

CHAPTER 230

STATE EMPLOYMENT RELATIONS

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SUBCHAPTER I

ADMINISTRATIVE SERVICES

230.01 Statement of policy. (1) It is the purpose of this chapter to provide state agencies and institutions of higher education with competent personnel who will furnish state services to citizens as fairly, efficiently and effectively as possible.

(2) It is the policy of the state and the responsibility of the secretary and the administrator to maintain a system of personnel management which fills positions in the classified service through methods which apply the merit principle, with adequate civil service safeguards. It is the policy of this state to provide for equal employment opportunity by ensuring that all personnel actions including hire, tenure or term, and condition or privilege of employment be based on the ability to perform the duties and responsibilities assigned to the particular position without regard to age, race, creed or religion, color, handicap, sex, national origin, ancestry, sexual orientation or political affiliation. It is the policy of this state to take affirmative action which is not in conflict with other provisions of this chapter. It is the policy of the state to ensure its employees opportunities for satisfying careers and fair treatment based on the value of each employee's services. It is the policy of this state to encourage disclosure of information under subch. III and to ensure that any employee employed by a governmental unit is protected from retaliatory action for disclosing information under subch. III. It is the policy of this state to correct pay inequities based on gender or race in the state civil service system.

(3) Nothing in this chapter shall be construed to either infringe upon or supersede the rights guaranteed state employees under subch. V of ch. 111.

History: 1977 c. 196; 1981 c. 112; 1983 a. 409; 1985 a. 29, 1987 a. 32.

While racial and ethnic classifications are inherently suspect, goal of achieving diverse student body in medical school justifies consideration of race in admissions policy *Univ. of California Regents v. Bakke*, 438 US 265 (1978).

230.02 Liberal construction of statutes. Statutes applicable to the department shall be construed liberally in aid of the purposes declared in s. 230.01.

History: 1977 c. 196.

230.03 Definitions. In this chapter, unless the context otherwise requires:

(1) "Administrator" means the administrator of the division.

(2) "Affirmative action" means specific actions in employment which are designed and taken for the purposes of all of the following:

(a) Ensuring equal opportunities.

(b) Eliminating a substantial disparity between the proportion of members of racial and ethnic, gender or handicap groups either in job groups within the classified civil service, or in similar functional groups in the unclassified service, and the proportion of members of racial and ethnic, gender or handicap groups in the relevant labor pool.

(c) Eliminating present effects of past discrimination.

(3) "Agency" means any state board, commission, committee, council, department or unit thereof created by the constitution or statutes if such board, commission, committee, council, depart-

ment, unit or the head thereof, is authorized to appoint subordinate staff by the constitution or statute, except a legislative or judicial board, commission, committee, council, department or unit thereof.

(4) Except as provided in s. 230.80 (1m), "appointing authority" means the chief administrative officer of an agency unless another person is authorized to appoint subordinate staff in the agency by the constitution or statutes.

(6) "Civil service" means all offices and positions of trust or employment in the service of the state, except offices and positions in the organized militia.

(7) "Collective bargaining agreement", "collective bargaining unit" and other terms relating to collective bargaining for state employes have the meaning set forth for such terms under subch. V of ch. 111.

(8) "Commission" means the personnel commission.

(9) "Department" means the department of employment relations.

(9m) "Disabled wartime veteran" means a veteran who has a disability that is directly traceable to war service.

(10) "Division" means the division of merit recruitment and selection in the department.

(10m) "Gender group", when used in connection with affirmative action under this chapter, does not include groups discriminated against because of sexual orientation, as defined in s. 111.32 (13m).

(10r) "Job group" means a set of classifications combined by the department on the basis of similarity in responsibility, pay range and nature of work.

(11) "Position" means a group of duties and responsibilities in either the classified or the unclassified divisions of the civil service, which require the services of an employe on a part-time or full-time basis.

(12) "Resident of this state" means a person who, on the date an application under s. 230.16 (1) is filed:

(a) Has established a residence, as defined in s. 6.10 (1), in this state not less than 10 days earlier;

(b) Has resided in this state for not less than a total of one year out of the immediately preceding 5 years;

(c) Is eligible to register to vote in this state; or

(d) Is the spouse of a person meeting the requirements of par. (a), (b) or (c).

(13) "Secretary" means the secretary of the department.

(14) Except as provided in s. 230.16 (7m), veteran means any of the following:

(a) A person who served on active duty under honorable conditions in the U.S. armed forces and who was entitled to receive any of the following:

1. The armed forces expeditionary medal established by executive order 10977 on December 4, 1961.

2. The Vietnam service medal established by executive order 11231 on July 8, 1965.

3. The navy expeditionary medal.

4. The marine corps expeditionary medal.

(b) A person who served on active duty under honorable conditions in the U.S. armed forces in Grenada, Lebanon, Panama, Somalia or a Middle East crisis under s. 45.34.

(c) A person who served on active duty under honorable conditions in the U.S. armed forces for at least one day during a war period, as defined in s. 45.35 (5) (a) to (h) or under section 1 of executive order 10957 dated August 10, 1961.

History: 1971 c. 270; 1973 c. 333; 1977 c. 196 ss. 24, 100; 1977 c. 418; 1981 c. 20, 26; 1983 a. 27 ss. 1604, 2200 (15); 1983 a. 409, 453, 538; 1987 a. 32; 1989 a. 31; 1991 a. 101, 147; 1993 a. 16, 254.

230.04 Powers and duties of the secretary. (1) The secretary is charged with the effective administration of this chapter. All powers and duties, necessary to that end, which are not

exclusively vested by statute in the commission, the administrator or appointing authorities, are reserved to the secretary.

(1m) The secretary may delegate, in writing, any of his or her functions set forth in this chapter to an appointing authority, within prescribed standards if the secretary finds that the agency has personnel management capabilities to perform such functions effectively and has indicated its approval and willingness to accept such responsibility by written agreement. If the secretary determines that any agency is not performing such delegated function within prescribed standards, the secretary shall forthwith withdraw such delegated function. Subject to the approval of the joint committee on finance, the secretary may order transferred to the department from the agency to which delegation was made such agency staff and other resources as necessary to perform such functions if increased staff was authorized to that agency as a consequence of such delegation or if the department reduced staff or shifted staff to new responsibilities as a result of such delegation. Any delegatory action taken under s. 230.09 (2) (a) or (d) or 230.13 (1) by an appointing authority may be appealed to the personnel commission under s. 230.44 (1) (b). The secretary shall be a party in such an appeal.

(2) The secretary may utilize the services of technical or specialized personnel to assist in implementing and maintaining a sound personnel management program. These services may be obtained from persons inside or outside of state service.

(3) The secretary may issue enforceable orders on all matters relating to the administration, enforcement and effect of this chapter and the rules prescribed thereunder except on matters relating to the provisions of subch. III or to those provisions of subch. II for which responsibility is specifically charged to the administrator.

(4) The secretary shall establish and maintain a collective bargaining capability under s. 111.815 (2).

(5) The secretary shall promulgate rules on all matters relating to the administration of the department and the performance of the duties assigned to the secretary, except on matters relating to those provisions of subch. II for which responsibility is specifically charged to the administrator.

(7) The secretary shall appoint, under the classified service, the staff necessary for performing the duties of the department, including the staff of the division.

(8) The secretary shall establish an employe performance evaluation program under s. 230.37 (1).

(9) The secretary shall do all of the following:

(a) Establish standards for affirmative action plans to be prepared by all agencies and applied to all employes in and applicants for employment in the unclassified and classified services, except for state officers elected by the people. The standards shall state the time periods within which these plans shall be prepared.

(b) Review and approve or disapprove any affirmative action plan prepared by an agency to ensure compliance with the standards established under par. (a), and send any approved affirmative action plan to the governor with comments.

(c) Monitor, evaluate and make recommendations to each agency to improve its progress toward providing equal opportunity to employes, applicants for employment and clients of the agency.

(d) Provide each agency with technical assistance in exploring and implementing innovative personnel policies in compliance with standards established under par. (a).

(e) Annually, prepare and submit to the governor and the legislature a summary of existing agency affirmative action program accomplishments, including the information obtained from agencies under sub. (10) (b), future goals and recommended actions.

(em) Annually, prepare and submit to the governor and the legislature a summary of the progress being made to provide employment opportunities in civil service for veterans under this chapter, including the information obtained from agencies under sub. (10) (c).

(f) Establish an affirmative action subunit reporting directly to the secretary. The affirmative action subunit shall advise and assist the secretary, the administrator and agency heads on establishing policies and programs to ensure appropriate affirmative action. The subunit shall advise and assist the secretary in monitoring such programs and shall provide staff to the affirmative action council.

(9m) The secretary shall conduct periodic reviews and evaluations of the written records of hiring decisions made by appointing authorities under ss. 230.21 (1m), 230.25 (1p) and 230.27 (2k).

(9r) (a) In this subsection:

1. "Independent" means the extent to which persons with disabilities exert control and choice over their own lives.

2. "Severely disabled employe" means an employe in the classified service with a chronic disability if the chronic disability meets all of the following conditions:

a. It is attributable to a mental or physical impairment or combination of mental and physical impairments.

b. It is likely to continue indefinitely.

c. It results in substantial functional limitations in one or more of the following areas of major life activity: self-care; receptive and expressive language; learning; mobility; capacity for independent living; and economic self-sufficiency.

(b) The secretary shall keep a record of all of the following:

1. The number of severely disabled employes and the percentage of severely disabled employes of the total number of employes in the classified service.

2. The number of severely disabled employes hired in each calendar year and the percentage of severely disabled employes among all persons hired in the classified service in that year.

(10) (a) The secretary may require all agencies and their officers to comply with the secretary's request to furnish current information pertaining to authorized positions, payroll and related items regarding civil service and employment relations functions.

(b) The secretary shall request from each agency and each agency shall furnish to the secretary relevant racial, ethnic, gender and handicap information on every new employe hired by the agency including limited term, project, seasonal and sessional employes. The secretary shall maintain the data to permit a periodic review of the agency's affirmative action plan accomplishments.

(c) The secretary shall request from each agency and each agency shall furnish to the secretary relevant information regarding the prior military service, if any, of every new employe hired by the agency including limited term, project, seasonal and sessional employes. The secretary shall maintain the data to permit a periodic review of the progress being made to provide employment opportunities in civil service for veterans and disabled war-time veterans.

(11) The secretary may provide by rule for an understudy program to assure continuity in selected positions.

(12) The secretary shall keep in the office an official roster of all permanent classified employes which shall include classification titles, pay and employment status changes and appropriate dates thereof.

(13) The secretary shall do all of the following:

(a) Establish standards for plans to increase state employment of recipients of aid under s. 49.19 prepared by agencies under s. 230.147 (1). The standards shall state the time periods within which these plans shall be prepared.

(b) Review and approve or disapprove plans prepared under s. 230.147 (1) to ensure compliance with the standards established under par. (a).

(c) Monitor, evaluate and make recommendations to agencies to improve progress toward meeting the goal in s. 230.147 (1).

(e) On or before September 30 annually beginning in 1989, prepare and submit to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) a report that includes all of the following information for the fiscal year preceding the date that the report is due:

1. A description of each agency's effort during that fiscal year to employ under s. 230.147 persons who received aid under s. 49.19.

2. The number of persons receiving aid under s. 49.19 who were employed by each agency under s. 230.147 during that fiscal year and the job title or classification of each position filled under s. 230.147.

(14) The secretary shall establish, by rule, the scope and minimum requirements of a state employe grievance procedure relating to conditions of employment.

(15) The secretary shall review and either approve or disapprove each determination by an agency head regarding the classification of a state employe as a protective occupation participant for purposes of the Wisconsin retirement system.

History: 1977 c. 196 ss. 48, 63, 101, 130 (11); 1977 c. 418, 447; 1981 c. 20; 1983 a. 27, 409; 1987 a. 27, 32, 140, 403; 1989 a. 31, 124; 1991 a. 101, 269, 288, 315

230.046 Training programs. **(1) DECLARATION OF POLICY.** In order to promote efficiency and economy in the operation of the state government, to provide means for the development of maximum proficiency by employes thereof, to establish and maintain the highest standards of performance in the transaction of the state's business, and to install and utilize effectively the best modern practices and techniques which have been developed, tested and proved, it is necessary and desirable in the public interest that self-improvement be supplemented and extended by state-sponsored training programs. The objective of these programs is to develop skills, knowledge, and abilities which will best qualify state employes for effective performance of their official duties, and to retain skilled and efficient state employes in order to continually improve the quality of public service.

(2) SUPERVISORY TRAINING. After initial appointment to a supervisory position, the appointing authority shall ensure that each classified service supervisor successfully completes a supervisory development program approved by the secretary. A waiver of any part of the probationary period under s. 230.28 (1) (c) may not be granted before completion of the development program. The program shall include such subjects as state personnel policies; grievance handling; discipline; performance evaluation; understanding the concerns of state employes with children; the supervisor's role in management and the concept of the total quality leadership process, including quality improvement through participatory management.

(3) TRAINING PROGRAMS. The secretary, pursuant to sub. (5), may authorize appointing authorities to:

(a) Provide off-the-job specialized training courses during working hours to designated employes without loss of pay.

(b) Provide specialized training to qualified persons through educational stipends in lieu of pay, but in no event shall a monthly stipend exceed the minimum pay of the position for which training is undertaken.

(c) Provide specialized training to designated employes through assignment to research projects, prescribed courses of study, institutes and short courses which are related to the performance of official duties and to pay the cost of required tuition and other necessary fees and expense in connection therewith.

(d) Conduct on-the-job courses of instruction deemed necessary for the efficient performance of agency functions and to pay honorariums to qualified experts instructing in such courses.

(e) Conduct other training programs consistent with the standards set by this section.

(4) RECORDS OF TRAINING PROGRAM PARTICIPATION. Each agency shall adopt a standardized system for measuring,

recording, reporting, accumulating and recognizing employe participation in its training program. The system may not take effect until approved by the secretary.

(5) INITIATION OF PROGRAMS Unless otherwise empowered by law, any agency desiring to initiate a training program under sub. (3) shall certify to the secretary that:

(a) Unencumbered appropriated funds are available or funds have been so provided by the joint committee on finance;

(b) Training costs estimated to exceed \$500, excluding the compensation of participants, have been included in the budget and approved by the legislature or the joint committee on finance, and such costs will be encumbered for training purposes on the records of the agency;

(c) An agreement has been entered into by the trainee and the appointing authority relative to employment with the state, together with such other terms and conditions as may be necessary under the rules of the secretary whenever on-the-job trainees are employed; and

(d) The immediate and necessary work requirements of the agency will not be seriously handicapped because of such training program.

(6) GIFTS AND GRANTS Nothing in this section shall nullify the acceptance or the special conditions of training programs financed by gifts, grants, bequests and devises from individuals, partnerships, associations, limited liability companies or corporations and all subventions from the United States, unless such financing has been refused by the state under s. 16.54 or 20.907.

(7) ESTABLISH INTERNSHIPS The secretary shall establish in the classified service in-service training internships designed to give rigorous training in public service administration for periods not to exceed 3 years under the direct supervision of experienced administrators.

(8) COOPERATE FOR SCHOLARSHIP LOANS To stimulate the interest of qualified students of exceptional merit in government career service, the secretary shall cooperate with the board of regents of the university of Wisconsin system in providing opportunities for recipients of public service scholarship loans to secure employment under the internship plan.

(9) TUITION REFUND PROGRAM The secretary may establish by rule in the classified service a tuition refund program to supplement departmental training, to encourage employe job-related development and, upon satisfactory completion of training under this program to refund to the employe, an amount not to exceed the cost of tuition and necessary fees.

(10) DEPARTMENT FUNCTIONS (a) In this subsection, "local governmental unit" means a political subdivision of this state, a special purpose district in this state, an agency or corporation of such a political subdivision or special purpose district, or a combination or subunit of any of the foregoing.

(b) The department may do all of the following:

1. Conduct off-the-job employe development and training programs and in cooperation with the appointing authorities shall coordinate state-sponsored employe development training programs.

2. Offer employe development and training programs under subd. 1. to employes of local governmental units, if the employes of the local governmental units are enrolled only as space is available and the local governmental units pay the same fees for the program as are charged for state employes.

3. Charge fees to state agencies and local governmental units whose employes participate in employe development and training programs under this subsection.

(11) RULES The secretary shall promulgate rules for the implementation of this section.

History: 1971 c. 100 s. 23; 1971 c. 270 ss. 56, 91; Stats. 1971 s. 16.33; 1975 c. 39 s. 732 (1); 1977 c. 29; 1977 c. 196 ss. 60, 103, 130 (4), (6m), (11), 131; Stats. 1977 s. 230.046; 1979 c. 221; 1981 c. 20; 1985 a. 29; 1989 a. 31; 1993 a. 112.

230.047 Temporary interchange of employes.

(1) DECLARATION OF POLICY Intergovernmental cooperation, including that specified in the intergovernmental personnel act of 1970, P.L. 91-648, 84 Stat. 1909, is an essential factor in resolving problems affecting this state. The interchange of personnel on a temporary basis between and among governmental agencies at the same or different levels of government and with institutions of higher education is a significant factor in achieving such cooperation.

(2) DEFINITIONS For the purposes of this section:

(a) "Local government" means any political subdivision, instrumentality or authority of a state or any general or special purpose agency of such a political subdivision, instrumentality or authority.

(b) "Receiving agency" means any department or agency of a foreign government, the federal government or a state or local government, an institution of higher education or other municipal corporate agency which receives an employe of another agency under this section.

(c) "Sending agency" means any department or agency of a foreign government, the federal government or a state or local government, an institution of higher education or other municipal corporate agency which sends any employe thereof to another agency under this section.

(3) AUTHORITY TO INTERCHANGE EMPLOYES Any department, agency or instrumentality of the state, or institution of higher education or any local government or other municipal corporate agency is authorized to participate in a program of interchange of employes with departments, agencies or instrumentalities of a foreign government, the federal government, another state or local government, an institution of higher education, other municipal corporate agencies or other agencies or instrumentalities of this state as a sending or receiving agency.

(4) STATUS OF EMPLOYES (a) Employes of a sending agency participating in an exchange of personnel as authorized in sub. (3), during such participation, are on detail to regular work assignments of the receiving agency.

(b) Employes who are on detail are entitled to the same salary and benefits to which they would otherwise be entitled and shall remain employes of the sending agency for all purposes, including the payment of their salaries, and their continuous service benefits except that the supervision of their duties during the period of detail may be governed by agreement between the sending agency and the receiving agency, and except that a receiving agency other than a receiving agency of this state may provide supplemental salary and benefits to the employe for the duration of the interchange.

(c) Any employe who participates in an exchange under the terms of this section who suffers disability or death as a result of personal injury arising out of and in the course of an exchange, or sustained in performance of duties in connection therewith, for the purposes of ch. 102, is an employe of the sending agency.

(5) TRAVEL EXPENSES OF EMPLOYES A sending agency of the state shall not pay the travel expenses of its employes incurred in connection with their work assignments at the receiving agency.

(6) STATUS OF EMPLOYES OF OTHER GOVERNMENTS (a) When any department, agency or instrumentality of this state acts as a receiving agency, employes of the sending agency who are assigned under authority of this section are on detail to the receiving agency.

(b) Employes who are detailed to the receiving agency shall not by virtue of such detail be considered to be employes thereof, nor shall they be paid a salary or wage by the receiving agency during the period of their detail. The supervision of the duties of such employes during the period of detail may be governed by agreement between the sending agency and the receiving agency.

(7) **TRAVEL EXPENSES OF EMPLOYEES OF OTHER GOVERNMENTS.** A receiving agency of the state may, in accordance with the travel regulations of such agency, pay travel expenses of persons assigned thereto under this section during the period of such assignments on the same basis as if they were regular employees of the receiving agency.

(8) **ADMINISTRATION.** The secretary shall promulgate rules for the operation and implementation of this section. The rules shall prescribe the duration, terms and conditions of such interchange.

(9) **SALARY REIMBURSEMENTS.** (a) Any funds received by a sending agency of the state from a receiving agency as reimbursement for salary expenditures made under an employe interchange agreement shall be credited to the appropriation from which the expenditures were paid.

(b) A receiving agency of the state may, in accordance with the salary provisions of the sending agency, reimburse the sending agency for salary and fringe benefit expenditures for employes on detail to the receiving agency.

History: 1971 c. 270 ss. 63, 77; Stats. 1971 s. 16.24; 1975 c. 147 s. 54; 1977 c. 196 s. 55; Stats. 1977 s. 230.047; 1979 c. 89, 221; 1983 a. 27, 189; 1991 a. 75

230.048 Day care for children of state employes.

(1) In this section, "cooperative" means a cooperative established under ch. 185 by state employes for the purpose of providing day care to children of state employes.

(2) The department may make grants to day care providers, including cooperatives, in connection with day care facilities located at or near a place of employment for state employes, if the day care providers agree to do all of the following:

(a) Provide day care services for children of state employes.

(b) Charge a fee to state employes whose children receive day care services at the facility. A day care provider shall set or subsidize the fees charged under this paragraph based on the person's ability to pay, according to rules established by the department under sub. (4) (a).

(c) Become self-supporting within a time period set by the department.

(3) (a) The department may only fund the start-up costs associated with day care facility staff, equipment and facility rental and remodeling under sub. (2).

(b) The department may not grant more than \$50,000 to a day care provider in connection with any one day care facility location.

(4) The department shall promulgate rules to develop criteria regarding all of the following:

(a) The way a day care provider must set or subsidize fees charged for day care services under sub. (2) (b) based on the employe's ability to pay.

(b) The selection of the day care providers that receive grants under sub. (2).

History: 1985 a. 29; 1987 a. 27; 1989 a. 31; 1991 a. 32, 39.

SUBCHAPTER II

CIVIL SERVICE

230.05 Powers and duties of the administrator.

(1) All powers necessary for the effective administration of the duties specified for the administrator under this subchapter are reserved to the administrator.

(2) (a) Except as provided under par. (b), the administrator may delegate, in writing, any of his or her functions set forth in this subchapter to an appointing authority, within prescribed standards if the administrator finds that the agency has personnel management capabilities to perform such functions effectively and has indicated its approval and willingness to accept such responsibility by written agreement. If the administrator determines that any agency is not performing such delegated function within prescribed standards, the administrator shall withdraw such dele-

gated function. The administrator may order transfer to the division from the agency to which delegation was made such agency staff and other resources as necessary to perform such functions if increased staff was authorized to that agency as a consequence of such delegation or if the division reduced staff or shifted staff to new responsibilities as a result of such delegation subject to the approval of the joint committee on finance. Any delegatory action taken under this subsection by any appointing authority may be appealed to the personnel commission under s. 230.44 (1) (b). The administrator shall be a party in such appeal.

(b) The administrator is prohibited from delegating any of his or her final responsibility for the monitoring and oversight of the merit recruitment and selection program under this subchapter.

(3) The administrator may utilize the services of technical or specialized personnel to assist in implementing and maintaining a sound merit recruitment and selection program. These services may be obtained from persons within or without state service.

(4) The administrator may issue enforceable orders on all matters relating to the administration, enforcement and effect of the provisions of this subchapter for which responsibility is specifically charged to the administrator and the rules prescribed thereunder. Any action brought against the appointing authority for failure to comply with the order of the administrator shall be brought and served within 60 days after the date on which the administrator's order was issued. Such orders may be appealed to the commission under s. 230.44 (1) (a).

(5) The administrator shall promulgate rules for the effective operation of the provisions of this subchapter for which responsibility is specifically charged to the administrator. Notice of the contents of such rules and any modifications thereof shall be given to appointing authorities affected thereby, and such rules and modifications shall also be printed for public distribution.

(6) The administrator may seek the prior advice and counsel of agency heads in the formulation of policies and procedures concerning the duties specified for the administrator under this subchapter.

(7) The administrator shall use techniques and procedures designed to certify eligible applicants to any vacant permanent position within 45 days after the filing of an appropriate request by an appointing authority.

(8) The administrator may provide personnel testing services to nonstate governmental units and may charge for those services.

History: 1971 c. 125, 270; 1977 c. 196 ss. 26, 105, 130 (5); 1977 c. 273; 1981 c. 20; 1983 a. 27; 1989 a. 31.
An agency cannot prohibit classified employes from running for nonpartisan office except for certain circumstances. 80 Atty Gen 68.

230.06 Powers and duties of appointing authorities.

(1) An appointing authority shall:

(a) Conform to, comply with, and aid in all proper ways in carrying into effect this subchapter and the rules prescribed thereunder.

(b) Appoint persons to or remove persons from the classified service, discipline employes, designate their titles, assign their duties and fix their compensation, all subject to this subchapter and the rules prescribed thereunder.

(c) Provide the secretary with current information relative to the assignment of duties to permanent classified positions in his or her agency.

(d) Report promptly to the secretary or the administrator any information the secretary or the administrator requires in connection with any delegated personnel function and with each appointment, promotion, demotion, suspension or separation from the service or other change in employe status.

(e) When requested by the secretary or the administrator, provide reports on employe work performance and any other records or information the secretary or administrator requires to carry out this subchapter.

(f) Provide the secretary with the civil service information required under s. 16.004 (7).

(g) Prepare an affirmative action plan which complies with the standards established by the secretary under s. 230.04 (9) (a) and which sets goals and outlines steps for incorporating affirmative action and principles supporting affirmative action into the procedures and policies of his or her agency.

(h) Ensure that his or her agency complies with its affirmative action plan.

(i) Explore and implement innovative personnel policies to ensure affirmative action.

(j) If his or her agency employs 50 or more employees, create an affirmative action advisory committee which shall advise the appointing authority concerning programs designed to ensure equal opportunity to all employees, applicants for employment and clients of the agency.

(k) Designate an affirmative action officer reporting directly to the appointing authority. The affirmative action officer shall advise and assist the appointing authority in establishing programs to ensure appropriate affirmative action.

(L) Provide information about the employment of each severely disabled employe for the secretary's report under s. 230.04 (9r) within 30 days after the disabled employe is appointed, and at other times at the request of the secretary.

(2) An appointing authority may delegate in writing part or all of his or her power of appointment, including discipline and removal.

(3) All reports and records submitted under sub. (1) shall be prepared and presented at such times and in such manner as the secretary or administrator prescribes.

History: 1971 c. 270; 1973 c. 333; 1977 c. 196 ss. 28, 106, 130 (5); 1981 c. 20; 1983 a. 27 ss. 1605g, 2200 (15); 1987 a. 32; 1991 a. 288, 315

230.08 Classification of civil service. (1) CLASSES. The civil service is divided into the unclassified service and the classified service.

(2) UNCLASSIFIED SERVICE. The unclassified service comprises positions held by:

(a) All state officers elected by the people.

(b) All officers and employees appointed by the governor whether subject to confirmation or not, unless otherwise provided.

(c) The director, associate director and state historian of the historical society; and, with the approval of the board of curators and the administrator, such number of specialists as are required by the society for specific research, writing, collecting or editing projects which for a limited period of time not to exceed 2 years, renewable at the discretion of the board of curators and the administrator for an additional 2-year period, require persons with particular training or experience in a specialized phase or field of history, historical research, writing, collecting or editing, and any persons whose entire salary is paid from funds reappropriated to the society by s. 20.245 (1) (g) where competitive examination is impractical.

(cm) All positions of the university of Wisconsin system identified in s. 20.923 (4), (4m) and (5).

(d) All faculty and academic staff, as defined in s. 36.05 (1) and (8), in the university of Wisconsin system.

(e) The number of division administrator positions as specified in this paragraph for any board, department or commission as defined in sub. (4) (a) and s. 15.01 (5), and for the historical society with specific functional assignments to be determined by the appointing authority, except as otherwise provided in sub. (4) or as otherwise provided by law:

1. Administration — 11.

2. Agriculture, trade and consumer protection — 6.

3. Development — 5.

3m. Educational communications board — 4.

4. Employment relations — 4.

4m. Gaming commission — 4.

5. Health and social services — 7.

5m. Historical society — 6.

6. Industry, labor and human relations — 7.

6m. Investment board — 1.

7. Justice — 4.

7m. Military affairs — 1.

8. Natural resources — 4.

8m. Public defender board — 2.

9. Public instruction — 5.

9m. Public service commission — 5.

10. Regulation and licensing — 4.

11. Revenue — 3.

12. Transportation — 6.

13. Veterans affairs — 2.

14. Technical college system board — 2.

(f) All legislative officers and, in addition, policy research personnel, assistants to legislators, research staff assigned to legislative committees and party caucuses and other persons employed under s. 13.20.

(fe) The state auditor and personnel of the legislative audit bureau.

(fm) The director and personnel of the legislative fiscal bureau.

(fo) The director and personnel of the legislative council staff.

(fs) All deputies of department secretaries appointed under s. 15.04 (2) and executive assistants to department secretaries appointed under s. 15.05 (3), including those appointed by the attorney general, the adjutant general, the director of the technical college system and the state superintendent of public instruction.

(g) One stenographer appointed by each elective executive officer, and one deputy or assistant appointed by each elective executive officer except the attorney general and superintendent of public instruction.

(h) The clerks and other assistants and employees and justices of the supreme court.

(i) The judges, clerks and other assistants and employees of the court of appeals.

(j) Boys and girls employed in the youth camps created under s. 23.09 (23).

(jg) American Indian youth employed under s. 23.09 (22) (b).

(jm) The employees of the lower Wisconsin state riverway board.

(k) Persons employed by the university of Wisconsin system whose employment is a necessary part of their training, student assistants or student hourly help as provided under s. 36.05 (6).

(L) One deputy of the head of any of the following agencies:

1. Office of commissioner of banking, created under s. 15.55.

2. Educational communications board, created under s. 15.57.

3. Office of commissioner of credit unions, created under s. 15.59.

3m. Department of employe trust funds.

4. Higher educational aids board, created under s. 15.67.

5. Office of commissioner of insurance, created under s. 15.73.

5m. Public defender board.

6. Office of commissioner of savings and loan, created under s. 15.82.

7. Office of commissioner of securities, created under s. 15.85.

(m) One executive assistant of the commission chairperson of each of the following agencies:

2. Employment relations commission, created under s. 15.58.

2m. Gaming commission.

3. Public service commission, created under s. 15.79.

(mp) One staff director of the cost containment commission, created under s. 15.195 (10).

(n) Court reporters employed by the circuit court.

(o) The executive director and other employees of the judicial commission.

(om) The executive director of the ethics board.

(p) All employees of the investment board, except blue collar and clerical employees.

(pd) The chairperson of the parole commission.

(pm) The state fair park director.

(q) The state public defender and staff attorney positions in the office of the state public defender.

(r) All employees appointed by the lieutenant governor.

(s) The director, sales manager and 3 sales representatives of prison industries in the department of corrections.

(sg) Deputy district attorney and assistant district attorney positions in the office of district attorney.

(u) Psychiatric residents employed in an educational training program by the department of health and social services.

(v) Not more than 5 bureau directors in the department of regulation and licensing.

(w) The program director for crime victims compensation and witness services in the department of justice.

(we) Professional staff members of the educational communications board authorized under s. 39.13 (2).

(wm) The executive director of the elections board.

(x) The executive director of the waste facility siting board.

(xg) The executive secretary of the board of commissioners of public lands.

(xm) The executive director of the sentencing commission.

(y) The director and staff assistant of the federal-state relations office of the department of administration.

(ym) The director of the office of health care information, created under s. 15.737 (1).

(yn) The executive secretary and staff of the Kickapoo valley governing board.

(z) All other officers and employees of the state whose positions are expressly excluded from the classified service by statute or whose positions cannot be placed under the classified service because of the restrictions placed on them by statute.

(zm) The privacy advocate under s. 19.625 (1).

(3) CLASSIFIED SERVICE (a) The classified service comprises all positions not included in the unclassified service.

(b) Employees holding permanent or sessional classified service positions in the legislative branch shall have the same legal status as employees holding permanent classified service positions in the administrative branch.

(e) School-year positions in the classified service shall be designated as permanent positions.

(4) DIVISION ADMINISTRATORS (a) The number of administrator positions specified in sub. (2) (e) includes all administrator positions specifically authorized by law to be employed outside the classified service in each department, board or commission and the historical society. In this paragraph, "department" has the meaning given under s. 15.01 (5), "board" means the educational communications board, investment board, public defender board and technical college system board and "commission" means the public service commission and the gaming commission. Notwithstanding sub. (2) (z), no division administrator position exceeding the number authorized in sub. (2) (e) may be created in the unclassified service.

(b) Notwithstanding sub. (2) (e), no appointing authority may assign the functions enumerated in this paragraph to be supervised in whole or in part by a division administrator in the unclassified service:

1. Functions of the department of revenue relating to income, franchise, sales or excise tax administration.

2. Functions of the department of justice relating to criminal investigations, except for controlled substance criminal investigations.

3. Any function of the department of employe trust funds.

4. Functions of the public service commission relating to scheduling and conducting public hearings.

(c) Any proposal of a board, department or commission, as defined in par. (a) and s. 15.01 (5), or of the historical society, for a change in the number of positions enumerated in sub. (2) (e), before being submitted to the legislature, shall first be submitted by the board, department or commission or by the historical society for a separate review by the department of administration and by the secretary. The department of administration's review shall include information on the appropriateness of the proposed change with regard to a board's, department's, commission's or society's current or proposed internal organizational structure under s. 15.02 (4). The secretary's review shall include information on whether the existing classified or existing or proposed unclassified division administrator position involved is or would be assigned to pay range 1-18 or above in schedule 1, or a comparable level, of the compensation plan under s. 230.12. The results of these reviews shall be provided by the department of administration and by the secretary to the joint committee on finance and the joint committee on employment relations at the same time that the board's, department's, commission's or society's proposal is presented to either committee.

(7) EXCEPTIONAL EMPLOYMENT SITUATIONS The administrator shall provide, by rule, for exceptional methods and kinds of employment to meet the needs of the service during periods of disaster or national emergency, and for other exceptional employment situations such as to employ the mentally handicapped, the physically handicapped and the disadvantaged.

(8) AUDITING OF PAYROLLS The secretary shall audit the payrolls of the classified and unclassified service, as necessary, to carry out this subchapter.

History: 1971 c. 40, 270; 1973 c. 333, 335; 1977 c. 29, 187; 1977 c. 196 ss. 34, 108, 130 (5); 1977 c. 272, 418, 449; Stats 1977 s. 230.08; 1979 c. 34, 189, 221, 356, 361; 1981 c. 20, 347, 374; 1983 a. 27 ss. 1605o to 1609am, 2200 (15); 1983 a. 189 s. 329 (27); 1983 a. 371, 378; 1985 a. 29; 1987 a. 27, 119, 204, 354, 399, 403; 1989 a. 31, 107, 119, 122, 169, 208, 219, 336; 1991 a. 39, 250, 269; 1993 a. 16, 349, 399.

Administrative agency may not issue rule that is not expressly or impliedly authorized by statute. Limiting eligibility lists of applicants for civil service positions on the basis of race or sex is not authorized by (7) State v. DILHR, 77 W (2d) 126, 252 NW (2d) 353.

230.09 Classification. (1) The secretary shall ascertain and record the duties, responsibilities and authorities of, and establish grade levels and classifications for, all positions in the classified service. Each classification so established shall include all positions which are comparable with respect to authority, responsibility and nature of work required. Each classification shall be established to include as many positions as are reasonable and practicable. In addition, each class shall:

(b) Be designated by the same official generic title. The official titles of classes so established shall be used in all reports and payrolls and in all estimates requesting the appropriation of money to pay employees.

(c) Be so constituted that the same evaluated grade level within a pay schedule can be applied to all positions in the class under similar working conditions.

(d) Where practical, be included in a series to provide probable lines of progression.

(2) (a) After consultation with the appointing authorities, the secretary shall allocate each position in the classified service to an appropriate class on the basis of its duties, authority, responsibilities or other factors recognized in the job evaluation process. The secretary may reclassify or reallocate positions on the same basis.

(am) The secretary shall maintain and improve the classification plan to meet the needs of the service, using methods and tech-

niques which may include personnel management surveys, individual position reviews, occupational group classification surveys, or other appropriate methods of position review. Such reviews may be initiated by the secretary after taking into consideration the recommendations of the appointing authority, or at his or her own discretion. The secretary shall establish, modify or abolish classifications as the needs of the service require.

(b) To accommodate and effectuate the continuing changes in the classification plan as a result of the classification survey program and otherwise, the secretary shall, upon initial establishment of a classification, assign that class to the appropriate pay rate or range, and may, upon subsequent review, reassign classes to different pay rates or ranges. The secretary shall assign each class to a pay range according to the skill, effort, responsibility and working conditions required for the class, without regard to whether the class is occupied primarily by members of a certain gender or racial group. The secretary shall give notice to appointing authorities to permit them to make recommendations before final action is taken on any such assignment or reassignment of classes.

(c) If anticipated changes in program or organization will significantly affect the assignment of duties or responsibilities to positions, the appointing authority shall, whenever practicable, confer with the secretary within a reasonable time prior to the reorganization or changes in program to formulate methods to fill positions which are newly established or modified to the extent that reclassification of the position is appropriate. In all cases, appointing authorities shall give written notice to the secretary and employe of changes in the assignment of duties or responsibilities to a position when the changes in assignment may affect the classification of the position.

(d) If after review of a filled position the secretary reclassifies or reallocates the position, the secretary shall determine whether the incumbent shall be regraded or whether the position shall be opened to other applicants.

(e) If an appointing authority appoints a person to a position at an approved grade level lower than that recognized for the position, the person in the position may be regraded, only upon recommendation of the appointing authority, subject to the statutes, classification plan and rules prescribed under this subchapter.

(f) If a position in the classified service is reclassified or reallocated, or if a position is allocated from the unclassified service to a classification in the classified service having a lower pay rate or pay range maximum than the incumbent's current basic pay rate, the pay rate of the incumbent shall be adjusted under the compensation plan under s. 230.12 or the rules prescribed under this section.

(g) When filling a new or vacant position, if the secretary determines that the classification for a position is different than that provided for by the legislature as established by law or in budget determinations, or as authorized by the joint committee on finance under s. 13.10, or as specified by the governor creating positions under s. 16.505 (1) (c) or (2) or the board of regents of the university of Wisconsin system creating positions under s. 16.505 (2m), or is different than that of the previous incumbent, the secretary shall notify the administrator and the secretary of administration. The administrator shall withhold action on the selection and certification process for filling the position. The secretary of administration shall review the position to determine that sufficient funds exist for the position and that the duties and responsibilities of the proposed position reflect the intent of the legislature as established by law or in budget determinations, the intent of the joint committee on finance acting under s. 13.10, the intent of the governor creating positions under s. 16.505 (1) (c) or (2) or the intent of the board of regents of the university of Wisconsin system creating positions under s. 16.505 (2m). The administrator may not proceed with the selection and certification process until the secretary of administration has authorized the position to be filled.

(3) The secretary shall establish separate classifications for career executive positions under s. 230.24 and rules governing the salary administration of positions in such classifications.

History: 1971 c. 270 ss. 16, 26; 1977 c. 196 ss. 32, 109, 130 (5); 1977 c. 272, 273, 418; 1981 c. 20; 1983 a. 27 ss. 1609b to 1610, 2200 (15); 1985 a. 29, 120; 1987 a. 27, 403; 1989 a. 39; 1991 a. 315.

Under (2) (b), employes in different occupational groups who perform substantially similar or equal work must be assigned to same pay range. 68 Atty Gen 190.

230.10 Compensation plan coverage. (1) Except as provided under sub. (2), the compensation plan provisions of s. 230.12 apply to all employes of the classified service, unless they are covered by a collective bargaining agreement under subch. V of ch. 111.

(2) The compensation plan in effect at the time that a representative is recognized or certified to represent employes in a collective bargaining unit and the employe salary and benefit provisions under s. 230.12 (3) (e) in effect at the time that a representative is certified to represent employes in a collective bargaining unit under subch. V of ch. 111 constitute the compensation plan or employe salary and benefit provisions for employes in the collective bargaining unit until a collective bargaining agreement becomes effective for that unit. If a collective bargaining agreement under subch. V of ch. 111 expires prior to the effective date of a subsequent agreement, and a representative continues to be recognized or certified to represent employes specified in s. 111.81 (7) (a) or certified to represent employes specified in s. 111.81 (7) (b) or (c) in that collective bargaining unit, the wage rates of the employes in such a unit shall be frozen until a subsequent agreement becomes effective, and the compensation plan under s. 230.12 and salary and benefit changes adopted under s. 230.12 (3) (e) do not apply to employes in the unit.

History: 1971 c. 270; 1977 c. 44; 1977 c. 196 ss. 35, 131; 1977 c. 272 s. 98; Stats 1977 s. 230.10; 1985 a. 42; 1989 a. 31.

230.12 Compensation. (1) **COMPENSATION PLAN** (a) *General provision.* 1. The compensation plan consists of both of the following:

a. The dollar values of the pay rates and ranges and the within range pay steps of the separate pay schedules to which the classes and grade levels for positions in the classified service established under the classification plan are assigned.

b. The provisions governing the pay of all unclassified positions except positions for employes of the university of Wisconsin system which are not identified under s. 20.923 (4) or (4m), for employes of the legislature which are not identified under s. 20.923 (4), for employes of a service agency under subch. IV of ch. 13, for employes of the state court system, for employes of the investment board identified under s. 230.08 (2) (p), for one stenographer employed by each elective executive officer under s. 230.08 (2) (g), and for 3 sales representatives of prison industries and one sales manager of prison industries identified under s. 303.01 (10).

2. In addition, the compensation plan may, when applicable, include provisions for supplemental pay and pay adjustments, and other provisions required to implement the plan or amendments thereto.

3. Provisions for administration of the compensation plan and salary transactions shall be provided in either the rules of the secretary or the compensation plan.

(b) *Schedules.* The several separate pay schedules may incorporate different wage and salary administration features. Each schedule shall provide for pay ranges or pay rates and applicable methods and frequency of within range pay adjustments based on such considerations as competitive practice, appropriate principles and techniques of wage and salary administration and determination, elimination of pay inequities based on gender or race, and the needs of the service. Not limited by enumeration, such considerations for establishment of pay rates and ranges and applicable within range pay adjustments may include provisions

prevalent in schedules used in other public and private employment, professional or advanced training, recognized expertise, or any other criteria which assures state employe compensation is set on an equitable basis.

(bf) *Legislative action.* Provisions of the compensation plan that the joint committee on employment relations approves which require legislative action for implementation, such as changes in fringe benefits and any proposed amendments, deletions or additions to existing law, shall be introduced by the committee in a bill or companion bills, to be put on the calendar. The bill or companion bills are not subject to ss. 13.093 (1), 13.50 (6) (a) and (b) and 16.47 (2). The committee may, however, submit suitable portions of the bill or companion bills to appropriate legislative committees for advisory recommendations on the proposed changes. The committee shall accompany the introduction of such proposed legislation with a message that informs the legislature of the committee's concurrence with the matters under consideration and which recommends the passage of such legislation without change. It is the intent of the legislature to make this process consistent with that set forth under s. 111.92.

(c) *Supplementary compensation.* 1. When applicable, the compensation plan may provide for pay supplements to reflect those circumstances not reflected by the basic pay rates or ranges as established in the compensation plan. Such pay supplements shall not be considered as part of an employe's basic pay.

2. The secretary may establish a plan of extra compensation for work performed during selected hours at an hourly rate or rates subject to approval of the joint committee on employment relations. The secretary may establish a plan of extra compensation for assistant district attorneys, which may include extra compensation for work performed during selected hours or for special duty such as on-call duty, at hourly rates subject to the approval of the joint committee on employment relations. Eligibility for such extra compensation shall be as provided in the compensation plan.

3. Meals furnished an employe by the employing state agency, while the employe is required by the agency to take meals in the performance of assigned duties or responsibilities, shall be furnished without charge to the employe or deduction from the employe's salary.

(d) *Uniforms and safety equipment.* The secretary, with approval of the joint committee on employment relations, may establish a schedule of payments to employes for uniforms or protective clothing and equipment required to perform their duties.

(dm) *Damaged personal articles.* The compensation plan shall include provision for reimbursement of employes whose articles of clothing, watches or eye glasses are damaged in the line of duty, if the damage is not caused by employe carelessness or normal wear and tear resulting from the type of work performed by an employe, subject to a minimum actual value or repair cost specified in the plan. Payments are subject to approval of an employe's appointing authority and shall not exceed a maximum amount specified in the plan.

(e) *Maintenance provisions.* The compensation plan shall also include the approved schedule of allowable charges for the deductions from the pay of employes who are furnished meals, wholesale provisions and other maintenance provisions. Where allowances such as laundry or meals are provided any classified employe or an employe and his or her family, and such allowance in kind is included as a part of the compensation, the appointing authority or department head in addition shall pay in cash the value of the food during the vacation period or noncumulative leave of absence, if not so utilized, to such an employe.

(f) *Trainee pay rates.* When applicable, the compensation plan may provide for rates of pay below the minimum of the pay range to reflect the appropriate beginning pay for persons appointed to positions who do not possess the qualifications necessary to perform the work at the classification level for which they are being trained. Pay increases up to the minimum of the pay range shall

be provided to compensate for the attainment of additional qualifications during the trainee period.

(3) *COMPENSATION PLAN; ESTABLISHMENT AND REVISION* (a) *Submission to the joint committee on employment relations.* The secretary shall submit to the joint committee on employment relations a proposal for any required changes in the compensation plan which may include across the board pay adjustments for positions in the classified service. The proposal shall include the amounts and methods for within range pay progression, for pay transactions, and for performance awards. The proposal shall be based upon experience in recruiting for the service, the principle of providing pay equity regardless of gender or race, data collected as to rates of pay for comparable work in other public services and in commercial and industrial establishments, recommendations of agencies and any special studies carried on as to the need for any changes in the compensation plan to cover each year of the biennium. The proposal shall also take proper account of prevailing pay rates, costs and standards of living and the state's employment policies.

(ad) *Timing of proposed changes.* Notwithstanding any other statute, the secretary may delay timing for announcement or implementation of any recommended changes in the compensation plan under this section until after some or all of the collective bargaining agreements under subch. V of ch. 111 for that biennium are negotiated. Any such action taken under this paragraph is not appealable under s. 230.44.

(b) *Public hearing on the proposal; adoption of plan.* The secretary shall submit the proposal for any required changes in the compensation plan to the joint committee on employment relations. The committee shall hold a public hearing on the proposal. The proposal, as may be modified by the joint committee on employment relations together with the unchanged provisions of the current compensation plan, shall, for the ensuing fiscal year or until a new or modified plan is adopted under this subsection, constitute the state's compensation plan for positions in the classified service. Any modification of the secretary's proposed changes in the compensation plan by the joint committee on employment relations may be disapproved by the governor within 10 calendar days. A vote of 6 members of the joint committee on employment relations is required to set aside any such disapproval of the governor.

(c) *Interim adjustments.* Subject to pars. (a) and (b), the secretary may propose amendments to one or more parts of the compensation plan at such times as the needs of the service require.

(d) *Legislative employes.* This subsection shall not apply to employes of the legislature under s. 13.20 (2).

(e) *University of Wisconsin system faculty and academic staff employes.* The secretary, after receiving recommendations from the board of regents, shall submit to the joint committee on employment relations a proposal for adjusting compensation and employe benefits for employes under ss. 20.923 (5) and (6) (m) and 230.08 (2) (d) who are not included in a collective bargaining unit under subch. V of ch. 111 for which a representative is certified. The proposal shall be based upon the competitive ability of the board of regents to recruit and retain qualified faculty and academic staff, data collected as to rates of pay for comparable work in other public services, universities and commercial and industrial establishments, recommendations of the board of regents and any special studies carried on as to the need for any changes in compensation and employe benefits to cover each year of the biennium. The proposal shall also take proper account of prevailing pay rates, costs and standards of living and the state's employment policies. The proposal for such pay adjustments may contain recommendations for across-the-board pay adjustments, merit or other adjustments and employe benefit improvements. Paragraph (b) and sub. (1) (bf) shall apply to the process for approval of all pay adjustments for such employes under ss. 20.923 (5) and (6) (m) and 230.08 (2) (d). The proposal as approved by the joint committee on employment relations and the

governor shall be based upon a percentage of the budgeted salary base for such employes under ss. 20.923 (5) and (6) (m) and 230.08 (2) (d). The amount included in the proposal for merit and adjustments other than across-the-board pay adjustments is available for discretionary use by the board of regents.

(4) COMPENSATION PLAN IMPLEMENTATION PROVISIONS. (a) When an approved compensation plan or an amendment thereto becomes effective, required individual pay adjustments shall be made in accordance with determinations made by the secretary to implement the approved plan.

(b) The secretary may, without prior approval of the joint committee on employment relations, grant an across the board adjustment, or appropriate portion thereof, previously approved by the committee under this section to employes who did not receive the adjustment on the effective date of the plan. "Employes" as used in this paragraph means those employes who are removed from a collective bargaining unit represented by a certified representative as the result of an approved transaction after the effective date of the compensation plan but prior to the effective date of any general adjustments provided under the bargaining unit agreement. No such across the board increase may become effective prior to the effective date of the individual employe transaction. In like manner an appointing authority may grant within range pay adjustments to similarly affected employes, subject to sub. (5) and applicable funding limitations.

(5) WITHIN RANGE PAY ADJUSTMENTS. (a) *Pay advancement techniques; application.* The varying circumstances and needs of the widely diverse occupational groups of state service must be recognized and met through several methods of systematic pay advancement. To this end the compensation program shall contain either individual or combinations of pay advancement techniques, and the pay schedules therein may contain provisions for a variety of methods of within range progression, including, but not limited to discretionary performance awards, equity adjustments, "time in grade" adjustments, and other appropriate within range adjustments as may be provided in the compensation schedule.

(b) *Date.* Any authorized pay adjustments under this section shall be awarded by each appointing authority for the agency subject to par. (d) on the date or dates in the approved plan.

(c) *Increase limits.* Unless otherwise defined in the pay schedule the total amount for all such within range increases shall not exceed the amount for such increases specified and approved by the joint committee on employment relations in its action on the secretary's proposal for such increases.

(d) *Individual increase limit.* Except as authorized in s. 36.09 (1) (j) for a position specified in s. 20.923 (4) (j) or (4m), no appointing authority shall award an employe cumulative performance award increases or other types of cumulative within range pay adjustments exceeding a total of 10% of the employe's base pay during a fiscal year. This paragraph does not apply to a specific type of pay increase authorized by the compensation plan if the plan specifically refers to this paragraph and specifically provides that the type of pay increase referenced in the plan is not subject to this paragraph.

(e) *Appeal of discretionary performance award.* An employe who is dissatisfied with the evaluation methodology and results used by an agency to determine any discretionary performance award, or the amount of such an award, may grieve the decision to the appointing authority under the agency's grievance procedure. The decision of the appointing authority is final and may not be appealed to the commission under s. 230.44 or 230.45 (1) (c).

(6) ADDITIONAL HOURS OF WORK PROVISIONS. Provisions relating to compensation for hours of work in addition to the standard basis of employment under s. 230.35 (5) (a) shall be provided for in the compensation plan. The provisions shall include the rate or rates to be paid to employes and the standards for determining which employes receive such compensation.

(7) EXCEPTIONAL PERFORMANCE AWARDS. Consistent with applicable provisions of sub. (5) it is the declared public policy that pay awards to employes in the classified service shall be granted consistent with sound personnel practice to recognize exceptional performance. Such exceptional performance awards shall be noncumulative and awarded to employes in accordance with eligibility determinations of the secretary consistent with the provisions of the approved compensation plan and the schedules contained therein. Funding for such exceptional performance awards shall be derived from any unspent moneys under sub. (5) and from the within range awards granted to an employe during the current fiscal year under sub. (5) who terminates with the agency. Exceptional performance awards shall be made on a lump sum basis, within the limits approved for such awards and shall not be considered part of an employe's basic pay.

(7m) PAY ADJUSTMENT FILING REQUIREMENTS. Except as provided in sub. (7), in the rules of the secretary, and in the compensation plan, pay increases shall be made only on the dates prescribed under sub. (8). Appointing authorities shall at such times each year as specified by the secretary file with the secretary and with the department of administration a list of employes showing their then existing pay rates and their proposed new pay rates.

(8) EFFECTIVE DATE OF COMPENSATION ADJUSTMENTS. Except as provided in s. 20.923 (3), all compensation adjustments for state employes shall be effective on the beginning date of the pay period nearest the statutory or administrative date.

History: 1971 c. 55, 125, 215; 1971 c. 270 ss. 20, 27, 28, 30 to 32; 1971 c. 336; Stats. 1971 s. 16.086; 1973 c. 12, 51, 90; 1975 c. 28, 39, 199, 224; 1977 c. 29, 44; 1977 c. 196 ss. 36, 130 (3), (5), (11), 131; 1977 c. 272, 418, 449; Stats. 1977 s. 230.12; 1979 c. 221; 1981 c. 20 s. 2202 (33) (b); 1981 c. 153; 1983 a. 27 ss. 1611am to 1612am, 2200 (15); 1983 a. 140; 1985 a. 29, 34, 42, 119, 332; 1987 a. 33, 83, 340, 399, 403; 1989 a. 39, 56, 117, 119, 124, 153, 336, 359; 1991 a. 269

230.13 Closed records. (1) Except as provided in s. 103.13, the secretary and the administrator may keep records of the following personnel matters closed to the public:

(a) Examination scores and ranks and other evaluations of applicants.

(c) Dismissals, demotions and other disciplinary actions.

(d) Pay survey data obtained from identifiable nonpublic employers.

(e) Names of nonpublic employers contributing pay survey data.

(2) Unless the name of an applicant is certified under s. 230.25, the secretary and the administrator shall keep records of the identity of an applicant for a position closed to the public.

History: 1971 c. 270; 1977 c. 196 s. 37; Stats. 1977 s. 230.13; 1979 c. 339; 1989 a. 31; 1991 a. 269, 317

Only names of applicants for classified positions not certified for employment may be withheld under (2). *Milwaukee Journal v. UW Board of Regents*, 163 W (2d) 933, 472 NW (2d) 607 (Ct. App. 1991)

230.14 Recruitment. (1) Recruitment for classified positions shall be an active continuous process conducted in a manner that assures a diverse, highly qualified group of applicants; and shall be conducted, except as provided under sub. (2), on the broadest possible base consistent with sound personnel management practices and an approved affirmative action plan or program. Due consideration shall be given to the provisions of s. 230.19.

(2) The administrator may recruit outside of this state only if the administrator determines that there is a critical shortage of residents of this state possessing the skills or qualifications required for the position.

(3m) In advertising openings in the classified civil service, the state may not require as a condition of application that an applicant be a college graduate unless the opening must be filled by an incumbent holding a credential, as defined in s. 440.01 (2) (a), or other license, permit, certificate or registration in an occupation

regulated by law and college graduation is required to obtain the occupational credential, license, permit, certificate or registration.

History: 1977 c. 196; 1981 c. 26; 1987 a. 32; 1991 a. 132.

230.147 Employment of aid recipients. (1) Each appointing authority of an agency with more than 100 authorized permanent full-time equivalent positions shall prepare and implement a plan of action to employ persons who, at the time determined under sub. (4), receive aid under s. 49.19 with the goal of making the ratio of those persons occupying permanent positions in the agency to the total number of persons occupying permanent positions in the agency equal to the ratio of the average case load receiving aid under s. 49.19 in this state in the previous fiscal year, as determined by the department of health and social services, to the average number of persons in the state civilian labor force in the preceding fiscal year, as determined by the department of industry, labor and human relations.

(2) Each appointing authority of an agency with 100 or fewer authorized permanent full-time equivalent positions is encouraged to employ persons who, at the time determined under sub. (4), receive aid under s. 49.19 to attempt to make the ratio of those persons occupying permanent positions in the agency to the total number of persons occupying permanent positions in the agency equal to the ratio of the average case load receiving aid under s. 49.19 in this state in the previous fiscal year, as determined by the department of health and social services, to the average number of persons in the state civilian labor force in the preceding fiscal year, as determined by the department of industry, labor and human relations.

(3) Notwithstanding subs. (1) and (2), the state fair park board shall make every reasonable effort to employ in permanent full-time equivalent positions persons who, at the time determined under sub. (4), receive aid under s. 49.19. The state fair park board shall consult with the department of employment relations to assure that its efforts under this subsection comply with ch. 230.

(4) The determination of when a person is receiving aid under s. 49.19 for the purposes of this section shall be made as follows:

(a) For positions in the classified service, when the person is certified under s. 230.25.

(b) For positions outside of the classified service, when the person begins employment with the agency or state fair park board.

History: 1985 a. 285; 1987 a. 27; 1989 a. 31.

230.148 Unclassified service reappointments. No person may be reappointed to a position in the unclassified service in any executive branch agency except the office of the governor, within one year after the person vacated the position, at a salary in excess of the salary which the person was receiving in the position at the time he or she vacated the position unless the excess is for an across the board pay adjustment or merit pay adjustment which is authorized by the joint committee on employment relations or by the legislature and which is generally awarded to other employees in the period between the time the person vacated the position and the time of the reappointment, or unless the excess was received by the person after vacating the position and while serving for not less than 6 consecutive months in any agency in any branch of state government.

History: 1979 c. 34.

230.15 Appointments, promotions, changes in classified service. (1) Appointments to, and promotions in the classified service, shall be made only according to merit and fitness, which shall be ascertained so far as practicable by competitive examination. The administrator may waive competitive examination for appointments made under sub. (1m).

(1m) (a) Whenever the state becomes responsible for a function previously administered by another governmental agency or a quasi-public or private enterprise, or when positions in the unclassified service, excluding employees of the legislature, are determined to be more appropriately included in the classified ser-

vice, the affected positions shall be included in the classified service.

(b) Whenever a position is included in the classified service under par. (a), the secretary shall determine all of the following:

1. The classification of the position.

2. If the incumbent employe is certified under par. (c), the pay, employe benefits and status under s. 230.35 appropriate for the employe.

(c) 1. Whenever a position is included in the classified service under par. (a), the administrator may waive the requirement for competitive examination under sub. (1) with respect to the position and certify the incumbent employe for appointment to the position in accordance with subd. 2.

2. The administrator may certify an incumbent employe as eligible for appointment under subd. 1. if the administrator determines on the basis of sound personnel management practices that the incumbent is qualified for the position included in the classified service.

3. If an employe is appointed after being certified under subd. 2., the administrator shall determine the employe's probationary status under s. 230.28, except that the employe shall receive credit toward his or her probationary period for the time that the employe had been employed in the position immediately prior to appointment.

(2) If a vacancy occurs in a position in the classified service when peculiar and exceptional qualifications of a scientific, professional, or educational character are required, and if presented with satisfactory evidence that for specified reasons competition in such special cases is impracticable, and that the position can best be filled by the selection of some designated person of high and recognized attainments in such qualities, the administrator may waive competition requirements unless the vacancy is to be filled by promotion.

(3) No person shall be appointed, transferred, removed, reinstated, restored, promoted or reduced in the classified service in any manner or by any means, except as provided in this subchapter.

History: 1971 c. 270 ss. 23, 46; Stats. 1971 s. 16.11; 1973 c. 90; 1977 c. 196 ss. 39, 131; Stats. 1977 s. 230.15; 1981 c. 140; 1983 a. 27; 1989 a. 31; 1993 a. 12.

The federal civil rights act of 1991 does not prohibit expanded certification under (1n) 80 Atty. Gen. 264.

230.16 Applications and examinations. (1) (a) The administrator shall require persons applying for admission to any examination under this subchapter or under the rules of the administrator to file an application with the division a reasonable time prior to the proposed examination.

(am) The administrator may require in connection with the application such supplementary work history, educational transcripts, statements of physicians or others having knowledge of the applicant, as needed for qualification evaluations.

(b) The division shall furnish application forms without charge to all persons requesting them.

(2) Competitive examinations shall be free and open to all applicants who at the time of application are residents of this state and who have fulfilled the preliminary requirements stated in the examination announcement. To assure that all residents of this state have a fair opportunity to compete, examinations shall be held at such times and places as, in the judgment of the administrator, most nearly meet the convenience of applicants and needs of the service. If a critical need for employes in specific classifications or positions exists, the administrator may open competitive examinations to persons who are not residents of this state.

(3) The administrator may appoint boards of examiners of at least 2 persons for the purpose of conducting oral examinations as a part of the examination procedure for certain positions. All board members shall be well-qualified and impartial and at least one shall be from outside of the civil service. All questions asked and answers made in any examination of applicants shall be recorded and made a part of the records of the applicants.

(4) All examinations, including minimum training and experience requirements, for positions in the classified service shall be job-related in compliance with appropriate validation standards and shall be subject to the approval of the administrator. All relevant experience, whether paid or unpaid, shall satisfy experience requirements.

(5) In the interest of sound personnel management, consideration of applicants and service to agencies, the administrator may set a standard for proceeding to subsequent steps in an examination, provided that all applicants are fairly treated and due notice has been given. The standard may be at or above the passing point set by the administrator for any portion of the examination. The administrator shall utilize appropriate scientific techniques and procedures in administering the selection process, in rating the results of examinations and in determining the relative ratings of the competitors.

(6) If any applicant is unable to complete the examination in the form presented to the applicant due to a handicap, the division shall provide a reader, an appropriate place to take the examination or other similar prerequisites to ensure equality of opportunity in the examination.

(7) (a) A preference shall be given to those veterans and to those spouses of veterans specified in subds. 1. to 6. who gain eligibility on any competitive employment register and who do not currently hold a permanent appointment or have mandatory restoration rights to a permanent appointment to any position. A preference means the following:

1. For a veteran, that 10 points shall be added to his or her grade.

2. For a disabled wartime veteran, that 15 points shall be added to his or her grade.

3. For a disabled wartime veteran whose disability is at least 30%, that 20 points shall be added to his or her grade.

4. For the spouse of a disabled wartime veteran whose disability is at least 70%, that 10 points shall be added to the spouse's grade.

5. For the unremarried spouse of a veteran who was killed in action, that 10 points shall be added to the spouse's grade.

6. For the unremarried spouse of a veteran who died of a service-connected disability, that 10 points shall be added to the spouse's grade.

(b) An applicant who is certified for a position after receiving a preference under par. (a) 4., 5. or 6. and who is appointed to that position may not obtain a preference under par. (a) 4., 5. or 6. for any other civil service position for which the applicant subsequently applies.

(7m) (a) In this subsection, "veteran" means a person who fulfills at least one of the following requirements:

1. Served on active duty in the U.S. armed forces for at least 180 days, not including training.

2. Was discharged from the U.S. armed forces because of a disability incurred during active duty or because of a disability that is later adjudicated by the U.S. department of veterans affairs to have been incurred during active duty.

3. Was honorably discharged from the U.S. armed forces.

4. Is eligible to receive federal veterans benefits.

(b) The department shall accept an application after its due date from a veteran if all of the following apply:

1. The register established on the basis of timely applications was established not more than 60 days before the applicant's separation from the U.S. armed forces.

2. The register has not expired.

3. The application was filed not more than 45 days after the applicant's separation from the U.S. armed forces.

4. The examination for the position is a written, nonessay examination that is scored by a machine.

(c) Within 30 days after acceptance of an application under par. (b), the department shall give the applicant an examination.

(8) The administrator may designate persons in or out of the official service of the state or of any municipality or county who shall, if in the service, with the consent of the head of the state or local agency or office in which such person serves, act as local examiner. Such persons in the performance of such duties as the administrator orders, shall be under the direct and sole control of the administrator; and their duties shall be considered part of the duties of the offices in which they are serving, and time shall be allowed therefor during office hours.

(9) The officials in control of state, municipal and county buildings, upon requisition by the administrator, shall furnish without charge adequate rooms and building services for the administration of examinations.

(10) Every reasonable precaution shall be taken to prevent any unauthorized person from gaining any knowledge of the nature or content of the examinations that is not available to every applicant.

(11) Records of examinations, including a transcript or recorded tape of oral examinations, given under this subchapter shall be retained for at least one year. Inspection of such records shall be regulated by rules of the administrator.

History: 1971 c. 270 ss. 12, 24, 35 to 37; Stats. 1971 s. 16.12; 1977 c. 196 ss. 40, 111, 130 (5), (6); 1977 c. 272; Stats. 1977 s. 230.16; 1981 c. 26, 140; 1983 a. 148 s. 10; 1983 a. 430, 538; 1987 a. 399; 1989 a. 31; 1991 a. 2, 101.

Residency requirement under (2) for classified positions violates equal protection since there is no such requirement for unclassified positions. 76 Atty Gen 45

See note to Art. I, sec. 1, citing Personnel Administrator of Mass. v. Feeney, 442 US 256 (1979).

230.17 Applicants and eligibles may be barred; bonds may be required. (1) The administrator shall provide by rule, the conditions, not otherwise provided by law, under which an applicant may be refused examination or reexamination, or an eligible refused certification. These conditions shall be based on sufficient reason and shall reflect sound technical personnel management practices and those standards of conduct, deportment and character necessary and demanded to the orderly, efficient and just operation of the state service.

(2) If the administrator refuses to examine an applicant, or after an examination to certify an eligible, as provided in this section, the administrator, if requested by the applicant so rejected within 10 days of the date of receipt of the notice of rejection, shall give the applicant a full and explicit statement of the exact cause of such refusal to examine or to certify. Applicants may appeal to the commission the decision of the administrator to refuse to examine or certify under s. 230.44 (1) (a). Upon request of an applicant or an eligible for a civil service position who has a handicap, the department of health and social services shall obtain from the administrator a detailed description of all duties entailed by such position and shall determine and report its findings to the administrator, as to the ability of the applicant, or eligible, to perform the duties of such position. Such findings shall be conclusive as to the qualifications of any applicant, or eligible, so examined. A notice of rejection shall notify an applicant or eligible of his or her rights under this subsection.

(3) When any position to be filled involves fiduciary responsibility, the appointing authority, where otherwise permitted by law, may require the appointee to furnish bond or other security, and shall notify the administrator of the amount and other details thereof. Any surety company authorized to do business in this state shall be a sufficient security on any such bond.

History: 1971 c. 270; 1977 c. 196 ss. 42, 130 (5); Stats. 1977 s. 230.17; 1983 a. 453.

230.18 Discrimination prohibited. No question in any form of application or in any examination may be so framed as to elicit information concerning the partisan political or religious opinions or affiliations of any applicant nor may any inquiry be made concerning such opinions or affiliations and all disclosures

thereof shall be discountenanced except that the administrator may evaluate the competence and impartiality of applicants for positions such as clinical chaplain in a state institutional program. No discriminations may be exercised in the recruitment, application, examination or hiring process against or in favor of any person because of the person's political or religious opinions or affiliations or because of age, sex, handicap, race, color, sexual orientation, national origin or ancestry except as otherwise provided.

History: 1971 c. 270; 1977 c. 196 s. 43; Stats. 1977 s. 230.18; 1981 c. 112, 391

230.19 Promotion. (1) The administrator shall provide employes with reasonable opportunities for career advancement, within a classified service structure designed to achieve and maintain a highly competent work force, with due consideration given to affirmative action.

(2) If, in the judgment of the administrator, the group of applicants best able to meet the requirements for vacancies in positions in the classified service are available within the classified service, the vacancies shall be filled by competition limited to persons in the classified service who are not employed under s. 230.26 or 230.27 and persons with the right of restoration resulting from layoff under s. 230.34 (2), unless it is necessary to go outside the classified service to be consistent with an approved affirmative action plan or program. The administrator may also limit competition for promotion to the employes of an agency or an employing unit within an agency if the resulting group of applicants would fairly represent the proportion of members of racial and ethnic, gender or handicap groups in the relevant labor pool for the state.

(3) A person with the right of restoration resulting from layoff under s. 230.34 (2) may compete only for a position under sub. (2) for which he or she could have competed had the layoff not occurred.

History: 1971 c. 270 s. 50; 1977 c. 196 ss. 44, 112; 1983 a. 402; 1987 a. 32; 1989 a. 31.

230.20 Recommendations. (1) Selection of classified state employes shall be based solely on merit and no employment recommendation shall be based on political or religious affiliations or on membership in associations not primarily related to merit in employment.

(2) An appointing authority may consider only those recommendations which he or she believes provide an objective evaluation of an applicant's character, training, experience, skills or abilities as they relate to the requirements for the position.

(3) Applicants for promotion shall not solicit recommendations from any source.

History: 1971 c. 270; 1977 c. 196 s. 45; 1977 c. 273; Stats. 1977 s. 230.20

230.21 Unskilled labor and critical recruitment selection. (1) The administrator may, to meet the needs of the service, establish separate recruitment, examination and certification procedures for filling positions in unskilled labor and service classes.

(1m) (a) If the administrator uses the method of random certification to determine which applicants for an unskilled labor or service position will receive further consideration for the position, the administrator shall do all of the following:

1. Engage in expanded certification by certifying additional names as provided in s. 230.25 (1n).
2. Additionally certify up to 3 names of persons who are veterans.

(b) If the administrator uses the method of random certification to determine which applicants for an unskilled labor or service position will receive further consideration for the position and the appointing authority does not select a veteran or a person the hiring of whom would serve affirmative action purposes, the appointing authority shall make and retain a written record of the appointing authority's reasons for selecting the person who was appointed. The appointing authority shall make the written records available to the department and annually submit a report

to the department summarizing the reasons contained in the written records.

(2) The administrator may designate classifications in which applicants are in critically short supply and may develop such recruitment, examination and certification processes as will provide agencies with prompt certification when qualified applicants can be found, provided that due notice has been given and proper competitive standards have been maintained.

(3) The administrator shall designate classifications in prison industries in the department of corrections as critical positions requiring expeditious hiring and shall develop such recruitment, examination and certification processes as will provide the department with prompt certification when qualified applicants can be found, provided that due notice has been given and proper competitive standards have been maintained.

History: 1971 c. 270; 1977 c. 196 ss. 45, 130 (3), (5); Stats. 1977 s. 230.21; 1983 a. 333; 1991 a. 39, 101

230.213 Affirmative action procedures for corrections positions. The administrator may, to meet affirmative action objectives, establish such recruitment, examination and certification procedures for positions in the department of corrections and for positions in juvenile correctional institutions within the division of youth services in the department of health and social services as will enable the department of corrections and the division of youth services in the department of health and social services to increase the number of employes of a specified gender or a specified racial or ethnic group in those positions. The administrator shall design the procedures to obtain a work force in the department of corrections and in juvenile correctional institutions within the division of youth services in the department of health and social services that reflects the relevant labor pool. The administrator may determine the relevant labor pool from the population of the state or of a particular geographic area of the state, whichever is more appropriate for achieving the affirmative action objective.

History: 1991 a. 39.

230.215 Part-time employment and flexible-time schedules. (1) **DECLARATION OF POLICY.** The legislature finds and declares:

(a) That employment practices which provide flexibility in scheduling hours of work often result in increased worker productivity, reduced absenteeism, improved employe morale and a more economical and efficient use of energy, highways and other transit systems.

(b) That traditional full-time work patterns fail to meet the needs of many potentially productive citizens who, due to age, health or family circumstances, are effectively prevented from engaging in full-time employment.

(c) That a greater number of permanent part-time employment opportunities are necessary to allow citizens a higher level of participation in the work force and to permit a greater utilization of the skills, talents and abilities of all citizens who want to work.

(d) That it is the intent of the legislature that all agencies of state government participate in developing and creating flexible-time work schedules, additional permanent part-time positions and other alternative work patterns in order to maximize, in a manner consistent with the needs of state service, the employment opportunities available to existing and potential state employes.

(e) That it is the intent of the legislature that all agencies of state government make available permanent part-time employment opportunities in classified positions.

(2) **FLEXIBLE-TIME EMPLOYMENT SCHEDULING.** In this subsection "flexible-time schedule" means a work schedule which includes required days or hours during which an employe subject to the work schedule must be present for work and designated hours during which the employe, with the approval of his or her supervisor, may elect a time of arrival to and departure from work. Every agency shall develop a plan for the establishment of employe flexible-time schedules. The plan shall attempt to maxi-

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mize efficiency of agency operations, the level of services to the public, energy conservation and employe productivity and shall consider traffic congestion, transit facilities and other relevant factors.

(3) PART-TIME EMPLOYMENT. (a) An agency may, with the approval of the secretary and with the approval of the secretary of administration under s. 16.50, restructure budgeted permanent positions as such positions become vacant or if an employe voluntarily requests a job-sharing or permanent part-time employment opportunity. No employe occupying a full-time permanent position may be involuntarily terminated, demoted, transferred or reassigned in order to restructure that position for permanent part-time employment and no such employe may be required to accept a permanent part-time position as a condition of continued employment.

(b) If the secretary, upon review of the report submitted under sub. (4), determines that an agency's past or proposed actions relating to permanent part-time employment opportunities do not adequately reflect the policy under sub. (1) (e), the secretary may recommend procedures designed to enable the agency to effect such policy.

(c) Permanent part-time appointments may be made for any number of hours in excess of 600 hours per year.

(4) REPORTS. Each agency, in complying with s. 15.04 (1) (d), shall include a report on the progress or failure of the plans of such agency in achieving the policies stated under sub. (1) and shall submit a copy of such report to the secretary.

(5) NONAPPLICATION. Section 230.35 (5) does not apply to employes subject to part-time employment and employe flexible-time scheduling under this section.

History: 1977 c. 196; 1979 c. 175 s. 53; 1979 c. 221; 1987 a. 140

230.22 Entry professional selection. (1) The secretary may establish by rule an entry professional class program for use in a wide range of entry professional positions.

(2) In connection with this program the secretary may establish separate classifications and corresponding pay provisions to provide agencies an entry professional program, through which they can compete on campuses and in the labor market for the best available applicants.

(3) The administrator may establish separate recruitment, evaluation and certification procedures for certain entry professional positions. Vacancies in entry professional positions may be limited to persons with a degree from an institution of higher education, as defined in s. 108.02 (18), or a degree under an associate degree program, as defined in s. 38.01 (1).

(4) The administrator may provide for cooperative programs leading to eligibility for permanent appointment in order to enable institutions of higher education and agencies to attract and train the highest caliber of undergraduate or graduate students for government employment.

History: 1971 c. 270; 1977 c. 196 ss. 46, 113, 130 (5); Stats. 1977 s. 230.22; 1983 a. 27 ss. 1612c to 1612e, 2200 (15); 1991 a. 39

230.24 Career executive selection. (1) The secretary may by rule develop a career executive program that emphasizes excellence in administrative skills in order to provide agencies with a pool of highly qualified executive candidates, to provide outstanding administrative employes a broad opportunity for career advancement and to provide for the mobility of such employes among the agencies and units of state government for the most advantageous use of their managerial and administrative skills. To accomplish the purpose of this program, the administrator may provide policies and standards for recruitment, examination, probation, employment register control, certification, transfer, promotion and reemployment, and the secretary may provide policies and standards for classification and salary administration, separate from procedures established for other employment. The secretary shall determine the positions which may be filled from career executive employment registers.

(1m) The policy established by the administrator under sub. (1) that deals with probation shall provide the option of extending the probationary period for handicapped individuals, as defined in s. 111.32 (8), who are employes in a manner consistent with s. 230.28 (1) (bm).

(2) A vacancy in a career executive position may be filled through an open competitive examination, a competitive promotional examination or by restricting competition to employes in career executive positions in order to achieve and maintain a highly competent work force in career executive positions, with due consideration given to affirmative action. The appointing authority shall consider the guidelines under s. 230.19 when deciding how to fill a vacancy under this paragraph.

(3) No rule may be adopted after September 15, 1979 which provides for an open enrollment period in the career executive program for incumbents who had an option to enter the program and who exercised the option of remaining outside of the program.

History: 1971 c. 270; 1977 c. 196 ss. 49, 114, 130 (3), (5); 1979 c. 42; 1983 a. 27, 192; 1987 a. 32; 1989 a. 144

See note to 230.44, citing *Basinas v. State*, 104 W (2d) 539, 312 NW (2d) 483 (1981).

230.25 Certification, appointments and registers.

(1) Appointing authorities shall give written notice to the administrator of any vacancy to be filled in any position in the classified service. The administrator shall certify, under this subchapter and the rules of the administrator, from the register of eligibles appropriate for the kind and type of employment, the grade and class in which the position is classified, the 5 names at the head thereof if the register of eligibles is less than 50. If the register is more than 50, the top 10%, with any fraction rounded to the next whole number, up to a maximum of 10 names, shall be certified. Up to 2 persons considered for appointment 3 times and not selected may be removed from the register for each 3 appointments made. Certification under this subsection shall be made before granting any preference under s. 230.16 (7).

(1g) For every position to be filled by promotion from a promotional register, the administrator shall, after certifying names under sub. (1), additionally certify the name of the highest ranked disabled wartime veteran whose disability is at least 70%.

(1m) After certifying names under sub. (1), additional names shall be certified in rank order of those who with the combination of veterans preference points awarded under s. 230.16 (7) and examination score earn a total score equal to or higher than the lowest score of those certified on the basis of examination only. The number of veterans or spouses of veterans added to the list may not exceed the number of names certified under sub. (1).

(1n) (a) After certifying names under subs. (1), (1g) and (1m), the administrator may engage in expanded certification by doing one or more of the following:

1. Certifying up to 3 names of persons belonging to at least one of one or more specified racial or ethnic groups.
2. Certifying up to 3 names of persons of a specified gender.
3. Certifying up to 3 names of persons with a handicap.

(b) The administrator may certify names under par. (a) 1. or 2. only if an agency requests expanded certification in order to comply with an approved affirmative action plan or program. The administrator may certify names under par. (a) 3. only if an agency requests expanded certification in order to hire persons with a handicap.

(1p) If an appointing authority appoints a person certified under this section and the person is not a veteran, the spouse of a veteran or a person the hiring of whom would serve affirmative action purposes, the appointing authority shall make and retain a written record of the appointing authority's reasons for selecting the person who was appointed. The appointing authority shall make the written records available to the department and annually submit a report to the department summarizing the reasons contained in the written records. The department shall annually prepare a report summarizing, for each agency, the reasons contained

in the records prepared by appointing authorities under this subsection.

(2) (a) When certifying names to appointing authorities under this section, the administrator shall specify whether the certification includes qualifying veterans or persons the hiring of whom would serve affirmative action purposes, without divulging the names of those individuals. The administrator shall not disclose any applicant's test score, with or without the addition of veterans preference points under s. 230.16 (7), to the appointing authority.

(b) Unless otherwise provided in this subchapter or the rules of the administrator, appointments shall be made by appointing authorities to all positions in the classified service from among those certified to them in accordance with this section. Appointments shall be made within 60 days after the date of certification unless an exception is made by the administrator. If an appointing authority does not make an appointment within 60 days after certification, he or she shall immediately report in writing to the administrator the reasons therefor. If the administrator determines that the failure to make an appointment is not justified under the merit system, the administrator shall issue an order directing that an appointment be made.

(3) The term of eligibility on original entrance and promotional registers is 6 months and thereafter the register expires but may be reactivated by the administrator for up to 3 years from the date of the establishment of the register. The eligibility of individuals for reinstatement or restoration is 3 years except as provided in ss. 230.28 and 230.34.

(4) (a) The administrator may establish a new and separate register for a specific position or class only when in the administrator's judgment there is no appropriate existing register from which appointments may be made.

(b) The administrator may establish separate registers for various geographic areas of the state if the needs of the service so require, provided proper publicity has been given of the intent to establish such registers.

History: 1971 c. 270 ss. 45, 48; Stats. 1971 s. 16.20; 1977 c. 196 ss. 50, 115, 130 (5), 131; 1977 c. 273; Stats. 1977 s. 230.25; 1983 a. 27; 1985 a. 29; 1987 a. 32; 1991 a. 101.

The federal civil rights act of 1991 does not prohibit expanded certification under (1n) 80 Atty Gen 264.

230.26 Limited term appointments. (1) The administrator may provide by rule for selection and appointment for limited term appointments, which are provisional appointments or appointments for less than 1,044 hours per year.

(1m) (a) Except as provided in par. (b), an appointing authority is prohibited from appointing a person who is not a resident of this state to a limited term appointment.

(b) The administrator may waive the prohibition under par. (a) if the appointed person's permanent work site is located outside this state.

(2) If there are urgent reasons for filling a vacancy in any position in the classified service and the administrator is unable to certify to the appointing authority, upon requisition by the latter, a list of persons eligible for appointment from an appropriate employment register, the appointing authority may nominate a person to the administrator for noncompetitive examination. If the nominee is certified by the administrator as qualified, the nominee may be appointed provisionally to fill the vacancy until an appointment can be made from a register established after announcement of competition for the position, except that no provisional appointment may be continued for more than 45 working days after the date of certification from the register. Successive appointments may not be made under this subsection.

(4) Fringe benefits specifically authorized by statutes, with the exception of worker's compensation, unemployment compensation, group insurance, retirement and social security coverage, shall be denied employees hired under this section. Such employees may not be considered permanent employees and do not qualify for tenure, vacation, paid holidays, sick leave, performance awards or the right to compete in promotional examinations.

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(5) If the administrator determines that an agency is not in compliance with the requirements of, or rules related to, sub. (1), (1m) or (2) regarding a particular employee, the administrator shall direct the appointing authority to terminate the employee.

History: 1971 c. 270 ss. 54, 55; Stats. 1971 s. 16.21; 1975 c. 147 s. 54; 1977 c. 196 s. 51; Stats. 1977 s. 230.26; 1979 c. 97; 1979 c. 221 ss. 732, 909; 1981 c. 20, 26; 1983 a. 27 ss. 1613, 1614, 2202 (15); 1985 a. 332.

230.27 Project positions. (1) A "project position" means a position which is normally funded for 6 or more consecutive months and which requires employment for 600 hours or more per 26 consecutive biweekly pay periods, either for a temporary workload increase or for a planned undertaking which is not a regular function of the employing agency and which has an established probable date of termination. No project position may exist for more than 4 years.

(1m) (a) Except as provided in par. (b), an appointing authority is prohibited from appointing a person who is not a resident of this state to a project position under this section.

(b) The administrator may waive the prohibition under par. (a) if there is a critical need for employees in a specific classification or position or a critical shortage of residents of this state possessing the skills or qualifications required for a position.

(2) The administrator may provide by rule for the selection and appointment of a person to a project position.

(2k) If an appointing authority selects, for a project position, a person who is not a veteran or is not a person the hiring of whom would serve affirmative action purposes, the appointing authority shall make and retain a written record of the appointing authority's reasons for selecting the person who was appointed. The appointing authority shall make the written records available to the department and annually submit a report to the department summarizing the reasons contained in the written records. The department shall annually prepare a report summarizing, for each agency, the information submitted by appointing authorities under this subsection.

(2m) An employee in a project position on a project appointment, while in the position, shall earn and receive all rights and privileges specifically authorized by statute for nonrepresented classified employees, except tenure, transfer, restoration, reinstatement, promotion eligibility and layoff benefits. A project employee's vacation and holidays under s. 230.35 (4) (d) and sick leave shall be on a prorated basis if the employee works less than full-time. Seniority, continuous service, benefits and rights earned while serving a project appointment shall be transferred to or from other project, permanent, seasonal, or sessional appointments in the following manner:

(a) Project appointees who have not previously held a permanent classified or unclassified civil service position may not transfer continuous service rights and benefits earned in any project appointment to subsequent project or permanent appointments.

(b) Project appointees who previously held a permanent classified or unclassified civil service position prior to being appointed to a project position may transfer rights and benefits previously earned to the project appointment, except those rights and benefits specifically excluded under this subsection, in a manner consistent with that applied to similar transactions in the permanent classified service. Such project employees who may subsequently be appointed to another project position or to a permanent classified position may transfer their rights and benefits to the new appointment in a manner consistent with that applied to similar transactions in the permanent classified service.

(3) A leave of absence may be granted under this section to cover the time served on a project appointment. Any time limits established under s. 230.35 do not apply to leaves of absence granted under this subsection.

History: 1977 c. 196; 1979 c. 221; 1981 c. 26, 140; 1983 a. 27, 192; 1985 a. 29; 1991 a. 101.

230.28 Probationary period. (1) (a) All original and all promotional appointments to permanent, sessional and seasonal

positions, with the exception of those positions designated as supervisor or management under s. 111.81, in the classified service shall be for a probationary period of 6 months, but the administrator at the request of the appointing authority and in accordance with the rules related thereto may extend any such period for a maximum of 3 additional months. Dismissal may be made at any time during such periods. Upon such dismissal, the appointing authority shall report to the administrator and to the employee removed, the dismissal and the reason therefor. The administrator may remove an employee during the employee's probationary period if the administrator finds, after giving notice and an opportunity to be heard, that such employee was appointed as a result of fraud or error.

(am) All probationary periods for employees in supervisory or management positions are one year unless waived after 6 months under par. (c). The waiver under par. (c) may be exercised for an employee in a supervisory position only if the employee has successfully completed the supervisory development program under s. 230.046 (2). However, persons who transfer or are reinstated to supervisory or management positions consistent with conditions under sub. (4) and who had previously obtained permanent status in class in a supervisory or management position prior to the transfer or reinstatement shall serve a probationary period in accordance with sub. (4).

(b) The administrator may authorize a longer probationary period not to exceed 2 years for any administrative, technical or professional position, in order to provide the appointing authority assurance that the employee has had adequate exposure to the various responsibilities which are a part of the position or classification.

(bm) At the request of an appointing authority and an employee, the administrator may authorize, at any time before the completion of the probationary period, an extended probationary period of up to one additional year for a handicapped individual, as defined in s. 111.32 (8), who is the employee to allow the employee to do any of the following:

1. Complete any necessary comprehensive or vocational rehabilitation program.
2. Obtain or adapt to special modifications made to the employee's workplace to accommodate the employee's handicap.
3. Achieve the knowledge, skills and abilities to competently perform the required tasks for the position for which the employee is appointed.

(bn) The appointing authority shall waive any remaining portion of the extended probationary period if the reasons for extending the probationary period are met.

(c) Upon request by the appointing authority, the administrator may waive any portion of the lengthened probationary period but in no case before a 6-month probationary period has been served.

(d) A promotion or other change in job status within an agency shall not affect the permanent status in class and rights, previously acquired by an employee within such agency. An employee demoted under s. 230.34 (1) shall not retain the permanent status in class previously acquired in the classification from which demoted.

(2) A probationary employee's supervisor shall complete a performance evaluation under s. 230.37 of the employee's work. The evaluation shall be in writing and shall indicate whether or not the employee's services have been satisfactory and whether or not the employee will be retained in his or her position. A copy of the evaluation shall be given to the employee at a reasonable time before the completion of the employee's probation. An employee shall gain permanent status unless terminated by the appointing authority prior to the completion of his or her probationary period.

(3) If an employee is removed from a position during the probationary period, and the administrator determines that the person is suitable for appointment to another position, the person's name may be restored to the list from which it was certified.

(4) A person reinstated in an employing unit other than one in which the person previously served in permanent status in the class in which the person is being reinstated, or an employee who transfers from one employing unit to another or an employee who moves to a different employing unit in conjunction with a voluntary demotion, may be required by the appointing authority to serve a probationary period. Provisions for the duration of such probationary period shall be provided in the rules of the administrator.

(5) An employee whose position is classified as "trainee" shall be on a probationary period for the duration of the training program and may be separated during that period without the right of appeal, at the discretion of the appointing authority. Upon qualifying for the objective classification, the employee shall serve a probationary period as specified in sub. (1).

(6) A person with a right of restoration resulting from layoff under s. 230.34 (2) who competes for promotion to a position under s. 230.19 (3) and is appointed shall serve a probationary period under sub. (1). If the appointing authority terminates the employee during the probationary period, the person shall return to his or her former layoff status.

History: 1971 c. 270, 336; 1977 c. 196 ss. 52, 117, 130 (4), (5), 131; 1977 c. 273; Stats. 1977 s. 230.28; 1979 c. 221; 1983 a. 402; 1989 a. 144.

See note to art. I, sec. 1, citing *DH&SS v. State Personnel Board*, 84 W (2d) 675, 267 NW (2d) 644 (1978).

See note to 230.44, citing *Board of Regents v. Wisconsin Pers. Comm.* 103 W (2d) 545, 309 NW (2d) 366 (1981).

230.29 Transfers. A transfer may be made from one position to another only if specifically authorized by the administrator.

History: 1971 c. 270; 1977 c. 196 ss. 54, 130 (5); Stats. 1977 s. 230.29.

230.30 Employing units; establishment and revision. Each agency shall constitute an employing unit for purposes of personnel transactions, except where appropriate functional, organizational or geographic breakdowns exist within the agency. These breakdowns may constitute a separate employing unit for one or more types of personnel transactions under an overall employing unit plan if requested by the appointing authority of that agency and approved by the administrator. If the administrator determines, after conferring with the appointing authority of the employing agency, that an employing unit is or has become inappropriate to carry out sound personnel management practices due to factors including, but not limited to, the size or isolated location of portions of the employing unit, the administrator may revise the employing unit structure of the agency to effect the remedy required.

History: 1979 c. 221.

230.31 Restoration of employment and reinstatement privileges. (1) Any person who has held a position and obtained permanent status in a class under the civil service law and rules and who has separated from the service without any delinquency or misconduct on his or her part but owing to reasons of economy or otherwise shall be granted the following considerations for a 3-year period from the date of such separation:

(a) Such person shall be eligible for reinstatement in a position having a comparable or lower pay rate or range for which such person is qualified.

(b) In addition, if on layoff status, the person shall be placed, in inverse order of layoff, on an appropriate mandatory restoration register for the unit used for layoff and on a restoration register for the agency from which the person was laid off. Use of such registers shall be subject to the rules of the administrator.

(2) The administrator may also provide for the reinstatement of persons who have served in seasonal and sessional employment and for persons who separate from a position while serving a probationary period.

History: 1971 c. 270 s. 60; Stats. 1971 s. 16.25; 1977 c. 196 ss. 56, 130 (5); 1977 c. 273, 418; Stats. 1977 s. 230.31; 1979 c. 32; 1981 c. 140.

230.32 Restoration after military leave. (1) Any classified employe of this state, except a limited term employe, who enlists, is ordered or is inducted into active service in the armed forces of the United States or who is requested to work for the federal government during a national emergency or a limited national emergency, shall be restored to the same or similar position in the classified service and his or her employment shall be deemed not to have been interrupted by such leave except for the receipt of pay or other compensation, accumulation of sick leave and accumulation of vacation for the period of such absence and the employe shall be given all the benefits of seniority, status, pay, pay advancement, performance awards and pension rights under ch. 40 as though the state employment was continuous, if:

(a) The employe presents to the appointing authority a certificate or other evidence that he or she has satisfactorily completed the period of training or service, and discharge is other than dishonorable or other than by reason of the sentence of a general court martial, or other than on the ground of being a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authorities, or other than as a deserter or of an officer by the acceptance of a resignation for the good of the service.

(b) The period of service is not more than 4 years unless involuntarily retained for a longer period.

(c) The employe is still qualified to perform the duties of such position.

(d) The employe makes application for restoration within 180 days after release from such training or services, or hospitalization continuing after discharge because of injuries or sickness resulting from such training or service.

(e) The circumstances of the employing agency have not changed so as to make it impossible or unreasonable to so restore such employe.

(2) (a) Any employe with permanent status in class who leaves state service for the reasons specified in this section and who has used the yearly vacation in anticipation of a full year's employment is presumed not to have interrupted employment as far as vacation pay is concerned, and any portion of the vacation for which the employe was paid which is unearned at the time of being called to duty may be made up upon return to state service. If the employe does not return to the state service, the employe shall within 2 years after termination of leave repay the state the amount not earned. The application of this provision is retroactive to all state employes called to active duty under P.L. 87-117 (10 USC 263).

(b) Any classified employe who was serving the probationary period, except in the capacity of a substitute, when he or she left state service shall, under this section, be restored to that point of service in the probationary period as though state employment had not been so interrupted.

(c) Any classified employe who had attained restoration rights as a seasonal employe when he or she left state service shall, under this section, be restored to such seasonal position or eligibility as though the service or eligibility had not been so interrupted.

(3) (a) Any classified employe who leaves state service and enters the armed forces of the United States shall, under this section, be granted written military leave of absence by the appointing authority. Notice of such leave from state service and the terms of any such leave shall be given in writing by the appointing authority to the secretary for purposes of record.

(b) Any classified employe who leaves state service for civilian employment in response to a specific request or order of the federal government or any of its agencies in connection with manpower redistribution and utilization shall, under this section, make written application to the appointing authority for civilian leave of absence presenting such specific request or order of the federal government as supporting evidence. Such civilian leave shall be allowed by the appointing authority and its terms, which shall conform to the rules of the secretary, shall be in writing. Notice of

such leave from state service shall be made in writing by the appointing authority to the secretary for purposes of record.

(c) All such military or civilian leaves of absence as heretofore may have been granted are validated and shall be deemed to be sufficient and effective hereunder. Such leaves shall be recorded with the secretary.

(4) Any person appointed to fill the position of an employe on such military or civilian leave shall be designated as a substitute or replacement employe and upon the return and reemployment of the original employe the substitute employe shall be transferred to a similar position with the same employing agency if one is available, or if not, he or she shall be eligible for reinstatement or have the right of restoration in accordance with this subchapter and the rules of the administrator. The status of any person who is appointed to fill the place of an employe on military or civilian leave under this section shall be governed by the rules of the administrator pursuant thereto.

(5) The restoration of classified former employes of the state shall be governed by this section and by the rules of the administrator.

(6) Any classified employe on June 5, 1953, who entered the service of the United States in civilian war emergency employment on or after January 1, 1942, and who was not at the time of such entry an employe of the state, and who on November 16, 1946, in accordance with P.L. 79-549 was transferred to the service of this state shall have such seniority rights as though having been a member of the classified service of the state during the period of employment in the service of the United States.

History: 1971 c. 270 ss. 73, 74; Stats. 1971 s. 16.26; 1977 c. 196 ss. 56, 130 (5); 1977 c. 273; 1977 c. 418 s. 924 (13m); Stats. 1977 s. 230.32; 1981 c. 96 s. 67; 1981 c. 140; 1983 a. 27 s. 2200 (15)

230.33 Leave of absence and pay while serving in unclassified position. Employes who have completed an original appointment probationary period in the classified service and are appointed to a position in the unclassified service shall be subject to the following provisions relative to leave of absence, restoration rights, reinstatement privileges and pay:

(1) A person appointed by the governor, elected officer, judicial body or by a legislative body or committee, or by any other appointing authority when both the classified and unclassified positions are within his or her department, shall be granted a leave of absence without pay for the duration of the appointment and for 3 months thereafter, during which time the person has restoration rights to the former position or equivalent position in the department in which last employed without loss of seniority. The person shall also have reinstatement privileges for 3 years following appointment to the unclassified service or for one year after termination of the unclassified appointment whichever is longer. Restoration rights and reinstatement privileges shall be forfeited if the reason for termination of the unclassified appointment would also be reason for discharge from the former position in the classified service.

(2) A person appointed to an unclassified position by an appointing authority other than an elected officer, judicial body, legislative body or committee, to a department other than the one in which the person was a classified employe may be granted a leave of absence without pay at the option of the person's former appointing authority in accordance with the leave of absence provisions in the rules of the secretary. An employe granted a leave of absence shall have the same restoration rights and reinstatement privileges as under sub. (1). If not granted a leave of absence, the employe shall be entitled only to the reinstatement privileges under sub. (1).

(3) Except for 3 sales representatives of prison industries and one sales manager of prison industries identified under s. 303.01 (10), an employe appointed to a position in the unclassified service from the classified service shall be entitled to receive at least the same pay received in the classified position while serving in such unclassified position.

(4) This section shall supersede any provision of law in conflict therewith but shall not diminish the rights and privileges of employes appointed to the unclassified service from the classified service prior to April 30, 1972.

History: 1971 c. 270 s. 69; Stats. 1971 s. 16 27; 1973 c. 12; 1975 c. 189, 421; 1977 c. 196 ss. 56, 130 (5); 1977 c. 273; Stats. 1977 s. 230 33; 1983 a. 27 s. 2200 (15); 1991 a. 269.

230.335 Rights of unclassified division administrators. If any employe in a classified position of division administrator is made unclassified under chapter 196, laws of 1977, and if the incumbent division administrator is not thereafter appointed to such position, or if the incumbent is hired and subsequently terminated for any reason except just cause, the incumbent division administrator shall have appointment rights, including bumping if necessary, to a comparable or lower level position which is within the agency wherein the division administrator position is located. The incumbent shall have 90 days after notice of termination to exercise such appointment rights.

History: 1977 c. 196.

230.337 Rights of employes: corrections or parole.

(1) Except as provided in sub. (2), if the position of any employe who serves in a classified position in the department of health and social services on January 1, 1990, is transferred and is unclassified under 1989 Wisconsin Act 31, and if the incumbent to the position is not thereafter appointed to the unclassified position, or if the incumbent is appointed to the unclassified position and subsequently terminated for any reason except just cause, the incumbent shall have restoration rights and reinstatement privileges, including the right of displacement if necessary, to a position having a comparable or lower pay rate or range for which the person is qualified in the department of corrections or the division of hearings and appeals in the department of administration. In case of termination, the incumbent shall have 90 days after notice of termination to exercise the rights and privileges.

(2) If any incumbent member of the parole board in the office of the secretary of health and social services on January 1, 1990, in a classified position is not appointed to the parole commission created by 1989 Wisconsin Act 31, or if the incumbent member is appointed to the commission and subsequently terminated for any reason except just cause, the incumbent member shall have restoration rights and reinstatement privileges, including the right of displacement if necessary, to a position having a comparable or lower pay rate or range for which the person is qualified which is within the department of corrections, as created by 1989 Wisconsin Act 31, or the department of health and social services. In the case of termination, the incumbent shall have 90 days after notice of termination to exercise the rights and privileges. The rights and privileges granted under this subsection are subject to the terms of any collective bargaining agreement that covers the incumbent parole board members.

History: 1989 a. 31, 107.

230.34 Demotion, suspension, discharge and layoff. (1) (a) An employe with permanent status in class or an employe who has served with the state or a county, or both, as an assistant district attorney for a continuous period of 12 months or more may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

(am) If an employe fails to report for work as scheduled or to contact his or her supervisor, the appointing authority may discipline the employe. If an employe fails to report for work as scheduled, or to contact his or her supervisor for a minimum of 5 consecutive working days, the appointing authority shall consider the employe's position abandoned and may discipline the employe or treat the employe as having resigned his or her position. If the appointing authority decides to treat the position abandonment as a resignation, the appointing authority shall notify the employe in writing that the employe is being treated as having effectively resigned as of the end of the last day worked.

(ar) Paragraphs (a) and (am) apply to all employes with permanent status in class in the classified service and all employes who have served with the state or a county, or both, as an assistant district attorney for a continuous period of 12 months or more, except that for employes specified in s. 111.81 (7) (a) in a collective bargaining unit for which a representative is recognized or certified, or for employes specified in s. 111.81 (7) (b) or (c) in a collective bargaining unit for which a representative is certified, if a collective bargaining agreement is in effect covering employes in the collective bargaining unit, the determination of just cause and all aspects of the appeal procedure shall be governed by the provisions of the collective bargaining agreement.

(b) No suspension without pay shall be effective for more than 30 days. The appointing authority shall, at the time of any action under this section, furnish to the employe in writing the reasons for the action.

(c) The secretary shall establish guidelines for uniform application of this authority among the various agencies.

(2) Employes with permanent status in class in permanent, seasonal and seasonal positions in the classified service and employes serving a probationary period in such positions after promotion or transfer may be laid off because of a reduction in force due to a stoppage or lack of work or funds or owing to material changes in duties or organization but only after all original appointment probationary and limited term employes in the classes used for layoff, are terminated.

(a) The order of layoff of such employes may be determined by seniority or performance or a combination thereof or by other factors.

(b) The administrator shall promulgate rules governing layoffs and appeals therefrom and alternative procedures in lieu of layoff to include voluntary and involuntary demotion and the exercise of a displacing right to a comparable or lower class, as well as the subsequent employe right of restoration or eligibility for reinstatement.

(2m) Employes in positions funded by nonstate funds made available contingent on special employe eligibility requirements such as length of prior unemployment, specific occupational disadvantages or need for remedial work experience, shall be exempt from inclusion with the employes whose positions are in classes considered for layoff under sub. (2). In the case of reduction in force in such nonstate funded positions, layoffs and layoff procedures established pursuant to the rules of the administrator may be limited to employes whose positions are dependent upon specific funding contingencies.

(3) The appointing authority shall confer with the administrator relative to a proposed layoff a reasonable time before the effective date thereof in order to assure compliance with the rules.

(4) Resignations shall be regulated by the rules of the secretary.

History: 1971 c. 270 ss. 61, 76; Stats. 1971 s. 16 28; 1975 c. 189, 200; 1977 c. 196 ss. 56, 130 (3), (5); 1977 c. 273; Stats. 1977 s. 230 34; 1979 c. 221; 1981 c. 140; 1983 a. 27 s. 2200 (15); 1989 a. 31.

On an appeal from discharge the appointing officer has the burden of persuasion that the discharge was for a just cause and the facts must be established to a reasonable certainty by the greater weight or clear preponderance of the evidence. *Reinke v. Personnel Board*, 53 W (2d) 123, 191 NW (2d) 833.

In deciding the issue of cause for termination, it is necessary to determine the specific requirements of the individual governmental position. *Safransky v. Personnel Board*, 62 W (2d) 464, 215 NW (2d) 379.

Trial court erroneously applied evidentiary standards required in discharge cases to review of layoff case. *Weaver v. Wis. Pers. Bd* 71 W (2d) 46, 237 NW (2d) 183.

Public employment is a property right for those given tenure by operation of civil service regulations or laws. *Vorwald v. School Dist. of River Falls*, 167 W (2d) 549, 482 NW (2d) 93 (1992).

230.35 State office hours; standard workweek; leaves of absence; holidays. (1) (a) Except as provided in subs. (1m) and (1r), appointing authorities shall grant to each person in their employ, except limited-term employes, based on accumulated continuous state service, annual leave of absence without loss of pay at the rate of:

1. Eighty hours each year for a full year of service during the first 5 years of service;

2. One hundred twenty hours each year for a full year of service during the next 5 years of service;

2m. One hundred thirty-six hours each year for a full year of service during the next 5 years of service;

3. One hundred sixty hours each year for a full year of service during the next 5 years of service;

3m. One hundred seventy-six hours each year for a full year of service during the next 5 years of service;

4. Two hundred hours each year for a full year of service after 25 years of service.

(b) An employe, with the approval of his or her appointing authority, may anticipate the annual leave which he or she could earn during the current calendar year except that no employe shall be eligible to take annual leave until he or she has completed the first 6 months of a probationary period for an original appointment.

(c) When the rate of annual leave changes during the 5th, 10th, 15th, 20th or 25th calendar year, the annual leave for that year shall be prorated.

(d) Annual leaves of absence shall not be cumulative except under sub. (1p) and except that unused annual leave shall, subject to the rules of the secretary, be used in the year following the one in which it was earned, but no employe shall lose any unused annual leave because the employe's work responsibilities prevented the usage of the unused annual leave during the first 6 months of the year following the year in which it was earned.

(e) Permanent classified employes, permanent part-time employes and seasonal employes with permanent seasonal status in class who are regularly employed for less than 12 months out of a year shall be granted proportional annual leave consistent with par. (a). These employes, with the approval of their appointing authority, may anticipate the vacation which they will earn during their current period of employment.

(f) An employe under this subsection earns annual leave any time he or she is on temporary layoff for a period not to exceed 20 working days.

(g) The continuous service of an employe eligible for annual leave shall not be considered interrupted if the employe either:

1. Was on an approved leave of absence, including but not limited to military leave, leave to serve in the unclassified service, leave for absence due to injury or illness arising out of state employment and covered by ch. 102; or

2. Left the service through resignation or layoff and is reemployed or recalled within 3 years.

(gm) Each employe of the state on October 17, 1971 shall be granted credit towards accumulated continuous service for all service in Wisconsin as a national guard technician which has not been credited under any other provision of this section.

(h) The length of time between an employe's resignation and reemployment under par. (g) 2. shall not be counted in computing years of continuous service under this subsection. Employes subject to par. (e) 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 under this subsection.

(j) The appointing authority shall respect the wishes of the eligible employes as to the time of taking their annual leave insofar as the needs of the service will permit.

(m) Payment for any unused authorized leave to which an employe is entitled upon termination, shall be made in a separate and distinct amount.

(1m) (a) Employes appointed to any of the following positions shall be entitled to annual leave of absence at the rate provided under par. (bt):

1. A career executive position under the program established under s. 230.24.

2. A position designated in s. 19.42 (10) (L) or 20.923 (4), (4m), (8) and (9).

3. A position authorized under s. 230.08 (2) (e).

4. A position designated as an attorney position in which the employe is employed and acts as an attorney, unless the attorney position is a limited term appointment under s. 230.26.

(bt) An employe appointed to a position listed under par. (a) shall be entitled to annual leave of absence without loss of pay based upon accumulated continuous state service at the rate of:

1. 120 hours each year for a full year of service during the first 5 years of service;

2. 160 hours each year for a full year of service during the next 5 years of service;

3. 176 hours each year for a full year of service during the next 5 years of service;

4. 200 hours each year for a full year of service during the next 5 years of service;

5. 216 hours each year for a full year of service after 20 years of service.

(e) Employes who previously were covered under sub. (1) (a), or other statutory provision regarding annual leave, who become subject to this subsection shall have their present continuous service credits for annual leave purposes applied to the career executive schedule at the appropriate rate. In no case shall the employe receive a reduction in annual leave hours earned by such change in schedules.

(eb) An employe under this subsection earns annual leave any time he or she is on temporary layoff for a period not to exceed 20 working days.

(f) The continuous service of an employe eligible for annual leave under this subsection shall not be considered interrupted if the employe leaves the service and is reemployed by the state in another position covered under this subsection. If reemployed in a position not covered under this subsection the employe shall be required to meet the continuous service requirements of sub. (1) (g). This paragraph applies to all persons who are employes covered under this subsection on or after July 1, 1973.

(g) This paragraph applies to all persons who are employes covered under this subsection on or after July 1, 1973.

(1p) (a) Employes at the 160-hour or 176-hour rate under sub. (1) or (1m) may, in the year earned, elect to receive not more than 40 of those hours of earned annual leave as credit for termination leave or as accumulated sabbatical leave.

(b) Employes at the 200-hour or 216-hour rate under sub. (1) or (1m) may, in the year earned, elect to receive not more than 80 of those hours of earned annual leave among one or more of these options:

1. Not to exceed 40 hours in cash;

3. As credit for termination leave;

4. As accumulated sabbatical leave.

(c) Employes with less than the 160-hour rate under sub. (1) or (1m) who have accumulated, at any time during the employe's continuous state service, a minimum of 520 hours of sick leave may elect to receive not more than 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.

(1r) A state officer elected by the people may take vacation without loss of pay. No such state officer is entitled to payment for unused annual leave.

(2) Leave of absence with pay owing to sickness and leave of absence without pay, other than annual leave and leave under s. 103.10, shall be regulated by rules of the secretary, except that unused sick leave shall accumulate from year to year. After July 1, 1973, employes appointed to career executive positions under the program established under s. 230.24 or positions designated in s. 19.42 (10) (L) or 20.923 (4), (4m), (8) and (9) or authorized under s. 230.08 (2) (e) shall have any unused sick leave credits restored if they are reemployed in a career executive position or in a position under s. 19.42 (10) (L) or 20.923 (4), (4m), (8) and

(9) or authorized under s. 230.08 (2) (e), regardless of the duration of their absence. Restoration of unused sick leave credits if reemployment is to a position other than those specified above shall be in accordance with rules of the secretary.

(2m) An employe shall be eligible for medical or family leave under s. 103.10 upon the expiration, extension or renewal of any collective bargaining agreement in effect on April 26, 1988, which covers the employe.

(3) (a) Officials and employes of the state who have permanent status and who are members of the national guard, the state defense force, or any other reserve component of the military forces of the United States or this state now or hereafter organized or constituted under federal or state law, are entitled to leaves of absence without loss of time in the service of the state, to enable them to attend military schools and annual field training or annual active duty for training, and any other state or federal tours of active duty, except extended active duty or service as a member of the active armed forces of the United States which have been duly ordered but not exceeding 30 days, excluding Saturdays, Sundays and holidays enumerated in sub. (4) in the calendar year in which so ordered and held. During this leave of absence, each state official or employe shall receive base state pay less the base military pay, received for and identified with such attendance but such reduction shall not be more than the base state pay. Such leave shall not be granted for absences of less than 3 days. A state official or employe serving on state active duty as a member of the national guard or state defense force, may elect to receive pay from the state under s. 20.465 (1) in an amount equal to base state salary for such period of state active duty. Leave granted by this section is in addition to all other leaves granted or authorized by any other law. For the purpose of determining seniority, pay or pay advancement and performance awards the status of the employe shall be considered uninterrupted by such attendance.

(b) Officials and employes of the state who are called to report for a preinduction physical for the military service shall be granted a leave of absence with pay for the time actually and necessarily spent in response to such call.

(c) Officials and employes of the state summoned for grand or petit jury service are entitled to leaves of absence without loss of time for the time of absence required pursuant to the summons and thereafter. There shall be no deduction from, nor interruption of pay from the state because of such absence.

(d) Employes of the state are entitled to reasonable paid leaves of absence to compete in promotional examinations and interviews. The secretary shall promulgate rules governing the lengths of time allowable for such leaves, their frequency and the provisions for their use.

(4) (a) Except as otherwise provided in sub. (5) (c), the office of the agencies of state government shall be kept open on all days of the year except Saturdays, Sundays and the following holidays:

1. January 1;
 - 1m. The 3rd Monday in January, which shall be the day of celebration for January 15.
2. After 12 noon on Good Friday, in lieu of the period specified in s. 895.20;
3. The last Monday in May, which shall be the day of celebration for May 30;
4. July 4;
5. The first Monday in September;
6. The 4th Thursday in November;
7. December 24;
8. December 25;
9. December 31;
10. The day following if January 1, July 4 or December 25 falls on Sunday.

(b) Compensatory time off or payment, either of which shall be at the rate of time and one-half, shall be granted to state employes for:

1. All work performed on the holidays enumerated in par. (a) 1., 1m. and 3. to 9.

2. The 5th through 8th hours worked on Good Friday.

(c) All employes except limited term employes shall receive 9.5 paid holidays annually in addition to any other authorized paid leave, the time to be at the discretion of the appointing authorities.

(d) In addition to the holidays granted under par. (c), all employes except limited term employes shall earn 3 paid personal holidays each calendar year. Eligibility to take the personal holidays during the year earned is subject to the following:

1. Employes serving the first 6 months of a probationary period for an original appointment or as a trainee may anticipate the personal holidays earned during each year and be eligible to take the personal holidays during the probationary period, subject to subsequent completion of the first 6 months of the probationary period and also subject to subd. 3. If an employe does not complete the first 6 months of probationary service, any holiday time taken under this paragraph shall then be considered approved leave without pay, and the agency shall recover from the employe the value of such time.

2. Employes who have completed the first 6 months of a probationary period for an original appointment or as a trainee shall be eligible to take the paid holidays throughout the calendar year earned, subject to subd. 3.

3. Such holidays shall be taken at the discretion of the appointing authority who shall respect the wishes of the eligible employes as to the time of taking the holidays under this paragraph insofar as the needs of the service will permit.

4. Personal holidays earned each year shall be noncumulative. However, if an appointing authority denies an employe the opportunity to take a personal holiday during the calendar year earned, the employe shall be permitted to carry over such day to the next year. In no event may such denial and carry-over occur in subsequent successive years.

(e) Appointing authorities shall give employes time off for voting under s. 6.76 without any deduction of compensation for time lost thereby.

(f) Monday to Friday the offices of the agencies of state government shall open at 7:45 a. m. and close at 4:30 p. m., with intermissions from 11:45 a. m. to 12:30 p. m. Agencies may, with the permission of the governor, adjust opening and closing hours and intermission periods to relieve traffic congestion or as the needs of the service otherwise require.

(5) (a) Except as provided under s. 230.215 (5), the standard basis of employment for the state service is 40 hours each 7 consecutive calendar day period, except that when the needs of an employing unit cannot be fulfilled by adhering to the standard basis of employment, additional hours of work may be required by the appointing authority. During a proclaimed national emergency, the governor may extend the workweek and adjust the working hours to use the available manpower of any or all agencies as he or she deems essential.

(b) The standard basis of employment shall be divided into 5 work days of 8 hours each except as provided under s. 230.215 (5), and except that when the conditions of employment cannot be satisfied by adhering to this division or when the public would not be inconvenienced, deviations may be permitted upon recommendation of the appointing authority and subsequent approval by the secretary.

(c) The governor may order some or all of the offices and other work stations of the departments of state government closed for specified periods of time or may order such other deviations in office hours or the standard basis of employment as may be neces-

sitated by weather conditions, energy shortages or emergency situations. The governor's order may specify how any time off or other deviation occasioned by the order may be covered for state employes.

History: 1971 c. 91, 125, 183, 211, 226; 1971 c. 270 ss. 70, 71, 83, 104; Stats. 1971 s. 16.30; 1973 c. 51, 243; 1975 c. 28, 39, 41; 1975 c. 147 s. 54; 1975 c. 189, 199, 421, 422; 1977 c. 44; 1977 c. 187 s. 135; 1977 c. 196 ss. 56, 118, 130 (3), (5), (12), 131; 1977 c. 273; 1977 c. 418 ss. 726, 727, 924 (13m); Stats. 1977 s. 230.35; 1979 c. 34, 89; 1979 c. 110 s. 60 (11); 1979 c. 221; 1981 c. 20, 96, 140; 1983 a. 27 s. 2200 (15); 1983 a. 30 ss. 4 to 11, 14; 1983 a. 71, 140; 1983 a. 192 ss. 220, 221, 304; 1985 a. 119; 1987 a. 63, 287, 340, 399, 403; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 12, 47

230.36 Hazardous employment, injuries, pay continued. (1) If a conservation warden, conservation patrol boat captain, conservation patrol boat engineer, state forest ranger, conservation field employe of the department of natural resources who is subject to call for fire control duty, member of the state patrol, state motor vehicle inspector, lifeguard, excise tax investigator employed by the department of revenue, special criminal investigation agent employed by the department of justice, special tax agent, state drivers' license examiner, state fair park police officer, university of Wisconsin system police officer and other state facilities police officer and patrol officer, security officer, watcher, engineer, engineering aide, building construction superintendent, fire fighter employed at the Wisconsin veterans home, or guard or institutional aide or a state probation and parole officer or any other employe whose duties include supervision and discipline of inmates or wards of the state at a state penal institution, including a secured correctional facility, as defined in s. 48.02 (15m), or while on parole supervision outside of the confines of the institutions, or supervision of persons placed on probation by a court of record, or supervision and care of patients at a state mental institution, and university of Wisconsin hospital and clinics suffers injury while in the performance of his or her duties, as defined in subs. (2) and (3); or any other state employe who is ordered by his or her appointing authority to accompany any employe listed in this subsection while the listed employe is engaged in the duties defined in sub. (3), or any other state employe who is ordered by his or her appointing authority to perform the duties, when permitted, in lieu of the listed employe and while so engaged in the duties defined in sub. (3), suffers injury as defined in sub. (2) the employe shall continue to be fully paid by the employing agency upon the same basis as paid prior to the injury, with no reduction in sick leave credits, compensatory time for overtime accumulations or vacation and no reduction in the rate of earning sick leave credit or vacation. The full pay shall continue while the employe is unable to return to work as the result of the injury or until the termination of his or her employment upon recommendation of the appointing authority. At any time during the employe's period of disability the appointing authority may order physical or medical examinations to determine the degree of disability at the expense of the employing agency.

(2) "Injury" as used in this section is physical harm to an employe caused by accident or disease.

(3) As used in this section "performance of duties" means duties performed in line of duty by:

(a) A forest ranger or field employe of the department of natural resources who is subject to call for forest fire control duty or fire watcher employed at the Wisconsin veterans home, and lifeguard, at all times while:

1. Driving or riding in a vehicle, aircraft or boat under circumstances which require hazardous maneuvering or speed in excess of the normal or posted limits in the performance of fire control duties;

2. Engaged in an effort to save lives, recover dead bodies, or protect public or private property;

3. Going to or returning from a fire and while engaged in the suppression of a fire; or

4. Engaged in public demonstration or training exercises provided such demonstration or training exercises are authorized by the appointing authority.

(b) A conservation warden, conservation patrol boat captain, conservation patrol boat engineer, member of the state patrol, state motor vehicle inspector, university of Wisconsin system police officer, security officer, watcher, state fair park police officer, special tax agent, excise tax investigator employed by the department of revenue and special criminal investigation agent employed by the department of justice at all times while:

1. In the process of making an arrest or investigating any violation or suspected violation of the law or the quelling of a riot or any other violence;

2. Engaged in an effort to save lives, recover dead bodies or protect public or private property;

3. Driving or riding in a vehicle, aircraft or boat under circumstances which require hazardous maneuvering or speed in excess of the normal or posted limits in the performance of law enforcement duties; or

4. Engaged in public demonstration or training exercises provided such demonstration or training exercises are authorized by the appointing authority.

(c) A guard, institution aide, or other employe at the university of Wisconsin hospital and clinics or at a state penal or mental institution, including a secured correctional facility, as defined in s. 48.02 (15m), and a state probation and parole officer, at all times while:

1. In the process of quelling a riot or disturbance or other act of violence;

2. In the process of restraining patients, inmates, probationers or parolees and apprehending runaways or escapees, including probationers and parolees;

3. When injury is occasioned as the result of an act by a patient, inmate, probationer or parolee;

4. In the process of making an arrest or investigating any violation or suspected violation of law pursuant to police powers authorized by s. 46.058 (2) or 301.29 (2) and rules adopted pursuant thereto;

5. Going to or returning from a fire, engaging in the suppression of a fire, evacuating patients or inmates because of a fire or engaging in fire drills; or

6. When disease is contracted as a result of exposure to such disease arising out of the care of inmates or patients.

(d) A drivers' license examiner at all times while examining drivers, conducting road tests or checking motor vehicles.

(e) An engineering aide, engineer or building construction superintendent at all times while:

1. Driving or riding in vehicles which require hazardous maneuvering of extremely slow speed while marking or measuring physical characteristics of highways.

2. Surveying or inspecting within the right of way of highways on which traffic is maintained.

3. Surveying or inspecting on construction sites where heavy equipment is operating.

4. Investigating or inspecting highways, structures or terrain under hazardous conditions.

(4) An employe denied benefits under this section may appeal to the commission under s. 230.45 (1) (d).

(5) The employing agency which makes payments under this section is entitled to the right of subrogation for reimbursement to the extent that the injured employe may recover the reimbursed items in an action or claim in tort against any 3rd party. The repayment shall not exceed the total sums paid to such employe under this section and shall be limited to the total sum credited to such

employe, as damages for pay and fringe benefits actually received in the settlement of any claim caused by the negligence of such 3rd party.

History: 1971 c. 164, 270; 1973 c. 333 s. 201m; 1975 c. 39, 189, 199, 224, 422; 1977 c. 26; 1977 c. 196 ss. 57, 119, 130 (4); 1977 c. 418 ss. 728, 729, 924 (50); 1977 c. 447 ss. 146, 206; Stats. 1977 s. 230.36; 1979 c. 32; 1979 c. 221 ss. 745, 746, 2202 (15); 1985 a. 29, 135; 1987 a. 27, 83; 1989 a. 31; 1993 a. 98, 215, 491.

Discussion of s. 230.36, 1977 stats., continuation of pay to employe injured in hazardous employment, with respect to long-term disability. 68 Atty. Gen. 25.

230.37 Standards of performance and ratings.

(1) In cooperation with appointing authorities the secretary shall establish an employe performance evaluation program to provide a continuing record of employe development and, when applicable, to serve as a basis for pertinent personnel actions. Similar evaluations shall be conducted during the probationary period but may not infringe upon the authority of the appointing authority to retain or dismiss employes during the probationary period.

(2) When an employe becomes physically or mentally incapable of or unfit for the efficient and effective performance of the duties of his or her position by reason of infirmities due to age, disabilities, or otherwise, the appointing authority shall either transfer the employe to a position which requires less arduous duties, if necessary demote the employe, place the employe on a part-time service basis and at a part-time rate of pay or as a last resort, dismiss the employe from the service. The appointing authority may require the employe to submit to a medical or physical examination to determine fitness to continue in service. The cost of such examination shall be paid by the employing agency. In no event shall these provisions affect pensions or other retirement benefits for which the employe may otherwise be eligible.

History: 1971 c. 270 ss. 66, 81; Stats. 1971 s. 16.32; 1977 c. 196 ss. 59, 130 (4); 1977 c. 273; Stats. 1977 s. 230.37; 1987 a. 140.

230.40 Political activities; public office. (1) No person holding a position in the classified civil service may directly or indirectly solicit or receive subscriptions or contributions for any partisan political party or any political purpose while on state time or engaged in official duties as an employe. No person may orally solicit or by letter transmit any solicitation to a state office or be in any manner concerned in soliciting any assistance, subscription, or support for any partisan political party or purpose from any person holding any position in the classified civil service while on state time or engaged in official duties as an employe. No person holding any position in the classified civil service may during the hours when on duty engage in any form of political activity calculated to favor or improve the chances of any political party or any person seeking or attempting to hold partisan political office, nor engage in any political activity when not on duty to such an extent that the person's efficiency during working hours will be impaired or that he or she will be tardy or absent from work. Any violation of this section is adequate grounds for dismissal.

(2) If a person in the classified service declares an intention to run for partisan political office the person shall be given a leave of absence for the duration of the election campaign and if elected shall separate from the classified service on assuming the duties and responsibilities of such office.

(3) A person who separates from the classified service to fill an elective position shall have reinstatement privileges for 3 years following termination from the classified service or for one year following termination from the elective position, whichever is longer.

(4) A person in the classified service may be granted upon concurrence by the person's appointing authority a leave of absence to participate in partisan political campaigning.

(5) Persons on leave from the classified service under subs. (2) and (4) shall not be subject to the restrictions of sub. (1), except as they apply to the solicitation of assistance, subscription or support from any person holding any position in the classified service.

(6) The administrator shall administer this section.

History: 1971 c. 270 s. 82; Stats. 1971 s. 16.35; 1973 c. 334; 1977 c. 196 s. 61; 1977 c. 273; Stats. 1977 s. 230.40; 1979 c. 221.

State employes covered by the Hatch Act cannot be discharged for partisan political participation while on leaves of absence under (2) and (4). 63 Atty. Gen. 217

Discussion of restrictions on political activities of state employes under federal and state law. 67 Atty. Gen. 315.

Classified state employes whose positions are federally funded in whole or in part, and who are not covered by a collective bargaining agreement, are entitled to leaves of absence in order to run for partisan political office and cannot be compelled to resign. Leaves of absence for such employes are governed generally by terms of applicable collective bargaining agreements. 73 Atty. Gen. 131.

Meaning of "declares an intention to run for office" in section 230.40 (2) discussed. OAG 6-94.

230.41 Invalid appointments. Any person employed or appointed contrary to this subchapter, or to the rules established thereunder, shall be paid by the appointing authority so employing or appointing, or attempting to employ or appoint that person, the compensation agreed upon for any service performed under such appointment or employment, or attempted appointment or employment, or in case no compensation is agreed upon, the actual value of such services and any expenses incurred in connection therewith, and shall have a cause of action against such appointing authority, for such sum and for the costs of the action. No appointing authority shall be reimbursed by the state for any sums so paid or recovered in any such action.

History: 1971 c. 270 s. 80; Stats. 1971 s. 16.36; 1977 c. 196 s. 61; Stats. 1977 s. 230.41; 1991 a. 316.

230.43 Misdemeanors; how punished. (1) OBSTRUCTION OR FALSIFICATIONS OF EXAMINATIONS. (a) Any person who wilfully, alone or in cooperation with one or more persons, defeats, deceives or obstructs any person in respect of the rights of examination or registration under this subchapter or any rules prescribed pursuant thereto, or

(b) Who wilfully, or corruptly, falsely marks, grades, estimates or reports upon the examination or proper standing of any person examined, registered or certified, pursuant to this subchapter, or aids in so doing, or

(c) Who wilfully or corruptly makes any false representations concerning the same, or concerning the person examined, or

(d) Who wilfully or corruptly furnishes any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any persons so examined, registered or certified, being appointed, employed or promoted, or

(e) Who personates any other person, or permits or aids in any manner any other person to personate him or her in connection with any examination, registration, application or request to be examined or registered, shall for each offense be guilty of a misdemeanor.

(2) PROHIBITED APPOINTMENTS. Whoever, after a rule has been duly established and published, makes an appointment to office or selects a person for employment, contrary to such rule, or wilfully refuses or neglects otherwise to comply with, or to conform to, this subchapter, or violates any of such provisions, shall be guilty of a misdemeanor. If any person is convicted under this subsection, any public office which such person may hold shall by force of such conviction be rendered vacant, and such person shall be incapable of holding public office for a period of 5 years from the date of such conviction.

(3) PENALTY. Misdemeanors under this section are punishable by a fine of not less than \$50 nor more than \$1,000, or by imprisonment for not more than one year in the county jail or both.

(4) RIGHTS OF EMPLOYEE. If an employe has been removed, demoted or reclassified, from or in any position or employment in contravention or violation of this subchapter, and has been restored to such position or employment by order of the commission or any court upon review, the employe shall be entitled to compensation therefor from the date of such unlawful removal, demotion or reclassification at the rate to which he or she would have been entitled by law but for such unlawful removal, demotion or reclassification. Interim earnings or amounts earnable with reasonable diligence by the employe shall operate to reduce back pay otherwise allowable. Amounts received by the employe as unemployment benefits or welfare payments shall not reduce the

back pay otherwise allowable, but shall be withheld from the employe and immediately paid to the unemployment reserve fund or, in the case of a welfare payment, to the welfare agency making such payment. The employe shall be entitled to an order of mandamus to enforce the payment or other provisions of such order.

(5) **TAXPAYERS' SUITS.** The right of any taxpayer to bring any action to restrain the payment of compensation to any person appointed to or holding any office or place of employment in violation of this subchapter shall not be limited or denied by reason of the fact that the office or place of employment has been classified as, or determined to be, not subject to competitive examination; however, any judgment or injunction in any such action shall be prospective only, and shall not affect payments already made or due to such persons by the proper disbursing officers, in accordance with the rules of the secretary in force at the time of such payments.

History: 1971 c. 270 ss. 64, 75, 84 to 86; Stats 1971 s. 16.38; 1977 c. 196 ss. 64, 130 (5); 1977 c. 273; Stats. 1977 s. 230.43; 1979 c. 221; 1981 c. 140; 1983 a. 27 s. 2200 (15).

Back pay under (4) isn't available remedy in reinstatement cases. *Seep v. Personnel Commission*, 140 W (2d) 32, 409 NW (2d) 142 (Ct. App. 1987).

230.44 Appeal procedures. (1) APPEALABLE ACTIONS AND STEPS. Except as provided in par. (e), the following are actions appealable to the commission under s. 230.45 (1) (a):

(a) *Decision made or delegated by administrator.* Appeal of a personnel decision under this subchapter made by the administrator or by an appointing authority under authority delegated by the administrator under s. 230.05 (2).

(b) *Decision made or delegated by secretary.* Appeal of a personnel decision under s. 230.09 (2) (a) or (d) or 230.13 (1) made by the secretary or by an appointing authority under authority delegated by the secretary under s. 230.04 (1m).

(c) *Demotion, layoff, suspension or discharge.* If an employe has permanent status in class, or an employe has served with the state or a county, or both, as an assistant district attorney for a continuous period of 12 months or more, the employe may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission, if the appeal alleges that the decision was not based on just cause.

(d) *Illegal action or abuse of discretion.* A personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion may be appealed to the commission.

(e) *Discretionary performance awards.* This subsection does not apply to decisions of an appointing authority relating to discretionary performance awards under s. 230.12 (5), including the evaluation methodology and results used to determine the award or the amount awarded.

(f) *Corrections employe rights.* A determination that a person was discharged from the unclassified service for just cause under s. 230.337.

(2) **FORM.** All appeals filed under this section shall be in writing.

(3) **TIME LIMITS.** Any appeal filed under this section may not be heard unless the appeal is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later, except that if the appeal alleges discrimination under subch. II of ch. 111, the time limit for that part of the appeal alleging such discrimination shall be 300 days after the alleged discrimination occurred.

(4) **HEARING.** (a) A hearing under this section shall be open to the public unless the appellant requests that the hearing be closed.

(b) An employe shall attend a hearing under this subsection and testify when requested to do so by the commission. Any person not under the civil service who appears before the commission by order shall receive for his or her attendance the fees and mileage provided for witnesses in civil actions in courts of record under ch. 885, which shall be audited and paid by the state in the

same manner as other expenses are audited and paid, upon the presentation of properly verified vouchers approved by the commission and charged to the proper appropriation for the commission. No witness subpoenaed at the insistence of a party other than the commission is entitled to compensation from the state for attendance or travel, unless the commission certifies that his or her testimony was relevant and material to the matter investigated.

(bm) Upon request of an employe who files an appeal of the decision of the secretary made under s. 230.09 (2) (a) or (d), the appeal shall be heard by a commissioner or attorney employed by the commission serving as arbitrator under rules promulgated for this purpose by the commission. In such an arbitration, the arbitrator shall orally render a decision at the conclusion of the hearing affirming, modifying or rejecting the decision of the secretary. The decision of the arbitrator is final and is not subject to review by the commission. An arbitrator's decision may not be cited as precedent in any other proceeding before the commission or before any court. The arbitrator shall promptly file his or her decision with the commission. The decision of the arbitrator shall stand as the decision of the commission. The decision of the commission is subject to review under ss. 227.53 to 227.57 only on the ground that the decision was procured by corruption, fraud or undue means or that the arbitrator or the commission exceeded the arbitrator's or the commission's power. The record of a proceeding under this paragraph shall be transcribed as provided in s. 227.44 (8).

(c) After conducting a hearing or arbitration on an appeal under this section, the commission or the arbitrator shall either affirm, modify or reject the action which is the subject of the appeal. If the commission or the arbitrator rejects or modifies the action, the commission may issue an enforceable order to remand the matter to the person taking the action for action in accordance with the decision. Any action brought against the person who is subject to the order for failure to comply with the order shall be brought and served within 60 days after the date of service of the decision of the commission or the arbitrator.

(d) The commission may not remove an incumbent or delay the appointment process as a remedy to a successful appeal under this section unless there is a showing of obstruction or falsification as enumerated in s. 230.43 (1).

(e) Any party in an action under this section may be present at a hearing in the action under this section, in person, by attorney or by any other agent.

(f) The commission shall issue a decision on an action under this section within 90 days after the hearing on the action is completed.

History: 1977 c. 196; 1979 c. 221; 1981 c. 140; 1983 a. 27; 1989 a. 31; 1991 a. 269; 1993 a. 16.

Discharge of probationary employe is not within "hiring process" under (1) (d) *Board of Regents v. Wisconsin Pers. Comm.* 103 W (2d) 545, 309 NW (2d) 366 (Ct. App. 1981).

Commission had jurisdiction to hear appeal of career executive employe from reassignment to job in lower pay range where complaint alleged that reassignment was for disciplinary purposes and was unreasonable and improper exercise of discretion *Basinas v. State*, 104 W (2d) 539, 312 NW (2d) 483 (1981).

230.45 Powers and duties of personnel commission. (1) The commission shall:

(a) Conduct hearings on appeals under s. 230.44.

(am) Designate a commissioner or an attorney employed by the commission to serve as an arbitrator in arbitrations under s. 230.44 (4) (bm).

(b) Receive and process complaints of discrimination under s. 111.375 (2). In the course of investigating or otherwise processing such a complaint, the commission may require that an interview with any state employe, except a management or supervisory employe who is a party to or immediately involved in the subject matter of the complaint, be conducted outside the presence of the appointing authority or any representative or agent thereof unless the employe voluntarily requests that presence. An appointing authority shall permit an employe to be interviewed without loss of pay and to have an employe representative present at the inter-

view. An appointing authority of an employe to be interviewed may require the commission to give the appointing authority reasonable notice prior to the interview.

(c) Serve as final step arbiter in the state employe grievance procedure established under s. 230.04 (14).

(d) Hear appeals under s. 230.36 (4).

(e) Hear appeals, when authorized under county merit system rules under s. 49.50, from any interested party.

(g) Receive and process complaints of discrimination pertaining to occupational safety and health under s. 101.055 (8).

(gm) Receive and process complaints of retaliatory disciplinary action under s. 230.85.

(h) Keep minutes of its own proceedings and other official actions. All such records shall, subject to reasonable rules, be open to public inspection. Records of the secretary or the administrator which are confidential shall be kept confidential by the commission.

(i) Adopt rules necessary to carry out this section. Notice of the contents of such rules and amendments thereto shall be given promptly to the secretary, the administrator and appointing authorities affected thereby.

(j) Receive complaints of discharge or discrimination under s. 46.90 (4) (b) and, except as provided in sub. (1m), process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

(1m) The commission shall waive the investigation and determination of probable cause of any complaint that is filed by a complainant under sub. (1) or s. 103.10 (12) (b) at the complainant's request. If the commission waives the investigation and probable cause determination, the commission shall proceed with a hearing on the complaint. The commission's waiver of an investigation and probable cause determination does not affect the commission's right to attempt to resolve the complaint by conference, conciliation or persuasion.

(2) Subsection (1) (c) does not apply to an employe who, using the agency grievance procedure, grieves his or her dissatisfaction with the evaluation methodology and results used to determine any discretionary performance award or the amount of such an award. Any such employe grievance shall be settled on the basis of the appointing authority's decision.

History: 1977 c. 196; 1979 c. 221; 1981 c. 334 s. 25 (2); 1981 c. 360; 1983 a. 27, 398, 409; 1987 a. 140, 331; 1987 a. 403 s. 256; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 16.

Commission powers under (1) (b) include power to investigate complaints and issue subpoenas 68 Atty. Gen. 403.

230.46 Duties of council on affirmative action. The council on affirmative action in the department shall serve in a direct advisory capacity to the secretary and as part of that relationship shall evaluate the progress of affirmative action programs throughout the civil service system, seek compliance with state and federal regulations and recommend improvements in the state's affirmative action efforts as an employer. In carrying out its responsibilities, the council may recommend legislation, consult with agency personnel and other interested persons, conduct hearings and take other appropriate action to promote affirmative action. The council shall report at least once per year to the governor and the legislature.

History: 1977 c. 196; 1983 a. 27

See note to 230.01, citing Univ. of California Regents v. Bakke, 438 US 265 (1978)

230.48 State employes suggestion board. (1) DUTIES. The state employes suggestion board shall do all of the following:

(a) Formulate, establish and maintain a plan or plans to encourage and reward unusual and meritorious suggestions and accomplishments by state employes promoting efficiency and economy in the performance of any function of state government.

(b) Appoint departmental or divisional committees to analyze and review suggestions and accomplishments of state employes submitted for consideration under the plan or plans established

under par. (a), and make recommendations regarding the plan or plans to the state employes suggestion board.

(c) Make and render awards to or for the benefit of state employes nominated to receive them in accordance with the plan or plans established under par. (a).

(2) PERSONNEL, FACILITIES AND EQUIPMENT. The department shall appoint, under the classified service, a secretary and such other employes as are necessary to carry out the duties of the state employes suggestion board, and shall provide such facilities and equipment as that board requires for the proper performance of its work. The state employes suggestion board may request and shall receive from any state department any assistance that it requires.

(3) AWARDS. The state employes suggestion board may determine the nature and extent of the awards to be made under this section which may include, but shall not be limited to, all of the following:

(a) Certificates, medals or other insignia, in the form and awarded at the times that the state employes suggestion board determines.

(b) Cash awards, in the amount and payable at the times that the state employes suggestion board determines.

(4) RULES. The state employes suggestion board may promulgate rules governing the operation of any plan or plans established under sub. (1) (a), the eligibility and qualifications of state employes participating under this section, the character and quality of suggestions and accomplishments submitted for consideration, the method of their submission and the procedure for their review, nominations for awards, and the kind, character and value of the awards, and any other rules as are necessary for the proper administration of this section or for the accomplishment of the purposes of this section.

History: 1971 c. 270 s. 87; Stats. 1971 s. 16 34; 1977 c. 196 s. 61; Stats. 1977 s. 16.008; 1977 c. 418 s. 36; Stats. 1977 s. 16 006; 1981 c. 20; 1987 a. 142; 1989 a. 31 s. 99; Stats. 1989 s. 230.48.

SUBCHAPTER III

EMPLOYEE PROTECTION

230.80 Definitions. In this subchapter:

(1) "Abuse of authority" means an arbitrary or capricious exercise of power.

(1m) "Appointing authority" means the chief officer of any governmental unit unless another person is authorized to appoint subordinate staff by the constitution or any law.

(2) "Disciplinary action" means any action taken with respect to an employe which has the effect, in whole or in part, of a penalty, including but not limited to any of the following:

(a) Dismissal, demotion, transfer, removal of any duty assigned to the employe's position, refusal to restore, suspension, reprimand, verbal or physical harassment or reduction in base pay.

(b) Denial of education or training, if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation or other personnel action.

(c) Reassignment.

(d) Failure to increase base pay, except with respect to the determination of a discretionary performance award.

(3) "Employee" means any person employed by any governmental unit except:

(a) A person employed by the office of the governor, the courts, the legislature or a service agency under subch. IV of ch. 13.

(b) A person who is, or whose immediate supervisor is, assigned to an executive salary group under s. 20.923.

(4) "Governmental unit" means any association, authority, board, commission, department, independent agency, institution, office, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature, the office of the governor and the courts. "Govern-

mental unit" does not mean any political subdivision of the state or body within one or more political subdivisions which is created by law or by action of one or more political subdivisions.

(5) "Information" means information gained by the employee which the employee reasonably believes demonstrates:

(a) A violation of any state or federal law, rule or regulation.

(b) Mismanagement or abuse of authority in state or local government, a substantial waste of public funds or a danger to public health and safety.

(6) "Merit further investigation" means reasonably indicates the existence of a situation justifying inquiry.

(7) "Mismanagement" means a pattern of incompetent management actions which are wrongful, negligent or arbitrary and capricious and which adversely affect the efficient accomplishment of an agency function. "Mismanagement" does not mean the mere failure to act in accordance with a particular opinion regarding management techniques.

(8) "Retaliatory action" means a disciplinary action taken because of any of the following:

(a) The employee lawfully disclosed information under s. 230.81 or filed a complaint under s. 230.85 (1).

(b) The employee testified or assisted or will testify or assist in any action or proceeding relating to the lawful disclosure of information under s. 230.81 by another employee.

(c) The appointing authority, agent of an appointing authority or supervisor believes the employee engaged in any activity described in par. (a) or (b).

(9) "Substantial waste of public funds" means an unnecessary expenditure of a substantial amount of money or a series of unnecessary expenditures of smaller amounts of money.

History: 1983 a. 409

230.81 Employee disclosure. (1) An employee with knowledge of information the disclosure of which is not expressly prohibited by state or federal law, rule or regulation may disclose that information to any other person. However, to obtain protection under s. 230.83, before disclosing that information to any person other than his or her attorney, collective bargaining representative or legislator, the employee shall do either of the following:

(a) Disclose the information in writing to the employee's supervisor.

(b) After asking the commission which governmental unit is appropriate to receive the information, disclose the information in writing only to the governmental unit the commission determines is appropriate. The commission may not designate the department of justice, the courts, the legislature or a service agency under subch. IV of ch. 13 as an appropriate governmental unit to receive information. Each appropriate governmental unit shall designate an employee to receive information under this section.

(2) Nothing in this section prohibits an employee from disclosing information to an appropriate law enforcement agency, a state or federal district attorney in whose jurisdiction the crime is alleged to have occurred, a state or federal grand jury or a judge in a proceeding commenced under s. 968.26, or disclosing information pursuant to any subpoena issued by any person authorized to issue subpoenas under s. 885.01. Any such disclosure of information is a lawful disclosure under this section and is protected under s. 230.83.

(3) Any disclosure of information by an employee to his or her attorney, collective bargaining representative or legislator or to a legislative committee or legislative service agency is a lawful disclosure under this section and is protected under s. 230.83.

History: 1983 a. 409

230.82 Processing of information. (1) A governmental unit to which an employee discloses information under s. 230.81 (1) shall process it as provided in this section. Within 30 days of receiving the information, the governmental unit shall either initially determine if it merits further investigation or refer the infor-

mation to a governmental unit better able to initially determine if it merits further investigation. A governmental unit which initially determines information to merit further investigation shall, within 30 days of that determination, either commence a full investigation into the truth of the information or refer the information to a governmental unit better able to conduct such an investigation, which shall commence it within 30 days of referral. A governmental unit may disclose or refer information to an appropriate law enforcement agency or district or federal attorney as part of an investigation or in lieu of referral to another governmental unit, if the law enforcement agency or district or federal attorney is best able to conduct the investigation. Any full investigation commenced shall be completed within a reasonable time.

(2) A governmental unit which initially determines that information merits further investigation, or which after a full investigation finds information to be true, shall so inform the employee and his or her appointing authority in writing. A governmental unit which initially determines information not to merit further investigation, refers the information to another governmental unit or after a full investigation finds information to be untrue shall so inform the employee in writing.

(3) A governmental unit which investigates or otherwise processes information disclosed under s. 230.81 may require that an interview with any employee described in s. 230.80 (3), except a management or supervisory employee immediately involved in the subject matter of the information disclosed, be conducted outside the presence of the appointing authority or any representative or agent thereof unless the employee voluntarily requests that presence. An appointing authority shall permit an employee to be interviewed without loss of pay and to have an employee representative present at the interview. An appointing authority of an employee to be interviewed may require the governmental unit to give the appointing authority reasonable notice prior to the interview.

(4) A governmental unit shall keep the identity of the employee confidential until the governmental unit determines the information merits further investigation. If a governmental unit conducts a full investigation, it shall keep the identity of the employee confidential if it is reasonably possible to do so.

History: 1983 a. 409

230.83 Retaliatory action prohibited. (1) No appointing authority, agent of an appointing authority or supervisor may initiate or administer, or threaten to initiate or administer, any retaliatory action against an employee.

(2) This section does not apply to an employee who discloses information if the employee knows or anticipates that the disclosure is likely to result in the receipt of anything of value for the employee or for the employee's immediate family, unless the employee discloses information in pursuit of any award offered by any governmental unit for information to improve government administration or operation.

(3) Nothing in this section restricts the right of an employer to take appropriate disciplinary action against an employee who knowingly makes an untrue statement or discloses information the disclosure of which is expressly prohibited by state or federal law, rule or regulation.

History: 1983 a. 409

230.85 Enforcement. (1) An employee who believes that a supervisor or appointing authority has initiated or administered, or threatened to initiate or administer, a retaliatory action against that employee in violation of s. 230.83 may file a written complaint with the commission, specifying the nature of the retaliatory action or threat thereof and requesting relief, within 60 days after the retaliatory action allegedly occurred or was threatened or after the employee learned of the retaliatory action or threat thereof, whichever occurs last.

(2) The commission shall receive and, except as provided in s. 230.45 (1m), investigate any complaint under sub. (1). In the course of investigating or otherwise processing such a complaint, the commission may require that an interview with any employee

described in s. 230.80 (3), except a management or supervisory employe who is a party to or is immediately involved in the subject matter of the complaint, be conducted outside the presence of the appointing authority or any representative or agent thereof unless the employe voluntarily requests that presence. An appointing authority shall permit an employe to be interviewed without loss of pay and to have an employe representative present at the interview. An appointing authority of an employe to be interviewed may require the commission to give the appointing authority reasonable notice prior to the interview. If the commission finds probable cause to believe that a retaliatory action has occurred or was threatened, it may endeavor to remedy the problem through conference, conciliation or persuasion. If that endeavor is not successful, the commission shall issue and serve a written notice of hearing, specifying the nature of the retaliatory action which has occurred or was threatened, and requiring the person named, in this section called the "respondent", to answer the complaint at a hearing. The notice shall specify the place of hearing and a time of hearing not less than 30 days after service of the complaint upon the respondent nor less than 10 days after service of the notice of hearing. If, however, the commission determines that an emergency exists with respect to a complaint, the notice of hearing may specify a time of hearing within 30 days after service of the complaint upon the respondent, but not less than 10 days after service of the notice of hearing. The testimony at the hearing shall be recorded or taken down by a reporter appointed by the commission.

(3) (a) After hearing, the commission shall make written findings and orders. If the commission finds the respondent engaged in or threatened a retaliatory action, it shall order the employe's appointing authority to insert a copy of the findings and orders into the employe's personnel file and, if the respondent is a natural person, order the respondent's appointing authority to insert such a copy into the respondent's personnel file. In addition, the commission may take any other appropriate action, including but not limited to the following:

1. Order reinstatement or restoration of the employe to his or her previous position with or without back pay.

2. Order transfer of the employe to an available position for which the employe is qualified within the same governmental unit.

3. Order expungement of adverse material relating to the retaliatory action or threat from the employe's personnel file.

4. Order payment of the employe's reasonable attorney fees by a governmental unit respondent, or by a governmental unit employing a respondent who is a natural person if that governmental unit received notice and an opportunity to participate in proceedings before the commission.

5. Recommend to the appointing authority of a respondent who is a natural person that disciplinary or other action be taken regarding the respondent, including but not limited to any of the following:

a. Placement of information describing the respondent's violation of s. 230.83 in the respondent's personnel file.

b. Issuance of a letter reprimanding the respondent.

c. Suspension.

d. Termination.

(b) If, after hearing, the commission finds that the respondent did not engage in or threaten a retaliatory action it shall order the complaint dismissed. The commission shall order the employe's appointing authority to insert a copy of the findings and orders into the employe's personnel file and, if the respondent is a natural person, order the respondent's appointing authority to insert such a copy into the respondent's personnel file. If the commission finds by unanimous vote that the employe filed a frivolous complaint it may order payment of the respondent's reasonable actual attorney fees and actual costs. Payment may be assessed against either the employe or the employe's attorney, or assessed so that the employe and the employe's attorney each pay a portion. To find

a complaint frivolous the commission must find that either s. 814.025 (3) (a) or (b) applies or that both s. 814.025 (3) (a) and (b) apply.

(c) Pending final determination by the commission of any complaint under this section, the commission may make interlocutory orders.

(d) Interim earnings or amounts earnable with reasonable diligence by the person subjected to the retaliatory action or threat shall reduce back pay otherwise allowable. Amounts received by the person subjected to the retaliatory action or threat as unemployment benefits or welfare payments do not reduce the back pay otherwise allowable, but shall be withheld from the person subjected to the retaliatory action or threat and immediately paid to the unemployment reserve fund or to the welfare agency making the payment.

(4) The commission shall serve a certified copy of the findings and order on the respondent and, if the respondent is a natural person, upon the respondent's appointing authority.

(5) (a) If a respondent does not comply with any lawful order by the commission, for each such failure the respondent shall forfeit a sum of not less than \$10 nor more than \$100. Every day during which a respondent fails to comply with any order of the commission constitutes a separate violation of that order.

(b) As an alternative to par. (a), the commission may enforce an order by a suit in equity.

(6) (a) If a disciplinary action occurs or is threatened within the time prescribed under par. (b), that disciplinary action or threat is presumed to be a retaliatory action or threat thereof. The respondent may rebut that presumption by a preponderance of the evidence that the disciplinary action or threat was not a retaliatory action or threat thereof.

(b) Paragraph (a) applies to a disciplinary action under s. 230.80 (2) (a) which occurs or is threatened within 2 years, or to a disciplinary action under s. 230.80 (2) (b), (c) or (d) which occurs or is threatened within one year, after an employe discloses information under s. 230.81 which merits further investigation or after the employe's appointing authority, agent of an appointing authority or supervisor learns of that disclosure, whichever is later.

History: 1983 a 409; 1991 a 39.

Commission may not use "multiplier" in computing reasonable attorney fees under (3) (a) 4; only SCR 20:1 5 factors are permissible. Board of Regents v. Personnel Comm. 147 W (2d) 406, 433 NW (2d) 273 (Ct. App. 1988)

230.86 Discipline based on surveillance. (1) No appointing authority may take any disciplinary action based in whole or in part on wiretapping, electronic surveillance or one-way mirrors unless that surveillance produces evidence that the employe against whom disciplinary action is taken has committed a crime or unless that surveillance is authorized by the appointing authority and is conducted in accordance with the rules promulgated under s. 16.004 (12).

(2) Subsection (1) does not apply to wiretapping, electronic surveillance or one-way mirrors used to monitor security or used for public safety purposes at a state institution.

History: 1989 a 245; 1993 a 496

230.87 Judicial review. (1) Findings and orders of the commission under this subchapter are subject to judicial review under ch. 227. Upon that review, or in any enforcement action, the department of justice shall represent the commission unless a conflict of interest results from that representation. A court may order payment of a prevailing appellant employe's reasonable attorney fees by a governmental unit respondent, or by a governmental unit employing a respondent who is a natural person if that governmental unit received notice and an opportunity to appear before the court.

(2) If the court finds that the appeal is frivolous, it shall award to the respondent reasonable attorney fees and costs. Payment may be assessed fully against the appellant, including a governmental unit, or the appellant's attorney or assessed so that the

appellant and the appellant's attorney each pay a portion. To find an appeal frivolous, the court must find one or more of the following:

(a) The appeal was filed, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another.

(b) The appellant or appellant's attorney knew, or should have known, that the appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

History: 1983 a. 409; 1985 a. 135

230.88 Payment of award, judgment or settlement; effect of order, arbitration award or commencement of court action. (1) **PAYMENT** Any award, judgment or settlement obtained by an employe under this subchapter shall be paid from the funds appropriated under s. 20.865 (1) (a), (g) and (q).

(2) **EFFECT.** (a) A final order issued under s. 230.85 or 230.87 which has not been appealed and for which the time of appeal has passed binds all parties who were subjected to the jurisdiction of the commission or the court and who received an opportunity to be heard. With respect to these parties, the decree is conclusive as to all issues of law and fact decided.

(b) No collective bargaining agreement supersedes the rights of an employe under this subchapter. However, nothing in this subchapter affects any right of an employe to pursue a grievance procedure under a collective bargaining agreement under subch. V of ch. 111, and if the commission determines that a grievance arising under such a collective bargaining agreement involves the

same parties and matters as a complaint under s. 230.85, it shall order the arbitrator's final award on the merits conclusive as to the rights of the parties to the complaint, on those matters determined in the arbitration which were at issue and upon which the determination necessarily depended.

(c) No later than 10 days before the specified time of hearing under s. 230.85 (2), an employe shall notify the commission orally or in writing if he or she has commenced or will commence an action in a court of record alleging matters prohibited under s. 230.83 (1). If the employe does not substantially comply with this requirement, the commission may assess against the employe any costs attributable to the failure to notify. Failure to notify the commission does not affect a court's jurisdiction to proceed with the action. Upon commencement of such an action in a court of record, the commission has no jurisdiction to process a complaint filed under s. 230.85 except to dismiss the complaint and, if appropriate, to assess costs under this paragraph.

History: 1983 a. 409

230.89 Rule making and reporting. (1) The commission shall promulgate rules to carry out its responsibilities under this subchapter.

(2) Every 2 years, the commission shall submit a report to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), regarding complaints filed, hearings held and actions taken under this subchapter, including the dollar amount of any monetary settlement or final monetary award which has become binding on the parties.

History: 1983 a. 409; 1987 a. 186