

Chapter ETF 10

ADMINISTRATION

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ETF 10.01 Definitions. Words, phrases, and terms used in all ETF chapters which are not defined in this section shall have the meaning set forth in s. 40.02, Stats.:

(1g) "Active military service" and "active service," as that term is used with reference to military service, including in s. 40.02 (15) (a) (intro.) and 1, (c) (intro.), 1 and 4, and (48m) (f), Stats., mean active duty military service in the armed forces of the United States, excluding:

(a) Service reported by the military as active duty for training purposes.

(b) Service as a cadet or student at a U.S. military service academy.

Note: This definition does not apply to the term "active service" used in reference to active performance of the duties of employment with a participating employer, as for example in s. 40.63 (1) (c) and (2), Stats.

Insofar as possible, the department relies on U.S. armed forces documents, such as the DD 214, the AGO53-55 series, NAVPERS 553, and GSA 6851, to identify periods of "active duty" and "active duty for training."

(1m) "Current basic pay rate" means:

(a) Unless otherwise provided by ch. 230, Stats., contractual agreements authorized under subch. V of ch. 111, Stats., or par. (b) or (c), the hourly rate, or its equivalent, excluding any overtime or supplementary compensation, at which the employee is paid at the time of termination of employment or at the time of death. For an active employee or employee on an approved leave of absence the "current basic pay rate" means the hourly rate, or its equivalent, the employee is paid during the pay period or was paid prior to the commencement of the leave of absence. The equivalent of the hourly rate of pay shall be obtained by dividing the

employee's total earnings in a typical pay period, excluding any overtime, on-call, extracurricular or supplementary compensation, by the number of hours, excluding hours, such as overtime, on-call and extracurricular hours which are incidental to the primary employment, for which the employee is paid in that pay period. If the employee has received a pay adjustment during the 12 months preceding termination, death or leave of absence, other than a permanent change that is broadly applicable to the employees of that employer, or unless that change is the result of a significant change in the nature and duties and activities of that employee, then the equivalent of the hourly rate shall be the greater of the previous current basic pay rate prior to the pay adjustment or the final average earnings divided by 174.

(b) For an annuitant who becomes a participating employee subject to s. 40.22, Stats., within 3 years of the original date of termination, the greater of the current basic pay rate as established under par. (a) on the effective date of the original annuity or the current basic pay rate at the time of subsequent termination.

(c) For annuitants who become participating employees subject to s. 40.22, Stats., after more than 3 years from the original date of termination the current basic pay rate determined in accordance with par. (a) at the time of subsequent termination for sick leave accumulated after reemployment only. The conversion of sick leave accumulation in effect prior to reemployment shall be calculated by application of the current basic pay rate in effect prior to reemployment as determined under par. (a).

(2) "Dependent" means:

(a) For life insurance purposes, an employee's spouse and an employee's unmarried child, including natural child, stepchild, adopted child and a child in an adoptive placement under s. 48.837 (1), Stats., who is dependent upon the employee for at least 50% of support and maintenance and who is:

1. More than 14 days of age, but under the age of 19,
2. Age 19 or over but less than age 25 if a full-time student, or
3. Age 19 or older and incapable of self-support because of a physical or mental disability which is expected to be of long-continued or indefinite duration.

(b) For health insurance purposes, an employee's spouse and an employee's unmarried child who is dependent upon the employee or the employee's former spouse for at least 50% of support and maintenance. In this paragraph, "child" includes a natural child, stepchild, adopted child, child in an adoptive placement under s. 48.837 (1), Stats., and a legal ward who became a legal ward of the employee or the employee's former spouse prior to age 19, and who is:

1. Under the age of 19,
2. Age 19 or over but less than age 25 if a full-time student, or
3. Age 19 or older and incapable of self-support because of a physical or mental disability which is expected to be of long-continued or indefinite duration.

(2m) "Earnings" under s. 40.02 (22), Stats., except as otherwise provided by federal regulations for OASDHI purposes, does not include payments made in lieu of welfare, payments made to reimburse welfare costs, or payments made as part of a work relief, general relief or public assistance program under ch. 49, Stats., unless employment is part of a training program to improve skills or increase employability and the employment satisfies the requirements under s. 40.22 (1), Stats.

(3) "Full calendar year" as used in s. 40.08 (8) (d) and (10), Stats., means the time period beginning on a given date and ending on the same date in the next year.

(3d) "Guardian" has the meaning given in s. 880.01 (3), Stats., and includes conservators appointed pursuant to s. 880.31, Stats.

(3h) "Inactive participant" means, for purposes of the teachers retirement board election under s. ETF 10.10, a participant who is neither a participating employee, as defined in s. 40.02 (46), Stats., nor an annuitant as defined in s. 40.02 (4), Stats.

(3m) "Medical record" includes medical evaluation, diagnosis, prognosis, rehabilitation potential, medication, treatment, diet, limitations on activities, symptoms, general physical or mental condition, x-rays, lab tests or results, or any communication or information related to the health, medical, surgical, dental, optometric, chiropractic, podiatric or hospital care or condition of a participant or the spouse or dependent of the participant.

(3p) "Monthly compensation" means, for purposes of s. 40.19 (4) (g), Stats.:

(a) Where the compensation is paid on a weekly basis, the amount computed by multiplying the employee's basic weekly pay rate by 4.3333.

(b) Where the compensation is paid on a biweekly basis, the amount computed by multiplying the employee's basic biweekly pay rate by 2.1666.

(3s) "Public school" means, for purposes of s. 15.165 (3) (a) 1, Stats., a cooperative educational service agency established under ch. 116, Stats., a county handicapped children's education board established under s. 115.86, Stats., and any school supported wholly or in part by public funds which is under the control and management of the state of Wisconsin or any subdivision of the state of Wisconsin and which is empowered by law to employ teachers; but does not mean the university of Wisconsin system, any school in the city of Milwaukee, a state agency or a vocational, technical and adult education district.

(3w) "Salary index" means, for purposes of s. 40.26, Stats., for years prior to 1982, 5%.

(4) "School system" includes, for life insurance purposes, any public entity whose primary purpose is education.

(4m) "School year" means, for purposes of s. 40.02(3), Stats., the period beginning July 1 and ending the following June 30.

(5) "Student" means, for insurance purposes, a person, who is enrolled in an institution which provides a schedule of courses or classes and, whose principal activity is the procurement of an education. Full-time

student status shall be defined by the institution in which the student is enrolled and shall include any usual vacation period if the child was a full-time student at the end of the previous term.

(6) "Summer vacation" means the time between the end of the regular school term of the school system in which the employe was last employed and the beginning of the next regular school term of that system.

History: Cr. Register, February, 1983, No. 326, eff. 3-1-83; r. and recr. (intro.), am. (2) (intro.), cr. (3m), Register, June, 1983, No. 330, eff. 7-1-83; cr. (3w), Register, December, 1983, No. 336, eff. 1-1-84; cr. (3h) and (3s), Register, March, 1984, No. 339, eff. 4-1-84; am. (1), Register, April, 1984, No. 340, eff. 5-1-84; emerg. cr. (4m), eff. 1-1-85; cr. (4m), Register, March, 1985, No. 351, eff. 4-1-85; cr. (2m), Register, October, 1985, No. 358, eff. 11-1-85; cr. (1m), Register, May, 1986, No. 365, eff. 6-1-86; am. (1m) (a), Register, August, 1986, No. 368, eff. 9-1-86; r. (1) and (3), Register, September, 1986, No. 369, eff. 10-1-86; r. and recr. (2), Register, January, 1987, No. 373, eff. 2-1-87; cr. (3p), Register, March, 1987, No. 375, eff. 4-1-87; cr. (3), Register, June, 1992, No. 438, eff. 7-1-92; cr. (1g), Register, September, 1992, No. 441, eff. 10-1-92; cr. (3d), Register, October, 1992, No. 442, eff. 11-1-92.

ETF 10.03 Creditable service. (1) For annual earnings periods beginning on or after January 1, 1985, each participating employer shall determine and report service in hours for each participating employe in the manner prescribed in this section. Earnings which are paid to a teacher, as defined in s. 40.02(55), Stats., who has contracted to receive such payments on either a 9 or 10 month contract basis, and which are paid after the beginning of a school year, as defined in s. ETF 10.01(4m), for services rendered in the preceding school year, are deemed to be received by the teacher on June 30 of the preceding school year for purposes of reporting service to the department.

(2) The full-time equivalent of one day of service is 8 hours. If an employer has established workdays of other than 8 hours as full-time employment for some or all of its employes, the number of hours to be reported within a reporting period is determined by the participating employer by dividing the number of hours for which earnings are paid to the employe in the reporting period by the number of hours which would have been worked in that reporting period by a regular full-time employe of that employer in the same kind of employment and multiplying the result by 40 times the number of weeks and fractions of a week in the reporting period.

(3) For purposes of s. 40.02(17), Stats., the full-time equivalent of one year of creditable service for a teacher, as defined in s. 40.02(55), Stats., who is not an executive participating employe, as defined in s. 40.02(30), Stats., is 1,320 hours and for all other participating employes the full-time equivalent of one year of creditable service is 1,904 hours.

(4) When a participating employe receives earnings from the same participating employer for employment in more than one of the categories under s. 40.23(2)(b), Stats., then the following tests shall be applied by the participating employer when service and earnings are reported:

(a) If employment in each of the categories meets the requirements of s. 40.22, Stats., by itself then the earnings and service shall be reported separately for each category.

(b) If employment in any one category meets the requirements of s. 40.22, Stats., and all other employment does not, then earnings and service shall be added to and reported under the one category which meets the eligibility requirements of s. 40.22, Stats.

(c) If employment in more than one category meets the qualifying requirements of s. 40.22, Stats., and all other employment does not, then earnings and service for employment in those categories which do not meet the qualifying requirements of s. 40.22, Stats., shall be added to and reported under:

1. That qualifying category in which the greatest number of hours is worked, or

2. The lowest numbered subd. under sub. (5)(b) if the greatest number of hours worked is equal in 2 or more qualifying categories.

(d) If employment in none of the categories meets the requirements of s. 40.22, Stats., separately, but those requirements are met when the employment is added together then earnings and service shall be added to and reported under:

1. That category in which the greatest number of hours is worked, or

2. The lowest numbered subd. under sub. (5)(b) if the greatest number of hours worked is equal in 2 or more categories.

(5) (a) Fractions of an hour shall be rounded to the nearest hour prior to crediting and if the fraction is one-half hour then the hours credited shall be rounded up to the next whole number.

(b) If the total number of hours reported for an employe within an annual earnings period exceeds the applicable number specified in sub. (3) service shall be allocated and credited in the following sequence:

1. Service as a protective occupation participant not subject to Titles II and XVIII of the federal social security act whose formula rate is determined under s. 40.23 (2m) (e)4, Stats.

2. Service as a protective occupation participant subject to Titles II and XVIII of the federal social security act whose formula rate is determined under s. 40.23 (2m) (e)3, Stats.

3. Service as an executive participating employe whose formula rate is determined under s. 40.23 (2m) (e)2, Stats.

4. Service as an elected official whose formula rate is determined under s. 40.23 (2m) (e)2, Stats.

5. Service as a teacher whose formula rate is determined under s. 40.23 (2m) (e)1, Stats.

6. Service of a type not covered under subds. 1 to 5.

(c) The earnings shall be reported and credited in full without regard to any allocation of creditable service under par. (b).

(6) (a) For local elected officials who are participating employes, but serving in positions not considered full-time by the local unit of government, the amount of service shall be determined and reported by the employer as follows:

1. For employment which is essentially ministerial in nature, the number of hours reported shall be the actual number of hours for which the employe is paid if a regular work schedule has been established. If there is no regular work schedule, the number of hours reported may not

be greater than the quotient derived from dividing the compensation paid during the reporting period by 2 times the minimum hourly wage rate established by the federal fair labor standards act for non-agricultural employment.

2. For members of governing bodies or other policy-making groups, the number of hours reported shall be the number of hours in actual attendance at meetings of the governing body, the policy-making group or any sub-group thereof and a reasonable amount of time spent in preparation for such meetings, but in no event shall the number of hours determined to have been spent in preparation time exceed twice the number of hours actually spent at the meetings.

(b) In applying the standards set forth in par. (a), it is the responsibility of the local unit of government to maintain the necessary documentation to justify the reasonableness of the basis used in reporting service for local elected officials.

(c) The department may consider other factors in granting creditable service to local elected officials where circumstances warrant and when satisfactory supporting information is provided.

(7) (a) If a participating employe receives earnings for on-call, standby, extracurricular or other service which is incidental to the primary employment, earnings shall be reported and contributions paid on those earnings pursuant to s. 40.05, Stats. The number of hours determined by the employer and reported pursuant to this subsection shall be the quotient derived from dividing the compensation paid for such service during the annual earnings period by the participating employe's current basic pay rate.

(b) The employer shall maintain the necessary documentation to justify the basis upon which service is reported in applying the standards set forth in par. (a).

(c) In no event shall the number of hours under par. (a), combined with the hours under the primary employment, exceed creditable service of one year during the entire calendar year.

Note: This rule requires a new form which will replace several existing forms. These forms are routinely provided by the department at no charge to reporting officials required to use them.

History: Emerg. cr. eff. 1-1-85; cr. Register, March, 1985, No. 351, eff. 4-1-85; cr. (7), Register, August, 1986, No. 368, eff. 9-1-86.

ETF 10.05 Creditable service for Milwaukee teachers. Creditable service for Milwaukee teachers shall be granted for teaching services performed

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payments for retroactive changes in earning rates and those considered covered earnings under s. 40.02 (22) (b) 9, Stats., shall be determined at the employe and employer rates which would have been in effect if the subsequent changes and decisions had been known at the time the earnings would normally have been payable and shall be subject to s. 40.06 (5), Stats.

History: Cr. Register, July, 1986, No. 367, eff. 8-1-86.

ETF 10.64 Late reporting charges and interest. (1) Except as provided in s. ETF 10.63 (2) and (3) and this subsection, any report or remittance not received within the period specified in this chapter, ch. 40, Stats., or an insurance contract between the group insurance board and an insurance carrier shall be subject to the charges and interest calculated in accordance with the provisions of s. 40.06, Stats. Reports and remittances required under ss. ETF 10.61, 10.62 and 10.63 (1) (f) are not subject to the interest charges under s. 40.06 (5), Stats.

(2) The employer shall be responsible for and transmit to the department any assessment made against the state by the federal government for late payment of contributions due on any OASDHI adjustment report.

(3) When interest is due under s. 40.06 (5), Stats., and the effective rate for the current year is unavailable, the effective rate for the previous calendar year shall be used. The due date specified on the billing notice shall be the next regularly scheduled due date for regular payments specified under s. ETF 10.63, ch. 40, Stats., or contracts between the group insurance board and any insurance carrier, but in no case less than 30 days from the date of the billing notice. When interest is due under s. 40.06 (3), Stats., it shall be assessed on a daily basis from the billing notice due date to the date payment is actually received.

History: Renum. from ETF 4.02 (2) and am., Register, December, 1982, No. 324, eff. 1-1-83; am. (1) and cr. (2), Register, August, 1984, No. 344, eff. 9-1-84; am. (1) and cr. (3), Register, October, 1986, No. 370, eff. 11-1-86.

ETF 10.70 Individual personal information. (1) Individual personal information, within the meaning of s. 40.07, Stats., is all information in any individual record of the department, including but not limited to the date of birth, earnings, contributions, interest credits, beneficiary designations, creditable service, marital status, address, and social security number, but not including information in any statistical report, other report or summary in which individual identification is not possible.

(2) Individual personal information may be disclosed as required for the proper administration of benefit programs under ch. 40, Stats., including discussion of this information in any meeting of any board created under s. 15.16 or 15.165, Stats., or disclosure in any written record of the board proceedings.

(3) (a) Pursuant to s. 40.07 (1) (a), Stats., an individual's personal information may be disclosed, except as otherwise prohibited, upon proper identification, to that individual or the duly authorized personal representative of that individual in person, by telephone, or in writing.

(b) Except as provided in par. (d), an individual's authorization to release information to a personal representative shall be in writing, signed, and dated and shall refer specifically to the records in this department.

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(c) A written authorization under par. (b) which does not contain an expiration date shall be deemed to have expired 6 months following the date the authorization was signed.

(d) The secretary of the department, or specific departmental employees designated by the secretary, may authorize disclosure of information without written authorization when urgent circumstances exist which warrant an exception to normal procedures and when the person to whom the information is to be given is otherwise authorized to receive it.

(4) In case of death, disabling injury or disease, disclosure of individual personal information shall be made only to a proper beneficiary or the duly authorized representative of the beneficiary or to the legal representative of the individual or the individual's estate whose record is the subject of inquiry.

(5) Notwithstanding sub. (3), disclosure of an individual's beneficiary designation shall only be made under any of the following circumstances:

(a) While the individual is living, to the individual or to his or her duly authorized representative, upon request in person or in writing.

(b) After the death of the individual:

1. Upon request in person or in writing, to the personal representative of the individual's estate, to a beneficiary of the individual, or to the personal representative's or the beneficiary's duly authorized representative;

2. To an insurance carrier or administrator of benefits under ch. 40, Stats., or predecessor as necessary for proper payment of benefits.

(c) To parties determined by the department to have an interest in the designation, when the information is relevant to a pending court action or to a pending appeal under s. 40.03 (1) (j), (6) (i), (7) (f), (8) (f), or 40.80 (2g), Stats.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83; r. and recr. (5), Register, October, 1992, No. 442, eff. 11-1-92.

ETF 10.71 Transcript fees. (1) The department shall provide a party to an appeal under ch. ETF 11, or a party to department proceedings under s. 227.42, Stats., with a copy of the transcript of any proceedings upon request and payment of a fee. The party shall make the request for the transcript in writing and pay a fee as follows:

(a) For an existing written transcript, a \$3.00 flat charge plus 25¢ for each page of the transcript for single copies.

(b) A 10¢ per page charge for additional copies.

(c) For producing a written transcript from reporter's notes or another medium, the reasonable costs of transcription in addition to the fees provided by pars. (a) and (b).

(d) For an audio tape, \$10 per copy.

(e) For other electronic record, the reasonable cost of the medium and copying.

(2) One free copy of the transcript shall be provided to any party who establishes to the satisfaction of the department, that the payment of a transcript fee would prove to be an unreasonable financial burden due to the party's lack of financial resources.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77; renum. from ETF 3.02 and am. (1) (intro.) and (2), Register, June, 1983, No. 330, eff. 7-1-83; r. and recr. (1) (intro.), am. (1) (a), cr. (1) (c) to (e), Register, June, 1992, No. 438, eff. 7-1-92.

ETF 10.72 Fee for search of historical records. Individuals and employers may be charged an administrative fee of \$5.00 for information concerning an account or record which is not readily available and which requires a search of historical records, either within the department or at the state records center. This charge shall not apply for searches required by s. 40.02 (17) (b) or 40.25 (6) (a), Stats.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; renum. from ETF 3.03 am., Register, June, 1983, No. 330, eff. 7-1-83.

ETF 10.75 Durable power of attorney. (1) The department shall accept durable power of attorney, as defined under and containing the language required in s. 243.07, Stats., in lieu of a participant's or guardian's signature in all situations except the filing of a benefit application or beneficiary designation.

(2) The durable power of attorney shall be acceptable if it satisfies the following requirements:

- (a) It is in writing.
- (b) It is dated.
- (c) The expiration date, if specified, has not passed.
- (d) It is signed by the participant.

(e) It does not exclude all property nor specifically the benefit program administered by the department.

(3) The attorney-in-fact shall, at the request of the department, submit proof of continuance of durable power of attorney by affidavit as set forth under s. 243.07 (5), Stats.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86.

ETF 10.78 Guardianship requirements. (1) When the amount of a single sum benefit payment to a minor, as defined under s. 880.01 (7), Stats., or incompetent, as defined under s. 880.01 (4), Stats., exceeds \$5,000, or when an annuity or disability annuity is payable, payment shall be made by the department to the court appointed guardian, for the benefit of the minor or incompetent, upon receipt of a certified copy of the letters of appointment. Letters of appointment shall be certified within the past 6 months. If the minor is married and has not been adjudged to be incompetent, the department shall make the payment to the minor.

(2) When a single sum benefit of \$5,000 or less is payable, the secretary may authorize payment, for the benefit of the minor or incompetent, to the person providing for or caring for the minor, or to the spouse, parent or blood relative providing for or caring for the incompetent person.

(3) Notwithstanding sub. (2), if a guardianship is identified prior to payment, payment shall be made to the guardian, for the benefit of the

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minor or incompetent, upon receipt of a certified copy of the letters of appointment.

(4) If there is a guardian of the estate and another guardian of the person, payment shall be made to the guardian of the estate.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86.

ETF 10.80 Invalid benefit applications and beneficiary designations. (1) Except as provided in sub. (2), an application for a benefit, a designation of a beneficiary or any other document which is signed by a guardian as provided in s. 40.08 (9m), Stats., but is not accompanied by a certified copy of an order of a circuit court approving the specific terms of the document is invalid and is deemed not to have been filed with the department. The department shall return any such document to the guardian as soon as administratively feasible, but failure by the department to return such a document shall not be interpreted as approval.

(2) A certified copy of an order of a circuit court approving the specific terms of the document is not required if the document:

(a) Is a benefit application subject to s. 40.08 (9), Stats., and s. ETF 10.78;

(b) Is not required by statute, administrative rule, or contract administered by the department to be signed by the person under guardianship;

(c) Is an insurance application which is required to be filed in order to initiate, increase, continue, or convert insurance coverage or to transfer coverage from one insurance carrier to another; or

(d) Can be revoked or changed in the future without restriction, or is otherwise determined by the department to be without long-term effect on the rights and benefits of the person under guardianship. This paragraph does not apply to designations of beneficiary.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92.