

State of Wisconsin



Labor and Industry Review Commission

Roul Anderson
Complainant

Labor Ready Midwest
Respondent

ERD Case No. CR201701984

Fair Employment Decision¹

Dated and Mailed:

December 14, 2017

The decision of the Equal Rights Division (copy attached) is **affirmed**. Accordingly, the complainant's appeal of the preliminary determination is dismissed.

By the Commission:

/s/

Georgia E. Maxwell, Chairperson

/s/

Laurie R. McCallum, Commissioner

/s/

David B. Falstad, Commissioner

¹ **Appeal Rights:** See the green enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the Labor and Industry Review Commission as a respondent in the petition for judicial review.

Appeal rights and answers to frequently asked questions about appealing a fair employment decision to circuit court are also available on the commission's website <http://lirc.wisconsin.gov>.

Procedural Posture

On July 17, 2017, the complainant filed a complaint of discrimination with the Equal Rights Division (hereinafter "Division") of the Department of Workforce Development. On July 19, 2017, an Equal Rights Officer with the Division issued a preliminary determination dismissing the complainant's complaint because it did not state a claim under a law that the Division has the jurisdiction to enforce. The initial determination provided the following instruction with respect to appeals:

THE NEXT STEP IS:

The dismissal will become final unless written appeal is received by the Equal Rights Division, PO Box 7997, Madison, Wisconsin 53707, within 20 days of the date this determination was mailed. (The DATE OF MAILING is stamped at the top of the Preliminary Determination.) The appeal must state the specific reasons why you are appealing.

Because the preliminary determination was issued on July 19, 2017, the last day on which an appeal could have been filed was August 8, 2017.

The complainant attempted to file an appeal of the preliminary determination on August 21, 2017. On August 23, 2017, the Division mailed the complainant a letter notifying him that his appeal was not timely and that his case was therefore closed. The Division's letter did not include a notice of appeal rights.

On September 18, 2017, the complainant appeared in person at the Division's office and asked to speak with the Civil Rights Bureau Director. On October 2, 2017, the Civil Rights Bureau Director issued a letter to the complainant advising him that his appeal was late and that his request to reopen his case was denied. The letter included a notice of appeal rights and instructions for filing a petition for review by the commission.

On October 13, 2017, the complainant filed a timely petition for commission review of the dismissal of his appeal. The matter is now before the commission and ready for a decision.

Memorandum Opinion

The Division has rules with respect to preliminary determinations which provide, in relevant part:

"The complainant may appeal from an order dismissing a complaint under sub. (2) by filing a written appeal with the department. The appeal shall be filed within 20 days of the date of the order and shall state specifically the grounds upon which it is based. If a timely appeal is filed, the department shall serve a copy of the appeal upon all other

parties. The matter shall be referred to the hearing section of the division for review by an administrative law judge. . . .”

Wis. Admin. Code ch. DWD § 218.05(3).

The complainant’s appeal of the preliminary determination was filed more than 20 days after the date on which the determination was issued. The law does not provide any exception allowing late appeals of preliminary determinations to be considered, even where the appeal is late for good cause. *Nemec v. School District of Washburn*, ERD Case No. 201103604 (LIRC Jan. 30, 2014). Consequently, the dismissal of the complainant’s late appeal of the preliminary determination is affirmed, and the preliminary determination remains in effect.