

State of Wisconsin
Department of Workforce Development
Division of Workforce Solutions

Chapter DWD 12

**Grievance Procedure for Resolving Complaints of Employment Displacement
under the Wisconsin Works Program**

The Wisconsin Department of Workforce Development proposes an order to amend s. DWD 12.14 (2) (f) and (3) (d) and to create s. DWD 12.055, relating to the grievance procedure for resolving complaints of employment displacement under the Wisconsin Works program and affecting small business.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Section 49.141 (5)(bm), as created by 2003 Wisconsin Act 173, and 227.11, Stats.

Statutes interpreted: Section 49.141 (5)(am), Stats., as renumbered by 2003 Wisconsin Act 173

Relevant federal law: 42 USC 607(f) and 45 CFR 261.70

Federal law. 42 USC 607(f) and 45 CFR 261.70 prohibit an adult in a family receiving assistance under a state program funded by a federal Temporary Assistance for Needy Families (TANF) block grant from being employed or assigned to a position in the following circumstances:

- Any other individual is on layoff from the same or any substantially equivalent job.
- The employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy with a participant in a TANF-funded program.

States are required to establish and maintain a grievance procedure for resolving complaints of alleged violations of this prohibition.

Explanation of agency authority. Section 49.141 (5)(am), Stats., as renumbered by 2003 Wisconsin Act 173, provides that no Wisconsin Works employment position may be operated so as to do any of the following:

- Have the effect of filling a vacancy created by an employer terminating a regular employee or otherwise reducing its work force for the purpose of hiring a W-2 participant.
- Fill a position when any other person is on layoff or strike from the same or a substantially equivalent job within the same organizational unit.
- Fill a position when any other person is engaged in a labor dispute regarding the same or a substantially equivalent job within the same organizational unit.

Section 49.141 (5)(bm), Stats., as created by 2003 Wisconsin Act 173, directs the Department to promulgate rules specifying a grievance procedure for resolving complaints of alleged violations of the nondisplacement provisions.

Summary of the proposed changes. The current rule requires employers to provide a grievance procedure for regular employees to resolve complaints of employment displacement by a W-2 participant. The proposed rule provides that employers shall comply with the procedure developed by the Department.

The proposed rule requires each W-2 agency to designate staff responsible for receiving, investigating, and resolving complaints of violations of the nondisplacement provisions or maintain an agreement with a department grantee or contractor in the same locality to receive, investigate, and resolve such complaints. Each W-2 work training provider or employer of a participant in a W-2 employment position shall inform its employees of the right to file a complaint and provide information about how to obtain further information on the grievance procedure.

An employee, former employee, or employee's representative may file a written complaint with the W-2 agency or its designee that alleges facts that may constitute a violation of the nondisplacement provisions. The complaint must be filed within one year from the date of the alleged violation. Upon receipt of a complaint alleging a violation of the nondisplacement provisions, the W-2 agency or its designee shall investigate the complaint and assist the parties in attempting to reach an informal resolution to the complaint. If an informal resolution cannot be reached, the W-2 agency or its designee shall conduct a hearing within 30 calendar days from the date the complaint was filed. The W-2 agency or its designee shall issue a hearing decision to the parties within 60 calendar days from the date the complaint was filed.

A party may file a request for a department review within 10 days of receiving an adverse decision from the W-2 agency or its designee or within 15 days from the date the decision was due if the parties did not receive a decision. The review shall be conducted by the administrator of the department's division of workforce solutions or a designee. The department's final decision shall be issued within 30 calendar days from the date the request for departmental review was filed.

A W-2 employer or work training provider who is found to have violated any of the nondisplacement provisions may be subject to termination of existing W-2 or other work training agreements with the department or its contractors, termination of grants from the department or its contractors and disqualification for future grants, and disqualification for future work training agreements with the department or its contractors.

No employer or W-2 work training provider may retaliate against an employee, employee's representative, or witness who initiates or participates in the grievance procedure.

Summary of analytical methodology used to develop the proposed rule. The grievance procedure adopted for employment displacement by W-2 participants is similar to the grievance procedure that the Department developed for complaints of employment displacement by participants in employment and training programs funded by grants under the federal Workforce Investment Act (WIA) and Welfare to Work. (The Welfare to Work program no longer exists.)

The grievance procedure was developed to comply with federal WIA and Welfare to Work regulations at 20 CFR 667.600 and 20 CFR 645.270. The preamble to the TANF regulations recommends that states use one set of grievance procedures for the TANF and Welfare to Work programs, 64 Federal Register 17797 (April 12, 1999). Although the Welfare to Work program no longer exists, the proposed rule allows for a common grievance procedure and a common complaint coordinator for complaints of employment displacement by participants in employment and training programs funded by grants under WIA and W-2.

Comparison with rules in adjacent states. Iowa. A complaint must be filed within one year with the program contractee. The contractee attempts to reach an informal resolution of the complaint. If informal resolution is not possible, a complainant may file a written appeal with the Department. The appeal procedures generally used for Department disputes are followed.

Illinois. A complaint may be filed with the Department. The Department holds an in-person conference to receive documents and statements and issues a decision.

Michigan. All complaints utilizing Michigan Department of Career Development/Office of Workforce Development funding sources follow the same complaint procedure. The complaint procedure is found in the WIA state plan.

Local agencies must make provisions for informal means to resolve complaints before they become grievances. If there is no informal resolution, the local agency conducts a hearing and issues a decision no later than 60 days from the date the grievance was filed. A grievance may be appealed to the Department and the Department may conduct a hearing. A decision is issued no later than 30 days after the filing of the appeal.

Minnesota. Minnesota has a state statute that applies to nondisplacement in union workplaces. They do not appear to have developed a grievance procedure that applies to all workplaces with a TANF-subsidized individual.

Anticipated costs incurred by private sector. There will be no significant fiscal effect on the private sector.

Effect on small business. The rule will affect privately-run W-2 agencies and small businesses that have a W-2 participant at their work site. The rule will not have a significant economic impact on a substantial number of small businesses.

Analysis and supporting documentation used to determine effect on small business. The rule merely outlines a procedure for resolving complaints. The grievance procedure is not expected to be used often.

SECTION 1. DWD 12.055 is created to read:

DWD 12.055 Grievance procedure for complaints of employment displacement.

(1) AGENCY DESIGNEE. Each W-2 agency shall designate staff responsible for receiving, investigating, and resolving complaints of violations of s. DWD 12.05 (9) or shall maintain an agreement with a department grantee or contractor in the same locality to receive, investigate, and resolve such complaints.

(2) NOTICE. Each W-2 work training provider or employer of a participant in a W-2 employment position shall inform its employees of the right to file a complaint under this section and provide information about how to obtain further information on the grievance procedure.

(3) FILING A COMPLAINT. (a) An employee, former employee, or employee's representative may file a written complaint with the W-2 agency or its designee that alleges facts that may constitute a violation of s. DWD 12.05 (9).

(b) The complaint shall be filed within one year from the date of the alleged violation.

(4) INVESTIGATION AND INFORMAL RESOLUTION. Upon receipt of a complaint alleging a violation of s. DWD 12.05 (9), the W-2 agency or its designee shall investigate the complaint and assist the parties in attempting to reach an informal resolution to the complaint.

(5) HEARING. (a) If an informal resolution under sub. (4) cannot be reached, the W-2 agency or its designee shall conduct a hearing within 30 calendar days from the date the complaint was filed.

(b) The W-2 agency or its designee shall issue a hearing decision to the parties within 60 calendar days from the date the complaint was filed.

(6) DEPARTMENT REVIEW. A party may file a request for a department review within 10 days of receiving an adverse decision from the W-2 agency or its designee or within 15 days from the date the decision was due if the parties did not receive a decision. The review shall be conducted by the administrator of the department's division of workforce solutions or a designee. The department's final decision shall be issued within 30 calendar days from the date the request for departmental review was filed.

Note: A request for departmental review may be filed with the Division of Workforce Solutions Administrator, Department of Workforce Development, 201 E. Washington Avenue, P.O. Box 7972, Madison, WI 53707.

(7) REMEDIES. A W-2 employer or work training provider who is found to have violated any of the nondisplacement provisions in s. DWD 12.05 (9) may be subject to the following penalties:

(a) Termination of existing W-2 or other work training agreements with the department or its contractors.

(b) Termination of grants from the department or its contractors and disqualification for future grants.

(c) Disqualification for future work training agreements with the department or its contractors.

(8) NONRETALIATION. No employer or W-2 work training provider may retaliate against an employee, employee's representative, or witness who initiates or participates in the grievance procedure under this section.

SECTION 2. DWD 12.14 (2) (f) and (3) (d) are amended to read:

DWD 12.14 (2) (f) ~~Provide a~~ Comply with the grievance procedure in s. DWD 12.055 for regular employees of the worksite to resolve complaints ~~related to~~ of employment displacement by a W-2 participant under s. DWD 12.05 (9).

DWD 12.14 (3) (d) ~~Provide a~~ Comply with the grievance procedure in s. DWD 12.055 for regular employees of the worksite to resolve complaints ~~related to~~ of employment displacement by a W-2 participant under s. DWD 12.05 (9).

SECTION 3. EFFECTIVE DATE. 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.