Local Committee

Technical Assistance Guide

WISCONSIN APPRENTICESHIP
Earn. Learn. Succeed.

Produced by the WI Dept. of Workforce Development, Bureau of Apprenticeship Standards

State of Wisconsin
STATE OF WISCONSIN
DWD
Department of Workforce Development
Division of Employment and Training

Bureau of Apprenticeship Standards
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1. INTRODUCTION

The purpose of this instructional manual is to provide valuable resource information to Local Construction Apprenticeship Committees around the State of Wisconsin that have responsibility for implementing aspects of the state's apprenticeship programs.

It is our hope that this manual will be a useful reference guide for Local Construction Apprenticeship Committee members when it comes to discharging their important responsibilities.

We have, to the greatest extent possible, covered the most important information, but if you have more detailed or unusual questions, you are encouraged to contact your local Apprenticeship Training Representative (ATR) first. A listing of the BAS Apprenticeship Training Representatives is located on the Bureau of Apprenticeship Standards website page: www.wisconsinapprenticeship.org. If your local ATR is unavailable, you may contact the Apprenticeship Director at (608) 266-3133 or the Chief of Field Operations at (608) 266-3132 for additional information or guidance.

2. PARTNERS – ROLES & RELATIONSHIPS

Dept. of Workforce Development Bureau of Apprenticeship Standards

The Wisconsin Department of Workforce Development (DWD) is the state agency that has primary responsibility for implementing and monitoring apprenticeship programs in Wisconsin. Specific responsibility for administering apprenticeship program standards is held by the Bureau of Apprenticeship Standards (BAS), which is located in the Department's Division of Employment and Training.

The BAS jointly reviews classroom training with the Wisconsin Technical College Board, which has responsibility for conducting most of the classroom instruction connected with the apprenticeship programs. The BAS also works closely with State and Local Construction Apprenticeship Committees for all major trades, labor unions, employers, recognized apprenticeship training centers and employer associations to ensure a high level of quality and consistency in Wisconsin's apprenticeship programs.

State apprenticeship representatives, also known as Apprenticeship Training Representatives (ATRs), are assigned specific local construction committees for purposes of oversight and to assist with program administration. The Representatives work with the committees to help local committee members interpret laws, as well as BAS rules and regulations and to provide technical assistance. They also develop apprenticeship and on-the-job training programs and work with all groups interested in promoting apprenticeship in Wisconsin.

ATRs are also responsible for providing oversight of local committees including conducting Quality Assessment Reviews and Affirmative Action and Equal Employment Opportunity Compliance reviews. These reviews are valuable to local committees when it comes to evaluating the overall effectiveness and operation of their program required by DWD Chapter 295 and their progress toward meeting affirmative action goals as required by DWD Chapter 296.

Wisconsin Apprenticeship Advisory Council

The mission of the Wisconsin Apprenticeship Advisory Council is to provide the DWD Secretary and the Director of the Wisconsin Technical College System (WTCS) with advice and consultation on all matters pertaining to the effective operation of the Wisconsin Apprenticeship System.

The Council is comprised of 22 voting members, which represent a cross-section of Wisconsin's apprenticeship community. Nine (9) members are employer representatives; nine (9) are employee representatives; one is a WTCS representative; one is a K-12 representative, and two (2) are public members. The BAS Director serves as the nonvoting chairperson. The Council elects its own co-chairs, with one co-chair coming from

employer representatives and the other from employee representatives. All members of the Council shall be persons who are familiar with apprenticeable occupations.

The BAS seeks nominations for council positions from state level employer and employee organizations whose members are involved in the training of apprentices or in the preparation of individuals for apprenticeship. The Secretary of the Department of Workforce Development makes the final appointments except for the two (2) educational members who are appointed by their respective departments. Council members serve for a term of three years and are eligible for reappointment to additional terms.

Council meetings are held at least four times each year or on an "as needed" basis.

Council responsibilities include:

- Advise the DWD on matters involving the Wisconsin Apprenticeship System, including the enactment of laws and rules.
- Advise the WTCS State Director on matters pertaining to related instruction for apprentices and related occupation instruction.
- Provide guidance and leadership to the State Trade Committees for the purpose of improving the apprenticeship program, as well as Local Committee structure and operation.

The Council has four standing sub-committees:

1. Educational Linkages
2. Equal Access
3. Outreach
4. Policy and Standards

State Trade Advisory Committees

The State Trade Advisory Committees are a very important part of the advisory structure that advises BAS in the administration of the apprenticeship program and in communicating with all the partners in the apprenticeship program. Just as the Advisory Council handles overall apprenticeship policy, the State trade committees handle policy relating to their trade.

Committee duties include:

- Provide recommendations and advice on their trade's policy and program matters to BAS and the WTCS on all aspects of the apprenticeship program and curriculum.
- Assist in formulating and revising state apprenticeship standards.
- Assume leadership to ensure high quality working conditions for apprentices and expanding the number of participating employers.

- Prepare policies for participating trades when it comes to proficiency assessment and testing devices used by the Local Committees.
- Review and monitor local committee operations.
- Assist local committees to work out programmatic and administrative problems.
- Assist in the formation and promotion of local committee structures where they currently do not exist.
- Promote Equal Opportunity and Affirmative Action.

State program standards provide more specific guidelines on state committee structure, membership requirements, committee operations and committee responsibilities.

State committees meet at least twice each year and their membership includes equal numbers of employers and employee members who have been nominated by organizations involved with local committees. The goal is to have fair representation from local committees as members on state committees. The BAS is also responsible for ensuring that all areas of the State are properly represented on each State trade committee.

The State trade committees operate on a consensus decision making process. This means that there may be concerns after discussions are held, but members may consent to the proposal anyway and allow it to be adopted. Therefore, reaching consensus does not assume that everyone must be in complete agreement, but members can live with the decision.

Members serve three year terms and can be re-nominated for additional terms. Members must be currently and actively participating in the trade and are required to attend at least 75% of the meetings over the term of their appointment. WTCS representatives, industry apprenticeship coordinators, instructors and other interested parties in the apprenticeship program may advise and consult with state committees, but they are not allowed to serve as voting members.

There are currently 13 construction trade advisory committees:

1. Carpentry
2. Construction Craft Laborer
3. Electrical
4. Glazing
5. Heat and Frost Insulation
6. Ironworking
7. Masonry
8. Painting
9. Plumbing
10. Roofing
11. Sheet Metal
12. Sprinkler Fitting
13. Steamfitting

There are three (3) industrial trade advisory committees:

1. Machine Tool
2. Maintenance Mechanic/Millwright/Pipefitting
3. Industrial Electrical and Instrumentation

The three advisory committees that work with the service trades are:

1. Barber/Cosmetology
2. Electric Utility Workers
3. Waste Water Treatment Plant Operators

Local Committees

Construction Trade Local Committees have been active and advisory to the Department since 1918. During the 1920's a large number of local committees were organized by the local vocational schools, so they could advise the schools on apprentice related instruction needs. By the late 1930's the area joint apprenticeship committees were functioning much as they do today. They are made up of representatives of local employer groups and local employee organizations, with a jurisdictional area covering several counties.

The committees' most important role is the job of seeing that apprentices are properly registered and that the training, including related instruction/curriculum meets industry needs. There is no law that gives local apprenticeship committees administrative authority; nor can the Bureau legally delegate such authority. No mention is made of committees in the Apprenticeship Law. They are purely advisory.

The local committee also plays an important role in being the main contact for the apprentice and being an advocate for the apprentice when issues occur during the apprenticeship.

WI Administrative Code DWD 295.02 and DWD 295.03 outline the delegation of authority given to local committees. There are two types of local committees; joint apprenticeship committee which consists of an equal number of representatives of employers and representatives of employees who are represented by a collective bargaining agent. A non-joint apprenticeship committee consists of representatives of employers, but not representatives of employees represented by a collective bargaining agent.

Wisconsin Technical College System

The partnership between Wisconsin's apprenticeship agency (BAS) and what is now the Wisconsin Technical College System (WTCS) dates back to the founding of both systems in 1911. Delivering apprentice related instruction is central to the WTCS mission (State Statute 38.001(1m)). The statutes also state that it is the duty of publicly funded schools, "to cooperate with the department and employers of apprentices to furnish…such instruction as may be required to be given apprentices." (s.s.106.01(10)) The WTCS operates under a model of shared governance between the Wisconsin Technical College System Board and the 16 district technical college boards; state guidelines, local policies and economic realities determine how and where instruction is provided.

The Wisconsin Technical College System Board is the coordinating agency for the state Technical College System (WTCS). The board

establishes statewide policies and standards for the educational programs and services provided by the 16 technical college districts that cover the state. The Governor appoints ten of the 13 members of the state board; members are selected to represent diverse constituencies. The other three members represent state agencies. The operations of the state board are carried out by a staff headed by a system president who is appointed by the board. Among the staff at the WTCS State Board (WTCSB) office in Madison is the Education Director for Apprenticeship charged with the initiation, development, maintenance and supervision of apprentice related instruction programs on a system wide basis. These duties include curriculum and course approval and funding for system wide apprenticeship curriculum development.

Local Technical College District Boards

Local Technical College District Boards are responsible for the direct operation of their 16 respective schools and programs. Each technical college has a designated Apprenticeship Coordinator, generally an associate dean, charged with the development, maintenance and supervision of apprentice related instruction programs in that district, and support staff who interact directly with apprentices. In addition, the WTCS Apprenticeship Coordinators Council, a committee of the whole that includes the WTCS Education Director for Apprenticeship and the BAS Director (or designee), meets monthly by conference call to coordinate the ongoing inter-district delivery of apprentice related instruction.

Wisconsin Technical College system currently provides programs of apprentice related instruction in 30 distinct occupations (using 65 different program titles); the number of trade programs offered in each district varies.

Who's Responsible for What?

WTCS State Guidelines vs. Local College Policies

STATE WTCS GUIDELINES	LOCAL COLLEGE POLICIES
Formal program approval	Decision to offer program, minimum number required to run a class
Formal Course Approval (titles and hours)	Course configuration (lecture/lab),how course is delivered (face to face, blended, on-line)
Length of program, A/B wk calendar for inter-college scheduling	Scheduling of classes, semester beginning and ending dates
Initial curriculum approval and modifications	How curriculum is delivered in the classroom
Uniform tuition and material fees based on hours of instruction	Refunds, determination of residency, financial aid, applicant testing policies, student fees for parking, graduation
Instructor certification guidelines	Hiring, supervision and evaluation of instructors, complaint process

Certification renewal requirements, college professional development plan and activities	Individual instructor professional development plans & activities
Contracting requirements (s.s.38.14), calculation of full-cost recovery rate	Local College Boards approve contracts, grants exceptions
Supplemental funds for unanticipated new programs and additional classes	Ongoing budgeting for instruction, supplies and equipment
Statewide curriculum development, common competencies & outcomes	Ongoing local curriculum maintenance and development
Overall program evaluation, Apprenticeship Completer	College and program-level Quality Review Process (QRP)
Accountability for federal reporting	Required recordkeeping (kept 5 years from last action), grade reports, transcript (permanent records)

Approved Training Centers

Although the WTCS is the primary source used for apprenticeship related instruction, other educational sources may be used after approval by the Bureau of Apprenticeship Standards. Sponsor owned training centers may partner with WTCS in providing related instruction or may provide related instruction independent of WTCS. In addition, sponsors may provide related instruction in-house at their workplace, by correspondence course or by electronic media. As with sponsor owned training centers, the sponsor must receive approval from the BAS prior to beginning the instruction.

Local Committee's Role in the Recruitment of Instructors

Apprenticeship is a partnership among education, government and industry, and local committees are recognized as advisory to both DWD – BAS and the WTCS. One of the major components of this partnership is to provide qualified instructional staff for both paid and unpaid related/technical instruction. The majority of this instruction takes place with the Wisconsin Technical College System (WTCS). Therefore, it is of the utmost importance that the Technical System partner with industry in providing instructional staff. There are numerous methods used in the recruitment of instructional staff, these methods include, but are not limited to, advice from advisory committees, training directors and staff from within the technical system.

Employers and employees are also recruited to serve on the selection committees and interviewing panels. Even though input is received and valued within the technical college system, the final judgment to hire is that of the administrative staff from the local Wisconsin Technical College. The instructional staff who are recruited and hired through this partnership are employees of a college in the WTCS and as such are subject to college policies, practices and procedures.

In the case of sponsor owned training centers, each site is unique in its role in hiring of instructors, but in any case, the center must meet the requirements set forth in DWD 295 and Chapter 6 of the WI Apprenticeship Manual.

3. ROLE AND STRUCTURE OF LOCAL COMMITTEES

Chapter DWD 295.03 (1) provides the legal basis for the establishment of apprenticeship local committees. Their purpose is to act in an advisory capacity to the Department, to the parties of the Apprentice Contract, and to the Wisconsin Technical College System (WTCS) on curriculum matters.

Construction Trade Joint Apprenticeship Committees (JACs) have been active and advisory to the Bureau since 1918. During the 1920's a large number of local JACs were organized by the local vocational schools to advise the schools on apprentice related instruction needs. By the late 1930's the local JACs were functioning much as they do today. They were made up of representatives of local employer groups and local employee organizations within a geographic jurisdictional area.

The primary role of the local committees is to advise the BAS on the administration of the apprenticeship programs. In order to serve on a local committee, an individual must be designated by the BAS. For employee members, the BAS Apprenticeship Training Representative (ATR) receives written nominations from the labor organization that represents the trades served by the committee. For employer members, the BAS Apprenticeship Training Representative receives written nominations from the employer organization that represents employers from the same trades. These nominations are then forwarded to the BAS administrative office with the recommendation and comments. The BAS then makes the final decision regarding appointment to the Committee and notifies each person who is appointed to the committee. No person is considered a committee member until the appropriate designation letter has been received. Only formal members designated by BAS have voting authority.

Decision making is based on majority rule. If the vote is a tie, BAS makes the final decision for joint apprenticeship committees, in the case of unequal representation, the members present shall vote for those absent from their group.

Advisory Function of the Local Committee

The primary role of the local committees is to advise the BAS on the administration of apprenticeship programs and to oversee the training of apprentices and ensure that all parties are satisfying the conditions of the Apprentice Contract. Standards are developed and approved by BAS. It is the responsibility of the ATR to ensure that local committees follow the Standards in the operation of the committee.

However, there is no law which gives state or local advisory committees administrative authority nor can the Bureau legally delegate such authority. The committee's usefulness is in no way impaired merely because it has no authority to approve, cancel or complete contracts. Far more important than

this authority is the job of seeing that apprentices are properly registered and trained and that the training meets industry needs.

In addition, the committee may be expected to advise the Bureau and the Technical College on apprenticeship matters in the trades covered by the committee.

Local committees have the authority to select and place apprentice applicants providing they follow Bureau approved procedures. In this capacity they function much as a personnel office for their industry group, recruiting, screening and referring those qualified to area employers. Applying the State Apprenticeship Laws, Rules and Trade Standards as a base, the goal is to have the area standards and related instruction material for each trade as uniform as statewide conditions permit. This assures all the people involved in the training of apprentices in a given trade will be working toward the same program and graduating journey workers with comparable skills.

Relationship to Wisconsin Technical College System

The Wisconsin Technical College System relies on advisory committees at the state and local levels to provide relevant career education.

The Wisconsin Laws of 1971 provide statutory recognition of the use of local advisory committees by technical colleges:

> 38.14(5) ADVISORY COMMITTEES. The district board may establish advisory committees representing every occupation in the district. Each advisory committee shall consist of equal numbers of employers and employees selected by the district board from recommendations submitted by representative organizations and associations of each occupation. The district board and the district director may request the advice and assistance of these advisory committees in selecting, purchasing, and installing equipment, in preparing course materials, in developing instructional methods and vocational guidance programs, and for such purposes as the district board desires.

Apprentice program advisory committees provide the college advice and assistance regarding related instruction for apprentices. There are two types of committees that advise apprenticeship programs. One, the local apprenticeship committee either joint or non-joint, is formed by the Department of Workforce Development, Bureau of Apprenticeship Standards. Each of these local committees develops and coordinates an apprentice training program for a construction trade. The guidelines they follow for structure and operation may differ slightly, but do not generally conflict with what is described here.

The other type of apprenticeship program advisory committee, formed by the technical college district for trades other than construction, follows these guidelines for its structure and operation.

Each local apprenticeship committee should set one meeting per year to review the curriculum and education facilities. This meeting should be held at the appropriate training facility. The purpose of the meeting would be to approve curriculum and to provide feedback to the Wisconsin Technical College System.

Local Committee Responsibilities

The *Wisconsin Apprenticeship Manual* updated by the Apprenticeship Advisory Council in 2010 outlines the responsibilities that local committees have relating to the apprenticeship program. These are:

- Ensure that employer and apprentice applications are processed in a timely manner.
- Establish local standards which must be in conformance with state standards.
- Develop and implement bias free apprentice selection procedures and affirmative action plan in conformity with DWD 295 and 296.
- Ensure that apprentices get the required range of work process experience and safeguard the training of apprentices on the job.
- Recommend to the Bureau conditions which apprentices may be employed. Included in this process, is the timely review of employer applications and requests of new apprentices. Timely review is the approval or disapproval for the request within 40 days. Employers have the right of appeal in the case of a disapproval.
- Approve employers for apprenticeship training purposes.
- Maintain records of each apprentice in the committee's program.
- Encourage parties to Apprentice Contracts to bring their complaints before the Committee.
- Review and make sure that adequate classroom and on-the-job records are kept for apprentices. All reviews should be in writing.
- Review and evaluate classroom and on-the-job performance on a regular basis for every apprentice prior to the end of the probationary period in person and recommend any appropriate action to the employer or as recommended by the state committee. A review must be performed, at least annually and a minimum of two times during the term of the Apprentice Contract, in person and before recommending completion to the BAS.
- Recommend to the BAS, credit for previous experience/education in conformity with Council or state trade committee policy and procedures.
- Develop a policy and implement a program that assists out of work apprentices to find work.
- Implement an apprentice layoff/transfer policy as defined by State Standards or in a bargaining agreement or in local committee standards.

- Keep minutes of each committee meeting and submit copies to BAS.
- Advise and inform the public on projected apprentice openings, where applicable.
- Advise the BAS and Local Technical Colleges on all matters pertaining to related instruction in the committee area. Assist in securing related instruction with the State Office or District Technical College.
- Respond to surveys and questionnaires sent by the BAS regarding information on participating employers, apprentices, meetings held and AA/EEO progress.
- Encourage parties to an Apprentice Contract to bring issues before the local committee. If not resolved, provide recommendations to the BAS on its resolution.
- Take part in statewide trade or industry marketing and apprenticeship promotion.
- Recommend modifications to ratios in State standards to help meet area workforce needs in conformity with bargaining agreements where applicable.
- Recommend completion of the apprentice to the Bureau.
- Report back to the respective nominating organizations and keep them fully informed and active in promoting the local program.

Operational Guidelines

The committees will follow these operational guidelines:

- Elect their own officers. In the case of joint apprenticeship committees, there shall be two officers (one employer and one employee) so that in the event of one's absence the meeting can still proceed.
- Meet at least two times each year or as prescribed by the State Trade Committee.
- Meet in conformity with Wisconsin's Open Meeting law.
- Keep written minutes of all meetings, and file a copy of the minutes with the local office of the Bureau.
- Ensure that apprentices are properly registered in conformity with Wisconsin apprenticeship regulations.
- Ensure that the apprenticeship program is bias free in the selection and training of apprentices and that the workplace is free of sexual and ethnic harassment.
- Meet quorum
    - Joint Apprenticeship Committees-A meeting quorum exists when at least one employer and one employee representative is present. In the case of unequal representation, the members present shall vote for those absent from their group;
    - Non-joint committees—a meeting quorum exists when at least two members are in attendance.
- Keep union and nonunion business out of the local committee meeting.

Membership—Selection and Appointment of Members

Local joint committees are made up of representation of employers and employees. Each local committee will have a minimum of two voting members one employer representative and one from the skilled workforce.

Local non-joint committees consist of representatives of employers, but not of employees who are represented by a collective bargaining agent.

Membership Nominations:
The Contractors Association for participating employers in the geographic area nominates the employer members. Employer members must currently work at the trade or represent those who employ skilled workers of the trade and have trained apprentices in the last five years.

Local labor organizations representing skilled workers in the area will nominate employee members. Employee members must be active journey level workers and working at the trade or represent active journey level workers.

When no such employer organization exists, the BAS will ask the State Employers' Organization or the State Committee for assistance.

Exceptions to these requirements can be made by the BAS in order to expand female and minority participation on committees.

Membership Appointments:
After nominations have been submitted, the Bureau will finalize the committee membership. All committee members must be approved and designated by the BAS in order to serve on the committee. To the extent they are employed in the workforce, the Bureau will ensure that females and minorities are represented on the committee.

Membership Meeting Attendance Requirements:

- Members must attend at least 75% of the meetings over the term of their appointment, unless excused for good cause.
- Must conduct themselves in a professional manner.

Removal of Local Committee Member:
The Bureau may remove a person from membership on a committee for one or more of the following reasons:

- Failure to attend at least 75% of the committee meetings unless excused by the Bureau for good cause.
- Failure to meet the membership requirements unless an exception is granted by the Bureau.
- Violation of any State apprenticeship statute, rule or standard.

Non-voting Consultants:

Wisconsin Technical College System representatives, industry apprenticeship coordinators, apprenticeship instructors, employer and employee organization representatives and appropriate community based organizations may serve as nonvoting consultants. Nonvoting consultants may not participate in the closed section of the meeting unless the issue deals directly with them.

BAS Representative:
The responsibility of a BAS Representative at a local committee meeting is to ensure that all committee actions recommended or taken are legal under both federal and State laws, committee standards and in accordance with approved local committee policies. In this capacity, the ATR participates in both the open and closed sections of committee meetings.

Trusts

It is not appropriate to conduct any trust business during a local committee meeting. Trust meetings are to be held separately from local committee meetings regardless of membership overlap.

4. OPERATIONAL GUIDELINES

State and Local Apprenticeship Program Standards

State trade committees develop standards for the trade classifications within their industry. When these standards have been adopted by the state committee and approved by the Bureau of Apprenticeship Standards (BAS), all local committee standards must meet the minimum of the State standards. Local Committee policies and procedures; such as, last chance agreements, attendance policies and grading must also be approved by the BAS.

Local committees may adopt the industry's state standards or develop local standards that exceed the minimums outlined by the State standards. All standards developed by the local committees, must be submitted to the local Bureau of Apprenticeship Standards (BAS) representative for review. The local BAS representative will review the standards prior to submittal to the Bureau Director and provide preliminary approval or return to the local committee. If the standards meet all requirements, they are then forwarded to the BAS Director.

The BAS Bureau Director will review all proposed standards to ensure compliance with the Apprenticeship Manual, apprenticeship laws, applicable administrative rules and the state standards developed by that industry's State committee. The Director's approval or denial of the standards is communicated to the committee in writing within 90 days of receipt. If the Director does not approve the standards or suggested amendments, the local committee will be notified of the reasons for disapproval and provided the appropriate technical assistance if requested.

All revisions or addenda to the local standards must be submitted to BAS for approval or denial.

The BAS Director is responsible for keeping copies of all approved state and local standards, revisions, and state committee agendas.

Application & Selection of Apprentices

The Application Process

Each local committee must prepare and receive written approval from BAS for all application and selection procedures. The local committee must submit new or updated procedures to the local BAS Apprenticeship Training Representative who will then review and submit to the Bureau Director for final approval. The local committee must receive written approval from the BAS Director before implementing any changes in the application or selection process.

When advertising for apprentices, the application process must be clearly outlined and communicated to the public and all interested parties; such as,

Community Based Organizations (CBOs) in the area, Job Centers, etc. Also, it is highly recommended that local committees post their Notice of Application Openings on Job Center of Wisconsin.

Information must include:

- When applications are taken (i.e., daily, time -- 9 a.m. to 5 p.m., etc.).
- Days applications are accepted(i.e., first Tuesday of every month).
- Where to apply (i.e., name, telephone number and specific street address) and if the application must be returned in person or by mail.
- If an appointment is necessary and who to call (including telephone number) to make an appointment.
- Any specific information applicants need to provide with an application (i.e., high school diploma, courses, high school Algebra, grades, etc.).
- Assessment requirements (i.e., Accuplacer, TABE, etc.) and if any fees are required.
- Physical requirements, if any (i.e., drug testing or ability to lift X lbs.).
- Any other requirements or documentation required; i.e., proof of driver's license.

All information soliciting apprenticeship applicants should also include a statement of non-discrimination. The correct pledge is:

> The recruitment, selection, employment, and training of apprentices during their apprenticeship shall be without discrimination because of race, color, religion, national origin, sex, age, creed, handicap, marital status, ancestry, sexual orientation, arrest record, conviction record, or membership in the military forces of the United States or this State.

The local committee must take affirmative action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required under Title 29 of the Code of Federal Regulations, Part 30 (as amended), the Wisconsin Fair Employment Law and all other applicable State laws which is DWD 296 in Wisconsin.

All notices and/or letters of denial shall include a statement regarding the appeal process; such as, "Should you feel that the recommendation or action by the Local Apprenticeship Committee is contrary to applicable policies, committee standards or Wisconsin apprenticeship rules, you have the right to file an appeal with the Wisconsin Department of Workforce Development, Bureau of Apprenticeship Standards, P.O. Box 7972, Madison, WI 53707, stating which rules or laws or procedures you believe were violated."

It is recommended that local committees use the standard BAS application forms for both apprentice applicants and employer applicants. All other

application forms used by the Committee must be approved by the BAS before implementation.

Once all application requirements have been met and the applicant is approved for placement with an employer, a copy of the application must be sent to the BAS Apprenticeship Representative (ATR) for that Committee.

The Selection Process

In order to place apprentices, each local committee must have an approved Selection and Placement Procedure. All selection procedures must be geared towards ensuring uniformity and fairness to all applicants. With Wisconsin Administrative Rules and Federal Equal Opportunity Standards for Apprenticeship Programs in mind, guidelines are set forth under DWD 296.06.

Any changes made after approval, must also be submitted and approved by BAS, in writing, prior to implementation. This includes items, such as; a change in tests or modification of interview questions. Generally changes are approved for one year only. The BAS ATR will then determine if the change has caused an adverse impact on a specific group of applicants. Again all changes must first submitted to the local BAS ATR for review. Once reviewed and approved at the local level, they will be submitted to the BAS Bureau Director for review and approval.

At a minimum, each Committee must include the following information in their Selection Procedures:

- All Qualification Factors including educational level, assessment requirements, and any other qualifications used by the Committee;
- Application Forms;
- Selection Process; and
- Oral Interview information, if applicable

In Wisconsin, the construction trades use two general methods for the actual placement of apprentices in jobs; the rank-order list method and the letter of introduction method. In the rank-order list method, the committee creates a list of candidates based on their cumulative scores on written examinations and oral interviews. In the letter of introduction method, applicants who meet basic requirements are given a letter from the sponsoring committee stating that they are eligible to be hired as apprentices. Applicants must then find an employer who participates in the apprenticeship program to hire them.

Ranked List

If a **ranked list** is the approved method, the selection procedures must include the minimum standards set by the Committee to appear on the list. These factors may include: meeting a minimum legal age; meeting minimum standards set by the Committee; meeting the minimum score on a test; results of an aptitude test score on items directly related to job performance; educational attainment or achievement in relevant coursework.

If the Committee conducts oral interviews, a copy of the questions must be approved by BAS and included as part of the selection procedures. The following guidelines must be used in developing questions for the oral interviews:

- Use the same questions for all applicants
- Use only questions that are job related
- Use questions to further determine the respective fitness of applicants to do the work if the required fitness is directly related to the work.

Follow-up questions are not permitted unless used to clarify an applicant's response to a question. Members of the interview must not make personal notations on an applicant's questionnaire.

There may be some instances when the issue of disabilities is raised. Committees must include information regarding reasonable accommodations for the applicant, if the applicant raises this as an issue.

Following these interviews, a summary of conclusions must be prepared and a ranking of candidates deemed "eligible" shall be made.

Ineligible applicants must be given a written statement of why they were ineligible and notified of their appeal rights.

In the case of the ranked list, if an employer requires an apprentice in a special category, applicants may be bypassed for the highest ranking apprentice applicant in that special category. Examples include women, minorities or residency requirements. Employers must have an Affirmative Action Plan in place which identifies the underutilization of employees in one of these potential categories or can show proof of these requirements for the job awarded to the employer.

Letter of Introduction

If the **Letter of Introduction** is the approved method of selection, copies of the letter and corresponding procedures must be approved by the Bureau.

In addition, DWD 295.10 (2) Family-owned construction business allows an owner to select a son or daughter who has met the qualification standards for the trade or any person for affirmative action purposes as an apprentice without going through the normal selection procedures. The family-owned construction business must meet minimum qualifications, approved as a trainer and the apprentice applicant must meet the program entrance requirements. Once applicants meet these requirements, they must be registered with the local committee. They do not need to go through the normal selection procedures, required of other applicants.

A dual selection process is prohibited under DWD 296. Only one selection procedure may be used regardless as to how many occupations/trades are used by that committee.

Registration of Apprentices

The Bureau of Apprenticeship Standards (BAS) is the registration agency for apprenticeship programs in the State of Wisconsin. Apprentice registration is the process of making an apprentice applicant an active and approved apprentice. This should not be confused with registering for related classroom instruction. An apprentice applicant does not become an active apprentice until the Apprentice Contract is signed by the apprentice, the sponsor and approved by BAS. Only BAS has authority to approve Apprentice Contracts.

To start the apprentice registration process the local committee must submit the required employer and apprentice applications to the assigned BAS ATR. This provides the basic information in order to prepare the Apprentice Contract and assign the apprentice to the proper employer.

The Apprentice Contract is an agreement between the State of Wisconsin, the apprentice and the local committee acting as the agent of the sponsor that outlines the training program. The contract consists of two parts the contract face page and the Exhibit A (trade information).

The contract face page lists the apprentice and sponsor, the start date and trade name. It states the provisions are binding and the Department (BAS) is the only party to the contract with the authority to approve a cancellation request. It also states the Department will issue a Certificate of Apprenticeship upon successful completion and mandates the apprentice's progress, grades and attendance be released to the sponsor (local committee) and employer while the contract is in effect. The face page is signed by the apprentice, sponsor and BAS Director and states they agree to fulfill the obligations of the contract as required by Chapter 106 of the laws of Wisconsin and the requirements of DWD 295. The following privacy statement is also approved by the apprentice to ensure the apprentice is aware information in the contract may be used for other reasons:

> *Personal information you provide may be used for secondary purposes [Privacy Law, s 15.04(1)(m) Wisconsin Statutes].*

The Exhibit A (trade information) in the Apprentice Contract consists of seven (7) separate sections, of which five are stated by law. Each must be approved by BAS.

- **EXTENT OF TERM OF APPRENTICESHIP and PROBATIONARY PERIOD:** This section states the term of the apprenticeship program which may be stated in hours, months or years, competencies or hybrid which is a combination of time and competencies. In the construction industry it is the usual practice to state the term in years,

with a minimum number of hours. This section also includes the length of the probationary period, is required with each new Apprentice Contract. All apprentices serve one probationary period per Apprentice Contract. It can be stated in months or hours but cannot exceed 25% of the term of the apprenticeship, and in no case exceed twelve calendar months. During the probationary period apprenticeship agreements are voidable by either the apprentice or the sponsor upon written notice to the BAS.

- **SCHOOL ATTENDANCE:** States the minimum number of hours the apprentice will attend trade paid related school instruction through the Wisconsin Technical College System or other institution approved by the BAS. It mandates that the employer must pay the apprentice the same rate per hour for attending related school instruction as for services performed.
- **WORK PROCESS SCHEDULE:** Outlines the different phases of training with the approximate hours needed in each area for the apprentice to receive a well-rounded education in all facets of the trade. The hours of paid related school instruction are listed on the schedule along with the hours of on the job learning for a total of the apprenticeship program hours. The training need not be given in sequence and time on specific operations need not be continuous.
- **MINIMUM COMPENSATION TO BE PAID:** Displays the wage progression of the apprenticeship. This progression should provide for a graduated scale progressing in periods based on hours or months in the apprenticeship program stating percentages of the base skilled wage rate paid to the apprentice. An Apprentice Contract wage scale is deemed adequate when, during the term of training, it averages at least 60% of the current base skilled wage rate.
- **CREDIT PROVISIONS:** Apprentices may be granted credit for previous work or school experience. (Such credit should only reflect actual work time that relates directly to the trade or school time relating directly to the trade related instruction.) Credit should be granted prior to the end of the probationary period or as soon as a proper evaluation can be made. All credit for all previously contracted time at the trade (school and work) in an approved Wisconsin apprenticeship program must be granted to the apprentice unless there are extenuating circumstances and the credit is not approved by the BAS. This credit (unless not approved) must be applied at the beginning of the contract. If application of the credit advances the apprentice to a higher wage, then that wage must apply.
- **SPECIAL PROVISIONS:** This section of the Apprentice Contract is often used to describe extra requirements; such as. additional unpaid schooling, tool purchases, CPR/First Aid and bonuses paid to apprentices upon successful completion.

The apprenticeship registration process is concluded when the Apprentice Contract is signed by the required parties and approved by BAS. The BAS

Administrative Office sends copies of the approved contract to all parties involved. Copies are sent to the apprentice, employer, local committee and assigned school.

Apprentice Evaluation and Credit

The responsibility of the local committee to recommend the application of credit/advancement and conducting apprentice evaluations during the term of apprenticeship are found in the following documents: 1) Chapter DWD 295.07 (3)(1)Wisconsin Administrative Code; 2) the Apprenticeship Manual; and 3) State and Local Trade Standards. The process used by local committees to accomplish apprentice evaluations and the application of credit varies by committee.

All local Committees are required, at a minimum, to:

- Review the progress of each apprentice prior to the end of the probationary period, in person (work and school).
- Review each apprentice's progress at least annually during the term of apprenticeship both work and school (at least two (2) times in person).
- Verify periodically that adequate work and school records are being kept for each apprentice.
- Document the review, in writing, and maintain such record as part of the apprentice's official record.
- Ensure that apprentices meet the requirement of work processes related to the trade information sheet and safeguard the training of apprentices on-the-job.
- Inform all parties to the contract of the committees' recommendations.
- Recommend credit for prior work and school experience to the Bureau.
- Meet the requirements of the Schedule of Work Processes included in the Apprentice Contract.
- Adopt a policy consistent with State standards to measure trade proficiency assessment/testing (for work experience and course work) to be utilized in the determination of credit recommendations to the Bureau for prior experience/education.
- The local committee has the responsibility to inform parties to the contract of their right of appeal to the Bureau.

Amending An Apprentice Contract

Terms of the Apprentice Contract may be modified upon approval of the Bureau. If a committee or an apprentice wishes to amend any terms of the contract, such as; the addition or deletion of related instruction courses and/or hours, the Committee must submit the request to BAS. BAS will review the request and notify the committee within 90 days.

Transfer An Apprentice Contract

In order to provide increased flexibility for an apprentice to continue his or her apprenticeship program, DWD 295 allows for the transfer of an apprentice contract between apprenticeship programs.

Before a transfer can occur, all parties to the contract must agree to the transfer. The transfer must be to the same occupation and the transferring apprentice must be provided a transcript of related instruction and on-the-job learning by the original committee.

If the apprentice has not completed his/her original probationary period, he/she may be required to complete the remaining hours of that original probationary period. If the apprentice has completed his/her original probationary period, an additional probationary period may be required. The maximum allowable new probationary time can be up to 25% of the remaining term, not to exceed one calendar year.

Application of Credit

The committee may recommend to the Bureau, the application of credit to an existing apprentice contract at any time during the apprenticeship following the conditions listed below. Any party to the Apprentice Contract may forward a request for credit to the committee (apprentice, employer, the Bureau or the committee). Third parties may supply supporting information to the committee for consideration in the determination process (i.e., educational institutions, former employers, etc.).

- Work and school hours earned, under a Wisconsin apprenticeship, in the same trade must be applied if requested. All credit earned under a prior apprentice contract in the same trade must be given to the apprentice under the new or transferred contract, unless extenuating circumstances are approved by BAS. If the committee is requesting denial of credit application, the denial must be justified in writing to the Bureau for final disposition.
- Credit requests made at the outset of an apprenticeship must be applied or denied during the probationary period of the contract.
- If the BAS approves the committee's recommendation of credit and such credit advances the apprentice to a higher wage, then that wage must apply. The new wage must be reflected in the next available pay period following the credit approval.
- All credit recommendations of the committee, approved or denied, must be made in writing and forwarded to the Bureau. The Bureau will inform all parties of the approval/denial of credit, in writing.
- Third parties will be notified of approval/denial if necessary or required (i.e., related instruction providers in the case of school credit, Veterans Administration, Industry Training Directors, etc.).
- School credit may only be granted as a result of prior transcripts and documented educational experiences.

Evaluation, Outcomes & Recommendations

Evaluation Tools listed below are commonly used by the local committees as part of the evaluation process:

- Reports from school including attendance, progress and grades.
- Employer reports may include mechanical ability, workmanship, cooperation, initiative, ability to take direction, attendance and any other relevant considerations. It is important that employers do not complete the review forms and state "layoff—lack of work" when the apprentice has performance problems.

  It is the responsibility of the local committee to obtain apprentice evaluations from the employer to which the apprentice is assigned. The forms used for the evaluation must be nondiscriminatory and approved by the Bureau of Apprenticeship Standards prior to their use.

  Discuss the importance of the reports with your approved trainers (employers) so they understand the importance of these evaluations. Evaluations must be completed truthfully by the employer and shared with the apprentice, especially when there is a possibility that disciplinary action may be taken by the Committee as a result of the evaluations.

- Apprentice Training Guidelines (Job Books)- identify skills required for the occupation and its related training program.

  These Training Guidelines have been written in statements, which describe how well an apprentice must perform each skill in order to become competent, and complete his/her apprenticeship.

- Review of any other formal work and/or education records

Based on this review, the Local Committee may:

- Recommend pay increase.
- Indicate the apprentice is making satisfactory progress toward completion of the Apprentice Contract.
- Recommend the completion of the apprenticeship.
- Recommend the reassignment of the apprentice to another employer to gain work experience not provided by the currently assigned employer.
- Recommend disciplinary action (including remedial classes or additional night school classes) for unsatisfactory progress (cancellation, unassignment, additional schooling, withhold pay increase, etc.).
- Withhold further pay increases.

Disciplinary Procedures

Apprentices may be subject to disciplinary procedures, specified in writing in local committee program standards. Examples of disciplinary action may include failing to make satisfactory progress or failing to meet their responsibilities in the apprenticeship program.

Behaviors that could lead to disciplinary action include, but are not limited to:

- Failure to submit on-the-job learning records (OJL cards) as required.
- Failure to fulfill all paid related and unpaid related instruction requirements.
- Unsatisfactory grades for related instruction courses, either paid or unpaid.
- Unsatisfactory attendance (including tardiness) for related instruction courses, either paid or unpaid.
- Unsatisfactory attendance (including tardiness) at the job site.
- Accepting or soliciting employment with a contractor without local committee authorization.
- Working for pay at the trade and outside of the apprenticeship program while an apprentice.
- Failing to abide by safety procedures.
- Failure to follow written work rules and procedures established by the employer.
- Disruptive behavior on-the-job or in related instruction, either paid or unpaid.
- Failure to follow the directions of the foreman or supervisor (insubordination).
- Leaving employment without consulting with the local committee.
- Failure to attend local committee meetings when notified.
- Failure to meet local committee requirements.

Conducting the Disciplinary Meeting

Local committees must specify their disciplinary procedures in their standards or their policies. Many have a scale of progressive disciplinary actions for apprenticeship work rules or performance failures. These policies and procedures must be approved in writing by BAS.

Conducting a Disciplinary Meeting

There are times when the local committee must request the appearance of an apprentice for disciplinary purposes. These reasons include failure to progress at work or at school, late work record cards, or tardy at work or school to mention a few. It is the responsibility of the local committee to collect the information related to the issue, so the committee can make a recommendation to BAS that is factual.

The apprentice may be represented by an advocate/mentor at the meeting. The advocate may be the apprentice's union

representative, attorney, employer, mentor, parent or another party designated by the apprentice.

Pre-meeting Activities

Identify the Issue

Review the facts related to the reasons for the apprentice's appearance. Don't take any actions or recommend any action before the apprentice's appearance. Determine who needs to be at the meeting and who needs to report.

For example, if the issue is apprentice grades or conduct in related instruction class, you may need to invite the instructor. Ask the instructor to bring a printout of grades; his/her grade book or other documents relevant to the issue. The technical college apprenticeship coordinator may also want to be involved to discuss the school's grading policy or other school policies affecting the issue, including appeal procedures.

Although it is preferable that the instructor appear in person, there are times when he/she is unable to attend. In this case the instructor should be asked to provide written documentation regarding the issue being discussed at the meeting.

If the meeting is concerning a work issue, invite the employer as it is preferable that the employer or employer's representative appear in person. If the employer is unable to appear, ask the employer to provide documentation concerning the issue.

The Committee's Training Coordinator may want to brief the Committee concerning past actions and details relating to the issue. If the Coordinator, the Committee, or other party has pre-appearance notes relating to the issue, such as, a summary of events, these notes are not part of the official record and may be destroyed, unless they are kept with the official meeting records.

Identify a Lead Member

At the time of the local committee briefing, determine which committee member will take the lead at the committee meeting. It is recommended that only one committee member should take the lead in questioning the apprentices. Others may ask follow-up questions for clarification only. This lead role may be rotated among the various committee members.

Set the environment of the meeting room so the apprentice feels free to discuss the issue. Consider the number of people who will be present in the room, seating positions, etc. If this is the apprentice's first appearance before the committee, introduce yourselves. It is good practice to have name tents for each of the committee members.

During the Disciplinary Meeting

Treat all information gathered at the meeting confidentially. During this portion of the meeting, is under a closed session and all information discussed is confidential. This information must not be shared outside of the committee meeting.

Begin the discussion with the apprentice with a question, such as, "Can you explain to the committee why you are here?" If the apprentice responds in the negative, review the notification letter sent to the apprentice.

Restate the specific issue which is going to be discussed, (i.e.; failure to progress at related instruction—failed the semester test with a score of 55 and 80% is passing.)

Treat the apprentice with respect, use no profane language, do not interrupt and hold no side conversations.

Allow the apprentice enough time to tell his/her side of the story without interruption and without derailing the agenda. However, the apprentice must be guided to stay specific to the issue. It is the role of the designated committee member to take this lead. Try to get the apprentice to take responsibility for his/her actions and acknowledge the needed remedial action. If necessary, share a copy of the Committee's policy or rules relating to the issue, so there is an understanding on the part of the apprentice that the behavior is unacceptable and must be corrected.

Once the apprentice has been able to tell his/her story, questions regarding the issue may be asked. The Committee may then ask the apprentice to leave the room while the issue is being discussed or the committee may inform the apprentice, that he/she will receive the Committee's recommendation in writing at a future date.

If the apprentice presents information during the discussion that needs further discussion or investigation, the local committee may table the issue to gather more information or to defuse the issue. Be consistent with recommended discipline and treat like cases the same.

It is recommended that each local committee have disciplinary procedures and that they follow them consistently.

Role of the Employer During Disciplinary Meeting

Whenever the local committee conducts a disciplinary meeting with an apprentice, it is recommended that the employer is also invited. This will ensure that the employer is aware of the apprentice's difficulties and may be able to provide additional relevant information and assist in correcting the problem, if warranted.

Every matter brought up at the local committee meeting must be denied, approved or tabled. If tabled, the reason must be specific and made as part of the minutes. When discussing the issue, it is important that the committee remain focused on the official matter at hand. It is important to remember that the committee is bound to confidentiality. The committee may not act on hearsay and must rely on first hand facts. These are facts that are personally known or personally witnessed.

There may be some circumstances where a member of the committee may have a conflict of interest in dealing with a specific issue. If there is any borderline involvement, then the committee member must recuse him or herself, this could involve a relative, friend or the member could be the employer.

In addition, BAS has the authority to recuse a member if there is any perception that there might be a conflict of interest. This means that the committee member may or may not be asked to leave the room and is unable to vote on this issue.

After the Committee has decided on a plan of action, determine who will follow-up on the action, especially for those items that are tabled. Also, ensure that the minutes are concise, timely and accurate.

Role of BAS Staff at the Disciplinary Committee Meeting

It is the role of the ATR to ensure the Committee is following apprenticeship law, Chapter 106, rules and proper procedures. The ATR is to provide technical assistance and advice to the Committee regarding committee activities. The ATR must also confirm that the meeting minutes are accurate and reflect the true activities which occurred at the meeting.

Use of Last Chance Agreements

Last chance agreements may be used to explain to apprentices the expectations and consequences of specific behavior and actions of the apprentice. It may be issued when the committee would like to provide apprentices one last chance to complete their apprenticeship program. The last chance agreement must address specific areas of concern and how the committee expects the apprentice to behave in the future. For example, if the committee is concerned about the apprentice's attendance at related instruction the last chance agreement would address the related instruction issue and that the apprentice must attend all future scheduled related instruction classes, unless excused for a valid reason, or the committee will recommend cancellation.

It should not be used as a motivation tool or a tool to "tune up" the apprentice. It should only be used when the committee is serious enough to offer an apprentice a documented "last chance" to continue in the apprenticeship program.

Impact of Drug Testing

One of the key disciplinary issues that has been raised for the past several years deals with drug testing.

Pre-employment Drug Testing

Local apprenticeship committees may require pre-employment drug testing. If a committee chooses to mandate drug testing there are several guidelines that must be followed:

1) The offer of employment must be made prior to the drug test;
2) The apprentice applicant must not be required to pay for the drug test;
3) All apprentice applicants must be tested at the time of placement, not just selected apprentices.

If a local committee does not wish to implement pre-employment drug testing, employers may implement pre-employment drug testing for their employees, including apprentices.

The issue of payment for the drug test is left up to the local area. The key rule is that, if either the local committee or the employer adopts the policy, the apprentice applicant may not be charged for the test.

Random Drug Testing

It has become more and more common for employers to implement random drug testing. It has also been deemed reasonable for an employer to have a rule that restricts the use of illegal drugs both on the job and off the job.

If an apprentice is sent back to the committee for violation of an employer work rule and the work rule relates to drug testing, the committee must determine the following regarding the work rule:

1) The (employer's) rule prohibits a positive drug test, is known to the apprentice, and spells out the consequences of a positive drug test;
2) The (employer's) rule provides for termination when an employee tests positive and the apprentice has been made aware of the rule;
3) The positive test is valid. To be valid, the test must have been conducted by a laboratory certified by the US Department of Health and Human Services.

If the three (3) conditions are met, Committee may recommend cancellation of apprentice for violation of employer's work rule.

As with pre-employment testing, the apprentice is not required to pay for the test.

Cancellation Procedures

If a local committee wants to cancel an Apprentice Contract, it must request the ATR to send the apprentice a 20 day Intent to Cancel Notice. Copies of the Notice are also sent to the employer, the committee, and the technical college or other approved training center.

This Notice allows the apprentice, or any other party to the Apprentice Contract 20 calendar days to respond, in writing, to the Bureau apprenticeship training representative (ATR) on the form provided by the department. If no written response is received within the time period, the ATR will proceed with the cancellation by sending a Cancellation Notice.

If the ATR receives an objection within the 20-day period the following provisions apply:

1) The response is referred to the local committee for action. If the response contains new information, the committee may request to proceed with the cancellation or may re-interview the apprentice. After the re-interview, the committee may then request to have the Intent to Cancel Notice rescinded or it may recommend proceeding with the cancellation.

2) If the committee recommends cancellation, the ATR will review the facts surrounding the cancellation. If the ATR concurs with the Committee, the ATR will proceed to cancel the Apprentice Contract. This process should take no more than 14 days.

3) The apprentice may appeal this cancellation; however, the apprentice status for the remainder of the process is “cancelled”.

If the apprentice responds after the 20-day period and a cancellation notice has been issued and the reason for the cancellation is NOT subject to a hearing, the ATR will send the appeal to the BAS Administrative Office for review. If after review by the Administrative Office and no changes need to be made, the appeal will be sent to the DWD Chief Legal Counsel per WI Statutes 227.42. The apprentice remains cancelled.

If the apprentice responds after the 20-day period,a cancellation notice has been issued, and the reason IS subject to a hearing, the ATR will send the appeal packet to the BAS Administrative Office for review, and, if needed, a hearing will be scheduled. If a hearing is needed, refer to Chapter 8.

Following are matters which are unrelated to the provisions of the contract which are not appropriate subjects for a hearing under DWD 295:

1. Employee absenteeism or tardiness at work or school;
2. Employee use of drugs or alcohol on-the-job at work or school;

3. Insubordination;
4. Refusal to perform work as assigned;
5. Employee violations of the employer's/sponsor's printed work rules.

Unassignment of Apprentice

An unassignment of an apprentice is a temporary interruption of the apprenticeship program, normally for more than 30 days. The use of the unassigned status is used for the purpose of stopping the time counting toward the apprenticeship and starting it again without the need for an apprentice to go through the application process.

Apprentices are normally placed on unassignment for one of the following reasons:

- Lack of work (layoff);
- Medical reasons;
- Return to school;
- Discipline;
- Temporarily removed from the program;
- Military Service.

If an apprentice needs to be placed on unassignment, the local ATR must be contacted, in writing. The reason for the unassignment must be included in the request. Minutes of a local committee meeting may be used as documentation as a valid request.

The initial unassignment will not exceed one year. However, it may be extended for good cause when approved by the Apprenticeship Training Representative.

Reassignment of Apprentice

When the apprenticeship sponsor is a local committee, the apprentice is reassigned to the employer with a Reassignment Notice. A Reassignment Notice is issued when an apprentice is moved back to active status from unassignment.

Completion of an Apprenticeship

Certifying that an apprentice has satisfactorily completed a registered apprenticeship program is a major responsibility of BAS. Upon receiving necessary documentation, the BAS issues a Certificate of Apprenticeship with a pocket card which verifies completion of a registered apprenticeship program and confirms official journey worker status. These credentials have explicit meaning, recognition and respect in the eyes of federal and state governments, as well as with relevant industries.

The recommendation for completion of an apprenticeship program is generally the responsibility of the Committee. A copy of the written completion request must be retained in the Bureau field offices. The Local Construction Apprenticeship Committees recommend completion of construction apprentices with actions recorded in the Committee's meeting minutes.

The local WTCS school or other approved apprenticeship training center provides verification that an apprentice has satisfactorily completed the required instruction. All related instruction must be reported to BAS, both paid and unpaid. If the technical college does not provide the instruction, the apprentice or sponsor is required to provide that information to BAS; for example, Red Cross Certification, OSHA 10, or OSHA 30.

Based on the Committee's recommendation, the BAS ATR ensures that the terms of the Apprentice Contract have been met regarding satisfactory completion of the term of the apprenticeship program, on-the-job learning (OJL) hours have been met, paid and unpaid related instruction has been completed, current First Aid/CPR training certifications have been obtained, OSHA 10-hour course for construction apprentices has been met, completion of Transition to Trainer course and that the apprentice has successfully learned the trade.

Early completion of an apprenticeship program is considered on an individual basis when the Local Committee and the apprentice file a written request that provides a justification for such action.

Each licensed trade has separate requirements concerning the successful completion of the apprenticeship program. The BAS will issue a Certificate of Apprenticeship and pocket card when specific criteria are met. The following are examples of occupations where specific requirements must be satisfied.

- Plumbing and Sprinkler Fitting: The BAS ATR provides a credential examination letter stating that the apprentice has satisfactorily completed a registered apprenticeship program and is eligible to take the journeyworker plumbing exam or sprinkler fitting examinations. The authority having jurisdiction notifies the BAS office when an apprentice has successfully passed the examination. The examination date is used when the BAS issues the Certificate of Apprenticeship and pocket card.
- Construction Electrician Certification: An electrical apprentice must also successfully pass the journey worker examination prior to completion of a Wisconsin registered construction electrician apprenticeship program. As with Plumbing and Sprinkler Fitting programs, the BAS ATR will provide a credential examination letter to the apprentice stating that the apprentice has satisfactorily completed the registered apprenticeship program requirements and is eligible to take the journeyworker examination. The authority having jurisdiction notifies the BAS office when an apprentice has successfully passed the examination. The examination date is used when the BAS issues the Certificate of Apprenticeship and pocket card.

5. RELATED INSTRUCTION

Related Instruction Assignment

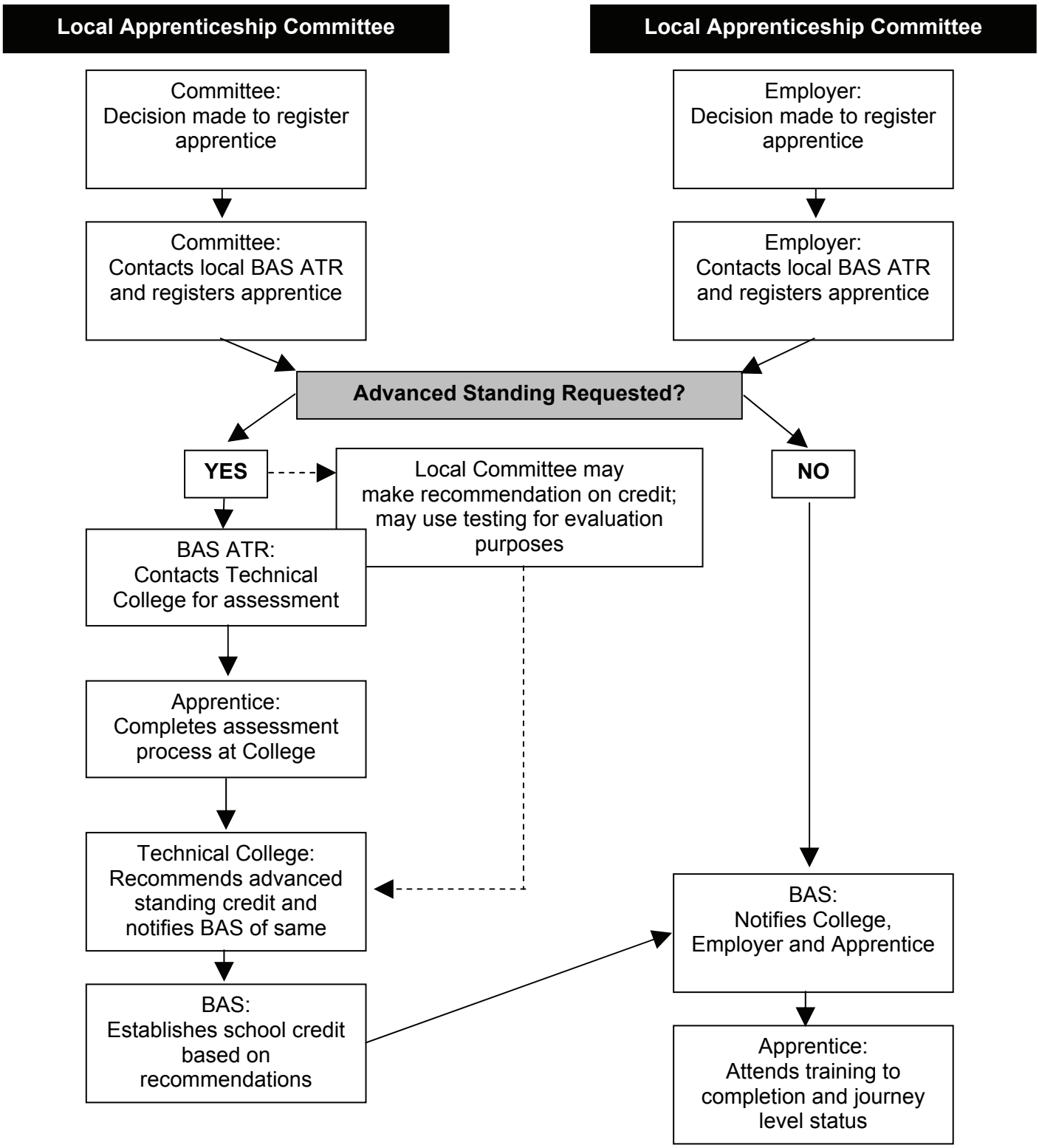
Bureau of Apprenticeship Standards (BAS) Apprenticeship Training Representatives (ATRs) assign apprentices to specific technical college districts or other approved training provider for related instruction purposes. This assignment is generally based on where the apprentice lives, for specific curriculum offerings or based on a local committee recommendation.

If the number of apprentices justifies an alternative form of related instruction with several districts, the Wisconsin Technical College System (WTCS) district apprenticeship coordinators can recommend that the apprentices be grouped together at one designated district or other approved training provider for efficiency. In these cases, an agreement must be reached between the coordinators of all districts, BAS ATR and the affected local committees.

Advanced Standing

Advanced standing must be requested by the apprentice at the beginning of his/her apprenticeship program.

PROCEDURE FOR ESTABLISHING RELATED INSTRUCTION ADVANCED STANDING FOR APPRENTICES



Registration and Release of Information

Technical College districts and other training providers have a reasonable expectation that they will receive timely payment of tuition and books. As a result, technical colleges require a copy of the approved contract prior to the apprentice registering for class. In addition, if apprentices have any delinquent accounts with a technical college, they will not be allowed to register for apprenticeship classes and will be in violation of their Apprentice Contracts.

The registration process differs slightly among training providers. A letter to the employer and the apprentice indicating start date, instruction times, classroom location and costs is sent as far in advance as possible, if appropriate. The apprentice is responsible for the payment of tuition and fees. If the sponsor pays the tuition, the school will request an authorization form to be completed prior to enrollment by the apprenticeship sponsor, which includes the name(s) of the apprentice(s). Regardless of which process is used, technical colleges require a copy of the approved contract prior to the apprentice registering for class.

If an apprentice (or sponsor) has any questions concerning registration, books or other supply issues, he/she should contact the approved training provider for assistance.

When apprentices sign their Apprentice Contract, they give the school the authority to release information to the committee, employer and BAS about apprenticeship classes they have attended. This information will show the hours of instruction and grades received. The phrase on the Apprentice Contract is as follows: “The apprentice's signature authorizes the assigned provider(s) of paid and unpaid related instruction to release progress, grades and attendance reports to the department, sponsor and employer while this contract is in effect”.

Reporting an Absence

When the apprentice is absent from related instruction classes, he/she must inform the employer and the instructor immediately. The BAS ATR, the assigned employer and the local committee must be provided with timely reports, including attendance, as requested. The method of reporting may be mutually agreed on between the school and the local committee. The apprentice will be required to make-up missed classes as per local committee policies and/or training provider policy.

Qualification of Instructors

All individuals who provide instruction to apprentices in the core technical subjects related to the occupation are required to possess specific educational training.

If the instructor is employed by a technical college district, the hiring district will review all instructor applications, conduct interviews, make a selection and then submit the selected candidate's credentials to the WTCS Board

certification officer for provisional certification approval. The WTCS requires that instructors serve an apprenticeship in the trade area they are going to teach and have at least 14,000 hours (7 years) experience at a minimum.

"Adjunct faculty" who teach unpaid related instruction classes also need to be certified. These are typically journey-level workers in the trade and are willing to share their expertise by teaching night classes to apprentices.

If the instructor is not certified by the WTCS, the BAS will review for initial qualifications based on occupational experience. They must have at least seven (7) years experience in the specific occupation and must have taken courses in teaching techniques and adult learning styles. If the instructor does not have the educational training, this instruction must occur within two (2) years of the initial assignment.

6. CONDUCTING AN EFFECTIVE MEETING

Local Committee Meetings and the Open Meetings Law

The State of Wisconsin recognizes the importance of having a citizenry that has full access to government business. State policies and laws are tilted towards making sure that the public is given the fullest and most comprehensive information possible as it concerns the functioning of government. The Wisconsin Open Meetings Law creates a legal requirement and presumption that all meetings of governmental bodies will be held in open session.

Local Construction Apprenticeship Committees are considered an advisory governmental body subject to the Open Meetings Law. Consequently, all Local Apprenticeship Committee meetings and sub-committee meetings are public meetings and must fully comply with the Wisconsin Open Meetings Law.

WI Chapter 19.82(2), defines a meeting as the convening of members of the body for purposes of exercising responsibilities, authority, power, or duties delegated to or vested in the body. If one-half or more of those designated by the Bureau of Apprenticeship Standards (BAS) as members are present, it is presumed to be a meeting of the body. This includes any gathering of Committee members for any formal or informal action, including discussion, decision or information gathering, on matters within the Committee's scope of authority.

The Open Meetings Law grants the public the right to attend and observe the meetings held in open session. An open meeting allows for public access, but does not ensure public participation in the meeting. Discussion can be limited to Committee members, consultants and representatives during an open meeting.

Under the provisions of the Wisconsin Open Meetings Law, the following must be taken into consideration:

- **Accessible meeting locations.** The meeting room must be open to the public and reasonably accessible as defined under the American with Disabilities Act. ·
- **Public meeting notices.** Every committee meeting must be preceded by a public notice at least 24 hours prior to the meeting. This publicly posted notice must include the time, date, place and subject matter of the meeting (which could be a prepared agenda posted with the notice). Notices must be posted at three (3) different locations at least 24 hours in advance of the meeting. Since every notice must also be sent to the official State newspaper, Wisconsin State Journal, the BAS maintains an internal mechanism for providing the newspaper with meeting notices. Meeting notices must

be submitted to the Committee's BAS ATR by the Wednesday of the week prior to the meeting if the Committee wants to use this BAS notification method for the official state newspaper.

Public notice for a meeting shall be given at least 24 hours prior to the meeting. In an emergency situation, this time may be shortened. However, under no circumstances shall the notice be less than two (2) hours.

Wisconsin's Opening Meetings Law applies to every meeting for a governmental body. The Department of Workforce Development has determined that apprenticeship committee meetings are subject to this law. However, the Law does allow committees to go into a closed session under certain circumstances.

Meeting Structure

- **Agenda.** The agenda must be clear and easy for citizens to understand. Any subject matter that may be dealt with in closed session does not need to be detailed or described on the meeting agenda.
- **Miscellaneous business.** It is permissible to place on the agenda an item such as "miscellaneous business" or "other business", which gives the public notice that other items may be considered at the meeting. Topics of importance or wide public interest must be postponed until specific advance notice should be given.
- **Electronic Media meeting.** An electronic media conference including telephone, webinar or other electronic media may be considered "reasonably accessible to the public" if the public and news media can effectively monitor it. This can be accomplished by broadcasting the meeting through speakers that give the public the same access to the discussion as each member of the body participating in the conference call.
- **Closed session.** Wisconsin Statutes 19.84(2) provides an exception that allows for closed sessions. A closed session is one that limits public access. Meetings may only be closed for discussion of specific issues involving an individual apprentice and/or his/her performance evaluation or any other financial, medical, social or personal issues. A closed meeting requires proper notice and must be convened first as an open meeting and then a duly constituted vote of the members present must be held to move into closed session. The Committee may return to an open session from the closed session only if this intention was included in the meeting notice. If the notice specified a reconvene time, the Committee must wait until that time to reconvene in open session. The intent to convene in closed session must be included in the meeting notice and the notice must contain a general description of the matters to be discussed in closed session. Notices that contain closed session provisions should include the state exemption by which the closed session will be held (i.e., "per Wisconsin Statute 19.82(2)").

In addition to local committee members, training coordinators and BAS staff, only individuals directly involved in the issue or at the request of the apprentice or the employer may be in attendance during the closed session portion of the meeting.

All disciplinary issues must be conducted during only during the closed session of the committee meeting.

- **Minutes.** All motions must be recorded in the open session minutes. These minutes must be made available to the public upon request to the Bureau of Apprenticeship Standards. Motions made in closed session that are not of a sensitive nature should be included in the open session minutes. Do not include any details of closed session discussions in the open minutes, but instead should be recorded as "closed session minutes." Closed session minutes are not available to the public or to the news media and should never be distributed in open session.
- **Quorum.** There must be a quorum before any official action may be taken at the committee meeting. For joint committee meetings a meeting quorum exists when at least one employer member and one employee member attends a meeting. Other quorum rules are allowed but not below the one and one minimum. For unilateral or non-joint committee meetings a meeting quorum exists when at least two members are in attendance.

Committee Meeting Checklist

The following checklist can help a Committee schedule, prepare for and conduct meetings. The checklist will also help the Committee track activities and related correspondence required by the actions taken at the meeting.

Before the meeting

- Schedule the date, time and location of the meeting.
- Set the agenda for the meeting.
- Notify all committee members, consultants and representatives of the meeting.
- Send the notice/agenda to BAS representative by Wednesday of the week prior to the meeting.
- If mailing draft minutes along with the new agenda, do not include minutes from the "closed session".
- Post notice/agenda at three designated locations at least 24 hours prior to meeting.
- Distribute and collect evaluation reviews.
- Mail notices to appear to apprentices, employers and applicants.
- Obtain apprentice roster from BAS representative.

At the meeting

- Open in accordance with the Wisconsin Open Meetings Law.
- Take roll call

- Verify that a quorum is present.
- Designate an Acting Chair if the Chair is absent.
- Designate Acting Secretary if the Secretary is absent.
- Approve minutes from the last meeting, both open and closed.
- Take minutes.
- Determine tentative agenda for the next meeting.
- Set next meeting date

After the meeting

- Submit meeting minutes to BAS with required supporting documentation.
- Submit approved applications to BAS for contract preparation.
- Schedule new apprentice orientation.
- Complete any correspondence related to Committee actions.

Sample Meeting Agenda

(Name of Local Committee)
(Address _
street, city, state, zip)
(Local Committee telephone number)

Meeting Agenda

(date, time, place, address and room number of meeting location)

1) Call to order—This meeting is called to order in accordance with Wisconsin's Open Meetings Law.
2) Roll call of Committee members.
3) Review and approval of minutes from last meeting.
4) Reports.
   - Apprenticeship instructor
   - WTCS representative
   - Employee representative
   - Employer representative
   - BAS representative
5) Old business.
6) New business.
7) Affirmative Action report.
8) Communications.
9) Next meeting date.
10) Discussion.
11) Closed meeting portion (motion to close the meeting must be done in accordance with Wisconsin Open Meetings Law). Include time.
    - Applicant interviews.
    - Approval of new apprentice contracts
    - Completion interviews
    - Periodic reviews.
12) Adjournment

Sample Meeting Minutes

Name of Local Committee)
(address _ street, city, state, zip)
(Local Committee phone number)

Meeting Minutes

(date, time, place, address and room number of meeting location)

Call to order: The meeting was called to order at (time) by (name) in accordance with WI Open Meetings Law.

Roll call of Committee members: *List member names and note who was present, who was absent and who was unexcused.*

Review/approval of meeting minutes: The minutes of the (date) meeting were (approved or amended) on a motion by (name), seconded by (name). Motion passed (or failed).

Reports: (Name) reported that (*cover the highlights, but not in great detail*).

Old business: *Describe any "old" business that was taken up by the Committee.*

New business: *Describe any "new" business that was taken up by the Committee (and which was not specifically identified as an agenda item.*

Affirmative Action report: (Name) reported on progress toward meeting AA goals (give details).

Communications: The following communications were received by the Committee: letters from (sender), concerning (subject) and (action taken by the committee).

Next meeting date: The next meeting will be held on (day, date, time, location, etc.).

Discussion: Items for the next agenda were discussed.

Closed meeting: *Any motion to close the meeting must be done in accordance with the Wisconsin Open Meetings Law and so stated in the minutes. The Committee must keep minutes taken from the closed meeting separate from the regular minutes if the information is sensitive and confidential.*

(continued)

Sample Meeting Minutes, pg 2

(Continued)

Applicant Interviews: The following qualified applicants appeared to receive a letter of introduction:
(List names of applicants.)

If the information concerning the applicant is not personal, the business does not have to be part of the closed portion or the minutes treated as confidential.

Apprentice Status Reports
Apprentices laid off
Transfers
Leave of absences
Etc.

Other Actions Recommended
Completions
Unassignments/Reassignments
Cancellations

Approval of New Apprentice Contracts:
The following requests for new Apprentice Contracts were approved: (List the names of applicants, assigned employers, trade and start dates.)

The following requests for new apprentice contracts were denied: (List names of applicants, employers, and reason for denial)

List apprentices' names, employers, action recommended, effective date and reason for action.

Apprentice Reviews:
(Apprentice's name) appeared for a periodic (or special if applicable) review. The apprentice has completed ___ work hours, ____ paid related instruction hours and _____ hours unpaid related instruction hours. All employer and school assessments of the apprentice were satisfactory or unsatisfactory. Include any concerns expressed by the apprentice or the committee. Also include any remedial actions ordered by the committee.

If the committee conducts the wage advancement, include advancement information.

Adjournment: The meeting adjourned at (time).

7. PUBLIC RECORDS LAW AND RECORDS KEEPING

Wisconsin's Public Records Law

Each Local Committee is responsible for maintaining records as required by Wisconsin Administrative Code, DWD 296.08(1). In this context, the local committee is the sponsor.

The text reads as follows:

> **OBLIGATION OF SPONSORS:** Each sponsor shall keep adequate records, including a summary of the qualifications of each applicant, the basis for evaluation or selection or rejection of each applicant, information relative to the operation of the apprenticeship program, including, but not limited to, job assignment, promotion, demotion, lay-off, or termination, rates of pay, or other forms of compensation or conditions of work, and any other records pertinent to a determination of compliance with these regulations, as may be required by the agency. The records pertaining to individual applicants, whether selected or rejected shall be maintained in such a manner as to permit identification of minority and female (minority and non-minority) participants.

Committee Records

Committee meeting minutes and any other correspondence regarding actions taken on any apprentice or applicant must be kept on record by the committee for five (5) years past the last action. In addition, the committee must provide the Bureau of Apprenticeship Standards (BAS) with copies of such records, as requested. Local Construction Committees are considered to be representing the State of Wisconsin when conducting official business and, as such, fall under the requirements of State law.

An individual may look at his or her own records simply by making a request to the Committee or BAS Apprenticeship Training Representative (ATR). The individual may look at, but may not change, any of the wording on the record.

Any other individual may request copies of any correspondence or portions of meeting minutes relating to an individual by making a request in writing to the BAS Director or the Chief of Field Operations. This also applies to closed session records.

Local committee records must be kept five (5) years after the last action.

8. COMPLAINT AND APPEAL PROCEDURES

BAS COMPLAINT AND APPEAL PROCESS

This section does not apply to any complaint concerning discrimination or other equal opportunity issues covered by Chapter 296 or any subject covered by a collective bargaining agreement.

A complaint is a question or request for assistance to solve a problem, or alleged problem, regarding any part of the apprenticeship program. A complaint can be made by anyone and can be received in writing, by telephone or in person.

Complaints are normally handled by the Bureau of Apprenticeship Standards (BAS) Apprenticeship Training Representative who has responsibility for the local committee (or area) under which the apprentice is serving his/her apprenticeship. If the complaint concerns a BAS Apprenticeship Training Representative, the complaint is handled by the Chief of Field Operations. If the complaint is about a member of the Bureau Administrative Office staff, it is referred to the Bureau Director.

The BAS will accept a written complaint from any party to the apprentice contract which alleges that another party to the contract is not in compliance with the contract or which raises a non-contract issue that relates to the apprentice program and that has had a specific impact on the person filing the complaint.

The responsible BAS employee will investigate the complaint and attempt to resolve it in a time frame that is helpful to the complainant. If any follow-up is required, a complaint file is started. This file contains comprehensive notes and any documents obtained during the investigation. If the complaint appears valid and cannot be resolved at the level where it was initially investigated, the entire file is forwarded to the next level of supervision for resolution.

Complaints should be resolved within 20 working days. Records are kept both in paper form and on the Bureau of Apprenticeship Standards Information System (BASIS). Formal complaint files must be retained for a minimum of five years and are purged only with the approval of the Bureau Director.

APPEALS

An appeal is a request made of the BAS for reconsideration of an action or a pending action. An appeal differs from a complaint by virtue of the fact the appeal causes the Bureau to review its actions, or pending actions, whereas a complaint results in the Bureau reviewing someone else's action(s). An appeal may be the result of the Bureau's inability to resolve a complaint to everyone's satisfaction. There are basically two types of appeals:

1. An appeal objecting to the cancellation of an Apprentice Contract. This type of appeal can only be made by signatories on the contract.
2. An appeal on any other decision the Bureau had made or is about to make.

The difference between these two is that Chapter 106 and DWD 295 require a specific process for cancellation. Other appeals may not require the same due process.

Intent to Cancel Notice

DWD 295.20, Enforcement of Apprentice Contracts places the authority for a cancellation action at the Apprentice Training Representative (ATR) level. When a party to the Contract requests cancellation of the Contract, the ATR will send a 20-day Intent to Cancel Notice to all parties to the Contract. The Notice states that the Contract will be cancelled 20 calendar days from the date of the Notice, unless the ATR receives written objection from any party within the 20-day period. The objection must be on a form provided by BAS.

If no objection is received by the expiration of the 20-day period, the Contract is cancelled effective the date shown on the Notice.

The apprentice may file an appeal in writing within 20 days of the final decision. When an appeal is received, the BAS Director will review the appeal and issue a written determination within 40 days of the appeal.

The final written determination may be appealed in writing within ten (10) days by writing to the DWD Legal Counsel who will review the case and issue a final determination.

Hearings

If the determination is made to conduct a hearing, the BAS makes the arrangements for a Hearing Examiner, a date, location, etc., and forwards a copy of the issue(s) to the Examiner. All parties are notified in writing of the hearing. BAS is responsible for all matters pertaining to the hearing, including the calling of witnesses, coordination between involved parties, etc. If the Chief of Field Operations does not have prior knowledge of the facts, he will be the Hearing Examiner. If the Chief has prior knowledge of the facts, a different person will be the Hearing Examiner. BAS also attends all hearings as an expert witness on apprenticeship law, rules and policy, if required.

The Hearing Examiner will only consider information presented at the hearing in reaching a determination. After the hearing, the Examiner must produce written findings and an order in accordance with State Statutes and send the findings to the parties concerned. This decision is final and subject only to Department or judicial review. The Bureau will act immediately upon receipt of the findings to carry out the directives.

Appeal/hearing files are maintained in the Administrative Office for at least five (5) years and are purged only with the approval of the Bureau Director.

WTCS - Complaint and Appeal Procedures

A complaint is a question, concern, or a request for assistance to solve a problem or alleged problem in the apprenticeship program. A complaint can be made by anyone and can be in writing, by telephone or in person.

Complaints

The complaint should be directed to the District Apprenticeship Coordinator or assigned administrator. After the complaint is made, a response will be given in a reasonable amount of time.

If the person that made the complaint is not satisfied with the response, it is suggested that a formal letter be written to the Apprenticeship Coordinator or assigned administrator with a request to have the coordinator's immediate supervisor get involved in the process.

Student Appeals

When a complaint is made by an Apprentice, the apprentice student will follow the appeals process that is outlined in the WTCS District Student Handbook.

9. VETERANS AND THE APPRENTICESHIP PROGRAM

Many military veterans enter Wisconsin apprenticeship programs after their discharge from the military or while serving as an active military reservist. Military veterans who are eligible to collect Veteran's Educational Benefits (GI Bill) may do so while serving their apprenticeship.

This benefit is an entitlement paid directly to the veteran apprentice, not money to the employer to offset cost of training. The benefit rate is at its highest level during the first six month period when apprenticeship wages are lowest. They are paid a reduced rate during the second six-month period, reduced again to a fixed amount for the remainder of the program.

The Bureau of Apprenticeship Standards (BAS) staff assists in completion of the benefit paperwork to ensure that it is completed and submitted properly. An approved apprenticeship contract and the following United States Department of Veteran's Affairs (USDVA) forms are required. These forms may be accessed at http://www.gibill.va.gov/.

- **VA Form 22-1990, Application for Education Benefits.** This is completed by the apprentice or the County Veteran Services Officer (CVSO) and is the actual application for veteran's benefits.
- **VA Form 22-1999, Enrollment Certification.** This form (which must be signed by the apprenticeship sponsor) certifies that the veteran is in an approved apprenticeship.
- **VA Form 22-8794, Designation of Certifying Official(s).** This designates those officials who are authorized to certify enrollment information and monthly verification of apprentice hours. It is completed and signed by the employer or, in the designated committee area, the Local Committee representative or Training Director. This form only needs to be completed once for a sponsor. It needs to be re-submitted only when a change of officials is required.
- V**A Form 22-1995, Request for Change of Program or Place of Training**. This is completed by the veteran if they are changing trades, sponsors or type of program (i.e. college to apprenticeship).
- **VA Form 22-5490, Application for Survivors' and Dependents' Education Assistance.** This is the benefit application for the son, daughter or spouse of a veteran who is either permanently disabled or has died as a the result of a service connected disability.

Wisconsin is one of the leaders in the nation in the number of apprentices receiving benefits and BAS encourages veteran apprentices to apply even if they are unsure they are eligible. This will help ensure that all eligible veteran apprentices will receive this important entitlement. BAS will confirm eligibility status with the US Department of Veterans Affairs. If USDVA can not confirm eligibility, BAS will supply Form 22-1990 which must be submitted by the applicant to USDVA.

10. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION

Positive Work Environment

Maintaining a positive work environment is a major step toward supporting diversity in the workplace for all apprentices. It is important for local committees to be aware of workplace circumstances that can have a negative impact on apprentices' performance.

Changing Workforce

The face of the American workforce is changing. The past decade has seen the greatest wave of immigration since the turn of the last century. Many are people are hardworking, motivated men and women, but they may face adversity when they enter the work place.

- Two out of three new workers in the future will be women and minorities.
- Women will comprise at least 47% of the labor force.
- Hispanics will out number African Americans as the largest minority in our country. In Wisconsin the Asian population is growing even faster than the Hispanic population.
- Caucasian males comprised 83% of the construction labor force in 1986; to maintain that percentage every Caucasian male graduating from high school from now on would have to enter the construction field.
- Currently the average age of a construction worker is in the mid to late 50's. Younger men and women will be entering the workforce to replace these workers.

The values of the average worker have changed significantly over the past several decades which are causing employers to deal with several generations of workers. As employers need to deal with questions of how to help each group work effectively with each other, so do local committees.

Generational Differences

Included in the Guide is a chart that summarizes the characteristics of the current generations in the workforce and their attitudes. It is important to understand and react to the differences. No matter the differences, studies have shown that the vast majority of workers, regardless of their generational roots, want to be proud of the work they do and their organization. Further, they want to be treated fairly, and value harmonious relationships with co-workers.

GENERATIONAL DIFFERENCES

	Veterans (1922-1945)	Baby Boomers (1946-1964)	Generation X (1965-1980)	Generation Y (1981-2000)
Core Values	Hard Work Dedication and sacrifice Respect for rules Duty before pleasure Honor	Optimism Team orientation Personal gratification Involvement Personal growth	Diversity Techno literacy Fun and informality Self-reliance Pragmatism	Optimistic Feel civic duty Confident Achievement oriented Respect for diversity
Education	A dream	A birthright	A way to get there	An incredible expense
Money	Put it away Pay cash	Buy now, pay later	Cautious Conservative	Earn to spend
Work ethic	Hard work Respect authority Sacrifice Duty before fun Adhere to rules	Workaholics Work efficiently Personal fulfillment Desire quality Question authority	Eliminate the task Self-reliance Want structure and direction Skeptical	Multitasking Tenacity Goal oriented Tolerant What's next
Work is …	An obligation	An exciting adventure	A difficult challenge A contract	A means to an end Fulfillment
Leadership style	Directive Command and control	Consensual Collegial	Challenge others Ask why	Unknown (to be determined)
Communication	Formal Memo	In person	Direct Immediate	Email Voicemail
Feedback and Rewards	No news is good news Satisfaction in a job well done	Don't appreciate it Document it Money Title recognition	Sorry to interrupt, but how am I doing? Freedom is the best reward	Whenever I want it, at the push of a button Meaningful work
Messages that motivate	Your experience is respected	You are valued You are needed	Do it your way Forget the rules	You will work with other bright, creative people
Work and Family Life	Ne'er the twain shall meet	No balance Work to live	Balance	Balance

Harassment in the Work Place

Harassment becomes illegal when an employer, supervisor, or co-worker harasses a person because of their race, color, creed, ancestry, national origin, age (40 and up), disability, sex, arrest or conviction record, marital status, sexual orientation or membership in the military reserve. It is offensive, belittling, or threatening behavior directed at an individual or group of employees. The behavior is unwelcome, unsolicited, usually

unreciprocated, and often repeated. Bullying is a form of harassment and also a failure to show respect and courtesy.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature. It is important to note that harassment is in the "eye of the beholder". What might be acceptable to one worker might be offensive and unwelcome to another. The Courts have adopted the "reasonable person" standard in determining if conduct is harassing.

Race, Color, National Origin, and Ancestry. The law dealing with race, color, national origin and ancestry covers all employers, employment agencies, licensing agencies and unions. Although some employment actions may seem to be harsh, they may not be in violation of the law. Adverse treatment violates the law when it is based, at least in part, on a person or group's race, color, national origin, ancestry or other protected class characteristics.

Generally it is the responsibility of the employer to address harassment with its employees. An employer is responsible for its own acts and those of its agents regardless of whether the acts were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of those acts.

However, there may be situations where the local committee needs to conduct an investigation or become involved with these types of situations. Once these situations become known to the committee, the committee must act. Examples include:

- A female apprentice or employee who claims that a committee member or training director made inappropriate sexual advances or remarks;
- A verbal report by one apprentice that another apprentice is being subjected to racial, religious, ethnic or other harassment on the job;
- The apprentice is called before the committee for discipline who claims that there is disparate treatment based on some protected classification (e.g. race, gender, age).

Local committees are covered under all federal civil rights laws for their apprenticeship activities. The laws include:

- Title VII of the Civil Rights Acts of 1964;
- Age Discrimination in Employment Act (ADEA) prohibits discrimination against individuals age 40 or over;
- Americans with Disabilities Act;
- Wisconsin Fair Employment Act;
- DWD Chapter 296;
- Other federal laws, such as, USERRA, dealing with the military service or reserve obligations.

While local committees are advisory to the Bureau of Apprenticeship Standards (BAS) and cannot be held directly liable for actions taken by the committee, there is an expectation that local committees will take action if the committee becomes aware of harassment, discrimination, or other alleged illegal activity. Parties can include training directors, committee members or staff, apprentices, or a third party including contractors, sub-contractors on job sites or the local union. Action means an investigation that the issue and recommendations made to the BAS before any final determination is made.

Although claims can start with a letter from an apprentice, more often the first notice is when the apprentice appears before the committee and makes the allegation. When the apprentice first raises the issue and if it deals with the job site, the first step is to contact the employer with the allegation. This is important because the employer is held accountable for employee actions on a job site.

If the allegation is against an instructor who is employed by a technical college, the committee should contact the local technical college apprenticeship coordinator with the information. Although the committee may or may not be involved in an investigation, the technical college is also responsible for enforcing their own work rules.

Once the allegation has been made, gather the basic information regarding the complaint. Most issues can be investigated and resolved fairly quickly. However, for those cases that are more serious, the committee may want a more formal investigation or may want to turn the case over to the BAS for investigation.

If the committee wants to handle the investigation itself, it is recommended that the investigator has training in EEO issues and interviewing skills. Once the investigator gathers the facts relative to the issue, the investigator must report back to the committee with recommendations. A program is considered to have taken appropriate measures when the alleged harassment stops or the allegation is resolved. In some cases, the allegations are so serious or complicated that the committee may want to turn the case over to BAS. However, in other cases, the apprentice may be satisfied if corrective action is taken. For example, an apprentice complaining that the termination was due to discrimination on the job may be satisfied if he is not assigned to that contractor again and is sent out to another job. The committee should meet and confer with the contractor so corrective action may be taken at the worksite, if appropriate.

It is not uncommon, when someone makes a complaint of discrimination or harassment, for the complainant to ask that the complaint be kept confidential or request that no action be taken. In some situations it is possible to remedy a situation without revealing the identity of the apprentice. For example, a general warning may be given to a class about

inappropriate behavior. At the other extreme, honoring a request for confidentiality or not taking action may prevent that person from later suing, but it does not protect BAS and the local committee if some other apprentice is subjected to the same type of discrimination. BAS Training Representatives (ATRs) are authorized to act on behalf of the local committee. However, in all cases, the local committee needs to know that there have been allegations made, and then decide the scope of the investigation and the appropriate remedial action.

BAS Oversight Responsibilities—DWD Chapter 296

DWD Chapter 296 sets forth the policies and procedures that the Bureau of Apprenticeship Standards will use in the administration of the Apprenticeship Program as it relates to affirmative action. The scope includes the recruitment and selection of apprentices and to all conditions of employment and training during apprenticeship and the procedures established provide for review of the apprenticeship program, for registering apprenticeship programs, for processing complaints and for deregistering noncomplying apprenticeship programs.

It is the obligation of all apprenticeship sponsors, including local committees, to recruit, employ and train apprentices without discrimination. If local committees have a deficiency in the utilization of minorities or females, they must undertake outreach and positive recruitment actions to equalize opportunities for apprenticeship in order to allow for the full utilization of minority and female work potential.

It is the responsibility of the BAS to ensure that apprenticeship programs in Wisconsin are bias free. In order to carryout this responsibility, the BAS shall ensure that:

1. Each local committee has adopted a written affirmative action plan, where appropriate; and
2. Regularly conducts a review of the program.

Affirmative Action as defined in DWD 296 is the guiding force for the BAS in carrying out its responsibilities as it relates to affirmative action. DWD 296.05 (2) states:

Definition of Affirmative Action

Affirmative Action is not a mere passive nondiscrimination. It includes procedures, methods and a program for the identification, positive recruitment, training, and motivation of present and potential minority and female apprentices. It is action, which will equalize opportunity in apprenticeship so as to allow full utilization of minority and female work potential. The overall result to be sought is equal opportunity in apprenticeship for all individuals participating in or seeking entrance to Wisconsin's labor force.

All local committees must have Affirmative Action Plans. In addition, all apprenticeship sponsors, including local committees, must sign a nondiscrimination pledge.

On a periodic basis, the BAS will conduct Compliance Reviews to determine if apprenticeship sponsors are meeting their affirmative action goals and to determine if the sponsor is complying with DWD Chapter 296.

Compliance Reviews must be done on a regular basis. The following four items are evaluated during the Compliance Review:

- Apprentice Selection Procedures;
- Achievement of Affirmative Action Plan, goals and timetables;
- Whether sponsors have made a good faith effort to achieve goals, and timetables if they are not met; and
- Whether records have been adequately kept.

11. AMERICANS WITH DISABILITIES ACT

Wisconsin's Fair Employment Law gives civil rights protection to qualified persons with disabilities. The law applies to virtually all private and public employers, regardless of the number of employees. Under the federal American with Disabilities Act (ADA), disability discrimination is also prohibited for employers having 15 or more employees.

Employers may not discriminate in hiring or promotion if a person with a disability is qualified for the job. Applicants can be asked about their ability to perform the job, but they may not be required to take tests or be asked about any health or disability related questions before receiving a job offer or apprenticeship position. An employer must make a reasonable accommodation unless it would result in a hardship to the business.

Alcoholism and drug addictions are disabilities under state law and a person may not be discriminated against for either reason. Under the ADA, an active user of illegal drugs is not protected although one who is recovering or who is in a supervised drug rehabilitation program is covered under both state and federal laws.

Employers may require employees who use alcohol or have abused drugs to meet the same standards of performance and conduct set for other employees and may prohibit use of illegal drugs and alcohol in workplace.

Because local committees are acting as employers when recruiting and placing apprentices, local committee actions must meet ADA requirements.

Title I of the ADA requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are applicants for employment, except when such accommodation would cause an undue hardship. The law provides for three categories of "reasonable accommodations". The job application process is the one most directly affecting local committees. The others will not be discussed here.

When an applicant decides to request an accommodation, the individual or his/her representative must notify the committee that he/she needs an adjustment due to a medical condition. To request the accommodation, the applicant may use plain English and need not mention the ADA or use the phrase "reasonable accommodation." A family member, friend, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability. The request does not have to be in writing.

The applicant may request the reasonable accommodation at any time during the application process. The ADA does not preclude an individual with

a disability from requesting a reasonable accommodation because he/she did not ask for one when applying for a job or after receiving the job offer.

After receiving the request, the committee may ask the applicant questions concerning what reasonable accommodation is needed and to clarify what the individual needs are of the applicant.

When the disability is not obvious, the committee may ask the applicant for documentation about his/her disability and functional limitations. The committee is entitled to know that the applicant has a covered disability for which he/she needs a reasonable accommodation. If the disability and the need for the accommodation are obvious, the committee cannot ask for documentation.

In addition, the Committee must provide a reasonable accommodation to a qualified applicant with a disability even if it believes that it will be unable to provide this individual with a reasonable accommodation on the job. The law requires an individual to have an equal opportunity to participate in the application process and to be considered for a job unless it can show undue hardship. The Committee should assess the need for accommodations for the application process separately from those that may be needed to perform the job.

There are different rules when an employer may or may not ask disability-related inquiries and require medical examinations for employees and applicants. The ADA limits the ability to make disability-related inquires or require medical examinations at three stages:

1. Pre-offer—at the first stage (prior to an offer of employment) an employer, which in this case means the committee, may not ask any disability-related questions or require any medical examinations, even if they are related to the job. Blood and urine tests to determine the current use of illicit drugs, physical agility and physical fitness tests and polygraph examinations are not considered medical examinations.
2. At the second stage, after an applicant is given a conditional job offer, but before he or she starts work, any employer may ask disability related questions and conduct medical examinations, regardless of whether they are related to the job, as long as it does for all entering employees in the same job category under the American with Disabilities Act.
3. After employment begins, the employer may make disability-related inquiries and require medical examinations only if they are job-related and consistent with business necessity.

When an apprentice is brought before the committee for lack of progress relating to school or work or other issues, it is important that the committee give the apprentice an opportunity to ask for assistance. This is especially important in disability cases because the employee must self disclose any disability. Keep a record of these offers.

12. FAMILY AND MEDICAL LEAVE ACT

FMLA of 1993 (29 USC §2601 et seq; 29 CFR 825) or Section 103.10 WI Statutes, Chapter DWD 225 WI Code

The Family and Medical Leave Act (FMLA) is intended to provide a means for employees to balance their work and family responsibilities by taking unpaid leave for certain reasons. The Act is intended to promote both the stability and economic security of families, and the national interests in preserving family integrity. Because apprentices are part of the workforce, they are covered under the Family and Medical Leave Act.

Wisconsin also has a Family and Medical Leave Law, Section 103.10, Wisconsin Statutes that mirror the Federal law.

Who is Covered

The FMLA is applicable to any employer in the private sector who is engaged in commerce or in any industry or activity affecting commerce, and who has fifty (50) or more employees each working day during at least twenty (20) calendar weeks or more in the current or preceding calendar year.

All public agencies (state and local government) and local education agencies (schools) are covered. These employers do not need to meet the 50 employee test.

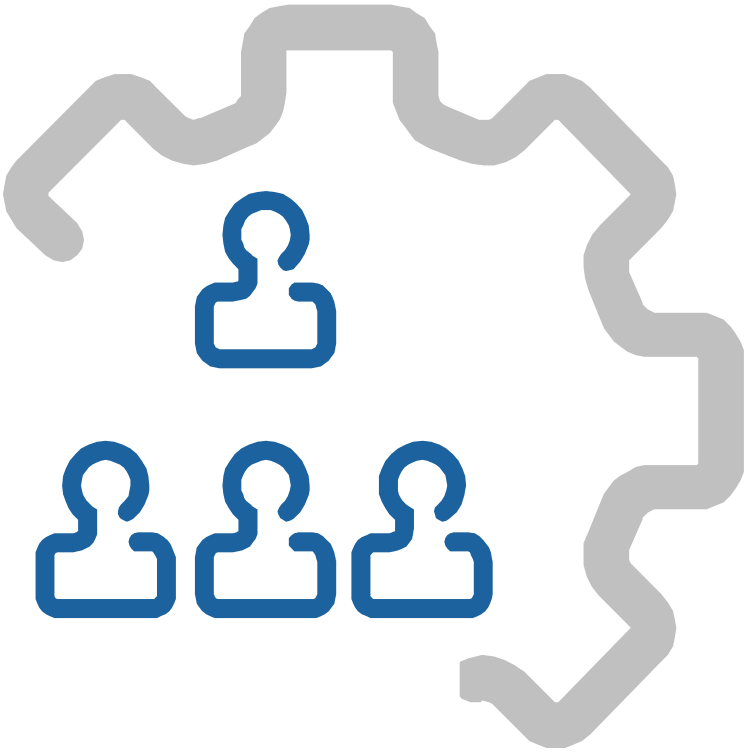
Unlawful Acts

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

Additional Information

The final rule implementing FMLA is contained in the January 6, 1995, Federal Register. For additional information, contact the nearest office of the U.S. Department of Labor, Wage and Hour Division, listed in most telephone directories under federal government. For additional information on the Wisconsin Law, contact the Wisconsin Department of Workforce Development, Equal Rights Division.

Enforcement is by filing a complaint with the Equal Rights Division within 300 days.



13. GLOSSARY

Apprentice—Any person who enters an apprentice contract with the Department of Workforce Development and with a sponsor or with an apprenticeship committee acting as an agent of a sponsor.

Apprentice Contract means any contract or agreement of service, express or implied, between an apprentice, the department, and a sponsor or an apprenticeship committee acting as the agent of a sponsor whereby an apprentice is to receive directly from or through the apprentice's employer, in consideration for the apprentice's services in whole or in part, instruction in any trade, craft, or business.

Apprenticeship Committee—means a joint apprenticeship committee or a nonjoint apprenticeship committee designated by a sponsor to administer an apprenticeship program.

Apprenticeship Program—A program approved by the Department providing for the employment and training of apprentices in a trade, craft, or business that includes a plan containing all of the terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices as required under this subchapter, including the apprentice contract requirements under Wis Stats 106.0.1.

Approved Training Center—Privately funded educational institution approved by the Bureau of Apprenticeship Standards for apprenticeship purposes.

Assignment is the initial placement of an apprentice with an employer.

Apprenticeship Training Representative (ATR) is an employee of the Bureau of Apprenticeship Standards who administers, oversees, regulates and provides technical assistance on the apprenticeship program at the local level.

Bureau—means the Bureau of Apprenticeship Standards within the Department of Workforce Development charged with the oversight responsibilities of Wisconsin's apprenticeship program.

Bureau of Apprenticeship Standards (BAS)—The Bureau is the Registration Agency within the Department of Workforce Development who approves all apprentice contracts in accordance with Chapter 106 of the Wisconsin Statutes.

Cancellation—The termination of the registration or approval status of a program at the request of the sponsor or termination of an Apprentice Contract at the request of any party to the contract.

Certificate of Apprenticeship—A credential issued by the Bureau of Apprenticeship Standards certifying that the apprentice has met the program requirements set forth in the Apprentice Contract.

Chapter 106—The section in the Wisconsin Statutes that covers Apprentice and Employment Programs.

Credit—is the application of work/school hours against the total of the term of an apprenticeship, to an existing apprentice contract.

DACUM—**D**esigning **a Cu**rriculu**m**-- An occupational analysis performed by expert workers in the occupation which can be used for instructional program planning, curriculum development, training materials development, organizational restructuring, employee recruitment, training needs assessment, career counseling, job descriptions, competency test development, and other purposes.

Department of Workforce Development—Is the state registration agency for purposes of apprenticeship registration under state and federal regulations.

Employer—Any person employing an apprentice whether or not the person is a party to an apprentice contract with an apprentice.

Exhibit A—Part of the Apprentice Contract that provides the requirements of the apprenticeship training.

Evaluation—is the process by which the local committee determines the relative progress of an apprentice during the term of an apprenticeship. The above is accomplished using written records and may include an interview of the apprentice by the committee.

Local Apprenticeship Committee— means an apprenticeship committee to which the department has to delegate the authority to act under Administrative Code DWD 295.02 and 295.03.

Office of Apprenticeship (OA)—is the office designated by the Employment and Training Administration of the US Department of Labor to administer the national apprenticeship system or its successor organization.

OJL-.on the job training/learning provided by employers during the apprenticeship.

OSHA—Occupational Safety and Health Administration. The designated federal agency that oversees on-the-job safety issues.

Probationary Period—The defined period of time during which any party to the Apprentice Contract may terminate the Apprentice Contract without stated cause.

Provisional Registration-- is the initial approval of a newly registered apprenticeship program that meets the required standards for program registration.

Progressive Wage Scale—A progressive schedule of wages to be paid to the apprentice consistent with the skills acquired.

Ratio—An established number of apprentices to journey workers permitted for each employer, consistent with proper supervision, training, safety, and continuity of employment upon completion.

Related Instruction means an organized and systematic form of instruction designed to provide the apprentice with the knowledge of the theoretical and technical subjects related to the apprentice's occupation. Such instruction may be given in a classroom, through occupational or industrial courses, or by correspondence courses of equivalent value, electronic media, or other forms of self-study approved by the department.

In Wisconsin, there are two types of related instruction:

- Paid Related Instruction—Classroom instruction, paid by the employer, is required by each apprenticeship program. The required hours are reflected in the Apprentice Contract.

- Unpaid Related Instruction—An apprentice contract contains language in the special provisions, requiring an apprentice to take additional instruction on their own time in excess of the paid hours required by law.

Special Provisions—Special section of the Apprentice Contract that is used to describe additional requirements during the apprenticeship period. Most often it is used to describe the additional unpaid related instruction.

Sponsor—Any employer, organization of employees, association of employers, committee or other person operating an apprenticeship program and in whose name of the apprenticeship program is approved by the Department

Standards—written plans defining the terms and conditions of employment, training and supervision of apprentices.

State Trade Committees—These statewide committees consist of employee and employer representatives. Their purpose is to formulate

minimum State standards for their specific trade, review them every five years and make recommendations for changes to the Department.

Term of Apprenticeship— All apprenticeship programs must have a term (period). There are three (3) options; competency based, time based or a hybrid which is a combination of competency and time based.

Trade Information-- The tasks that the apprentices must demonstrate proficiency before a completion certificate is granted. They will be outlined in the local program standards.

Transfer means a shift of apprenticeship registration from one program to another where there is agreement between the apprentice and the affected apprenticeship committees or program sponsors in the same occupation.

Unassignment means the temporary interruption of an apprentice contract.

Wisconsin State Apprenticeship Advisory Council—The Advisory Council consists of employee and employer representatives and educational representatives. The Council's mission is to provide advice to the Department on matters involving the Wisconsin Apprenticeship System.

Wisconsin Technical College System—A publicly funded system of 16 local technical colleges who provide apprenticeship related instruction as outlined in the apprentice contract.

Work Processes (Trade Information)—The tasks that the apprentices must demonstrate proficiency before a completion certificate is granted. They will be outlined in the local program standards.

14. ACRONYMS

AA/EEO—Affirmative Action/Equal Employment Opportunity

ABC—Associated Builders & Contractors of Wisconsin, Inc.

ADA—Americans with Disabilities Act

AFL-CIO—American Federation of Labor-Congress of Industrial Organizations

ATR—Apprenticeship Training Representative

BAS—Bureau of Apprenticeship Standards

CBO—Community Based Organization

CPR/CCR—Cardiopulmonary/ Continuous Compression Resuscitation/

DACUM—Developing A Curriculum

DOL—Department of Labor

DWD—Department of Workforce Development

FMLA—Family Medical Leave Act

JAC—Joint Apprenticeship Committee

OA—Office of Apprenticeship

OJL-On-the-Job Learning

OJT—On-the-Job Training

OSHA—Occupational Safety & Health Administration

PRI—Paid related instruction

TABE--Tests of Adult Basic Education

TAG—Technical Assistance Guide

URI—Unpaid related instruction

VA—Veterans Administration

WTCS—Wisconsin Technical College System

WTCSB—Wisconsin Technical College System Board

15. WISCONSIN OPEN MEETINGS LAW

The State of Wisconsin recognizes the importance of a public informed about governmental affairs. As a representative of a "governmental body" local committees and local committee members are subject to Wisconsin's Open Meetings Law. The WI Department of Justice has produced a Compliance Guide which is included here to provide detail to information contained elsewhere in this TAG. The table below provides TAG pages to help you find information on key concepts:

Note: Original WI DOJ document has been inserted and contains its own table of contents and page numbers.

Topic	Page (TAG)
Are Apprenticeship Committees subject to the Open Meetings Law? Yes. There is a specific statutory reference in the open meetings law, which states, "Joint apprenticeship committees, appointed pursuant to Wis. Adm. Code provisions,are governmental bodies and subject to the requirements of the open meeting law. 63 Atty. Gen. 363."	Page 102
What is a governmental body? A governmental body is any state or local agency, board, commission, council, department, or public body corporate and politic that has been created by constitution, statute, ordinance, rule or order.	Page 78
What constitutes a meeting? A meeting occurs whenever a convening of members of a governmental body satisfies two requirements: (1) there is a purpose to engage in governmental business and (2) the number of members present is sufficient to determine the governmental body's course of action.	Page 80
What format might a meeting take? The phrase "convening of members" in Wis. Stat. § 19.82(2) is not limited to situations in which members of a body are simultaneously gathered in the same location, but may also include other situations in which members are able to effectively communicate with each other and to exercise the authority vested in the body, even if they are not physically present together. For example, a meeting can occur via written correspondence, telephone conference call, or electronic communication.	Page 81
Meeting Notices. Notice must be given to the public, news media if they request it, an official newspaper (if exists). The public notice must be posted in one or more places within the Committee's jurisdiction, but three are recommended. The notice of the meeting must include a closed session if known about in advance. A last-minute closed session may be used to discuss item(s) within the notice of an open session.	Page 87
Open Session Requirements Meetings must be open to all persons, except when closed for a specific purpose according to the law. Reasonable efforts must be made to accommodate person who wish to record, film or photograph the meeting, so long as those acts to not interfere with the meeting or attendees.	Pages 88
Minutes A record must be kept of motions and roll call votes at any meeting. Detailed minutes are not required. Consent agendas and single-motion approval of consent agenda items are likely insufficient for the law. No secret ballot may be used for election or decision, except the election of officers of that body.	Page 90
Authorized Closed Sessions There are 13 Open Meetings exemptions allowing closed session, including judicial hearings, employment/licensing issues, and consideration of personal information. A majority vote must occur to convene in closed session after topic and statutory exemption claimed are announced in open session.	Pages 92
Who may Attend a Closed Session Members of the committee may attend a closed session of the committee unless the rules of the committee provide otherwise.	Page 96
Penalties Any member of the committee who knowingly attends a meeting held in violation of the open meetings law is subject to a forfeiture of between $25 and $300 for each violation. Any action taken at a meeting held in violation of the open meetings law may be voided by the court. Exceptions exist to both.	Page 98

WISCONSIN
OPEN MEETINGS LAW

A COMPLIANCE GUIDE

August 2010

DEPARTMENT OF JUSTICE
ATTORNEY GENERAL J.B. VAN HOLLEN

Effective citizen oversight of the workings of government is essential to our democracy and promotes confidence in it. Public access to meetings of governmental bodies is a vital aspect of this principle.

Promoting compliance with Wisconsin's open meetings law by raising awareness and providing education and information about the law is an ongoing part of the mission of the Wisconsin Department of Justice. Citizens and public officials who understand their rights and responsibilities under the law will be better equipped to advance Wisconsin's policy of openness in government.

Wisconsin Open Meetings Law: A Compliance Guide is not a comprehensive interpretation of the open meetings law. Its aim is to provide a workable understanding of the law by explaining fundamental principles and addressing recurring questions. Government officials and others seeking legal advice about the application of the open meetings law to specific factual situations should direct questions to their own legal advisors.

This Compliance Guide is also available on the Wisconsin Department of Justice website at *www.doj.state.wi.us*, to download, copy, and share. The website version contains links to many of the opinions and letters cited in the text of the Guide.

As Attorney General, I cannot overstate the importance of fully complying with the open meetings law and fostering a policy of open government for all Wisconsin citizens. To that end, I invite all government entities to contact the Department of Justice whenever our additional assistance can be of help to you.

J.B. Van Hollen
Attorney General
August 2010

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WISCONSIN
OPEN MEETINGS LAW[1]

I. POLICY OF THE OPEN MEETINGS LAW.

The State of Wisconsin recognizes the importance of having a public informed about governmental affairs. The state's open meetings law declares that:

> In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.

Wis. Stat. § 19.81(1). [2]

In order to advance this policy, the open meetings law requires that "all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law." Wis. Stat. § 19.81(2). There is thus a presumption that meetings of governmental bodies must be held in open session. *State ex rel. Newspapers v. Showers*, 135 Wis. 2d 77, 97, 398 N.W.2d 154 (1987). Although there are some exemptions allowing closed sessions in specified circumstances, they are to be invoked sparingly and only where necessary to protect the public interest. The policy of the open meetings law dictates that governmental bodies convene in closed session only where holding an open session would be incompatible with the conduct of governmental affairs. "Mere government inconvenience is . . . no bar to the requirements of the law." *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 678, 239 N.W.2d 313 (1976).

The open meetings law explicitly provides that all of its provisions must be liberally construed to achieve its purposes. Wis. Stat. § 19.81(4); *St. ex rel. Badke v. Greendale Village Bd.*, 173 Wis. 2d 553, 570, 494 N.W.2d 408 (1993); *State ex rel. Lawton v. Town of Barton*, 2005 WI App 16, ¶ 19, 278 Wis. 2d 388, 692 N.W.2d 304 ("The legislature has issued a clear mandate that we are to vigorously and liberally enforce the policy behind the open meetings law"). This rule of liberal construction applies in all situations, except enforcement actions in which forfeitures are sought. Wis. Stat. § 19.81(4). Public officials must be ever mindful of the policy of openness and the rule of liberal construction in order to ensure compliance with both the letter and spirit of the law. *State ex rel. Citizens for Responsible Development v. City of Milton*, 2007 WI App 114, ¶ 6, 300 Wis. 2d 649, 731 N.W.2d 640 ("The legislature has made the policy choice that, despite the efficiency advantages of secret government, a transparent process is favored").

II. WHEN DOES THE OPEN MEETINGS LAW APPLY?

The open meetings law applies to every "meeting" of a "governmental body." Wis. Stat. § 19.83. The terms "meeting" and "governmental body" are defined in Wis. Stat. § 19.82(1) and (2).

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[1]The 2009 Open Meetings Law Compliance Guide was prepared by Assistant Attorneys General Thomas C. Bellavia and Bruce A. Olsen. The text reflects the continuing contributions of former Assistant Attorneys General Alan M. Lee and Mary Woolsey Schlaefer to earlier editions of the Guide. The assistance of reviewers Sandra L. Tarver, Steven P. Means, Kevin Potter, Kevin St. John, and Raymond P. Taffora, and the technical and administrative support of Connie L. Anderson, Amanda J. Welte, and Sara J. Paul is gratefully acknowledged.

[2]The text of this, and all other, sections of the open meetings law appears in Appendix A.

A. Definition Of "Governmental Body."

1. Entities that are governmental bodies.

a. State or local agencies, boards, and commissions.

The definition of "governmental body" includes a "state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order[.]" Wis. Stat. § 19.82(1). This definition is broad enough to include virtually any collective governmental entity, regardless of what it is labeled. It is important to note that a governmental body is defined primarily in terms of the manner in which it is created, rather than in terms of the type of authority it possesses. Purely advisory bodies are therefore subject to the law, even though they do not possess final decision making power, as long as they are created by constitution, statute, ordinance, rule, or order. *See State v. Swanson*, 92 Wis. 2d 310, 317, 284 N.W.2d 655 (1979).

The words "constitution," "statute," and "ordinance," as used in the definition of "governmental body," refer to the constitution and statutes of the State of Wisconsin and to ordinances promulgated by a political subdivision of the state. The definition thus includes state and local bodies created by Wisconsin's constitution or statutes, including condemnation commissions created by Wis. Stat. § 32.08, as well as local bodies created by an ordinance of any Wisconsin municipality. It does not, however, include bodies created solely by federal law or by the law of some other sovereign.

State and local bodies created by "rule or order" are also included in the definition. The term "rule or order" has been liberally construed to include any directive, formal or informal, creating a body and assigning it duties. 78 Op. Att'y Gen. 67, 68-69 (1989). This includes directives from governmental bodies, presiding officers of governmental bodies, or certain governmental officials, such as county executives, mayors, or heads of a state or local agency, department or division. *See* 78 Op. Att'y Gen. 67. A group organized by its own members pursuant to its own charter, however, is not created by any governmental directive and thus is not a governmental body, even if it is subject to governmental regulation and receives public funding and support.[3] The relationship of affiliation between the University of Wisconsin Union and various student clubs thus is not sufficient to make the governing board of such a club a governmental body. Penkalski Correspondence, May 4, 2009.

The Wisconsin Attorney General has concluded that the following entities are "governmental bodies" subject to the open meetings law:

State or local bodies created by constitution, statute, or ordinance:

- A municipal public utility managing a city-owned public electrical utility. 65 Op. Att'y Gen. 243 (1976).
- Departments of formally constituted subunits of the University of Wisconsin system or campus. 66 Op. Att'y Gen. 60 (1977).
- A town board, but not an annual or special town meeting of town electors. 66 Op. Att'y Gen. 237 (1977).
- A county board of zoning adjustment authorized by Wis. Stat § 59.99(3) (1983) (now Wis. Stat. § 59.694(1)). Gaylord Correspondence, June 11, 1984.

[3] *But see* the discussion of quasi-governmental corporations in section II.A.1.d. of this Guide.

- A public inland lake protection and rehabilitation district established by a county or municipality, pursuant to Wis. Stat. §§ 33.21 to 33.27. DuVall Correspondence, November 6, 1986.

State or local bodies created by resolution, rule, or order:

- A committee appointed by the school superintendent to consider school library materials. Staples Correspondence, February 10, 1981.
- A citizen's advisory group appointed by the mayor. Funkhouser Correspondence, March 17, 1983.
- An advisory committee appointed by the Natural Resources Board, the Secretary of the Department of Natural Resources, or a District Director, Bureau Director or Property Manager of that department. 78 Op. Att'y Gen. 67.
- A consortium of school districts created by a contract between districts; a resolution is the equivalent of an order. I-10-93, October 15, 1993.
- An industrial agency created by resolution of a county board under Wis. Stat. § 59.071. I-22-90, April 4, 1990.
- A deed restriction committee created by resolution of a common council. I-34-90, May 25, 1990.
- A school district's strategic-planning team whose creation was authorized and whose duties were assigned to it by the school board. I-29-91, October 17, 1991.
- A citizen's advisory committee appointed by a county executive. Jacques Correspondence, January 26, 2004.
- An already-existing numerically definable group of employees of a governmental entity, assigned by the entity's chief administrative officer to prepare recommendations for the entity's policy-making board, when the group's meetings include the subject of the chief administrative officer's directive. Tylka Correspondence, June 8, 2005.
- A Criminal Justice Study Commission created by the Wisconsin Department of Justice, the University of Wisconsin Law School, the State Bar of Wisconsin, and the Marquette University Law School. Lichstein Correspondence, September 20, 2005.
- Grant review panels created by a consortium which was established pursuant to an order of the Wisconsin Commissioner of Insurance. Katayama Correspondence, January 20, 2006.
- A joint advisory task force established by a resolution of a Wisconsin town board and a resolution of the legislature of a sovereign Indian tribe. I-04-09, September 28, 2009.
- A University of Wisconsin student government committee, council, representative assembly, or similar collective body that has been created and assigned governmental responsibilities pursuant to Wis. Stat. § 36.09(5). I-05-09, December 17, 2009.

Any entity that fits within the definition of "governmental body" must comply with the requirements of the open meetings law. In most cases, it is readily apparent whether a particular body fits within the definition. On occasion, there is some doubt. Any doubts as to the applicability of the open meetings law should be resolved in favor of complying with the law's requirements.

b. Subunits.

A "formally constituted subunit" of a governmental body is itself a "governmental body" within the definition in Wis. Stat. § 19.82(1). A subunit is a separate, smaller body created by a parent body and composed exclusively of members of the parent body. 74 Op. Att'y Gen. 38, 40 (1985). If, for example, a fifteen member county board appoints a committee consisting of five members of the county board, that committee would be considered a "subunit" subject to the open meetings law. This is true despite the fact that the five-person committee would be smaller than a quorum of the county board. Even a committee with only two members is

considered a "subunit," as is a committee that is only advisory and that has no power to make binding decisions. Dziki Correspondence, December 12, 2006.

Groups that include both members and non-members of a parent body are not "subunits" of the parent body. Such groups nonetheless frequently fit within the definition of a "governmental body"—*e.g.*, as advisory groups to the governmental bodies or government officials that created them.

c. State Legislature.

Generally speaking, the open meetings law applies to the state Legislature, including the senate, assembly, and any committees or subunits of those bodies. Wis. Stat. § 19.87. The law does not apply to any partisan caucus of the senate or assembly. Wis. Stat. § 19.87(3). The open meetings law also does not apply where it conflicts with a rule of the Legislature, senate, or assembly. Wis. Stat. § 19.87(2). Additional restrictions are set forth in Wis. Stat. § 19.87.

d. Governmental or quasi-governmental corporations.

The definition of "governmental body" also includes a "governmental or quasi-governmental corporation," except for the Bradley sports center corporation. Wis. Stat. § 19.82(1). The term "governmental corporation" is not defined in either the statutes or the case law interpreting the statutes. It is clear, however, that a "governmental corporation" must at least include a corporation established for some public purpose and created directly by the state Legislature or by some other governmental body pursuant to specific statutory authorization or direction. *See* 66 Op. Att'y Gen. 113, 115 (1977).

The term "quasi-governmental corporation" also is not defined in the statutes, but its definition was recently discussed by the Wisconsin Supreme Court in *State v. Beaver Dam Area Dev. Corp. ("BDADC")*, 2008 WI 90, 312 Wis. 2d 84, 752 N.W.2d 295. In that decision, the Court held that a "quasi-governmental corporation" does not have to be *created* by the government or *per se* governmental, but rather is a corporation that significantly resembles a governmental corporation in function, effect, or status. *Id.*, ¶¶ 33-36. The Court further held that each case must be decided on its own particular facts, under the totality of the circumstances and set forth a non-exhaustive list of factors to be examined in determining whether a particular corporation sufficiently resembles a governmental corporation to be deemed quasi-governmental, while emphasizing that no single factor is outcome determinative. *Id.*, ¶¶ 7-8, 63 n.14, and 79. The factors set out by the Court in *BDADC* fall into five basic categories: (1) the extent to which the private corporation is supported by public funds; (2) whether the private corporation serves a public function and, if so, whether it also has other, private functions; (3) whether the private corporation appears in its public presentations to be a governmental entity; (4) the extent to which the private corporation is subject to governmental control; and (5) the degree of access that government bodies have to the private corporation's records. *Id.*, ¶ 62.

In adopting this case-specific, multi-factored "function, effect or status" standard, the Wisconsin Supreme Court followed a 1991 Attorney General opinion. *See* 80 Op. Att'y Gen. 129, 135 (1991) (Milwaukee Economic Development Corporation, a Wis. Stat. ch. 181 corporation organized by two private citizens and one city employee, is a quasi-governmental corporation); *see also* Kowalczyk Correspondence, March 13, 2006 (non-stock, non-profit corporations established for the purpose of providing emergency medical or fire department services for participating municipalities are quasi-governmental corporations). Prior to 1991, however, Attorney General opinions on this subject emphasized some of the more formal aspects of quasi-governmental corporations. Those opinions should now be read in light of the *BDADC* decision. *See* 66 Op. Att'y Gen. 113 (volunteer fire department organized under Wis. Stat. ch. 181 is not a quasi-governmental corporation); 73 Op. Att'y Gen. 53 (1984) (Historic Sites Foundation organized under Wis. Stat. ch. 181 is not a quasi-governmental corporation); 74 Op. Att'y Gen. 38 (corporation established to provide financial support to public broadcasting stations organized under Wis. Stat. ch. 181 is not a quasi-governmental corporation). Geyer Correspondence, February 26, 1987 (Grant County Economic Development Corporation organized by private individuals under Wis. Stat. ch. 181 is not a quasi-governmental

corporation, even though it serves a public purpose and receives more than fifty percent of its funding from public sources).

In March 2009, the Attorney General issued an informal opinion which analyzed the *BDADC* decision in greater detail and expressed the view that, out of the numerous factors discussed in that decision, particular weight should be given to whether a corporation serves a public function and has any private functions. I-02-09, March 19, 2009. When a private corporation contracts to perform certain services for a governmental body, the key considerations in determining whether the corporation becomes quasi-governmental are whether the corporation is performing a portion of the governmental body's public functions or whether the services provided by the corporation play an integral part in any stage—including the purely deliberative stage—of the governmental body's decision-making process. *Id.*

2. Entities that are not governmental bodies.

a. Governmental offices held by a single individual.

The open meetings law does not apply to a governmental department with only a single member. *Plourde v. Habhegger*, 2006 WI App 147, 294 Wis. 2d 746, 720 N.W.2d 130. Because the term "body" connotes a group of individuals, a governmental office held by a single individual likewise is not a "governmental body" within the meaning of the open meetings law. Thus, the open meetings law does not apply to the office of coroner or to inquests conducted by the coroner. 67 Op. Att'y Gen. 250 (1978). Similarly, the Attorney General has concluded that the open meetings law does not apply to an administrative hearing conducted by an individual hearing examiner. Clifford Correspondence, December 2, 1980.

b. Bodies meeting for collective bargaining.

The definition of "governmental body" explicitly excludes bodies that are formed for or meeting for the purpose of collective bargaining with municipal or state employees under Wis. Stat. ch. 111. A body formed exclusively for the purpose of collective bargaining is not subject to the open meetings law. Wis. Stat. § 19.82(1). A body formed for other purposes, in addition to collective bargaining, is not subject to the open meetings law when conducting collective bargaining. Wis. Stat. § 19.82(1). The Attorney General has, however, advised multi-purpose bodies to comply with the open meetings law, including the requirements for convening in closed session, when meeting for the purpose of forming negotiating strategies to be used in collective bargaining. 66 Op. Att'y Gen. 93, 96-97 (1977). The collective bargaining exclusion does not permit any body to consider the final ratification or approval of a collective bargaining agreement in closed session. Wis. Stat. § 19.85(3).

c. Bodies created by the Wisconsin Supreme Court.

The Wisconsin Supreme Court has held that bodies created by the Court, pursuant to its superintending control over the administration of justice, are not governed by the open meetings law. *State ex rel. Lynch v. Dancey*, 71 Wis. 2d 287, 238 N.W.2d 81 (1976). Thus, generally speaking, the open meetings law does not apply to the Court or bodies created by the Court. In the *Lynch* case, for example, the Court held that the former open meetings law, Wis. Stat. § 66.77(1) (1973), did not apply to the Wisconsin Judicial Commission, which is responsible for handling misconduct complaints against judges. Similarly, the Attorney General has indicated that the open meetings law does not apply to: the Board of Attorneys Professional Responsibility, OAG 67-79 (July 31, 1979) (unpublished opinion); the Board of Bar Examiners, Kosobucki Correspondence, September 6, 2006; or the monthly judicial administration meetings of circuit court judges, conducted under the authority of the Court's superintending power over the judiciary. Constantine Correspondence, February 28, 2000.

d. Ad hoc gatherings.

Although the definition of a governmental body is broad, some gatherings are too loosely constituted to fit the definition. Thus, *Conta* holds that the directive that creates the body must also "confer[] collective power and define[] when it exists." 71 Wis. 2d at 681. *Showers* adds the further requirement that a "meeting" of a governmental body takes place only if there are a sufficient number of members present to determine the governmental body's course of action. 135 Wis. 2d at 102. In order to determine whether a sufficient number of members are present to determine a governmental body's course of action, the membership of the body must be numerically definable. The Attorney General's Office thus has concluded that a loosely constituted group of citizens and local officials instituted by the mayor to discuss various issues related to a dam closure was not a governmental body, because no rule or order defined the group's membership, and no provision existed for the group to exercise collective power. Godlewski Correspondence, September 24, 1998.

The definition of a "governmental body" is only rarely satisfied when groups of a governmental unit's employees gather on a subject within the unit's jurisdiction. Thus, for example, the Attorney General concluded that the predecessor of the current open meetings law did not apply when a department head met with some or even all of his or her staff. 57 Op. Att'y Gen. 213, 216 (1968). Similarly, the Attorney General's Office has advised that the courts would be unlikely to conclude that meetings between the administrators of a governmental agency and the agency's employees, or between governmental employees and representatives of a governmental contractor were "governmental bodies" subject to the open meetings law. Peplnjak Correspondence, June 8, 1998. However, where an already-existing numerically definable group of employees of a governmental entity are assigned by the entity's chief administrative officer to prepare recommendations for the entity's policy-making board, the group's meetings with respect to the subject of the directive are subject to the open meetings law. Tylka Correspondence, June 8, 2005.

B. Definition Of "Meeting."

A "meeting" is defined as:

> [T]he convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter . . . .

Wis. Stat. § 19.82(2). The statute then excepts the following: an inspection of a public works project or highway by a town board; or inspection of a public works project by a town sanitary district; or the supervision, observation, or collection of information about any drain or structure related to a drain by any drainage board. *Id*.

1. The *Showers* test.

The Wisconsin Supreme Court has held that the above statutory definition of a "meeting" applies whenever a convening of members of a governmental body satisfies two requirements: (1) there is a purpose to engage in governmental business and (2) the number of members present is sufficient to determine the governmental body's course of action. *Showers*, 135 Wis. 2d at 102.

a. The purpose requirement.

The first part of the *Showers* test focuses on the purpose for which the members of the governmental body are gathered. They must be gathered to conduct governmental business. *Showers* stressed that "governmental business" refers to any formal or informal action, including discussion, decision or information gathering, on matters within the governmental body's realm of authority. *Showers*, 135 Wis. 2d at 102-03. Thus, in

Badke, 173 Wis. 2d at 572-74, the Wisconsin Supreme Court held that the village board conducted a "meeting," as defined in the open meetings law, when a quorum of the board regularly attended each plan commission meeting to observe the commission's proceedings on a development plan that was subject to the board's approval. The Court stressed that a governmental body is engaged in governmental business when its members gather to simply hear information on a matter within the body's realm of authority. *Id.* at 573-74. The members need not actually discuss the matter or otherwise interact with one another to be engaged in governmental business. *Id.* at 574-76. The Court also held that the gathering of town board members was not chance or social because a majority of town board members attended plan commission meetings with regularity. *Id.* at 576. In contrast, the Court of Appeals concluded in *Paulton v. Volkmann*, 141 Wis. 2d 370, 375-77, 415 N.W.2d 528 (Ct. App. 1987), that no meeting occurred where a quorum of school board members attended a gathering of town residents, but did not collect information on a subject the school board had the potential to decide.

b. The numbers requirement.

The second part of the *Showers* test requires that the number of members present be sufficient to determine the governmental body's course of action on the business under consideration. People often assume that this means that the open meetings law applies only to gatherings of a majority of the members of a governmental body. That is not the case because the power to control a body's course of action can refer either to the affirmative power to pass a proposal or the negative power to defeat a proposal. Therefore, a gathering of one-half of the members of a body, or even fewer, may be enough to control a course of action if it is enough to block a proposal. This is called a "negative quorum."

Typically, governmental bodies operate under a simple majority rule in which a margin of one vote is necessary for the body to pass a proposal. Under that approach, exactly one-half of the members of the body constitutes a "negative quorum" because that number against a proposal is enough to prevent the formation of a majority in its favor. Under simple majority rule, therefore, the open meetings law applies whenever one-half or more of the members of the governmental body gather to discuss or act on matters within the body's realm of authority.

The size of a "negative quorum" may be smaller, however, when a governmental body operates under a super majority rule. For example, if a two-thirds majority is required for a body to pass a measure, then any gathering of more than one-third of the body's members would be enough to control the body's course of action by blocking the formation of a two-thirds majority. *Showers* made it clear that the open meetings law applies to such gatherings, as long as the purpose requirement is also satisfied (*i.e.*, the gathering is for the purpose of conducting governmental business). *Showers*, 135 Wis. 2d at 101-02. If a three-fourths majority is required to pass a measure, then more than one-fourth of the members would constitute a "negative quorum," etc.

2. Convening of members.

When the members of a governmental body conduct official business while acting separately, without communicating with each other or engaging in other collective action, there is no meeting within the meaning of the open meetings law. Katayama Correspondence, January 20, 2006. Nevertheless, the phrase "convening of members" in Wis. Stat. § 19.82(2) is not limited to situations in which members of a body are simultaneously gathered in the same location, but may also include other situations in which members are able to effectively communicate with each other and to exercise the authority vested in the body, even if they are not physically present together. Whether such a situation qualifies as a "convening of members" under the open meetings law depends on the extent to which the communications in question resemble a face-to-face exchange.

a. Written correspondence.

The circulation of a paper or hard copy memorandum among the members of a governmental body, for example, may involve a largely one-way flow of information, with any exchanges spread out over a considerable period of time and little or no conversation-like interaction among members. Accordingly, the Attorney General

has long taken the position that such written communications generally do not constitute a "convening of members" for purposes of the open meetings law. Merkel Correspondence, March 11, 1993. Although the rapid evolution of electronic media has made the distinction between written and oral communication less sharp than it once appeared, it is still unlikely that a Wisconsin court would conclude that the circulation of a document through the postal service, or by other means of paper or hard-copy delivery, could be deemed a "convening" or "gathering" of the members of a governmental body for purposes of the open meetings law.

b. Telephone conference calls.

A telephone conference call, in contrast, is very similar to an in-person conversation and thus qualifies as a convening of members. 69 Op. Att'y Gen. 143 (1980). Under the *Showers* test, therefore, the open meetings law applies to any conference call that: (1) is for the purpose of conducting governmental business and (2) involves a sufficient number of members of the body to determine the body's course of action on the business under consideration. To comply with the law, a governmental body conducting a meeting by telephone conference call must provide the public with an effective means to monitor the conference. This may be accomplished by broadcasting the conference through speakers located at one or more sites open to the public. 69 Op. Att'y Gen. 143, 145.

c. Electronic communications.

Written communications transmitted by electronic means, such as email or instant messaging, also may constitute a "convening of members," depending on how the communication medium is used. Although no Wisconsin court has applied the open meetings law to these kinds of electronic communications, it is likely that the courts will try to determine whether the communications in question are more like an in-person discussion—*e.g.*, a rapid back-and-forth exchange of viewpoints among multiple members—or more like non-electronic written correspondence, which generally does not raise open meetings law concerns. If the communications closely resemble an in-person discussion, then they may constitute a meeting if they involve enough members to control an action by the body. Krischan Correspondence, October 3, 2000. In addressing these questions, courts are likely to consider such factors as the following: (1) the number of participants involved in the communications; (2) the number of communications regarding the subject; (3) the time frame within which the electronic communications occurred; and (4) the extent of the conversation-like interactions reflected in the communications.

Because the applicability of the open meetings law to such electronic communications depends on the particular way in which a specific message technology is used, these technologies create special dangers for governmental officials trying to comply with the law. Although two members of a governmental body larger than four members may generally discuss the body's business without violating the open meetings law, features like "forward" and "reply to all" common in electronic mail programs deprive a sender of control over the number and identity of the recipients who eventually may have access to the sender's message. Moreover, it is quite possible that, through the use of electronic mail, a quorum of a governmental body may receive information on a subject within the body's jurisdiction in an almost real-time basis, just as they would receive it in a physical gathering of the members.

Inadvertent violations of the open meetings law through the use of electronic communications can be reduced if electronic mail is used principally to transmit information one-way to a body's membership; if the originator of the message reminds recipients to reply only to the originator, if at all; and if message recipients are scrupulous about minimizing the content and distribution of their replies. Nevertheless, because of the absence of judicial guidance on the subject, and because electronic mail creates the risk that it will be used to carry on private debate and discussion on matters that belong at public meetings subject to public scrutiny, the Attorney General's Office strongly discourages the members of every governmental body from using electronic mail to communicate about issues within the body's realm of authority. Krischan Correspondence, October 3, 2000; Benson Correspondence, March 12, 2004. Members of a governmental body may not decide matters by email voting, even if the result of the vote is later ratified at a properly noticed meeting. I-01-10, January 25, 2010.

3. Walking quorums.

The requirements of the open meetings law also extend to walking quorums. A "walking quorum" is a series of gatherings among separate groups of members of a governmental body, each less than quorum size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a quorum. *Showers*, 135 Wis. 2d at 92, quoting *Conta*, 71 Wis. 2d at 687. In *Conta*, the Court recognized the danger that a walking quorum may produce a predetermined outcome and thus render the publicly-held meeting a mere formality. *Conta*, 71 Wis. 2d at 685-88. The Court commented that any attempt to avoid the appearance of a "meeting" through use of a walking quorum is subject to prosecution under the open meetings law. *Conta*, 71 Wis. 2d at 687. The requirements of the open meetings law thus cannot be circumvented by using an agent or surrogate to poll the members of governmental bodies through a series of individual contacts. Such a circumvention "almost certainly" violates the open meetings law. Clifford Correspondence, April 28, 1986; *see also* Herbst Correspondence, July 16, 2008 (use of administrative staff to individually poll a quorum of members regarding how they would vote on a proposed motion at a future meeting is a prohibited walking quorum).

The essential feature of a "walking quorum" is the element of agreement among members of a body to act uniformly in sufficient numbers to reach a quorum. Where there is no such express or tacit agreement, exchanges among separate groups of members may take place without violating the open meetings law. The signing, by members of a body, of a document asking that a subject be placed on the agenda of an upcoming meeting thus does not constitute a "walking quorum" where the signers have not engaged in substantive discussion or agreed on a uniform course of action regarding the proposed subject. Kay Correspondence, April 25, 2007; Kittleson Correspondence, June 13, 2007. In contrast, where a majority of members of a body sign a document that expressly commits them to a future course of action, a court could find a walking quorum violation. Huff Correspondence, January 15, 2008; *see also* I-01-10, January 25, 2010 (use of email voting to decide matters fits the definition of a "walking quorum" violation of the open meetings law).

4. Multiple meetings.

When a quorum of the members of one governmental body attend a meeting of another governmental body under circumstances where their attendance is not chance or social, in order to gather information or otherwise engage in governmental business regarding a subject over which they have decision-making responsibility, two separate meetings occur, and notice must be given of both meetings. *Badke*, 173 Wis. 2d at 577. The Attorney General has advised that, despite the "separate public notice" requirement of Wis. Stat. § 19.84(4), a single notice can be used, provided that the notice clearly and plainly indicates that a joint meeting will be held and gives the names of each of the bodies involved, and provided that the notice is published and/or posted in each place where meeting notices are generally published or posted for each governmental body involved. Friedman Correspondence, March 4, 2003.

The kinds of multiple meetings presented in the *Badke* case, and the separate meeting notices required there, must be distinguished from circumstances where a subunit of a parent body meets during a recess from or immediately following the parent body's meeting, to discuss or act on a matter that was the subject of the parent body's meeting. In such circumstances, Wis. Stat. § 19.84(6) allows the subunit to meet on that matter without prior public notice.

5. Burden of proof as to existence of a meeting.

The presence of members of a governmental body does not, in itself, establish the existence of a "meeting" subject to the open meetings law. The law provides, however, that if one-half or more of the members of a body are present, the gathering is presumed to be a "meeting." Wis. Stat. § 19.82(2). The law also exempts any "social or chance gathering" not intended to circumvent the requirements of the open meetings law. Wis. Stat. § 19.82(2). Thus, where one-half or more of the members of a governmental body rode to a meeting in the same vehicle, the law presumes that the members conducted a "meeting" which was subject to all of the requirements of the open meetings law. Karstens Correspondence, July 31, 2008. Similarly, where a majority of members of a common council gathered at a lounge immediately following a common council meeting, a

violation of the open meetings law was presumed. Dieck Correspondence, September 12, 2007. The members of the governmental body may overcome the presumption by proving that they did not discuss any subject that was within the realm of the body's authority. *Id.*

Where a person alleges that a gathering of less than one-half the members of a governmental body was held in violation of the open meetings law, that person has the burden of proving that the gathering constituted a "meeting" subject to the law. *Showers*, 135 Wis. 2d at 102. That burden may be satisfied by proving: (1) that the members gathered to conduct governmental business and (2) that there was a sufficient number of members present to determine the body's course of action.

Again, it is important to remember that the overriding policy of the open meetings law is to ensure public access to information about governmental affairs. Under the rule of liberally construing the law to ensure this purpose, any doubts as to whether a particular gathering constitutes a "meeting" subject to the open meetings law should be resolved in favor of complying with the provisions of the law.

III. WHAT IS REQUIRED IF THE OPEN MEETINGS LAW APPLIES?

The two most basic requirements of the open meetings law are that a governmental body:

(1) give advance public notice of each of its meetings, and

(2) conduct all of its business in open session, unless an exemption to the open session requirement applies.

Wis. Stat. § 19.83.

A. Notice Requirements.

Wisconsin Stat. § 19.84, which sets forth the public notice requirements, specifies when, how, and to whom notice must be given, as well as what information a notice must contain.

1. To whom and how notice must be given.

The chief presiding officer of a governmental body, or the officer's designee, must give notice of each meeting of the body to: (1) the public; (2) any members of the news media who have submitted a written request for notice; and (3) the official newspaper designated pursuant to state statute or, if none exists, a news medium likely to give notice in the area. Wis. Stat. § 19.84(1).

The chief presiding officer may give notice of a meeting to the public by posting the notice in one or more places likely to be seen by the general public. 66 Op. Att'y Gen. 93, 95. As a general rule, the Attorney General has advised posting notices at three different locations within the jurisdiction that the governmental body serves. *Id*. Alternatively, the chief presiding officer may give notice to the public by paid publication in a news medium likely to give notice in the jurisdictional area the body serves. 63 Op. Att'y Gen. 509, 510-11 (1974). If the presiding officer gives notice in this manner, he or she must ensure that the notice is actually published. Meeting notices may also be posted at a governmental body's website as a supplement to other public notices, but web posting should not be used as a substitute for other methods of notice. Peck Correspondence, April 17, 2006. Nothing in the open meetings law prevents a governmental body from determining that multiple notice methods are necessary to provide adequate public notice of the body's meetings. Skindrud Correspondence, March 12, 2009. If a meeting notice is posted on a governmental body's website, amendments to the notice should also be posted. Eckert Correspondence, July 25, 2007.

The chief presiding officer must also give notice of each meeting to members of the news media who have submitted a written request for notice. *Lawton*, 278 Wis. 2d 388, ¶ 7. Although this notice may be given in writing or by telephone, 65 Op. Att'y Gen. Preface, v-vi (1976), it is preferable to give notice in writing to help ensure accuracy and so that a record of the notice exists. 65 Op. Att'y Gen. 250, 251 (1976). Governmental bodies cannot charge the news media for providing statutorily required notices of public meetings. 77 Op. Att'y Gen. 312, 313 (1988).

In addition, the chief presiding officer must give notice to the officially designated newspaper or, if none exists, to a news medium likely to give notice in the area. *Lawton*, 278 Wis. 2d 388, ¶ 7. The governmental body is not required to pay for and the newspaper is not required to publish such notice. 66 Op. Att'y Gen. 230, 231 (1977). Note, however, that the requirement to provide notice to the officially designated newspaper is distinct from the requirement to provide notice to the public. If the chief presiding officer chooses to provide notice to the public by paid publication in a news medium, the officer must ensure that the notice is in fact published.

When a specific statute prescribes the type of meeting notice a governmental body must give, the body must comply with the requirements of that statute as well as the notice requirements of the open meetings law. Wis. Stat. § 19.84(1)(a). However, violations of those other statutory requirements are not redressable under the open meetings law. For example, the open meetings law is not implicated by a municipality's alleged failure to comply with the public notice requirements of Wis. Stat. ch. 985 when providing published notice of public hearings on proposed tax incremental financing districts. *See* Boyle Correspondence, May 4, 2005. Where a class 1 notice under Wis. Stat. ch. 985 has been published, however, the public notice requirement of the open meetings law is also thereby satisfied. Stalle Correspondence, April 10, 2008.

2. Contents of notice.

a. In general.

Every public notice of a meeting must give the "time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof." Wis. Stat. § 19.84(2). The chief presiding officer of the governmental body is responsible for providing notice, and when he or she is aware of matters which may come before the body, those matters must be included in the meeting notice. 66 Op. Att'y Gen. 68, 70 (1977). The Attorney General's Office has advised that a chief presiding officer may not avoid liability for a legally deficient meeting notice by assigning to a non-member of the body the responsibility to create and provide a notice that complies with Wis. Stat. § 19.84(2). Schuh Correspondence, October 17, 2001.

A frequently recurring question is how specific a subject-matter description in a meeting notice must be. Prior to June 13, 2007, this question was governed by the "bright-line" rule articulated in *State ex rel. H.D. Ent. v. City of Stoughton*, 230 Wis. 2d 480, 602 N.W.2d 72 (Ct. App. 1999). Under that standard, a meeting notice adequately described a subject if it identified "the general topic of items to be discussed" and the simple heading "licenses," without more, was found sufficient to apprise the public that a city council would reconsider a previous decision to deny a liquor license to a particular local grocery store. *Id.* at 486-87.

On June 13, 2007, the Wisconsin Supreme Court overruled *H.D. Enterprises* and announced a new standard to be applied prospectively to all meeting notices issued after that date. *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804. In *Buswell*, the Court determined that "the plain meaning of Wis. Stat. § 19.84(2) sets forth a reasonableness standard, and that such a standard strikes the proper balance contemplated in Wis. Stat. §§ 19.81(1) and (4) between the public's right to information and the government's need to efficiently conduct its business." *Id.*, ¶ 3. This reasonableness standard "requires a case-specific analysis" and "whether notice is sufficiently specific will depend upon what is reasonable under the circumstances." *Id.*, ¶ 22. In making that determination, the factors to be considered include: "[1] the burden of providing more detailed notice, [2] whether the subject is of particular public interest, and [3] whether it involves non-routine action that the public would be unlikely to anticipate." *Id.*, ¶ 28 (bracketed references added).

The first factor "balances the policy of providing greater information with the requirement that providing such information be 'compatible with the conduct of governmental affairs.' Wis. Stat. § 19.81(1)." *Id.*, ¶ 29. The determination must be made on a case-by-case basis. *Id.* "[T]he demands of specificity should not thwart the efficient administration of governmental business." *Id.*

The second factor takes into account "both the number of people interested and the intensity of that interest," though the level of interest is not dispositive, and must be balanced with other factors on a case-by-case basis. *Id.*, ¶ 30.

The third factor considers "whether the subject of the meeting is routine or novel." *Id.*, ¶ 31. There may be less need for specificity where a meeting subject occurs routinely, because members of the public are more likely to anticipate that the subject will be addressed. *Id.* "Novel issues may . . . require more specific notice." *Id.*

Whether a meeting notice is reasonable, according to the Court, "cannot be determined from the standpoint of when the meeting actually takes place," but rather must be "based upon what information is available to the officer noticing the meeting at the time the notice is provided, and based upon what it would be reasonable for the officer to know." *Id.*, ¶ 32. Once reasonable notice has been given, "meeting participants would be free to discuss any aspect of the noticed subject matter, as well as issues that are reasonably related to it." *Id.*, ¶ 34. However, "a meeting cannot address topics unrelated to the information in the notice." *Id.* The Attorney General has similarly advised, in an informal opinion, that if a meeting notice contains a general subject matter designation and a subject that was not specifically noticed comes up at the meeting, a governmental body should refrain from engaging in any information gathering or discussion or from taking any action that would deprive the public of information about the conduct of governmental business. I-05-93, April 26, 1993.

Whether a meeting notice reasonably apprises the public of the meeting's subject matter may also depend in part on the surrounding circumstances. A notice that might be adequate, standing alone, may nonetheless fail to provide reasonable notice if it is accompanied by other statements or actions that expressly contradict it, or if the notice is misleading when considered in the light of long-standing policies of the governmental body. Linde Correspondence, May 4, 2007; Koss Correspondence, May 30, 2007; Musolf Correspondence, July 13, 2007; Martinson Correspondence, March 2, 2009.

In order to draft a meeting notice that complies with the reasonableness standard, a good rule of thumb will be to ask whether a person interested in a specific subject would be aware, upon reading the notice, that the subject might be discussed.

b. Generic agenda items.

Purely generic subject matter designations such as "old business," "new business," "miscellaneous business," "agenda revisions," or "such other matters as are authorized by law" are insufficient because, standing alone, they identify no particular subjects at all. Becker Correspondence, November 30, 2004; Heupel Correspondence, August 29, 2006. Similarly, the use of a notice heading that merely refers to an earlier meeting of the governmental body (or of some other body) without identifying any particular subject of discussion is so lacking in informational value that it almost certainly fails to give the public reasonable notice of what the governmental body intends to discuss. Erickson Correspondence, April 22, 2009. If such a notice is meant to indicate an intent to simply receive and approve minutes of the designated meeting, it should so indicate and discussion should be limited to whether the minutes accurately reflect the substance of that meeting. *Id.*

Likewise, the Attorney General has advised that the practice of using such designations as "mayor comments," "alderman comments," or "staff comments" for the purpose of communicating information on matters within the scope of the governmental body's authority "is, at best, at the outer edge of lawful practice, and may well cross the line to become unlawful." Rude Correspondence, March 5, 2004. Because members and officials of governmental bodies have greater opportunities for input into the agenda-setting process than the

public has, they should be held to a higher standard of specificity regarding the subjects they intend to address. Thompson Correspondence, September 3, 2004.

c. Action agenda items.

The Wisconsin Court of Appeals has noted that "Wis. Stat. § 19.84(2) does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken." *State ex rel. Olson v. City of Baraboo*, 2002 WI App 64, ¶ 15, 252 Wis. 2d 628, 643 N.W.2d 796. The *Buswell* decision inferred from this that "adequate notice . . . may not require information about whether a vote on a subject will occur, so long as the subject matter of the vote is adequately specified." *Buswell*, 301 Wis. 2d 178, ¶ 37 n.7. Both in *Olson* and in *Buswell*, however, the courts reiterated the principle—first recognized in *Badke*, 173 Wis. 2d at 573-74 and 577-78—that the information in the notice must be sufficient to alert the public to the importance of the meeting, so that they can make an informed decision whether to attend. *Buswell*, 301 Wis. 2d 178, ¶ 26; *Olson*, 252 Wis. 2d 628, ¶ 15. The *Olson* decision thus acknowledged that, in some circumstances, a failure to expressly state whether action will be taken at a meeting could be a violation of the open meetings law. *Id.* Although the courts have not articulated the specific standard to apply to this question, it appears to follow from *Buswell* that the test would be whether, under the particular factual circumstances of the case, the notice reasonably alerts the public to the importance of the meeting. Herbst Correspondence, July 16, 2008.

Another frequently asked question is whether a governmental body may act on a motion for reconsideration of a matter voted on at a previous meeting, if the motion is brought under a general subject matter designation. The Attorney General has advised that a member may move for reconsideration under a general subject matter designation, but that any discussion or action on the motion should be set over to a later meeting for which specific notice of the subject matter of the motion is given. Bukowski Correspondence, May 5, 1986.

d. Notice of closed sessions.

The notice provision in Wis. Stat. § 19.84(2) requires that if the chief presiding officer or the officer's designee knows at the time he or she gives notice of a meeting that a closed session is contemplated, the notice must contain the subject matter to be considered in closed session. Such notice "must contain enough information for the public to discern whether the subject matter is authorized for closed session under § 19.85(1)." *Buswell*, 301 Wis. 2d 178, ¶ 37 n.7. The Attorney General has advised that notice of closed sessions must contain the specific nature of the business, as well as the exemption(s) under which the chief presiding officer believes a closed session is authorized. 66 Op. Att'y Gen. 93, 98. Merely identifying and quoting from a statutory exemption does not reasonably identify any particular subject that might be taken up thereunder and thus is not adequate notice of a closed session. Weinschenk Correspondence, December 29, 2006; Anderson Correspondence, February 13, 2007. In *State ex rel. Schaeve v. Van Lare*, 125 Wis. 2d 40, 47, 370 N.W.2d 271 (Ct. App. 1985), the Court held that a notice to convene in closed session under Wis. Stat. § 19.85(1)(b) "'to conduct a hearing to consider the possible discipline of a public employee'" was sufficient.

3. Time of notice.

The provision in Wis. Stat. § 19.84(3) requires that every public notice of a meeting be given at least twenty-four hours in advance of the meeting, unless "for good cause" such notice is "impossible or impractical." If "good cause" exists, the notice should be given as soon as possible and must be given at least two hours in advance of the meeting. Wis. Stat. § 19.84(3).

No Wisconsin court decisions or Attorney General opinions discuss what constitutes "good cause" to provide less than twenty-four-hour notice of a meeting. This provision, like all other provisions of the open meetings law, must be construed in favor of providing the public with the fullest and most complete information about governmental affairs as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1) and (4). If there is any doubt whether "good cause" exists, the governmental body should provide the full twenty-four-hour notice.

When calculating the twenty-four hour notice period, Wis. Stat. § 990.001(4)(a) requires that Sundays and legal holidays shall be excluded. Posting notice of a Monday meeting on the preceding Sunday is, therefore, inadequate, but posting such notice on the preceding Saturday would suffice, as long as the posting location is open to the public on Saturdays. Caylor Correspondence, December 6, 2007.

Wisconsin Stat. § 19.84(4) provides that separate notice for each meeting of a governmental body must be given at a date and time reasonably close to the meeting date. A single notice that lists all the meetings that a governmental body plans to hold over a given week, month, or year does not comply with the notice requirements of the open meetings law. *See* 63 Op. Att'y Gen. 509, 513. Similarly, a meeting notice that states that a quorum of various town governmental bodies may participate at the same time in a multi-month, on-line discussion of town issues fails to satisfy the "separate notice" requirement. Connors/Haag Correspondence, May 26, 2009.

University of Wisconsin departments and their subunits, as well as the Olympic ice training rink, are exempt from the specific notice requirements in Wis. Stat. § 19.84(1)-(4). Those bodies are simply required to provide notice "which is reasonably likely to apprise interested persons, and news media who have filed written requests for such notice." Wis. Stat. § 19.84(5). Also exempt from the specific notice requirements are certain meetings of subunits of parent bodies held during or immediately before or after a meeting of the parent body. *See* Wis. Stat. § 19.84(6).

4. Compliance with notice.

A governmental body, when conducting a meeting, is free to discuss any aspect of any subject identified in the public notice of that meeting, as well as issues reasonably related to that subject, but may not address any topics that are not reasonably related to the information in the notice. *Buswell*, 301 Wis. 2d 178, ¶ 34. There is no requirement, however, that a governmental body must follow the agenda in the order listed on the meeting notice, unless a particular agenda item has been noticed for a specific time. Stencil Correspondence, March 6, 2008. Nor is a governmental body required to actually discuss every item contained in the public notice. It is reasonable, in appropriate circumstances, for a body to cancel a previously planned discussion or postpone it to a later date. Black Correspondence, April 22, 2009.

B. Open Session Requirements.

1. Accessibility.

In addition to requiring advance public notice of every meeting of a governmental body, the open meetings law also requires that "all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times." Wis. Stat. § 19.81(2). Similarly, an "open session" is defined in Wis. Stat. § 19.82(3) as "a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times." Every meeting of a governmental body must initially be convened in "open session." *See* Wis. Stat. §§ 19.83 and 19.85(1). All business of any kind, formal or informal, must be initiated, discussed, and acted upon in "open session," unless one of the exemptions set forth in Wis. Stat. § 19.85(1) applies. Wis. Stat. § 19.83.

The requirement that meeting locations be reasonably accessible to the public and open to all citizens at all times means that governmental bodies must hold their meetings in rooms that are reasonably calculated to be large enough to accommodate all citizens who wish to attend the meetings. *Badke*, 173 Wis. 2d at 580-81. Absolute access is not, however, required. *Id.* In *Badke*, for instance, the Wisconsin Supreme Court concluded that a village board meeting that was held in a village hall capable of holding 55-75 people was reasonably accessible, although three members of the public were turned away due to overcrowding. *Id.* at 561, 563, 581. Whether a meeting place is reasonably accessible depends on the facts in each individual case. Any doubt as to whether a meeting facility is large enough to satisfy the requirement should be resolved in favor of holding the meeting in a larger facility.

The policy of openness and accessibility favors governmental bodies holding their meetings in public places, such as a municipal hall or school, rather than on private premises. *See* 67 Op. Att'y Gen. 125, 127 (1978). The law prohibits meetings on private premises that are not open and reasonably accessible to the public. Wis. Stat. § 19.82(3). Generally speaking, places such as a private room in a restaurant or a dining room in a private club are not considered "reasonably accessible." A governmental body should meet on private premises only in exceptional cases, where the governmental body has a specific reason for doing so which does not compromise the public's right to information about governmental affairs.

The policy of openness and accessibility also requires that governmental bodies hold their meetings at locations near to the public they serve. Accordingly, the Attorney General has concluded that a school board meeting held forty miles from the district which the school board served was not "reasonably accessible" within the meaning of the open meetings law. Miller Correspondence, May 25, 1977. The Attorney General advises that, in order to comply with the "reasonably accessible" requirement, governmental bodies should conduct all their meetings at a location within the territory they serve, unless there are special circumstances that make it impossible or impractical to do so. I-29-91, October 17, 1991.

Occasionally, a governmental body may need to leave the place where the meeting began in order to accomplish its business—*e.g.*, inspection of a property or construction projects. The Attorney General's Office has advised that such off-site business may be conducted consistently with the requirements of the open meetings law, as long as certain precautions are taken. First the public notice of the meeting must list all of the locations to be visited in the order in which they will be visited. This makes it possible for a member of the public to follow the governmental body to each location or to join the governmental body at any particular location. Second, each location at which government business is to be conducted must itself be reasonably accessible to the public at all times when such business is taking place. Third, care must be taken to ensure that government business is discussed only during those times when the members of the body are convened at one of the particular locations for which notice has been given. The members of the governmental body may travel together or separately, but if half or more of them travel together, they may not discuss government business when their vehicle is in motion, because a moving vehicle is not accessible to the public. Rappert Correspondence, April 8, 1993; Musolf Correspondence, July 13, 2007.

2. Access for persons with disabilities.

The public accessibility requirements of the open meetings law have long been interpreted by the Attorney General as meaning that every meeting subject to the law must be held in a location that is "reasonably accessible to all citizens, including those with disabilities." 69 Op. Att'y Gen. 251, 252 (1980). In selecting a meeting facility that satisfies this requirement, a local governmental body has more leeway than does a state governmental body. For a state body, the facility must have physical characteristics that permit persons with functional limitations to enter, circulate, and leave the facility *without* assistance. *See* Wis. Stat. §§ 19.82(3) and 101.13(1); 69 Op. Att'y Gen. 251, 252. In the case of a local governmental body, however, a meeting facility must have physical characteristics that permit persons with functional limitations to enter, circulate, and leave the facility *with* assistance. 69 Op. Att'y Gen. 251, 253. In order to optimally comply with the spirit of open government, however, local bodies should also, whenever possible, meet in buildings and rooms that are accessible without assistance.

The Americans With Disabilities Act and other federal laws governing the rights of persons with disabilities may additionally require governmental bodies to meet accessibility and reasonable accommodation requirements that exceed the requirements imposed by Wisconsin's open meetings law. For more detailed assistance regarding such matters, both government officials and members of the public are encouraged to consult with their own attorneys or to contact the appropriate federal enforcement authorities.

3. Tape recording and videotaping.

The open meetings law grants citizens the right to attend and observe meetings of governmental bodies that are held in open session. The open meetings law also grants citizens the right to tape record or videotape open session meetings, as long as doing so does not disrupt the meeting. The law explicitly states that a governmental body must make a reasonable effort to accommodate anyone who wants to record, film, or photograph an open session meeting, as long as the activity does not interfere with the meeting. Wis. Stat. § 19.90.

In contrast, the open meetings law does not require a governmental body to permit recording of an authorized closed session. 66 Op. Att'y Gen. 318, 325 (1977); Maroney Correspondence, October 31, 2006. If a governmental body wishes to record its own closed meetings, it should arrange for the security of the records to prevent their improper disclosure. 66 Op. Att'y Gen. 318, 325.

4. Citizen participation.

In general, the open meetings law grants citizens the right to attend and observe open session meetings of governmental bodies, but does not require a governmental body to allow members of the public to speak or actively participate in the body's meeting. Lundquist Correspondence, October 25, 2005. There are some other state statutes that require governmental bodies to hold public hearings on specified matters. *See* for example, Wis. Stat. § 65.90(4) (requiring public hearing before adoption of a municipal budget) and Wis. Stat. § 66.46(4)(a) (requiring public hearing before creation of a tax incremental finance district). Unless such a statute specifically applies, however, a governmental body is free to determine for itself whether and to what extent it will allow citizen participation at its meetings. Zwieg Correspondence, July 13, 2006; Chiaverotti Correspondence, September 19, 2006.

Although it is not required, the open meetings law does permit a governmental body to set aside a portion of an open meeting as a public comment period. Wis. Stat. §§ 19.83(2) and 19.84(2). Such a period must be included on the meeting notice. During such a period, the body may receive information from the public and may discuss any matter raised by the public. If a member of the public raises a subject that does not appear on the meeting notice, however, it is advisable to limit the discussion of that subject and to defer any extensive deliberation to a later meeting for which more specific notice can be given. In addition, the body may not take formal action on a subject raised in the public comment period, unless that subject is also identified in the meeting notice.

5. Ballots, votes, and records, including meeting minutes.

No secret ballot may be used to determine any election or decision of a governmental body, except the election of officers of a body. Wis. Stat. § 19.88(1). For example, a body cannot vote by secret ballot to fill a vacancy on a city council. 65 Op. Att'y Gen. 131 (1976). If a member of a governmental body requests that the vote of each member on a particular matter be recorded, a voice vote or a vote by a show of hands is not permissible unless the vote is unanimous and the minutes reflect who is present for the vote. I-95-89, November 13, 1989. A governmental body may not use email ballots to decide matters, even if the result of the vote is later ratified at a properly noticed meeting. I-01-10, January 25, 2010.

The open meetings law requires a governmental body to create and preserve a record of all motions and roll-call votes at its meetings. Wis. Stat. § 19.88(3). This requirement applies to both open and closed sessions. De Moya Correspondence, June 17, 2009. Written minutes are the most common method used to comply with the requirement, but they are not the only permissible method. It can also be satisfied if the motions and roll-call votes are recorded and preserved in some other way, such as on a tape recording. I-95-89, November 13, 1989. As long as the body creates and preserves a record of all motions and roll-call votes, it is not required by the open meetings law to take more formal or detailed minutes of other aspects of the meeting. Other statutes outside the open meetings law, however, may prescribe particular minute-taking requirements for certain

governmental bodies and officials that go beyond what is required by the open meetings law. I-20-89, March 8, 1989. *See*, *e.g.*, Wis. Stat. §§ 59.23(2)(a) (county clerk); 60.33(2)(a) (town clerk); 61.25(3) (village clerk); 62.09(11)(b) (city clerk); 62.13(5)(i) (police and fire commission); 66.1001(4)(b) (plan commission); 70.47(7)(bb) (board of review).

Although Wis. Stat. § 19.88(3) does not indicate how detailed the record of motions and votes should be, the general legislative policy of the open meetings law is that "the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business." Wis. Stat. § 19.81(1). In light of that policy, it seems clear that a governmental body's records should provide the public with a reasonably intelligible description of the essential substantive elements of every motion made, who initiated and seconded the motion, the outcome of any vote on the motion, and, if a roll-call vote, how each member voted. De Moya Correspondence, June 17, 2009.

Nothing in the open meetings law prohibits a body from making decisions by general consent, without a formal vote, but such informal procedures are typically only appropriate for routine procedural matters such as approving the minutes of prior meetings or adjourning. In any event, regardless of whether a decision is made by consensus or by some other method, Wis. Stat. § 19.88(3) still requires the body to create and preserve a meaningful record of that decision. Huebscher Correspondence, May 23, 2008. "Consent agendas," whereby a body discusses individual items of business under separate agenda headings, but takes action on all discussed items by adopting a single motion to approve all the items previously discussed, are likely insufficient to satisfy the recordkeeping requirements of Wis. Stat. § 19.88(3). Perlick Correspondence, May 12, 2005.

Wisconsin Stat. § 19.88(3) also provides that meeting records created under that statute—whether for an open or a closed session—must be open to public inspection to the extent prescribed in the state public records law. Because the records law contains no general exemption for records created during a closed session, a custodian must release such items unless the particular record at issue is subject to a specific statutory exemption or the custodian concludes that the harm to the public from its release would outweigh the benefit to the public. De Moya Correspondence, June 17, 2009. There is a strong presumption under the public records law that release of records is in the public interest. As long as the reasons for convening in closed session continue to exist, however, the custodian may be able to justify not disclosing any information that requires confidentiality. But the custodian still must separate information that can be made public from that which cannot and must disclose the former, even if the latter can be withheld. In addition, once the underlying purpose for the closed session ceases to exist, all records of the session must then be provided to any person requesting them. *See* 67 Op. Att'y Gen. 117, 119 (1978).

IV. WHEN IS IT PERMISSIBLE TO CONVENE IN CLOSED SESSION?

Every meeting of a governmental body must initially be convened in open session. All business of any kind, formal or informal, must be initiated, discussed, and acted upon in open session unless one of the exemptions in Wis. Stat. § 19.85(1) applies. Wis. Stat. § 19.83.

A. Notice Of Closed Session.

The notice provision in Wis. Stat. § 19.84(2) requires that, if the chief presiding officer of a governmental body is aware that a closed session is contemplated at the time he or she gives public notice of the meeting, the notice must contain the subject matter of the closed session.[4]

[4] *See* section III.A.2.d. of this Guide for information on how to comply with this requirement.

If the chief presiding officer was not aware of a contemplated closed session at the time he or she gave notice of the meeting, that does not foreclose a governmental body from going into closed session under Wis. Stat. § 19.85(1) to discuss an item contained in the notice for the open session. 66 Op. Att'y Gen. 106, 108 (1977). In both cases, a governmental body must follow the procedure set forth in Wis. Stat. § 19.85(1) before going into closed session.

B. Procedure For Convening In Closed Session.

Every meeting of a governmental body must initially be convened in open session. Wis. Stat. §§ 19.83 and 19.85(1). Before convening in closed session, the governmental body must follow the procedure set forth in Wis. Stat. § 19.85(1) which requires that the governmental body pass a motion, by recorded majority vote, to convene in closed session. If a motion is unanimous, there is no requirement to record the votes individually. *Schaeve*, 125 Wis. 2d at 51. Before the governmental body votes on the motion, the chief presiding officer must announce and record in open session the nature of the business to be discussed and the specific statutory exemption which is claimed to authorize the closed session. 66 Op. Att'y Gen. 93, 97-98. Stating only the statute section number of the applicable exemption is not sufficient because many exemptions contain more than one reason for authorizing closure. For example, Wis. Stat. § 19.85(1)(c) allows governmental bodies to use closed sessions to interview candidates for positions of employment, to consider promotions of particular employees, to consider the compensation of particular employees, and to conduct employee evaluations—each of which is a different reason that should be identified in the meeting notice and in the motion to convene into closed session. Reynolds/Kreibich Correspondence, October 23, 2003. Similarly, merely identifying and quoting from a statutory exemption does not adequately announce what particular part of the governmental body's business is to be considered under that exemption. Weinschenk Correspondence, December 29, 2006; Anderson Correspondence, February 13, 2007. Enough specificity is needed in describing the subject matter of the contemplated closed meeting to enable the members of the governmental body to intelligently vote on the motion to close the meeting. Heule Correspondence, June 29, 1977; *see also Buswell*, 301 Wis. 2d 178, ¶ 37 n.7. If several exemptions are relied on to authorize a closed discussion of several subjects, the motion should make it clear which exemptions correspond to which subjects. Brisco Correspondence, December 13, 2005. The governmental body must limit its discussion in closed session to the business specified in the announcement. Wis. Stat. § 19.85(1).

C. Authorized Closed Sessions.

Wisconsin Stat. § 19.85(1) contains thirteen exemptions to the open session requirement which permit, but do not require, a governmental body to convene in closed session. Because the law is designed to provide the public with the most complete information possible regarding the affairs of government, exemptions should be strictly construed. *State ex rel. Hodge v. Turtle Lake*, 180 Wis. 2d 62, 71, 508 N.W.2d 603 (1993); *Citizens for Responsible Development*, 300 Wis. 2d 649, ¶ 8. The policy of the open meetings law dictates that the exemptions be invoked sparingly and only where necessary to protect the public interest. If there is any doubt as to whether closure is permitted under a given exemption, the governmental body should hold the meeting in open session. *See* 74 Op. Att'y Gen. 70, 73 (1985).

The following are some of the most frequently cited exemptions.

1. Judicial or quasi-judicial hearings.

Wisconsin Stat. § 19.85(1)(a) authorizes a closed session for "[d]eliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body." In order for this exemption to apply, there must be a "case" that is the subject of a quasi-judicial proceeding. *Hodge*, 180 Wis. 2d at 72; *cf. State ex rel. Cities S. O. Co. v. Bd. of Appeals*, 21 Wis. 2d 516, 537, 124 N.W.2d 809 (1963) (allowing zoning appeal boards to deliberate in closed session after hearing, decided before the Legislature added the "case" requirement in 1977). The Wisconsin Supreme Court held that the term "case" contemplates a controversy among parties that are adverse to one another; it does not include a mere request for a permit. *Hodge*, 180 Wis. 2d at 74. An example of a governmental body that considers "cases" and thus can convene in closed

session under Wis. Stat. § 19.85(1)(a), where appropriate, is the Wisconsin Employment Relations Commission, 68 Op. Att'y Gen. 171 (1979). Bodies that consider zoning appeals, such as boards of zoning appeals and boards of adjustment, may not convene in closed session. Wis. Stat. §§ 59.694(3) (towns); 60.65(5) (counties); and 62.23(7)(e)3. (cities); White Correspondence, May 1, 2009. The meetings of town, village, and city boards of review regarding appeals of property tax assessments must also be conducted in open session. Wis. Stat. § 70.47(2m).

2. Employment and licensing matters.

a. Consideration of dismissal, demotion, discipline, licensing, and tenure.

Two of the statutory exemptions to the open session requirement relate specifically to employment or licensing of an individual. The first, Wis. Stat. § 19.85(1)(b), authorizes a closed session for:

> Considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter . . . .

If a closed session for such a purpose will include an evidentiary hearing or final action, then the governmental body must give the public employee or licensee actual notice of that closed hearing and/or closed final action. Evidentiary hearings are characterized by the formal examination of charges and by taking testimony and receiving evidence in support or defense of specific charges that may have been made. 66 Op. Att'y Gen. 211, 214 (1977). Such hearings may be required by statute, ordinance or rule, by collective bargaining agreement, or by circumstances in which the employee or licensee is the subject of charges that might damage the person's good name, reputation, honor or integrity, or where the governmental body's action might impose substantial stigma or disability upon the person. *Id.*

Where actual notice is required, the notice must state that the person has a right to request that any such evidentiary hearing or final action be conducted in open session. If the person makes such a request, the governmental body may not conduct an evidentiary hearing or take final action in closed session. The body may, however, convene in closed session under Wis. Stat. § 19.85(1)(b) for the purpose of deliberating about the dismissal, demotion, licensing, discipline, or investigation of charges. Following such closed deliberations, the body may reconvene in open session and take final action related to the person's employment or license. *See State ex rel. Epping v. City of Neillsville*, 218 Wis. 2d 516, 581 N.W.2d 548 (Ct. App. 1998); Johnson Correspondence, February 27, 2009.

Nothing in Wis. Stat. § 19.85(1) permits a person who is not a member of the governmental body to demand that the body meet in closed session. The Wisconsin Court of Appeals held that a governmental body was not required to comply with a public employee's request that the body convene in closed session to vote on the employee's dismissal. *Schaeve*, 125 Wis. 2d at 40.

b. Consideration of employment, promotion, compensation, and performance evaluations.

The second exemption which relates to employment matters authorizes a closed session for "[c]onsidering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility." Wis. Stat. § 19.85(1)(c).

The Attorney General's Office has interpreted this exemption to extend to public officers, such as a police chief, whom the governmental body has jurisdiction to employ. Caturia Correspondence, September 20, 1982. The Attorney General's Office has also concluded that this exemption is sufficiently broad to authorize convening

in closed session to interview and consider applicants for positions of employment. Caturia Correspondence, September 20, 1982.

An elected official is not considered a "public employee over which the governmental body has jurisdiction or exercises responsibility." Wis. Stat. § 19.85(1)(c). Thus, Wis. Stat. § 19.85(1)(c) does not authorize a county board to convene in closed session to consider appointments of county board members to a county board committee. 76 Op. Att'y Gen. 276 (1987). Similarly, the exemption does not authorize a school board to convene in closed session to select a person to fill a vacancy on the school board. 74 Op. Att'y Gen. 70, 72. The exemption does not authorize a county board or a board committee to convene in closed session for the purposes of screening and interviewing applicants to fill a vacancy in the elected office of county clerk. Haro Correspondence, June 13, 2003. Nor does the exemption authorize a city council or one of its committees to consider a temporary appointment of a municipal judge. O'Connell Correspondence, December 21, 2004.

The language of the exemption refers to a "public employee" rather than to positions of employment in general. The apparent purpose of the exemption is to protect individual employees from having their actions and abilities discussed in public and to protect governmental bodies "from potential lawsuits resulting from open discussion of sensitive information." *Oshkosh Northwestern Co. v. Oshkosh Library Bd.*, 125 Wis. 2d 480, 486, 373 N.W.2d 459 (Ct. App. 1985). It is not the purpose of the exemption to protect a governmental body when it discusses general policies that do not involve identifying specific employees. *See* 80 Op. Att'y Gen. 176, 177-78 (1992); *see also Buswell*, 301 Wis. 2d 178, ¶ 37 (noting that Wis. Stat. § 19.85(1)(c) "provides for closed sessions for considering matters related to *individual* employees"). Thus, Wis. Stat. § 19.85(1)(c) authorizes a closed session to discuss the qualifications of and salary to offer a specific applicant but does not authorize a closed session to discuss the qualifications and salary range for the position in general. 80 Op. Att'y Gen. 176, 178-82. The section authorizes closure to determine increases in compensation for specific employees, 67 Op. Att'y Gen. 117, 118. Similarly, Wis. Stat. § 19.85(1)(c) authorizes closure to determine which employees to lay off, or whether to non-renew an employee's contract at the expiration of the contract term, *see* 66 Op. Att'y Gen. 211, 213, but not to determine whether to reduce or increase staffing, in general.

3. Consideration of financial, medical, social, or personal information.

The exemption in Wis. Stat. § 19.85(1)(f) authorizes a closed session for:

> Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

An example is where a state employee was alleged to have violated a state law. *See Wis. State Journal v. U.W. Platteville*, 160 Wis. 2d 31, 38, 465 N.W.2d 266 (Ct. App. 1990). This exemption is not limited to considerations involving public employees. For example, the Attorney General concluded that, in an exceptional case, a school board could convene in closed session under the exemption to interview a candidate to fill a vacancy on the school board if information is expected to damage a reputation, however, the vote should be in open session. 74 Op. Att'y Gen. 70, 72.

At the same time, the Attorney General cautioned that the exemption in Wis. Stat. § 19.85(1)(f) is extremely limited. It applies only where a member of a governmental body has actual knowledge of information that will have a substantial adverse effect on the person mentioned or involved. Moreover, the exemption authorizes closure only for the duration of the discussions about the information specified in Wis. Stat. § 19.85(1)(f). Thus, the exemption would not authorize a school board to actually appoint a new member to the board in closed session. 74 Op. Att'y Gen. 70, 72.

4. Conducting public business with competitive or bargaining implications.

A closed session is authorized for "[d]eliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session." Wis. Stat. § 19.85(1)(e). This exemption is not limited to deliberating or negotiating the purchase of public property or the investing of public funds. For example, the Attorney General has determined that the exemption authorized a school board to convene in closed session to develop negotiating strategies for collective bargaining. 66 Op. Att'y Gen. 93, 96. (The opinion advised that governmental bodies that are not formed exclusively for collective bargaining comply with the open meetings law when meeting for the purpose of developing negotiating strategy).

Governmental officials must keep in mind, however, that this exemption applies only when "competitive or bargaining reasons require a closed session." Wis. Stat. § 19.85(1)(e). The exemption is restrictive rather than expansive. *Citizens for Responsible Development*, 300 Wis. 2d 649, ¶¶ 6-8. When a governmental body seeks to convene in closed session under Wis. Stat. § 19.85(1)(e), the burden is on the body to show that competitive or bargaining interests require closure. *Id.*, ¶ 10. An announcement of a contemplated closed session under Wis. Stat. § 19.85(1)(e) that provides only a conclusory assertion that the subject of the session will involve competitive or bargaining issues is inadequate because it does not reflect how the proposed discussion would implicate the competitive or bargaining interests of the body or the body's basis for concluding that the subject falls within the exemption. Wirth/Lamoreaux Correspondence, May 30, 2007.

The use of the word "require" in Wis. Stat. § 19.85(1)(e) limits that exemption to situations in which competitive or bargaining reasons leave a governmental body with no option other than to close the meeting. *Citizens for Responsible Development*, 300 Wis. 2d 649, ¶ 14. On the facts as presented in *Citizens for Responsible Development*, the Court thus found that a desire or request for confidentiality by a private developer engaged in negotiations with a city was not sufficient to justify a closed session for competitive or bargaining reasons. *Id.*, ¶¶ 13-14. Nor did the fear that public statements might attract the attention of potential private competitors for the developer justify closure under this exemption, because the Court found that such competition would be likely to benefit, rather than harm, the city's competitive or bargaining interests. *Id.*, ¶ 14 n.6. Similarly, holding closed meetings about ongoing negotiations between the city and private parties would not prevent those parties from seeking a better deal elsewhere. The possibility of such competition, therefore, also did not justify closure under Wis. Stat. § 19.85(1)(e). *Citizens for Responsible Development*, 300 Wis. 2d 649, ¶¶ 15-16. The exemption did, however, allow the city to close those *portions* of its meetings that would reveal its negotiation strategy or the price it planned to offer for a purchase of property, but it could not close other parts of the meetings. *Id.*, ¶ 19. The competitive or bargaining interests to be protected by a closed session under Wis. Stat. § 19.85(1)(e) do not have to be shared by every member of the body or by every municipality participating in an intergovernmental body. *State ex rel. Herro v. Village of McFarland*, 2007 WI App 172, ¶¶ 16-19, 303 Wis. 2d 749, 737 N.W.2d 55.

Consistent with the above emphasis on the word "require" in Wis. Stat. § 19.85(1)(e), the Attorney General has advised that mere inconvenience, delay, embarrassment, frustration, or even speculation as to the probability of success would be an insufficient basis to close a meeting. Gempeler Correspondence, February 12, 1979. Competitive or bargaining reasons permit a closed session where the discussion will directly and substantially affect negotiations with a third party, but not where the discussions might be one of several factors that indirectly influence the outcome of those negotiations. Henderson Correspondence, March 24, 1992. The meetings of a governmental body also may not be closed in a blanket manner merely because they may at times involve competitive or bargaining issues, but rather may only be closed on those occasions when the particular meeting is going to involve discussion which, if held in open session, would harm the competitive or bargaining interests at issue. I-04-09, September 28, 2009. Once a governmental body's bargaining team has reached a tentative agreement, the discussion whether the body should ratify the agreement should be conducted in open session. 81 Op. Att'y Gen. 139, 141 (1994).

5. Conferring with legal counsel with respect to litigation.

The exemption in Wis. Stat. § 19.85(1)(g) authorizes a closed session for "[c]onferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved."

The presence of the governmental body's legal counsel is not, in itself, sufficient reason to authorize closure under this exemption. The exemption applies only if the legal counsel is rendering advice on strategy to adopt for litigation in which the governmental body is or is likely to become involved.

There is no clear-cut standard for determining whether a governmental body is "likely" to become involved in litigation. Members of a governmental body should rely on the body's legal counsel for advice on whether litigation is sufficiently "likely" to authorize a closed session under Wis. Stat. § 19.85(1)(g).

6. Remaining exemptions.

The remaining exemptions in Wis. Stat. § 19.85(1) authorize closure for:

1. Considering applications for probation or parole, or considering strategy for crime detection or prevention. Wis. Stat. § 19.85(1)(d).

2. Specified deliberations by the state council on unemployment insurance and the state council on worker's compensation. Wis. Stat. § 19.85(1)(ee) and (eg).

3. Specified deliberations involving the location of a burial site. Wis. Stat. § 19.85(1)(em).

4. Consideration of requests for confidential written advice from an ethics board. Wis. Stat. § 19.85(1)(h).

5. Considering specified matters related to a business ceasing its operations or laying off employees. Wis. Stat. § 19.85(1)(i).

6. Considering specified financial information relating to the support of a nonprofit corporation operating an ice rink owned by the state. Wis. Stat. § 19.85(1)(j).[5]

D. Who May Attend A Closed Session.

A frequently asked question concerns who may attend the closed session meetings of a governmental body. In general, the open meetings law gives wide discretion to a governmental body to admit into a closed session anyone whose presence the body determines is necessary for the consideration of the matter that is the subject of the meeting. Schuh Correspondence, December 15, 1988. If the governmental body is a subunit of a parent body, the subunit must allow members of the parent body to attend its open session and closed session meetings, unless the rules of the parent body or subunit provide otherwise. Wis. Stat. § 19.89. Where enough non-members of a subunit attend the subunit's meetings that a quorum of the parent body is present, a meeting of the parent body occurs, and the notice requirements of Wis. Stat. § 19.84 apply. *Badke*, 173 Wis. 2d at 579.

E. Voting In An Authorized Closed Session.

The Wisconsin Supreme Court has held that Wis. Stat. § 14.90 (1959), a predecessor to the current open meetings law, authorized a governmental body to vote in closed session on matters that were the legitimate subject of deliberation in closed session. *Cities S. O. Co.*, 21 Wis. 2d at 538. The Court reasoned that "voting is an integral part of deliberating and merely formalizes the result reached in the deliberating process." *Id.* at 539.

In *Schaeve*, 125 Wis. 2d at 53, the Court of Appeals commented on the propriety of voting in closed session under the current open meetings law. The Court indicated that a governmental body must vote in open

[5]For more detailed information on these exemptions, consult the text of Wis. Stat. § 19.85(1), which appears in Appendix A.

session unless an exemption in Wis. Stat. § 19.85(1) expressly authorizes voting in closed session. *Id.* The Court's statement was not essential to its holding and it is unclear whether the Supreme Court would adopt a similar interpretation of the current open meetings law.

Given this uncertainty, the Attorney General advises that a governmental body vote in open session, unless the vote is clearly an integral part of deliberations authorized to be conducted in closed session under Wis. Stat. § 19.85(1). Stated another way, a governmental body should vote in open session, unless doing so would compromise the need for the closed session. *Accord*, *Epping*, 218 Wis. 2d at 524 n.4 (even if deliberations were conducted in an unlawful closed session, a subsequent vote taken in open session could not be voided).

None of the exemptions in Wis. Stat. § 19.85(1) authorize a governmental body to consider in closed session the ratification or final approval of a collective bargaining agreement negotiated by or for the body. Wis. Stat. § 19.85(3); 81 Op. Att'y Gen. 139.

F. Reconvening In Open Session.

A governmental body may not commence a meeting, convene in closed session, and subsequently reconvene in open session within twelve hours after completion of a closed session, unless public notice of the subsequent open session is given "at the same time and in the same manner" as the public notice of the prior open session. Wis. Stat. § 19.85(2). The notice need not specify the time the governmental body expects to reconvene in open session if the body plans to reconvene immediately following the closed session. If the notice does specify the time, the body must wait until that time to reconvene in open session. When a governmental body reconvenes in open session following a closed session, the presiding officer has a duty to open the door of the meeting room and inform any members of the public present that the session is open. Claybaugh Correspondence, February 16, 2006.

V. WHO ENFORCES THE OPEN MEETINGS LAW AND WHAT ARE ITS PENALTIES?

A. Enforcement.

Both the Attorney General and the district attorneys have authority to enforce the open meetings law. Wis. Stat. § 19.97(1). In most cases, enforcement at the local level has the greatest chance of success due to the need for intensive factual investigation, the district attorneys' familiarity with the local rules of procedure, and the need to assemble witnesses and material evidence. 65 Op. Att'y Gen. Preface, ii. Under certain circumstances, the Attorney General may elect to prosecute complaints involving a matter of statewide concern.

A district attorney has authority to enforce the open meetings law only after an individual files a verified open meetings law complaint with the district attorney. *See* Wis. Stat. § 19.97(1). Actions to enforce the open meetings law need not be preceded by a notice of claim. *State ex rel. Auchinleck v. Town of LaGrange*, 200 Wis. 2d 585, 594-97, 547 N.W.2d 587 (1996). The verified complaint must be signed by the individual and notarized and should include available information that will be helpful to investigators, such as: identifying the governmental body and any members thereof alleged to have violated the law; describing the factual circumstances of the alleged violations; identifying witnesses with relevant evidence; and identifying any relevant documentary evidence.[6] The district attorney has broad discretion to determine whether a verified complaint should be prosecuted. *State v. Karpinski*, 92 Wis. 2d 599, 607, 285 N.W.2d 729 (1979). An enforcement action brought by a district attorney or by the Attorney General must be commenced within 6 years after the cause of action accrues or be barred. *See* Wis. Stat. § 893.93(1)(a).

[6]A model complaint appears in Appendix B.

Proceedings to enforce the open meetings law are civil actions subject to the rules of civil procedure, rather than criminal procedure, and governed by the ordinary civil standard of proof, rather than a heightened standard of proof such as would apply in a criminal or quasi-criminal proceeding. Accordingly, enforcement of the open meetings law does not involve such practices as arrest, posting bond, entering criminal-type pleas, or any other aspects of criminal procedure. Rather, an open meetings law enforcement action is commenced like any civil action by filing and serving a summons and complaint. In addition, the open meetings law cannot be enforced by the issuance of a citation, in the way that other civil forfeitures are often enforced, because citation procedures are inconsistent with the statutorily-mandated verified complaint procedure. Zwieg Correspondence, March 10, 2005.

If the district attorney refuses to commence an open meetings law enforcement action or otherwise fails to act within twenty days of receiving a complaint, the individual who filed the complaint has a right to bring an action, in the name of the state, to enforce the open meetings law. *Lawton*, 278 Wis. 2d 388, ¶ 15. Wis. Stat. § 19.97(4). *See also Fabyan v. Achtenhagen*, 2002 WI App 214, ¶¶ 10-13, 257 Wis. 2d 310, 652 N.W.2d 649 (complaint under Wis. Stat. § 19.97 must be brought in the name of and on behalf of the state; *i.e.*, the caption must bear the title "State ex rel. . . ," or the court lacks competency to proceed). Although an individual may not bring a private enforcement action prior to the expiration of the district attorney's twenty-day review period, the district attorney may still commence an action even though more than twenty days have passed. It is not uncommon for the review and investigation of open meetings complaints to take longer than twenty days.

Court proceedings brought by private relators to enforce the open meetings law must be commenced within two years after the cause of action accrues, or the proceedings will be barred. Wis. Stat. § 893.93(2)(a); *State ex rel. Leung v. City of Lake Geneva*, 2003 WI App 129, ¶ 6, 265 Wis. 2d 674, 666 N.W.2d 104. If a private relator brings an enforcement action and prevails, the court is authorized to grant broad relief, including a declaration that the law was violated, civil forfeitures where appropriate, and the award of the actual and necessary costs of prosecution, including reasonable attorney fees. Wis. Stat. § 19.97(4). Attorney fees will be awarded under this provision where such an award will provide an incentive to other private parties to similarly vindicate the public's rights to open government and will deter governmental bodies from skirting the open meetings law. *Buswell*, 301 Wis. 2d 178, ¶ 54.

B. Penalties.

Any member of a governmental body who "knowingly" attends a meeting held in violation of the open meetings law, or otherwise violates the law, is subject to a forfeiture of between $25 and $300 for each violation. Wis. Stat. § 19.96. Any forfeiture obtained in an action brought by the district attorney is awarded to the county. Wis. Stat. § 19.97(1). Any forfeiture obtained in an action brought by the Attorney General or a private citizen is awarded to the state. Wis. Stat. § 19.97(1), (2), and (4).

The Wisconsin Supreme Court has defined "knowingly" as not only positive knowledge of the illegality of a meeting, but also awareness of the high probability of the meeting's illegality or conscious avoidance of awareness of the illegality. *Swanson*, 92 Wis. 2d at 319. The Court also held that knowledge is not required to impose forfeitures on an individual for violating the open meetings law by means other than attending a meeting held in violation of the law. Examples of "other violations" are failing to give the required public notice of a meeting or failing to follow the procedure for closing a session. *Id*. at 321.

A member of a governmental body who is charged with knowingly attending a meeting held in violation of the law may raise one of two defenses: (1) that the member made or voted in favor of a motion to prevent the violation or (2) that the member's votes on all relevant motions prior to the violation were inconsistent with the cause of the violation. Wis. Stat. § 19.96.

A member who is charged with a violation other than knowingly attending a meeting held in violation of the law may be permitted to raise the additional statutory defense that the member did not act in his or her official capacity. In addition, in *Swanson*, 92 Wis. 2d at 319, and *Hodge*, 180 Wis. 2d at 80, the Supreme Court intimated

that a member of a governmental body can avoid liability if he or she can factually prove that he or she relied, in good faith and in an open and unconcealed manner, on the advice of counsel whose statutory duties include the rendering of legal opinions as to the actions of the body. *See State v. Tereschko*, 2001 WI App 146, ¶¶ 9-10, 246 Wis. 2d 671, 630 N.W.2d 277 (unpublished opinion declining to find a knowing violation where school board members relied on the advice of counsel in going into closed session); *State v. Davis*, 63 Wis. 2d 75, 82, 216 N.W.2d 31 (1974) (interpreting Wis. Stat. § 946.13(1) (private interest in public contract)). *Cf. Journal/Sentinel v. Shorewood School Bd.*, 186 Wis. 2d 443, 452-55, 521 N.W.2d 165 (Ct. App. 1994) (school board may not avoid duty to provide public records by delegating the creation and custody of the record to its attorneys).

A governmental body may not reimburse a member for a forfeiture incurred as a result of a violation of the law, unless the enforcement action involved a real issue as to the constitutionality of the open meetings law. 66 Op. Att'y Gen. 226 (1977). Although it is not required to do so, a governmental body may reimburse a member for his or her reasonable attorney fees in defending against an enforcement action and for any plaintiff's attorney fees that the member is ordered to pay. The city attorney may represent city officials in open meetings law enforcement actions. 77 Op. Att'y Gen. 177, 180 (1988).

In addition to the forfeiture penalty, Wis. Stat. § 19.97(3) provides that a court may void any action taken at a meeting held in violation of the open meetings law if the court finds that the interest in enforcing the law outweighs any interest in maintaining the validity of the action. Thus, in *Hodge*, 180 Wis. 2d at 75-76, the Court voided the town board's denial of a permit, taken after an unauthorized closed session deliberation about whether to grant or deny the permit. *Cf. Epping*, 218 Wis. 2d at 524 n.4 (arguably unlawful closed session deliberation does not provide basis for voiding subsequent open session vote); *State ex rel. Ward v. Town of Nashville*, 2001 WI App 224, ¶ 30, 247 Wis. 2d 988, 635 N.W.2d 26 (unpublished opinion declining to void an agreement made in open session, where the agreement was the product of three years of unlawfully closed meetings). A court may award any other appropriate legal or equitable relief, including declaratory and injunctive relief. Wis. Stat. § 19.97(2).

In enforcement actions seeking forfeitures, the provisions of the open meetings law must be narrowly construed due to the penal nature of forfeiture. In all other actions, the provisions of the law must be liberally construed to ensure the public's right to "the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business." Wis. Stat. § 19.81(1) and (4). Thus, it is advisable to prosecute forfeiture actions separately from actions seeking other types of relief under the open meetings law.

C. Interpretation by Attorney General.

In addition to the methods of enforcement discussed above, the Attorney General also has express statutory authority to respond to requests for advice from any person as to the applicability of the open meetings and public records laws. Wis. Stat. §§ 19.39 and 19.98. This differs from other areas of law, in which the Attorney General is only authorized to give legal opinions or advice to specified governmental officials and agencies. Because the Legislature has expressly authorized the Attorney General to interpret the open meetings law, the Supreme Court has acknowledged that the Attorney General's opinions in this area should be given substantial weight. *BDADC*, 312 Wis. 2d 84, ¶¶ 37, 44-45.

Citizens with questions about matters outside the scope of the open meetings and public records laws, should seek assistance from a private attorney. Citizens and public officials with questions about the open meetings law or the public records law are advised to first consult the applicable statutes, the corresponding discussions in this Compliance Guide and in the Department of Justice's Public Records Law Compliance Outline, court decisions, and prior Attorney General opinions and to confer with their own private or governmental attorneys. In the rare instances where a question cannot be resolved in this manner, a written request for advice may be made to the Wisconsin Department of Justice. In submitting such requests, it should be remembered that the Department of Justice cannot conduct factual investigations, resolve disputed issues of fact, or make definitive determinations on fact-specific issues. Any response will thus be based solely on the information provided.

APPENDIX A

OPEN MEETINGS LAW

Wis. Stat. §§ 19.81 - 19.98 (2007-08)

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(4) NONAPPLICABILITY. This section does not apply to any matching program established between the secretary of transportation and the commissioner of the federal social security administration pursuant to an agreement specified under s. 85.61 (2).

History: 1991 a. 39, 269; 1995 a. 27; 2003 a. 265.

19.71 Sale of names or addresses. An authority may not sell or rent a record containing an individual's name or address of residence, unless specifically authorized by state law. The collection of fees under s. 19.35 (3) is not a sale or rental under this section.

History: 1991 a. 39.

19.77 Summary of case law and attorney general opinions. Annually, the attorney general shall summarize case law and attorney general opinions relating to due process and other legal issues involving the collection, maintenance, use, provision of access to, sharing or archiving of personally identifiable information by authorities. The attorney general shall provide the summary, at no charge, to interested persons.

History: 1991 a. 39.

19.80 Penalties. (2) EMPLOYEE DISCIPLINE. Any person employed by an authority who violates this subchapter may be discharged or suspended without pay.

(3) PENALTIES. (a) Any person who willfully collects, discloses or maintains personally identifiable information in violation of federal or state law may be required to forfeit not more than $500 for each violation.

(b) Any person who willfully requests or obtains personally identifiable information from an authority under false pretenses may be required to forfeit not more than $500 for each violation.

History: 1991 a. 39, 269.

SUBCHAPTER V

OPEN MEETINGS OF GOVERNMENTAL BODIES

19.81 Declaration of policy. (1) In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.

(2) To implement and ensure the public policy herein expressed, all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.

(3) In conformance with article IV, section 10, of the constitution, which states that the doors of each house shall remain open, except when the public welfare requires secrecy, it is declared to be the intent of the legislature to comply to the fullest extent with this subchapter.

(4) This subchapter shall be liberally construed to achieve the purposes set forth in this section, and the rule that penal statutes must be strictly construed shall be limited to the enforcement of forfeitures and shall not otherwise apply to actions brought under this subchapter or to interpretations thereof.

History: 1975 c. 426; 1983 a. 192.

NOTE: The following annotations relate to s. 66.77, repealed by Chapter 426, laws of 1975.

Subsequent to the presentation of evidence by the taxpayer, a board of review's consideration of testimony by the village assessor at an executive session was contrary to the open meeting law. Although it was permissible for the board to convene a closed session for the purpose of deliberating after a quasi−judicial hearing, the proceedings did not constitute mere deliberations but were a continuation of the quasi−judicial hearing without the presence of or notice to the objecting taxpayer. Dolphin v. Butler Board of Review, 70 Wis. 2d 403, 234 N.W.2d 277 (1975).

The open meeting law is not applicable to the judicial commission. State ex rel. Lynch v. Dancey, 71 Wis. 2d 287, 238 N.W.2d 81 (1976).

A regular open meeting, held subsequent to a closed meeting on another subject, does not constitute a reconvened open meeting when there was no prior open meeting on that day. 58 Atty. Gen. 41.

Consideration of a resolution is a formal action of an administrative or minor governing body and when taken in proper closed session, the resolution and result of the vote must be made available for public inspection, pursuant to 19.21, absent a specific showing that the public interest would be adversely affected. 60 Atty. Gen. 9.

Joint apprenticeship committees, appointed pursuant to Wis. Adm. Code provisions, are governmental bodies and subject to the requirements of the open meeting law. 63 Atty. Gen. 363.

Voting procedures employed by worker's compensation and unemployment advisory councils that utilized adjournment of public meeting for purposes of having members representing employers and members representing employees or workers to separately meet in closed caucuses and to vote as a block on reconvening was contrary to the open records law. 63 Atty. Gen. 414.

A governmental body can call closed sessions for proper purposes without giving notice to members of the news media who have filed written requests. 63 Atty. Gen. 470.

The meaning of "communication" is discussed with reference to giving the public and news media members adequate notice. 63 Atty. Gen. 509.

The posting in the governor's office of agenda of future investment board meetings is not sufficient communication to the public or the news media who have filed a written request for notice. 63 Atty. Gen. 549.

A county board may not utilize an unidentified paper ballot in voting to appoint a county highway commissioner, but may vote by ayes and nays or show of hands at an open session if some member does not require the vote to be taken in such manner that the vote of each member may be ascertained and recorded. 63 Atty. Gen. 569.

NOTE: The following annotations refer to ss. 19.81 to 19.98.

When the city of Milwaukee and a private non−profit festival organization incorporated the open meetings law into a contract, the contract allowed public enforcement of the contractual provisions concerning open meetings. Journal/Sentinel, Inc. v. Pleva, 155 Wis. 2d 704, 456 N.W.2d 359 (1990).

Sub. (2) requires that a meeting be held in a facility that gives reasonable public access, not total access. No person may be systematically excluded or arbitrarily refused admittance. State ex rel. Badke v. Greendale Village Bd. 173 Wis. 2d 553, 494 N.W.2d 408 (1993).

This subchapter is discussed. 65 Atty. Gen. preface.

Public notice requirements for meetings of a city district school board under this subchapter and s. 120.48, 1983 stats., are discussed. 66 Atty. Gen. 93.

A volunteer fire department organized as a nonprofit corporation under s. 213.05 is not subject to the open meeting law. 66 Atty. Gen. 113.

Anyone has the right to tape−record an open meeting of a governmental body provided the meeting is not thereby physically disrupted. 66 Atty. Gen. 318.

The open meeting law does not apply to a coroner's inquest. 67 Atty. Gen. 250.

The open meeting law does not apply if the common council hears a grievance under a collective bargaining agreement. 67 Atty. Gen. 276.

The application of the open meeting law to the duties of WERC is discussed. 68 Atty. Gen. 171.

A senate committee meeting was probably held in violation of the open meetings law although there was never any intention prior to the gathering to attempt to debate any matter of policy, to reach agreement on differences, to make any decisions on any bill or part thereof, to take any votes, or to resolve substantive differences. Quorum gatherings should be presumed to be in violation of the law, due to a quorum's ability to thereafter call, compose and control by vote a formal meeting of a governmental body. 71 Atty. Gen. 63.

Nonstock corporations created by statute as bodies politic clearly fall within the term "governmental body" as defined in the open meetings law and are subject to the provisions of the open meetings law. Nonstock corporations that were not created by the legislature or by rule, but were created by private citizens are not bodies politic and not governmental bodies. 73 Atty. Gen. 53.

A "quasi−governmental corporation" in sub. (1) includes private corporations that closely resemble governmental corporations in function, effect, or status. 80 Atty. Gen. 129.

Understanding Wisconsin's open meeting law. Harvey, WBB September 1980.

Getting the Best of Both Worlds: Open Government and Economic Development. Westerberg. Wis. Law. Feb. 2009.

19.82 Definitions. As used in this subchapter:

(1) "Governmental body" means a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or quasi−governmental corporation except for the Bradley center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; a long−term care district under s. 46.2895; or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. I, IV, V, or VI of ch. 111.

(2) "Meeting" means the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one−half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any

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social or chance gathering or conference which is not intended to avoid this subchapter, any gathering of the members of a town board for the purpose specified in s. 60.50 (6), any gathering of the commissioners of a town sanitary district for the purpose specified in s. 60.77 (5) (k), or any gathering of the members of a drainage board created under s. 88.16, 1991 stats., or under s. 88.17, for a purpose specified in s. 88.065 (5) (a).

(3) "Open session" means a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times. In the case of a state governmental body, it means a meeting which is held in a building and room thereof which enables access by persons with functional limitations, as defined in s. 101.13 (1).

History: 1975 c. 426; 1977 c. 364, 447; 1985 a. 26, 29, 332; 1987 a. 305; 1993 a. 215, 263, 456, 491; 1995 a. 27, 185; 1997 a. 79; 1999 a. 9; 2007 a. 20, 96; 2009 a. 28.

A "meeting" under sub. (2) was found although the governmental body was not empowered to exercise the final powers of its parent body. State v. Swanson, 92 Wis. 2d 310, 284 N.W.2d 655 (1979).

A "meeting" under sub. (2) was found when members met with a purpose to engage in government business and the number of members present was sufficient to determine the parent body's course of action regarding the proposal discussed. State ex rel. Newspapers v. Showers, 135 Wis. 2d 77, 398 N.W.2d 154 (1987).

The open meetings law is not meant to apply to single−member governmental bodies. Sub. (2) speaks of a meeting of the members, plural, implying there must be at least two members of a governmental body. Plourde v. Berends, 2006 WI App 147, 294 Wis. 2d 746, 720 N.W.2d 130, 05−2106.

A corporation is quasi−governmental if, based on the totality of circumstances, it resembles a governmental corporation in function, effect, or status, requiring a case−by−case analysis. Here, a primary consideration was that the body was funded exclusively by public tax dollars or interest thereon. Additionally, its office was located in the municipal building, it was listed on the city Web site, the city provided it with clerical support and office supplies, all its assets revert to the city if it ceases to exist, its books are open for city inspection, the mayor and another city official are directors, and it had no clients other than the city. State v. Beaver Dam Area Development Corporation, 2008 WI 90, 312 Wis. 2d 84, 752 N.W.2d 295, 06−0662.

A municipal public utility commission managing a city owned public electric utility is a governmental body under sub. (1). 65 Atty. Gen. 243.

A "private conference" under s. 118.22 (3), on nonrenewal of a teacher's contract is a "meeting" within s. 19.82 (2). 66 Atty. Gen. 211.

A private home may qualify as a meeting place under sub. (3). 67 Atty. Gen. 125.

A telephone conference call involving members of governmental body is a "meeting" that must be reasonably accessible to the public and public notice must be given. 69 Atty. Gen. 143.

19.83 Meetings of governmental bodies. (1) Every meeting of a governmental body shall be preceded by public notice as provided in s. 19.84, and shall be held in open session. At any meeting of a governmental body, all discussion shall be held and all action of any kind, formal or informal, shall be initiated, deliberated upon and acted upon only in open session except as provided in s. 19.85.

(2) During a period of public comment under s. 19.84 (2), a governmental body may discuss any matter raised by the public.

History: 1975 c. 426; 1997 a. 123.

When a quorum of a governmental body attends the meeting of another governmental body when any one of the members is not also a member of the second body, the gathering is a "meeting," unless the gathering is social or by chance. State ex rel. Badke v. Greendale Village Board, 173 Wis. 2d 553, 494 N.W.2d 408 (1993).

19.84 Public notice. (1) Public notice of all meetings of a governmental body shall be given in the following manner:

(a) As required by any other statutes; and

(b) By communication from the chief presiding officer of a governmental body or such person's designee to the public, to those news media who have filed a written request for such notice, and to the official newspaper designated under ss. 985.04, 985.05 and 985.06 or, if none exists, to a news medium likely to give notice in the area.

(2) Every public notice of a meeting of a governmental body shall set forth the time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof. The public notice of a meeting of a governmental body may provide for a period of public comment, during which the body may receive information from members of the public.

(3) Public notice of every meeting of a governmental body shall be given at least 24 hours prior to the commencement of such meeting unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 2 hours in advance of the meeting.

(4) Separate public notice shall be given for each meeting of a governmental body at a time and date reasonably proximate to the time and date of the meeting.

(5) Departments and their subunits in any University of Wisconsin System institution or campus are exempt from the requirements of subs. (1) to (4) but shall provide meeting notice which is reasonably likely to apprise interested persons, and news media who have filed written requests for such notice.

(6) Notwithstanding the requirements of s. 19.83 and the requirements of this section, a governmental body which is a formally constituted subunit of a parent governmental body may conduct a meeting without public notice as required by this section during a lawful meeting of the parent governmental body, during a recess in such meeting or immediately after such meeting for the purpose of discussing or acting upon a matter which was the subject of that meeting of the parent governmental body. The presiding officer of the parent governmental body shall publicly announce the time, place and subject matter of the meeting of the subunit in advance at the meeting of the parent body.

History: 1975 c. 426; 1987 a. 305; 1993 a. 215; 1997 a. 123; 2007 a. 20.

There is no requirement in this section that the notice provided be exactly correct in every detail. State ex rel. Olson v. City of Baraboo Joint Review Board, 2002 WI App 64, 252 Wis. 2d 628, 643 N.W.2d 796, 01−0201.

Sub. (2) does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken. The notice must alert the public of the importance of the meeting. Although a failure to expressly state whether action will be taken could be a violation, the importance of knowing whether a vote would be taken is diminished when no input from the audience is allowed or required. State ex rel. Olson v. City of Baraboo Joint Review Board, 2002 WI App 64, 252 Wis. 2d 628, 643 N.W.2d 796, 01−0201.

Sub. (2) sets forth a reasonableness standard for determining whether notice of a meeting is sufficient that strikes the proper balance between the public's right to information and the government's need to efficiently conduct its business. The standard requires taking into account the circumstances of the case, which includes analyzing such factors as the burden of providing more detailed notice, whether the subject is of particular public interest, and whether it involves non−routine action that the public would be unlikely to anticipate. Buswell v. Tomah Area School District, 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804, 05−2998.

Under sub. (1) (b), a written request for notice of meetings of a governmental body should be filed with the chief presiding officer or designee and a separate written request should be filed with each specific governmental body. 65 Atty. Gen. 166.

The method of giving notice pursuant to sub. (1) is discussed. 65 Atty. Gen. 250.

The specificity of notice required by a governmental body is discussed. 66 Atty. Gen. 143, 195.

The requirements of notice given to newspapers under this section is discussed. 66 Atty. Gen. 230.

A town board, but not an annual town meeting, is a "governmental body" within the meaning of the open meetings law. 66 Atty. Gen. 237.

News media who have filed written requests for notices of public meetings cannot be charged fees by governmental bodies for communication of the notices. 77 Atty. Gen. 312.

A newspaper is not obligated to print a notice received under sub. (1) (b), nor is governmental body obligated to pay for publication. Martin v. Wray, 473 F. Supp. 1131 (1979).

19.85 Exemptions. (1) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session. A closed session may be held for any of the following purposes:

Electronic reproduction of 2007−08 Wis. Stats. database, updated and current through 2009 Act 406 and June 30, 2010.

(a) Deliberating concerning a case which was the subject of any judicial or quasi−judicial trial or hearing before that governmental body.

(b) Considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter; provided that the faculty member or other public employee or person licensed is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par. (f) do not apply to any such evidentiary hearing or meeting where the employee or person licensed requests that an open session be held.

(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.

(d) Except as provided in s. 304.06 (1) (eg) and by rule promulgated under s. 304.06 (1) (em), considering specific applications of probation, extended supervision or parole, or considering strategy for crime detection or prevention.

(e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.

(ee) Deliberating by the council on unemployment insurance in a meeting at which all employer members of the council or all employee members of the council are excluded.

(eg) Deliberating by the council on worker's compensation in a meeting at which all employer members of the council or all employee members of the council are excluded.

(em) Deliberating under s. 157.70 if the location of a burial site, as defined in s. 157.70 (1) (b), is a subject of the deliberation and if discussing the location in public would be likely to result in disturbance of the burial site.

(f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

(g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

(h) Consideration of requests for confidential written advice from the government accountability board under s. 5.05 (6a), or from any county or municipal ethics board under s. 19.59 (5).

(i) Considering any and all matters related to acts by businesses under s. 560.15 which, if discussed in public, could adversely affect the business, its employees or former employees.

(2) No governmental body may commence a meeting, subsequently convene in closed session and thereafter reconvene again in open session within 12 hours after completion of the closed session, unless public notice of such subsequent open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session.

(3) Nothing in this subchapter shall be construed to authorize a governmental body to consider at a meeting in closed session the final ratification or approval of a collective bargaining agreement under subch. I, IV, V, or VI of ch. 111 which has been negotiated by such body or on its behalf.

History: 1975 c. 426; 1977 c. 260; 1983 a. 84; 1985 a. 316; 1987 a. 38, 305; 1989 a. 64; 1991 a. 39; 1993 a. 97, 215; 1995 a. 27; 1997 a. 39, 237, 283; 1999 a. 32; 2007 a. 1, 20; 2009 a. 28.

Although a meeting was properly closed, in order to refuse inspection of records of the meeting, the custodian was required by s. 19.35 (1) (a) to state specific and sufficient public policy reasons why the public interest in nondisclosure outweighed the public's right of inspection. Oshkosh Northwestern Co. v. Oshkosh Library Board, 125 Wis. 2d 480, 373 N.W.2d 459 (Ct. App. 1985).

The balance between protection of reputation under sub. (1) (f) and the public interest in openness is discussed. Wis. State Journal v. UW−Platteville, 160 Wis. 2d 31, 465 N.W.2d 266 (Ct. App. 1990). See also Pangman v. Stigler, 161 Wis. 2d 828, 468 N.W.2d 784 (Ct. App. 1991).

A "case" under sub. (1) (a) contemplates an adversarial proceeding. It does not connote the mere application for and granting of a permit. Hodge v. Turtle Lake, 180 Wis. 2d 62, 508 N.W.2d 603 (1993).

A closed session to discuss an employee's dismissal was properly held under sub. (1) (b) and did not require notice to the employee under sub. (1) (c) when no evidentiary hearing or final action took place in the closed session. State ex rel. Epping v. City of Neillsville, 218 Wis. 2d 516, 581 N.W.2d 548 (Ct. App. 1998), 97−0403.

The exception under sub. (1) (e) must be strictly construed. A private entity's desire for confidentiality does not permit a closed meeting. A governing body's belief that secret meetings will produce cost savings does not justify closing the door to public scrutiny. Providing contingencies allowing for future public input was insufficient. Because legitimate concerns were present for portions of some of the meetings does not mean the entirety of the meetings fell within the narrow exception under sub. (1) (e). Citizens for Responsible Development v. City of Milton, 2007 WI App 114, 300 Wis. 2d 649, 731 N.W.2d 640, 06−0427.

Section 19.35 (1) (a) does not mandate that, when a meeting is closed under this section, all records created for or presented at the meeting are exempt from disclosure. The court must still apply the balancing test articulated in *Linzmeyer,* 2002 WI 84, 254 Wis. 2d 306. Zellner v. Cedarburg School District, 2007 WI 53, 300 Wis. 2d 290, 731 N.W.2d 240, 06−1143.

Nothing in sub. (1) (e) suggests that a reason for going into closed session must be shared by each municipality participating in an intergovernmental body. It is not inconsistent with the open meetings law for a body to move into closed session under sub. (1) (e) when the bargaining position to be protected is not shared by every member of the body. Once a vote passes to go into closed session, the reason for requesting the vote becomes the reason of the entire body. Herro v. Village of McFarland, 2007 WI App 172, 303 Wis. 2d 749, 737 N.W.2d 55, 06−1929.

In allowing governmental bodies to conduct closed sessions in limited circumstances, this section does not create a blanket privilege shielding closed session contents from discovery. There is no implicit or explicit confidentiality mandate. A closed meeting is not synonymous with a meeting that, by definition, entails a privilege exempting its contents from discovery. Sands v. The Whitnall School District, 2008 WI 89, 312 Wis. 2d 1, 754 N.W.2d 439, 05−1026.

Boards of review cannot rely on the exemptions in sub. (1) to close any meeting in view of the explicit requirements in s. 70.47 (2m). 65 Atty. Gen. 162.

A university subunit may discuss promotions not relating to tenure, merit increases, and property purchase recommendations in closed session. 66 Atty. Gen. 60.

Neither sub. (1) (c) nor (f) authorizes a school board to make actual appointments of a new member in closed session. 74 Atty. Gen. 70.

A county board chairperson and committee are not authorized by sub. (1) (c) to meet in closed session to discuss appointments to county board committees. In appropriate circumstances, sub. (1) (f) would authorize closed sessions. 76 Atty. Gen. 276.

Sub. (1) (c) does not permit closed sessions to consider employment, compensation, promotion, or performance evaluation policies to be applied to a position of employment in general. 80 Atty. Gen. 176.

A governmental body may convene in closed session to formulate collective bargaining strategy, but sub. (3) requires that deliberations leading to ratification of a tentative agreement with a bargaining unit, as well as the ratification vote, must be held in open session. 81 Atty. Gen. 139.

"Evidentiary hearing" as used in s. 19.85 (1) (b), means a formal examination of accusations by receiving testimony or other forms of evidence that may be relevant to the dismissal, demotion, licensing, or discipline of any public employee or person covered by that section. A council that considered a mayor's accusations against an employee in closed session without giving the employee prior notice violated the requirement of actual notice to the employee. Campana v. City of Greenfield, 38 F. Supp. 2d 1043 (1999).

Closed Session, Open Book: Sifting the *Sands* Case. Bach. Wis. Law. Oct. 2009.

19.851 Closed sessions by government accountability board. The government accountability board shall hold each meeting of the board for the purpose of deliberating concerning an investigation of any violation of the law under the jurisdiction of the ethics and accountability division of the board in closed session under this section. Prior to convening under this section, the government accountability board shall vote to convene in closed session in the manner provided in s. 19.85 (1). No business may be conducted by the government accountability board at any closed session under this section except that which relates to the purposes of the session as authorized in this section or as authorized in s. 19.85 (1).

History: 2007 a. 1.

19.86 Notice of collective bargaining negotiations. Notwithstanding s. 19.82 (1), where notice has been given by either party to a collective bargaining agreement under subch. I, IV, V, or VI of ch. 111 to reopen such agreement at its expiration date, the employer shall give notice of such contract reopening as provided in s. 19.84 (1) (b). If the employer is not a governmental

Text from the 2007−08 Wis. Stats. database updated by the Legislative Reference Bureau. Only printed statutes are certified under s. 35.18 (2), stats. Statutory changes effective prior to 1−2−10 are printed as if currently in effect. Statutory changes effective on or after 1−2−10 are designated by NOTES. Report errors at (608) 266−3561, FAX 264−6948, http://www.legis.state.wi.us/rsb/stats.html

body, notice shall be given by the employer's chief officer or such person's designee.

History: 1975 c. 426; 1987 a. 305; 1993 a. 215; 1995 a. 27; 2007 a. 20; 2009 a. 28.

19.87 Legislative meetings. This subchapter shall apply to all meetings of the senate and assembly and the committees, subcommittees and other subunits thereof, except that:

(1) Section 19.84 shall not apply to any meeting of the legislature or a subunit thereof called solely for the purpose of scheduling business before the legislative body; or adopting resolutions of which the sole purpose is scheduling business before the senate or the assembly.

(2) No provision of this subchapter which conflicts with a rule of the senate or assembly or joint rule of the legislature shall apply to a meeting conducted in compliance with such rule.

(3) No provision of this subchapter shall apply to any partisan caucus of the senate or any partisan caucus of the assembly, except as provided by legislative rule.

(4) Meetings of the senate or assembly committee on organization under s. 71.78 (4) (c) or 77.61 (5) (b) 3. shall be closed to the public.

History: 1975 c. 426; 1977 c. 418; 1987 a. 312 s. 17.

Sub. (3) applied to a closed meeting of the members of one political party on a legislative committee to discuss a bill. State ex rel. Lynch v. Conta, 71 Wis. 2d 662, 239 N.W.2d 313 (1976).

19.88 Ballots, votes and records. (1) Unless otherwise specifically provided by statute, no secret ballot may be utilized to determine any election or other decision of a governmental body except the election of the officers of such body in any meeting.

(2) Except as provided in sub. (1) in the case of officers, any member of a governmental body may require that a vote be taken at any meeting in such manner that the vote of each member is ascertained and recorded.

(3) The motions and roll call votes of each meeting of a governmental body shall be recorded, preserved and open to public inspection to the extent prescribed in subch. II of ch. 19.

History: 1975 c. 426; 1981 c. 335 s. 26.

Under sub. (1), a common council may not vote to fill a vacancy on the common council by secret ballot. 65 Atty. Gen. 131.

19.89 Exclusion of members. No duly elected or appointed member of a governmental body may be excluded from any meeting of such body. Unless the rules of a governmental body provide to the contrary, no member of the body may be excluded from any meeting of a subunit of that governmental body.

History: 1975 c. 426.

19.90 Use of equipment in open session. Whenever a governmental body holds a meeting in open session, the body shall make a reasonable effort to accommodate any person desiring to record, film or photograph the meeting. This section does not permit recording, filming or photographing such a meeting in a manner that interferes with the conduct of the meeting or the rights of the participants.

History: 1977 c. 322.

19.96 Penalty. Any member of a governmental body who knowingly attends a meeting of such body held in violation of this subchapter, or who, in his or her official capacity, otherwise violates this subchapter by some act or omission shall forfeit without reimbursement not less than $25 nor more than $300 for each such violation. No member of a governmental body is liable under this subchapter on account of his or her attendance at a meeting held in violation of this subchapter if he or she makes or votes in favor of a motion to prevent the violation from occurring, or if, before the violation occurs, his or her votes on all relevant motions were inconsistent with all those circumstances which cause the violation.

History: 1975 c. 426.

The state need not prove specific intent to violate the Open Meetings Law. State v. Swanson, 92 Wis. 2d 310, 284 N.W.2d 655 (1979).

19.97 Enforcement. (1) This subchapter shall be enforced in the name and on behalf of the state by the attorney general or, upon the verified complaint of any person, by the district attorney of any county wherein a violation may occur. In actions brought by the attorney general, the court shall award any forfeiture recovered together with reasonable costs to the state; and in actions brought by the district attorney, the court shall award any forfeiture recovered together with reasonable costs to the county.

(2) In addition and supplementary to the remedy provided in s. 19.96, the attorney general or the district attorney may commence an action, separately or in conjunction with an action brought under s. 19.96, to obtain such other legal or equitable relief, including but not limited to mandamus, injunction or declaratory judgment, as may be appropriate under the circumstances.

(3) Any action taken at a meeting of a governmental body held in violation of this subchapter is voidable, upon action brought by the attorney general or the district attorney of the county wherein the violation occurred. However, any judgment declaring such action void shall not be entered unless the court finds, under the facts of the particular case, that the public interest in the enforcement of this subchapter outweighs any public interest which there may be in sustaining the validity of the action taken.

(4) If the district attorney refuses or otherwise fails to commence an action to enforce this subchapter within 20 days after receiving a verified complaint, the person making such complaint may bring an action under subs. (1) to (3) on his or her relation in the name, and on behalf, of the state. In such actions, the court may award actual and necessary costs of prosecution, including reasonable attorney fees to the relator if he or she prevails, but any forfeiture recovered shall be paid to the state.

(5) Sections 893.80 and 893.82 do not apply to actions commenced under this section.

History: 1975 c. 426; 1981 c. 289; 1995 a. 158.

Judicial Council Note, 1981: Reference in sub. (2) to a "writ" of mandamus has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto. [Bill 613−A]

Awards of attorney fees are to be at a rate applicable to private attorneys. A court may review the reasonableness of the hours and hourly rate charged, including the rates for similar services in the area, and may in addition consider the peculiar facts of the case and the responsible party's ability to pay. Hodge v. Town of Turtle Lake, 190 Wis. 2d 181, 526 N.W.2d 784 (Ct. App. 1994).

Actions brought under the open meetings and open records laws are exempt form the notice provisions of s. 893.80 (1). Auchinleck v. Town of LaGrange, 200 Wis. 2d 585, 547 N.W.2d 587 (1996), 94−2809.

Failure to bring an action under this section on behalf of the state is fatal and deprives the court of competency to proceed. Fabyan v. Achtenhagen, 2002 WI App 214, 257 Wis. 2d. 310, 652 N.W.2d 649, 01−3298.

Complaints under the open meetings law are not brought in the individual capacity of the plaintiff but on behalf of the state, subject to the 2−year statue of limitations under s. 893.93 (2). Leung v. City of Lake Geneva, 2003 WI App 129, 265 Wis. 2d 674, 666 N.W.2d 104, 02−2747.

When a town board's action was voided by the court due to lack of statutory authority, an action for enforcement under sub. (4) by an individual as a private attorney general on behalf of the state against individual board members for a violation of the open meetings law that would subject the individual board members to civil forfeitures was not rendered moot. Lawton v. Town of Barton, 2005 WI App 16, 278 Wis. 2d 388, 692 N.W.2d 304, 04−0659

19.98 Interpretation by attorney general. Any person may request advice from the attorney general as to the applicability of this subchapter under any circumstances.

History: 1975 c. 426.

APPENDIX B

SAMPLE OPEN MEETINGS LAW COMPLAINT FORM

VERIFIED OPEN MEETINGS LAW COMPLAINT

Now comes the complainant _____ and as and for a verified complaint pursuant to Wis. Stat. §§ 19.96 and 19.97, alleges and complains as follows:

1. That _he is a resident of the _____ [town, village, city] of _____, Wisconsin, and that his or her Post Office Address is _____ [street, avenue, etc.] _____, Wisconsin _____ [zip].

2. That _____ [name of member or chief presiding officer] whose Post Office Address is _____ [street, avenue, etc.], _____ [city], Wisconsin, was on the _____ day of _____ 200_, a _____ [member or chief presiding officer] of _____ designate official title of governmental body] and that such _____ [board, council, commission or committee] is a governmental body within the meaning of Wis. Stat. § 19.82(1).

3. That _____ [name of member or chief presiding officer] on the _____ day of _____, 200_, at _____ County of _____, Wisconsin, knowingly attended a meeting of said governmental body held in violation of Wis. Stat. § 19.96 and _____ [cite other applicable section(s)], or otherwise violated those sections in that [set out every act or omission constituting the offense charged]:

4. That _____ [name of member or chief presiding officer] is thereby subject to the penalties prescribed in Wis. Stat. § 19.96.

5. That the following witnesses can testify to said acts or omissions:

Name	Address	Telephone
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

6. That the following documentary evidence of said acts or omissions is available:

7. That this complaint is made to the District Attorney for _____ County under the provisions of Wis. Stat. § 19.97, and that the district attorney may bring an action to recover the forfeiture provided in Wis. Stat. § 19.96.

WHEREFORE, complainant prays that the District Attorney for _____ County, Wisconsin, timely institute an action against _____ [name of member or chief presiding officer] to recover the forfeiture provided in Wis. Stat. § 19.96, together with reasonable costs and disbursements as provided by law.

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

_____ being first duly sworn on oath deposes and says that __he is the above-named complainant, that _he has read the foregoing complaint and that, based on his or her knowledge, the contents of the complaint are true.

_____
COMPLAINANT

Subscribed and sworn to before me
this ____ day of _____, 200_.

_____
Notary Public, State of Wisconsin
My Commission: _____

16. APPRENTICESHIP FORMS

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Affirmative Action Compliance Review - (DETA-8850)

Department of Workforce Development
Division of Employment and Training
Bureau of Apprenticeship Standards

DETA-8850 (R. 12/2008)

Sponsor Name:

Address:

Contact Person(s):

Name:

Title:

Telephone Number:

COMPLIANCE REVIEW STATUS

Name BAS/BAT Representative:

Compliance Review Date:

Date of Last Compliance Review:

Type of Sponsor Business:

Sponsor's Total Employes:

Sponsor's Current Apprenticeable Trades and the Number of Apprentices Currently in Each:

Trade	No. of Apprentices

Date Submitted to BAS Administrative Office:

Affirmative Action Compliance Review - (DETA-8850) , cont.

Bureau of Apprenticeship Standards
EQUAL EMPLOYMENT OPPORTUNITY AFFIRMATIVE ACTION

COMPLIANCE REVIEW

Information for review period: to

	Minority		Non-Minority		Total		Grand Total
	Male	Female	Male	Female	Male	Female	All
Applied for Apprenticeship							
Completed Application Process According to Approved Selection Process							
Met Minimum Qualifications							
Started Apprenticeship Program							
Apprentices Canceled During Review Period							
Apprentices Completed During Review Period							
Apprentices Currently in Program							
Journeyworkers in Sponsor's Workforce							

Date: _____ **Program Goals:** Minorities: _____ Females: _____

SECTION 1 - ADMINISTRATIVE INFORMATION

A. Individual Sponsors

1. Is the sponsor signatory to a bargaining agreement? ☐ Yes ☐ No

   If yes, give full name and number of local union:

2. Does sponsor have an in-plant Advisory Committee? ☐ Yes ☐ No

B. Joint Committees/Construction Trades

Which association(s), labor organization(s) or other organization(s) nominates the employe members of the committee? Provide association or organization name and address and their representative's name:

Which association(s) or organization(s) nominates the employer members of the committee? Provide association or organization name and address and their representative's name.

How many employers are currently training apprentices?

How many union employers are currently training apprentices? Non-union?

Affirmative Action Compliance Review - (DETA-8850) , cont.

Does this committee have access to an apprenticeship training fund that can be used to promote and recruit for the program? ☐ Yes ☐ No

Is there equal employer/employe representation on this committee? ☐ Yes ☐ No

SECTION 2 - AFFIRMATIVE ACTION PLAN / EEO PLEDGE

A. Does the AAP include the utilization of journey-level workers to assist in implementing the sponsor's affirmative action efforts? ☐ Yes ☐ No

Were female and minority journey-level workers used to assist in implementing the sponsor's AA program? ☐ Yes ☐ No

Describe the activities of journeyworkers taken during the review year:

B. Does the sponsor equitably grant advanced standing or credit on the basis of previously acquired experience, training skills or aptitude? ☐ Yes ☐ No

C. Does the AAP include activities with local schools, vocational education systems and other agencies to develop programs for preparing students to meet standards and criteria required to qualify for entry into apprenticeship programs? ☐ Yes ☐ No

Describe the activities, programs developed and contracts made during the review period:

D. Did the sponsor disseminate information regarding the apprenticeship program to local Job Service offices, educational institutions, and community-based agencies to increase awareness and/or develop programs for preparing students and potential applicants to meet standards and criteria required to qualify for entry into apprenticeship programs? ☐ Yes ☐ No

To whom was the information disseminated? (If extensive, include sponsor contact/outreach list as an appendix to this report):

What information is disseminated and how was it done?

When was the information disseminated? (Give dates):

E. Has the sponsor internally disseminated their AA Plan commitment to all employers and employes? ☐ Yes ☐ No

When and How? (Posting, meetings, mailings, newsletter):

To Whom?

F. Has the sponsor undertaken the following actions to insure that recruitment, selection, employment and training of apprentice is non-discriminatory?

a. Does sponsor have the required non-discrimination pledge? ☐ Yes ☐ No
b. Does the sponsor have a BAS-approved Affirmative Action Plan? ☐ Yes ☐ No
c. Did the sponsor review its Affirmative Action Plan during the review period? ☐ Yes ☐ No

G. Did the sponsor conduct any specific efforts or engage in additional activities which were not listed in the AAP? ☐ Yes ☐ No

Describe the activity or effort:

H. Were there any items of the AAP which the sponsor did not implement or conduct? ☐ Yes ☐ No

Affirmative Action Compliance Review - (DETA-8850) , cont.

If yes, list those items:

SUMMARY COMMENTS:

SECTION 3 - SELECTION PROCEDURES

A. Does the sponsor have a BAS-approved selection procedure? ☐ Yes ☐ No

Date approved:

If not, describe procedure used:

B. What selection procedure was used? (Check one)

☐ 1. Rank selection based on validated factors.
☐ 2. Random selection from pool of eligible applicants.
☐ 3. Selection from pool of current employes.
☐ 4. Alternative selection procedure.

C. Did the sponsor disseminate the following information on its selection procedure?

1. Procedure for application? ☐ Yes ☐ No
2. Place for application? ☐ Yes ☐ No
3. Qualifications required? ☐ Yes ☐ No

If no to any item, explain:

(Answer the specific question which applies to the selection procedure used by the sponsor.)

1. If application period is open year-round, was the information disseminated semi-annually? ☐ Yes ☐ No
2. If the application period was open for a specified time, was the information disseminated at least 30 days prior to opening, and was the application period at least 2 weeks in length? ☐ Yes ☐ No

D. Did the sponsor follow the BAS-approved selection procedures? ☐ Yes ☐ No

If no, explain in detail where the sponsor varied from procedure and why:

E. Application Form

Did the sponsor use a standard application form? ☐ Yes ☐ No

Was the form free of potentially discriminatory questions? ☐ Yes ☐ No

If no, list potentially discriminatory questions and attach form to this report.

F. Operation of Selection Procedures

Did the sponsor consistently apply the minimum criteria in determining eligibility and qualifications of applicants? ☐ Yes ☐ No

Does the sponsor use a test to determine eligibility or ranking of applicants? ☐ Yes ☐ No

If a test is used:

1. What test is administered?
2. Who administers the test?

Affirmative Action Compliance Review - (DETA-8850) , cont.

3. Are test results used consistently in the selection process? ☐ Yes ☐ No

G. Does the sponsor use interviews to select and rank applicants? ☐Yes ☐No

1. Do the same individuals conduct the interviews for all applicants? ☐ Yes ☐ No
2. Were the same questions asked of all applicants, and did the interviewers use standard, written questions? ☐ Yes ☐ No

If no, explain what the sponsor did in the selection procedure and if this action had a potentially discriminatory effect.

H. Records

Were records of the selection process kept and made available to you? ☐ Yes ☐ No

If no, explain what records were not kept or provided:

SUMMARY COMMENTS:

SECTION 4 - EEO OPERATIONS

A. Does the sponsor employ and/or train apprentices in a non-discriminatory manner?
(Did the sponsor uniformly apply rules, policies, and procedures in taking apprentice actions?) ☐ Yes ☐ No

How was this determined? (What records were examined in review?)

Describe any variations or inconsistencies which may have resulted in unequal treatment of apprentices.

B. Are the following applicant, apprentice and selection records being kept for a minimum of five years?

Applicant Records:			**Comments**
Summary of Qualifications	☐ Yes	☐ No	
Selection and Rejection	☐ Yes	☐ No	
Interview Records	☐ Yes	☐ No	
Testing Results	☐ Yes	☐ No	
Original Applications	☐ Yes	☐ No	
Apprentice Records:			
Job Assignment Information	☐ Yes	☐ No	
Wage Advancement	☐ Yes	☐ No	
Disciplinary Actions	☐ Yes	☐ No	
Layoff	☐ Yes	☐ No	
Termination	☐ Yes	☐ No	
Basis for Evaluation	☐ Yes	☐ No	
Other - Specify:	☐ Yes	☐ No	

SECTION 5 - ANALYSIS

FINDINGS AND RECOMMENDATIONS

Affirmative Action Compliance Review - (DETA-8850), cont.

A. Based upon your review of the sponsor's statistical analysis (Section 1), is the sponsor meeting its goals during the review period for:

Women? ☐ Yes ☐ No

Minorities? ☐ Yes ☐ No

B. Based upon your review and analysis of the sponsor's implementation of its Affirmative Action Plan (Section 2), did the sponsor make a good faith effort to meet goals and timetables? ☐ Yes ☐ No

Describe any deficiencies in the AAP or sponsor's implementation of the AAP and your recommendations for corrective actions:

C. Based upon your analysis of the sponsor's selection procedures (Section 3) during the review period, did the sponsor conduct a fair non-discriminatory selection of apprentices? ☐ Yes ☐ No

Describe any deficiencies in the selection process and recommended corrective actions:

D. Based upon your analysis of the sponsor's operation of the program (Section 4), did the sponsor treat all apprentices equally? ☐ Yes ☐ No

Describe any deficiencies in the program operation and recommended corrective actions:

E. What specific plans does the sponsor have to improve efforts to meet goals?

F. Describe any specific technical assistance or training requested of or recommended by the Bureau of Apprenticeship Standards:

REVIEW RESULTS (Check one)

☐ The sponsor is in compliance based upon meeting its goals and timetables for women and minorities,
and
operating the program in a non-discriminatory manner.

☐ The sponsor is in compliance based upon its good faith efforts to recruit women and minorities,
and
operating the program in a non-discriminatory manner.

☐ The sponsor is not in compliance because of the deficiencies noted above and corrective action is needed.

Attachments

The Field Representative should attach any pertinent sponsor records, i.e., the sponsor information dissemination, applications if deficient, results of sponsor's internal AAP review, documentation of any deficiencies concerning unequal treatment, any selection documents which have not been approved by the BAS, test/interview information, if appropriate.

Amendment Notice - (DETA-10127)

Used when there is an agreed upon change in the Apprentice Contract.

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
bmkReturnAdd1
bmkReturnAdd2
bmkReturnAdd3
bmkReturnAdd4
bmkReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development

bmkGovernor Governor
bmkSecretary Secretary
bmkDivAdmin Division Administrator

bmkDate

bmkAddr1
bmkAddr2
bmkAddr3
bmkAddr4
bmkCityStateZip

Amendment Notice

Apprentice Name	Social Security Number
bmkApprenticeName	**bmkSocialSecurityNumber**
Employer Name	**Sponsor Name**
bmkEmployerName	**bmkSponsor**

The request to have your Apprenticeship Contract amended is approved as follows:

bmkAmendment

Bureau of Apprenticeship Standards

bmkSignature
bmkTypedName
Apprenticeship Training Representative
bmkReturnAdd6
bmkReturnAdd7

bmkSchTrade

bmkSchERAddr1
bmkSchERAddr2
bmkSchERAddr3
bmkSchERAddr4
bmkSchERCityStateZip

Also mailed to: Employer, Sponsor, School

DWEA-10127-E (R. 04/2012)

Apprentice Application - (DETA-63)

DETA-63 (R. 09/2008)

Department of Workforce Development
Division of Employment and Training
Bureau of Apprenticeship Standards

APPRENTICE APPLICATION

Personal information you provide may be used for secondary purposes [Privacy Law, s. 15.04(1)(m), Wisconsin Statutes]. The provision of your social security number is mandatory under Wisconsin Statutes. Your social security number will be used for identification purposes. If you do not provide your social security number, your application will be denied.

Trade Name		Social Security Number		Date
Name (First)	Middle	Last		
Street Address or P.O. Box		City	State	Zip Code+4
Telephone Number ( )	Cell Phone Number ( )	E-Mail Address		Birth Date

EDUCATION AND TRAINING BACKGROUND:

Check the highest school year completed. For example: If you graduated from high school, check 12. If you have a two-year associate degree, check 14.

☐ 8 ☐ 9 ☐ 10 ☐ 11 ☐ 12 ☐ GED ☐ HSED

☐ 13 ☐ 14 ☐ 15 ☐ 16 ☐ 17 ☐ 18 ☐ 19 ☐ 20 ☐ 21 ☐ 22 ☐ 23 ☐ 24 ☐ 25

Previous **Related** School (Military/Correspondence/Night School/Trade School, etc.):

_____

_____

Previous Trade **Related** Employment (Including Military):

Company	City	Months	Trade

Prospective Employer (if applicable):_____ Start Date _____

Military Veteran: Veteran of Military Service ☐ Yes ☐ No Date Separated_____
Active Reserve or Guard Member ☐ Yes ☐ No
Eligible for VA Benefits ☐ Yes ☐ No ☐ Not Sure

Please return to: Mary Pierce
Bureau of Apprenticeship Standards
2125 Commercial Ave
Madison WI 53704
Telephone: (608) 246-7900
Fax: (608) 266-0766
Email: maryx.pierce@dwd.wisconsin.gov

Apprentice Application - (DETA-63), cont.

Apprenticeship Application EEOC Supplemental Information

Name _____

Social Security Number _____

The Apprenticeship Sponsor is committed to equal opportunity for all applicants. The recruitment, selection, employment and training of apprentices during their apprenticeship, shall be without discrimination because of race, color, religion, national origin, sex, age, creed, handicap, marital status, ancestry, sexual orientation, arrest record, conviction record, or membership in the military forces of the United States or this state. The sponsor will take affirmative action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required under Title 29 of the Code of Federal Regulations, Part 30, the Wisconsin Fair Employment Law, and all other applicable state laws.

---- Please Complete the Following ----

The information provided below is simply for Equal Employment Opportunity Commission (EEOC) purposes. This information will assist us in our efforts to provide accurate information in compliance with EEOC regulations and requirements.

Race: (CHECK ALL THAT APPLY)	Ethnic Group: (CHECK ONE)
☐ White ☐ Black ☐ Asian ☐ American Indian or Alaskan Native ☐ Hawaiian/Pacific Islander	☐ Not Hispanic or Latino ☐ Origin Hispanic or Latino Gender: ☐ Male ☐ Female

This form will not become part of your Personnel file. It will be maintained in a separate file, used only for EEOC and Affirmative Action reporting purposes.

Apprentice Contract Exhibit A - (DETA-10408)

Madison Area Plumbing JAC • Madison WI
Plumber • 1-862380000-01-T
Exhibit A - Program Provisions

Approved: February 13, 2006

TERM OF APPRENTICESHIP: The term of apprenticeship shall be Time-based, which has been established to be 5 years. Hours of labor shall be the same as established for other skilled employees in the trade.

PROBATIONARY PERIOD: The probationary period shall be the first 12 months of employment, but in no case shall it exceed twelve calendar months. During the probationary period, this contract may be cancelled by the apprentice or the sponsor upon written notice to the Department, without adverse impact on the sponsor.

SCHOOL ATTENDANCE: The apprentice shall attend Madison Area Technical College, as assigned, for paid related instruction four hours per week or the equivalent and satisfactorily complete the prescribed course material for a minimum of 500 hours, unless otherwise approved by the Department. The employer must pay the apprentice for attended related instruction hours at the same rate per hour as for services performed.

WORK PROCESS SCHEDULE: In order to obtain well-rounded training and thereby qualify as a skilled worker in the trade, the apprentice shall have experience and training in the following areas. This instruction and experience shall include the following operations but not necessarily in the sequence given. Time spent on specific operations need not be continuous.

Work Process Description	Approximate Hours (Min - Max)
Interior and exterior underground sanitary and storm sewer work, or private sewage systems.	1000
Vertical stacks and branches, including soil, waste vent and conductors.	2410
Water supply systems, including underground and above-ground domestic potable hot and cold water systems, cross connection control and water treatment.	1900
Setting and connecting all types of plumbing fixtures and appliances, including those connected with both the water supply and waste systems.	1520
Plumbing layout.	550
Core drilling, stock work and truck driving.	120
Paid Related Instruction	500
TOTAL	8000

The above schedule is to include all operations and such other work as is customary in the trade.

MINIMUM COMPENSATION TO BE PAID: (Per collective bargaining agreement)

1st period of one year of not less than 1600 hours - 40% of the base skilled wage rate

2nd period of one year of not less than 1600 hours - 50% of the base skilled wage rate

3rd period of one year of not less than 1600 hours - 60% of the base skilled wage rate

4th period of one year of not less than 1600 hours - 70% of the base skilled wage rate

5th period of one year of not less than 1600 hours - 80% of the base skilled wage rate

DETA-10408-E (R. 12/2010)

Exhibit A – Page 1 of 2

Apprentice Contract Exhibit A - (DETA-10408), cont.

Madison Area Plumbing JAC • Madison WI
Plumber • 1-862380000-01-T
Exhibit A - Program Provisions

Base skilled wage rate $36.62 per hour.

If at any time the base skilled wage rate rises or falls, the apprentice's wage shall be adjusted proportionately. The wage rate of apprentices employed in this trade and this firm shall be based on the base skilled wage rate stated above.

All apprentices are covered by State and Federal Wage and Hour Standard requirements. All apprentices shall be paid no less than the minimum wage established under regulations.

CREDIT PROVISIONS: The apprentice, granted credit at the start or during the term of the apprenticeship, shall be paid the wage rate of the pay period to which such credit advanced the apprentice.

Work credit hours approved:	None
School credit hours approved:	
Paid related instruction:	None
Unpaid related instruction:	None
Total credit hours to be applied to the term of the apprenticeship:	None

SPECIAL PROVISIONS:

Apprentices are required to complete an approved First Aid/CPR course. This will be done during the first two (2) years of the apprenticeship. First Aid/CPR Course certification must be kept current throughout the term of the apprenticeship.

Apprentices must meet unpaid related instruction course requirements specified in the table "Unpaid Requirements: Approved by State Plumbing Committee-October 18, 2001:Related Instruction

The apprentice will attend a minimum of 260 hours of unpaid related instruction classes on his or her own time and successfully complete the following courses as scheduled by the committee:

Plumbing Applications Lab
Plumbing Blueprint Reading
Plumbing Repair
Transition to Trainer
Isometric Interpretation & Drawing
Transit/Level/Laser
Welding
Safety/OSHA
First Aid/CPR
Customer Relations

An apprentice in his/her final year must participate in the Transition to Trainer.

In order for apprentices to receive credit for any unpaid related instruction course, they must attend 80% of the classes and receive a grade of 75% or better.

DETA-10408-E (R. 12/2010)

Exhibit A – Page 2 of 2

Apprentice Contract Face Page - (DETA-4224)

Apprentice Contract

This contract was prepared by Mary Green on the date of May 11, 2012,
between the Wisconsin Department of Workforce Development (the Department) and:

Apprentice

Jody J. Brown
1234 Anywhere Drive
Nocity, WI 53703
SSN: 000-00-0000
DOB: January 01, 1990

Sponsor

Montgomery Area Plumbing JAC
1000 Montgomery Ct #102
Nocity, WI 53703

The Apprenticeship term begins on May 1, 2012, and terminates upon the successful completion of the apprenticeship program provisions of the Plumber trade, which are incorporated as part of this contract as Exhibit A, Program Provisions. The provisions included in this contract are binding on the parties.

The Department will issue a **CERTIFICATE OF APPRENTICESHIP** to the apprentice upon satisfactory completion of the provisions of this Apprentice Contract.

This contract may be terminated or cancelled by the apprentice, or may be suspended or cancelled by the sponsor, for good cause, with due notice to the apprentice and a reasonable opportunity for corrective action, and with written notice to the apprentice and to the Department.

The apprentice's signature authorizes the assigned provider(s) of paid and unpaid related instruction to release progress, grades, and attendance reports to the Department, sponsor, and employer while this contract is in effect.

The program sponsor and apprentice agree to the terms of the Apprenticeship Standards incorporated as part of this document and identified as Exhibit A. The sponsor will not discriminate in the selection and training of the apprentice and will accord the apprentice equal opportunity in all phases of apprenticeship employment and training, without discrimination because of race, color, religion, national origin, sex, age, creed, handicap, marital status, ancestry, sexual orientation, arrest record, conviction record, or membership in the military forces of the United States or this state.

The apprentice, sponsor, and employer agree to fulfill all the obligations of this Apprentice Contract. The parties have signed this contract, as required by Chapter 106.01 of the laws of Wisconsin. Personal information provided herein may be used for secondary purposes [Privacy Law, s.15.04(1)(m) Wisconsin Statutes].

Apprentice Signature	May 5, 2012
Apprentice Signature	Date
Sponsor Signature	May 5, 2012
Sponsor Signature	Date
Bureau Director Signature	May 10, 2012
Department Approval	Date

The Registration Agency is the authority to receive and resolve controversies or differences arising out of this contract when they cannot be resolved locally in accordance with established procedures or collective bargaining provisions.

Registration Agency:
Department of Workforce Development
Division of Employment and Training
Bureau of Apprenticeship Standards
PO Box 7972, Madison, WI 53707
Phone: 608-266-3332

DETA-4224 (R. 12/2010)

Apprentice Review Form - (DETA-16)

APPRENTICE REVIEW

Construction

Department of Workforce Development
Division of Employment and Training
Bureau of Apprenticeship Standards

Personal information you provide may be used for secondary purposes [Privacy Law, s. 15.04(1)(m), Wisconsin Statutes]. DWSA-16 (R. 03/2007)

Date Sent: Date Returned:

Social Security Number	**Please make all necessary changes below:**
Name	
Address	
City, State, Zip Code	
Telephone No.	
Cell Telephone No.	
Email Address	

You are employed with .
You are under the jurisdiction of .

ON-THE-JOB TRAINING

1. Are you currently employed with the employer listed above? ☐ Yes ☐ No
   If no, list current employer. _____ Date you started with the new employer: _____
2. Are you currently laid off? ☐ Yes ☐ No Date you were laid off: _____
3. Is your on-the-job training satisfactory? ☐ Yes ☐ No If no, please comment on the back.
4. Are your work record reports/cards up-to-date and submitted? ☐ Yes ☐ No
5. Are you being paid at least the minimum compensation required in your Apprentice Contract? ☐ Yes ☐ No
6. Date of last review by your employer. _____
7. Date of last review by your committee. _____
8. Are the terms of the Special Provisions in your Apprentice Contract being completed (examples: First Aid/CPR, OSHA Safety, Unpaid Related Instruction (night school), etc.)? ☐ Yes ☐ No

RELATED INSTRUCTION (SCHOOLING)

Our records show you are currently assigned to for Paid Related Instruction (day school).

9. Is this the correct school? ☐ Yes ☐ No If no, list current school. _____
10. Have you completed Paid Related Instruction (day school)? ☐ Yes ☐ No
11. Are you satisfied with your Paid Related Instruction (day school)? ☐ Yes ☐ No If no, please comment on the back.
12. Are you currently eligible to receive GI Bill benefits? ☐ Yes ☐ No
    If yes, are you currently receiving GI Bill Benefits? ☐ Yes ☐ No

Please contact the Field Representative listed below, for additional concerns and or questions.

Return the completed form to:

Please use the back of this form to make any additional comments.

Apprentice Review Initial Notice - (DETA-13824)

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development

Governor Governor
Secretary Secretary
DivAdmin Division Administrator

Date

Addr1
Addr2
Addr3
Addr4
CityStateZip

Apprentice Name	Social Security Number
ApprenticeName	**SocialSecurityNumber**
Employer Name	**Sponsor Name**
EmployerName	**Sponsor**

The State of Wisconsin, Bureau of Apprenticeship Standards (BAS), has created an Apprentice Review form for you to complete on the Internet. The BAS is responsible for registration and oversight of all Wisconsin apprenticeship programs.

The purpose of this Apprentice Review form is to annually monitor your progress in the apprenticeship program. Your feedback is greatly appreciated. We will update your personal data (such as address, telephone number(s), email address, etc.) based on your completed Apprentice Review form.

Text

To access your Apprentice Review form on the Internet perform the following steps:

1. Enter the following website address into the address line of your Internet browser (Internet Explorer or Netscape) and press the ENTER key: **Website**
2. The Apprenticeship Standards website will be displayed. Click on "Apprentice Review".
3. The Apprentice Review logon screen will be displayed. Enter your Apprentice ID and Apprentice Personal Number, listed below, in the spaces provided, and click the OK button.

Apprentice ID: ID **Apprentice Personal Number: PIN**

As your apprenticeship training representative, I am available to assist you with any questions or concerns.

Sincerely,

Signature
TypedName
Apprenticeship Training Representative
ReturnAdd6
ReturnAdd7
ReturnAdd8

DETA-13824-1 (R. 05/2012)

Apprentice Review Reminder - (DETA-13824)

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development

Governor Governor
Secretary Secretary
DivAdmin Division Administrator

Date

Second Notice!

Addr1
Addr2
Addr3
Addr4
CityStateZip

Apprentice Name	Social Security Number
ApprenticeName	**SocialSecurityNumber**
Employer Name	**Sponsor Name**
EmployerName	**Sponsor**

Enclosed is the Apprentice Review form sent by the State of Wisconsin, Bureau of Apprenticeship Standards (BAS). The BAS is responsible for registration and oversight of all Wisconsin apprenticeship programs.

The purpose of this Apprentice Review form is to annually monitor your progress in the apprenticeship program. Your feedback is greatly appreciated. We will update your personal data (such as address, telephone number(s), E-mail addresses, etc.) based on your completed Apprentice Review form.

Text

As your apprenticeship training representative, I am available to assist you with any questions or concerns.

Sincerely,

Signature
TypedName
Apprenticeship Training Representative
ReturnAdd6
ReturnAdd7
ReturnAdd8

DETA-13824-E (R. 05/2012)

Cancellation Notice - (DETA-10129)

Used by BAS to notify an apprentice that his/her apprenticeship program has been cancelled, including the reasons leading to the cancellation.

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development

Governor Governor
Secretary Secretary
DivAdmin Division Administrator

Date

Addr1
Addr2
Addr3
Addr4
CityStateZip

Cancellation Notice

Apprentice Name **ApprenticeName**	Social Security Number **SocialSecurityNumber**
Employer Name **EmployerName**	Local Committee Name **LocalCommitteeName**
Requester **Requester**	Effective Date **EffectiveDate**

This letter is formal notification that your Apprentice Contract is canceled for the following reason(s):

Reason

Any party to this Apprentice Contract may appeal this decision, in writing, to the following address:

Director
Bureau of Apprenticeship Standards
P.O. Box 7972
Madison, WI 53707

Signature
TypedName
Apprenticeship Training Representative
ReturnAdd6
ReturnAdd7

SchTrade
SchERAddr1
SchERAddr2
SchERAddr3
SchERAddr4
SchERCityStateZip

Also mailed to Employer, Sponsor, School

DETA-10129-E (R. 05/2012)

Cancellation Rescission Notice - (DETA-12512)

Used by BAS to rescind a cancellation notice that has been issued, but is no longer in effect.

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development

Governor Governor
Secretary Secretary
DivAdmin Division Administrator

Date

Addr1
Addr2
Addr3
Addr4
CityStateZip

Rescind Intent to Cancel Notice

Apprentice Name	Social Security Number
ApprenticeName	**SocialSecurityNumber**
Employer Name	**Sponsor Name**
EmployerName	**Sponsor**

This is formal notification that the Intent to Cancel Notice for the Apprentice Contract signed by the above named parties has been rescinded.

Text

Sincerely,

Signature
TypedName
Apprenticeship Training Representative
ReturnAdd6
ReturnAdd7

SchTrade

SchERAddr1
SchERAddr2
SchERAddr3
SchERAddr4
SchERCityStateZip

Also mailed to: Employer, Sponsor, School

DETA-12512-E (R. 04/2012)

Completion Certificate - (DETA-10134)

Issued when the apprentice has successfully completed the apprenticeship program;
Mailed to the sponsor for presentation to the apprentice.

State of Wisconsin

CERTIFICATE
OF
APPRENTICESHIP

JODY J. BROWN

has satisfactorily served an apprenticeship in the employ of
Madison Area Plumbing Committee
for a term of
4 Years

and has completed the required hours of related instruction
in accordance with the Statutes of the
State of Wisconsin, and is recognized
as a journeyman
Plumber

with all the rights, privileges, and opportunities
pertaining to the honor.

This diploma, with official signatures and the Seal of the Wisconsin
Department of Workforce Development, was
given in the State of Wisconsin on
January 01, 2012

SAMPLE ONLY!
State Director of Apprenticeship

SAMPLE ONLY!
Sponsor

WISCONSIN'S APPRENTICESHIP SYSTEM
SINCE 1911

Completion Letter - (DETA-13)

Mailed by BAS to the apprentice upon the apprentice's completion of the program.

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development

Governor Governor
Secretary Secretary
DivAdmin Division Administrator

Date

Addr1
Addr2
Addr3
Addr4
CityStateZip

RE: **Completion of Apprenticeship**

SPONSOR: SponsorName
SponsorAddress1
SponsorAddress2
SponsorCityStateZip

COMPLETION DATE: CompletionDate

TERM AND TRADE: Term
Trade

SCHOOL HOURS: SchoolHoursRequired Required

Congratulations!

It is with great pleasure that I am notifying you of the completion of your apprenticeship. I would like to acknowledge and congratulate you on your hard work and dedication which has now led to the successful completion of your apprenticeship training program.

Enclosed is a pocket card which contains the information concerning your apprenticeship. Your Sponsor is being sent a certificate for signature. It will be presented to you once signed.

Again, congratulations and good luck with your future employment!

Sincerely,

Signature
TypedName
Bureau of Apprenticeship Standards
Telephone

✂ Cut on dotted lines

Wisconsin
Certificate of Apprenticeship
This certifies that a diploma has been issued to

ApprenticeName2
on **CompletionDate2**
affirming the satisfactory completion of
apprenticeship at the trade of

TradeName

Karen P Morgan
State Director of Apprenticeship

DETA-13 E (R. 04/2012)

Credential Notice (Licensed Trades Only) – (DETA-12513)

Sent by BAS to the Dept. of Safety and Professional Services to make them aware that an apprentice is eligible to apply for a license.

Governor
Governor

Secretary
Secretary

DivAdmin
Division Administrator

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

State of Wisconsin
Department of Workforce Development

DWSA-12513-E (R. 03/2007)

Date

Addr1
Addr2
Addr3
Addr4
CityStateZip

Credential Notice

Apprentice Name **ApprenticeName**	Social Security Number **SocialSecurityNumber**
Employer Name **EmployerName**	Sponsor Name **Sponsor**

This letter confirms that the above named apprentice is in the process of being registered as a Tradename apprentice under the provisions of Chapter 106, Wisconsin Statutes. The start date of the apprenticeship is Contract Start Date.

This letter is to be used to apply for the Tradename credential from the Division of Professional Credentialing in lieu of a copy of the approved Apprentice Contract.

Contact the Department of Safety and Professional Services, Division of Professional Credentialing at (608) 261-8467 to request a credential application.

Sincerely,

Signature
TypedName
Field Representative
ReturnAdd6
ReturnAdd7

SchTrade

SchERAddr1
SchERAddr2
SchERAddr3
SchERAddr4
SchERCityStateZip

Also mailed to: Employer, Sponsor

Credit Approval Notice – (DETA-10130)

Used to notify an apprentice that Credit is granted for either work or school.
Notification occurs after the Contract has been signed and is active.

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development

Governor Governor
Secretary Secretary
DivAdmin Division Administrator

Date

Addr1
Addr2
Addr3
Addr4
CityStateZip

Credit Approval Notice

Apprentice Name	Social Security Number
ApprenticeName	**SocialSecurityNumber**
Employer Name	**Sponsor Name**
EmployerName	**Sponsor**

The application for credit to your Apprentice Contract has been approved as follows:

Credit1
Credit2

Please retain this letter for your records. If application of this credit advances you into a higher salary step, your employer should make that adjustment effective in the next pay period.

Signature
TypedName
Apprenticeship Training Representative
ReturnAdd6
ReturnAdd7

SchTrade

SchERAddr1
SchERAddr2
SchERAddr3
SchERAddr4
SchERCityStateZip

Also mailed to: Employer, Sponsor, School

DETA-10130-E (R. 04/2012)

Credit Denial Notice – (DETA-10131)

Used to notify an apprentice that a credit request for prior work experience or school has been denied.

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development

Governor
Secretary Secretary
DivAdmin Division Administrator

Addr1
Addr2
Addr3
Addr4
CityStateZip

Credit Denial Notice

Apprentice Name ApprenticeName	Social Security Number SocialSecurityNumber
Employer Name EmployerName	Sponsor Name Sponsor

Your request to have credit applied to your apprenticeship is being deniedText. You have the right to appeal this decision in writing to:

Director
Bureau of Apprenticeship Standards
P O Box 7972
Madison WI 53707

In your appeal, please state the reason(s) you believe the credit requested should be applied to your apprenticeship.

Signature
TypedName
Apprenticeship Training Representative
ReturnAdd6
ReturnAdd7

SchTrade
SchERAddr1
SchERAddr2
SchERAddr3
SchERAddr4
SchERCityStateZip

Also mailed to: Employer, Sponsor, School

DETA-10131-E (R. 04/2012)

Employer Application – (DETA-10407)

DETA-10407 (R. 09/2008)

Department of Workforce Development
Division of Employment and Training
Bureau of Apprenticeship Standards

EMPLOYER APPLICATION

Personal information you provide may be used for secondary purposes [Privacy Law, s. 15.04(1)(m), Wisconsin Statutes].

UI Number	FEIN	Date		
Name of Firm		Contact/Title		
Street Address or P.O. Box	City	County	State	Zip Code+4
Telephone Number ( )	Fax No. ( )			
Email	Cell Phone ( )			

Indicate Appropriate Industry Group: ☐ Construction ☐ Industrial ☐ Service ☐ OJT

Product or Service: _____

Year Business Started: _____ Trained Apprentices Before? ☐ Yes ☐ No

Trade apprentice will be trained in? _____

Are the skilled workers/journey workers in the trade covered by a collective bargaining agreement? ☐ Yes ☐ No

If yes, list union name and number: _____

Are the apprentices covered by this agreement? ☐ Yes ☐ No

Number of skilled workers/journey workers in this trade: _____

Present skilled/journey worker base skilled wage rate per hour for this trade: $_____ per hour

Applicant Name	Date Training Will Start	Starting Wage Rate

If the applicant has had previous related school or work experience, how many credit hours are being requested for this applicant?

Work: _____ School: _____

Name of school apprentice will attend: _____

Please return to: Mary Pierce
Bureau of Apprenticeship Standards
2125 Commercial Ave
Madison WI 53704
Telephone: (608) 246-7900
Fax: (608) 266-0766
Email: maryx.pierce@dwd.wisconsin.gov

Employer Application - (DETA-10407), cont.

NAMES OF SKILLED WORKERS AND APPRENTICES NOW EMPLOYED

Name	Date Employed or Indentured	License Number (if applicable)
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		

Any misrepresentation contained herein shall be grounds for denial of your request for an apprentice.

_____
Firm Name

_____
Signature

_____
Date Signed

Employer Assignment Notice (DETA-10133)

Used to notify all contract parties of a new work assignment for the apprentice.

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development

Governor Governor
Secretary Secretary
DivAdmin Division Administrator

Date

Addr1
Addr2
Addr3
Addr4
CityStateZip

Employer Assignment

Apprentice Name	Social Security Number
ApprenticeName	**SocialSecurityNumber**
Employer Name	Local Committee Name
EmployerName	**LocalCommitteeName**

This letter is to verify that this Apprentice Contract has been assigned to EmployerName, effective EffectiveDate.

Any objection to this assignment must be made in writing and received by this office no later than ten working days from the date of this letter.

The employer agrees to take this apprentice into service under the conditions specified in the Apprentice Contract. The employer shall retain this apprentice as long as work is available or the apprentice is transferred to another employer.

The employer and apprentice are required to notify the Bureau of Apprenticeship Standards and the Local Committee, when the apprentice is released from this employer.

Signature
TypedName
Apprenticeship Training Representative
ReturnAdd6
ReturnAdd7

SchTrade

SchERAddr1
SchERAddr2
SchERAddr3
SchERAddr4
SchERCityStateZip

Also mailed to: Employer, Sponsor, School

DETA-10133-E (R. 04/2012)

Exam Notice (Licensed Trades Only) - (DETA-12515)

Used to inform the Dept. of Safety and Professional Services that an apprentice has completed the apprenticeship program and is eligible to write the Journeyworker Exam.

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development

Governor Governor
Secretary Secretary
DivAdmin Division Administrator

Date

Addr2
Addr3
Addr4
CityStateZip

Tradename Exam Notice

Apprentice Name ApprenticeName	Social Security Number SocialSecurityNumber
Employer Name EmployerName	Sponsor Name Sponsor

This letter confirms that the above named apprentice has successfully completed all educational and training requirements for a Tradename apprenticeship and is eligible to take the journeyworker Tradename exam TxtAsOfDate.

Contact the Department of Safety and Professional Services, Division of Professional Credentialing at (608) 261-8467 to request an application form. Alternatively, the application form may be downloaded online at http://dsps.wi.gov/sb/SB-FormCredAppList.html

Attach this letter to your examination application as confirmation that you qualify for the exam.

Sincerely,

Signature
TypedName
Apprenticeship Training Representative
ReturnAdd6
ReturnAdd7
Email

Also mailed to: Employer, Sponsor, School

DETA-12515-E (R. 05/2012)

Intent to Cancel Notice - (DETA-10126)

Mailed by BAS to the apprentice, with copies to contract parties, when a party to the contract has requested cancellation of the Apprentice Contract. Reasons are noted.

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development

Governor Governor
Secretary Secretary
DivAdmin Division Administrator

Date

Addr1
Addr2
Addr3
Addr4
CityStateZip

Intent to Cancel Notice

Apprentice Name **ApprenticeName**	Social Security Number **SocialSecurityNumber**
Employer Name **EmployerName**	Local Committee Name **LocalCommitteeName**
Requester **Requester**	Effective Date **EffectiveDate**

This is formal notification we intend to cancel the Apprentice Contract signed by the above named parties for the following reason(s):

Reason

Any objections to this cancellation request must be received in this office **in writing** by appealdate or we will proceed with cancellation. Please complete the attached form if you have any objection(s) to this cancellation.

Failure to respond in writing will result in the cancellation of your apprenticeship. If you are canceled, you may not attend apprenticeship related schooling or continue working as an apprentice.

Signature
TypedName
Apprenticeship Training Representative
ReturnAdd6
ReturnAdd7

SchTrade
SchERAddr1
SchERAddr2
SchERAddr3
SchERAddr4
SchERCityStateZip

Also mailed to: Employer, Sponsor, School

DETA-10126-E (R. 04/2012)

Intent to Cancel Rescission Notice - (DETA-12512)

Mailed by BAS to the apprentice, with copies to contract parties, to rescind an “Intent to Cancel” notice.

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development

Governor Governor
Secretary Secretary
DivAdmin Division Administrator

Date

Addr1
Addr2
Addr3
Addr4
CityStateZip

Rescind Intent to Cancel Notice

Apprentice Name **ApprenticeName**	Social Security Number **SocialSecurityNumber**
Employer Name **EmployerName**	Sponsor Name **Sponsor**

This is formal notification that the Intent to Cancel Notice for the Apprentice Contract signed by the above named parties has been rescinded.

Text

Sincerely,

Signature
TypedName
Apprenticeship Training Representative
ReturnAdd6
ReturnAdd7

SchTrade
SchERAddr1
SchERAddr2
SchERAddr3
SchERAddr4
SchERCityStateZip

Also mailed to: Employer, Sponsor, School

DETA-12512-E (R. 04/2012)

Intent to Cancel Response Form - Apprentice - (DETA-15632)

Used by the apprentice to object to a sponsor action. Submission is tied to a deadline given to the apprentice in the "Intent to Cancel" form.

APPRENTICE RESPONSE TO LOCAL COMMITTEE/SPONSOR ACTION

THIS FORM IS ONLY NECESSARY IF YOU ARE OBJECTING TO YOUR LOCAL COMMITTEE OR APPRENTICE SPONSOR RECOMMENDATIONS

The information below will assist the Bureau of Apprenticeship Standards (BAS) review your objection more quickly. Please provide all the information that is requested.

1. Full Name:
2. Address:

3. Phone numbers where you can be reached (including cell phone numbers).

   _____ _____

4. School (s) where you attend paid related instruction and unpaid related instruction.

   _____

5. Your local committee or apprentice sponsor (employer) has recommended cancellation of your apprenticeship program. What are the reasons you object to this cancellation?

6. Other information relevant to your objection.

7. What plan do you have to improve your performance as it relates to the reason listed on the attached Intent to Cancel Notice?

Do not write in the box. For internal purposes only.

Sponsor Recommendation ☐ **Agree** ☐ **Proceed to Cancel**
ATR _____ **Date** _____

DWSA-15632 (N. 05/2007)

Provisional Sponsor Registration Letter - (DETA-16900)

Issued by BAS to sponsors to confirm registration as a (provisional) sponsor.

Department of Workforce Development
Employment and Training Division
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5
ReturnAdd6

State of Wisconsin
Department of Workforce Development
Governor, Governor
Secretary, Secretary
DivAdmin, Division Administrator

CurrentDate

Addr1
Addr2
Addr3
Addr4
CityStateZip

Dear SponsorName:

Congratulations on your decision to use registered apprenticeship as the training method for your Trade Name workforce. **You are now certified by the Bureau of Apprenticeship Standards as a provisionally-registered Sponsor**. As you know, the apprenticeship method of training, with a skilled worker passing on craft knowledge to another – is almost as old as recorded history. It has endured for centuries due to a steadfast focus on quality and craftsmanship that is industry-driven and industry-designed.

As a new sponsor of Trade Name apprentices, you are already aware of the benefits that apprenticeship training offers to industry and apprentices alike. Many of those benefits are likely what drew you to become a new sponsor and I commend you on your commitment to quality training.

In addition to gaining the benefits of apprenticeship, you are now obligated to maintain your apprenticeship program in a manner that conforms to the requirements for registered apprenticeship programs set by Title 29, CFR part 29, "Labor Standards for the Registration of Apprenticeship Programs." These requirements are spelled out in your program standards and in the binding language of all apprentice contracts.

As a provisionally-registered sponsor, you must meet the required standards for program registration for a full training cycle before this Bureau can approve you as a registered sponsor. During this initial training cycle, the Bureau will conduct annual quality assessments and provide technical assistance. At the end of the initial training cycle, a final quality assessment will be conducted. If you meet the required standards, your provisional registration status will be changed to permanent registration. Because quality training is at the heart of registered apprenticeship, you must continue to fully meet the required standards at the end of the training cycle or be subject to deregistration procedures.

As a provisionally-registered sponsor, you will receive all rights, privileges and responsibilities associated with being a registered apprenticeship program. If you have any questions or concerns, I encourage you to discuss them with ATR Name, your Apprenticeship Training Representative who can be reached by telephone at ATR Phone or by email at ATR Email. Please also feel free to contact me at any time.

Sincerely,

Signature

TypedName

DETA-16900-E (N. 11/2010)

Reassignment Notice – (DETA-10410)

Mailed by BAS to the apprentice to confirm that the apprentice contract has been returned to active status after a period of unassignment.

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development

Governor Governor
Secretary Secretary
DivAdmin Division Administrator

Date

Addr1
Addr2
Addr3
Addr4
CityStateZip

Reassignment Notice

Apprentice Name **ApprenticeName**	Social Security Number **SocialSecurityNumber**
Employer Name **EmployerName**	Sponsor Name **Sponsor**

This letter is official notification that your Apprentice Contract has been reassigned to active status effective EffectiveDate.

The time you were in unassigned status will be added to the original projected completion date.

Signature
TypedName
Apprenticeship Training Representative

SchTrade
SchERAddr1
SchERAddr2
SchERAddr3
SchERAddr4
SchERCityStateZip

ReturnAdd6
ReturnAdd7

Also mailed to: Employer, Sponsor, School

DETA-10410-E (R. 05/2012)

School Absence Notice - (DETA-10137)

Issued by BAS to the apprentice when the apprentice has at least 3 PRI absences.

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development

Governor Governor
Secretary Secretary
DivAdmin Division Administrator

Date

Addr1
Addr2
Addr3
Addr4
CityStateZip

Paid Related Instruction Absences Notice

Apprentice Name AppreticeName	**Social Security Number** SocialSecurityNumber
Employer Name EmployerName	**Sponsor Name** Sponsor

It has been brought to the attention of the Department that you have been absent from paid related instruction classes on PRIAbsenceDates.

Failure to attend paid related instruction classes is a violation of the terms of your contract, and may result in cancellation of your apprenticeship.

If you have any questions, please feel free to contact me.

Signature
TypedName
Apprenticeship Training Representative
ReturnAdd6
ReturnAdd7

SchTrade

SchERAddr1
SchERAddr2
SchERAddr3
SchERAddr4
SchERCityStateZip

Also mailed to: Employer, Sponsor, School

DETA-10137-E (R. 04/2012)

Sponsor Quality Assessment Appointment Notice – (DETA-16976)

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development
Governor Governor
Secretary Secretary
DivAdmin Division Administrator

Date

Addr1
Addr2
Addr3
Addr4
CityStateZip

Dear Recipient:

Thank you for scheduling time to meet with me on Date at Time so that I can conduct a/an Assessment Type Quality Assessment of your registered apprenticeship program. This assessment will cover the time period from BeginReviewDate through EndReviewDate. This assessment will be conducted in accordance with the laws, rules and regulations set forth in WI Stat 106, DWD 295 and DWD 296.

As we discussed, certain records will need to be available to me at the time of the review. These records include:

- Skilled Workforce data, including skilled wage rates
- Training Plan
- Apprentice Selection Procedures
- Apprentice Complaint Procedures
- Apprentice Files (for each apprentice in review period), containing:
    - Training records
    - Job Book, if used
    - Termination/Completion/Disciplinary records, if applicable
    - Wage records
    - Evaluations
    - Related Instruction records

If you have any questions, please contact me by telephone at the number below.

Sincerely,
Signature
TypedName
Apprenticeship Training Representative
ReturnAdd6
ReturnAdd7

DETA-16976-E (R. 04/2012)

Sponsor Quality Assessment Form (Sample – Five Year) – (DETA-16958)

WISCONSIN APPRENTICESHIP
Earn. Learn. Succeed.

WISCONSIN REGISTERED APPRENTICESHIP QUALITY ASSURANCE ASSESSMENT – Five Year

I. GENERAL INFORMATION

Name	Comm/ER No.	Sponsor No.	BAS District
Madison Metro Area Plumbing Committee	123456	789123	Area 6

Address
Physical: 123 Anystreet, Madison, WI 53704
Mailing: PO Box 123, Madison, WI 53704
Application: 123 Anystreet, Madison, WI 53704

II. ASSESSMENT OUTCOME

		Must Select One
1.	Date Quality Assessment was conducted: 01/01/2012	
2.	Outcome of this Quality Assessment.	☒ Pass ☐ Fail
2a.	Recommend corrective action plan?	☐ Yes ☐ No ☒ N/A
2b.	If 2a is "Yes," enter date corrective action plan is due:	Action Plan is Due on:
2c.	Recommend deregistration?	☒ Yes ☐ No ☐ N/A

3a. BAS Staff Conducting the Assessment (Print) Mary A. Smith	3b. BAS Staff Signature: Mary A. Smith
4a. Name of Participating Sponsor Representative Bob Jones	4b. Title of Participating Sponsor Representative: President

III. SPONSOR's OCCUPATIONS (Covered by Standards) as of .	BASIS Active Apprentices	BASIS JWs Employed	Current JWs Employed	BASIS Skilled Wage Rate	Current Skilled Wage Rate	Wage Type	Program Completion Rate
Plumber	1	3		$30.00		Outlying Commercial	

Section III Data Note: Duplicate counts of active apprentices and journeyworkers will appear in occupation rows having multiple wage types.

IV. REVIEW DATES

Review Start Date	Review End Date	Program Registration Date	Final Provisional Assessment Date	Most Recent Assessment Date
01/01/2010	12/31/2011	07/01/2009		

V. DEFICIENCIES NOT REMEDIED *(Describe any previous deficiencies that have not been remedied.)*

The ATR would note any deficiencies in BASIS and that notation would print here.

DETA-16958-E (N. 03/2011)

Sponsor Quality Assessment Form (Sample – Five Year), cont.

WISCONSIN APPRENTICESHIP
Earn. Learn. Succeed.

Wisconsin Bureau of Apprenticeship Standards
Quality Assurance Assessment – Five Year
Page 2 of 5

All Questions below This Line Are Mandatory and Must Be Answered

VI. PROGRAM OPERATION		Yes	No	N/A
1.	Does the sponsor have approved Standards?	☐	☐	☐
2.	A specific person(s) is responsible for program monitoring and assisting apprentice(s).	☐	☐	☐
3.	Sponsor promptly notifies BAS of registrations, cancellations, and completions.	☐	☐	☐
4.	Program quality is periodically assessed using apprentice and journeyworker feedback.	☐	☐	☐
5.	Sponsor maintains required records for selection, employment and training.	☐	☐	☐
6.	Sponsor submits revisions to BAS prior to instituting them.	☐	☐	☐
7.	Sponsor committee meets regularly to address progress of apprentices and the program.	☐	☐	☐
8.	All apprentices in each occupation are registered with BAS?	☐	☐	☐
9.	The complaint procedure (from Standards) is made available to apprentices and applicants.	☐	☐	☐
10.	Sponsor follows up on terminations to determine the cause.	☐	☐	☐
11.	Sponsor has addressed high cancellation rate. (If yes, explain in item 17, below.)	☐	☐	☐
12.	Employer has interest in starting new apprentices in a new or current trade. a. (Describe)	☐	☐	☐
13.	Employer has identified additional services that can be provided by BAS. a. (Describe)	☐	☐	☐
14.	Employer is satisfied with Related Instruction a. (Comments)	☐	☐	☐
15.	Employer receives grade, attendance and progress reports for Paid RI in timely manner.	☐	☐	☐
16.	Employer has reviewed the standards for all trades employed.	☐	☐	☐
17.	Describe existing deficiencies and recommendations. (Must be completed for each item answered no, above.) The ATR would note any deficiencies and/or related recommendations in BASIS and that notation would print out.			

VII. RELATED INSTRUCTION		Yes	No	N/A
1.	Paid related instruction is provided consistently, in accordance with approved standards.	☐	☐	☐
2.	Unpaid related instruction is provided consistently, in accordance with approved standards.	☐	☐	☐
3.	Sponsor provides feedback to apprentice(s) on related instruction progress/ test results.	☐	☐	☐
4.	A course outline of subjects to be covered each year exists.	☐	☐	☐
5.	Wages follow the progressive wage schedule, based on completion of both OJL and RI.	☐	☐	☐
6.	Related training instructors receive formalized instructor training. (Answer and describe.) a. Type of Training: b. Number of Hours:	☐	☐	☐
7.	Sponsor uses established criteria or guidelines for instructors. *Answer Yes/No & select type(s).* ☐a. State Certification ☐b. Teaching experience. ☐c. Occupational experience *Note: The user can select one or more from a, b and c.*	☐	☐	☐
8.	Related instruction delivery system is: ☐a. Classroom ☐b. Online ☐c. Correspondence ☐d. Other *Note: The user can select one or more from a-d.*			
9.	Related instruction source is: ☐a. Technical College ☐b. Training Center ☐c. Other *Note: The user can select one from a-c.*			
10.	Number of hours per year that paid related instruction is actually being provided:			
11.	Describe existing deficiencies and recommendations. (Must be completed for each item answered No, above.) The ATR would note any deficiencies and/or related recommendations in BASIS and that notation would print out.			

DETA-16958-E (N. 03/2011)

Sponsor Quality Assessment Form (Sample – Five Year), cont.

WISCONSIN APPRENTICESHIP
Earn. Learn. Succeed.

Wisconsin Bureau of Apprenticeship Standards
Quality Assurance Assessment – Five Year
Page 3 of 5

VIII. ON-THE-JOB LEARNING (OJL)	Yes	No	N/A
1. Apprentices receive OJL in all phases of occupation as outlined in occupation schedule.	☐	☐	☐
2. OJL is coordinated with related instruction.	☐	☐	☐
3. Sponsor is providing reasonably continuous employment to all apprentices.	☐	☐	☐
4. Safety training is included as part of OJL.	☐	☐	☐
5. The OJL (work process schedule) is kept current with industry practice.	☐	☐	☐
6. Sponsor's workforce is consistent with approved ratio, per apprenticeship standards.	☐	☐	☐
7. Written review and evaluation of on-the-job (including attendance) progress is performed with each assigned apprentice(s).	☐	☐	☐
a. Apprentice progress is reviewed prior to end of probationary period.	☐	☐	☐
b. Apprentice progress is reviewed at least annually.	☐	☐	☐
c. Apprentice progress is reviewed within six months prior to program completion.	☐	☐	☐
8. Scheduled apprentice wage increases are determined by actual hours of OJL or by months in the program, and are consistent with the registered apprenticeship standards.	☐	☐	☐
9. Advance credit is equitably provided for previously acquired experience and training.	☐	☐	☐
10. Sponsor tracks OJL Hours using a Job Book or Attendance Cards.	☐	☐	☐
11. Describe existing deficiencies and recommendations. (Must be completed for each item answered No, above.) The ATR would note any deficiencies and/or related recommendations in BASIS and that notation would print out.			

DETA-16958-E (N. 03/2011)

Sponsor Quality Assessment Form (Sample – Five Year), cont.

Wisconsin Bureau of Apprenticeship Standards
Quality Assurance Assessment – Five Year
Page 4 of 5

IX. APPRENTICE(S) FOR PERIOD BEGINNING AND ENDING

Section IX. Data Note: The listing below presents apprentice records as they existed in BASIS on .

Apprentice Name	Contract Details					
	Employer Currently Assigned	Contract Start Date	Contract Current Status	Contract Status Date	Trade or Occupation	Assigned School
Green, Paul	Jones Plumbing, Inc.	08/01/2009	Active	01/01/2010	Plumber	Wisconsin Technical College
Jones, Henry	Green Plumbing, LLC	02/01/2010	Active	02/15/2010	Plumber	WI Technical College
Smith, Penny	Maple Plumbing & Sons	04/01/2010	Canceled	08/01/2011	Plumber	A Wis Technical College

DETA-16958-E (N. 03/2011)

Sponsor Quality Assessment Form (Sample – Five Year), cont.

WISCONSIN APPRENTICESHIP
Earn. Learn. Succeed.

Wisconsin Bureau of Apprenticeship Standards
Quality Assurance Assessment – Five Year
Page 5 of 5

X. SPONSOR CONTACTS

Section X. Data Note: The listing below presents sponsor's contact records as they existed in BASIS on .

Contact Person	Title	Phone	Fax	Email	Newsltr	Mailing
Alan B. Perkins	Chair	(608) 266-3332	(608) 266-0766	alan.perkins@norealaddress.com	Y	N
Alaina A. Perkins	Apprentice Coordinator	(608) 266-3332	(608) 266-0766	alaina.perkins@notrealivanaddress.com	N	Y

DETA-16958-E (N. 03/2011)

Sponsor Quality Assessment Outcome Notice – (DETA-16977)

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development
Governor Governor
Secretary Secretary
DivAdmin Division Administrator

Date

Addr1
Addr2
Addr3
Addr4
CityStateZip

Dear Recipient:

On Date of Assessment, I conducted a/an Assessment Type Quality Assessment of your registered apprenticeship program. This assessment covered the time period from BeginReviewDate through EndReviewDate. All Quality Assessments conducted by the Bureau of Apprenticeship Standards are given a rating of either pass or fail. Your rating is: PassFail. As a result of this assessment and on behalf of the Bureau of Apprenticeship Standards, I have made the following findings or recommendations:

AssessFindings Program Operations

AssessFindings Related Instruction

AssessFindings On the Job Learning

ActionPlan

Optional Text

We sincerely appreciate the cooperation and courtesies extended by you and your office to the Bureau of Apprenticeship Standards while we conducted the AssessType1. A copy of the completed Quality Assessment form is attached for your review. If you have any questions or concerns, please do not hesitate to call. I can be reached using the contact information in the letterhead, or via telephone at the number below.

Sincerely,
Signature
TypedName
Apprenticeship Training Representative
ReturnAdd6
ReturnAdd7

Encl. Completed Quality Assessment form

DETA-16977-E (R. 04/2012)

Sponsor Registration Certificate – (DETA-16897)

Certificate of Registration

The State of Wisconsin
Bureau of Apprenticeship Standards

Certifies That

Madison Area Plumbing Committee

Is a Registered Apprenticeship Sponsor, in accordance with Statutes of the State of Wisconsin
This certificate with official signature and the seal of the Wisconsin Department of
Workforce Development was given in the State of Wisconsin on August 1, 2012.

SAMPLE ONLY!

Karen P. Morgan
State Director of Apprenticeship

Effective Date
July 7, 2012
Registration
1234567890

Transfer Denial Notice – (DETA-16935)

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development

Governor Governor
Secretary Secretary
DivAdmin Division Administrator

Date

Addr1
Addr2
Addr3
Addr4
CityStateZip

Denial of Transfer Notice

Apprentice Name	Social Security Number
ApprenticeName	**SocialSecurityNumber**
Employer Name	Sponsor Name
EmployerName	**Sponsor**

Your request to transfer your apprentice contract to another sponsor is denied. The reason for the denial is as follows:

Reason

You have the right to appeal this decision in writing to.

Director
Bureau of Apprenticeship Standards
P O Box 7972
Madison WI 53707

In your appeal, please state the reason(s) you believe the transfer of your apprenticeship should be approved.

Signature
TypedName
Apprenticeship Training Representative
ReturnAdd6
ReturnAdd7

SchTrade
SchERAddr1
SchERAddr2
SchERAddr3
SchERAddr4
SchERCityStateZip

Also mailed to: Employer, Sponsor, School

DETA-16935-E (R. 04/2012)

Transfer of School Notice – (DETA-12517)

Used to confirm that the apprentice has been transferred from one school to another.

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development

Governor Governor
Secretary Secretary
DivAdmin Division Administrator

Date

Addr1
Addr2
Addr3
Addr4
CityStateZip

Transfer of School Assignment Notice

Apprentice Name	Social Security Number
ApprenticeName	**SocialSecurityNumber**
Employer Name	Sponsor Name
EmployerName	**Sponsor**

This letter confirms that the above named apprentice has been transferred from TxtOldSchool to TextNewSchool for paid related instruction.

Sincerely,

Signature
TypedName
Apprenticeship Training Representative
ReturnAdd6
ReturnAdd7

SchTrade

SchERAddr1
SchERAddr2
SchERAddr3
SchERAddr4
SchERCityStateZip

Also mailed to: Employer, Sponsor

DETA-12517-E (R. 04/2012)

Transition to Trainer Reminder - (DETA-14715)

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development

Governor Governor
Secretary Secretary
DivAdmin Division Administrator

Date

Addr1
Addr2
Addr3
Addr4
CityStateZip

Transition to Trainer Reminder

Apprentice Name	Social Security Number
ApprenticeName	**SocialSecurityNumber**
Employer Name	**Sponsor Name**
EmployerName	**Sponsor**

This notice is a reminder that you are required to complete the Transition to Trainer course during the final year of your Apprentice Contract. This requirement is listed in the Special Provisions of your Contract. It is your responsibility to register for the class.

Transition to Trainer was designed for all apprentices who are approaching the end of their training as well as for journey level workers who are or will be training apprentices. It was developed in response to results from a survey of apprentices leaving the program. The results consistently showed that on-the-job training was the least satisfactory part of apprentice training. This course will give future apprentice trainers the necessary skills to become better trainers as they move into the role of journey worker.

To register for Transition to Trainer course, contact your local Wisconsin Technical College apprenticeship office for scheduling information.

Sincerely,

Signature
TypedName
Apprenticeship Training Representative
ReturnAdd6
ReturnAdd7
ReturnAdd8

Also mailed to: Employer, Sponsor

DETA-14715-E (R. 05/2012)

Unassignment Notice - (DETA-10136)

Used to inform an apprentice that the Apprentice Contract has been placed on hold for the stated reasons.

DIVISION OF EMPLOYMENT AND TRAINING
Bureau of Apprenticeship Standards
ReturnAdd1
ReturnAdd2
ReturnAdd3
ReturnAdd4
ReturnAdd5

STATE OF WISCONSIN
DWD
Department of Workforce Development

Governor Governor
Secretary Secretary
DivAdmin Division Administrator

Date

Addr1
Addr2
Addr3
Addr4
CityStateZip

Unassignment Notice

Apprentice Name **ApprenticeName**	Social Security Number **SocialSecurityNumber**
Employer Name **EmployerName**	Local Committee Name **LocalCommitteeName**
Requester **Requester**	Unassignment Date **EffectiveDate**

This letter is formal notification that your Apprentice Contract has been unassigned for the following reason(s):

Reason

This unassignment is issued with the understanding that when this apprenticeship is resumed the Bureau of Apprenticeship Standards must be notified. Time during the unassignment will be added to the original projected completion date. If the unassignment exceeds one year, it may be necessary to draft a new Apprenticeship Contract with appropriate credit.

If you have any questions, please feel free to contact me.

Signature
TypedName
Apprenticeship Training Representative
ReturnAdd6
ReturnAdd7

SchTrade

SchERAddr1
SchERAddr2
SchERAddr3
SchERAddr4
SchERCityStateZip

Also mailed to: Employer, Sponsor, School

DETA-10136-E (R. 05/2012)

VA Compliance Survey - (VA-22-1934)

Department of Veterans Affairs

COMPLIANCE SURVEY REPORT

(Under chapters 30, 32, 33, 35, and 36, Title 38, U.S.C.; Chapter 31, 1606 and 1607, Title 10, U.S.C.; and Section 901 and 903 of Public Law 95-342)

1. NAME AND ADDRESS OF SCHOOL OR TRAINING ESTABLISHMENT (*Include ZIP Code*)

FACILITY CODE

IDENTIFICATION NO. *(VA use only)*

PRIOR SURVEY					
PERIOD COVERED THROUGH	DATES OF SURVEY		PERIOD COVERED		RO NO.
	FROM	THROUGH	FROM	THROUGH	

PRIOR SURVEY COMPLETED: ☐ ON SITE ☐ REMOTE

CURRENT SURVEY COMPLETED: ☐ ON SITE ☐ REMOTE

REASON FOR SURVEY ☐ ROUTINE ☐ FOLLOW-UP ☐ 100% AUDIT ☐ OTHER *(Specify)*

SCHOOLS ONLY

COURSES OFFERED *(Check one)*
- ☐ STANDARD COLLEGE DEGREE
- ☐ NON DEGREE
- ☐ CORRESPONDENCE
- ☐ FLIGHT

PROFIT STATUS: *(Check one)*
- ☐ PUBLIC
- ☐ PROPRIETARY NONPROFIT
- ☐ PROPRIETARY PROFIT

APPROVAL STATUS:
- ☐ ACCREDITED *(38 CFR 21.4253)*
- ☐ NONACCREDITED *(38 CFR 21.4254)*

TRAINING ESTABLISHMENTS ONLY
- ☐ APPRENTICE *(38 CFR 21.4261)*
- ☐ OTHER OJT *(38 CFR 21.4262)*

CHAPTER	STUDENTS ENROLLED	RECORDS REVIEWED	RECORDS WITH DISCREPANCY	STUDENTS INTERVIEWED
30				
31				
32/S.901/S.903				
33/NCS				
35				
1606				
1607				
NON-VA				
TOTAL				

NAME AND TITLE OF OFFICIAL(S) CONTACTED

LINE NO.	AREAS OF REVIEW	FINDINGS YES	FINDINGS NO
	GENERAL		
1	THE FACILITY PROVIDED THE RECORDS AND ACCOUNTS OF VA BENEFICIARIES AND OTHER STUDENTS FOR EXAMINATION (38 CFR 21.4209, 21.7307, 21.9770)		
2	VA BENEFICIARIES COMMENCED THE COURSE ON THE DATE CERTIFIED (38 CFR 21.4131, 21.4203, 21.5810, 21.5831, 21.7131, 21.7152, 21.7631, 21.7652, 21.9720)		
3	VA BENEFICIARIES ARE ENROLLED IN AND PURSUING THE APPROVED PROGRAM AS CERTIFIED (38 CFR 21.3030, 21.5131, 21.7130, 21.7630, 21.9710)		
4	THE FACILITY MAINTAINS A RECORD OF PREVIOUS EDUCATION AND TRAINING OF VA BENEFICIARIES, HAS GRANTED APPROPRIATE CREDIT AND HAS REPORTED THE GRANT TO THE BENEFICIARIES (38 CFR 21.4253, 21.4254, 21.4263)		
5	THE FACILITY MAINTAINS ACCURATE, CURRENT AND COMPLETE RECORDS OF ENROLLMENT, CORRESPONDENCE LESSONS SERVICED, FLIGHT TRAINING HOURS OR APP/OJT HOURS (38 CFR 21.4253, 21.4254)		
6	THE FACILITY ACCURATELY AND PROMPTLY REPORTED ENROLLMENT, TUITION AND FEES, LESSONS SERVICED, FLIGHT TRAINING HOURS OR APP/OJT HOURS (38 CFR 21.4203(e)(f)(g), 21.4204, 21.7156, 21.9735)		
7	THE FACILITY PROMPTLY NOTIFIED VA WHEN BENEFICIARIES TERMINATED OR INTERRUPTED TRAINING (38 CFR 21.4203, 21.7156, 21.9735)		
8	THE FACILITY MAINTAINS ACCURATE, CURRENT AND COMPLETE RECORDS OF PROGRESS OR GRADES FOR VA BENEFICIARIES (38 CFR 21.4253, 21.4254, 21.4262, 21.4263)		
9	THE FACILITY PROMPTLY NOTIFIED VA WHEN BENEFICIARIES DID NOT PROGRESS SATISFACTORILY ACCORDING TO APPROVED STANDARDS AND PRACTICES OF THE FACILITY (38 CFR 21.4203(d), 21.4277)		
	ALL EXCEPT TRAINING ESTABLISHMENTS		
10	CHARGES TO VA BENEFICIARIES FOR TUITION AND FEES WERE THE SAME OR LESS THAN THE CHARGES TO OTHER SIMILARLY CIRCUMSTANCED STUDENTS (38 CFR 21.4210(d), 21.9600, 38 U.S.C. 3690(a))		
11	CERTIFICATION OF THE 85 PERCENT ENROLLMENT LIMITATION WAS VERIFIED (38 CFR 21.4201)		
	ALL EXCEPT FLIGHT SCHOOLS AND TRAINING ESTABLISHMENTS		
12	THE FACILITY PROMPTLY NOTIFIED VA OF ANY CHANGES IN CREDIT OR CLOCK HOURS, OR TUITION & FEES, THAT WOULD AFFECT THE AMOUNT OF PAYMENT TO BENEFICIARIES (38 CFR 21.4203, 21.7156(b), 21.9735)		

VA FORM JAN 2010 **22-1934** SUPERSEDES VA FORM 22-1934, JAN 1999, WHICH WILL NOT BE USED.

VA Compliance Survey - (VA-22-1934), cont.

LINE NO.	AREAS OF REVIEW *(Continued)*	FINDINGS	
	NONACCREDITED COURSES ONLY (Unless part of the approval criteria for an accredited course)	YES	NO
13	STUDENTS WERE FURNISHED A COPY OF THE COURSE OUTLINE, SCHEDULE OF TUITION AND FEES AND OTHER CHARGES, AND REGULATIONS PERTAINING TO ATTENDANCE, GRADING POLICY, CONDUCT AND RULES OF OPERATION (38 CFR 21.4254(c))		
14	ENROLLMENTS WERE WITHIN THE LIMITATION ESTABLISHED BY THE STATE APPROVING AGENCY (38 CFR 21.4254(c))		
15	THE SCHOOL'S REFUND POLICY MEETS THE REQUIREMENTS OF VA REGULATIONS (38 CFR 21.4254(c), 21.4255, 21.4256)		
	CORRESPONDENCE SCHOOLS ONLY		
16	STUDENTS AFFIRMED THE ENROLLMENT AGREEMENT AFTER THE EXPIRATION OF 10 FULL DAYS AFTER THE DAY ON WHICH THE AGREEMENT WAS SIGNED (38 CFR 21.4256)		
17	SUPPLIES, IF PART OF THE APPROVED COURSE, WERE FURNISHED TO STUDENTS (38 CFR 21.4254, 21.4255)		
18	SCHOOL RECORDS SHOW THAT VA BENEFICIARIES ARE PAYING THEIR SHARE OF THE APPROVED CHARGES AND THAT NON-VA STUDENTS ARE PAYING 100 PERCENT OF THE ESTABLISHED CHARGES (38 CFR 21.4210(d))		
19	NORMAL COMPLETION TIME FOR THE APPROVED COURSES IS AT LEAST SIX-MONTHS (38 CFR 21.4256)		
	FLIGHT SCHOOLS ONLY		
20	SCHOOL RECORDS SHOW THAT BENEFICIARIES HELD AN UNLIMITED PRIVATE PILOT'S LICENSE OR HIGHER RATING BEFORE ENROLLMENT (38 CFR 21.4263)		
21	SCHOOL RECORDS SHOW THAT BENEFICIARIES HELD A CURRENT MEDICAL CERTIFICATE OF THE APPROPRIATE CLASS BEFORE AND DURING ENROLLMENT (38 CFR 21.4263)		
22	SCHOOL RECORDS SHOW THAT VA BENEFICIARIES ARE PAYING THEIR SHARE OF THE COST OF TRAINING RECEIVED AND THAT NON-VA STUDENTS ARE PAYING 100 PERCENT OF THE COST OF TRAINING RECEIVED (38 CFR 21.4263)		
	TRAINING ESTABLISHMENTS ONLY		
23	VA BENEFICIARIES WERE FURNISHED A COPY OF THE TRAINING AGREEMENT (38 CFR 21.4261, 21.4262)		
24	VA BENEFICIARIES WERE RECEIVING TRAINING IN ACCORDANCE WITH THE APPROVED TRAINING PROGRAM (38 CFR 21.4261, 21.4262)		
25	VA BENEFICIARIES WERE RECEIVING WAGES AT THE APPROPRIATE RATE AS SHOWN IN THE APPROVED TRAINING AGREEMENT (38 CFR 21.4261, 21.4262)		
	ADDITIONAL AREAS OF REVIEW		
26	THE FACILITY HAS CORRECTED AND NOT REPEATED ANY DISCREPANCY FOUND ON THE PRIOR SURVEY, OTHER THAN AN OCCASIONAL CLERICAL ERROR (38 CFR 21.4210(d))		
27	THE FACILITY AND VA BENEFICIARIES HAVE MET AND ARE COMPLYING WITH ALL OTHER APPLICABLE PROVISIONS OF THE LAW INCLUDING THOSE CONCERNING:		
A	ADVERTISING, SALES OR ENROLLMENT PRACTICES OF ANY TYPE (38 CFR 21.4252(b)(h), 21.4254(c))		
B	POWER OF ATTORNEY AND NONASSIGNABILITY OF BENEFITS (38 CFR 21.4146, 21.9680)		
C	INDEPENDENT STUDY (38 CFR 21.4267)		
D	PRACTICAL TRAINING (38 CFR 21.4265)		
E	COOPERATIVE COURSES AND FARM COOPERATIVE COURSES (38 CFR 21.4233, 21.4257, 21.4264)		
F	TWO-YEAR PERIOD OF OPERATION FOR BRANCHES (38 CFR 21.4251)		
G	TUTORIAL ASSISTANCE (38 CFR 21.4236, 21.9685)		
H	OWNER/OFFICER RESTRICTION AND CONFLICTING INTERESTS CERTIFICATION (38 CFR 21.4005, 21.4202(c), 21.5001, 21.7305, 21.7805, 21.9770)		
I	CONTRACTUAL ARRANGEMENTS (38 CFR 21.4233(e))		
J	ADVANCE PAY (38 CFR 21.4203, 21.9715)		
K	NONDUPLICATION OF BENEFITS (38 CFR 21.4020, 21.4022, 21.5022, 21.5023, 21.7143, 21.7642, 21.9690)		
L	YELLOW RIBBON AGREEMENT (38 CFR 21.9700)		
M	OTHER *(Specify)* _____		

ATTACHMENTS *(Check all appropriate boxes)*

☐ NARRATIVE ☐ 22-1936, 22-1936A, OR OTHER WORKSHEETS ☐ 22-8794, 22-8794A ☐ 22-1919 ☐ WORKING PAPERS

DATE REPORT SUBMITTED	SIGNATURE OF COMPLIANCE SURVEY SPECIALIST

VA FORM 22-1934, JAN 2010

17. RESOURCE MATERIALS

This section of the TAG contains additional materials related to the role and responsibility of Wisconsin's Local Apprenticeship Committees.

- Wisconsin Fair Employment Law
  - Harassment in the Work Place
  - Pregnancy, Employment and the Law
  - Persons with Disabilities on the Job
  - Age Discrimination in the Workplace
  - Race, Color, National Origin and Ancestry
  - Sexual Orientation Protection
  - Arrest and Conviction Records under the Law
- Wisconsin Family and Medical Leave Act
- Wisconsin Apprenticeship Manual, WI Stat. 106,
- Administrative Code DWD 295-296

Wisconsin Fair Employment Law

How is the law enforced?
Persons who believe they have been discriminated against because of sexual orientation may file a complaint with the Equal Rights Division within 300 days of knowing about the alleged discrimination. The division investigates complaints, helps parties settle cases or, as necessary, orders remedies if discrimination is found.

For information on filing a complaint or questions about employment discrimination please contact:

STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT
EQUAL RIGHTS DIVISION
CIVIL RIGHTS BUREAU

201 E WASHINGTON AVE ROOM A300
PO BOX 8928
MADISON WI 53708

Telephone: (608) 266-6860
TTY: (608) 264-8752

819 N. 6th ST
ROOM 255
MILWAUKEE WI 53203

Telephone: (414) 227-4384
TTY: (414) 227-4081

Web Site: http://dwd.wisconsin.gov/er/

DWD is an equal opportunity employer and service provider. If you need assistance to access services or need material in an alternate format, please contact us

This is one of a series of pamphlets highlighting programs of the Wisconsin Department of Workforce Development. It is intended to provide only a general description, not a legal interpretation.

Wisconsin's Fair Employment Law Pamphlets

#1 Fair Hiring & Avoiding Loaded Interview Questions

#2 Harassment In The Workplace

#3 Pregnancy Employment & The Law

#4 Persons with Disabilities on the Job

#5 Fair Employment Law & Complaint Process

#6 Age Discrimination In The Workplace

#7 Settlement

#8 Race, Color, National Origin and Ancestry

#9 Sexual Orientation Protection

Harassment in the Work Place

State of Wisconsin
Department of Workforce Development
Equal Rights Division
Civil Rights Bureau

Wisconsin Fair Employment Law
#2 in a Series
Harassment IN THE WORKPLACE

Harassment in the Work Place

1. What is the Legal Definition of Harassment?

Under the Fair Employment Law harassment in the workplace may be illegal under two circumstances. The first is when an employer, supervisor or co-worker **singles a person out** for harassment **because of** that person's race, color, creed, ancestry, national origin, age (40 and up), disability, sex, arrest or conviction record, marital status, sexual orientation or military services. The second situation is when the **content of the harassment** itself relates directly to any of these protected characteristics (i.e. sexual harassment, use of derogatory ethnic or religious terms, age or disability related comments, etc.)

It is important to note that the Fair Employment Law only prohibits harassment in the circumstances described above. **There is no general prohibition against harassment.** An employer who harasses an employee because of a personal dislike, for example, or who harasses employees in general is **not** violating the Fair Employment Law, no matter how abusive or hostile the environment might be.

Harassment may include verbal abuse, epithets, sexually explicit or derogatory language, display of offensive cartoons or materials, mimicry, lewd or offensive gestures and telling of jokes offensive to the above protected class members. The behavior must be more than a few isolated incidents or casual comments. It involves a pattern of abusive and degrading conduct directed against a person **because of** his or her protected class that is sufficient to interfere with work or creates an offensive and hostile work environment.

"Sexual" harassment includes **unwelcome sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature** when:

- Engaging in such conduct is made an implicit or explicit term or condition of employment. **Example: A newly hired machine operator is told sexual jokes, touching and display of nude posters are just part of factory life and she should try to ignore it.**

- Acceptance or rejection of such conduct is used as the basis for an employment decision affecting an employee. **Example: A manager tells a worker applying for a promotion that the job would be his if he just "treated her right."**

- The conduct interferes with an employee's work or creates an intimidating, hostile or offensive work environment. **Example: One worker experiences repeated advances from another asking her for dates or "just to go out for drinks after work." The worker says she isn't interested, but the co-worker won't take 'no' for an answer.**

ERD-7334-PWEB (R. 12/2008)

2. When is Conduct Unwelcome?

Conduct is unwelcome when an employee does not solicit or invite it and when the employee regards the conduct as undesirable or offensive. Since sexual attraction is a normal factor in employee interactions, the distinction between advances that are *invited, uninvited-but-welcome, offensive-but-tolerated and flatly rejected* may be difficult to discern. This distinction is important because conduct is unlawful when it is unwelcome.

It is important to note that harassment is in the "eye of the beholder". What might be acceptable to one worker might be offensive and unwelcome to another. The U.S. Supreme Court has adopted the "reasonable person" standard in determining if conduct is harassing.

3. What Forms Does Sexual Harassment Take?

In practical terms, there are two forms of sexual harassment.

Quid Pro Quo ('this for that'): When employment decisions or expectations (e.g. hiring, promotions, salary increases, shift or work assignments, and performance standards) are based on an employee's willingness to grant or deny sexual favors. Examples of quid pro quo harassment include:

- Demanding sexual favors for a promotion or raise.
- Disciplining or firing a subordinate who ends a romance.
- Changing work standards after a subordinate refuses repeated requests for a date.

Hostile Environment: A work environment is "hostile" when unwelcome verbal, non-verbal or physical behavior focusing on sexuality is severe and pervasive enough to interfere with the victim's work performance or be intimidating or offensive to a reasonable person.

Examples of behaviors that can create a hostile environment:

Verbal

- Sexual jokes or insults
- Comments about a person's body or sex life
- Sexually demeaning comments

Non-Verbal

- Making gestures or staring
- Display of sexually suggestive or degrading materials
- Giving sexually suggestive "gifts".

Physical

- Touching, hugging, kissing or patting
- Brushing against a person's body
- Blocking a person's movement

4. Important Facts about Harassment

- Sexual harassment often occurs when there is a disparity of power, not just when men and women work together.
- A person who consents to a supervisor's sexual advances might still be a victim of sexual harassment.
- A member of one sex can sexually harass a member of the same sex even if there is no romantic motive for the harassment.
- "Horseplay" can constitute sexual harassment if the actions are explicitly sexual in nature.
- Offenders can be supervisors, co-workers, or non-employees such as vendors, customers, or suppliers.
- The victim does not have to be directly involved. A third person can be offended by harassing behavior among willing participants.
- Harassment does not have to be reported or complained about by the victim to be defined as harassment.
- An employer can set stricter limits on harassment in the workplace (such as prohibiting all harassment) than may be specified under fair employment laws.
- Unless severe, a single incident or a few isolated incidents of offensive behavior will not likely rise to the level of harassment.
- A single incident of unwanted touching of a person's intimate body areas is sufficiently offensive to be defined as sexual harassment. It may also constitute a criminal offense under state "sexual assault" laws.
- Abusive, hostile, or rude treatment of one sex (as opposed to mistreatment of all employees) may still constitute harassment, despite the absence of overt sexual behavior.

5. How Can Management Respond To Harassment Concerns?

- Implement a strong policy explicitly prohibiting harassment, including a description of disciplinary consequences that will be applied.
- Provide training to educate employees on the issue of harassment and periodically remind them of your strong desire to maintain a harassment free workplace.
- Have multiple avenues in place for making an internal complaint and regularly inform employees about the complaint process. A "victim-friendly" complaint procedure encourages employees to come forward, is sensitive to their situation, stresses the need for confidentiality and ensures that retaliation will not occur, whatever the investigation outcome is.
- Ensure that every complaint is taken seriously. It is essential that the employer act in a timely manner. Commence an investigation immediately and take appropriate corrective action **as soon as possible**.
- Avoid making credibility judgments or reaching conclusions before you have gathered the facts, even if you think you "know" the parties involved and have an "idea" about what happened.
- Keep in mind that there is a wide range of sensitivity toward harassing behavior. Remember, the "eye of the beholder" is what is important, not what you or other co-workers might find personally offensive. And be aware that it is not just young, "attractive" females who are sexually harassed.

- Keep lines of communication open. Make sure the complaining employee is informed of your efforts to correct any harassing behavior (including information about the consequences to the harasser) and of your desire to be promptly notified if problems persist or if retaliation occurs.
- Realize that as a supervisor or owner you are "at risk" anytime you have an intimate relationship with a subordinate, even though you present relationship is not harassing and may not affect employment decisions. Policies that regulate social contact between supervisors and subordinates, including requirements that such contact be divulged by supervisors, are within an employer's rights under the Fair Employment Law.

6. Who Is Liable For Harassment?

How an employer addresses harassment with its employees is likely to be the single most critical issue in determining liability in legal actions.

- An employer is responsible for **its own acts** and those of **its agents** regardless of whether the acts were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of those acts.
- An employer is responsible for harassment between **co-workers**, if the employer or its agents **knew or should have known** of the conduct and failed to take immediate and appropriate corrective action.
- An employer is responsible when non-employees such as customers or suppliers harass its employee(s) during the workday, where the employer or its agents knew or should have known of the conduct and failed to take immediate and appropriate action.

7. What Are The Consequences?

Lost Work Time:
- Harassment is very disruptive of production.
- It can seriously affect victim/employee morale.
- It may increase absenteeism and turnover.

Reputation:
- An owner's or company's community reputation may suffer.

Damages:
- A victim's back pay; attorney fees and costs may be substantial.
- Compensatory and punitive damages under federal law may dramatically increase dollar damages.
- Other laws, such as state sexual assault statutes, may result in criminal charges.

8. When in Doubt about Sexual Harassment!!

Often, an employee or supervisor may not be sure if a particular behavior or interaction is appropriate. The following "not sure" tests might be helpful.

Ask yourself:

- Would you say or do it in front of your boss, grandparent or a stranger?
- How would you feel if your family or close friends were subjected to the same words or behavior?
- Would you say or do it to a colleague who is the same sex as you?

This is one of a series of pamphlets highlighting programs of the Wisconsin Department of Workforce Development. It is intended to provide only a general description, not a legal interpretation.

The Equal Rights Division also has additional informational material that explains various aspects of the fair employment law.

PAMPHLET SERIES

1. FAIR HIRING & AVOIDING LOADED INTERVIEW QUESTIONS
2. HARASSMENT IN THE WORKPLACE
3. PREGNANCY EMPLOYMENT & THE LAW
4. PERSONS WITH DISABILITIESON THE JOB
5. FAIR EMPLOYMENT LAW & COMPLAINT PROCESS
6. AGE DISCRIMINATION IN THE WORKPLACE
7. SETTLEMENT
8. RACE, COLOR, NATIONAL ORIGIN & ANCESTRY
9. SEXUAL ORIENTATION PROTECTION

The Department of Workforce Development is an equal opportunity service provider. If you need assistance to access services or need material in an alternate format, please contact us. Deaf, hearing, or speech-impaired callers may reach us in Madison at (608) 264-8752 or in Milwaukee at (414)227-4081.

Questions about employment discrimination should be directed to:

EQUAL RIGHTS DIVISION

201 E Washington Ave
Room A300
PO Box 8928
Madison WI 53708

(608) 266-6860
TTY (608) 264-8752

819 N 6th St
Room 255
Milwaukee WI 53203

(414)227-4384
(414) 227-4081

http://dwd.wisconsin.gov/er

Pregnancy, Employment and the Law

State of Wisconsin
Department of Workforce Development
Equal Rights Division
Civil Rights Bureau

Wisconsin's Fair Employment Law
#3 in a Series

Pregnancy, Employment and the Law

An underlying principle of all equal employment law is that applicants for employment and employees shall be treated equally regardless of age, race, color, creed, disability, arrest or conviction records, national origin, ancestry, marital status, sexual orientation, sex, membership in the military reserves or use or nonuse of lawful products. This principal applies to pregnant employees.

Any procedure that treats pregnant females less favorably than other employees who have temporary disabilities is sex discrimination according to both state and federal laws. It is illegal for an employer to use pregnancy as a reason to take any adverse personnel action that would not have been undertaken otherwise, including lay-off, reduced responsibilities or reduced pay. Wisconsin also requires some parents be allowed unpaid leave in connection with births and adoptions.

Here are the answers to some common questions about maternity benefits.

Q. May an employer refuse to hire a woman because she is pregnant?
A. No. If the woman meets the qualifications required for the job, she may not be denied employment simply because she is pregnant.

Q. Is a woman required to tell an employer when she applies for a job, that she is pregnant?
A. No. She is not required to do so under either state or federal laws.

Q. May employers ask a woman if she is pregnant or is planning on having children in the near future?
A. An employer may not ask a question that applies to only one group of applicants and not to another, if the only difference between the groups is a characteristic or status protected by the Fair Employment Law. Furthermore, the employer may not ask or use the information obtained from a question to discriminate against a person because of that person's membership in a protected category. Since only women, may become pregnant and bear children, questioning about these matters can be discriminatory. The use of questions about an applicant's intent to have children may also be discriminatory, even if both men and woman are asked.

Q. What is an employer's obligation to an employee who is temporarily unable to perform her job because of pregnancy?
A. An employer is required to treat an employee unable to perform her job because of her pregnancy in the same manner as it treats other **temporarily** disabled employees, whether by providing modified tasks, alternative assignments, disability leave or leave without pay.

The employer should provide the same benefits to employees disabled by pregnancy as it provides to other **temporarily** disabled persons.

Additionally, employers with 50 or more permanent employees must allow covered employees up to six weeks of family leave in a 12-month period, without pay, for the birth of the employee's child if the leave begins within 16 weeks of the child's birth.

Q. May an employer legally discipline or terminate a pregnant employee?
A. Yes. Any employee may be disciplined or terminated for cause. An employer may impose the same discipline on a pregnant employee as on any other employee. If a complaint is filed, discrimination will not be found if the employer can document that the discipline or termination was for willful neglect of job duties, or for failure to follow work rules that are enforced impartially on all employees.

ERD-7550-PWEB (R.03/2011)

Q. May employers discharge or discipline a woman because she has or is contemplating terminating a pregnancy?

A. No. An employer cannot discriminate in its employment practices against a woman because of any pregnancy-related conditions.

Q. May an employer discharge, refuse to hire or discipline a woman because she is pregnant and not married?

A. No. An employer may not treat a pregnant employee any differently on the basis of her marital status. An employer must also provide maternity insurance benefits to employees without regard to the employee's marital status. Though this will not necessarily include coverage for a newborn child, an employer may not offer dependent coverage to some employees and not others on the basis of sex.

Q. May employers force an employee to take maternity leave at some arbitrary point in her pregnancy?

A. No. An employer may not force an employee to go on leave unless she is unable to perform the functions of her job. The timing and length of temporary disability leave should be determined between the employee and her doctor, as are other medical absences.

Q. What if customer's or co-workers are uncomfortable with a pregnant employee performing the job?

A. Co-worker or customer preference is not a valid reason for refusing to allow the pregnant employee to continue performing her job, if she is able.

Q. Must employers hold open the job of an employee who is absent on leave because she is temporarily disabled by a pregnancy-related condition?

A. A pregnant employee's job must be held open for her return on the same basis as jobs are held open for employees on sick or disability leave for other reasons.

If an employee is entitled to medical leave under the State or Federal Family and Medical Leave Act and takes medical leave in relation to pregnancy, the returning employee **may** be eligible for reinstatement to that employee's former position if it is vacant, or reinstated into an equivalent position with equivalent compensation, benefits, work shifts, hours, and other terms and conditions of employment if the former position is not vacant."

Q. What if an employee wants to be off work beyond the time she is physically disabled because of her pregnancy?

A. There is a clear distinction between childbearing leave and child rearing leave. Childbearing leave (when a doctor determines the woman is temporarily disabled) should be handled the same as other temporary leaves for medical reasons. When child rearing leave is granted by an employer, it should be available to both men and women and handled on the same basis as leave for any other non-medical personal reason.

Under the Wisconsin Family and Medical Leave Law, employers with 50 or more permanent employees must allow covered employees up to six weeks of family leave in a 12-month period, without pay, for:

1. The birth of the employee's child if the leave begins within 16 weeks of the child's birth.
2. The placement of a child with the employee for adoption if the leave begins within 16 weeks of the child's placement.

Note: The federal family and medical leave law may provide additional weeks of leave. Contact the U. S. Labor Department, Wage and Hour Division.

Q. What obligations do employers have with regard to the payment of maternity benefits?

A. Employers are required to provide disability coverage for pregnancy on the same basis as they provide it for any other condition. This means that both disability income protection and medical expense insurance must cover maternity-related disabilities and maternity-related health care expenses on the same basis as for all other conditions.

Any health insurance plan offered in connection with employment must cover maternity on the same basis as other conditions, whether or not the employer makes contributions to the plan. An employer that does not have any disability coverage for employees is not obligated to provide such coverage for maternity, but must still treat the pregnant employee in the same manner as other employees who are temporarily disabled.

If any employer employs 50 or more people on a permanent basis and the employee has been employed for the prior 52 weeks and worked at least 1000 hours during that period, the employee is entitled to unpaid leave under the law in connection with birth during any leave taken under the law. An employee may decide to use accrued paid leave instead of unpaid leave. The employer must maintain the same group health insurance coverage for the employee as existed prior to the leave, with the same conditions that applied prior to the leave.

Q. Is the employer required to pay part of a woman's salary while she is on a pregnancy disability leave?

A. No. The employer is required to pay only such benefits as are paid to employees who are on disability leaves due to reasons other than pregnancy.

Q. May a union and employer enter into a health or disability insurance contract which excludes maternity benefits?

A. No. The union and employer are both subject to the Wisconsin Fair Employment Law and held accountable for entering into a discriminatory contract.

Q. Can there be a waiting period before maternity coverage begins?

A. There can be the same waiting period before maternity coverage takes effect as there is for coverage of other health conditions.

Q. If a pregnant employee leaves the job; does the employer have to pay maternity benefits?

A. If the benefits for other conditions are extended beyond the termination of employment, and then benefits for maternity must be extended also. If benefits for other conditions end, they can end for maternity.

Q. Must an employer provide health insurance coverage for the medical expenses of pregnancy-related conditions of the spouses of male employees or the dependents of all employees?

A. When an employer provides no coverage for dependents, the employer is not required to begin such coverage. However, every group health insurance policy, which provides coverage of dependent children and maternity coverage for any individual, shall provide maternity coverage for dependent children. Wisconsin Insurance Commission rules require that complications of pregnancy be covered in all health insurance plans.

Q. When an employer offers its employees a choice among several health insurance plans, must coverage for pregnancy-related conditions be offered in all the plans?

A. Yes. Each of the plans must cover pregnancy-related conditions. An employee with a single coverage policy must receive coverage for her own pregnancy-related condition and not be forced to carry a family policy. However, a single person could be required to purchase a family policy in order to provide coverage for a child.

Q. When an employee converts from the group medical coverage to an individual policy upon terminating employment, do the laws regarding discrimination apply to the individual policy?

A. Yes. A new conversion policy must be offered which provides the same coverage for pregnancy-related conditions as it provides for other medical conditions. If the coverage is reduced for all conditions, it may be reduced on the same basis for pregnancy-related conditions.

Q. Is an employee who is unable to work because of pregnancy-related temporary disability eligible for worker's compensation?

A. No. Worker's compensation is available only to those persons who have a job-related illness or injury.

Q. What laws specifically apply to maternity benefits available to employees?

A. Both federal and state laws address the matter of maternity benefits. The Pregnancy Amendments of Title VII of the Civil Rights Act of 1964 is the federal legislation.

The Wisconsin Fair Employment Act (111.31-111.395, Wis.Stats.) includes the following language regarding maternity:

"111.36(1) Employment discrimination because of sex includes, but is not limited to any of the following actions by any employment, labor organization, employment agency, licensing agency or other person . . .

111.36(1) (c) Discriminating against any woman on the basis of pregnancy, childbirth, maternity leave or related medical conditions by engaging in any of the actions prohibited under s. 111.322, including, but not limited to, actions concerning fringe benefit programs covering illnesses and disability."

Wisconsin's Family and Medical Leave Law applies to employers with 50 or more permanent employees and employees of those employers who have been employed for the prior 52 weeks and have worked at least 1,000 hours during that period.

Q. Are insurance companies bound by these laws?

A. These laws apply only to employers. It is the employer or union's responsibility to buy insurance policies, which comply with the law. There is no comparable obligation on insurance companies. However, an insurance company would be wise to advise an employer/union-client of the legal obligations regarding maternity benefits.

Q. Are there any differences in federal and state laws?

A. There are no differences in what is required in the federal and state discrimination laws in the treatment of pregnant employees by an employer. Federal discrimination law applies only to those employers with 15 or more employees. Wisconsin's Fair Employment Act covers all employers in Wisconsin. The federal and state family and medical leave laws apply to employers with 50 or more permanent employees. However, the two laws differ in key areas. For a comparison between the federal and state family and medical leave laws, contact the Wisconsin Equal Rights Division.

Q. Does it make any difference whether an employment-related maternity complaint is filed with the federal Equal Employment Opportunity Commission (EEOC) or Wisconsin's Equal Rights Division (ERD)?

A. As to claims of discrimination, not really. In Wisconsin, the EEOC and the ERD have a worksharing agreement that requires complaints to be co-filed with each other unless the complainant objects. There are some differences in the procedures followed by the state and federal agency when a complaint is filed. Attorney's fees are available through a successful action under both federal and state law.

Claims that the Wisconsin Family and Medical Leave Act have been violated must be filed with the Wisconsin Equal Rights Division within 30 days of knowing about the alleged violation. A claim under the federal family and medical leave law must be filed with the U. S. Labor Department, Wage and Hour Division.

Q. What usually happens when an employment-related maternity complaint is filed with the Wisconsin Equal Rights Division?

A. Since case law and precedents in discrimination cases are quite well established, the parties in pregnancy discrimination cases frequently achieve prompt settlements. Please ask for a copy of the brochure "Wisconsin Fair Employment Law and Complaint Process" for more information about the steps in processing a discrimination complaint.

Q. Where should I go for further information?
A. If you have questions regarding maternity benefits in an employer-employee relationship, contact:

DEPARTMENT OF WORKFORCE DEVELOPMENT
EQUAL RIGHTS DIVISION

201 E WASHINGTON AVE
PO BOX 8928
MADISON WI 53708
(608) 266-6860
(608) 264-8752(TTY)

819 N 6TH ST
ROOM 255
MILWAUKEE WI 53203
(414) 227-4384
(414) 227-4081(TTY))

If you want more information about the federal regulations or wish to file a complaint under the Pregnancy Discrimination Amendments to the Civil Rights Act, you should contact:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
310 W WISCONSIN AVE, SUITE 800
MILWAUKEE WI 53203
(414) 291-1112

If you have an insurance problem and cannot get the answer you need from the agent or company involved, please contact:

OFFICE OF COMMISSIONER OF INSURANCE
121 E WILSON ST
MADISON WI 53702
(608) 266-0103

If you wish to file a complaint under the federal Family and Medical Leave Law, or seek information on this law, please contact:

U S DEPARTMENT OF LABOR
212 E WASHINGTON AVE - ROOM 309
MADISON WI 53703
WAGE AND HOUR DIVISION
MADISON OFFICE: (608) 414-5221 MILWAUKEE OFFICE: (414) 297-3585

The Department of Workforce Development is an equal opportunity service provider. If you need assistance to access services or need material in an alternate format or need it translated to another language, please contact us.

Questions about employment discrimination should be directed to the:

EQUAL RIGHTS DIVISION

201 E WASHINGTON AVE
PO BOX 8928
MADISON WI 53708

(608) 266-6860
(608) 264-8752(TTY):

819 N 6TH ST
MILWAUKEE WI 53203

(414) 227-4384
(414) 227-4081(TTY)

Persons with Disabilities on the

State of Wisconsin
Department of Workforce Development
Equal Rights Division

Wisconsin's Fair Employment Law
#4 in a Series

Persons with Disabilities on the Job

Disability Protections

Wisconsin's Fair Employment Law gives civil rights protections to qualified persons with disabilities. The law applies to virtually all, private and public employers, regardless of the number of employees.

Under the federal Americans with Disabilities Act (ADA), disability discrimination is also prohibited for employers having 15 or more employees.

Both laws are designed to ensure equal opportunity in all aspects of employment.

What actions are covered?

The law protects persons with disabilities against discrimination in:

- Recruitment and hiring
- Job assignments
- Pay
- Leave or benefits
- Promotion
- Licensing or union membership
- Training
- Lay-off and firing
- Other employment related actions

The law also prohibits an employer from **retaliating** against applicants or employees who assert rights under the law. **Harassment** on the job because of a person's disability is also prohibited.

Who is protected?

The law protects individuals with disabilities who are qualified and can perform the essential functions of a job, with or without a reasonable accommodation.

An individual with a disability is a person who:

- has a physical or mental impairment that makes achievement unusually difficult or limits the capacity to work;
- has a **record** of such an impairment, or
- is **perceived** as having such impairment

The **first** part of this definition applies to a substantial impairment that limits a person's major life activities such as seeing, hearing, walking, learning, and working. For example, a person with diabetes, epilepsy, or mental retardation would likely be covered, but a person with a minor, non-chronic condition of short duration, such as a broken leg or occasional headaches would generally not be covered.

The **second** part of this definition covers a person who had a disability but is now recovered. For example, a person with cancer that is in remission, or a person with a history of mental illness would be covered.

The **third** part of this definition includes a person who is "perceived" as having a disability. For example, an applicant whose physical exam revealed a prior back injury that would not affect job performance would be covered.

In many cases, it is difficult to decide if a condition is a disability under the law without having a written diagnosis from a physician or another health care provider. Typically, the facts in each case must be reviewed. For example, a pattern of relatively minor headaches may not be a disability whereas severe recurring migraines would likely be a disability.

ERD-7899-PWEB (R. 05/2009)

Job

Is AIDS a disability under the law?
Yes, a person with AIDS is protected under the law and may not be discriminated against because of this disease.

How does the law apply to alcoholism and drug addiction?
Alcoholism and drug addictions are disabilities under state law and a person may not be discriminated against for either reason. Under the ADA, a "current" user of illegal drugs is not protected although one who is recovering or who is in a supervised drug rehabilitation program is covered under both state and federal laws.

Employers may require employees who use alcohol or have abused drugs to meet the same standards of performance and conduct set for other employees and may prohibit the use of illegal drugs and alcohol in the workplace.

Can an employer refuse to hire a person because of a disability?
A person with a disability may be passed over if the disability is reasonably related to the person's ability to adequately and safely perform job-related duties. An employer may consider if a person's disability would constitute a hazard to the safety of the person, coworkers or the public. However, an employer may not assume a hazard exists because of a person's disability and must typically establish through objective or medically supported evidence that a significant risk of substantial harm would occur.

An employer has a legitimate interest in maintaining a safe workplace, but may not generalize rejection of persons with disabilities. If a hazard does exist, an employer has a further duty to determine if a reasonable accommodation can be made to reduce the hazard to an acceptable level.

Must an employer hire a qualified person with a disability over other qualified applicants without a disability?
An employer is not required to hire a qualified applicant with a disability over other qualified applicants. However, an employer may not refuse to hire a person with a disability because of the disability or because a reasonable accommodation is required to make it possible for the person to perform essential job functions.

Can an employer discriminate against a person who has an association with a person with a disability?
Under state law, disability "by association" is not covered. This refers to discrimination against an individual because a spouse, child or friend has a disability. However, the federal ADA does protect individuals against discrimination on this basis and a complaint may be filed with the US. Equal Employment Opportunity Commission (EEOC).

What is a reasonable accommodation?
A reasonable accommodation is any modification or adjustment to a job, the work environment or how things are done that enables a qualified applicant or employee with a disability to participate in the application process, perform essential job functions or enjoy the same employment rights and privileges as other employees.

A person with a disability is often the best source for identifying the most effective accommodation. A person with a disability is generally expected to make a request for an accommodation, unless the need for one is obvious.

An employer is required to make a reasonable accommodation unless it would result in a hardship to the business. The hardship standard will vary with each case. Generally, a hardship may exist if the accommodation is difficult or expensive to achieve in relation to the size and resources of the business. If the accommodation is unduly costly or disruptive or would fundamentally alter the nature of the business it might also represent a hardship.

What kinds of reasonable accommodations might be involved?

- Following are some typical solutions:
- Modifying how exams or training are given;

- Installing a ramp for building access;
- Making restrooms accessible;
- Making telephones accessible;
- Raising a desk for wheelchair access;
- Offering part-time or flexible work schedules;
- Restructuring a job or redistributing minor job functions;
- Reassigning an employee to a vacant position;
- Providing reserved parking

Resource Tip: The JOB ACCOMMODATIONS NETWORK is listed in this pamphlet under "disability resources". Call them if you need ideas on accommodations for a specific disability.

May an employer ask about a disability?

Inquiries about a person's disability, health or worker's compensation history are unlawful if they imply or express a limitation based on disability. Under the federal ADA, any inquiry at the pre-employment stage, which would likely require an applicant to disclose a disability, is unlawful.

Employers are advised to avoid such inquiries or medical examinations before making a bona fide job offer.

However, an employer may inquire about an applicant's ability to perform essential job functions and, within certain limits, may conduct tests of all applicants to determine if they can perform such functions, with or without an accommodation.

How do the worker's compensation and fair employment laws apply for persons who sustain a work-related injury?

An employee injured on the job and covered by the worker's compensation law is not precluded from seeking remedies under state or federal fair employment laws. If the injury results in a disability as defined under the fair employment law, and the employee is not returned to work, not reasonably accommodated or faces another adverse action because of the disability, the employee may file a discrimination complaint under the fair employment law. An employee may also seek any rights separately available under the worker's compensation law.

How is the law enforced?

Persons who believe they have been discriminated against because of a disability may file a complaint with the Equal Rights Division within 300 days of knowing about the alleged discrimination. The division investigates complaints, helps parties settle cases or, as necessary, orders remedies if discrimination is found.

DISABILITY RESOURCES

A number of important resources are available to assist employers and persons with disabilities. A few key agency resources are:

JOB ACCOMMODATIONS NETWORK (JAN)
WEST VIRGINIA UNIVERSITY-809 ALLEN HALL
PO BOX 6123
MORGANTOWN WV 26506-6123
1-800-526-7234 (Voice/TDD)
Technical Assistants making reasonable accommodations

GREAT LAKES DISABILITY & BUSINESS TECH CENTER
UNIVERSITY OF ILLINOIS-CHICAGO UAP
1640 W ROOSEVELT RD. M/C627
CHICAGO IL 60608
1-800-949-4232 (Voice/TDD)
Technical Assistants on ADA compliance in general

EASTER SEAL SOCIETY OF WISCONSIN INC
101 NOB HILL RD SUITE 301
MADISON WI 53713
(608) 277-8288 (Voice/TTY)
Technical Assistants on Accessibility in buildings

WISCONSIN DIVISION OF VOCATIONAL REHABILITATION
201 E WASHINGTON AVE
PO BOX 7852
MADISON WI 53707
1-800-442-3447 (Voice), (608) 266-0283 (TTY)

NAMI WISCONSIN (National Alliance on Mental Illness)
4233 W BELTLINE HWY
MADISON WI 53711
1-800-236-2988 or (608) 268-600

US EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)
310 W. WISCONSIN AVE SUITE 800
MILWAUKEE W I 53203
(414) 297-1112 (Voice), 1-800-669-6820 (TTY) or 1-800-669-4000 (Toll Free)
Information about federal employment protections under the ADA

This is one of a series of pamphlets highlighting programs of the Wisconsin Department of Workforce Development. It is intended to provide only a general description, not a legal interpretation. The Equal Rights Division has additional informational materials explaining various aspects of the fair employment law.

Pamphlet Series

#1 FAIR HIRING & AVOIDING LOADED INTERVIEW QUESTIONS
#2 HARASSMENT IN THE WORKPLACE
#3 PREGNANCY, EMPLOYMENT & THE LAW
#4 PERSONS WITH DISABILITIES ON THE JOB
#5 FAIR EMPLOYMENT LAW & COMPLAINT PROCESS
#6 AGE DISCRIMINATION IN THE WORKPLACE
#7 SETTLEMENT
#8 RACE, COLOR, NATIONAL ORIGIN & ANCESTRY
#9 SEXUAL ORIENTATION PROTECTION

The Department of Workforce Development is an equal opportunity service provider. If you need assistance to access services or need material in an alternate format, please contact us. Deaf, hearing or speech-impaired callers may reach us at the below numbers.

Questions about employment discrimination should be directed to:

EQUAL RIGHTS DIVISION

201 E WASHINGTON AVE ROOM A300
PO BOX 8928
MADISON WI 53708

Telephone: (608) 266-6860
TTY: (608) 264-8752

819 N 6th ST
ROOM 255
MILWAUKEE WI 53203

Telephone: (414) 227-4384
TTY: (414) 227-4081

Web Site: http://dwd.wisconsin.gov/er

State of Wisconsin
Department of Workforce Development
Equal Rights Division
Civil Rights Bureau

Information about the Americans with Disabilities Act

Employment

Employers may not discriminate in hiring or promotion if a person with a disability is qualified for the job.

Employers can ask about a person's ability to perform the job, but may not require tests or make any health or disability related inquires before making a job offer.

Employers must provide "reasonable accommodation" to persons with disabilities, including job restructuring and equipment modifications, unless doing so would impose an "undue hardship".

Who must comply*:* After July 26, 1994, all employers with 15 or more workers. (Under Wisconsin law, all employers are covered.)

Transportation

After August 26, 1990, all new public buses ordered must be accessible to persons with disabilities.

Transit agencies must provide comparable paratransit or other special transportation services to persons with disabilities who cannot use fixed route buses, unless an undue burden would result.

After July 26, 1995, exiting rail systems must have one accessible car per train.

After July 26, 1990, new rail cars ordered must be accessible.

New bus and train stations must be accessible.

After July 26, 1993, key stations in rapid, light and computer rail systems must be accessible with some multi-year extensions.

After July 26, 2010, all existing Amtrak stations must be accessible.

Public Accommodations

After January 26, 1992, private entities such as restaurants, hotels, and retail stores may not discriminate against persons with disabilities.

Auxiliary aids and services must be provided to individuals with vision or hearing impairments or other disabilities, unless burden would result.

Physical barriers in exiting facilities must be removed, if removal is readily achievable. If not, readily achievable alternative methods of providing services must be offered.

All new construction and alterations of facilities must be accessible.

State and Local Government

State and local governments may not discriminate against qualified individuals with disabilities.

All government facilities, services and communications must be accessible consistent with the requirements of section 504 of the Rehabilitation Act of 1973.

Telecommunications

Companies offering telephone services to the general public must offer telephone relay services to persons who use telecommunication devices for the deaf (TTY) or similar devices.

ERD 12864-P (R. 08/2005)

ADA/DISABILITY RESOURCES

Employment Discrimination

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
310 W WISCONSIN AVE SUITE 800
MILWAUKEE WI 53203
(414) 297-1111, (414) 297-1115 (TTY)

STATE OF WISCONSIN
DEPT OF WORKFORCE DEVELOPMENT
EQUAL RIGHTS DIVISION

MADISON
201 E WASHINGTON AVE ROOM A300
PO BOX 8928
MADISON WI 53708
(608) 266-6860, (608) 264-8752(TTY)
MILWAUKEE
819 N 6TH ST
ROOM 255
MILWAUKEE WI 53203
(414) 227-4384)
(414) 227-4081(TTY)

Architectural & Transportation Barriers

ARCHITECTURAL & TRANS BARRIERS COMPLIANCE BOARD
1111 18TH ST NW-SUITE 501
WASHINGTON DC 20036
(202) USA-ABLE, (Voice/TTY)
"Title II accessibility issues"

STATE OF WISCONSIN
DEPARTMENT OF COMMERCE
SAFETY AND BUILDINGS DIVISION
PO BOX 2658
MADISON, WI 53701
(608) 266-3151
"Accessibility under state building codes"

Public Accommodations & Gov't Services

U S DEPARTMENT OF JUSTICE
PO BOX 66118
WASHINGTON D.C. 20035-6118
(202) 514-0301, (202) 514-0383(TTY)
"Title II & III-accessibility in government and private entity run public accommodations"

Transportation

U S DEPARTMENT OF TRANSPORTATION
400 7TH ST SW
WASHINGTON, DC 30590
(202) 366-4723, (202) 755-7687(TTY)
"Title II & III on Gov't and Private Transportation"

ADA Technical Assistance

JOB ACCOMMODATIONS NETWORK (JAN)
WEST VIRGINIA UNIVERSITY
809 ALLEN HALL
PO BOX 6123
MORGANTOWN WV 26506-6123
(800) 526-7234 (Voice/TTY)
"Making Reasonable accommodations"

GREAT LAKES DISABILITY & BUSINESS TECH CENTER
UNIVERSITY OF ILLINOIS-CHICAGO UAP
1640 W ROOSEVELT RD M/C627
CHICAGO IL 60608
(800) 949-4232 (Voice/TTY)

EASTER SEAL SOCIETY OF WISCONSIN INC
101 NOB HILL RD SUITE 301
MADISON WI 53713
(608) 277-8288 (Voice/TTY)
(Cleo Eliason or Rodney Ross)

GOVERNOR'S COMMITTEE FOR PEOPLE WITH DISABILITIES
1 W WILSON ST ROOM 558
MADISON WI 53707-7852
(608) 266-5378 (Voice/TTY)

STATE OF WISCONSIN
DEPT OF WORKFORCE DEVELOPMENT
DIVISION OF VOCATIONAL REHABILITATION
CENTRAL OFFICE/ADMINISTRATION
201 EAST WASHINGTON AVE
PO BOX 7852
MADISON WI 53707-7852
(608) 261-0050
(888) 877-5939 (TTY)
(800) 442-3477 (Toll Free)

WISCONSIN COALITION FOR ADVOCACY
16 N. CARROLL ST SUITE 400
MADISON WI 53703
(608) 267-0214 (Voice) (800) 708-3034 (TTY)
"Information on Mental Illnesses"

Telecommunications

FEDERAL COMMUNICATIONS COMMISSION
1919 M ST NW
WASHINGTON DC 20554
(202) 632-7000, (202) 632-6999(TTY)
"Title IV relating to telecommunications"

Age Discrimination in the Workplace

State of Wisconsin
Department of Workforce Development
Equal Rights Division
Civil Rights Bureau

Wisconsin's Fair Employment Law
#6 in a Series

Age Discrimination in the Workplace

Age Discrimination Protections

State and federal law protects most workers age 40 and older from workplace discrimination. Wisconsin's Fair Employment Law sections 111.31-111.395, Wisconsin Statutes apply to virtually all private and public employers, regardless of the number of employee's.

Federal age protections are contained in the Age Discrimination in Employment Act, known as the ADEA. The ADEA applies only to employers with 20 or more workers.

As with other protected classes such as race, national origin, sex, and disability, Wisconsin's legislature declared that discrimination against qualified older workers unfairly denies their right to gainful employment.

While state law promotes employment of older persons based on their ability rather than their age, employers may terminate a worker, irrespective of age, if he or she is physically or otherwise **unable to perform** essential job duties. However, an employer may be required to make a **reasonable accommodation** for a worker who is unable to perform essential job functions because of a disability.

What actions are covered?

State law protects older workers against discrimination in discharge, job assignments, leave or benefits, licensing, retirement benefits, hiring, pay, promotion, training and other employment actions.

The law also prohibits an employer from **retaliating** against applicants or employees who assert their rights under the law. Employers are also responsible for ensuring that older workers are not **harassed** on the job because of their age. Unlawful harassment may include persistent remarks about a person's age or other behavior, which interferes with a person work performance or otherwise creates an intimidating, hostile or offensive work environment.

Is everyone protected based on his or her age?

No, the law doesn't protect persons less than 40 years of age. Though questionable and perhaps unfair to younger workers, an employer can legally give a hiring "preference" to older workers. State law also contains the following **exceptions**, which permit an employer to consider age in its decisions:

…for Hazardous employment:
An employer may "exercise an age distinction" (for example, it may set a maximum age of 60) if the job involves physical danger or is hazardous, such as law enforcement or firefighting.

…for future advancement to a higher level job:
An employer may hire a younger person if the knowledge and experience to be gained in the job is required for future advancement to a managerial or executive position.

…for school bus drivers:
Under another state law related to licensing school bus drivers, [section 343.12(2), Wisconsin Statutes], a person must be between 18 and 70 years of age to meet licensing standards of the Wisconsin Department of Transportation.

…for insurance purposes:
An employer may provide varying insurance coverage based on age.

…for retirement plans:
An employer may implement the provisions of a bonafide retirement plan so long as it isn't a ploy for age discrimination. However, a plan may not mandate involuntary retirement because of age.

What about advertising for employment?

Wisconsin law prohibits advertisements, employment application forms or other materials which **imply** or **express** a limitation based on a person's age. Therefore, ads calling for **"young or recent college graduates" or "youth-oriented"** may be considered unlawful. Application inquiries regarding a person's age are also prohibited, except where the inquiry is to determine if a person is "old enough" for a specific job.

ERD-10453-PWEB (R. 06/2006)

Can promotion and training be withheld?
It is unlawful to deny employees promotions or training opportunities because of their age. For example, it is unfair to deny such opportunities on the assumption that older workers "lack potential" or that training should be earmarked for younger workers who "will be with us longer".

Can older workers be laid-off?
State and federal laws do not prohibit involuntary layoffs or reductions-in-force affecting older workers. However, employers may not target older workers when deciding who to let go, nor may older employees be transferred to units where they are more likely to be affected by lay-off. Further, lay-off cannot be based upon a person's eligibility for pension benefits.

How does the law relate to early retirement?
Incentives for early retirement might be welcomed by some employees and viewed by others as a message they are no longer wanted. An early retirement offer is generally lawful if it is based on business necessity. However forced early retirement based on a person's age is unlawful.

Are waiver and release agreements legal?
An employee is usually asked to sign a release as part of a termination or acceptance of an early retirement offer. The federal **Older Workers Benefit Protection Act** (part of the ADEA) sets standards which must be met before such a release is considered valid. An individual's signing of a waiver agreement must be done in a "knowing and voluntary" manner, and meet **seven** essential requirements.

It must

1. be written in plain language;
2. make reference to rights or claims arising under the ADEA;
3. not waive rights or claims' arising after the waiver is signed;
4. waive rights or claims only in exchange for money or other benefits in excess of those already entitled to;
5. advise the employee to consult an attorney before signing;
6. give the employee at lease 21 days to consider the agreement before signing;
7. permit the employee to revoke the agreement within 7 days after signing;

State law standards are similar.

What if performance is slipping?
Obviously there can be many reasons for poor performance and age may or may not be a factor. But regardless of age, an employer can expect all workers to perform in a satisfactory manner. An employer is not required to accommodate a person solely because of his or her age.

If poor performance relates to a **disability**, an employer may be required to make a **reasonable accommodation** so that essential job functions can be performed. An accommodation might involve job restructuring, transfer or other strategies, which permit an employee to perform essential job functions.

What about rejections because a person appears "overqualified" for the job?
An employer's use of the term "overqualified" may be a sign of age discrimination. It is unlawful for an employer to not hire an experienced older person based merely on the assumption that an older worker might become bored or dissatisfied and leave the job.

How is the law enforced?
Persons who believe they have been discriminated against because of their age may file a complaint with the Equal Rights Division within **300 days** of the discriminatory action. The Division investigates complaints, helps the parties with settlement and, if necessary, orders relief if discrimination is found after a formal hearing.

How is age discrimination proven?
The employee or applicant has the burden of proving discrimination and must first meet **four** standards:

- that he or she is 40 or older;

- that he or she was qualified for or was satisfactorily performing the job;
- that some adverse employment action was taken;
- and that, a younger worker, was selected for the position or was treated more favorably;

If these factors are met, the employer then has an opportunity to explain that the action was **not** based on age. Following this explanation, a complainant has an opportunity to show that the explanation is a "pretext" or cover-up for discrimination. The **key question** is whether age was a determining factor in the action taken.

Resources for older workers
A number of important resources are available to assist employers and older workers. A few key agency resources are:

WISCONSIN CHAPTER OF THE AMERICAN ASSOCIATION OF RETIRED PERSONS (AARP)
16 N CARROLL STE 500
MADISON WI 53703
(886) 448-3611 (Toll Free)
Provides services for retired AARP members

THE ELDER LAW CENTER OF THE COALITION OF WISCONSIN AGING GROUPS
2850 DAIRY DR STE 100
MADISON WI 53718
(608) 224-0660
Information on aging issues and legal services

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
310 W. WISCONSIN AVENUE, STE 800
MILWAUKEE WI 53203
(414) 297-1111 (Voice), 1-800-669-6820 (TTY) or 1-800-669-4000 (Toll Free)
Information about federal employment protections under the ADEA

JOB ACCOMMODATIONS NETWORK (JAN)
WEST VIRGINIA UNIVERSITY
PO BOX 6080
MORGANTOWN WV 26506-6080
(800) 526-7234 (Voice/TTY)
Tech Asst.: Making reasonable accommodations

For information on statewide employment and training opportunities or to recruit workers, contact your nearest Job Center. To locate the Job Center in your area, call 1-888-258-9966 or visit:
http://www.wisconsinjobcenter.org/directory/default.htm

This is one of a series of pamphlets highlighting programs of the Wisconsin Department of Workforce Development. It is intended to provide only a general description, not a legal interpretation.

The Equal Rights Division has additional informational material explaining various aspects of the fair employment law.

Pamphlet Series

#1 Fair Hiring & Avoiding Loaded Interview Questions	#2 Harassment in the Workplace
#3 Pregnancy Employment & The Law	#4 Persons with Disabilities on the Job
#5 Fair Employment Law & Complaint Process	#6 Age Discrimination In The Workplace
#7 Settlement	

The Department of Workforce Development is an equal opportunity service provider. If you need assistance to access services or need material in an alternate format, please contact us. Deaf, hearing, or speech-impaired callers may reach us in Madison at (608) 264-8752 or in Milwaukee at (414) 227-4081

Questions about employment discrimination should be directed to:

EQUAL RIGHTS DIVISION

201 E Washington Ave
PO Box 8928
Madison WI 53708
Telephone: (608) 266-6860
TTY: (608) 264-8752

819 N 6th St Room 255
Milwaukee WI 53203
Telephone: (414) 227-4384
TTY: (414) 227-4081

Web Site: http://dwd.wisconsin.gov/er/

Race, Color, National Origin and Ancestry

State of Wisconsin
Department of Workforce Development
Equal Rights Division
Civil Rights Bureau

The Wisconsin Fair Employment Law
#8 in a Series

Race, Color, National Origin and Ancestry

The law has prohibited discrimination based on race, color, national origin and ancestry for over 50 years. Yet, significant levels of employment discrimination based on race, national origin and ancestry continue in Wisconsin.

The law covers all employers, employment agencies, licensing agencies and unions. Employers may not legally discriminate because of a person's **race, color, national origin, ancestry,** creed, age, sex, disability, arrest or conviction record, marital status, sexual orientation, military status and use or nonuse of lawful products away from work.

Unfair treatment is not necessarily a violation of the law. Some employment actions may be harsh, insensitive or unjust. Adverse treatment violates the law when it is based, at least in part, on a person or group's race, color, national origin, ancestry or other protected class characteristic.

What do the term's race, color, national origin and ancestry mean?

Race refers to a group of people united or classified together based on a common history, nationality or geography. It includes all races, not just members of a racial minority. Racial groups include American Indian or Alaska Native, Asian, Native Hawaiian or Pacific Islander, Black or African American, and White. Bi-racial designations are also recognized.

Color refers to a person's skin color.

National Origin refers to a person's, or his or her ancestor's, country of birth or because a person has physical, cultural or linguistic characteristics of a national origin group.

Ancestry refers to the country, nation, tribe or other identifiable group of people from which a person descends. It can also refer to the physical, cultural or linguistic characteristics of the person's ancestors.

What protections does the law provide?

The law prohibits discrimination in employment-related actions such as:

- Recruitment and hiring
- Pay
- Promotion
- Training
- Lay-off and firing
- Job assignments
- Leave or benefits
- Licensing or union membership
- Any other employment action affecting a term or condition of work

Any adverse employment action is illegal if it occurs, even in part, because of a person's race, color, national origin or ancestry.

What kinds of actions might be unlawful?

It would be unusual for one single action or one piece of evidence to be enough to prove unlawful discrimination. However, positive responses to any of the following questions may indicate that unlawful discrimination exists:

Does the employer treat people of certain races or nationality groups differently than other persons in the same situation, who are not in such protected groups?

ERD-14009-PWEB (R. 03/2004)

Did the employer permit or engage in rude or derogatory comments, ethnic slurs or other actions directed at someone because of their race or national origin, and was the behavior severe and pervasive enough to substantially interfere with work or create a hostile, offensive or intimidating work environment?

Has the employer imposed a "speak English only" rule which doesn't seem necessary for successful job performance? An employer can rarely justify requiring English-only, even during breaks and lunchtime.

Were people of certain races or national origin groups treated more harshly or disciplined more severely for workplace rule violations such as tardiness, absenteeism or failing to meet production standards?

Does it seem that race or national origin is a factor in who gets favorable or unfavorable treatment, who gets training for job advancement, who is promoted, who gets preferred vacation days, who is given flexible hours or who is placed in undesirable or dead-end jobs?

Does it appear that race or national origin is a factor in any term or condition of work?

Did an employer violate one of its policies in making a decision that adversely affected certain racial or ethnic group members?

Were less-qualified, non-protected class people retained while persons of certain racial or national origin groups were laid off or terminated?

Has there been a noticeable reduction in the number of certain racial or national origin group members in the workplace?

Is there a history of bias or hostility in the workplace toward certain racial or national origin groups?

At a job interview were questions asked about race, nationality, ancestry, or where an applicant or his or her parents were born? (Employers can ask if a person is legally able to work in the US).

In applying for work, were you asked to provide more or different documents than required under the Immigration Reform and Control Act?

Other practices are also prohibited:
Retaliation against persons who assert their rights under the fair employment law, the family & medical leave law or other labor standards laws.

Engaging in most types of genetic testing is also prohibited as is giving an improper honesty test.

Are there any exceptions under the law?
The law permits an employer to legally consider a person's race or national origin in a few very narrow exceptions. A few examples include:

- Affirmative Action: A formally adopted affirmative action plan may permit an employer to consider race or national origin in the selection process.
- Counselor: An employer seeking a staff counselor, mentor and role model for a group of teens having a certain cultural or ethnic background, may be able to demonstrate a business necessity for hiring a person from such cultural or ethnic background.
- Actors or Models: In some cases, an employer may hire persons with certain racial or ethnic characteristics for the purposes of authenticity or for another business necessity.

However, in practically all jobs available in today's workforce, the law prohibits an employer from considering race, color, national origin or ancestry in making an employment-related decision.

How does the Immigration Reform and Control Act (IRCA) relate to the anti-discrimination law?
While the IRCA prohibits hiring of unauthorized workers, it also prohibits employers from singling out or otherwise treating persons differently because they are foreign born, "foreign-looking", have "foreign-sounding"

names, or speak with an accent. Work authorization documents must be reviewed for all applicants, not just those who appear to be foreign or whose primary language isn't English.

Can a person be passed over for a job because of an accent or language skill level?
An employer may not refuse to hire an applicant who is reasonably able to meet job performance requirements, despite an accent or less than perfect language skills. However an employer may reject an applicant whose language skill level is such that it would significantly interfere with job performance.

Can a person be discriminated against for associating with a person of another race or national origin group?
No. The law prohibits discrimination against a person based on the race or national origin of a spouse, family member, friend or associate. Likewise, the law forbids discrimination against an individual because of his membership in an organization that advances the interests of a certain racial or national origin group.

Can employers fill jobs without advertising in public?
The law doesn't specify the method an employer must use in filing job vacancies but the method used must not be discriminatory. An employer who employs mostly members of one race or national origin group who **only** fills jobs by employee referral or word of mouth, may be engaging in unlawful discrimination against other racial or national origin groups who are not represented in the employer's workforce.

How is a complaint filed under Wisconsin law?
A person, who believes he or she has been discriminated against, may file a complaint with the Equal Rights Division within **300 days** of the alleged discriminatory action.

A **complaint form** with instructions is available from the Division. Please see the last page of this handout for the telephone numbers and addresses of ERD's two main offices and the link to the Division's Website.

What happens when a complaint is filed?
After the Equal Rights Division receives a complaint, it assigns an equal rights officer to investigate. The investigator acts impartially and independently, and represents neither the complainant (person filing the complaint) nor the respondent (employer being complained against). The investigator cannot give legal advice to the parties. Either party should contact an attorney for legal advice. The Division has a list of attorneys who handle fair employment cases.

Soon after the division receives a complaint, it sends a copy to the respondent, who must provide a written answer to the complaint. The investigator may contact the complainant after receiving this answer and may gather more information from the parties or any witnesses to the actions. The investigator may also ask the parties if they want to try to resolve the case through a voluntary settlement.

If the investigator finds probable cause to believe that discrimination exists, the case will be referred for a formal hearing. For more details on the complaint process, please ask for Pamphlet #5, Fair Employment and Complaint Process.

Federal Anti-Discrimination Laws

Federal laws differ from state laws, as do procedures for complaints. The most common federal laws, which might apply to issues involving race, color, national origin and ancestry, are:

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000 e

The Civil Rights Act of 1866, 42 U.S.C.A. § 1981

For more details on federal laws and filing a federal discrimination complaint, contact:

U S EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)
310 W WISCONSIN AVE
SUITE 800

MILWAUKEE WI 53203

Telephone Number (414) 297-1111
TTY (414) 297-1115

Questions about employment discrimination should be directed to:

STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT
EQUAL RIGHTS DIVISION
CIVIL RIGHTS BUREAU

201 E WASHINGTON AVE ROOM A300
PO BOX 8928
MADISON WI 53708

Telephone Number: (608) 266-6860
TTY Number: (608) 264-8752

819 N 6th ST
ROOM 255
MILWAUKEE WI 53203

Telephone Number: (414) 227-4384
TTY Number: (414) 227-4081

Web Site: **http://dwd.wisconsin.gov/er/**

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Wisconsin's Fair Employment Law Pamphlets

#1 Fair Hiring & Avoiding Loaded Interview Questions
#2 Harassment In The Workplace
#3 Pregnancy Employment & The Law
#4 Persons with Disabilities on the Job
#5 Fair Employment Law & Complaint Process
#6 Age Discrimination In The Workplace
#7 Settlement
#8 Race, Color, National Origin and Ancestry
#9 Sexual Orientation Protection

4

Sexual Orientation Protection

State of Wisconsin
Department of Workforce Development
Equal Rights Division
Civil Rights Bureau

Wisconsin's Fair Employment Law
#9 in a Series

Sexual Orientation Protection

How does the law define sexual orientation?
The Wisconsin Fair Employment Law defines "sexual orientation" as having a preference for heterosexuality, homosexuality or bisexuality, having a history of such a preference or being identified with such a preference.

What actions are covered?
The law prohibits discrimination in:

- Recruitment and hiring
- Job assignments
- Pay
- Leave or benefits
- Promotion
- Licensing or union membership
- Training
- Lay-off and firing
- Other employment related actions

The law also prohibits an employer from retaliating against applicants or employees who assert rights under the law. Harassment on the job because of a person's sexual orientation is also prohibited. Under Wisconsin law, harassment may include verbal abuse, epithets, vulgar or derogatory language, display of offensive cartoons or materials, mimicry, lewd or offensive gestures, and telling jokes that target groups of people based on sexual orientation. The behavior must be more than a few isolated incidents or casual comments. Harassment involves a pattern of abusive and degrading conduct directed against the employee based on sexual orientation that is sufficient to interfere with his or her work or to create an offensive and hostile work environment.

Who is protected?
The law applies to all private and public employers, regardless of the number of employees, except for federal government or tribal employers.

Can an employer refuse to hire a person because of their sexual orientation?
No, sexual orientation is not a permissible consideration when hiring an employee. Religious institutions are sometimes exempt from the law when hiring for a religion-based position. In order to be exempt, the job description must demonstrate that the position is clearly related to the religious teachings and beliefs of the institution.

Can an employer discriminate against a person because of association with people of different sexual orientations?
No, the law prohibits discrimination because of being identified as a relative, friend or significant other of someone with a particular sexual orientation.

May an employer ask about an applicant's sexual orientation?
The Fair Employment Law prohibits any inquiry that implies or expresses any limitation because of a protected basis, including sexual orientation. Marital status discrimination is also prohibited under Wisconsin law and questions about marital status that are designed to detect a person's sexual orientation may violate both marital status and sexual orientation provisions of the law.

Is an individual protected if an employer thinks the employee's sexual orientation is different than it really is and acts on that perception?
Yes, the definition includes being identified with a preference for a particular sexual orientation. It is illegal for an employer to discriminate against someone based on perceived sexual orientation, even if the perception is wrong, for example, it would be a violation of the law if an employer assumes a man is homosexual because he is effeminate and discharges him because of that perception.

ERD-14266-PWEB (N. 03/2004)

Arrest and Conviction Records under the Law

State of Wisconsin
Department of Workforce Development
Equal Rights Division
Civil Rights Bureau

Arrest and Conviction Records Under the Law

How does the law define (Wisconsin Fair Employment Law, Wisconsin Statutes. 111.31-111.395) Arrest record?

Arrest record is defined as information that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense by any law enforcement or military authority.

How does the law define conviction record?

Conviction record is defined as information indicating that a person has been convicted of any felony, misdemeanor or other offense, has been judged delinquent, has been less than honorably discharged, or has been placed on probation, fined, imprisoned or paroled by any law enforcement or military authority.

Can an employer discharge a current employee because of a pending criminal charge?

No. An employer may, however, **suspend** an employee, **if** the offense-giving rise to the pending criminal charge is **substantially related** to the circumstances of the particular job or licensed activity.

Can an employer refuse to hire a person because of a record of arrests that did not lead to conviction?

No. An employer is not allowed to ask about arrests, other than pending charges.

What can an employer ask regarding arrest and conviction records?

An employer may ask whether an applicant has any pending charges or convictions, as long as the employer makes it clear that these will only be given consideration if the offenses are substantially related to the particular job. An employer cannot, legally, make a rule that no persons with conviction records will be employed. Each job and record must be considered individually.

Can an employer refuse to hire an applicant because of a lengthy record of convictions or conviction for a crime the employer finds upsetting?

An employer may only refuse to hire a qualified applicant because of a conviction record for an offense that is substantially related to the circumstances of a particular job. Whether the crime is an upsetting one may have nothing to do with whether it is substantially related to a particular job.

What is meant by substantially related?

The law does not specifically define it. The “substantially related” test looks at the circumstances of an **offense**, where it happened, when, etc. - compared to the circumstances of a job - where is this job typically done, when, etc. The more similar the circumstances, the more likely it is that a substantial relationship will be found. The legislature has determined that certain convictions are substantially related to employment in child and adult caregiving programs regulated by the Department of Health and Family Services.

What if an employer believes a pending charge or conviction is substantially related but the employee or applicant believes it is not?

In this situation, the employee or applicant may file a complaint and the Equal Rights Division will make a determination as to whether there is a substantial relationship, with either party having the right to appeal the decision.

ERD-7609-P (R. 09/2011)

Can an employer refuse to hire or discharge a person with a pending charge or conviction because other workers or customers don't want the person with a conviction there?

No. The law makes no provision for this type of problem. The employer must show that the conviction record is substantially related to the particular job. Co-worker or customer preference is not a consideration.

Is it a violation of the law if the applicant's conviction record is a part of the reason for not being hired, but not the whole reason?

Yes. A conviction record that is not substantially related to the particular job should be given no consideration in the hiring process.

How should an applicant answer questions on an application regarding conviction record?

It is best to answer all questions on an application as honestly and fully as possible, and to offer to explain the circumstances of the conviction to the employer.

Should an employer ask about the circumstances of a conviction during an interview?

Yes. An employer must obtain enough information to determine if the conviction record is substantially related to the job. If the employer decides there is a substantial relationship, employment may be refused but the employer must be prepared to defend the decision if the applicant believes there is not a substantial relationship and files a complaint.

What should a person do if refused employment or discharged because of an arrest or conviction record (that is not substantially related)?

Complaints about violations of the law protecting persons from discrimination because of arrest and/or conviction may be filed with:

This is one of a series of fact sheets highlighting Wisconsin Department of Workforce Developments programs. It is intended to provide only a general description, not a legal interpretation.

For additional Information contact us at:

STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT
EQUAL RIGHTS DIVISION
CIVIL RIGHTS BUREAU

201 E WASHINGTON AVE ROOM A300
P O BOX 8928
MADISON WI 53708

Telephone: (608) 266-6860
TTY: (608) 264-8752

819 N 6th ST
ROOM 723
MILWAUKEE WI 53203

Telephone: (414) 227-4384
TTY: (414) 227-4081

Web Site: http://dwd.wisconsin.gov/er/

The Department of Workforce Development is an equal opportunity service provider. If you need assistance to access services or need material in an alternate format, please contact us.

Wisconsin Family and Medical Leave

State of Wisconsin
Department of Workforce Development
Equal Rights Division

COMPARISON OF FEDERAL AND WISCONSIN FAMILY AND MEDICAL LEAVE LAWS

The following comparison of federal and state Family and Medical Leave Acts (FMLA) presumes, in comparing any two provisions, that employer coverage and employee eligibility requirements have been met for both jurisdictions. In addition, commonly asked questions and answers are included.

Employers must comply with any provisions of state or local law that provide greater family or medical leave rights than the rights established by the federal FMLA. The U.S. Department of Labor will not enforce state family and medical leave laws, and states may not enforce federal family and medical leave laws. Employees have no obligation to designate whether the leave they are taking is federal or state FMLA leave. Thus, employers covered by both federal and state FMLA must comply with the provisions of both.

Further information on federal FMLA may be obtained by contacting the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration.

State of Wisconsin
Department of Workforce Development
Equal Rights Division
Labor Standards Bureau

201 E WASHINGTON AVE ROOM A300
PO BOX 8928
MADISON WI 53708

Telephone Number: (608) 266-6860
TTY Number: (608) 264-8752

819 N. 6TH STREET
ROOM 255
MILWAUKEE WI 53203

Telephone Number: (414) 227-4384
TTY Number: (414) 227-4081

Web Site http://dwd.wisconsin.gov/er

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ERD-9680 (R. 09/2012)

Act

MAJOR PROVISIONS OF FEDERAL AND STATE FAMILY AND MEDICAL LEAVE LAWS

Issues	Federal Enforced by the U. S. Department of Labor.	Wisconsin Enforced by the Department of Workforce Development	Most Favorable to Employees.
Employers Covered	Employers of 50 or more employees in at least 20 weeks of current or preceding year.	Employers of at least 50 permanent employees during at least 6 of the preceding 12 calendar months.	See attached Questions and Answers.
Employees Eligible	Have worked for employer at least 1,250 hours in preceding 12 months and employed for at least 12 months and employed at worksite by employer with 50 or more employees within 75 miles of that worksite.	Have worked for employer at least 1,000 hours in preceding 52 weeks and for at least 52 consecutive weeks.	See attached Questions and Answers.
Amount of Leave	12 weeks during a 12 month period. Leave for birth, adoption, or to care for sick parent or child must be shared by spouses working for same employer.	During a 12 month period. * 6 weeks for birth or adoption * 2 weeks for serious health condition of parent, child or spouse. * 2 weeks for employees own serious health condition.	See attached Questions and Answers.
Type of Leave	Contact USDOL@ 608-441-5221 for inquiries.	Birth, placement of child for adoption or foster care, to provide care for parent, child, spouse, domestic partner or parent of domestic partner with serious health condition, or employee's own serious health condition.	Wisconsin
Serious Health Condition	(1). Illness, injury, impairment, or physical or mental condition involving incapacity or treatment connected with inpatient care in hospital or hospice. (2). Residential medical care in hospital, hospice, or residential medical care facility. (3). continuing treatment by a health care provider involving: (a). Incapacity or absence of more than 3 days from work, school, or other activities. (b). Chronic or long-term condition incurable, or so serious if not treated would result in incapacity of more than 3 days. (c). Prenatal care.	Means a disabling physical or mental illness, injury, impairment, or condition involving inpatient care in a hospital, nursing home, hospice, or out patient care that requires continuing treatment or supervision by a health care provider.	Comparable

Issues	Federal Enforced by the U. S. Department of Labor.	Wisconsin Enforced by the Department of Workforce Development	Most Favorable to Employees.
Health Care Provider	(1). doctors of medicine or osteopathy authorized to practice medicine or surgery in the State; (2). podiatrists, dentists, clinical psychologists, optometrists, chiropractors (for manual manipulation of spine to correct subluxation demonstrated by X-ray) (3). nurse practitioners, and nurse-midwives, if authorized to practice under State law; or, (4). Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts.	Means: licensed physician, nurse, chiropractor, dentist, podiatrist, physical therapist, optometrist, psychologist; certified occupational therapist, occupational therapy assistant, respiratory care practitioner, acupuncturist, social worker, marriage and family therapist, professional counselor, speech-language pathologist or audiologist; and Christian Science practitioner.	Varies, as Federal and State laws each include several different types of health care providers.
Intermittent Leave	Permitted for serious health condition when medically necessary. Not permitted for birth or adoption unless employer agrees.	Permitted for all family and medical leaves in increments equal to the shortest increment permitted by employer for any other non-emergency leave	Wisconsin
Substitution of Paid Leave	Employee may elect or employer may require accrued paid leave to be substituted in some cases. No limits on substituting paid vacation or personal leave. Employee may not substitute paid sick leave, medical, or family leave for any situation not covered by employer's leave plan.	Employee may elect to substitute accrued paid or unpaid leave of any other type provided by employer.	Wisconsin
Reinstatement Rights	Must be restored to same or equivalent position in all terms and conditions.	Similar Provision	Comparable
Key Employee Exception	Exempts salaried employees if among highest paid 10% and if restoration would lead to grievous economic harm to employer.	No Similar Provision	Wisconsin
Maintenance of Health Benefits During Leave	Health insurance must be continued under same conditions as prior to leave.	Similar Provision	Comparable
Leave Requests	Made by employee 30 days in advance or as soon as practicable.	Made by employee in advance in a reasonable and practicable manner.	Wisconsin
Medical Certification May be Required By Employer to Support	Request for leave because of serious health condition. Employee's fitness to return to work from medical leave.	Similar Provision No Specific Provision	Comparable Wisconsin

Issues	Federal Enforced by the U. S. Department of Labor.	Wisconsin Enforced by the Department of Workforce Development	Most Favorable to Employees.
Executive, Administrative and Professional Employees	Salaried executive, administrative and professional employees of covered employers, who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulation 29 CFR part 541, do not lose their FLSA-exempt Status by using any unpaid FMLA leave. This special exception to the “salary basis” requirement extends only to “eligible” employees use of leave required by FMLA	Unpaid leave would not result in loss of exempt status under State minimum wage and overtime law.	Comparable

QUESTIONS AND ANSWERS ABOUT THE INTERFACE OF WISCONSIN AND FEDERAL LEAVE

The existence of different Family Medical Leave Laws on state and federal levels raises questions about the coordination of rights and responsibilities of employers and employees. The following questions and answers are intended to provide users with information on the coordination of leave entitlement. They are intended to provide general advice. For advice on specific situations involving entitlement to Wisconsin Family and Medical Leave, please contact the **State of Wisconsin, Department of Workforce Development, Equal Rights Division at** (608) 266-6860 – Madison or (414) 227-4384 – Milwaukee. **US Department of Labor's** telephone number is (608) 441-5221– Madison.

1. What are an employee's leave entitlements under the federal law?

Answer: The federal Family and Medical Leave Act of 1993 entitles employees who have worked 12 months for an employer and at least 1,250 hours in the 12 month period prior to leave, up to 12 weeks of leave. This leave may be taken for the birth or placement for adoption or foster care of a son or daughter, the serious health condition of the employee's parent, son, daughter, or spouse, or on the serious health condition of the employee. An employee is not entitled to 12 weeks for each of these reasons within a 12-month period. Questions concerning entitlement to federal leave should be addressed to the United States Department of Labor.

2. What are an employee's leave entitlements under the Wisconsin Family and Medical Leave Law?

Answer: The Wisconsin Family and Medical Leave Law entitles employees who have worked for an employer for 52 consecutive weeks and at least 1,000 hours in the 12 months prior to leave, up to six (6) weeks of leave on the birth or adoption of a child. Two (2) weeks to care for a parent, child or spouse of the employee with a serious health condition and two (2) weeks for the serious health condition of the employee. Unlike leave under the federal law, entitlement under the Wisconsin Family and Medical Leave Law are specific to the category of leave requested.

3. Does an employee's pay continue during a period of leave?

Answer: Leave under both state and federal law is unpaid. However, under the state law, an employee may substitute paid or unpaid leave. Under federal law, an employer may require or an employee may elect to substitute paid leave for the otherwise unpaid leave.

4. Do employee's health benefits continue during a period of leave?

Answer: If the leave is covered by either state or federal law, the employee's health insurance shall continue, under the same conditions as comparable active employees.

5. What is the 12-month period within which an employee's leave is to be taken?

Answer: For Wisconsin leave purposes, the 12 month period during which leave must be taken is based on a calendar year. The federal 12-month period during which leave may be taken is based on the period selected by the employer, which may be a rolling or fixed year. The year may be based on a calendar year, fiscal year, or the employee's anniversary date.

6. If an employee qualifies for leave under one of the laws, does the employee automatically qualify for leave under the other law?

Answer: An employee must qualify under the federal law to be entitled to the 12 weeks of leave. The employee must qualify under Wisconsin law to be eligible for the Wisconsin leave entitlement. Satisfaction of one law's eligibility requirements does not necessarily mean the employee has satisfied the requirements of the other. However, an employer may use the lower of the federal and state requirements for purposes of leave administration. In such a case, the satisfaction of the lower thresholds for federal and Wisconsin leave will result in employee entitlement to such leaves.

7. If an employee is entitled to leave under both laws, how is his or her leave charged against the entitlement?

Answer: If an employee qualifies for federal family and medical leave and for leave under state law, leave used counts against the employee's entitlement under both laws.

8. If an employee is entitled to leave under only one law, how is his or her leave accounted for?

Answer: If an employee is entitled to leave under only one law, his or her leave used counts against the entitlement under that law.

9. If an employee is entitled to leave under both laws, which requirements for notice, certification, substitution and intermittent leave apply?

Answer: Nothing in the Federal Family and Medical Leave Act supersedes any provision of state or local law which provides greater family and medical leave rights than those provided by the federal law. Therefore, where an employee is entitled to leave under both laws, the notice, certification, substitution and intermittent leave requirements which provide the greater leave rights apply. However, if an employee's leave extends beyond the period of coverage under one of the laws, an employer may require the employee to comply with the requirements of the continuing law.

10. If an employee is entitled to leave under only Wisconsin law, what rules apply as to notice, certification and intermittent leave.

Answer: When an employee is entitled only to leave under Wisconsin law, then only the Wisconsin rules regarding notice, certification, and intermittent leave apply.

11. If an employee is only entitled to leave under the federal law, what rules apply concerning notice, certification, substitution, and intermittent leave?

Answer: If an employee is only entitled to leave under the federal law, then the federal rules concerning notice, certification, substitution, and intermittent leave apply.

12. If an employer's policy or collective bargaining agreement provides greater family and medical leave rights than are provided by either federal or state law, which rules apply?

Answer: To the extent that an employer's policy or collective bargaining agreement provides leave rights in addition to or greater than those provided by state or federal law, the employer's policy or collective bargaining agreement shall apply to the extent they are more generous.

13. If an employee takes leave for the birth or adoption of a child and is eligible for leave under Wisconsin and federal laws, how are the leaves coordinated?

Answer: For an employee who qualifies under both the federal and Wisconsin laws for leave on a birth or adoption, the six weeks of Wisconsin and federal leave may commence prior to, on or after the birth or adoption. Wisconsin law provides that the six weeks of leave must commence within 16 weeks before or after the birth or adoption. Under federal law, up to 12 weeks of leave is available for the birth or placement for adoption provided the leave is concluded no later than 12 months after the birth or placement. The federal and Wisconsin leaves will run concurrently where an employee is entitled to both.

Example: Following the birth of a child, mother desires to take off 12 weeks and father six weeks. Mother will be on leave for her own serious health condition for a period of six weeks, under her employer's disability plan, concurrently using two weeks of Wisconsin leave for her serious health condition and six weeks of federal leave for her serious health condition. At the end of the six weeks of disability, she may take an additional six weeks of leave for the birth of the child under Wisconsin law, concurrently utilizing the remaining six weeks of her federal leave. The father will take six weeks of leave for the birth of a child. Concurrently using his six weeks for the birth of a child under Wisconsin law and six weeks of his federal entitlement, leaving six weeks of leave under the federal law which may be used for other qualifying purposes later in the year.

14. Is placement for foster care covered?

Answer: Placement for foster care is covered only under federal law; it is not covered under state law.

15. If an employee is eligible for leave to care for a family member with a serious health condition under Wisconsin and federal law, how are the leaves coordinated?

Answer: Under Wisconsin law, an employee is entitled to take up to two weeks per year to care for a parent (including parent-in-laws), child, or spouse with a serious health condition. Federal law allows an employee up to 12 weeks per year to care for a parent, child, or spouse with a serious health condition. If the requirements for leave under both laws are met, the leave under both laws run concurrently.

Example: The child of an employee experiences a serious health condition, which has a duration of 12 weeks. The first two weeks are covered by both laws with the next 10 weeks of leave covered only by federal law. If the employee's need for leave should extend beyond 12 weeks, the availability of additional weeks will be governed by the employer's leave policies.

16. If an employee experiences a serious health condition, how are his or her leave entitlement coordinated under Wisconsin and federal law?

Answer: An employee will be entitled to up to two weeks of leave under Wisconsin's law for his or her own serious health condition, and up to 12 weeks of leave under federal law, provided the leave has not been used for other purposes. If the employee is entitled to leave under both laws, then leave use will be counted against both entitlements concurrently.

Example: An employee experiences a serious health condition which renders him or her unable to perform the functions of his or her position. The first weeks of leave are covered by both the Wisconsin and federal laws, concurrently, with any additional leave covered and charged only against the employee's federal entitlement, for up to 10 additional weeks. If the employee's need for leave extends beyond 12 weeks from its commencement, the availability of leave from work will be governed by the employer's leave policies.

Wisconsin Family and Medical Leave Act

Section 103.10, Wisconsin Statutes, requires that all employers with 50 or more employees display a copy of this poster in the workplace. Employers with 25 or more employees are required to post their particular leave policy

Under state law all employers with 50 or more permanent employees must allow employees of either sex:

- **Up to six (6) weeks leave in a calendar year for the birth or adoption of the employee's child, providing the leave begins within sixteen (16) weeks of the birth or placement of that child.**
- **Up to two (2) weeks of leave in a calendar year for the care of a child, spouse, domestic partner, as defined in § 40.02(21c) or 770.01(1) or parent or a parent of a domestic partner with a serious health condition.**
- **Up to two (2) weeks leave in a calendar year for the employee's own serious health condition.**

This law only applies to an employee who has worked for the employer more than 52 consecutive weeks and for at least 1000 hours during that 52-week period. The law also requires that employees be allowed to substitute paid or unpaid leave provided by the employer for Wisconsin Family and Medical Leave. Employers may have leave policies, which are more generous than leaves required by the law.

A complaint concerning a denial of rights under this law **must be filed within 30 days** after the violation occurs or the employee should have reasonably known that the violation occurred, whichever is later.

For answers to questions about the law, a complete copy of the law, or to make a complaint about a denial of rights under the law contact:

STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT
EQUAL RIGHTS DIVISION

201 E WASHINGTON AVE ROOM A300
PO BOX 8928
MADISON WI 53708

Telephone: (608) 266-6860
TTY: (608) 264-8752

819 N 6th ST
ROOM 723
MILWAUKEE WI 53203

Telephone: (414) 227-4384
TTY: (414) 227-4081

Website: http://dwd.wisconsin.gov/er/

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Fair Employment Law & Family Medical Leave Act Remedies at a Glance	State of Wisconsin Dept Of Workforce Development Equal Rights Division

This document is for general informational purposes only, is subject to change and is not to be considered legal advice. Individuals who wish to obtain legal advice in a particular matter should consult an attorney. Also, individuals who desire more information about the state laws may contact the Equal Rights Division of the State of Wisconsin at (608) 266-6860 in Madison or (414) 227-4384 in Milwaukee. Individuals who desire more information about the federal fair employment laws referenced should contact the U.S. Equal Employment Opportunity Commission at (414) 297-1112. Persons seeking more information on the federal Family & Medical Leave Act may call the Wage & Hour Division of the U.S. Labor Department at (608) 264-5221.

I. Fair Employment Remedies

WFEA **Section 111.31 et seq.** of the Wisconsin Statutes is referred to as the Wisconsin Fair Employment Act.

Title VII **42 U.S.C. sections 2000e, et seq.** is referred to as Title VII of the Civil Rights Act of 1964.

ADA **42 U.S.C. sections 12101, et seq.** is referred to as the Americans with Disabilities Act of 1990.

ADEA **29 U.S.C. sections 621, et seq.** is referred to as the Age Discrimination in Employment Act of 1967.

EPA **29 U.S.C. sections 206 (d), et seq.** is referred to as the Equal Pay Act. (It is part of the Fair Labor Standards Act, 29 U.S.C. section 201, et seq.)

y = available; n = not available	**Wisconsin**	**Federal**			
	WFEA	**Title VII**	**ADA**	**ADEA**	**EPA**
♦ **Backpay**	y	y	y	y	y
♦ **Front Pay**	**(a)**	y	y	y	**(b)**
♦ **Interest**	y	y	y	y	y
♦ **Reinstatement**	y	y	y	y	**(b)**
♦ **Attorney Fees and Costs**	y	y	y	y	y
♦ **Compensatory Damages for Emotional Harm**	**(c)**	y	y	n	n
♦ **Punitive Damages**	**(c)**	y	y	n	n
♦ **Liquidated Damages**	n	n	n	y	y
♦ **Other Remedies**	y	y	y	y	y

(a) Front pay instead of reinstatement can be awarded under the WFEA in retaliation cases brought under sec. 111.322 (2m), Wis. Stats. Whether front pay instead of reinstatement can be awarded for retaliation claims under section 111.322 (3), Wisconsin Statutes and/or for other.Discrimination claims under the WFEA is not yet settled by case law.

(b) Claims under the federal EPA (Equal Pay Act) ordinarily involve a wage differential. However, the EPA also has a retaliation prohibition, and reinstatement or front pay are possible remedies for unlawful retaliation where a discharge is involved.

(c) Compensatory and punitive damages may be awarded by a circuit court if an ALJ finds that a complainant has been unlawfully discriminated against or if LIRC affirms a finding of discrimination. A complainant must file a separate action in circuit court to obtain these types of damages after the administrative proceedings have been concluded.

"Liquidated Damages" on the chart generally refers to a **doubling** of the compensation that the person would otherwise be entitled to under the ADEA or the EPA. Even if a person establishes a violation of the

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ADEA, the person is not automatically entitled to the liquidated damages (or doubling) unless a certain additional standard of proof is met. Under the EPA, even if a person has established a violation, the employer may avoid the liquidated damages if it can present the required "good-faith" defense.

"Other Remedies" on the chart includes such remedies as cease and desist orders, and requiring an employer to provide training to supervisors or employees.

"Compensatory Damages" and **"Punitive Damages"** are generally subject to caps (for the combined total of the compensatory and punitive damages) based on employer size as follows:

Number of Employees	Cap
15-100	$50,000
101-200	$100,000
201-500	$200,000
501 or more	$300,000

Note: There is no cap for race discrimination cases (or national origin discrimination cases if the national origin claim involves ancestry or ethnic characteristics) which are brought under 42 U.S.C. sec. 1981.

	Wisconsin	Federal			
	WFEA	Title VII	ADA	ADEA	EPA
Protected Classes	age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, military service, use or nonuse of lawful products off the employer's premises during non working hours	race, color, sex, religion, national origin	disability	age	sex
Administrative Hearing (appeal to Labor and Industry Review Commission and then to court)	y	n	n	n	n
Court Hearing (federal claims may be filed in federal or state court)	appeal to circuit court	y	y	y	y
Jury Trial	n	y	y	y	y
Class Action	n	y	y	y	y
Number of Employees	no minimum	15 or more	15 or more	20 or more	no minimum

For details on damages under federal law, see EEOC's Website at **www.eeoc.gov./docs/damages.txt.**

Special Note: Individuals with complaints against federal agencies regarding employment discrimination may contact the U.S. Equal Employment Opportunity Commission at (414) 297-1111 regarding applicable procedures.

II. Family and Medical Leave Act Remedies

Wisconsin Law

The Wisconsin Family and Medical Leave Law is found at section 103.10, Wisconsin Statutes. It covers employers with fifty or more employees. The law is enforced administratively through the Wisconsin Equal Rights Division. In addition to those remedies for which a "y" is shown in the chart below, a separate civil court action may be brought after the administrative proceeding (including any court appeals), has been completed to recover other damages caused by a violation of the state law.

Federal Law

The federal Family and Medical Leave Act is found at 29 U.S.C. sections 2611, et seq. It covers employers with 50 or more employees. A complaint may be filed with the U.S. Department of Labor and a civil court action may also be filed. In addition to individual complaints, a class action may be filed.

y = available; n = not available	Wisconsin	Federal
♦ **Backpay**	y	y
♦ **Reinstatement**	y	y
♦ **Interest**	y	y
♦ **Attorney Fees and Costs**	y	y
♦ **Liquidated Damages**	n	y
♦ **Other Damages**	possibly in court	n
♦ **Other Remedies**	y	y

"Liquidated Damages" on the chart generally refers to a doubling of the compensation that the person would otherwise be entitled to under the U.S. Family and Medical Leave Act. If a person establishes a violation of the U.S. Family and Medical Leave Act, the employer may avoid liquidated damages if it can present the required "good faith" defense.

"Other Remedies" on the chart includes such remedies as cease and desist orders, and requiring an employer to provide training to supervisors or other employees.

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Equal Rights Division

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DWD is an equal opportunity service provider. If you need assistance to access services or material in an alternate format, please contact us. Deaf, hearing or speech-impaired callers may reach us in Madison at (608) 264-8752 or in Milwaukee at (414) 227-4081.

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