

## **Clearinghouse Rule 06-061**

### **PROPOSED ADMINISTRATIVE RULE OF WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

Note: The Wisconsin Employment Relations Commission proposed to repeal and recreate ERC 33 Appendix Forms A, B and C as part of the complete revision of its administrative rules encompassed in Clearinghouse Rule 02-037. Following consideration of the Legislative Council's Clearinghouse Report and comments from the public, it was the intent of the Commission to include ERC 33 Appendix Forms A, B and C in its Notice of Submission of Proposed Rule to Legislature (which did include ERC 33 and ERC 33 Appendix Form D) and in its own rule-making Order. However, ERC Appendix Forms A, B and C were inadvertently omitted from that Notice and the Commission's subsequent rule-making Order. Therefore, the Commission proposes to repeat the rule making process as to ERC Appendix Forms A, B and C.

The Wisconsin Employment Relations Commission proposes an order to repeal and recreate ERC 33 Appendix Forms A, B and C relating to procedures for the administration of the Municipal Employment Relations Act.

The proposed rule interprets Secs. 111.70 (1) (dm), (fm), and (nc) and 111.70 (4) (cm) 5s. Stats.

Sections 111.70 (4)(cm)8s., 111.71(1) and 227.11(2)(a), Stats. give the Commission authority to repeal and recreate these rules.

The proposed rule specifies the manner in which a qualified economic offer is calculated.

There are no federal regulations that address a qualified economic offer nor are there similar rules in adjacent states.

The proposed rule will have no economic impact on small business.

The proposed rule will have no fiscal impact.

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SECTION 1. CHAPTER ERC 33 Appendix Forms A, B and C are repealed and recreated to read:

**EMPLOYMENT RELATIONS COMMISSION**

**Chapter ERC 33**

## **APPENDIX**

### **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

#### **QUALIFIED ECONOMIC OFFER CALCULATION**

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#### **FORM A**

This form and Form B must be provided by the district to the labor organization 60 days prior to contract expiration, or whenever a qualified economic offer is made, whichever is earlier.

#### **DEVELOPING A QUALIFIED ECONOMIC OFFER**

##### **Developing Employee Base**

1. Identify all school district professional employees (as defined by Sec. 111.70(1)(ne), Stats.) who were represented by the labor organization for the purposes of collective bargaining and contract administration on the 90<sup>th</sup> day prior to the expiration of the current/most recently expired bargaining agreement. School district professional employees who were employed on the 90<sup>th</sup> day but who thereafter retire, resign or are terminated prior to the expiration of the current/most recently expired contract are included. School district professional employees on layoff, sick leave or leave of absence must be included if they continue to be represented by the labor organization for the purposes of collective bargaining and contract administration. School district professional employees who are replacing employees who are in leave status are not included unless they are represented by the labor organization for the purposes of collective bargaining and contract administration in the same bargaining unit as the employee being replaced.

##### **Developing Fringe Base**

2. Identify all fringe benefits and your percentage contribution toward the cost thereof as such benefits and contributions existed on the 90<sup>th</sup> day prior to the expiration of the current/most recently expired agreement, or the 90<sup>th</sup> day prior to the date on which your negotiations actually commenced if there is no previous collective bargaining agreement between the parties. If your fringe benefit contribution level is expressed as a dollar amount, convert the dollar amount to a percentage for the purposes of this calculation.

##### **Total Base Cost Calculation**

3. Using the employees identified in Step 1 and the fringe benefits and employer percentage contribution levels identified in Step 2, complete Form B to calculate the employer cost of compensation and fringe benefits for the year preceding the expiration date specified in your current/most recently expired contract. For the purposes of this calculation, assume that any cost increase incurred during the year was in effect for the entire year. In your calculation, you must

include the cost of any benefits Step 1 employees who retire will receive/received prior to the expiration of your current/most recently expired contract. Do not include the cost of providing benefits to employees who retired before the 90<sup>th</sup> day prior to the expiration of the current/most recently-expired contract.

**Enter the total base year salary and fringe benefit costs from Form B here.**

Salary \_\_\_\_\_

Fringe \_\_\_\_\_

Total \_\_\_\_\_

### **QEO 1 Dollar Amounts**

4. Calculate 3.8%, 2.1% and 1.7% of your Step 3 total and enter here

3.8% = \_\_\_\_\_ 2.1% = \_\_\_\_\_ 1.7% = \_\_\_\_\_.

For the purposes of the following calculations, *do not* assume any change in: (1) the identity of Step 1 employees; (2) the level of service they provide to the district or (3) the fringe benefits Step 1 employees received or the applicable employer % contribution level. *Do* assume that any cost increase incurred during the year was in effect for the entire year.

### **QEO 1 Fringe Benefit Calculation**

5. Using the same employees identified in Step 1 and the fringe benefits and employer percentage contribution levels identified in Step 2, calculate the actual employer cost of maintaining the fringe benefits and employer percentage contribution levels for the first 12-month period following the stated expiration date in the current/most recently expired contract. If your contract will have a duration of less than 12 months, prorate your cost calculation to reflect your actual contract duration, if appropriate. **Enter this cost here and on Form B, QEO 1, fringe benefit cost.** \_\_\_\_\_

6. Subtract your Step 3 base fringe benefit cost from your Step 5 cost and calculate the result as a percentage of your total Step 3 base year cost. **Enter the result here and on Form B, QEO 1, fringe benefit percentage.** \_\_\_\_\_

### **QEO 1 Step Calculation**

7. For the first 12-month period following the stated expiration date in the current/most recently expired contract, calculate the total additional cost of providing each employee identified in

Step 1 with any salary increase to which they would be entitled by virtue of an additional year of service on the salary schedule (longevity is to be included if part of salary schedule). **Enter this cost here and on Form B, QEO 1, Step Advancement** \_\_\_\_\_.

8. Calculate your Step 7 cost as a percentage of the total Step 3 base year cost. **Enter the result here.** \_\_\_\_\_

#### **End of first year QEO calculation**

**If you are bargaining a contract with a duration of 12 months or less, stop and proceed to the Qualified Economic Offer Instruction, Form C.**

#### **Start of second year QEO calculation**

#### **Total QEO 1 Base Cost Calculation**

9. Repeat Step 3 for the first 12-month period following the stated expiration date of your current/most recently-expired contract. **Enter the total QEO 1 salary and fringe benefit costs from Form B here.**

Salary \_\_\_\_\_

Fringe \_\_\_\_\_

Total \_\_\_\_\_

#### **QEO 2 Dollar Amounts**

10. Calculate 3.8%, 2.1% and 1.7% of your Step 9 total and enter here:

3.8% = \_\_\_\_\_ 2.1% = \_\_\_\_\_ 1.7% = \_\_\_\_\_.

#### **QEO 2 Fringe Benefit Calculation**

If your contract will have a duration of less than 24 months, prorate your QEO 2 cost calculation to reflect your actual contract duration, if appropriate.

11. Repeat Step 5 for the second 12-month period following the stated expiration date in the current/most recently expired contract. **Enter this cost here and on Form B, QEO 2, fringe benefit cost** \_\_\_\_\_.

12. Subtract your Step 9 fringe benefit cost from your Step 11 cost and calculate the result as a percentage of your Step 9 total QEO 1 cost. **Enter the result here and on QEO 2, Form B, fringe benefit percentage** \_\_\_\_\_.

13. Repeat Step 7 calculation for the second 12-month period following the stated

expiration date in the current/most recently-expired contract. **Enter the cost here and on Form B, QEO 2, Step Advancement.** \_\_\_\_\_.

14. Calculate your Step 13 cost as a percentage of your Step 9 total QEO 1 cost. **Enter the result here** \_\_\_\_\_.

**Proceed to the qualified economic offer instruction Form C.**

**ERC 33 Appendix**

**WISCONSIN ADMINISTRATIVE CODE**

**FORM B**

This Form and Form A must be provided by the district to the labor organization 60 days prior to contract expiration, or whenever a qualified economic offer is made, whichever is earlier.

<b>Salary</b>	<b>Base</b>	<b>Year</b>	<b>QEO1</b>	<b>1/</b>
QEO2 1/				
<b>Salary Schedule</b>				
_____ 2/ _____ 3/				
Additional Step Advancement	_____	_____	_____	_____
Additional QEO Salary Schedule Cost	_____	_____	_____	_____
	_____	Salary Subtotal		_____
Longevity (include here if not on salary schedule)	_____	_____	_____	_____
Extended Contracts	_____	_____	_____	_____
Co-Curricular Pay	_____	_____	_____	_____
Extra Duty Pay	_____	_____	_____	_____
Athletic Events	_____	_____	_____	_____
Department Head	_____	_____	_____	_____
Curricular Work	_____	_____	_____	_____
Overload Pay	_____	_____	_____	_____
M-Team	_____	_____	_____	_____
_____ IEP	_____	_____	_____	_____

Supervision			
Other			
Total Extra Duty Pay			
Summer School			
Severance Pay			
Sick Leave Payout			
Other			
	Total Salary Cost		

<sup>1</sup> The QEO1 and QEO2 salary costs will remain the same as the base year costs for longevity (if not a step), extended contracts, co-curricular pay, extra duty pay, summer school, severance pay, sick leave payout, etc. unless the rate of compensation increases due to an increase in the salary schedule or an additional year of service entitles base year employee(s) to additional compensation.

<sup>2</sup> Enter base year salary subtotal.

<sup>3</sup> Enter QEO1 salary subtotal.

## Fringe Benefit Costs

Credit Reimbursement 4/

\_\_\_\_\_

\_\_\_\_\_

Social Security

\_\_\_\_\_

\_\_\_\_\_

Retirement

\_\_\_\_\_

\_\_\_\_\_

Health Insurance

\_\_\_\_\_

\_\_\_\_\_

No.S \_\_\_\_ No.F \_\_\_\_  
Employer % Contribution  
Level S \_\_\_\_ F \_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dental Insurance

\_\_\_\_\_

\_\_\_\_\_

No.S \_\_\_\_ No.F \_\_\_\_  
Employer % Contribution  
Level S \_\_\_\_ F \_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Vision Insurance

\_\_\_\_\_

\_\_\_\_\_

No.S \_\_\_\_ No.F \_\_\_\_  
Employer % Contribution  
Level S \_\_\_\_ F \_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Life Insurance

\_\_\_\_\_

\_\_\_\_\_

Employer % Contribution  
Level \_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Disability Insurance

Employer % Contribution  
Level \_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Long-Term Care Insurance

Employer % Contribution  
Level \_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Other \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Total Fringe Benefit Cost**

\_\_\_\_\_

\_\_\_\_\_

**Total Salary and Fringe Benefit Cost**

\_\_\_\_\_

**QEO1 Increased/decreased salary cost as a percentage of base  
Year total salary and fringe benefit cost** \_\_\_\_\_

**QEO1 Increased/decreased fringe benefit cost as a percentage of  
base Year total salary and fringe benefit cost** \_\_\_\_\_

**QEO2 Increased/decreased salary cost as a percentage of QEO1  
total salary and fringe benefit cost**  
\_\_\_\_\_

**QEO2 Increased/decreased fringe benefit cost as a percentage of  
QEO1 total salary and fringe benefit cost**  
\_\_\_\_\_

Attach a chart identifying the number of base year employees at each step and lane on any existing salary schedule. We swear that we completed this form in as accurate a manner as possible.

\_\_\_\_\_  
Superintendent/ Date  
Business Manager

\_\_\_\_\_  
Treasurer Date

\_\_\_\_\_  
<sup>4/</sup> The QEO1 and QEO2 credit reimbursement costs will remain the same as the base year costs unless the rate of reimbursement increases due to an increase in the salary schedule.



**WISCONSIN EMPLOYMENT RELATIONS COMMISSION QUALIFIED ECONOMIC OFFER  
INSTRUCTIONS**

**FORM C**

Utilize the following instructions to determine the components of a qualified economic offer.

Note: If payment of any appropriate salary increase would raise your fringe benefit costs (due to resultant social security and retirement cost increases) above 1.7% of Step 3 (base cost), then reduce the salary increase in the amount necessary to keep the combined cost of fringe benefits, steps, and average salary increase at 3.8% of Step 3 (base cost).

**DEVELOPING A QUALIFIED ECONOMIC OFFER**

When calculating any appropriate salary increase or decrease, include any increased or decreased salary cost in extended contracts, co-curricular pay, extra duty pay, etc., which is produced by salary schedule increases or decreases or payment of steps or lanes.

1. Complete Forms A and B.
2. Using the information on Form A, determine how the law requires you to proceed by identifying the cost combination that applies to the first 12-month period of your offer.
  - A. If the combined costs identified by Step 6 (fringe benefits) and Step 8 (steps), are less than 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purpose of collective bargaining and contract administration:
    1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.
    2. Pay all eligible employees any salary increase to which they are entitled by virtue of an additional year of service on the salary schedule. Include longevity payments if they are part of the salary schedule.
    3. Pay an average salary increase to all employees in an amount determined by the difference between 3.8% of Step 3 (base cost) and the combined cost of Step 6 (fringe benefits) and Step 8 (steps) and in a manner which does not alter the relationship between steps and lanes in your existing salary structure. The options available for distribution of the general salary increase are a uniform dollar amount increase on each salary cell; or a uniform % increase to each salary cell; or an increase in the base which increases each cell in accordance with the existing salary structure.
  - B. If the combined costs identified by Step 6 (fringe benefits) and Step 8 (steps) are 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purposes of collective bargaining and contract administration:
    1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.

2. Pay all eligible employees any salary increase to which they are entitled by virtue of an additional year of service on the salary schedule. Include longevity payments if they are part of the salary schedule.

- C. If the combined costs identified by Step 6 (fringe benefits) and Step 8 (steps) are more than 3.8% of Step 3 (base cost) but the cost of Step 6 (fringe benefits) is less than 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purposes of collective bargaining and contract administration:
1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.
  2. Calculate the prorated portion of Step 7 (steps) which can be funded by 3.8% of Step 3 (base cost) minus the cost identified by Step 5 (fringe benefits). To identify the proration percentage, identify the amount of money available to fund steps and divide by the amount of money necessary to fully fund steps.
  3. Pay the same prorated salary increase to all eligible employees entitled thereto by virtue of an additional year of employment on the salary schedule. Include longevity payments if they are part of the salary schedule. For example, if the foregoing calculation would allow payment of half of the Step 7 (steps) salary increase to eligible Step 1 employees, you must pay one-half of the salary increase to which any of your actual employees are entitled by virtue of an additional year of service on the salary schedule during the first 12 months of your offer.
- D. If the cost identified by Step 6 (fringe benefits) is 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purposes of collective bargaining the contract administration:
1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.
- E. If the cost identified by Step 6 (fringe benefits) is more than 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purposes of collective bargaining and contract administration:
1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.
  2. You may decrease the salary of all employees in an amount determined by the difference between the cost identified by Step 6 (fringe benefits) and 3.8% of Step 3 (base cost) and in a manner which does not alter the relationship between steps and lanes on your existing salary structure. The options available for distribution of the average salary decrease are a uniform dollar amount decrease on each salary cell; or a uniform % decrease on each salary cell; or a decrease in the base which decreases each cell in accordance with the existing salary structure.

For the second year or portion thereof, repeat your evaluation of options A-E utilizing the costs identified in Steps 9-14 of Form A.

SECTION 2. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provides in s. 227.22(2) (intro.), Stats,