

CHAPTER 230

STATE EMPLOYMENT RELATIONS

	SUBCHAPTER I		
	ADMINISTRATIVE SERVICES		
230.01	Statement of policy.	230.28	Probationary period.
230.02	Liberal construction of statutes.	230.29	Transfers.
230.03	Definitions.	230.30	Employing units; establishment and revision.
230.04	Powers and duties of the director.	230.31	Restoration of employment and reinstatement privileges.
230.046	Training programs.	230.315	Differential pay, sick leave, and annual leave for state employees activated into certain federal service.
230.047	Temporary interchange of employees.	230.32	Restoration after military leave.
	SUBCHAPTER II	230.33	Leave of absence and pay while serving in unclassified position.
	CIVIL SERVICE	230.335	Rights of unclassified division administrators.
230.05	Powers and duties of the administrator.	230.337	Rights of employees: corrections or parole.
230.06	Powers and duties of appointing authorities.	230.34	Demotion, suspension, discharge and layoff.
230.08	Classification of civil service.	230.35	State office hours; standard workweek; leaves of absence; holidays.
230.09	Classification.	230.36	Hazardous employment, injuries, pay continued.
230.10	Compensation plan coverage.	230.37	Standards of performance and ratings.
230.12	Compensation.	230.40	Political activities; public office.
230.13	Closed records.	230.41	Invalid appointments.
230.14	Recruitment.	230.43	Misdemeanors; how punished.
230.143	Appointment; selective service registration.	230.44	Appeal procedures.
230.147	Employment of aid recipients.	230.45	Powers and duties of commission and division of equal rights.
230.148	Unclassified service reappointments.	230.46	Duties of council on affirmative action.
230.15	Appointments, promotions, changes in classified service.	230.48	State employees suggestion board.
230.16	Applications and examinations.		SUBCHAPTER III
230.17	Applicants and eligibles may be barred; bonds may be required.		EMPLOYEE PROTECTION
230.18	Discrimination prohibited.	230.80	Definitions.
230.19	Promotion.	230.81	Employee disclosure.
230.20	Recommendations.	230.82	Processing of information.
230.21	Unskilled labor and critical recruitment selection.	230.83	Retaliatory action prohibited.
230.213	Affirmative action procedures for corrections positions.	230.85	Enforcement.
230.215	Part–time employment and flexible–time schedules.	230.86	Discipline based on surveillance.
230.22	Entry professional selection.	230.87	Judicial review.
230.24	Career executive selection.	230.88	Payment of award, judgment or settlement; effect of order, arbitration award or commencement of court action.
230.25	Certification, appointments and registers.	230.89	Rule making and reporting.
230.26	Limited term appointments.		SUBCHAPTER IV
230.27	Project positions.		EMPLOYEE FREEDOM OF SPEECH PROTECTION
230.275	Noncompetitive appointment of certain disabled veterans.	230.90	Government employer retaliation prohibited.

SUBCHAPTER I

ADMINISTRATIVE SERVICES

230.01 Statement of policy. (1) It is the purpose of this chapter to provide state agencies and institutions of higher education with competent personnel who will furnish state services to citizens as fairly, efficiently and effectively as possible.

(2) It is the policy of the state and the responsibility of the director and the administrator to maintain a system of personnel management which fills positions in the classified service through methods which apply the merit principle, with adequate civil service safeguards. It is the policy of this state to provide for equal employment opportunity by ensuring that all personnel actions including hire, tenure or term, and condition or privilege of employment be based on the ability to perform the duties and responsibilities assigned to the particular position without regard to age, race, creed or religion, color, disability, sex, national origin, ancestry, sexual orientation or political affiliation. It is the policy of this state to take affirmative action which is not in conflict with other provisions of this chapter. It is the policy of the state to ensure its employees opportunities for satisfying careers and fair treatment based on the value of each employee's services. It is the policy of this state to encourage disclosure of information under subch. III and to ensure that any employee employed by a governmental unit is protected from retaliatory action for disclosing information under subch. III. It is the policy of this state to correct pay inequities based on gender or race in the state civil service system.

(3) Nothing in this chapter shall be construed to either infringe upon or supersede the rights guaranteed state employees under subch. V of ch. 111.

History: 1977 c. 196; 1981 c. 112; 1983 a. 409; 1985 a. 29, 1987 a. 32; 1999 a. 87; 2003 a. 33.

230.02 Liberal construction of statutes. Statutes applicable to the office shall be construed liberally in aid of the purposes declared in s. 230.01.

History: 1977 c. 196; 2003 a. 33.

230.03 Definitions. In this chapter, unless the context otherwise requires:

(1) “Administrator” means the administrator of the division.

(2) “Affirmative action” means specific actions in employment which are designed and taken for the purposes of all of the following:

(a) Ensuring equal opportunities.

(b) Eliminating a substantial disparity between the proportion of members of racial and ethnic, gender or disabled groups either in job groups within the classified civil service, or in similar functional groups in the unclassified service, and the proportion of members of racial and ethnic, gender or disabled groups in the relevant labor pool.

(c) Eliminating present effects of past discrimination.

(3) “Agency” means any board, commission, committee, council, or department in state government or a unit thereof created by the constitution or statutes if such board, commission, committee, council, department, unit, or the head thereof, is authorized to appoint subordinate staff by the constitution or stat-

ute, except a legislative or judicial board, commission, committee, council, department, or unit thereof or an authority created under subch. II of ch. 114 or subch. III of ch. 149 or under ch. 231, 232, 233, 234, 235, 237, or 279. “Agency” does not mean any local unit of government or body within one or more local units of government that is created by law or by action of one or more local units of government.

(4) Except as provided in s. 230.80 (1m), “appointing authority” means the chief administrative officer of an agency unless another person is authorized to appoint subordinate staff in the agency by the constitution or statutes.

(6) “Civil service” means all offices and positions of trust or employment in the service of the state, except offices and positions in the organized militia.

(7) “Collective bargaining agreement”, “collective bargaining unit” and other terms relating to collective bargaining for state employees have the meaning set forth for such terms under subch. V of ch. 111.

(8) “Commission” means the employment relations commission.

(9e) “Director” means the director of the office.

(9m) “Disabled veteran” means a veteran who has a service-connected disability.

(10) “Division” means the division of merit recruitment and selection in the office.

(10e) “Division of equal rights” means the division of equal rights in the department of workforce development.

(10m) “Gender group”, when used in connection with affirmative action under this chapter, does not include groups discriminated against because of sexual orientation, as defined in s. 111.32 (13m).

(10r) “Job group” means a set of classifications combined by the office on the basis of similarity in responsibility, pay range and nature of work.

(10w) “Office” means the office of state employment relations.

(11) “Position” means a group of duties and responsibilities in either the classified or the unclassified divisions of the civil service, which require the services of an employee on a part-time or full-time basis.

(12) “Resident of this state” means a person who, on the date an application under s. 230.16 (1) is filed:

(a) Has established a residence, as defined in s. 6.10 (1), in this state not less than 10 days earlier;

(b) Has resided in this state for not less than a total of one year out of the immediately preceding 5 years;

(c) Is eligible to register to vote in this state; or

(d) Is the spouse or minor child of a person meeting the requirements of par. (a), (b) or (c).

(14) Except as provided in s. 230.16 (7m), veteran means any of the following:

(a) A person who served on active duty under honorable conditions in the U.S. armed forces and who was entitled to receive any of the following:

1. The armed forces expeditionary medal established by executive order 10977 on December 4, 1961.

2. The Vietnam service medal established by executive order 11231 on July 8, 1965.

3. The navy expeditionary medal.

4. The marine corps expeditionary medal.

(b) A person who served on active duty under honorable conditions in the U.S. armed forces in a crisis zone, as defined in s. 45.01 (11).

(c) A person who served on active duty under honorable conditions in the U.S. armed forces for at least one day during a war period, as defined in s. 45.01 (13) or under section 1 of executive order 10957 dated August 10, 1961.

(d) A person who served on active duty under honorable conditions in the U.S. armed forces for 2 continuous years or more or the full period of the person’s initial service obligation, whichever is less. A person discharged from the U.S. armed forces for reasons of hardship or a service-connected disability or a person released due to a reduction in the U.S. armed forces prior to the completion of the required period of service shall also be considered a “veteran”, regardless of the actual time served.

History: 1971 c. 270; 1973 c. 333; 1977 c. 196 ss. 24, 100; 1977 c. 418; 1981 c. 20, 26; 1983 a. 27 ss. 1604, 2200 (15); 1983 a. 409, 453, 538; 1987 a. 32; 1989 a. 31; 1991 a. 101, 147; 1993 a. 16, 254; 1995 a. 27, 255; 1997 a. 27; 1999 a. 65, 87; 2001 a. 16, 103; 2003 a. 33 ss. 2385 to 2387s, 9160; 2005 a. 22, 74, 335, 393; 2007 a. 20, 97.

230.04 Powers and duties of the director. (1) The director is charged with the effective administration of this chapter. All powers and duties, necessary to that end, which are not exclusively vested by statute in the commission, the division of equal rights, the administrator or appointing authorities, are reserved to the director.

(1m) The director may delegate, in writing, any of his or her functions set forth in this chapter to an appointing authority, within prescribed standards if the director finds that the agency has personnel management capabilities to perform such functions effectively and has indicated its approval and willingness to accept such responsibility by written agreement. If the director determines that any agency is not performing such delegated function within prescribed standards, the director shall forthwith withdraw such delegated function. Subject to the approval of the joint committee on finance, the director may order transferred to the office from the agency to which delegation was made such agency staff and other resources as necessary to perform such functions if increased staff was authorized to that agency as a consequence of such delegation or if the office reduced staff or shifted staff to new responsibilities as a result of such delegation. Any delegatory action taken under s. 230.09 (2) (a) or (d) or 230.13 (1) by an appointing authority may be appealed to the commission under s. 230.44 (1) (b). The director shall be a party in such an appeal.

(2) The director may utilize the services of technical or specialized personnel to assist in implementing and maintaining a sound personnel management program. These services may be obtained from persons inside or outside of state service.

(3) The director may issue enforceable orders on all matters relating to the administration, enforcement and effect of this chapter and the rules prescribed thereunder except on matters relating to the provisions of subch. III or to those provisions of subch. II for which responsibility is specifically charged to the administrator.

(4) The director shall establish and maintain a collective bargaining capability under s. 111.815 (2).

(5) The director shall promulgate rules on all matters relating to the administration of the office and the performance of the duties assigned to the director, except on matters relating to those provisions of subch. II for which responsibility is specifically charged to the administrator.

(8) The director shall establish an employee performance evaluation program under s. 230.37 (1).

(9) The director shall do all of the following:

(a) Establish standards for affirmative action plans to be prepared by all agencies and applied to all employees in and applicants for employment in the unclassified and classified services, except for state officers elected by the people. The standards shall state the time periods within which these plans shall be prepared.

(b) Review and approve or disapprove any affirmative action plan prepared by an agency to ensure compliance with the standards established under par. (a), and send any approved affirmative action plan to the governor with comments.

(c) Monitor, evaluate and make recommendations to each agency to improve its progress toward providing equal opportunity to employees, applicants for employment and clients of the agency.

(d) Provide each agency with technical assistance in exploring and implementing innovative personnel policies in compliance with standards established under par. (a).

(e) Annually, prepare and submit to the governor and the legislature a summary of existing agency affirmative action program accomplishments, including the information obtained from agencies under sub. (10) (b), future goals and recommended actions.

(em) Annually, prepare and submit to the governor and the legislature a summary of the progress being made to provide employment opportunities in civil service for veterans under this chapter, including the information obtained from agencies under sub. (10) (c).

(f) Establish an affirmative action subunit. The affirmative action subunit shall advise and assist the director, the administrator and agency heads on establishing policies and programs to ensure appropriate affirmative action. The subunit shall advise and assist the director in monitoring such programs and shall provide staff to the council on affirmative action.

(9m) The director shall conduct periodic reviews and evaluations of the written records of hiring decisions made by appointing authorities under ss. 230.21 (1m), 230.25 (1p) and 230.27 (2k).

(9r) (a) In this subsection:

1. “Independent” means the extent to which persons with disabilities exert control and choice over their own lives.

2. “Severely disabled employee” means an employee in the classified service with a chronic disability if the chronic disability meets all of the following conditions:

a. It is attributable to a mental or physical impairment or combination of mental and physical impairments.

b. It is likely to continue indefinitely.

c. It results in substantial functional limitations in one or more of the following areas of major life activity: self-care; receptive and expressive language; learning; mobility; capacity for independent living; and economic self-sufficiency.

(b) The director shall keep a record of all of the following:

1. The number of severely disabled employees and the percentage of severely disabled employees of the total number of employees in the classified service.

2. The number of severely disabled employees hired in each calendar year and the percentage of severely disabled employees among all persons hired in the classified service in that year.

(10) (a) The director may require all agencies and their officers to comply with the director’s request to furnish current information pertaining to authorized positions, payroll and related items regarding civil service and employment relations functions.

(b) The director shall request from each agency and each agency shall furnish to the director relevant racial, ethnic, gender and disability information on every new employee hired by the agency including limited term, project, seasonal and sessional employees. The director shall maintain the data to permit a periodic review of the agency’s affirmative action plan accomplishments.

(c) The director shall request from each agency and each agency shall furnish to the director relevant information regarding the prior military service, if any, of every new employee hired by the agency including limited term, project, seasonal and sessional employees. The director shall maintain the data to permit a periodic review of the progress being made to provide employment opportunities in civil service for veterans and disabled veterans.

(11) The director may provide by rule for an understudy program to assure continuity in selected positions.

(12) The director shall keep in the office an official roster of all permanent classified employees which shall include classification titles, pay and employment status changes and appropriate dates thereof.

(13) The director shall do all of the following:

(a) Establish standards for plans to increase state employment of recipients of aid under s. 49.19 or benefits under s. 49.147 (3) to (5) prepared by agencies under s. 230.147 (1). The standards shall state the time periods within which these plans shall be prepared.

(b) Review and approve or disapprove plans prepared under s. 230.147 (1) to ensure compliance with the standards established under par. (a).

(c) Monitor, evaluate and make recommendations to agencies to improve progress toward meeting the goal in s. 230.147 (1).

(e) On or before September 30 annually beginning in 1989, prepare and submit to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) a report that includes all of the following information for the fiscal year preceding the date that the report is due:

1. A description of each agency’s effort during that fiscal year to employ under s. 230.147 persons who received aid under s. 49.19 or benefits under s. 49.147 (3) to (5).

2. The number of persons receiving aid under s. 49.19 or benefits under s. 49.147 (3) to (5) who were employed by each agency under s. 230.147 during that fiscal year and the job title or classification of each position filled under s. 230.147.

(14) The director shall establish, by rule, the scope and minimum requirements of a state employee grievance procedure relating to conditions of employment.

(15) The director shall review and either approve or disapprove each determination by an agency head regarding the classification of a state employee as a protective occupation participant for purposes of the Wisconsin retirement system.

(16) The director may appoint an executive assistant outside the classified service.

(17) The director shall resolve any dispute raised by a complaint filed under s. 321.64 (1) (c).

History: 1977 c. 196 ss. 48, 63, 101, 130 (11); 1977 c. 418, 447; 1981 c. 20; 1983 a. 27, 409; 1987 a. 27, 32, 140, 403; 1989 a. 31, 124; 1991 a. 101, 269, 288, 315; 1995 a. 289; 1997 a. 27; 1999 a. 87; 2003 a. 33; 2005 a. 22; 2007 a. 200.

Cross Reference: See also ER, Wis. adm. code.

DER has no authority to control the recruitment process after certification. It was proper to dismiss DER as a party to an action alleging discrimination in failing to hire a candidate who had been certified for the position. *Balele v. Wisconsin Personnel Commission*, 223 Wis. 2d 739, 589 N.W.2d 418 (Ct. App. 1998), 98–1432.

230.046 Training programs. (1) DECLARATION OF POLICY. In order to promote efficiency and economy in the operation of the state government, to provide means for the development of maximum proficiency by employees thereof, to establish and maintain the highest standards of performance in the transaction of the state’s business, and to install and utilize effectively the best modern practices and techniques which have been developed, tested and proved, it is necessary and desirable in the public interest that self-improvement be supplemented and extended by state-sponsored training programs. The objective of these programs is to develop skills, knowledge, and abilities which will best qualify state employees for effective performance of their official duties, and to retain skilled and efficient state employees in order to continually improve the quality of public service.

(2) SUPERVISORY TRAINING. After initial appointment to a supervisory position, each appointing authority shall ensure that each classified service supervisor successfully completes a supervisory development program. A waiver of any part of the probationary period under s. 230.28 (1) (c) may not be granted before completion of the development program. The program shall include such subjects as state personnel policies, grievance handling, discipline, performance evaluation, understanding the concerns of state employees with children, the supervisor’s role in management and the concept of the total quality leadership process, including quality improvement through participatory management.

(3) TRAINING PROGRAMS. Each appointing authority may do any of the following:

(a) Provide off–the–job specialized training courses during working hours to designated employees without loss of pay.

(b) Provide specialized training to qualified persons through educational stipends in lieu of pay, but in no event shall a monthly stipend exceed the minimum pay of the position for which training is undertaken.

(c) Provide specialized training to designated employees through assignment to research projects, prescribed courses of study, institutes and short courses which are related to the performance of official duties and to pay the cost of required tuition and other necessary fees and expense in connection therewith.

(d) Conduct on–the–job courses of instruction deemed necessary for the efficient performance of agency functions and to pay honorariums to qualified experts instructing in such courses.

(e) Conduct other training programs consistent with the standards set by this section.

(4) RECORDS OF TRAINING PROGRAM PARTICIPATION. Each agency shall adopt a standardized system for measuring, recording, reporting, accumulating and recognizing employee participation in its training program.

(5) INITIATION OF PROGRAMS. Unless otherwise empowered by law, any agency desiring to initiate a training program under sub. (3) shall ensure that:

(a) Unencumbered appropriated funds are available or funds have been so provided by the joint committee on finance;

(b) Training costs estimated to exceed \$500, excluding the compensation of participants, have been included in the budget and approved by the legislature or the joint committee on finance, and such costs will be encumbered for training purposes on the records of the agency;

(c) An agreement has been entered into by the trainee and the appointing authority relative to employment with the state, together with such other terms and conditions as may be necessary under the rules of the director whenever on–the–job trainees are employed; and

(d) The immediate and necessary work requirements of the agency will not be seriously handicapped because of such training program.

(6) GIFTS AND GRANTS. Nothing in this section shall nullify the acceptance or the special conditions of training programs financed by gifts, grants, bequests and devises from individuals, partnerships, associations, limited liability companies or corporations and all subventions from the United States, unless such financing has been refused by the state under s. 16.54 or 20.907.

(7) ESTABLISH INTERNSHIPS. The director shall establish in the classified service in–service training internships designed to give rigorous training in public service administration for periods not to exceed 3 years under the direct supervision of experienced administrators.

(8) COOPERATE FOR SCHOLARSHIP LOANS. To stimulate the interest of qualified students of exceptional merit in government career service, the director shall cooperate with the board of regents of the University of Wisconsin System in providing opportunities for recipients of public service scholarship loans to secure employment under the internship plan.

(9) TUITION REFUND PROGRAM. The director may establish by rule in the classified service a tuition refund program to supplement departmental training, to encourage employee job–related development and, upon satisfactory completion of training under this program to refund to the employee, an amount not to exceed the cost of tuition and necessary fees.

(10) FUNCTIONS OF THE OFFICE. The office may do all of the following:

(a) Conduct off–the–job employee development and training programs relating to functions under this chapter or subch. V of ch. 111.

(b) Charge fees to state agencies whose employees participate in employee development and training programs under this subsection.

History: 1971 c. 100 s. 23; 1971 c. 270 ss. 56, 91; Stats. 1971 s. 16.33; 1975 c. 39 s. 732 (1); 1977 c. 29; 1977 c. 196 ss. 60, 103, 130 (4), (6m), (11), 131; Stats. 1977 s. 230.046; 1979 c. 221; 1981 c. 20; 1985 a. 29; 1989 a. 31; 1993 a. 112; 1999 a. 9; 2003 a. 33.

Cross Reference: See also ch. ER 44, Wis. adm. code.

230.047 Temporary interchange of employees.

(1) DECLARATION OF POLICY. Intergovernmental cooperation, including that specified in the intergovernmental personnel act of 1970, P.L. 91–648, 84 Stat. 1909, is an essential factor in resolving problems affecting this state. The interchange of personnel on a temporary basis between and among governmental agencies at the same or different levels of government and with institutions of higher education is a significant factor in achieving such cooperation.

(2) DEFINITIONS. For the purposes of this section:

(a) “Local government” means any political subdivision, instrumentality or authority of a state or any general or special purpose agency of such a political subdivision, instrumentality or authority.

(b) “Receiving agency” means any department or agency of a foreign government, the federal government or a state or local government, an institution of higher education or other municipal corporate agency which receives an employee of another agency under this section.

(c) “Sending agency” means any department or agency of a foreign government, the federal government or a state or local government, an institution of higher education or other municipal corporate agency which sends any employee thereof to another agency under this section.

(3) AUTHORITY TO INTERCHANGE EMPLOYEES. Any department, agency or instrumentality of the state, or institution of higher education or any local government or other municipal corporate agency is authorized to participate in a program of interchange of employees with departments, agencies or instrumentalities of a foreign government, the federal government, another state or local government, an institution of higher education, other municipal corporate agencies or other agencies or instrumentalities of this state as a sending or receiving agency.

(4) STATUS OF EMPLOYEES. (a) Employees of a sending agency participating in an exchange of personnel as authorized in sub. (3), during such participation, are on detail to regular work assignments of the receiving agency.

(b) Employees who are on detail are entitled to the same salary and benefits to which they would otherwise be entitled and shall remain employees of the sending agency for all purposes, including the payment of their salaries, and their continuous service benefits except that the supervision of their duties during the period of detail may be governed by agreement between the sending agency and the receiving agency, and except that a receiving agency other than a receiving agency of this state may provide supplemental salary and benefits to the employee for the duration of the interchange.

(c) Any employee who participates in an exchange under the terms of this section who suffers disability or death as a result of personal injury arising out of and in the course of an exchange, or sustained in performance of duties in connection therewith, for the purposes of ch. 102, is an employee of the sending agency.

(5) TRAVEL EXPENSES OF EMPLOYEES. A sending agency of the state shall not pay the travel expenses of its employees incurred in connection with their work assignments at the receiving agency.

(6) STATUS OF EMPLOYEES OF OTHER GOVERNMENTS. (a) When any department, agency or instrumentality of this state acts as a receiving agency, employees of the sending agency who are

assigned under authority of this section are on detail to the receiving agency.

(b) Employees who are detailed to the receiving agency shall not by virtue of such detail be considered to be employees thereof, nor shall they be paid a salary or wage by the receiving agency during the period of their detail. The supervision of the duties of such employees during the period of detail may be governed by agreement between the sending agency and the receiving agency.

(7) TRAVEL EXPENSES OF EMPLOYEES OF OTHER GOVERNMENTS. A receiving agency of the state may, in accordance with the travel regulations of such agency, pay travel expenses of persons assigned thereto under this section during the period of such assignments on the same basis as if they were regular employees of the receiving agency.

(8) ADMINISTRATION. The director shall promulgate rules for the operation and implementation of this section. The rules shall prescribe the duration, terms and conditions of such interchange.

(9) SALARY REIMBURSEMENTS. (a) Any funds received by a sending agency of the state from a receiving agency as reimbursement for salary expenditures made under an employee interchange agreement shall be credited to the appropriation from which the expenditures were paid.

(b) A receiving agency of the state may, in accordance with the salary provisions of the sending agency, reimburse the sending agency for salary and fringe benefit expenditures for employees on detail to the receiving agency.

History: 1971 c. 270 ss. 63, 77; Stats. 1971 s. 16.24; 1975 c. 147 s. 54; 1977 c. 196 s. 55; Stats. 1977 s. 230.047; 1979 c. 89, 221; 1983 a. 27, 189; 1991 a. 75; 2003 a. 33.

Cross Reference: See also ch. ER 47, Wis. adm. code.

SUBCHAPTER II

CIVIL SERVICE

230.05 Powers and duties of the administrator. (1) All powers necessary for the effective administration of the duties specified for the administrator under this subchapter are reserved to the administrator.

(2) (a) Except as provided under par. (b), the administrator may delegate, in writing, any of his or her functions set forth in this subchapter to an appointing authority, within prescribed standards if the administrator finds that the agency has personnel management capabilities to perform such functions effectively and has indicated its approval and willingness to accept such responsibility by written agreement. If the administrator determines that any agency is not performing such delegated function within prescribed standards, the administrator shall withdraw such delegated function. The administrator may order transfer to the division from the agency to which delegation was made such agency staff and other resources as necessary to perform such functions if increased staff was authorized to that agency as a consequence of such delegation or if the division reduced staff or shifted staff to new responsibilities as a result of such delegation subject to the approval of the joint committee on finance. Any delegatory action taken under this subsection by any appointing authority may be appealed to the commission under s. 230.44 (1) (a). The administrator shall be a party in such appeal.

(b) The administrator is prohibited from delegating any of his or her final responsibility for the monitoring and oversight of the merit recruitment and selection program under this subchapter.

(3) The administrator may utilize the services of technical or specialized personnel to assist in implementing and maintaining a sound merit recruitment and selection program. These services may be obtained from persons within or without state service.

(4) The administrator may issue enforceable orders on all matters relating to the administration, enforcement and effect of the provisions of this subchapter for which responsibility is specifically charged to the administrator and the rules prescribed there-

under. Any action brought against the appointing authority for failure to comply with the order of the administrator shall be brought and served within 60 days after the date on which the administrator's order was issued. Such orders may be appealed to the commission under s. 230.44 (1) (a).

(5) The administrator shall promulgate rules for the effective operation of the provisions of this subchapter for which responsibility is specifically charged to the administrator. Notice of the contents of such rules and any modifications thereof shall be given to appointing authorities affected thereby, and such rules and modifications shall also be printed for public distribution.

(6) The administrator may seek the prior advice and counsel of agency heads in the formulation of policies and procedures concerning the duties specified for the administrator under this subchapter.

(7) The administrator shall use techniques and procedures designed to certify eligible applicants to any vacant permanent position within 45 days after the filing of an appropriate request by an appointing authority.

(8) The administrator may provide any personnel services to nonstate governmental units and may charge the nonstate governmental units for providing the services.

History: 1971 c. 125, 270; 1977 c. 196 ss. 26, 105, 130 (5); 1977 c. 273; 1981 c. 20; 1983 a. 27; 1989 a. 31; 1997 a. 216, 237; 2003 a. 33.

Cross Reference: See also ER–MRS, Wis. adm. code.

DMRS has no authority to control the recruitment process after certification. It was proper to dismiss DMRS as a party to an action alleging discrimination in failing to hire a candidate who had been certified for the position. *Balele v. Wisconsin Personnel Commission*, 223 Wis. 2d 739, 589 N.W.2d 418 (Ct. App. 1998), 98–1432.

An agency cannot prohibit classified employees from running for nonpartisan office except for certain circumstances. 80 Atty. Gen. 68.

230.06 Powers and duties of appointing authorities.

(1) An appointing authority shall:

(a) Conform to, comply with, and aid in all proper ways in carrying into effect this subchapter and the rules prescribed thereunder.

(b) Appoint persons to or remove persons from the classified service, discipline employees, designate their titles, assign their duties and fix their compensation, all subject to this subchapter and the rules prescribed thereunder.

(c) Provide the director with current information relative to the assignment of duties to permanent classified positions in his or her agency.

(d) Report promptly to the director or the administrator any information the director or the administrator requires in connection with any delegated personnel function and with each appointment, promotion, demotion, suspension or separation from the service or other change in employee status.

(e) When requested by the director or the administrator, provide reports on employee work performance and any other records or information the director or administrator requires to carry out this subchapter.

(f) Provide the director with the civil service information required under s. 16.004 (7).

(g) Prepare an affirmative action plan which complies with the standards established by the director under s. 230.04 (9) (a) and which sets goals and outlines steps for incorporating affirmative action and principles supporting affirmative action into the procedures and policies of his or her agency.

(h) Ensure that his or her agency complies with its affirmative action plan.

(i) Explore and implement innovative personnel policies to ensure affirmative action.

(j) If his or her agency employs 50 or more employees, create an affirmative action advisory committee which shall advise the appointing authority concerning programs designed to ensure equal opportunity to all employees, applicants for employment and clients of the agency.

(k) Designate an affirmative action officer reporting directly to the appointing authority. The affirmative action officer shall

advise and assist the appointing authority in establishing programs to ensure appropriate affirmative action.

(L) Provide information about the employment of each severely disabled employee for the director's report under s. 230.04 (9r) within 30 days after the disabled employee is appointed, and at other times at the request of the director.

(2) An appointing authority may delegate in writing part or all of his or her power of appointment, including discipline and removal.

(3) All reports and records submitted under sub. (1) shall be prepared and presented at such times and in such manner as the director or administrator prescribes.

History: 1971 c. 270; 1973 c. 333; 1977 c. 196 ss. 28, 106, 130 (5); 1981 c. 20; 1983 a. 27 ss. 1605g, 2200 (15); 1987 a. 32; 1991 a. 288, 315; 2003 a. 33.

230.08 Classification of civil service. (1) CLASSES. The civil service is divided into the unclassified service and the classified service.

(2) UNCLASSIFIED SERVICE. The unclassified service comprises positions held by:

(a) All state officers elected by the people.

(b) All officers and employees of the state appointed by the governor whether subject to confirmation or not, unless otherwise provided.

(c) The director, associate director and state historian of the historical society; and, with the approval of the board of curators and the administrator, such number of specialists as are required by the society for specific research, writing, collecting or editing projects which for a limited period of time not to exceed 2 years, renewable at the discretion of the board of curators and the administrator for an additional 2-year period, require persons with particular training or experience in a specialized phase or field of history, historical research, writing, collecting or editing, and any persons whose entire salary is paid from funds reappropriated to the society by s. 20.245 (1) (r) where competitive examination is impractical.

(cd) All sales and development professionals of the historical society employed under s. 44.20 (4) (a).

(cm) All positions of the University of Wisconsin System identified in s. 20.923 (4g) and (5).

(d) All faculty and academic staff, as defined in s. 36.05 (1) and (8), in the University of Wisconsin System.

(dm) Instructional staff employed by the board of regents of the University of Wisconsin System who provide services for a charter school established by contract under s. 118.40 (2r) (cm).

(e) The number of division administrator positions as specified in this paragraph for any board, department or commission as defined in sub. (4) (a) and s. 15.01 (5), and for the historical society with specific functional assignments to be determined by the appointing authority, except as otherwise provided in sub. (4) or as otherwise provided by law:

1. Administration — 14.
2. Agriculture, trade and consumer protection — 6.
- 2m. Children and families — 3.
3. Commerce — 6.
- 3e. Corrections — 4.
- 3m. Educational communications board — 4.
- 4f. Financial institutions — 3.
- 4h. Government accountability board — 2.
5. Health services — 6.
- 5m. Historical society — 5.
6. Workforce development — 6.
7. Justice — 3.
- 7m. Military affairs — 1.
8. Natural resources — 7.
- 8m. Public defender board — 2.

9. Public instruction — 5.

9m. Public service commission — 5.

10. Regulation and licensing — 4.

11. Revenue — 4.

12. Transportation — 6.

13. Veterans affairs — 3.

14. Technical college system board — 2.

(em) The director of credit unions.

(f) All legislative officers and, in addition, policy research personnel, assistants to legislators, research staff assigned to legislative committees, and other persons employed under s. 13.20.

(fc) The chief and personnel of the legislative reference bureau.

(fe) The state auditor and personnel of the legislative audit bureau.

(fm) The director and personnel of the legislative fiscal bureau.

(fo) The director and personnel of the legislative council staff.

(fp) The director and personnel of the legislative technology services bureau.

(fs) All deputies of department secretaries appointed under s. 15.04 (2) and executive assistants to department secretaries appointed under s. 15.05 (3), including those appointed by the attorney general, the adjutant general, the director of the technical college system and the state superintendent of public instruction.

(g) One stenographer appointed by each elective executive officer, and one deputy or assistant appointed by each elective executive officer except the attorney general and superintendent of public instruction.

(h) The clerks and other assistants and employees and justices of the supreme court.

(i) The judges, clerks and other assistants and employees of the court of appeals.

(jm) The employees of the lower Wisconsin state riverway board.

(k) Persons employed by the University of Wisconsin System whose employment is a necessary part of their training, student assistants or student hourly help as provided under s. 36.05 (6).

(L) One deputy of the head of any of the following agencies:
2. Educational communications board, created under s. 15.57.

3m. Department of employee trust funds.

4. Higher educational aids board, created under s. 15.67.

5. Office of commissioner of insurance, created under s. 15.73.

5m. Public defender board.

(m) One executive assistant of the commission chairperson of each of the following agencies:

2. Employment relations commission, created under s. 15.58.

(mL) One executive assistant of each commissioner of the public service commission, created under s. 15.79.

(n) Court reporters employed by the circuit court.

(o) The executive director and other employees of the judicial commission.

(on) The legal counsel to the government accountability board.

(p) All employees of the investment board, except blue collar and clerical employees.

(pd) The chairperson of the parole commission.

(pm) All employees of the state fair park board.

(q) The state public defender and staff attorney positions in the office of the state public defender.

(r) All employees appointed by the lieutenant governor.

(rm) Staff of the environmental education board.

(s) The director, sales manager and 3 sales representatives of prison industries in the department of corrections.

(sg) Deputy district attorney and assistant district attorney positions in the office of district attorney.

(tv) The director of the office of urban development in the department of children and families, appointed under s. 48.48 (16m).

(v) Not more than 5 bureau directors in the department of regulation and licensing.

(w) The program director for crime victims compensation and victim and witness services in the department of justice.

(we) Professional staff members of the educational communications board authorized under s. 39.13 (2).

(wh) The judicial council attorney appointed under s. 758.13 (3) (g) 2.

(x) The executive director of the waste facility siting board, unless the board chooses to appoint the executive director under the classified service.

(xe) The director of Indian gaming in the department of administration, and the attorney in the department of administration, appointed under s. 569.015 (2).

(xg) The executive secretary of the board of commissioners of public lands.

(xm) The commandants of Wisconsin veterans homes in the department of veterans affairs.

(y) The director and staff assistant of the federal–state relations office of the department of administration.

(ya) The director and executive assistant to the director of the office of state employment relations in the department of administration.

(yc) Two persons employed by the department of commerce engaged in advertising, marketing, and promotional activities within the United States for economic development of, and business recruitment to, this state.

(yn) The executive director and staff of the Kickapoo reserve management board.

(z) All other officers and employees of the state whose positions are expressly excluded from the classified service by statute or whose positions cannot be placed under the classified service because of the restrictions placed on them by statute.

(3) CLASSIFIED SERVICE. (a) The classified service comprises all positions not included in the unclassified service.

(b) Employees holding permanent or sessional classified service positions in the legislative branch shall have the same legal status as employees holding permanent classified service positions in the administrative branch.

(e) School–year positions in the classified service shall be designated as permanent positions.

(4) DIVISION ADMINISTRATORS. (a) The number of administrator positions specified in sub. (2) (e) includes all administrator positions specifically authorized by law to be employed outside the classified service in each department, board or commission and the historical society. In this paragraph, “department” has the meaning given under s. 15.01 (5), “board” means the educational communications board, government accountability board, investment board, public defender board and technical college system board and “commission” means the public service commission. Notwithstanding sub. (2) (z), no division administrator position exceeding the number authorized in sub. (2) (e) may be created in the unclassified service.

(b) Notwithstanding sub. (2) (e), no appointing authority may assign the functions enumerated in this paragraph to be supervised in whole or in part by a division administrator in the unclassified service:

1. Functions of the department of revenue relating to income, franchise, sales or excise tax administration.

2. Functions of the department of justice relating to criminal investigations, except for controlled substance criminal investigations.

3. Any function of the department of employee trust funds.

4. Functions of the public service commission relating to scheduling and conducting public hearings.

(c) Any proposal of a board, department or commission, as defined in par. (a) and s. 15.01 (5), or of the historical society, for a change in the number of positions enumerated in sub. (2) (e), before being submitted to the legislature, shall first be submitted by the board, department or commission or by the historical society for a separate review by the secretary of administration and by the director. The secretary of administration’s review shall include information on the appropriateness of the proposed change with regard to a board’s, department’s, commission’s or society’s current or proposed internal organizational structure under s. 15.02 (4). The director’s review shall include information on whether the existing classified or existing or proposed unclassified division administrator position involved is or would be assigned to pay range 1–18 or above in schedule 1, or a comparable level, of the compensation plan under s. 230.12. The results of these reviews shall be provided by the secretary of administration and by the director to the joint committee on finance and the joint committee on employment relations at the same time that the board’s, department’s, commission’s or society’s proposal is presented to either committee.

(7) EXCEPTIONAL EMPLOYMENT SITUATIONS. The administrator shall provide, by rule, for exceptional methods and kinds of employment to meet the needs of the service during periods of disaster or national emergency, and for other exceptional employment situations such as to employ the mentally disabled, the physically disabled and the disadvantaged.

(8) AUDITING OF PAYROLLS. The director shall audit the payrolls of the classified and unclassified service, as necessary, to carry out this subchapter.

History: 1971 c. 40, 270; 1973 c. 333, 335; 1977 c. 29, 187; 1977 c. 196 ss. 34, 108, 130 (5); 1977 c. 272, 418, 449; Stats. 1977 s. 230.08; 1979 c. 34, 189, 221, 356, 361; 1981 c. 20, 347, 374; 1983 a. 27 ss. 1605o to 1609am, 2200 (15); 1983 a. 189 s. 329 (27); 1983 a. 371, 378; 1985 a. 29; 1987 a. 27, 119, 204, 354, 399, 403; 1989 a. 31, 107, 119, 122, 169, 208, 219, 336; 1991 a. 39, 250, 269; 1993 a. 16, 349, 399; 1995 a. 27 ss. 6245 to 6277m, 9126 (19), 9130 (4); 1995 a. 216; 1997 a. 3, 27, 179, 194, 237; 1999 a. 9, 42, 87, 186; 2001 a. 16, 19, 109; 2003 a. 33 ss. 2392 to 2407b, 9160; 2003 a. 91, 326; 2005 a. 22, 25; 2007 a. 1; 2007 a. 20 ss. 3006 to 3014, 9121 (6) (a).

Cross Reference: See also chs. ER 2 and ER–MRS 27, Wis. adm. code.

An administrative agency may not issue a rule that is not expressly or impliedly authorized by statute. Limiting eligibility lists of applicants for civil service positions on the basis of race or sex is not authorized by sub. (7). *State v. DILHR*, 77 Wis. 2d 126, 252 N.W.2d 353 (1977).

An investment board employee hired in the classified service whose position was changed to unclassified by subsequent legislative action had a property interest in the position entitling him to continued civil service protections after the reclassification. *Bahr v. State Investment Board*, 186 Wis. 2d 379, 521 N.W.2d 152 (Ct. App. 1994).

230.09 Classification. (1) The director shall ascertain and record the duties, responsibilities and authorities of, and establish grade levels and classifications for, all positions in the classified service. Each classification so established shall include all positions which are comparable with respect to authority, responsibility and nature of work required. Each classification shall be established to include as many positions as are reasonable and practicable. In addition, each class shall:

(b) Be designated by the same official generic title. The official titles of classes so established shall be used in all reports and payrolls and in all estimates requesting the appropriation of money to pay employees.

(c) Be so constituted that the same evaluated grade level within a pay schedule can be applied to all positions in the class under similar working conditions.

(d) Where practical, be included in a series to provide probable lines of progression.

(2) (a) After consultation with the appointing authorities, the director shall allocate each position in the classified service to an

appropriate class on the basis of its duties, authority, responsibilities or other factors recognized in the job evaluation process. The director may reclassify or reallocate positions on the same basis.

(am) The director shall maintain and improve the classification plan to meet the needs of the service, using methods and techniques which may include personnel management surveys, individual position reviews, occupational group classification surveys, or other appropriate methods of position review. Such reviews may be initiated by the director after taking into consideration the recommendations of the appointing authority, or at his or her own discretion. The director shall establish, modify or abolish classifications as the needs of the service require.

(b) To accommodate and effectuate the continuing changes in the classification plan as a result of the classification survey program and otherwise, the director shall, upon initial establishment of a classification, assign that class to the appropriate pay rate or range, and may, upon subsequent review, reassign classes to different pay rates or ranges. The director shall assign each class to a pay range according to the skill, effort, responsibility and working conditions required for the class, without regard to whether the class is occupied primarily by members of a certain gender or racial group. The director shall give notice to appointing authorities to permit them to make recommendations before final action is taken on any such assignment or reassignment of classes.

(c) If anticipated changes in program or organization will significantly affect the assignment of duties or responsibilities to positions, the appointing authority shall, whenever practicable, confer with the director within a reasonable time prior to the reorganization or changes in program to formulate methods to fill positions which are newly established or modified to the extent that reclassification of the position is appropriate. In all cases, appointing authorities shall give written notice to the director and employee of changes in the assignment of duties or responsibilities to a position when the changes in assignment may affect the classification of the position.

(d) If after review of a filled position the director reclassifies or reallocates the position, the director shall determine whether the incumbent shall be regraded or whether the position shall be opened to other applicants.

(e) If an appointing authority appoints a person to a position at an approved grade level lower than that recognized for the position, the person in the position may be regraded, only upon recommendation of the appointing authority, subject to the statutes, classification plan and rules prescribed under this subchapter.

(f) If a position in the classified service is reclassified or reallocated, or if a position is allocated from the unclassified service to a classification in the classified service having a lower pay rate or pay range maximum than the incumbent's current basic pay rate, the pay rate of the incumbent shall be adjusted under the compensation plan under s. 230.12 or the rules prescribed under this section.

(g) When filling a new or vacant position, if the director determines that the classification for a position is different than that provided for by the legislature as established by law or in budget determinations, or as authorized by the joint committee on finance under s. 13.10, or as specified by the governor creating positions under s. 16.505 (1) (c) or (2), the University of Wisconsin Hospitals and Clinics Board creating positions under s. 16.505 (2n) or the board of regents of the University of Wisconsin System creating positions under s. 16.505 (2m), or is different than that of the previous incumbent, the director shall notify the administrator and the secretary of administration. The administrator shall withhold action on the selection and certification process for filling the position. The secretary of administration shall review the position to determine that sufficient funds exist for the position and that the duties and responsibilities of the proposed position reflect the intent of the legislature as established by law or in budget determinations, the intent of the joint committee on finance acting under s. 13.10, the intent of the governor creating positions under s. 16.505 (1) (c) or (2), the University of Wisconsin Hospitals and

Clinics Board creating positions under s. 16.505 (2n) or the intent of the board of regents of the University of Wisconsin System creating positions under s. 16.505 (2m). The administrator may not proceed with the selection and certification process until the secretary of administration has authorized the position to be filled.

(3) The director shall establish separate classifications for career executive positions under s. 230.24 and rules governing the salary administration of positions in such classifications.

History: 1971 c. 270 ss. 16, 26; 1977 c. 196 ss. 32, 109, 130 (5); 1977 c. 272, 273, 418; 1981 c. 20; 1983 a. 27 ss. 1609b to 1610, 2200 (15); 1985 a. 29, 120; 1987 a. 27, 403; 1989 a. 39; 1991 a. 315; 1995 a. 27; 2003 a. 33.

Under sub. (2) (b), employees in different occupational groups who perform substantially similar or equal work must be assigned to the same pay range. 68 Atty. Gen. 190.

230.10 Compensation plan coverage. (1) Except as provided under sub. (2), the compensation plan provisions of s. 230.12 apply to all employees of the classified service, unless they are covered by a collective bargaining agreement under subch. V of ch. 111.

(2) The compensation plan in effect at the time that a representative is recognized or certified to represent employees in a collective bargaining unit and the employee salary and benefit provisions under s. 230.12 (3) (e) in effect at the time that a representative is certified to represent employees in a collective bargaining unit under subch. V of ch. 111 constitute the compensation plan or employee salary and benefit provisions for employees in the collective bargaining unit until a collective bargaining agreement becomes effective for that unit. If a collective bargaining agreement under subch. V of ch. 111 expires prior to the effective date of a subsequent agreement, and a representative continues to be recognized or certified to represent employees specified in s. 111.81 (7) (a) or certified to represent employees specified in s. 111.81 (7) (b) to (f) in that collective bargaining unit, the wage rates of the employees in such a unit shall be frozen until a subsequent agreement becomes effective, and the compensation plan under s. 230.12 and salary and benefit changes adopted under s. 230.12 (3) (e) do not apply to employees in the unit.

History: 1971 c. 270; 1977 c. 44; 1977 c. 196 ss. 35, 131; 1977 c. 272 s. 98; Stats. 1977 s. 230.10; 1985 a. 42; 1989 a. 31; 2001 a. 16.

230.12 Compensation. (1) COMPENSATION PLAN. (a) *General provision.* 1. The compensation plan consists of both of the following:

a. The dollar values of the pay rates and ranges and the within range pay steps of the separate pay schedules to which the classes and grade levels for positions in the classified service established under the classification plan are assigned.

b. The provisions governing the pay of all unclassified positions except positions for employees of the University of Wisconsin System, for employees of the legislature who are not identified under s. 20.923 (4), for employees of a service agency under subch. IV of ch. 13, for employees of the state court system, for employees of the investment board identified under s. 230.08 (2) (p), for one stenographer employed by each elective executive officer under s. 230.08 (2) (g), for 3 sales representatives of prison industries and one sales manager of prison industries identified under s. 303.01 (10), and for sales and development professional of the historical society employed under s. 44.20 (4) (a).

2. In addition, the compensation plan may, when applicable, include provisions for supplemental pay and pay adjustments, and other provisions required to implement the plan or amendments thereto.

3. Provisions for administration of the compensation plan and salary transactions shall be provided, as determined by the director, in either the rules of the director or the compensation plan.

(b) *Schedules.* The several separate pay schedules may incorporate different wage and salary administration features. Each schedule shall provide for pay ranges or pay rates and applicable methods and frequency of within range pay adjustments based on such considerations as competitive practice, appropriate prin-

principles and techniques of wage and salary administration and determination, elimination of pay inequities based on gender or race, and the needs of the service. Not limited by enumeration, such considerations for establishment of pay rates and ranges and applicable within range pay adjustments may include provisions prevalent in schedules used in other public and private employment, professional or advanced training, recognized expertise, or any other criteria which assures state employee compensation is set on an equitable basis.

(bf) *Legislative action.* Provisions of the compensation plan that the joint committee on employment relations approves which require legislative action for implementation, such as changes in fringe benefits and any proposed amendments, deletions or additions to existing law, shall be introduced by the committee in a bill or companion bills, to be put on the calendar. The bill or companion bills are not subject to ss. 13.093 (1), 13.50 (6) (a) and (b) and 16.47 (2). The committee may, however, submit suitable portions of the bill or companion bills to appropriate legislative committees for advisory recommendations on the proposed changes. The committee shall accompany the introduction of such proposed legislation with a message that informs the legislature of the committee's concurrence with the matters under consideration and which recommends the passage of such legislation without change. It is the intent of the legislature to make this process consistent with that set forth under s. 111.92.

(c) *Supplementary compensation.* 1. When applicable, the compensation plan may provide for pay supplements to reflect those circumstances not reflected by the basic pay rates or ranges as established in the compensation plan. Such pay supplements shall not be considered as part of an employee's basic pay.

2. The director may establish a plan of extra compensation for work performed during selected hours at an hourly rate or rates subject to approval of the joint committee on employment relations. Eligibility for such extra compensation shall be as provided in the compensation plan.

3. Meals furnished an employee by the employing state agency, while the employee is required by the agency to take meals in the performance of assigned duties or responsibilities, shall be furnished without charge to the employee or deduction from the employee's salary.

(d) *Uniforms and safety equipment.* The director, with approval of the joint committee on employment relations, may establish a schedule of payments to employees for uniforms or protective clothing and equipment required to perform their duties.

(dm) *Damaged personal articles.* The compensation plan shall include provision for reimbursement of employees whose articles of clothing, watches or eye glasses are damaged in the line of duty, if the damage is not caused by employee carelessness or normal wear and tear resulting from the type of work performed by an employee, subject to a minimum actual value or repair cost specified in the plan. Payments are subject to approval of an employee's appointing authority and shall not exceed a maximum amount specified in the plan.

(e) *Maintenance provisions.* The compensation plan shall also include the approved schedule of allowable charges for the deductions from the pay of employees who are furnished meals, wholesale provisions and other maintenance provisions. Where allowances such as laundry or meals are provided any classified employee or an employee and his or her family, and such allowance in kind is included as a part of the compensation, the appointing authority or department head in addition shall pay in cash the value of the food during the vacation period or noncumulative leave of absence, if not so utilized, to such an employee.

(f) *Trainee pay rates.* When applicable, the compensation plan may provide for rates of pay below the minimum of the pay range to reflect the appropriate beginning pay for persons appointed to positions who do not possess the qualifications necessary to perform the work at the classification level for which they are being

trained. Pay increases up to the minimum of the pay range shall be provided to compensate for the attainment of additional qualifications during the trainee period.

(g) *Temporary reserve appeal tribunal.* The compensation plan shall include a provision authorizing the department of workforce development to pay any individual who was previously employed by the department of workforce development and who is appointed to limited term employment as a temporary reserve appeal tribunal under s. 108.09 (3) (a) 2. not more than the base pay rate that the individual was paid at the time of his or her separation from the department of workforce development, plus any across-the-board and discretionary intervening adjustments that were made under the compensation plan or applicable collective bargaining agreement to the base pay rate for the position that was previously filled by the individual during the time between the individual's separation from the department of workforce development and the individual's appointment as a temporary reserve tribunal. For the purpose of calculating the amount of any discretionary intervening adjustment, the amount shall be limited to the amount that would have been generated by the employee.

(3) **COMPENSATION PLAN; ESTABLISHMENT AND REVISION.** (a) *Submission to the joint committee on employment relations.* The director shall submit to the joint committee on employment relations a proposal for any required changes in the compensation plan which may include across the board pay adjustments for positions in the classified service. The proposal shall include the amounts and methods for within range pay progression, for pay transactions, and for performance awards. The proposal shall be based upon experience in recruiting for the service, the principle of providing pay equity regardless of gender or race, data collected as to rates of pay for comparable work in other public services and in commercial and industrial establishments, recommendations of agencies and any special studies carried on as to the need for any changes in the compensation plan to cover each year of the biennium. The proposal shall also take proper account of prevailing pay rates, costs and standards of living and the state's employment policies.

(ad) *Timing of proposed changes.* Notwithstanding any other statute, the director may delay timing for announcement or implementation of any recommended changes in the compensation plan under this section until after some or all of the collective bargaining agreements under subch. V of ch. 111 for that biennium are negotiated. Any such action taken under this paragraph is not appealable under s. 230.44.

(b) *Public hearing on the proposal; adoption of plan.* The director shall submit the proposal for any required changes in the compensation plan to the joint committee on employment relations. The committee shall hold a public hearing on the proposal. The proposal, as may be modified by the joint committee on employment relations together with the unchanged provisions of the current compensation plan, shall, for the ensuing fiscal year or until a new or modified plan is adopted under this subsection, constitute the state's compensation plan for positions in the classified service. Any modification of the director's proposed changes in the compensation plan by the joint committee on employment relations may be disapproved by the governor within 10 calendar days. A vote of 6 members of the joint committee on employment relations is required to set aside any such disapproval of the governor.

(c) *Interim adjustments.* Subject to pars. (a) and (b), the director may propose amendments to one or more parts of the compensation plan at such times as the needs of the service require.

(d) *Legislative employees.* This subsection shall not apply to employees of the legislature under s. 13.20 (2).

(e) *University of Wisconsin System senior executives, faculty, and academic staff employees; Wisconsin Technical College System senior executives.* 1. The director, after receiving recommendations from the board of regents, shall submit to the joint committee on employment relations a proposal for adjusting

compensation and employee benefits for employees under ss. 20.923 (4g), (5) and (6) (m) and 230.08 (2) (d) who are not included in a collective bargaining unit under subch. V of ch. 111 for which a representative is certified. The proposal shall include the salary ranges and adjustments to the salary ranges for the university senior executive salary groups 1 and 2 established under s. 20.923 (4g). The proposal shall be based upon the competitive ability of the board of regents to recruit and retain qualified faculty and academic staff, data collected as to rates of pay for comparable work in other public services, universities and commercial and industrial establishments, recommendations of the board of regents and any special studies carried on as to the need for any changes in compensation and employee benefits to cover each year of the biennium. The proposal shall also take proper account of prevailing pay rates, costs and standards of living and the state's employment policies. The proposal for such pay adjustments may contain recommendations for across-the-board pay adjustments, merit or other adjustments and employee benefit improvements. Paragraph (b) and sub. (1) (bf) shall apply to the process for approval of all pay adjustments for such employees under ss. 20.923 (4g), (5) and (6) (m) and 230.08 (2) (d). The proposal as approved by the joint committee on employment relations and the governor shall be based upon a percentage of the budgeted salary base for such employees under ss. 20.923 (4g), (5) and (6) (m) and 230.08 (2) (d). The amount included in the proposal for merit and adjustments other than across-the-board pay adjustments is available for discretionary use by the board of regents.

2. The director, after receiving recommendations from the board of the Technical College System, shall submit to the joint committee on employment relations a proposal for adjusting compensation and employee benefits for employees under s. 20.923 (7). The proposal shall include the salary ranges and adjustments to the salary ranges for the general senior executive salary groups established under s. 20.923 (7). Paragraph (b) and sub. (1) (bf) shall apply to the process for approval of all pay adjustments for such employees. The proposal as approved by the joint committee on employment relations and the governor shall be based upon a percentage of the budgeted salary base for such employees under s. 20.923 (7).

(4) COMPENSATION PLAN IMPLEMENTATION PROVISIONS. (a) When an approved compensation plan or an amendment thereto becomes effective, required individual pay adjustments shall be made in accordance with determinations made by the director to implement the approved plan.

(b) The director may, without prior approval of the joint committee on employment relations, determine the circumstances under which it is appropriate for an appointing authority to grant, and authorize an appointing authority to grant, a general wage or parity adjustment, or appropriate portion thereof, previously approved by the committee under this section to employees who did not receive the adjustment on the effective date of the adjustment set forth in the plan. No general wage or parity adjustment may become effective for any employee prior to the effective date of the individual employee transaction, but the director may authorize an appointing authority to grant a lump sum payment to an employee to reflect any wage or parity adjustment that the employee did not receive during the period between the effective date of the adjustment set forth in the plan and the effective date of the individual employee transaction.

(5) WITHIN RANGE PAY ADJUSTMENTS. (a) *Pay advancement techniques, application.* The varying circumstances and needs of the widely diverse occupational groups of state service must be recognized and met through several methods of systematic pay advancement. To this end the compensation program shall contain either individual or combinations of pay advancement techniques, and the pay schedules therein may contain provisions for a variety of methods of within range progression, including, but not limited to discretionary performance awards, equity adjustments, "time in grade" adjustments, and other appropriate within

range adjustments as may be provided in the compensation schedule.

(b) *Date.* Any authorized pay adjustments under this section shall be awarded by each appointing authority for the agency subject to par. (d) on the date or dates in the approved plan.

(c) *Increase limits.* Unless otherwise defined in the pay schedule the total amount for all such within range increases shall not exceed the amount for such increases specified and approved by the joint committee on employment relations in its action on the director's proposal for such increases.

(d) *Individual increase limit.* No appointing authority shall award an employee cumulative performance award increases or other types of cumulative within range pay adjustments exceeding a total of 10% of the employee's base pay during a fiscal year. This paragraph does not apply to a specific type of pay increase authorized by the compensation plan if the plan specifically refers to this paragraph and specifically provides that the type of pay increase referenced in the plan is not subject to this paragraph.

(e) *Appeal of discretionary performance award.* An employee who is dissatisfied with the evaluation methodology and results used by an agency to determine any discretionary performance award, or the amount of such an award, may grieve the decision to the appointing authority under the agency's grievance procedure. The decision of the appointing authority is final and may not be appealed to the commission under s. 230.44 or 230.45 (1) (c).

(6) ADDITIONAL HOURS OF WORK PROVISIONS. Provisions relating to compensation for hours of work in addition to the standard basis of employment under s. 230.35 (5) (a) shall be provided for in the compensation plan. The provisions shall include the rate or rates to be paid to employees and the standards for determining which employees receive such compensation.

(7m) PAY ADJUSTMENT FILING REQUIREMENTS. Except as provided in the rules of the director and in the compensation plan, pay increases shall be made only on the dates prescribed under sub. (8). Appointing authorities shall at such times each year as specified by the secretary file with the director and with the secretary of administration a list of employees showing their then existing pay rates and their proposed new pay rates.

(8) EFFECTIVE DATE OF COMPENSATION ADJUSTMENTS. Except as provided in s. 20.923 (3), all compensation adjustments for state employees shall be effective on the beginning date of the pay period nearest the statutory or administrative date.

(9) HEALTH INSURANCE PREMIUM CREDITS. The director may recommend to the joint committee on employment relations a program, administered by the department of employee trust funds, that provides health insurance premium credits to employees whose compensation is established under this section or s. 20.923 (2) or (3). The health insurance premium credits shall be used for the purchase of health insurance for a retired employee, or the retired employee's surviving insured dependents; for an eligible employee under s. 40.02 (25) (b) 6e., or the eligible employee's surviving insured dependents; for an employee who is laid off, but who is not on a temporary, school year, seasonal, or sessional lay-off, and his or her surviving insured dependents; and for the surviving insured dependents of an employee who dies while employed by the state, and shall be based on the employee's years of continuous service, accumulated unused sick leave and any other factor recommended by the director. Credits granted under the program to an employee who is laid off shall be available until the credits are exhausted, the employee is reemployed by the state, or 5 years have elapsed from the date of layoff, whichever occurs first. The approval process for the program is the same as that provided under sub. (3) (b) and the program shall be incorporated into the compensation plan under sub. (1).

History: 1971 c. 55, 125, 215; 1971 c. 270 ss. 20, 27, 28, 30 to 32; 1971 c. 336; Stats. 1971 s. 16.086; 1973 c. 12, 51, 90; 1975 c. 28, 39, 199, 224; 1977 c. 29, 44; 1977 c. 196 ss. 36, 130 (3), (5), (11), 131; 1977 c. 272, 418, 449; Stats. 1977 s. 230.12; 1979 c. 221; 1981 c. 20 s. 2202 (33) (b); 1981 c. 153; 1983 a. 27 ss. 1611am to 1612am, 2200 (15); 1983 a. 140; 1985 a. 29, 34, 42, 119, 332; 1987 a. 33, 83, 340, 399, 403;

1989 a. 39, 56, 117, 119, 124, 153, 336, 359; 1991 a. 269; 1995 a. 37, 88; 1997 a. 14, 237; 1999 a. 42, 102; 2001 a. 16, 29, 35; 2003 a. 33, 91, 117.

Cross Reference: See also ch. ER 29, Wis. adm. code.

230.13 Closed records. (1) Except as provided in sub. (3) and ss. 19.36 (10) to (12) and 103.13, the director and the administrator may keep records of the following personnel matters closed to the public:

- (a) Examination scores and ranks and other evaluations of applicants.
- (c) Dismissals, demotions and other disciplinary actions.
- (d) Pay survey data obtained from identifiable nonpublic employers.
- (e) Names of nonpublic employers contributing pay survey data.

(2) Unless the name of an applicant is certified under s. 230.25, the director and the administrator shall keep records of the identity of an applicant for a position closed to the public, except as provided in sub. (3).

(3) (a) The director and the administrator shall provide to the department of children and families or a county child support agency under s. 59.53 (5) information requested under s. 49.22 (2m) that would otherwise be closed to the public under this section. Information provided under this paragraph may only include an individual's name and address, an individual's employer and financial information related to an individual.

(b) The director and the administrator may provide any agency with personnel information relating to the hiring and recruitment process, including specifically the examination scores and ranks and other evaluations of applicants.

History: 1971 c. 270; 1977 c. 196 s. 37; Stats. 1977 s. 230.13; 1979 c. 339; 1989 a. 31; 1991 a. 269, 317; 1997 a. 191; 2003 a. 33, 47, 320; 2007 a. 20.

NOTE: 2003 Wis. Act 47, which affects this section, contains extensive explanatory notes.

Only names of applicants for classified positions who were not certified for employment may be withheld under sub. (2). *Milwaukee Journal v. UW Board of Regents*, 163 Wis. 2d 933, 472 N.W.2d 607 (Ct. App. 1991).

230.14 Recruitment. (1) Recruitment for classified positions shall be an active continuous process conducted in a manner that assures a diverse, highly qualified group of applicants; and shall be conducted on the broadest possible base consistent with sound personnel management practices and an approved affirmative action plan or program. Due consideration shall be given to the provisions of s. 230.19.

(3m) In advertising openings in the classified civil service, the state may not require as a condition of application that an applicant be a college graduate unless the opening must be filled by an incumbent holding a credential, as defined in s. 440.01 (2) (a), or other license, permit, certificate or registration in an occupation regulated by law and college graduation is required to obtain the occupational credential, license, permit, certificate or registration.

(4) The administrator may charge an agency a fee to announce any vacancy to be filled in a classified or unclassified position in that agency. Funds received under this subsection shall be credited to the appropriation account under s. 20.545 (1) (ka).

History: 1977 c. 196; 1981 c. 26; 1987 a. 32; 1991 a. 132; 1995 a. 27; 1997 a. 307; 2003 a. 33.

Cross Reference: See also ch. ER–MRS 6, Wis. adm. code.

230.143 Appointment; selective service registration. A person who is required to register with the selective service system under 50 USC, Appendix, sections 451 to 473, but has not registered, may not receive any of the following during the period that the person is required to register:

(1) An original appointment to a position in the classified service.

(2) An appointment to a position described in s. 230.08 (2) (k).

History: 2001 a. 16; 2003 a. 33.

230.147 Employment of aid recipients. (1) Each appointing authority of an agency with more than 100 authorized

permanent full–time equivalent positions shall prepare and implement a plan of action to employ persons who, at the time determined under sub. (4), receive aid under s. 49.19, or benefits under s. 49.147 (3) to (5), with the goal of making the ratio of those persons occupying permanent positions in the agency to the total number of persons occupying permanent positions in the agency equal to the ratio of the average case load receiving aid under s. 49.19, or benefits under s. 49.147 (3) to (5), in this state in the previous fiscal year to the average number of persons in the state civilian labor force in the preceding fiscal year, as determined by the department of children and families.

(2) Each appointing authority of an agency with 100 or fewer authorized permanent full–time equivalent positions is encouraged to employ persons who, at the time determined under sub. (4), receive aid under s. 49.19, or benefits under s. 49.147 (3) to (5), to attempt to make the ratio of those persons occupying permanent positions in the agency to the total number of persons occupying permanent positions in the agency equal to the ratio of the average case load receiving aid under s. 49.19, or benefits under s. 49.147 (3) to (5) in this state in the previous fiscal year to the average number of persons in the state civilian labor force in the preceding fiscal year, as determined by the department of children and families.

(3) Notwithstanding subs. (1) and (2), the state fair park board shall make every reasonable effort to employ in permanent full–time equivalent positions persons who, at the time determined under sub. (4), receive aid under s. 49.19 or benefits under s. 49.147 (3) to (5). The state fair park board shall consult with the office to assure that its efforts under this subsection comply with ch. 230.

(4) The determination of when a person is receiving aid under s. 49.19 for the purposes of this section shall be made as follows:

(a) For positions in the classified service, when the person is certified under s. 230.25.

(b) For positions outside of the classified service, when the person begins employment with the agency or state fair park board.

History: 1985 a. 285; 1987 a. 27; 1989 a. 31; 1995 a. 27 ss. 6281, 6282, 9130 (4); 1995 a. 289; 1997 a. 3; 2003 a. 33; 2007 a. 20.

230.148 Unclassified service reappointments. No person may be reappointed to a position in the unclassified service in any executive branch agency except the office of the governor, within one year after the person vacated the position, at a salary in excess of the salary which the person was receiving in the position at the time he or she vacated the position unless the excess is for an across the board pay adjustment or merit pay adjustment which is authorized by the joint committee on employment relations or by the legislature and which is generally awarded to other employees in the period between the time the person vacated the position and the time of the reappointment, or unless the excess was received by the person after vacating the position and while serving for not less than 6 consecutive months in any agency in any branch of state government.

History: 1979 c. 34.

230.15 Appointments, promotions, changes in classified service. (1) Subject to the restriction under s. 230.143, appointments to, and promotions in, the classified service shall be made only according to merit and fitness, which shall be ascertained so far as practicable by competitive examination. The administrator may waive competitive examination for appointments made under subs. (1m) and (2) and shall waive competitive examination for appointments made under sub. (2m).

(1m) (a) Whenever the state becomes responsible for a function previously administered by another governmental agency or a quasi–public or private enterprise, or when positions in the unclassified service, excluding employees of the legislature, are determined to be more appropriately included in the classified service, the affected positions shall be included in the classified service.

(b) Whenever a position is included in the classified service under par. (a), the director shall determine all of the following:

1. The classification of the position.
2. If the incumbent employee is certified under par. (c), the pay, employee benefits and status under s. 230.35 appropriate for the employee.

(c) 1. Whenever a position is included in the classified service under par. (a), the administrator may waive the requirement for competitive examination under sub. (1) with respect to the position and certify the incumbent employee for appointment to the position in accordance with subd. 2.

2. The administrator may certify an incumbent employee as eligible for appointment under subd. 1. if the administrator determines on the basis of sound personnel management practices that the incumbent is qualified for the position included in the classified service.

3. If an employee is appointed after being certified under subd. 2., the administrator shall determine the employee's probationary status under s. 230.28, except that the employee shall receive credit toward his or her probationary period for the time that the employee had been employed in the position immediately prior to appointment.

(2) If a vacancy occurs in a position in the classified service when peculiar and exceptional qualifications of a scientific, professional, or educational character are required, and if presented with satisfactory evidence that for specified reasons competition in such special cases is impracticable, and that the position can best be filled by the selection of some designated person of high and recognized attainments in such qualities, the administrator may waive competition requirements unless the vacancy is to be filled by promotion.

(2m) If a vacancy occurs in a position in the classified service and the administrator is notified by an appointing authority that the position is to be filled by a disabled veteran under s. 230.275, the administrator shall waive all competition requirements for filling the position.

(3) No person shall be appointed, transferred, removed, reinstated, restored, promoted or reduced in the classified service in any manner or by any means, except as provided in this subchapter.

History: 1971 c. 270 ss. 23, 46; Stats. 1971 s. 16.11; 1973 c. 90; 1977 c. 196 ss. 39, 131; Stats. 1977 s. 230.15; 1981 c. 140; 1983 a. 27; 1989 a. 31; 1993 a. 12; 1997 a. 307; 2001 a. 16; 2003 a. 33.

230.16 Applications and examinations. (1) (a) The administrator shall require persons applying for admission to any examination under this subchapter or under the rules of the administrator to file an application with the division a reasonable time prior to the proposed examination.

(am) The administrator may require in connection with the application such supplementary work history, educational transcripts, statements of physicians or others having knowledge of the applicant, as needed for qualification evaluations.

(b) The division shall furnish application forms without charge to all persons requesting them.

(2) Competitive examinations shall be free and open to all applicants who have fulfilled the preliminary requirements stated in the examination announcement. To assure that all applicants have a fair opportunity to compete, examinations shall be held at such times and places as, in the judgment of the administrator, most nearly meet the convenience of applicants and needs of the service.

(3) The administrator may appoint boards of examiners of at least 2 persons for the purpose of conducting oral examinations as a part of the examination procedure for certain positions. All board members shall be well-qualified and impartial. All questions asked and answers made in any examination of applicants shall be recorded and made a part of the records of the applicants.

(4) All examinations, including minimum training and experience requirements, for positions in the classified service shall be job-related in compliance with appropriate validation standards and shall be subject to the approval of the administrator. All relevant experience, whether paid or unpaid, shall satisfy experience requirements.

(5) In the interest of sound personnel management, consideration of applicants and service to agencies, the administrator may set a standard for proceeding to subsequent steps in an examination, provided that all applicants are fairly treated and due notice has been given. The standard may be at or above the passing point set by the administrator for any portion of the examination. The administrator shall utilize appropriate scientific techniques and procedures in administering the selection process, in rating the results of examinations and in determining the relative ratings of the competitors.

(6) If any applicant is unable to complete the examination in the form presented to the applicant due to a disability, the division shall provide a reader, an appropriate place to take the examination or other similar prerequisites to ensure equality of opportunity in the examination.

(7) (a) A preference shall be given to those veterans and to those spouses of veterans specified in subds. 1. to 6. who gain eligibility on any competitive employment register and who do not currently hold a permanent appointment or have mandatory restoration rights to a permanent appointment to any position. A preference means the following:

1. For a veteran, that 10 points shall be added to his or her grade.
2. For a disabled veteran, that 15 points shall be added to his or her grade.
3. For a disabled veteran whose disability is at least 30%, that 20 points shall be added to his or her grade.
4. For the spouse of a disabled veteran whose disability is at least 70%, that 10 points shall be added to the spouse's grade.
5. For the unremarried spouse of a veteran who was killed in action, that 10 points shall be added to the spouse's grade.
6. For the unremarried spouse of a veteran who died of a service-connected disability, that 10 points shall be added to the spouse's grade.

(b) An applicant who is certified for a position after receiving a preference under par. (a) 4., 5. or 6. and who is appointed to that position may not obtain a preference under par. (a) 4., 5. or 6. for any other civil service position for which the applicant subsequently applies.

(7m) (a) In this subsection, "veteran" means a person who fulfills at least one of the following requirements:

1. Served on active duty in the U.S. armed forces for at least 180 days, not including training.
2. Was discharged from the U.S. armed forces because of a disability incurred during active duty or because of a disability that is later adjudicated by the U.S. department of veterans affairs to have been incurred during active duty.
3. Was honorably discharged from the U.S. armed forces.
4. Is eligible to receive federal veterans benefits.

(b) The office shall accept an application after its due date from a veteran if all of the following apply:

1. The register established on the basis of timely applications was established not more than 60 days before the applicant's separation from the U.S. armed forces.
2. The register has not expired.
3. The application was filed not more than 45 days after the applicant's separation from the U.S. armed forces.
4. The examination for the position is a written, nonessay examination that is scored by a machine.

(c) Within 30 days after acceptance of an application under par. (b), the office shall give the applicant an examination.

(9) The officials in control of state, municipal and county buildings, upon requisition by the administrator, shall furnish without charge adequate rooms and building services for the administration of examinations.

(10) Every reasonable precaution shall be taken to prevent any unauthorized person from gaining any knowledge of the nature or content of the examinations that is not available to every applicant.

(11) Records of examinations, including a transcript or recorded tape of oral examinations, given under this subchapter shall be retained for at least one year. Inspection of such records shall be regulated by rules of the administrator.

History: 1971 c. 270 ss. 12, 24, 35 to 37; Stats. 1971 s. 16.12; 1977 c. 196 ss. 40, 111, 130 (5), (6); 1977 c. 272; Stats. 1977 s. 230.16; 1981 c. 26, 140; 1983 a. 148 s. 10; 1983 a. 430, 538; 1987 a. 399; 1989 a. 31; 1991 a. 2, 101; 1997 a. 27, 307; 1999 a. 87, 102; 2003 a. 33.

Cross Reference: See also ch. ER–MRS 6, Wis. adm. code.

A Massachusetts civil service preference for veterans did not deny equal protection to women. *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256 (1979).

230.17 Applicants and eligibles may be barred; bonds may be required. (1) The administrator shall provide by rule, the conditions, not otherwise provided by law, under which an applicant may be refused examination or reexamination, or an eligible refused certification. These conditions shall be based on sufficient reason and shall reflect sound technical personnel management practices and those standards of conduct, deportment and character necessary and demanded to the orderly, efficient and just operation of the state service.

(2) If the administrator refuses to examine an applicant, or after an examination to certify an eligible, as provided in this section, the administrator, if requested by the applicant so rejected within 10 days of the date of receipt of the notice of rejection, shall give the applicant a full and explicit statement of the exact cause of such refusal to examine or to certify. Applicants may appeal to the commission the decision of the administrator to refuse to examine or certify under s. 230.44 (1) (a). Upon request of an applicant or an eligible for a civil service position who has a disability, the department of health services shall obtain from the administrator a detailed description of all duties entailed by such position and shall determine and report its findings to the administrator, as to the ability of the applicant, or eligible, to perform the duties of such position. Such findings shall be conclusive as to the qualifications of any applicant, or eligible, so examined. A notice of rejection shall notify an applicant or eligible of his or her rights under this subsection.

(3) When any position to be filled involves fiduciary responsibility, the appointing authority shall conduct a criminal history background check before offering employment to an applicant for the position. If otherwise permitted by law, the appointing authority may require the appointee to furnish bond or other security, and shall notify the administrator of the amount and other details thereof. Any surety company authorized to do business in this state shall be a sufficient security on any such bond.

History: 1971 c. 270; 1977 c. 196 ss. 42, 130 (5); Stats. 1977 s. 230.17; 1983 a. 453; 1995 a. 27 s. 9126 (19); 1999 a. 87; 2005 a. 350; 2007 a. 20 s. 9121 (6) (a).

230.18 Discrimination prohibited. No question in any form of application or in any examination may be so framed as to elicit information concerning the partisan political or religious opinions or affiliations of any applicant nor may any inquiry be made concerning such opinions or affiliations and all disclosures thereof shall be discounted except that the administrator may evaluate the competence and impartiality of applicants for positions such as clinical chaplain in a state institutional program. No discriminations may be exercised in the recruitment, application, examination or hiring process against or in favor of any person because of the person's political or religious opinions or affiliations or because of age, sex, disability, race, color, sexual

orientation, national origin or ancestry except as otherwise provided.

History: 1971 c. 270; 1977 c. 196 s. 43; Stats. 1977 s. 230.18; 1981 c. 112, 391; 1999 a. 87.

230.19 Promotion. (1) The administrator shall provide employees with reasonable opportunities for career advancement, within a classified service structure designed to achieve and maintain a highly competent work force, with due consideration given to affirmative action.

(2) If, in the judgment of the administrator, the group of applicants best able to meet the requirements for vacancies in positions in the classified service are available within the classified service, the vacancies shall be filled by competition limited to persons in the classified service who are not employed under s. 230.26 or 230.27 and persons with the right of restoration resulting from layoff under s. 230.34 (2), unless it is necessary to go outside the classified service to be consistent with an approved affirmative action plan or program. The administrator may also limit competition for promotion to the employees of an agency or an employing unit within an agency if the resulting group of applicants would fairly represent the proportion of members of racial and ethnic, gender or disabled groups in the relevant labor pool for the state.

(3) A person with the right of restoration resulting from layoff under s. 230.34 (2) may compete only for a position under sub. (2) for which he or she could have competed had the layoff not occurred.

History: 1971 c. 270 s. 50; 1977 c. 196 ss. 44, 112; 1983 a. 402; 1987 a. 32; 1989 a. 31; 1999 a. 87.

Cross Reference: See also ch. ER–MRS 14, Wis. adm. code.

230.20 Recommendations. (1) Selection of classified state employees shall be based solely on merit and no employment recommendation shall be based on political or religious affiliations or on membership in associations not primarily related to merit in employment.

(2) An appointing authority may consider only those recommendations which he or she believes provide an objective evaluation of an applicant's character, training, experience, skills or abilities as they relate to the requirements for the position.

History: 1971 c. 270; 1977 c. 196 s. 45; 1977 c. 273; Stats. 1977 s. 230.20; 1999 a. 102.

230.21 Unskilled labor and critical recruitment selection. (1) Subject to s. 230.275, the administrator may, to meet the needs of the service, establish separate recruitment, examination and certification procedures for filling positions in unskilled labor and service classes.

(1m) (a) If the administrator uses the method of random certification to determine which applicants for an unskilled labor or service position will receive further consideration for the position, the administrator shall do all of the following:

1. Engage in expanded certification by certifying additional names as provided in s. 230.25 (1n).

2. Additionally certify up to 3 names of persons who are veterans.

(b) If the administrator uses the method of random certification to determine which applicants for an unskilled labor or service position will receive further consideration for the position and the appointing authority does not select a veteran or a person the hiring of whom would serve affirmative action purposes, the appointing authority shall make and retain a written record of the appointing authority's reasons for selecting the person who was appointed. The appointing authority shall make the written records available to the office and annually submit a report to the office summarizing the reasons contained in the written records.

(2) The administrator may designate classifications in which applicants are in critically short supply and may develop such recruitment, examination and certification processes as will provide agencies with prompt certification when qualified applicants

can be found, provided that due notice has been given and proper competitive standards have been maintained.

(3) The administrator shall designate classifications in prison industries in the department of corrections as critical positions requiring expeditious hiring and shall develop such recruitment, examination and certification processes as will provide the department with prompt certification when qualified applicants can be found, provided that due notice has been given and proper competitive standards have been maintained.

History: 1971 c. 270; 1977 c. 196 ss. 45, 130 (3), (5); Stats. 1977 s. 230.21; 1983 a. 333; 1991 a. 39, 101; 1997 a. 307; 2003 a. 33.

Cross Reference: See also ch. ER–MRS 7, Wis. adm. code.

230.213 Affirmative action procedures for corrections positions. The administrator may, to meet affirmative action objectives, establish such recruitment, examination and certification procedures for positions in the department of corrections as will enable the department of corrections to increase the number of employees of a specified gender or a specified racial or ethnic group in those positions. The administrator shall design the procedures to obtain a work force in the department of corrections that reflects the relevant labor pool. The administrator may determine the relevant labor pool from the population of the state or of a particular geographic area of the state, whichever is more appropriate for achieving the affirmative action objective.

History: 1991 a. 39; 1995 a. 27, 225.

Cross Reference: See also s. ER–MRS 8.01, Wis. adm. code.

230.215 Part-time employment and flexible-time schedules. (1) DECLARATION OF POLICY. The legislature finds and declares:

(a) That employment practices which provide flexibility in scheduling hours of work often result in increased worker productivity, reduced absenteeism, improved employee morale and a more economical and efficient use of energy, highways and other transit systems.

(b) That traditional full-time work patterns fail to meet the needs of many potentially productive citizens who, due to age, health or family circumstances, are effectively prevented from engaging in full-time employment.

(c) That a greater number of permanent part-time employment opportunities are necessary to allow citizens a higher level of participation in the work force and to permit a greater utilization of the skills, talents and abilities of all citizens who want to work.

(d) That it is the intent of the legislature that all agencies of state government participate in developing and creating flexible-time work schedules, additional permanent part-time positions and other alternative work patterns in order to maximize, in a manner consistent with the needs of state service, the employment options available to existing and potential state employees.

(e) That it is the intent of the legislature that all agencies of state government make available permanent part-time employment opportunities in classified positions.

(2) FLEXIBLE-TIME EMPLOYMENT SCHEDULING. In this subsection “flexible-time schedule” means a work schedule which includes required days or hours during which an employee subject to the work schedule must be present for work and designated hours during which the employee, with the approval of his or her supervisor, may elect a time of arrival to and departure from work. Every agency shall develop a plan for the establishment of employee flexible-time schedules. The plan shall attempt to maximize efficiency of agency operations, the level of services to the public, energy conservation and employee productivity and shall consider traffic congestion, transit facilities and other relevant factors.

(3) PART-TIME EMPLOYMENT. (a) An agency may, with the approval of the director and with the approval of the secretary of administration under s. 16.50, restructure budgeted permanent positions as such positions become vacant or if an employee voluntarily requests a job-sharing or permanent part-time employment opportunity. No employee occupying a full-time permanent

position may be involuntarily terminated, demoted, transferred or reassigned in order to restructure that position for permanent part-time employment and no such employee may be required to accept a permanent part-time position as a condition of continued employment.

(b) If the director, upon review of the report submitted under sub. (4), determines that an agency’s past or proposed actions relating to permanent part-time employment opportunities do not adequately reflect the policy under sub. (1) (e), the director may recommend procedures designed to enable the agency to effect such policy.

(c) Permanent part-time appointments may be made for any number of hours in excess of 600 hours per year.

(4) REPORTS. Each agency, in complying with s. 15.04 (1) (d), shall include a report on the progress or failure of the plans of such agency in achieving the policies stated under sub. (1) and shall submit a copy of such report to the director.

(5) NONAPPLICATION. Section 230.35 (5) does not apply to employees subject to part-time employment and employee flexible-time scheduling under this section.

History: 1977 c. 196; 1979 c. 175 s. 53; 1979 c. 221; 1987 a. 140; 2003 a. 33.

230.22 Entry professional selection. (1) The director may establish by rule an entry professional class program for use in a wide range of entry professional positions.

(2) In connection with this program the director may establish separate classifications and corresponding pay provisions to provide agencies an entry professional program, through which they can compete on campuses and in the labor market for the best available applicants.

(3) Subject to s. 230.275, the administrator may establish separate recruitment, evaluation and certification procedures for certain entry professional positions. Vacancies in entry professional positions may be limited to persons with a degree from an institution of higher education, as defined in s. 108.02 (18), or a degree under an associate degree program, as defined in s. 38.01 (1).

(4) The administrator may provide for cooperative programs leading to eligibility for permanent appointment in order to enable institutions of higher education and agencies to attract and train the highest caliber of undergraduate or graduate students for government employment.

History: 1971 c. 270; 1977 c. 196 ss. 46, 113, 130 (5); Stats. 1977 s. 230.22; 1983 a. 27 ss. 1612c to 1612e, 2200 (15); 1991 a. 39; 1997 a. 307; 2003 a. 33.

Cross Reference: See also s. ER–MRS 8.20, Wis. adm. code.

230.24 Career executive selection. (1) The director may by rule develop a career executive program that emphasizes excellence in administrative skills in order to provide agencies with a pool of highly qualified executive candidates, to provide outstanding administrative employees a broad opportunity for career advancement and to provide for the mobility of such employees among the agencies and units of state government for the most advantageous use of their managerial and administrative skills. To accomplish the purpose of this program, the administrator may provide policies and standards for recruitment, examination, probation, employment register control, certification, transfer, promotion and reemployment, and the director may provide policies and standards for classification and salary administration, separate from procedures established for other employment. The director shall determine the positions which may be filled from career executive employment registers.

(1m) The policy established by the administrator under sub. (1) that deals with probation shall provide the option of extending the probationary period for individuals with disabilities, as defined in s. 111.32 (8), who are employees in a manner consistent with s. 230.28 (1) (bm).

(2) A vacancy in a career executive position may be filled through an open competitive examination, a competitive promotional examination or by restricting competition to employees in career executive positions in order to achieve and maintain a highly competent work force in career executive positions, with

due consideration given to affirmative action. The appointing authority shall consider the guidelines under s. 230.19 when deciding how to fill a vacancy under this paragraph.

(3) No rule may be adopted after September 15, 1979 which provides for an open enrollment period in the career executive program for incumbents who had an option to enter the program and who exercised the option of remaining outside of the program.

History: 1971 c. 270; 1977 c. 196 ss. 49, 114, 130 (3), (5); 1979 c. 42; 1983 a. 27, 192; 1987 a. 32; 1989 a. 144; 1997 a. 112; 2003 a. 33.

Cross Reference: See also chs. ER 30 and ER–MRS 30, Wis. adm. code.

230.25 Certification, appointments and registers.

(1) Appointing authorities shall give written notice to the administrator of any vacancy to be filled in any position in the classified service. The administrator shall certify, under this subchapter and the rules of the administrator, from the register of eligibles appropriate for the kind and type of employment, the grade and class in which the position is classified, any number of names at the head thereof. In determining the number of names to certify, the administrator shall use statistical methods and personnel management principles that are designed to maximize the number of certified names that are appropriate for filling the specific position vacancy. Up to 2 persons considered for appointment 3 times and not selected may be removed from the register for each 3 appointments made. Certification under this subsection shall be made before granting any preference under s. 230.16 (7).

(1g) For every position to be filled by promotion from a promotional register, the administrator shall, after certifying names under sub. (1), additionally certify the name of the highest ranked disabled veteran whose disability is at least 70%.

(1m) After certifying names under sub. (1), additional names shall be certified in rank order of those who with the combination of veterans preference points awarded under s. 230.16 (7) and examination score earn a total score equal to or higher than the lowest score of those certified on the basis of examination only. The number of veterans or spouses of veterans added to the list may not exceed the number of names certified under sub. (1).

(1n) (a) After certifying names under subs. (1), (1g) and (1m), the administrator may engage in expanded certification by doing one or more of the following:

1. Certifying up to 3 names of persons belonging to at least one of one or more specified racial or ethnic groups.
2. Certifying up to 3 names of persons of a specified gender.
3. Certifying up to 3 names of persons with a disability.

(b) The administrator may certify names under par. (a) 1. or 2. only if an agency requests expanded certification in order to comply with an approved affirmative action plan or program. The administrator may certify names under par. (a) 3. only if an agency requests expanded certification in order to hire persons with a disability.

(1p) If an appointing authority appoints a person certified under this section and the person is not a veteran, the spouse of a veteran or a person the hiring of whom would serve affirmative action purposes, the appointing authority shall make and retain a written record of the appointing authority's reasons for selecting the person who was appointed. The appointing authority shall make the written records available to the office and annually submit a report to the office summarizing the reasons contained in the written records. The office shall annually prepare a report summarizing, for each agency, the reasons contained in the records prepared by appointing authorities under this subsection.

(2) (a) When certifying names to appointing authorities under this section, the administrator shall specify whether the certification includes qualifying veterans or persons the hiring of whom would serve affirmative action purposes, without divulging the names of those individuals. The administrator shall not disclose any applicant's test score, with or without the addition of veterans preference points under s. 230.16 (7), to the appointing authority.

(b) Unless otherwise provided in this subchapter or the rules of the administrator, appointments shall be made by appointing authorities to all positions in the classified service from among those certified to them in accordance with this section. Appointments shall be made within 60 days after the date of certification unless an exception is made by the administrator. If an appointing authority does not make an appointment within 60 days after certification, he or she shall immediately report in writing to the administrator the reasons therefor. If the administrator determines that the failure to make an appointment is not justified under the merit system, the administrator shall issue an order directing that an appointment be made.

(3) (a) Subject to par. (b), the term of eligibility on original entrance and promotional registers is 6 months and thereafter the register expires but may be reactivated by the administrator for up to 3 years from the date of the establishment of the register. Except as provided in ss. 230.28 and 230.34, the eligibility of individuals for reinstatement is 5 years and the eligibility of individuals for restoration is 3 years.

(b) 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).

(4) (a) The administrator may establish a new and separate register for a specific position or class only when in the administrator's judgment there is no appropriate existing register from which appointments may be made.

(b) The administrator may establish separate registers for various geographic areas of the state if the needs of the service so require, provided proper publicity has been given of the intent to establish such registers.

(5) Notwithstanding sub. (2) (a), if an appointing authority elects to appoint a disabled veteran to a vacant position on a non-competitive basis under s. 230.275 and the appointing authority has requested a certification for the position, the administrator shall provide the appointing authority the names of all disabled veterans certified for appointment to the position and who satisfy the condition specified in s. 230.275 (1) (a) and the names of all such disabled veterans who are on any other employment register that is identified by the appointing authority.

History: 1971 c. 270 ss. 45, 48; Stats. 1971 s. 16.20; 1977 c. 196 ss. 50, 115, 130 (5), 131; 1977 c. 273; Stats. 1977 s. 230.25; 1983 a. 27; 1985 a. 29; 1987 a. 32; 1991 a. 101; 1997 a. 27, 307; 1999 a. 87; 2003 a. 33.

Cross Reference: See also chs. ER–MRS 11 and 12, Wis. adm. code.

The federal civil rights act of 1991 does not prohibit expanded certification under (1n). 80 Atty. Gen. 264.

230.26 Limited term appointments. (1) The administrator may provide by rule for selection and appointment for limited term appointments, which are provisional appointments or appointments for less than 1,044 hours per year.

(1m) (a) Except as provided in par. (b), an appointing authority is prohibited from appointing a person who is not a resident of this state to a limited term appointment.

(b) The administrator may waive the prohibition under par. (a) if the appointed person's permanent work site is located outside this state.

(2) If there are urgent reasons for filling a vacancy in any position in the classified service and the administrator is unable to certify to the appointing authority, upon requisition by the latter, a list of persons eligible for appointment from an appropriate employment register, the appointing authority may nominate a person to the administrator for noncompetitive examination. If the nominee is certified by the administrator as qualified, the nominee may be appointed provisionally to fill the vacancy until an appointment can be made from a register established after announcement of competition for the position, except that no provisional appointment may be continued for more than 45 working days after the date of certification from the register. Successive appointments

may not be made under this subsection. This subsection does not apply to a person appointed to a vacant position in the classified service under s. 230.275.

(4) Fringe benefits specifically authorized by statutes, with the exception of deferred compensation plan participation under subch. VII of ch. 40, worker's compensation, unemployment insurance, group insurance, retirement, and social security coverage, shall be denied employees hired under this section. Such employees may not be considered permanent employees and do not qualify for tenure, vacation, paid holidays, sick leave, performance awards, or the right to compete in promotional examinations.

(5) If the administrator determines that an agency is not in compliance with the requirements of, or rules related to, sub. (1), (1m) or (2) regarding a particular employee, the administrator shall direct the appointing authority to terminate the employee.

History: 1971 c. 270 ss. 54, 55; Stats. 1971 s. 16.21; 1975 c. 147 s. 54; 1977 c. 196 s. 51; Stats. 1977 s. 230.26; 1979 c. 97; 1979 c. 221 ss. 732, 909; 1981 c. 20, 26; 1983 a. 27 ss. 1613, 1614, 2202 (15); 1985 a. 332; 1997 a. 39, 307; 2001 a. 16.

Cross Reference: See also ch. ER–MRS 10, Wis. adm. code.

230.27 Project positions. (1) A “project position” means a position which is normally funded for 6 or more consecutive months and which requires employment for 600 hours or more per 26 consecutive biweekly pay periods, either for a temporary workload increase or for a planned undertaking which is not a regular function of the employing agency and which has an established probable date of termination. No project position may exist for more than 4 years.

(1m) (a) Except as provided in par. (b), an appointing authority is prohibited from appointing a person who is not a resident of this state to a project position under this section.

(b) The administrator may waive the prohibition under par. (a) if there is a critical need for employees in a specific classification or position or a critical shortage of residents of this state possessing the skills or qualifications required for a position.

(2) Subject to s. 230.275, the administrator may provide by rule for the selection and appointment of a person to a project position.

(2k) If an appointing authority selects, for a project position, a person who is not a veteran or is not a person the hiring of whom would serve affirmative action purposes, the appointing authority shall make and retain a written record of the appointing authority's reasons for selecting the person who was appointed. The appointing authority shall make the written records available to the office and annually submit a report to the office summarizing the reasons contained in the written records. The office shall annually prepare a report summarizing, for each agency, the information submitted by appointing authorities under this subsection.

(2m) An employee in a project position on a project appointment, while in the position, shall earn and receive all rights and privileges specifically authorized by statute for nonrepresented classified employees, except tenure, transfer, restoration, reinstatement, promotion eligibility and layoff benefits. A project employee's vacation and holidays under s. 230.35 (4) (d) and sick leave shall be on a prorated basis if the employee works less than full-time. Seniority, continuous service, benefits and rights earned while serving a project appointment shall be transferred to or from other project, permanent, seasonal, or sessional appointments in the following manner:

(a) Project appointees who have not previously held a permanent classified or unclassified civil service position may not transfer continuous service rights and benefits earned in any project appointment to subsequent project or permanent appointments.

(b) Project appointees who previously held a permanent classified or unclassified civil service position prior to being appointed to a project position may transfer rights and benefits previously earned to the project appointment, except those rights and benefits specifically excluded under this subsection, in a manner consis-

tent with that applied to similar transactions in the permanent classified service. Such project employees who may subsequently be appointed to another project position or to a permanent classified position may transfer their rights and benefits to the new appointment in a manner consistent with that applied to similar transactions in the permanent classified service.

(3) A leave of absence may be granted under this section to cover the time served on a project appointment. Any time limits established under s. 230.35 do not apply to leaves of absence granted under this subsection.

History: 1977 c. 196; 1979 c. 221; 1981 c. 26, 140; 1983 a. 27, 192; 1985 a. 29; 1991 a. 101; 1997 a. 307; 2003 a. 33.

Cross Reference: See also chs. ER 34 and ER–MRS 34, Wis. adm. code.

230.275 Noncompetitive appointment of certain disabled veterans. (1) Whenever a vacancy occurs in a position in the classified service that is determined by the administrator to be a nonprofessional position or in an entry professional position under s. 230.22, the appointing authority may appoint a disabled veteran on a noncompetitive basis if all of the following occur:

(a) The disabled veteran has served in the U.S. armed forces and is included on a U.S. armed forces permanent disability list with a disability rating of at least 30% or the disabled veteran has been rated by the U.S. department of veterans affairs as having a compensable service-connected disability of at least 30%.

(b) The disabled veteran presents to the appointing authority written documentation from an appropriate department of the federal government certifying the existence and extent of the disability. This certification must have been issued by the appropriate department of the federal government within the year preceding appointment.

(c) The appointing authority determines that the disabled veteran is qualified to perform the duties and responsibilities of the position.

(d) The appointing authority notifies the administrator in writing that the position is to be filled with a disabled veteran on a noncompetitive basis.

(e) The disabled veteran does not hold a permanent appointment or have mandatory restoration rights to a permanent appointment.

(2) A disabled veteran appointed to a vacant position under this section need not be certified under this subchapter for appointment to the position.

(3) (a) 1. If an appointing authority elects to appoint a disabled veteran to a vacant position on a noncompetitive basis under sub. (1), the appointing authority shall offer to interview for the position any disabled veteran who has expressed an interest to the appointing authority in applying for the position, who satisfies the condition specified in sub. (1) (a) and who appears to have the skills and experience suitable for performing the duties and responsibilities of the position.

2. If an appointing authority elects to appoint a disabled veteran to a vacant position on a noncompetitive basis under sub. (1) and the appointing authority has requested a certification for the position, the appointing authority shall offer to interview for the position any disabled veteran who is certified for appointment to the position and who satisfies the condition specified in sub. (1) (a).

(b) Except as provided in par. (a), if an appointing authority elects to appoint a disabled veteran to a vacant position on a noncompetitive basis under sub. (1), an appointing authority is not required to interview any other person, including any person certified for appointment to the position.

(4) Nothing in this section shall require an appointing authority to appoint a disabled veteran to a vacant position in the classified service or prohibit an appointing authority from filling a vacant position in the classified service from the list of those per-

sons certified under this subchapter for appointment to the position.

History: 1997 a. 307.

230.28 Probationary period. (1) (a) All original and all promotional appointments to permanent, sessional and seasonal positions, with the exception of those positions designated as supervisor or management under s. 111.81, in the classified service shall be for a probationary period of 6 months, but the administrator at the request of the appointing authority and in accordance with the rules related thereto may extend any such period for a maximum of 3 additional months. Dismissal may be made at any time during such periods. Upon such dismissal, the appointing authority shall report to the administrator and to the employee removed, the dismissal and the reason therefor. The administrator may remove an employee during the employee's probationary period if the administrator finds, after giving notice and an opportunity to be heard, that such employee was appointed as a result of fraud or error.

(am) All probationary periods for employees in supervisory or management positions are one year unless waived after 6 months under par. (c). The waiver under par. (c) may be exercised for an employee in a supervisory position only if the employee has successfully completed a supervisory development program under s. 230.046 (2). However, persons who transfer or are reinstated to supervisory or management positions consistent with conditions under sub. (4) and who had previously obtained permanent status in class in a supervisory or management position prior to the transfer or reinstatement shall serve a probationary period in accordance with sub. (4).

(b) The administrator may authorize a longer probationary period not to exceed 2 years for any administrative, technical or professional position, in order to provide the appointing authority assurance that the employee has had adequate exposure to the various responsibilities which are a part of the position or classification.

(bm) At the request of an appointing authority and an employee, the administrator may authorize, at any time before the completion of the probationary period, an extended probationary period of up to one additional year for an individual with a disability, as defined in s. 111.32 (8), who is the employee to allow the employee to do any of the following:

1. Complete any necessary comprehensive or vocational rehabilitation program.
2. Obtain or adapt to special modifications made to the employee's workplace to accommodate the employee's disability.
3. Achieve the knowledge, skills and abilities to competently perform the required tasks for the position for which the employee is appointed.

(bn) The appointing authority shall waive any remaining portion of the extended probationary period if the reasons for extending the probationary period are met.

(c) Upon request by the appointing authority, the administrator may waive any portion of the lengthened probationary period but in no case before a 6-month probationary period has been served.

(d) A promotion or other change in job status within an agency shall not affect the permanent status in class and rights, previously acquired by an employee within such agency. An employee demoted under s. 230.34 (1) shall not retain the permanent status in class previously acquired in the classification from which demoted.

(2) A probationary employee's supervisor shall complete a performance evaluation under s. 230.37 of the employee's work. The evaluation shall be in writing and shall indicate whether or not the employee's services have been satisfactory and whether or not the employee will be retained in his or her position. A copy of the evaluation shall be given to the employee at a reasonable time before the completion of the employee's probation. An employee

shall gain permanent status unless terminated by the appointing authority prior to the completion of his or her probationary period.

(3) If an employee is removed from a position during the probationary period, and the administrator determines that the person is suitable for appointment to another position, the person's name may be restored to the list from which it was certified.

(4) A person reinstated in an employing unit other than one in which the person previously served in permanent status in the class in which the person is being reinstated, or an employee who transfers from one employing unit to another or an employee who moves to a different employing unit in conjunction with a voluntary demotion, may be required by the appointing authority to serve a probationary period. Provisions for the duration of such probationary period shall be provided in the rules of the administrator.

(5) An employee whose position is classified as "trainee" shall be on a probationary period for the duration of the training program and may be separated during that period without the right of appeal, at the discretion of the appointing authority. Upon qualifying for the objective classification, the employee shall serve a probationary period as specified in sub. (1).

(6) A person with a right of restoration resulting from layoff under s. 230.34 (2) who competes for promotion to a position under s. 230.19 (3) and is appointed shall serve a probationary period under sub. (1). If the appointing authority terminates the employee during the probationary period, the person shall return to his or her former layoff status.

History: 1971 c. 270, 336; 1977 c. 196 ss. 52, 117, 130 (4), (5), 131; 1977 c. 273; Stats. 1977 s. 230.28; 1979 c. 221; 1983 a. 402; 1989 a. 144; 1997 a. 112; 1999 a. 9.

Cross Reference: See also ch. ER–MRS 13, Wis. adm. code.

The discharge of a probationary employee is not appealable as part of the "hiring process" under s. 230.44 (1) (d). Board of Regents v. Wisconsin Personnel Commission 103 Wis. 2d 545, 309 N.W.2d 366 (1981).

An employee who has acquired permanent status in class who is promoted within the same agency, does not lose permanent status in the prior position while in probationary status in the new position. If termination from the new position occurs, the employee must be reinstated in the former position. The required due process to be afforded in a disciplinary action to an employee with a protected property interest in a position is discussed. Arneson v. Jezewski, 225 Wis. 2d 371, 592 N.W.2d 606 (1999), 95–1592.

An employee serving a promotional probationary period can be removed from that position without the right to appeal. Statutory rights extended to an employee with permanent status protect the employee by requiring that the employee be returned to the pre-promotion position, rather than completely terminated from state service. Any discipline affecting permanent status in class in the pre-promotion position can be maintained only for just cause. Kriska v. WERC, 2008 WI App 13, ___ Wis. 2d ___, 745 N.W.2d 688, 07–0813.

230.29 Transfers. (1) Subject to sub. (2), a transfer may be made from one position to another only if specifically authorized by the administrator.

(2) This section does not apply to an employee of the University of Wisconsin Hospitals and Clinics Board.

History: 1971 c. 270; 1977 c. 196 ss. 54, 130 (5); Stats. 1977 s. 230.29; 1995 a. 27.

Cross Reference: See also ch. ER–MRS 15, Wis. adm. code.

230.30 Employing units; establishment and revision.

(1) Each agency shall constitute an employing unit for purposes of personnel transactions, except where appropriate functional, organizational or geographic breakdowns exist within the agency and except as provided in sub. (2). These breakdowns may constitute a separate employing unit for one or more types of personnel transactions under an overall employing unit plan if requested by the appointing authority of that agency and approved by the administrator. If the administrator determines, after conferring with the appointing authority of the employing agency, that an employing unit is or has become inappropriate to carry out sound personnel management practices due to factors including, but not limited to, the size or isolated location of portions of the employing unit, the administrator may revise the employing unit structure of the agency to effect the remedy required.

(2) The division of gaming in the department of administration shall constitute a separate employing unit for purposes of personnel transactions.

History: 1979 c. 221; 1997 a. 27.

230.31 Restoration of employment and reinstatement privileges. (1) Any person who has held a position and obtained permanent status in a class under the civil service law and rules and who has separated from the service without any delinquency or misconduct on his or her part but owing to reasons of economy or otherwise shall be granted the following considerations:

(a) For a 5-year period from the date of separation, the person shall be eligible for reinstatement in a position having a comparable or lower pay rate or range for which such person is qualified.

(b) For a 3-year period from the date of separation, if on layoff status, the person shall be placed, in inverse order of layoff, on an appropriate mandatory restoration register for the unit used for layoff and on a restoration register for the agency from which the person was laid off. Use of such registers shall be subject to the rules of the administrator.

(2) The administrator may also provide for the reinstatement of persons who have served in seasonal and sessional employment and for persons who separate from a position while serving a probationary period.

History: 1971 c. 270 s. 60; Stats. 1971 s. 16.25; 1977 c. 196 ss. 56, 130 (5); 1977 c. 273, 418; Stats. 1977 s. 230.31; 1979 c. 32; 1981 c. 140; 1997 a. 307.

Cross Reference: See also ch. ER–MRS 16, Wis. adm. code.

230.315 Differential pay, sick leave, and annual leave for state employees activated into certain federal service. (1) Subject to sub. (3), a state employee who is activated

to serve on military duty in the U.S. armed forces shall be paid his or her state salary, less any military pay and housing allowances that he or she receives, during the period in which the employee is on military duty in the U.S. armed forces, unless the military pay and housing allowances equal or exceed his or her state salary, and shall accumulate sick leave and paid annual leave of absence as though no interruption in service has occurred if all of the following apply:

(a) On or after January 1, 2003, the employee is activated to serve, or is serving, on military duty in the U.S. armed forces, other than for training purposes.

(b) On the date on which he or she is activated, the employee is either a member of the Wisconsin national guard or a member of a reserve component of the U.S. armed forces or is recalled to active military duty from inactive reserve status.

(c) The employee has received a military leave of absence under s. 230.32 (3) (a) or 230.35 (3), under a collective bargaining agreement under subch. V of ch. 111, or under rules promulgated by the office of employment relations or is eligible for reemployment with the state under s. 321.64 after completion of his or her service in the U.S. armed forces.

(2) Subject to sub. (3), on or after January 1, 2003, a state employee who is required to serve, or who is serving, in the U.S. public health service and who is on detail with any of the U.S. armed forces shall be paid his or her state salary, less any federal pay and housing allowances that he or she receives, during the period in which the employee is detailed for duty with any of the U.S. armed forces, unless the federal pay and housing allowances equal or exceed his or her state salary, and shall accumulate sick leave and paid annual leave of absence as though no interruption in service has occurred.

(3) (a) Except as provided in par. (b), beginning on the day in which a state employee is activated to serve on military duty in the U.S. armed forces or to serve in the U.S. public health service, the employee shall receive the pay and benefits authorized under sub. (1) or (2) for a period of not more than 179 days. If a state employee is eligible to receive pay and benefits for military service under s. 230.35 (3) (a) or a collective bargaining agreement under subch. V of ch. 111, the state employee shall become eligi-

ble to receive the pay and benefits authorized under sub. (1) or (2) only after receiving the pay and benefits for military service under s. 230.35 (3) (a) or a collective bargaining agreement under subch. V of ch. 111.

(b) The governor, by executive order, may extend the period that an employee receives the pay and benefits under par. (a) up to a period of 2 years from the date on which the person is activated to serve on military duty in the U.S. armed forces or to serve in the U.S. public health service. The governor may make up to 3 additional extensions under this paragraph, each of which may not exceed a period of 2 years. Any extension granted by the governor under this paragraph may apply to an individual employee or to a group of employees, as determined by the governor.

(c) No employee who is eligible to receive the pay and benefits under sub. (1) or (2) may receive the pay or benefits for any service in the U.S. armed forces or the U.S. public health service for any such service before January 1, 2003.

(4) An appointing authority shall permit a state employee who is eligible to receive the pay and benefits authorized under sub. (1) or (2) and who has completed his or her duty with the U.S. armed forces or the U.S. public health service to use up to 160 hours of accumulated paid leave before the employee resumes employment with the state. Any accumulated paid leave that is used under this subsection must be used no later than 30 days after the employee has completed his or her duty with the U.S. armed forces or the U.S. public health service. If, after using any such accumulated paid leave, an employee has any accumulated paid leave remaining that was accumulated while on duty with the U.S. armed forces or the U.S. public health service, the appointing authority shall permit the employee to carry over the leave into the next year for use in that year.

History: 2003 a. 162; 2005 a. 22, 469; 2007 a. 200.

230.32 Restoration after military leave. (1) Any classified employee of this state, except a limited term employee, who enlists, is ordered or is inducted into active service in the armed forces of the United States or who is requested to work for the federal government during a national emergency or a limited national emergency, shall be restored to the same or similar position in the classified service and his or her employment shall be deemed not to have been interrupted by such leave except for the receipt of pay or other compensation and accumulation of sick leave and vacation for the period of such absence, unless the employee qualifies to receive pay and benefits under s. 230.315, and the employee shall be given all other benefits of seniority, status, pay, pay advancement, performance awards and pension rights under ch. 40 as though the state employment was continuous, if:

(a) The employee presents to the appointing authority a certificate or other evidence that he or she has satisfactorily completed the period of training or service, and discharge is other than dishonorable or other than by reason of the sentence of a general court martial, or other than on the ground of being a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authorities, or other than as a deserter or of an officer by the acceptance of a resignation for the good of the service.

(b) The period of service is not more than 4 years unless involuntarily retained for a longer period.

(c) The employee is still qualified to perform the duties of such position.

(d) The employee makes application for restoration within 180 days after release from such training or services, or hospitalization continuing after discharge because of injuries or sickness resulting from such training or service.

(e) The circumstances of the employing agency have not changed so as to make it impossible or unreasonable to so restore such employee.

(2) (a) Any employee with permanent status in class who leaves state service for the reasons specified in this section and who has used the yearly vacation in anticipation of a full year's

employment is presumed not to have interrupted employment as far as vacation pay is concerned, and any portion of the vacation for which the employee was paid which is unearned at the time of being called to duty may be made up upon return to state service. If the employee does not return to the state service, the employee shall within 2 years after termination of leave repay the state the amount not earned. The application of this provision is retroactive to all state employees called to active duty under P.L. 87–117 (10 USC 263).

(b) Any classified employee who was serving the probationary period, except in the capacity of a substitute, when he or she left state service shall, under this section, be restored to that point of service in the probationary period as though state employment had not been so interrupted.

(c) Any classified employee who had attained restoration rights as a seasonal employee when he or she left state service shall, under this section, be restored to such seasonal position or eligibility as though the service or eligibility had not been so interrupted.

(3) (a) Any classified employee who leaves state service and enters the armed forces of the United States shall, under this section, be granted written military leave of absence by the appointing authority. Notice of such leave from state service and the terms of any such leave shall be given in writing by the appointing authority to the director for purposes of record.

(b) Any classified employee who leaves state service for civilian employment in response to a specific request or order of the federal government or any of its agencies in connection with manpower redistribution and utilization shall, under this section, make written application to the appointing authority for civilian leave of absence presenting such specific request or order of the federal government as supporting evidence. Such civilian leave shall be allowed by the appointing authority and its terms, which shall conform to the rules of the director, shall be in writing. Notice of such leave from state service shall be made in writing by the appointing authority to the director for purposes of record.

(c) All such military or civilian leaves of absence as heretofore may have been granted are validated and shall be deemed to be sufficient and effective hereunder. Such leaves shall be recorded with the director.

(4) Any person appointed to fill the position of an employee on such military or civilian leave shall be designated as a substitute or replacement employee and upon the return and reemployment of the original employee the substitute employee shall be transferred to a similar position with the same employing agency if one is available, or if not, he or she shall be eligible for reinstatement or have the right of restoration in accordance with this subchapter and the rules of the administrator. The status of any person who is appointed to fill the place of an employee on military or civilian leave under this section shall be governed by the rules of the administrator pursuant thereto.

(5) The restoration of classified former employees of the state shall be governed by this section and by the rules of the administrator.

(7) Any employee who is absent from state service because the employee is in active service, as defined in s. 321.65 (1) (a), is entitled to all reemployment rights and benefits provided under s. 321.65.

History: 1971 c. 270 ss. 73, 74; Stats. 1971 s. 16.26; 1977 c. 196 ss. 56, 130 (5); 1977 c. 273; 1977 c. 418 s. 924 (13m); Stats. 1977 s. 230.32; 1981 c. 96 s. 67; 1981 c. 140; 1983 a. 27 s. 2200 (15); 2001 a. 26; 2003 a. 33, 162; 2005 a. 145; 2007 a. 200.

230.33 Leave of absence and pay while serving in unclassified position. Employees who have completed an original appointment probationary period in the classified service and are appointed to a position in the unclassified service shall be subject to the following provisions relative to leave of absence, restoration rights, reinstatement privileges and pay:

(1) A person appointed to an unclassified position by the governor, elected officer, judicial body or by a legislative body or

committee shall be granted a leave of absence without pay for the duration of the appointment and for 3 months thereafter, during which time the person has restoration rights to the former position or equivalent position in the department in which last employed in a classified position without loss of seniority. The person shall also have reinstatement privileges for 5 years following appointment to the unclassified service or for one year after termination of the unclassified appointment whichever is longer. Restoration rights and reinstatement privileges shall be forfeited if the reason for termination of the unclassified appointment would also be reason for discharge from the former position in the classified service.

(1m) A person appointed to an unclassified position by an appointing authority other than an appointing authority described under sub. (1), when both the classified and unclassified positions are within the appointing authority's department, shall be granted a leave of absence without pay for the duration of the appointment and for 3 months thereafter, during which time the person has restoration rights to the former position or equivalent position in the department in which last employed in a classified position without loss of seniority. The person shall also have reinstatement privileges for 5 years following appointment to the unclassified service or for one year after termination of the unclassified appointment whichever is longer. Restoration rights and reinstatement privileges shall be forfeited if the reason for termination of the unclassified appointment would also be reason for discharge from the former position in the classified service.

(2) A person appointed to an unclassified position by an appointing authority other than an appointing authority described under sub. (1), to a department other than the one in which the person was a classified employee may be granted a leave of absence without pay at the option of the person's former appointing authority in accordance with the leave of absence provisions in the rules of the director. An employee granted a leave of absence shall have the same restoration rights and reinstatement privileges as under sub. (1m). If not granted a leave of absence, the employee shall be entitled only to the reinstatement privileges under sub. (1m).

(3) Except for 3 sales representatives of prison industries and one sales manager of prison industries identified under s. 303.01 (10), an employee appointed to a position in the unclassified service from the classified service shall be entitled to receive at least the same pay received in the classified position while serving in such unclassified position.

(4) This section shall supersede any provision of law in conflict therewith but shall not diminish the rights and privileges of employees appointed to the unclassified service from the classified service prior to April 30, 1972.

History: 1971 c. 270 s. 69; Stats. 1971 s. 16.27; 1973 c. 12; 1975 c. 189, 421; 1977 c. 196 ss. 56, 130 (5); 1977 c. 273; Stats. 1977 s. 230.33; 1983 a. 27 s. 2200 (15); 1991 a. 269; 1997 a. 307; 1999 a. 102; 2003 a. 33.

230.335 Rights of unclassified division administrators. If any employee in a classified position of division administrator is made unclassified under chapter 196, laws of 1977, and if the incumbent division administrator is not thereafter appointed to such position, or if the incumbent is hired and subsequently terminated for any reason except just cause, the incumbent division administrator shall have appointment rights, including bumping if necessary, to a comparable or lower level position which is within the agency wherein the division administrator position is located. The incumbent shall have 90 days after notice of termination to exercise such appointment rights.

History: 1977 c. 196.

230.337 Rights of employees: corrections or parole. If any incumbent member of the parole board in the office of the secretary of health services on January 1, 1990, in a classified position is not appointed to the parole commission created by 1989 Wisconsin Act 31, or if the incumbent member is appointed to the commission and subsequently terminated for any reason except

just cause, the incumbent member shall have restoration rights and reinstatement privileges, including the right of displacement if necessary, to a position having a comparable or lower pay rate or range for which the person is qualified which is within the department of corrections, as created by 1989 Wisconsin Act 31, or the department of health services. In the case of termination, the incumbent shall have 90 days after notice of termination to exercise the rights and privileges. The rights and privileges granted under this subsection are subject to the terms of any collective bargaining agreement that covers the incumbent parole board members.

History: 1989 a. 31, 107; 1995 a. 27 s. 9126 (19); 2005 a. 145; 2007 a. 20 s. 9121 (6) (a).

230.34 Demotion, suspension, discharge and layoff.

(1) (a) An employee with permanent status in class or an employee who has served with the state as an assistant district attorney for a continuous period of 12 months or more may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

(am) If an employee fails to report for work as scheduled or to contact his or her supervisor, the appointing authority may discipline the employee. If an employee fails to report for work as scheduled, or to contact his or her supervisor for a minimum of 5 consecutive working days, the appointing authority shall consider the employee's position abandoned and may discipline the employee or treat the employee as having resigned his or her position. If the appointing authority decides to treat the position abandonment as a resignation, the appointing authority shall notify the employee in writing that the employee is being treated as having effectively resigned as of the end of the last day worked.

(ar) Paragraphs (a) and (am) apply to all employees with permanent status in class in the classified service and all employees who have served with the state as an assistant district attorney for a continuous period of 12 months or more, except that for employees specified in s. 111.81 (7) (a) in a collective bargaining unit for which a representative is recognized or certified, or for employees specified in s. 111.81 (7) (b) or (c) in a collective bargaining unit for which a representative is certified, if a collective bargaining agreement is in effect covering employees in the collective bargaining unit, the determination of just cause and all aspects of the appeal procedure shall be governed by the provisions of the collective bargaining agreement.

(b) No suspension without pay shall be effective for more than 30 days. The appointing authority shall, at the time of any action under this section, furnish to the employee in writing the reasons for the action.

(c) The director shall establish guidelines for uniform application of this authority among the various agencies.

(2) Employees with permanent status in class in permanent, sessional and seasonal positions in the classified service and employees serving a probationary period in such positions after promotion or transfer may be laid off because of a reduction in force due to a stoppage or lack of work or funds or owing to material changes in duties or organization but only after all original appointment probationary and limited term employees in the classes used for layoff, are terminated.

(a) The order of layoff of such employees may be determined by seniority or performance or a combination thereof or by other factors.

(b) The administrator shall promulgate rules governing layoffs and appeals therefrom and alternative procedures in lieu of layoff to include voluntary and involuntary demotion and the exercise of a displacing right to a comparable or lower class, as well as the subsequent employee right of restoration or eligibility for reinstatement.

(2m) Employees in positions funded by nonstate funds made available contingent on special employee eligibility requirements such as length of prior unemployment, specific occupational disadvantages or need for remedial work experience, shall be exempt

from inclusion with the employees whose positions are in classes considered for layoff under sub. (2). In the case of reduction in force in such nonstate funded positions, layoffs and layoff procedures established pursuant to the rules of the administrator may be limited to employees whose positions are dependent upon specific funding contingencies.

(3) The appointing authority shall confer with the administrator relative to a proposed layoff a reasonable time before the effective date thereof in order to assure compliance with the rules.

(4) Resignations shall be regulated by the rules of the director.

History: 1971 c. 270 ss. 61, 76; Stats. 1971 s. 16.28; 1975 c. 189, 200; 1977 c. 196 ss. 56, 130 (3), (5); 1977 c. 273; Stats. 1977 s. 230.34; 1979 c. 221; 1981 c. 140; 1983 a. 27 s. 2200 (15); 1989 a. 31; 1999 a. 102; 2003 a. 33.

Cross Reference: See also chs. ER–MRS 17 and 22, Wis. adm. code.

On an appeal from a discharge, the appointing officer has the burden of persuasion that the discharge was for a just cause. The facts must be established to a reasonable certainty by the greater weight or clear preponderance of the evidence. *Reinke v. Personnel Board*, 53 Wis. 2d 123, 191 N.W.2d 833 (1971).

In deciding the issue of cause for termination, it is necessary to determine the specific requirements of the individual governmental position. *Safransky v. Personnel Board*, 62 Wis. 2d 464, 215 N.W.2d 379 (1974).

The trial court erroneously applied evidentiary standards required in discharge cases to the review of a layoff case. *Weaver v. Wisconsin Personnel Board*, 71 Wis. 2d 46, 237 N.W.2d 183 (1976).

Public employment is a property right for those given tenure by operation of civil service regulations or laws. *Vorwald v. School District of River Falls*, 167 Wis. 2d 549, 482 N.W.2d 93 (1992).

An investment board employee hired in the classified service whose position was changed to unclassified by subsequent legislative action had a property interest in the position entitling him to continued civil service protections after the reclassification. *Bahr v. State Investment Bd.* 186 Wis. 2d 379, 521 N.W.2d 152 (Ct. App. 1994).

Sub. (1) provides a permanent civil service employee with a property interest in employment requiring the appointing authority to provide notice to the employee prior to any disciplinary action. The employee is entitled to a hearing to address the employer's reasons for any disciplinary action. An employer at a hearing cannot introduce evidence of subsequent misconduct without adequate notice and hearing. *Board of Regents of the University of Wisconsin System v. Wisconsin Personnel Commission*, 2002 WI 79, 254 Wis. 2d 148, 646 N.W.2d 759, 01–1899.

230.35 State office hours; standard workweek; leaves of absence; holidays. (1) (a) Except as provided in subs. (1m), (1r), and (1s), appointing authorities shall grant to each person in their employ, except employees excluded from coverage under this subsection by the department by rule and limited-term employees, based on accumulated continuous state service, annual leave of absence without loss of pay at the rate of:

1. One hundred four hours each year for a full year of service during the first 5 years of service;

2. One hundred forty-four hours each year for a full year of service during the next 5 years of service;

2m. One hundred sixty hours each year for a full year of service during the next 5 years of service;

3. One hundred eighty-four hours each year for a full year of service during the next 5 years of service;

3m. Two hundred hours each year for a full year of service during the next 5 years of service;

4. Two hundred sixteen hours each year for a full year of service after 25 years of service.

(b) An employee, with the approval of his or her appointing authority, may anticipate the annual leave which he or she could earn during the current calendar year except that no employee shall be eligible to take annual leave until he or she has completed the first 6 months of a probationary period for an original appointment.

(c) When the rate of annual leave changes during the 5th, 10th, 15th, 20th or 25th calendar year, the annual leave for that year shall be prorated.

(d) Annual leaves of absence shall not be cumulative except under sub. (1p) and except that unused annual leave shall, subject to the rules of the director, be used in the year following the one in which it was earned, but no employee shall lose any unused annual leave because the employee's work responsibilities prevented the usage of the unused annual leave during the first 6 months of the year following the year in which it was earned.

(e) Permanent classified employees, permanent part-time employees and seasonal employees with permanent seasonal sta-

tus in class who are regularly employed for less than 12 months out of a year shall be granted proportional annual leave consistent with par. (a). These employees, with the approval of their appointing authority, may anticipate the vacation which they will earn during their current period of employment.

(f) An employee under this subsection earns annual leave any time he or she is on temporary layoff for a period not to exceed 20 working days.

(g) The continuous service of an employee eligible for annual leave shall not be considered interrupted if the employee either:

1. Was on an approved leave of absence, including but not limited to military leave, leave to serve in the unclassified service, leave to participate in providing specialized disaster relief services, leave for absence due to injury or illness arising out of state employment and covered by ch. 102; or

2. Left the service through resignation or layoff and is reemployed or recalled within 5 years.

(gm) Each employee of the state on October 17, 1971 shall be granted credit towards accumulated continuous service for all service in Wisconsin as a national guard technician which has not been credited under any other provision of this section.

(h) The length of time between an employee's resignation and reemployment under par. (g) 2. shall not be counted in computing years of continuous service under this subsection. Employees subject to par. (e) shall be deemed to have completed one full year of service for each such seasonal, sessional or other part-time annual period of service in computing years of continuous service under this subsection.

(j) The appointing authority shall respect the wishes of the eligible employees as to the time of taking their annual leave insofar as the needs of the service will permit.

(m) Payment for any unused authorized leave to which an employee is entitled upon termination, shall be made in a separate and distinct amount.

(1m) (bt) An employee who is not subject to the minimum wage and overtime requirements under the federal Fair Labor Standards Act, 29 USC 201 to 219, shall be entitled to annual leave of absence without loss of pay based upon accumulated continuous state service at the rate of:

1. 120 hours each year for a full year of service during the first 5 years of service;
2. 160 hours each year for a full year of service during the next 5 years of service;
3. 176 hours each year for a full year of service during the next 5 years of service;
4. 200 hours each year for a full year of service during the next 5 years of service;
5. 216 hours each year for a full year of service after 20 years of service.

(e) Employees who previously were covered under sub. (1) (a), or other statutory provision regarding annual leave, who become subject to this subsection shall have their present continuous service credits for annual leave purposes applied to the career executive schedule at the appropriate rate. In no case shall the employee receive a reduction in annual leave hours earned by such change in schedules.

(eb) An employee under this subsection earns annual leave any time he or she is on temporary layoff for a period not to exceed 20 working days.

(f) The continuous service of an employee eligible for annual leave under this subsection shall not be considered interrupted if the employee was on an approved leave of absence to participate in providing specialized disaster relief services or if the employee leaves the service and is reemployed by the state in another position covered under this subsection. If reemployed in a position not covered under this subsection the employee shall be required to meet the continuous service requirements of sub. (1) (g). This

paragraph applies to all persons who are employees covered under this subsection on or after July 1, 1973.

(1p) (a) Employees at the 160-hour, 176-hour, or 184-hour rate under sub. (1) or (1m) may, in the year earned, elect to receive not more than 40 of those hours of earned annual leave as credit for termination leave or as accumulated sabbatical leave.

(b) Employees at the 200-hour rate under sub. (1) or (1m) may, in the year earned, elect to receive not more than 80 of those hours of earned annual leave among one or more of these options:

1. Not to exceed 40 hours in cash;
3. As credit for termination leave;
4. As accumulated sabbatical leave.

(bm) Employees at the 216-hour rate under sub. (1) or (1m) may, in the year earned, elect to receive not more than 120 of those hours of earned annual leave among one or more of these options:

1. Not to exceed 40 hours in cash.
2. As credit for termination leave.
3. As accumulated sabbatical leave.

(c) Employees with less than the 160-hour rate under sub. (1) or (1m) who have accumulated, at any time during the employee's continuous state service, a minimum of 520 hours of sick leave may elect to receive not more than 40 hours of earned annual leave as credit for termination leave or as accumulated sabbatical leave or both. An election under this paragraph shall be made in the year in which the annual leave is earned.

(1r) A state officer elected by the people may take vacation without loss of pay. No such state officer is entitled to payment for unused annual leave.

(1s) Annual leave of absence with pay for instructional staff employed by the board of regents of the University of Wisconsin System who provide services for a charter school established by contract under s. 118.40 (2r) (cm) shall be determined by the governing board of the charter school established by contract under s. 118.40 (2r) (cm), as approved by the chancellor of the University of Wisconsin–Parkside and subject to the terms of any collective bargaining agreement under subch. V of ch. 111 covering the instructional staff.

(2) Leave of absence with pay owing to sickness and leave of absence without pay, other than annual leave and leave under s. 103.10, shall be regulated by rules of the director, except that unused sick leave shall accumulate from year to year. After July 1, 1973, employees appointed to career executive positions under the program established under s. 230.24 or positions designated in s. 19.42 (10) (L) or 20.923 (4), (7), (8), and (9) or authorized under s. 230.08 (2) (e) shall have any unused sick leave credits restored if they are reemployed in a career executive position or in a position under s. 19.42 (10) (L) or 20.923 (4), (7), (8), and (9) or authorized under s. 230.08 (2) (e), regardless of the duration of their absence. Restoration of unused sick leave credits if reemployment is to a position other than those specified above shall be in accordance with rules of the director.

(2d) (a) In this subsection:

1. "Bone marrow" has the meaning given in s. 146.34 (1) (a).
2. "Human organ" means a heart, lung, liver, pancreas, kidney, intestine, or other organ that requires the continuous circulation of blood to remain useful for purposes of transplantation.

(b) An appointing authority shall grant a leave of absence of 5 workdays to any employee who requests a leave of absence to serve as a bone marrow donor if the employee provides the appointing authority written verification that he or she is to serve as a bone marrow donor.

(c) An appointing authority shall grant a leave of absence of 30 workdays to any employee who requests a leave of absence to serve as a human organ donor if the employee provides the appointing authority written verification that he or she is to serve as a human organ donor.

(d) An employee who is granted a leave of absence under this subsection shall receive his or her base state pay without interruption during the leave of absence. For purposes of determining seniority, pay or pay advancement and performance awards and for the receipt of any benefit that may be affected by a leave of absence, the service of the employee shall be considered uninterrupted by the leave of absence.

(e) For employees who are included in a collective bargaining unit for which a representative is recognized or certified under subch. V of ch. 111, this subsection shall apply unless otherwise provided in a collective bargaining agreement.

(2m) An employee shall be eligible for medical or family leave under s. 103.10 upon the expiration, extension or renewal of any collective bargaining agreement in effect on April 26, 1988, which covers the employee.

(2r) (a) In this subsection, “catastrophic need” means an illness or injury that incapacitates or is expected to incapacitate an employee or an employee’s family member, that requires the employee to take time off from work for an extended period of time and that creates a financial hardship for the employee.

(b) The director may establish, by rule, a catastrophic leave program that permits employees to donate certain types and amounts of leave credits to other employees who have been absent from pay status because of a catastrophic need for which there is no paid leave benefits or replacement income available. The director shall determine the types and amounts of leave credits that may be donated.

(c) No employee may grieve under an agency’s grievance procedure any appointing authority’s decision relating to a catastrophic leave program under this subsection or appeal any such decision to the commission under s. 230.44 or 230.45 (1) (c).

(3) (a) Officials and employees of the state who have permanent status and who are members of the national guard, the state defense force, or any other reserve component of the military forces of the United States or this state now or hereafter organized or constituted under federal or state law, are entitled to leaves of absence without loss of time in the service of the state, to enable them to attend military schools and annual field training or annual active duty for training, and any other state or federal tours of active duty, except extended active duty or service as a member of the active armed forces of the United States which have been duly ordered but not exceeding 30 days, excluding Saturdays, Sundays and holidays enumerated in sub. (4) in the calendar year in which so ordered and held. During this leave of absence, each state official or employee shall receive base state pay less the base military pay received for and identified with such attendance but such reduction shall not be more than the base state pay. Other than for a leave of absence for the adjutant general and any deputy adjutants general, such leave shall not be granted for absences of less than 3 days. A state official or employee serving on state active duty as a member of the national guard or state defense force, may elect to receive pay from the state under s. 20.465 (1) in an amount equal to base state salary for such period of state active duty. Leave granted by this section is in addition to all other leaves granted or authorized by any other law. For the purpose of determining seniority, pay or pay advancement and performance awards the status of the employee shall be considered uninterrupted by such attendance.

(b) Officials and employees of the state who are called to report for a preinduction physical for the military service shall be granted a leave of absence with pay for the time actually and necessarily spent in response to such call.

(c) Officials and employees of the state summoned for grand or petit jury service are entitled to leaves of absence without loss of time for the time of absence required pursuant to the summons and thereafter. There shall be no deduction from, nor interruption of pay from the state because of such absence.

(d) Employees of the state are entitled to reasonable paid leaves of absence to compete in promotional examinations and interviews. The director shall promulgate rules governing the lengths of time allowable for such leaves, their frequency and the provisions for their use.

(e) 1. In this paragraph, “specialized disaster relief services” means professional, technical or other services that require advanced training or expertise and that are provided to assist persons affected by a disaster.

2. An appointing authority may grant a leave of absence to a state employee to allow the employee to participate in providing specialized disaster relief services if all of the following conditions are met:

a. Except as provided under subd. 2m., the disaster occurred in this state.

b. The employee is a certified disaster service volunteer of the American Red Cross.

c. The American Red Cross submits a written request to the employee’s appointing authority for the services of the employee. The request shall also specify who has requested the assistance of the American Red Cross in the particular disaster.

d. The employee has permanent status, if the employee’s position is included in the classified service.

e. The leave of absence conforms with any rules of the director regarding leaves of absence to provide specialized disaster relief services.

2m. The governor may authorize appointing authorities to grant a leave of absence to any employee who satisfies the conditions listed in subd. 2. b. to e. to allow that employee to provide specialized disaster relief services in connection with a particular disaster that occurred outside this state. The governor may specify a disaster under this subdivision at any time after the disaster occurs.

3. A leave of absence granted under subd. 2. or 2m. may not exceed 30 workdays each year.

4. An employee who is granted a leave of absence under subd. 2. or 2m. shall receive his or her base state pay without interruption during the leave of absence. For purposes of determining seniority, pay or pay advancement and performance awards, the service of the employee shall be considered uninterrupted by a leave of absence granted under subd. 2. or 2m.

5. The director may promulgate any rules necessary to implement this paragraph.

6. For employees who are included in a collective bargaining unit for which a representative is recognized or certified under subch. V of ch. 111, this paragraph shall apply unless otherwise provided in a collective bargaining agreement.

(4) (a) Except as otherwise provided in sub. (5) (c), the office of the agencies of state government shall be kept open on all days of the year except Saturdays, Sundays and the following holidays:

1. January 1.

1m. The 3rd Monday in January, which shall be the day of celebration for January 15.

3. The last Monday in May, which shall be the day of celebration for May 30.

4. July 4.

5. The first Monday in September.

6. The 4th Thursday in November.

7. December 24.

8. December 25.

9. December 31.

10. The day following if January 1, July 4 or December 25 falls on Sunday.

(b) Compensatory time off or payment, either of which shall be at the rate of time and one-half, shall be granted to state

employees for all work performed on the holidays enumerated in par. (a) 1. to 9.

(c) All employees except limited term employees shall receive 9 paid holidays annually in addition to any other authorized paid leave, the time to be at the discretion of the appointing authorities.

(d) In addition to the holidays granted under par. (c), all employees except limited term employees shall earn 3.5 paid personal holidays each calendar year, plus one additional paid personal holiday each calendar year in recognition of Veterans Day. Eligibility to take the personal holidays during the year earned is subject to the following:

1. Employees serving the first 6 months of a probationary period for an original appointment or as a trainee may anticipate the personal holidays earned during each year and be eligible to take the personal holidays during the probationary period, subject to subsequent completion of the first 6 months of the probationary period and also subject to subd. 3. If an employee does not complete the first 6 months of probationary service, any holiday time taken under this paragraph shall then be considered approved leave without pay, and the agency shall recover from the employee the value of such time.

2. Employees who have completed the first 6 months of a probationary period for an original appointment or as a trainee shall be eligible to take the paid holidays throughout the calendar year earned, subject to subd. 3.

3. Such holidays shall be taken at the discretion of the appointing authority who shall respect the wishes of the eligible employees as to the time of taking the holidays under this paragraph insofar as the needs of the service will permit.

4. Personal holidays earned each year shall be noncumulative. However, if an appointing authority denies an employee the opportunity to take a personal holiday during the calendar year earned, the employee shall be permitted to carry over such day to the next year. In no event may such denial and carry-over occur in subsequent successive years.

(e) Appointing authorities shall give employees time off for voting under s. 6.76 without any deduction of compensation for time lost thereby.

(f) Monday to Friday the offices of the agencies of state government shall open at 7:45 a.m. and close at 4:30 p.m., with intermissions from 11:45 a.m. to 12:30 p.m. Agencies may, with the permission of the governor, adjust opening and closing hours and intermission periods to relieve traffic congestion or as the needs of the service otherwise require.

(5) (a) Except as provided under s. 230.215 (5), the standard basis of employment for the state service is 40 hours each 7 consecutive calendar day period, except that when the needs of an employing unit cannot be fulfilled by adhering to the standard basis of employment, additional hours of work may be required by the appointing authority. During a proclaimed national emergency, the governor may extend the workweek and adjust the working hours to use the available manpower of any or all agencies as he or she deems essential.

(b) The standard basis of employment shall be divided into 5 work days of 8 hours each except as provided under s. 230.215 (5), and except that when the conditions of employment cannot be satisfied by adhering to this division or when the public would not be inconvenienced, deviations may be permitted upon recommendation of the appointing authority and subsequent approval by the director.

(c) The governor may order some or all of the offices and other work stations of the departments of state government closed for specified periods of time or may order such other deviations in office hours or the standard basis of employment as may be necessitated by weather conditions, energy shortages or emergency situations. The governor's order may specify how any time off or

other deviation occasioned by the order may be covered for state employees.

History: 1971 c. 91, 125, 183, 211, 226; 1971 c. 270 ss. 70, 71, 83, 104; Stats. 1971 s. 16.30; 1973 c. 51, 243; 1975 c. 28, 39, 41; 1975 c. 147 s. 54; 1975 c. 189, 199, 421, 422; 1977 c. 44; 1977 c. 187 s. 135; 1977 c. 196 ss. 56, 118, 130 (3), (5), (12), 131; 1977 c. 273; 1977 c. 418 ss. 726, 727, 924 (13m); Stats. 1977 s. 230.35; 1979 c. 34, 89; 1979 c. 110 s. 60 (11); 1979 c. 221; 1981 c. 20, 96, 140; 1983 a. 27 s. 2200 (15); 1983 a. 30 ss. 4 to 11, 14; 1983 a. 71, 140; 1983 a. 192 ss. 220, 221, 304; 1985 a. 119; 1987 a. 63, 287, 340, 399, 403; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 12, 47; 1995 a. 37, 178; 1997 a. 118, 307; 1999 a. 42, 85, 101, 125; 2001 a. 16, 109; 2003 a. 22, 33, 117; 2005 a. 21; 2007 a. 106, 142.

Cross Reference: See also chs. ER 18 and 28, Wis. adm. code.

230.36 Hazardous employment, injuries, pay continued. (1m) In this section:

(a) "Injury" means physical harm to an employee caused by accident or disease.

(b) "Performance of duties" means duties performed in the line of duty by any of the following:

1. A forest ranger or field employee of the department of natural resources who is subject to call for forest fire control duty at a Wisconsin veterans home operated by the department of veterans affairs under s. 45.50, and lifeguard, at all times while:

a. Driving or riding in a vehicle, aircraft or boat under circumstances which require hazardous maneuvering or speed in excess of the normal or posted limits in the performance of fire control duties;

b. Engaged in an effort to save lives, recover dead bodies, or protect public or private property;

c. Going to or returning from a fire and while engaged in the suppression of a fire; or

d. Engaged in public demonstration or training exercises provided such demonstration or training exercises are authorized by the appointing authority.

2. A conservation warden, conservation patrol boat captain, conservation patrol boat engineer, member of the state patrol, state motor vehicle inspector, University of Wisconsin System police officer, security officer, or security person, other state facilities police officer, special tax agent, excise tax investigator employed by the department of revenue, and special criminal investigation agent employed by the department of justice at all times while:

a. In the process of making an arrest or investigating any violation or suspected violation of the law or the quelling of a riot or any other violence;

b. Engaged in an effort to save lives, recover dead bodies or protect public or private property;

c. Driving or riding in a vehicle, aircraft or boat under circumstances which require hazardous maneuvering or speed in excess of the normal or posted limits in the performance of law enforcement duties; or

d. Engaged in public demonstration or training exercises provided such demonstration or training exercises are authorized by the appointing authority.

3. A guard, institution aide, or other employee at the University of Wisconsin Hospitals and Clinics or at a state penal or mental institution, including a juvenile correctional facility, as defined in s. 938.02 (10p), and a state probation, extended supervision, and parole officer, at all times while:

a. In the process of quelling a riot or disturbance or other act of violence;

b. In the process of restraining patients, inmates, probationers, parolees or persons on extended supervision and apprehending runaways or escapees, including probationers, parolees and persons on extended supervision;

c. When injury is occasioned as the result of an act by a patient, inmate, probationer, parolee or person on extended supervision;

d. In the process of making an arrest or investigating any violation or suspected violation of law pursuant to police powers authorized by s. 46.058 (2) or 301.29 (2) and rules adopted pursuant thereto;

e. Going to or returning from a fire, engaging in the suppression of a fire, evacuating patients or inmates because of a fire or engaging in fire drills; or

f. When disease is contracted as a result of exposure to such disease arising out of the care of inmates or patients.

4. A drivers' license examiner at all times while examining drivers, conducting road tests or checking motor vehicles.

5. An engineering aide, engineer or building construction superintendent at all times while:

a. Driving or riding in vehicles which require hazardous maneuvering of extremely slow speed while marking or measuring physical characteristics of highways.

b. Surveying or inspecting within the right-of-way of highways on which traffic is maintained.

c. Surveying or inspecting on construction sites where heavy equipment is operating.

d. Investigating or inspecting highways, structures or terrain under hazardous conditions.

(2m) (a) If any of the following state employees suffers injury while in the performance of duties, the employee shall continue to be fully paid by the employing agency upon the same basis as paid prior to the injury, with no reduction in sick leave credits, compensatory time for overtime accumulations or vacation and no reduction in the rate of earning sick leave credit or vacation:

1. A conservation warden.
2. A conservation patrol boat captain.
3. A conservation patrol boat engineer.
4. A state forest ranger.
5. A conservation field employee of the department of natural resources who is subject to call for fire control duty.
6. A member of the state patrol.
7. A state motor vehicle inspector.
8. A lifeguard.
9. An excise tax investigator employed by the department of revenue.
10. A special criminal investigation agent employed by the department of justice.
11. A special tax agent.
12. A state drivers' license examiner.
14. A University of Wisconsin System police officer or other state facilities police officer and patrol officer.
15. A security officer or security person.
16. An engineer.
17. An engineering aide.
18. A building construction superintendent.
20. A guard or institutional aide or a state probation, extended supervision, and parole officer or any other employee whose duties include supervision and discipline of inmates or wards of the state at a state penal institution, including a juvenile correctional facility, as defined in s. 938.02 (10p), or while on parole supervision or extended supervision outside of the confines of the institutions, or supervision of persons placed on probation by a court of record, or supervision and care of patients at a state mental institution, and the University of Wisconsin Hospitals and Clinics.
21. A state employee who is not listed in this paragraph who is ordered by his or her appointing authority to accompany an employee listed in this paragraph while the listed employee is engaged in duties enumerated under sub. (1m) (b).
22. A state employee who is not listed in this paragraph who is ordered by his or her appointing authority to perform duties enumerated under sub. (1m) (b), when permitted, in lieu of a listed employee.

(b) The full pay under par. (a) (intro.) shall continue while the employee is unable to return to work as the result of the injury or until the termination of his or her employment upon recommendation of the appointing authority. At any time during the employee's period of disability the appointing authority may, at the expense of the employing agency, order physical or medical examinations to determine the degree of disability.

(4) An employee denied benefits under this section may appeal to the commission under s. 230.45 (1) (d).

(5) An employing agency that makes payments under this section is entitled to the right of subrogation for reimbursement to the extent that the injured employee may recover the reimbursed items in an action or claim in tort against any 3rd party. The repayment shall not exceed the total sums paid to the injured employee under this section and shall be limited to the total sum credited to the injured employee, as damages for pay and fringe benefits actually received in the settlement of any claim caused by the negligence of the 3rd party.

(6) Any person who is employed by the University of Wisconsin Hospitals and Clinics Authority, who suffers an injury between June 29, 1996, and June 30, 1997, shall be covered under this section if the person, had he or she been a state employee, would have been covered under this section.

History: 1971 c. 164, 270; 1973 c. 333 s. 201m; 1975 c. 39, 189, 199, 224, 422; 1977 c. 26; 1977 c. 196 ss. 57, 119, 130 (4); 1977 c. 418 ss. 728, 729, 924 (50); 1977 c. 447 ss. 146, 206; Stats. 1977 s. 230.36; 1979 c. 32; 1979 c. 221 ss. 745, 746, 2202 (15); 1985 a. 29, 135; 1987 a. 27, 83; 1989 a. 31; 1993 a. 98, 215, 491; 1995 a. 27, 77; 1997 a. 283; 1999 a. 63, 85, 186; 2001 a. 16, 103, 104; 2003 a. 83; 2005 a. 22, 344.

Cross Reference: See also ch. ER 28, Wis. adm. code.

Discussion of s. 230.36, 1977 stats., continuation of pay to employee injured in hazardous employment, with respect to long-term disability. 68 Atty. Gen. 25.

230.37 Standards of performance and ratings. (1) In cooperation with appointing authorities the director shall establish an employee performance evaluation program to provide a continuing record of employee development and, when applicable, to serve as a basis for pertinent personnel actions. Similar evaluations shall be conducted during the probationary period but may not infringe upon the authority of the appointing authority to retain or dismiss employees during the probationary period.

(2) When an employee becomes physically or mentally incapable of or unfit for the efficient and effective performance of the duties of his or her position by reason of infirmities due to age, disabilities, or otherwise, the appointing authority shall either transfer the employee to a position which requires less arduous duties, if necessary demote the employee, place the employee on a part-time service basis and at a part-time rate of pay or as a last resort, dismiss the employee from the service. The appointing authority may require the employee to submit to a medical or physical examination to determine fitness to continue in service. The cost of such examination shall be paid by the employing agency. In no event shall these provisions affect pensions or other retirement benefits for which the employee may otherwise be eligible.

History: 1971 c. 270 ss. 66, 81; Stats. 1971 s. 16.32; 1977 c. 196 ss. 59, 130 (4); 1977 c. 273; Stats. 1977 s. 230.37; 1987 a. 140; 2003 a. 33.

Cross Reference: See also ch. ER 45, Wis. adm. code.

230.40 Political activities; public office. (1) No person holding a position in the classified civil service may directly or indirectly solicit or receive subscriptions or contributions for any partisan political party or any political purpose while on state time or engaged in official duties as an employee. No person may orally solicit or by letter transmit any solicitation to a state office or be in any manner concerned in soliciting any assistance, subscription, or support for any partisan political party or purpose from any person holding any position in the classified civil service while on state time or engaged in official duties as an employee. No person holding any position in the classified civil service may during the hours when on duty engage in any form of political activity calculated to favor or improve the chances of any political party or any person seeking or attempting to hold partisan political office, nor engage in any political activity when not on duty to

such an extent that the person's efficiency during working hours will be impaired or that he or she will be tardy or absent from work. Any violation of this section is adequate grounds for dismissal.

(2) If a person in the classified service declares an intention to run for partisan political office the person shall be placed on a leave of absence for the duration of the election campaign and if elected shall separate from the classified service on assuming the duties and responsibilities of such office.

(3) A person who separates from the classified service to fill an elective position shall have reinstatement privileges for 5 years following termination from the classified service or for one year following termination from the elective position, whichever is longer.

(4) A person in the classified service may be granted upon concurrence by the person's appointing authority a leave of absence to participate in partisan political campaigning.

(5) Persons on leave from the classified service under subs. (2) and (4) shall not be subject to the restrictions of sub. (1), except as they apply to the solicitation of assistance, subscription or support from any person holding any position in the classified service.

(6) The administrator shall administer this section.

History: 1971 c. 270 s. 82; Stats. 1971 s. 16.35; 1973 c. 334; 1977 c. 196 s. 61; 1977 c. 273; Stats. 1977 s. 230.40; 1979 c. 221; 1997 a. 307; 1999 a. 102.

State employees covered by the Hatch Act cannot be discharged for partisan political participation while on leaves of absence under subs. (2) and (4). 63 Atty. Gen. 217.

Discussion of restrictions on political activities of state employees under federal and state law. 67 Atty. Gen. 315.

Classified state employees whose positions are federally funded, in whole or in part, and who are not covered by a collective bargaining agreement, are entitled to leaves of absence in order to run for partisan political office and cannot be compelled to resign. Leaves of absence for such employees are governed generally by terms of applicable collective bargaining agreements. 73 Atty. Gen. 131.

The meaning of "declares an intention to run for office" in sub. (2) is discussed. 81 Atty. Gen. 135.

230.41 Invalid appointments. Any person employed or appointed contrary to this subchapter, or to the rules established thereunder, shall be paid by the appointing authority so employing or appointing, or attempting to employ or appoint that person, the compensation agreed upon for any service performed under such appointment or employment, or attempted appointment or employment, or in case no compensation is agreed upon, the actual value of such services and any expenses incurred in connection therewith, and shall have a cause of action against such appointing authority, for such sum and for the costs of the action. No appointing authority shall be reimbursed by the state for any sums so paid or recovered in any such action.

History: 1971 c. 270 s. 80; Stats. 1971 s. 16.36; 1977 c. 196 s. 61; Stats. 1977 s. 230.41; 1991 a. 316.

230.43 Misdemeanors; how punished. (1) OBSTRUCTION OR FALSIFICATIONS OF EXAMINATIONS. (a) Any person who willfully, alone or in cooperation with one or more persons, defeats, deceives or obstructs any person in respect of the rights of examination or registration under this subchapter or any rules prescribed pursuant thereto, or

(b) Who willfully, or corruptly, falsely marks, grades, estimates or reports upon the examination or proper standing of any person examined, registered or certified, pursuant to this subchapter, or aids in so doing, or

(c) Who willfully or corruptly makes any false representations concerning the same, or concerning the person examined, or

(d) Who willfully or corruptly furnishes any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any persons so examined, registered or certified, being appointed, employed or promoted, or

(e) Who personates any other person, or permits or aids in any manner any other person to personate him or her in connection with any examination, registration, application or request to be examined or registered, shall for each offense be guilty of a misdemeanor.

(2) **PROHIBITED APPOINTMENTS.** Whoever, after a rule has been duly established and published, makes an appointment to office or selects a person for employment, contrary to such rule, or willfully refuses or neglects otherwise to comply with, or to conform to, this subchapter, or violates any of such provisions, shall be guilty of a misdemeanor. If any person is convicted under this subsection, any public office which such person may hold shall by force of such conviction be rendered vacant, and such person shall be incapable of holding public office for a period of 5 years from the date of such conviction.

(3) **PENALTY.** Misdemeanors under this section are punishable by a fine of not less than \$50 nor more than \$1,000, or by imprisonment for not more than one year in the county jail or both.

(4) **RIGHTS OF EMPLOYEE.** If an employee has been removed, demoted or reclassified, from or in any position or employment in contravention or violation of this subchapter, and has been restored to such position or employment by order of the commission or any court upon review, the employee shall be entitled to compensation therefor from the date of such unlawful removal, demotion or reclassification at the rate to which he or she would have been entitled by law but for such unlawful removal, demotion or reclassification. Interim earnings or amounts earnable with reasonable diligence by the employee shall operate to reduce back pay otherwise allowable. Amounts received by the employee as unemployment benefits or welfare payments shall not reduce the back pay otherwise allowable, but shall be withheld from the employee and immediately paid to the unemployment reserve fund or, in the case of a welfare payment, to the welfare agency making such payment. The employee shall be entitled to an order of mandamus to enforce the payment or other provisions of such order.

(5) **TAXPAYERS' SUITS.** The right of any taxpayer to bring any action to restrain the payment of compensation to any person appointed to or holding any office or place of employment in violation of this subchapter shall not be limited or denied by reason of the fact that the office or place of employment has been classified as, or determined to be, not subject to competitive examination; however, any judgment or injunction in any such action shall be prospective only, and shall not affect payments already made or due to such persons by the proper disbursing officers, in accordance with the rules of the director in force at the time of such payments.

History: 1971 c. 270 ss. 64, 75, 84 to 86; Stats. 1971 s. 16.38; 1977 c. 196 ss. 64, 130 (5); 1977 c. 273; Stats. 1977 s. 230.43; 1979 c. 221; 1981 c. 140; 1983 a. 27 s. 2200 (15); 2003 a. 33.

Back pay under sub. (4) is not an available remedy in reinstatement cases. See v. Personnel Commission, 140 Wis. 2d 32, 409 N.W.2d 142 (Ct. App. 1987).

This section does not confer any special right of action. The statute ensures that actions brought to enjoin the compensation of improperly appointed officials are not limited to classified employees. Association of Career Employees v. Klausner, 195 Wis. 2d 602, 536 N.W.2d 478 (Ct. App. 1995), 94–0632.

230.44 Appeal procedures. (1) APPEALABLE ACTIONS AND STEPS. Except as provided in par. (e), the following are actions appealable to the commission under s. 230.45 (1) (a):

(a) *Decision made or delegated by administrator.* Appeal of a personnel decision under this subchapter made by the administrator or by an appointing authority under authority delegated by the administrator under s. 230.05 (2).

(b) *Decision made or delegated by director.* Appeal of a personnel decision under s. 230.09 (2) (a) or (d) or 230.13 (1) made by the director or by an appointing authority under authority delegated by the director under s. 230.04 (1m).

(c) *Demotion, layoff, suspension or discharge.* If an employee has permanent status in class, or an employee has served with the state as an assistant district attorney for a continuous period of 12 months or more, the employee may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission, if the appeal alleges that the decision was not based on just cause.

(d) *Illegal action or abuse of discretion.* A personnel action after certification which is related to the hiring process in the clas-

sified service and which is alleged to be illegal or an abuse of discretion may be appealed to the commission.

(dm) *Noncompetitive appointment of certain disabled veterans.* A personnel action under s. 230.275 by an appointing authority that is alleged to be illegal or an abuse of discretion. The administrator and the office may not be a party to any such appeal.

(e) *Discretionary performance awards.* This subsection does not apply to decisions of an appointing authority relating to discretionary performance awards under s. 230.12 (5), including the evaluation methodology and results used to determine the award or the amount awarded.

(f) *Corrections employee rights.* A determination that a person was discharged from the unclassified service for just cause under s. 230.337.

(2) FORM. All appeals filed under this section shall be in writing.

(3) TIME LIMITS. Any appeal filed under this section may not be heard unless the appeal is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later, except that if the appeal alleges discrimination under subch. II of ch. 111, the time limit for that part of the appeal alleging such discrimination shall be 300 days after the alleged discrimination occurred.

(4) HEARING. (a) A hearing under this section shall be open to the public unless the appellant requests that the hearing be closed.

(b) An employee shall attend a hearing under this subsection and testify when requested to do so by the commission. Any person not under the civil service who appears before the commission by order shall receive for his or her attendance the fees and mileage provided for witnesses in civil actions in courts of record under ch. 885, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of properly verified vouchers approved by the commission and charged to the proper appropriation for the commission. No witness subpoenaed at the insistence of a party other than the commission is entitled to compensation from the state for attendance or travel, unless the commission certifies that his or her testimony was relevant and material to the matter investigated.

(bm) Upon request of an employee who files an appeal of the decision of the director made under s. 230.09 (2) (a) or (d), the appeal shall be heard by a commissioner or attorney employed by the commission serving as arbitrator under rules promulgated for this purpose by the commission. In such an arbitration, the arbitrator shall orally render a decision at the conclusion of the hearing affirming, modifying or rejecting the decision of the director. The decision of the arbitrator is final and is not subject to review by the commission. An arbitrator's decision may not be cited as precedent in any other proceeding before the commission or before any court. The arbitrator shall promptly file his or her decision with the commission. The decision of the arbitrator shall stand as the decision of the commission. The decision of the commission is subject to review under ss. 227.53 to 227.57 only on the ground that the decision was procured by corruption, fraud or undue means or that the arbitrator or the commission exceeded the arbitrator's or the commission's power. The record of a proceeding under this paragraph shall be transcribed as provided in s. 227.44 (8).

(c) After conducting a hearing or arbitration on an appeal under this section, the commission or the arbitrator shall either affirm, modify or reject the action which is the subject of the appeal. If the commission or the arbitrator rejects or modifies the action, the commission may issue an enforceable order to remand the matter to the person taking the action for action in accordance with the decision. Any action brought against the person who is subject to the order for failure to comply with the order shall be brought and served within 60 days after the date of service of the decision of the commission or the arbitrator.

(d) The commission may not remove an incumbent or delay the appointment process as a remedy to a successful appeal under this section unless there is a showing of obstruction or falsification as enumerated in s. 230.43 (1).

(e) Any party in an action under this section may be present at a hearing in the action under this section, in person, by attorney or by any other agent.

(f) The commission shall issue a decision on an action under this section within 90 days after the hearing on the action is completed.

History: 1977 c. 196; 1979 c. 221; 1981 c. 140; 1983 a. 27; 1989 a. 31; 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 307; 1999 a. 102; 2003 a. 33.

The discharge of a probationary employee is not appealable as part of the "hiring process" under s. 230.44 (1) (d). Board of Regents v. Wisconsin Pers. Comm. 103 Wis. 2d 545, 309 N.W.2d 366 (Ct. App. 1981).

The commission had jurisdiction to hear the appeal of a career executive employee's reassignment to a job in a lower pay range who alleged that the reassignment was for disciplinary purposes and was unreasonable and an improper exercise of discretion. *Basinas v. State*, 104 Wis. 2d 539, 312 N.W.2d 483 (1981).

While this section's procedures may be available to persons other than affected employees, an action to have declared illegal an alleged intentional and systematic attempt to circumvent civil service laws for partisan political purposes was not barred due to a failure to meet the appeal time limits of this section. *Association of Career Employees v. Klauser*, 195 Wis. 2d 602, 536 N.W.2d 478 (Ct. App. 1995), 94-0632.

The plain meaning of "effective date of the action" in sub. (3) is the date on which the action takes effect. The action in this case was the extension of the employee's probation, and the extension took effect at the time his prior probationary period expired. *Stern v. WERC*, 2006 WI App 193, 296 Wis. 2d 306, 722 N.W. 2d 594, 05-3144.

The time limit in sub. (3) may be waived. *Stern v. WERC*, 2006 WI App 193, 296 Wis. 2d 306, 722 N.W. 2d 594, 05-3144.

230.45 Powers and duties of commission and division of equal rights. (1) The commission shall:

(a) Conduct hearings on appeals under s. 230.44.

(am) Designate a commissioner or an attorney employed by the commission to serve as an arbitrator in arbitrations under s. 230.44 (4) (bm).

(c) Serve as final step arbiter in the state employee grievance procedure established under s. 230.04 (14).

(d) Hear appeals under s. 230.36 (4).

(e) Hear appeals, when authorized under county merit system rules under s. 49.78 (4), from any interested party.

(h) Keep minutes of its own proceedings and other official actions. All such records shall, subject to reasonable rules, be open to public inspection. Records of the director or the administrator which are confidential shall be kept confidential by the division of equal rights or the commission.

(i) Adopt rules necessary to carry out this section. Notice of the contents of such rules and amendments thereto shall be given promptly to the director, the administrator and appointing authorities affected thereby.

(1e) The division of equal rights shall:

(a) Receive and process complaints of discrimination of state employees under s. 111.375. In the course of investigating or otherwise processing such a complaint, the division of equal rights may require that an interview with any state employee, except a management or supervisory employee who is a party to or immediately involved in the subject matter of the complaint, be conducted outside the presence of the appointing authority or any representative or agent thereof unless the employee voluntarily requests that presence. An appointing authority shall permit an employee to be interviewed without loss of pay and to have an employee representative present at the interview. An appointing authority of an employee to be interviewed may require the division of equal rights to give the appointing authority reasonable notice prior to the interview.

(b) Receive and process complaints of retaliatory disciplinary action under s. 230.85.

(c) Keep minutes of its own proceedings and other official actions relating to this chapter. All such records shall, subject to reasonable rules, be open to public inspection. Records of the

director or the administrator which are confidential shall be kept confidential by the division of equal rights.

(d) Adopt rules necessary to carry out this section. Notice of the contents of such rules and amendments thereto shall be given promptly to the director, the administrator, and appointing authorities affected thereby.

(1m) The commission shall waive the investigation and determination of probable cause of any complaint that is filed by a complainant under sub. (1) or s. 103.10 (12) (b) at the complainant's request. If the commission waives the investigation and probable cause determination, the commission shall proceed with a hearing on the complaint. The commission's waiver of an investigation and probable cause determination does not affect the commission's right to attempt to resolve the complaint by conference, conciliation or persuasion.

(2) Subsection (1) (c) does not apply to an employee who, using the agency grievance procedure, grieves his or her dissatisfaction with the evaluation methodology and results used to determine any discretionary performance award or the amount of such an award. Any such employee grievance shall be settled on the basis of the appointing authority's decision.

(3) The commission shall promulgate rules establishing a schedule of filing fees to be paid by any person who files an appeal under sub. (1) (c) or (e) or s. 230.44 (1) (a) or (b) with the commission on or after the effective date of the rules promulgated under this subsection. Fees paid under this subsection shall be credited to the appropriation account under s. 20.425 (1) (i).

History: 1977 c. 196; 1979 c. 221; 1981 c. 334 s. 25 (2); 1981 c. 360; 1983 a. 27, 398, 409; 1987 a. 140, 331; 1987 a. 403 s. 256; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 16; 1995 a. 27; 1997 a. 131, 216; 1999 a. 176; 2001 a. 26, 38; 2003 a. 33; 2005 a. 25.

Cross Reference: See also PC, Wis. adm. code.

The power to investigate complaints and issue subpoenas is included within the meaning of "receive and process." 68 Atty. Gen. 403.

230.46 Duties of council on affirmative action. The council on affirmative action in the office shall serve in a direct advisory capacity to the director and as part of that relationship shall evaluate the progress of affirmative action programs throughout the civil service system, seek compliance with state and federal regulations and recommend improvements in the state's affirmative action efforts as an employer. In carrying out its responsibilities, the council may recommend legislation, consult with agency personnel and other interested persons, conduct hearings and take other appropriate action to promote affirmative action. The council shall report at least once per year to the governor and the legislature.

History: 1977 c. 196; 1983 a. 27; 2003 a. 33.

230.48 State employees suggestion board. (1) DUTIES. The state employees suggestion board shall do all of the following:

(a) Formulate, establish and maintain a plan or plans to encourage and reward unusual and meritorious suggestions and accomplishments by state employees promoting efficiency and economy in the performance of any function of state government.

(b) Appoint departmental or divisional committees to analyze and review suggestions and accomplishments of state employees submitted for consideration under the plan or plans established under par. (a), and make recommendations regarding the plan or plans to the state employees suggestion board.

(c) Make and render awards to or for the benefit of state employees nominated to receive them in accordance with the plan or plans established under par. (a).

(2) **PERSONNEL, FACILITIES AND EQUIPMENT.** The office shall appoint, under the classified service, a secretary and such other employees as are necessary to carry out the duties of the state employees suggestion board, and shall provide such facilities and equipment as that board requires for the proper performance of its work. The state employees suggestion board may request and

shall receive from any state department any assistance that it requires.

(3) **AWARDS.** The state employees suggestion board may determine the nature and extent of the awards to be made under this section which may include, but shall not be limited to, all of the following:

(a) Certificates, medals or other insignia, in the form and awarded at the times that the state employees suggestion board determines.

(b) Cash awards, in the amount and payable at the times that the state employees suggestion board determines.

(4) **RULES.** The state employees suggestion board may promulgate rules governing the operation of any plan or plans established under sub. (1) (a), the eligibility and qualifications of state employees participating under this section, the character and quality of suggestions and accomplishments submitted for consideration, the method of their submission and the procedure for their review, nominations for awards, and the kind, character and value of the awards, and any other rules as are necessary for the proper administration of this section or for the accomplishment of the purposes of this section.

History: 1971 c. 270 s. 87; Stats. 1971 s. 16.34; 1977 c. 196 s. 61; Stats. 1977 s. 16.008; 1977 c. 418 s. 36; Stats. 1977 s. 16.006; 1981 c. 20; 1987 a. 142; 1989 a. 31 s. 99; Stats. 1989 s. 230.48; 2003 a. 33.

SUBCHAPTER III

EMPLOYEE PROTECTION

Cross Reference: See also ch. DWD 224, Wis. adm. code.

230.80 Definitions. In this subchapter:

(1) "Abuse of authority" means an arbitrary or capricious exercise of power.

(1m) "Appointing authority" means the chief officer of any governmental unit unless another person is authorized to appoint subordinate staff by the constitution or any law.

(2) "Disciplinary action" means any action taken with respect to an employee which has the effect, in whole or in part, of a penalty, including but not limited to any of the following:

(a) Dismissal, demotion, transfer, removal of any duty assigned to the employee's position, refusal to restore, suspension, reprimand, verbal or physical harassment or reduction in base pay.

(b) Denial of education or training, if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation or other personnel action.

(c) Reassignment.

(d) Failure to increase base pay, except with respect to the determination of a discretionary performance award.

(3) "Employee" means any person employed by any governmental unit except:

(a) A person employed by the office of the governor, the courts, the legislature or a service agency under subch. IV of ch. 13.

(b) A person who is, or whose immediate supervisor is, assigned to an executive salary group or university senior executive salary group under s. 20.923.

(4) "Governmental unit" means any association, authority, board, commission, department, independent agency, institution, office, society, or other body in state government created or authorized to be created by the constitution or any law, including the legislature, the office of the governor, and the courts, but excluding the Health Insurance Risk-Sharing Plan Authority. "Governmental unit" does not mean any political subdivision of the state or body within one or more political subdivisions that is created by law or by action of one or more political subdivisions.

(5) "Information" means information gained by the employee which the employee reasonably believes demonstrates:

(a) A violation of any state or federal law, rule or regulation.

(b) Mismanagement or abuse of authority in state or local government, a substantial waste of public funds or a danger to public health and safety.

(6) “Merit further investigation” means reasonably indicates the existence of a situation justifying inquiry.

(7) “Mismanagement” means a pattern of incompetent management actions which are wrongful, negligent or arbitrary and capricious and which adversely affect the efficient accomplishment of an agency function. “Mismanagement” does not mean the mere failure to act in accordance with a particular opinion regarding management techniques.

(8) “Retaliatory action” means a disciplinary action taken because of any of the following:

(a) The employee lawfully disclosed information under s. 230.81 or filed a complaint under s. 230.85 (1).

(b) The employee testified or assisted or will testify or assist in any action or proceeding relating to the lawful disclosure of information under s. 230.81 by another employee.

(c) The appointing authority, agent of an appointing authority or supervisor believes the employee engaged in any activity described in par. (a) or (b).

(9) “Substantial waste of public funds” means an unnecessary expenditure of a substantial amount of money or a series of unnecessary expenditures of smaller amounts of money.

History: 1983 a. 409; 1995 a. 27, 326; 1997 a. 237; 2005 a. 74.

A “pattern of incompetent management actions” under sub. (7) requires more than a claim of a single act of incompetent management. A continuing course of conduct requires multiple actions to constitute a pattern. *Hutson v. Wisconsin Personnel Commission*, 2003 WI 97, 263 Wis. 2d 612, 665 N.W.2d 212, 01–2959.

230.81 Employee disclosure. (1) An employee with knowledge of information the disclosure of which is not expressly prohibited by state or federal law, rule or regulation may disclose that information to any other person. However, to obtain protection under s. 230.83, before disclosing that information to any person other than his or her attorney, collective bargaining representative or legislator, the employee shall do either of the following:

(a) Disclose the information in writing to the employee’s supervisor.

(b) After asking the division of equal rights which governmental unit is appropriate to receive the information, disclose the information in writing only to the governmental unit that the division of equal rights determines is appropriate. The division of equal rights may not designate the department of justice, the courts, the legislature or a service agency under subch. IV of ch. 13 as an appropriate governmental unit to receive information. Each appropriate governmental unit shall designate an employee to receive information under this section.

(2) Nothing in this section prohibits an employee from disclosing information to an appropriate law enforcement agency, a state or federal district attorney in whose jurisdiction the crime is alleged to have occurred, a state or federal grand jury or a judge in a proceeding commenced under s. 968.26, or disclosing information pursuant to any subpoena issued by any person authorized to issue subpoenas under s. 885.01. Any such disclosure of information is a lawful disclosure under this section and is protected under s. 230.83.

(3) Any disclosure of information by an employee to his or her attorney, collective bargaining representative or legislator or to a legislative committee or legislative service agency is a lawful disclosure under this section and is protected under s. 230.83.

History: 1983 a. 409; 2003 a. 33.

Cross Reference: See also ch. DWD 224, Wis. adm. code.

230.82 Processing of information. (1) A governmental unit to which an employee discloses information under s. 230.81 (1) shall process it as provided in this section. Within 30 days of receiving the information, the governmental unit shall either initially determine if it merits further investigation or refer the information to a governmental unit better able to initially determine if it merits further investigation. A governmental unit which ini-

tially determines information to merit further investigation shall, within 30 days of that determination, either commence a full investigation into the truth of the information or refer the information to a governmental unit better able to conduct such an investigation, which shall commence it within 30 days of referral. A governmental unit may disclose or refer information to an appropriate law enforcement agency or district or federal attorney as part of an investigation or in lieu of referral to another governmental unit, if the law enforcement agency or district or federal attorney is best able to conduct the investigation. Any full investigation commenced shall be completed within a reasonable time.

(2) A governmental unit which initially determines that information merits further investigation, or which after a full investigation finds information to be true, shall so inform the employee and his or her appointing authority in writing. A governmental unit which initially determines information not to merit further investigation, refers the information to another governmental unit or after a full investigation finds information to be untrue shall so inform the employee in writing.

(3) A governmental unit which investigates or otherwise processes information disclosed under s. 230.81 may require that an interview with any employee described in s. 230.80 (3), except a management or supervisory employee immediately involved in the subject matter of the information disclosed, be conducted outside the presence of the appointing authority or any representative or agent thereof unless the employee voluntarily requests that presence. An appointing authority shall permit an employee to be interviewed without loss of pay and to have an employee representative present at the interview. An appointing authority of an employee to be interviewed may require the governmental unit to give the appointing authority reasonable notice prior to the interview.

(4) A governmental unit shall keep the identity of the employee confidential until the governmental unit determines the information merits further investigation. If a governmental unit conducts a full investigation, it shall keep the identity of the employee confidential if it is reasonably possible to do so.

History: 1983 a. 409.

230.83 Retaliatory action prohibited. (1) No appointing authority, agent of an appointing authority or supervisor may initiate or administer, or threaten to initiate or administer, any retaliatory action against an employee.

(2) This section does not apply to an employee who discloses information if the employee knows or anticipates that the disclosure is likely to result in the receipt of anything of value for the employee or for the employee’s immediate family, unless the employee discloses information in pursuit of any award offered by any governmental unit for information to improve government administration or operation.

(3) Nothing in this section restricts the right of an employer to take appropriate disciplinary action against an employee who knowingly makes an untrue statement or discloses information the disclosure of which is expressly prohibited by state or federal law, rule or regulation.

History: 1983 a. 409.

Cross Reference: See also ch. DWD 224, Wis. adm. code.

230.85 Enforcement. (1) An employee who believes that a supervisor or appointing authority has initiated or administered, or threatened to initiate or administer, a retaliatory action against that employee in violation of s. 230.83 may file a written complaint with the division of equal rights, specifying the nature of the retaliatory action or threat thereof and requesting relief, within 60 days after the retaliatory action allegedly occurred or was threatened or after the employee learned of the retaliatory action or threat thereof, whichever occurs last.

(2) The division of equal rights shall receive and, except as provided in s. 230.45 (1m), investigate any complaint under sub. (1). In the course of investigating or otherwise processing such a complaint, the division of equal rights may require that an inter-

view with any employee described in s. 230.80 (3), except a management or supervisory employee who is a party to or is immediately involved in the subject matter of the complaint, be conducted outside the presence of the appointing authority or any representative or agent thereof unless the employee voluntarily requests that presence. An appointing authority shall permit an employee to be interviewed without loss of pay and to have an employee representative present at the interview. An appointing authority of an employee to be interviewed may require the division of equal rights to give the appointing authority reasonable notice prior to the interview. If the division of equal rights finds probable cause to believe that a retaliatory action has occurred or was threatened, it may endeavor to remedy the problem through conference, conciliation or persuasion. If that endeavor is not successful, the division of equal rights shall issue and serve a written notice of hearing, specifying the nature of the retaliatory action which has occurred or was threatened, and requiring the person named, in this section called the “respondent”, to answer the complaint at a hearing. The notice shall specify the place of hearing and a time of hearing not less than 30 days after service of the complaint upon the respondent nor less than 10 days after service of the notice of hearing. If, however, the division of equal rights determines that an emergency exists with respect to a complaint, the notice of hearing may specify a time of hearing within 30 days after service of the complaint upon the respondent, but not less than 10 days after service of the notice of hearing. The testimony at the hearing shall be recorded or taken down by a reporter appointed by the division of equal rights.

(3) (a) After hearing, the division of equal rights shall make written findings and orders. If the division of equal rights finds that the respondent engaged in or threatened a retaliatory action, it shall order the employee’s appointing authority to insert a copy of the findings and orders into the employee’s personnel file and, if the respondent is a natural person, order the respondent’s appointing authority to insert such a copy into the respondent’s personnel file. In addition, the division of equal rights may take any other appropriate action, including but not limited to the following:

1. Order reinstatement or restoration of the employee to his or her previous position with or without back pay.
2. Order transfer of the employee to an available position for which the employee is qualified within the same governmental unit.
3. Order expungement of adverse material relating to the retaliatory action or threat from the employee’s personnel file.
4. Order payment of the employee’s reasonable attorney fees by a governmental unit respondent, or by a governmental unit employing a respondent who is a natural person if that governmental unit received notice and an opportunity to participate in proceedings before the division of equal rights.
5. Recommend to the appointing authority of a respondent who is a natural person that disciplinary or other action be taken regarding the respondent, including but not limited to any of the following:
 - a. Placement of information describing the respondent’s violation of s. 230.83 in the respondent’s personnel file.
 - b. Issuance of a letter reprimanding the respondent.
 - c. Suspension.
 - d. Termination.

(b) If, after hearing, the division of equal rights finds that the respondent did not engage in or threaten a retaliatory action it shall order the complaint dismissed. The division of equal rights shall order the employee’s appointing authority to insert a copy of the findings and orders into the employee’s personnel file and, if the respondent is a natural person, order the respondent’s appointing authority to insert such a copy into the respondent’s personnel file. If the division of equal rights finds by unanimous vote that the employee filed a frivolous complaint it may order payment of the respondent’s reasonable actual attorney fees and actual costs.

Payment may be assessed against either the employee or the employee’s attorney, or assessed so that the employee and the employee’s attorney each pay a portion. To find a complaint frivolous the division of equal rights must find that s. 802.05 (2) has been violated.

(c) Pending final determination by the division of equal rights of any complaint under this section, the division of equal rights may make interlocutory orders.

(d) Interim earnings or amounts earnable with reasonable diligence by the person subjected to the retaliatory action or threat shall reduce back pay otherwise allowable. Amounts received by the person subjected to the retaliatory action or threat as unemployment benefits or welfare payments do not reduce the back pay otherwise allowable, but shall be withheld from the person subjected to the retaliatory action or threat and immediately paid to the unemployment reserve fund or to the welfare agency making the payment.

(4) The division of equal rights shall serve a certified copy of the findings and order on the respondent and, if the respondent is a natural person, upon the respondent’s appointing authority.

(5) (a) If a respondent does not comply with any lawful order by the division of equal rights, for each such failure the respondent shall forfeit a sum of not less than \$10 nor more than \$100. Every day during which a respondent fails to comply with any order of the division of equal rights constitutes a separate violation of that order.

(b) As an alternative to par. (a), the division of equal rights may enforce an order by a suit in equity.

(6) (a) If a disciplinary action occurs or is threatened within the time prescribed under par. (b), that disciplinary action or threat is presumed to be a retaliatory action or threat thereof. The respondent may rebut that presumption by a preponderance of the evidence that the disciplinary action or threat was not a retaliatory action or threat thereof.

(b) Paragraph (a) applies to a disciplinary action under s. 230.80 (2) (a) which occurs or is threatened within 2 years, or to a disciplinary action under s. 230.80 (2) (b), (c) or (d) which occurs or is threatened within one year, after an employee discloses information under s. 230.81 which merits further investigation or after the employee’s appointing authority, agent of an appointing authority or supervisor learns of that disclosure, whichever is later.

History: 1983 a. 409; 1991 a. 39; 2003 a. 33; Sup. Ct. Order No. 03–06A, 2005 WI 86, 280 Wis. 2d xiii.

Cross Reference: See also ch. DWD 224, Wis. adm. code.

The commission may not use a “multiplier” in computing reasonable attorney fees under sub. (3) (a) 4.; only SCR 20:1.5 factors are permissible. Board of Regents v. Personnel Commission 147 Wis. 2d 406, 433 N.W.2d 273 (Ct. App. 1988).

230.86 Discipline based on surveillance. (1) No appointing authority may take any disciplinary action based in whole or in part on wiretapping, electronic surveillance or one-way mirrors unless that surveillance produces evidence that the employee against whom disciplinary action is taken has committed a crime or unless that surveillance is authorized by the appointing authority and is conducted in accordance with the rules promulgated under s. 16.004 (12).

(2) Subsection (1) does not apply to wiretapping, electronic surveillance or one-way mirrors used to monitor security or used for public safety purposes at a state institution.

History: 1989 a. 245; 1993 a. 496.

Cross Reference: See also ch. DWD 224, Wis. adm. code.

230.87 Judicial review. (1) Findings and orders of the division of equal rights under this subchapter are subject to judicial review under ch. 227. Upon that review, or in any enforcement action, the department of justice shall represent the division of equal rights unless a conflict of interest results from that representation. A court may order payment of a prevailing appellant employee’s reasonable attorney fees by a governmental unit respondent, or by a governmental unit employing a respondent

who is a natural person if that governmental unit received notice and an opportunity to appear before the court.

(2) If the court finds that the appeal is frivolous, it shall award to the respondent reasonable attorney fees and costs. Payment may be assessed fully against the appellant, including a governmental unit, or the appellant's attorney or assessed so that the appellant and the appellant's attorney each pay a portion. To find an appeal frivolous, the court must find one or more of the following:

(a) The appeal was filed, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another.

(b) The appellant or appellant's attorney knew, or should have known, that the appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

History: 1983 a. 409; 1985 a. 135; 2003 a. 33.

Cross Reference: See also ch. DWD 224, Wis. adm. code.

230.88 Payment of award, judgment or settlement; effect of order, arbitration award or commencement of court action. (1) **PAYMENT.** Any award, judgment or settlement obtained by an employee under this subchapter shall be paid from the funds appropriated under s. 20.865 (1) (a), (g) and (q).

(2) **EFFECT.** (a) A final order issued under s. 230.85 or 230.87 which has not been appealed and for which the time of appeal has passed binds all parties who were subjected to the jurisdiction of the division of equal rights or the court and who received an opportunity to be heard. With respect to these parties, the decree is conclusive as to all issues of law and fact decided.

(b) No collective bargaining agreement supersedes the rights of an employee under this subchapter. However, nothing in this subchapter affects any right of an employee to pursue a grievance procedure under a collective bargaining agreement under subch. V of ch. 111, and if the division of equal rights determines that a grievance arising under such a collective bargaining agreement involves the same parties and matters as a complaint under s. 230.85, it shall order the arbitrator's final award on the merits conclusive as to the rights of the parties to the complaint, on those matters determined in the arbitration which were at issue and upon which the determination necessarily depended.

(c) No later than 10 days before the specified time of hearing under s. 230.85 (2), an employee shall notify the division of equal rights orally or in writing if he or she has commenced or will commence an action in a court of record alleging matters prohibited under s. 230.83 (1). If the employee does not substantially comply with this requirement, the division of equal rights may assess against the employee any costs attributable to the failure to notify. Failure to notify the division of equal rights does not affect a court's jurisdiction to proceed with the action. Upon commencement of such an action in a court of record, the division of equal rights has no jurisdiction to process a complaint filed under s. 230.85 except to dismiss the complaint and, if appropriate, to assess costs under this paragraph.

History: 1983 a. 409; 2003 a. 33.

The commission lost its subject matter jurisdiction over the appellant's whistleblower complaint once an action was filed in the federal district court that included allegations of state whistleblower violations. The state did not waive the jurisdictional issue by informing the commission that it had no objection to holding the commission proceeding in abeyance while the claims were pursued in federal court. The legislature expressly withdrew the power of the commission to adjudicate whistleblower claims once an action alleging those claims is filed in a court of record. *Albrechtsen v. Department of Workforce Development*, 2005 WI App 241, 288 Wis. 2d 144, 708 N.W.2d 1, 04–2130.

230.89 Rule making and reporting. (1) The division of equal rights shall promulgate rules to carry out its responsibilities under this subchapter.

(2) Every 2 years, the division of equal rights shall submit a report to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), regarding complaints filed, hearings held and actions taken under this subchapter, including the dollar amount of any mone-

tary settlement or final monetary award which has become binding on the parties.

History: 1983 a. 409; 1987 a. 186; 2003 a. 33.

Cross Reference: See also PC, Wis. adm. code.

SUBCHAPTER IV

EMPLOYEE FREEDOM OF SPEECH PROTECTION

230.90 Government employer retaliation prohibited.

(1) In this section:

(a) "Disciplinary action" means any action taken with respect to an employee which has the effect, in whole or in part, of a penalty.

(b) "Employee" means any person employed by any governmental unit except:

1. A person employed by the office of the governor, the courts, the legislature or a service agency under subch. IV of ch. 13.

2. A person who is, or whose immediate supervisor is, assigned to an executive salary group or university senior executive salary group under s. 20.923.

(c) "Governmental unit" means any association, authority, board, commission, department, independent agency, institution, office, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature, the office of the governor and the courts. "Governmental unit" does not mean the University of Wisconsin Hospitals and Clinics Authority, the Health Insurance Risk-Sharing Plan Authority, or any political subdivision of the state or body within one or more political subdivisions which is created by law or by action of one or more political subdivisions.

(d) "Information" means information gained by the employee which the employee reasonably believes demonstrates:

1. A violation of any state or federal law, rule or regulation.

2. Mismanagement or abuse of authority in state government, a substantial waste of public funds or a danger to public health and safety.

(2) An employee may bring an action in circuit court against his or her employer or employer's agent, including this state, if the employer or employer's agent retaliates, by engaging in a disciplinary action, against the employee because the employee exercised his or her rights under the first amendment to the U.S. constitution or article I, section 3, of the Wisconsin constitution by lawfully disclosing information or because the employer or employer's agent believes the employee so exercised his or her rights. The employee shall bring the action within 2 years after the action allegedly occurred or after the employee learned of the action, whichever occurs last. No employee may bring an action against the office of state employment relations as an employer's agent.

(3) If, following the close of all evidence in an action under this section, a court or jury finds that retaliation was the primary factor in an employer's or employer's agent's decision to engage in a disciplinary action, the court or jury may not consider any evidence offered by the employer or employer's agent that the employer or employer's agent would have engaged in the disciplinary action even if the employee had not disclosed, or the employer or employer's agent had not believed the employee disclosed, the information.

(4) If the court or jury finds that the employer or employer's agent retaliated against the employee, the court shall take any appropriate action, including but not limited to the following:

(a) Order placement of the employee in his or her previous position with or without back pay.

(b) Order transfer of the employee to an available position for which the employee is qualified within the same governmental unit.

(c) Order expungement of adverse material relating to the retaliatory action or threat from the employee's personnel file.

(cm) Order the employer to pay compensatory damages.

(d) Order the employer to pay the employee's reasonable attorney fees.

(e) Order the employer or employer's agent to insert a copy of the court order into the employee's personnel file.

(f) Recommend to the employer that disciplinary or other action be taken regarding the employer's agent, including but not

limited to any of the following:

1. Placement of information describing the agent's action in his or her personnel file.

2. Issuance of a letter reprimanding the agent.

3. Suspension.

4. Termination.

History: 1983 a. 409; 1985 a. 135; 1995 a. 27; 1997 a. 237; 2003 a. 33 ss. 2726, 9160; 2005 a. 74; 2005 a. 155 ss. 13, 60; Stats. 2005 s. 230.90.

The scope of an employee's protection under s. 895.65 is narrower than the protection afforded by the 1st amendment. *Kmetz v. State Historical Society*, 304 F. Supp 2d 1108 (2004).