

## **NOTICE OF PUBLIC HEARING**

### **Office of State Employment Relations**

**NOTICE IS HEREBY GIVEN** that pursuant to ss. 230.04(5), Stats., and interpreting s. 230.04(1), Stats., the Office of State Employment Relations will hold a Public Hearing at the time and place shown below to consider the creation of permanent rules relating to references to the Compensation Plan, day care providers, the Entry Professional Program, paid leave to vote, continuous service, reinstatement, sick leave credit restoration, annual leave schedules, annual leave options, personal holidays, catastrophic leave, paid leave for bone marrow or organ donation, project compensation, hiring above the minimum and supervisor training.

**Date:** March 2, 2005  
**Time:** 10:30 A.M. to 11:30 A.M.  
**Location:** Room 4B, 4<sup>th</sup> Floor  
Office of State Employment Relations  
101 East Wilson Street  
Madison, WI 53703

The hearing will be held jointly with a hearing by the Division of Merit Recruitment and Selection in the Office of State Employment Relations, which has separate rule-making authority and is simultaneously promulgating rules. Please see the separate hearing notice for an analysis of the proposed rule order of the Division of Merit Recruitment and Selection.

The hearing site is accessible to persons with disabilities. If you need an interpreter, materials in alternate format or other accommodations for this meeting, please inform the contact person listed at the end of this notice before the hearing.

Written comments on the rules may be sent to the contact person by 12:00 P.M. noon on March 4, 2005. Written comments will receive the same consideration as written or oral testimony presented at the hearing.

A copy of the rule is available from the contact person listed at the end of this notice, or by going to "Announcements" at <http://oser.state.wi.us>.

### **ANALYSIS PREPARED BY OFFICE OF STATE EMPLOYMENT RELATIONS**

#### **Statutory and Agency Authority**

Section 230.04, Stats., charges the Director of the Office of State Employment Relations with effective administration of ch. 230, Stats., and the promulgation of rules related to the performance of the Director's duties.

Section 230.046 (2), Stats., requires appointing authorities to ensure that each classified service supervisor completes a supervisory development program.

Section 230.35 (2r) (b), Stats., allows the Director of the Office of State Employment Relations to establish, by rule, a catastrophic leave program.

#### **Statutes Interpreted:**

- s. 6.76, relating to paid leave to vote
- s. 230.046, relating to training
- s. 230.35 (1m), relating to annual leave and continuous service
- s. 230.35 (1p), relating to annual leave options
- s. 230.35 (2d), relating to bone marrow and organ donation
- s. 230.35 (2r), relating to a catastrophic leave program
- s. 230.35 (4) (e), relating to paid leave to vote

**There are no related statutes or rules other than those listed above.**

## **Plain Language Analysis of the Rules**

### **Chapter ER 1**

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 3**

Compensation administration provisions for nonrepresented employees are now provided in the Compensation Plan. Therefore, the related reference in s. ER 3.03 (4) should include the Compensation Plan.

### **Chapter ER 4**

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**

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**

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 10.02 (4) says that LTEs can only be paid for hours worked. Changes to s. ER 10.02 (4) are necessary to make it consistent with the statute.

### **Chapter ER 18**

Effective July 5, 1998, reinstatement eligibility and other eligibility historically tied to reinstatement, was increased from 3 years to 5 years. Because more than five years have passed, a distinction between 3-year eligibility and 5-year eligibility is no longer necessary. Changes to all provisions noting the distinction should now be made to simplify the eligibility to be 5 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 only granted to 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**

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 6-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 should also 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 3 years to 5 years. Because more than five years have passed, a distinction between 3-year eligibility and 5-year eligibility is no longer necessary. Changes to all provisions noting the distinction should now be made to simplify the eligibility to be 5 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 more clearly state that intent.

#### **Chapter ER 34**

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**

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.

## **Comparison with Rules of Adjacent States**

**Rule changes that are for clarification only are not reflected in the comparison.**

### **Chapter ER 3**

*Where are pay provisions included for non-union employees - in your rules or a compensation plan?*

IL: Pay provisions for nonunion employees are within our Pay Plan.

IA: Our administrative rules

MI: Pay provisions for non-represented employees are included in civil service rules and in the civil service compensation plan.

MN: Compensation Plan for unrepresented employees

### **Chapter ER 4**

*Does any agency have the authority to provide grants to day care providers. If yes, are specific funds appropriated for these grants?*

IL: No

IA: Unknown

MI: No

MN: Agencies do not have such authority.

### **Chapter ER 8**

*If you have a special hiring program targeted at entry professional positions, is there a reporting requirement to the Legislature on the activities and results of such a program? If yes, what is required to be reported.*

IL: No

IA: No

MI: No

MN: We have no such program.

### **Chapter ER 10**

*Do your statutes require that state employees be granted paid leave to vote if the only time they can vote is during work hours? If so, are any employees excluded from the provision?*

IL: No

IA: Yes, called voting leave; and No, all employees are included.

MI: There is no provision for paid time off specifically for voting purposes.

MN: Statute permits employees to be absent from work (paid) during the forenoon of an election day to vote. "Election" means a regularly scheduled state primary or general election, an election to fill a vacancy in the office of United States senator or United States representative, or an election to fill a vacancy in the office of state senator or state representative.

### **Chapter ER 18**

*Do you provide different vacation schedules based on the type of position. If yes, what are they?*

IL: No

IA: No

MI: No, vacation schedules and policies do not vary by the types of positions.

MN: Vacation schedules for managers are different than all other bargaining units.

*What are your rules regarding the restoration of seniority for employees who leave and later return to state service?*

IL: Seniority is only restored when a laid off employee is rehired within two years.

IA: Prior service credit is provided for all service in a permanent position.

MI: Only for purposes of annual leave accrual (vacation time) and longevity pay, employees who separate from state service and later return are eligible to have prior service hours added back in after they complete 5 years of

continuous service. For purposes of employment preference, an employee who separates for reason other than leave of absence or layoff, loses all continuous service hours.

MN: Seniority is forfeited when an employee separates from state service. Time on the layoff list or an approved leave of absence is not considered a separation.

*What are your rules regarding allowing employees to convert vacation into sabbatical or termination leave?*

IL: Not allowed to convert.

IA: We have no such rules. All vacation is paid off at termination.

MI: All annual leave (vacation time) unused at the time of separation is paid at the employee's last rate of pay. These pay off amounts are subject to the maximum accrual caps which are based on years of service.

MN: Employees eligible to use vacation are compensated in cash for their unused vacation at the time they terminate service. Sabbatical leaves are not dependent upon vacation leave.

*If vacation can be converted to sabbatical or termination leave, are there any rules regarding pro-ration of the amount that can be converted?*

IL: Not applicable

IA: Not applicable

MI: Employees are subject to maximum annual leave accrual caps based on years of service. The payoff amounts cannot exceed these accrual cap amounts.

MN: Liquidation of vacation on separation is limited to 275 hours.

*Do you consider Veterans Day a legal holiday, or a personal holiday to be used anytime in recognition of Veterans Day?*

IL: Legal

IA: Veterans day is a legal state holiday.

MI: Veteran's Day is a legal holiday, observed on November 11.

MN: It is a legal holiday, but with the agreement of the Local Union, a substitute day may be observed for Veterans Day.

*Do your statutes require that state employees be granted paid leave to vote if the only time they can vote is during work hours? If so, are any employees excluded from the provision?*

IL: No

IA: Yes, called voting leave; and No, all employees are included.

MI: There is no provision for paid time off specifically for voting purposes.

MN: Statute permits employees to be absent from work (paid) during the forenoon of an election day to vote. "Election" means a regularly scheduled state primary or general election, an election to fill a vacancy in the office of United States senator or United States representative, or an election to fill a vacancy in the office of state senator or state representative.

*Do you have a catastrophic leave program? If yes, are there any types of positions excluded from the program? Note: For these questions a catastrophic leave program would be any program allowing employees to donate leave to another employee (who has run out of leave) for an illness or injury that incapacitates the employee or an immediate relative requiring the employee to be absent from work for an extended period of time.*

IL: No

IA: No

MI: Yes, we have an annual leave donation policy and an annual leave "bank" that are available to assist "employees facing financial hardship due to serious injury or prolonged illness of the employee or the employee's dependent spouse, child, or parent." In order to receive a leave transfer an employee must have completed the initial probationary period and have exhausted all leave credits.

MN: Yes, we have a vacation donation program. Employees may apply for the program if they have been employed by the state for at least six consecutive months, are eligible to accrue and use vacation (or personal days) or sick leave, are eligible for full or partial Employer Insurance contribution, have exhausted all forms of

paid leave, and obtain medical documentation which verifies that a life threatening illness/injury necessitates absence from work for a minimum of six weeks.

*Do you provide paid leave for bone marrow or organ donation?*

IL: Yes. An employee may receive up to 6 weeks.

IA: We have no specific rule/policy on this subject. Determination would be considered within the context of our regular sick leave rules.

MI: There is no provision for paid time off specifically for bone marrow or organ donation. Sick Leave would have to be used for these situations.

MN: Yes, up to 40 hours.

### **Chapter ER 29**

*Where are pay provisions included for non-union employees - in your rules or a compensation plan?*

IL: Pay provisions for nonunion employees are within our Pay Plan.

IA: Our administrative rules

MI: Pay provisions for non-represented employees are included in civil service rules and in the civil service compensation plan.

MN: Compensation Plan for unrepresented employees

*Do you provide 6-month pay increases to any type of state employees?*

IL: No

IA: Upon completion of the probationary period, promotion or reclassification to a higher pay grade.

MI: Yes, many of our pay ranges have 6 month steps.

MN: Some bargaining unit agreements allow these for employees at certain steps within their salary range.

*Can new employees be hired above the minimum? Is this extended to movements of current employees (i.e., can the criteria used for setting pay the pay of a new employee be used when a current employee is moving to a new position)?*

IL: Yes

IA: Yes, however, movements for current employees is up to the discretion of the agency.

MI: Yes, new employees can be hired above the minimum without any special approval if the agency can document the accepted rational (difficulty recruiting for the position, employee making more outside state service and higher rate is necessary to attract, special education/experience well beyond minimum qualifications needed, or previous state employee with pertinent experience). The same criteria can not be applied when moving current employees to new positions. Specific formulas and policies must be applied.

MN: Yes, new hires can be hired above minimum. Pay upon movement to a new position is dependent upon language in the bargaining unit contract.

### **Chapter ER 34**

*Where are pay provisions included for non-union employees - in your rules or a compensation plan?*

IL: Pay provisions for nonunion employees are within our Pay Plan.

IA: Our administrative rules

MI: Pay provisions for non-represented employees are included in civil service rules and in the civil service compensation plan.

MN: Compensation Plan for unrepresented employees

**Chapter ER 44**

*Does your state have basic supervisory training? Are agencies authorized to offer their own supervisory training? If yes, does the agency's training have to be approved by any centralized human resources office?*

IL: No, yes, and no, respectively.

IA: Yes, courses included in the basic supervisory certificate program are: Achieving Communication Effectiveness; Customer service; Ethics in the Workplace; Human Relations Skills; Discipline, Grievances, & the Contracts; Family Medical Leave Act; EEO/AA: Making the Most of Your Workforce; From Interview to Hire; Investigating Employee Misconduct; Performance Evaluation; Preventing Sexual Harassment for Supervisors; and What is the ADA? Agencies can provide their own supervisory training without approval by HRE, however they typically focus their training on department specific issues.

MI: Yes, yes and no, respectively.

MN: We offer required supervisory training to all new supervisors through the state's Training and Development Resource Center. Agencies may offer additional training if they choose which does not have to be approved by the centralized human resources office.

**There are no existing or proposed federal regulations that are intended to address the activities to be regulated by the proposed rules.**

**No factual data or analytical methodologies were necessary for the rule changes involved herein.**

**The proposed rule changes affect only persons employed by or who seek employment with the State of Wisconsin. The rule changes will not affect small business.**

**There will be no anticipated costs that would be incurred by the private sector.**

**FISCAL ESTIMATE**

The fiscal impact of changes in ss. ER 18.02 (5), ER 18.11, ER 18.15, and ER 29.03 (1) is indeterminable.

There is no fiscal impact caused by the other changes in this rule order or the changes are required by statute for which any fiscal report should have already been considered.

**INITIAL REGULATORY FLEXIBILITY ANALYSIS**

The proposed rule does not affect small business; therefore, an initial regulatory flexibility analysis is not required.

**EFFECTIVE DATE**

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2)(intro), Stats.

**CONTACT PERSON**

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Karen E. Timberlake, Director  
Office of State Employment Relations

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Date