Disability Rights WISCONSIN

Guide: Wisconsin Fair Housing Complaint Process

This resource is meant to be a general guide for people with disabilities, not legal advice. For legal advice specific to your situation, please talk to an attorney.

Introduction

If you believe a housing provider discriminated against you because of your disability, you can file a Fair Housing Complaint with Wisconsin's Equal Rights Division (ERD). This resource describes the complaint process and gives tips for navigating it on your own.

***Step 1:** File a Fair Housing Complaint with Wisconsin's Equal Rights Division.*

You can complain about housing discrimination based on disability for up to one year after the discrimination happened or you learned about it. To file a state complaint about disability discrimination in housing, fill out the ERD complaint form: dwd.wisconsin.gov/dwd/forms/erd/pdf/erd-10240.pdf?20230905

Mail or fax the form to either office:

ERD Madison
PO Box 8928
Madison, WI 53708
Fax: 608-267-4592

ERD Milwaukee
819 N. 6th St., Room 723
Milwaukee, WI 53203
Fax: 414-227-4084

1-800-928-8778 Toll Free | **disabilityrightswi.org**

You can also send your complaint form online, although you must create an account to do so. File a complaint here: dwd.wisconsin.gov/er/complaints/

Advocacy Tip

Fill out the form completely and sign it before sending it to the Equal Rights Division. You can call the Equal Rights Division a week or two after sending to make sure they got it.

Equal Rights Division, Madison Office Number: 608-266-6860
Equal Rights Division, Milwaukee Office Number: 414-227-4384

You can withdraw your complaint any time. If you want to withdraw, ask for this in writing, sign it, and send it to the Equal Rights Division. If you withdraw your complaint, though, you probably won't be able to bring it again.[1]

Once the Equal Rights Division gets your complaint, they'll look it over to make sure:

- you and the housing provider are covered under Wisconsin fair housing law.
- that your complaint has a claim they can address.
- that you filed it within a year of the discrimination or when you learned about it.[2]

If your complaint doesn't meet these requirements, the Equal Rights Division will dismiss it.[3] If you get a dismissal, you can appeal within 20 days to an Administrative Law Judge (ALJ).[4]

Step 2: Equal Rights Division Investigation and Initial Determination

If your complaint meets the requirements, the Equal Rights Division will investigate. They may visit the housing or other locations, get records and documents, or talk to people who know about what happened.[5]

1 See DWD 220.04(8).

2 DWD 220.05(1).

3 DWD 220.05(2).

4 DWD 220.05(3).

5 DWD 220.07(1).

The Equal Rights Division can dismiss complaints before finishing their investigation if:

- you don't respond to something they send you within 20 days; or
- the Equal Rights Division or a court have dismissed the allegations in your complaint before.[6]

If they dismiss your complaint for one of these reasons, you can appeal to an Administrative Law Judge within 20 days.[7]

After the Equal Rights Division finishes investigating, they will write an **Initial Determination** — which says if they think there is probable cause for your complaint.[8] **Probable cause** means that there is reason to think illegal discrimination may have happened. If the Equal Rights Division decides there's probable cause, they will make a **charge of discrimination** (see Step 3: Charge of Discrimination for more information).[9] If the Equal Rights Division decides there's no probable cause, they will dismiss your complaint.[10] You can appeal a No Probable Cause dismissal within 20 days by asking, in writing, for a **Probable Cause Hearing**.[11] See Hearing Types in **Step 3: Charge of Discrimination** for more information about Probable Cause Hearings.

Mediation

If the parties agree, the Equal Rights Division can try to help you reach an agreement to resolve the problem from your complaint – this is called **mediation** or **conciliation**. If you reach an agreement with the housing provider, the agreement will be written and you can go to the Equal Rights Division to enforce it if the provider violates it later. (See DWD 220.10 for more information).

6 DWD 220.07(2)(a).

7 DWD 220.07(2)(b).

8 DWD 220.08(1).

9 DWD 220.08(2).

10 DWD 220.08(3).

11 See DWD 220.09.

Step 3: Charge of Discrimination

If the Equal Rights Division finds probable cause for your complaint, either in the Initial Determination or after a Probable Cause Hearing, they will make a charge of discrimination and send it to Wisconsin's Attorney General for review. The Attorney General then decides whether to prosecute the housing provider for breaking the law.

Advocacy Tip

Housing law does not have an exhaustion of remedies requirement. This means you can sue your landlord anytime, even if you haven't gone through the government complaint process yet.

Most housing cases go to Small Claims Court. See the Wisconsin Court Self Help Law Center webpage for more information: www.wicourts.gov/services/public/selfhelp/smallclaims.htm

The Equal Rights Division will dismiss your complaint if you decide to sue the housing provider and a trial has started.[12] Even if the Equal Rights Division does issue a charge, you can still choose to take your case to court instead.[13]

Hearing Types

There are two kinds of hearings that can happen in the Equal Rights Division's housing complaint process. Both types of hearings follow the same basic process, described in **Step 4: Equal Rights Division Hearing.**

Probable Cause Hearing: This type of hearing happens if the Equal Rights Division says there's No Probable Cause and you appeal. At a Probable Cause Hearing, an Administrative Law Judge decides if there is probable cause for your complaint to move forward.

Merits Hearing: This type of hearing happens if the Equal Rights Division finds Probable Cause and issues a charge of discrimination. At a Merits Hearing, the Administrative Law Judge decides if the housing provider broke the law and can award you damages, or money, for what happened.

[12] DWD 220.11(2).

[13] DWD 220.12(1).

Step 4: Equal Rights Division Hearing

The Equal Rights Division will send you and your housing provider a **Notice of Hearing** with the hearing details, like date, time, and place. The hearing must happen at least 30 days after the notice, so you have time to get ready.[14] Within 10 days of the Notice, your housing provider(s) must send an answer to your complaint allegations to both you and the Equal Rights Division.[15]

At any time during the hearing process, the Administrative Law Judge may hold a **Pre-Hearing Conference** to talk with both parties.[16]

You and the housing provider you complained about both have the right to review any evidence the other party has about the issue, before the hearing, so you can prepare. This information is exchanged in a process called **discovery**. In the discovery stage, you can ask the other side for documents and information they may have relating to your complaint. You can also ask questions of any witnesses to the discrimination, in a meeting called a **deposition**. The respondent gets to make discovery requests to you also.[17]

Advocacy Tip

It's important to respond quickly and respectfully to the other side's discovery requests. They have a right to do this under the law, the same way you do. If you believe the other side is asking you for something that's not ok, you may talk with them or their lawyer to try and work it out.

At least **10 days** before the hearing, you and the housing provider must send the Equal Rights Division and the other side a list of witnesses and copies of any **exhibits**, or documents, you plan to use at the hearing.[18] You must send these by mail or fax unless the Administrative Law Judge says you can use email.[19]

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[14] See DWD 220.14(1).

[15] DWD 220.15.

[16] DWD 220.16.

[17] DWD 220.18(3). See Wis. Stat. §804 for the rules on depositions and discovery.

[18] See DWD 220.18.

[19] See DWD 220.25.

The actual hearing will happen according to the rules from Wisconsin law.[20] This will feel like a courtroom proceeding — the judge guides the process, and you and the other side can question witnesses and show exhibits. You can go to the hearing in person, or an authorized representative (like a lawyer) can go for you.[21] If you don't go to your hearing, the Administrative Law Judge will dismiss your complaint unless you show that you had a good reason.[22]

Step 5: Hearing Decision

After a Probable Cause or Merits Hearing, the Administrative Law Judge will write a decision which either:

- dismisses the complaint.
- orders the Equal Rights Division to issue charges (for a Probable Cause Hearing).[23]
- orders the housing provider to comply with fair housing law (for a Merits Hearing).[24]

In a Merits Hearing order, the Administrative Law Judge can award you damages if they find the housing provider discriminated against you. **Damages** means money for lost wages, medical expenses, higher costs of other housing, or emotional distress.[25]

If you lose at a Merits Hearing, you can appeal to state court. The Administrative Law Judge's decision should describe your appeal rights.

[20] See DWD 220.21(1), Wis. Stat. Ch. 227.

[21] DWD 220.21(3).

[22] DWD 220.21(4).

[23] DWD 220.23(1).

[24] DWD 220.23(2).

[25] DWD 220.23(2).