

## Chapter ER-Pers 16

## REINSTATEMENT AND RESTORATION

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**ER-Pers 16.01 Definition.** (1) Reinstatement and restoration mean the act of re-appointment without competition of an employe or former employe (a) to a position in the same class in which the person was previously employed or (b) to a position in another classification to which the person would have been eligible to transfer had there been no break in employment or (c) to a position in a class having a lower pay rate or pay range maximum for which the person is qualified to perform the work after the customary orientation provided to new workers in the position.

(2) Re-appointment under sub. (1) may be either permissive at the discretion of the appointing authority or mandatory as required by the law or rule of the administrator. In those instances where an employe or former employe has "eligibility" for reinstatement, the action is permissive. In those instances where an employe or former employe has the "right" of restoration, the action is mandatory. In these rules of the administrator, "reinstatement" refers to a permissive act and "restoration" refers to a mandatory right.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, February, 1981, No. 302, eff. 3-1-81; am. (2), Register, February, 1983, No. 326, eff. 3-1-83.

**ER-Pers 16.015 Return to a lower position.** The appointment of a former employe, who previously acquired permanent status in class to a position in a lower classification than the one in which permanent status was acquired, following a break in service not covered by leave or the layoff provisions of these rules, shall be considered as an original appointment, except when it may be considered a reinstatement under s. ER-Pers 16.035, and the appointing authority chooses to treat such appointment as a reinstatement.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81.

**ER-Pers 16.02 Report of appointing authority; approval by administrator.** All reinstatements and restorations shall be reported to the administrator for approval as may be required.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, February, 1981, No. 302, eff. 3-1-81.

**ER-Pers 16.03 Types and conditions of restoration.** (1) **LAYOFF.** See s. ER-Pers 22.10.

(2) **RETURN FROM MILITARY.** An employe returning from military service shall be restored under the provisions of s. 230.32, Stats.

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(3) **RESTORATION IN ACCORDANCE WITH ORDER OF PERSONNEL COMMISSION OR COURT ACTION.** See s. 230.44 (4), Stats. A probationary period shall not be required as a result of such restoration.

(4) **LEAVE TO THE UNCLASSIFIED SERVICE.** An employe returning from an approved leave of absence to the unclassified service shall be restored under the provisions of s. 230.33, Stats.

(5) **RESTORATION FOLLOWING NON-COMPLETION OF PROBATIONARY PERIOD UPON PROMOTION WITHIN AN AGENCY.** See s. 230.28 (1) (d), Stats. and s. ER-Pers 14.03 (1).

(6) **RETURN FROM APPROVED LEAVE WITHOUT PAY OR SUMMER LEAVE.** Return from approved leave without pay or summer leave shall be treated as if it were a restoration in accordance with the provisions of s. ER-Pers 18.05 (2).

(7) **RETURN FROM A SEASONAL OR SESSIONAL LAYOFF.** A seasonal or sessional employe or a seasonal or sessional layoff shall be restored to the same or similar position within the employing unit during succeeding seasons or sessions. The order of the return of such employes is at the discretion of the appointing authority. If, during the succeeding season or session, the appointing authority cannot restore such employes due to lack of work or funds, they shall be formally laid off, subject to the provisions of ch. ER-Pers 22.

**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; am. (2), (3) and (5), r. and recr. (1), (4), (6) and (7), r. (4m) and (8), Register, February, 1981, No. 302, eff. 3-1-81.

**ER-Pers 16.035 Types and conditions of reinstatement. (1) GENERAL.** An employe who has terminated from the classified service without misconduct or delinquency or who has accepted a voluntary demotion for personal reasons shall be eligible for reinstatement in any agency for 3 years from the date of such resignation or demotion.

(2) **RETURN FROM UNCLASSIFIED POSITION.** Any employe who left the classified service to accept an appointment to an unclassified position 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 under s. ER-Pers 16.03 (4).

(3) **DOWNWARD REALLOCATION OR RECLASSIFICATION OF A POSITION.** An employe whose position has been reallocated or reclassified to a classification with a lower pay rate or pay range maximum shall have reinstatement eligibility in any agency for 3 years from the date of the action.

(4) **FAILURE TO RETURN FROM LEAVE OF ABSENCE.** If an employe does not return from an approved leave of absence, such failure to return shall be treated as job abandonment under s. ER-Pers 21.03, unless the employe submits a letter of resignation as required under s. ER-Pers 21.01.

**History:** Cr. Register, February, 1981, No. 302, eff. 3-1-81.

**ER-Pers 16.04 Kinds of reinstatement; probationary status. (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 the person earned

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reinstatement eligibility may be required by the appointing authority to serve a probationary period. If not required to serve a probationary period, the employe shall immediately attain permanent status in class. If required to serve a probationary period and during such period the employe's services are found to be unsatisfactory, the employe may be terminated from the service by 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 the person earned reinstatement eligibility may be required by the appointing authority to serve a probationary period. If not required to serve a probationary period, the employe shall immediately attain permanent status in class. If required to serve a probationary period, the employe may be terminated from the service by the appointing authority during the probationary period 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 the person earned reinstatement eligibility and shall immediately attain permanent status in the class.

(2) **TERMINATION DURING THE PROBATIONARY PERIOD.** A person who resigns from a permanent, seasonal or sessional position or who is terminated due to a pending layoff while serving a probationary period may be reinstated by the appointing authority at any time during a 3 year period from the date of termination. The probationary time already served may be carried over by the appointing authority, except as provided in s. 230.32 (2) (b), Stats. The appointing authority shall determine the amount of carryover at the time of the reinstatement and shall give written notice to the employe. The appointing authority shall keep a record of that notice on file.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (2), Register, September, 1975, No. 237, eff. 10-1-75; am. Register, February, 1981, No. 302, eff. 3-1-81; am. Register, February, 1983, No. 326, eff. 3-1-83.

**ER-Pers 16.05 Pay on reinstatement.** See s. ER-Pers 29.03 (6).

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; r. and recr. Register, February, 1981, No. 302, eff. 3-1-81.

**ER-Pers 16.06 Pay on restoration.** See s. ER-Pers 29.03 (7).

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (1), Register, September, 1975, No. 237, eff. 10-1-75; am. (1), Register, December, 1976, No. 252, eff. 1-1-77; r. and recr. Register, February, 1981, No. 302, eff. 3-1-81.