inmates. The affirmative action goal is changed from a racially balanced work force in each employing unit to a work force which reflects racial composition of all adult institutions. Physical or mental limitations may only be considered in the selection process if the limitations are relevant to the position as permitted by the Americans with Disabilities Act of 1990, 42 USC s. 12101.

The Department's authority to repeal and recreate these rules is found in s. 227.11 (2) (a), Stats. The statutes interpreted are ss. 302.09, 303.01, 303.03 and 303.06, Stats.

SECTION 1. Chapter DOC 313 is repealed and recreated to read:

Chapter DOC 313

PRISON INDUSTRIES

DOC 313.01 Purpose	DOC 313.12	Work Day
DOC 313.02 Authority and Definitions	DOC 313.13	Placement Priority Upon Transfer
DOC 313.03 Documentation		
DOC 313.04 Authority of PRC	DOC 313.14	Employe Suggestions
DOC 313.05 Application and Approval	DOC 313.15	Employe Labor Unions
DOC 313.06 Probationary Period	DOC 313.16	Affirmative Action
DOC 313.07 Performance Evaluation	DOC 313.17	Total Shop Shutdown and Layoff
DOC 313.08 Work Rules		
DOC 313.09 Discipline	DOC 313.18	Private Sector/Prison Industry Enhancement Certification Programs
DOC 313.10 Termination		
DOC 313.11 Compensation		

DOC 313.01 PURPOSE. The purposes of prison industries are to provide meaningful employment opportunities, to assist inmates in reintegration into their communities and to maintain self-supporting industries through the sale of products and services. The following goals have been established to promote the achievement of these purposes:

(1) To provide the inmate with work skills, habits and training necessary to compete in the job market, thereby increasing the potential for a successful return to society;

(2) To be self-supporting to the degree possible, while maintaining inmate wages based on productivity;

(3) To utilize production methods and business practices consistent with those used by private industry;

(4) To develop, produce and market products and services of benefit to customers at a competitive price; and

(5) To provide products and services which do not unfairly compete with Wisconsin-based manufacturers and service providers.

DOC 313.02 AUTHORITY AND DEFINITIONS. (1) This chapter is created under the authority of s. 227.11 (2) (a), Stats., and implements ss. 302.09, 303.01, 303.03, and 303.06 Stats.

(2) In this chapter:

(a) "Department" means the department of corrections.

(b) "Employe" means an inmate who works for and is compensated by the prison industries program. An inmate employe is not an employe of the State.

(c) "Program review committee" or "PRC" means the committee established in s. DOC 302.18.

(3) The definitions in chs. DOC 303 and 310 apply to this chapter.

DOC 313.03 DOCUMENTATION. Prison industries shall document in writing its operations including but not limited to job positions, titles and descriptions, pay scales, probationary term, work hours, work rules and policies. These documents shall be available to inmates and the public and shall be updated to reflect any change.

DOC 313.04 AUTHORITY OF PRC. The PRC has authority over an inmate's program assignment under ch. DOC 302 and approval must be obtained from the PRC before industries may hire an inmate. PRC approval is not required to terminate an employe.

DOC 313.05 APPLICATION AND APPROVAL. (1) Any inmate, if first determined eligible by a prison industries supervisor, may apply for a position in prison industries. The application may include the inmate's preferences for positions.

(2) The shop supervisor or designee, shall:

(a) Interview applicants for specific positions under the shop supervisor's supervision. If an opening occurs, the shop supervisor may select any inmate applicant for the position and recommend that the PRC approve the inmate for the program assignment. The selection shall be consistent with current education requirements, employment opportunities, and affirmative action policies.

(b) The following criteria shall be used in the selection of employes:

1. Education requirements;
2. Attitude and willingness to learn;
3. Experience and training;
4. Physical or mental ability or limitation, if relevant to the position, as permitted by the Americans with Disabilities Act of 1990, 42 USC s. 12101;

5. Past employment record with prison industries or other institution work experience; and

6. Documented security concerns.

(3) The PRC, using the procedure and criteria of ch. DOC 302, shall make the decision to approve or deny the program assignment.

**DOC 313.06 PROBATIONARY PERIOD.** (1) Every inmate hired for a new position by prison industries shall serve a probationary period during which the inmate's employment may be terminated by the inmate or the supervisor under s. DOC 313.10 (1) (a) or (b). If terminated by the supervisor, an inmate may appeal through the inmate complaint review system under ch. DOC 310.

(2) Employes shall not receive incentive pay or the benefits covered under ss. DOC 313.11 (5) and (6) and 313.17 during their original probationary period.

(3) The duration of the probationary period for any position shall be established by management so as to provide adequate time for the average employe to learn the duties of the position.

(4) The supervisor may extend the probation for a period not to exceed 30 days, if the employe has not demonstrated satisfactory performance but can reasonably be expected to within the additional 30 days.

**DOC 313.07 PERFORMANCE EVALUATION.** (1) Each employe's performance shall be evaluated as often as required to provide adequate training during the probationary period and to assure the employe is meeting performance and productivity expectations after the probationary period. The evaluation shall be written and shall include the specific skills and expectations of the position based upon the criteria of sub. (2).

(2) The criteria to be used in evaluating employes include, but are not limited to, the following:

- (a) Quality of performance of assigned duties;
- (b) Productivity level;
- (c) Initiative;
- (d) Attitude;
- (e) Contributions beyond usual job duties; and
- (f) Improvement in the criteria listed in this subsection.

(3) The shop supervisor or designee shall meet with the employe as part of the evaluation process to discuss the employe's performance.

(4) An evaluation shall be completed prior to any pay rate change and upon termination, regardless of cause.

(5) After successful completion of probation, if an employe's evaluation indicates performance below expectations, a counseling session shall be held with the employe during which the supervisor shall explain the performance problem and the supervisor and the employe shall attempt to find a solution to the performance problem. A counseling report documenting the results of the counseling session shall be prepared.

(6) Copies of the employe evaluation report and counseling report shall be distributed to the employe, the supervisor, the social services staff, and the employe's personnel file.

(7) A recommendation concerning extra good time for those inmates to whom 1983 Wis. Act 528 does not apply shall be included in the evaluation. The criteria for an extra good time recommendation shall be those under s. DOC 302.31(4) to (6).

DOC 313.08 WORK RULES. The following conduct is a violation of a work rule:

(1) Disobedience, insubordination or refusal to carry out written or oral instructions, directions or assignments.

(2) Abusing, striking or deliberately causing mental anguish or injury to others.

(3) Unauthorized use, abuse, destruction or removal from the work site of state-owned or leased property including, but not limited to keys, shop or business equipment, products or materials.

(4) Unauthorized use of state provided or leased services including, but not limited to telephone or mail services.

(5) Inattentiveness or negligence in the performance of job duties and responsibilities.

(6) Violation of any health or safety procedure or instruction including, but not limited to shop or machine procedures.

(7) Failure to provide accurate and complete information when required by supervisory personnel, including, but not limited to application data, production information, time cards and reports.

(8) Unauthorized disclosure of proprietary information including, but not limited to design, engineering and business documents.

(9) Possession of weapons or the manufacture or alteration of material with the intent of making the material suitable for use as a weapon.

(10) Reporting for work or while at work manifesting any evidence of having used or being under the influence of an intoxicating substance, as defined in s. DOC 303.02 (11), or in possession of an intoxicating substance or drug paraphernalia or device as defined in s. DOC 303.44.

(11) Disorderly conduct including, but not limited to the use of loud, profane or abusive language, horseplay and gambling.

(12) Unauthorized solicitation for any purpose while on duty or on prison industries property.

(13) Unauthorized posting, changing or removal of posted material or unauthorized distribution of written material.

(14) Entering or permitting others to enter restricted areas without authorization or failing to comply with posted instructions.

(15) Tardiness, excessive absenteeism or abuse of sick leave privileges.

DOC 313.09 DISCIPLINE. (1) Ch. DOC 303 applies to all employes of the prison industries. Prison industries staff shall prepare an incident report for a violation of ch. DOC 303 and forward the incident report to appropriate staff at the prison where the employe is confined.

(2) Prison industries may impose discipline for any violation of a work rule as set forth in s. DOC 313.08 which occurs on or off the job, whether or not the violation constitutes a violation of ch. DOC 303.

(3) A prison industries supervisor may discipline an employe for violations of work rules in accordance with the following progressive discipline procedure:

(a) The minimum response to a first violation shall be a verbal warning with a notation in the employe's file.

(b) The minimum response to a second violation shall be a written reprimand.

(c) The minimum response to a third violation shall be a 3 day suspension without pay.

(4) Prison industries supervisors may terminate an employe's employment for a violation of a work rule as provided in s. DOC 313.10.

(5) This disciplinary procedure applies only to employes who have completed their probationary period. Employes on probation may be terminated at the discretion of the supervisor.

(6) An employe may appeal a discipline or termination decision made under this section through the inmate complaint review system under ch. DOC 310.

(7) After 12 consecutive months without a violation, an employe's record may be expunged of a violation for which discipline of less than time-off was assigned.

DOC 313.10 TERMINATION. (1) Prison industries has the authority to terminate an employe's employment. The types of termination are as follows;

(a) Voluntary. An employe may voluntarily terminate employment with prison industries at any time. The employe shall complete the scheduled work shift in process at the time of the employe's request for termination or be subject to disciplinary action.

(b) During the probationary period. A supervisor may terminate an employe's employment during probation because of performance, conduct or for any other reason deemed appropriate by the supervisor.

(c) Rule violations. A supervisor may terminate an inmate's employment for work rule violations under s. DOC 313.08.

(d) Substandard performance. An employe may be terminated for substandard performance if, after 2 counseling sessions conducted by the supervisor or designee for the same or different problems, the employe's performance has not improved to meet standards.

(e) Layoff. An employe may be terminated as a reduction in work force in accordance with s. DOC 313.17.

(f) Unable to work. An employe who is certified as physically unable to work as determined by a physician, physician assistant or registered nurse employed by the department or is certified as mentally unable to work by a psychiatrist or licensed psychologist employed by the department may be terminated if the disability period exceeds 90 days.

(g) Transfer. An employe shall be terminated upon transfer to another institution. If a prison industries facility is operating at the new institution, the inmate may be given priority consideration for rehiring under s. DOC 313.13.

(h) Release. An employe shall be terminated upon parole, discharge or placement in intensive sanctions.



(2) Whenever an employe is terminated, the supervisor shall prepare a written decision, with copies to the inmate, the social services file, and the employe's personnel file. This written decision shall include, but is not limited to, the following information:

- (a) Name of employe;
- (b) Date of termination;
- (c) Shop name;
- (d) Supervisor's name; and
- (e) Type of termination.

(3) An inmate terminated from employment by prison industries shall be referred to the PRC for reassignment under ch. DOC 302.

**DOC 313.11 COMPENSATION.** (1) Each employe shall be paid a base wage established by prison industries management. Pay adjustments based on educational achievements defined by prison industries written policy may be added to the original base wage rate. Prison industries, in its discretion, may limit application of this policy to specific prison industry locations in order to pilot rehabilitative employment programs or to respond to circumstances which hinder employes' ability or willingness to participate in a particular prison industry employment.

(2) Pay adjustments may also be made by the shop supervisor based on employe performance and the pay scale of the position. The amount of the pay adjustment may be established by prison industry written policy.

(3) Overtime pay at the rate of one and one-half times the base wage shall be given to employes for hours worked in excess of 40 hours per week. Twice the base wage shall be paid for work on Sundays and state holidays.

(4) Employes who work between the hours of 6:00 P.M. and 6:00 A.M. may be paid a differential amount per hour in addition to the base wage they receive.

(5) Employes who have completed their probationary period shall be eligible for 4 days of leave each quarter for non-work related illness or other unanticipated absences. All leave must be approved by the supervisor. Leave for non-work related illness shall be paid at the entry level wage rate.

(6) Employes shall be paid one-half their base pay if there is a temporary layoff under s. DOC 313.17 (2). This subsection applies only when the shop is closed for reasons unrelated to actions of employes or other inmates.

(7) Employees injured in the performance of their job duties shall receive the same pay, excluding overtime and differentials, while recuperating which they would have received had they been working, unless terminated under s. DOC 313.10 (c) or (d).

(8) An employe who has been charged with one or more offenses under ch. DOC 303 and found not guilty of all charges, shall be paid by the prison in which the inmate is confined at the prison's maximum pay rate for all hours absent from work due to the disciplinary process including temporary lock-up time. If the employe is found guilty, the employe shall receive no pay for hours absent due to the disciplinary process.

(9) Employees of the prison industries program may be paid piece-rate wages.

(10) Nonmonetary or monetary awards may be established by management. Any awards program shall be documented by management in a written plan.

DOC 313.12 WORK DAY. (1) The regular work day for full-time industries positions shall be not less than 6 nor more than 8 hours excluding overtime, except as provided in sub. (4).

(2) Employees shall be paid for actual hours worked.

(3) All absences from the work-site during work hours must be approved by the industry supervisor. The supervisor shall approve absences for necessary programming which cannot be scheduled during non-work hours.

(4) Part-time positions of less than 6 hours per day may be developed by prison industries' management to provide time for educational program or other constructive program purposes.

DOC 313.13 PLACEMENT PRIORITY UPON TRANSFER. (1) Employees who are transferred to another prison for other than discipline reasons may be given a priority consideration over applicants who have never worked for prison industries.

(2) The length of the probationary period under s. DOC 313.06 may be modified, at the discretion of a prison industry supervisor, for an employe who has transferred and been hired by the new industry.

DOC 313.14 EMPLOYEE SUGGESTIONS. Prison industries management may establish an employe contribution procedure for receiving and reviewing employe suggestions.

DOC 313.15 EMPLOYEE LABOR UNIONS. Employee labor unions are prohibited.

DOC 313.16 AFFIRMATIVE ACTION. (1) Prison industries shall promote equal employment opportunity through affirmative action in programs and practices including, but not limited to: recruitment, selection, promotion, termination, layoff, pay rates, training programs and appointment to committees. The goal of the affirmative action program is a representative inmate work force that reflects the racial composition of the population of all adult institutions.

(2) Prison industries shall gather pertinent racial information from its employing units quarterly. Prison industries management shall monitor the quarterly reports under this section and direct affirmative action if necessary.

(3) Prison industries shall provide parity in employment opportunities for male and female inmates.

DOC 313.17 TOTAL SHOP SHUTDOWN AND LAYOFF. (1) The management of prison industries has the authority to lay off employes when business conditions dictate such action. This section does not govern loss of production capacity due to inmate actions. In this section, "inmate actions" includes, but is not limited to, riot, strike, sit-down strike, institution lock-down, fire or other property damage caused by inmates.

(2) If a layoff is considered temporary, the affected employe shall receive one-half of base pay during the layoff period. A "temporary layoff" means a period of 15 working days or less.

(3) If an employe on layoff has not been reemployed after 15 consecutive working days, the employe may be terminated and shall receive no further benefits.

(4) If a layoff is considered permanent, the affected employe shall be terminated and is eligible for a separation allowance equal to one half of the pay the employe would have received, excluding overtime and differentials, for a 15 day period.

(5) If the employe terminated under sub. (3) or (4) is called back to the same position within 60 calendar days following termination, the employe shall return at the former wage rate.

(6) An employe who is laid off from one industry may be offered a position in another industry. If the employe does not accept the offered position, the employe shall be terminated from employment with prison industries and receive no further pay or benefits.

**DOC 313.18 PRIVATE SECTOR/PRISON INDUSTRY ENHANCEMENT CERTIFICATION PROGRAMS.** Prison industries programs certified by the federal PS/PIEC Program under 18 USC s. 17.61 (c) and operating under the authority of s. 303.06 (2), Stats., are not subject to ss. DOC 313.06 (2); 313.07 (7); 313.11 (3), (5), (6), and (7), 313.12 (1) and 313.16 (2) to (6), but are subject to the following:

(1) Each employe working in a PS/PIEC program shall be paid a wage comparable to that paid in the private sector for work of a similar nature in the locality in which the prison industry is located or, as a minimum, the federal minimum wage.

(2) Overtime hours shall be compensated for in accordance with the Federal Fair Labor Standards Act, 29 USC s. 201.

(3) An employe injured in the performance of job duties shall receive injury compensation pay in an amount equal to the amount the employe would have received had the employe worked during their recuperation.

(4) The regular work schedule for PS/PIEC programs shall be as close to 40 hours per week as possible based on the prison schedules and the workload available.

(5) An employe who has been laid off and is called back to the same position within 60 calendar days shall return at their former wage rate. If the employe is called back to a different position, the employe shall receive an appropriate wage for the duties being performed.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Corrections

Dated: January 21, 1994

By: Michael J. Sullivan  
Secretary Michael J. Sullivan

Seal:

