

State of Wisconsin

DEPARTMENT OF EMPLOYMENT RELATIONS

- OFFICE OF THE SECRETARY BULLETIN -

- DIVISION OF MERIT RECRUITMENT AND SELECTION BULLETIN -

- CLASSIFICATION & COMPENSATION BULLETIN -

Date: January 10, 2000

Locator No.: OS-82/MRS-203/CLR/PP-168

Subject: Revised Rules for ER and ER-MRS,
Wis. Admin. Code

The purpose of this bulletin is to notify State agencies of the content, availability and location of the latest changes to the DER Secretary and DMRS Administrator's rules, effective January 1, 2000. Both sets of rules have been modified to bring them in compliance with statutory changes (1997 Wisconsin Act 307) that have been in force since July 5, 1998. These statutory changes provide for increasing the permissive reinstatement period from three to five years prospectively and allowing employment registers to expire in three months, instead of six months.

The rules have also been modified to change other provisions that had been created based on the pre-July 5, 1998 statutes (e.g., changing the period from three to five years prospectively in which sick leave previously earned can be restored as a result of reinstatement), and to make minor technical changes in other rule language for clarity. Attachment A provides the specific language modifications that will occur.

The Revisor of State Statutes has placed the latest Rules of the Secretary of Employment Relations and the Rules of the Administrator of Merit Recruitment and Selection on the Rules internet site. You can find them at:

<http://www.legis.state.wi.us/rsb/code/er/> and <http://www.legis.state.wi.us/rsb/code/er-mrs/>

Note: For technical reasons, the Revisor of Statutes has reprinted all chapters of the Secretary's (ER) and the Administrator's (ER-MRS) rules. To ensure that you have the most recent version of these rules, you may wish to obtain a complete set of all ER and ER-MRS chapters, either off the Internet or from Document Sales.

Additional guidance on implementing these and other changes resulting from 1997 Wisconsin Act 307 was provided in OS-74 and MRS-188 issued July 1, 1998.

Please direct any questions you may have on the Secretary's ER rules to Paul Ostrowski, Compensation Analyst, at (608) 267-0343 or e-mail at Paul.Ostrowski@der.state.wi.us or FAX at (608) 267-1020.

Please direct any policy questions you may have on the Division of Merit Recruitment and Selection ER-MRS rules to Denny Huett, DMRS Policy Advisor, at (608) 266-7296 or e-mail at Denny.Huett@der.state.wi.us or FAX at (608) 267-1000.

Peter D. Fox, Secretary
Department of Employment Relations

Robert J. Lavigna, Administrator
Division of Merit Recruitment and Selection

James A. Pankratz, Administrator
Division of Compensation and Labor Relations

Attachment

Attachment A

TEXT OF RULE CHANGES FOR ER, WIS. ADMIN. CODE

SECTION 1. ER 1.02 (14) is repealed.

SECTION 2. ER 1.02 (41) is amended to read:

ER 1.02 (41) "Reinstatement" means the act of permissive reappointment without competition of an employee or former employee under s. 230.31, 230.33 ~~or~~ 230.34 or 230.40 (3), Stats., to a position: (a) in the same class in which the person was previously employed; (b) in another classification to which the person would have been eligible to transfer had there been no break in employment; or (c) in a class having a lower pay rate or pay range maximum for which the person is qualified to perform the work after the customary orientation provided to newly hired workers in the position.

SECTION 3. ER 18.01 (3)(f) is amended to read:

ER 18.01 (3)(f) Layoff and subsequent ~~reemployment~~ restoration from layoff under s. ER-MRS 22.10 within 3 years.

SECTION 4. ER 18.02 (2) (b) 2 (intro) and b. are amended to read:

ER 18.02 (2) (b) 2. Left the service ~~through resignation or layoff~~ prior to July 5, 1998 and is reemployed within 3 years, subject to the following:

b. Any return to service following termination for ~~cause~~ misconduct or delinquency is deemed to not be a qualifying reemployment under this ~~provision~~ subdivision, even though the return is within the 3 year period.

SECTION 5. ER 18.02 (2) (b) 2m is created to read:

2m. Left the service on or after July 5, 1998 and is reemployed within 5 years, subject to the following:

a. Employment prior to leaving the service and upon returning to the service within 5 years must be as a permanent, classified employee or as an unclassified employee other than a limited term employee.

b. Any return to service following termination for misconduct or delinquency is deemed to not be a qualifying reemployment under this provision, even though the return is within the 5 year period.

SECTION 6. ER 18.02 (2) (b) 7 is amended to read:

7. Was ~~on layoff and is reemployed within 3 years, or~~ on temporary layoff under s. ER-MRS 22.14.

SECTION 7. ER 18.03 (5) (a) is amended to read:

ER 18.03 (5) SICK LEAVE CREDIT CONTINUATION. (a) Previously accumulated sick leave shall not be canceled by absence on approved leave under s. ER 18.14. Termination from the service for ~~cause as provided in s. 230.34 (1) (a), Stats., misconduct or delinquency~~ shall cancel all unused accumulated sick leave. Whenever an unclassified employee covered by this section or a permanent classified employee is laid off, terminated due to lack of work or funds, or resigns prior to July 5, 1998, any unused accumulated sick leave credit shall remain on record and be restored if the person is reemployed in a position covered by this section within 3 years. Whenever an unclassified employee covered by this section or a permanent classified employee is laid off, terminated due to lack of work or funds, or resigns on or after July 5, 1998, any unused accumulated sick leave credit shall remain on record and be restored if the person is reemployed in a position covered by this section within 5 years. This provision shall also apply to project employees eligible to transfer credits under s. ER 18.05 (3).

SECTION 8. ER 18.04 (4)(d) is created to read:

ER 18.04 (4) (d) If an employee moves between permanent or unclassified appointments and project appointments during a calendar year, the total number of personal holidays earned in the calendar year shall not exceed three and one-half days.

SECTION 9. ER 18.05 (4)(d) is amended to read:

ER 18.05 (4)(d) Holidays. Time off for personal and legal holidays shall be granted under s. ER 18.04. ~~If an employee moves between the permanent or unclassified appointments and project appointments during a calendar year, the total number of personal holidays earned in the calendar year shall not exceed 3.~~

SECTION 10. ER 18.16 is created to read:

ER 18.16. PAID LEAVES FOR PROVIDING CERTAIN DISASTER RELIEF SERVICES. As provided in s. 230.35 (3)(e), Stats., an appointing authority may grant a paid leave of absence to a state employee to allow the employee to participate in providing specialized disaster relief services if the conditions in s. 230.35 (3)(e), Stats., are met.

SECTION 11. ER 29.03 (6) is amended to read:

ER 29.03 (6) PAY ON REINSTATEMENT (a) When an employee who has not held permanent status in class within the last 3 years is reinstated based on reinstatement eligibility earned prior to July 5, 1998, pay on reinstatement shall be determined in accordance with the appropriate provisions regarding pay on original appointment contained in the compensation plan adopted under s. 230.12, Stats., or a collective bargaining agreement under subch. V. of ch. 111, Stats.

(b) For the purposes of par. (c) for an employee who is reinstated based on reinstatement eligibility earned prior to July 5, 1998, "last rate received" means the highest base pay rate received in any position in which the employee held permanent status in class, within the last 3 years. For the purposes of par. (c) for an employee who is reinstated based on reinstatement eligibility earned on or after July 5, 1998, "last rate received" means the highest base pay rate received in any position in which the employee held permanent status in class, within the last 5 years.

SECTION 12. ER 29.03 (6)(am) is created to read:

ER 29.03 (6)(am) When an employee who has not held permanent status in class within the last 5 years is reinstated based on reinstatement eligibility earned on or after July 5, 1998, pay on reinstatement shall be determined in accordance with the appropriate provisions regarding pay on original appointment contained in the compensation plan adopted under s. 230.12, Stats., or a collective bargaining agreement under subch. V. of ch. 111, Stats.

SECTION 13. ER 29.04 (intro) is created to read:

ER 29.04 (intro) Multiple pay adjustments that are effective on the same date will be applied in the following order:

TEXT OF RULE CHANGE FOR ER-MRS, WIS. ADMIN. CODE

SECTION 1. ER-MRS 1.02 (29) is amended to read:

ER-MRS 1.02 (29) "Reinstatement" means the act of permissive re-appointment without competition of an employee or former employee under s. 230.31, 230.33 ~~or~~ , 230.34 or 230.40 (3), Stats., to a position:

SECTION 2. ER-MRS 11.03 (1) is amended to read:

ER-MRS 11.03 (1) OPEN COMPETITIVE OR PROMOTIONAL REGISTERS. Eligibility on a register continues for 6 months from the date the register was established or, on an integrated register, 6 months from the date the individual is placed on the register. The administrator may allow a register to expire after 3 months, but only after considering the impact of such an action on the policy of this state to provide for equal employment opportunity and to take affirmative action, as specified in s. 230.01 (2), Stats.

SECTION 3. ER-MRS 16.025 is amended to read:

ER-MRS 16.025 PERIOD OF ELIGIBILITY ~~The~~ Except as otherwise provided in ss. 230.33 and 230.40 (3), Stats., the period of eligibility for all reinstatements and restorations shall begin and end as follows:

(1) For reinstatements based on reinstatement eligibility earned prior to July 5, 1998, the period of eligibility shall begin with the date of separation from the position in which the eligibility was earned and end with the last day of the 3rd year after the date of separation.

(2) For reinstatements based on reinstatement eligibility earned on or after July 5, 1998, the period of eligibility shall begin with the date of separation from the position in which the eligibility was earned and end with the last day of the 5th year after the date of separation.

(3) For restorations, the period of eligibility shall begin with the date of separation from the position in which the eligibility was earned and end with the last day of the 3rd year after the date of separation.

~~Any~~ (4) (a) Except as provided in par. (b), any act of reinstatement or restoration must become effective during the 3-year applicable period of eligibility specified in subs. (1) to (3) or in ss. 230.33 or 230.40(3), Stats.

(b) An employee may be reinstated after the expiration of the applicable period of eligibility if the employee submitted a specific request or application for reinstatement to a specific vacancy during the applicable period of eligibility and the employee is reinstated to the specific vacancy.

SECTION 4. ER-MRS 16.035 (1), (2) and (3) are amended to read:

ER-MRS 16.035 TYPES AND CONDITIONS OF REINSTATEMENT (1) GENERAL. An employee who, prior to July 5, 1998, has ~~terminated~~ separated from a position in the classified service without misconduct or delinquency or who has accepted a voluntary demotion for personal reasons shall be

eligible for reinstatement in any agency for 3 years from the date of such ~~resignation~~ separation or demotion. An employee who, on or after July 5, 1998, has separated from a position in the classified service without misconduct or delinquency or who has accepted a voluntary demotion for personal reasons shall be eligible for reinstatement in any agency for 5 years from the date of such separation or demotion.

(2) RETURN FROM UNCLASSIFIED POSITION. Any employee who left the classified service prior to July 5, 1998 to accept an appointment to an unclassified position shall have reinstatement eligibility in any agency for 3 years following the appointment to the unclassified service or one year after termination of the unclassified appointment, whichever is longer. Any employee who left the classified service on or after July 5, 1998 to accept an appointment to an unclassified position shall have reinstatement eligibility in any agency for 5 years following the appointment to the unclassified service or one year after termination of the unclassified appointment, whichever is longer. The benefit under this subsection is in addition to any benefit under s. ER-MRS 16.03 (4).

(3) DOWNWARD REALLOCATION OR RECLASSIFICATION OF A POSITION. An employee whose position has been reallocated or reclassified to a ~~classification with a lower pay rate or pay range maximum~~ lower class prior to July 5, 1998 shall have reinstatement eligibility in any agency for 3 years from the date of the action. An employee whose position has been reallocated or reclassified to a lower class on or after July 5, 1998, shall have reinstatement eligibility in any agency for 5 years from the date of the action. For definitions of reallocation and reclassification, see s. ER 3.01 (2) and (3), respectively.

SECTION 5. ER-MRS 16.04 (2) is amended to read:

ER-MRS 16.04 (2) (title) SEPARATION DURING THE PROBATIONARY PERIOD. A person who ~~resigns or who is terminated~~, prior to July 5, 1998, separates from a position without misconduct or delinquency while serving a probationary period may be reinstated to a position in a class in the same class-pay range or counterpart pay range or in a lower class than the position from which the employee resigned or was terminated by an appointing authority separated at any time during a 3 year period from the date of ~~termination~~ separation providing the person is qualified to perform the work after the customary orientation provided to a newly hired worker in the position. A person who, on or after July 5, 1998, separates from a position without misconduct or delinquency while serving a probationary period may be reinstated to a position in a class in the same pay range or counterpart pay range or in a lower class than the position from which the employee separated at any time during a 5 year period from the date of separation providing the person is qualified to perform the work after the customary orientation provided to a newly hired worker in the position. The probationary time already served may be carried over by the appointing authority, except as provided in s. 230.32 (2) (b), Stats. The appointing authority shall determine the amount of carry-over at the time of the reinstatement and shall give written notice of the amount to the employee. The appointing authority shall keep a copy of that notice on file.

Note: For movement to a position in a lower class while serving an original probationary period, see ER-MRS 17.02 (1).

SECTION 6. ER-MRS 22.11 (title) and (1) (a), (b), (c) and (d) are consolidated and amended to read:

ER-MRS 22.11 (TITLE) Reinstatement eligibility and conditions.

(1) When a vacancy, for which the employee is qualified, occurs in another employing unit of the agency in any class other than the approved layoff group from which the employee was terminated:

- (a) ~~As~~ as a result of layoff;
- (b) ~~Exercised~~, exercised displacement rights;
- (c) ~~Demoted~~, demotion as a result of layoff; or

~~(d) Transferred transfer or demoted demotion~~ between agencies as a result of layoff; and the employee was terminated while on probation, the employee may be reinstated at the discretion of the appointing authority within a 3-year period from the date of any of the actions taken in this subsection as a result of being subject to layoff, if the action taken as a result of being subject to layoff occurred before July 5, 1998.

SECTION 7. ER-MRS 22.11 (1m) is created to read:

ER-MRS 22.11 (1m) When a vacancy, for which the employee is qualified, occurs in another employing unit of the agency in any class other than the approved layoff group from which the employee was terminated as a result of layoff, exercised displacement rights, demotion as a result of layoff, or transfer or demotion between agencies as a result of layoff and the employee was terminated while on probation, the employee may be reinstated at the discretion of the appointing authority within a 5-year period from the date of any of the actions taken in this subsection as a result of being subject to layoff, if the action taken as a result of being subject to layoff occurred on or after July 5, 1998.

SECTION 8. ER-MRS 22.11 (2) is amended to read:

ER-MRS 22.11 (2) When a vacancy, for which the employee is qualified, occurs anywhere in state service other than the agency from which the employee was terminated as a result of layoff, exercised displacement rights, or demotion as a result of layoff, the employee may be reinstated at the discretion of the appointing authority within:

(a) a 3-year period from the date of action resulting from layoff if the action occurred prior to July 5, 1998, or;

(b) A 5-year period from the date of action resulting from layoff if the action occurred on or after July 5, 1998.

SECTION 9. ER-MRS 34.08 is amended to read:

ER-MRS 34.08 TERMINATION ~~[s. 230.27 (2), Stats.]~~ (1) Employees on a project appointment may be terminated at any time.

(2) Employees so terminated prior to July 5, 1998 do not have layoff, reinstatement, restoration or displacement rights or reinstatement eligibility to any permanent, seasonal or sessional position unless those rights or eligibilities were previously earned in a permanent, seasonal, or sessional position and are being applied within three years of the date of separation from that position or prior to the expiration of an approved leave of absence.

(3) Employees so terminated on or after July 5, 1998 do not have layoff, restoration or displacement rights to any permanent, seasonal or sessional position unless those rights were previously earned in a permanent, seasonal, or sessional position and are being applied within three years of the date of separation from that position or prior to the expiration of an approved leave of absence.

(4) Employees so terminated on or after July 5, 1998 do not have reinstatement eligibility to any permanent, seasonal or sessional position unless the eligibility was previously earned in a permanent, seasonal, or sessional position and is being applied within five years of the date of separation from that position or prior to the expiration of an approved leave of absence.