

Clearinghouse Rule 08-026

**State of Wisconsin
Department of Employee Trust Funds
Employee Trust Fund Board
Wisconsin Retirement Board
Teachers Retirement Board**

The Wisconsin department of employee trust funds proposes an order to amend ETF 10.08 (2) (b) 4. and to create ETF 50.30 (4), relating to termination of employment and administrative leave of absence.

Notice of Public Hearing

A public hearing on this proposed rule will be held on May 22, 2008 at 1:00 p.m. in Conference Room GB at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin. Persons wishing to attend should come to the reception desk up the stairs (or by elevator) from the main entrance to the building.

Analysis Prepared by the Department of Employee Trust Funds

1. Statute interpreted:
Section 40.63, Wis. Stats.
2. Statutory authority:
Sections 40.03 (2) (i) and 227.11 (2) (a), Wis. Stats.
3. Explanation of agency authority:
By statute, the DETF Secretary is expressly authorized, with appropriate board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin statutes. Also, each state 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.
4. Related statute or rule:
Ch. ETF 10, Wis. Admin. Code, concerns the administration of the Public Employee Trust Fund and Ch. ETF 50 concerns disability benefits provided in accordance with the trust fund. Section 40.63, Wis. Stats. concerns disability annuities from the Wisconsin retirement system. There are no other related administrative rules or statutes.
5. Plain language analysis:

The purpose of this rule is to enable participants to continue to receive private benefits offered by their employer, such as health insurance, while they are receiving disability benefits under s. 40.63, Stats.

6. Summary of, and comparison with, existing or proposed federal regulations:

The only federal regulations that may be affected by this proposed rule are provisions of the Internal Revenue Code regulating qualified pension plans. The Wisconsin Retirement System is required to be maintained as a qualified plan by s. 40.015, Stats. As a general rule, pension plans are supposed to provide benefits at retirement. However, federal regulations state that a pension plan may provide for the payment of a pension due to disability. The Wisconsin Retirement System provides for disability annuities under s. 40.63, Stats.

7. Comparison with rules in adjacent states:

The department did not locate any comparable rule or statute in any adjacent states.

8. Summary of factual data and analytical methodologies:

Currently, the department interprets s. 40.63, Stats. to permit a disabled employee, who is on a leave of absence and not expected to return to service, to apply for a disability annuity benefit and to receive such benefits if the employee's application is approved. This practice followed an internal review of the department's policies and the pertinent statutes and administrative rules for administering the s. 40.63 disability benefit program.

This proposed rule addresses the status of disability annuitants with regard to the Wisconsin Retirement System and other fringe benefits under ch. 40, Stats. For example, if a disabled employee is deemed to have terminated employment for all ch. 40 purposes, the effect on that person's health insurance and premiums would vary depending on whether the employer participated in the group insurance board's health insurance under ch. 40 or if the employer offered other health insurance.

Under s. ETF 50.54 (2) (b), long-term disability insurance benefits, which replaced disability annuity benefits for employees not continuously employed since before October 16, 1992, already are available for employees on a leave of absence. This proposed rule will conform the eligibility criteria regarding termination of employment for both disability annuities and long-term disability insurance.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report.

The rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System.

10. Effect on small business:
There is no effect on small business.
11. Agency contact person (including email and telephone):
Please direct any questions about the proposed rule to David Nispel, deputy chief counsel, department of employee trust funds, P. O. Box 7931, Madison, WI 53707. The email address: david.nispel@etf.state.wi.us. The telephone number is: (608) 264-6936.
12. Place where comments are to be submitted and deadline for submissions:
Written comments on the proposed rule may be submitted to David Nispel, deputy chief counsel, department of employee trust funds, 801 W. Badger Road, P. O. Box 7931, Madison, WI 53707. Written comments must be received at the department of employee trust funds no later than 4:30 p.m. on Friday, May 23, 2008.

Text of Proposed Rule

Section 1. ETF 10.08 (2) (b) 4. is amended to read:

4. Except as provided in ETF 50.30 (4), upon termination of employment the participant is treated consistently with the status of a former employee. This includes, but is not limited to the terminated employee no longer being eligible for benefits available only to active employees. Examples of such benefits may include health insurance, life insurance, income continuation insurance coverage, making deferred compensation or tax sheltered annuity contributions, worker's compensation coverage, internal grievance, promotion or transfer rights, or rights available to active employees under a collective bargaining agreement. This subd. shall not apply to benefits that may be available to the employer's retired employees, such as severance pay, post-retirement insurance coverage and/or employer payment of premiums, or post-retirement benefits or other rights provided through collective bargaining or other retirement agreements. However, agreements made after the termination date for future compensable services to be rendered by the employee would not be precluded under subd. 3.

Section 2. ETF 50.30 (4) is created to read:

(4) To be eligible for disability benefits under s. 40.63, Stats., a participant must terminate all participating employment. For disability benefits under s. 40.63, Stats., “termination of employment” means that the participant has ceased to be a participating employee on the termination date that the employer reports to the department for the purpose of all benefits administered under ch. 40, Stats. Such benefits include health insurance coverage and sick leave credit usage, life insurance coverage, income continuation insurance coverage, Wisconsin retirement system coverage and death benefits under s. 40.73 (1) (am) and (c), and making deferred compensation contributions under s. 40.80, Stats. A termination of employment under this subs. does not preclude a participating employer from placing the participant on an administrative leave of absence as long as the employee is not expected to resume active service.

Proposed Effective Date:

This rule shall take effect on the first day of the month commencing after the date of publication in the Wisconsin administrative register as provided by s. 227.22 (2) (intro.), Stats.

Fiscal Estimates:

The rule codifies current department practice. The rule will have no effect on state funds.

Free Copies of Proposed Rule:

Copies of the proposed rule are available without cost from the Office of the Secretary, Department of Employee Trust Funds, P. O. Box 7931, Madison, WI 53707-7931. The telephone number is: (608) 266-1071.

Approved for publication:

This proposed rule is approved for publication in the Wisconsin Administrative Register.

Date this _____ day of _____, 200__.

David Stella, Secretary
Department of Employee Trust Funds

