

# Wisconsin Human Resources Handbook

## Chapter 430

### Employee Grievance Procedure

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#### Sec. 430.010 Introduction

The State encourages continuing informal communication between employees and management. The State also recognizes the value of a formal grievance procedure. It is the policy of the State and the responsibility of the Administrator to ensure that an established written grievance procedure relating to adverse employment actions is available to state employees for the disposition of employee grievances.

This grievance procedure shall ensure each employee may, without prejudice, express and present a grievance through proper channels. During the grievance process, the grievant and the employer shall make efforts to resolve the grievance by seeking a mutually acceptable solution to the matter grieved. This chapter sets forth the procedures by which employees may challenge adverse employment action pursuant to s. 230.445, Wis. Stats. and conditions of employment action pursuant to s. 230.04(14), Wis. Stats. and Wis. Adm. Code Ch. ER 46.

**Note:** Grievance procedures for represented Public Safety Employees – employees in positions classified as State Patrol Troopers and State Patrol Inspectors - are described in their collective bargaining agreement and are not subject to any provisions contained in this chapter.

#### Sec. 430.020 Statutory Authority

1. Section 230.04 (14), Wis. Stats., provides “Except as provided in s. 230.445, the administrator shall establish, by rule, the scope and minimum requirements of a state employee grievance procedure relating to conditions of employment.”
2. Section 230.44(1)(c), Wis. Stats., provides:  
“**Appeal procedures.** (1) Appealable Actions and Steps. Except as provided in par. (e), the following are actions appealable to the commission under s. 230.45(1)(a):  
...  
(c) *Demotion, layoff, suspension or discharge.* If an employee has permanent status in class, or an employee has served with the state as an assistant district attorney or an assistant state public defender for a continuous period of 12 months or more, the employee may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission as the final step in the state employee grievance

process established under s. 230.445, if the appeal alleges that the decision was not based on just cause.”

3. Section 230.445(2), Wis. Stats., provides: “An employee may file a complaint under this section concerning the application of a law, rule, or policy to an adverse employment decision against an employee.”
4. Section 230.445 (3), Wis. Stats., outlines the procedures for grievances related to adverse employment decisions.
5. Chapter ER 46, Wis. Adm. Code. outlines the rules for grievances related to conditions of employment as established by the administrator.

### Sec. 430.030 Definitions

1. **Administrator:** The Administrator of the Department of Administration, Division of Personnel Management.
2. **Adverse employment decision:** “... [A] decision by management to demote, layoff, suspend without pay, discharge, or reduce the base pay of an employee.” s. 230.445 (1)(a), Wis. Stats.
3. **Employee:** “...[A] state employee who has obtained permanent status in class or an employee who has served with the state as an assistant district attorney or an assistant public defender for a continuous period of twelve (12) months or more.” s. 230.445 (1)(b), Wis. Stats.
4. **Permanent status in class:** “... [T]he rights and privileges attained upon successful completion of a probationary period required upon appointment to a permanent, seasonal, or sessional position.” s. ER 1.02 (29), Wis. Adm. Code.

### Sec. 430.040 Grievable Actions

#### 1. Adverse Employment Decisions

Per Wis. Stats. s. 230.445, employees may file a formal grievance contesting only the following adverse employment decisions if the employee alleges the action was taken without just cause. Grievances filed will follow the procedures, rules and scope of this chapter.

- demotion
- layoff
- suspension (including letters in lieu of suspension\*)
- discharge
- reduction in base pay

Employees must use the DPM Adverse Employment Action and Condition of Employment Employee Grievance form ([DOA-15802](#)) to file grievances (Attachment #1) contesting an adverse employment decision by the employer. Grievances may be filed electronically per the procedure set forth by each agency.

\*Note: Letters in lieu of suspension will only be issued for exempt employees where FLSA rules prohibit unpaid suspensions.

#### 2. Conditions of Employment

Employees may file a grievance on issues related to conditions of employment, as defined in Ch. ER 46, Wis. Adm. Code. Grievances filed under the provisions of Ch. ER 46 shall follow the procedures, rules and scope of this chapter.

Employees must use DPM Adverse Employment Action and Condition of Employment Employee Grievance form (DOA-15802) to file grievances (Attachment #1) related to conditions of employment. Grievances may be filed electronically per the procedures set forth by each agency.

**Sec. 430.050 Non-Grievable Actions Appealable Directly to the WERC**

The following actions are not grievable under this grievance procedure but can be appealed directly to the Commission (WERC) per ss. 230.44 or 230.45, Wis. Stats.

1. Decision made or delegated by the administrator;
2. Decision made or delegated by the director;
3. Illegal action or abuse of discretion relating to the hiring process in the classified service;
4. Noncompetitive appointment of certain disabled veterans;
5. Discretionary performance awards excluding performance awards under s. 230.12(5), Wis. Stats. or under s. 230.04(19), Wis. Stats. which includes the methodology and results used to determine the award or the amount awarded;
6. Determination that a person was discharged from the unclassified service for just cause under s. 230.337, Wis. Stats.;
7. Decisions affecting Milwaukee County employees by the department of health services;
8. Decisions affecting certain county employees by the department of children and families;
9. Denial of hazardous duty pay per s. 230.36(4), Wis. Stats.

**Sec. 430.060 Non-Grievable Actions Appealable Directly to the Division of Equal Rights**

The following actions are not grievable under this grievance procedure but can be appealed directly to the Division of Equal Rights (ERD) per s. 230.45, Wis. Stats.

1. Discrimination complaints under s. 111.375, Wis. Stats.;
2. Complaints of retaliatory disciplinary actions under s. 230.85, Wis. Stats.;
3. Whistle Blower complaints under s. 230.81, Wis. Stats.

**Sec. 430.070 Notice of Grievance Rights**

Employees must be provided proper notice of grievance rights following any action which is grievable under section 430.040 of this chapter. To ensure uniform practice across all agencies when providing an employee notice of an adverse employment decisions, the following communication is required to be included in letters issuing employee discipline:

“If you believe that this action is not based on just cause, you may appeal it through the grievance procedure set forth in Wis. Stat. s. 230.445 and the Wisconsin Human Resources Handbook Chapter 430 Employee Grievance Procedure, [if applicable, insert agency grievance policy information]. Grievances must be submitted using the DPM Adverse Employment Action Grievance form (DOA-15802) available on the Division of Personnel Management website at [https://dpm.wi.gov/Pages/How\\_Do\\_I/FileAGrievance.aspx](https://dpm.wi.gov/Pages/How_Do_I/FileAGrievance.aspx) [if applicable, insert agency link]. The grievance must be received by [insert agency protocol (i.e. where to file)] no later than 14 calendar days after the employee becomes aware of, or should have become aware of, the decision that is the subject of the complaint.”

This language will be included in termination letters including terminations for misconduct, job abandonment, medical separation, or failure of a performance improvement plan. This language is not required for termination of other unclassified employees, probationary employees who currently do not hold permanent status, project-project

employees, limited term employees, or employees in a collective bargaining unit subject to the provisions of s. 111.91(1), Wis. Stats.

### **Sec. 430.080 Grievance Procedure**

The grievance procedure for employees consists of the following steps. The usual management designee responding to the step will be:

- First step – Appointing Authority or designee. This will normally be the agency Human Resources Director, Employment Relations Section Chief, or designee. Employees will contact their human resources office to determine the appropriate contact and the appropriate method of filing;
- Second step – Department of Administration (DOA), Division of Personnel Management (DPM).

Grievances not resolved or settled at Step 1 or 2 of the process may be appealed to the WERC under s. 230.445(3)(c), Wis. Stats., if the appeal alleges the decision grieved was not based on just cause. Grievances may not be appealed to the WERC without first completing the preceding steps in the grievance procedure.

### **Sec. 430.090 Grievance Submittal and Response Time**

An employee may file a grievance under this chapter concerning the application of a law, rule, or policy to an adverse employment decision or condition of employment against the employee. If an employee does not file a grievance or an appeal by an applicable deadline as described below, the employee waives his or her right to further appeal the adverse employment or condition of employment decision under this procedure and the grievance will be considered as having been adjudicated on the basis of the last preceding employer response. All filed grievances, other than untimely filed grievances, must be heard and answered at step 1 of the process.

#### **Step 1 Process**

A formal grievance must be filed with the designated employer representative no later than 14 calendar days from the date the grievant first became aware, or should have become aware (with the exercise of reasonable diligence) of the matter being grieved. Wis. Stats. s. 230.445(3)(a)1. The 14-day timeframe for filing a step 1 grievance shall be computed beginning the day after the grievant first became aware, or should have become aware of the matter being grieved. A grievance must be filed using DPM form DOA-15802, Attachment #1, at both Step 1 and Step 2 of the process. The form must be filed electronically, in person, or by U.S.P.S. mail. If the grievance is mailed via U.S.P.S. the postmark denotes the date of submittal.

Upon receipt of the grievance by management and prior to the grievance hearing, the employee may designate a representative in writing. Upon such written designation, the representative will then be authorized to discuss the specifics of the grievance with the agency designee. Management will arrange a time, date, and place for the grievance to be heard with the grievant. It is the grievant's responsibility to inform his or her representative of the time, date and place of the hearing. Management will not schedule the hearing with the representative. – If the employee fails to appear at the scheduled grievance hearing, the employer shall answer the grievance.

Management shall meet with the grievant in person, unless upon mutual agreement an alternative method of meeting is determined. Management shall issue a decision, in writing, using DPM form [DOA-15803](#) (Attachment #2), not later than 14 days after the receipt of the Step 1 grievance. If management fails to issue a decision within 14 days, the employee may advance their grievance to Step 2 of the process on the 15<sup>th</sup> day.

**Note:** For condition of employment grievances, if the last day on which a grievance is to be filed or a decision is to be grieved or served is a Saturday, Sunday, or legal holiday, or the day specified in s. 230.35 (4) (a) 10., Wis. Stats., the grievance may be filed or the decision may be grieved or served on the next day which is not a Saturday, Sunday, or legal holiday, or the day specified in s. 230.35 (4) (a) 10., Wis. Stats.

### **Step 2 Process**

A Step 1 grievance decision may be appealed to Step 2, DPM, using DOA-15802 (Attachment #1) no later than 14 days from the date of decision in Step 1 or within 15 calendar days of the date on which the grievance should have been answered if no response was issued at the first step of the process. If filing electronically, the grievance must be sent to the DPM grievance mailbox: [DOADPMGrievance@wisconsin.gov](mailto:DOADPMGrievance@wisconsin.gov).

If the step 2 grievance is filed timely, DPM will review the grievance and the written decision from step 1. DPM will issue a written decision no later than 30 days after the receipt. If DPM does not issue a decision within 31 days after receipt of the step 2 grievance, the employee may appeal their grievance to the WERC.

### **WERC**

An employee or appointing authority may appeal a decision issued by DPM to the WERC. The appeal must be filed no later than 14 days after receiving DPM's response. See s. 230.445(3)(c), Wis. Stats. and s. ER 46.07(2), Wis. Adm. Code.

DOA Legal counsel shall represent management before the WERC in an employee advanced appeal.

### **Sec. 430.100 WERC Appeal Filing Process**

Chapters ERC 91 and 92, Wis. Adm. Code, identify the procedures for filing appeals of Step 2 grievance responses with the WERC. Further information on the filing process can be found at <http://werc.wi.gov/>.

### **Sec. 430.110 Miscellaneous**

1. A grievant may be assisted by a representative of his or her choosing at any step of the grievance process. A representative cannot file or advance a grievance on the employee's behalf or dictate the scheduling of a grievance hearing.
2. The grievant and the management designee can agree in writing to extend a timeframe for filing or responding.
3. The grievant and the management designee may meet or confer in a manner other than in person for Step 1 grievances. However, adverse employment grievances require mutual agreement.
4. Neither the first step hearing nor the second step may be waived.
5. The appointing authority or DPM may consolidate grievances when a reasonable basis for consolidation exists.
6. Limited term, probationary, and project employees are prohibited from filing a grievance.
7. Employees must be notified in writing of these grievance procedures and any changes which may occur through the agency's policies, procedures, handbook, or other format. Agency policies must identify, at a minimum, where electronic grievances are filed, which position(s) in the agency are responsible for the first step hearing, the time frames, the filing form, and any other requirements.

### **Sec. 430.120 Use of Paid Work Time by Employees for Preparing and Presenting Grievances**

When requested in advance, agencies are required to allow 30 minutes of conference or preparation time for the grievant and representative. This time will occur directly prior to the grievance hearing and is without loss of pay.

The grievance hearing will be held with the grievant during scheduled work hours whenever possible. If the hearing need take place outside of normal work hours, the time spent by the grievant and his or her representative (if a state employee) during the meeting and 30 minutes prior to the meeting, if requested, will be without loss of pay.

Any and all expenses incurred by the grievant or his/her representative in investigating, preparing, or presenting a grievance shall be the sole responsibility of the grievant or representative and not the employer.

### **Sec. 430.130 Retaliation Prohibited**

Agencies are prohibited from retaliating against a grievant, representative, or witness who participates, or is scheduled to participate, in proceedings for using the grievance procedure. The DPM Administrator can enforce this prohibition by order under s. 230.04(3), Wis. Stats.

### **Sec. 430.140 Limitations of Relief Granted**

Agencies and the commission are prohibited from granting relief that is retroactive beyond 14 days immediately preceding the filing of the grievance at the first step.

### **Sec. 430.150 Administrative Information**

This chapter was originally issued in June 1997 as Chapter 340 of the *Wisconsin Personnel Manual*.

This chapter was revised and reissued in October 2001 as Chapter 430 of the *Wisconsin Human Resources Handbook*.

This chapter was revised and reissued In December 2003 to remove the references to the State Personnel Commission and insert references to the Wisconsin Employment Relations Commission.

This chapter was revised and reissued in December 2011 due to the enactment of 2011 Wisconsin Act 10 and approval of the 2011-13 Compensation Plan.

This chapter was revised and reissued in April 2012 to modify time frames and clarify the responsibilities of grievants.

This chapter was revised and reissued in July 2016 due to the enactment of 2015 Wisconsin Act 150.

**Attachment 1:** Adverse Employment Action Employee Grievance form

**Attachment 2:** Condition of Employment Employee Grievance form

**Attachment 3:** Employer Grievance Decision form

In September 2018, Chapter 430 was revised and reissued to reflect updates to Chapter ER 46, Wisconsin Administrative Code that changed the process for grievances related to conditions of employment to match that for adverse employment decisions. Attachments were modified to reflect that all grievances will be submitted using the same form. Additionally, the Bureau of Compensation and Employment Relations has formally been reorganized into two separate bureaus, Classification & Compensation and Employee Management and references have been updated.

**Attachment 1:** Adverse Employment Action and Employee Condition of Employment Grievance form

**Attachment 2:** Employer Grievance Decision form

In February 2019, this chapter was revised to include a new section regarding notification of grievance rights. With the publication of this chapter, policy bulletin DPM-0463-CER is obsolete. Also, a statement was included to clarify that untimely grievances are not required to be heard at Step 1.

In May 2019, this chapter was revised to update attachments to reflect changes to the grievance forms. The forms were updated to provide clarified instructions to employees for the submission of a grievance at both Step 1 and Step 2.

**Attachment #1**

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DIVISION OF PERSONNEL MANAGEMENT  
DOA-15802 (R05/2019)  
PREVIOUSLY OSER-DCLR-22



**Wis. Stats s.230.445**  
**Wis. Adm. Code Ch. ER 46**

**Grievance Number – For Agency/DPM use only**  
Click or tap here to enter text.

**ADVERSE EMPLOYMENT ACTION  
AND CONDITION OF EMPLOYMENT EMPLOYEE GRIEVANCE**

**Filing a Step 1 Grievance:** To file a 1<sup>st</sup> step grievance, this form must be submitted to the Appointing Authority or your Department's designated grievance representative **at the agency you work for** within 14 days of either (1) your notice of the adverse employment action being grieved or (2) when you became aware or should have become aware of the condition of employment being grieved. If you do not know who your Appointing Authority or designated grievance representative is, contact human resources at your agency for assistance.

**Filing a Step 2 Grievance:** To file a 2<sup>nd</sup> step grievance appeal of a step 1 decision, this form must be submitted to the Division of Personnel Management at DOADPMGrievance@wisconsin.gov or 101 East Wilson St., 4<sup>th</sup> Floor, PO Box 7855, Madison, WI 53707-7855 within 14 days of the date provided in the "Date Returned" box on the Step 1 Decision. If the Appointing Authority or designee does not issue a written decision within 15 days after the receipt of the grievance at Step 1, the employee may appeal their grievance to DPM.

**Note:** For condition of employment grievances, if the last day on which a grievance is to be filed or a decision is to be grieved or served is a Saturday, Sunday, or legal holiday, or the day specified in s. 230.35 (4) (a) 10., Wis. Stats., the grievance may be filed or the decision may be grieved or served on the next day which is not a Saturday, Sunday, or legal holiday, or the day specified in s. 230.35 (4) (a) 10., Wis. Stats.

Please Check One This is a <b>Step 1</b> Grievance Commencement <input type="checkbox"/>		
This is a <b>Step 2</b> Grievance Appeal of Employer <b>Step 1</b> Decision <input type="checkbox"/>		
Last Name, First Name, MI	Agency/Division	
Employing Unit	Work Unit	Supervisor
Headquarter Location	Hours of Work	
Classification	Preferred Email Address	
Home Address	Preferred Telephone	
Adverse Employment or Condition of Employment Action/Subject of Grievance (Please Check One)		
<input type="radio"/> 1-Day Suspension <input type="radio"/> 3-Day Suspension <input type="radio"/> 5-Day Suspension <input type="radio"/> Demotion <input type="radio"/> Discharge <input type="radio"/> Layoff <input type="radio"/> Reduction in Base Pay <input type="radio"/> Condition of Employment		
Grievance Summary		
Relief Sought		
Date Submitted	Received By (For Agency/DPM Use Only)	Date Received



Attachment #2

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DIVISION OF PERSONNEL  
MANAGEMENT  
DOA-15803 (R05/2019)



Grievance Number – For Agency/DPM use only  
Click or tap here to enter text.

**EMPLOYER GRIEVANCE DECISION**

STEP 1   
STEP 2

Management Representative Name (Last, First)		Title	
Grievant Name (Last, First, MI)			
Grievant Representative Name & Contact Information			
Date Grievance Received	Date Heard	Date Returned	Method of Return
Adverse Employment or Condition of Employment Action/Subject of Grievance (Please Check One)			
<input type="radio"/> 1-Day Suspension <input type="radio"/> 3-Day Suspension <input type="radio"/> 5-Day Suspension <input type="radio"/> Demotion <input type="radio"/> Discharge <input type="radio"/> Layoff <input type="radio"/> Reduction in Base Pay <input type="radio"/> Condition of Employment			
Grievance Decision			
Rationale			

**INSTRUCTIONS: If dissatisfied with the decision, the grievance may be appealed.**

**Appeal of a Step 1 Decision:** A Step 1 decision appeal must be submitted using the DPM Adverse Employment Action and Condition of Employment Employee Grievance form (DOA-15802) available on the Division of Personnel Management website at [https://dpm.wi.gov/Pages/How\\_Do\\_I/FileAGrievance.aspx](https://dpm.wi.gov/Pages/How_Do_I/FileAGrievance.aspx). A timely appeal of a Step 1 decision must be submitted to DPM at DOADPMGrievance@wisconsin.gov or 101 East Wilson St., 4<sup>th</sup> Floor, PO Box 7855, Madison, WI 53707-7855 within 14 days of the date provided in the “Date Returned” box on the Step 1 decision. If the appointing authority or designee does not issue a written decision within 15 days after the receipt of the grievance at Step 1, the employee may appeal their grievance to DPM.

**Appeal of a Step 2 Decision:** A timely appeal of a Step 2 Decision must be filed with the Wisconsin Employment Relations Commission no later than 14 days after receiving DPM’s decision. If DPM does not issue a written decision within 31 days after receiving the grievance the grievance may be appealed to the WERC.