plaintiff under sub. (1) or s. 103.10 (12) (b) at the plaintiff’s request. If the commission waives the investigation and probable cause determination, the commission shall proceed with a hearing on the complaint. The commission’s waiver of an investigation and probable cause determination does not affect the commission’s right to attempt to resolve the complaint by conference, conciliation or persuasion.

(2) Subsection (1) (c) does not apply to an employee who, using the agency grievance procedure, grieves his or her dissatisfaction with the evaluation methodology and results used to determine any discretionary performance award or the amount of such an award. Any such employee grievance shall be settled on the basis of the appointing authority’s decision.

(3) The commission shall promulgate rules establishing a schedule of filing fees to be paid by any person who files an appeal under sub. (1) or (e) or s. 230.44 (1) (a) or (b) with the commission on or after the effective date of the rules promulgated under this subsection. Fees paid under this subsection shall be credited on the appropriation account under s. 20.425 (1) (i).


Cross Reference: See also PC, Wis. adm. code.

Commission powers under sub. (1) (b) include power to investigate complaints and issue subpoenas. 68 Atty. Gen. 403.

230.46 Duties of council on affirmative action. The council on affirmative action in the office shall serve in a direct advisory capacity to the director and as part of that relationship shall evaluate the progress of affirmative action programs throughout the civil service system, seek compliance with state and federal regulations and recommend improvements in the state’s affirmative action efforts as an employer. In carrying out its responsibilities, the council may recommend legislation, consult with agency personnel and other interested persons, conduct hearings and take other appropriate action to promote affirmative action. The council shall report at least once per year to the governor and the legislature.

History: 1977 c. 196; 1983 a. 27; 2003 a. 33.

230.48 State employees suggestion board. (1) Duties. The state employees suggestion board shall do all of the following:

(a) Formulate, establish and maintain a plan or plans to encourage and reward unusual and meritorious suggestions and accomplishments by state employees promoting efficiency and economy in the performance of any function of state government.

(b) Appoint departmental or divisional committees to analyze and review suggestions and accomplishments of state employees submitted for consideration under the plan or plans established under par. (a), and make recommendations regarding the plan or plans to the state employees suggestion board.

(c) Make and render awards to or for the benefit of state employees nominated to receive them in accordance with the plan or plans established under par. (a).

(2) Personnel, facilities and equipment. The office shall appoint, under the classified service, a secretary and such other employees as are necessary to carry out the duties of the state employees suggestion board, and shall provide such facilities and equipment as that board requires for the proper performance of its work. The state employees suggestion board may request and shall receive from any state department any assistance that it requires.

(3) Awards. The state employees suggestion board may determine the nature and extent of the awards to be made under this section which may include, but shall not be limited to, all of the following:

(a) Certificates, medals or other insignia, in the form and awarded at the times that the state employees suggestion board determines.

(b) Cash awards, in the amount and payable at the times that the state employees suggestion board determines.

(4) Rules. The state employees suggestion board may promulgate rules governing the operation of any plan or plans established under sub. (1) (a), the eligibility and qualifications of state employees participating under this section, the character and quality of suggestions and accomplishments submitted for consideration, the method of their submission and the procedure for their review, nominations for awards, and the kind, character and value of the awards, and any other rules as are necessary for the proper administration of this section or for the accomplishment of the purposes of this section.

History: 1971 c. 270 s. 87; Stats. 1971 s. 16.34; 1977 c. 196 s. 61; Stats. 1977 s. 16.008; 1977 c. 418 s. 36; Stats. 1977 s. 16.006; 1981 c. 20; 1987 a. 142; 1989 a. 31 s. 99; Stats. 1989 s. 230.48; 2003 a. 33.

SUBCHAPTER III

EMPLOYEE PROTECTION

Cross Reference: See also ch. DWD 224, Wis. adm. code.

230.80 Definitions. In this subchapter:

(1) “Abuse of authority” means an arbitrary or capricious exercise of power.

(1m) “Appointing authority” means the chief officer of any governmental unit unless another person is authorized to appoint subordinate staff by the constitution or any law.

(2) “Disciplinary action” means any action taken with respect to an employee which has the effect, in whole or in part, of a penalty, including but not limited to any of the following:

(a) Dismissal, demotion, transfer, removal of any duty assigned to the employee’s position, refusal to restore, suspension, reprimand, verbal or physical harassment or reduction in base pay.

(b) Denial of education or training, if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation or other personnel action.

(c) Reassignment.

(d) Failure to increase base pay, except with respect to the determination of a discretionary performance award.

(3) “Employee” means any person employed by any governmental unit except:

(a) A person employed by the office of the governor, the courts, the legislature or a service agency under subch. IV of ch. 13.

(b) A person who is, or whose immediate supervisor is, assigned to an executive salary group or university senior executive salary group under s. 20.923.

(4) “Governmental unit” means any association, authority, board, commission, department, independent agency, institution, office, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature, the office of the governor and the courts. “Governmental unit” does not mean any political subdivision of the state or body within one or more political subdivisions which is created by law or by action of one or more political subdivisions.

(5) “Information” means information gained by the employee which the employee reasonably believes demonstrates:

(a) A violation of any state or federal law, rule or regulation.

(b) Mismanagement or abuse of authority in state or local government, a substantial waste of public funds or a danger to public health and safety.

(6) “Merit further investigation” means reasonably indicates the existence of a situation justifying inquiry.

(7) “Mismanagement” means a pattern of incompetent management actions which are wrongful, negligent or arbitrary and capricious and which adversely affect the efficient accomplishment of an agency function. “Mismanagement” does not mean the
mere failure to act in accordance with a particular opinion regarding management techniques.  “Retaliatory action” means a disciplinary action taken because of any of the following:

(8) “Retaliatory action” means a disciplinary action taken by any of the following:

(a) The employee lawfully disclosed information under s. 230.81 or filed a complaint under s. 230.85 (1).

(b) The employee testified or assisted or will testify or assist in any action or proceeding relating to the lawful disclosure of information under s. 230.81 by another employee.

(c) The appointing authority, agent of an appointing authority or supervisor believes the employee engaged in any activity described in par. (a) or (b).

(9) “Substantial waste of public funds” means an unnecessary expenditure of a substantial amount of money or a series of unnecessary expenditures of smaller amounts of money.


A “pattern of incompetent management actions” under sub. (7) requires more than a claim of a single act of incompetent management. A continuing course of conduct requires multiple actions to constitute a pattern. Hutson v. Wisconsin Personnel Commission, 2003 WI 97, 263 Wis. 2d 612, 665 N.W.2d 212, 01−2959.

230.81 Employee disclosure. (1) An employee with knowledge of information disclosed as of an act of management is required to disclose any information if the employee knows or anticipates that the disclosure of information to any other person other than his or her attorney, collective bargaining representative or legislator, the employee shall do all of the following:

(a) Disclose the information in writing to the employee’s supervisor.

(b) After asking the division of equal rights which government unit is appropriate to receive the information, disclose the information in writing at the governmental unit that the division of equal rights determines is appropriate. The division of equal rights may not designate the department of justice, the courts, the legislature or a service agency under subch. IV of ch. 13 as an appropriate governmental unit to receive information. Each appropriate governmental unit shall designate an employee to receive information under this section.

(2) Nothing in this section prohibits an employee from disclosing information to an appropriate law enforcement agency, a state or federal district attorney in whose jurisdiction the crime is alleged to have occurred, a state or federal grand jury or a judge in a proceeding commenced under s. 968.26, or disclosing information pursuant to any subpoena issued by any person authorized to issue subpoenas under s. 885.01. Any such disclosure of information is a lawful disclosure under this section and is protected under s. 230.83.

(3) Any disclosure of information by an employee to his or her attorney, collective bargaining representative or legislator or to a legislative committee or legislative service agency is a lawful disclosure under this section and is protected under s. 230.83.


Cross Reference: See also ch. DWD 224, Wis. adm. code.

230.82 Processing of information. (1) A governmental unit to which an employee discloses information under s. 230.81 (1) shall process it as provided in this section. Within 30 days of receiving the information, the governmental unit shall either initially determine if it merits further investigation or refer the information to a governmental unit better able to initially determine if it merits further investigation. A governmental unit which initially determines information to merit further investigation shall, within 30 days of that determination, either commence a full investigation into the truth of the information or refer the information to a governmental unit better able to conduct such an investigation, which shall commence it within 30 days of referral. A governmental unit may disclose or refer information to an appropriate law enforcement agency or district or federal attorney as part of an investigation or in lieu of referral to another governmental unit, if the law enforcement agency or district or federal attorney is best able to conduct the investigation. Any full investigation commenced shall be completed within a reasonable time.

(2) A governmental unit which initially determines that information merits further investigation, or which after a full investigation finds information to be true, shall so inform the employee and his or her appointing authority in writing. A governmental unit which initially determines information not to merit further investigation, refers the information to another governmental unit or after a full investigation finds information to be untrue shall so inform the employee in writing.

(3) A governmental unit which investigates or otherwise processes information disclosed under s. 230.81 may require that an interview with any employee described in s. 230.80 (3), except a management or supervisory employee immediately involved in the subject matter of the information disclosed, be conducted outside the presence of the appointing authority or any representative or agent thereof unless the employee voluntarily requests that presence. An appointing authority shall permit an employee to be interviewed without loss of pay and to have an employee representative present at the interview. An appointing authority of an employee to be interviewed may require the governmental unit to give the appointing authority reasonable notice prior to the interview.

(4) A governmental unit shall keep the identity of the employee confidential until the governmental unit determines the information merits further investigation. If a governmental unit conducts a full investigation, it shall keep the identity of the employee confidential if it is reasonably possible to do so.

History: 1983 a. 409.

230.83 Retaliatory action prohibited. (1) No appointing authority, agent of an appointing authority or supervisor may initiate or administer, or threaten to initiate or administer, any retaliatory action against an employee.

(2) This section does not apply to an employee who discloses information if the employee knows or anticipates that the disclosure is likely to result in the receipt of anything of value for the employee or for the employee’s immediate family, unless the employee discloses information in pursuit of any award offered by any governmental unit for information to improve government administration or operation.

(3) Nothing in this section restricts the right of an employer to take appropriate disciplinary action against an employee who knowingly makes an untrue statement or discloses information the disclosure of which is expressly prohibited by state or federal law, rule or regulation.

History: 1983 a. 409.

Cross Reference: See also ch. DWD 224, Wis. adm. code.

230.85 Enforcement. (1) An employee who believes that a supervisor or appointing authority has initiated or administered, threatened to initiate or administer, a retaliatory action against that employee in violation of s. 230.83 may file a written complaint with the division of equal rights, specifying the nature of the retaliatory action or threat thereof and requesting relief, within 60 days after the retaliatory action allegedly occurred or was threatened or after the employee learned of the retaliatory action or threat thereof, whichever occurs last.

(2) The division of equal rights shall receive and, except as provided in s. 230.45 (1m), investigate any complaint under sub. (1). In the course of investigating or otherwise processing such a complaint, the division of equal rights may require that an interview with any employee described in s. 230.80 (3), except a management or supervisory employee who is a party to or is immediately involved in the subject matter of the complaint, be conducted outside the presence of the appointing authority or any representative or agent thereof unless the employee voluntarily requests that presence. An appointing authority shall permit an employee to be interviewed without loss of pay and to have an employee representative present at the interview. An appointing authority of an employee to be interviewed may require the division of equal rights to issue subpoenas under s. 885.01. Any such disclosure of information under s. 230.81 by another employee.
rights to give the appointing authority reasonable notice prior to the interview. If the division of equal rights finds probable cause to believe that a retaliatory action has occurred or was threatened, it may endeavor to remedy the problem through conference, conciliation or persuasion. If that endeavor is not successful, the division of equal rights shall issue and serve a written notice of hearing, specifying the nature of the retaliatory action which has occurred or was threatened, and requiring the person named, in this section called the “respondent”, to answer the complaint at a hearing. The notice shall specify the place of hearing and a time of hearing not less than 30 days after service of the notice of hearing. If, however, the division of equal rights determines that an emergency exists with respect to a complaint, the notice of hearing may specify a time of hearing within 30 days after service of the complaint upon the respondent, but not less than 10 days after service of the notice of hearing. The testimony at the hearing shall be recorded or taken down by a reporter appointed by the division of equal rights.

(3) (a) After hearing, the division of equal rights shall make written findings and orders. If the division of equal rights finds that the respondent engaged in or threatened a retaliatory action, it shall order the employee’s appointing authority to insert a copy of the findings and orders into the employee’s personnel file and, if the respondent is a natural person, order the respondent’s appointing authority to insert such a copy into the respondent’s personnel file. In addition, the division of equal rights may take any other appropriate action, including but not limited to the following:

1. Order reinstatement or restoration of the employee to his or her previous position with or without back pay.
2. Order transfer of the employee to an available position for which the employee is qualified within the same governmental unit.
3. Order expungement of adverse material relating to the retaliatory action or threat from the employee’s personnel file.
4. Order payment of the employee’s reasonable attorney fees by a governmental unit respondent, or by a governmental unit employing a respondent who is a natural person if that governmental unit received notice and an opportunity to participate in proceedings before the division of equal rights.
5. Recommend to the appointing authority of a respondent who is a natural person that disciplinary or other action be taken regarding the respondent, including but not limited to any of the following:
   a. Placement of information describing the respondent’s violation of s. 230.83 in the respondent’s personnel file.
   b. Issuance of a letter reprimanding the respondent.
   c. Suspension.
   d. Termination.

(b) If, after hearing, the division of equal rights finds that the respondent did not engage in or threaten a retaliatory action it shall order the complaint dismissed. The division of equal rights shall order the employee’s appointing authority to insert a copy of the findings and orders into the employee’s personnel file and, if the respondent is a natural person, order the respondent’s appointing authority to insert such a copy into the respondent’s personnel file. If the division of equal rights finds that the employee’s appointing authority to insert a frivolous complaint it may order payment of the respondent’s reasonable actual attorney fees and actual costs. Payment may be assessed against either the employee or the employee’s attorney, or assessed so that the employee and the employee’s attorney each pay a portion. To find a complaint frivolous the division of equal rights must find that s. 802.05 (2) has been violated.

(c) Pending final determination by the division of equal rights of any complaint under this section, the division of equal rights may make interlocutory orders.

(d) Interim earnings or amounts earnable with reasonable diligence by the person subjected to the retaliatory action or threat shall reduce back pay otherwise allowable. Amounts received by the person subjected to the retaliatory action or threat as unemployment benefits or welfare payments do not reduce the back pay otherwise allowable, but shall be withheld from the person subjected to the retaliatory action or threat and immediately paid to the unemployment reserve fund or to the welfare agency making the payment.

(4) The division of equal rights shall serve a certified copy of the findings and order on the respondent and, if the respondent is a natural person, upon the respondent’s appointing authority.

(5) (a) If a respondent does not comply with any lawful order by the division of equal rights, for each such failure the respondent shall forfeit a sum of not less than $10 nor more than $100. Every day during which a respondent fails to comply with any order of the division of equal rights constitutes a separate violation of that order.

(b) As an alternative to par. (a), the division of equal rights may enforce an order by a suit in equity.

(6) (a) If a disciplinary action occurs or is threatened within the time prescribed under par. (b), that disciplinary action or threat is presumed to be a retaliatory action or threat thereof. The respondent may rebut that presumption by a preponderance of the evidence that the disciplinary action or threat was not a retaliatory action or threat thereof.

(b) Paragraph (a) applies to a disciplinary action under s. 230.80 (2) which occurs or is threatened within 2 years, or to a disciplinary action under s. 230.80 (2) (b), (c) or (d) which occurs or is threatened within one year, after an employee discloses information under s. 230.81 which merits further investigation or after the employee’s appointing authority, agent of an appointing authority or supervisor learns of that disclosure, whichever is later.

History: 1983 a. 409; 1991 a. 39; 2003 a. 33; Sup. Ct. Order No. 03−06A, 2005 WI 86, filed 6−21−05, eff. 7−1−05.

Cross Reference: See also ch. DWD 224, Wis. adm. code.

The commission may not use a “multiplier” in computing reasonable attorney fees under sub. (3) (a) 4.; only SCR 20:1.5 factors are permissible. Board of Regents v. Personnel Commission 147 Wis. 2d 406, 433 N.W.2d 273 (Ct. App. 1988).

230.86 Discipline based on surveillance. (1) No appointing authority may take any disciplinary action based in whole or in part on wiretapping, electronic surveillance or one−way mirrors unless that surveillance produces evidence that the employee against whom disciplinary action is taken has committed a crime or unless that surveillance is authorized by the appointing authority and is conducted in accordance with the rules promulgated under s. 16.904 (12).

(2) Subsection (1) does not apply to wiretapping, electronic surveillance or one−way mirrors used to monitor security or used for public safety purposes at a state institution.

History: 1989 a. 245; 1993 a. 496.

Cross Reference: See also ch. DWD 224, Wis. adm. code.

230.87 Judicial review. (1) Findings and orders of the division of equal rights under this subchapter are subject to judicial review under ch. 227. Upon that review, or in any enforcement action, the department of justice shall represent the division of equal rights unless a conflict of interest results from that representation. A court may order payment of a prevailing appellant employee’s reasonable attorney fees by a governmental unit respondent, or by a governmental unit employing a respondent who is a natural person if that governmental unit received notice and an opportunity to appear before the court.

(2) If the court finds that the appeal is frivolous, it shall award to the respondent reasonable attorney fees and costs. Payment may be assessed fully against the appellant, including a governmental unit, or the appellant’s attorney or assessed so that the appellant and the appellant’s attorney each pay a portion.
an appeal frivolous, the court must find one or more of the follow-
ing:

(a) The appeal was filed, used or continued in bad faith, solely
for purposes of harassing or maliciously injuring another.

(b) The appellant or appellant’s attorney knew, or should have
known, that the appeal was without any reasonable basis in law or
equity and could not be supported by a good faith argument for an
extension, modification or reversal of existing law.

Cross Reference: See also ch. DWD 224, Wis. adm. code.

230.88 Payment of award, judgment or settlement;
effect of order, arbitration award or commencement of
court action. (1) PAYMENT. Any award, judgment or settlement
obtained by an employee under this subchapter shall be paid from
the funds appropriated under s. 20.865 (1) (a), (g) and (q).

(2) EFFECT. (a) A final order issued under s. 230.85 or 230.87
which has not been appealed and for which the time of appeal has
passed binds all parties who were subjected to the jurisdiction of
the division of equal rights or the court and who received an
opportunity to be heard. With respect to these parties, the decree
is conclusive as to all issues of law and fact decided.

(b) No collective bargaining agreement supersedes the rights
of an employee under this subchapter. However, nothing in this
subchapter affects any right of an employee to pursue a grievance
procedure under a collective bargaining agreement under subch.
V of ch. 111, and if the division of equal rights determines that a
grievance arising under such a collective bargaining agreement
involves the same parties and matters as a complaint under s.
230.85, it shall order the arbitrator’s final award on the merits con-
clusive as to the rights of the parties to the complaint, on those
matters determined in the arbitration which were at issue and upon
which the determination necessarily depended.

(c) No later than 10 days before the specified time of hearing
under s. 230.85 (2), an employee shall notify the division of equal
rights orally or in writing if he or she has commenced or will com-
ence an action in a court of record alleging matters prohibited
under s. 230.83 (1). If the employee does not substantially comply
with this requirement, the division of equal rights may assess
against the employee any costs attributable to the failure to notify.
Failure to notify the division of equal rights does not affect a
court’s jurisdiction to proceed with the action. Upon commence-
ment of such an action in a court of record, the division of equal
rights has no jurisdiction to process a complaint filed under s.
230.85 except to dismiss the complaint and, if appropriate, to
assess costs under this paragraph.


230.89 Rule making and reporting. (1) The division of
equal rights shall promulgate rules to carry out its responsibilities
under this subchapter.

(2) Every 2 years, the division of equal rights shall submit a
report to the chief clerk of each house of the legislature, for dis-
tribution to the appropriate standing committees under s. 13.172
(3), regarding complaints filed, hearings held and actions taken
under this subchapter, including the dollar amount of any mone-
tary settlement or final monetary award which has become bind-
ing on the parties.

Cross Reference: See also PC, Wis. adm. code.