

Report From Agency

STATE OF WISCONSIN  
DEPARTMENT OF EMPLOYEE TRUST FUNDS  
EMPLOYEE TRUST FUND BOARD  
WISCONSIN RETIREMENT BOARD  
TEACHERS RETIREMENT BOARD

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FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #08-026

**FINAL RULE** to amend ETF 10.08 (2) (b) 4. and to create ETF 50.30 (4), relating to termination of employment and administrative leave of absence.

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**Agency Person to be Contacted for Questions**

Please direct any questions about the proposed rule to David Nispel, General Counsel, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 264-6936. E-mail address: [david.nispel@etf.state.wi.us](mailto:david.nispel@etf.state.wi.us).

**Statement Explaining Need for Rule**

This rule-making is needed reflect current department interpretation of s. 40.63, Stats. regarding permitting a disabled employee, who is on a leave of absence and not expected to return to service, to apply for a disability annuity benefit and to receive such benefits if the employee’s application is approved. The proposed rule will conform the eligibility criteria regarding termination of employment for s. 40.63, Stats. disability annuities with the criteria regarding long-term disability insurance benefits under s. ETF 50.54 (2) (b). For example, under this rule, the effect on a person’s health insurance and premiums would not vary depending on whether the employer participated in the group insurance board’s health insurance under ch. 40 or if the employer offered other health insurance.

**Analysis Prepared by the Department of Employee Trust Funds**

**1. Statute interpreted:**

Section 40.63, Stats.

2. Statutory authority:

Sections 40.03 (2) (i) and 227.11 (2) (a), Stats.

3. Explanation of agency authority:

By statute, the DETF Secretary is expressly authorized, with appropriate board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin statutes. Also, each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

4. Related statute or rule:

Ch. ETF 10, Wis. Admin. Code, concerns the administration of the Public Employee Trust Fund and Ch. ETF 50 concerns disability benefits provided in accordance with the trust fund. Section 40.63, Stats., concerns disability annuities from the Wisconsin retirement system. There are no other related administrative rules or statutes.

5. Plain language analysis:

The purpose of this rule is to enable participants to continue to receive non-chapter 40, Stats., benefits offered by their employer, such as health insurance, while they are receiving disability benefits under s. 40.63, Stats.

6. Summary of, and comparison with, existing or proposed federal regulations:

The only federal regulations that may be affected by this proposed rule are provisions of the Internal Revenue Code regulating qualified pension plans. The Wisconsin Retirement System is required to be maintained as a qualified plan by s. 40.015, Stats. As a general rule, pension plans are supposed to provide benefits at retirement. However, federal regulations state that a pension plan may provide for the payment of a pension due to disability. The Wisconsin Retirement System provides for disability annuities under s. 40.63, Stats.

7. Comparison with rules in adjacent states:

The department did not locate any comparable rule or statute in any adjacent states.

8. Summary of factual data and analytical methodologies:

Currently, the department interprets s. 40.63, Stats., to permit a disabled employee, who is on a leave of absence and not expected to return to service, to apply for a disability annuity benefit and to receive such benefits if the employee's application is approved. This practice followed an internal review of the department's policies and the pertinent statutes and administrative rules for administering the s. 40.63, Stats., disability benefit program.

This proposed rule addresses the status of disability annuitants with regard to the Wisconsin Retirement System and other fringe benefits under ch. 40, Stats. For example, if a disabled employee is deemed to have terminated employment for all ch. 40 purposes, the effect on that person's health insurance and premiums would vary depending on whether the employer participated in the group insurance board's health insurance under ch. 40 or if the employer offered other health insurance.

Under s. ETF 50.54 (2) (b), long-term disability insurance benefits, which replaced disability annuity benefits for employees not continuously employed since before October 16, 1992, already are available for employees on a leave of absence. This proposed rule will conform the eligibility criteria regarding termination of employment for both disability annuities and long-term disability insurance.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

This rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System.

10. Anticipated costs incurred by private sector

None.

11. Statement of effect on small business:

The rule has no effect on small businesses.

**Regulatory Flexibility Analysis:**

The proposed rule has no significant effect on small businesses because only governmental employers and their employees may participate in the benefit programs under ch. 40 of the statutes administered by the Department of Employee Trust Funds.

**Fiscal Estimate:**

The proposed rule has no direct fiscal impact. The proposed rule generates no revenues for any employer. The proposed rule itself has no effect on the fiscal liabilities of any county, city, village, town, school district, technical college district or sewerage. The rule has no state fiscal effect during the current biennium and no fiscal impact on state funds.

**Text of Rule**

Section 1. ETF 10.08 (2) (b) 4. is amended to read:

ETF 10.08 (2) (b) 4. ~~Upon~~ Except as provided in ETF 50.30 (4), upon termination of employment the participant is treated consistently with the status of a former employee. This includes, but is not limited to the terminated employee no longer being eligible for benefits available only to active employees. Examples of such benefits may include health insurance, life insurance, income continuation insurance coverage, making deferred compensation or tax sheltered annuity contributions, worker's compensation coverage, internal grievance, promotion or transfer rights, or rights available to active employees under a collective bargaining agreement. This subd. shall not apply to benefits that may be available to the employer's retired employees, such as severance pay, post-retirement insurance coverage and/or employer payment of premiums, or post-retirement benefits or other rights provided through collective bargaining or other retirement agreements. However, agreements made after the termination date for future compensable services to be rendered by the employee would not be precluded under subd. 3.

Section 2. ETF 50.30 (4) is created to read:

ETF 50.30 (4) For purposes of benefits administered under ch. 40, Stats., the participant shall be treated as terminated for all ch. 40, Stats., purposes effective on the date before the s. 40.63, Stats., annuity is effective or on the termination date reported to the department by the employer, whichever is earlier. The benefits include, but are not limited to, health insurance coverage, sick leave credit usage, life insurance coverage, income continuation insurance coverage, Wisconsin retirement system coverage and death benefits under s. 40.73 (1) (am) and (c), Stats., and deferred compensation contributions and benefits under s. 40.80, Stats. This rule does not preclude a participating employer from placing the participant on an administrative leave of absence for purposes of benefits not administered under ch. 40, Stats.

(end of rule text)



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Ronald Sklansky  
*Clearinghouse Director*

Terry C. Anderson  
*Legislative Council Director*

Richard Sweet  
*Clearinghouse Assistant Director*

Laura D. Rose  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE **08-026**

AN ORDER to amend ETF 10.08 (2) (b) 4., and to create ETF 50.30 (4), relating to termination of employment and administrative leave of absence.

Submitted by **DEPARTMENT OF EMPLOYE TRUST FUNDS**

04-08-2008 RECEIVED BY LEGISLATIVE COUNCIL.

05-01-2008 REPORT SENT TO AGENCY.

RNS:WF





## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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*Clearinghouse Director*

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### CLEARINGHOUSE RULE 08-026

#### 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 January 2005.]

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

- a. In both sections of the rule, the entire citation should be shown in the text. For example, in SECTION 1, “ETF 10.08 (2) (b)” should be inserted before “4.”
- b. In s. ETF 50.30 (4), “shall” should replace “must” and “The” should replace “Such.” Also, “subs.” should be replaced with “subsection.” [See s. 1.07, Manual.]

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

- a. In the analysis to the rule, “Stats.” should replace “Wis. Stats.”
- b. In s. ETF 50.30 (4), “Stats.” should be inserted after the fourth statutory citation.

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

- a. The “plain language analysis” in the analysis to the rule states that a purpose of the rule is to enable participants to continue to receive **private benefits** offered by their employer, such as health insurance, while they are receiving disability benefits under s. 40.63, Stats. The meaning of the term “private benefits” is unclear. If the term “private benefits” refers to benefits other than those provided under ch. 40, Stats., the analysis should be redrafted to specifically state this. If the term has some other meaning, it should be more clearly stated.
- b. SECTION 2 should be drafted to effectuate the intent of the rule more clearly. The apparent intent of the rule is to clearly state that (as specifically authorized in s. 40.63 (1) (c), Stats.) a person who is placed on an administrative leave of absence and who is not expected to resume



active service may qualify for a disability benefit under s. 40.63, Stats. However, this intent is obscured because the proposed subsection, rather than stating this directly, indirectly states that a “termination of employment” does “not preclude” a participating employer from placing the participant on administrative leave of absence if the employee is not expected to resume active service. In addition, this intent is obscured because the first sentence of the subsection, without mentioning anything about an administrative leave of absence, states that a participant must terminate all participating employment in order to be eligible for disability benefit under s. 40.63, Stats.

### **Response to Legislative Council Staff Recommendations**

The DETF implemented all of the Legislative Council Staff recommendations contained in the Clearinghouse Report. This involved making changes in form, style, grammar, punctuation, statutory and rule references, and use of plain language.

### **List of Persons Appearing or Registering For or Against the Rules.**

No persons registered either for or against the rule at the public hearing on May 22, 2008.

### **Summary of Comments Received at Public Hearing.**

No person wished to testify concerning the rule. The record was held open for written comments until 4:30 p.m. on May 22, 2008, but no comments were received.

### **Modifications to Rule as Originally Proposed as a Result of Public Comments**

None.

### **Modifications to the Analysis Accompanying the Proposed Rule.**

The analysis was revised to reflect the comments made by the Legislative Council Staff regarding the term “private benefits” and the intent of the rule.

### **Modifications to the Initial Fiscal Estimate**

None.

**Board Authorization for Promulgation**

This final draft report on Clearinghouse Rule #08-026 has been duly approved for submission to the Legislature, and for promulgation, by the Department of Employee Trust Funds and by the Employee Trust Funds Board, Wisconsin Retirement Board and Teachers Retirement Board at their meetings on June 18, 2009.

**Effective Date**

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

Respectfully submitted,

**DEPARTMENT OF EMPLOYEE TRUST FUNDS**

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David A. Stella  
Secretary

Date: \_\_\_\_\_