

## Chapter ER 18

## ABSENCES

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**Note:** Corrections made under s. 13.93 (2m) (b) 6. Stats., Register December 2003 No. 576.

**ER 18.01 Definitions.** In this chapter, unless the context otherwise requires:

(1) "Elected official" means a constitutional officer or other elected official under s. 20.923 (2), Stats.;

(2) "Employee" means any person who receives remuneration for services rendered to the state under an employer-employee relationship in the classified or unclassified civil service except:

(a) Elected officials;

(b) Unclassified staff of the university of Wisconsin system not identified under s. 20.923 (4), Stats.;

(c) Unclassified staff of the legislature not identified under s. 20.923 (4), Stats.;

(d) Unclassified staff of a legislative service agency under subch. IV of ch. 13, Stats.;

(e) One stenographer employed by each elective constitutional officer under s. 230.08 (2) (g), Stats.; and

(f) Staff of the state court system.

(3) "Employment status" means the status of a person in the civil service under s. 230.08, Stats., while in pay status or on:

(a) Approved leave of absence without pay;

(b) Military leave;

(c) Leave to serve in the unclassified service;

(d) Leave of absence due to injury or illness arising out of state employment and covered by worker's compensation under ch. 102, Stats., or s. 230.36, Stats.;

(e) Temporary layoff; or

(f) Layoff and subsequent restoration from layoff under s. ER-MRS 22.10 within 3 years.

(4) "Immediate family" means:

(a) Parents, step-parents, grandparents, foster parents, children, step-children, grandchildren, foster children, brothers and their spouses, sisters and their spouses, of the employee or spouse;

(b) The spouse;

(c) Aunts and uncles, sons-in-law or daughters-in-law of the employee or spouse; and

(d) Other relatives of the employee or spouse providing they reside in the same household of the employee.

(4m) "Layoff" means the termination of the services of an employee with permanent status in class from a position in a group in which a reduction in force is to be accomplished and which results in a mandatory reemployment right of the affected employee to future positions.

(5) Except as provided in s. ER 18.15, "leave credits" mean earned but unused annual leave, termination leave, sabbatical leave, sick leave, personal and legal holiday time, and holiday

compensatory time off. "Leave credits" does not include compensatory time off credits earned for working overtime.

(6) "Limited term employee" means a person who is an employee as a result of either:

(a) Employment in the classified service in which the nature and conditions do not permit attainment of permanent status in class, for which the use of normal procedures for recruitment and examination are not practicable, and which is not project employment; or

(b) Employment in the unclassified service in which the employee would have been considered a limited term employee, had employment been in the classified service.

(7) "Sabbatical leave" means annual leave which was deferred during the year earned to be used in a subsequent year to extend the annual leave, unless used for termination leave.

(8) "Termination leave" means annual leave which was deferred during the year earned to be used in a subsequent year to extend an employee's termination date or for payment in a lump sum upon termination.

**History:** Cr. Register, May, 1988, No. 389, eff. 6-1-88; correction in (2) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466; am. (5), Register, June, 1997, No. 498, eff. 7-1-97; am. (3) (f), Register, December, 1999, No. 528, eff. 1-1-00; correction in (2) (b) made under s. 13.93 (2m) (b) 7., Stats., Register April 2002 No. 556.

**ER 18.02 Annual leave of absence. (1) EMPLOYEES WHO EARN ANNUAL LEAVE OF ABSENCE.** With the exception of limited term employees, all employees shall earn annual leave as provided in this section.

(2) COMPUTING CONTINUOUS SERVICE. (a) Only the most recent period in continuous employment status in either the unclassified service under s. 230.08 (2), Stats., or as a permanent employee in the classified service or both shall be counted in determining an employee's length of continuous service. This excludes time served as a limited term employee or in those positions under s. 230.08 (2) (k), Stats., regarding youth camps and students respectively. The inclusion of time served in a project appointment is governed by s. ER 18.05 (3) and (4).

(b) The continuous employment status of an employee eligible for annual leave shall not be considered interrupted if the employee:

1. Was on an approved leave of absence.

2m. Left the service and is reemployed within 5 years, subject to the following:

a. Employment prior to leaving the service and upon returning to the service within 5 years must be as a permanent, classified employee or as an unclassified employee other than a limited term employee.

b. Any return to service following termination for misconduct or delinquency is deemed to not be a qualifying reemployment under this provision, even though the return is within the 5 year period.

3. Was serving a project appointment and was eligible to transfer continuous service credits under s. ER 18.05 (3) regarding transfer of credits by project employees who were permanent employees.

4. Was absent on military leave.

5. Was absent due to injury or illness arising from state employment and covered by the worker's compensation act, or s. 230.36, Stats., regarding hazardous employment injuries and pay continuation.

6. Was an employee who left the service, returned to state employment on or after July 1, 2003, and immediately attained exempt status under the federal Fair Labor Standards Act, 29 USC 201 to 219 in a nonrepresented position, or subsequently attained such status in a nonrepresented position. This subdivision applies regardless of the duration of absence as provided under s. 230.35 (1m) (f), Stats.

7. Was on temporary layoff under s. ER-MRS 22.14.

(c) The length of time between an employee's resignation and reemployment under sub. (2) (b), shall not be counted in computing years of continuous service.

(d) Persons in seasonal, sessional, school year and part-time employment shall be deemed to have completed one full year of service for each such seasonal, sessional or other part-time annual period of service in computing years of continuous service.

(e) The provisions of this section regarding credit for leaves of absence other than military leave, leave to serve in the unclassified service or leave of absence due to injury or illness arising out of state employment and covered by worker's compensation under ch. 102, Stats., or s. 230.36, Stats., shall apply only to persons who return from an approved leave of absence on or after April 9, 1976. There shall be no adjustment to length of service credits for approved leaves or portions thereof taken prior to April 9, 1976.

**(3) ELIGIBILITY.** (a) Pursuant to ss. 230.27 (2m) and 230.35 (1) (b), Stats., permanent and project employees in the classified service are not eligible to take annual leave during the first 6 months of the most recent period of continuous service in the classified service. Continuous service credits earned during employment in the unclassified service do not count toward this 6 month qualifying period. Employees who terminate during this 6 month period are deemed to have earned annual leave credits but have not acquired eligibility to take annual leave or receive any payment for the annual leave credits earned during this 6 month period.

(b) Unclassified employees are not required to complete a qualifying period prior to taking annual leave.

(c) Eligible employees shall be granted noncumulative annual leave based on accumulated continuous state service as follows:

1. Full-time, full-year employment. Annual leave shall be based upon accumulated continuous state service and earned at the rate for each year as shown in the following table:

**ANNUAL LEAVE RATE FOR FULL YEAR OF SERVICE**

Years of Service	Hours Earned Each Year
During First 5	80
5+ to 10	120
10+ to 15	136
15+ to 20	160
20+ to 25	176
25 & Over	200

2. Seasonal, sessional, school year and part-time employees. Employees who are in pay status for less than 80 hours during any

biweekly pay period during the calendar year shall be granted prorated annual leave consistent with subs. 1. and 3.

3. Annual leave for full-time, full year employees in exempt status under the federal Fair Labor Standards Act, 29 USC 201 to 219, in a nonrepresented position on or after July 1, 2003 shall be based upon accumulated continuous service and earned at the rate shown in the following table:

**ANNUAL LEAVE RATE FOR FULL YEAR OF SERVICE**

Years of Service	Hours Earned Each Year
During First 5	120
5+ to 10	160
10+ to 15	176
15+ to 20	200
20 & Over	216

**(4) COMPUTING ANNUAL LEAVE.** (a) Annual leave credits in any given year shall not be earned for any period of absence without pay except periods of absence due to temporary layoff under s. ER-MRS 22.14.

(b) Annual leave for employees covered in sub. (3) (c) 1., 2. and 3. and persons included under s. 20.923 (4), (8) and (9), Stats., shall be prorated during the calendar year in which the rate of earning changes.

(c) Upon termination of employment, annual leave shall be prorated and payment for unused leave for which an employee is eligible under sub. (4) shall be made in accordance with sub. (9).

(d) The amount of annual leave earned by an employee during a calendar year is based on the employee's hours in pay status up to a maximum of 80 hours per biweekly pay period. Annual leave is not earned during overtime work hours. Hourly annual leave amounts earned for each hour in pay status can be computed by using the following:

<u>ANNUAL LEAVE RATE</u>	<u>CONVERSION FACTOR</u>
80 hr. rate	.038314 per hour
120 hr. rate	.057471 per hour
136 hr. rate	.065134 per hour
160 hr. rate	.076628 per hour
176 hr. rate	.084291 per hour
200 hr. rate	.095785 per hour
216 hr. rate	.103448 per hour

**(5) EMPLOYEE OPTION.** (a) Pursuant to s. 230.35 (1p) (a), Stats., employees who earn annual leave at the rate of 160 or 176 hours per year may elect to receive up to 40 hours of such leave, or prorated portion thereof, among one or more of the following options:

1. Annual leave during the year earned or as authorized pursuant to sub. (7).

2. Credit for a combined termination and sabbatical leave plan with such credit being accumulated without limitation.

(b) Pursuant to s. 230.35 (1p) (b) and (bm), Stats., employees who earn annual leave at a rate of 200 or 216 hours per year may elect to receive up to 80 or 120 hours, respectively, of such leave, or prorated portion thereof, among one or more of the following options:

1. Annual leave during the year earned or as authorized pursuant to sub. (7).

2. Credit for a combined termination and sabbatical leave plan with such credit being accumulated without limitation.

3. Cash payment during the year earned for not to exceed 40 hours at the employee's base rate exclusive of any supplementary compensation as of the last day of the payroll in the calendar year.

(bm) Pursuant to s. 230.35 (1p) (c), Stats., employees who earn annual leave at less than the rate of 160 hours per year and who have accumulated, at any time during the employee's continuous state service, a minimum of 520 hours of sick leave may elect to receive up to 40 hours of earned annual leave as credit for termination leave or as accumulated sabbatical leave or both. An election under this paragraph shall be made in the year in which the annual leave is earned.

(c) The number of hours available for use under pars. (a) and (b) shall be prorated at the pertinent annual leave rate or rates for employees who work less than 2088 hours during the calendar year.

**(6) WHEN ANNUAL LEAVE MAY BE TAKEN.** (a) Pursuant to s. 230.35 (1) (b), Stats., employees may anticipate annual leave which they can earn during the calendar year. Anticipated annual leave shall be based upon a projection of the employee's number of hours in pay status during the calendar year and the conversion factors provided under sub. (4) (d).

(b) *When annual leave may be taken.* In determining annual leave schedules, the appointing authority shall respect the wishes of the eligible employees as to the time of taking their annual leave insofar as the needs of the service will permit. Annual leave allowance shall be taken during the calendar year except as follows:

1. Employees who request and receive approval from their appointing authority or who are required by their appointing authority to defer all or part of their annual leave for a given calendar year shall be permitted to take it within the first 6 months of the ensuing calendar year.

2. However, employees who are unable to take unused annual leave as provided in subd. 1. due to their work responsibilities shall be granted an additional 6 month extension of time in which to use the annual leave. Any extension under this subdivision shall be approved by the appointing authority. Any authorized leave credits, carried over from the previous calendar year, shall be dropped as of December 31 of the following calendar year. This paragraph shall not apply to any carried over leave credited under sub. (5) (a) 2. and (b) 2.

3. Employees completing an original probationary period during the first 6 months of the calendar year shall have the remainder of the calendar year in which to use annual leave earned in the previous year.

4. Employees completing an original probationary period during the last 6 months of the calendar year shall have the remainder of the calendar year and the first 6 months of the following calendar year in which to use annual leave earned in the previous year.

5. If the projected number of hours in pay status used to anticipate an employee's annual leave under par. (a) changes during the calendar year, the employee's anticipated annual leave balance shall be adjusted in accordance with sub. (4). Employees granted additional leave during the last 6 months of the calendar year due to changes in the projected number of hours in pay status shall have the remainder of the calendar year and the first 6 months of the ensuing calendar year in which to use the additional annual leave earned in the previous year.

6. Employees may use annual leave as provided in s. ER 18.15 (4) (f) and (g).

**(7) WHEN SABBATICAL LEAVE MAY BE TAKEN.** In determining sabbatical leave schedules, the appointing authority shall respect the wishes of eligible employees as to the time of taking sabbatical leave subject to the needs of the service.

**Note:** See s. ER 21.04 regarding treatment of leave credits upon resignation from state service.

**(9) PAYMENT FOR UNUSED LEAVE UPON TERMINATION.** Upon termination, payment for unused annual leave, including termination and sabbatical leave, shall be made pursuant to:

(a) Section ER 21.04 for termination as a result of resignation.

(b) Section 230.35 (1) (m), Stats., for termination as a result of layoff, death or discharge, with the date of layoff, death or discharge establishing the employee's termination date.

(c) Section 40.02 (22) (b) 6., Stats., for termination as a result of disability.

**History:** Renum. from ER-Pers 18.02 (2) (a) to (g), (3) (b), (4) (a) to (c), (5) (a) to (c), (7) (intro) to (d), cr. (1), (2) (a), (b) (intro.), (d) and (e), (3) (a) to (c) (intro.), (4) (d), (5), (6) (a) and (b) 5., (7) and (9), Register, May, 1988, No. 389, eff. 6-1-88; correction in (2) (b) 6 and 7, (3) (c) 3 and 4 (a) and (b), (6) (b) 2, made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466; am. (2) (b) 6., (3) (c) 3., (5) (c), cr. (5) (bm) and (6) (b) 6., Register, March, 1998, No. 507, eff. 4-1-98; am. (2) (b) 2. (intro.), b. and (2) (b) 7., cr. (2) (b) 2m, Register, December, 1999, No. 528, eff. 1-1-00; correction in (2) (a) made under 13.93 (2m) (b) 7., Stats., Register, December, 1999, No. 528; corrections in (2) (b) 6., (3) (c) 3. and (4) (b) made under s. 13.93 (2m) (b) 7., Stats., Register April 2002 No. 556; **CR 04-139: r. (2) (b) 2. a. and b., am. (2) (b) 2m. and 6., (3) (c) 2., (5) (b) and (c) Register June 2005 No. 594, eff. 7-1-05.**

**ER 18.03 Sick leave. (1) EMPLOYEES WHO EARN SICK LEAVE.** Pursuant to s. 230.35 (2), Stats., all employees shall earn sick leave under this rule except:

(a) Limited term employees;

(b) Members of the organized militia referenced under s. 20.923 (6) (c), Stats.;

(c) Those employees referenced in s. 230.08 (2) (j), 1993 Stats.

**(1g) SICK LEAVE FOR CERTAIN UNCLASSIFIED STAFF.** This section also applies to unclassified staff of the legislature not identified under s. 20.923 (4), Stats., unclassified staff of a legislative service agency under subch. IV of ch. 13, Stats., staff of the state court system, and the one stenographer employed by each elective executive officer under s. 230.08 (2) (g), Stats. These persons shall be considered "employees" for the provisions regarding sick leave under this chapter.

**(1m) CERTAIN ELECTED OFFICIALS' SICK LEAVE.** This section also applies to elected officials except members of the legislature, circuit and appeals court judges and justices of the supreme court.

**Note:** See ss. 13.121 (4) and 757.02 (5), Stats., for accrual of sick leave credits for health insurance premiums for members of the legislature and circuit and appeals court judges and justices of the supreme court, respectively.

**(2) ACCRUAL OF SICK LEAVE.** (a) Sick leave credit shall accrue at the rate of .0625 hour for each hour in pay status, not to exceed 5 hours in any biweekly pay period.

(b) Sick leave credits in any given year shall not be earned for any period of absence without pay or time otherwise not worked or paid for, except that for administrative purposes, any approved absence or absences without pay totaling 4 work hours or less in any biweekly pay period will be disregarded. This paragraph does not apply to persons on temporary layoff under s. ER-MRS 22.14 who shall earn sick leave credits at the rate specified under par. (a) for the time spent on such temporary layoff.

(c) Unused sick leave shall accumulate from year to year in the employee's sick leave account pursuant to s. 230.35 (2), Stats.

**Note:** See s. ER 18.05 for sick leave carry-over provisions for project employees.

(d) Sick leave shall not be used until it has been accrued.

**(3) ACCOUNTING FOR USE OF SICK LEAVE.** The use of sick leave shall be charged to the employee's account by the appointing authority.

**(4) ELIGIBILITY FOR AND USE OF SICK LEAVE.** Each employee who has accrued sick leave credits shall be eligible to use sick leave for periods of absence from employment, as follows:

(a) For personal illnesses, bodily injuries, maternity, or exposure to contagious disease:

1. Which require the employee's confinement;

2. Which render the employee unable to perform assigned duties; or

3. Where performance of assigned duties would jeopardize the employee's health or recovery.

(b) For immediate family or personal medical or dental appointments which cannot be scheduled at times other than during work hours.

(c) For temporary emergency medical care of ill or injured members of the immediate family for a limited period of time to permit the employee to make other arrangements. Use of sick leave for temporary emergency care of immediate family members is limited to 5 work days for any one illness or injury; however, the use of sick leave may be extended to cover unusual circumstances provided prior approval is obtained from the appointing authority.

(d) For a death in the immediate family, use of accrued sick leave due to a death in the immediate family is limited to a total of 3 work days, plus required travel time not to exceed 4 additional work days. However the appointing authority may extend the use of sick leave to cover unusual circumstances.

(e) An appointing authority may require a medical certificate to justify the granting of sick leave or to verify the fitness of an employee to return to work.

**(5) SICK LEAVE CREDIT CONTINUATION.** (a) Previously accumulated sick leave shall not be canceled by absence on approved leave under s. ER 18.14. Termination from the service for misconduct or delinquency shall cancel all unused accumulated sick leave. Whenever an unclassified employee covered by this section or a permanent classified employee is laid off, terminated due to lack of work or funds, or resigns, any unused accumulated sick leave credit shall remain on record and be restored if the person is reemployed in a position covered by this section within 5 years. This provision shall also apply to project employees eligible to transfer credits under s. ER 18.05 (3).

(b) For restoration of sick leave credits for employees serving in career executive positions or positions designated in s. 20.923 (4), (8) and (9), Stats., see s. 230.35 (2), Stats. This same provision shall also apply to elected officials except members of the legislature, circuit and appeals court judges and justices of the supreme court.

**(6) ADJUSTMENT TO SICK LEAVE BALANCE OF EMPLOYEES ON UNPAID LEAVE OF ABSENCE.** Employees who began an unpaid leave of absence on or after July 6, 1997 and before October 12, 1997 shall have their sick leave balances recomputed, upon their return to a position covered by this section, at the rate of .0625 for each hour in pay status, not to exceed 5 hours in any biweekly pay period, based on the number of hours in pay status in a position covered by this section during that time period. Any additional sick leave credits will be credited to the employee's sick leave balance and are available for prospective use only.

**(7) ADJUSTMENT TO SICK LEAVE BALANCE.** (a) The sick leave balances of all employees in pay status on October 12, 1997 and former employees who retired or were laid off from a position during the period from July 6, 1997 to October 12, 1997 shall be recomputed at the rate of .0625 for each hour in pay status, not to exceed 5 hours in any biweekly pay period, based on the number of hours in pay status in a position covered by this section during that time period. Any additional sick leave credits will be credited to the employee's sick leave balance and are available for prospective use only, except that former employees who retired or were laid off after July 6, 1997 and before October 12, 1997 may use the additional sick leave credits for the payment of health insurance premiums in the same manner as any sick leave credits that were available to them for that purpose at the time of retirement or layoff.

(b) The sick leave balances of all employees who move after October 12, 1997 from a position covered by a collective bargaining agreement under subch. V of ch. 111, Stats., to a position covered by this section shall be recomputed at the rate of .0625 for

each hour in pay status, not to exceed 5 hours in any biweekly pay period, based on the number of hours in pay status in a position or positions covered by a collective bargaining agreement between July 6, 1997 and the effective date of the employee's move to a position covered by this section. The sick leave balance of an employee may not be adjusted for any hours in pay status during that time period if the employee's sick leave balance previously has been adjusted for those hours under sub. (6) or par. (a) or under terms of a collective bargaining agreement. Any additional sick leave credits will be credited to the employee's sick leave balance and are available for prospective use only. This paragraph does not apply after June 30, 1999.

**Note:** For provisions regarding sick leave conversion credit at the time of retirement, in the event of death or at the time of layoff, see s. 40.05 (4) (b) and (bm), Stats., regarding health insurance premiums.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (1), (2) (a) and (b) and (5), Register, September, 1975, No. 237, eff. 10-1-75; am. (1) and (7), Register, December, 1976, No. 252, eff. 1-1-77; am. (1), (2), (3) and (4) (a), r. (4) (c) and (7), renum. (5) to be (5) (a) and am., cr. (5) (b), renum. (6) to be (5) (c) and am. Register, February, 1981, No. 302, eff. 3-1-81; am. (2) (a) and (b) and (5) (c), Register, February, 1983, No. 326, eff. 3-1-83; renum. from ER-Pers 18.03, r. (1) (b) and (c), (4) (a) and (5) (c), cr. (1g), (1m), (4) (intro.) to (d), Register, May, 1988, No. 389, eff. 6-1-88; correction in (2) (b) and (5) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466; emerg. am. (2) (a), cr. (6) and (7), eff. 10-12-97; am. (2), cr. (6) and (7), Register, March, 1998, No. 507, eff. 4-1-98; cr. (4) (d), Register, December, 1999, No. 528, eff. 1-1-00; correction in (5) (b) made under s. 13.93 (2m) (b) 7., Stats., Register April 2002 No. 556; **CR 04-139; am. (5) (a) Register June 2005 No. 594, eff. 7-1-05.**

#### **ER 18.04 Holidays. (1) EMPLOYEES WHO EARN HOLIDAYS.**

All employees except limited term employees earn holidays under this section.

**(2) COMPENSATORY TIME.** (a) Employees shall receive equivalent time off when the legal holiday falls on the employee's regularly scheduled day off.

(b) Subject to subs. 1. to 5., employees shall receive compensatory time off at a rate of one and one-half times the number of hours worked, or a cash payment at a rate of one and one-half times the employee's regular rate for each hour the employee is assigned to work on a holiday enumerated in s. 230.35 (4) (a) 1. to 9., Stats. In addition, such working employee also receives the holiday off at a later date.

1. Regular rate is defined in the compensation plan established under s. 230.12 (6), Stats.

2. Compensatory time off shall be scheduled at the discretion of the appointing authority.

3. The amount of compensatory time, recorded at the one and one-half rate specified under par. (b) that is not scheduled and used within the first 6 months of the ensuing calendar year, shall be paid in cash at the employee's current regular rate. Any such payment shall be made prior to the administrative date for compensation adjustments established under s. 230.12 (8), Stats.

4. Pursuant to Article IV, Section 26 of the Wisconsin Constitution and s. 20.923 (16), Stats., fixed term employees and employees in positions included under s. 20.923 (4) (5) and (8) to (12), Stats., are ineligible for extra compensation for work performed on a holiday.

5. Compensatory time off shall not be used until after the holiday during which it has accrued occurs. Prospective use of compensatory time off shall not be permitted.

**(3) ELIGIBILITY FOR LEGAL HOLIDAYS.** (a) For the purposes of this subsection, "scheduled work day" for an employee on a leave of absence without pay means the day the employee would have been scheduled to work had the employee been in pay status.

(b) To be eligible for any legal holiday with pay, a person must be in employment status on the holiday and do at least one of the following:

1. Work on the holiday;

2. Be in pay status on the last scheduled work day immediately preceding the holiday; or

3. Be in pay status on the first scheduled work day immediately following the holiday.

(c) Employees who are regularly employed for less than 80 hours per biweekly pay period on a continuing basis shall be granted a prorated amount of legal holidays consistent with the employee's regularly scheduled hours per pay period at the time the holiday occurs.

**(4) PERSONAL HOLIDAYS.** (a) Employees who are regularly employed for less than 80 hours per biweekly pay period on a continuing basis shall be granted a prorated amount of paid personal holiday time consistent with the employee's regularly scheduled hours per pay period at the time the holiday is taken.

(b) Upon termination, payment for any unused personal holidays shall be made in the same manner as provided for annual leave under s. ER 18.02 (9).

(c) Personal holidays shall be used prior to the end of the calendar year, except as provided under s. 230.35 (4) (d) 4., Stats., and s. ER 18.15 (4) (f).

(d) If an employee moves between permanent or unclassified appointments and project appointments during a calendar year, the total number of personal holidays earned in the calendar year shall not exceed four and one-half days.

**Note:** See s. 230.35 (4) (d), Stats.

**History:** Renum. from ER-Pers 18.07, cr. (1), (2) (b) 4. and 5., (3) and (4) (c), Register, May, 1988, No. 389, eff. 6-1-88; correction in (2) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466; am. (2), Register, June, 1997, No. 498, eff. 7-1-97; am. (4) (c), Register, March, 1998, No. 507, eff. 4-1-98; cr. (4) (d), Register, December, 1999, No. 528, eff. 1-1-00; **CR 04-139; am. (4) (d) Register June 2005 No. 594, eff. 7-1-05.**

**ER 18.05 Other provisions relating to annual leave, sick leave and personal holidays. (1) ANNUAL LEAVE, SICK LEAVE OR PERSONAL HOLIDAYS ON LEGAL HOLIDAYS.**

In the event that a legal holiday falls on a regular work day within the week or weeks taken as annual leave, sick leave, or personal holidays, such legal holiday shall not be charged as annual leave, sick leave or personal holiday. For any time on which work is suspended, such suspension shall not be construed to extend any annual leave, sick leave or personal holiday to an employee in such status at the time.

**(2) TRANSFER OF CREDITS BY PERMANENT CLASSIFIED OR UNCLASSIFIED EMPLOYEES.** (a) For the purposes of this subsection, "new appointing authority" means the appointing authority after the movement between the relevant types of employment. In some instances, the new appointing authority may be the same as the former appointing authority.

(b) Except as provided in pars. (e) and (g), upon entry to employment covered by this chapter from state unclassified employment which was not covered by this chapter, unused leave credits accumulated under the employment not covered by this chapter may be retained by the employee upon mutual agreement between the employee and the new appointing authority. Such agreements are subject to approval by the director. The total amount of leave credits retained by the employee may not exceed the unused leave credits which could have been accumulated in accordance with the provisions of this chapter. Negative leave credit balances shall not be transferred. An elected official is not eligible to transfer unused leave credits earned during employment as an elected official to employment covered by this chapter other than unused sick leave credits. The transfer of unused sick leave credits accumulated under state unclassified employment not covered by this chapter will be authorized subject to the limits specified in this paragraph.

(c) When an employee moves from a position to a different position, and employment in both positions is covered by this chapter, obligation for any unused accumulated leave credits earned pursuant to this chapter shall be assumed by the new appointing authority.

(d) When an employee in employment subject to this chapter moves to unclassified state employment not subject to this chapter, the employee may carry forward any unused accumulated

leave credits earned under this chapter to the new place of employment, providing the new appointing authority agrees to assume the obligation for them.

(e) When an employee in employment subject to this chapter terminates and moves to unclassified state employment not subject to this chapter and the new appointing authority is not willing to assume the obligation for any unused accumulated leave credits earned under this chapter, the agency subject to this chapter shall pay the employee a lump sum payment for the leave credits, except that no payment shall be made for sick leave credits.

(f) When a represented classified employee moves to a nonrepresented position subject to this chapter, the employee shall carry forward any unused accumulated leave credits.

(g) When an elected official covered by s. ER 18.03 moves to other employment subject to this chapter, any unused sick leave credits shall be carried forward.

(h) When positions are converted from the unclassified service to the classified service, leave credit benefits for employees who remain in such positions pursuant to a waiver of competition under s. 230.15 (1), Stats., are determined by the director.

**(3) TRANSFER OF CREDITS BY PROJECT EMPLOYEES WHO WERE PERMANENT EMPLOYEES OR UNCLASSIFIED EMPLOYEES.** Pursuant to s. 230.27 (2m) (b), Stats., a project employee who has previously been a permanent classified employee or an unclassified employee other than a limited term employee may transfer continuous service and paid leave credits previously earned to the project appointment and from the project appointment to a subsequent project or permanent appointment in a manner consistent with that applied to similar transactions in the permanent classified service, subject to the following:

(a) *Transfer of credits to a project appointment.* 1. Accumulated leave credits earned as a permanent classified employee or as an unclassified employee other than a limited term employee shall be carried over to a project appointment in the same manner as prescribed under sub. (2) if the project employee would have been able to carry over the leave credits to a permanent appointment.

2. Continuous service credits earned as a permanent classified employee or as an unclassified employee other than a limited term employee shall be carried over to a project appointment in the same manner as prescribed under s. ER 18.02 (2) if the project employee would have been eligible to carry over the continuous service credits to a permanent appointment.

(b) *Transfer of credits between project appointments.* Accumulated leave and continuous service credits earned during a project appointment shall be carried over upon appointment to a subsequent project appointment if the project employee previously was a permanent classified employee or unclassified employee other than a limited term employee and could have carried over the leave credits if the project appointments had been permanent appointments.

(c) *Transfer of credits from a project appointment.* Accumulated leave and continuous service credits earned during a project appointment shall be carried over upon a permanent classified or unclassified appointment if the project employee previously was a permanent classified employee or an unclassified employee other than a limited term employee and could have carried over the leave credits if the project appointment had been a permanent appointment.

**(4) TRANSFER OF CREDITS BY OTHER PROJECT EMPLOYEES.** Pursuant to s. 230.27 (2m) (a), Stats., a project employee who has not previously been a permanent classified employee or an unclassified employee other than a limited term employee may not transfer continuous service or paid leave credits earned in any project appointment to subsequent project, permanent, or unclassified appointments, subject to the following:

(a) *Continuous service.* Continuous service credit shall be earned for the duration of employment in the project position.

Continuous service is considered interrupted and a new period of continuous service begins upon subsequent project, permanent, or unclassified appointments.

(b) *Annual leave.* A 6 month qualifying period must be served in each project appointment and subsequent permanent appointment before becoming eligible to use annual leave.

(c) *Sick leave.* Unused sick leave credits shall be canceled upon subsequent project, permanent, or unclassified appointments.

(d) *Holidays.* Time off for personal and legal holidays shall be granted under s. ER 18.04.

(6) **LEAVE CREDIT BALANCES.** An employee may not overdraw the balance of any leave credit account.

**History:** Renum. from ER-Pers 18.04 (1), cr. (2) to (4) and (6), Register, May, 1988, No. 389, eff. 6-1-88; am. (4) (d), Register, December, 1999, No. 528, No. 528, eff. 1-1-00.

#### ER 18.06 Leave with pay due to work-related injury.

Certain employees and elected officials other than members of the legislature, circuit and appeals court judges and justices of the supreme court, who are unable to work due to injuries incurred in line of duty and hazardous employments shall continue to receive their salaries, according to the provisions of s. 230.36, Stats., and ch. ER 28.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, February, 1981, No. 302, eff. 3-1-81; renum. from ER-Pers 18.06 and am. Register, May, 1988, No. 389, eff. 6-1-88.

#### ER 18.08 Military service. (1) NATIONAL GUARD, STATE GUARD, RESERVE CORPS.

For project employees, eligibility for annual military leave under s. 230.35 (3), Stats., shall be earned after completion of the first 6 months of employment in a project position. If prior eligibility has been attained in a permanent, seasonal, sessional or unclassified position and the employee has been appointed to the project position without an interruption of continuous service, such prior eligibility shall be retained.

**Note:** See s. 230.35 (3), Stats., for provisions regarding attendance at duly ordered military and naval schools, annual field training and naval exercises by employees and elected officials other than members of the legislature, circuit and appeals court judges and justices of the supreme court.

#### (2) ACTIVE SERVICE. See s. 230.32, Stats.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (1), Register, December, 1976, No. 252, eff. 1-1-77; am. Register, February, 1981, No. 302, eff. 3-1-81; renum. from ER-Pers 18.08 and am. Register, May, 1988, No. 389, eff. 6-1-88.

**ER 18.09 Civilian service.** Service during a period officially proclaimed to be a national emergency or limited national emergency. See s. 230.32 (1), Stats.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, February, 1981, No. 302, eff. 3-1-81; renum. from ER-Pers 18.09, Register, May, 1988, No. 389, eff. 6-1-88.

**ER 18.10 Jury service.** As provided in s. 230.35 (3) (c), Stats., employees and elected officials, except limited term employees and members of the legislature, circuit and appeals court judges and justices of the supreme court summoned for grand or petit jury service shall be entitled to leave with pay. However, when not impaneled for actual service and only on call, the employee or elected official shall report back to work unless authorized by the appointing authority to be absent from the work assignment.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, February, 1981, No. 302, eff. 3-1-81; renum. from ER-Pers 18.10 and am. Register, May, 1988, No. 389, eff. 6-1-88.

**ER 18.11 Voting time.** Pursuant to ss. 6.76 and 230.35 (4) (e), Stats., an employee who is eligible to vote but is unable to vote during nonworking hours shall be granted time off with pay for not to exceed 3 consecutive hours upon written application to the employee's appointing authority at least 2 work days prior to the election date. Such application shall state the need and the amount of reasonable time off required to exercise this right. The appoint-

ing authority may designate the time of day that the employee shall be allowed the time off.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, February, 1981, No. 302, eff. 3-1-81; renum. from ER-Pers 18.13, Register, May, 1988, No. 389, eff. 6-1-88; **CR 04-139: am. Register June 2005 No. 594, eff. 7-1-05.**

**ER 18.12 Leaves of absence for promotional examinations and interviews.** Each employee with permanent status in class shall be eligible for and may request up to 16 hours paid leave time each calendar year for the purpose of competing in no more than 2 Wisconsin State Civil Service examinations which could make the employee eligible for promotion and for participating in employment interviews in connection with such examinations when such examinations and interviews are conducted during an employee's scheduled work time. Employees shall be granted such requests provided due notice has been given by the employee and work coverage will not be interrupted. Such time shall not exceed the number of hours reasonably required to attend such examinations and interviews, including travel time. Leave time for more than 2 examinations in each calendar year and interviews in connection with such examinations may be granted to employees at the discretion of the appointing authority.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; r. and recr. Register, February, 1981, No. 302, eff. 3-1-81; renum. from ER-Pers 18.14, Register, May, 1988, No. 389, eff. 6-1-88.

**ER 18.13 Leave of absence by employees and certain elected officials for military preinduction physical examination.** See s. 230.35 (3) (b), Stats.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, February, 1981, No. 302, eff. 3-1-81; renum. from ER-Pers 18.15, Register, May, 1988, No. 389, eff. 6-1-88.

**ER 18.14 Leave of absence without pay. (1) ELIGIBILITY.** Permanent classified employees may be granted a leave of absence without pay subject to the provisions of sub. (2).

(2) **WHEN GRANTED.** (a) *Formal leave.* Any permanent classified employee, may request a leave of absence without pay for a period not to exceed one year. Such leave may be granted by the appointing authority when it will not result in prejudice to the interests of the state as an employer beyond any benefits to be realized upon the employee's return to the service. A leave of absence may be extended on a year to year basis for an additional 2 years with the approval of the appointing authority. No formal leave of absence shall exceed 3 years except as provided under par. (f).

(b) *Leave to serve in unclassified position.* See s. 230.33, Stats.

(c) *Summer leave.* Employees whose services are not required at institutions or schools during a summer recess shall be considered to be on leave of absence without pay.

(d) *Maternity leave.* Upon request of the employee, maternity leaves of absence shall be granted for a period of time requested by the employee, not to exceed 6 consecutive months. Upon request of the employee, the appointing authority may extend or renew a maternity leave of absence for additional periods of time, not to exceed a total of 6 months. Part or all of the original leave, extension or renewal may be covered by sick leave pursuant to s. ER 18.03 (4) (a), leave of absence without pay, earned annual leave, sabbatical leave, holiday leave, compensatory time off at the employee's discretion, or anticipated annual leave subject to s. ER 18.02 (6).

(e) *Paternity, adoption and pre-adoptive foster care.* Upon request of the employee, leaves of absence for paternity, adoption and pre-adoptive foster care shall be granted for a period of time requested by the employee, not to exceed 6 consecutive months. Upon request of the employee, the appointing authority may extend or renew paternity, adoption and pre-adoptive foster care leaves of absence for additional periods of time, not to exceed a total of 6 months. Part or all of the original paternity, adoptive or pre-adoptive foster care leave, extension or renewal may be covered by leave of absence without pay, earned annual leave, sabbat-

ical leave, holiday leave, compensatory time off at the employee's discretion, or anticipated annual leave subject to s. ER 18.02 (6).

(f) *Leave to serve in a project appointment.* An appointing authority may grant a leave of absence without pay for not more than 4 years to an employee who voluntarily accepts a project appointment.

**(3) ABSENCE WITHOUT LEAVE.** Any absence of an employee that is not authorized under chs. ER 1 to 47 shall be considered as an absence without leave. Any such absence may be grounds for disciplinary action.

**Note:** Also see s. ER 21.03 regarding abandonment.

**(4) FAILURE TO RETURN FROM LEAVE.** The date the leave of absence expires shall be considered the last day worked.

**Note:** See s. ER 21.03 for other provisions regarding failure to return from leave.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (1) (b) and cr. (1) (d), Register, September, 1975, No. 237, eff. 10-1-75; am. (2), Register, December, 1976, No. 252, eff. 1-1-77; r. (1) (a), renum. (1) (b) to be (1) (a) and am., cr. (1) (b), (c) and (f), r. and recr. (1) (d), am. (2), cr. (4), Register, February, 1981, No. 302, eff. 3-1-81; am. (1) (a) and (d) and (2), Register, February, 1983, No. 326, eff. 3-1-83; renum. from ER-Pers 18.05 and r. (1) (e) and (f) (2), renum. (1) to be (2) and am. (2) (a) and (d), am. (3) and (4), cr. (1), (2) (e) and (f), Register, May, 1988, No. 389, eff. 6-1-88.

**ER 18.15 Catastrophic leave. (1) DEFINITIONS.** In this section:

(a) "Catastrophic need" has the meaning given in s. 230.35 (2r) (a), Stats.

(b) "Donor" means any person meeting the eligibility requirements under sub. (3).

(c) "Employee" means any person who receives remuneration for services rendered to the state under an employer-employee relationship, except employees in positions under s. 230.08 (2) (cm), (d) and (k), Stats., unless approved or authorized by the UW Board of Regents, unclassified employees of the State of Wisconsin Investment Board, elected officials and limited term employees.

(d) "Leave credits" means earned but unused termination leave, sabbatical leave, personal and legal holiday time, and anticipated and earned but unused annual leave, subject to s. 230.35 (1) (b), Stats. "Leave credits" does not include sick leave credits or compensatory time off credits.

(e) "Recipient" means any person meeting the eligibility requirements under sub. (2).

**(2) DETERMINING RECIPIENT ELIGIBILITY.** To be an eligible recipient, an employee shall satisfy the conditions under par. (a) or (b):

(a) Be an eligible recipient under a catastrophic leave program under a collective bargaining agreement under subch. V of ch. 111, Stats., or;

(b) Satisfy all of the following conditions:

1. Complete the first 6 months of service as a permanent classified, project or unclassified employee.

2. Be absent from pay status due to a catastrophic need of the employee or an immediate family member. Absence from pay status may occur in noncontinuous increments.

3. Anticipate an absence from pay status of at least 160 hours duration. The 160 hours shall be prorated for seasonal, sessional, school year, and part-time employees.

4. Provide medical certification of the catastrophic need if required by the appointing authority.

5. Use all available sick leave credits.

6. Have a leave balance of no more than 16 hours of combined accrued annual leave, including sabbatical or termination leave, and holiday credits.

7. May not be receiving other salary replacement income.

8. Be approved as an eligible recipient by the appointing authority or a designee.

**(3) DETERMINING DONOR ELIGIBILITY.** To be an eligible donor, an employee shall satisfy the conditions under par. (a) or (b):

(a) Be an eligible donor under a catastrophic leave program under a collective bargaining agreement under subch. V of ch. 111, Stats., or;

(b) Satisfy all of the following conditions:

1. Complete the first 6 months of service as a permanent classified, project or unclassified employee.

2. Have at least one year of continuous service.

**(4) LEAVE CREDIT DONATIONS AND USAGE.** (a) 1. Subject to subs. 2. to 5., a donor may donate leave credits to one or more recipients in any calendar year.

2. The total amount of leave credits donated by a donor to all recipients in any calendar year may not exceed 24 hours. The 24 hour limit shall be prorated for seasonal, sessional, school year, and part-time employees.

3. A donor may donate leave credits only to recipients within the same agency, except that donations may be made to recipients in different agencies with the approval of the donor's appointing authority and the recipient's appointing authority.

4. Leave credit donations shall be in whole hour increments and on an hour-for-hour basis irrespective of the base hourly rates of the donor and recipient.

5. Leave credits donated in excess of the maximum number of leave credits required for a recipient shall be returned to the donor.

(b) A recipient may not receive more than 640 hours of donated leave credits during any calendar year. The 640 hour limit shall be prorated for seasonal, sessional, school year, and part-time employees. The donated leave credits shall be used in order of receipt.

(c) In a biweekly pay period, a recipient may not use more than 80 hours of leave or the number of hours consistent with the recipient's regularly scheduled hours per pay period at the time the unpaid leave commenced, whichever is less.

(d) Leave credits earned by a recipient shall be used prior to using donated leave credits, subject to sub. (2) (b) 5. and 6. The appointing authority shall determine the increments in which leave credits are deducted.

(e) If a recipient or donor no longer meets the definition of employee under sub. (1) (c), moves to another agency, or separates from employment, all unused donated leave credits shall be returned to the donor.

(f) Leave credits donated to a recipient are not subject to limitations on end of year carryover of leave credits under ss. ER 18.02 (6) (b) and 18.04 (4) (c).

(g) Donors shall have the remainder of the calendar year and the first 6 months of the ensuing calendar year in which to use previously donated leave credits returned to the donor during the last 6 months of the calendar year.

**(4g) Credit transfers between covered employees in different agencies may occur with the affected agencies' approval.**

**(4m) If an employee is covered by a catastrophic leave program under a collective bargaining agreement under subch. V of ch. 111, Stats., the provisions of the applicable collective bargaining agreement shall determine eligibility, limitations on the receipt, donation and usage of leave and other conditions of catastrophic leave as they apply to that employee.**

**(5) APPEAL PROVISIONS.** No employee may grieve under an agency's grievance procedure any appointing authority's decision relating to a catastrophic leave program or appeal any such decision to the commission under s. 230.44 or 230.45 (1) (c), Stats.

**History:** Cr., Register, June, 1997, No. 498, eff. 7-1-97; emerg. am. (1) (c), (2) to (3) (a), (4) (a) 3., cr. (4m), eff. 10-12-97; am. (1) (c), (2) (intro.), (3) (intro.), (4) (a) 3., renum. (2) (a) to (h), (3) (a) and (b) to be (2) (b) 1. to 8., (3) (b) 1. and 2., cr. (2) (a), (b) (intro.), (3) (a), (b) (intro.) and (4m), Register, March, 1998, No. 507, eff. 4-1-98; correction in (4) (d) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1998, No. 507; **CR 04-139: am. (1) (c), (2) (b) 1., 2., 3., 5., (3) (b) 1. and (4g), Register June 2005 No. 594, eff. 7-1-05.**

**ER 18.16 Paid leaves for providing certain disaster relief services.** As provided in s. 230.35 (3) (e), Stats., an appointing authority may grant a paid leave of absence to a state employee to allow the employee to participate in providing specialized disaster relief services if the conditions in s. 230.35 (3) (e), Stats., are met.

**History:** Cr. Register, December, 1999, No. 528, eff. 1-1-00.

**ER 18.17 Paid leave to serve as a bone marrow or organ donor.** As provided in s. 230.35 (2d), Stats., an appointing authority shall grant paid leave of absence to a state employee who serves as a bone marrow or organ donor under the conditions provided in s. 230.35 (2d), Stats.

**History:** CR 04-139: cr. Register June 2005 No. 594, eff. 7-1-05.