

Chapter Ind 88

EQUAL OPPORTUNITIES

Fair Employment

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*inquiries and employment*

**History:** Chapter Ind 88 as it was in effect on September 30, 1972 was repealed and a new chapter Ind 88 was created, Register, September, 1972, No. 201, eff. 10-1-72.

**Ind 88.01 Definitions.** (1) The term "act" as used herein shall mean the Wisconsin Fair Employment Practices Act, sections 111.31-111.37, Wis. Stats.

(2) The terms employe, employer, department, labor organization, discrimination, discriminatory practice, serve, service findings, recommendations, probable cause, unlawful and order, as used herein shall have the same meaning as set forth in the act.

**History:** Cr. Register, September, 1972, No. 201, eff. 10-1-72.

**Ind 88.02 Complaint.** (1) **CONTENT.** A complaint shall be in writing and shall be signed and verified. It shall fully identify each complainant and respondent, and shall state clearly and concisely the facts constituting the alleged unlawful discriminatory practice or act committed by each named respondent. Appropriate assistance in preparing complaints will be made available by the department.

(2) **FILING.** Complaints may be filed with any office of the department.

(3) **AMENDMENT AND WITHDRAWAL.** Subject to the approval of the department, a complaint may be amended or withdrawn.

(4) **NOTICE TO RESPONDENT.** Upon the filing of a complaint, the department shall serve a copy thereof upon the respondent.

(5) **SUPPLEMENTAL COMPLAINT.** Upon request the department may permit the complainant to file a supplemental complaint setting forth transactions, occurrences or events which allegedly have occurred after the filing of the original or amended complaint. The department shall serve a copy thereof upon the respondent.

**History:** Cr. Register, September, 1972, No. 201, eff. 10-1-72.

**Ind 88.03 Investigations.** (1) **INITIAL DETERMINATION.** The department shall promptly investigate all duly filed complaints and shall issue an initial determination in writing setting forth the basis thereof as to whether there is probable cause to believe that discrimination has been or is being committed.

(2) **PROBABLE CAUSE DEFINED.** Probable cause exists when there is reasonable ground for belief supported by facts and circumstances strong enough in themselves to warrant a prudent person in the belief that discrimination probably has been or is being committed.

**History:** Cr. Register, September, 1972, No. 201, eff. 10-1-72.

**Ind 88.035 Dismissal of complaint.** (1) **RIGHT TO HEARING.** When there is an initial determination of no probable cause to believe that discrimination has been or is being committed, the complainant may file with the department, within 30 days from the date of such initial determination, a request for hearing. The request shall be in writing and shall state specifically the grounds upon which it is based. If no request is filed within 30 days, the complainant shall be deemed to have waived the right to hearing, and the initial determination shall be deemed the decision of the department.

(2) **HEARING.** If timely request is made for hearing, it shall be conducted pursuant to section Ind 88.08, and the hearing examiner shall upon the evidence make either a finding of probable cause or of no probable cause. If no probable cause is found, the complainant may petition for a review of the hearing examiner's finding pursuant to section Ind 88.085. If probable cause is found, the case shall be referred for conference, conciliation and persuasion, *provided* that the parties may consent by written stipulation, to waive their right to attempted conciliation and written notice of hearing, and to permit the hearing examiner to receive evidence of whether the respondent has engaged in unlawful discrimination.

**History:** Cr. Register, September, 1972, No. 201, eff. 10-1-72.

**Ind 88.04 Conference, conciliation and persuasion.** (1) **CONFERENCE, CONCILIATION AND PERSUASION.** If upon investigation the department determines that there is probable cause to believe that discrimination has been or is being committed, it shall immediately endeavor to eliminate the practice by conference, conciliation or persuasion.

(2) **CONCILIATION AGREEMENT.** If as a result of said conference, conciliation and persuasion, the department is able to effect the elimination of any unlawful practice or act, a written conciliation agreement shall be prepared and shall set forth all measures to be taken by any party, as in the judgment of the department will effectuate the purposes of the act.

**History:** Cr. Register, September, 1972, No. 201, eff. 10-1-72.

**Ind 88.06 Notice of hearing.** If the department is unable to eliminate the alleged discriminatory practice or act through conference, conciliation or persuasion, it shall promptly issue and serve a written notice of hearing and complaint specifying the nature of the discrimination which appears to have been committed and requiring the respondent to answer the complaint at a hearing before the department. The notice shall specify a time of hearing not less than 10 days after service of the notice of hearing and complaint, and a place of hearing within either the county of the respondent's residence or the county in which the alleged discrimination appears to have occurred. Service of the notice of hearing and complaint may be made upon the parties therein named by delivering to and leaving with each copies thereof, or by mailing copies on the date of issuance to

the last known addresses of the parties as they appear on the records of the department.

**History:** Cr. Register September, 1972, No. 201, eff. 10-1-72.

**Ind 88.07 Answer.** (1) **CONTENT.** An answer shall be a written statement which admits such allegations in the complaint as are true, denies such allegations as are controverted by the respondent or as to which the respondent has insufficient information or knowledge to form a belief, and asserts any matter constituting a defense.

(2) **FILING.** The answer shall be filed with the department within 10 days from the date of service of the notice of hearing and complaint. A copy of the answer shall be transmitted to the complainant by the department.

**History:** Cr. Register, September, 1972, No. 201, eff. 10-1-72.

**Ind 88.08 Hearings.** (1) **PROCEDURE.** Where the department on its own motion deems a hearing appropriate or required by law, and it is impracticable for the full commission to hear or read all the evidence, the department shall designate an examiner to conduct such hearing. Hearings shall be conducted in conformity with these rules and with the provisions of chapter 227, Wis. Stats.

(2) **APPEARANCE OF PARTIES.** Either party may appear at the hearing, may be allowed to call, examine and cross-examine witnesses, and may introduce papers, documents or other evidence, in person or by counsel.

(3) **ACCELERATION OF HEARING.** The parties may consent by written stipulation to a hearing within less than 10 days after the service of the complaint and notice of hearing.

**History:** Cr. Register, September, 1972, No. 201, eff. 10-1-72.

**Ind 88.085 Findings and order.** (1) **RECOMMENDED FINDINGS AND ORDER, WRITTEN EXCEPTIONS, ORAL ARGUMENT.** The hearing examiner shall prepare a summary of the evidence which, together with recommendations as to the findings of fact, conclusions of law and proposed order shall be issued and served upon each party. Each party shall be allowed a period of 20 calendar days from the date of issuance thereof to file written exceptions to such summary and proposed findings. Where requested, a reasonable opportunity shall be afforded for oral arguments.

(2) **DEPARTMENT FINDINGS AND ORDER.** The department findings may be made upon the basis of the hearing examiner's summary and any written exceptions thereto which are duly filed. If the department finds that the respondent has not engaged in discrimination as alleged in the complaint, it shall serve a certified copy of its findings on the parties together with an order dismissing the complaint. If the department finds that the respondent has engaged in discrimination in violation of the act, the department shall make written findings and recommend such action by the respondent as will effectuate the purposes of the act, and shall serve a certified copy of the findings and recommendations on the parties together with an order requiring the respondent to comply with the recommendations. Whenever the department's findings and order are contrary to the recommendations of the hearing examiner, its decision shall include a state-

ment of the facts and ultimate conclusions relied upon in rejecting the recommendations of the hearing examiner.

(3) **SERVICE OF DECISION.** Every decision when made, signed and filed shall be served forthwith, by personal delivery or mailing, of a certified copy to each party to the proceedings or to his attorney of record.

**History:** Cr. Register, September, 1972, No. 201, eff. 10-1-72.

**Ind 88.09 Subpoenas and motions.** (1) **SUBPOENAS AND SUBPOENAS DUCES TECUM.** The department or its duly authorized agent may issue subpoenas and subpoenas duces tecum on its own motion or upon proper application by any party, whenever necessary to compel the attendance of witnesses or the introduction of books, records, correspondence, documents, or other evidence which relate to the proceeding. Service shall be in the manner prescribed by law for the service of subpoenas.

(2) **FAILURE TO OBEY SUBPOENAS.** On the failure of any person to obey a subpoena or subpoena duces tecum issued by the department, the matter may be referred to the attorney general's office for enforcement pursuant to section 885.12, Wis. Stats.

(3) **MOTIONS.** Motions and objections made during a hearing shall be stated orally and shall, with the ruling of the examiner, be included in the report of the hearing. All other motions shall be in writing stating briefly the relief requested and the grounds therefor. An original and 3 copies of the motion and any answer thereto shall be filed with the department. All motions shall be decided without further testimony or argument unless requested by the department.

**History:** Cr. Register, September, 1972, No. 201, eff. 10-1-72.

**Ind 88.10 Judicial review.** Findings and orders of the department under the act are subject to judicial review under chapter 227, Wis. Stats. The department will notify the parties of their right to judicial review.

**History:** Cr. Register, September, 1972, No. 201, eff. 10-1-72.

**Ind 88.13 Posting provision of act.** Every employer, employment agency, and labor organization subject to the act, shall post and keep posted in conspicuous places upon its premises a poster prepared and made available by the department relating to the public policy contained in the act.

**History:** Cr. Register, September, 1972, No. 201, eff. 10-1-72.

**Ind 88.20 History:** Cr. Register, April, 1972, No. 196, eff. 6-1-72; emerg. am. eff. 5-12-72; emerg. r. eff. 8-15-72; r. Register, September, 1972, No. 201, eff. 10-1-72.

**Ind 88.50 Pre-employment inquiries and employment records.** An employer subject to the act may make such pre-employment inquiries and keep such employment records as will enable said employer to determine statistically the age, race, color, handicap, sex, creed, and national origin or ancestry of applicants and employees. Pre-employment inquiries and employment records which tend directly or indi-

rectly to disclose such information do not constitute unlawful discrimination per se.<sup>1</sup>

**Note:** The department, when investigating complaints under sections 111.31-111.37, Wis. Stat., will pay particular attention to the use of such pre-employment inquiries and employment records by the party against whom the complaint has been made.

**History:** Cr. Register, September, 1972, No. 201, eff. 10-1-72; r. and recr., Register, July, 1973, No. 211, eff. 8-1-73.

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