# Chapter Ind 86

# FAMILY AND MEDICAL LEAVE



**Ind 86.001 Purpose.** The purpose of this chapter is to implement the provisions of s. 103.10, Stats., providing for family and medical leave for employes in certain cases and prohibiting certain practices by establishing interpretations of the provisions of that section to assist in its implementation.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.01 Definitions and scope.** (1) When used in this chapter or in s. 103.10, Stats.:

(a) "Act" means s. 103.10, Stats., unless the context requires otherwise.

(b) "Action prohibited" means one or more actions or inactions prohibited by the act.

(c) "Administrative law judge" means the examiner appointed to conduct hearings arising under s. 103.10 (12), Stats.

(d) "Child", "Christian Science practitioner", "employe", "employer", "employment benefit", "health care provider", "parent", "serious health condition" and "spouse" have the same definitions as in the act.

(e) "Complainant" means the person who files a complaint alleging that an action prohibited by the act has been committed.

(f) "Days" means calendar days unless the context requires otherwise.

(g) "Division" means the equal rights division of the Wisconsin department of industry, labor and human relations.

(h) "Filed" or "filing" means physically received at any office of the division.

(i) "Group health insurance coverage" means the entire health insurance package offered by an employer including without limitation medical, dental and vision insurance.

(j) "Person" includes but is not limited to one or more individuals, partnerships, associations, corporations, joint stock or mutual compa-

nies, bodies politic or corporate, unincorporated organizations, trusts, legal representatives, trustees or receivers.

(k) "Probable cause" means a reasonable ground for belief, supported by facts and circumstances strong enough in themselves to warrant a prudent person in the belief, that an action prohibited by s. 103.10 (11), Stats., probably has been or is being committed.

(l) "Respondent" means the person alleged in a complaint to have committed an act prohibited by s. 103.10 (11), Stats.

(m) The words "a 12-month period", as used in s. 103.10 (3) (b) and (4) (b), Stats., mean a calendar year commencing immediately after midnight on January 1 and ending at midnight on December 31 each year.

(n) The words "a 12-month period", as used in s. 103.10 (9) (c) 2., Stats., mean a period of 365 consecutive days commencing with the date the first payment is required by an employer to be paid by an employe pursuant to s. 103.10 (9) (c), Stats.

(o) The words "week" and "weeks", as used in s. 103.10 (2) (c), Stats., mean 7 consecutive calendar days.

(2) A person engaging in any activity, enterprise or business in this state shall be deemed to be "employing at least 50 individuals on a permanent basis" within the meaning of s. 103.10 (1) (c), Stats., if, during at least 6 of the preceding 12 calendar months, with partial months to count as full months, the employer, according to its usual personnel recordkeeping practices as required by ss. Ind 72.11 and 74.06, actually treated at least 50 individuals as being permanent employes as to the activities, enterprises or businesses of that employer.

(3) A person shall be deemed to have "been employed by the same employer for more than 52 consecutive weeks" within the meaning of s. 103.10 (2) (c), Stats., if the person has actually been treated by the employer, according to the usual personnel recordkeeping practices of the employer as required by ss. Ind 72.11 and 74.06, as an employe during each of those 52 weeks, irrespective of the number of hours worked in those weeks and notwithstanding that the employe may have, in that 52-week period, been off work for one or more weeks on vacation leave, sick leave or other leave, or on layoff, if such vacation leave, sick leave or other leave was granted to the employe by the employer according to a regular practice of granting such leaves, or the layoff was initiated by the employer, and if the employer allowed the employe to return to work at the end of the leave or layoff without having to reapply for employment.

(4) A person shall be deemed to have "worked for the employer for at least 1,000 hours during the preceding 52-week period" within the meaning of s. 103.10 (2) (c), Stats., if the number of hours actually worked in that period plus the number of hours for which the employe was paid pursuant to a regular policy of paid vacation leave, sick leave or other paid leave equals at least 1,000 hours.

(5) Where a person's policy with respect to leave for the reasons described in s. 103.10 (3) (b) and (4) (a), Stats., is to provide the same leave as granted in s. 103.10 (3) (b) and (4) (a), Stats., the posting of a statement to that effect together with a copy of the act, in the manner prescribed by s. 103.10 (14) (b), Stats., shall satisfy the requirements of s. 103.10 (14) (b), Stats.

(6) To the extent that an employer grants leave to an employe for the birth of the employe's natural child in a manner which is no more restrictive than the leave available to that employe under s. 103.10 (3) (b) 1., Stats., the leave granted by the employer shall be deemed to be leave available to that employe under s. 103.10 (3) (b) 1., Stats.

(7) To the extent that an employer grants leave to an employe for the placement of a child with the employe for adoption or as a precondition for adoption under s. 48.90 (2), Stats., in a manner which is no more restrictive than the leave available to that employe under s. 103.10 (3) (b) 2., Stats., the leave granted by the employer shall be deemed to be leave available to that employe under s. 103.10 (3) (b) 2., Stats.

(8) To the extent that an employer grants leave to an employe to care for the employe's child, spouse or parent in a manner which is no more restrictive than the leave available to that employe under s. 103.10 (3) (b) 3., Stats., the leave granted by the employer shall be deemed to be leave available to that employe under s. 103.10 (3) (b) 3., Stats.

(9) To the extent that an employer grants leave to an employe relating to the employe's own health in a manner which is no more restrictive than the leave available to that employe under s. 103.10 (4), Stats., the leave granted by the employer shall be deemed to be leave available to that employe under s. 103.10 (4), Stats.

(10) To the extent that leave granted by an employer to an employe is deemed by this subsection to be leave available to that employe under the act, the use of that leave granted by the employer shall be use of that leave available under the act.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.02 When and how leave taken.** (1) The leave allowed under the act may be taken in non-continuous increments. An employe may schedule and take partial absence leave, as provided in s. 103.10 (3) (d), Stats., or medical leave as provided in s. 103.10 (4) (c), Stats., in actual increments of less than a full workday if the employer allows any other leave to be taken in increments of less than a full workday. The duration of the shortest increment available to the employe under the act shall be equal to the shortest increment the employer allows to be taken by that employe for any other non-emergency leave.

(2) For purposes of the partial absence leave authorized by s. 103.10 (3) (d), Stats., the word "week" as used in s. 103.10 (3) (a), Stats., means 5 days of leave which would otherwise be workdays for the requesting employe.

(3) (a) An employe shall be deemed to have scheduled partial absence, for the reasons described in s. 103.10 (3) (b) 1. and 2., Stats., in a fashion that "does not unduly disrupt the employer's operations" within the meaning of s. 103.10 (3) (d), Stats.,

1. If the employe provides the employer with notice of the employe's proposed schedule of partial absence which is at least as much notice as the shortest notice that employe is required to give the employer for the taking of any other non-emergency or non-medical leave, and

2. If the schedule is sufficiently definite for the employer to be able to schedule replacement employes, to the extent replacement employes are required, to cover for the absences.

(b) An employe shall be deemed to have scheduled partial absence, for the reasons described in s. 103.10 (3) (b) 3., Stats., in a fashion that "does not unduly disrupt the employer's operations" within the meaning of s. 103.10 (3) (d), Stats.,

1. If the employe provides the employer with a proposed schedule for the leave with reasonable promptness after the employe learns of the probable necessity for the leave, and

2. Except where precluded by the need for health care consultation or treatment, if that proposed schedule is sufficiently definite that the employer is able to schedule replacement employes, to the extent replacement employes need to be scheduled, to cover the absence of the employe taking the leave.

(c) If an employer has a written policy which requires notice of scheduled absences under s. 103.10 (3) (d), Stats., to be in writing, if this policy governs all employes of the employer within this state, and if the employe has been made aware of this policy, the employe shall advise the employer under this subsection in writing.

(4) (a) An employe shall be deemed to have given the employer "advance notice of the medical treatment or supervision in a reasonable and practicable manner" within the meaning of s. 103.10 (6) (b) 2., Stats., if the notice identifies the planned dates of the leave and is given to the employer by the employe with reasonable promptness after the employe learns of the probable necessity of the leave.

(b) If the employer has a written policy which requires notice of leave pursuant to s. 103.10 (6) (b) 2., Stats., to be in writing, if this policy governs all employes of the employer within this state, and if the employe has been made aware of this policy, the notice required by s. 103.10 (6) (b) 2., Stats., shall be in writing except where precluded by the need for health care consultation or treatment.

(5) An employe shall be deemed to have made "a reasonable effort" to schedule a leave so that it does not "unduly disrupt the employer's operations" within the meaning of s. 103.10 (6) (b) 1., Stats.,

(a) If the employe provides the employer with a proposed schedule for the leave with reasonable promptness after the employe learns of the probable necessity of the leave, and

(b) Except where precluded by the need for health care consultation or treatment, if that proposed schedule is sufficiently definite that the employer is able to schedule replacement employes, to the extent replacement employes need to be scheduled, to cover the absence of the employe taking the leave.

(6) (a) An employe may commence family leave pursuant to s. 103.10 (3) (b) 1., Stats., no earlier than 16 weeks before the estimated date of birth and no later than 16 weeks after the actual date of birth.

(b) An employe may commence family leave pursuant to s. 103.10 (3) (b) 2., Stats., no earlier than 16 weeks before the expected date of placement either for adoption or as a precondition for adoption under s. 48.90

(2), Stats., and no later than 16 weeks after the actual date of placement either for adoption or as a precondition for adoption under s. 48.90 (2), Stats.

(7) Leave available during "a 12-month period", within the meaning of s. 103.10 (3) (a) and (4) (b), Stats., and s. Ind 86.01 (1) (m), must be used within that 12-month period. No more than one 6 week period of leave may be used by an employe, either as continuous or partial absence leave, as to the birth or adoption of any one child.

(8) Family leave requested by an employe may be denied by an employer if the employe substantially fails to provide that employer with proper notice of that leave pursuant to s. 103.10 (6), Stats., as interpreted by this s. Ind 86.02.

(9) Except where emergency health care consultation or treatment is required, an employer may deny a requested leave where the employer has made a proper request for certification pursuant to s. 103.10 (7), Stats., as to that leave, and the employe requesting the leave fails or refuses, after that proper request, to substantially comply with the provisions of s. 103.10 (7), Stats., as to certification.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.03 Substituting leave.** (1) At the option of the employe, an employe entitled to family or medical leave under the act may substitute, for any leave requested under the act, any other paid or unpaid leave which has accrued to the employe.

(2) Leave substituted for leave available under the act will be credited, for purposes of using up the leave available under the act, to the extent the substituted leave is actually used by the employe calculated in no less than the increments available pursuant to s. Ind 86.02 (1).

(3) The employer may not require an employe to substitute any other paid or unpaid leave available to the employe for either family or medical leave under the act.

(4) If any other type of leave is substituted for family or medical leave, and any seniority or employment benefit would normally accrue during the taking of that other type of leave, that seniority or employment benefit shall accrue during the taking of that substituted leave.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.031 Consecutive leave.** If any employe chooses to utilize leave provided under s. 103.10 (3) or (4), Stats., the employe may not extend leave taken by adding leave of any other type provided by the employer, unless:

(1) The employe meets the employer's requirements for taking the other leave which are in effect for all employes; or

(2) The employer consents to the extension.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.04 Continuation of insurance.** (1) The employe shall be deemed to be continuing to make the contributions required of the employe under group health insurance coverage within the meaning of s. 103.10

(9) (b), Stats., if the employe pays the contribution required by the employer within the time required by the employer.

(2) The employer may not require the employe to pay the employe's contribution, except into escrow as provided by s. 103.10 (9) (c), Stats., more frequently, or in greater amounts, than was required of the employe prior to the leave being taken.

(3) The employer may not deny leave under this act based upon nonpayment by the employe into the escrow acount.

(4) In the event an employer requires an employe to fund an escrow account under s. 103.10 (9) (c), Stats., the employer may pay from the escrow account the amount of the employe's contribution which either is or becomes due during any leave taken under the act.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.05 Time to commence administrative proceedings.** If an employer is not in compliance with the notice posting requirements of s. 103.10 (14) (a), Stats., at the time a violation occurs under s. 103.10, Stats., an employe complaining of that violation shall be deemed not to "reasonably have known" that a violation occurred within the meaning of s. 103.10 (12) (b), Stats., until either the first date that the employer comes into compliance with s. 103.10 (14) (a), Stats., by posting the required notice, or the first date that the employe obtains actual knowledge of the information contained in the required notice, whichever date occurs earlier. If the employer is not in compliance with the notice posting requirements of s. 103.10 (14) (a), Stats., at the time a violation occurs under s. 103.10, Stats., the employer has the burden of proving actual knowledge on the part of the employe within the meaning of this section.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.06 Complaint.** (1) CONTENT. A complaint shall identify the full name and address of each complainant and respondent and shall state clearly and concisely the facts constituting the alleged prohibited action including the approximate date of each occurrence.

(2) FORM. A complaint shall be filed with the division in writing on a form promulgated by the division or any other form acceptable to the division. A complaint shall be signed by the complainant or the duly authorized representative of the complainant, and the signature of the complainant, or the duly authorized representative of the complainant, shall be notarized.

(3) WHO MAY FILE. A complaint may be filed by any individual who is a complainant or by the duly authorized representative of that individual. A complaint filed by a duly authorized representative shall state that the representative is authorized to file the complaint.

(4) FILING. A complaint may be filed at any office of the division. A complaint which does not meet the requirements as to content and form specified in this section shall be accepted for filing. The person filing the complaint may be required by the division to file an amended complaint, correcting the defects in the initial complaint, within a reasonable time, to be specified by the division through notice to the person filing the complaint, after filing the initial complaint. In the event an amended complaint which meets the requirements as to content and form specified in this section is not filed within the time required by the division, after

service of that notice upon the person filing the complaint or the duly authorized representative of that person by certified mail-return receipt requested, the complaint may be dismissed by the division. A complaint shall be considered filed as of the date of the first complaint filed with the division whether that first complaint complies with the requirements of this section as to content and form or not.

(5) ASSISTANCE. Appropriate assistance shall be made available by the division, to persons filing complaints, in the completion of complaint forms.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.07 Withdrawal and amendment of complaints.** (1) WITHDRAWAL. A complaint may be withdrawn at any time. A request for withdrawal shall be in writing and signed by the complainant or the duly authorized representative or attorney of record of the complainant. Upon the filing of a request for withdrawal the division shall dismiss the complaint by written order. All dismissals based on withdrawal of the complaint shall be deemed to be with prejudice unless otherwise expressly stated.

(2) AMENDMENT. After an initial determination has been issued, a complaint may be amended only with the approval of the administrative law judge. Amendments may be allowed by the administrative law judge only to make claims which relate back to the original complaint for statute of limitation purposes.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.08 Notice to respondents.** The division shall serve a copy of every complaint and amended complaint filed on each respondent named in the complaint or amended complaint by mailing a copy to that respondent at the address given for the respondent in the complaint. The division shall simultaneously serve a notice upon each respondent requesting a response to the complaint within 10 days after the date in the notice. The notice shall advise the respondent that, if no response to the complaint is filed within the time provided, the division will make an initial determination based upon the information provided by the complainant.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.09 Review of complaints.** (1) PRELIMINARY REVIEW. The division shall review every complaint filed to ascertain whether the complainant is protected by the act, whether the respondent is subject to the act, whether the complaint states a claim for relief under the act and whether it has been filed within the time period prescribed by the act. The division shall serve upon the parties a preliminary determination and order dismissing any complaint which fails to meet these requirements.

(2) APPEAL TO THE ADMINISTRATOR. A complainant may appeal from an order dismissing a complaint under sub. (1) by filing a written request with the administrator of the division. The request shall be filed within 10 days after the date of the order and shall state specifically the grounds upon which it is based. If a timely request is filed, the administrator, or a person designated by the administrator, shall review the preliminary determination and shall either affirm, reverse, modify or set aside the preliminary determination and order. Any such decision shall be served upon the parties. If the decision reverses or sets aside the preliminary determination, the complaint shall be referred for investigation. If the

decision affirms the preliminary determination, it is the final decision of the division and the department and shall be subject to review in court.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.10 Investigation and conciliation.** (1) The division shall investigate all complaints which satisfy the review under s. Ind 86.09 and may subpoena persons or documents when related to an investigation. Subpoenas may be enforced pursuant to s. 885.12, Stats.

(2) If during an investigation it appears that an action or inaction of the respondent has violated the act in a manner other than alleged in the complaint, the division shall advise the complainant that the complaint may be amended to allege the additional violation or violations. If the complaint is so amended, the department shall investigate the allegations of the amended complaint and the allegations of the initial complaint.

(3) Concurrent with the investigation of the complaint, the division shall attempt to resolve the complaint by conference, conciliation or persuasion. At the option of the division these attempts may be made by the investigator assigned to investigate the complaint, a conciliator on the staff of the division, or both.

(4) If conciliation resolves the dispute, a written conciliation agreement shall be prepared which shall state all measures to be taken by each of the parties. The agreement may provide for the dismissal of the complaint provided that such dismissal is without prejudice to the complainant's right to pursue the complaint against any respondent who fails to comply with the terms of the agreement.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.11 Initial determinations as to cause.** (1) GENERAL. At the conclusion of the investigation, the division shall issue a written initial determination which states whether or not there is probable cause to believe that an action prohibited by the act has been committed by the respondent. The initial determination shall state the facts upon which it is based and shall be served upon the parties.

(2) PROBABLE CAUSE. If the investigation results in a conclusion that there is probable cause to believe that an action prohibited by the act has occurred as alleged in the complaint, the matter shall proceed to hearing.

(3) NO PROBABLE CAUSE. If the investigation results in a conclusion that there is no probable cause to believe that an action prohibited by the act has occurred as alleged in the complaint, the division may dismiss those allegations through an initial determination of no probable cause. The division shall, by a notice to be served with the initial determination, notify the parties of the complainant's right to appeal as provided by s. Ind 86.13.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.12 Appeals of initial determinations of no probable cause.** Within 10 days after the date of an initial determination that there is no probable cause pursuant to s. Ind 86.11 (3), a complainant may file with the division a written request for a hearing on the issue of probable cause.

(1) If no timely request is filed, the initial determination's order of dismissal shall be final.

(2) If a timely written request is filed, the division shall issue a notice certifying the matter to hearing. A hearing on the issue of probable cause shall be noticed and conducted in accordance with the provisions of ss. Ind 86.13 and 86.15-86.21, except that the parties may stipulate prior to the hearing that the administrative law judge may decide the case on the merits rather than hold a hearing on probable cause.

(3) In the event the administrative law judge determines, as a result of a hearing appealing an initial determination finding no probable cause, that probable cause does not exist to believe an action prohibited by the act has occurred as alleged in the complaint, the administrative law judge shall affirm the initial determination and that affirmance by the administrative law judge shall be a final and appealable order of the department and the division.

(4) In the event the administrative law judge determines at the hearing that probable cause does exist to believe an action prohibited by the act has occurred as alleged in the complaint, the administrative law judge shall orally make that finding on the record and shall, upon making that finding, immediately proceed to hearing on the merits after providing the parties a reasonable opportunity to resolve the case between themselves.

(5) In the event the adminstrative law judge is unable to make the determination as to existence of probable cause at the hearing, the administrative law judge may take that issue under advisement for further consideration in which event, if a determination is thereafter made that probable cause exists, a hearing on the merits shall be set for a later date and time.

(6) Upon finding probable cause, an administrative law judge may admit the entire record of the hearing on probable cause into the record of the hearing on the merits and allow the parties to introduce only such additional evidence as has not previously been introduced.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.13 Notice of hearing.** In any matter which has been certified to hearing, the division shall advise the parties and their representatives in writing of the specific time, date and place established for the hearing by issuance of a notice of hearing. The notice of hearing shall fully identify the parties and the case number. It shall specify a time and date for hearing and a place for hearing in either the county of the respondent's principal place of business or the county in which the action prohibited by the act appears to have occurred. It shall specify the nature of the alleged violation of the act and shall state the legal authority on which the hearing is based. A copy of the complaint shall be attached to the notice of hearing.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.14 Answer.** (1) WHEN REQUIRED AND FILING AND SERVICE. Within 10 days after the date of a notice of hearing on the merits, each respondent shall file with the division an answer to the allegations of the complaint. The respondent shall serve a copy of the answer upon all other parties.

(2) CONTENTS. The answer shall contain a specific admission, denial or explanation of each allegation in the complaint. If the respondent is

without knowledge or information sufficient to form a belief as to the truth of an allegation in the complaint, the respondent shall so state and shall state the reason the respondent is without sufficient knowledge or information, in which case these statements by respondent shall be deemed a denial of the allegation. Admissions or denials may be made to all or part of an allegation but shall fairly meet the substance of the allegation. Any allegation not properly responded to shall be deemed admitted. Any affirmative defense relied upon by respondent shall be raised in the answer unless it has previously been raised by motion in writing. Failure to raise an affirmative defense in a timely filed answer may, in the absence of good cause, be held to constitute a waiver of such an affirmative defense.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.15 Pre-hearing conference.** In any case set for hearing, pre-hearing conferences may be held in accordance with the provisions of s. 227.44 (4), Stats.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.16 Subpoenas and motions.** (1) SUBPOENAS. The administrative law judge may issue subpoenas whenever necessary to compel the attendance of witnesses or the production of documents either on the administrative law judge's own motion or on the proper application by any party. Service of subpoenas shall be made in the manner prescribed by law. Subpoenas may be enforced pursuant to s. 885.12, Stats.

(2) MOTIONS. Motions made during a hearing may be stated orally and shall, with the ruling of the administrative law judge, be included in the record of the hearing. All other motions shall be in writing and shall state briefly the relief requested and the grounds upon which the moving party is entitled to relief. All written motions shall be filed with the division's hearing section and served on all parties by the moving party. Any party opposing the motion may file a written response which, if filed, shall be served on all other parties. All written motions shall be decided without further argument unless requested by the administrative law judge.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.17 Pre-hearing disclosure and discovery.** (1) EXCHANGE OF NAMES OF WITNESSES AND COPIES OF EXHIBITS. By no later than the tenth day prior to the day of the hearing, the parties shall file with the division and serve upon the other party a written list of the names of witnesses and copies of the exhibits which the parties intend to use at the hearing. The administrative law judge may exclude witnesses and exhibits not identified in a timely fashion pursuant to this section. This section does not apply to witnesses and exhibits offered in rebuttal which the party could not have reasonably have anticipated using prior to the hearing.

(2) PRE-HEARING DISCOVERY. A party may obtain discovery prior to hearing, except that discovery directed to a complainant who is not represented by legal counsel shall not be permitted in the absence of written consent of the administrative law judge. The scope of discovery, the methods of discovery and the use of discovery at hearing will be the same as set forth in ch. 804, Stats., subject to the administrative law judge being authorized to restrict the time, scope, methods and use of discovery to serve the goal of the act to achieve speedy resolutions in cases under the act. The administrative law judge has the same authority to

compel discovery, to issue protective orders and to impose sanctions as the court has under ch. 804, Stats. Copies of demands for discovery and responses to demands for discovery may not be filed with the division. Certificates of service showing service of demands for discovery and responses to demands for discovery shall be filed with the division. Discovery may not be used prior to the time that a matter is certified for hearing, except that the taking and preservation of evidence shall be permitted prior to certification to hearing under the circumstances set forth in s. 227.45 (7), Stats.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.18 Disqualification of the administrative law judge.** Upon the administrative law judge's own motion or upon timely and sufficient affidavit filed by any party, the administrative law judge shall determine whether the administrative law judge should be disqualified because of personal bias or for some other reason. Any such determination shall be made part of the record and decision in the case.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.19 Hearings.** (1) PROCEDURE. Hearings shall be conducted in accordance with the act and the provisions of ch. 227, Stats.

(2) APPEARANCE OF PARTIES. Parties may appear at the hearing in person or by counsel or other representative.

(3) ACCELERATION OF HEARING. The parties may file a written stipulation that the hearing be scheduled sooner than the date set in the notice of hearing.

(4) POSTPONEMENTS AND CONTINUANCES. All requests for postponements shall be filed with the division's hearing section within 10 days after the date of the notice of hearing, except where emergency circumstances arise thereafter and prior to hearing. Postponements and continuances shall be granted only for good cause shown and not for the mere convenience of the parties, their attorneys or their representatives.

(5) FAILURE TO APPEAR. If the complainant fails to appear at a hearing, either in person or by a representative, the administrative law judge may dismiss the complaint. If a respondent fails to appear at a hearing, the hearing shall proceed as scheduled. If, within 10 days after the date of the hearing, any party who fails to appear shows good cause in writing for the failure to appear, the administrative law judge may reopen the hearing.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.20 Record of proceedings.** (1) TRANSCRIPTION OF RECORD. A stenographic, electronic or other record of oral proceedings shall be made at all hearings conducted under the act. Transcription of the record for purposes other than judicial review shall be at the expense of the party requesting the transcription, at a reasonable compensatory fee as determined by the division. The record shall be transcribed into a written transcript at the division's expense only for the purpose of judicial review.

(2) COPIES OF TRANSCRIPTS. Copies of the written transcripts shall be at the expense of any party who requests the transcript, at a reasonable fee to be determined by the division except that, in the event the record is

transcribed, copies shall be made available without cost to a party who submits a sworn affidavit of indigency showing the inability to pay the cost of the transcript.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.21 Decision and order.** (1) GENERAL. After the close of the hearing, including any briefing which may be allowed by the administrative law judge, the administrative law judge shall prepare a formal written decision which shall include findings of fact, conclusions of law and an order, and which may be accompanied by a memorandum opinion. A copy of the administrative law judge's decision shall be served on the parties by the division.

(2) CONTENTS OF DECISION AND ORDER AFTER HEARING ON THE ISSUE OF PROBABLE CAUSE. If after a hearing on the issue of probable cause, the administrative law judge concludes that probable cause does not exist, the administrative law judge shall issue a decision and an order which dismisses the allegations of the complaint and which shall be a final order of the department appealable to circuit court. If the administrative law judge concludes that probable cause exists, the matter will proceed to hearing on the merits according to s. Ind 86.12 and the findings as to probable cause can either be entered as a separate order or incorporated into the written decision on the merits.

(3) CONTENTS OF DECISION AND ORDER AFTER HEARING ON THE MERITS. After a hearing on the merits, the administrative law judge shall issue a decision and an order which shall either dismiss the allegations of the complaint or shall order such action by the respondent as will effectuate the purposes of the act, depending upon the administrative law judge's findings and conclusions on the merits of the complaint. The decision of the administrative law judge shall be the final decision of the division and the department for purposes of judicial review under s. 227.52, Stats.

(4) COMPUTATION OF INTEREST. Interest on any award made pursuant to the act or to this chapter shall be added to that award and computed at an annual rate of 12% simple interest. Interest shall be computed by calendar quarter.

History: Register, November, 1989, No. 407, eff. 12-1-89.

**Ind 86.22 Notice as to right to review.** Every decision and order of an administrative law judge under s. Ind 86.21 shall be accompanied by a separate notice advising the parties of their rights to seek judicial review of the decision pursuant to the act and to that section.

History: Register, November, 1989, No. 407, eff. 12-1-89.