



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2015 Wisconsin Act 150
[2015 Assembly Bill 373]

State Civil Service

2015 Wisconsin Act 150 revises certain aspects of the state civil service laws for classified employees. Those revisions apply to the hiring process, performance reviews, discipline and grievance procedures, and layoff and reinstatement procedures. The Act also requires certain administrative planning actions by the Department of Administration (DOA) and its Division of Personnel Management (DPM).

HIRING PROCESS

The Act's revisions relating to the hiring process affect the application format, consideration of certain applicants, and timelines in the application process.

Form of Application

The Act requires a person to submit a resume in all cases when applying for a position in the classified service. In accordance with that requirement, the Act removes the primary reliance on an examination-based process. The Act also specifies that selection processes apply using the same standards that apply under prior law.

Application by a Veteran or a Spouse of a Veteran

The Act specifies a new process for the treatment of veterans, which requires the names of the three highest ranking disabled veterans whose disability is at least 70% to be added to a certification list of eligible applicants. Provisions are also made for certification of additional disabled veterans, veterans without a disability, the spouse of a disabled veteran whose disability is at least 70%, and an unremarried spouse of a veteran who was killed in action or who died of a service-connected disability. Additionally, if a veteran has equal qualifications to any other applicant, the agency is required to give a preference to the veteran, for the position.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

Application by a Person With a Conviction Record

The Act specifies that DPM may not ask a person who is applying for a position to supply information regarding a conviction record. However, information regarding a conviction record may be requested in applications for a position in which a particular conviction record would disqualify an applicant. DPM may consider the conviction record of an applicant after the person has been certified as an eligible applicant.

Application by a State Employee

The Act removes the preference to fill a vacant position, or career executive position, from within the classified service and from former employees with a right of restoration.

The Act requires an agency, if an applicant holds a position as a state employee at the time of consideration, to review the applicant's personnel file before it may offer the person the position.

Application Timelines

The Act revises the time period for DPM to provide a certification list of eligible applicants for a vacant permanent position from 45 days to 30 days. The Act also revises the time period for an agency to make an appointment after receiving a certification list from 60 days to 30 days.

PERFORMANCE REVIEWS

The Act revises the following aspects of performance reviews and merit compensation:

- Specifies that all employees must serve a one-year probationary period, which may be extended up to an additional 12 months.
- Specifies that performance reviews must be made at least annually.
- Requires DPM to establish a discretionary merit compensation award program, and appropriates \$6 million from general program revenue in the 2016-17 fiscal year for the program. Under the program, an employee whose job performance has exceeded agency expectations may receive a lump sum monetary award.

DISCIPLINE AND GRIEVANCE PROCEDURES

The Act's revisions relating to discipline and grievance procedures affect the policies that an agency must follow in making an adverse employment decision, the employee conduct that may warrant an adverse employment decision, and the timelines to contest such a decision.

Agency's Standard in Making an Adverse Employment Decision

The Act requires DPM to establish a general standard for progressive discipline plans, to be adopted and utilized by each agency, for work performance or personal conduct that is inadequate, unsuitable, or inferior. The general standard must allow an agency to accelerate discipline for conduct or performance that is severe in its inadequacy, unsuitability, or inferiority, and must include standards to define serious violations of the code of ethics.

Employee's Conduct That May Warrant an Adverse Employment Decision

The Act identifies certain conduct by an employee that constitutes just cause for removal, suspension, discharge, reduction in pay, or demotion, and that is not subject to progressive disciplinary actions. These include:

- Harassment, infliction of physical harm, intoxication, or possession of a controlled substance without a prescription, while on duty.
- Falsification of agency records or commission of various acts of theft or other intentional or negligent conduct that causes substantial damage to agency property.
- Conviction of a crime or civil forfeiture that makes it impossible to perform the duties of the position.
- Misuse or abuse of agency property, including intentional viewing or distributing of pornographic material.
- Commission of a serious violation of the code of ethics for public employees.

The Act also revises the absences that may be subject to discipline, or may be deemed a resignation, from five consecutive absences to three absences in a calendar year.

Timelines to Contest an Adverse Employment Decision

The Act specifies a procedure, with timelines, for an employee to contest an adverse employment decision. This includes 14 days to file a complaint with the agency, 14 days for the agency to review the complaint, 14 days for the employee to appeal to DPM, 30 days for DPM to review the complaint, and 14 days for the employee or employer to appeal to the Wisconsin Employment Relations Commission (WERC). WERC must issue its decision within 120 days of receiving the appeal, with specific deadlines for completion of a pre-hearing conference, discovery, and motions.

LAYOFF AND REINSTATEMENT PROCEDURES

The Act revises the prescribed order of layoffs and the eligibility standard for reinstatement and restoration actions.

Layoff

The Act specifies that the order of layoffs must be primarily based on performance, and then based on disciplinary records, seniority, and ability, in accordance with DPM rules. Under the Act, this order applies without regard to limited term, probationary, or permanent status; also, seniority displacement (commonly known as "bumping") rights are eliminated.

Reinstatement and Restoration

The Act sunsets the reinstatement and restoration procedures under prior law to apply only to an employee who separates from service before July 1, 2016. Under prior law, a person who separates from service without misconduct has a right of restoration for three years after a layoff, and is eligible for reinstatement for five years after the separation from service.

For an employee who is laid off on or after July 1, 2016, with no misconduct, the Act specifies that the person is eligible for reinstatement for three years after the layoff to any position within state civil service, for which the person is qualified, and that is at a comparable or lower pay range.

ADMINISTRATIVE PROVISIONS

The Act requires an agency to annually report to DPM the number of days it took to make an offer after receiving a certification list. The Act also requires an agency to permanently maintain an employee's disciplinary records.

The Act removes the allowance for the State Compensation Plan to supersede provisions of the civil service statutes and administrative rules.

The Act requires DOA to consult with each executive agency to develop a plan for assuming human resources functions for those agencies. The plan does not apply to the Board of Regents of the University of Wisconsin System or the Technical College System Board. The Act requires the consultations to occur by January 1, 2017, with plans to be submitted to the Joint Committee on Finance by March 1, 2017, for implementation beginning July 1, 2017.

The Act also requires DPM and its Bureau of Merit Recruitment and Selection (BMRS) to jointly review and submit findings to the Governor by January 1, 2017, on: the feasibility of requiring executive agencies to use electronic personnel files and to use a uniform personnel evaluation system; the classifications for all positions in the classified service; the State Compensation Plan; and the Wisconsin Human Resources Handbook.

Effective date: The general effective date of the Act is July 1, 2016. However, the joint review by DPM and BMRS of certain aspects of the state civil service system and the development of a plan by DOA regarding human resources functions took effect February 14, 2016.

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