

## Chapter ETF 10

## ADMINISTRATION

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ETF 10.01 Definitions. Words, phrases, and terms used in all ETF chapters which are not defined in this section shall have the meaning set forth in s. 40.02, Stats.:

(1m) "Current basic pay rate" means:

(a) Unless otherwise provided by ch. 230, Stats., contractual agreements authorized under subch. V of ch. 111, Stats., or par. (b) or (c), the hourly rate, or its equivalent, excluding any overtime or supplementary compensation, at which the employe is paid at the time of termination of employment or at the time of death. For an active employe or employe on an approved leave of absence the "current basic pay rate" means the hourly rate, or its equivalent, the employe is paid during the pay period or was paid prior to the commencement of the leave of absence. The equivalent of the hourly rate of pay shall be obtained by dividing the employe's total earnings in a typical pay period, excluding any overtime, on-call, extracurricular or supplementary compensation, by the number of hours, excluding hours, such as overtime, on-call and extracurricular hours which are incidental to the primary employment, for which the employe is paid in that pay period. If the employe has received a pay adjustment during the 12 months preceding termination, death or leave of absence, other than a permanent change that is broadly applicable to the employes of that employer, or unless that change is the result of a significant change in the nature and duties and activities of that employe, then the equivalent of the hourly rate shall be the greater of the previous current basic pay rate prior to the pay adjustment or the final average earnings divided by 174.

(b) For an annuitant who becomes a participating employe subject to s. 40.22, Stats., within 3 years of the original date of termination, the greater of the current basic pay rate as established under par. (a) on the

effective date of the original annuity or the current basic pay rate at the time of subsequent termination.

(c) For annuitants who become participating employees subject to s. 40.22, Stats., after more than 3 years from the original date of termination the current basic pay rate determined in accordance with par. (a) at the time of subsequent termination for sick leave accumulated after re-employment only. The conversion of sick leave accumulation in effect prior to reemployment shall be calculated by application of the current basic pay rate in effect prior to reemployment as determined under par. (a).

(2) "Dependent" means, for life insurance purposes, an employee's spouse, unmarried child, including stepchild and adopted child, who is dependent upon the employee for at least 50% of support and maintenance and who is:

(a) More than 14 days of age, but under the age of 19,

(b) Between the ages of 19 and 25 if a full-time student, or

(c) Age 19 or older and incapable of self-support on account of a physical or mental disability which can be expected to be of long-continued or indefinite duration.

(2m) "Earnings" under s. 40.02 (22), Stats., except as otherwise provided by federal regulations for OASDHI purposes, does not include payments made in lieu of welfare, payments made to reimburse welfare costs, or payments made as part of a work relief, general relief or public assistance program under ch. 49, Stats., unless employment is part of a training program to improve skills or increase employability and the employment satisfies the requirements under s. 40.22 (1), Stats.

(3h) "Inactive participant" means, for purposes of the teachers retirement board election under s. ETF 10.10, a participant who is neither a participating employee, as defined in s. 40.02 (46), Stats., nor an annuitant as defined in s. 40.02 (4), Stats.

(3m) "Medical record" includes medical evaluation, diagnosis, prognosis, rehabilitation potential, medication, treatment, diet, limitations on activities, symptoms, general physical or mental condition, x-rays, lab tests or results, or any communication or information related to the health, medical, surgical, dental, optometric, chiropractic, podiatric or hospital care or condition of a participant or the spouse or dependent of the participant.

(3s) "Public school" means, for purposes of s. 15.165 (3) (a) 1, Stats., a cooperative educational service agency established under ch. 116, Stats., a county handicapped children's education board established under s. 115.86, Stats., and any school supported wholly or in part by public funds which is under the control and management of the state of Wisconsin or any subdivision of the state of Wisconsin and which is empowered by law to employ teachers; but does not mean the university of Wisconsin system, any school in the city of Milwaukee, a state agency or a vocational, technical and adult education district.

(3w) "Salary index" means, for purposes of s. 40.26, Stats., for years prior to 1982, 5%.

(4) "School system" includes, for life insurance purposes, any public entity whose primary purpose is education.

(4m) "School year" means, for purposes of s. 40.02(3), Stats., the period beginning July 1 and ending the following June 30.

(5) "Student" means, for insurance purposes, a person, who is enrolled in an institution which provides a schedule of courses or classes and, whose principal activity is the procurement of an education. Full-time student status shall be defined by the institution in which the student is enrolled and shall include any usual vacation period if the child was a full-time student at the end of the previous term.

(6) "Summer vacation" means the time between the end of the regular school term of the school system in which the employe was last employed and the beginning of the next regular school term of that system.

History: Cr. Register, February, 1983, No. 326, eff. 3-1-83; r. and recr. (intro.), am. (2) (intro.), cr. (3m), Register, June, 1983, No. 330, eff. 7-1-83; cr. (3w), Register, December, 1983, No. 336, eff. 1-1-84; cr. (3h) and (3s), Register, March, 1984, No. 339, eff. 4-1-84; am. (1), Register, April, 1984, No. 340, eff. 5-1-84; emerg. cr. (4m), eff. 1-1-85; cr. (4m), Register, March, 1985, No. 351, eff. 4-1-85; cr. (2m), Register, October, 1985, No. 358, eff. 11-1-85; cr. (1m), Register, May, 1986, No. 365, eff. 6-1-86; am. (1m) (a), Register, August, 1986, No. 368, eff. 9-1-86; r. (1) and (3), Register, September, 1986, No. 369, eff. 10-1-86.

**ETF 10.03 Creditable service.** (1) For annual earnings periods beginning on or after January 1, 1985, each participating employer shall determine and report service in hours for each participating employe in the manner prescribed in this section. Earnings which are paid to a teacher, as defined in s. 40.02(55), Stats., who has contracted to receive such payments on either a 9 or 10 month contract basis, and which are paid after the beginning of a school year, as defined in s. ETF 10.01(4m), for services rendered in the preceding school year, are deemed to be received by the teacher on June 30 of the preceding school year for purposes of reporting service to the department.

(2) The full-time equivalent of one day of service is 8 hours. If an employer has established workdays of other than 8 hours as full-time employment for some or all of its employes, the number of hours to be reported within a reporting period is determined by the participating employer by dividing the number of hours for which earnings are paid to the employe in the reporting period by the number of hours which would have been worked in that reporting period by a regular full-time employe of that employer in the same kind of employment and multiplying the result by 40 times the number of weeks and fractions of a week in the reporting period.

(3) For purposes of s. 40.02(17), Stats., the full-time equivalent of one year of creditable service for a teacher, as defined in s. 40.02(55), Stats., who is not an executive participating employe, as defined in s. 40.02 (30), Stats., is 1,320 hours and for all other participating employes the full-time equivalent of one year of creditable service is 1,904 hours.

(4) When a participating employe receives earnings from the same participating employer for employment in more than one of the categories under s. 40.23 (2) (b), Stats., then the following tests shall be applied by the participating employer when service and earnings are reported:

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(a) If employment in each of the categories meets the requirements of s. 40.22, Stats., by itself then the earnings and service shall be reported separately for each category.

(b) If employment in any one category meets the requirements of s. 40.22, Stats., and all other employment does not, then earnings and service shall be added to and reported under the one category which meets the eligibility requirements of s. 40.22, Stats.

(c) If employment in more than one category meets the qualifying requirements of s. 40.22, Stats., and all other employment does not, then earnings and service for employment in those categories which do not meet the qualifying requirements of s. 40.22, Stats., shall be added to and reported under:

1. That qualifying category in which the greatest number of hours is worked, or

2. The lowest numbered subd. under sub. (5)(b) if the greatest number of hours worked is equal in 2 or more qualifying categories.

(d) If employment in none of the categories meets the requirements of s. 40.22, Stats., separately, but those requirements are met when the employment is added together then earnings and service shall be added to and reported under:

1. That category in which the greatest number of hours is worked, or

2. The lowest numbered subd. under sub. (5)(b) if the greatest number of hours worked is equal in 2 or more categories.

(5) (a) Fractions of an hour shall be rounded to the nearest hour prior to crediting and if the fraction is one-half hour then the hours credited shall be rounded up to the next whole number.

(b) If the total number of hours reported for an employe within an annual earnings period exceeds the applicable number specified in sub. (3) service shall be allocated and credited in the following sequence:

1. Service as a protective occupation participant not subject to Titles II and XVIII of the federal Social Security Act whose formula rate is determined under s. 40.23 (2m) (e)4, Stats.

2. Service as a protective occupation participant subject to Titles II and XVIII of the federal Social Security Act whose formula rate is determined under s. 40.23 (2m) (e)3, Stats.

3. Service as an executive participating employe whose formula rate is determined under s. 40.23 (2m) (e)2, Stats.

4. Service as an elected official whose formula rate is determined under s. 40.23 (2m) (e)2, Stats.

5. Service as a teacher whose formula rate is determined under s. 40.23 (2m) (e)1, Stats.

6. Service of a type not covered under subsd. 1 to 5.

**ETF 10.34 Rights of beneficiaries.** Persons who are receiving or are eligible to receive benefits as beneficiaries of participants under ch. 40, Stats., shall be eligible to file an election to cancel variable participation pursuant to s. 40.04 (7), Stats.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81; renum. from ETF 8.06 and am., Register, December, 1982, No. 324, eff. 1-1-83.

**ETF 10.35 Withdrawal of election form.** An election to terminate variable participation cannot be cancelled or withdrawn after it has been received by the department and is subject to change only as prescribed by s. 40.04 (7) (b), Stats.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81; renum. from ETF 8.07 and am., Register, December, 1982, No. 324, eff. 1-1-83.

**ETF 10.60 Reports and payments.** (1) Every employer, which has one or more employees as a participant under ch. 40, Stats., shall:

(a) Prepare and transmit a coverage report or reports to the department for each calendar month. Such reports shall be in the form prescribed by and in accordance with instructions from the department.

(b) Remit to the department, with the respective coverage reports required under par. (a), the employe and employer contributions or deposits, premiums, payments on the accrued liability or other amounts payable to the department for the calendar month covered by the report.

(2) The secretary may, for specified employers or types of coverage, provide for summary reporting on a monthly basis to accompany the monthly remittance required in sub. (1) (b), and detailed reporting on a quarterly, semi-annual, or annual basis.

(3) The department may designate an agent or depository to receive on its behalf, payments or remittances as provided in sub. (1) (b) and any report or remittance will be considered received in the department's offices as of the date it is received by such a designated agent or depository.

History: Cr. Register, December, 1976, No. 252, eff. 1-1-77; emerg. am. (1) (a) and (b), eff. 8-1-80; am. (1) (a) and (b), Register, November, 1980, No. 299, eff. 12-1-80; renum. from ETF 4.01 and am. (1) (intro.), Register, December, 1982, No. 324, eff. 1-1-83.

**ETF 10.61 Transmittal of initial OASDHI wage reports.** Initial monthly and annual wage reports and the required remittance covering the period from the effective date of coverage to the end of the report period in which any employer becomes covered under the agreement between the state and the federal social security administration, as required in the administration of subch. III of ch. 40, Stats., are due 70 calendar days after the approval of the coverage agreement by the social security administration. Whenever the social security administration extends the time for the filing of initial retroactive wage reports or payment of the required remittance, an extension of the due date shall be granted by the department.

History: 1-2-56; r. and rec. Register, December, 1957, No. 24, eff. 1-1-58; am. Register, November, 1969, No. 167, eff. 12-1-69; renum. from SSF 1.05 and am., Register, December, 1982, No. 324, eff. 1-1-83.

**ETF 10.62 Transmittal of OASDHI adjustment reports.** (1) The original and one copy of any adjustment wage report required in the administration of subch. III of ch. 40, Stats., shall be dated and signed by the autho-

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rized agent for any coverage group and transmitted, with any required remittance, within 15 calendar days prior to the due date established under federal regulations as defined in s. 40.02 (32), Stats.

(2) When an adjustment wage report is prepared by the social security administration because of errors in reporting "covered wages" which were ascertained by federal authorities, any contributions required, in the administration of subch. III of ch. 40, Stats., shall be remitted within 15 calendar days prior to the due date established under federal regulations as defined in s. 40.02 (32), Stats. A statement from the employer explaining the adjustment will be required.

History: 1-2-56; r. and recr. Register, December, 1957, No. 24, eff. 1-1-58; am. Register, November, 1969, No. 167, eff. 12-1-69; renum. from SSF 1.06 (1) and (3) and am., Register, December, 1982, No. 324, eff. 1-1-83.

**ETF 10.63 Due dates.** (1) (a) Reports and remittances from state departments required in the administration of group health insurance pursuant to subch. IV of ch. 40, Stats., are due no later than the 20th day of the calendar month for the following month's coverage.

(e) Reports and remittances from state departments, excluding university and other state department reports which pertain to teachers only, required in the administration of subch. II of ch. 40, Stats., are due on the 20th day of the calendar month following the reporting period.

(f) Reports and remittances from all reporting officials required in the administration of subch. III of ch. 40, Stats., are due on the 5th day of the calendar month for contributions on wages paid during the 16th through the last day of the previous calendar month and on the 20th day of the calendar month for contributions on wages paid during the first 15 days of that month, except, that the annual report of wage detail is due prior to the March 1 following the end of the reporting period and except as provided by ss. ETF 10.61 and 10.62.

(g) Reports and remittances other than those specified in pars. (a) to (f) are due on the last working day, excluding Saturdays, Sundays, and holidays when the state offices are closed, of the calendar month following the end of the reporting period.

(2) Whenever the 5th or 20th day of the calendar month referred to in sub. (1) falls on a Saturday, Sunday or holiday on which state offices are closed, a report or a remittance received on the next succeeding working day shall be deemed to have been received on a timely basis.

(3) The secretary may waive charges and interest calculated under s. 40.06 (3), Stats., on any employer's reports and remittances, which are received within one day of the due date specified under subs. (1) and (2) if he or she determines that the waiver will not impair the objective of encouraging timely receipt of contributions and remittances.

History: Cr. Register, December, 1976, No. 252, eff. 1-1-77; emerg. cr. (1) (e), eff. 8-1-80; r. and recr. (1), am. (2) and (3), r. (4), renum. (5) and (6) to be (4) and (5) and am. (4), Register, November, 1980, No. 239, eff. 12-1-80; renum. from ETF 4.02, am. (1), renum. (2) to be ETF 10.64, renum. (3) to be (2), r. (4), renum. (5) to be (3) and am., Register, December, 1982, No. 324, eff. 1-1-83; am. (1) (f) and (2), Register, December, 1983, No. 336, eff. 1-1-84; r. and recr. (3), Register, April, 1986, No. 364, eff. 5-1-86; emerg. r. (1) (c), eff. 6-1-86; r. (1) (b) to (d), Register, September, 1986, No. 369, eff. 10-1-86.

**ETF 10.635 Late paid earnings.** Except for purposes of s. 40.05 (3), Stats., contributions and premiums due on late-paid earnings, including Register, September, 1986, No. 369

payments for retroactive changes in earning rates and those considered covered earnings under s. 40.02 (22) (b) 9, Stats., shall be determined at the employe and employer rates which would have been in effect if the subsequent changes and decisions had been known at the time the earnings would normally have been payable and shall be subject to s. 40.06 (5), Stats.

History: Cr. Register, July, 1986, No. 367, eff. 8-1-86.

**ETF 10.64 Late reporting charges and interest.** (1) Except as provided in s. ETF 10.63 (2) and (3) and this subsection, any report or remittance not received within the period specified in this chapter shall be subject to the charges and interest calculated in accordance with the provisions of s. 40.06, Stats. Reports and remittances required under ss. ETF 10.61, ETF 10.62 and ETF 10.63 (1) (f) are not subject to the interest charges under s. 40.06 (5), Stats.

(2) The employer shall be responsible for and transmit to the department any assessment made against the state by the federal government for late payment of contributions due on any OASDHI adjustment report.

History: Renum. from ETF 4.02 (2) and am., Register, December, 1982, No. 324, eff. 1-1-83; am. (1) and cr. (2), Register, August, 1984, No. 344, eff. 9-1-84.

**ETF 10.70 Individual personal information.** (1) Individual personal information, within the meaning of s. 40.07, Stats., is 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 status, address, and social security number, but not including information in any statistical report, other report or summary in which individual identification is not possible.

(2) Individual personal information may be disclosed as required for the proper administration of benefit programs under ch. 40, Stats., including discussion of this information in any meeting of any board created under s. 15.16 or 15.165, Stats., or disclosure in any written record of the board proceedings.

(3) (a) Pursuant to s. 40.07 (1) (a), Stats., an individual's personal information may be disclosed, except as otherwise prohibited, upon proper identification, to that individual or the duly authorized personal representative of that individual in person, by telephone, or in writing.

(b) Except as provided in par. (d), an individual's authorization to release information to a personal representative shall be in writing, signed, and dated and shall refer specifically to the records in this department.

(c) A written authorization under par. (b) which does not contain an expiration date shall be deemed to have expired 6 months following the date the authorization was signed.

(d) The secretary of the department, or specific departmental employes designated by the secretary, may authorize disclosure of information without written authorization when urgent circumstances exist which warrant an exception to normal procedures and when the person to whom the information is to be given is otherwise authorized to receive it.

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(4) In case of death, disabling injury or disease, disclosure of individual personal information shall be made only to a proper beneficiary or the duly authorized representative of the beneficiary or to the legal representative of the individual or the individual's estate whose record is the subject of inquiry.

(5) Notwithstanding sub. (3), disclosure of a beneficiary designation shall only be in person or upon receipt of a written request from the individual whose record is the subject of inquiry. Disclosure shall be made to either the individual or to the duly authorized representative of that individual.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83.

**ETF 10.71 Transcript fees.** (1) A copy of the transcript of proceedings in any hearing initiated under the provisions of s. 227.07 or 227.064, Stats., will be provided upon the written request of a party, as defined in s. 227.01 (6), Stats., and upon payment of the fee or fees specified below:

(a) A \$3.00 flat charge plus 25¢ for each page of the transcript for single copies.

(b) A 10¢ per page charge for additional copies.

(2) One free copy of the transcript shall be provided to any party who establishes to the satisfaction of the department, that the payment of a transcript fee would prove to be an unreasonable financial burden due to the party's lack of financial resources.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77; renum. from ETF 3.02 and am. (1) (intro.) and (2), Register, June, 1983, No. 330, eff. 7-1-83.

**ETF 10.72 Fee for search of historical records.** Individuals and employers may be charged an administrative fee of \$5.00 for information concerning an account or record which is not readily available and which requires a search of historical records, either within the department or at the state records center. This charge shall not apply for searches required by s. 40.02 (17) (b) or 40.25 (6) (a), Stats.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; renum. from ETF 3.03 am., Register, June, 1983, No. 330, eff. 7-1-83.

**ETF 10.75 Durable power of attorney.** (1) The department shall accept durable power of attorney, as defined under and containing the language required in s. 243.07, Stats., in lieu of a participant's or guardian's signature in all situations except the filing of a benefit application or beneficiary designation.

(2) The durable power of attorney shall be acceptable if it satisfies the following requirements:

(a) It is in writing.

(b) It is dated.

(c) The expiration date, if specified, has not passed.

(d) It is signed by the participant.

(e) It does not exclude all property nor specifically the benefit program administered by the department.

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(3) The attorney-in-fact shall, at the request of the department, submit proof of continuance of durable power of attorney by affidavit as set forth under s. 243.07 (5), Stats.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86.

**ETF 10.78 Guardianship requirements.** (1) When the amount of a single sum benefit payment to a minor, as defined under s. 880.01 (7), Stats., or incompetent, as defined under s. 880.01 (4), Stats., exceeds \$5,000, or when an annuity or disability annuity is payable, payment shall be made by the department to the court appointed guardian, for the benefit of the minor or incompetent, upon receipt of a certified copy of the letters of appointment. Letters of appointment shall be certified within the past 6 months. If the minor is married and has not been adjudged to be incompetent, the department shall make the payment to the minor.

(2) When a single sum benefit of \$5,000 or less is payable, the secretary may authorize payment, for the benefit of the minor or incompetent, to the person providing for or caring for the minor, or to the spouse, parent or blood relative providing for or caring for the incompetent person.

(3) Notwithstanding sub. (2), if a guardianship is identified prior to payment, payment shall be made to the guardian, for the benefit of the minor or incompetent, upon receipt of a certified copy of the letters of appointment.

(4) If there is a guardian of the estate and another guardian of the person, payment shall be made to the guardian of the estate.

History: Cr. Register, September, 1986, No. 369.