



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

State Civil Service System

Wisconsin's civil service system governs the selection, advancement, discipline, removal, and other employment terms of state employees. The state civil service system was created in 1905 and requires merit-based selection and just cause termination.¹ This Information Memorandum provides a general overview of the civil service system by briefly describing the following elements of the system: (1) classification; (2) recruitment, examination, and selection; (3) advancement; (4) restoration and reinstatement; (5) demotion, suspension, discharge, and layoff; (6) compensation; and (7) employee grievances.

The state civil service system is governed by subch. II of ch. 230, Stats., and administered by the Division of Merit Recruitment and Selection in the Office of State Employment Relations (OSER). Additional sources for information related to the civil service system and state employment include all of the following: chs. ER 1 to 47 and ER-MRS 1 to 34, Wis. Adm. Code; the State Compensation Plan; and the Wisconsin Human Resources Handbook.

The purpose of ch. 230, Stats., is to provide state agencies with competent personnel who will furnish state services to citizens fairly, efficiently, and effectively. Further, the chapter provides that it is the policy of the state to maintain a system that fills classified service positions through merit, with adequate civil service safeguards, and to provide for equal employment opportunity by ensuring that all personnel actions are based on the ability to perform the duties and responsibilities of the position. [s. 230.01 (1) and (2), Stats.]

CLASSIFICATION

The state civil service system is divided into the classified service and the unclassified service. In general, the civil service system applies to employees in the classified service but not to employees in the unclassified service. [s. 230.08 (1), Stats.]

The classified service comprises all positions not included in the unclassified service. [s. 230.08 (3) (a), Stats.] Section 230.08 (2), Stats., lists the positions that are included in the unclassified service. For example, the unclassified service includes positions held by all of the following:

- All state officers elected by the people.

¹ *The History of the Wisconsin Civil Service 1905-2005*, Wisconsin Office of State Employment Relations, p. 1.

- All officers and employees of the state appointed by the Governor, whether subject to confirmation or not, unless otherwise provided.
- Division administrators in state agencies. [The statutes designate a number of division administrators in the unclassified service in each agency.]
- All legislative officers, policy research personnel, assistants to legislators, and research staff assigned to legislative committees.
- The personnel of the Legislative Reference Bureau, Legislative Audit Bureau, Legislative Fiscal Bureau, Legislative Council, and Legislative Technology Services Bureau.
- The Supreme Court justices and Court of Appeals judges, and the clerks, assistants, and employees of such justices or judges.
- Officers and employees 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.

For all positions in the classified service, the OSER Director (“Director”) must establish grade levels and classifications. Each classification must include all positions that are comparable with respect to authority, responsibility, and nature of work, and each classification must be established to include as many positions as are reasonable and practicable. After consulting with the appointing authorities², the Director must 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 Director may reallocate positions on the same basis. In addition, the Director must, upon the initial establishment of a classification, assign that class to the appropriate pay rate or range according to the skill, effort, responsibility, and working conditions required for the class. Upon subsequent review, the Director may reassign classes to different pay rates and ranges. [s. 230.09 (1) and (2) (a) and (b), Stats.]

RECRUITMENT, EXAMINATION, AND SELECTION

RECRUITMENT

Recruitment for classified positions must be an active, continuous process that is conducted in a manner that ensures a diverse, highly qualified group of applicants. It must be conducted on the broadest possible base consistent with sound personnel management practices and an approved affirmative action plan or program. [s. 230.14 (1), Stats.]

² An “appointing authority” is the chief administrative officer of an agency, unless another person is authorized to appoint subordinate staff in the agency by the constitution or statutes. [s. 230.03 (4), Stats.]

EXAMINATION

Appointments to, and promotions in, the classified service must be made only according to merit and fitness, which is generally ascertained by competitive examination.³ [s. 230.15 (1), Stats.]

The Administrator of the Division of Merit Recruitment and Selection (“Administrator”) must require persons applying for admission to any examination to file an application with the division within a reasonable time prior to the proposed examination. In connection with the application, the Administrator may require supplementary work history, educational transcripts, or statements of physicians or others having knowledge of the applicant, as needed for qualification evaluations. [s. 230.16 (1), Stats.]

Competitive examinations must be free and open to all applicants who have fulfilled the preliminary requirements stated in the examination announcement. To ensure that all applicants have a fair opportunity to compete, examinations must 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. [s. 230.16 (2), Stats.]

All examinations, including minimum training and experience requirements, for positions in the classified service must be job-related in compliance with appropriate validation standards and must be subject to the approval of the Administrator. All relevant experience, whether paid or unpaid, must satisfy experience requirements. [s. 230.16 (4), Stats.]

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 must 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. [s. 230.16 (5), Stats.]

CERTIFICATION

An appointing authority must give written notice to the Administrator of any vacancy to be filled in any classified service position. The Administrator must certify from the appropriate employment register⁴ any number of names at the head of the register. In determining the number of names to certify, the Administrator must use statistical methods and personnel management principles that are designed to maximize the number of certified names that are appropriate for filling the specific position vacancy. [s. 230.25 (1), Stats.]

After certifying names, additional names must be certified in rank order of those who, with the combination of veterans preference points awarded under s. 230.16 (7), Stats., and

³ The Administrator of the Division of Merit Recruitment and Selection must waive competitive examination for a vacancy in the classified service that will be filled by a disabled veteran on a noncompetitive basis under s. 230.275, Stats. In addition, the Administrator may waive competitive examination for appointments involving an incumbent employee whose position is placed in the classified service and appointments requiring peculiar and exceptional qualifications of a scientific, professional, or educational character. [s. 230.15 (1), (1m), (2), and (2m), Stats.]

⁴ An employment register contains the names of applicants for civil service positions and is used to fill positions in the classified service. An employment register may be established by functional grouping of titles, class title, subtitle, or recruitment option. [s. ER-MRS 11.01 (1) and (2), Wis. Adm. Code.]

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 prior to this addition of names. [s. 230.25 (1m), Stats.]

In addition, the Administrator may engage in expanded certification by doing one or more of the following: (1) certifying up to three names of persons belonging to at least one of one or more specified racial or ethnic groups (if the agency requests expanded certification to comply with an approved affirmative action plan); (2) certifying up to three names of persons of a specified gender (if the agency requests expanded certification to comply with an approved affirmative action plan); or (3) certifying up to three names of persons with a disability (if the agency requests expanded certification to hire persons with a disability). [s. 230.25 (1n), Stats.]

When certifying names to an appointing authority, the administrator must 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. In addition, the administrator may not disclose any applicant's examination score to the appointing authority. [s. 230.25 (2) (a), Stats.]

SELECTION AND APPOINTMENT

An appointing authority must generally make an appointment to a classified service position from among the names certified to the appointing authority. An appointment must 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, the appointing authority must immediately report, in writing, to the Administrator the reasons for failing to make an appointment. If the Administrator determines that the failure to make an appointment is not justified under the merit system, the Administrator must issue an order directing that an appointment be made. [s. 230.25 (2) (b), Stats.]

Selection of classified state employees must be based solely on merit and no employment recommendation may be based on political or religious affiliations or on membership in associations not primarily related to merit in employment. An appointing authority may consider only those recommendations that 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. [s. 230.20, Stats.]

The statutes authorize the Administrator to establish separate recruitment, evaluation, and certification procedures for some positions, including unskilled labor positions, entry professional positions, and career executive positions. [ss. 230.21, 230.22, and 230.24, Stats.]

PROBATIONARY PERIOD

All original and all promotional appointees to permanent, sessional, and seasonal positions in the classified service, except supervisory or management positions, must serve a probationary period of six months. However, the Administrator, at the request of the appointing authority, may extend the probationary period for a maximum of three additional months. An appointee to a supervisory or management position must serve a probationary period of one year, unless the Administrator, at the request of the appointing authority, waives the probationary period after six months. [s. 230.28 (1) (a) and (am), Stats.]

Dismissal may be made at any time during the probationary period. Upon dismissal, the appointing authority must report the dismissal, and the reason for the dismissal, to the Administrator and to the removed employee. 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 the employee was appointed as a result of fraud or error. An employee gains permanent status in civil service unless the employee is terminated by the appointing authority prior to the completion of the employee's probationary period. [s. 230.28 (1) (a) and (2), Stats.]

ADVANCEMENT

The Administrator must provide employees with reasonable opportunities for career advancement, within a classified service structure designed to achieve and maintain a highly competent workforce, with due consideration given to affirmative action. [s. 230.19 (1), Stats.]

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 must be filled by competition limited to persons in the classified service and persons with the right of restoration resulting from layoff⁵, 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 employees 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 disabled groups in the relevant labor pool for the state. [s. 230.19 (2), Stats.]

RESTORATION AND REINSTATEMENT

Any person who has obtained permanent status in civil service 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 must be granted the following reinstatement⁶ and restoration⁷ considerations:

⁵ When the group of applicants is limited in this way, a person with the right of restoration resulting from layoff may compete only for a position for which he or she could have competed had the layoff not occurred. [s. 230.19 (3), Stats.]

⁶ "Reinstatement" means the act of permissive re-appointment without competition of an employee or former employee to a position in the same class in which the person was previously employed; in another class to which the person would have been eligible to transfer had there been no break in employment; or in a class having a lower pay rate or pay range maximum for which the person is qualified to perform the work after the customary orientation provided to newly hired workers in the position. [s. ER-MRS 1.02 (29), Wis. Adm. Code.]

⁷ "Restoration" means the act of mandatory re-appointment without competition of an employee or former employee to a position in the same class in which the person was previously employed; in another classification to which the person would have been eligible to transfer had there been no break in employment; or in a class having a lower pay rate or pay range maximum for which the person is qualified to perform the work after the customary orientation provided to newly hired workers in the position. [s. ER-MRS 1.02 (30), Wis. Adm. Code.]

- For a five-year period from the date of separation, the person must be eligible for reinstatement in a position having a comparable or lower pay rate or range for which such person is qualified.
- For a three-year period from the date of separation, if on layoff status, the person must 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.

[s. 230.31 (1), Stats.]

State statutes also provide specific restoration rights and reinstatement privileges in classified service for certain types of employees. For example, any classified employee, except a limited term employee, who enlists, is ordered, or is inducted into active service in the U.S. Armed Forces or who is requested to work for the federal government during a national emergency must be restored to the same or similar position in the classified service, if certain conditions are met. Similarly, employees who have completed an original appointment probationary period in the classified service and are appointed to a position in the unclassified service are generally provided with: (1) restoration rights for the duration of the unclassified service appointment and for three months after the termination of the appointment; and (2) reinstatement privileges for five years following appointment to the unclassified service or for one year after termination of the appointment, whichever is longer. [ss. 230.32 (1) and 230.33 (1), (1m), and (2), Stats.]

DEMOTION, SUSPENSION, DISCHARGE, AND LAYOFF

An employee with permanent status in civil service or an employee who has served with the state as an assistant district attorney or assistant state public defender 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. [s. 230.34 (1) (a), Stats.]

Employees with permanent status in permanent, sessional, and seasonal positions in the classified service and employees 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 employees in the classes used for layoff are terminated. The order of layoff of such employees may be determined by seniority or performance, a combination of seniority and performance, or by other factors. [s. 230.34 (2), Stats.]

COMPENSATION

Compensation for most state employees is governed by the State Compensation Plan. Any changes to the Compensation Plan must be approved by the Legislature's Joint Committee on Employment Relations. [s. 230.12 (3), Stats.]

The Compensation Plan contains: (1) 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 assigned⁸; and (2) the provisions governing the pay of certain unclassified service employees, including executive salary group (ESG) employees and elected officials. The Compensation Plan may, when applicable, include provisions for supplemental pay and pay adjustments and other provisions required to implement the plan or amendments to the plan. [s. 230.12 (1) (a), Stats.]

The pay schedules in the Compensation Plan may incorporate different wage and salary administration features. Each schedule must provide for pay ranges or rates and applicable methods and frequency of pay adjustments based on considerations such as competitive practice, appropriate principles and techniques of wage and salary administration and determination, needs of the service, and elimination of pay inequities based on gender or race. Such considerations may also include provisions prevalent in schedules used in other public and private employment, recognized expertise, professional or advanced training, or any other criteria that ensures state employee compensation is set on an equitable basis. [s. 230.12 (1) (b), Stats.]

The Compensation Plan may also include other provisions relating to pay, benefits, and working conditions as outlined in s. 230.12, Stats., as well as provisions relating to pay, benefits, and working conditions that supersede the provisions of the civil service and other applicable statutes and rules promulgated by the Director and Administrator. [s. 230.12 (1), Stats.]

In addition to compensation, state employees are provided with various benefits, including paid annual leave, sick leave, and holidays; health insurance; and retirement benefits. [s. 230.35, Stats; ch. 40, Stats.; and ch. ER 18, Wis. Adm. Code.]

EMPLOYEE GRIEVANCES

GRIEVANCE PROCEDURE

The Director must establish the scope and minimum requirements of a state employee grievance procedure relating to conditions of employment. [s. 230.04 (14), Stats.] The grievance procedure is outlined in Chapter 430 of the Wisconsin Human Resources Handbook.

An employee may use the grievance procedure to grieve certain employment actions, including demotion, layoff, suspension, discharge, and reduction in pay if the employee alleges that such action was taken without just cause. A grievant must submit a formal grievance to the designated employer representative. The deadline for submission of the grievance is 30 calendar days from the date that the grievant became aware or should have become aware of the matter that is the subject of the grievance. [ss. 430.030 and 430.080, Human Resources Handbook.]

⁸ If an employee is covered under a collective bargaining agreement under the State Employment Labor Relations Act (SELRA), in subch. V of ch. 111, Stats., the compensation plan applies to that employee, except for provisions of the compensation plan that are subject to bargaining under a collective bargaining agreement that covers the employee. [s. 230.10 (1), Stats.]

At the discretion of the employer, the grievance procedure may begin with informal resolution of the grievance between the employee and his or her supervisor. The formal grievance procedure contains the following three steps:

- **Step One:** The grievance must be submitted to the division administrator or his or her designee. In general, under this step, the administrator meets with the employee regarding the grievance and issues a written decision on the grievance within 30 calendar days of the administrator's receipt of the grievance.
- **Step Two:** If the grievant appeals the decision of the administrator under step one, the grievance must be submitted to the appointing authority, or his or her designee, within 10 calendar days of receipt of the administrator's decision under step one. In general, under this step, the appointing authority meets with the employee regarding the grievance and issues a written decision on the grievance within 30 calendar days of the appointing authority's receipt of the grievance.
- **Step Three:** If the grievant appeals the decision of the appointing authority under step two, the grievance must be submitted to OSER within 10 calendar days of receipt of the appointing authority's decision under step two. If OSER is unable to resolve the grievance, OSER notifies the grievant, within 30 calendar days of OSER's receipt of the grievance, of the option to appeal to Wisconsin Employment Relations Commission (WERC) for certain types of grievances.

[ss. 430.060 and 430.080, Human Resources Handbook.]

OSER's decision may be appealed to the WERC if the appeal alleges: (1) that the grieved action was not based on just cause; or (2) the denial of hazardous duty benefits under s. 230.36, Stats. The appeal must be filed with WERC within 30 calendar days after the date of OSER's notice in the third step. [s. 430.080, Human Resources Handbook.]

Wisconsin Employment Relations Commission

In addition to serving as final step arbiter in grievances subject to the state employee grievance procedure, described above, WERC also conducts hearings on appeals under the state civil service laws in the following types of actions or decisions:

- A personnel decision under subch. II of ch. 230, Stats., that is made by the Administrator or by an appointing authority under authority delegated by the Administrator.
- A personnel decision relating to allocation of positions in the classified service or relating to closed personnel records that is made by the Director or by an appointing authority under authority delegated by the Director.
- A demotion, layoff, suspension, discharge, or reduction in base pay, as the final step in the state employee grievance procedure, if the appeal alleges that the decision was not based on just cause.
- A personnel action after certification that is related to the hiring process in the classified service and that is alleged to be illegal or an abuse of discretion.

- A personnel action under s. 230.275, Stats., relating to noncompetitive appointment of disabled veterans, by an appointing authority that is alleged to be illegal or an abuse of discretion.
- A determination that a person was discharged from the unclassified service for just cause under s. 230.337, Stats., relating to rights of corrections or parole employees.
- A decision of the Department of Health Services relating to a Milwaukee County employee under s. 49.825 (3) (b), Stats.
- A decision of the Department of Children and Families relating to a county employee under s. 49.826 (3) (b), Stats.
- A decision to deny hazardous duty benefits under s. 230.36, Stats.

[ss. 230.44 (1) and 230.45 (1) (a), (c), and (d), Stats.]

Any appeal filed with WERC 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. All appeals must be in writing. [s. 230.44 (2) and (3), Stats.]

A hearing must be open to the public, unless the appellant requests that the hearing be closed. Any party in an action may be present at a hearing on the action in person, by attorney, or by any other agent. Within 90 days after the hearing on an action is complete, WERC must either affirm, modify, or reject the action that is the subject of the appeal. WERC's decision may be appealed to circuit court. [s. 230.44 (4) (a), (c), (e), and (f), Stats.]

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

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