

## Chapter ER-MRS 27

### EXCEPTIONAL METHODS AND KINDS OF EMPLOYMENT

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**Note:** Chapter ER-Pers 27 as it existed on May 31, 1988 was repealed and a new chapter ER-Pers 27 was created effective June 1, 1988. Chapter ER-Pers 27 was renumbered chapter ER-MRS 27 under s. 13.93 (2m) (b) 1., Stats., Register, October, 1994, No. 466.

**ER-MRS 27.01 Purpose.** This chapter, promulgated under s. 230.08 (7), Stats., which authorizes the director to provide for exceptional methods and kinds of employment, enables the state, as an employer, to carry out its social, economic and community responsibilities through employment of individuals who are economically disadvantaged or have a disability, or to meet the needs of the service during periods of disaster or national emergency, or to comply with special funding requirements for specific positions.

**History:** Cr. Register, May, 1988, No. 389, eff. 6-1-88; CR 04-138: am. Register June 2005 No. 594, eff. 7-1-05; correction made under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717.

**ER-MRS 27.02 Definitions.** The following are definitions for terms used in this chapter:

(2) "Disability" means the same as "individual with a disability" as defined in sub. (4m).

(3) "Economically disadvantaged individual" means an individual whose circumstances are such that the individual meets specific criteria for participation in federal, state or local government programs available to the unemployed, underemployed, or whose family income is at or below the poverty level as determined by federal or state standards.

(4) "Exceptional employment situations" means employment opportunities in agencies where:

(a) Vacancies have been set aside, as a part of an approved affirmative action plan, to provide training and permanent employment to individuals with a disability;

(b) Special statutory or funding requirements for specific positions require applicants who meet established eligibility criteria; or

(c) The employment situations occur as a result of disaster or national emergency.

(4m) "Individual with a disability" means an individual under s. 111.32 (8), Stats., who:

(a) Has a physical or mental impairment which makes achievement unusually difficult or limits the capacity to work;

(b) Has a record of such an impairment; or

(c) Is perceived as having such an impairment.

(5) "Periods of disaster" or "periods of national emergency" mean periods of time when, as a result of natural disasters, epidemics, or war, existing merit system techniques and procedures for recruitment and selection are unable to provide an adequate number of eligible applicants to meet the needs of the service.

**History:** Cr. Register, May, 1988, No. 389, eff. 6-1-88; CR 04-138: renum. (1) to be (4m) and am., am. (2) and (4) (a) Register June 2005 No. 594, eff. 7-1-05; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register June 2005 No. 594; CR 18-006: cr. (5) Register July 2018 No. 751, eff. 8-1-18.

**ER-MRS 27.03 Identifying exceptional employment situations.** The director may authorize use of exceptional methods of employment for exceptional employment situations for any of the following reasons:

(1) An agency has set aside positions for employment opportunities to provide training and permanent employment to individuals with a severe disability and it has been determined that the selection procedure traditionally used would measure the applicants' disability instead of their ability, aptitude or skill, or whatever other factor the selection procedure purports to measure.

(2) Special statutory or funding requirements for specific positions require applicants to meet certain criteria such as:

(a) Being economically disadvantaged;

(b) Being welfare recipients;

(c) Being a disabled Vietnam era veteran; or

(d) Meeting any other eligibility criteria established for the particular position.

(3) To meet the needs of the service during periods of disaster or periods of national emergency.

**History:** Cr. Register, May, 1988, No. 389, eff. 6-1-88; CR 04-138: am. (1) Register June 2005 No. 594, eff. 7-1-05; correction in (intro.) made under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717; CR 18-006: am. (1) Register July 2018 No. 751, eff. 8-1-18.

**ER-MRS 27.04 Qualifying for exceptional employment situations.** When the director has determined that an exceptional employment situation exists, recruitment may be targeted as follows:

(1) For appointment to exceptional employment situations for individuals with a disability, applicants must be certified as severely disabled by appropriate specialists such as a physician, psychiatrist, psychologist, chiropractor, teachers or counselors specialized in learning disabilities or special education, vocational rehabilitation counselor, occupational or physical therapist or other specialist deemed appropriate by the director, and must require on-the-job training beyond that normally provided during the probationary period for similar positions.

(2) For appointment to exceptional employment situations under s. ER-MRS 27.02 (4) (b), applicants must meet the eligibility criteria for the position as set forth in s. ER-MRS 27.03 (2).

(3) For appointment to exceptional employment situations under s. ER-MRS 27.02 (4) (c), applicants must meet the minimum qualification requirements established by the director under this chapter.

**History:** Cr. Register, May, 1988, No. 389, eff. 6-1-88; corrections in (2) and (3) made under s. 13.93 (2m) (b) 1., Stats., Register, October, 1994, No. 466; CR 04-138: am. (1) Register June 2005 No. 594, eff. 7-1-05; correction in (intro.), (1), (3) made under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717.

**ER-MRS 27.05 Use of exceptional methods of employment and exceptional employment lists.** Upon written request of an appointing authority, the director may authorize use of exceptional methods of employment to fill positions identified as exceptional employment situations. In considering such requests, the director shall determine whether the following criteria have been met:

(1) FOR EMPLOYMENT OF INDIVIDUALS WITH A DISABILITY. For employment of individuals with a disability, the director shall determine whether:

(a) Appropriate position description modifications have been made and essential qualifications for the positions have been defined.

(b) Special provisions for on-the-job training, including consideration of length of training, reasonable accommodations, supervision and safety have been developed, subject to modification at the time of appointment to meet the specific employment and training needs of the individual hired for the position.

(c) An appropriate probationary period length has been established.

(d) The position is permanent, or, if not, the person shall be appointed to a permanent position upon satisfactory completion of the training period.

**(2) FOR EMPLOYMENT OF THE ECONOMICALLY DISADVANTAGED.** For employment of the economically disadvantaged, any special statutory or funding requirements specifying that applicants meet established eligibility criteria have been identified.

**(3) DURING PERIODS OF DISASTER OR NATIONAL EMERGENCY.** During periods of disaster or national emergency, a critical shortage of qualified applicants in the labor supply occurs and existing merit system techniques and procedures for recruitment and selection do not provide an adequate number of eligible applicants to meet the needs of the service.

**History:** Cr. Register, May, 1988, No. 389, eff. 6-1-88; CR 04-138: am. (1) Register June 2005 No. 594, eff. 7-1-05; correction in (intro.), (1) made under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717; **CR 17-006: am. (3) Register June 2018 No. 750, eff. 7-1-18.**

**ER-MRS 27.06 Exceptional employment list establishment.** The director may authorize establishment of exceptional employment eligibility lists to enable agencies to hire individuals for exceptional employment situation vacancies. In establishing the lists the director shall employ merit system principles which are comparable to those which are used in establishing standard eligibility lists for the same classification and may use one or more of the following methods or processes:

**(1)** Limitation of recruitment to a specific applicant target group;

**(2)** Grouping of applicants based on their qualifications and certification of qualified applicants from these groups;

**(3)** Creation of an exceptional employment list from a standard employment list;

**(4)** Selection procedure waivers; and

**(5)** Seeking the creation of emergency classifications and suitable salary ranges for the classifications, which may be entirely new classes or the counterpart of existing classes except for qualification requirements. Emergency classifications created and positions filled under this subsection shall be abolished 6 months after the condition of disaster or emergency ceases to exist. The selection procedures to be used in these emergency situations may include traditional assessment instruments including evaluations of training, experience, or general qualifications. The selection method may be either competitive or noncompetitive in whole or in part.

**History:** Cr. Register, May, 1988, No. 389, eff. 6-1-88; correction in (intro.), made under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717; **CR 18-006: am. (4), (5) Register July 2018 No. 751, eff. 8-1-18.**

**ER-MRS 27.07 Appointee status.** Persons appointed from an exceptional employment eligibility list to an exceptional employment vacancy in the classified service shall become employees with permanent status in class after successful completion of a probationary period as provided in s. 230.28, Stats., and ch. ER-MRS 13, except that appointments made as a result of the creation of emergency classifications shall be considered as serving a probationary period during their entire appointment and shall not acquire permanent status in class. Employees appointed as a result of the creation of emergency classifications shall be laid off no later than 6 months after the condition which prompted the use of the exceptional employment method has ceased to exist.

**History:** Cr. Register, May, 1988, No. 389, eff. 6-1-88; correction made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466.