State of Wisconsin

OFFICE OF STATE EMPLOYMENT RELATIONS

- OFFICE OF THE DIRECTOR -
- DIVISION OF COMPENSATION AND LABOR RELATIONS -
- DIVISION OF MERIT RECRUITMENT AND SELECTION -

Date: July 8, 2005	**Subject: Changes in Wisconsin Administrative Rules**
Locator No. OSER-0067-DO-CLR-MRS	

I. Introduction

Technical changes to administrative rules of the Director and the DMRS Administrator took effect on July 1, 2005. This bulletin summarizes the changes. All rule chapters in ER and ER-MRS are being republished by the Revisor of Statutes, even those that haven't been changed. Links to the new versions of both rule sets are available on the OSER website at http://oser.state.wi.us/section_detail.asp?linkcatid=388&linkid=29.

To ensure you are using the current version of the rules, OSER strongly encourages agency HR staff either to use the online version of the rules, or print out all chapters to replace those currently in use. The updated chapters and indexes can be distinguished by the Register date of June 2005 in the footer.

The remainder of this document describes the changes in each set of rules. If you have any questions about specific rule changes, please contact Paul Ostrowski at 608-267-0343 or paul.ostrowski@oser.state.wi.us for ER rules, or Diane Siegler at 608-267-0408 or diane.siegler@oser.state.wi.us for ER-MRS rules.

II. Changes in ER Rules of the Director

SUMMARY OF THE RULES

Chapter ER 1 relating to a definition of Compensation Plan

The Compensation Plan is referred to in the rules without definition. Therefore, s. ER 1.02 (5m) should be created to provide that definition.

Chapter ER 4 relating to day care grants

Sec. 230.048, Stats., has been repealed. OSER no longer is authorized to have a program for grants to day care providers and an appropriation is no longer provided. Therefore, ch. ER 4 no longer is necessary.

Chapter ER 8 relating to EPP program

The use of the Entry Professional Program has been reduced significantly, diminishing the need to provide separate information on it for the annual affirmative action report. Therefore, s. ER 8.03 no longer is necessary.

Chapter ER 10 relating to LTEs

In accordance with s. 230.35 (4) (e), Stats., employees **shall** be given paid leave to vote if the only time they can vote is during work hours. Section ER 10.02 (4) says that LTEs can be paid only for hours worked. Changes to s. ER 10.02 (4) are necessary to make it consistent with the statute.

Chapter ER 18 relating to leave

Effective July 5, 1998, reinstatement eligibility and other eligibility historically tied to reinstatement, was increased from three years to five years. Because more than five years have passed, a distinction between three-year eligibility and five-year eligibility is no longer necessary. Changes to all provisions noting the distinction should now be made to simplify the eligibility to be five years in all cases. Therefore, changes to s. ER 18.02 (2) regarding continuous service and s. ER 18.03 (5) regarding sick leave credit continuation are necessary.

2003 Wisconsin Act 22 changed s. 230.35 (1m), Stats., to allow employees with FLSA exempt status to receive the accelerated annual leave schedule previously granted to only career executives, attorneys, and certain unclassified positions. Changes to s. ER 18.02 (3) are necessary to make it consistent with the statute.

The change created by Wisconsin Act 22 also expanded the group of employees whose continuous service is considered uninterrupted under s. 230.35 (1m) (f), Stats., to include those with FLSA exempt status. Changes to s. ER 18.02 (2) (b) 6., will provide language consistent with the statute.

2003 Wisconsin Act 117 changed s. 230.35 (1p), Stats., to increase the option to bank annual leave hours from 80 hours to 120 hours for those employees at the 216-hour annual leave rate. Changes to s. ER 18.02 (5) are necessary to make it consistent with the statute.

Section ER 18.02 (5) also requires proration of annual leave options for nonrepresented employees who have worked less than 2088 hours in a calendar year no matter how eligibility is acquired. Collective bargaining agreements do not have any requirement to prorate for working less than 2088 hours if the eligibility is based on accumulation of 520 hours of sick leave, and there is no apparent justification for treating nonrepresented employees differently. Removal of the proration requirement for annual leave options if the eligibility of a nonrepresented employee is based on accumulated sick leave will provide parity and uniformity, and simplify administration of the annual leave option process.

2003 Wisconsin Act 117 also changed s. 230.35 (4) (d), Stats., to provide employees with an additional personal holiday in recognition of Veterans Day. Changes to s. ER 18.04 (4) (d) are necessary to make it consistent with the statute.

In accordance with s. 230.35 (4e), Stats., employees **shall** be given paid leave to vote if the only time they can vote is during work hours. Section ER 18.11 says employees **may** be given paid leave. Changes to s. ER 18.11 are necessary to make it consistent with the statute.

Changes in s. 230.35 (2r), Stats., removed statutory restrictions that allowed only classified employees to participate in a catastrophic leave program established in the rules of the Director of the Office of State Employment Relations. This was done to allow certain unclassified employees to participate. Section ER 18.15 governs catastrophic leave participation and rules, but currently applies only to classified employees. Therefore, changes to s. ER 18.15 are necessary. Note: Some unclassified employees are excluded because they are covered under unique pay and benefit provisions. For instance, elected officials are not eligible for leave donated under the catastrophic leave provisions, and therefore, cannot donate or receive such leave.

Chapter ER 18 does not make any reference to the bone marrow or organ donation benefits added to s. 230.35, Stats., by 1999 Wisconsin Act 125. Therefore, an addition to ch. ER 18 is necessary.

Chapter ER 29 relating to Compensation

Except for s. ER 29.05, all compensation administration provisions for nonrepresented employees are now provided in the Compensation Plan. Therefore, creation of s. ER 29.02 is necessary to indicate when reference to the Compensation Plan is appropriate.

The language describing the six-month pay increase for project appointees in s. ER 29.03 (2m) is no longer applicable and, therefore, should be deleted. Section E., 3.01 of the 2003-2005 Compensation Plan states that projects are not eligible for a 6-month pay increase.

The language describing the pay for various appointments in s. ER 29.03 does not include any provision for use of Hiring Above the Minimum for current classified employees. Pay on appointment flexibility has been provided for broadband pay schedules and also should be provided for non-broadband schedules. Due to the labor market, many employees new to state service are being hired at pay rates higher than those being paid to current employees. Changes to s. ER 29.03 are necessary to allow current employees with the same skills and experience to be paid the same as a new employee would be paid upon an original appointment.

Effective July 5, 1998, reinstatement eligibility and other eligibility historically tied to reinstatement was increased from three years to five years. Because more than five years have passed, a distinction between three-year eligibility and five-year eligibility is no longer necessary. Changes to all provisions noting the distinction should now be made to simplify the eligibility to be five years in all cases. Therefore, changes to s. ER 29.03 (6) regarding reinstatement are necessary.

The language describing pay on reinstatement in s. ER 29.03 (6) states that "last rate received" is "the highest base pay rate received in any position in which the employee held permanent status."

The intent of this language was to include only previously held positions, not the employee's current position. Changes to s. ER 29.03 (6) are necessary to state that intent more clearly.

Chapter ER 34 relating to references to the Compensation Plan

Compensation administration provisions for project employees are now provided in the Compensation Plan. Therefore, related references in ER 34.05 should be to, or include, the Compensation Plan.

Chapter ER 44 relating to training

Section 230.046, Stats., has been amended so that agencies no longer need to get OSER approval to offer their own basic supervision courses, to waive the basic supervision requirements, and for an agency's training tracking system. Sections ER 44.03 (1) and (2) and 44.07 (2) reflect prior law and are inconsistent with current law. Therefore, changes to those sections of ch. ER 44 are necessary to make them consistent with the statute.

Multiple Chapters Relating to References to the Compensation Plan

References to the compensation plan are also inserted in various locations relating to pay provisions for certain transactions.

TEXT OF THE RULES

ER 1.02 (5m) is created to read:

> **ER 1.02 (5m)** "Compensation plan" means the compensation plan adopted under s. 230.12, Stats.

ER 3.03 (4) is amended to read:

> **ER 3.03 (4)** Requests for reallocation, reclassification or regrade are canceled when an employee resigns, retires or is terminated from pay status in the position prior to the effective date of the requested action. The effective date of the requested action shall be determined in accordance with s. ER 29.03 (3) <u>or the compensation plan</u>.

ER 4 is repealed.

ER 8.03 is repealed.

ER 10.02 (4) is amended to read:

> **ER 10.02 (4)** Limited term employees shall be paid only for actual hours worked except as otherwise provided in the compensation plan, <u>or for voting time pursuant to ss. 6.76 and 230.35 (4) (e), Stats., in accordance with s. ER 18.11</u>.

ER 18.02 (2) (b) 2., a. and b. are repealed.

ER 18.02 (2) (b) 2m., and 6., are amended to read:

ER 18.02 (2) (b) 2m. Left the service ~~on or after July 5, 1998~~ and is reemployed within 5 years, subject to the following:
a. Employment prior to leaving the service and upon returning to the service within 5 years must be as a permanent, classified employee or as an unclassified employee other than a limited term employee.
b. Any return to service following termination for misconduct or delinquency is deemed to not be a qualifying reemployment under this provision, even though the return is within the 5 year period.

6. Was ~~a career executive~~ an employee ~~or employed under s. 20.923 (4), (4m), (8) or (9), Stats.~~, who left the service, ~~and~~ returned to state employment ~~as a career executive regardless of the duration of absence as provided under s. 230.35 (1m) (f), Stats. This applies to all persons who are career executive employees or employees enumerated in s. 20.923 (4), (4m), (8) or (9), Stats., on or after July 1, 1973.~~ on or after July 1, 2003, and immediately attained exempt status under the federal Fair Labor Standards Act, 29 USC 201 to 219 in a nonrepresented position, or subsequently attained such status in a nonrepresented position. This subdivision applies regardless of the duration of absence as provided under s. 230.35 (1m) (f), Stats.

ER 18.02 (3) (c) 3., is amended to read:

ER 18.02 (3) (c) 3. ~~Full-time~~ Annual leave for full-time, full year ~~career executives and certain executive salary schedule employees. Annual leave for career executives, as provided under ch. ER-MRS 30, persons included under s. 19.42 (10) (L) or 20.923 (4), (4m), (8) and (9), Stats., employees in positions authorized under s. 230.(2) (e), Stats., and employees appointed to a position designated as an employee position in which the employee is employed and acts as an attorney, unless the attorney position is a limited term appointment under s. 230.26, Stats.~~ employees in exempt status under the federal Fair Labor Standards Act, 29 USC 201 to 219, in a nonrepresented position on or after July 1, 2003 shall be based upon accumulated continuous service and earned at the rate shown in the following table:

ANNUAL LEAVE RATE FOR
FULL YEAR OF SERVICE

Years of Service	Hours Earned Each Year
During First 5	120
5+ to 10	160
10+ to 15	176
15+ to 20	200
20 & Over	216

ER 18.02 (5) (b) and (c) are amended to read:

ER 18.02 (5) (b) Pursuant to s. 230.35 (1p) (b) and (bm), Stats., employees who earn annual leave at a rate of 200 or ~~more~~ 216 hours per year may elect to receive up to 80 or 120 hours, respectively, of such leave, or prorated portion thereof, among one or more of the following options:
1. Annual leave during the year earned or as authorized pursuant to sub. (7).
2. Credit for a combined termination and sabbatical leave plan with such credit being accumulated without limitation.
3. Cash payment during the year earned for not to exceed 40 hours at the employee's base rate exclusive of any supplementary compensation as of the last day of the payroll in the calendar year.

(c) The number of hours available for use under pars. (a)~~,~~ and (b) ~~and (bm)~~ shall be prorated at the pertinent annual leave rate or rates for employees who work less than 2088 hours during the calendar year.

ER 18.03 (5) (a) is amended to read:

ER 18.03 (5) (a) Previously accumulated sick leave shall not be canceled by absence on approved leave under s. ER 18.14. Termination from the service for misconduct or delinquency shall cancel all unused accumulated sick leave. ~~Whenever an unclassified employee covered by this section or a permanent classified employee is laid off, terminated due to lack of work or funds, or resigns prior to July 5, 1998, any unused accumulated sick leave credits shall remain on record and be restored if the person is reemployed in a position covered by this section within 3 years.~~ Whenever an unclassified employee covered by this section or a permanent classified employee is laid off, terminated due to lack of work or funds, or resigns, ~~on or after July 5, 1998,~~ any unused accumulated sick leave credit shall remain on record and be restored if the person is reemployed in a position covered by this section within 5 years. This provision shall also apply to project employees eligible to transfer credits under s. ER 18.05 (3).

ER 18.04 (4) (d) is amended to read:

ER 18.04 (4) (d) If an employee moves between permanent or unclassified appointments and project appointments during a calendar year, the total number of personal holidays earned in the calendar year shall not exceed ~~three~~ four and one-half days.

ER 18.11 is amended to read:

ER 18.11 Voting time. Pursuant to ss. 6.76 and 230.35 (4) (e), Stats., an employee who is eligible to vote but is unable to vote during nonworking hours ~~may~~ shall be granted time off with pay for not to exceed 3 consecutive hours upon written application to the employee's appointing authority at least 2 work days prior to the election date. Such application shall state the need and the amount of reasonable time off required to exercise

this right. ~~If granted, the~~The appointing authority may designate the time of day that the employee shall be allowed the time off.

ER 18.15 (1) (c) is amended to read:

ER 18.15 (1) (c) "Employee" means any person who receives remuneration for services rendered to the state under an employer-employee relationship ~~in the classified service~~, except employees in positions under s. 230.08 (cm), (d) and (k), Stats., unless approved or authorized by the UW Board of Regents, unclassified employees of the State of Wisconsin Investment Board, elected officials and limited term employees.

ER 18.15 (2) (b) 1., 2., 3. and 5., are amended to read:

ER 18.15 (2) (b) 1. Complete the first 6 months of ~~an original probationary period in~~ service as a permanent ~~position or 6 months in a~~ classified, project ~~position~~ or unclassified employee.
2. ~~Be on approved leave~~ Be absent from pay status due to a catastrophic need of the employee or an immediate family member. ~~The unpaid leave may be taken~~ Absence from pay status may occur in noncontinuous increments.
3. Anticipate an ~~approved unpaid leave~~ absence from pay status of at least 160 hours duration. The 160 hours shall be prorated for seasonal, sessional, school year, and part-time employees.
5. Use all available sick leave credits ~~earned under ss. 36.30 and 230.35 (2), Stats~~.

ER 18.15 (3) (b) 1. is amended to read:

ER 18.15 (3) (b) 1. Complete the first 6 months of ~~an original probationary period in~~ service as a permanent classified, ~~position or 6 months in a~~ project ~~position~~ or unclassified employee.

ER 18.15 (4g) is created to read:

ER 18.15 (4g) Credit transfers between covered employees in different agencies may occur with the affected agencies' approval.

ER 18.17 is created to read:

ER 18.17 Paid leave to serve as a bone marrow or organ donor. As provided in s. 230.35 (2d), Stats., an appointing authority shall grant paid leave of absence to a state employee who serves as a bone marrow or organ donor under the conditions provided in s. 230.35 (2d), Stats.

ER 29.02 is created to read:

ER 29.02 Purpose. Except for s. ER 29.05, compensation administration provisions for nonrepresented employees are provided in the compensation plan. The main purpose of this chapter is to provide compensation administration provisions for collective bargaining agreements that reference this chapter.

ER 29.03 (1) is amended to read:

ER 29.03 (1) GENERAL. Pay shall be determined in accordance with subs. (1) to (9), except that the appointing authority may determine pay for transactions in subs. (4) to (6) using hiring above the minimum in accordance with the rules of the compensation plan or applicable collective bargaining agreement. Upon the completion of any personnel transaction, employees shall receive a base pay rate not less than:
(a) The PSICM rate for the class if the employee is not serving a probationary period.
(b) The minimum rate for the class if the employee is serving a probationary period.
(c) The minimum rate for the training program if the employee is serving a probationary period in a trainee class.

ER 29.03 (2m) is repealed.

ER 29.03 (6) (a) is repealed.

ER 29.03 (6) (am) and (b) are amended to read:

ER 29.03 (6) (am) When an employee who has not held permanent status in class within the last 5 years is reinstated ~~based on reinstatement eligibility earned on or after July 5, 1998~~, pay on reinstatement shall be determined in accordance with the appropriate provisions regarding pay on original appointment contained in the compensation plan adopted under s. 230.12, Stats., or a collective bargaining agreement under subch. V of ch. 111, Stats.

(b) For the purposes of par. (c) ~~for an employee who is reinstated based on reinstatement eligibility earned prior to July 5, 1998, "last rate received" means the highest base pay rate received in any position in which the employee held permanent status in class, within the last 3 years for an employee who is reinstated based on reinstatement eligibility earned on or after July 5, 1998,~~ "last rate received" means the highest base pay rate received in any position from which reinstatement eligibility is derived and in which the employee held permanent status in class, within the last 5 years.

ER 34.05 (intro) is amended to read:

ER 34.05 Pay provisions. The pay provisions of ~~ch. ER 29~~ s. ER 29.05, and the state compensation plan for non-represented employees shall apply to project appointees.

ER 34.05 (4) to (8) and Note are repealed.

ER 44.03 (1) is amended to read:

> **ER 44.03 (1)** PURPOSE. Recognizing that supervisors represent a key link between agency goals and agency action and that the behavior and attitudes of supervisors are of fundamental importance to employee relations, s. 230.046 (2), Stats., requires each new supervisor to complete successfully a supervisory development program ~~approved by the director~~.

ER 44.03 (2) (a) is renumbered ER 44.03 (2) and amended to read:

> **ER 44.03 (2)** WAIVER OF APPROVED SUPERVISORY DEVELOPMENT PROGRAM. ~~(a)~~ An appointing authority may ~~request the director to~~ waive all or a portion of the supervisory development program for any new supervisor or manager ~~who has received equivalent training prior to appointment. The~~ if the appointing authority ~~requesting the waiver shall provide the director with written assurance that the employee's record shows~~ determines that the employee received prior supervisory training equivalent to the ~~standards set forth by the director~~ requirements in s. 230.046(2), Stats. The appointing authority shall place a copy of the determination in the employee's personnel file.

ER 44.03 (2) (b) and (c) are repealed.

ER 44.07 (2) (a) is repealed.

ER 44.08 is repealed.

III. Changes in ER-MRS Rules of the DMRS Administrator

SUMMARY OF THE RULES

Ch. ER-MRS 8 relating to the Entry Professional Program

Classifications previously in the Entry Professional Program have been eliminated from it except at an agency's specific request. The program's value as an alternative recruitment and selection program was also diminished when the statutes were changed in 1998 to permit flexible certification for all positions. Thus, the need to provide separate information on the program for the annual affirmative action report no longer exists. The reporting requirement is repealed.

Chs. ER-MRS 12, 22 and 27 relating to references to "handicap" and "handicapped"

This amendment changes the term "handicap" or "handicapped" to "disability" or "individual with a disability," respectively, in various provisions. These changes are being made to conform with preferred terminology and to be consistent with other references in chapters 111 and 230 of the Statutes and in the Administrative Code.

Ch. ER-MRS 14 relating to promotions

Under certain conditions, an appointment from a register must be considered a promotion even though the appointee has reinstatement eligibility to the position being filled. The appointing authority should have the discretion to treat the appointment as a promotion.

Ch. ER-MRS 15 relating to involuntary transfers

A change is necessary to clarify that involuntary transfers are permitted within an employing unit and between employing units of the same agency. This change would clarify that voluntary and involuntary transfers are treated the same.

Chs. ER-MRS 16, 22 and 34, relating to references to reinstatement eligibility

1997 Wisconsin Act 307 increased the reinstatement eligibility period for state employees from three years to five years, effective for employee movements occurring after July 5, 1998. Because more than five years have elapsed, distinctions between the "old" three-year eligibility and the "new" five-year eligibility are no longer necessary. Removal of all provisions noting the distinction is made to improve the readability of the provisions.

Chs. ER-MRS 12, 17 and 32 relating to the form and filing of documents

Certification requests are submitted in a variety of forms, both on paper and electronically. This amendment removes references to "a prescribed form," permitting submission of requests in paper or electronic format. The language is modified to eliminate various requirements that agencies submit copies of transactions to the administrator, specifically when the appointing authority notifies the employee of a voluntary or involuntary demotion or when the employee accepts a demotion within an agency or between agencies. Language is also modified in ch. 32 to eliminate the requirement that the appointing authority submit a copy of the acting assignment notice to the administrator. The process will be better served by the appointing authority placing a copy of these transactions in the employee's personnel file.

Ch. ER-MRS 24 relating to the ethics code

The definition of "state property" is updated to clearly include information technology and telecommunications equipment and services.

Multiple Chapters relating to references to the compensation plan

References to the compensation plan are also inserted in various locations relating to pay provisions for certain transactions.

TEXT OF THE RULES

ER-MRS 1.02 (3) is created to read:

ER-MRS 1.02 (3) "compensation plan" means the compensation plan adopted under s. 230.12, Stats.

ER-MRS 8.26 is repealed.

ER-MRS 12.01 is amended to read:

ER-MRS 12.01 Action by appointing authority. To fill a vacancy, the appointing authority shall submit a request ~~on the prescribed form~~ to the administrator.

ER-MRS 12.06 (title) and Note and 12.07 are amended to read:

ER-MRS 12.06 ~~Handicapped~~ Disability expanded certification

Note: Forms are available free from the Division of Merit Recruitment and Selection, ~~137 E. Wilson St.~~, 101 East Wilson Street, 4th floor, Madison, or by mail at PO Box 7855 ,Madison, WI 53707–7855, at www.wisc jobs.state.wi.us or at other locations throughout the state where Applications for State Employment are available.

ER–MRS 12.07 Additional certifications. Upon request of an agency, the administrator may, under s. 230.08 (7), Stats., certify additional names to supplement those certified under s. ER–MRS 12.06. The additional names shall be those of ~~handicapped~~ candidates with a disability for whom the administrator has waived the test requirement. The administrator may waive the test requirement for a ~~handicapped~~ person with a disability under this section if the administrator determines that the ~~handicap~~ disability precludes the person from equitably participating in the tests used to examine candidates certified under s. 230.24 (1) or 230.25, Stats., because of impaired sensory, manual, reading or speaking skills not related to the tasks to be performed after reasonable accommodations have been made on the job.

ER-MRS 14.02 (5) is amended to read:

ER-MRS 14.02 (5) The permissive appointment of an employee to a different position in a higher class than the highest position currently held in which the employee has permanent status in class, when the employee has been certified from a register as eligible for appointment, ~~is~~ may be considered a promotion when the position is in a class, class subtitle or progression series in which the employee has not previously attained permanent status in class. Such appointments are reinstatements when the employee is appointed on the basis of qualifying for the position other than as a result of being certified as eligible for appointment from a register.

ER-MRS 14.03 (1) and Note are amended to read:

ER–MRS 14.03 Kinds of promotion; status and rights. (1) PROMOTION WITHIN THE SAME AGENCY. In accordance with s. 230.28 (1), Stats., the promoted employee shall be required to serve a probationary period. At any time during this period the appointing authority may remove the employee from the position to which the employee was promoted without the right of appeal and shall restore the employee to the employee's former position or a similar position and former rate of pay, as determined under ER29.03 (7) (a) or the compensation plan. Any other removal, suspension without pay, or discharge during the probationary period shall be subject to s. 230.44(1) (c), Stats. If the position to which the employee has restoration rights has been abolished, the employee shall be given consideration for any other vacant position in the same or counterpart pay range for which the employee is determined to be qualified by the appointing authority to perform the work after being given the customary orientation provided for newly hired workers. If no such vacant position exists, the employee shall be treated as if he or she had been restored to the position held prior to promotion and the provisions for making layoffs under ch. ER-MRS 22 shall apply.

Note: For pay on promotion, new promotion and restoration, see s. ER 29.03 (4) (b), (4) (c) and (7) (a), respectively, or the compensation plan.

ER-MRS 14.04 and 14.05 are amended to read:

ER-MRS 14.04 Pay on promotion. See s. ER 29.03 (4) or the compensation plan.

ER-MRS 14.05 Pay on new promotion. See s. ER 29.03 (4) or the compensation plan.

Note to ER-MRS 15.03 is amended to read:

Note: For pay on transfer see s. ER 29.03 (5) or the compensation plan.

ER-MRS 15.04 and 15.05 are amended to read:

ER-MRS 15.04 Transfer between different employing units of the same agency. An employee who transfers or is involuntarily transferred between different employing units of the same agency may be required by the appointing authority to serve a probationary period, except that a probationary period shall be required upon a transfer to a trainee position. If the transfer is to a position in a different class and no probationary period resulting from the transfer is required, the employee shall immediately attain permanent status in class. An employee who transfers or who is involuntarily transferred while serving a probationary period may continue in the probationary status being served prior to transfer or begin a new probationary period under s. ER-MRS 15.07.

ER-MRS 15.05 Transfer within the same employing unit. No employee who transfers or who is involuntarily transferred within the same employing unit either to a position in a different class or to a different position in the same class may be required to serve a

probationary period, except that a probationary period shall be required upon transfer to a trainee position.

ER-MRS 15.06 is amended to read:

ER-MRS 15.06 Pay on transfer. See s. ER 29.03 (5) or the compensation plan.

ER-MRS 15.07 (1) is amended to read:

ER-MRS 15.07 Transfer while serving a probationary period. (1) Employees serving a probationary period may transfer or be involuntarily transferred to a different position. The probationary period time served prior to such movement shall be carried over if the transfer is within an employing unit. If the transfer is between employing units of the same agency or between agencies, the probationary period time served prior to such movement may be carried over at the discretion of the appointing authority.

ER-MRS 16.025 (1) is repealed.

ER-MRS 16.025 (2) and (4) (a) are amended to read:

ER-MRS 16.025 (2) For reinstatements ~~based on reinstatement eligibility earned on or after July 5, 1998~~, the period of eligibility shall begin with the date of separation from the position in which the eligibility was earned and end with the last day of the 5th year after the date of separation.

(4) (a) Except as provided in par. (b), any act of reinstatement or restoration must become effective during the applicable period of eligibility specified in subs. ~~(1) to~~ (2) or (3) or in ss. 230.33 or 230.40 (3), Stats.

ER-MRS 16.03 (6) (c) is amended to read:

ER-MRS 16.03 (6) (c) *Pay upon return from leave.* See s. ER 29.03 (7) or the compensation plan.

ER-MRS 16.035 (1), (2) and (3) are amended to read:

ER-MRS 16.035 (1) GENERAL. ~~An employee who, prior to July 5, 1998, has separated from a position in the classified service without misconduct or delinquency or who has accepted a voluntary demotion for personal reasons shall be eligible for reinstatement in any agency for 3 years from the date of such separation or demotion.~~ An employee who, ~~on or after July 5, 1998~~, has separated from a position in the classified service without misconduct or delinquency or who has accepted a voluntary demotion for personal reasons shall be eligible for reinstatement in any agency for 5 years from the date of such separation or demotion.

(2) RETURN FROM UNCLASSIFIED POSITION. ~~Any employee who left the classified service prior to July 5, 1998 to accept an appointment to an unclassified position shall have reinstatement eligibility in any agency for 3 years following the appointment to the unclassified service or one year after termination of the unclassified appointment, whichever is longer.~~ Any employee who left the classified service ~~on or after July 5, 1998~~ to accept an appointment to an unclassified position shall have reinstatement eligibility in any agency for 5 years following the appointment to the unclassified service or one year after termination of the unclassified appointment, whichever is longer. The benefit under this subsection is in addition to any benefit under ER-MRS 16.03 (4)

(3) DOWNWARD REALLOCATION OR RECLASSIFICATION OF A POSITION. ~~An employee whose position has been reallocated or reclassified to a lower class prior to July 5, 1998 shall have reinstatement eligibility in any agency for 3 years from the date of the action.~~ An employee whose position has been reallocated or reclassified to a lower class ~~on or after July 5, 1998,~~ shall have reinstatement eligibility in any agency for 5 years from the date of the action. For definitions of reallocation and reclassification, see s. ER 3.01(2) and (3), respectively.

ER-MRS 16.04 (2) is amended to read:

ER-MRS 16.04 (2) SEPARATION DURING THE PROBATIONARY PERIOD. ~~A person who, prior to July 5, 1998, separates from a position without misconduct or delinquency while serving a probationary period may be reinstated to a position in a class in the same pay range or counterpart pay range or in a lower class than the~~ position ~~from which the employee separated at any time during a 3 year period from the date of separation providing the person is qualified to perform the work after the customary orientation provided to a newly hired worker in the position.~~ A person who~~, on or after July 5, 1998,~~ separates from a position without misconduct or delinquency while serving a probationary period may be reinstated to a position in a class in the same pay range or counterpart pay range or in a lower class than the position from which the employee separated at any time during a 5 year period from the date of separation providing the person is qualified to perform the work after the customary orientation provided to a newly hired worker in the position. The probationary time already served may be carried over by the appointing authority, except as provided in s. 230.32 (2) (b), Stats. The appointing authority shall determine the amount of carry-over at the time of the reinstatement and shall give written notice of the amount to the employee. The appointing authority shall keep a copy of that notice on file.

ER-MRS 16.05 and 16.06 are amended to read:

ER–MRS 16.05 Pay on reinstatement. See s. ER 29.03 (6) <u>or the compensation plan</u>.

ER–MRS 16.06 Pay on restoration. See s. ER 29.03 (7) <u>or the compensation plan</u>.

ER-MRS 17.03 is amended to read:

ER-MRS 17.03 Notice to employee. The appointing authority shall notify an employee who is being demoted of the action and the reasons for the action at least 5 working days prior to the effective date of the action. Such notification shall be in writing and shall advise the employee of his or her right to appeal the action under s. 230.44 (1) (c), Stats. The appointing authority shall ~~send a copy of the notification to the administrator~~ place a copy of the notice in the employee's personnel file.

ER-MRS 17.04 (3) (intro) and (4) (intro) are amended to read:

ER-MRS 17.04 (3) (intro) VOLUNTARY DEMOTION WITHIN AN AGENCY. An employee may request and with approval of the appointing authority be voluntarily demoted within the agency either to a position in the same employing unit, or to a position in a different employing unit. The employee's request, the appointing authority's response, and the employee's acceptance of the demotion shall be in writing. ~~A copy of the employee's acceptance shall be sent to the administrator~~. The appointing authority shall place a copy of the employee's acceptance in the employee's personnel file.

(4) (intro) VOLUNTARY DEMOTION BETWEEN AGENCIES. An employee may request and, with approval of the appointing authority of the receiving agency, may accept a voluntary demotion between agencies. ~~A copy of the employee's written acceptance of such voluntary demotion shall be furnished to the administrator.~~ The appointing authority shall place a copy of the employee's written acceptance of such voluntary demotion in the employee's personnel file.

Note to ER-MRS 17.04 (4) (b) is amended to read:

Note: For pay on voluntary demotion or demotion for disciplinary purposes see s. ER 29.03 (8) or the compensation plan.

ER-MRS 17.05 is amended to read:

ER–MRS 17.05 Pay on voluntary demotion or demotion for disciplinary purposes. See s. ER 29.03 (8) or the compensation plan.

ER-MRS 22.06 (2) is amended to read:

ER-MRS 22.06 (2) The appointing authority may exempt from the layoff group up to 2 employees or 20%, whichever is greater, of the number of employees in the layoff group to retain employees having special or superior skills or for other purposes as determined by the appointing authority. In addition, for affirmative action purposes, as defined in s. 230.03 (2), Stats., the appointing authority may exempt, subject to the approval of the administrator, female, minority and ~~handicapped~~ employees with a disability in the layoff group. Exercise of these exemptions may be requested by the appointing authority as part of the layoff plan submitted under ER-MRS 22.05.

ER-MRS 22.08(2) (a) 2 and 3, (2) (b) 2, (3) (a) 2 and (3) (c), are amended to read:

ER-MRS 22.08 (2) (a) 2. For pay provisions regarding an employee who is demoted by the appointing authority, as a result of a layoff to the highest level vacancy available for which the employee is qualified, see s. ER 29.03 (8) (c) or the compensation plan.

3. For pay provisions regarding an employee who chooses, with the approval of the appointing authority, to be demoted as a result of layoff to a vacancy which is at a lower level than other available vacancies to which the employee could be demoted, see s. ER 29.03 (8) (d) 1 or the compensation plan.

(2) (b) 2. An employee who demotes as a result of layoff between agencies shall have his or her pay determined under s. ER 29.03 (8) (d) 2 or the compensation plan.

(3) (a) 2 If the employee has previously attained permanent status in class in a position whose classification had been affected by an action of the ~~administrator~~ director, the employee shall immediately attain rights to the classification which replaced the original classification of the position previously held by the employee.

(3) (c) An employee who exercises displacement rights shall have his or her pay determined under s. ER 29.03 (8) (c) or the compensation plan.

ER-MRS 22.09 (2) (a), (b) and (c) are amended to read:

ER-MRS 22.09 (2) (a) The position is one which the employee would be qualified to perform after customary orientation provided to new workers in the position~~;~~.

(b) The position is the highest level position available within the agency to which the employee could either transfer or demote~~;~~.

(c) The number of work hours required does not vary substantially from the number of work hours previously worked~~; and~~.

ER-MRS 22.10 (intro) is amended to read:

ER–MRS 22.10 (intro) Restoration rights and conditions. An employee ~~or former employee~~ who transfers or demotes to another agency as a result of layoff under s. ER–MRS 22.08 (1)or (2) and is terminated while on probation, exercises displacement rights as a result of layoff under s. ER–MRS 22.08 (3), is demoted as a result of layoff under s. ER–MRS 22.08 (2), or is terminated as a result of layoff, shall, under s. 230.34 (2), Stats., be granted the following considerations for a 3–year period from the date of such action:

Note to ER-MRS 22.10 (2) is amended to read:

Note: For pay of employees restored following layoff see s. ER 29.03 (7) or the compensation plan.

ER-MRS 22.10 (4) is amended to read:

ER-MRS 22.10 (4) PAY ON RESTORATION. See s. ER 29.03 (7) or the compensation plan.

ER-MRS 22.11 (1) is repealed.

ER-MRS 22.11 (1m) and (2) (intro) are amended to read:

ER-MRS 22.11 (1m) When a vacancy, for which the employee is qualified, occurs in another employing unit of the agency in any class other than the approved layoff group from which the employee was terminated as a result of layoff, exercised displacement rights, demotion as a result of layoff, or transfer or demotion between agencies as a result of layoff and the employee was terminated while on probation, the employee may be reinstated at the discretion of the appointing authority within a 5-year period from the date of any of the actions taken in this subsection as a result of being subject to layoff, ~~if the action taken as a result of being subject to layoff occurred on or after July 5, 1998.~~

(2) (intro) When a vacancy, for which the employee is qualified, occurs anywhere in state service other than the agency from which the employee was terminated as a result of layoff, exercised displacement rights, or demotion as a result of layoff, the employee may be reinstated at the discretion of the appointing authority within~~:~~ a 5-year period from the date of action resulting from layoff.

ER-MRS 22.11 (2) (a) and (b) are repealed.

ER-MRS 22.11 (3) is amended to read:

ER-MRS 22.11 (3) For pay of employees upon reinstatement following layoff, see s. ER 29.03 (6) or the compensation plan. For pay provisions upon reinstatement where a probationary period is required, see s. ER 29.03 (2) (b) or the compensation plan.

ER-MRS 24.03 (7) is amended to read:

ER-MRS 24.03 (7) "State property" includes, but is not limited to, facilities, vehicles, supplies, equipment, telecommunications equipment and services, information-technology equipment and services, stenographic assistance and reproduction services.

ER-MRS 27.01 is amended to read:

ER–MRS 27.01 Purpose. This chapter, promulgated under s. 230.08 (7), Stats., which authorizes the administrator to provide for exceptional methods and kinds of

employment, enables the state, as an employer, to carry out its social, economic and community responsibilities through employment of individuals who are economically disadvantaged or ~~handicapped~~ have a disability, or to meet the needs of the service during periods of disaster or national emergency, or to comply with special funding requirements for specific positions.

ER-MRS 27.02 (1) is renumbered ER-MRS 27.02 (4m) and amended to read:

ER-MRS 27.02 (4m) ~~"Handicapped"~~ "Individual with a disability" means an individual under s. 111.32 (8), Stats., who:

ER-MRS 27.02 (2) is amended to read:

ER-MRS 27.02 (2) "Disability" means the same as ~~handicapped~~ "individual with a disability" as defined in sub. (1).

ER-MRS 27.02 (4)(a) is amended to read:

ER-MRS 27.02 (4)(a) Vacancies have been set aside, as a part of an approved affirmative action plan, to provide training and permanent employment to ~~handicapped~~ individuals with a disability;

ER-MRS 27.03 (1) is amended to read:

ER-MRS 27.03 (1) An agency has set aside positions for employment opportunities to provide training and permanent employment to ~~severely handicapped~~ individuals with a severe disability and it has been determined that the examination method traditionally used to examine for similar vacancies would measure the applicants' disability instead of their ability, aptitude or skill, or whatever other factor the test purports to measure.

ER-MRS 27.04 (1) is amended to read:

ER-MRS 27.04 (1) For appointment to exceptional employment situations for ~~handicapped~~ individuals with a disability, applicants must be certified as severely ~~handicapped~~ disabled by appropriate specialists such as a physician, psychiatrist, psychologist, chiropractor, teachers or counselors specialized in learning disabilities or special education, vocational rehabilitation counselor, occupational or physical therapist or other specialist deemed appropriate by the administrator, and must require on-the-job training beyond that normally provided during the probationary period for similar positions.

ER-MRS 27.05 (1) (title) and (1) (intro) are amended to read:

> **ER-MRS 27.05 (1)** FOR EMPLOYMENT OF ~~HANDICAPPED~~ INDIVIDUALS WITH A DISABILITY. For employment of ~~handicapped~~ individuals with a disability, the administrator shall determine whether:

ER-MRS 32.04 is amended to read:

> **ER-MRS 32.04 Letter of notification.** The appointing authority shall give written notice to the employee of the acting assignment. This letter of notification shall identify the nature of the duties to be assigned, the planned duration and other conditions of the acting assignment, including the fact that no adjustment in pay shall be made. The appointing authority shall ~~send a copy of the notice of the acting assignment to the administrator~~ place a copy of the notice in the employee's personnel file.

ER-MRS 34.08 (2) is repealed.

ER-MRS 34.08 (3) and (4) are amended to read:

> **ER–MRS 34.08 (3)** Employees so terminated ~~on or after July 5, 1998~~ do not have layoff, restoration or displacement rights to any permanent, seasonal or sessional position unless those rights were previously earned in a permanent, seasonal, or sessional position and are being applied within three years of the date of separation from that position or prior to the expiration of an approved leave of absence.
>
> (4) Employees so terminated ~~on or after July 5, 1998~~ do not have reinstatement eligibility to any permanent, seasonal or sessional position unless the eligibility was previously earned in a permanent, seasonal, or sessional position and is being applied within five years of the date of separation from that position or prior to the expiration of an approved leave of absence.

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