

Clearinghouse Rule 12-054

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

The scope statement for this rule, SS 059-12, was approved by the Governor on July 30, 2012, published in Register No. 680, on August 14, 2012, and approved by ETF Secretary Robert Conlin on September 27, 2012.

The Wisconsin department of employee trust funds proposes an order to amend ETF 10.01 (3i), ETF 10.63 (1) (a) (b) (c) (d) (e) and (f), ETF 10.63 (2), and ETF 10.63 (3), and ETF 40.10 (1) (2) (3) (e), to repeal and recreate ETF 20.015 (1) and (2), and to create ETF 10.86 relating to technical and minor substantive changes in existing ETF administrative rules.

Notice of Public Hearing

A public hearing on this proposed rule will be held on January 31, 2013, at 1:00 p.m., in Conference Room GA at the offices of the Department of Employee Trust Funds (ETF), 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. The public hearing sites are accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact David Nispel, General Counsel, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707. The e-mail address: david.nispel@etf.wi.gov. The telephone number is: (608) 264-6936.

Analysis Prepared by the Department of Employee Trust Funds

1. Statutes interpreted:
Sections 40.01 (1), 40.01 (2), 40.02 (55), 40.05 (1), 40.05 (2), 40.06 (1), 40.06 (2), 40.06 (3), 40.22 (1), 40.22 (2), 40.22 (2m), 40.22 (2r), 40.22 (3), 40.51 (7).
2. Statutory authority:
Sections 40.03 (2) (i), (ig), 40.51 (7) (a), 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.

Section 40.51 (7) (a) allows the department to establish by rule different eligibility standards or contribution requirements for any employer, other than the state, including an employer that is not a participating employer, that elects to offer to all of its employees a health care coverage plan through a program offered by the group insurance board.

In addition, 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 statutes or rules:
There are no other related statutes or administrative rules directly related to this technical rule.
5. Plain language analysis:
The purpose of this rule is to revise existing administrative rules of the Department of Employee Trust Funds to make them conform with 2011 Wisconsin Acts 10, 32 and 133, to reflect current practices of the department, to provide flexibility regarding due dates for filing reports with the department, and to make other technical changes.
6. Summary of, and comparison with, existing or proposed federal statutes and 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.
7. Comparison with rules in adjacent states:
Periodically, retirement systems in adjacent states promulgate technical rules to update existing administrative rules.
8. Summary of factual data and analytical methodologies:
The department is proposing this rule to update existing rules and interpretations of existing statutes.
9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:
This 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. Please see attached economic impact analysis.
10. Effect on small business:
The rule has no effect on small businesses.
11. Regulatory Flexibility Analysis

The proposed rule has no significant effect on small businesses because only governmental employers and their employees may participate in the benefit programs under ch. 40 of the statutes administered by the Department of Employee Trust Funds.

12. Fiscal Estimate
Please see the attached fiscal estimate.
13. Agency contact person (including e-mail and telephone):
Please direct any questions about the proposed rule to David Nispel, General Counsel, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707. The e-mail address: david.nispel@etf.wi.gov. The telephone number is: (608) 264-6936.
14. Place where comments are to be submitted and deadline for submissions:
Written comments on the proposed rule may be submitted to David Nispel, General Counsel, Department of Employee Trust Funds, 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 January 31, 2013.
15. Proposed Effective Date:
This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.
16. Free Copies of Proposed Rule:
Copies of the proposed rule are available without cost by contacting the General Counsel, Department of Employee Trust Funds, P. O. Box 7931, Madison, WI 53707-7931. You can also obtain a copy by calling (608) 264-6936 or by emailing david.nispel@etf.wi.gov.

Text of Proposed Rule

SECTION 1. ETF 10.01 (3i) is amended to read:

(3i) "Maximum voluntary contribution" means the total amount eligible under section 415 (c) of the internal revenue code to be contributed to the Wisconsin retirement system in a calendar year by or on behalf of a participating employee, less all ~~benefit adjustment contributions and~~ required and employer-paid additional contributions which are includable in the limits of section 415 (c) of the internal revenue code, as determined by the department.

SECTION 2. ETF 10.63 (1) (a) is amended to read:

ETF 10.63 Due Dates. (1) (a) Contribution reports and remittances from state departments, excluding university and other state department reports which pertain to teachers only, required in the administration of subch. II of ch. 40, Stats., are due on the 20th day of the month following the reporting month or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.

SECTION 3. ETF 10.63 (1) (b) is amended to read:

(b) Contribution reports and remittances other than those specified in par. (a) required in the administration of subch. II and ch. 40, Stats., are due on the last working day, excluding Saturdays, Sundays, and holidays when the state offices are closed, of the month following the end of the reporting month, or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.

SECTION 4. ETF 10.63 (1) (c) is amended to read:

(c) Detailed annual earnings reports required in the administration of subch. II of ch. 40, Stats., are due on the last working day, excluding Saturdays, Sundays, and holidays when the state offices are closed, of the calendar month following the end of the calendar year, or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.

SECTION 5. ETF 10.63 (1) (d) is amended to read:

(d) Premium and coverage reports and remittances required in the administration of subchs. IV and VI of ch. 40, Stats., are due on the 20th day of the calendar month preceding the coverage month or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.

SECTION 6. ETF 10.63 (1) (e) is amended to read:

(e) Premium and coverage reports and remittances required in the administration of subch. V of ch. 40, Stats., are due as follows:

1. For state agencies, on the 20th day of the calendar month following the reporting period or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.
2. For local government employers, on the 20th day of the calendar month preceding the month of coverage or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.

SECTION 7. ETF 10.63 (1) (f) is amended to read:

(f) Reduction reports and remittances required in the administration of subch. VIII of ch. 40, Stats., are due within 2 working days after the date on which the regular employee payroll payments are issued, excluding Saturdays, Sundays, and holidays when the state offices are closed, or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication.

SECTION 8. ETF 10.63 (2) is amended to read:

(2) Whenever the 20th day of the calendar month or a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication referred to in sub. (1) falls on a Saturday, Sunday or holiday on which state offices are closed, a report or a remittance received on the first working day after the 20th day of the calendar month or a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication shall be deemed to have been received on a timely basis.

SECTION 9. ETF 10.63 (3) is amended to read:

(3) The secretary may waive charges and interest calculated under s. 40.06 (3), Stats., on any employer's reports and remittances, which are received within one day of the due date specified under subs. (1) and (2) and announced to employers by ETF or on a day determined by the secretary and communicated to employers by ETF through email updates, employer bulletins or other means of communication if he or she determines that the waiver will not impair the objective of encouraging timely receipt of contributions and remittances.

SECTION 10. ETF 10.86 is created to read:

Any member, beneficiary, or distributee of any estate receiving benefits payable under any of the benefit plans administered by the department may have the benefits paid via electronic deposit into a financial institution account owned by a representative payee, nursing home, religious order, or other entity designated by the member, beneficiary, or distributee of any estate and approved by the department.

SECTION 11. ETF 20.015 (1) and (2) are repealed and recreated to read:

ETF 20.015 Participating Employees

(1) PARTICIPATING EMPLOYEES: one-third of full-time employment.

(a) NON-TEACHERS. Except as provided in par. (b) and (c), for purposes of s. 40.22, Stats., 600 hours of employment with an employer in one year is considered one-third of full-time employment.

(b) TEACHERS. For an employee classified as a teacher under s. 40.02 (55), Stats., for purposes of s. 40.22, Stats., 440 hours of employment with an employer in one year is considered one-third of full-time employment.

(c) EDUCATIONAL SUPPORT PERSONNEL EMPLOYEE. Except as provided in par. (a), for purposes of s. 40.22, Stats., 440 hours of employment with an employer in one year is considered one-third of full-time employment.

(2) PARTICIPATING EMPLOYEES: two-thirds of full-time employment.

(a) NON-TEACHERS. Except as provided in par. (b) and (c), for purposes of s. 40.22, Stats., 1200 hours of employment with an employer in one year is considered two-thirds of full-time employment.

(b) TEACHERS. For an employee classified as a teacher under s. 40.02 (55), Stats., for purposes of s. 40.22, Stats., 880 hours of employment with an employer in one year is considered two-thirds of full-time employment.

(c) EDUCATIONAL SUPPORT PERSONNEL EMPLOYEE. Except as provided in par. (a), for purposes of s. 40.22, Stats., 880 hours of employment with an employer in one year is considered two-thirds of full-time employment.

SECTION 12. ETF 40.10 (1) is amended to read:

(1) An employee of an employer, other than the state, shall be eligible for health insurance under s. 40.51(7), Stats., if requirements of ss. 40.02(46) and 40.22, Stats., or of s. 40.19(4)(a), Stats., are satisfied. An employee of an employer that is not a participating employer shall be eligible for health insurance under s. 40.51(7), Stats., if the requirements set forth in s. 40.02(28) are satisfied and the following requirements are met:

(a) The employee works at least two-thirds of what is considered full-time employment by the department. [Note: See ETF 10.03(3); 1904 hours]

(b) Employment in the employee's position is expected to last at least one year.

SECTION 13. ETF 40.10 (2) is amended to read:

(2) As provided in a collective bargaining agreement under subch. IV of ch. 111, the employer, including an employer that is not a participating employer, shall pay an employer contribution toward the gross health insurance premium based on the lowest cost qualified plan in the service area of the employer, as follows:

SECTION 14. ETF 40.10 (3) (e) is amended to read:

(e) The group insurance board, with the advice of the actuary, may classify a health plan offered to local government employees, including local government employees of employers who are not participating employers, in a tier that is different than that of the health plan of the same name as offered to state employees.