

# Wisconsin Human Resources Handbook

## Chapter 680

### Protective Occupation Status for State Employees

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#### Sec. 680.010 Introduction

The Wisconsin Retirement System (WRS) provides retirement benefits for the vast majority of employees of the State of Wisconsin. The “protective occupation” category is a supplemental program of the WRS which was instituted to allow employees who are responsible for ensuring the public’s safety to retire before they become unable to adequately perform their duties.

This chapter describes the intent of protective occupation status for state governmental employees participating in the WRS, identifies the responsibility of the Office of State Employment Relations (OSER) to review agencies’ protective occupation determinations, and prescribes procedures for designating a position as a protective occupation and for certifying the incumbent to the Public Employee Trust Fund as a protective occupation participant. The provisions of this chapter apply *only* to state governmental employees who meet the requirements for participation in the WRS.

**Note:** The Department of Employee Trust Funds (DETF) administers the WRS. Any general questions from state agency human resources staff concerning eligibility for participation in the WRS or any specific questions concerning the supplemental protective occupation program and relevant ETF administrative codes should be directed to:

DETF, Division of Retirement Services; Member and Employer Services Bureau  
801 West Badger Road, P.O. Box 7931; Madison, Wisconsin 53707-7931  
Telephone number (608) 266-3285 (for employers only)  
Toll Free Employer Communication Center Line (877) 533-5020  
Fax number (608) 267-3931  
Internet site <http://etf.wi.gov/employers.htm>

State employees who have other questions concerning the WRS should contact DETF at the following member services line: Toll Free: 1 (877) 533-5020; Local Madison: (608) 266-3285; Fax: (608) 267-3931

**Sec. 680.020 Definitions**

1. **Active Fire Suppression or Prevention:** Job duties which involve the pre-suppression, suppression, and prevention of forest fires.
2. **Active Law Enforcement:** Job duties which involve the detection or prevention of crime, the enforcement of laws and ordinances, and the authority to make arrests for violations of the laws and ordinances the employee is employed to enforce.
3. **Agency Head Determination:** A formal review of a position's responsibilities by the head of an agency, or his/her designee, for the purpose of determining whether a position should be designated a protective occupation for purposes of the WRS and, if the position is filled, whether the incumbent should be certified to the Public Employee Trust Fund as a protective occupation participant.
4. **Frequent Exposure:** Foreseeable exposure of a recurrent nature happening at short, but not necessarily predictable, intervals.
5. **High Degree of Danger or Peril:** An incident of an adverse nature involving an actual or perceived threat of bodily harm to the public or the employee responsible for assuring the public's safety.
6. **High Degree of Physical Conditioning:** Demonstrated ability to complete standardized physical fitness and/or agility requirements on a regular basis, as determined by the employing agency, in order to effectively carry out the responsibilities of the position.
7. **Normal Retirement Date for Protective Occupation Participant:** The date on which a participant attains the age of 54 years if the participant has less than 25 years of service, or 53 years if the participant has 25 years of service or more.
8. **Participant:** Any person included within the provisions of the WRS by virtue of being or having been a participating employee whose account has not been closed under s. 40.25(1) or (2), Wis. Stats.
9. **Participating Employee:** An employee who is currently in the service of or an employee who is on leave of absence from a participating employer under the WRS and who has met the requirements for inclusion within the provisions of the WRS under s. 40.22, Wis. Stats.
10. **Participating Employer:** Any State of Wisconsin employer subject to the provisions of each of the respective benefit plans covered under Chapter 40, Wis. Stats.
11. **Principal Duties:** Those duties which are performed by an employee for at least 51 percent of the time.
12. **Protective Occupations:** Those occupations whose principal duties involve ensuring the public's safety and which subject the individual filling the position to periods of great mental and physical stress, require the individual to be present under very dangerous situations, and require the individual to carry out his/her duties regardless of the risk involved.
13. **Protective Occupation Participant:**
  - a. Any participant included within the provisions of the WRS who occupies a job title specifically identified in s. 40.02(48) (am), Wis. Stats., as being a protective occupation (or is allocated to a classification title determined by OSER to be equivalent) and whose name is certified to the Public Employee Trust Fund as a protective occupation participant.

- b. Any participant included within the provisions of the WRS whose principal duties are determined by OSER to involve active law enforcement or active fire suppression or prevention, provided the duties require frequent exposure to a high degree of danger or peril and require a high degree of physical conditioning, and whose name is certified to the Public Employee Trust Fund as a protective occupation participant. (See s. 40.02(48) (a), Wis. Stats.)

14. **Public Safety:** Protection from danger, risk, or injury, as well as the responsibility to enforce public good.

#### **Sec. 680.030 Statutory Authority**

Sections 230.04(15) and 40.06(1) (dm), Wis. Stats., authorize the Director of OSER to review and either approve or disapprove each determination by an agency head that a position should be designated a protective occupation for purposes of the WRS. A state employee's name may not be certified to the Public Employee Trust Fund as a protective occupation participant until OSER approves the agency's determination.

#### **Sec. 680.040 Delegation**

Section 230.04(1m), Wis. Stats., authorizes the Director of OSER to delegate any of his/her statutory functions to the head of an agency. Included is the authority to make protective occupation determinations.

To request authorization to make protective occupation determinations, an agency head must submit a written request to the Director of OSER. The request must identify the specific classification, classification series, or specific allocation(s) within a particular classification for which the agency requests delegation; a copy of a position description for a typical position; and an explanation of how the classification or specific allocation meets the statutory intent of protective occupation. The Director of OSER will respond in writing, either approving or denying the request for delegation. If approved, the delegation agreement will remain in effect until a written request to rescind or modify the agreement is made by either the Director of OSER or the head of the agency.

#### **Sec. 680.050 Policy Statement**

It is the policy of OSER to apply the protective occupation provisions of Ch. 40, Wis. Stats., in accordance with statutory intent.

The intent of protective occupation under the WRS is to provide a supplemental retirement benefit for those law enforcement and fire suppression or prevention employees who are primarily responsible for protecting the public. The rationale for granting special retirement benefits to certain occupational groups is described in the Retirement Research Council's Staff Report No. 1-1962, as follows:

The public interest requires that employees whose duties relate directly to public safety should possess the necessary mental and physical skills to cope with any type of emergency situation. Failure to maintain high standards in this regard is to subject the public, as well as other employees, to unwarranted danger. In certain other occupational areas, the primary danger is that the employee himself will fall victim to his [or her] own physical and mental limitations.

#### **Sec. 680.060 Types of Protective Occupation Participants**

Two types of protective occupation participants exist for purposes of the WRS. They are:

1. Participants whose job titles are specifically identified by statute as being protective (or are allocated to civil service classifications determined by OSER to be equivalent); or,

2. Participants whose principal duties involve active law enforcement or active fire suppression or prevention, provided the duties require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning.

See s. 40.02(48)(a) and (am), Wis. Stats., for statutory language on protective occupation participants, and the attachment to this chapter for a list of statutorily authorized protective occupation job titles and their equivalent civil service classification titles.

## Sec. 680.070 Procedures for Requesting Protective Occupation Status

Each time a classification decision is made, the agency head or designee considers whether or not the position should be included under protective status. Every time a position is filled (e.g., the first-time classification of a new position), or a position is reallocated or reclassified, or the duties of a filled position change so significantly that the primary purpose of the position involves or no longer involves active law enforcement or active fire suppression or prevention, the position must be evaluated for protective occupation purposes.

1. **Delegated Civil Service Classification Titles.** For those civil service classification titles which are delegated to an agency and are specifically identified in s. 40.02(48) (am), Wis. Stats., as being protective (or are allocated to civil service classification titles determined by OSER to be equivalent), the agency head or designee will notify DETF of the name of the employee occupying the protective occupation position for subsequent certification as a protective occupation participant by the Public Employee Trust Fund.
2. **Non-delegated Civil Service Classification Titles.** For those civil service classification titles which are not delegated to an agency, the agency head or designee will make a determination as to the appropriateness of protective status based on s. 40.02(48)(a), Wis. Stats. (See section 680.080, Criteria to be Used When Making Protective Occupation Determinations for Job Titles Not Specifically Identified by Statute, of this handbook chapter.)
  - a. **Agency Recommendation to Deny a Request for Protective Status.** Upon making a determination that a non-delegated protective occupation request should be denied, the agency head or designee will inform the employee and provide the employee with appeal rights to OSER. (See section 680.110, Appeal Procedures, of this handbook chapter.)
  - b. **Agency Recommendation to Approve a Request for Protective Status.** Upon making a determination that a non-delegated protective occupation request should be approved, the agency head or designee will provide the following information to OSER:
    - 1) An official position description signed by the supervisor and human resources manager.
    - 2) An organizational chart.
    - 3) A copy of the certification request used in filling the position or a completed reclassification/reallocation form.
    - 4) Written justification for protective status (i.e., an explanation of how the principal duties involve active law enforcement or active fire suppression or prevention, expose the employee to a high degree of danger or peril on a frequent basis, and require a high degree of physical conditioning; an identification of any certification, license, or specialized training requirements; and a comparison of the position to other comparable positions which are designated as protective).
    - 5) The effective date requested by the employee and the effective date proposed by the agency.

6. The name of the agency contact person for follow-up purposes.

In the case of 2.a. or b. above, OSER will conduct a review and inform the agency head and employee of its decision. If the request is denied, OSER will notify the employee of his/her appeal rights to the Employee Trust Funds Board (ETF Board). (See section 680.110, Appeal Procedures, of this handbook chapter.)

#### **Sec. 680.080 Criteria to be Used When Making Protective Occupation Determinations for Job Titles Not Specifically Identified by Statute**

For protective occupation determinations for those job titles not specifically identified in s. 40.02(48) (am), Wis. Stats., the requirements found in s. 40.02(48) (a), Wis. Stats., must be met in order for a position to be determined a protective occupation and for the incumbent to be certified to the Public Employee Trust Fund as a protective occupation participant. To be determined to be a protective occupation, the “principal duties” assigned the position *must*:

1. involve “active law enforcement” or “active fire suppression or prevention” *and*
2. require “frequent exposure” to a “high degree of danger or peril” *and*
3. require a “high degree of physical conditioning.”

(See section 680.020, Definitions, of this handbook chapter.)

**Note:** Status of Current Protective Occupation Participants. Employees certified as protective occupation participants prior to publication of this chapter shall retain protective status regardless of whether or not their positions would now be recognized by OSER as protective occupations. However, when such positions are refilled or a classification action is taken, at that time the agency head must conduct a review of the position and, if the classification title is delegated, make a determination as to the appropriateness of protective status and follow applicable procedures, or, if the title is not delegated, submit a determination to OSER for review.

#### **Sec. 680.090 Effective Date for Protective Occupation Determinations**

1. **New Appointments.** Protective status provisions are only applicable to individuals who meet the requirements for participation in the WRS. The effective date for protective status differs, depending on the type of position involved.
  - a. **Permanent and Project Employees.** For employees appointed to permanent and project positions, the effective date for protective status is the effective date of the employee’s appointment to the position.
  - b. **Appointed, Unclassified Employees.** For employees appointed to unclassified positions, the effective date for protective status is the effective date of the employee’s appointment to the position.
  - c. **Limited Term Employees (LTEs).** For LTEs, the effective date for protective status is the date when the employee becomes eligible for participation in the WRS. Agency heads should contact their payroll offices regarding LTE eligibility for retirement benefits. If questions remain, they should contact DETF, Division of Retirement Services. (See section 680.010, Introduction, of this handbook chapter.)
2. **Reclassification and Reallocation Transactions.** When protective occupation determinations result from reclassifications or reallocations, the effective date policy described below will apply.

- a. **Reclassification Transactions.** The effective date for protective occupation determinations resulting from a reclassification shall be the beginning of the first pay period following effective receipt of the reclassification request in the agency human resources office.
- b. **Reallocation Transactions.** The effective date for protective occupation determinations resulting from a reallocation is dependent on the reallocation type. For example:
  - 1) The effective date for protective occupation determinations resulting from reallocations occurring as a result of a request for a classification review shall be the beginning of the first pay period following effective receipt of the request in the agency human resources office.
  - 2) The effective date for protective occupation determinations resulting from reallocations to correct an error in the previous assignment of a position shall be the beginning of the first pay period following effective receipt of the request in the agency human resources office.
  - 3) The effective date for protective occupation determinations resulting from reallocations occurring as a result of a personnel management survey shall be the date of survey implementation.
3. **Employee/Supervisor-Initiated Requests for Protective Occupation Status.** An employee or his/her supervisor may submit a request for protective occupation status to the agency human resources office. In these instances, the effective date for protective occupation status shall be the beginning of the first pay period following receipt of the request in the agency human resources office, except as noted in (4) below.
4. **Retroactive Effective Dates for Protective Status.** In the event an employee requests an effective date earlier than the date of receipt in the agency human resources office, the agency head is required to consider the appropriateness of the retroactive date for service rendered up to seven full calendar years. (See ss. 40.06(1) (e) (1) and 40.08(10), Wis. Stats., regarding limitations on retroactive effective dates.) Then OSER reviews and approves or denies the request as a whole.

#### Sec. 680.100 Certification Procedures

1. **Department of Employee Trust Funds Notification.** In accordance with s. 40.06(1) (d), Wis. Stats., state agencies are required to notify DETF of the names of all participating employees classified as protective occupation participants.
2. **Procedures.** Whether an employee occupies a job title specifically identified by statute as a protective occupation (or occupies a position allocated to a classification title determined by OSER to be equivalent) or is determined to be protective upon review and approval by OSER (or by the agency head when the agency has been delegated the authority by OSER to make protective occupation determinations), the agency responsible for certifying the employee's name to the Public Employee Trust Fund as a protective occupation participant will:
  - a. Process the certification forms required by DETF in the manner and within the time frames prescribed by DETF.
  - b. Maintain in the employee's personnel file a copy of the position description upon which protective status was granted, the certification form submitted to DETF, and OSER's approval of protective status, or the agency's, when approval is delegated.

**Sec. 680.110 Appeal Procedures**

1. **Denial of a *Delegated Protective Occupation Request*.** When a *delegated* protective occupation request submitted by an employee in writing is denied by the appointing authority, the employee may appeal the determination to the ETF Board. (See ss. 40.06(1) (e) 1 and 40.03(1) (j), Wis. Stats.)

Upon making a determination to deny a delegated protective occupation request:

- a. The appointing authority shall provide written notice to the employee of the agency's determination to deny the request. The written notice shall include the agency's rationale for denying the request and the employee's appeal rights to the ETF Board.
  - b. If the employee feels that the decision of the appointing authority is incorrect, the employee may file a written appeal with the ETF Board; 801 West Badger Road; P.O. Box 7931; Madison, Wisconsin; 53707-7931, no later than 90 days after the decision is mailed to the person requesting protective occupation status. During that time, the agency's determination of an employee's protective occupation status remains in effect until such time as the determination is overruled by the ETF Board and any appeal time has expired. If written notice of appeal is not filed in accordance with s. 40.06(1) (e) 1, Wis. Stats., the agency's determination will be final.
  - c. If the appeal is filed in accordance with s. 40.06(1) (e) 1, Wis. Stats., the ETF Board shall review the relevant facts and may hold a hearing.
  - d. Upon completion of its review and hearing, if any, the ETF Board will make a determination, which it shall certify to the employee and the employing state agency.
2. **Denial of a *Non-delegated Protective Occupation Request*.** When a *non-delegated* protective occupation request submitted by an employee in writing is not recommended for approval by the appointing authority, the employee may appeal the determination to OSER.

Upon making a determination to deny a non-delegated protective occupation request:

- a. The appointing authority will provide written notice to the employee of the agency's recommendation to deny the request. The written notice will include the agency's rationale for denying the request and the employee's appeal rights to OSER.
- b. If the employee feels that the decision of the appointing authority is incorrect, the employee may submit to the appointing authority a written request for re-review by the Director of OSER. Such request, if submitted, shall be forwarded to OSER by the appointing authority, along with a copy of the written notice to the employee and any other pertinent information.
- c. If an appeal is submitted by the employee, OSER will conduct a re-review of the request and issue a final determination, in writing. Such notification shall inform both the employee and the appointing authority of OSER's final determination and inform the employee of his/her appeal rights to the ETF Board.
- d. If the employee feels the decision of the Director of OSER is incorrect, the employee may file a written appeal with the ETF Board (see address above) no later than 90 days after the decision is mailed to the employee. During that time, OSER's determination of an employee's protective occupation status will remain in effect until such time as the determination is overruled by the ETF Board and any appeal time has expired. If written notice of appeal is not filed in accordance with s. 40.06(1) (e) 1, Wis. Stats., OSER's determination shall be final.

- e. If the appeal is filed in accordance with s. 40.06(1) (e) 1, Wis. Stats., the ETF Board shall review the relevant facts and may hold a hearing.
- f. Upon completion of its review and hearing, if any, the ETF Board shall make a determination which it shall certify to the employee, the Director of OSER, and the employing state agency.

**Note:** Section 40.06(1)(e)1, Wis. Stats., permits the ETF Board to consider only up to seven years of service rendered prior to the date on which the appeal is received by the Board.

### **Sec. 680.120      Monitoring**

In accordance with s. 230.04(10) (a), Wis. Stats., the Director of OSER may require agencies to furnish current information pertaining to protective occupation positions. Such reports, if requested, shall be provided to OSER, Division of Merit Recruitment.

### **Sec. 680.130      Administrative Information**

This chapter was created in March of 2001 to provide guidance regarding the designation of the protection occupation positions.

The chapter was revised in August 2010 to update the DETF contact information, correct the statutory cite in section 680.060(2), remove the policy statement in section 680.090(4)(a) which conflicted with (b), change references to the Secretary and DER to the Director and OSER, respectively, and update the classifications listed in the attachment.

In January of 2014 this chapter was revised to update the DETF contact information and update the Ranger classifications in the attachment which occurred as a result of the Ranger Personnel Management Survey implemented on June 30, 2013. The titles which were added were the Military Affairs Security Officer Classification Series and the Military Affairs Security Officer Supervisor. The titles which were removed were the Statutorily Authorized Job Titles and Equivalent State Civil Service Classification titles that were no longer utilized.

#### **Titles Removed:**

#### **Statutorily Authorized Job Titles**

Job titles not applicable to state civil service:

- County Traffic Police Officer, Deputy Sheriff (Job title not applicable to the state civil service)
- Person employed under s. 61.66(1), Wis. Stats.
- Sheriff
- Undersheriff

Job title that no longer exists:

- Conservation Patrol Boat Captain
- Conservation Patrol Boat Engineer
- Fire Watcher employed by the Wisconsin Veterans Facilities

### Equivalent State Civil Service Classification Titles

Classifications that no longer exist:

- Chief, Campus Security & Police (UWSP), Administrator
- Division of Narcotics Enforcement (Unclassified) Fire Management Officer
- Fire Management Officer Region
- Aircraft Pilot Supervisor
- Aviation Manager
- State Patrol Lieutenant Colonel
- State Patrol Trooper Confidential
- Police Officer Confidential

Approved Allocations:

- Ranger-Assistant-Property Manager
- Ranger-Enforcement
- Ranger-Operations
- Park Manager

Attachment

**STATUTORILY AUTHORIZED STATE PROTECTIVE OCCUPATION JOB TITLES  
AND THEIR EQUIVALENT STATE CIVIL SERVICE CLASSIFICATION TITLES**

STATUTORILY AUTHORIZED STATE JOB TITLES s. 40.02(48) (am), Wis. Stats.	EQUIVALENT STATE CIVIL SERVICE CLASSIFICATION TITLES	
	(Non-Supervisory/Management)	(Supervisory/Management)
Assistant or Deputy Fire Marshal	Special Agent Special Agent-Senior	Criminal Investigation Director Special Agent-In Charge
Conservation Patrol Officer	Ranger	
Conservation Pilot	Aircraft Pilot*	
Conservation Warden	Administrative Warden Conservation Warden Environmental Warden Safety Specialist Warden Special Investigative Warden	Natural Resources Law Enforcement Supv
Excise Tax Investigator Employed by the Department of Revenue	Excise Tax Agent Excise Tax Agent-Senior	Excise Tax Agent Supervisor
Fire Fighter	Fire/Crash Rescue Specialist 1, 2, 3	Fire/Crash Rescue Supervisor
Forest Fire Control Assistant	Forestry Technician* Forestry Technician-Advanced*	
Member of the State Traffic Patrol State Motor Vehicle Inspector	State Patrol Trooper State Patrol Inspector	Superintendent/Administrator, Division of State Patrol ( <i>Unclassified</i> ) [see s. 40.02(48) (b) 4, Wis. Stats.] State Patrol Captain State Patrol Colonel State Patrol Lieutenant State Patrol Major State Patrol Sergeant

\* Approved allocations only. Prior approval of protective occupation status by OSER is required when a different allocation within the classification series is involved. (See sections 680.060 and 680.120 of this handbook chapter.)

STATUTORILY AUTHORIZED STATE JOB TITLES s. 40.02(48) (am), Wis. Stats.	EQUIVALENT STATE CIVIL SERVICE CLASSIFICATION TITLES	
	(Non-Supervisory/Management)	(Supervisory/Management)
Police Officer	Police Detective Police Officer Military Affairs Security Officers- Entry, Obj, Sr.	Director, Protective Services ( <i>UW unclassified</i> ) Deputy Police Chief, Capitol Police Police Captain Police Chief, Capitol Police Police Chief, State Fair Park ( <i>unclassified</i> ) Police Lieutenant Police Sergeant Military Affairs Security Officer Supervisor
Special Criminal Investigation Agent in the Department of Justice	Special Agent Special Agent-Senior	Administrator, Division of Criminal Investigation Criminal Investigation Director Special Agent In-Charge
State Probation and Parole Officer	Probation and Parole Agent	Corrections Field Supervisor
State Forest Ranger	Forester* Forester-Senior*	Natural Resources Staff Spec* Natural Resources Basin Supv* Natural Resources Region Team Supv*
State Correctional-Psychiatric Officer	Correctional Officer Correctional Sergeant Psychiatric Care Technician Youth Counselor Youth Counselor-Advanced	Supervising Officer-DHS Psychiatric Care Supervisor Supervising Officer 1, 2 Supervising Youth Counselor

\* Approved allocations only. Prior approval of protective occupation status by OSER is required when a different allocation within the classification series is involved. (See sections 680.060 and 680.120 of this handbook chapter.)