

position to which the employee returns shall not be placed in the executive service, but shall remain in the preferred service.

(h) Notwithstanding any other law to the contrary, including, but not limited to, § 4-4-105, the reduction of scheduled hours of work authorized by this section shall include the closing of any or all state departments on any day or partial day of the week, when determined to be necessary by the governor as a result of reductions in funding levels.

(i) If at any time prior to or during any reduction-in-force the governor determines that the reduction-in-force will materially impair and/or disrupt governmental services to the public, the governor shall notify the speaker of the senate and the speaker of the house of representatives of the anticipated impairment and/or disruption of such governmental services. The governor shall advise the speakers of the actions that the governor and the affected department or departments will undertake to minimize the impairment and/or disruption of such governmental services.

(j) The names of all preferred service employees affected by a reduction-in-force shall be placed on a layoff list maintained by the department. For a period of one (1) year following the date of the layoff, an employee, who is laid off as a result of a reduction-in-force, shall be notified of any job openings in the same job classification that the employee served immediately prior to layoff, shall be extended an invitation to apply for the job, and shall be granted an interview.

SECTION 36. Tennessee Code Annotated, Section 8-30-315, is amended by deleting the section in its entirety and substituting instead the following:

An appointing authority may suspend without pay an employee, for disciplinary purposes, for such length of time as the authority considers appropriate, not exceeding thirty (30) days in any twelve-month period. With the approval of the commissioner, an employee may be suspended for a longer period pending the appeal or the processing of an appeal in accordance with this chapter.

SECTION 37. Tennessee Code Annotated, Section 8-30-316, is amended by deleting the section in its entirety and substituting instead the following:

(a) An employee in the preferred service who has successfully completed a probationary period becomes a preferred service employee and may be dismissed, demoted, or suspended for cause. The dismissal of a preferred service employee will take effect immediately after the appointing authority gives notice to such employee and files a written statement with the commissioner. The employee shall continue to receive compensation for ten (10) days following the date of dismissal.

(b) An appointing authority may dismiss any employee when the authority determines that the good of the service will be served thereby. Whenever an employee is dismissed "for the good of the service," the notice of termination must outline the reasons for dismissal.

(c) If an employee in state service willfully refuses or fails to appear before any legislative committee, or any officer, board or body authorized to conduct any hearing or inquiry, the employee shall forfeit his or her position and shall not be eligible for appointment to any position in state service.

(d) Any employee who is absent from duty for more than three (3) consecutive work days without giving prior written or electronic notice to the appointing authority or appropriate manager that specifies the reason for such absence, and without securing permission to be on leave, or who fails to report for duty or to the immediate supervisor or the appointing authority within two (2) work days after the expiration of any authorized leave of absence, is considered as having resigned not in good standing, absent extenuating circumstances beyond the control of the employee causing the employee's absence or preventing the employee's return. An employee deemed to have resigned in accordance with these circumstances shall have the right to appeal such action through the appeal procedure described herein.

(e) The commissioner may dismiss an employee if the commissioner finds that the employee was appointed as a result of fraud.

(f) A preferred service employee is entitled to appeal a dismissal, demotion, or suspension as provided in § 8-30-318.

SECTION 38. Tennessee Code Annotated, Section 8-30-317, is amended by deleting the section in its entirety and substituting instead the following:

The department of human resources and the department of finance and administration shall report electronically each month to the finance and ways and means committees of the senate and house of representatives and the fiscal review committee on bona fide employee promotions, showing clearly by department the names and the increases in pay as a result of such promotions. The departments shall also furnish an electronic copy of the report to the speakers of the senate and house of representatives and upon request to any member of the general assembly. The report shall also include employee transfers, dismissals, terminations, demotions, separations, positions reclassified from the preferred service to the executive service, and position abolishments showing clearly by department the name and title of each employee affected and such employee's position after such action.

SECTION 39. Tennessee Code Annotated, Section 8-30-318, is amended by deleting the section in its entirety and substituting instead the following:

** Appeals Process*

(a) The department shall promulgate regulations establishing an appeal procedure for employees.

(b) An employee in the preferred service system, who has successfully completed the required probationary period, may file a complaint concerning the application of a law, rule, or policy to the dismissal, demotion, or suspension of the employee. If the term of the suspension is less than three (3) days, the right to appeal is limited to an appeal to the commissioner under Step II of subsection (h). An employee shall not be entitled to appeal a suspension of less than three (3) days to the board of appeals.

(c) An executive service employee, however, does not have standing to file a complaint under this section.

(d) A complaint filed under this section must identify the law, rule, or policy that was allegedly violated.

(e) An employee who files a complaint under this section must file the complaint as soon as possible after the occurrence of the act or condition complained of, and not later than fourteen (14) days after the date the employee became aware, or by the exercise of reasonable diligence should have become aware, of the occurrence giving rise to the complaint. If an employee fails to file the complaint within the fourteen-day period, the right to appeal under this chapter lapses and is deemed to have been waived in its entirety by the employee.

(f) For the purposes of this chapter, a complaint is filed when the appointing authority, the commissioner, or the board of appeals, depending on whether the complaint is being made under Step I, II or III as provided in subsection (h), receives a written or electronic copy of the complaint.

(g) A remedy granted under this section may not extend back more than thirty (30) days before the complaint was filed.

(h) The following appeal procedure is established:

Step I: The complainant shall reduce the complaint to writing and file the complaint with the complainant's appointing authority. The appropriate appointing authority or designee shall conduct any investigation considered necessary, meet with the complainant in person, and issue a decision, in writing, not later than fifteen (15) days after the date the appointing authority receives the complaint. If

the appointing authority does not issue a decision fifteen (15) days after the appointing authority receives the complaint, the complainant may appeal to the commissioner by filing the complaint in accordance with Step II.

authority

Step II: If the appointing authority does not find in favor of the complainant, the complainant may appeal to the commissioner of the department of human resources by filing the complaint not later than fourteen (14) days after the date of the appointing authority's written decision. The commissioner of the department of human resources shall review the complaint and the appointing authority's decision, and issue a decision, in writing, not later than thirty (30) days after the date the complaint was filed with the commissioner. If the commissioner does not issue a decision thirty (30) days after the commissioner receives the complaint, the complainant may appeal to the board of appeals in accordance with Step III.

DPM

Step III: The complainant or state agency may appeal in writing to the board of appeals not later than fourteen (14) days after the date the complainant, or in the case of a state agency, the state agency receives written notice of the action taken by the commissioner of the department of human resources. Within ten (10) days after the receipt of the appeal, the administrative law judge assigned to assist the board of appeals in the proceedings related to the appeal shall determine whether all previous procedural requirements were completed properly and in a timely manner. If a procedural requirement has not been met, the appeal shall be dismissed. If the procedural requirements have been met, the board of appeals shall conduct proceedings in accordance with the Uniform Administrative Procedures Act as modified herein, to determine if the law, rule, or policy specified in the complaint was violated.

ERC

Each hearing under this chapter shall occur before a panel of at least three (3) members of the board of appeals, assisted by one (1) administrative law judge ("ALJ"). The ALJ shall assist at the hearing by ruling on questions of the admissibility of evidence, swearing witnesses, advising members of the board of appeals on the law of the case, and ensuring that the proceedings are carried out in accordance with this chapter and other applicable law. At no time shall the ALJ take part in the determination of a question of fact. An ALJ, upon timely motion, may decide any procedural question of law.

The board of appeals shall issue its final decision in each proceeding no later than one hundred twenty (120) days after the date of the filing of the appeal with the board of appeals.

(i) In order to ensure that the board of appeals issues its final decision no later than one hundred twenty (120) days after the date of the filing of the appeal, the following conditions shall be imposed on hearings before the board of appeals:

- (1) The parties shall participate in a pre-hearing conference no later than twenty (20) days after the filing of the appeal. At the pre-hearing conference, a date must be set on which the hearing before the board of appeals will be held.
- (2) All discovery must be completed no later than sixty (60) days after the filing of the appeal.
- (3) All motions, both dispositive and non-dispositive, must be ruled on no later than thirty (30) days before the date of the hearing.
- (4) Extensions on the deadlines provided herein are only to be granted in extraordinary circumstances. In any event, the granting of an extension shall not extend the one hundred twenty (120) day time period for the board of appeals to issue its decision.
- (5) Continuances of the hearing before the board of appeals may be granted only in extraordinary circumstances, as determined by the board of appeals or the ALJ.

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(6) Neither party shall be entitled to a petition for reconsideration under § 4-5-317.

(j) Decisions of the board of appeals are subject to judicial review in accordance with the Uniform Administrative Procedures Act, title 4, chapter 5 and the rules and regulations promulgated thereunder, in each case as amended in this chapter.

(k) The board of appeals may award attorney's fees and costs to a successfully appealing employee. The commissioner shall establish by rule the manner in which those fees shall be determined. The unsuccessful party or other state agency shall pay any fees or costs awarded under this subsection.

(l) If the employee is successful in obtaining reinstatement to a position from which the employee has been terminated, the employee shall be reinstated to a position in the county in which he or she was employed at the time of termination. The commissioner may grant exceptions on a case-by-case basis.

(m) In any case in which a successful complainant has been awarded reinstatement, back pay or attorney's fees, the agency involved shall have a period of thirty (30) days from the date of the final order within which to provide reinstatement, back pay and/or attorney's fees.

SECTION 40. Tennessee Code Annotated, Section 8-30-319, is amended by deleting the section in its entirety and substituting instead the following:

(a) The supervisor is responsible for maintaining the proper job performance level, conduct, and discipline of the employees under the supervisor's supervision. When corrective action is necessary, the supervisor should administer disciplinary action at the step appropriate to the infraction, conduct, or performance, as determined by the supervisor.

(b) Upon written application by the employee, any written warning or written follow-up to an oral warning, which has been issued to an employee, shall be expunged from the employee's personnel file after a period of two (2) years; provided, that the employee has had no further disciplinary actions with respect to the same area of performance, conduct, and discipline.

SECTION 41. Tennessee Code Annotated, Section 8-30-320 through and including Section 8-30-333 are repealed.

SECTION 42. Tennessee Code Annotated, Section 8-30-401, is amended by deleting the section in its entirety and substituting instead the following:

The commissioner may enter into agreements with any municipality or political subdivision of the state to furnish services and facilities of the department to such municipality or political subdivision in the administration of its personnel. Any such agreement shall provide for the reimbursement to the state of the reasonable cost of the services and facilities furnished, as determined by the commissioner. All municipalities and political subdivisions of the state are authorized to enter into such agreements.

SECTION 43. Tennessee Code Annotated, Section 8-30-402, is amended by deleting the section in its entirety and substituting instead the following:

All officers and employees of the state and of municipalities and political subdivisions of the state shall allow the department the reasonable use of public buildings under their control for conducting an assessment, hearing or investigation authorized by this part or part 3 of this chapter. The department shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished by it.

SECTION 44. Tennessee Code Annotated, Section 8-30-403, is amended by deleting the section in its entirety and substituting instead the following:

Incorporate general time lines



Department of
Human Resources

OSER rules

POLICY

Approved by: Rebecca R. Hunter, Commissioner	Policy Number: 12-005
Signature: <i>Rebecca R. Hunter</i>	Supersedes: New
Application: All Preferred Service Employees and All Agency Appointing Authorities	Effective Date: October 3, 2012
Authority: T.C.A. § 4-3-1703, T.C.A. § 8-30-103, T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-108, T.C.A. § 8-30-318	Rule: Chapter 1120-11

Subject:

Appeals Procedure for Preferred Service Employees

Pursuant to Tenn. Code Ann. § 8-30-318, preferred service employees who have successfully completed the required probationary period may file an appeal regarding the application of a law, rule, or policy by an agency to the following employment actions: dismissal, demotion, or suspension. Executive service employees are at-will and are not eligible to participate in the appeal process.

Procedural Steps of Appeal

There are three (3) steps of the appeals process for preferred service employees. Appointing authorities are responsible for ensuring all preferred service employees are aware of the appeal process. Step I of the appeals process includes an informal discussion between the employee ("complainant") and agency's appointing authority. Step II of the appeals process includes a document review and decision by the Commissioner of the Department of Human Resources ("Commissioner"). Step III, the final step of the appeals process, is a hearing before the Board of Appeals.

Timeline for Filing a Complaint

At Step I of the appeals process, a complainant who desires to appeal an action based on an agency's alleged violation of a specific law, rule, or policy with regard to complainant's dismissal, demotion, or suspension, must complete a Step I appeal form. A completed appeal form, along with any relevant documentation, must be submitted to the appointing authority/designee no later than fourteen (14) calendar days after the date complainant received written notice of employment action. The completed form must identify the specific law, rule, or policy allegedly violated by the agency or department and describe the alleged violation of the policy. If complainant does not submit the completed form and relevant documentation in a timely manner, the complainant waives the right to appeal.

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~~If the complainant desires to proceed to Step II of the appeals process, the complainant has a maximum of fourteen (14) calendar days from the date of receipt of the appointing authority's written decision to complete and submit a Step II appeal form and relevant documentation. If, however, the appointing authority does not issue a written decision within fifteen (15) days after the appointing authority receives the complaint, the complainant may appeal to the Commissioner by filing a complaint in accordance with Step II.~~

To commence Step III of the appeals process, either the complainant or the agency may submit a completed Step III appeal form along with any relevant documentation within fourteen (14) calendar days of receipt of written decision by the Commissioner of Human Resources.

with 14 days of notice of act/Step I

The first step of the appeals process commences once the complainant has timely submitted the Step I appeal form and any relevant documentation to the appointing authority. The appointing authority shall first determine whether the appeal has been filed timely and whether the matter is appealable. After review, the appointing authority shall set a date for a face-to-face discussion between the complainant and the employee's supervisor who issued the discipline. The date for the meeting shall be communicated in writing to the complainant no later than five (5) days after the receipt of the appeal. The appointing authority may also conduct any independent investigation relevant to the appeal if necessary prior to the meeting.

During the face-to-face discussion, the complainant must present information indicating the law, rule or policy allegedly violated by the agency in issuing the discipline. This discussion shall be informal. The presence of observers is at the discretion of the appointing authority. If necessary, the appointing authority may seek information from the observers, but such observers may not advocate on behalf of the agency or the employee.

The appointing authority shall issue a written decision to the complainant using their preferred method of communication (as designated on the Step I appeal form) no later than fifteen (15) calendar days after receipt of complainant's completed Step I appeal form. In reaching a decision, the appointing authority may consider information obtained as a result of the investigation, the documents presented during the Step I appeal, or during the Step I face-to-face discussion. The appointing authority may ultimately uphold the disciplinary action or may overturn, reduce, or amend the disciplinary action. When appropriate, the appointing authority may also reinstate leave and award back pay. If leave is reinstated or an award of back pay is granted, the agency must submit the award to the Department of Human Resources Technical Services Division for approval within three (3) days. If back pay is awarded, the agency shall issue payment no later than thirty (30) days from date of award. Any corrective action granted to the complainant cannot go back more than thirty (30) days prior to filing the Step I appeal.

If the appointing authority does not issue a written decision fifteen (15) days after the appointing authority receives the complaint, the complainant may appeal to the Commissioner by filing a

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complaint in accordance with Step II. The complainant may also proceed to Step II when the complainant disagrees with the appointing authority's written decision.

The appointing authority may appoint a designee to serve as his or her representative throughout Step I of the appeal process. If such an appointment is made, the appointing authority shall inform the Department of Human Resources of the name of the designee(s) in writing.

Step II

The second step of the appeals process begins when a complainant submits a completed Step II appeal form to the Commissioner of the Department of Human Resources. The form is to be fully completed by the complainant. If the agency appointing authority issued a written decision, the appeal form, along with any relevant documentation, shall be submitted to the Commissioner no later than fourteen (14) calendar days after the date of the appointing authority's written decision.

Once the completed Step II appeal form and relevant documentation is received by the Commissioner, the Commissioner will complete an initial review within five (5) days to make a determination regarding timely submission of Step II information as well as review the specific law, rule, or policy allegedly violated by the agency. Upon completion of the initial review, the Commissioner will notify both complainant and agency whether the Step II form and documentation was timely submitted and whether complainant is able to proceed with an appeal. The notification will detail the timeframes for submitting additional documentation to the Commissioner.

After a thorough review of all relevant documentation provided from Step I and submitted by the complainant and the agency, the Commissioner will prepare a decision letter, which will be delivered to complainant and agency no later than thirty (30) days from the date the Commissioner received the completed Step II form and documentation. The decision letter will be issued to the complainant using their preferred method of communication (as designated on Step II appeal form). The decision letter will be sent to the agency's appointing authority as well as the general counsel of the agency by email. The decision shall include the Commissioner's determination as to whether the appointing authority's decision will stand, be overturned, reduced, or amended, and may also include reinstatement of leave or back pay if appropriate. Any corrective action granted may not go back more than thirty (30) days prior to complainant's submission of completed Step I appeal form.

Either the complainant or agency may appeal to the Board of Appeals if one of the following occurs: (1) DOHR does not timely issue a decision letter, (2) the complainant disagrees with the Commissioner's decision, or (3) the agency disagrees with Commissioner's decision.

~~Step II~~ Step II of the appeals process is the final administrative step for a complainant appealing a suspension of less than three (3) days.

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The Commissioner may appoint a designee to serve as his or her representative throughout Step II of the appeal process. If such an appointment is made, the Commissioner shall record the name of the designee(s) in writing.

Step III

The third and final step of the appeals process is initiated by submission of a completed Step III appeal form and all relevant documentation, including the Step II decision letter, to the Board of Appeals (sometimes "Board") no later than fourteen (14) days after the date the complainant or the agency receives the decision letter from the Commissioner. The form is to be fully completed by the complainant or complainant's representative, or the agency's appointing authority or agency representative acting on the appointing authority's behalf.

The Step III appeal form and relevant documentation shall be submitted to the Board of Appeals using the contact information below by one of the following methods: U.S. certified mail, hand-delivery, fax, or e-mail (scanned and submitted electronically).

Board of Appeals
First Floor, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243
Fax: (615) 401-6848
E-mail: DOHR.Step3Appeals@tn.gov

The complainant will receive formal notification of the receipt of the Step III appeal by the preferred method of communication selected on the Step III appeal form. Agency notification will be made to both the appointing authority and general counsel of the agency by an email from the Board of Appeals administrator.

Upon receipt of the completed Step III form and relevant documentation by the administrator, a docket number will be assigned to the appeal and the appeal will be transferred to an Administrative Law Judge (ALJ) in the Administrative Procedures Division of the Secretary of State's Office. Notice of appearance on behalf of the agency shall be made to the ALJ within three (3) days of notification of receipt of the appeal by contacting the Administrative Procedures Division at (615) 741-7008. If notice is not timely made, the ALJ will communicate directly with the general counsel for the agency. The assigned ALJ will determine, within ten (10) days of assignment, if all procedural requirements for filing a Step III appeal were completed properly and in a timely manner. If not, the appeal will be dismissed by the ALJ and the complainant and agency will be notified by the method of communication selected on the Step III appeal form.

If all of the procedural requirements have been met, the Board of Appeals will proceed under the Uniform Administrative Procedures Act (UAPA), Title 4, Chapter 5 of the Tennessee Code Annotated, in making a determination whether the specific law, rule, or policy listed on the appeal form was violated.

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The Board shall issue its final decision no later than one hundred twenty (120) days from the date the Step III appeal form/relevant documentation was submitted to the Board. In order to ensure the Board meets this requirement, the following conditions shall be imposed on hearings before the Board:

1. Within twenty (20) days after the filing of the Step III appeal, the complainant and the agency will participate in a pre-hearing telephone conference with the assigned ALJ, at which time the hearing date will be set.
2. All motions, both dispositive (motions affecting the disposition or settlement of appeal) and non-dispositive (motions that do not affect the disposition or settlement of appeal), must be ruled on no later than thirty (30) days before the hearing date.
3. All discovery must be completed no later than sixty (60) days after filing the Step III appeal and relevant documentation with the Board.
4. Deadline extensions may be granted only in extraordinary circumstances as determined by either the Board or the ALJ. However, the granting of an extension does not affect the one hundred twenty (120) day time period for the Board of Appeals to issue its final decision.

Prior to the Board of Appeals hearing, the complainant and agency will be notified of the logistical details for the hearing as well as any pending due dates for submission of any additional documentation for review by the board members. The notification will be made to complainant and agency by the preferred method of communication selected on the Step III appeal form. An original and one (1) copy of the additional documentation for the Board of Appeals will be due to the administrator no later than ten (10) days prior to the hearing date. Oral argument is permitted before the Board of Appeals.

After the Step III hearing, the Board will issue a final order which may include, but is not limited to, upholding, overturning, reducing, or amending the Step II decision as well as reinstatement of leave, award of back pay and/or attorney's fees. A final order will be submitted to the complainant or his or her representative and the agency by the preferred method of communication selected on the Step III appeal form. Neither party shall be entitled to a petition for reconsideration under Tenn. Code Ann. § 4-5-317.

If the complainant is awarded back pay, reinstatement, or attorney's fees, the involved agency must comply with the final order within thirty (30) days from the date of the final order. If back pay is awarded, the reinstatement order shall specifically address back pay to the complainant and whether any offset of income earned from other employment or unemployment compensation claims will occur. If offset is to occur, the order shall include this information. If the complainant is reinstated to a position from which the employee was terminated, the complainant will be reinstated in the county where the complainant was working prior to termination, unless an exception is granted by the Commissioner. A complainant who successfully appeals dismissal for gross conduct and is reinstated must be credited with any annual leave used during the ten (10) calendar day paid notice and any annual leave forfeited to the state as a result of the dismissal. The annual time shall be charged as

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discretionary leave with pay, and the annual leave shall be added back to the employee's balance, along with any forfeited annual leave and any leave complainant would have accrued had they not been terminated. If attorney's fees are awarded by the Board of Appeals, the prevailing attorney shall submit required documentation (included in Section 1120-11-05 (3) of the Rules of the Department of Human Resources) to the board no later than thirty (30) days of the effective date of the final order.

The Step III hearing by the Board of Appeals is the final administrative step in the appeals procedure for preferred service employees. The Board's decisions, however, are subject to judicial review under UAPA, Title 4, Chapter 5.

Forms

The Appeal Forms for Steps I, II, and III may be obtained from the DOHR website: www.tn.gov/dohr by clicking on the link "Appeals Process for Preferred Service Employees" under the section titled "Appeal forms." The agency is responsible for providing these forms to employees when computer access is not readily available. Employees may also contact the Board of Appeals administrator for assistance in obtaining any of the forms. An appeal may not be denied if it is not submitted on the form as long as the required components are included in the notice of appeal.

Questions regarding this policy may be directed to Director of Legal Services or the Board of Appeals Administrator.

Wisconsin Human Resources Handbook

Chapter 550

Discretionary Merit Compensation (DMC) Program Guidelines

Section 550.010	Introduction
Section 550.020	Statutory Authority
Section 550.030	Eligibility and Coverage
Section 550.040	DMC Amounts
Section 550.050	All Other Unclassified Employees (Covered by Section B of the Compensation Plan) in Non-Broadband Pay Ranges
Section 550.060	DMC Effective Dates
Section 550.070	Multiple Base Pay Adjustments Effective on the Same Date
Section 550.080	DMC Limitation Exceptions
Section 550.090	DMC Exception Request when Pay upon Appointment has been used within the past 12 months for Broadbanded Employees
Section 550.100	Agency DMC Administrative Procedures
Section 550.110	Agency Procedure for Obtaining OSER Approval of DMC Recommendations
Section 550.120	Recordkeeping
Section 550.130	DMC Approval Delegation
Section 550.140	Referral of Questions
Section 550.150	Administrative Information
Attachment #1	Justification for Discretionary Merit Compensation Award
Attachment #2	Discretionary Merit Compensation Report Form
Attachment #3	2015-2017 Compensation Plan DMC Eligibility Chart

Sec. 550.010 Introduction

This handbook chapter provides general policy assistance and information to agencies processing base-building and lump sum Discretionary Merit Compensation (DMC) for eligible classified and unclassified employees.

The DMC provisions, contained in Section J of the Compensation Plan, and this chapter provide guidance to appointing authorities for awarding monetary recognition for merit to employees (except those serving a fixed term) covered by the Compensation Plan. They also provide compensation for retention of non-broadband classified employees and unclassified State Fair Park employees except the Executive Director. (See criteria listed in Sec. 550.110.)

The chart provided as Attachment 3 to this chapter describes DMC eligibility in general terms and notes exceptions to eligibility by pay schedule.

Generally, DMC may be granted to any eligible classified or unclassified employee whose pay administration is covered by the Compensation Plan, other than fixed term and attorneys covered by s. 230.12(10) to (12), Wis. Stats., or Section C, 3.00, of the Compensation Plan. DMC adjustments may be granted as a base pay increase, a lump sum payment, or a combination of both. However, for certain positions, the DMC is limited to only base pay increases. Detailed information about eligibility and limits of the DMC amount are provided within this chapter.

Basic DMC Information:

- DMC amounts are normally limited to four within range pay steps (WRPS) of the employee's pay range, per fiscal year. The specific details regarding limitations are provided later in this chapter.
- All base pay DMC increases are subject to the maximum of the employee's pay range.
- All lump sum DMC must be converted to a base pay equivalent by dividing the lump sum amount by 2080; this will ensure the fiscal year WRPS limitation is not exceeded.
- Crafts Worker and Crafts Worker-related employees will be eligible only for lump sum **merit** DMC.
- Employees may not be eligible for DMC if broadband pay upon appointment was used in the same fiscal year. (See exception request procedure described in Section 550.090.)
- The granting, denial, amount, and type (base building or lump sum) of DMC are not grievable.
- Employees may self-nominate for DMC no more than once per fiscal year.

This chapter is based on provisions contained in the current Compensation Plan, which may be found in the Reference Center on the OSER website at <http://oscr.state.wi.us/>, or at the following hyperlink:

Office of State Employment Relations - 2015 - 2017 Compensation Plan

Sec. 550.020 Statutory Authority

1. "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."
s. 230.12(1)(a)2, Wis. Stats.
2. "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."
s. 230.12(1)(a)3, Wis. Stats.

Sec. 550.030 Eligibility and Coverage

All employees in pay status whose pay administration is covered by the Compensation Plan are eligible to be considered for DMC except the following employees, who are considered **ineligible** to receive DMC:

1. Any employee whose job performance in the previous 12 months was rated below satisfactory.
2. Supervisors who did not complete formal performance evaluations on all subordinate employees for whom performance evaluations are required.
3. Trainees eligible for scheduled trainee increases.
4. Crafts Worker and Crafts Worker-related employees will be eligible for lump sum **merit** DMC only.
5. Employees serving a fixed term appointment.
6. Any Attorney who is covered by pay progression provisions under s. 230.12(10) to (12), Wis. Stats., or Section C, 3.00, of the Compensation Plan, which include the following classifications:

Assistant Attorney General
Assistant Attorney General Confidential
Assistant Attorney General Supervisor
Assistant State Public Defender Attorney
Assistant State Public Defender Attorney Confidential
Assistant State Public Defender Attorney Confidential/Supervisor
Assistant State Public Defender Attorney Management

Assistant State Public Defender Attorney Supervisor
Assistant District Attorney
Deputy District Attorney
Deputy District Attorney Supervisor

Sec. 550.040 DMC Amounts

An employee may receive more than one DMC during the fiscal year; however, the total amount granted in the form of base pay adjustments or lump sum payments (or a combination of both) during a fiscal year may not exceed an amount equal to the four WRPS limit, except as provided in Sec 550.080. The WRPS per fiscal year per employee limit includes DMC granted by a single agency or by multiple agencies. It does *not* include adjustments granted under Discretionary Equity or Retention Adjustment (DERA) provisions.

All base pay DMC is subject to the maximum of the applicable pay range. All lump sum DMC must be converted to a base pay equivalent by dividing the lump sum amount by 2080 to ensure the fiscal year WRPS limitation is not exceeded.

Sec. 550.050 Unclassified Employees (Covered by Section B of the Compensation Plan) in Non-Broadband Pay Ranges

1. Eligible unclassified employees in non-broadband pay ranges, except fixed term employees, are eligible for DMC limited to four WRPS per fiscal year, except as provided in Sec. 550.080.
2. DMC for employees in Pay Schedules 90 and 95 (listed below and referenced in s. 20.923(16), Wis. Stats.) may only be granted as base building adjustments.

All Department Secretaries
All Department Deputy Secretaries
All Department Assistant Deputy Secretaries
All Department Executive Assistants
All unclassified Division Administrators not serving a fixed term, excluding Chief Legal Counsels,
Legislative Advisors, and Communications Directors
Administration, Department of: Director of Federal-State Relations Office
Arts Board: Executive Secretary
Corrections, Department of: Director of Prison Industries
Educational Communications Board: Executive Director
Employment Relations, Office of: Director, and Deputy Director
Financial Institutions, Department of: Director of the Office of Credit Unions
Government Accountability Board: Legal Counsel
Governor, Office of: Executive Secretary and Key Professional Staff
Governor's Work-Based Learning Board: Executive Director
Higher Education Aids Board: Executive Secretary
Insurance, Office of: Commissioner
Justice, Department of: Program Director for Crime Victims Compensation
Public Defender, Office of: State Public Defender
Safety and Professional Services, Department of: All Bureau Directors
Secretary of State, Office of: Assistant Secretary of
Sentencing Commission: Executive Director
State Fair Park: Director
State Treasurer, Office of: Assistant State Treasurer
Wisconsin Historical Society: Director and Associate Director
Wisconsin Technical College System: Director
Workforce Development: Executive Director for Employment and Training

NOTE: Employees serving fixed terms are prohibited by Article IV, Section 26, of the Constitution, from receiving pay increases during their terms of office except as authorized at the time of appointment.

3. For all other eligible unclassified employees (except as noted in 1. and 2., above), the DMC may be granted in the form of a base pay adjustment, lump sum payment, or a combination of both.
4. For positions assigned to pay schedules that do not include a WRPS amount, use 3% of the applicable pay range minimum as one WRPS. For NTE (not-to-exceed) positions, use 3% of the minimum of the pay range to which the NTE is assigned.

Sec. 550.060 DMC Effective Dates

DMC may be granted at any time during the fiscal year in accordance with approved agency DMC policies. The effective date of base building and lump sum adjustments is the beginning of the first pay period on or following the date of effective receipt of the recommendation. If multiple base pay adjustments have identical effective dates, the DMC will be applied to the employee's base pay rate using the guidelines outlined in Section 550.070 of this chapter. No DMC may be retroactive.

"Effective receipt" is defined as the date on which a recommendation is received by the office within the agency that has been delegated, in writing, effective receipt authority by the appointing authority.

Sec. 550.070 Multiple Base Pay Adjustments Effective on the Same Date

Pursuant to Section I, 4.01 of the Compensation Plan, if multiple base pay adjustments have the same effective date, DMC will be applied to an employee's base pay according to the order of adjustments provided below.

1. Probationary trial period adjustment
2. Reallocation regrade adjustment
3. Reclassification regrade adjustment
4. Progression adjustment
5. Promotion upward movement adjustment
6. Career executive voluntary movement to a higher classification
7. Demotion downward movement adjustment
8. Career executive reassignment or voluntary movement to a lower classification
9. Transfer lateral movement adjustment
10. Career executive assignment or voluntary movement to a position allocated to a classification in the same pay range
11. Reinstatement
12. Restoration
13. Compensation Plan adjustments pursuant to s. 230.12, Wis. Stats.
14. Compensation Plan schedule adjustments under s. 230.12, Wis. Stats.
15. Progression adjustments other than those provided for in (4), above.
16. Establishment of a raised minimum rate
17. Discretionary Equity or Retention Adjustment (DERA)
18. **Discretionary Merit Compensation (DMC)**
19. Original Appointment

NOTE: DMC may *not* be included when calculating pay on reinstatement or restoration except when returning from a leave of absence granted for service in an unclassified position. This exception is limited to matching DMC actually received in the unclassified position and a maximum of **four** WRPS per fiscal year for the applicable classified pay range from which reinstatement eligibility or restoration rights are derived.

Sec. 550.080 DMC Limitation Exceptions

The basic limitations on the number of WRPS and the type (base pay adjustment or lump sum payment) are provided in Sections 550.040 and 550.050 of this chapter. Under exceptional circumstances, an appointing authority may submit a request to the OSER Director to exceed the specified WRPS limit. This request must be accompanied by a comprehensive justification.

NOTE: The individual increase limit provided in s. 230.12(5)(d), Wis. Stats., for classified employees does not apply to DMC outlined in this chapter.

OSER approval is *required* for all DMC recommended by an agency, unless delegation is granted in accordance with Section 550.130. OSER's review will include confirming that certain eligibility requirements are met, the appropriate limitations have not been exceeded, and that proper justification has been provided.

Sec. 550.090 DMC Exception Request when Pay upon Appointment has been used within the past 12 months for Broadbanded Employees

OSER will conduct an exception review if an agency requests to award DMC to a broadbanded employee if the DMC effective date is within a 12 month period from the most recent pay upon appointment (i.e., a personnel transaction other than demotion, reclassification, or reallocation, where an agency has flexibility to set the employee's pay rate). This request must be accompanied by a comprehensive justification.

Sec. 550.100 Agency DMC Administrative Procedures

DMC provisions allow appointing authorities to provide monetary recognition for merit to eligible employees. The provisions also allow eligible employees to self-nominate for DMC no more than once each fiscal year.

Prior to recommending DMC, agencies must develop administrative procedures which must be reviewed and approved by OSER's Division of Compensation and Labor Relations. Administrative procedures are defined as written protocols that detail how employees may qualify for and receive DMC. No agency may recommend DMC until its administrative procedures have been reviewed and approved by OSER.

All DMC administrative procedures must explain the agency DMC recommendation and approval process. At a minimum, the administrative procedure section should include: (1) what office or individual within the agency constitutes DMC effective receipt (as defined in Section I., 3.00, of the Compensation Plan), and (2) the process to be followed by employees or nominating supervisors and administrators to submit DMC recommendations for approval, including timing of submittals. Effective receipt is based on when a request is received, not signed. OSER recommends that agency administrative procedures also include (1) a list of criteria that justify DMC (or reference the core criteria on the Justification for DMC Award form); (2) an explanation of any funding limitations; and (3) details regarding fiscal year award maximums.

Agencies are reminded to distribute copies of agency DMC administrative procedures to all eligible employees.

NOTE: Agencies wishing to amend their existing DMC administrative procedures should submit updated copies for review and approval to OSER, Bureau of Compensation, 101 East Wilson Street, 4th Floor, Madison, WI 53703. Contact the Bureau of Compensation for information on electronic submittal.

Sec. 550.110 Agency Procedure for Obtaining OSER Approval of DMC Recommendations

OSER approval is *required* for all DMC recommendations, unless approval is delegated in accordance with Section 550.130, of this chapter. The information listed below is necessary for each DMC award recommended. The complete package of required items described below must be attached and sent electronically to the OSER designated DMC mailbox for each DMC recommendation: [OSER DCLR DMC-DEIRA Requests@wisconsin.gov](mailto:OSER-DCLR-DMC-DEIRA-Requests@wisconsin.gov). Agencies with multiple recommendations may combine all requests into one e-mail. *Incomplete requests will be returned to the agency for completion and resubmittal.*

Required Form – When submitting a DMC recommendation to OSER, agencies must complete the DMC Justification form (OSER-DCLR-220, sample shown in Attachment 1) filling in all areas of the form including the reason for the DMC, a description of criteria met that are applicable to the DMC recommendation, the DMC type (base building and/or lump sum), and DMC amount to be granted. The form must also include the applicable agency approvals (including appointing authority or designee signature). For DMC effective after June 28, 2015, the following criteria from Section I, 2.00(5)(j) and (k) of the Compensation Plan must be used:

- (j) Merit DMC will only be approved if one or more of the following criteria were considered:
1. The length or frequency of the outstanding performance;
 2. Overall significance or importance of the employee's work product to the organization;
 3. Regularity with which the outstanding performance or unique contribution is demonstrated;
 4. Employee has new permanent job duties and/or responsibilities of growing importance to the agency that have been either newly assigned or were the evolution of their originally assigned functions, and are of greater scope, impact and/or complexity compared to previous functions; or
 5. Employee has acquired additional competencies, which are both specialized and critical in carrying out the permanent functions of the position.
- (k) Retention DMC will only be approved if the employer is aware that the employee is actively seeking other employment, or the employee has a job offer in hand and the resultant loss of the employee's knowledge and experience would be a detriment to the agency.

Required Spreadsheet – Attach the formatted DMC/DEIRA Report Form spreadsheet (OSER-DCLR-221), sample shown in Attachment 2) containing all areas listed below for each DMC approval request. If multiple DMC recommendations are included in the same e-mail, all entries may be shown on a single Excel spreadsheet.

- a. Agency name
- b. Employee name (Last name, First Name)
- c. Adjusted Continuous Service Date (mm/dd/yyyy)
- d. DMC Effective Date (mm/dd/yyyy)
- e. Date of Broadband Pay Upon Appointment (PUA) in the previous 12 months, if any (mm/dd/yyyy)
- f. Employee Classification
- g. Pay Schedule
- h. Pay Range
- i. Base Rate prior to DMC
- j. DMC base increase amount
- k. Base Rate after DMC
- l. DMC lump sum amount
- m. DMC award type (base or lump sum)
- n. DMC criteria (code 1)(This key is also included on the form.)
- o. Number of Within Range Pay Steps

Upon approval/denial by OSER – Agency will receive an e-mail from OSER with the decision.

Retention DMC requests - OSER will respond to retention DMC recommendations within one work day of receipt of the request, whenever possible.

Sec. 550.120 Recordkeeping

Agencies must retain a copy of all records pertaining to recommended DMC (whether approved or denied by OSER) for a period of three years (one biennium plus one year) and furnish materials upon OSER's request. DMC records to be retained include all DMC nominations, DMC approvals and denials, and DMC related documents sent to and received from OSER.

Sec. 550.130 DMC Approval Delegation

Per Section J, 2.00 (4) of the 2015-2017 Compensation Plan, all DMC must be approved by OSER prior to being awarded unless delegation is granted to the appointing authority. If OSER delegates authority, an agency will still be required to send the completed DMC/DERA excel report form to the designated DMC mailbox at [OSER DCLR DMC-DERA Requests@wisconsin.gov](mailto:OSER_DCLR_DMC-DERA_Requests@wisconsin.gov). The agency must also retain a copy of all records pertaining to the DMC request (whether approved or denied) for a period of three years (one biennium plus one year) and furnish those materials upon OSER's request. DMC records to be retained by the agency include all DMC nominations, DMC approvals and denials, DMC related documents sent to and received from OSER, and documents that would have been sent to OSER if delegation had not been granted.

DMC approval delegation may be rescinded at any time.

Sec. 550.140 Referral of Questions

Questions regarding information included in this chapter may be directed to the OSER Bureau of Compensation.

Questions concerning payroll processing or file maintenance procedures may be sent to:

DOA Central Payroll:

Nancy Krueger.....(608) 264-9571

Sec. 550.150 Administrative Information

This chapter provides implementation and administration information for the Discretionary Merit Compensation program, created in the 2011-2013 Compensation Plan. With the creation of this program, the Discretionary Compensation Adjustment program previously described in Chapter 540 is abolished.

This chapter was updated in March 2012 to indicate that except for unique circumstances, only one of the three criteria should be used for a DMC submittal. The attached sample justification form was revised in several respects to: narrow the definition of retention; show only one of the three possible criteria being used for a DMC award; clarify the DMC effective date to enter on the form; clarify the requested pay upon appointment information; and add instructions for processing DMC lump sums through DOA Central Payroll.

This chapter was updated in July 2013 to: remove equity and retention adjustments from the chapter (for equity and retention adjustments, see Chapter 552 Discretionary Equity or Retention Adjustment (DERA) Program Guidelines); allow base-building DMC to employees in nonbroadband classifications; update other eligibility requirements; include potential OSER delegation of DMC approval to agencies, and provide clarification of existing provisions.

This chapter was updated in July of 2015 to reflect language amended in the 2015-2017 Compensation Plan. Changes include retention DMC for nonbroadband classified employees and certain State Fair Park employees, craft worker eligibility

for lump sum merit DMC, increase in within range pay limits for unclassified merit, and annual rate calculation change (2080 factor instead of 2088).

**JUSTIFICATION FOR DISCRETIONARY MERIT COMPENSATION (DMC) AWARD
SAMPLE FORM**

AGENCY: DOA	EMPLOYEE NAME: Smith, Sue A.	CLASSIFICATION TITLE: Publications Supervisor	PAY SCHEDULE & RANGE: 81-03
CRITERIA		JUSTIFICATION	INCREASE AMOUNT
Merit: Employee recognition for superior or meritorious performance. Justifications should be supported by criteria outlined in Section J, 2.00(5) of the Compensation Plan. Retention: Justification should be supported by criteria outlined in Section J, 2.00(5) of the Compensation Plan		Provide justification on page 2 of this document.	\$1000.00 Lump Sum \$2.04 base increase
DMC RECOMMENDATION			
Old Base Salary \$26.00	New Base Salary \$28.04	Funding Source(s) GPR	DMC Effective Date: 07-12-2015
Recommended By (Supervisor):	Date:	Budget Approval (Funding approval only):	Date:
		# Prior WRPS in Same FY: None	Broadband PUA in last 12 months: X No Yes Effective Date:
		Date:	Division Administrator Approval:
			Date:
			NUMBER OF WRPS OR EQUIVALENT 0.72 WRPS 3.00 WRPS

AGENCY HEAD APPROVAL (signature):	APPROVED: _____	DENIED: _____	DATE:
	Base Pay Adjustment: _____	Lump Sum: _____	

OSER APPROVAL:	APPROVED: _____	DENIED: _____	DATE:
	Base Pay Adjustment: _____	Lump Sum: _____	

AGENCY CONTACT NAME:	CONTACT PHONE NO:

JUSTIFICATION:

CRITERIA (Check all that apply for either Merit or Retention, but not both):

<input checked="" type="checkbox"/> Merit	<input checked="" type="checkbox"/> Employee received performance evaluation within last 12 months
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Employee is a supervisor and has completed required performance evaluations for all subordinates
<input type="checkbox"/> Retention	<input type="checkbox"/> Employee received performance evaluation within last 12 months
<input type="checkbox"/>	<input type="checkbox"/> Employee is a supervisor and has completed required performance evaluations for all subordinates
JUSTIFICATION NARRATIVE (Provide specifics and supporting documentation below):	

Merit DMC: Ms. Smith has demonstrated consistent above average performance over the last several years, as supported by her performance reviews. She recently completed a project vital to the agency that involved months of work and which required working many additional hours,

INSTRUCTIONS FOR DMC JUSTIFICATION FORM COMPLETION

All areas of the form *must* be completed by the agency; incomplete forms will be returned to the sending agency for completion and resubmittal. Below is the list of boxes contained on this DMC form with instructions for completion.

Page 1

1. **Agency** – Agency name or agency acronym (including secondary level)
2. **Employee Name** – Employee last name, first name, and middle initial
3. **Classification Title** – Employees full classification title (not working title); position title for unclassified employees
4. **Pay Schedule & Range** – Numerical pay schedule and range
5. **Increase Amount** – Amount to be provided as a lump sum payment or the base increase amount
6. **Number of WRPS or Equivalent** – Calculate the number of WRPS equivalent for each DMC (base and/or lump sum) awarded. For lump sum awards, calculate the number of WRPS by dividing the award by 2080, then divide that amount by the applicable WRPS amount from the pay schedule (or 3% of minimum for pay ranges not having a listed WRPS).
7. **Old Base Salary** – Employee's base pay rate prior to the DMC
8. **New Base Salary** – Employee's base pay rate after the DMC
9. **Funding Sources** – List source(s) of agency funds used to pay for DMC, e.g., GPR, PRO, SEG, etc.
10. **DMC Effective Date** – Show the first day of the pay period following the "effective date of receipt by agency" as the DMC effective date.
11. **# of Prior WRPS in Same FY** – Show total WRPS of any previous DMC in the same fiscal year.
12. **PUA in last 12 months** – Show any broadband appointment date(s) in last twelve months, even if pay did not change. Leave space blank if no appointment in past 12 months.
13. **Recommended By; Budget Approval; Division Administrator Approval** - This yellow shaded area may be modified consistent with the agency's internal approval process. **Agency Head Approved/Denied** - Appointing Authority or designee (Deputy or Executive Assistant only): This signature line may not be modified and every DMC recommendation form must include this signature.
14. **OSER Approved/Denied** - OSER completes
15. **Agency Contact Name** – Identify agency staff who will respond to OSER questions about the DMC recommendation and to whom OSER's review results will be returned.

Page 2

16. **Criteria** - Place an X next to merit or retention criteria. All DMC recommendations must show that the employee has had a performance evaluation in the past 12 months, and if the employee is a supervisor, the employee must have completed required performance evaluations for all subordinates (check boxes to confirm these statements).
17. **Justification** - Provide narrative supporting the merit or retention award. Documentation may be provided as an attachment.
18. **Submit the completed and approved DMC Justification form, along with the DMC/DERA Report spreadsheet form OSER-DCLR-221, to the OSER DCLR DMC-DERA Request mailbox at OSER.DCLR.DMC-DERA.Requests@wisconsin.gov.**
19. **Payroll Processing of DMC Lump Sums** - Prior to entering the DMC lump sum amount into the payroll system, the DOA Central Payroll system requires documentation of OSER approval. As documentation, agencies may either: (1) Attach the *first page* of the OSER-approved (signed) DMC Justification Form (OSER-DCLR-220), or (2) attach an OSER DMC approval e-mail that includes the employee name(s) and lump sum amount(s).

Attachment 2

2015-2017 Compensation Plan DMC Eligibility Chart
 Eligibility by Pay Schedule or Range with Exceptions Noted

Pay Schedule or Range	DMC WRPS fiscal year limit	Base Pay DMC	Lump Sum DMC	Exceptions Explanation
Classified 01	Not eligible	no	no	Not eligible
02	4WRPS	yes	yes	
03	4WRPS	yes	yes	
04	4WRPS	no	yes	Crafts Workers are ineligible for retention DMC.
05	4WRPS	yes	yes	
06	4WRPS	yes	yes	
07	4WRPS	yes	yes	
08	4WRPS	yes	yes	
09-75	4WRPS	yes	yes	
09-76	Not eligible	no	no	Ineligible attorneys
10	4WRPS	yes	yes	
11	4WRPS	yes	yes	
12	4WRPS	yes	yes	
13	4WRPS	yes	yes	
14	4WRPS	yes	yes	
15	4WRPS	yes	yes	
20	Not eligible	no	no	Ineligible attorneys
21	Not eligible	no	no	Ineligible attorneys
36	4 WRPS	yes	yes	
50	4WRPS	yes	yes	
63	Not eligible	no	no	Not covered by the Compensation Plan
70	4WRPS	yes	yes	
71-01	4WRPS	yes	yes	
71-02	Not eligible	no	no	Ineligible attorneys
81	4WRPS	yes	yes	
90	4WRPS	yes	mixed	Certain Schedule 90 employees are limited to base increase only (see list in section 550.050 under 2.). Employees serving fixed term are not eligible for DMC.
95	4WRPS	yes	no	Schedule 95 titles are limited to base increase only.
Unclassified other than 90 and 95	4WRPS	yes	yes	Includes other unclassified covered by the Compensation Plan except fixed term are not eligible for DMC.
Unclassified State Fair Park employees (other than the Director)	4WRPS	yes	yes	WRPS value is based on comparable classified classifications.

WISCONSIN HUMAN RESOURCES HANDBOOK

CHAPTER 430

EMPLOYEE GRIEVANCE PROCEDURE

Sec. 430.010	Introduction	Sec. 430.100	Miscellaneous
Sec. 430.020	Statutory Authority	Sec. 430.110	Use of Paid Work Time by Employees for Investigating, Preparing, and Presenting Grievances
Sec. 430.030	Grievance		
Sec. 430.040	Non-Grievable Actions		
Sec. 430.050	Management Rights		
Sec. 430.060	Grievance Steps	Sec. 430.120	Retaliation Prohibited
Sec. 430.070	Actions Grievable to Second Step Only	Sec. 430.130	Limitations of Relief Granted
Sec. 430.080	Grievance Submittal and Response Time	Sec. 430.140	Administrative Information
Sec. 430.090	WERC Appeal Filing Process	Attachment	Employee Grievance Form

Sec. 430.010 Introduction

Section 230.12(1)(h), Wis. Stats., states “[t]he compensation plan may include other provisions relating to pay, benefits, and working conditions that shall supersede the provisions of the civil service and other applicable statutes and rules promulgated by the director.” Section G.10 .00 of the 2011-2013 Compensation Plan provides that “[n]otwithstanding ch. ER 46, Wis. Admin. Code and s. 230.44, Wis. Stats., the employee grievance procedure shall be as identified in the Wisconsin Human Resources Handbook Chapter 430 on the Employee Grievance Procedure.” Pursuant to these authorities, this chapter sets forth the procedures by which employees may contest certain actions which affect their conditions of employment.

Note: Grievance procedures for represented Public Safety Employees – employees in positions classified as State Patrol Troopers and State Patrol Inspectors - are described in their collective bargaining agreement.

Sec. 430.020 Statutory Authority

Section 230.12(1)(h), Wis. Stats., states “[t]he compensation plan may include other provisions relating to pay, benefits, and working conditions that shall supersede the provisions of the civil service and other applicable statutes and rules promulgated by the director.”

Section G.10 .00 of the 2011-2013 Compensation Plan provides that “[n]otwithstanding ch. ER 46, Wis. Admin. Code and s. 230.44, Wis. Stats., the employee grievance procedure shall be as identified in the Wisconsin Human Resources Handbook Chapter 430 on the Employee Grievance Procedure.”

Section 230.44(1)(c) provides:

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):

(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.

Section 230.36(4), Wis. Stats., states that “[a]n employee denied [hazardous employment] benefits under this section may appeal to the commission under s. 230.45(1)(d).

Section 230.45, Wis. Stats., provides in relevant part:

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

Sec. 430.030 Grievance

Permanent and project employees, employees that have served with the Office of State Public Defender as a staff attorney for a continuous period of 12 months or more, and employees that have served with the state as an assistant district attorney for a continuous period of 12 months or more, may file a formal grievance through this grievance procedure contesting the following actions if the employee alleges the action was taken without just cause:

- demotion
- layoff
- suspension (including letters in lieu of suspension)
- discharge
- reduction in base pay
- written reprimands, but only through the second step of the grievance procedure, as set forth in this chapter

An employee may file a formal grievance through this grievance chapter contesting the denial of hazardous employment benefits under s. 230.36 and may appeal the denial to the commission under s. 230.45(1)(d).

An employee may file a formal grievance through this grievance procedure contesting an action where the employee alleges the Employer abused its discretion in applying written agency rules, policies or procedures, but only through the second step of the grievance procedure, as set forth in this chapter.

Employees on original probation and project employees may file a grievance on any of the preceding actions, excluding discharge.

A representative may not file a grievance on behalf of an employee. A representative may not appeal a denied grievance to the next higher level step in the grievance procedure on behalf of an employee. An employee may grieve a discharge beginning with the second step of the grievance procedure.

After an employee has filed a grievance, the employee may designate a representative in writing. The representative will then be authorized to discuss the specifics of the grievance with the management designee. The management designee will contact the employee when scheduling grievance hearings.

After a disciplinary action has been imposed and a grievance filed, the employee/grievant may request in writing, and the agency will provide, documents which management used in determining the disciplinary action.

Employees should use the OSER grievance form (OSER-DCLR-222 (Rev. 12/2011)) to file grievances. Grievances must be filed using the multi-ply OSER form and cannot be filed electronically. Employees may contact their agency human resources office for a copy of this form.

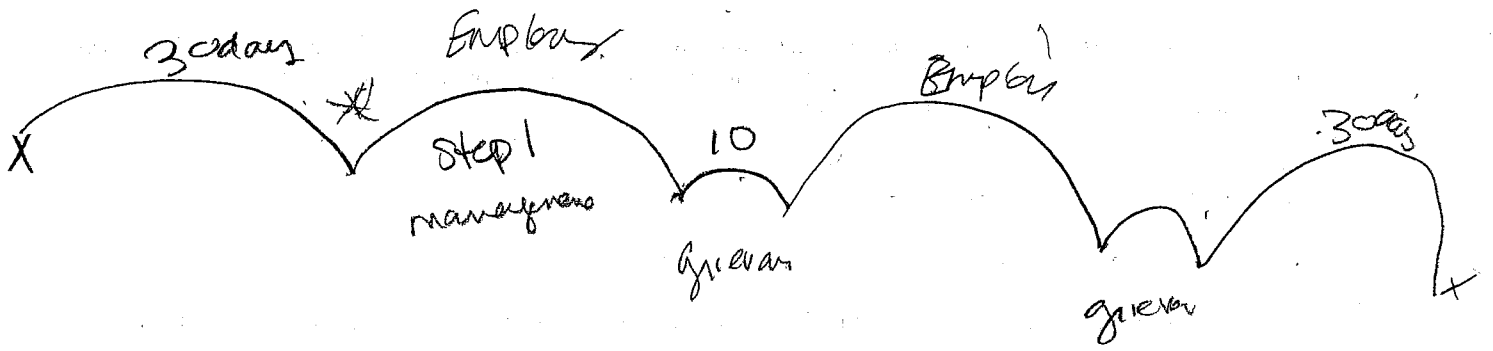
Sec. 430.040 Non-Grievable Actions

Actions **not** grievable under this procedure include the following:

1. Decisions made or delegated by the administrator that are appealable to the commission under Wis. Stat. § 230.44(1)(a);
2. Decisions made or delegated by the director that are appealable under Wis. Stat. § 230.44(1)(b). (Also see WHRH Chapter 420);
3. Personnel actions that are appealable to the commission under Wis. Stat. § 230.44(1)(d);
4. Personnel actions under § 230.275 that are appealable to the commission under Wis. Stat. § 230.44(1)(dm);
5. Determinations that a person was discharged from the unclassified service for just cause under Wis. Stat. § 230.337;
6. Delegation of an action by the OSER Director to an appointing authority;
7. Termination of limited term (LTE) or project employees;
8. The reassignment of a career executive employee under ch. ER-MRS 30, Wis. Adm. Code ;
9. The failure of a supervisor to process a reclassification request;
10. The content of written agency rules and policies;
11. Release of probationary employees;
12. Oral reprimands;
13. A condition of employment which is a management right of the employer under s. ER 46.04, Wis. Adm. Code (See Section 430.050 of this Chapter);
14. Any other matters related to wages, hours of work, types of fringe benefits, and other conditions of employment that are not expressly grievable under this chapter. Examples of such matters include, but are not limited to, discretionary merit compensation, allegations of missed overtime, assignment of overtime, and scheduling of work; and
15. Performance evaluations.

Sec. 430.050 Management Rights

Management possesses the sole right to carry out its statutory mandate and goals assigned to the agency and all management rights repose in management. Nothing in Ch. ER 46, Wis. Adm. Code or this chapter, is intended to



Tennessee language (1)(c)

Step 1 - App Author or designer

Step 11 -

interfere with the sole right of an agency to carry out its statutory mandate and goals. In accordance with Ch. ER 46.04(2), Wis. Adm. Code, management rights include, but are not limited to:

1. Utilizing personnel, methods, and means to carry out the statutory mandate and goals of the agency.
2. Determining the size and composition of the work force.
3. Managing and directing the employees of the agency.
4. Hiring, promoting, transferring, assigning or retaining employees.
5. Establishing reasonable work rules.
6. Taking disciplinary action against an employee for just cause.
7. Laying off employees due to lack of work or funds or organizational changes.

Sec. 430.060 Grievance Steps

A grievance procedure for employees will have the following steps. The usual management designee responding to the step will be:

- Pre-filing (if this step exists at the discretion of the agency) – first line supervisor;
- First step – division administrator level or designee;
- Second step –appointing authority level or designee; and
- Third step –OSER.

Grievances under this chapter which have not been resolved or settled under the foregoing procedure may be appealed to the Wisconsin Employment Relations Commission (WERC) under Wis. Stat. § 230.44(1)(c) if the appeal alleges the decision grieved was not based on just cause or under s. 230.45(1)(d) if the appeal alleges the denial of hazardous employment benefits under s. 230.36. Grievances may not be appealed to the WERC without first completing the relevant preceding steps in the grievance procedure. Office of State Employment Relations, Bureau of Labor Relations staff will represent the agency before the WERC.

Employees should contact their agency human resources office to find out who is the appropriate management designee for each step in the agency's grievance process.

Sec. 430.070 Action Grievable to Second Step Only

The following actions cannot be grieved beyond the second step:

1. Written reprimands; and
2. Grievances alleging the Employer abused its discretion in applying written agency rules, policies or procedures.

Sec. 430.080 Grievance Submittal and Response Time

A formal grievance must be filed with and received by the designated employer representative no later than 30 calendar days from the date the grievant first became aware, or should have become aware (with the exercise of reasonable diligence) of the matter grieved. If mailed, the postmark denotes the date of submittal or response. Grievances not appealed within the designated time limits at any step of the grievance procedure will be considered as having been adjudicated on the basis of the last preceding Employer answer. Grievances which are not answered within the time limits may be grieved to the next step within ten (10) calendar days after the last day on which the grievance could have been timely answered.

1. Informal resolutions are encouraged through a pre-filing process. Agencies have the discretion to adopt a pre-filing step as part of the grievance process. If a pre-filing meeting is held, the supervisor and employee should identify and discuss the matter in a mutual attempt to resolve the issue.
2. The Step 1 management designee must meet with the employee regarding a grievance (with the exception of a grievance containing any of the actions identified in Sec. 430.040, in which case a meeting is not required) and supply a written response on the grievance form and deliver it to the grievant within thirty (30) calendar days of receipt of the written grievance form from the employee. Grievance hearings may be conducted via teleconference or video conference at the discretion of the Employer.
3. If the grievant is dissatisfied with the answer in Step 1, the grievant must submit the grievance to Step 2 within ten (10) calendar days from receipt of the answer in Step 1 or within ten (10) calendar days of the date on which the response should have been answered if no response was issued at the first step of the process.

The Step 2 management designee must meet with the employee and supply a written response on the grievance form and deliver it to the grievant within thirty (30) calendar days of receipt of the grievance at Step 2. Grievance hearings may be conducted via teleconference or video conference at the discretion of the Employer.

4. If the grievant is dissatisfied with the answer in Step 2, the grievant must appeal to OSER within ten (10) calendar days from the date of the answer in Step 2 or within ten (10) calendar days of the date on which the response should have been answered. The appeal must:
 - a) Include the grievant's written appeal;
 - b) Include a copy of the grievance, including any and all copies of grievance responses;
 - c) Be postmarked or date stamped by OSER within the time frame specified above; and
 - d) Not be filed electronically.

OSER will review the grievance. If the grievance cannot be resolved, OSER shall send a written notice to the grievant within thirty (30) calendar days from receipt of the grievance at Step 3. The written notice will inform the grievant that grievances that have not been settled under the foregoing procedure may be appealed to the Wisconsin Employment Relations Commission under Wis. Stat. § 230.44(1)(c) if the appeal alleges the decision grieved was not based on just cause, or under s. 230.45(1)(d) if the appeal alleges the denial of hazardous employment benefits under s. 230.36.

5. Grievances which have not been settled under the foregoing procedure may be appealed to the Wisconsin Employment Relations Commission under Wis. Stat. § 230.44(1)(c), if appeal alleges the decision grieved was not based on just cause, or under s. 230.45(1)(d) if the appeal alleges the denial of hazardous employment benefits under s. 230.36. Such appeal must be made in writing and, notwithstanding Wis. Stat. § 230.44(3) or if applicable, PC 3.01, Wis. Adm. Code, filed (actual receipt at the Employment Relations Commission) within 30 calendar days after the date of OSER's notice issued at Step 3 or within thirty (30) calendar days from the date on which OSER's notice was due, whichever is sooner.

If an unresolved grievance is not appealed to the commission, it shall be considered terminated on the basis of the second step answer. The issue as stated by the grievant in the second step shall constitute the sole and entire subject matter to be heard by the commission, unless the parties agree to modify the scope of the hearing.

6. OSER, Bureau of Labor Relations staff shall represent the Employer in hearings before the WERC.

Sec. 430.090 WERC Appeal Filing Process

Section PC 3.03, Wis. Adm. Code, identifies the form and content required in WERC appeals. All appeals must be made in writing. There is no form that needs to be used in filing an appeal, but the appeal should include the following:

- (a) The grievant's address, telephone numbers, and e-mail address at work and at home;
- (b) The grievant representative's address, telephone numbers, and e-mail address at work and at home;

- (c) The name of the state agency that took the action being appealed;
- (d) The facts forming the basis for the appeal;
- (e) The reason the grievant believes the action to be improper;
- (f) The relief or remedy requested; and
- (g) A copy of the employer's last grievance response.

Sec. 430.100 Miscellaneous

1. A grievant may be assisted by a representative of his/her own choosing in person, by telephone, or by teleconference.
2. The grievant and the management designee can agree in writing to:
 - Waive a first step hearing.
 - Extend a time frame for filing or responding
3. The second step hearing cannot be waived.
4. A single grievance form may be used for more than one employee if the grievants are grieving the same issue or circumstance. The grievance is declared as a group grievance at Step 1 and is signed by all grieving employees.
5. The appointing authority may consolidate grievances where a reasonable basis for consolidation exists.
6. Limited Term Employees are prohibited from filing a grievance.

Sec. 430.110 Use of Paid Work Time by Employees for Investigating, Preparing, and Presenting Grievances

It is recognized that an employee who files a grievance may need time to prepare for the presentation of his/her case. Upon receiving reasonable notice the employer is required to permit a state employee and his/her representative a reasonable period of time, as determined by the appointing authority, during normal work hours to investigate, prepare, and present a grievance without loss of pay.

Any expense incurred by the grievant or his/her representative in investigating, preparing, or presenting a grievance shall be the sole responsibility of the grievant or representative.

Time spent preparing grievances outside the employee's regularly scheduled hours of work, or any travel or other expenses incurred by the grievant are not the responsibility of the employer.

Employees must be notified in writing of these grievance procedures and any changes that may occur through the agency's policies and procedures handbook or other format. Agency policies must identify, at a minimum, which positions in the agency are responsible for each of the first two steps, the time frames, the filing form, and any other requirements.

Sec. 430.120 Retaliation Prohibited

Agencies are prohibited from retaliating against a grievant, representative, or witness who participates, or is scheduled to participate, in proceedings for using the grievance procedure. The OSER Director can enforce this prohibition by order under s. 230.04(3), Wis. Stats.

Sec. 430.130 Limitations of Relief Granted

1. Agencies and the commission are prohibited from granting relief that is retroactive beyond 30 days immediately preceding the filing of the grievance at the first step.
2. Agencies and the commission are prohibited from awarding interest, attorney's fees or costs as relief granted pursuant to any grievance filed under this chapter through and including appeals to the WERC.

Sec. 430.140 Administrative Information

This chapter was originally issued in June 1997 as Chapter 340 of the *Wisconsin Personnel Manual*.

This chapter was revised and reissued in October 2001 as Chapter 430 of the *Wisconsin Human Resources Handbook*.

This chapter was revised and reissued In December 2003 to remove the references to the State Personnel Commission and insert references to the Wisconsin Employment Relations Commission.

This chapter was revised and reissued in December 2011 due to the enactment of 2011 Wisconsin Act 10 and approval of the 2011-13 Compensation Plan.

This chapter was revised and reissued in April 2012 to modify time frames and clarify the responsibilities of grievants.

Attachment: Employee Grievance Form

Grievance Step - circle one

1 2 3

No. - for Agency use only

EMPLOYEE GRIEVANCE REPORT

(TYPE OR PRINT WITH BALL POINT PEN-[press firmly])

If this is a group grievance, use name and classification of spokesperson and attach a sheet listing the names, classifications, and signatures of other grievants.

Name - Last, First, Middle Initial		Classification	
Agency	Division	Employing Unit	Work Unit
Work Unit Telephone		Headquarters location	Shift or Hours of Work

This grievance alleges violation of work rules, admin. code or agency policy: _____ Type of grievance (check one): Individual
 Group
 In a group grievance, names of all grievants must be listed and all of the grievants must sign the grievance.
 (Attach a copy of rules, admin. code or agency policy allegedly violated.)
 Describe the grievance - state all facts, including time, place of incident, names of persons involved, etc.

Relief sought

Employee's Signature	Employee Representative's Signature (if applicable)	Date Submitted
Employee's Mailing Address and e-mail address	Employee Representative's Name (PRINT) (if applicable)	Employee Representative's Mailing Address and e-mail address (if applicable)

Employer's Decision

Employer's Signature	Title	Date Received	Date Returned
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INSTRUCTIONS

In the event that the employee is not satisfied with the supervisor's written decision, or if the supervisor does not return an answer within the time limits identified in Wisconsin Human Resources Handbook Chapter 430.080, the grievance must be appealed to the next higher step or appealed to the Wisconsin Employment Relations Commission within the time limits set forth in Wisconsin Human Resources Handbook Chapter 430.080.

GRIEVANCE MUST BE FILED ON THIS FORM

Complete this report following instructions. Detach third copy (pink) and submit rest of set to the proper representative of your employer. **See Wisconsin Human Resources Handbook Chapter 430.080, for time limits for presenting and acting on grievances. Failure to observe these time limits will result in loss of appeal rights.**

ASSEMBLY BILL 342

"Ban the box" //

disqualified by law or the employer's policies from employment in particular positions.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Would this be the right term?

1 **SECTION 1.** 111.335 (1) (am) of the statutes is created to read:

2 111.335 (1) (am) 1. ~~Employment discrimination because of conviction record~~
3 ~~includes~~ *State agencies may not* requesting an applicant for employment, on an application form or
4 otherwise, to supply information regarding the conviction record of the applicant, or
5 otherwise inquiring into or considering the conviction record of an applicant for
6 employment, before the applicant has been *certified* selected for an interview by the
7 prospective employer.

8 2. Subdivision 1. does not prohibit an employer from notifying applicants for
9 employment that, subject to this section and ss. 111.321 and 111.322, an individual
10 with a particular conviction record may be disqualified by law or under the
11 employer's policies from employment in particular positions.

~~**SECTION 2. Initial applicability.**~~

~~(1) CONSIDERATION OF CONVICTION RECORD. This act first applies to an application
14 for employment submitted to an employer on the effective date of this subsection.~~

~~**SECTION 3. Effective date.**~~

~~(1) CONSIDERATION OF CONVICTION RECORD. This act takes effect on the first day
17 of the 6th month beginning after publication.~~

(END)

Include

** Immediate dismissal ok*

Just cause

*Tier 1
Add
phenology
an add*

WHEDA EMPLOYEE HANDBOOK - SECTION 3: CONDITIONS OF EMPLOYMENT

*108.04(5)(f) - #8 falsifying (5)(c)
(5)(b) - 49*

*Add - Immoral conduct
2011 Act 84 -*

EMPLOYEE DISCIPLINE

It is WHEDA's policy that any conduct that--in its sole judgment--interferes with or adversely affects employment is sufficient grounds for disciplinary actions ranging from oral warning to immediate discharge. The following examples of conduct, while not exhaustive, are among those for which WHEDA may discipline any employee:

- * 1* Harassment of fellow employees.
- * 2* Intoxication or being under the influence of any legally controlled drug substance or in the possession without a prescription. *on the job*
- 3. Inappropriately discloses confidential information.
- 4. Incompetence or inefficiency.
- 5. Insubordination.
- 6. Negligence or carelessness.
- 7. Unauthorized absence from work. *- 1 or 2 no call/no show → w/ discipline*
- * 8* Knowingly falsifying any document or record of WHEDA or giving false information to WHEDA in connection with any application for employment or work assignment or in response to any request for employment information.
- 9* Misappropriation, misuse or abuse of WHEDA property. *including to download 115.31(1)(c) pornographic material*
- 10 Disloyalty to WHEDA, including the unauthorized communication of information about the agency.
- 11 Any other conduct detrimental to the effective functioning of WHEDA or to its public reputation or to the maintenance of good order and discipline among employees.

While the Authority reserves the right to discipline or discharge an employee in whatever manner it deems appropriate--for any reason--it generally uses a progressive disciplinary system. In general, disciplinary action will reflect the infraction and may begin at the step deemed appropriate by WHEDA. A written record of the disciplinary decision and resultant actions will be placed in the personnel file of the affected employee.

Employee discipline, when necessary, should be handled in an open and orderly manner. Disciplinary action is intended to be administered in a corrective fashion, concentrating on employee rehabilitation rather than punishment.

Human Resources will be involved in the review of progressive discipline.

Progressive Discipline

When the Authority uses a progressive discipline approach, it will usually do so in the following manner:

- 1. The employee should first receive a verbal warning. It should be made clear to the employee that this warning is part of the progressive disciplinary procedure. The employee should be told of the problem(s), and how it can be corrected. The manager should write a note including the date and the incident(s) for inclusion in the employee's personnel file.
- 2. If the verbal warning does not solve the problem(s), a written employee warning notice should be issued. This warning details the problem(s) in writing, and is to be signed by the manager and the employee and placed in his/her personnel file. A specific plan of action should be instituted at this time.
- 3. If the written warning and specific plan of action do not solve the problem(s), the employee may be suspended without pay for a defined period of time.