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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 18-006

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### 1. Statutory Authority

a. In the rule summary, the agency cites to ss. 227.11 (2), 230.04 (5), and 230.05 (5), Stats., as statutory authority for the proposed rule. However, ch. 230, Stats., contains statutes that provide specific rulemaking authority to the agency for parts of the proposed rule and, thus, should also be cited as statutory authority. Examples include ss. 230.04 (14), 230.24 (1), and 230.34 (2) (b), Stats.

b. Section ER 43.02 (2) (d) adds veteran groups to the definition of “affirmative action group”. However, in the statutory definition of “affirmative action” under s. 230.03 (2), Stats., veteran groups are not included in the list of affirmative action groups. The agency should explain its statutory authority for including veteran groups in its definition of “affirmative action groups”.

c. Section ER-MRS 11.03 (2) allows the director to reactivate a register up to one year from the date it was established. Section 230.25 (3) (a), Stats., allows the administrator to reactivate a register for up to three years from the date it was established. Why is the proposed rule more restrictive than the statute?

d. In s. ER-MRS 16.025 (2) and (3), the three- and five-year time periods end with the last day of the third or fifth year after the date of separation or layoff. Does the agency intend the end date to always occur on December 31<sup>st</sup>? If so, this interpretation appears to be inconsistent with s. 230.31, Stats., which provides a three- or five-year period from the date of separation or layoff and does not appear to extend to December 31<sup>st</sup> of the year in which that period expires.

## **2. Form, Style and Placement in Administrative Code**

a. Sections ER 1.02 (8) and (46) and ER-MRS 1.02 (5) and (33) provide, in the definitions of “demotion” and “transfer”, that a demotion or transfer directed by the appointing authority shall be considered involuntary. It appears the provisions relating to involuntary demotions or transfers might be better placed in any sections of the rules where involuntary demotions and transfers are referenced, rather than as a potential substantive provision in the definitions. [s. 1.01 (7) (b), Manual.]

b. Sections ER 1.02 (22) and ER-MRS 1.02 (18) specify that “original appointment” does not include certain appointments for purposes of s. ER-MRS 13.03. Because that part of the definition only applies to s. ER-MRS 13.03, that part might be better placed in s. ER-MRS 13.03, rather than the general definitions in chs. ER 1 and ER-MRS 1. [s. 1.01 (7) (a), Manual.]

c. Throughout the proposed rule, when material is deleted and other material is inserted in the same location, the new underscored material always immediately follows the stricken material. [s. 1.06 (1), Manual.] For example, in s. ER 1.02 (22), “or transfer basis” should be replaced with “basis or transfer”.

d. In ss. ER 1.02 (42) and ER-MRS 1.02 (30), the comma after “230.32” should not be underscored because it is existing text. [s. 1.06 (1), Manual.]

e. In the treatment clause for SECTION 3, the designation “(intro.)” should be inserted after both “(3) (c) 3.” and “(5) (a)”.

f. Throughout the proposed rule, the title formats should follow the formats outlined in s. 1.05 (2), Manual. For example, the title of s. ER 18.02 (1) should read “EMPLOYEES WHO EARN ANNUAL LEAVE OF ABSENCE”, and the title of s. ER 18.02 (2) should read “COMPUTING CONTINUOUS SERVICE” (which are consistent with the existing titles in s. ER 18.02 (1) and (2)).

g. In s. ER 18.02 (5) (a), the hyphen after “160” should be underscored because it is new material. [s. 1.06 (1), Manual.]

h. In s. ER 18.08 (1), it appears that “~~6-12 months~~” should be replaced with “6 12 months”. [s. 1.06 (1), Manual.]

i. In the treatment clause for SECTION 13, the designation “(intro.)” should be inserted after “43.01”.

j. In s. ER 43.02 (5m), “one or more of the following” should be underscored because it is new text. [s. 1.06 (1), Manual.]

k. Throughout the proposed rule, introductory material that precedes subunits should end in a colon and contain words such as “all of the following” or “any of the following”. Each subunit should end in a period. [s. 1.03 (3), Manual.] For example, s. ER 43.02 (5m) (a) (intro.) should end with “one of the following” and subs. 1. and 2. should end in periods, not semicolons.

l. In s. ER 43.02 (5m) (c), the paragraph could read: ““Disabled veteran” has the meaning given in s. 230.03 (9m), Stats.”. [s. 1.01 (7) (d), Manual.]

m. In s. ER 43.04 (2), “~~board of regents of the university of Wisconsin system~~” should be replaced with “~~Board of Regents of the University of Wisconsin System~~” to accurately reflect existing text.

n. In s. ER 46.06 (7), “(a)” should be underscored because it is new text. [s. 1.06 (1), Manual.]

o. It appears s. ER 46.09 (2) should be repealed and recreated, rather than amended.

p. In s. ER-MRS 1.02 (30), the contents of the paragraph should be shown in the proposed rule in the identical form as they appear in the existing rule.

q. In s. ER-MRS 6.03, “and resumes” should be underscored because it is new material. [s. 1.06 (1), Manual.]

r. In ss. ER-MRS 6.08 (2) (intro.), 8.04 (2), and 22.035 (1) (intro.), “but is not limited to” or “but not limited to” should be stricken-through because the word “includes” is sufficient. Similarly, in s. ER-MRS 6.09 (1), “but not limited to” should be omitted. [s. 1.01 (9) (f), Manual.]

s. In s. ER-MRS 6.09 (1), the period at the end of the subsection should not be underscored. [s. 1.06 (4), Manual.]

t. In s. ER-MRS 11.04 (1) (h), “1” should be replaced with “one”. [s. 1.01 (5), Manual.] In addition, a period should be inserted at the end of the paragraph to accurately reflect the existing text.

u. In s. ER-MRS 12.07, to accurately reflect the existing text, “candidate” should be replaced with “candidates”; “deter- mines” should be replaced with “determines”; and “~~test~~” should be replaced with “~~tests~~”.

v. In the treatment clause for SECTION 77, the designation “(intro.)” should be inserted after “13.02 (2)”.

w. In s. ER-MRS 13.02 (2), “pro- vided” should be replaced with “provided” to accurately reflect the existing text.

x. Section ER-MRS 15.08 omits existing text near the end of the section. If the text should be deleted, it should be stricken-through. [s. 1.06 (1), Manual.]

y. In s. ER-MRS 22.06 (2), it appears that “may” should be stricken-through. [s. 1.06 (1), Manual.]

z. In s. ER-MRS 22.06 (3), the comma after “layoff group” should be stricken-through. [s. 1.06 (1), Manual.] In addition, “four years” should be replaced with “4 years”. [s. 1.01 (5), Manual.]

aa. In s. ER-MRS 22.07 (2), “(7)” should be omitted. [s. 1.01 (5), Manual.]

bb. SECTION 116 appears twice in the proposed rule. The second instance could be numbered as SECTION 116m or the following SECTIONS could be numbered as 117 and the sequence adjusted.

cc. In s. ER-MRS 27.06 (4), “procedure” should be underscored because it is new text. [s. 1.06 (1), Manual.]

dd. In s. ER-MRS 30.11 (1), the “a” after “If ~~the~~” should be underscored because it is new text. [s. 1.06 (1), Manual.]

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

a. Section ER 18.02 (2) references s. 230.08 (2) (k), Stats., but that statutory section was repealed as the note in sub. (2) (a) indicates. It appears that the proposed rule should delete the reference to the repealed statute.

b. Section ER 18.02 (2) (b) 6. references s. 19.342 (10) (L), Stats., but that statute does not exist. The proposed rule should omit or correct the reference to that statute.

c. In s. ER 46.06 (2) (b) 2., should “par. (1)” be replaced with “subd. 1.”?

d. Section ER-MRS 12.02 references s. 230.274 (1), Stats., but that statute does not exist. The proposed rule should omit or correct the reference to that statute.

e. In s. ER-MRS 13.05 (2), a period should be inserted after the “s” that precedes “ER-MRS 13.02 (4)”.

f. In s. ER-MRS 16.03 (5), “s. ER-MRS 14.03 (1), and s. ER-MRS 15.055” should be replaced with “~~s. ER-MRS 14.03 (1)~~ ss. ER-MRS 14.03 (1) and 15.055”.

g. In s. ER-MRS 22.08 (intro.), “below” should be replaced with “below in this section”.

h. In s. ER-MRS 22.08 (2) (a), “sub.” should be replaced with “sub. subsection”.

i. In s. ER-MRS 22.08 (2) (c), “subpart (1)” should be replaced with “sub. (1)”.

j. In s. ER-MRS 30.105, should “ch. ER-MRS 15” be replaced with “~~ch. ER-MRS 15~~ ch. ER-MRS 22”?

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. ER 46.09 (2), are the additional procedures established by the administrator promulgated as rules? If not, why not?

b. In s. ER-MRS 8.01, consider removing the word “examination” altogether, rather than amending it, in order to more closely mirror the language in the cited statutory section.

c. In s. ER-MRS 10.04 (2), are the standards established by the director promulgated as rules? If not, why not?

d. In s. ER-MRS 10.06 (1), “judgement” should be replaced with “judgment”.

e. Should s. ER-MRS 13.05 (1) contain the same reference to “during a probationary period ...” that is in s. ER-MRS 13.05 (2)?

f. Should s. ER-MRS 15.04 (2) specify that the subsection applies to an employee who is involuntarily transferred after serving a probationary period?