2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2185

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2185

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 20, 2009

Recorder Job Number: 2185

Committee Clerk Signature Eva Lubelt

Minutes:

Chairman Klein: Called the meeting to order. Open hearing on Senate Bill 2185.

Senator Tom Fiebiger. (Written Testimony Attached). In support of Bill 2185.

Chairman Klein: In this case someone would file a case with the Labor Commissioner. The Labor Commissioner would then go to the claimant.

Senator Fiebiger: Yes, the respondent, who's the employer of the landlord.

Chairman Klein: The landlord then responds to the labor commissioner and what were asking is for that information to be available to both sides?

Senator Fiebiger: Yes. Right now the landlord or employer can ask for it and get a copy of it but that doesn't work the same for the claimant. They don't get to see the response to my charge unless they release it voluntarily.

Chairman Klein: What are you trying to accomplish?

Senator Fiebiger: The problem is when people come into my office and file complaints, they're frustrated. That's while they're filing a complaint and I don't think it helps the process to be told you can file a complaint but we're not going to tell you what's in the response to their complaint. We need to allow people to have good information.

Chairman Klein: If in went a little further to litigation they would have to provide that information?

Senator Fiebiger: In a court hearing the parties exchange information between themselves.

Discussion followed.

Senator Potter: So what you're saying is that if both sides have the information it could lead to resolution at the Labor Department before it gets to litigation, and all this information is going to be available in litigation any way?

Senator Fiebiger: Yes.

Lisa Fair McIver's, Commissioner of Labor: I am neutral. Do you have any questions?

Chairman Klein: How many cases are we dealing with?

Lisa: The human rights act would apply only to employment discrimination, public service, public accommodations and credit transactions. The number of claims is on the rise in most of these areas. Under employment discrimination we had 230 claims, on average we have over a 100 claims on employment discrimination. In the area of public service, pubic accommodation, credit transactions, 100 a year is about the average. Human Rights complaints, the total number were 64 and that is rising slowly. The language is our statue is based on CFR provision that covers the Equal Employment Opportunity Commission and their language also indicates that the disclosure is to be made where deemed necessary for securing appropriate relief. It looks like are current statue is based on this EEOC provision. I am just worried that this bill might but us in jeopardy of losing our funding.

Chairman Klein: You're currently providing that information?

Lisa: We are not providing the documents are general policy is we don't disclose much of the documentary evidence until the case is closed. At that time it becomes an open record and then it's disclosed for purposes of litigation.

Discussion continued.

Senator Behm: I feel it's important to lay everything on the table.

Lisa: There are often things about your business you may not want to be public knowledge.

Senator Potter: I have the sense it will eventually be disclosed anyway, if it's going to be released early on or later in litigation. How does it change the motivation for the business?

Lisa: That's true; the number of cases resolved in litigation is small. Now there is going to be more disclosure up front. We have very few requests for records on closed files.

Discussion continued.

Chairman Klein: When a complaint comes to you do you have to address it no matter where it is at and you apply the written code to that particular claim?

Lisa: That's correct.

Chairman Klein: Do you see a problem with this section of law that we should address something, or do feel its working okay?

Lisa: Certainly there is room for improvement; my primary concern is about my funding. If we lose the federal contract and so I am waiting to hear back from them.

Chairman Klein: We're going to close the hearing on Senate Bill 2185.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2185

Senate Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 4, 2009

Recorder Job Number: 8707

Committee Clerk Signature

Minutes:

Chairman Klein: opened discussion on SB 2185. I've been waiting on the labor commissioner, the complainant gets to the response from the respondent.

Senator Andrist: when a complainant files a complaint, they must supply a copy of the complaint to the respondent.

Senator Wanzek: Neutral testimony came from the Labor Dept.

Senator Potter: Anything that ends up in her office is public record.

Senator Andrist: The other thing we can do is pass this bill and bring her concerns to the house.

Senator Potter: I agree

Senator Potter: made motion for a Do Pass on SB 2185

Senator Wanzek: seconded

Roll call vote: 6-1 for Do Pass on SB 2185

Chairman Klein: Closed the hearing on SB 2185

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Date: 2/4/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2185

Senate **Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☑ **Pass** ☐ **Do Not Pass** ☐ **Amended**

Motion Made By _____ Seconded By _____

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman		✓	Senator Arthur H. Behm	✓	
Senator Terry Wanzek – V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Potter

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2185: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2185 was placed on the Eleventh order on the calendar.

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2185

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2185

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 9, 2009

Recorder Job Number: 10490

Committee Clerk Signature Ellen LeTang

Chairman Keiser: Opened the hearing on SB 2185 relating to requirements of the labor department regarding discriminatory complaints.

Representative Schneider~District 21 in Fargo. I am a co-sponsor and I'm here in support of this bill. The bill relates to the requirement of the labor department regarding discriminatory complaints. If you turn to the back of the bill you can see the new language. To me it's pretty straight forward. It's something that I have dealt with in my practice and essentially it's a full disclosure. If somebody files a complaint against you, you have a right to see that complaint and see what charges are against you. Likewise, you can return your answer to that complaint, the person who filed that complaint should be able to see what the other side is sees too.

Senator Fiebiger~District 45 in Fargo. See testimony attachment.

Chairman Keiser: Any questions from the committee members? Is there anyone here to testify in opposition of SB 2185, neutral?

Lisa K Fair McEvers~Department of Labor Commissioner. See testimony attachment.

Representative Amerman: In that contract, is it year to year renewal?

McEvers: Yes, it is renewed yearly on the Federal fiscal year. We are in the middle of a federal contract right now and we will be investigating those cases for that federal contract through the end of September of this year.

Representative Schneider: Do you have other states that handle this issue and also if there are other agencies in the state where charges are filed that you can't see what's being levied against you?

McEvers: I not familiar with all the other states. I am familiar with the statue of Illinois. The issue is whether the other states are investigating as a FEPA (Fair Employment Practice Agency). In the state of Illinois, I got around this by requiring the parties themselves, disclose it to each other instead of running it through the labor department there, the FEPA, and so it wasn't actually the FEPA that was disclosing the information, it was the parties. So I'm not aware of other states that are investigating this but the issue is whether it conflict with the FEPA contract?

Representative Ruby: On line six, the first part A, aren't you already providing the respondent with a copy of the complaint? How do you notify them of the complaint?

McEvers: That correct, what happens when information comes to the department, it comes what is called an intake. The department actually drafts the complaint for the complaining party, they sign it and they sign it. We try to address the pertinent issues and have them sign that complaint. Hopefully, they are getting everything they want in there. This is already served on the respondent but the respondent might respond with a lot of information. The information could be helpful or unhelpful to resolve the issue, depending what that response is.

Chairman Keiser: Looking at the actual language, "upon filing a complaint", so the minute you receive a complaint, you would become obligated to share that complaint prior to any investigation?

McEvers: That correct and that is actually what we do. What we do before we start any investigation, we send the respondent and we don't start our investigation until we receive a response from them. That's the point where we begin our investigation. We start out with an invitation to the meeting, once we get the response and try to get the parties to mediate the action.

Chairman Keiser: Then continuing, on subsection B, on lines eight and nine, immediately upon filing the respondent's response, the initial one has to be shared. As you proceed in your investigation, why wouldn't you share everything, if we truly want transparency?

McEvers: Everything is eventually shared after the case is closed.

Chairman Keiser: Immediately?

McEvers: Immediately, the reason that there may be some information by the employer that they don't want to disclosed. I think this is important that's why Senator Fiebiger drafted this to be the initial response. There could be for instance, trade secrets, that could be divulged or there could be information regarding different persons with disabilities, and there could be confidential information that is disclosed as part of this information that they don't want disclosed unless it goes through litigation.

Chairman Keiser: Last question I have, the process we now have is very formal on the party of your department, but really informal in a sense. If this becomes law, as an employer, I will immediately contact an attorney and have them respond rather than having the current process which is to respond to your person. This is a re-employment act for attorneys on both sides?

McEvers: I think that's right if you are aware. It will make the respondent more careful in crafting their initial response.

Chairman Keiser: That is the net result is that we will go attorneys instead of responding to your people.

McEvers: That's a possibility.

Representative Schneider: Do respondents now know that the other sides are not going to see that response? I just assume that the other side is going to see it. Are they notified in any way that they won't?

McEvers: There isn't a notification that says that. If they ask, we would tell what our present policy is but we don't send it out or play "hide the ball". We try to figure out which side has merit and accountability and that's what we are trying to do. I'm not saying it a perfect process.

Chairman Keiser: Anyone else here to testify in a neutral position? See none, closes the hearing on SB 2185.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2185

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 9, 2009

Recorder Job Number: 10495

Committee Clerk Signature Ellen LeTang

Chairman Keiser: Opened the committee work session on SB 2185.

Representative N Johnson: My thought was if we could amend it so maybe the respondent would send a copy to them rather then run it through the courts, would that be something that we could require the respondents to do?

Representative Schneider: On Representative N Johnson's thought when you serve the complaint, you serve it on the department and the department will serve it on the respondent & vice versa. I don't know if that would address the concerns.

Chairman Keiser: If you are going to do it, you need the Labor Department to do it so you make sure it gets done and you have some control over it. I have a question for committee members. How many of you have ever been investigated for anything by the Labor Department? It's an interesting experience and it's very stressful. It was handled very professionally and solved the problem. It is my opinion, that if this passes, that companies will then go to an attorney.

Representative Ruby: My question is in that initial report filing, would the director have the ability to act on any information that is personal? Like a remark that is made like drug use, handicap or something maybe third party involved that they don't want it disclosed to from the initial complaint? I have some concerns.

Chairman Keiser: Wouldn't they have to give you the full complaint under this bill?

Representative Schneider: Yes, the full response. I don't know if they would consider it if there were attachments to the initial response that would be considered. One of the reasons this bill is brought forward is just for full disclosure purposes. Right now, there are two sides in a dispute, the person filing the complaint and the respondent. The respondent gets to see a copy of the complaint and of course, their own response because they are drafting it. The person, who filed the complaint, never gets to find out initially, what the other side's response is. That's not fair or transparent. If you are filing the complaint, you are very aware of any inflammatory remarks to begin with. I think with full disclosure, this bill makes a lot of sense so everybody can see where everybody is coming from.

Chairman Keiser: This does limit itself to the discriminatory complaints. My complaint was a commission payable complaint. It was formal but informal, non-threatening. The department did a wonderful job dealing with the central issues.

Representative Ruby: I'm thinking about it, in not just in the response but the respondent is replying back and the complainant getting to see that. I'm thinking of the possibility for instance, sexual harassment where only one complainant comes forward in the group and doesn't necessarily want to be identified. Under this, they would have to identify who the complainant is, instead of them just investigating. It's very similar of somebody files a complaint of child neglect, they don't necessarily tell the person that they are investigating, who filed the complaint. It's an anonymous complaint and its better if the department would be able to hold back who filed the complaint and do the investigation until further on.

Representative Schneider: The way it works now, the person that filed the complaint, the respondent gets to see that complaint. In the case of sexual harassment, that they would know exactly who that employee is because they get to see the complaint, but the person filing

the complaint, doesn't get to see what the employer's response is. From the complainant's standpoint, it hinders compromising. What you have is the department is coming back to you then and saying this is what the other side is saying. You get the appearance, well, if that is what they are saying, why can't I see what is actually what they are saying, instead of how you are interpreting it. I think it leads to suspect and confrontational. In contrast, if you were to skip the whole Department of Labor, you just file a complaint in district court; of course you will get to see their side, answers and documents. I like the bill.

Representative Vigesaa: Commissioner mentioned that she could lose these contracts that she has with the EEOC. What would be the cost the department if we lost those contracts?

Representative N Johnson: $50,000.

Chairman Keiser: Committee members, maybe we should hold this to see if there is a response.

Chairman Keiser: Closes the committee work session on SB 2185.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2185

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 16, 2009

Recorder Job Number: 11038

Committee Clerk Signature Ellen LeTang

Chairman Keiser: Opened the committee work session on SB 2185.

Chairman Keiser: We didn't want to put you into a situation with the EEOC. This created a problem with the EEOC.

Lisa McEvers~Department of Labor Commissioner. I still can't answer the question. The EEOC has chosen to ignore us. What I have provided to you is what other states has done. The Fargo EEOC office has authority over six states. What I have provided to you is a summary of laws in those six states. The laws vary from state to state but none of the other states require full disclosure of the respondent's response.

Chairman Keiser: No other state has this provision?

McEvers: Right, but there is some other districts that allow it. I've been told that the national office that district directors have a large amount discretion in awarding these contracts. I can't say for sure what they are going to do. I do have concerns because this is a big part of my budget. What I suggest, if you are wanting to allow this or something similar to this, that instead of putting a provision in this, if you want to allow this information to be disclosed, I would rather it be disclosed by the respondent rather than by the department.

Chairman Keiser: The respondent may disclose?

McEvers: Right, well right now the respondent is not required under statue to respond. If we are going to require or allow them to respond, if they respond, have them send the copy of the response to the other side. That's what the state of Illinois does.

Chairman Keiser: Looking at the bill, where would we go to address that?

McEvers: I would put it in a different statue. I would put it into 1402.423 and amend that statue which talks about the complaint and right after the complaint, I would put a new subsection in that says, the respondent may respond... Page three of my hand out.

Vice Chairman Kasper: Would you require the complainant when they answer to you, to send something to the respondent? Is that what you are presenting?

McEvers: No, what happens when a complaint is filed with us, we then serve that on the respondent. The complaint is on the open record statue. In our administrative rules also requires us to provide that complaint to the respondent. The question now is "how does the complainant get the respondent's response"? I would like the respondent to respond to the complainant, to keep us in the loop so we won't be in violation of the provision.

Chairman Keiser: When you get a bill and rewrite to a different section, without a public hearing, that creates a problem for me personally. I would not support that because people don't have a chance to come in and comment.

Representative Schneider: Generally I would agree but the proposed language basically does the same thing, just in a different section.

Representative Ruby: What if the respondent doesn't want respond to them?

McEver: They may file a response but if file a response, they are required then to send it to the responder.

Representative Ruby: That's my point, that is "a shall". What if they feel if something is there that they would rather not have disclosed?

McEver: They don't have to respond at all.

Representative Ruby: I realize that but they want to respond to you, they just don't want something disclosed to the other party.

McEver: That's precisely why some other states don't allow the disclosure. We would be the only state that would have full disclosure at this point.

Keiser: So now you do your investigation and you reach some conclusion, then you would inform both parties of your conclusion and then you would have to share the information with both parties?

McEver: Only upon request.

Chairman Keiser: It's open record, they could request it and if they request it and don't like your decision, they can proceed to court?

McEver: That correct. There is some information that we have to redacted out for example medical information.

Chairman Keiser: I do agree with Representative Schneider's comment that the intent stays the same.

Chairman Keiser: What are the wishes of the committee?

Vice Chairman Kasper: Moves a Do Not Pass.

Representative Ruby: Second.

Chairman Keiser: Further discussion.

Representative Schneider: I don't see the fear here in the full disclosure... I'm going to oppose the motion.

Representative Ruby: I don't think we were presented any examples where this is a problem.

Representative Schneider: The examples would be both Senator Fiebiger and I who have represented people through the Department of Labor. A lot of times, let's just skip that seven or eight district court.

Chairman Keiser: That would still be available if we amended this?

Representative Schneider: Yes, even if we don't do anything. The Department of Labor is a free service to both sides.

Chairman Keiser: Further comment?

Representative Thorpe: I understand that the bill would do is that some complaints be settled without going to court. This bill will help facilitate that.

Representative N Johnson: I struggling with that but I think that's a fair thing to do but I the dilemma of it's in the wrong place. I would have to resist a Do Pass and a Do Not Pass. To me it makes sense to share but I understand the concerns the department to put their budget at risk.

Chairman Keiser: I have a different perspective; I guarantee if this is adopted, the first thing is that both sides will get an attorney. From my perspective, having the mediation from the Department of Labor, gives his personal experience.

Representative Schneider: I think you hit the nail on the head, that's the frustration is that they don't give you the whole story. You as the person responding, you have the luxury of having that person's complaint. If you are the person filing the complaint, you don't get to see what the response was, the Department of Labor is trying to mediate and you are not getting the whole story, you can see how they get frustrated.

Chairman Keiser: Again, I didn't get the full story at the outset.

Vice Chairman Kasper: I look at this as a marriage counselor, get the mediation.

Chairman Keiser: Further discussion?

Voting rolling was taken on SB 2185 for a Do Not Pass with 8 ayes, 5 nays, 0 absent and

Representative Nottestad is the carrier.

Date: Mar 16, 2009

Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2185

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☐ Do Pass ☒ Do Not Pass ☐ As Amended

Motion Made By Seconded By

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative N Johnson			Representative Schneider		
Representative Nottestad			Representative Thorpe		
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

Total (Yes) 8 No 5

Absent

Floor Assignment Nottestad

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2185: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). SB 2185 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2185

SB 2185

Chairman Klein and members of the Senate Industry, Business and Labor Committee, I am Senator Tom Fiebiger, District 45, and I appear before you today in support of SB 2185.

The purpose of this bill is to provide that the Department of Labor provide the person filing a complaint of discrimination with a copy of the initial response to the complaint filed with the Department in response to that complaint. Similarly, the bill requires the Department to provide the respondent, the person that is the subject of the complaint, with a copy of the actual complaint filed against them.

Currently, under North Dakota Century Code Section 14-02.4-21, the Department is not required to provide the complainant or the respondent with those initial filings. The respondent may request a copy of the complaint and receive it. However, if the complainant makes such a request for the respondent's initial response, the Department is not required to provide it. That does not seem fair or practical.

As a practicing attorney representing both complainants and respondents over the past 18 years, I have encountered numerous complainant's that have been extremely frustrated and disappointed that they do not even get to know what the respondent's initial response is to their complaint of discrimination. As a practical matter, knowing the other party's position may well help foster a resolution of the complaint.

Another concern is that if you do not ever get to see the other party's response to your complaint, you are limited to the piecemeal information given out by the Labor Department relating to the other party's response. The Department's information may or may not be totally accurate. The best evidence is certainly the complaint and the initial response. While the Department has the discretion to release this limited information during the investigative process, my practical experience is that they it is rarely, if ever, released.

I have learned from the Commissioner that her office is concerned that this law may cost them contracts they have with the Equal Employment Opportunity Commission (EEOC) to investigate claims filed by North Dakota Citizens under the federal Civil Rights Act of 1964. The Labor Commissioner is unclear how this bill may impact what information the Department may release under federal regulations. I know our neighbor state releases initial responses of respondents under the Minnesota Human Rights Act. It seems that if the Labor Department has been releasing any such initial filings, they may have already been in non-compliance with the federal regulations with no apparent negative consequences to date.

The goal of this bill is fairness, transparency and providing all our citizens with the most basic information when they are involved in the complaint process. Releasing these limited documents will foster the perception of fairness and transparency among our citizens. The investigative notes and other documents created as part of the investigation are not required to be released under this bill. Only the complaint and initial response are affected.

I urge this committee to help open up the complaint process to the participants by giving SB 2185 a "Do Pass" recommendation. I would be happy to answer any questions you may have.

Thank you.

SB 2185

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Another concern is that if our citizens filing discrimination complaints not ever given the opportunity to see the other party's response to their complaint, North Dakotans filing complaints of discrimination are limited to the piecemeal information selectively given out by the Department of Labor relative to the employer's response. The Department's information may or may not be totally accurate. The best evidence is certainly the complaint and the initial response. While the Department has the discretion to release this limited information

during the investigative process, my practical experience is that they it is rarely, if ever, released.

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I urge this committee to help open up the complaint process to the participants by giving SB 2185 a "Do Pass" recommendation. I would be happy to answer any questions you may have.

Thank you.

John Hoeven
Governor

Lisa K. Fair McEvers
Commissioner

NORTH DAKOTA
Department of
LABOR

State Capitol - 13th Floor
600 E Boulevard Ave Dept 406
Bismarck, ND 58505-0340

nd.gov/labor
nd.gov/humanrights

TO: Chairman George Keiser
Rep. Jasper Schneider

FROM: Lisa K. Fair McEvers

DATE: March 16, 2009

RE: SB 2185

The department has not received word from the EEOC District Director in Chicago whether proposed changes to the North Dakota Human Rights Act in SB 2185 would affect whether the EEOC would continue to contract with the North Dakota Department of Labor as a Fair Employment Practices Agency (FEPA). As noted in my testimony, the department receives approximately $50,000 per year by contract with the EEOC. It is my understanding from an EEOC official in Washington, D.C., that much discretion is granted to the District Director in deciding what agencies may be offered a FEPA contract.

The Chicago District Office covers six states: Illinois, Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin, as well as contracting with various local governments and tribes.

Of the District's six state FEPAs, the laws on disclosure vary, but none of them require full disclosure of the respondent's response be made by the FEPA. All require the complaint or charge filed or information regarding the factual allegations be disclosed to the respondent as is currently the practice by the North Dakota Department of Labor (NDDOL). None of them require the FEPA to disclose the respondent's initial response.

The current federal disclosure provision found at 29 C.F.R. § 1601.22 reads in pertinent part as follows:

> Neither a charge, nor information obtained during the investigation of a charge of employment discrimination under the ADA or title VII, nor information obtained from records required to be kept or reports required to be filed pursuant to the ADA or title VII, shall be made matters of public information by the Commission prior to the institution of any proceeding under the ADA or title VII involving

such charge or information. This provision does not apply to such earlier disclosures to charging parties, or their attorneys, respondents or their attorneys, or witnesses where disclosure is deemed necessary for securing appropriate relief.

I believe that our current statute is based in part on this CFR provision, because it only provides for disclosure where "deemed necessary for securing appropriate relief."

While it is unclear what the Chicago District will allow, it appears to me that at least one other EEOC District Office, Seattle, would allow such disclosure as proposed by SB 2185. The Montana Department of Labor enforces human rights, and is also a FEPA under the direction of the Seattle District. Montana's statute allows the department, upon request, to provide parties with all other information related to the complaint in the possession of the department that is not currently in the possession of the parties or party.

In addition to the FEPA issue, I have another concern about the proposed amendments to N.D.C.C. § 14-02.4-21, if the initial response includes any individually identifiable health information, the disclosure of such information should not be allowed, because of the nature of the information being disclosed.

Below is a summary of other state FEPAs laws which are part of the Chicago District. I have attached the actual statutes so that you may review the actual provisions.

ILLINOIS

A copy of the charge is required to be served on the respondent. The charging party or the respondent may file a position statement which remains confidential unless agreed upon by the parties until the investigation is completed. The respondent is required to file a verified response to the allegation with the FEPA and serve a copy on the complainant or his representative.

IOWA

A copy of the complaint is required to be served on the respondent. I could find no requirement for a respondent to respond. Disclosure of the information gathered during the investigation is prohibited, unless such disclosure is made in connection with the conduct of such investigation.

MINNESOTA

Human rights investigative data in an open case file are confidential, but certain information including the factual basis for the allegations are accessible to both the charging party and the respondent. The FEPA may disclose information as deemed necessary to facilitate the investigation or disposition of the charge. The FEPA has discretion to make information, even in a closed file, inaccessible to the parties in order to protect medical or other security interests of the parties or third persons.

SOUTH DAKOTA

A copy of the charge is required to be served on the respondent. The respondent is required to respond. Investigative information is not fully disclosed to parties until the determination is issue, and then only upon a written request and payment of cost for copying the materials.

WISCONSIN

A copy of the complaint is required to be served on the respondent (exception for anonymity requirement). The respondent is required to respond. I could find no requirement for the FEPA to disclose the response prior to the matter being certified for hearing. At that time, the respondent must answer the complaint and certify that the answer has been mailed to all other parties.

SUMMARY

It appears that the other state FEPAs in the Chicago District have provisions which provide similar disclosure requirements as North Dakota's current statute. As I noted in a previous email to Rep. Schneider, I would suggest deleting the statutory requirement for the department to provide the complaint to the respondent, since it is an open record and pursuant to the department's administrative rules is already required to be provided to the respondent.

If the committee wants to require the department to disclose the initial response despite the fact that it is unknown whether or not it will have an affect on our FEPA status, I have only one suggestion: instead of putting the requirement in N.D.C.C. 14-02.4-21 which is really about what records are exempt, perhaps it should be added as a subsection to N.D.C.C. 14-02.4-23, where if a respondent provides a response to the complaint, the respondent would also to serve the response on the complainant. This way, it would be the respondent disclosing the response and not the department, similar to the Illinois statute (which we know has met the requirements of the Chicago District office). In addition, the department would not be liable if the response contained any individually identifiable health information.

Possible language amending 14-02.4-23:

2. The respondent may file a signed response within twenty days of the date a respondent receives the complaint. The department may grant an extension of time to file a response upon request by the respondent if such a request is reasonable and not for the purpose of delay. If a response is filed with the department, the respondent shall serve a copy of its response to the on the complainant or the complainant's representative.

the purposes of this section, the following definitions shall apply:

(1) "Final findings and orders" shall mean:

(i) The findings of fact and order incident thereto issued by a FEP agency on the merits of a charge; or

(ii) The consent order or consent decree entered into by the FEP agency on the merits of a charge.

Provided, however, That no findings and order of a FEP agency shall be considered final for purposes of this section unless the FEP agency shall have served a copy of such findings and order upon the Commission and upon the person claiming to be aggrieved and shall have informed such person of his or her rights of appeal or to request reconsideration, or rehearing or similar rights; and the time for such appeal, reconsideration, or rehearing request shall have expired or the issues of such appeal, reconsideration or rehearing shall have been determined.

(2) "Substantial weight" shall mean that such full and careful consideration shall be accorded to final findings and orders, as defined above, as is appropriate in light of the facts supporting them when they meet all of the prerequisites set forth below:

(i) The proceedings were fair and regular; and

(ii) The practices prohibited by the State or local law are comparable in scope to the practices prohibited by Federal law; and

(iii) The final findings and order serve the interest of the effective enforcement of title VII or the ADA: *Provided,* That giving substantial weight to final findings and orders of a FEP agency does not include according weight, for purposes of applying Federal law, to such Agency's conclusions of law.

[42 FR 55388, Oct. 14, 1977, as amended at 45 FR 73036, Nov. 4, 1980; 48 FR 19165, Apr. 28, 1983; 49 FR 13024, Apr. 2, 1984; 51 FR 18778, May 22, 1986; 52 FR 26959, July 17, 1987; 53 FR 3370, Feb. 7, 1988; 54 FR 32061, Aug. 4, 1989; 56 FR 9624, 9625, Mar. 7, 1991; 71 FR 26828, May 9, 2006]

§ 1601.22 Confidentiality.

Neither a charge, nor information obtained during the investigation of a charge of employment discrimination under the ADA or title VII, nor information obtained from records required to be kept or reports required to be filed pursuant to the ADA or title VII, shall be made matters of public information by the Commission prior to the institution of any proceeding under the ADA or title VII involving such charge or information. This provision does not apply to such earlier disclosures to charging parties, or their attorneys, respondents or their attorneys, or witnesses where disclosure is deemed necessary for securing appropriate relief. This provision also does not apply to such earlier disclosures to representatives of interested Federal, State, and local authorities as may be appropriate or necessary to the carrying out of the Commission's function under title VII or the ADA, nor to the publication of data derived from such information in a form which does not reveal the identity of charging parties, respondents, or persons supplying the information.

[42 FR 55388, Oct. 14, 1977, as amended at 56 FR 9624, 9625, Mar. 7, 1991]

PROCEDURE TO RECTIFY UNLAWFUL EMPLOYMENT PRACTICES

§ 1601.23 Preliminary or temporary relief.

(a) In the interest of the expeditious procedure required by section 706(f)(2) of title VII, the Commission hereby delegates to the Director of the Office of Field Programs or upon delegation, the Director of Field Management Programs and each District Director the authority, upon the basis of a preliminary investigation, to make the initial determination on its behalf that prompt judicial action is necessary to carry out the purposes of the Act and recommend such action to the General Counsel. The Commission authorizes the General Counsel to institute an appropriate action on behalf of the Commission in such a case not involving a government, governmental agency, or political subdivision.

(b) In a case involving a government, governmental agency, or political subdivision, any recommendation for preliminary or temporary relief shall be transmitted directly to the Attorney General by the Director of the Office of Field Programs or upon delegation, the

49-2-504. Informal investigation -- conciliation -- findings. (1) The department shall informally investigate the matters set out in the complaint promptly and impartially to determine whether there is reasonable cause to believe that the allegations are supported by a preponderance of the evidence.

(2) (a) During the informal investigation process and before the department issues a finding under subsection (7), the department may attempt to resolve the complaint by mediation.

(b) If the department makes a finding under subsection (7)(c) that there is reasonable cause to believe that unlawful discrimination occurred, the department shall attempt to resolve the complaint by conciliation in a manner that, in addition to providing redress for the complaint, includes conditions that eliminate the discriminatory practice, if any, found in the investigation.

(3) The department shall, within 10 business days following receipt of a filed complaint, notify a respondent that the respondent is the subject of a filed complaint. The notification must be in writing and must include a copy of the filed complaint. If requested, the department shall also provide the parties with all other information related to the complaint in the possession of the department that is not currently in the possession of the parties or a party. The department shall make known to the parties the fact that information is available upon request. The department may not investigate a complaint until it has received notice that the respondent has received the department's notification of the complaint.

(4) If the department determines that the inclusion of documents or information obtained by the department would seriously impede the rights of a person or the proper investigation of the complaint, the information may be excluded from the notification by providing a written summary of the information. The written summary must include sufficient information to give maximum effect to the intent of this chapter.

(5) The respondent shall file an answer to a complaint filed with the department within 10 business days of the respondent's receipt of the complaint. An answer may be a response simply admitting or denying the allegations without further specificity or requesting additional information from the department. The time for filing an answer may be extended by a showing of good cause.

(6) The department shall commence proceedings within 30 days after receipt of a complaint.

(7) (a) After the informal investigation, the department shall issue a finding on whether there is reasonable cause to believe that a preponderance of the evidence supports the charging party's allegation of unlawful discrimination. The finding must be issued within 180 days after a complaint is filed, except that the department shall issue the finding within 120 days after a complaint is filed under 49-2-305.

(b) If the department finds that there is no reasonable cause to believe that unlawful discrimination occurred, it shall issue a notice of dismissal and dismiss the case from the department's administrative process. After receipt of a notice of dismissal, a charging party may:

(i) continue the administrative process by filing objections with the commission as provided in 49-2-511; or

(ii) discontinue the administrative process and commence proceedings in district court as provided in 49-2-511.

(c) If the department finds that there is reasonable cause to believe that unlawful discrimination occurred and conciliation efforts are unsuccessful, the department shall certify the complaint for hearing pursuant to 49-2-505.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(4); amd. Sec. 9, Ch. 467, L. 1997; amd. Sec. 3, Ch. 28, L. 2007.

Public Act 094-0326

Public Act 094-0326

HB0823 Enrolled LRB094 07350 WGH 37508 b

AN ACT concerning human rights.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Human Rights Act is amended by changing Sections 7A-102 and 7B-102 as follows:

(775 ILCS 5/7A-102) (from Ch. 68, par. 7A-102)
Sec. 7A-102. Procedures.
(A) Charge.
(1) Within 180 days after the date that a civil rights violation allegedly has been committed, a charge in writing under oath or affirmation may be filed with the Department by an aggrieved party or issued by the Department itself under the signature of the Director.
(2) The charge shall be in such detail as to substantially apprise any party properly concerned as to the time, place, and facts surrounding the alleged civil rights violation.
(B) Notice, and Response, and Review of Charge. The Department shall, within 10 days of the date on which the charge was filed, serve a copy of the charge on the respondent. This period shall not be construed to be jurisdictional. The charging party and the respondent may each file a position statement and other materials with the Department regarding the charge of alleged discrimination within 60 days of receipt of the notice of the charge. The position statements and other materials filed shall remain confidential unless otherwise agreed to by the party providing the information and shall not be served on or made available to the other party during pendency of a charge with the Department. The Department shall require the respondent to file a verified response to the allegations contained in the charge within 60 days of receipt of the notice of the charge. The respondent shall serve a copy of its response on the complainant or his representative. All allegations contained in the charge not timely denied by the respondent shall be deemed admitted, unless the respondent states that it is without sufficient information to form a belief with respect to such allegation. The Department may ~~shall~~ issue a notice of default directed to any respondent who fails to file a verified response to a charge within 60 days of receipt of the notice of the charge, unless the respondent can demonstrate good cause as to why such notice should not issue.

216.15 Complaint - hearing.

1. Any person claiming to be aggrieved by a discriminatory or unfair practice may, in person or by an attorney, make, sign, and file with the commission a verified, written complaint which shall state the name and address of the person, employer, employment agency, or labor organization alleged to have committed the discriminatory or unfair practice of which complained, shall set forth the particulars thereof, and shall contain such other information as may be required by the commission. The commission, a commissioner, or the attorney general may in like manner make, sign, and file such complaint.

2. Any place of public accommodation, employer, labor organization, or other person who has any employees or members who refuse or threaten to refuse to comply with the provisions of this chapter may file with the commission a verified written complaint in triplicate asking the commission for assistance to obtain their compliance by conciliation or other remedial action.

3. *a.* After the filing of a verified complaint, a true copy shall be served within twenty days on the person against whom the complaint is filed. If the first named respondent on a complaint is not a governmental entity, service of a true copy on the respondent shall be by certified mail. An authorized member of the commission staff shall make a prompt investigation and shall issue a recommendation to an administrative law judge employed either by the commission or by the division of administrative hearings created by section 10A.801, who shall then issue a determination of probable cause or no probable cause.

b. For purposes of this chapter, an administrative law judge issuing a determination of probable cause or no probable cause under this section is exempt from section 17A.17.

c. If the administrative law judge concurs with the investigating official that probable cause exists regarding the allegations of the complaint, the staff of the commission shall promptly endeavor to eliminate the discriminatory or unfair practice by conference, conciliation, and persuasion. If the administrative law judge finds that no probable cause exists, the administrative law judge shall issue a final order dismissing the complaint and shall promptly mail a copy to the complainant and to the respondent. A finding of probable cause shall not be introduced into evidence in an action brought under section 216.16.

d. The commission staff must endeavor to eliminate the discriminatory or unfair practice by conference, conciliation, and persuasion for a period of thirty days following the initial conciliation meeting between the respondent and the commission staff after a finding of probable cause. After the expiration of thirty days, the director may order the conciliation conference and persuasion procedure provided in this section to be bypassed when the director determines the procedure is unworkable by reason of past patterns and practices of the respondent, or a statement by the respondent that the respondent is unwilling to continue with the conciliation. The director must have the approval of a commissioner before bypassing the conciliation, conference and persuasion procedure. Upon the bypassing of conciliation, the director shall state in writing the reasons for bypassing.

4. The members of the commission and its staff shall not disclose the filing of a complaint, the information gathered during the investigation, or the endeavors to eliminate such discriminatory or unfair practice by mediation, conference, conciliation, and persuasion, unless such disclosure is made in connection with the conduct of such investigation.

5. When the director is satisfied that further endeavor to settle a complaint by conference, conciliation, and persuasion is unworkable and should be bypassed, and the thirty-day period provided for in subsection 3 has expired without agreement, the director with the approval of a commissioner, shall issue and cause to be served a written notice specifying the charges in the complaint as they may have been amended and the reasons for bypassing conciliation, if the conciliation is bypassed, and requiring the respondent to answer the charges of the complaint at a hearing before the commission, a commissioner, or a person designated by the commission to conduct the hearing, hereafter referred to as the administrative law judge, and at a time and place to be specified in the notice.

6. The case in support of such complaint shall be presented at the hearing by one of the commission's attorneys or agents. The investigating official shall not participate in the hearing except as a witness nor participate in the deliberations of the commission in such case.

7. The hearing shall be conducted in accordance with the provisions of chapter 17A for contested cases. The burden of proof in such a hearing shall be on the commission.

8. If upon taking into consideration all of the evidence at a hearing, the commission determines that the respondent has engaged in a discriminatory or unfair practice, the commission shall state its findings of fact and conclusions of law and shall issue an order requiring the respondent to cease and desist from the discriminatory or unfair practice and to take the necessary remedial action as in the judgment of the commission will carry out the purposes of this chapter. A copy of the order shall be delivered to the respondent, the complainant, and to any other public officers and persons as the commission deems proper.

a. For the purposes of this subsection and pursuant to the provisions of this chapter "remedial action" includes but is not limited to the following:

(1) Hiring, reinstatement or upgrading of employees with or without pay. Interim earned income and unemployment compensation shall operate to reduce the pay otherwise allowable.

(2) Admission or restoration of individuals to a labor organization, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, with the utilization of objective criteria in the admission of individuals to such programs.

(3) Admission of individuals to a public accommodation or an educational institution.

(4) Sale, exchange, lease, rental, assignment or sublease of real property to an individual.

(5) Extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent denied to the complainant because of the discriminatory or unfair practice.

(6) Reporting as to the manner of compliance.

(7) Posting notices in conspicuous places in the respondent's place of business in form prescribed by the commission and inclusion of notices in advertising material.

(8) Payment to the complainant of damages for an injury caused by the discriminatory or unfair practice which damages shall include but are not limited to actual damages, court costs and reasonable attorney fees.

b. In addition to the remedies provided in the preceding provisions of this subsection, the commission may issue an order requiring the respondent to cease and desist from the discriminatory or unfair practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this chapter as follows:

(1) In the case of a respondent operating by virtue of a license issued by the state or a political subdivision or agency, if the commission, upon notice to the respondent with an opportunity to be heard, determines that the respondent has engaged in a discriminatory or unfair practice and that the practice was authorized, requested, commanded, performed or knowingly or recklessly tolerated by the board of directors of the respondent or by an officer or executive agent acting within the scope of the officer's or agent's employment, the commission shall so certify to the licensing agency. Unless the commission finding of a discriminatory or unfair practice is reversed in the course of judicial review, the finding of discrimination is binding on the licensing agency. If a certification is made pursuant to this subsection, the licensing agency may initiate licensee disciplinary procedures.

(2) In the case of a respondent who is found by the commission to have engaged in a discriminatory or unfair practice in the course of performing under a contract or subcontract with the state or political subdivision or agency, if the practice was authorized, requested, commanded, performed, or knowingly or recklessly tolerated by the board of directors of the respondent or by an officer or executive agent acting within the scope of the officer's or agent's employment, the commission shall so certify to the contracting agency. Unless the commission's

finding of a discriminatory or unfair practice is reversed in the course of judicial review, the finding of discrimination is binding on the contracting agency.

(3) Upon receiving a certification made under this subsection, a contracting agency may take appropriate action to terminate a contract or portion thereof previously entered into with the respondent, either absolutely or on condition that the respondent carry out a program of compliance with the provisions of this chapter; and assist the state and all political subdivisions and agencies thereof to refrain from entering into further contracts.

c. The election of an affirmative order under paragraph *"b"* of this subsection shall not bar the election of affirmative remedies provided in paragraph *"a"* of this subsection.

9. *a.* The terms of a conciliation or mediation agreement reached with the respondent may require the respondent to refrain in the future from committing discriminatory or unfair practices of the type stated in the agreement, to take remedial action as in the judgment of the commission will carry out the purposes of this chapter, and to consent to the entry in an appropriate district court of a consent decree embodying the terms of the conciliation or mediation agreement. Violation of such a consent decree may be punished as contempt by the court in which it is filed, upon a showing by the commission of the violation at any time within six months of its occurrence. At any time in its discretion, the commission may investigate whether the terms of the agreement are being complied with by the respondent.

b. Upon a finding that the terms of the conciliation or mediation agreement are not being complied with by the respondent, the commission shall take appropriate action to assure compliance.

10. If, upon taking into consideration all of the evidence at a hearing, the commission finds that a respondent has not engaged in any such discriminatory or unfair practice, the commission shall issue an order denying relief and stating the findings of fact and conclusions of the commission, and shall cause a copy of the order dismissing the complaint to be served on the complainant and the respondent.

11. The commission shall establish rules to govern, expedite, and effectuate the procedures established by this chapter and its own actions thereunder.

12. Except as provided in section 614.8, a claim under this chapter shall not be maintained unless a complaint is filed with the commission within three hundred days after the alleged discriminatory or unfair practice occurred.

13. The commission or a party to a complaint may request mediation of the complaint at any time during the commission's processing of the complaint. If the complainant and respondent participate in mediation, any mediation agreement may be enforced pursuant to this section. Mediation may be discontinued at the request of any party or the commission.

[C66, 71, §105A.9; C73, §601A.9; C75, 77, §601A.14; C79, 81, §601A.15]

88 Acts, ch 1109, §27, 28

C93, §216.15

95 Acts, ch 129, §8 - 11; 98 Acts, ch 1202, §36, 46; 2005 Acts, ch 23, §1 - 3; 2007 Acts, ch 110, §1; 2008 Acts, ch 1028, §1

2007 amendment to subsection 12 applies to all complaints, claims, and actions arising out of an alleged death, loss, or injury occurring on or after July 1, 2007; 2007 Acts, ch 110, §6

Subsection 9, unnumbered paragraphs 1 and 2 editorially designated as paragraphs a and b

Subsection 12 amended

2008 Minnesota Statutes

363A.35 ACCESS TO CASE FILES.

Subdivision 1. **General provisions.** Notwithstanding section 13.39, and except as provided in section 363A.06, subdivision 4, and 363A.28, subdivision 9, the availability of human rights investigative data to persons other than department employees is governed by this section.

Subd. 2. **Access to open files.** (a) Except as otherwise provided in this subdivision, human rights investigative data contained in an open case file are confidential data on individuals or protected nonpublic data. The name and address of the charging party and respondent, factual basis of the allegations, and the statute under which the action is brought are private data on individuals or nonpublic data but are accessible to the charging party and the respondent.

(b) After a charge has been filed, the commissioner may disclose information to persons as the commissioner deems necessary (1) to facilitate investigation or disposition of the charge, or (2) to promote public health or safety. The commissioner may also disclose data about an open case file to another governmental entity to assist that entity or the department in processing a complaint or to eliminate duplication of efforts in the investigation of the same or similar facts as alleged in the charge. To the extent that data are disclosed to other governmental entities, it must be stipulated that section 13.03, subdivision 4, applies to the classification of the data.

(c) After making a finding of probable cause, the commissioner may make human rights investigative data contained in an open case file accessible to a person, government agency, or the public if access will aid the investigative and enforcement process.

Subd. 3. **Access to closed files.** (a) Except as otherwise provided in this subdivision, human rights investigative data contained in a closed case file are private data on individuals or nonpublic data. The name and address of the charging party and respondent, factual basis of the allegations, the statute under which the action is brought, the part of the summary of the investigation that does not contain identifying data on a person other than the complainant or respondent, and the commissioner's memorandum determining whether probable cause has been shown are public data.

(b) The commissioner may make human rights investigative data contained in a closed case file inaccessible to the charging party or the respondent in order to protect medical or other security interests of the parties or third persons.

Subd. 4. **Charging party access.** Data comprised of materials and documentation provided by a charging party that is part of an open or closed case file is accessible to the charging party in accordance with section 13.04, subdivision 3. The charging party may consent to the release of the data to the charging party's attorney or other legal representative.

History: 1Sp1985 c 13 s 327; 1988 c 670 s 13; 1995 c 259 art 1 s 52; 1997 c 172 s 1,2; 2001 c 194 s 4

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20-13-32.2. Investigative materials confidential--Access to material by parties following determination. Prior to the issuance of a determination under § 20-13-1.1, 20-13-28.1, or 20-13-32, information and materials regarding a charge of discrimination obtained by an investigating official are confidential. Notwithstanding §§ 1-27-29 to 1-27-32, inclusive, after the issuance of a determination and upon receipt of a written request and payment of costs for copying, all investigatory materials may be disclosed to the parties or their counsel of record.

Source: SL 2002, ch 98, § 1; SL 2004, ch 144, § 1.

Chapter 20-13

Wisconsin

DWD 218.04

DWD 218.04Notification of respondent.

DWD 218.04(1)

(1) WHEN NOTICE IS TO BE SENT. Except where prevented by the anonymity requirement of s. 111.375 (1), Stats., the department shall serve a copy of a complaint which meets the requirements of s. DWD 218.03 upon each respondent prior to the commencement of any investigation.

DWD 218.04(2)

(2) CONTENT OF NOTICE. The notice shall include a copy of the complaint, which shall indicate on its face the date the complaint was filed. The notice shall direct the respondent to respond in writing to the allegations of the complaint within a time period specified by the department. The notice shall further state that, if the respondent fails to answer the complaint in writing, the department may make an initial determination as to whether an act of employment discrimination, unfair honesty testing or unfair genetic testing has occurred based only on the department's investigation and the information supplied by the complainant.

DWD 218.04 - ANNOT.

History: *Cr. Register, June, 1995, No. 474, eff. 7-1-95.*

DWD 218.12

DWD 218.12Answer.

DWD 218.12(1)

(1) WHEN REQUIRED. Within 21 days after the date of a notice of hearing on the merits, each respondent shall file with the hearing section of the division an answer to the allegations of the complaint upon which there is a finding of probable cause, along with a certification that a copy of the answer has been mailed to all other parties.

DWD 218.12(2)

(2) CONTENT OF ANSWER. The answer shall contain the respondent's current address. It shall also contain a specific admission, denial or explanation of each allegation of the complaint. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, the respondent shall so state and this shall have the effect of a denial. Admissions or denials may be to all or part of an allegation, but shall fairly meet the substance of the allegation. Any affirmative defense relied upon, including the statute of limitations, shall be raised in the answer unless it has previously been raised by a motion in writing. Failure to raise an affirmative defense in the answer may, in the absence of good cause, be held to constitute a waiver of such a defense.

DWD 218.12 - ANNOT.

History: *Cr. Register, June, 1995, No. 474, eff. 7-1-95; CR 03-092: am. (1) and (2) Register March 2004 No. 579, eff. 4-1-04.*

DWD 218.14

DWD 218.14Pre-hearing discovery.

DWD 218.14(1)

(1) WHEN DISCOVERY MAY BEGIN. Discovery may not be used prior to the time that a matter is certified to 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.

DWD 218.14(2)

(2) DISCOVERY DIRECTED TO A PARTY NOT REPRESENTED BY LEGAL COUNSEL. In the case of discovery directed to a party who is not represented by legal counsel, the party seeking that discovery shall, not less than 10 days prior to conducting such discovery, state in writing that it intends to seek discovery. The party seeking discovery shall send this notice to the party who is not represented by legal counsel and to either the chief of the hearing section or the administrative law judge, if one has been assigned to the case. All copies of demands for discovery and notices of depositions shall be filed with the department at the time they are served upon the party from whom the discovery is sought. Copies of responses to discovery by an unrepresented party and the original transcript of any deposition of an unrepresented party shall be filed with the department by the party which instituted those discovery requests as soon as practicable after the discovery has been taken.

DWD 218.14(3)

(3) SCOPE, METHOD AND USE OF DISCOVERY. The scope of discovery, the methods of discovery and the use of discovery at hearing shall be the same as set forth in ch. 804, Stats.

DWD 218.14(4)

(4) FAILURE TO COMPLY WITH DISCOVERY REQUESTS; DUTY TO CONSULT WITH OPPOSING PARTY. The administrative law judge may compel discovery, issue protective orders, and impose sanctions in the manner provided under ch. 804, Stats. All motions to compel discovery or motions for protective orders shall be accompanied by a statement in writing by the party making the motion that, after consultation in person or by telephone with the opposing party and sincere attempts to resolve their differences, the parties are unable to reach agreement. The statement shall state the date and place of such consultation and the names of all parties participating in the consultation.

DWD 218.14(5)

(5) FILING WITH DEPARTMENT. Copies of discovery requests and responses to discovery requests need not be filed with the division, except as required under sub. (2).