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WISCONSIN LEGISLATIVE COUNCIL STAFF

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FORM 2

AUG 31 1999

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RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-110

AN ORDER to amend ER 1.02 (41), 18.01 (3) (f), 18.02 (2) (b) 2. (intro.) and b. and 7., 18.03 (5) (a), 18.05 (4) (d) and 29.03 (6); to repeal ER 1.02 (14); and to create ER 18.02 (2) (b) 2m., 18.04 (4) (d), 18.16 and 29.04 (intro.), relating to reinstatement eligibility and restoration of sick leave for state employes, other related time periods for state personnel transactions, and minor and technical rule changes.

Submitted by **DEPARTMENT OF EMPLOYMENT RELATIONS**

07-13-99 RECEIVED BY LEGISLATIVE COUNCIL.

08-09-99 REPORT SENT TO AGENCY.

RNS:DF:rv;jal

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 99-110

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. In the third and fourth lines of s. ER 18.03 (5), all of the stricken material should precede the underscored material.

b. In s. 18.04 (4) (d), "days" should be inserted before the period.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. ER 18.01 (3) (f), "s." should be inserted after "under."

b. In s. ER 18.02 (2) (b) 2m. b., "subdivision" should replace "provision."

c. In s. ER 29.03 (6) (am), the material after "determined" should be deleted and replaced with a reference to the specific statutes, rules, or both, that govern pay on original appointment. Also, the paragraph should be created in a separate SECTION and should not be underscored. [See s. 1.06 (1), Manual.]

**PROPOSED ORDER OF THE SECRETARY
OF THE DEPARTMENT OF EMPLOYMENT RELATIONS**

ADOPTING RULES

To amend ER 1.02 (41), 18.01 (3)(f), 18.02 (2) (b) 2 (intro), b. and 7, 18.03 (5) (a), 18.05 (4)(d), and 29.03 (6); to repeal ER 1.02 (14); and to create ER 18.02 (2) (b) 2m, 18.04 (4)(d), 18.16, and 29.04 (intro), relating to reinstatement eligibility and restoration of sick leave for state employes, other related time periods for state personnel transactions, and minor and technical rule changes.

ANALYSIS PREPARED BY DEPARTMENT OF EMPLOYMENT RELATIONS

This rule order is intended to bring the Department's administrative rules into conformity with statutory changes made by 1997 Wisconsin Act 307 regarding the eligibility period for reinstatement and the determination of continuous service. The rule order also amends time periods for restoration of unused sick leave and makes minor policy and technical changes in the rules.

Act 307 increased the eligibility period for reinstatement for state employes from three to five years. This rule order amends references to reinstatement in the administrative rules to conform to this statutory change.

("Reinstatement" is currently defined in the rules to mean the act of permissive reappointment without competition of an employe or former employe under specified statutes 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.)

Act 307 amended the determination of continuous service by increasing from three to five years the time period during which a former employe's years of prior service would be restored if the person is reemployed in state service. This rule order amends the rules to conform to this statutory change.

The amount of sick leave earned and provisions regarding restoration of unused sick leave upon return to state service are not set by statute, but are set forth in the rules of the Secretary of the Department. Current rules provide that unused sick leave shall be restored if a person is reemployed in state service within 3 years, which is the same as the previous reinstatement eligibility period. This rule order increases the restoration period for unused sick leave to five years to maintain the parallel treatment with the newer, longer reinstatement period.

There are also other references to "three years" in the rules which were established, in part, to correspond to the three-year reinstatement period. These references are increased to five years where appropriate.

The increased eligibility periods explained above apply to employees who are initially eligible for reinstatement on or after July 5, 1998, which is the same effective date as Act 307.

Act 307 did not increase the three-year restoration period; thus, provisions relating to the three-year period for restoration rights in the administrative rules are retained.

Minor technical changes are also made in the rule order, including:

- References to termination or separation for "cause" are replaced by "misconduct or delinquency" to conform to s. 230.31, Stats., which uses the term "misconduct or delinquency" in reference to reinstatement eligibility.
- More precise words are substituted to describe the different ways of leaving a position which trigger restoration rights or reinstatement eligibility.
- A reference to the maximum number of personal holidays in a calendar year for employees who move between types of appointments is changed from three to three and one-half days, to conform to the amount of personal holidays specified in s. 230.35 (4)(d), Stats.
- The list of types of leave in Chapter ER 18 is expanded to include paid leaves for providing certain disaster relief services, which was newly authorized in s. 230.35 (3)(e), Stats., by 1997 Wisconsin Act 118.

The statutory authority for these rule changes is found in the following:

1. S. 230.04 (5), grants the Secretary general authority to promulgate rules on all matters related to the Department (except those reserved to the Administrator of the Department's Division of Merit Recruitment and Selection).
2. The specific statutory authority to increase the reinstatement eligibility period is found in ss. 230.31 (1)(a), 230.33 (1) and 230.40 (3), which were amended by Act 307 to increase the eligibility period from three to five years.
3. S. 230.35 (1)(g) 2 was amended by Act 307 to increase from three to five years the time period in which a former state employe may return to state service and not have his/her continuous service interrupted.

4. S. 230.35 (2) provides that restoration of unused sick leave upon reemployment of state employees shall be regulated by the administrative rules of the Secretary of the Department of Employment Relations.

5. S. 230.35 (4)(d) provides for three and one-half personal holidays.

6. S. 230.35 (3)(e) permits paid leaves for providing certain disaster relief services.

TEXT OF PROPOSED RULE

SECTION 1. ER 1.02 (14) is repealed. *check*

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 employe or former employe 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 ER-MRS 22.10 within 3 years.

s.

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, 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:

see in app of acb 307

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.

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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, misconduct or delinquency as provided in s. 230.34 (1) (a), Stats., shall cancel all unused accumulated sick leave. Whenever an unclassified employe covered by this section or a permanent classified employe 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 employe covered by this section or a permanent classified employe 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 employes 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 employe 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 employe 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 provisions regarding pay on original appointment.

(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 provisions regarding pay on original appointment.

(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.

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cite specific statute or admin. rule

SECTION 12. 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:

EFFECTIVE DATE

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2)(intro), Stats.

FISCAL ESTIMATE

The lengthened permissive reinstatement period may result in lower agency expenditures for filling vacancies because agencies will be able to appoint former employes instead of recruiting new applicants. Additionally, individuals reinstating may be eligible for higher pay than if they would have to start over again, or if an individual not having reinstatement eligibility were hired instead. However, it is impossible to estimate any cost impact.

The rule gives former employes a longer time period in which to return to state service and be eligible for restoration of unused sick leave and years of prior service. Vacation earning rate is based on length of service. Thus, these employes will more quickly reach the earning level at which unused vacation may be converted to termination leave or cash payments. Furthermore, they may accumulate larger amounts of unused sick leave which may be converted at retirement age to pay post-retirement health insurance premiums. These two effects could increase state costs, but it is impossible to determine the amount.

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