

**Proposed Rule Relating to Domestic Partner Benefits and
the Extension of Health Insurance to Adult Children to Age 27 Years**

Clearinghouse Rule 10-004

**State of Wisconsin
Department of Employee Trust Funds
Employee Trust Fund Board
Wisconsin Retirement Board
Teachers Retirement Board
Group Insurance Board
Deferred Compensation Board**

The Wisconsin Department of Employee Trust Funds (ETF) proposes an order pursuant to s. 227.14, Stats., to create new administrative rules and modify existing administrative rules; to repeal s. ETF 10.01 (9) and 10.78 (2), to amend ss. ETF 10.01 (3m), 10.70 (1), 20.055, 40.01 (2m) (a), 40.01 (2m) (b), 40.01 (3) (a), 41.02 (1) (a), to repeal and recreate s. ETF 10.01 (2), and to create ss. ETF 10.01 (1r), 20.08 and 20.10, relating to the implementation of benefit changes mandated in 2009 Wisconsin Act 28; specifically, domestic partner benefits and the expansion of health insurance coverage to adult dependents up to the age of 27 years.

Notice of Public Hearing

A public hearing on the proposed rule will be held on February 12, 2010 at 1:30 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. Statutes Interpreted:
Various statute sections in ch. 40, Stats., regarding the Public Employee Trust Fund.
2. Statutory Authority:
Sections 40.03 (2) (i), (ig), (ir), and 227.11 (2) (a), Stats.
3. Explanation of Agency Authority:
By statute, the ETF 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.

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4. Related Statute or Rule:

There are no other statutes or rules that provide for benefits administered by ETF to be extended to the domestic partners of state and local government employees. 2009 Wisconsin Act 28 contains changes to many statutes relating to domestic partnership. A new Chapter 770, provides for a domestic partnership registry, but these provisions relate only to the creation of a registered domestic partnership and the benefits flowing from a Chapter 770 domestic partnership. These provisions are not linked with the provisions regarding Chapter 40 domestic partnerships. The expansion of health insurance to adult dependents up to the age of 27 years relates to an insurance mandate in s. 632.885, Stats.

5. Plain Language Analysis:

2009 Wisconsin Act 28 provides in essence that domestic partners that meet the statutory requirements for domestic partnership in Chapter 40 are to be considered as equivalent to spouses for the purpose of the benefits administered by ETF. Domestic partnerships have not previously been recognized for Chapter 40 benefit purposes. In addition, 2009 Wisconsin Act 28 mandates the extension of health insurance coverage to eligible adult children up to the age of 27 years. ETF previously covered eligible adult children up to the age of 25 years if the child was a full time student. New rules and amendments are necessary to effectuate these provisions of 2009 Wisconsin Act 28, including but not limited to:

- A rule that the statutory definition of “decree date” applies to a termination of a domestic partnership for qualified domestic relations order purposes.
- A rule that for the purpose of determining a beneficiary under the statutory standard sequence (in the absence of a beneficiary designation or where the named beneficiary(ies) are deceased), a divorce, legal separation, or annulment terminates the marital relationship, and a domestic partnership terminates as defined by this rule.
- A rule that a completed and notarized *Affidavit of Domestic Partnership* must be received by the department before the domestic partnership becomes effective for Chapter 40 benefit purposes.
- A rule permitting the department to reject any Affidavit that is illegible or missing necessary information, and requiring rejection of Affidavits that are not notarized and/or signed by both partners.
- A rule clarifying that the registration of domestic partnership under Chapter 770, Wis. Stats., does not create a domestic partnership for Chapter 40 benefit purposes. ETF needs a separate affidavit because there are

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differences between the definitions of domestic partnership in Chapter 40 and in Chapter 770. For example, ETF's definition of domestic partnership permits same-sex and opposite-sex domestic partners, while Chapter 770 permits only same-sex domestic partners.

- A rule establishing the effective date of Chapter 40 domestic partnerships based on ETF's Affidavit receipt date. The rule determines exactly when and how domestic partnerships are created and terminated for Chapter 40 benefit purposes. For example, upon the Department's receipt of a properly executed *Affidavit of Termination of Domestic Partnership*, ETF will consider the domestic partnership to be irrevocably dissolved.
 - A rule that permits ETF to consider a domestic partnership to be terminated, based on evidence that the partnership no longer meets the statutory definition of a domestic partnership, such as failing to share a common residence or marrying, or that the Chapter 40 domestic partnership terminates at such time as neither partner has any benefit rights under Chapter 40.
6. Summary of, and Comparison with, Existing or Proposed Federal Regulations:
There are no existing federal regulations that specifically address benefits for the domestic partners of state and local government employees/retirees. However, there is pending federal legislation relating to domestic partnerships and to the expansion of health insurance to adult dependents to the age of 27 years:
- Affordable Health Care for America Act (H.R. 3962): The bill contains a provision that would allow adults up to 27 years old to be covered by a parent's health insurance policy. The bill also addresses tax inequities for insurance subscribers related to the addition of adult children or domestic partners to the subscriber's employer-sponsored group health insurance plan. The bill was approved by the House of Representatives on November 7, 2009, and was placed on the Senate Calendar for reading.
 - Domestic Partnership Benefits and Obligations Act (S. 1102, H.R. 2517): provides to domestic partners of federal employees (excluding military) health insurance and enhanced dental and vision benefits, retirement and disability benefits, family, medical, and emergency leave, group life insurance, long-term care insurance, compensation for work injuries, and benefits for disability, death, or captivity. Last action on the bill was in July 2009, with the bill going to the Oversight and Government Reform Committee.

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- Tax Equity for Health Plan Beneficiaries Act (S. 1153, H.R. 2625): The bill would exclude the value of employer-provided health insurance for a domestic partner or other non-spouse beneficiary from an eligible employee's income, as it does for benefits provided for a spouse or dependent. Last action on the bill was in May 2009, with the bill going to the House Ways and Means Committee.
- Ending Health Disparities for LGBT Americans Act (H.R. 3001): Introduced in June, 2009. This bill incorporates the Tax Equity for Health Plan Beneficiaries Act and the Domestic Partnership Benefits and Obligations Act. It contains provisions for eliminating inequities relating to domestic partner and same-sex spouse access to benefits, as well as the tax inequities. Last action on the bill was in August 2009, with the bill going to the Subcommittee on Military Personnel.

7. Comparison with Rules in Adjacent States

Illinois:

- *Domestic Partnership Benefits*. There are no comparable state-level administrative rules on domestic partnership benefits for state and local government employees. Some Illinois municipalities have ordinances that provide for domestic partner benefits.
- *Health Insurance Coverage of Adult Dependents*. For policies issued after July 1, 2009, Group or individual health insurance policies are permitted to cover unmarried dependents until they reach age 26, regardless of student status and to age 30 for dependents who are veterans and have not been dishonorably discharged. Illinois law Sections 356z.11 and 356z.12.

Iowa:

- *Domestic Partnership Benefits*. There are no comparable state-level administrative rules on domestic partnership benefits for state and local government employees. However, Iowa legalized same-sex marriage in April 2009.
- *Health Insurance Coverage of Adult Dependents*. Health insurance providers are required to continue to cover unmarried children under their parents' coverage provided that the child 1) is under the age of 25 and a current resident of Iowa, 2) is a full-time student, or 3) has a disability. Iowa Code § 509.3 and Iowa Code § 514E.7.

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Michigan:

- *Domestic Partnership Benefits.* There are no comparable state-level administrative rules on domestic partnership benefits for state and local government employees. Some municipalities, such as Ann Arbor, have ordinances providing for domestic partner benefits.
- *Health Insurance Coverage of Adult Dependents.* There are no comparable administrative rules relating to the expansion of health insurance coverage of adult dependents.

Minnesota:

- *Domestic Partnership Benefits.* There are no comparable state-level administrative rules on domestic partnership benefits for state and local government employees. The city of Minneapolis has an ordinance that provides for domestic partner benefits. Minnesota's Governor vetoed a Bill in 2008 for domestic partnership benefits.
- *Health Insurance Coverage of Adult Dependents.* Minnesota Chapter 62E.02 defines "dependent" as a spouse or unmarried child under age 25, or a dependent child of any age who is disabled.

8. Summary of Factual Data and Analytical Methodologies:
2009 Wisconsin Act 28 created a requirement for ETF to recognize domestic partners who meet the qualifications of a Chapter 40 domestic partnership for the various benefit programs administered by ETF. 2009 Wisconsin Act 28 also mandated the extension of health insurance coverage to adult children to the age of 27 years. These requirements of the Act have been set forth in the newly created rule provision, as directed by the legislature.
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:
Steve Hurley, Policy Director, Department of Employee Trust Funds, 801 W Badger Rd, Madison, WI 53713-7931, P.O. Box 7931 (use ZIP Code 53707 for PO Box); Phone: 608-267-2847; E-mail: Steve.Hurley@etf.state.wi.us

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12. Place where comments are to be submitted and deadline for submissions:
Comments may be submitted to the contact person no later than 4:30 p.m., Central Standard Time, on February 19, 2010. The place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.
 13. Proposed Effective Date:
This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided by s. 227.22 (2) (intro.), Stats.
 14. Fiscal Estimate:
The rule will have a minimal fiscal effect in that it will require the creation and processing of new forms used to track new categories of dependents for the various benefit programs administered by the Department. Most of the fiscal effect will be one-time. These costs are anticipated to be insignificant and the Department can absorb these costs within the existing base budget. The rule will not create any additional fiscal impact on any county, city, village, town, school district, technical college district, or sewerage districts. The rule will not create any additional fiscal impact on the state for the current biennium. The rule will not have any fiscal impact on the private sector.
 15. 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.
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Text of Proposed Rule

Section 1. ETF 10.01 (1r) is created to read:

ETF 10.01 (1r) “Decree date” as defined in s. 40.02 (18f), Stats., includes the first day of the month in which a participant’s domestic partnership is terminated by a court under a final judgment, decree or order.

Section 2. ETF 10.01 (2) is repealed and recreated to read:

ETF 10.01 (2) “Dependent” means:

(a) For life insurance purposes, an eligible employee’s spouse or domestic partner and an employee’s unmarried child, including natural child, stepchild, child of the domestic partner, adopted child and a child in an adoptive placement under s. 48.837 (1), Stats., who is dependent upon the employee for at least 50% of support and maintenance and who is:

1. More than 14 days of age, but under the age of 19,
2. Age 19 or over but less than age 25 if a full-time student, or
3. Age 19 or older and incapable of self-support because of a physical or mental disability which is expected to be of long-continued or indefinite duration.

(b) For health insurance purposes, an eligible employee’s spouse or domestic partner and an eligible employee’s unmarried child who is dependent upon the employee or the other parent for at least 50% of support and maintenance. This support and maintenance requirement does not apply to eligible adult children as described in s. 632.885, Stats. A dependent includes an eligible employee’s grandchild as provided in s. 632.895 (5m), Stats. It also includes the eligible employee’s unmarried dependent child, regardless of age, when he or she is:

1. Under the age of 19,
2. Age 19 or older but less than age 27 as provided in s. 632.885, Stats.
3. Age 27 or older and incapable of self-support because of a physical or mental disability which is expected to be of indefinite duration or for at least one year or a full-time student as provided in s. 632.885, Stats.

In this section, “child” includes a natural child, stepchild, child of the domestic partner, adopted child, child in an adoptive placement under s. 48.837 (1), Stats., and legal ward who became a permanent legal ward of

42 the employee or the employee's spouse or domestic partner prior to age
43 19.

44
45 **Section 3. ETF 10.01 (3m) is amended to read:**

46
47 **ETF 10.01 (3m)** "Medical record" includes medical evaluation, diagnosis,
48 prognosis, rehabilitation potential, medication, treatment, diet, limitations
49 on activities, symptoms, general physical or mental condition, x-rays, lab
50 tests or results, or any communication or information related to the health,
51 medical, surgical, dental, optometric, chiropractic, podiatric or hospital
52 care or condition of a participant or the spouse, domestic partner or
53 dependent of the participant.

54
55 **Section 4. ETF 10.01 (9) is repealed.**

56
57 *Note: Section 10.01 (9) was repealed to remove the obsolete terms*
58 *'widow' and 'widower.'* *The part of section 10.01 (9) that refers to the*
59 *termination of a marital relationship and the determination of a beneficiary*
60 *under s. 40.02 (8) (a) (2), is retained in a new section 20.08.*

61
62 **Section 5. ETF 10.70 (1) is amended to read:**

63
64 **ETF 10.70 (1)** Individual personal information, within the meaning of s.
65 40.07, Stats., is all information in any individual record of the department,
66 including but not limited to the date of birth, earnings, contributions,
67 interest credits, beneficiary designations, creditable service, marital or
68 domestic partnership status, address, and social security number, but not
69 including information in any statistical report, other report or summary in
70 which individual identification is not possible.

71
72 **Section 6. ETF 10.78 (2) is repealed:**

73
74 *Note: Repealed because the department is already granted such authority*
75 *under s. 40.08 (9), Stats.*

76
77 **Section 7. ETF 20.055 is amended to read:**

78
79 **ETF 20.055 Spouse's or domestic partner's signature on an ~~annuity a~~**
80 **benefit application.** Documentation of inability to obtain a spouse's or
81 domestic partner's signature on an annuity application as required under
82 s. 40.24 (7) (a), Stats., or on a separation benefit application as provided
83 in s. 40.25 (3m), shall be accepted for the following reasons only:

84
85 (1) The spouse or domestic partner is incompetent as defined
86 under s. 54.10 (3), ~~880.01 (4)~~, Stats., and a copy of the court order
87 appointing the spouse's or domestic partner's guardian is submitted

88 to the department, except guardianship papers are not required
89 when ~~payment~~ the benefit payable is a single sum benefit payable
90 under s. 40.25 (1), Stats. The guardian's signature shall be
91 required on the annuity application in lieu of the spouse's or
92 domestic partner's signature if the participant chooses an annuity
93 option other than an option specified under s. 40.24 (7) (a), Stats.;
94 or
95

96 ~~**Note:** Section 880.01 (4), Stats., was repealed by 2005 Wis. Act 387. See~~
97 ~~s. 54.10 (3), Stats., for requirements to find an individual incompetent.~~
98

99 **(2)** The participant certifies, on a form provided by the department,
100 that the participant does not now know and has not known the
101 whereabouts of the spouse or domestic partner for at least the 90
102 days immediately prior to the date the application is signed.
103

104 **(3)** The requirements in s. 40.24 (7) (a) (intro) and (b), Stats.,
105 related to the requirement for the domestic partner's signature on
106 benefit applications, shall not apply if the participant is prohibited
107 under the internal revenue code from selecting a joint and survivor
108 annuity with the domestic partner as the named survivor, based on
109 the participant's and domestic partner's respective ages.
110

111
112 **Section 8. ETF 20.08 is created to read:**
113

114 **ETF 20.08** For purposes of determining a beneficiary under s. 40.02 (8)
115 (a) 2., Stats., a judgment, order or decree of divorce, legal separation or
116 an annulment of the marriage terminates the marital relationship. A
117 domestic partnership terminates as specified in ETF 20.10 (3) for the
118 purposes of determining a beneficiary under s. 40.02 (8) (a) 2., Stats.
119

120
121 **Section 9. ETF 20.10 is created to read:**
122

123 **ETF 20.10 Domestic partner benefits. (1)** For the purposes of this
124 section, "member" means any of the following persons:

- 125 (a) Participant.
- 126 (b) Annuitant.
- 127 (c) Eligible employee.
- 128 (d) Beneficiary.
- 129 (e) Alternate payee.
- 130 (f) Recipient of duty disability benefits under s. 40.65, Stats.

131
132 **(2)** (a) For the purposes of the benefits authorized under Chapter 40,
133 Stats., a domestic partnership as defined in s. 40.02 (21d), Stats.,

134 becomes effective on the date that the department receives a completed
135 and notarized *Affidavit of Domestic Partnership* form (ET-2371), except
136 that a domestic partnership cannot become effective before January 1,
137 2010.

138 (b) The department may at its discretion reject any *Affidavit of*
139 *Domestic Partnership* (ET-2371) that is illegible or missing
140 information necessary for benefit administration purposes.
141 Affidavits that are missing the name or signature of either domestic
142 partner or are not notarized shall be rejected. Any affidavit so
143 rejected shall have no force or effect, and for the purposes of the
144 benefits authorized in Chapter 40, the effective date of the domestic
145 partnership shall be based on the date the department receives a
146 completed, notarized *Affidavit of Domestic Partnership* form (ET-
147 2371) signed by both partners.

148 (c) Registering as domestic partners under the provisions of
149 Chapter 770, Stats., does not establish a domestic partnership for
150 the purposes the benefits authorized in Chapter 40, Stats.

151 (d) Establishing a domestic partnership or a same-sex marriage in
152 another state does not establish a domestic partnership for the
153 purposes of the benefits authorized in Chapter 40, Stats.

154
155 **(3)** Once a domestic partnership becomes effective it remains in force
156 until the earlier of the following dates;

157 (a) The date on which the department receives a notarized
158 *Affidavit of Termination of Domestic Partnership* form (ET-2372)
159 signed by either the member or the domestic partner.

160
161 (b) Based on evidence provided to the department, the date
162 established to the department's satisfaction that the domestic
163 partnership no longer met all of the conditions in s. 40.02 (21d),
164 Stats. Examples of no longer meeting such conditions include, but
165 are not limited to, one of the domestic partners marrying another
166 person or establishing a new domestic partnership with a different
167 partner under sub. (2), or no longer sharing a common residence.

168
169 (c) The date on which neither domestic partner is a member as
170 defined in sub. 1.

171
172 (d) The date determined by the court that a domestic partnership
173 terminated.

174
175 (e) The department may at its discretion reject any *Affidavit of*
176 *Termination of Domestic Partnership* (ET-2372) that is illegible or
177 missing information necessary for benefit administration purposes.
178 Any affidavit terminating a domestic partnership that is missing the
179 name of either domestic partner, the signature of the domestic

180 partner who is terminating the domestic partnership, or is not
181 notarized shall be rejected, and shall have no force or effect.
182 Except as provided in par. (b) and (c), for the purposes of the
183 benefits authorized in Chapter 40, the effective date of the
184 termination of the domestic partnership shall be based on the date
185 the department receives a completed, signed and notarized
186 *Affidavit of Termination of Domestic Partnership* form (ET-2372).

187
188 (f) Terminating a domestic partnership created under the
189 provisions of Chapter 770, Stats., does not terminate a domestic
190 partnership established under sub. (2) for the purposes the benefits
191 authorized in Chapter 40, Stats.

192
193 **(4)** Affidavits certifying or terminating a domestic partnership that are
194 received after the date of death of either domestic partner are invalid, and
195 shall have no force or effect.

196
197 **(5)** The domestic partner provisions in s. 40.08 (8) (a) 4. and s. 40.23 (4)
198 (e) 1. and (f), Stats., shall not apply if such provisions are inconsistent with
199 any internal revenue code provisions that authorize and regulate the
200 benefit plan.

201
202 **Note:** *The Affidavit of Domestic Partnership form (ET-2371) and the*
203 *Affidavit of Termination of Domestic Partnership form (ET-2372) can be*
204 *found on ETF's Web site, <http://etf.wi.gov>, or by contacting the department*
205 *at 1-877-533-5020.*

206
207 **Section 10. ETF 40.01 (2m) is amended to read:**

208
209 **ETF 40.01 (2m) RESPONSIBLE PERSON.** (a) *Multiple surviving insured*
210 *dependents, with surviving spouse or domestic partner.* If the deceased
211 insured employee is survived by a spouse or domestic partner and other
212 dependents of the deceased insured employee, then the family coverage
213 shall continue in effect and the surviving spouse or domestic partner shall
214 be the responsible person and have the same control and responsibilities
215 with respect to the insurance coverage of the insured surviving
216 dependents as the insured employee had while living.

217
218 (b) *Multiple surviving insured dependents, without surviving spouse*
219 *or surviving domestic partner.* If the deceased insured employee is
220 not survived by a spouse or domestic partner but by more than one
221 insured dependents, then the family coverage will continue in
222 effect. The oldest surviving insured dependent, or that person's
223 guardian, shall be the responsible person and have the same rights
224 and responsibilities with respect to the insurance coverage of the
225 insured surviving dependents as the insured employee had while

226 living. Upon reasonable request from any adult surviving insured
227 dependent or the guardian of any minor surviving insured
228 dependent, the department may designate another surviving
229 insured dependent, or that person's guardian, as the responsible
230 person.
231

232 **Section 11. ETF 40.01 (3) is amended to read:**
233

234 **ETF 40.01 (3) DURATION OF CONTINUING COVERAGE.** (a) *Surviving*
235 *spouse or surviving domestic partner.* A surviving spouse or surviving
236 domestic partner entitled to insurance coverage under this section and s.
237 40.02 (25) (b) 3., Stats., is entitled to continuous coverage under this
238 section for life, unless sooner cancelled voluntarily or for non-payment of
239 premiums. A suspension of coverage because of the operation of s. 40.05
240 (4) (b) or (be), Stats., does not affect this entitlement. The surviving
241 spouse or surviving domestic partner may not add new dependents to this
242 coverage.
243

244 **Note:** *Section 40.02 (25) (b) 3., Stats., defines the surviving spouse or*
245 *domestic partner of an employee, or retired employee, as an "eligible*
246 *employee" having, under rules to be promulgated by this department, the*
247 *same right to health insurance coverage as the deceased employee or*
248 *retired employee except without any state contribution. Section 40.05 (4)*
249 *(b) and (be), Stats, concern the accumulated sick leave conversion credit*
250 *benefit plan. It permits a surviving insured dependent to delay deductions*
251 *from a deceased employee's accumulated sick leave conversion credits to*
252 *pay for group health insurance under ch. 40, Stats., because the surviving*
253 *insured dependent is covered by a health insurance plan or policy*
254 *comparable to the standard plan during the period deductions are*
255 *delayed. Health insurance coverage under ch. 40, Stats., is, in effect,*
256 *suspended unless and until the dependent elects to reinstate coverage*
257 *and resume the deductions from accumulated sick leave conversion*
258 *credits.*
259

260 (b) *Other surviving insured dependents.* The duration of coverage
261 for other surviving insured dependents shall be established by the
262 terms of the group health insurance contract approved by the group
263 insurance board.
264

265
266 **Section 12. ETF 41.02 (1) (a) is amended to read:**
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268 **ETF 41.02 (1) (a)** Provide employees and annuitants meaningful
269 protection for themselves, their spouses, their domestic partners and their
270 parents from the potentially catastrophic costs of financing long-term care;
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Section 13. ETF 60.60 (8) (d) is amended to read:

ETF 60.60 (8) (d) An insured surviving spouse, domestic partner, or dependent child may not continue payment of premiums from the conversion account after the death of the insured but may elect, if otherwise eligible, to continue coverage as provided in s. ETF 40.01.

(END OF RULE TEXT)

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

Dated this _____ day of January, 2010.

David Stella, Secretary
Department of Employee Trust Funds