

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## *RULES CLEARINGHOUSE*

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## CLEARINGHOUSE RULE 97-073

### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

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

- a. All of the statutory citations in the rule should conclude with the notation “, Stats.” Also, all of the references in the rule to Administrative Code provisions should be preceded by the notation “s.” or “ss.”, as applicable.
- b. Since the first sentence of s. ETF 10.08 (1) (a) provides that the section defines separation of employment under s. 40.23 (1) (a) 1., Stats., the statement of statutes interpreted in the analysis to the rule should include a reference to this statutory section.
- c. In s. ETF 10.08 (1) (a), “shall be construed to supersede” should be replaced by “supersedes.”
- d. In s. ETF 10.08 (2) (a), the phrase “is entitled to” should be replaced by the word “may.”
- e. Section ETF 10.08 (2) (b) (intro.) would be clearer if rewritten to read: “Termination from participating employment occurs when all of the following conditions are met:”.
- f. In s. ETF 10.08 (2) (b) 1. and 4., in the last sentence of each subdivision, “shall” should be replaced by “does.” This same change should also be made in s. ETF 10.08 (3) (d).
- g. Section ETF 10.08 (2) (c) (intro.) should be restructured along the following lines:

In order to receive . . . , a person terminated from participating employment on or after July 1, 1996, shall remain terminated from all employment . . . throughout a period beginning with . . . and ending on the latest of the following dates:

In sub. (2) (c) 1., the statutory cross-reference should read “s. 40.23 (1) (b) and (bm), Stats.,”.

h. In s. ETF 10.08 (3) (a), the notation “pars.” should be replaced by the notation “par.”

i. In s. ETF 10.08 (3) (d), “subs. (2) par. a” should be replaced by “sub. (2) (a).” However, the reference to sub. (2) (a) should be reviewed because it appears that there is no relationship between subs. (2) (a) and (3) (d).

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

a. In s. ETF 10.08 (2) (b) 4., “consistent” should be replaced by “consistently.”

b. The rule as drafted states that a right to future employment includes but is not limited to a verbal or written agreement for future employment with any participating employer or “having already been elected as of the termination date to a term of public office meeting the qualification for participating employment which term commences on or after the date of termination of employment.” [See s. ETF 10.08 (2) (b) 3.] This provision will not include certain situations in which a “good faith” termination appears to be questionable. For example, if a person “resigned” and that person was unopposed for reelection at a subsequent election, this provision would not apply since it applies only when the person has already been elected as of the termination date. Also, a person could be a candidate for election and be opposed and still submit a resignation, be reelected and receive a pension as well as the salary for the elected position. This could be remedied, for example, by providing that a resignation is effective only if the person is not a candidate for reelection. There may be other instances in which this provision would not serve to exclude someone from “retiring” and continuing to work in the person’s prior position.

c. In s. ETF 10.08 (2) (d), should the word “meeting” be replaced by the word “meets”?