

Report From Agency

**Clearinghouse Rule 10-004
State of Wisconsin**

**Department of Employee Trust Funds,
Employee Trust Funds Board, Teachers Retirement Board,
Wisconsin Retirement Board, Deferred Compensation Board
and Group Insurance Board.**

FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #10-004

FINAL RULE to repeal s. ETF 10.01 (9) and 10.78 (2), to amend ss. ETF 10.01 (3m), 10.70 (1), 20.055, 40.01 (2m) (a), 40.01 (2m) (b), 40.01 (3) (a), 41.02 (1) (a), to repeal and recreate s. ETF 10.01 (2), and to create ss. ETF 10.01 (1L) and 10.01 (1r), 20.08 and 20.10, relating to the implementation of benefit changes mandated in 2009 Wisconsin Act 28; specifically, domestic partner benefits and the expansion of health insurance coverage to adult dependents up to the age of 27 years.

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Agency Person to be Contacted for Questions

Please direct any questions about this rule-making to Steve Hurley, Director of the Office of Policy, Privacy and Compliance, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 267-2847. E-mail address: steve.hurley@etf.state.wi.us.

Statement Explaining Need for Rule

This rule-making is needed to supplement and codify agency interpretations of the statutes governing the benefits that became available to domestic partners under Chapter 40 of the statutes through 2009 Wisconsin Act 28. This rule-making also deletes two obsolete or unnecessary references, and expands the definition of a “dependent” to reflect the extension of health insurance benefits to children of insured subscribers up to age 27.

Analysis Prepared by the Department of Employee Trust Funds

1. Statutes Interpreted:
Various statute sections in ch. 40, Stats., regarding the Public Employee Trust Fund.
2. Statutory Authority:
Sections 40.03 (2) (i), (ig), (ir), (t) and 227.11 (2) (a), Stats.
3. Explanation of Agency Authority:
By statute, the ETF 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:
There are no other statutes or rules that provide for benefits administered by ETF to be extended to the domestic partners of state and local government employees. 2009 Wisconsin Act 28 contains changes to many statutes relating to domestic partnership. A new Chapter 770, provides for a domestic partnership registry, but these provisions relate only to the creation of a registered domestic partnership and the benefits flowing from a Chapter 770 domestic partnership. These provisions are not linked with the provisions regarding Chapter 40 domestic partnerships. The expansion of health insurance to adult dependents up to the age of 27 years relates to an insurance mandate in s. 632.885, Stats.
5. Plain Language Analysis:
2009 Wisconsin Act 28 provides in essence that domestic partners that meet the statutory requirements for domestic partnership in Chapter 40 are to be considered as equivalent to spouses for the purpose of the benefits administered by ETF. Domestic partnerships have not previously been recognized for Chapter 40 benefit purposes. In addition, 2009 Wisconsin Act 28 mandates the extension of health insurance coverage to eligible adult children up to the age of 27 years. ETF previously covered eligible adult children up to the age of 25 years if the child was a full time student. New rules and amendments are necessary to effectuate these provisions of 2009 Wisconsin Act 28, including but not limited to:
 - A rule that the statutory definition of “decree date” applies to a termination of a domestic partnership for qualified domestic relations order purposes.
 - A rule that for the purpose of determining a beneficiary under the statutory standard sequence (in the absence of a beneficiary designation or where the named beneficiary(ies) are deceased), a divorce, legal separation, or annulment terminates the marital relationship, and a domestic partnership terminates as defined by this rule.

- A rule that a completed and notarized *Affidavit of Domestic Partnership* must be received by the department before the domestic partnership becomes effective for Chapter 40 benefit purposes.
 - A rule permitting the department to reject any Affidavit that is illegible or missing necessary information, and requiring rejection of Affidavits that are not notarized and/or signed by both partners.
 - A rule clarifying that the registration of domestic partnership under Chapter 770, Wis. Stats., does not create a domestic partnership for Chapter 40 benefit purposes. ETF needs a separate affidavit because there are differences between the definitions of domestic partnership in Chapter 40 and in Chapter 770. For example, ETF's definition of domestic partnership permits same-sex and opposite-sex domestic partners, while Chapter 770 permits only same-sex domestic partners.
 - A rule establishing the effective date of Chapter 40 domestic partnerships based on ETF's Affidavit receipt date. The rule determines exactly when and how domestic partnerships are created and terminated for Chapter 40 benefit purposes. For example, upon the Department's receipt of a properly executed *Affidavit of Termination of Domestic Partnership*, ETF will consider the domestic partnership to be irrevocably dissolved.
 - A rule that permits ETF to consider a domestic partnership to be terminated, based on evidence that the partnership no longer meets the statutory definition of a domestic partnership, such as failing to share a common residence or marrying, or that the Chapter 40 domestic partnership terminates at such time as neither partner has any benefit rights under Chapter 40.
6. Summary of, and Comparison with, Existing or Proposed Federal Regulations:
 There are no existing federal regulations that specifically address benefits for the domestic partners of state and local government employees/retirees. However, there is pending federal legislation relating to domestic partnerships and to the expansion of health insurance to adult dependents to the age of 27 years:
- Affordable Health Care for America Act (H.R. 3962): The bill contains a provision that would allow adults up to 27 years old to be covered by a parent's health insurance policy. The bill also addresses tax inequities for insurance subscribers related to the addition of adult children or domestic partners to the subscriber's employer-sponsored group health insurance plan. The bill was approved by the House of Representatives on November 7, 2009, and was placed on the Senate Calendar for reading.

- Domestic Partnership Benefits and Obligations Act (S. 1102, H.R. 2517): provides to domestic partners of federal employees (excluding military) health insurance and enhanced dental and vision benefits, retirement and disability benefits, family, medical, and emergency leave, group life insurance, long-term care insurance, compensation for work injuries, and benefits for disability, death, or captivity. Last action on the bill was in July 2009, with the bill going to the Oversight and Government Reform Committee.
- Tax Equity for Health Plan Beneficiaries Act (S. 1153, H.R. 2625): The bill would exclude the value of employer-provided health insurance for a domestic partner or other non-spouse beneficiary from an eligible employee's income, as it does for benefits provided for a spouse or dependent. Last action on the bill was in May 2009, with the bill going to the House Ways and Means Committee.
- Ending Health Disparities for LGBT Americans Act (H.R. 3001): Introduced in June, 2009. This bill incorporates the Tax Equity for Health Plan Beneficiaries Act and the Domestic Partnership Benefits and Obligations Act. It contains provisions for eliminating inequities relating to domestic partner and same-sex spouse access to benefits, as well as the tax inequities. Last action on the bill was in August 2009, with the bill going to the Subcommittee on Military Personnel.

7. Comparison with Rules in Adjacent States

Illinois:

- *Domestic Partnership Benefits*. There are no comparable state-level administrative rules on domestic partnership benefits for state and local government employees. Some Illinois municipalities have ordinances that provide for domestic partner benefits.
- *Health Insurance Coverage of Adult Dependents*. For policies issued after July 1, 2009, Group or individual health insurance policies are permitted to cover unmarried dependents until they reach age 26, regardless of student status and to age 30 for dependents who are veterans and have not been dishonorably discharged. Illinois law Sections 356z.11 and 356z.12.

Iowa:

- *Domestic Partnership Benefits*. There are no comparable state-level administrative rules on domestic partnership benefits for state and local government employees. However, Iowa legalized same-sex marriage in April 2009.

- *Health Insurance Coverage of Adult Dependents.* Health insurance providers are required to continue to cover unmarried children under their parents' coverage provided that the child 1) is under the age of 25 and a current resident of Iowa, 2) is a full-time student, or 3) has a disability. Iowa Code § 509.3 and Iowa Code § 514E.7.

Michigan:

- *Domestic Partnership Benefits.* There are no comparable state-level administrative rules on domestic partnership benefits for state and local government employees. Some municipalities, such as Ann Arbor, have ordinances providing for domestic partner benefits.
- *Health Insurance Coverage of Adult Dependents.* There are no comparable administrative rules relating to the expansion of health insurance coverage of adult dependents.

Minnesota:

- *Domestic Partnership Benefits.* There are no comparable state-level administrative rules on domestic partnership benefits for state and local government employees. The city of Minneapolis has an ordinance that provides for domestic partner benefits. Minnesota's Governor vetoed a Bill in 2008 for domestic partnership benefits.
- *Health Insurance Coverage of Adult Dependents.* Minnesota Chapter 62E.02 defines "dependent" as a spouse or unmarried child under age 25, or a dependent child of any age who is disabled.

8. Summary of Factual Data and Analytical Methodologies:

2009 Wisconsin Act 28 created a requirement for ETF to recognize domestic partners who meet the qualifications of a Chapter 40 domestic partnership for the various benefit programs administered by ETF. 2009 Wisconsin Act 28 also mandated the extension of health insurance coverage to adult children to the age of 27 years. These requirements of the Act have been set forth in the newly created rule provision, as directed by the legislature.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report:

The 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. Effect on small business:

There is no effect on small business.

11. Agency contact person:
Steve Hurley, Policy Director, Department of Employee Trust Funds, 801 W Badger Rd, Madison, WI 53713-7931, P.O. Box 7931 (use ZIP Code 53707 for PO Box); Phone: 608-267-2847; E-mail: Steve.Hurley@etf.state.wi.us
 12. Place where comments are to be submitted and deadline for submissions:
Comments may be submitted to the contact person no later than 4:30 p.m., Central Standard Time, on February 19, 2010. The place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.
 13. Proposed Effective Date:
This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided by s. 227.22 (2) (intro.), Stats.
 14. Fiscal Estimate:
The rule will have a minimal fiscal effect in that it will require the creation and processing of new forms used to track new categories of dependents for the various benefit programs administered by the Department. Most of the fiscal effect will be one-time. These costs are anticipated to be insignificant and the Department can absorb these costs within the existing base budget. The rule will not create any additional fiscal impact on any county, city, village, town, school district, technical college district, or sewerage districts. The rule will not create any additional fiscal impact on the state for the current biennium. The rule will not have any fiscal impact on the private sector.
 15. Free Copies of Proposed Rule:
Copies of the proposed rule are available without cost from the Office of the Secretary, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931. The telephone number is: (608) 266-1071.
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Text of Proposed Rule

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3 **Section 1. ETF 10.01 (1L) is created to read:**
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5 **ETF 10.01 (1L)** In this section, “child” includes a natural child, stepchild,
6 child of the insured domestic partner, adopted child, child in an adoptive
7 placement under s. 48.837 (1), Stats., and legal ward who became a
8 permanent legal ward of the employee or the employee’s spouse or
9 domestic partner prior to age 19.
10

11
12 **Section 2. ETF 10.01 (1r) is created to read:**
13

14 **ETF 10.01 (1r)** “Decree date” as defined in s. 40.02 (18f), Stats., includes
15 the first day of the month in which a participant’s domestic partnership is
16 terminated by a court under a final judgment, decree or order.
17

18
19 **Section 3. ETF 10.01 (2) is repealed and recreated to read:**
20

21 **ETF 10.01 (2)** “Dependent” means:

22 (a) For life insurance purposes, an eligible employee’s spouse or
23 domestic partner and an employee’s unmarried child, including natural
24 child, stepchild, child of the domestic partner, adopted child and a child
25 in an adoptive placement under s. 48.837 (1), Stats., who is dependent
26 upon the employee for at least 50% of support and maintenance and
27 who is any of the following:

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

33 (b) For health insurance purposes, an eligible employee’s spouse, an
34 eligible employee's domestic partner if the eligible employee has elected
35 coverage for the domestic partner as provided by the health insurance
36 contract, and an eligible employee’s unmarried child who is dependent
37 upon the employee or the other parent for at least 50% of support and
38 maintenance. This support and maintenance requirement does not apply
39 to eligible adult children as described in s. 632.885, Stats. A dependent
40 includes an eligible employee’s grandchild as provided in s. 632.895 (5m),
41 Stats. It also includes the eligible employee’s unmarried dependent child,
42 regardless of age, when he or she is:

- 43 1. Under the age of 19,

- 44 2. Age 19 or older but less than age 27 as provided in s.
45 632.885, Stats.
- 46 3. Age 27 or older and incapable of self-support because of a
47 physical or mental disability which is expected to be of
48 indefinite duration or for at least one year or a full-time
49 student as provided in s. 632.885, Stats.

50
51 **Section 4. ETF 10.01 (3m) is amended to read:**
52

53 **ETF 10.01 (3m)** “Medical record” includes medical evaluation, diagnosis,
54 prognosis, rehabilitation potential, medication, treatment, diet, limitations
55 on activities, symptoms, general physical or mental condition, x-rays, lab
56 tests or results, or any communication or information related to the health,
57 medical, surgical, dental, optometric, chiropractic, podiatric or hospital
58 care or condition of a participant or the spouse, domestic partner or
59 dependent of the participant.
60

61
62 **Section 5. ETF 10.01 (9) is repealed.**
63

64
65 **Section 6. ETF 10.70 (1) is amended to read:**
66

67 **ETF 10.70 (1)** “Individual personal information,” ~~within the meaning of s.~~
68 ~~40.07, Stats.,~~ is means all information in any individual record of the
69 department, including ~~but not limited to~~ the date of birth, earnings,
70 contributions, interest credits, beneficiary designations, creditable service,
71 marital or domestic partnership status, address, and social security
72 number, but ~~not including~~ does not include information in any statistical
73 report, other report or summary in which individual identification is not
74 possible.
75

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77 **Section 7. ETF 10.78 (2) is repealed.**
78

79
80 **Section 8. ETF 20.055 is amended to read:**
81

82 **ETF 20.055 Spouse’s or domestic partner’s signature on an annuity a**
83 **benefit application.** Documentation of inability to obtain a spouse’s or
84 domestic partner’s signature on an annuity application as required under
85 s. 40.24 (7) (a), Stats., or on a separation benefit application as provided
86 in s. 40.25 (3m), shall be accepted for the following reasons only:
87

88 (1) The spouse or domestic partner is incompetent as defined
89 under s. 54.10 (3), ~~880.01 (4), Stats.~~, and a copy of the court order
90 appointing the spouse's or domestic partner's guardian is submitted
91 to the department, except guardianship papers are not required
92 when ~~payment~~ the benefit payable is a single sum benefit payable
93 under s. 40.25 (1), Stats. The guardian's signature shall be
94 required on the annuity application in lieu of the spouse's or
95 domestic partner's signature if the participant chooses an annuity
96 option other than an option specified under s. 40.24 (7) (a), Stats.;
97 or

98
99 **Note:** ~~Section 880.01 (4), Stats., was repealed by 2005 Wis. Act 387. See~~
100 ~~s. 54.10 (3), Stats., for requirements to find an individual incompetent.~~
101

102 (2) The participant certifies, on a form provided by the department,
103 that the participant does not now know and has not known the
104 whereabouts of the spouse or domestic partner for at least the 90
105 days immediately prior to the date the application is signed.
106

107 (3) The requirements in s. 40.24 (7) (a) (intro) and (b), Stats.,
108 related to the requirement for the domestic partner's signature on
109 benefit applications, shall not apply if the participant is prohibited
110 under the internal revenue code from selecting a joint and survivor
111 annuity with the domestic partner as the named survivor, based on
112 the participant's and domestic partner's respective ages.
113

114
115 **Section 9. ETF 20.08 is created to read:**

116
117 **ETF 20.08** For purposes of determining a beneficiary under s. 40.02 (8)
118 (a) 2., Stats., a judgment, order or decree of divorce, legal separation or
119 an annulment of the marriage terminates the marital relationship. A
120 domestic partnership terminates as specified in ETF 20.10 (3) for the
121 purposes of determining a beneficiary under s. 40.02 (8) (a) 2., Stats.
122

123
124 **Section 10. ETF 20.10 is created to read:**

125
126 **ETF 20.10 Domestic partner benefits. (1)** For the purposes of this
127 section, "member" means any of the following persons:

- 128 (a) Participant.
- 129 (b) Annuitant.
- 130 (c) Eligible employee.
- 131 (d) Beneficiary.
- 132 (e) Alternate payee.
- 133 (f) Recipient of duty disability benefits under s. 40.65, Stats.

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(2) (a) For the purposes of the benefits authorized under Chapter 40, Stats., a domestic partnership as defined in s. 40.02 (21d), Stats., becomes effective on the date that the department receives a completed and notarized *Affidavit of Domestic Partnership* form (ET-2371), except that a domestic partnership cannot become effective before January 1, 2010.

(b) The department may reject any *Affidavit of Domestic Partnership* (ET-2371) that is illegible or missing information necessary for benefit administration purposes. Affidavits that are missing the name or signature of either domestic partner or are not notarized shall be rejected. Any affidavit so rejected shall have no force or effect, and for the purposes of the benefits authorized in Chapter 40, the effective date of the domestic partnership shall be based on the date the department receives a completed, notarized *Affidavit of Domestic Partnership* form (ET-2371) signed by both partners.

(c) Registering as domestic partners under the provisions of Chapter 770, Stats., does not establish a domestic partnership for the purposes the benefits authorized in Chapter 40, Stats.

(d) Establishing a domestic partnership or a same-sex marriage in another state does not establish a domestic partnership for the purposes of the benefits authorized in Chapter 40, Stats.

(3) Once a domestic partnership becomes effective it remains in force until the earlier of the following dates:

(a) The date on which the department receives a notarized *Affidavit of Termination of Domestic Partnership* form (ET-2372) signed by either the member or the domestic partner.

(b) Based on evidence provided to the department, the date established to the department's satisfaction that the domestic partnership no longer met all of the conditions in s. 40.02 (21d), Stats. Examples of no longer meeting the conditions include one of the domestic partners marrying another person or establishing a new domestic partnership with a different partner under sub. (2), or no longer sharing a common residence.

(c) The date on which neither domestic partner is a member as defined in sub. 1.

(d) The date determined by the court that a domestic partnership terminated.

(e) The department may reject any *Affidavit of Termination of Domestic Partnership* (ET-2372) that is illegible or missing

180 information necessary for benefit administration purposes. Any
181 affidavit terminating a domestic partnership that is missing the
182 name of either domestic partner, the signature of the domestic
183 partner who is terminating the domestic partnership, or is not
184 notarized shall be rejected, and shall have no force or effect.
185 Except as provided in par. (a) 2. and 3., for the purposes of the
186 benefits authorized in Chapter 40, the effective date of the
187 termination of the domestic partnership shall be based on the date
188 the department receives a completed, signed and notarized
189 *Affidavit of Termination of Domestic Partnership* form (ET-2372).
190

191 (f) Terminating a domestic partnership created under the
192 provisions of Chapter 770, Stats., does not terminate a domestic
193 partnership established under sub. (2) for the purposes the benefits
194 authorized in Chapter 40, Stats.
195

196 **(4)** Affidavits certifying or terminating a domestic partnership that are
197 received after the date of death of either domestic partner are invalid, and
198 shall have no force or effect.
199

200 **(5)** The domestic partner provisions in s. 40.08 (8) (a) 4. and s. 40.23 (4)
201 (e) 1. and (f), Stats., shall not apply if such provisions are inconsistent with
202 any internal revenue code provisions that authorize and regulate the
203 benefit plan.
204

205 **Note:** *The Affidavit of Domestic Partnership form (ET-2371) and the*
206 *Affidavit of Termination of Domestic Partnership form (ET-2372) can be*
207 *found on ETF's Web site, <http://etf.wi.gov>, or by contacting the department*
208 *at 1-877-533-5020.*
209

210
211 **Section 11. ETF 40.01 (2m) is amended to read:**
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213 **ETF 40.01 (2m) RESPONSIBLE PERSON.** (a) *Multiple surviving insured*
214 *dependents, with surviving spouse or domestic partner.* If the deceased
215 insured employee is survived by a spouse or domestic partner and other
216 dependents of the deceased insured employee, then the family coverage
217 shall continue in effect and the surviving spouse or domestic partner shall
218 be the responsible person and have the same control and responsibilities
219 with respect to the insurance coverage of the insured surviving
220 dependents as the insured employee had while living.
221

222 (b) *Multiple surviving insured dependents, without surviving spouse*
223 *or surviving domestic partner.* If the deceased insured employee is
224 not survived by a spouse or domestic partner but by more than one
225 insured dependents, then the family coverage will continue in

226 effect. The oldest surviving insured dependent, or that person's
227 guardian, shall be the responsible person and have the same rights
228 and responsibilities with respect to the insurance coverage of the
229 insured surviving dependents as the insured employee had while
230 living. Upon reasonable request from any adult surviving insured
231 dependent or the guardian of any minor surviving insured
232 dependent, the department may designate another surviving
233 insured dependent, or that person's guardian, as the responsible
234 person.

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237 **Section 12. ETF 40.01 (3) is amended to read:**

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239 **ETF 40.01 (3) DURATION OF CONTINUING COVERAGE.** (a) *Surviving*
240 *spouse or surviving domestic partner.* A surviving spouse or surviving
241 domestic partner entitled to insurance coverage under this section and s.
242 40.02 (25) (b) 3., Stats., is entitled to continuous coverage under this
243 section for life, unless sooner cancelled voluntarily or for non-payment of
244 premiums. A suspension of coverage because of the operation of s. 40.05
245 (4) (b) or (be), Stats., does not affect this entitlement. The surviving
246 spouse or surviving domestic partner may not add new dependents to this
247 coverage.

248
249 **Note:** *Section 40.02 (25) (b) 3., Stats., defines the surviving spouse or*
250 *domestic partner of an employee, or retired employee, as an "eligible*
251 *employee" having, under rules to be promulgated by this department, the*
252 *same right to health insurance coverage as the deceased employee or*
253 *retired employee except without any state contribution. Section 40.05 (4)*
254 *(b) and (be), Stats, concern the accumulated sick leave conversion credit*
255 *benefit plan. It permits a surviving insured dependent to delay deductions*
256 *from a deceased employee's accumulated sick leave conversion credits to*
257 *pay for group health insurance under ch. 40, Stats., because the surviving*
258 *insured dependent is covered by a health insurance plan or policy*
259 *comparable to the standard plan during the period deductions are*
260 *delayed. Health insurance coverage under ch. 40, Stats., is, in effect,*
261 *suspended unless and until the dependent elects to reinstate coverage*
262 *and resume the deductions from accumulated sick leave conversion*
263 *credits.*

264
265 (b) *Other surviving insured dependents.* The duration of coverage
266 for other surviving insured dependents shall be established by the
267 terms of the group health insurance contract approved by the group
268 insurance board.

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272 **Section 13. ETF 41.02 (1) (a) is amended to read:**

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274 **ETF 41.02 (1) (a)** Provide employees and annuitants meaningful
275 protection for themselves, their spouses, their domestic partners and their
276 parents from the potentially catastrophic costs of financing long-term care;

277

278

279 **Section 14. ETF 60.60 (8) (d) is amended to read:**

280

281 **ETF 60.60 (8) (d)** An insured surviving spouse, domestic partner, or
282 dependent child may not continue payment of premiums from the
283 conversion account after the death of the insured but may elect, if
284 otherwise eligible, to continue coverage as provided in s. ETF 40.01.

285

286

(END OF RULE TEXT)



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
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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 **10-004**

AN ORDER to repeal ETF 10.01 (9) and 10.78 (2); to amend ETF 10.01 (3m), 10.70 (1), 20.055, 40.01 (2m) (a) and (b) and (3) (a), and 41.02 (1) (a); to repeal and recreate ETF 10.01 (2); and to recreate ETF 10.01 (1r), 20.08, and 20.10, relating to the implementation of benefit changes mandated in 2009 Wisconsin Act 28; specifically, domestic partner benefits and the expansion of health insurance coverage to adult dependents up to the age of 27 years.

Submitted by **DEPARTMENT OF EMPLOYE TRUST FUNDS**

01-14-2010 RECEIVED BY LEGISLATIVE COUNCIL.

02-09-2010 REPORT SENT TO AGENCY.

RNS:DWS

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 10-004

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

2. Form, Style and Placement in Administrative Code

a. In s. ETF 10.01 (2), pars. (a) (intro.) and (b) (intro.) should end with “any of the following:”. All of the subdivisions should end with periods.

b. In SECTION 2, line 39, the definition of “child” should precede the definition of “current basic pay rate.” It should be numbered sub. (1L) and should be in SECTION 1 of the rule. Subsequent SECTIONS should be renumbered accordingly.

c. SECTION 5 should read as follows:

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

d. In s. ETF 20.10 (2) (b) and elsewhere in the rule, “may at its discretion” should be changed to “may.” In sub. (3) (b) and elsewhere in the rule, “such” should be changed to “the” and “but not limited to” should be deleted.

e. On page 10, line 155, sub. (3) should be renumbered as par. (3) (a) and pars. (a), (b), (c), and (d) should be subds. 1., 2., 3. and 4. Paragraphs (e) and (f) should be renumbered as pars. (b) and (c) accordingly. On page 11, line 182, “par. (b) and (c)” should be changed to “par. (a) 2. and 3.”. On page 10, line 156, the semicolon should be changed to a colon.

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

In the list of statutes that authorize promulgation of this rule, s. 40.03 (2) (t), Stats., should be listed. It appears that this statute provides authority for s. ETF 20.10 (5).

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

It is not clear if the notes in SECTIONS 4 and 6 should be printed in the Administrative Code or if they are just for the education of readers prior to promulgation.

Response to Legislative Council Staff Recommendations

ETF implemented all the Legislative Council staff recommendations.

List of Persons Appearing or Registering For or Against the Rules

No persons appeared at the hearing or registered for or against the rule at the public hearing on February 12, 2010.

Summary of Comments Received at the Public Hearing

No person testified concerning the rule. The record was held open for written comments until 4:30 on Friday, February 19, 2010, but ETF did not receive any written comments.

Modifications to Rule as Originally Proposed

No changes were made from the original proposal as a result of public comments.

Upon further consideration, ETF made one substantive change to the proposed rule in addition to the changes recommended by the Legislative Council Rules Clearinghouse staff. This small change, to 10.01 (2) (b), would provide a health insurance subscriber the flexibility to choose whether to cover a domestic partner under family coverage as provided by the health insurance contract, rather than that coverage being automatic if the subscriber already had family coverage in force at the time of establishing a domestic partnership with ETF.

Modifications to Fiscal Estimate as Originally Proposed

No changes were made to the fiscal estimate in the original proposal.

Modifications to the Analysis Accompanying the Proposed Rule

No changes were made to the analysis accompanying the proposed rule.

Board Authorization for Promulgation

This final draft report on clearinghouse Rule #10-004 has been duly approved for submission to the Legislature, and for promulgation, by the Department of Employee Trust Funds and the following boards:

- Employee Trust Funds Board on March 18, 2010
- Teachers Retirement Board on March 18, 2010
- Wisconsin Retirement Board on March 18, 2010
- Group Insurance Board on April 13, 2010
- Deferred Compensation Board on May 18, 2010

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

_____ Date: _____
David A. Stella
Secretary