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# Wisconsin Legislative Council

## ACT MEMO

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### 2023 Wisconsin Act 4 [2023 Assembly Bill 28]

### Classifying County Jailers as Protective Occupation Participants Under WRS and the Treatment of County Jailers Under MERA

2023 Wisconsin Act 4 relates to the classification of county jailers as protective occupation participants (“protectives”) under the Wisconsin Retirement System (WRS) and general municipal employees under the Municipal Employment Relations Act (MERA). The act generally classifies county jailers as protectives for purposes of benefits under WRS, unless a county jailer opts out of such a classification. Jailers are generally required to pay the additional employer costs associated with protective status, except for jailers who are employed or hired in counties that classified jailers as protectives on the bill’s effective date and have not subsequently reclassified them as general employees. The act also generally treats county jailers as general municipal employees, rather than public safety employees, under MERA.

## BACKGROUND

### Protective Occupation Participants

Under Wisconsin law, protectives are treated differently than other WRS participating employees. For example, protectives receive a higher multiplier to determine their monthly annuity payments after retirement, may retire at a younger age, and may participate in the duty disability program.<sup>1</sup> Employers also contribute a higher percentage of earnings into the WRS for employees who are protectives than for those who are not and pay the cost for protectives’ participation in the duty disability program.

As relevant to county jailers, state law defines a “protective occupation participant” as any WRS participant whose principal duties are determined by the employing county to involve “active law enforcement,” provided that the duties “require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning.” By statute, the Legislature has expressly designated as protectives those who work in any of 22 enumerated position types and whose names are certified as protectives by their employers. Examples of those enumerated positions include police officers, fire fighters, sheriffs, and deputy sheriffs.<sup>2</sup>

Currently, county jailers are not included in this list. As was mentioned, however, state law authorizes WRS employers to designate additional employees (such as county jailers) as protectives if the employer determines that the position’s principal duties meet the statutory definition of protective occupation participant. WRS employers must notify the Department of Employee Trust Funds (ETF) of

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<sup>1</sup> The duty disability program provides a lifetime disability benefit for persons in state or local protective occupations who have a work-related permanent disability.

<sup>2</sup> A deputy sheriff is any officer or employee of a sheriff’s office unless the officer or employee meets certain exceptions, such as having the principal duties of a telephone operator, clerk, or mechanic.

the names of all employees classified as protectives; designations may be reviewed by ETF and appealed to the ETF Board.

## **MERA**

MERA provides greater collective bargaining rights to positions categorized as “public safety employees” than it does to those categorized as “general municipal employees.” General municipal employees may bargain with respect to base wages, but cannot bargain for an increase in wages above any increase in the consumer price index unless the increase is approved by referendum. In contrast, public safety employees may bargain regarding wages, hours, and conditions of employment.

State law defines a public safety employee in reference to the individual’s status as a protective, and defines a general municipal employee as a municipal employee who is not a public safety employee or transit employee. Under MERA, a “public safety employee” includes any municipal employee who is employed in a position classified as a protective under the WRS or a comparable city or county retirement system in one of the following categories: (1) police officer; (2) firefighter; (3) deputy sheriff; (4) county traffic police officer; or (5) employee of a combined protective services department. A public safety employee also includes a person who is employed as an emergency medical services provider. Though “county jailer” is not expressly included in this list, Wisconsin courts have found that jailers in particular counties are protectives and, therefore, qualify as public safety employees.

## **2023 WISCONSIN ACT 4**

### **Protective Occupation Participants**

2023 Wisconsin Act 4 generally classifies county jailers as protectives, but allows jailers to irrevocably opt out of this classification. County jailers who are classified as protectives are generally responsible for the additional employer costs resulting from their classification as protectives, including the employer’s portion of WRS and duty disability contributions. Newly hired county jailers must make these contributions on a pre-tax basis; current jailers must make the contributions post-tax. However, as described in more detail below, jailers are not required to pay the additional employer costs if they are either classified as protectives before the act’s effective date or are hired on or after the effective date in counties that classified jailers as protectives on the effective date, unless the county subsequently determines to categorize jailers as general employees.

As was mentioned, the bill provides county jailers who are not classified as protectives on the act’s effective date with the irrevocable option of whether to be classified as protectives. In order to elect not to be a protective, a person currently employed as a county jailer, but who is not classified as a protective, must notify his or her employer in writing within 60 days of the act’s effective date. For newly hired county jailers in counties that did not classify jailers as protectives on the act’s effective date, the county board must provide an irrevocable option to elect not to be a protective at the time of hire.

The act also establishes procedures for counties and jailers in counties that classified jailers as protectives on the act’s effective date and subsequently determine to classify them as general employees. In counties that subsequently reclassify jailers as general employees, the county board must provide both current and newly hired jailers with the irrevocable option to not be a protective; those jailers that elect to remain protectives are then responsible for the additional employer WRS contributions and duty disability contributions associated with being a protective, as in counties that did not classify jailers as protectives on the act’s effective date. Jailers who elect to remain protectives have contributions deducted on a post-tax basis, while newly hired jailers who elect to be classified as protectives have contributions made on a pre-tax basis.

In counties that make this determination, the county board must provide jailers with notice of the board's determination to classify jailers as general employees and of a jailer's opportunity to remain a protective. The notice must be in writing, in a manner that the employer typically uses to provide notices to employees, and posted where notices to employees are customarily posted. Jailers have 60 days from the board's determination or the date of hiring, whichever is applicable, to make their election.

## **MERA**

Under the act, county jailers are considered general municipal employees, except for jailers employed in counties that treat jailers as public safety employees on the act's effective date. However, if a county that treats jailers as public safety employees raises a question concerning the appropriateness of including county jailers in a collective bargaining unit that includes public safety employees, the county may not treat any county jailer as a public safety employee.

**Effective date:** January 1, 2024

For a full history of the bill, visit the Legislature's [bill history page](#).

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