

Chapter ER-MRS 16

REINSTATEMENT AND RESTORATION

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Note: Chapter ER-Pers 16 was renumbered chapter ER-MRS 16 under s. 13.93 (2m) (b) 1., Stats., Register, October, 1994, No. 466; Corrections made under s. 13.93 (2m) (b) 6., Stats., Register December 2003 No. 576.

ER-MRS 16.01 Definition. Reappointment under this chapter may be either permissive at the discretion of the appointing authority or mandatory as required by the law or rule of the director. In those instances where an employee or former employee has “eligibility” for reinstatement, the action is permissive. In those instances where an employee or former employee has the “right” of restoration, the action is mandatory.

Note: See s. ER-MRS 1.02 (29) and (30) for definitions of reinstatement and restoration.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, February, 1981, No. 302, eff. 3-1-81; am. (2), Register, February, 1983, No. 326, eff. 3-1-83; r. (1), renum. (2) and am. Register, May, 1988, No. 389, eff. 6-1-88; correction made under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717.

ER-MRS 16.015 Return to a lower position. (1) RETURN FOLLOWING A BREAK IN SERVICE NOT COVERED BY LEAVE OR LAYOFF. The appointment of a former employee, who previously acquired permanent status in class, to a position in the same, counterpart or lower class than the one in which permanent status in class was acquired, following a break in service not covered by leave or the layoff provisions of these rules or applicable collective bargaining agreement, shall be considered as an original appointment except when it may be considered a reinstatement under s. ER-MRS 16.035 and the appointing authority chooses to treat such appointment as a reinstatement.

(2) RETURN TO A POSITION AT A HIGHER LEVEL. For provisions relating to appointment of persons who previously had permanent status in class to a position in a higher class see s. ER-MRS 14.02 (2).

History: Cr. Register, February, 1981, No. 302, eff. 3-1-81; renum. to be (1) and am. and cr. (2), Register, May, 1988, No. 389, eff. 6-1-88; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466.

ER-MRS 16.02 Report of appointing authority; approval by director. All reinstatements and restorations shall be reported to the director for approval as may be required.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, February, 1981, No. 302, eff. 3-1-81; corrections made under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717.

ER-MRS 16.025 Period of eligibility. Except as otherwise provided in s. 230.40 (3), 2013 Stats., and s. 230.33, Stats., the period of eligibility for all reinstatements and restorations shall begin and end as follows:

(2) For reinstatements, the period of eligibility shall begin with the date of separation from the position in which the eligibility was earned and end as follows:

(a) Five years after the date of separation if separation occurred prior to July 1, 2016.

(b) Three years after the date of layoff if layoff occurred on or after July 1, 2016.

(3) For restorations following layoff that occurred prior to

July 1, 2016, the period of eligibility shall begin with the date of separation from the position in which the eligibility was earned and end 3 years after the date of separation due to layoff.

(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 s. 230.40 (3), 2013 Stats., or in sub. (2) or (3) or s. 230.33, Stats.

(b) An employee may be reinstated after the expiration of the applicable period of eligibility if the employee submitted a specific request or application for reinstatement to a specific vacancy during the applicable period of eligibility and the employee is reinstated to the specific vacancy.

Note: For definition of year, see s. ER-MRS 1.02 (35).

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88; am. (intro.), (1) to (4) (b), Register, December, 1999, No. 528, eff. 1-1-00; CR 04-138: r. (1), am. (2) and (4) (a) Register June 2005 No. 594, eff. 7-1-05; correction in (intro.), (4) (a) under s. 13.92 (4) (b) 7., Stats., Register December 2016 No. 732; CR 18-006: renum. (2) to (2) (intro.) and am., cr. (2) (a), (b), am. (3) Register July 2018 No. 751, eff. 8-1-18.

ER-MRS 16.03 Types and conditions of restoration. (1) LAYOFF BEFORE JULY 1, 2016. See s. ER-MRS 22.10.

(2) RETURN FROM MILITARY. An employee returning from military service shall be restored under the provisions of s. 230.32, Stats.

(3) RESTORATION IN ACCORDANCE WITH ORDER OF WISCONSIN EMPLOYMENT RELATIONS COMMISSION OR COURT ACTION. See s. 230.44 (4) or 230.445, Stats. A probationary period shall not be required as a result of such restoration.

(4) RETURN FROM SERVING IN THE UNCLASSIFIED SERVICE. An employee returning from an approved leave of absence to the unclassified service shall be restored under the provisions of s. 230.33, Stats.

(5) RESTORATION FOLLOWING NON-COMPLETION OF PROBATIONARY PERIOD UPON PROMOTION OR TRANSFER WITHIN AN AGENCY. See s. 230.28 (1) (d), Stats., and ss. ER-MRS 14.03 (1) and 15.055.

(6) RETURN FROM APPROVED LEAVE WITHOUT PAY OR SUMMER LEAVE. (a) *General.* Return from approved leave without pay or summer leave shall be treated as if it were a restoration under either of the following:

1. A position at the same level is available. Except as provided in subd. 2., upon the expiration of an approved leave of absence without pay, or sooner if the appointing authority agrees, a classified employee may return to his or her position or to a position in the same or counterpart pay range for which the employee is qualified to perform the work after being given the customary orientation provided for a newly hired worker in the position.

2. No position at the same level is available. If the position is filled while the employee is on leave or if the position has been abolished and there is no other vacant position available in the same or counterpart pay range in the agency, the employee shall be treated as if he or she had been restored to the previous posi-

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tion, and the provisions for making layoffs under ch. ER-MRS 22 shall apply.

(b) *Effect on continuous service and sick leave upon return from leave.* Approved leaves without pay shall not operate to interrupt the continuous service or cancel the unused accumulated sick leave of the absent employee.

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

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (2) and (4), cr. (4m), (7) and (8), Register, September, 1975, No. 237, eff. 10-1-75; am. (2), (3) and (5), r. and recr. (1), (4), (6) and (7), r. (4m) and (8), Register, February, 1981, No. 302, eff. 3-1-81; renum. (6) to be (6) (a) (intro.), cr. (6) (a) 1., and 2., (b) and (c), Register, May, 1988, No. 389, eff. 6-1-88; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466; CR 04-138: am. (6) (c) Register June 2005 No. 594, eff. 7-1-05; CR 18-006: am. (1) (title), (3), (5) Register July 2018 No. 751, eff. 8-1-18; cr. (6) (a) (title) under s. 13.92 (4) (b) 2., Stats., Register July 2018 No. 751.

ER-MRS 16.035 Types and conditions of reinstatement. (1) **GENERAL.** An employee who, prior to July 1, 2016, 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 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 s. 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 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.

Note: Section ER-MRS 16.035 (3) only applies to downward reallocations that occurred prior to July 1, 2016, as provided in s. 230.31, Stats.

(3m) **LAYOFF.** See s. ER-MRS 22.11.

(4) **FAILURE TO RETURN FROM LEAVE OF ABSENCE.** If an employee does not return from an approved leave of absence, such failure to return shall be treated as job abandonment under s. ER 21.03, unless the employee submits a letter of resignation as required under s. ER 21.02.

History: Cr. Register, February, 1981, No. 302, eff. 3-1-81; am. (3), Register, May, 1988, No. 389, eff. 6-1-88; corrections in (2) and (4) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466; am. (1) to (3), Register, December, 1999, No. 528, eff. 1-1-00; corrections in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1999, No. 528; CR 04-138: am. (1) to (3) Register June 2005 No. 594, eff. 7-1-05; CR 18-066: am. (1), cr. (3m) Register July 2018 No. 751, eff. 8-1-18.

ER-MRS 16.04 Kinds of reinstatement; probationary status. (1) **REINSTATEMENT OF PERSONS WHO PREVIOUSLY OBTAINED PERMANENT STATUS IN CLASS.** (a) *Reinstatement to different agency.* A person who is reinstated to an agency other than the one from which the person earned reinstatement eligibility may be required by the appointing authority to serve a probationary period. If not required to serve a probationary pe-

riod, the employee shall immediately attain permanent status in class. If required to serve a probationary period and during such period the employee's services are found to be unsatisfactory, the employee may be terminated from the service by the appointing authority without the right of appeal.

(b) *Reinstatement to a different employing unit in the same agency.* A person who is reinstated to a different employing unit in the same agency from which the person earned reinstatement eligibility may be required by the appointing authority to serve a probationary period. If not required to serve a probationary period, the employee shall immediately attain permanent status in class. If required to serve a probationary period, the employee may be terminated from the service by the appointing authority during the probationary period without the right of appeal. However, if the probation is terminated without misconduct, following reinstatement as a result of layoff, the employee shall continue to have reinstatement eligibility under s. ER-MRS 22.11.

(c) *Reinstatement to the same employing unit.* A person shall not be required to serve a probationary period when reinstated to the same employing unit from which the person earned reinstatement eligibility and shall immediately attain permanent status in the class, except that a probationary period may be required for reinstatement to a supervisory or management position in accordance with the provisions of s. 230.28 (4), Stats.

(2) **SEPARATION DURING THE PROBATIONARY PERIOD.** A person who, prior to July 1, 2016, separated 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.

Note: For movement to a position in a lower class while serving an original probationary period, see ER-MRS 17.02 (1).

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (2), Register, September, 1975, No. 237, eff. 10-1-75; am. Register, February, 1981, No. 302, eff. 3-1-81; am. Register, February, 1983, No. 326, eff. 3-1-83; am. (2), Register, May, 1988, No. 389, eff. 6-1-88; am. (2), Register, December, 1999, No. 528, eff. 1-1-00; CR 04-138: am. (2) Register June 2005 No. 594, eff. 7-1-05; CR 18-006: am. (1) (b), (c), (2) Register July 2018 No. 751, eff. 8-1-18.

ER-MRS 16.05 Pay on reinstatement. See s. ER 29.03 (6) or the compensation plan.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; r. and recr. Register, February, 1981, No. 302, eff. 3-1-81; correction made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466; CR 04-138: am. Register June 2005 No. 594, eff. 7-1-05.

ER-MRS 16.06 Pay on restoration. See s. ER 29.03 (7) or the compensation plan.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (1), Register, September, 1975, No. 237, eff. 10-1-75; am. (1), Register, December, 1976, No. 252, eff. 1-1-77; r. and recr. Register, February, 1981, No. 302, eff. 3-1-81; correction made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466; CR 04-138: am. Register June 2005 No. 594, eff. 7-1-05.