

Register # 167

INDUSTRIAL COMMISSION

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Chapter Ind 88

EQUAL OPPORTUNITIES

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Ind 88.01 Definitions of terms when used in this chapter. (1) Complainant. A complainant is any person, partnership, association, labor organization, corporation, whether domestic or foreign, legal representative, trustee, receiver, or legal representative of a deceased person who has duly filed an initial complaint under section 111.36, Wis. Stats., charging that discrimination has been or is being committed, or that a discriminatory practice has been or is being engaged in.

(2) *Respondent.* A respondent is any person, partnership, association, labor organization, corporation, whether domestic or foreign, legal representative, trustee, receiver, or legal representative of a deceased person who in an initial complaint filed under section 111.36, Wis. Stats., has been charged with having committed discrimination or engaging in discriminatory practices.

(3) *Initial complaint.* An initial complaint is the original charge made by a complainant pursuant to section 111.36 (1), Wis. Stats., including any subsequent amendments thereto.

(4) *Complaint.* A complaint shall consist of the formal written charges, in the nature of a pleading, issued and served by or on behalf of the commission upon the respondent together with the notice of hearing pursuant to section 111.36 (3), Wis. Stats., and shall include the initial complaint as well as the initial and any further determinations made by the commission's agent as a result of his investigation of the initial complaint.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66.

Ind 88.02 Initial complaint. Initial complaints charging discrimination or discriminatory practices shall be in writing, subscribed and sworn to by the complainant, and shall contain:

- (1) The name and address of the complainant,
- (2) The name and address of the respondent,
- (3) A statement setting forth the particulars of the alleged discrimination or discriminatory practice,
- (4) The date or dates of the alleged discrimination or discriminatory practice.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66.

Ind 88.03 Where filed. Initial complaints may be filed with the Equal Opportunities Division, the secretary of the Industrial Com-

mission, an Industrial commissioner, or an agency or branch of the Industrial Commission.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66.

Ind 88.04 How filed. Initial complaints may be filed by the complainant or his duly authorized agent and may be filed in person or by mail.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66.

Ind 88.05 When filed. An initial complaint alleging an act of discrimination or a discriminatory practice may not be filed or received later than 90 days after the alleged act occurred or the alleged practice ceased.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66.

Ind 88.06 Notice to respondent. Upon the filing of an initial complaint, the commission shall serve a copy thereof upon the respondent promptly and prior to the commencement of the investigation.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66.

Ind 88.07 Amendment and withdrawal. An initial complaint may be amended or withdrawn at any time with and subject to the approval of the commission or its designated agent and under such terms as the commission or agent shall direct.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66.

Ind 88.08 Investigations, hearings, determinations. (1) An agent designated by the commission shall promptly investigate all duly filed initial complaints. The agent shall promptly make and issue to the complainant and respondent an initial determination in writing setting forth the basis thereof as to whether or not there is probable cause to believe that discrimination has been or is being committed.

(2) (a) If after an investigation by an agent of the commission, an initial determination is made that there is no probable cause to believe discrimination has been committed, the reasons therefor shall be discussed with the complainant and the complainant shall be afforded an opportunity to provide any additional facts not already considered by the agent. If the complainant provides additional facts they shall be set forth in writing and a copy thereof shall be served on the respondent and a time for conferring with the parties, within a reasonable period, shall be established by the agent. If, on the basis of such additional facts, and such conference, the agent sustains his initial determination, the parties shall be notified accordingly in writing and the initial complaint shall be dismissed.

(b) Complainant within 10 days after notification, excluding Saturdays, Sundays and holidays, may apply to the commission for review of the dismissal of the initial complaint. The application for review shall be filed with the commission the same as under Wis. Adm. Code section Ind 88.03 and a copy served on the respondent. Upon receipt of an application for review, the commission shall offer the respondent an opportunity to respond in writing thereto within 30 days, excluding Saturdays, Sundays and holidays.

(c) The commission shall review the entire file and may either affirm its agent's initial determination or order a formal hearing to review the initial determination. The party seeking review shall be

the appellant in any such hearing and shall have the burden of proving that there is competent evidence as would lead a quasi judicial officer to believe within reasonable probabilities that a full hearing will establish the fact of unlawful discrimination by a preponderance of the evidence. Subsection (1), but not subsection (2), of section Ind 88.10 shall be applicable to any hearing to review an initial determination ordered pursuant to section Ind 88.08 (2) (c). If after such hearing, and upon the official record made therein, the examiner finds that there is probable cause to believe that discrimination has been or is being committed, he shall make his findings and conclusions to that effect and mail a copy thereof to the complainant and to the respondent. Thereafter, proceedings shall be had as provided in section Ind 88.08 (3), the same as in the case of initial determinations to the same effect. If after such hearing, and upon the official record made therein, the examiner finds that there is no probable cause to believe that discrimination has been or is being committed, he shall make his recommended findings and conclusions to that effect and transmit the same to the commission, with copies thereof to be mailed, at the same time, to the complainant and to the respondent. The commission may thereupon adopt such recommended findings and conclusions and issue its order dismissing the initial complaint; or it may modify or set aside the examiner's recommended findings and conclusions and make its own findings, conclusions and order, on the basis of the official record made at such hearing, as to whether there is probable cause to believe that discrimination has been or is being committed.

(3) (a) If upon investigation of an initial complaint the agent determines that there is probable cause to believe that discrimination has been or is being committed, he shall issue an initial determination to such effect. A copy of such initial determination shall be mailed to the last known addresses of the complainant and the respondent as they appear on the records of the commission. The agent may amend such initial determination within 10 days of mailing such initial determination upon showing of clerical error, mistake or subsequently discovered information. Promptly after such mailing, the agent shall, pursuant to section 111.36 (3) Wis. Stats., endeavor to eliminate the alleged discrimination or discriminatory practice by means of conference, conciliation or persuasion.

(b) If, within 30 days after such mailing of the initial determination, (unless the time be extended by written order of the commission) the agent is unable to eliminate the alleged discrimination or discriminatory practice by means of conference, conciliation or persuasion, he shall so certify to the commission in writing. Upon such certification, the commission shall promptly review the applicable records, investigations and reports of the agent concerning the initial complaint and shall, with due notice to the complainant and respondent, 1. remand the matter to the agent with recommendations for further proceedings in accordance with the statute and the rules contained herein, 2. reverse the agent's initial determination, or 3. pursuant to section 111.36 (3) Wis. Stats., cause to be issued and served upon the respondent a notice of hearing and a complaint as provided in section Ind 88.01 (4), followed by a hearing, in accordance with section Ind 88.10, as to the discrimination or discriminatory practice charged.

(c) Within 30 days after the matter has been remanded by the commission to the agent for further proceedings, under section Ind 88.08 (3) (b) 1. he shall certify in writing to the commission as to the progress or results of such proceedings and shall mail a copy of such certification to the last known addresses of the complainant and of the respondent as they appear on the records of the commission. Within 10 days after such mailing, the complainant or respondent may appeal to the commission therefrom and request that a hearing pursuant to section 111.36 (3), Wis. Stats., be conducted by an examiner, designated by the commission for that purpose as to the discrimination or discriminatory practice charged.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66; r. and recr. (2) (c), Register, October, 1967, No. 142, eff. 11-1-67.

Ind 88.09 Request for hearing. A request for hearing pursuant to section Ind 88.08 (3) (c) shall be in writing subscribed to by the party requesting the hearing and shall specify the reasons upon which such request is based. The request shall be filed within the time specified by the applicable statute or rule and may be filed with the Equal Opportunities Division at its principal office, the secretary of the Industrial Commission, an Industrial commissioner, or any branch of the Wisconsin State Employment Service. The request may be filed by the complainant or respondent or by a duly authorized agent and may be filed in person or by mail.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66.

Ind 88.10 Hearings. (1) Where the commission on its own motion deems such hearing appropriate or required by law, or upon receipt of a duly filed request for hearing, the commission shall designate an examiner to conduct such hearing. Such hearing shall be conducted promptly and shall afford the complainant and respondent reasonable opportunity to be heard. Hearings shall be public, subject to the authority of the examiner to maintain order. All testimony at the hearing shall be taken down by a reporter appointed by the commission. Hearings shall be conducted in conformity with these rules and with the provisions of chapter 227, Wis. Stats., relating to hearing procedures, practices and evidence as applicable to agencies. The commission or examiner may continue or adjourn a hearing to a later date or to a different place by announcement thereof at the hearing or by appropriate notice to the parties.

(2) In any case in which a hearing is conducted by an examiner, except in the case of a hearing to review an initial determination ordered pursuant to section Ind 88.08 (2) (c), the procedure shall be as follows:

(a) The examiner designated to conduct the hearing shall cause to be issued and served upon the complainant and respondent a copy of the complaint and a written notice of hearing requiring the complainant and the respondent to appear at such hearing and give evidence relative to the complaint. The notice of hearing shall specify the date of issuance and a time of hearing not less than 10 days after service of the notice of hearing and complaint, the names of the complainant and the respondent, their last known addresses as they appear on the records of the commission, the place of hearing and the examiner designated to conduct the hearing.

(b) Service of notice of hearing and accompanying complaint may be made upon the complainant and respondent therein named by delivering to and leaving with each a copy of such notice and accompanying complaint or by mailing by certified or registered mail on the date of issuance copies thereof to the last known addresses of the complainant or respondent as they appear on the records of the commission. If the notice of hearing is so served by mail, the date of receipt as evidenced by the postal return receipt shall be deemed to be the date of service.

(c) The scope of the hearing shall be limited to the merits of the complaint.

(d) Within 10 days, excluding Saturday, Sunday and holidays, after service of the notice of hearing and complaint, the respondent may file with the commission at the place designated on such notice, an answer to the complaint. Such answer shall be in writing and shall be filed in triplicate. Upon receipt of an answer to the complaint, the commission shall promptly, and prior to the time of hearing, transmit a copy thereof to the complainant or his designated agent.

(e) If after hearing, and on the basis of the official record made therein, the examiner finds that the respondent has engaged in or is engaging in discrimination, he shall make and recommend to the industrial commission written findings of fact and conclusions thereon and shall recommend such action to be taken by the respondent and, where required, by the complainant, as will effectuate the purpose of section 111.31-111.37, Wis. Stats., and as will eliminate, as the case may be, the discrimination committed or being committed. A certified copy of such recommended findings, conclusions and recommended action, together with a summary of the evidence prepared by the hearing examiner, shall be mailed to the last known addresses of the respondent and the complainant. Thereafter, the industrial commission shall make and issue its decision in accordance with the procedures prescribed by section 227.12, 227.13 and 227.14, Wis. Stats.

(3) No officer, employe or agent of the commission who shall have previously been engaged in any investigative, prosecuting, conciliation, persuasion or enforcement function in any case or proceeding under sections 111.31-111.37, Wis. Stats., shall, in that or a factually related case or proceeding, participate or advise in the decision, recommended decision, or review, under this chapter, by the hearing examiner or by the commission, nor shall such officer, employe or agent participate in the hearings, except as a witness or counsel.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66.

Ind 88.11 Transfer of proceedings. At any time after the filing of an initial complaint under section 111.36 (1), Wis. Stats., the commission, with appropriate notice to the complainant and respondent, may transfer the proceedings to itself.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66.

Ind 88.12 Mailed documents. Wherever sections 111.31-111.37, Wis. Stats., or these rules and regulations, authorize the filing of a document by mail, the date of filing shall be the date the document is mailed as evidenced by its postmark.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66.

Ind 88.13 Depositions. Depositions may be taken and incorporated into proceedings under sections 111.31-111.37, Wis. Stats., in accordance with statutory provisions relating to the taking and use of depositions in proceedings before courts of record.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66.

Ind 88.14 Prohibited disclosures. It shall be unlawful for the commission or any of its agents or employes to make public in any manner whatever any of the information obtained by the commission pursuant to its authority under section 111.36, Wis. Stats., prior to the time a hearing actually takes place before an examiner under section Ind 88.10.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66.

Ind 88.15 Evidence of endeavors to conciliate, confer or persuade. No testimony or evidence shall be given or received at any hearing concerning endeavors to eliminate an alleged discriminatory practice by conference, conciliation or persuasion.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66.

Ind 88.16 Posting provisions of act. The poster issued by the industrial commission relative to the public policy and definitions of the Fair Employment Act shall be posted in a conspicuous place in each place of employment.

History: 1-2-56; renum. from Ind 88.01, Register, December, 1965, No. 120, eff. 1-1-66.

Ind 88.50 Racial data. An employer subject to Wisconsin's Fair Employment chapter 111, subchapter 2, may make and keep such post-employment records as will enable said employer to determine statistically the age, race, color, handicap, sex, creed, national origin or ancestry of his employes. Such records shall not be obtained by way of identifying race, color or creed on an employment application form or pre-employment inquiry, and shall not be made part of the individual record of any employe.

History: Cr. Register, April, 1967, No. 136, eff. 5-1-67.