

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

File No. 1005

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 1-30-84
DATE FOR REVIEW
DATE DUE 2-6-84

Adopted w/a hearing
Adopted w/o hearing
Temporary rule ✓

Approved 2-17- Disapproved 2-6-84 Returned to Agency

Resubmitted 2.17.84 Due 2.27.84
Approved 2-17-84 Disapproved Returned to Agency

Date filed w/Secretary of State 2/23/84 Revisor approved disapproved

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✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 1.27.84 Date

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency contains no reference to period of effectiveness

✓ Affidavit of Mailing Notice or rulemaking
12.6.83 At least ~~30~~ 20 days prior to ~~hearing~~/adoption

Mailing list Certificate not submitted

✓ Publication in State Register
12.12.83 At least ~~30~~/20 days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
Approving H.E.'s Report
Approving agency action

? Agency's Findings of Fact there are changes from Rules as proposed, but document setting forth reasons for change is not labelled F of F – see below

N/A LCRAR Report or agency Affidavit

Certificate of Board's Resolution Adopting Rules

Order Approving Incorporation by Reference

Statement of Need and Reasonableness

✓ Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received + dept's response by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT of Human Rights

Office Memorandum

TO: Martha J. Casserly
Special Assistant Attorney General

DATE: February 15, 1984

FROM: Kathryn R. Roberts
Acting Commissioner

PHONE: 6-5665

SUBJECT: Resubmission of Proposed Temporary Rules Governing Case Processing Policies and Procedures and Restrictions on Apprenticeship Programs

My staff has modified our proposed temporary rules in line with your memorandum of February 6, 1984 and I am resubmitting the rules for final approval by your office. Attached are four (4) copies of the modified rules and a supplemental order adopting the rules.

We have inserted a new definition of the term "answer" and we have changed "believes" to "determines" in MCAR SS1.064*c1.

KRR/edm
attachments

Modifications
SF-00006-02

STATE OF MINNESOTA

DEPARTMENT REVISOR OF STATUTES

Office Memorandum

TO : Mary Hartle
Department of Human Rights

DATE: February 14, 1984

FROM : Richard J. Sands
Assistant Revisor

PHONE: 296-2798

SUBJECT: AR0425T Rules Governing Procedures

Enclosed are four copies of your rule with the modifications you requested.

Please submit the rules to the Attorney General for final approval.

If you have any questions or need further modifications, please call.

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : KATHRYN ROBERTS, Acting Commissioner
Department of Human Rights

DATE: 2/6/84

ATTN: MARK B. LEVINGER, Special Assistant Attorney General

FROM : MARTHA J. CASSERLY MJC
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Adoption of Temporary Rules of the Department of Human Rights Governing Case Processing Policies and Procedures, and Restrictions for Apprenticeship Programs

The rules as described above have not been approved by this office for the following reasons:

1. 12 MCAR § 1.061(C) defines "answer" as used in Minn. Stat. § 363.06, subd. 8 (hereinafter subd. 8). This rule is ambiguous in that it could be interpreted one of two ways, both of which conflict with the statute.

First, the rule could be construed to define "answer" beyond the statutory scope of subd. 8. In subd. 8, an answer is submitted pursuant to the Commissioner's request for a response to the charge filed under subd. 1 of Minn. Stat. § 363.06. This rule, however, could be taken to expand the "answer" to include information received from a respondent during the investigation. This expansion would conflict with subd. 8 in which the legislature appears to have expressly limited the charging party's access only to an answer submitted pursuant to subd. 1.

On the other hand, the definition in this rule could also narrow the scope of subd. 8. The rule additionally defines "answer" as "deemed relevant by the Commissioner." Therefore, the rule could restrict a charging party's access to the respondent's answer only to what is "deemed relevant by the Commissioner." This restriction would contradict the statutory mandate to make these documents available to the charging party.

To correct these defects, the definition of answer in 12 MCAR § 1.061(C) must be deleted or clarified to avoid the aforementioned problems. The objective of this rule may already be provided for in Minn. Stat. § 13.39, which authorizes the Commissioner to provide a charging party access to investigative data such as respondent's responses.

2. 12 MCAR § 1.64(C) defines legal significance as a charge the Commissioner <u>believes</u> may provide legal precedent. This rule is impermissible in that there is no judicial review standard for a Commissioner's "belief." To correct this defect, the word "believes" could be replaced with "determines" subjecting the rule to the arbitrary and capricious judicial review standard.

After consideration of the above comments and agency action, if any, these rules may be resubmitted for our review. Upon resubmission, please include a new or supplemental Order Adopting and an original plus three copies of the new Rules as Adopted. Also, please include a memorandum specifying that the rules are being resubmitted so that we may obtain our initial file in this matter.

If you have any questions concerning the issues raised in this memorandum, please do not hesitate to call me.

MJC:dw

cc: Mary Hartle
Duane Harves
Kathy Burek
Paul Marinac

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : KATHRYN ROBERTS, Acting Commissioner
Department of Human Rights

DATE: 2/17/84

ATTN: MARK B. LEVINGER, Special Assistant Attorney General

FROM : MARTHA J. CASSERLY MJC
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Adoption of Temporary Rules of the Department of Human Rights Governing Case Processing Policies and Procedures, and Restrictions for Apprenticeship Programs

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

MJC:sa

AG copy

Department of Human Rights

Adopted Temporary Rules Governing Case Processing Policies and Procedures, and Restrictions for Apprenticeship Programs

Temporary Rules as Adopted

12 MCAR S 1.061 [Temporary] Definitions.

A. Scope. In 12 MCAR SS 1.061-1.076 [Temporary], the following phrases have the meanings given them here.

B. Affinity group. "Affinity group" means a group of persons whose members share a unique interest or characteristic.

C. Answer. "Answer," as used in section 363.06, subdivision 8, means ~~information from a respondent, deemed relevant by the commissioner, in~~ the respondent's initial written reply to a charge which contains information sufficient to explain the respondent's defense.

D. EEOC. "EEOC" means the United States Equal Employment Opportunity Commission.

E. HUD. "HUD" means the United States Department of Housing and Urban Development.

F. Predominantly involves heavy physical labor. "Predominantly involves heavy physical labor" when used in the context in which it is used in Minnesota Statutes, section 363.02, subdivision 1, clause (4) refers to all or most jobs in a trade that require (1) some lifting of objects weighing 100 pounds or more, or (2) a frequent need to carry, push, pull, or lift objects weighing 50 pounds or more.

G. Predominantly involves work on high structures. "Predominantly involves work on high structures" when used in the context in which it is used in Minnesota Statutes, section 363.02, subdivision 1, clause (4) refers to all or most jobs in a trade that require that essential work be regularly performed when the lowest part of the worker's body is more than ten feet above the closer of (1) the ground, or (2) a floor.

H. Would be charge. "Would be charge" means written information received by the department that may become a charge

of discrimination as defined in Hum Rts 1 and 102(a) but which lacks one or more of the required elements described in Hum Rts 1 and 102(a).

12 MCAR S 1.062 [Temporary] Filing, who and when.

A. Who may file. Any person who claims to be aggrieved by an unfair discriminatory practice may file a charge with the department. The charge of an allegedly aggrieved minor or ward must be filed by a parent or guardian.

B. Time of filing. A charge must be filed within six months of an alleged unfair discriminatory practice. Filing is accomplished by delivery of the charge to the department's office on or before the deadline. Time is to be computed in accordance with Minnesota Statutes, sections 645.14, 645.15, and 645.151.

12 MCAR S 1.063 [Temporary] Cross filing with other agencies.

A. State charges cross filed with certain federal agencies. A charge filed with the department which alleges violation of certain EEOC and HUD administered anti-discrimination laws will automatically be filed by the department with that agency.

B. Federal charges deferred to department. A charge filed with EEOC or HUD may be deferred to the department. The charge is deemed filed on the date the department receives from the federal agency sufficient material for a charge to be deemed filed under Hum Rts 102 (a) and (b).

C. Minneapolis and St. Paul charges. A charge alleging a violation occurring in Minneapolis or St. Paul may be referred by the commissioner to the Minneapolis Department of Civil Rights or the St. Paul Human Rights Department respectively, for investigation and recommended determination. The recommendation is subject to review by the commissioner.

12 MCAR S 1.064 [Temporary] Priority charges.

A. List. The department shall give priority to the following kinds of charges:

1. a commissioner's charge;

2. a charge alleging ongoing actual or threatened

physical violence;

3. a charge which the commissioner determines might require the department to seek an injunction or temporary restraining order;

4. a charge involving a disservice to a party due to an error by the department;

5. a charge requiring immediate action to prevent irreparable harm to the charging party; or

6. a charge having social or legal significance.

B. Social significance. A charge has social significance if the commissioner determines it affects in a substantial way:

1. many people;

2. a protected class;

3. a company or industry;

4. an entire affinity group; or

5. a current significant social issue.

C. Legal significance. A charge has legal significance if the commissioner ~~believes~~ determines it raises an issue that may provide a legal precedent that will further the purposes of the act.

12 MCAR S 1.065 [Temporary] Fact finding conference.

A. Call. The department may call a conference to obtain information needed to investigate an allegation in a charge. At the conference, the parties may attempt to resolve the proceedings before a formal finding is made.

B. Attendance; subpoenas; tape recording. The commissioner may require the attendance of a person at the conference by subpoena. The commissioner may restrict the attendance of others. The department shall, and a party may, make an audio tape recording of the conference. On request of a party, while a charge is pending the department shall duplicate its audio recording. The department shall charge a fee to cover the cost of duplication.

12 MCAR S 1.066 [Temporary] ~~Conciliation; agreement~~ Predetermination settlements.

~~A. Conciliation. After a finding of probable cause, the commissioner may invite the respondent to conciliate the matter. The invitation shall describe the conciliation process and may propose a remedy to resolve the proceedings. After permitting the respondent 15 days to respond to the invitation, the commissioner may issue a complaint according to Minnesota Statutes, section 363.06, subdivision 4, clause (3).~~

~~B. Agreement. If, at any time, the department and the parties agree on a resolution of the proceedings, the terms of the resolution shall be made a part of a settlement agreement.~~

~~After the respondent and the charging party have signed, the commissioner shall sign the agreement for the department. Execution of the agreement terminates the formal proceedings, subject to monitoring of the agreement by the department~~ Any time prior to a determination, the commissioner or a party to a charge may propose terms to settle a charge. A predetermination settlement may consist of terms similar to those authorized in Hum Rts 106(c).

12 MCAR S 1.067 [Temporary] Alternative forms of dispute resolution.

In any proceeding the commissioner may use any alternative form of dispute resolution on any terms agreed to by all the parties.

12 MCAR S 1.068 [Temporary] Notice of no probable cause.

The commissioner shall serve notice of a no probable cause determination on the charging party by certified mail and by first class mail. The respondent shall be notified by first class mail.

12 MCAR S 1.069 [Temporary] Appeal from no probable cause determination.

A charging party's appeal from a no probable cause determination must be delivered to the department within ten days of receipt of notice.

12 MCAR S 1.070 [Temporary] Monitoring.

The department shall monitor all settlement agreements. If the commissioner believes a respondent may not have complied with an agreement, the department shall notify the respondent ~~in writing~~ by certified mail. The notice shall specify the part of the agreement the respondent is believed to have violated. After permitting the respondent 15 days after the receipt of the notice to respond, the commissioner may begin proceedings to enforce the settlement agreement.

12 MCAR S 1.071 [Temporary] Reopening certain cases.

A. Request. A charging party may request that proceedings terminated according to Hum Rts 102 (f) or dismissed according to 12 MCAR S 1.076 be reopened. The request must be in writing and must state a reason for reopening.

B. Respondent; notice to; information from. The commissioner shall promptly notify the respondent ~~in writing~~ by certified mail of the request. The respondent has ten days from the receipt of the notice to provide the department with pertinent information in writing on reopening the proceedings.

C. Considerations. In deciding whether to reopen proceedings, the commissioner shall consider whether:

1. the department clearly erred in closing the proceedings;

2. the department was less than reasonably diligent in trying to find the charging party;

3. the charging party was unavoidably prevented from providing the department with information needed to avoid terminating the proceedings;

4. reopening the proceedings would place an unreasonable burden on the respondent; and

5. the passage of time precludes reopening the proceedings.

D. Reopening without request. After determining the department clearly erred in closing a proceeding, the commissioner may reopen the proceedings without a request.

E. Notice of decision. The commissioner shall promptly notify the parties in writing of the decision.

12 MCAR S 1.072 [Temporary] Exemptions for age restrictions in bona fide apprentice programs.

A. Application; coverage; duration. An operator of a bona fide apprenticeship program may apply to the department for an exemption from Minnesota Statutes, section 363.03 for the program. The commissioner shall provide the application form. An exemption shall be issued only for trades in the program which predominantly involve: (a) heavy physical labor; or (b) work on high structures. The exemption shall apply solely to permit age restrictions on applicants in programs involving those trades. An exemption shall be valid for five years unless revoked sooner. An operator of a program may not impose age restrictions unless an exemption is in effect.

B. Revocation. The department may revoke an exemption. To do so, the commissioner must decide that the exempted trade no longer predominantly involves: (a) heavy physical labor; or (b) work on high structures. An operator of an exempted program must immediately stop imposing age restrictions on applicants to its program upon expiration of, or notice of revocation of, an exemption.

12 MCAR S 1.073 [Temporary] Preservation of records.

A. While charge pending. A respondent notified of a charge shall retain all documents related to the charge under its control. The documents must be retained until the department notifies the respondent that the charge has been resolved.

B. During monitoring period. The commissioner may require as a part of a settlement agreement that the respondent retain documents related to a charge for a period of time.

C. Retention of records. An employer, employment agency, labor organization, or an operator of an apprenticeship or other training program subject to the act must retain all applicant and employment records for six months after the record is made.

12 MCAR S 1.074 [Temporary] Charges not to be processed.

The commissioner may choose not to process: (a) a moot charge; or (b) a charge without priority which the commissioner

believes does not warrant further use of department resources.

12 MCAR S 1.075 [Temporary] Dismissal of frivolous charges.

The department may dismiss a charge the commissioner believes:

A. illogical, fantastic, or incoherent;

B. is negated by common knowledge which the commissioner takes official notice of;

C. is brought by a charging party acting in bad faith;

D. is substantially the same, and involves the same parties, as a previous charge in which no probable cause was found.

12 MCAR S 1.076 [Temporary] Dismissal for failure to provide information.

A. When. The commissioner may dismiss a charge or a would be charge for failure to provide required information:

1. when the would be charge does not conform to Hum Rts 1 and 102 (a); or

2. when the information about a charge that the department has is insufficient to make a determination, and the charging party fails to provide:

a. information which the charging party claims to have or knows how to obtain which may substantiate an allegation;

b. a signed withdrawal of the charge after indicating a lack of interest in pursuing the charge; or

c. information essential to a charge that requires amending.

B. Procedure. If informal means of obtaining the information fail, the commissioner shall notify the charging party by certified and first class mail of the need for the required information and the possibility of dismissal of the charge for failure to provide required information. If the information is not delivered within 30 days of the date of notice and no other information is available for the commissioner to make a determination on the merits, the commissioner may dismiss the charge.

12 MCAR S 1.077 [Temporary] Rules temporarily superseded.

During the period that 12 MCAR SS 1.061-1.076 [Temporary] are effective, the following rules are superseded: Hum Rts 9, 52, 53, 54, 55, 56, 57, 58, 59, 102(c), 104(b), 105(a), (c)-(h), 111, 112, 113, 114, 115, 116, 117, and 118.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 23 1984
Joan Anderson Growe
Secretary of State
10:12 AM

APPROVED AS TO FORM AND LEGALITY
February 17 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

AG copy

Department of Human Rights

Adopted Temporary Rules Governing Case Processing Policies and Procedures, and Restrictions for Apprenticeship Programs

Temporary Rules as Adopted

12 MCAR S 1.061 [Temporary] Definitions.

A. Scope. In 12 MCAR SS 1.061-1.076 [Temporary], the following phrases have the meanings given them here.

B. Affinity group. "Affinity group" means a group of persons whose members share a unique interest or characteristic.

C. Answer. "Answer," as used in section 363.06, subdivision 8, means information from a respondent, deemed relevant by the commissioner, in reply to a charge.

D. EEOC. "EEOC" means the United States Equal Employment Opportunity Commission.

E. HUD. "HUD" means the United States Department of Housing and Urban Development.

F. Predominantly involves heavy physical labor. "Predominantly involves heavy physical labor" when used in the context in which it is used in Minnesota Statutes, section 363.02, subdivision 1, clause (4) refers to all or most jobs in a trade that require (1) some lifting of objects weighing 100 pounds or more, or (2) a frequent need to carry, push, pull, or lift objects weighing 50 pounds or more.

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1 1 and 102(a).

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8 of an alleged unfair discriminatory practice. Filing is
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B. Revocation. The department may revoke an exemption. To do so, the commissioner must decide that the exempted trade no longer predominantly involves: (a) heavy physical labor; or (b) work on high structures. An operator of an exempted program must immediately stop imposing age restrictions on applicants to its program upon expiration of, or notice of revocation of, an exemption.

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52, 53, 54, 55, 56, 57, 58, 59, 102(c), 104(b), 105(a), (c)-(h), 111, 112, 113, 114, 115, 116, 117, and 118.

Temporary Rules as Proposed (all new material)

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E. HUD. "HUD" means the United States Department of Housing and Urban Development.

F. Predominantly involves heavy physical labor. "Predominantly involves heavy physical labor" when used in the context in which it is used in Minnesota Statutes, section 363.02, subdivision 1, clause (4) refers to all or most jobs in a trade that require (1) some lifting of objects weighing 100 pounds or more, or (2) a frequent need to carry, push, pull, or lift objects weighing 50 pounds or more.

G. Predominantly involves work on high structures. "Predominantly involves work on high structures" when used in the context in which it is used in Minnesota Statutes, section 363.02, subdivision 1, clause (4) refers to all or most jobs in a trade that require that essential work be regularly performed when the lowest part of the worker's body is more than ten feet above the closer of (1) the ground, or (2) a floor.

12 MCAR S 1.062 [Temporary] Filing, who and when.

A. Who may file. Any person who claims to be aggrieved by an unfair discriminatory practice may file a charge with the department. The charge of an allegedly aggrieved minor or ward must be filed by a parent or guardian.

B. Time of filing. A charge must be filed within six months of an alleged unfair discriminatory practice. Filing is accomplished by delivery of the charge to the department's

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office on or before the deadline. Time is to be computed in accordance with Minnesota Statutes, sections 645.14, 645.15, and 645.151.

12 MCAR S 1.063 [Temporary] Cross filing with other agencies.

A. State charges cross filed with certain federal agencies. A charge filed with the department which alleges violation of certain EEOC and HUD administered anti-discrimination laws will automatically be filed by the department with that agency.

B. Federal charges deferred to department. A charge filed with EEOC or HUD may be deferred to the department. The charge is deemed filed on the date the department receives from the federal agency sufficient material for a charge to be deemed filed under Hum Rts 102 (a) and (b).

C. Minneapolis and St. Paul charges. A charge alleging a violation occurring in Minneapolis or St. Paul may be referred by the commissioner to the Minneapolis Department of Civil Rights or the St. Paul Human Rights Department respectively, for investigation and recommended determination. The recommendation is subject to review by the commissioner.

12 MCAR S 1.064 [Temporary] Priority charges.

A. List. The department shall give priority to the following kinds of charges:

1. a commissioner's charge;

2. a charge alleging ongoing actual or threatened physical violence;

3. a charge which the commissioner determines might require the department to seek an injunction or temporary restraining order;

4. a charge involving a disservice to a party due to an error by the department;

5. a charge requiring immediate action to prevent irreparable harm to the charging party; or

6. a charge having social or legal significance.

B. Social significance. A charge has social significance if the commissioner determines it affects in a substantial way:

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1. many people;
2. a protected class;
3. a company or industry;
4. an entire affinity group; or
5. a current significant social issue.

C. Legal significance. A charge has legal significance if the commissioner believes it raises an issue that may provide a legal precedent that will further the purposes of the act.

12 MCAR S 1.065 [Temporary] Fact finding conference.

A. Call. The department may call a conference to obtain information needed to investigate an allegation in a charge. At the conference, the parties may attempt to resolve the proceedings before a formal finding is made.

B. Attendance; subpoenas; tape recording. The commissioner may require the attendance of a person at the conference by subpoena. The commissioner may restrict the attendance of others. The department shall, and a party may, make an audio tape recording of the conference. On request of a party, while a charge is pending the department shall duplicate its audio recording. The department shall charge a fee to cover the cost of duplication.

12 MCAR S 1.066 [Temporary] Conciliation; agreement.

A. Conciliation. After a finding of probable cause, the commissioner may invite the respondent to conciliate the matter. The invitation shall describe the conciliation process and may propose a remedy to resolve the proceedings. After permitting the respondent 15 days to respond to the invitation, the commissioner may issue a complaint according to Minnesota Statutes, section 363.06, subdivision 4, clause (3).

B. Agreement. If, at any time, the department and the parties agree on a resolution of the proceedings, the terms of the resolution shall be made a part of a settlement agreement.

After the respondent and the charging party have signed, the commissioner shall sign the agreement for the department. Execution of the agreement terminates the formal proceedings,

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subject to monitoring of the agreement by the department.

12 MCAR S 1.067 [Temporary] Alternative forms of dispute resolution.

In any proceeding the commissioner may use any alternative form of dispute resolution on any terms agreed to by all the parties.

12 MCAR S 1.068 [Temporary] Notice of no probable cause.

The commissioner shall serve notice of a no probable cause determination on the charging party by certified mail and by first class mail. The respondent shall be notified by first class mail.

12 MCAR S 1.069 [Temporary] Appeal from no probable cause determination.

A charging party's appeal from a no probable cause determination must be delivered to the department within ten days of receipt of notice.

12 MCAR S 1.070 [Temporary] Monitoring.

The department shall monitor all settlement agreements. If the commissioner believes a respondent may not have complied with an agreement, the department shall notify the respondent in writing. The notice shall specify the part of the agreement the respondent is believed to have violated. After permitting the respondent 15 days to respond, the commissioner may begin proceedings to enforce the settlement agreement.

12 MCAR S 1.071 [Temporary] Reopening certain cases.

A. Request. A charging party may request that proceedings terminated according to Hum Rts 102 (f) or dismissed according to 12 MCAR S 1.076 be reopened. The request must be in writing and must state a reason for reopening.

B. Respondent; notice to; information from. The commissioner shall promptly notify the respondent in writing of the request. The respondent has ten days to provide the department with pertinent information in writing on reopening the proceedings.

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C. Considerations. In deciding whether to reopen proceedings, the commissioner shall consider whether:

1. the department clearly erred in closing the proceedings;

2. the department was less than reasonably diligent in trying to find the charging party;

3. the charging party was unavoidably prevented from providing the department with information needed to avoid terminating the proceedings;

4. reopening the proceedings would place an unreasonable burden on the respondent; and

5. the passage of time precludes reopening the proceedings.

D. Reopening without request. After determining the department clearly erred in closing a proceeding, the commissioner may reopen the proceedings without a request.

E. Notice of decision. The commissioner shall promptly notify the parties in writing of the decision.

12 MCAR S 1.072 [Temporary] Exemptions for age restrictions in bona fide apprentice programs.

A. Application; coverage; duration. An operator of a bona fide apprenticeship program may apply to the department for an exemption from Minnesota Statutes, section 363.03 for the program. The commissioner shall provide the application form. An exemption shall be issued only for trades in the program which predominantly involve: (a) heavy physical labor; or (b) work on high structures. The exemption shall apply solely to permit age restrictions on applicants in programs involving those trades. An exemption shall be valid for five years unless revoked sooner. An operator of a program may not impose age restrictions unless an exemption is in effect.

B. Revocation. The department may revoke an exemption. To do so, the commissioner must decide that the exempted trade no longer predominantly involves: (a) heavy physical labor; or (b) work on high structures. An operator of an exempted program must immediately stop imposing age restrictions on applicants to

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its program upon expiration of, or notice of revocation of, an exemption.

12 MCAR S 1.073 [Temporary] Preservation of records.

A. While charge pending. A respondent notified of a charge shall retain all documents related to the charge under its control. The documents must be retained until the department notifies the respondent that the charge has been resolved.

B. During monitoring period. The commissioner may require as a part of a settlement agreement that the respondent retain documents related to a charge for a period of time.

C. Retention of records. An employer, employment agency, labor organization, or an operator of an apprenticeship or other training program subject to the act must retain all applicant and employment records for six months after the record is made.

12 MCAR S 1.074 [Temporary] Charges not to be processed.

The commissioner may choose not to process: (a) a moot charge; or (b) a charge without priority which the commissioner believes does not warrant further use of department resources.

12 MCAR S 1.075 [Temporary] Dismissal of frivolous charges.

The department may dismiss a charge the commissioner believes:

A. illogical, fantastic, or incoherent;

B. is negated by common knowledge which the commissioner takes official notice of;

C. is brought by a charging party acting in bad faith;

D. is substantially the same, and involves the same parties, as a previous charge in which no probable cause was found.

12 MCAR S 1.076 [Temporary] Dismissal for failure to provide information.

A. When. The commissioner may dismiss a charge or a would be charge for failure to provide required information:

1. when the would be charge does not conform to Hum Rts 1 and 102 (a); or

2. when the information about a charge that the

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department has is insufficient to make a determination, and the charging party fails to provide:

a. information which the charging party claims to have or knows how to obtain which may substantiate an allegation;

b. a signed withdrawal of the charge after indicating a lack of interest in pursuing the charge; or

c. information essential to a charge that requires amending.

B. Procedure. If informal means of obtaining the information fail, the commissioner shall notify the charging party by certified and first class mail of the need for the required information and the possibility of dismissal of the charge for failure to provide required information. If the information is not delivered within 30 days of the date of notice and no other information is available for the commissioner to make a determination on the merits, the commissioner may dismiss the charge.

12 MCAR S 1.077 [Temporary] Rules temporarily superseded.

During the period that 12 MCAR SS 1.061-1.076 [Temporary] are effective, the following rules are superseded: Hum Rts 9, 52, 53, 54, 55, 56, 57, 58, 59, 102(c), 105(c)-(h), 111, 112, 113, 114, 115, 116, 117, and 118.

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OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD425T

Agency: Human Rights Department

Division:

Agency Contact: Mary Hartle

Rule Numbers: 12 MCAR SS 1.061-1.077

Title: Proposed Temporary Rules Governing Additional Procedural Requirements

Type of Rules: Temporary

Incorporations by Reference: None
Rule Number: Material Incorporated:

Duplication of Statutory Language: None
Rule Number: Statutory Section Duplicated:

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Richard J. Sands
Assistant Revisor
Phone: 296-2798
Date: November 17, 1983

STATE OF MINNESOTA
Department of Human Rights

In the Matter of the Proposed Adoption of Temporary Rules of the Minnesota Department of Human Rights Governing Case Processing Policies and Procedures, and Restrictions for Apprenticeship Programs

SUPPLEMENTAL ORDER ADOPTING TEMPORARY RULES

The above entitled matter was published in the State Register on December 12, 19 83, as a proposed temporary rule pursuant to Minnesota Statutes section 14.29 - 14.36. After affording interested and affected persons an opportunity to submit written data and views within 20 days of the publication date, reviewing and considering the data and views, and determining that the above-captioned rules are needed and reasonable,

NOW, THEREFORE, IT IS ORDERED that these rules identified as 12 MCAR §§ 1.061-1.077 are adopted this 15th day of February 1984, pursuant to authority vested in me by Minnesota Laws of 1981, Ch. 330, Sec. 4 and Laws of 1983, Ch. 301, Secs. 198-200.

STATE OF MINNESOTA

Kathryn R Roberts

Acting Commissioner of the
Department of Human Rights

State of Minnesota
Department of Human Rights

In the Matter of the Proposed Adoption of Temporary Rules of the Minnesota Department of Human Rights Governing Case Processing Policies and Procedures, and Restrictions for Apprenticeship Programs

ORDER ADOPTING TEMPORARY RULES

The above entitled matter was published in the State Register on December 12, 1983, as a proposed temporary rule pursuant to Minnesota Statutes section 14.29 - 14.36. After affording interest and affected persons an opportunity to submit written data and views within 20 days of the publication date, reviewing and considering the data and views, and determining that the above-captioned rules are needed and reasonable,

NOW THEREFORE, IT IS ORDERED that these rules identified as 12 MCAR §§ 1.061 - 1.077 are adopted this 27 day of Jan. 27, 1984, pursuant to authority vested in me by Minnesota Laws of 1981, Ch. 330, Sec. 4 and Laws of 1983, Ch. 301, Secs. 198 - 200.

STATE OF MINNESOTA

Irene Gomez-Bethke
Commissioner of the
Department of Human Rights

DEPARTMENT OF HUMAN RIGHTS

Proposed Temporary Rules Governing Case Processing Policies and Procedures, and Restrictions for Apprenticeship Programs.

Request for Public Comment

Notice is hereby given that the Department of Human Rights has proposed the following temporary rules for the purpose of implementing the provisions of Laws of 1981, Ch. 330, Sec. 4 and Laws of 1983, Ch. 301, Secs. 198-200.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rules for 20 days immediately following publication of this material in the State Register. All submissions must be in writing and addressed to:

Mary A. Hartle, Information Officer
Department of Human Rights
5th Floor Bremer Tower
7th Place & Minnesota Street
St. Paul, Minnesota 55101

The temporary rules may be revised on the basis of data and views received. Any written material received will become part of the record and will be submitted to the Attorney General.

Dated: November 28, 1983

Irene Gomez-Bethke
Commissioner of Human Rights

State of Minnesota
Department of Human Rights

In the Matter of the Proposed Adoption of Temporary Rules of the Minnesota Department of Human Rights Governing Case Processing Policies and Procedures, and Restrictions for Apprenticeship Programs.

ORDER FOR PUBLICATION OF TEMPORARY RULES

IT IS ORDERED this 29th day of November, 1983 that the proposed temporary rules in the above-entitled matter be published in the State Register.

STATE OF MINNESOTA

Irene Gomez-Bethke

Irene Gomez-Bethke, Commissioner
Minnesota Department of Human Rights

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

Brendalee Wettengel, being first duly sworn, hereby deposes and says:

That at the City of St. Paul, county and state aforesaid, on the 6th day of December, 19 83, (s)he served the attached Notice of Proposed Rules on Case Processing Policies and Procedures by depositing in the United States mail at said City of St. Paul a true and correct copy thereof, properly enveloped, with postage prepaid, by State Department of Human Rights and addressed to

The Rules Making List

B Wettengel

Subscribed and sworn to before me
this 6th day of December, 1983.

Carol S Keegan

CAROL S KEEGAN
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES OCTOBER 18, 1989

of investments. The statements must be prepared on forms available from the commissioner, or equivalent forms. The financial statements must be filed no later than 30 days after the fund year's conclusion. The financial statements must be audited by an independent certified public accountant, and an audit report must be filed with the commissioner not later than 60 days after the fund year's conclusion.

B. Extraordinary audits. Upon sufficient cause, the commissioner may require a plan to investigate the accuracy of one or more entries on its financial statements, and to report its findings. As a condition of these investigations, the commissioner may require a plan to contract with a qualified actuary, claims specialist, auditor, or other specialists as appropriate to the type of entry being investigated. On the basis of the investigation's findings, the commissioner may require changes in the plan's reserving, accounting, or recordkeeping practices. These extraordinary audits are in addition to the commissioner's rights to examine self-insurance plans under Minnesota Statutes, sections 60A.03 and 60A.031. Sufficient cause includes:

1. losses which appear significantly different than losses experienced by other self-insurance plans or insurance companies for similar coverage;

2. unusual changes in the amount of entries from period to period which are not sufficiently explained by the financial statements or footnotes; or

3. other indications that a plan's financial statements may not accurately reflect the plan's status and transactions.

C. Annual status report. Not later than 30 days after the fund year's conclusion, a plan shall file with the commissioner a statement describing any changes which have occurred in the information filed with its initial application for authority to self-insure, or with the plan's most recent status report. The status report must be filed on a form available from the commissioner.

D. Narrative report. Not later than 30 days after the fund year's conclusion, the board shall file with the commissioner a narrative report concerning the performance of the plan and its agents during the most recent fund year, and the status of the plan as of the last day of the most recent fund year. The report shall address the performance of the service company, financial administrator, and their major subcontractors; the adequacy of premiums, reserves, reinsurance, and current member resources as regards the plan's financial integrity; and any other issues which the board wishes to bring to the commissioner's attention.

E. Penalty. The financial statements, status reports, and narrative report required under A., C., and D. are considered together to be a plan's annual statement. This filing and other filings required by these rules are subject to Minnesota Statutes, section 72A.061.

F. Revenue fee. No later than 60 days after each fund year's conclusion, a plan shall file a report with the commissioner of revenue disclosing the total amount of claims paid during the fund year, with no deduction for claims wholly or partially reimbursed through reinsurance. The report must be filed on a form available from the commissioner of revenue. At the time of filing the report, the plan shall pay the fee required by Laws of Minnesota 1983, chapter 241, section 7 to the commissioner of revenue in the amount of two percent of the total amount of claims paid during the fund year, with no deduction for claims wholly or partially reimbursed through reinsurance.

Department of Human Rights

Proposed Temporary Rules Governing Case Processing Policies and Procedures, and Restrictions for Apprenticeship Programs

Request for Public Comment

Notice is hereby given that the Department of Human Rights has proposed the following temporary rules for the purpose of implementing the provisions of Laws of 1981, Ch. 330, Sec. 4 and Laws of 1983, Ch. 301, Secs. 198-200.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rules for 20 days immediately following publication of this material in the *State Register*. All submissions must be in writing and addressed to:

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Mary A. Hartle, Information Officer
Department of Human Rights
5th Floor Bremer Tower
7th Place & Minnesota Street
St. Paul, Minnesota 55101

The temporary rules may be revised on the basis of data and views received. Any written material received will become part of the record and will be submitted to the Attorney General.

November 28, 1983

Irene Gomez-Bethke
Commissioner of Human Rights

Temporary Rules as Proposed (all new material)

12 MCAR § 1.061 [Temporary] Definitions.

A. Scope. In 12 MCAR §§ 1.061-1.076 [Temporary], the following phrases have the meanings given them here.

B. Affinity group. "Affinity group" means a group of persons whose members share a unique interest or characteristic.

C. Answer. "Answer," as used in section 363.06, subdivision 8, means information from a respondent, deemed relevant by the commissioner, in reply to a charge.

D. EEOC. "EEOC" means the United States Equal Employment Opportunity Commission.

E. HUD. "HUD" means the United States Department of Housing and Urban Development.

F. Predominantly involves heavy physical labor. "Predominantly involves heavy physical labor" when used in the context in which it is used in Minnesota Statutes, section 363.02, subdivision 1, clause (4) refers to all or most jobs in a trade that require (1) some lifting of objects weighing 100 pounds or more, or (2) a frequent need to carry, push, pull, or lift objects weighing 50 pounds or more.

G. Predominantly involves work on high structures. "Predominantly involves work on high structures" when used in the context in which it is used in Minnesota Statutes, section 363.02, subdivision 1, clause (4) refers to all or most jobs in a trade that require that essential work be regularly performed when the lowest part of the worker's body is more than ten feet above the closer of (1) the ground, or (2) a floor.

12 MCAR § 1.062 [Temporary] Filing, who and when.

A. Who may file. Any person who claims to be aggrieved by an unfair discriminatory practice may file a charge with the department. The charge of an allegedly aggrieved minor or ward must be filed by a parent or guardian.

B. Time of filing. A charge must be filed within six months of an alleged unfair discriminatory practice. Filing is accomplished by delivery of the charge to the department's office on or before the deadline. Time is to be computed in accordance with Minnesota Statutes, sections 645.14, 645.15, and 645.151.

12 MCAR § 1.063 [Temporary] Cross filing with other agencies.

A. State charges cross filed with certain federal agencies. A charge filed with the department which alleges violation of certain EEOC and HUD administered anti-discrimination laws will automatically be filed by the department with that agency.

B. Federal charges deferred to department. A charge filed with EEOC or HUD may be deferred to department. The charge is deemed filed on the date the department receives from the federal agency sufficient material for a charge to be deemed filed under Hum Rts 102 (a) and (b).

C. Minneapolis and St. Paul charges. A charge alleging a violation occurring in Minneapolis or St. Paul may be referred by the commissioner to the Minneapolis Department of Civil Rights or the St. Paul Human Rights Department respectively, for investigation and recommended determination. The recommendation is subject to review by the commissioner.

12 MCAR § 1.064 [Temporary] Priority charges.

A. List. The department shall give priority to the following kinds of charges:

1. a commissioner's charge;

2. a charge alleging ongoing actual or threatened physical violence;

3. a charge which the commissioner determines might require the department to seek an injunction or temporary restraining order;

4. a charge involving a disservice to a party due to an error by the department;

5. a charge requiring immediate action to prevent irreparable harm to the charging party; or

6. a charge having social or legal significance.

B. Social significance. A charge has social significance if the commissioner determines it affects in a substantial way:

1. many people;

2. a protected class;

3. a company or industry;

4. an entire affinity group; or

5. a current significant social issue.

C. Legal significance. A charge has legal significance if the commissioner believes it raises an issue that may provide a legal precedent that will further the purposes of the act.

12 MCAR § 1.065 [Temporary] Fact finding conference.

A. Call. The department may call a conference to obtain information needed to investigate an allegation in a charge. At the conference, the parties may attempt to resolve the proceedings before a formal finding is made.

B. Attendance; subpoenas; tape recording. The commissioner may require the attendance of a person at the conference by subpoena. The commissioner may restrict the attendance of others. The department shall, and a party may, make an audio tape recording of the conference. On request of a party, while a charge is pending the department shall duplicate its audio recording. The department shall charge a fee to cover the cost of duplication.

12 MCAR § 1.066 [Temporary] Conciliation; agreement.

A. Conciliation. After a finding of probable cause, the commissioner may invite the respondent to conciliate the matter. The invitation shall describe the conciliation process and may propose a remedy to resolve the proceedings. After permitting the respondent 15 days to respond to the invitation, the commissioner may issue a complaint according to Minnesota Statutes, section 363.06, subdivision 4, clause (3).

B. Agreement. If, at any time, the department and the parties agree on a resolution of the proceedings, the terms of the resolution shall be made a part of a settlement agreement.

After the respondent and the charging party have signed, the commissioner shall sign the agreement for the department. Execution of the agreement terminates the formal proceedings, subject to monitoring of the agreement by the department.

12 MCAR § 1.067 [Temporary] Alternative forms of dispute resolution.

In any proceeding the commissioner may use any alternative form of dispute resolution on any terms agreed to by all the parties.

12 MCAR § 1.068 [Temporary] Notice of no probable cause.

The commissioner shall serve notice of a no probable cause determination on the charging party be certified mail and by first class mail. The respondent shall be notified by first class mail.

12 MCAR § 1.069 [Temporary] Appeal from no probable cause determination.

A charging party's appeal from a no probable cause determination must be delivered to the department within ten days of receipt of notice.

12 MCAR § 1.070 [Temporary] Monitoring.

The department shall monitor all settlement agreements. If the commissioner believes a respondent may not have complied with an agreement, the department shall notify the respondent in writing. The notice shall specify the part of the agreement the respondent is believed to have violated. After permitting the respondent 15 days to respond, the commissioner may begin proceedings to enforce the settlement agreement.

12 MCAR § 1.071 [Temporary] Reopening certain cases.

A. Request. A charging party may request that proceedings terminated according to Hum Rts 102 (f) or dismissed according to 12 MCAR § 1.076 be reopened. The request must be in writing and must state a reason for reopening.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

B. Respondent; notice to; information from. The commissioner shall promptly notify the respondent in writing of the request. The respondent has ten days to provide the department with pertinent information in writing on reopening the proceedings.

C. Considerations. In deciding whether to reopen proceedings, the commissioner shall consider whether:

1. the department clearly erred in closing the proceedings;

2. the department was less than reasonably diligent in trying to find the charging party;

3. the charging party was unavoidably prevented from providing the department with information needed to avoid terminating the proceedings;

4. reopening the proceedings would place an unreasonable burden on the respondent; and

5. the passage of time precludes reopening the proceedings.

D. Reopening without request. After determining the department clearly erred in closing a proceeding, the commissioner may reopen the proceedings without a request.

E. Notice of decision. The commissioner shall promptly notify the parties in writing of the decision.

12 MCAR § 1.072 [Temporary] Exemptions for age restrictions in bona fide apprentice programs.

A. Application; coverage; duration. An operator of a bona fide apprenticeship program may apply to the department for an exemption from Minnesota Statutes, section 363.03 for the program. The commissioner shall provide the application form. An exemption shall be issued only for trades in the program which predominantly involve: (a) heavy physical labor; or (b) work on high structures. The exemption shall apply solely to permit age restrictions on applicants in programs involving those trades. An exemption shall be valid for five years unless revoked sooner. An operator of a program may not impose age restrictions unless an exemption is in effect.

B. Revocation. The department may revoke an exemption. To do so, the commissioner must decide that the exempted trade no longer predominantly involves: (a) heavy physical labor; or (b) work on high structures. An operator of an exempted program must immediately stop imposing age restrictions on applicants to its program upon expiration of, or notice of revocation of, an exemption.

12 MCAR § 1.073 [Temporary] Preservation of records.

A. While charge pending. A respondent notified of a charge shall retain all documents related to the charge under its control. The documents must be retained until the department notifies the respondent that the charge has been resolved.

B. During monitoring period. The commissioner may require as a part of a settlement agreement that the respondent retain documents related to a charge for a period of time.

C. Retention of records. An employer, employment agency, labor organization, or an operator of an apprenticeship or other training program subject to the act must retain all applicant and employment records for six months after the record is made.

12 MCAR § 1.074 [Temporary] Charges not to be processed.

The commissioner may choose not to process: (a) a moot charge; or (b) a charge without priority which the commissioner believes does not warrant further use of department resources.

12 MCAR § 1.075 [Temporary] Dismissal of frivolous charges.

The department may dismiss a charge the commissioner believes:

A. illogical, fantastic, or incoherent;

B. is negated by common knowledge which the commissioner takes official notice of;

C. is brought by a charging party acting in bad faith;

D. is substantially the same, and involves the same parties, as a previous charge in which no probable cause was found.

12 MCAR § 1.076 [Temporary] Dismissal for failure to provide information.

A. When. The commissioner may dismiss a charge or a would be charge for failure to provide required information:

1. when the would be charge does not conform to Hum Rts 1 and 102 (a); or

2. when the information about a charge that the department has is insufficient to make a determination, and the charging party fails to provide:

a. information which the charging party claims to have or knows how to obtain which may substantiate an allegation;

b. a signed withdrawal of the charge after indicating a lack of interest in pursuing the charge; or

c. information essential to a charge that requires amending.

B. Procedure. If informal means of obtaining the information fail, the commissioner shall notify the charging party by certified and first class mail of the need for the required information and the possibility of dismissal of the charge for failure to provide required information. If the information is not delivered within 30 days of the date of notice and no other information is available for the commissioner to make a determination on the merits, the commissioner may dismiss the charge.

12 MCAR § 1.077 [Temporary] Rules temporarily superseded.

During the period that 12 MCAR §§ 1.061-1.076 [Temporary] are effective, the following rules are superseded: Hum Rts 9, 52, 53, 54, 55, 56, 57, 58, 59, 102(c), 105(c)-(h), 111, 112, 113, 114, 115, 116, 117, and 118.

Department of Labor and Industry Workers' Compensation Division

Proposed Adoption of Rules of the State Department of Labor and Industry Governing Reimbursement of Supplementary Benefits

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Department of Labor and Industry, Workers' Compensation Division proposes to adopt the above-entitled rules without a public hearing. The Commissioner has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes 14.21-14.28 (1982).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes 14.13-14.20 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

Steve Keefe, Commissioner
Department of Labor and Industry
444 Lafayette Road
St. Paul, Minnesota 55101

Authority for the adoption of these rules is contained in Minnesota Statutes 176.132, Subd. 4; 175.12 (2); and 176.83 (f). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the office of the Commissioner upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Steve Keefe, Commissioner, Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101.

A copy of the proposed rule immediately follows this notice in the *State Register*.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

STATEMENT OF COMPLIANCE
WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Mark B. Levinger do hereby declare that I have examined the proposed rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

January 30, 1984

Mark B. Levinger
Special Assistant
Attorney General