

Chapter ER-MRS 16

REINSTATEMENT AND RESTORATION

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Note: Chapter ER-Pers 16 was renumbered chapter ER-MRS 16 under s. 13.93 (2m) (b) 1, Stats., Register, October, 1994, No. 466.

ER-MRS 16.01 Definition. Reappointment under this chapter 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.

Note: See s. ER-MRS 1.02 (29) and (30) for definitions of reinstatement and restoration.

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; r. (1), renum. (2) and am. Register, May, 1988, No. 389, eff. 6-1-88.

ER-MRS 16.015 Return to a lower position. (1) RETURN FOLLOWING A BREAK IN SERVICE NOT COVERED BY LEAVE OR LAYOFF. The appointment of a former employe, who previously acquired permanent status in class, to a position in the same, counterpart or lower class than the one in which permanent status in class was acquired, following a break in service not covered by leave or the layoff provisions of these rules or applicable collective bargaining agreement, shall be considered as an original appointment except when it may be considered a reinstatement under s. ER-MRS 16.035 and the appointing authority chooses to treat such appointment as a reinstatement.

(2) RETURN TO A POSITION AT A HIGHER LEVEL. For provisions relating to appointment of persons who previously had permanent status in class to a position in a higher class see s. ER-MRS 14.02 (2).

History: Cr. Register, February, 1981, No. 302, eff. 3-1-81; renum. to be (1) and am. and cr. (2), Register, May, 1988, No. 389, eff. 6-1-88; corrections made under s. 13.93 (2m) (b) 7, Stats., Register, October, 1994, No. 466.

ER-MRS 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-MRS 16.025 Period of eligibility. The period of eligibility for all reinstatements and restorations shall begin with the date of separation from the position in which the eligibility was earned and end with the last day of the 3rd year after the date of separation. Any act of reinstatement or restoration must become effective during the 3-year period of eligibility.

Note: For definition of year, see s. ER-MRS 1.02 (35).

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

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

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

(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) RETURN FROM SERVING IN 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-MRS 14.03 (1).

(6) RETURN FROM APPROVED LEAVE WITHOUT PAY OR SUMMER LEAVE. (a) Return from approved leave without pay or summer leave shall be treated as if it were a restoration under either of the following:

1. A position at the same level is available. Except as provided in subd. 2, upon the expiration of an approved leave of absence without pay, or sooner if the appointing authority agrees, a classified employe may return to his or her position or to a position in the same or counterpart pay range for which the employe is qualified to perform the work after being given the customary orientation provided for a newly hired worker in the position.

2. No position at the same level is available. If the position is filled while the employe is on leave or if the position has been abolished and there is no other vacant position available in the same or counterpart pay range in the agency, the employe shall be treated as if he or she had been restored to the previous position, and the provisions for making layoffs under ch. ER-MRS 22 shall apply.

(b) *Effect on continuous service and sick leave upon return from leave.* Approved leaves without pay shall not operate to interrupt the continuous service or cancel the unused accumulated sick leave of the absent employe.

(c) *Pay upon return from leave.* See s. ER 29.03 (7).

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,

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February, 1981, No. 302, eff. 3-1-81; renun. (6) to be (6) (a) (intro.), cr. (6) (a) 1, and 2, (b) and (c), Register, May, 1988, No. 389, eff. 6-1-88; corrections made under s. 13.93 (2m) (b) 7, Stats., Register, October, 1994, No. 466.

ER-MRS 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-MRS 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. For definitions of reallocation and reclassification, see s. ER 3.01 (2) and (3), respectively.

(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-MRS 21.03, unless the employe submits a letter of resignation as required under s. ER-MRS 21.01.

History: Cr. Register, February, 1981, No. 302, eff. 3-1-81; am. (3), Register, May, 1988, No. 389, eff. 6-1-88; corrections in (2) and (4) made under s. 13.93 (2m) (b) 7, Stats., Register, October, 1994, No. 466.

ER-MRS 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 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 position or who is terminated while serving a probationary period may be reinstated to a position in the same class or in a lower class than the position from which the employe resigned or was terminated by an appointing authority at any time during a 3 year period from the date of termination providing the person is qualified to perform the work after the customary orientation provided to a newly hired worker in the position. 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 carry-over at the time of the reinstatement and shall give written notice of the amount to the employe. The appointing authority shall keep a copy 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; am. (2), Register, May, 1988, No. 389, eff. 6-1-88.

ER-MRS 16.05 Pay on reinstatement. See s. ER 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; correction made under s. 13.93 (2m) (b) 7, Stats., Register, October, 1994, No. 466.

ER-MRS 16.06 Pay on restoration. See s. ER 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; correction made under s. 13.93 (2m) (b) 7, Stats., Register, October, 1994, No. 466.