

Chapter Pers 16

REINSTATEMENT AND RESTORATION

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Pers 16.01 Definition. Reinstatement and restoration are acts of re-employment, without competition, of an employe or former employe to a position in the same class in which he or she was previously employed or in a closely related class having the same or lower pay rate or pay range maximum for which he or she meets the qualification requirements. Such re-employment may be either at the discretion of the appointing authority (permissive) or may be required by the law or these rules (mandatory). In those instances where an employe has "eligibility" for reinstatement or restoration, the action is permissive. In those instances where an employe has the "right" of reinstatement or restoration, the action is mandatory. For purposes of these rules, the terms "reinstatement" and "restoration" are synonymous.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

Pers 16.02 Report of appointing authority; approval by director. All reinstatements and restorations shall be reported to the director for his approval as he may require.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

Pers 16.03 Types and conditions of reinstatement and restoration. (1) **LAYOFF.** An employe who has been laid off or demoted in lieu of layoff, under section 16.28 (2), Wis. Stats., shall be granted the following considerations for a 3 year period from the date of such action:

(a) He or she shall be placed, in inverse order of his or her layoff or demotion in lieu of layoff, on an appropriate mandatory restoration register for the employing unit used for layoff and on a servicewide unranked permissive reinstatement register.

(b) When a vacancy for which he or she is qualified occurs in the employing unit from which he or she was laid off or demoted in lieu of layoff, he or she shall be mandatorily restored according to the inverse order of layoff or demotion in lieu of layoff, unless the employe files written waiver of such right.

(c) When a vacancy for which an employe is qualified occurs in state service other than in the employing unit from which the employe was laid off or demoted in lieu of layoff, he or she may be reinstated at the discretion of the appointing authority.

(2) **MANDATORY REINSTATEMENT.** An employe returning from military service or an approved leave to the unclassified service shall

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be mandatorily restored pursuant to the provisions of sections 16.26 and 16.27, Wis. Stats., respectively.

(3) **RESTORATION BY PERSONNEL BOARD OR COURT ACTION.** See sections 16.05 (1) (e) and 16.38 (4), Wis. Stats. A probationary period shall not be required for such reinstatement.

(4) **PERMISSIVE REINSTATEMENT, GENERAL.** An employe who has separated from the classified service without misconduct or delinquency, or who has accepted voluntary demotion for personal reasons, shall be eligible for reinstatement in any agency for 3 years from date of such separation or demotion. The effective date of reinstatement shall be within the 3 year time limit.

(4m) **PERMISSIVE REINSTATEMENT, RETURN FROM UNCLASSIFIED POSITION.** An employe who has been granted a leave of absence to the unclassified service under sections 16.27 (1) or (2), Wis. Stats., or a person not granted leave of absence to serve in the unclassified service under section 16.27 (2), Wis. Stats., shall have reinstatement eligibility in any agency for 3 years following the appointment to the unclassified service or one year after termination of the unclassified appointment, whichever is longer. The benefit under this subsection is in addition to any benefit applicable under subsection (2).

(5) **NON-COMPLETION OF PROBATIONARY PERIOD UPON PROMOTION.** See section 16.22 (1) (d), Wis. Stats., and Wis. Adm. Code section Pers 14.03 (1).

(6) **NON-COMPLETION OF PROBATIONARY PERIOD DUE TO LAYOFF.** An employe who is laid off while serving a probationary period for a promotion within an agency shall be restored to his previous position under Wis. Adm. Code section 14.03 (1), and if a vacancy occurs in the higher class he shall be mandatorily restored to a position in that class in the inverse order of layoff. Such employe shall be treated consistent with the probationary employe returning from military leave.

(7) **DOWNWARD REALLOCATION OF POSITION.** An employe whose position has been reallocated to a classification with a lower pay rate or pay range maximum, shall have the same reinstatement eligibility to the higher class as employes who voluntarily separate from the service.

(8) **REINSTATEMENT ELIGIBILITY UPON NON-RETURN FROM LEAVE OF ABSENCE.** If an employe does not return from an approved leave of absence, his/her 3 year reinstatement eligibility period shall begin on the day following expiration of the leave.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (2) and (4), cr. (4m), (7) and (8), Register, September, 1975, No. 237, eff. 10-1-75.

Pers 16.04 Kinds of reinstatement; employe status and rights.

(1) **REINSTATEMENT OF PERSONS WHO PREVIOUSLY OBTAINED PERMANENT STATUS IN CLASS.** (a) *Reinstatement to different agency.* A person who is reinstated to an agency other than the one from which he earned reinstatement eligibility may be required to serve a probationary period at the discretion of the appointing authority. If not required to serve a probationary period the employe resumes permanent status in class immediately if reinstated to the same class in which he or she earned permanent status in class. If not required to serve a

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probationary period and reinstated to a closely related class, the employe shall be granted permanent status in class immediately. If required to serve a probationary period and during such period the employe's services are found to be unsatisfactory, he or she may be separated from the service at the discretion of the appointing authority without the right of appeal.

(b) *Reinstatement to a different employing unit in the same agency.* A person who is reinstated to a different employing unit in the same agency from which he or she earned reinstatement eligibility may be required to serve a probationary period at the discretion of the appointing authority. If not required to serve a probationary period the employe resumes permanent status in class immediately if reinstated to the same class in which he or she earned permanent status. If not required to serve a probationary period and reinstated to a closely related class the employe shall be granted permanent status in class immediately. If required to serve a probationary period and during such period the employe's services are found to be unsatisfactory he or she may be separated from the service at the discretion of the appointing authority without the right of appeal.

(c) *Reinstatement to the same employing unit.* A person shall not be required to serve a probationary period when reinstated to the same employing unit from which he or she earned reinstatement eligibility. Such an employe resumes permanent status in class immediately whether reinstated to the class in which he or she previously obtained permanent status in class or to a closely related class.

(2) **REINSTATEMENT OF A PERSON WHO VOLUNTARILY SEPARATES FROM A PERMANENT, SEASONAL OR SESSIONAL POSITION WHILE SERVING A PROBATIONARY PERIOD.** Pursuant to section 16.25 (2), Wis. Stats., such a person may be reinstated at the discretion of an appointing authority at anytime during a 3 year period from the date of voluntary separation. Such person, except as covered in section 16.26 (2) (b), Wis. Stats., shall be required to start a new probationary period upon reinstatement.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (2), Register, September, 1975, No. 237, eff. 10-1-75.

Pers 16.05 Dismissal during probationary period. The name of an employe who is dismissed from a probationary period following reinstatement or restoration may at the discretion of the director be returned to the appropriate register.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

Pers 16.06 Pay rate upon permissive reinstatement. For the purposes of this subsection "last rate received" refers to the rate received in the last position in which the employe had gained permanent status in class.

(1) When an employe is reinstated, the pay may be at any rate within the pay range of the class reinstated to which is not greater than the last rate received plus intervening general pay adjustments but excluding merit increases. The adjustment(s) applied to the employe's last rate shall be that (those) of the appropriate pay schedule for the class to which the employe is reinstated.

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(a) For employes placed on probation when reinstated, the rate of pay shall not be less than the minimum of the pay range of the class.

(b) For employes not placed on probation when reinstated, the rate of pay shall not be less than the permanent status in class minimum of the class.

(2) In any reinstatement where an employe who had obtained permanent status in the class is required to serve a probationary period, completion of such probationary period shall not make the employe eligible to receive a pay increase as provided in Wis. Adm. Code section Pers 5.03 (1). However, upon completion of any such probationary period an employe shall be paid not less than the permanent status in class minimum.

(3) An employe reinstated under the provisions of Wis. Adm. Code section Pers 14.03 (2) shall be paid as provided in Wis. Adm. Code section Pers 16.07 (2).

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (1), Register, September, 1975, No. 237, eff. 10-1-75.

Pers 16.07 Pay rate upon mandatory reinstatement. (1) Subject to the maximum of the pay range or rate to which the class is assigned, an employe, when reinstated under one of the conditions listed below, shall be paid the last rate received plus intervening general pay adjustment(s) and, in pay schedules where applicable, shall also be eligible to receive intervening merit increases. The adjustment(s) applied to the employe's last rate shall be that (those) of the appropriate pay schedule for the class to which the employe is reinstated.

(a) An employe restored following military service, pursuant to section 16.26, Wis. Stats.

(b) An employe restored following a leave to serve in the unclassified service, pursuant to section 16.27, Wis. Stats.

(c) An employe mandatorily restored following layoff pursuant to section 16.28 (2), Wis. Stats.

(2) An employe restored under the provisions of Wis. Adm. Code section Pers 14.03 (1), for non-completion of a promotional probationary period shall be paid the rate received prior to the promotional increase, plus any intervening general pay adjustment(s) but excluding merit increases. The adjustment(s) applied to the employe's last rate shall be that (those) of the appropriate pay schedule for the class in which the employe had permanent status.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (1) (intro. par.) and (2), Register, September, 1975, No. 237, eff. 10-1-75.