

# STATEMENT OF SCOPE

## Department of Administration

**Rule No.:** Wis. Admin. Codes Chs. ER-MRS 1-34 and Chs. ER 1-47

**Relating to:** Update/Clean Up of Administrative Rules to Conform to 2015 Wisconsin Act 150 and Agency Practice

**Rule Type:** Permanent

### **1. Finding/nature of emergency (Emergency Rule only):**

N/A

### **2. Detailed description of the objective of the proposed rule:**

Ch. 230, Wis. Stats. was modified in 2016 to revise the state civil service laws in 2015 Wisconsin Act 150 (Act). Those revisions apply to the hiring process, performance reviews, discipline and grievance procedures, and layoff and reinstatement procedures. Full compliance with the Act requires substantial modifications to the current regulations implementing these laws. Additional modifications are needed to conform to the processes established by agency practice. Numerous sections of Wis. Admin Code Chapters ER-MRS 1-34 are affected by the Act. Modifications to Wis. Admin. Code Chapters ER 1-47 may be necessary as well.

### **3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

Changes to ch. ER-MRS 1 governing definitions to update definition of original appointment reinstatement, restoration, and to provide clarification for demotion and transfer.

Changes to ch. ER-MRS 6 governing recruitment and selection to replace examination with competitive procedures and update procedures for the selection process.

Changes to ch. ER-MRS 7 governing appointing procedures for unskilled labor and service classifications to replace examination and update procedures for the selection process.

Changes to ch. ER-MRS 8 governing procedures for corrections and entry professional positions to replace examination and update procedures for the selection process.

Changes to ch. ER-MRS 10 governing limited term appointments to provide for exclusions and violations.

Changes to ch. ER-MRS 11 governing employment registers to remove promotional registers and update management of registers.

Changes to ch. ER-MRS 12 governing certification and appointment to:

- Remove certification from promotional registers.
- Restoration following layoff.

- Replace test and examination with competitive procedures and update procedures for the certification process.
- Add reference to exceptional hiring methods and non-competitive appointment provisions.

Changes to ch. ER-MRS 13 governing probationary periods to provide consistency with probationary changes in Act 150 and past practice.

Changes to ch. ER-MRS 14 governing promotion to update procedures for the selection process.

Changes to ch. ER-MRS 15 governing transfer to:

- Require the assignment of a probationary period for transfer to a supervisory or management position.
- Update probationary requirements for movement within an agency.

Changes to ch. ER-MRS 16 governing reinstatement and restoration to:

- Remove restoration following layoff.
- Modify the conditions for reinstatement.

Changes to ch. ER-MRS 17 governing demotion to:

- Provide for the assignment of a probationary period for demotion to a supervisory or management position.
- Update probationary requirements for movement within an agency.

Changes to ch. ER-MRS 22 governing layoff procedures to:

- Specify how the order of layoff is to be determined.
- Eliminate displacement as an alternative to layoff.
- Eliminate restoration following layoff after July 1, 2016.

Changes to ch. ER-MRS 30 governing career executive employment to provide consistency with recruitment, selection, probation, reinstatement and restoration changes that occurred.

Changes to ch. ER-MRS 32 governing acting assignments to update procedures.

Changes to ch. ER-MRS 34 governing project appointments to update employment eligibilities.

Changes to ch. ER 1 governing definitions, to:

- Update definition of original appointment reinstatement, and restoration.
- Provide clarification for demotion and transfer.
- Add definitions previously provided for in the compensation plan.

Changes to ch. ER 3 governing position classification actions to update procedures.

Changes to ch. ER 21 governing resignation to update job abandonment.

Changes to ch. ER 45 governing performance evaluation to update procedures.

Changes to ch. ER 46 governing grievance procedures to provide consistency with statute.

#### **4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Section 227.11(2)(a), Wis. Stats., reads:

(2) Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

Section 230.04 (5), Wis. Stats., reads: "The administrator shall promulgate rules on all matters relating to the administration of the division and the performance of the duties assigned to the administrator, except on matters relating to those provisions of subch. II for which responsibility is specifically charged to the director."

Section 230.05 (5), Wis. Stats., reads: "The director shall promulgate rules for the effective operation of the provisions of this subchapter for which the responsibility is specifically charged to the director."

The proposed rule changes are authorized by Wis. Stat. §§ 230.04(5), and 230.05(5), being necessary for performance of duties assigned to the administrator and the director and necessary for the effective operation of subch. II of ch. 230 of the Wisconsin Statutes, as amended by 2015 Wisconsin Act 150. Paragraphs (a) and (b) of Wisconsin Stat. § 227.11(2) also authorize the department to prescribe forms and procedures and promulgate rules interpreting the provisions of ch. 230 to the extent necessary to effectuate the purpose of the statute.

#### **5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :**

The estimated time to be spent by state employees is 120 hours. No other resources are necessary.

#### **6. List with description of all entities that may be affected by the proposed rule :**

The proposed rules will affect state employees covered by the rules, and agencies and appointing authorities of the State of Wisconsin who implement and/or make decisions based on them.

Pursuant to Wis. Stat. § 230.03(3), an "agency" includes "any board, commission, committee, council, or department in state government or a unit thereof created by the constitution or statutes if such board, commission, committee, council, department, unit, or the head thereof, is authorized to appoint subordinate staff by the constitution or statute, except the Board of Regents of the University of Wisconsin System, a legislative or judicial board, commission, committee, council, department, or unit thereof or an authority created under subch. II of ch. 114 or under ch. 231, 232, 233, 234, 237, 238, or

279. ‘Agency’ does not mean any local unit of government or body within one or more local units of government that is created by law or by action of one or more local units of government.”

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :**

The Department is not aware of any existing or proposed federal regulation that is intended to address the activities regulated by the proposed rules.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

There will be minimal or no economic impact of these proposed rule revisions. These rule revisions are not likely to have a significant economic impact on small businesses.

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