

DEPARTMENT OF EMPLOYMENT RELATIONS BULLETIN

Job Abandonment Provision in Wis. Stats.
230.34(am) is Not Applicable to Certified
Subject: Bargaining Unit Employees

Date December 11, 1984

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The job abandonment provision in Wis. Stats. 230.34 is NOT applicable to employees in a certified bargaining unit.

Wis. Stats. 230.34(am) states:

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

Some agencies have been citing the above statute as the basis for taking disciplinary action against bargaining unit employees. **It is clear from Wis. Stats. 230.34(ar), however, that the job abandonment provision does not apply to employees in a certified bargaining unit.**

Wis. Stats. 230.34(ar) states:

"Paragraphs (a) and (am) apply to all employes with permanent status in class in the classified service, except that for employes in a certified bargaining unit covered by a collective bargaining agreement, the determination of just cause and all aspects of the appeal procedure shall be governed by the provisions of the collective bargaining agreement (emphasis added)."

How to treat bargaining unit employes:

When an employe fails to contact his or her supervisor and does not report to work as scheduled, the agency may terminate the employe who continues to be absent without approval. In taking such action, departments must determine that the termination of the represented employe is based on just cause. Any disciplinary action taken up to and including termination is subject to the grievance procedure provisions of the applicable collective bargaining agreement. Represented employes may only be terminated for just cause; they may not be considered to have resigned as provided in § 230.34.

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Therefore, if an employe fails to call and report, and the employer terminates or disciplines the employe, the employer's disciplinary letter should cite the action taken by the employer, the record of unexcused absence, and the work rule(s) violated. The statutory provision of § 230.34 must not be cited in any disciplinary letter or other record since it does not apply to represented employes. Additionally, it is recommended that the letter conclude with a statement that if the employe believes that the action was not taken for just cause, the employe may appeal pursuant to the provisions of the collective bargaining agreement.

In the event the terminated employe files a timely third-step grievance, the agency must hear and decide the merits of the grievance. If the third-step grievance is denied and appealed to arbitration, the disciplinary action taken is arbitrable.

NOTE: Terminations for failure to return from an approved leave of absence without pay would be handled in the same manner.