

## CLEARINGHOUSE RULE 18-006

### PROPOSED ORDER of the DEPARTMENT OF ADMINISTRATION

The Wisconsin Department of Administration proposes an order to repeal Wis. Admin. Code ss. ER 18.02 (2) (a) (Note), 18.15 (1) (c) (Note), 43.02 (3), 46.03 (Note), 46.06 (2) (c), 46.06 (4), 46.06 (6), 46.065, 46.09 (3), ss. ER-MRS 6.08 (1) (c), 8.22 (Note), 11.02 (2), 11.04 (1) (e), 12.02 (1), 12.02 (2), 14.05, 22.04 (1), 22.04 (2), 22.04 (3), 22.08 (1) (a) 1., 22.08 (1) (a) 2., 22.08 (1) (b) 3., 22.08 (1) (c), 22.08 (2) (b) (intro.), 22.08 (2) (b) 1., 22.08 (2) (b) 2., 22.08 (3), 22.11 (1m), 30.03 (2), and 30.11 (3); to renumber and amend ss. ER-MRS 15.04, 22.07, 22.08 (2) (a) 2., and 22.08 (2) (a) 3.; to consolidate, renumber and amend ss. ER-MRS 12.02 (intro.) and 12.02 (3), 22.08 (2) (a) (intro.), and 22.08 (2) (a) 1.; to amend ss. ER 1.02 (2) (b), 1.02 (9), 1.02 (22), 1.02 (42), 18.01 (2) (b), 18.01 (2) (e), 18.01 (3) (f), 18.01 (4m), 18.01 (6) (a), 18.02 (1), 18.02 (2) (a), 18.02 (2) (b) 6., 18.02 (3) (a), 18.02 (3) (c) 3. (intro.), 18.02 (5) (a) (intro.), 18.02 (5) (c), 18.04 (1), 18.04 (2) (b) 3., 18.05 (2) (b), 18.08 (1), 18.12 (title), 18.12, 18.15 (1) (c), 21.01 (1), 21.03 (2) (intro.), 43.01 (intro.), 43.02 (2) (c), 43.02 (5m) (intro.), 43.02 (6m) (intro.), 43.02 (6m) (a), 43.02 (6m) (b), 43.02 (6m) (c), 43.02 (6m) (d), 43.04 (2), 43.08 (title), 43.08, 46.01 (1), 46.03 (2) (b), 46.03 (2) (c), 46.03 (2) (d), 46.04 (1), 46.05 (4), 46.06 (1), 46.06 (2) (a), 46.06 (2) (b) 1., 46.06 (2) (b) 2., 46.06 (7), 46.07 (1) (intro.), 46.07 (1) (a), 46.07 (2), 46.08 (2), 46.08 (3), 46.09 (1), 46.11, ss. ER-MRS 1.02 (18), 1.02 (30) (intro.), ER-MRS ch. 6 (title), ss. ER-MRS 6.01, 6.027, 6.03, 6.04, 6.05 (title), 6.05 (1), 6.05 (2), 6.05 (3) (intro.), 6.05 (3) (b), 6.05 (3) (c), 6.05 (3) (d), 6.07 (title), 6.07, 6.08 (title), 6.08 (1) (intro.), 6.08 (1) (a), 6.08 (1) (b), 6.08 (2) (intro.), 6.08 (2) (a), 6.08 (2) (c), 6.08 (2) (d), 6.08 (3) (intro.), 6.08 (3) (a), 6.08 (3) (c), 6.09 (title), 6.09 (1), 6.09 (2), 6.095 (2), 6.10 (intro.), 6.10 (2), 6.10 (4), 6.10 (7), 6.10 (10), 6.12 (2), ER-MRS ch. 7 (title), ss. ER-MRS 7.01, 8.01, 8.04 (2), 8.05, 8.06, 8.20 (2), 8.21 (1), 8.24 (2), 10.04 (2), 11.03 (1) (title), 11.03 (2), 11.04 (1) (b), 11.04 (1) (h), 11.05, 12.04 (2), 12.06 (1), 12.06 (3), 12.07, 12.08, 13.02 (intro.), 13.02 (2) (intro.), 13.02 (4), 13.02 (5), 13.04 (1) (a), 13.04 (3), 13.05 (1) (title), 13.05 (1), 13.05 (2) (title), 13.05 (2), 13.05 (3), 14.015, 14.02 (5), 14.02 (6), 14.03 (2), 15.02, 15.03, 15.07 (1), 15.08, 16.025 (2) (intro.), 16.025 (3), 16.03 (1) (title), 16.03 (3), 16.03 (5) (title), 16.03 (5), 16.035 (1), 16.04 (1) (b), 16.04 (1) (c), 16.04 (2), 17.04 (3) (b), 17.04 (3) (d), 17.04 (4) (a), 22.025 (2), 22.03 (2), 22.035 (1) (intro.), 22.04 (intro.), 22.06 (1), 22.06 (2), 22.06 (3), 22.06 (4), 22.08 (intro.), 22.08 (1) (a) (intro.), 22.08 (2) (title), 22.08 (2) (intro.), 22.09 (1), 22.09 (2) (c), 22.09 (2) (e), 22.11 (2m), 27.02 (5), 27.03 (1), 27.05 (3), 27.06 (4), 27.06 (5), 30.06 (1), 30.06 (3), 30.07 (2), 30.08, 30.10 (1), 30.10 (2), 30.105, 30.11 (1) (intro.), 30.11 (1) (a), 30.11 (1) (b), 30.11 (2), 32.01, 32.02, 32.03 (2), 34.08 (3), 34.08 (4); to repeal and recreate ss. ER 43.02 (5m) (a), 43.02 (5m) (b), 43.02 (5m) (c), 46.09 (2), ss. ER-MRS 22.10, 22.11 (2), 30.11 (title); and to create ss. ER 1.02 (13g), 1.02 (13r), 18.18, 43.02 (6m) (e), 43.02 (6m) (f), 46.03 (2) (hg), 46.03 (2) (hr), ss. ER-MRS 1.02 (10), 1.02 (10m), 6.09 (1m), 10.035, 10.06, 15.04 (2), 16.025 (2) (a), 16.025 (2) (b), 16.035 (3m), 22.07 (2), 22.11 (1), 30.07 (3); relating to State Civil Service Definitions, Absences, Resignation, Affirmative Action And Equal Opportunity, Grievance, Merit Recruitment & Selection, Layoff, Probation, Personnel Transactions, Career Executive Employment, Limited Term Employment, and Project Employment provisions.

### Rule Analysis Prepared by the Department of Administration

#### 1. Citations to statutes interpreted:

Sections 230.01, 230.02, 230.03, 230.04, 230.042, 230.047, 230.05, 230.06, 230.08, 230.12, 230.13, 230.14, 230.15, 230.16, 230.17, 230.18, 230.19, 230.20, 230.21, 230.213, 230.24, 230.25, 230.26, 230.27, 230.275, 230.28, 230.29, 230.30, 230.31, 230.32, 230.33, 230.34, 230.35, 230.37, 230.41, 230.43, 230.44, 230.445, 230.45, 230.83, and 230.85, Stats.

## **2. Citations to statutory authority:**

Sections 227.11 (2), 230.04 (5), 230.04 (14), 230.05 (5), 230.15 (4), 230.17 (1), 230.21 (1), 230.213, 230.24 (1), 230.26 (1), 230.27 (2), 230.28 (4), 230.29, 230.32 (5), 230.34 (2) (b), 230.34 (4), 230.35 (1), 230.35 (1m)(f), and 230.35 (2), Stats.

## **3. Explanation of the agency's statutory authority to promulgate the rule under the statutes cited:**

The Department of Administration, Division of Personnel Management is responsible for the promulgation of rules relating to the administration of the division and the effective operation of subch. II of Ch. 230 of the Wisconsin Statutes. The proposed rule changes are authorized by Wis. Stat. ss. 230.04(5), and 230.05(5), being necessary for performance of duties assigned to the administrator and the director and necessary for the effective operation of subch. II of ch. 230 of the Wisconsin Statutes, as amended by 2015 Wisconsin Act 150 and current practice. Paragraphs (a) and (b) of Wisconsin Stat. s. 227.11(2) also authorize the department to prescribe forms and procedures and promulgate rules interpreting the provisions of ch. 230 to the extent necessary to effectuate the purpose of the statute.

In addition to the general authority provided in ss. 230.04 (5) and 227.11(2), Wis. Stats., the administrator has specific statutory authority to promulgate rules on the following: employee grievances based on conditions of employment (s. 230.04 (14), Wis. Stats.); resignation (s. 230.34 (4), Wis. Stats.); coverage of employees for the purpose of absences (s. 230.35 (1), Stats.); continuous service (s. 230.35 (1m)(f), Wis. Stats.); and restoration of unused sick leave and leaves of absence (s. 230.35 (2), Wis. Stats.).

The director, in addition to the general authority provided in ss. 230.05 (5) and 227.11(2), Wis. Stats., is granted specific statutory authority to promulgate rules on the following: continuous service for University of Wisconsin employees (s. 230.15 (4), Wis. Stats.); refusal to certify applicants (s. 230.17 (1), Wis. Stats.); recruitment and selection for unskilled labor and service positions (s. 230.21 (1), Wis. Stats.); recruitment and selection for certain corrections positions (s. 230.213, Wis. Stats.); administration of the career executive program (s. 230.24 (1), Wis. Stats.); recruitment and selection of limited term employees (§ 230.26 (1), Stats.); selection and appointments to project positions (s. 230.27 (2), Wis. Stats.); duration of permissive probationary periods (s. 230.28 (4), Wis. Stats.); authorization for transfers (s. 230.29, Wis. Stats.); restoration following military leave (s. 230.32 (5), Wis. Stats.); and layoffs, layoff appeals, alternatives to layoff, and reinstatement following layoff (s. 230.34 (2) (b), Wis. Stats.).

## **4. Related statutes or rules:**

Sections 7.33, 20.923, 40.02, 111.31 to 111.395, 111.81, 111.91, 230.01, 230.02, 230.03, 230.04, 230.042, 230.047, 230.05, 230.06, 230.08, 230.12, 230.13, 230.14, 230.15, 230.16, 230.17, 230.18, 230.19, 230.20, 230.21, 230.213, 230.22, 230.24, 230.25, 230.26, 230.27, 230.275, 230.28, 230.29, 230.30, 230.31, 230.32, 230.33, 230.34, 230.36, 230.37, 230.41, 230.43, 230.44, 230.445, 230.45, 230.83, and 230.85, Stats.

Chapters ER 1, 10, 18, 21, 29, 30, 34, 43, 44, 46, 47 and ER-MRS 1, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 22, 24, 27, 30, 32, and 34, relating to application of provisions of the civil service law, subch. II of ch. 230, Stats.

## **5. Brief plain language summary of the proposed rule :**

Changes to ch. ER 1 governing definitions to update definitions of original appointment and restoration. Definitions of involuntary demotion and involuntary transfer were created.

Changes to ch. ER 18 governing absences to provide consistency with statute and the State of Wisconsin Compensation Plan. Removed references to restoration and examination, updated applicability of provisions to University of Wisconsin employees, and adjusted timelines for leave to reflect changes in probationary periods.

Changes to ch. ER 21 governing resignation to update the definition of leave credits as related to resignation. The parameters of job abandonment updated to align the rule with statute.

Changes to ch. ER 43 governing affirmative action and equal opportunity to provide consistency with terminology used in statutes and federal regulations.

Changes to ch. ER 46 governing grievance procedures to provide consistency with statute. 2015 Wisconsin Act 150 created grievance procedures for adverse employment decisions in s. 230.445, Wis. Stats. The proposed rule changes update state employee grievance procedures and time limits for grievances filed relating to conditions of employment to match those for adverse employment decisions.

Changes to ch. ER-MRS 1 governing definitions to update definitions of original appointment and restoration. Definitions of involuntary demotion and involuntary transfer were created.

Changes to ch. ER-MRS 6 governing recruitment and selection to replace examination with competitive procedures to align the rule with current statute resulting from 2015 Wisconsin Act 150 changes.

Changes to ch. ER-MRS 7 governing appointing procedures for unskilled labor and service classifications to replace the term examination to align the rule with current statute resulting from 2015 Wisconsin Act 150 changes.

Changes to ch. ER-MRS 8 governing procedures for corrections and entry professional positions to replace the term examination and remove reference to promotional and servicewide recruitments to align the rule with current statute resulting from 2015 Wisconsin Act 150 changes. References to Department of Health Services also removed to align rule with current statute.

Changes to ch. ER-MRS 10 governing limited term appointments to provide for exclusions and violations to align the rule with statute and current practice.

Changes to ch. ER-MRS 11 governing employment registers to remove promotional registers to align the rule with current statute and update management of registers to account for new statutory timelines for recruitment resulting from 2015 Wisconsin Act 150 changes.

Changes to ch. ER-MRS 12 governing certification and appointment to remove certification from promotional and restoration registers and to replace examination with competitive procedures to align the rule with current statute resulting from 2015 Wisconsin Act 150 changes. Add reference to exceptional hiring methods and non-competitive appointment statute provisions.

Changes to ch. ER-MRS 13 governing probationary periods to provide consistency with probationary changes in 2015 Wisconsin Act 150 changes and current practice. All probationary periods will have a minimum duration of one year. Original and promotional probations may be extended for up to 12 months. No waiver is allowed for probationary periods for supervisory positions. Updating extension of a probation due to absence from employment to be for 348 hours as a result of the base probationary period being twice as long as prior probations. Mandatory extension due to absence for required probations only.

Changes to ch. ER-MRS 14 governing promotion to provide that promotional appointments are a result of open competition and remove reinstatement language to align the rule with current statute resulting from 2015 Wisconsin Act 150 changes. Removing duplicate language for pay on new promotion.

Changes to ch. ER-MRS 15 governing transfer to add language for authorization and probation related to involuntary transfers to differentiate from voluntary transfers.

Changes to ch. ER-MRS 16 governing reinstatement and restoration to update period of eligibility and conditions for reinstatement and restoration to align the rule with current statute resulting from 2015 Wisconsin Act 150 changes.

Changes to ch. ER-MRS 17 governing demotion to remove reference to restoration and clarify the assignment of a probationary period for voluntary demotion.

Changes to ch. ER-MRS 22 governing layoff procedures to specify how the order of layoff is to be determined to align the rule with current statute resulting from 2015 Wisconsin Act 150 changes. Definition of reasonable offer updated to reflect current practices. Alternatives to termination from the service as a result of layoff were modified to remove difference of within or between employing unit movements for transfers and demotions. Displacement as an alternative to layoff and restoration following layoff after July 1, 2016 were eliminated and reinstatement eligibility was updated to align the rule with current statute resulting from 2015 Wisconsin Act 150 changes.

Changes to ch. ER-MRS 27 governing exceptional methods and kinds of employment to replace examination with selection procedures to align the rule with current statute resulting from 2015 Wisconsin Act 150 changes.

Changes to ch. ER-MRS 30 governing career executive employment to provide consistency with recruitment, selection, probation, reinstatement and restoration changes made elsewhere and to align the rule with current statute resulting from 2015 Wisconsin Act 150 changes. Waiver of any portion of a trial period was eliminated. Added permissive probation for movement between agencies of career executive employees who have completed a trial period. Clarified career executive reassignment and prohibited reassignment between agencies while serving a trial period. Updated technical terminology to remove restoration language.

Changes to ch. ER-MRS 32 governing acting assignments to update procedures to align rule with current practices.

Changes to ch. ER-MRS 34 governing project appointments to update employment eligibilities to align the rule with current statute resulting from 2015 Wisconsin Act 150 changes.

**6. Summary of, and preliminary comparison with, any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :**

There are no existing or proposed federal regulations that directly pertain to this proposed rule.

**7. Comparison with similar rules in Illinois, Iowa, Michigan, and Minnesota:**

Each of the four-comparison states have a form of civil service (very similar to Wisconsin's original design), traditional collective bargaining, and mechanisms available for each of the topics presented for modification by the Division of Personnel Management (DPM). Based on the rule submission from the DPM, the topics of comparison include: 1) recruitment and selection, 2) probation, 3) grievances, and 4) layoff. To set the context of the comparison, the rules for Wisconsin are summarized first and then followed with a summary comparison of each state by topic.

**Recruitment: Selection Process.** Wisconsin has a civil service system covering all classified employees of the State and overseen by the Director of the Bureau of Merit Recruitment and Selection (BMRS). With the modifications from Act 150, applicants to civil service positions now apply with a resume and other selection materials as required by the Director. Act 150 eliminated any form of closed competition (service wide transfer and promotions) which means all advertised positions are available to all members of the public. (Note: agencies are permitted an internal transfer process prior to posting a vacancy for filling.) Positions must be advertised for at least 10 days and all materials are evaluated to determine eligibility. Eligible candidates are placed on a register which can remain active for up to three years. Due to the ease of the recruitment process and the competitive labor market, the current code submission stipulates a standard of one year but allows for two, one-year renewals if needed. Human resources staff draw names from the register to make a certification list which is provided to supervisors for interview. The entire hiring process is to be completed in 60 days – 30 days from the appointing authority's request to fill until the register is created and 30 days from the certification until a candidate is hired.

*Veterans.* Under Wisconsin law, veterans, or their spouses, with certain statuses or war experiences are given additional preference on the list as are females and minorities for positions which show statistical underutilization. Wisconsin law also permits non-competitive hiring of veterans with at least a 30% disability.

*Applicant Management.* Under the proposed rule changes, candidates invited to an interview will now have two days to respond rather than the five days previously provided. The change is reflective of current applicant management practices which allow for email and on-line scheduling rather than mailed letters which was the only mechanism available at the time of the original rule. The BMRS Director has a number of removal methods to address applicant issues during the hiring process. A new rule is being added to permit disqualification if the candidate previously resigned State service in lieu of discharge from State employment due to cause.

*Candidate Pool.* Post Act 150, the concepts of reinstatement and restoration were modified. Specifically, reinstatement was changed from a permissive eligibility available to employees, who left State service without delinquency or misconduct, for five years from the date of separation to a permissive eligibility available to persons laid off from state service for three years from the date of layoff. Restoration which had been a mandatory right of rehire for three years following lay off was eliminated. Restoration to the civil service remained for members of the classified service provided a leave of absence to the unclassified service and for members of the military on a leave of absence.

**Illinois:** *Selection Process.* The Director of Central Management Services (CMS) is responsible for the administration of the Personnel Code (20 ILCS 415/3). “The Director shall conduct open competitive and promotional examinations to determine the relative fitness of applicants” (80 ILADC 302.10). Vacancies in Illinois must initially be filled by available persons on a reemployment list (80 ILADC 302.10(b)). Subsequently, positions may be filled by open competition, promotion, demotion, transfer, or reinstatement (80 ILADC 302.90).

*Veterans.* Illinois rules provide for veterans’ preference through points added to the final grades of qualified applicants and verification is required prior to the points being applied (80 ILADC 302.30).

*Applicant Management.* The Director of CMS may refuse to consider applicants or remove applicants from a list of eligibles for similar reasons available in Wisconsin (80 ILADC 302.130). Illinois rules do not establish a time requirement to respond to an interview offer. Performance records of employees are considered for all personnel transactions (80 ILADC 302.260).

*Candidate Pool.* Reinstatement is allowed for permanent employees who left employment in good standing or have been laid off and there is no time limit on such eligibility (80 ILADC 302.610).

**Iowa:** *Selection Process.* Iowa statute section 8A.402 establishes a “central agency responsible for state human resources management” and authorizes the promulgation of rules by the Director of the Department of Administrative Services (DAS). The director may also delegate responsibilities to appointing authorities. Appointments and promotions are made solely on the basis of merit and fitness “to be ascertained by examinations or other appropriate screening methods.” (Iowa statute section 8A.411(3)).

*Veterans.* Iowa provides for similar non-competitive appointments of disabled veterans, though Iowa requires that the disabled veteran “satisfactorily completes a federally funded job training program” (IAC 11-57.9 (8A)). Iowa rules provide for veterans’ preference through points “applied as a percentage of the grade or score attained in qualifying examinations” and verification is required prior to the points being applied (IAC 11-54.5(2)).

*Applicant Management.* The Director of DAS may refuse to consider applicants or remove applicants from a list of eligibles for similar reasons available in Wisconsin. (IAC 11-54.2(5) and 11-55.2 (8A)). In Iowa, applicants have five workdays to respond to an inquiry about availability for appointment and similar rules which allow for applicant disqualification or removal due previous resignation in lieu of discharge for cause.

*Candidate Pool.* Vacancies in Iowa may be filled by promotion, demotion, transfer, recall, reinstatement or original appointment (IAC 11-56.1(8A)). Reinstatement is allowed for permanent employees who left employment for other than just cause or demoted and reinstatement may happen at any time (IAC 11-57.5 (8A)). The DAS maintains three types of lists of eligible applicants; (1) recall; (2) promotion; and (3) all applicant (IAC 11-55.1(8A)). Lists are issued following a request from the agency and expire 120 days after the dated issued. A hire must be effective within 60 days of the expiration of the list (IAC 11-56.2-.5 (8A)). When filling a vacancy in Iowa, consideration may be limited to current employees for promotion. (IAC 11-55.1(8A)).

**Michigan:** *Selection Process.* The State Personnel Director in the Civil Service Commission (CSC) is responsible for administration of the commission's powers and determines qualifications of candidates for positions in the classified service "by competitive examination and performance exclusively on the basis of merit, efficiency and fitness" (MI Const 1963, art 11, § 5). Staff of the CSC "shall prepare or approve examinations for all classified positions" (Michigan Civil Service Commission Rules 3-1.1). Vacancies in Michigan must initially be filled by available persons on a recall list who had been laid off or displaced (Michigan Civil Service Commission Rules 3-2.3 and Michigan Civil Service Commission Regulations 3.04(4)(A)).

*Veterans.* Michigan rules provide for veterans' preference through points added to the final scores of qualified applicants or to the scores of candidates in further screening is completed (Michigan Civil Service Commission Rules 3-8.3).

*Applicant Management.* Civil service staff may refuse to consider applicants or remove applicants from applicant pools for reasons similar to those available in Wisconsin. (Michigan Civil Service Commission Rules 3-2.2) Michigan rules do not establish a time requirement for applicant response to an interview offer.

*Candidate Pool.* Reinstatement is allowed for permanent employees who demoted or left employment in good standing for a period of three years (Michigan Civil Service Commission Rules 3-3.9). Employees are on a recall list for a period of one year from the date of layoff or demotion during layoff and can request an additional year twice for a total of three years (Michigan Civil Service Commission Regulations 3.09(5)(E)). The next step in the selection process is completing any contractual obligations resulting from collective bargaining (Michigan Civil Service Commission Regulations 3.04(4)(B)). Subsequently, positions may be filled by applicant pools resulting from open competition, promotion, demotion, transfer, or reinstatement (Michigan Civil Service Commission Rules 3-3.1 to 3.10). To facilitate transfers, preauthorized lateral job change lists are established by CSC which provide "a compilation of current classifications showing, for each classification, a listing of all classifications at the same classification level to which a lateral job change may occur without prior review of qualifications by Civil Service" (Michigan Civil Service Commission Regulations 3.07(3)(B)(3)).

**Minnesota:** *Selection Process.* The Commissioner of Minnesota Management & Budget (MMB) is responsible for developing rules on the process for determining the extent of competition required for vacancies, conducting selection procedures, and making appointments (Minnesota statute section 43A.04, subdivision 3). A resume database of applicants who meet the minimum application requirements is maintained by MMB (Minnesota Personnel Rule 3900.6650). The rules provide for a 1-year eligibility period for applicants in the database with a 6-month

minimum provided for by statute (Minnesota statute section 43A.09, subdivision 2b and Minnesota Personnel Rule 3900.6650). Applicants may also apply directly to the appointing authority for specific vacancies (Minnesota statute section 43A.09, subdivision 2a).

*Veterans.* Minnesota provides for similar non-competitive appointments including for disabled veterans (Minnesota statute sections 43A.111, 43A.15, and Minnesota Personnel Rules 3900.8200 to 3900.900). Minnesota does not require the appointing authority to interview additional individuals when making a non-competitive appointment of a disabled veteran whereas Wisconsin requires the consideration of any other interested disabled veteran prior to appointment. There is no time requirement within Minnesota statutes or rules for which appointments must be made.

*Applicant Management.* The Commissioner of MMB may refuse to consider applicants for reasons similar to those available in Wisconsin (Minnesota statute section 43A.10, subdivision 6b and Minnesota Personnel Rule 3900.4200, subpart 3). Applicants have a period of seven days to respond to an inquiry about availability for appointment. Minnesota allows applicants to be removed from consideration immediately upon a failure to appear for a scheduled interview, whereas Wisconsin permits one day for the applicant to provide a valid reason before being removed from consideration. Minnesota rules specifically provide for the removal from consideration of an applicant who does not follow instructions specified in a vacancy announcement.

*Candidate Pool.* When filling a vacancy, consideration may be limited to current employees, recall lists, reinstatement lists, and transfer candidates (Minnesota statute section 43A.10, subdivision 6a and Minnesota Personnel Rule 3900.3100).

**Probation:** In accordance with the changes from Act 150, the proposed Wisconsin rules now require a 12-month probationary period for original appointments and promotional appointments and provide for 12-month permissive probations upon certain transfers or demotions. Wisconsin rules, as proposed, provide for mandatory extension of probation when 348 hours of absences occur during an employee's 12-month probation or when performance has substantially changed or there have been unanticipated changes in the job duties of the employee.

**Illinois:** Illinois rules require the following related to probationary periods:

- 6-month probationary period upon entry into state service, rehire when it is considered a new period of continuous service, or when appointed from an open competitive eligibility list, regardless of current status as an employee (80 ILADC 302.300);
- 4-month probationary period for promotion and reinstatement (80 ILADC 302.300);
- an employee in Illinois who is absent 15 consecutive calendar days will have their probationary period extended (80 ILADC 302.300); and
- In Illinois, an employee who fails a promotional probation, other than for just cause, is returned to the former class, regardless of whether the promotion occurred within the same agency (80 ILADC 302.340).

**Iowa:** Iowa rules include the following requirements for probationary periods:

- original appointments in Iowa require a 6-month probationary period compared to 12-months in Wisconsin (IAC 11-58.1 (8A));



- probation is optional for reinstatement;
- an employee who promotes or transfers during a probationary period as a result of open competition or who voluntarily demotes, shall have their time spent in the original class counted towards the probationary period for the new position (IAC 11-58.3-.5 (8A));
- an employee with permanent status who promotes within a department may be required to serve a 6-month probationary period and if removed during this probation may be returned to the former class (IAC 11-58.9 (8A)); and
- similar to the rules in Wisconsin, in Iowa probationary employees are not eligible for reduction in force (layoff), promotion, or appeal rights (IAC 11.58.1 (8A)).

**Michigan:** Michigan rules require the following:

- a 12-month probationary period, 18-month for less than full time, for “a newly appointed classified employee who does not have status in the classified service” and for “an employee with status who is appointed to a new classification” (Michigan Civil Service Commission Rules 3-6.1 and 6.2);
- a 6-month extension of a probationary period, possibly longer with approval of the state personnel director, is permitted for an employee who has had unsatisfactory performance (Michigan Civil Service Commission Rules 3-6.2(b)); and,
- a probationary employee in Michigan may be released at any time during the probationary period and up to 28 calendar days after the probation has ended whereas Wisconsin requires the release to happen prior to the end of the probationary period (Michigan Civil Service Commission Rules 3-6.3).
- an employee with permanent status who fails a probation in a new classification, other than for just cause, is returned to the former class, regardless of whether the movement occurred within the same agency (Michigan Civil Service Commission Rules 3-6.6).

**Minnesota:** Probationary periods in Minnesota may be for 30-days to 2-years, depending on the rules for that particular group of employees (Minnesota statute section 43A.16, subdivision 1). In addition:

- non-managerial employees, not covered by a collective bargaining agreement, have a standard probation of 6-months compared to 12-months in Wisconsin (Minnesota Commissioner's Plan, Chapter VII);
- probationary periods may be extended for up to 6 additional months;
- probation is optional for reinstatement, transfer to a new class, transfer to a different agency or jurisdiction, and voluntary demotion;
- an employee with permanent status who does not complete an optional probation is restored to the former class and agency. In Wisconsin, similar re-employment provisions apply following non-completion of probationary periods when the probation is a result of intra-agency movement; and
- Minnesota provides a trial period for 15 calendar days for a non-managerial employee, not covered by a collective bargaining agreement, who moves to a new class and/or agency to decide whether the employee will remain in the new position.

**Grievances:** In Wisconsin employees are provided a grievance process for certain personnel actions and adverse employment decisions described in Chapter 230, Wis. Stats. Chapter ER 46 of the Wisconsin Administrative Code has the grievance process for conditions of employment which existed before Act

150 and 2011 Wisconsin Act 10. The proposed changes align all grievance procedures which will create consistency and lessen process and timeline confusion. With the changes from Act 150, the process is now a three-step process which requires submission to the employee's appointing authority and a meeting at the first step. Employees, other than those in WLEA, are required to submit the grievance themselves and only individual grievances are permitted. If unresolved at Step 1, Step 2 can occur in which the employee appeals the decision to Administrator of DPM. If the grievance is denied, the employee can appeal the denial to the Wisconsin Employment Relations Commission (WERC) for one last review. Grievance timelines were also reduced in Act 150.

**Illinois:** The Illinois grievance process requires initial submission of the grievance orally to the employee's immediate supervisor, followed by written submission to the next level supervisor, which is not required in the Wisconsin rules. Steps 3 and 4 in the Illinois process is the submission to the head of agency, followed by appeal to the Director of CMS similar to steps 1 and 2 provided in Wisconsin rules. In Illinois, the CMS Director appoints a grievance committee to hear the grievance and provide recommendation to the Director who will then review and make the final determination (80 ILADC 303.30). "Probationary terminations, charges seeking discharge, demotion or suspension totaling more than 30 days in any 12-month period of certified employees, appeals of allocation of duties or transfers from one geographical area in the State to another are not subject to grievance procedure" (80 ILADC 303.10 (b)). Such appeals, other than for probationary terminations, are appealed to the Illinois Civil Service Commission (80 ILADC 301.30 (c), 302.430, 302.496, and 30.750). Wisconsin requires that all grievances must first go to the appointing authority and can be ultimately appealed to the WERC if not resolved prior.

**Iowa:** Iowa provides an informal grievance process for employees similar to the formal grievance process in Wisconsin (IAC 11-61.1 (8A)). The Iowa process requires initial submission to the employee's immediate supervisor, not required in Wisconsin, and then permits appeal to the Director of DAS ("grievances involving suspension, reduction in pay within the same grade, disciplinary demotion, or discharge" (IAC 11-61.1 (8A)). The time limits at each step are similar to those of Wisconsin (IAC 11-61.1(1)). Iowa permits group grievances which have been eliminated in the proposed Wisconsin rules to mirror the statutory changes from Act 150. Grievance meetings are not required at any step in the Iowa process while Wisconsin requires a meeting at step 1.

**Michigan:** Michigan rules and regulations provide a three step grievance process for employees similar to the former grievance process in Wisconsin pre-Acts 10 and 150 (Michigan Civil Service Commission Rules 8-1 and Minnesota Civil Service Commission Regulations 8.01). A Step 1 grievance must be filed within 14 calendar days to the "Step 1 Official" within the agency. The "Step 1 Official" is required to hold an informal conference with the grievant and must issue a written answer within 14 days. Employees who are filing a grievance related to dismissal, suspension without pay, demotion and layoff may go directly to Step 2. The grievant may file a Step 2 grievance within 14 calendar days of the issuance of the Step 1 decision to the "Step 2 Official" within the agency. There is no requirement for a conference with the employee, though it is permissible. The "Step 2 Official" must provide a written decision within 28 calendar days. The grievant may appeal the Step 2 decision to the Civil Service Hearings Office (CSHO) within 28 days of the decision. Michigan rules do not provide time requirements for the CSHO to hold the hearing on the grievance and permit the grievant to elect an arbitration rather than a hearing. Once a decision is issued, either party may file an appeal to the Civil Service Commission within 28 calendar days.

**Minnesota:** Minnesota provides a dispute resolution process for employees similar to that of the grievance process in Wisconsin (Minnesota statutes section 43A.33). Non-managerial employees, not covered by a collective bargaining agreement, make an initial submission of complaint to the employee's immediate supervisor, followed by the next level supervisor if unresolved (Minnesota Commissioner's Plan, Chapter XII). The time limits at each step in the Minnesota rules are similar to those of Wisconsin. Minnesota encourages employees to use the dispute resolution process for adverse employment decisions, but the employee may appeal directly to the Bureau of Mediation Services at any time (Minnesota Commissioner's Plan, Chapter XII). Employees in Wisconsin must use the grievance procedure provided in statute.

**Layoff** – Layoff procedures for classified employees of the State of Wisconsin were modified in Act 150. Layoff is still determined by limiting the layoff group to the agency, employing unit, and employee classification. The order of layoff has been modified such that seniority is no longer the governing factor and has been replaced by performance, discipline records, special skills, and then seniority. Displacement or bumping was eliminated as an option and agencies are no longer required to terminate probationary employees (those serving an original probationary period) or limited term employees prior to laying off permanent employees. Layoff plans require the approval of the BMRS director and are expected to occur over a 60-day period (formal notification to layoff effective date); however, the proposed rules do include an option for a shorter timeline due to budget or funding factors. Upon layoff from state service, employees are provided a 3-year eligibility for reinstatement to a position at the same or lower level as the position of layoff. Wisconsin no longer has a mandatory restoration, or recall, from layoff other than in the Wisconsin Law Enforcement Association collective bargaining agreement.

**Illinois:** Illinois rules provide similar procedures for implementing a layoff of employees within an organizational unit "based on class, option, agency, county or other designation" (80 ILADC 302.520). A plan must be submitted to the Director of CMS for approval in advance of the effective date. The order of layoff is generally based on continuous service, but performance may be considered for adjustment (80 ILADC 302.530). All temporary, provisional, and probationary employees, in such order, must be released prior to layoff of a permanent employee (80 ILADC 302.530).

The notice requirement in the Illinois rules provides for 30 days compared to 60 calendar days in Wisconsin (80 ILADC 302.540). Illinois requires employees subject to layoff be offered "any vacant positions for the same title held by that employee within the same agency and county from which the employee is subject to layoff and within two additional alternate counties designated by the employee" (80 ILADC 302.545). Other transfers and demotions may be requested by the employee in writing prior to the effective date of the layoff (80 ILADC 302.550). Contrasted to Wisconsin, Illinois rules provide an employee who has been laid off shall be placed on a reemployment list for mandatory recall for up to 3 years. (80 ILADC 302.570, 302.580, and 302.590) Wisconsin rules provide for transfer and if not available, demotion in lieu of layoff and no recall rights for employees who have been laid off.

**Iowa:** Like Wisconsin, the Iowa rules provide procedures for implementing a reduction in force (layoff) of permanent merit system covered employees (IAC 11-60.3 (8A)). Iowa rules require the reduction in force to be by class within an agency organization unit or agency wide and a plan must be submitted to the director of DAS for approval in advance of the effective date (IAC 11-60.3(2)). The order of the reduction in force is the result of a calculation of retention points made up of a combination of points for length of service and points for performance record (IAC 11-

60.3(3)). Similar to Wisconsin, discipline and special skills or abilities may be used to adjust the order of layoff (IAC 11-60.3(3)).

The notice requirement in the Iowa rules provides for at least 20 workdays compared to 60 calendar days in Wisconsin (IAC 11-60.3(2)). Transfers and reassignments to the same class or a class in the same pay grade are permissible outside of the reduction in force process and are not included as alternatives during the layoff process (IAC 11-60.3(1)). An employee affected by layoff may exercise bumping rights to a filled or vacant lower class in the same series or to a lower formerly held class (IAC 11-61.3(5)). The notice to the employee will include the classes the employee may have bumping rights to and the employee is responsible for notifying the appointing authority of the class in which class the employee wishes to bump (IAC 11-60.3(2) and (3)). The employee receives written confirmation of the ability to bump and then has five calendar days to provide written acceptance of the position or be laid off (IAC 11-60.3(5)).

Wisconsin rules provide for transfers and demotions as alternatives in lieu of lay off to vacant positions, regardless of whether the employee has held the class previously, and do not allow for the bumping of filled positions. Contrasted to Wisconsin, Iowa rules provide an employee who has been laid off, exercised bumping rights, or had hours reduced shall be eligible for recall to the class and layoff unit occupied at the time of the reduction in force for a period of one year from the effective date. (IAC 11-60.3(6))

**Michigan:** Like Wisconsin, Michigan rules and regulations include procedures for implementing a layoff of employees based on classification or classification series, within a department and county (Michigan Civil Service Commission Rules 2-4 and Michigan Civil Service Commission Regulations 2.01). A layoff plan must only be submitted State Personnel Director of CSC for approval if the agency is going to deviate from the standard layoff process. (Michigan Civil Service Commission Rules 2-4 and Michigan Civil Service Commission Regulations 2.02). The order of layoff is based on continuous service which is calculated to the day using an hour formula (Michigan Civil Service Commission Regulations 2.01(4)(N)(3)(c)). Employees may displace other employees with less seniority in the same classification or series currently, or previously, held during the current period of employment (Michigan Civil Service Commission Rules 2-5.4 and Michigan Civil Service Commission Regulations 2.01(4)(c)).

The notice requirement is 15 days compared to 60 calendar days in Wisconsin (Michigan Civil Service Commission Regulations 2.01(4)(m)). After layoff in Michigan, an employee is placed on a recall list for mandatory recall for one year with the option for the employee to request an additional year twice, for up to a total of three years (Michigan Civil Service Commission Regulations 3.09(5)(E)). Wisconsin rules provide for transfer and if not available, demotion in lieu of layoff and no recall rights for employees who have been laid off.

**Minnesota:** In Minnesota, non-managerial employees, not covered by a collective bargaining agreement, who are permanent or probationary employees may be laid off (Minnesota Commissioner's Plan, Chapter X). A discussion with employees regarding voluntary reduction of hours, job sharing or other actions prior to initiating layoff is permissible (Minnesota Commissioner's Plan, Chapter X). Employees shall be reassigned to another position in same class, agency, and employment condition within 35 miles prior to initiating layoffs (Minnesota Commissioner's Plan, Chapter X). All provisional employees must be released prior to layoffs.

The Minnesota statute provides that if layoffs become necessary, each agency with more than 50 full time employees must reduce management and supervisory positions by the same percentage as line and support staff (Minnesota statute section 43A.046). There is no such requirement in Wisconsin.

Minnesota requires a layoff notice of at least 3 weeks which will include all of the following options if available: (1) accept layoff; (2) bumping of least senior employee within 35 miles in same employment condition, same agency, and same class, or if not available, a comparable or lower class employee previously served in order of previous service; (3) available vacancy in same agency; (4) reduction in hours in same agency and the same class or comparable or lower class for which the employee is qualified; (5) bumping least senior employee with no geographic limits; (6) bumping least senior employee from full-time to part-time and part-time to full-time if no bumping options to same class and employment condition or vacancies in same agency and employment condition within 35 miles are available; and (7) claiming a transfer or demotion to another agency unless a vacancy within the agency has been offered (Minnesota Commissioner's Plan, Chapter X). If the employee is laid off or demotes in lieu of layoff, the employee is placed on a layoff list for their class within the agency for one to three years, depending on continuous service, and may request to be added to the enterprise layoff list (Minnesota Commissioner's Plan, Chapter X). Recall from the layoff list is mandatory.

**Other** – In addition to the comparison categories noted above, job abandonment in Wisconsin was modified in Act 150. The proposed rules now reflect absences that may be considered job abandonment have changed from 5 consecutive days to 3 absences in a calendar year. Iowa rules do not define job abandonment but provide that an employee who fails to report to work for three consecutive days without prior authorization may be considered to have voluntarily terminated employment (IAC 11-60.1(1)). Similarly, Michigan rules also do not define job abandonment but provide that an employee who fails to report to work for three consecutive days may be disciplined (Michigan Civil Service Commission Rules 2-6.2(b)(3)). Illinois and Minnesota do not have provisions comparable to job abandonment.

**8. Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:**

The Department is proposing this rule to update existing rules and interpretations of existing statutes.

**9. Effect on small business:**

The rule has no effect on small businesses.

**10. Any analysis and supporting documents used in support of the agency's determination of the rule's effect on small business or in preparation of economic impact report:**

The proposed rule has no effect on small businesses because only governmental employers and their employees are governed by ch. 230, Wis. Stats., as administered by the Department of Administration, Division of Personnel Management.

**11. Agency Contact Person:**

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**RULE TEXT**

**SECTION 1.** ER 1.02 (2) (b) and (9) are amended to read:

**ER 1.02 (2)** (b) Eliminating a substantial disparity between the proportion of members of racial and ethnic, gender or ~~handicap~~ disability groups either in the classified civil service determined by grouping classifications according to similar responsibilities, pay ranges, nature of work, other factors recognized in the job evaluation process and any other factors the division considers relevant, or in similar functional groups in the unclassified service, and the proportion of members of racial and ethnic, gender or ~~handicap~~ disability groups in the relevant labor pool.

**(9)** “Discrimination” means unlawful actions or practices which constitute unequal or different treatment of, or create an unequal or different effect on an individual or group of people, on the basis of age, race, creed or religion, color, ~~handicap~~ disability, sex, marital status, national origin or ancestry, political affiliation, arrest or conviction record, sexual orientation, or other bases specified under subch. II of ch. 111, Stats.

**SECTION 2.** ER 1.02 (13g) and (13r) are created to read:

**ER 1.02 (13g)** “Involuntary demotion” means a demotion directed by the appointing authority.

**(13r)** “Involuntary transfer” means a transfer directed by the appointing authority.

**SECTION 3.** ER (22) and (42) are amended to read:

**ER 1.02 (22)** “Original appointment” means the appointment of a person who has not attained permanent status in class or permanent status, or the appointment of a current or former employee on a

basis other than a demotion, promotion, reinstatement or, restoration-basis or transfer to a classified position in which permanent status can be attained.

(42) “Restoration” means the act of mandatory reappointment without competition of an employee or former employee under s. 230.34, 2013 Stats., s. 230.31, 230.32, or 230.33 ~~or 230.34, Stats.,~~ to a position: (a) in the same class in which the person was previously employed; (b) in another classification to which the person would have been eligible to transfer had there been no break in employment; or (c) in a class having a lower pay rate or pay range maximum for which the person is qualified to perform the work after the customary orientation provided to newly hired workers in the position.

**SECTION 4.** ER 18.01 (2) (b), (2) (e), (3) (f), (4m), and (6) (a) are amended to read:

**ER 18.01 (2) (b)** ~~Unclassified staff~~ Employees of the University of Wisconsin System ~~not identified under s. 20.923 (4), Stats.;~~

(2) (e) ~~One stenographer~~ Stenographers employed by each elective constitutional officer under s. 230.08 (2) (g), Stats.; and

(3) (f) Layoff prior to July 1, 2016 and subsequent restoration from layoff under s. ER-MRS 22.10 within 3 years.

(4m) “Layoff” means the termination of the services of an employee with permanent status in class from a position in a group in which a reduction in force is to be accomplished and which results in ~~a mandatory permissive~~ reemployment-right eligibility of the affected employee to future positions.

(6) (a) Employment in the classified service in which the nature and conditions do not permit attainment of permanent status in class, for which the use of normal procedures for recruitment and ~~examination~~ selection are not practicable, and which is not project employment; or

**SECTION 5.** ER 18.02 (1) and (2) (a) are amended to read:

**ER 18.02 (1) EMPLOYEES WHO EARN ANNUAL LEAVE OF ABSENCE.** With the exception of limited term employees, all employees shall earn annual leave as provided in this section. Special rate tables and provisions for specific classifications may be provided in the compensation plan.

(2) COMPUTING CONTINUOUS SERVICE. (a) Only the most recent period in continuous employment status in ~~either~~ the unclassified service under s. 230.08 (2), Stats., employment in the University of Wisconsin System as provided in s. 230.15 (4), Stats., or as a permanent employee in the classified service or both any combination shall be counted in determining an employee’s length of continuous service. This excludes time served as a limited term employee or in those positions under s. 230.08 (2) (k), 2013 Stats., regarding youth camps and students respectively. The inclusion of time served in a project appointment is governed by s. ER 18.05 (3) and (4).

**SECTION 6.** ER 18.02 (2) (a) (Note) is repealed.

**SECTION 7.** ER 18.02 (2) (b) 6., (3) (a), (3) (c) 3. (intro.), (5) (a) (intro.), and (5) (c) are amended to read

**ER 18.02 (2) (b) 6.** Was an employee who left the service, returned to state employment on or after July 1, 2003, and immediately attained exempt status under the federal Fair Labor Standards Act, 29 USC 201 to 219 ~~in a nonrepresented position, or subsequently attained such status in a nonrepresented position~~ was an employee appointed to a career executive position under the program established under s. 230.24, Stats., or a position designated in s. 19.42 (10) (L) or 20.923 (4), (7), (8) and (9), Stats., or authorized under s. 230.08 (2) (e), Stats. and is reemployed and immediately attains exempt status under the federal Fair Labor Standards Act, 29 USC 201 to 219. This subdivision applies regardless of the duration of absence as provided under s. 230.35 (1m) (f), Stats.

**(3) ELIGIBILITY. (a)** Pursuant to ss. 230.27 (2m) and 230.35 (1) (b), Stats., permanent and project employees in the classified service are not eligible to take annual leave during the first 6 months of the most recent period of continuous service in the classified service unless to use annual leave already accrued in an unclassified position. Continuous service credits earned during employment in the unclassified service do not count toward this 6 month qualifying period. Employees who terminate during this 6 month period are deemed to have earned annual leave credits but have not acquired eligibility to take annual leave or receive any payment for the annual leave credits earned during this 6 month period.

**(3) (c) 3.** Annual leave for full-time, full year employees in exempt status under the federal Fair Labor Standards Act, 29 USC 201 to 219, ~~in a nonrepresented position on or after July 1, 2003~~ shall be based upon accumulated continuous service and earned at the rate shown in the following table:

**(5) (a)** Pursuant to s. 230.35 (1p) (a), Stats., employees who earn annual leave at the rate of 160 ~~or~~ 176 or 184 hours per year may elect to receive up to 40 hours of such leave, or prorated portion thereof, among one or more of the following options:

**(5) (c)** The number of hours available for use under pars. (a) ~~and~~, (b), and (bm) shall be prorated at the pertinent annual leave rate or rates for employees who work less than 2080 hours during the calendar year.

**SECTION 8.** ER 18.04 (1) and (2) (b) 3. are amended to read:

**ER 18.04 (1) EMPLOYEES WHO EARN HOLIDAYS.** All employees except limited term employees earn holidays under this section. Special provisions for specific classifications may be provided in the compensation plan.

**(2) (b) 3.** The amount of compensatory time, recorded at the one and one-half rate specified under par. (b) that is not scheduled and used within the ~~first 6 months of the ensuing~~ calendar year, shall be paid in cash at the employee's current regular rate in accordance with the compensation plan. Any such payment shall be made prior to the administrative date for compensation adjustments established under s. 230.12 (8), Stats.

**SECTION 9.** ER 18.05 (2) (b) is amended to read:



**ER 18.05 (2)** (b) Except as provided in pars. (e) and (g), upon entry to employment covered by this chapter from state unclassified employment which was not covered by this chapter, unused leave credits accumulated under the employment not covered by this chapter may be retained by the employee upon mutual agreement between the employee and the new appointing authority. Such agreements are subject to approval by the administrator. The total amount of leave credits retained by the employee may not exceed the unused leave credits which could have been accumulated in accordance with the provisions of this chapter. Negative leave credit balances shall not be transferred. An elected official is not eligible to transfer unused leave credits earned during employment as an elected official to employment covered by this chapter other than unused sick leave credits. The transfer of unused sick leave credits accumulated under state unclassified employment not covered by this chapter will be authorized subject to the limits specified in this paragraph. The restoration of unused sick leave credits accumulated under state unclassified employment not covered by this chapter will be in accordance with s. ER 18.03 (5) (a), except the total credits restored may not exceed those that could have been accumulated in accordance with the provisions of this chapter.

**SECTION 10.** ER 18.08 (1) is amended to read:

**ER 18.08 (1) NATIONAL GUARD, STATE GUARD, RESERVE CORPS.** For project employees, eligibility for annual military leave under s. 230.35 (3), Stats., shall be earned after completion of the first ~~6~~ 12 months of employment in a project position. If prior eligibility has been attained in a permanent, seasonal, sessional or unclassified position and the employee has been appointed to the project position without an interruption of continuous service, such prior eligibility shall be retained.

**SECTION 11.** ER 18.12 (title) and 18.12 are amended to read:

**ER 18.12 Leaves of absence for ~~promotional examinations and~~ civil service interviews.** Each employee with permanent status in class shall be eligible for and may request up to 16 hours paid leave time each calendar year for the purpose of competing in no more than 2 Wisconsin State Civil Service ~~examinations which could make the employee eligible for promotion and for participating in employment~~ interviews in connection with such examinations when such ~~examinations and~~ interviews are conducted during an employee's scheduled work time. Employees shall be granted such requests provided due notice has been given by the employee and work coverage will not be interrupted. Such time shall not exceed the number of hours reasonably required to attend such ~~examinations and~~ interviews, including travel time. Leave time for more than 2 ~~examinations~~ interviews in each calendar year ~~and interviews in connection with such examinations~~ may be granted to employees at the discretion of the appointing authority.

**SECTION 12.** ER 18.15 (1) (c) is amended to read:

**ER 18.15 (1) (c)** "Employee" means any person who receives remuneration for services rendered to the state under an employer-employee relationship, ~~except employees in positions under s. 230.08 (2) (em), (d) and (k), Stats., unless approved or authorized by the UW Board of Regents,~~ unclassified employees of the State of Wisconsin Investment Board, elected officials and limited term employees.

**SECTION 13.** ER 18.15 (1) (c) (Note) is repealed.

**SECTION 14.** ER 18.18 is created to read:

**ER 18.18 Paid leave to serve as an election official.** As provided in s. 7.33, Stats., an appointing authority shall grant leave without loss of pay to a state employee who serves as an election official.

**SECTION 15.** ER 21.01 (1) is amended to read:

**ER 21.01 (1)** “Leave credits” has the meaning defined in s. ER 18.01 (5), excluding sick leave.

**SECTION 16.** ER 21.03 (2) (intro.) is amended to read:

**ER 21.03 (2)** If an employee fails to report to work as scheduled or to contact his or her supervisor for a minimum of ~~5 consecutive~~ 3 working days during a calendar year, the appointing authority shall consider the employee’s position abandoned and may take one of the following actions:

**SECTION 17.** ER 43.01 (intro.) is amended to read:

**ER 43.01 Policy.** It is the policy of this state to ensure equal opportunity without regard to age, race, creed or religion, color, ~~handicap~~ disability, sex, marital status, national origin or ancestry, political affiliation, arrest or conviction record, or sexual orientation. In furtherance of this policy, all persons responsible for employment decisions shall, within the scope of their assigned responsibilities:

**SECTION 18.** ER 43.02 (2) (c) is amended to read:

**ER 43.02 (2) (c)** ~~Handicapped~~ Disability groups.

**SECTION 19.** ER 43.02 (3) is repealed.

**SECTION 20.** ER 43.02 (5m) (intro.) is amended to read:

**ER 43.02 (5m)** ~~“Handicapped”~~ “Disability” groups mean ~~individuals who~~ one or more of the following:

**SECTION 21.** ER 43.02 (5m) (a), (b), and (c) are repealed and recreated to read:

**ER 43.02 (5m) (a)** Individuals with a disability who have any of the following:

1. A physical or mental impairment which makes achievement unusually difficult or limits the capacity to work.
2. A record of such an impairment.
3. Are perceived as having such an impairment.

**(5m) (b)** Individuals with a severe disability who have a chronic disability that meets all of the following conditions:

1. It is attributable to a mental or physical impairment or combination or mental and physical impairments.

2. It is likely to continue indefinitely.
3. It results in substantial functional limitations in one or more of the following areas of major life activity: self-care; receptive and expressive language; learning; mobility; capacity for independent living; and economic self-sufficiency.

**(5m)** (c) Disabled veterans as defined in s. 230.03 (9m), Stats.

**SECTION 22.** ER 43.02 (6m) (intro.), (a), (b), (c), and (d) are amended to read:

**ER 43.02 (6m)** “Racial or Ethnic Groups” mean American Indians or Alaskan Natives (Non Hispanic or Latino), Asians or Pacific Islanders (Non Hispanic or Latino), Blacks or African Americans (Non Hispanic or Latino), and Hispanics or Latinos, Native Hawaiians or Other Pacific Islanders (Non Hispanic or Latino), and Whites (Non Hispanic or Latino) defined as follows:

**(6m)** (a) “American Indians or Alaskan Natives (Non Hispanic or Latino)” ~~mean~~ means persons descended from any of the original peoples of North America who possess 1/4 degree of documented tribal descendancy, or are enrolled with a federally or state recognized tribe, or are recognized by a federally or state recognized tribe as American Indians for state affirmative action purposes having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.

**(6m)** (b) “Asians or Pacific Islanders (Non Hispanic or Latino)” ~~mean~~ means persons descended from having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

**(6m)** (c) “Blacks or African Americans (Non Hispanic or Latino)” ~~mean~~ means persons descended from having origins in any of the Black black racial groups of Africa.

**(6m)** (d) “Hispanics or Latinos” ~~mean~~ means persons of Chicano Cuban, Mexican, Puerto Rican, Cuban, Central American or South or Central American, or other Spanish culture or origin, regardless of race.

**SECTION 23.** ER 43.02 (6m) (e) and (f) are created to read:

**ER 43.02 (6m)** (e) “Native Hawaiians or Other Pacific Islanders (Non Hispanic or Latino)” means persons having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

**(6m)** (f) “Whites (Non Hispanic or Latino)” means all persons having origins in any of the original peoples of Europe, North Africa or Middle East.

**SECTION 24.** ER 43.04 (2) is amended to read:

**ER 43.04 (2)** Determine compliance with the standards established under s. ER 43.03 of agency plans which were previously developed to comply with federal law ~~or to meet standards established by the Board of Regents of the University of Wisconsin System.~~

**SECTION 25.** ER 43.08 (title) and 43.08 are amended to read:

**ER 43.08 (title) Availability of AAIS Affirmative Action information.** Information on affirmative action groups ~~contained in the AAIS~~ is available to the public unless release of the information is prohibited by state or federal law.

**SECTION 26.** ER 46.01 (1) is amended to read:

**ER 46.01 Policy.** (1) Although the state encourages continuing informal communication between employees and management, it recognizes the value of a formal grievance procedure in a sound management program under s. 230.04 (14), Stats. It is the policy of the state and responsibility of the administrator to ensure that an established written grievance procedure relating to conditions of employment is available to state employees who are not covered by a collective bargaining agreement under subch. V of ch. 111, Stats., for the disposition of employee grievances.

**SECTION 27.** ER 46.03 (2) (b), (2) (c), and (2) (d) are amended to read:

**ER 46.03 (2) (b)** An action delegated by the director or by the administrator to an appointing authority that is directly appealable to the Wisconsin Employment Relations Commission under s. 230.44, Stats.;

(c) A demotion, suspension without pay, discharge, removal, layoff or reduction in base pay that is grievable under s. 230.445, Stats.;

(d) A personnel action after certification which is related to the hiring process that is appealable to the Wisconsin Employment Relations Commission under s. 230.44, Stats.;

**SECTION 28.** ER 46.03 (2) (hg) and (hr) are created to read:

**ER 46.03 (2) (hg)** A written instruction related to job performance or work conduct;

(2) (hr) The evaluation methodology used by an employer to determine a discretionary pay award or the amount of the award;

**SECTION 29.** ER 46.03 (Note) is repealed.

**SECTION 30.** ER 46.04 (1) is amended to read:

**ER 46.04 Management rights.** (1) Nothing in this chapter is intended to interfere with the sole right of the employer to carry out its statutory mandate and goals under s. 111.90, Stats.

**SECTION 31.** ER 46.05 (4) is amended to read:

**ER 46.05 (4)** Employees may not initiate a group grievance. ~~In such a case, the grievants shall choose one individual grievant to represent the interests of the group. Group grievances shall be so designated at the first step of the grievance procedure and signed by all employees party to the grievance.~~

**SECTION 32.** ER 46.06 (1), 46.06 (2) (a), (2) (b) 1., and (2) (b) 2. are amended to read:

**ER 46.06 Procedures and time limits.** (1) All grievances shall be filed with the ~~designated employer representative~~ employee's appointing authority, or designee, no later than ~~30~~ 14 calendar days from the date the employee first became aware or should have become aware of the matter grieved.

(2) (a) *First step.* Within ~~7~~ 14 calendar days of receipt by the appointing authority, or designee, of the timely grievance from the employee ~~or representative~~ under sub. (1), the ~~designated employer representative~~ appointing authority, or designee, shall conduct any investigation he or she deems necessary, meet with the grievant and representative to hear the grievance employee in person, and deliver issue a written decision ~~on the grievance form to the grievant and representative.~~

(2) (b) *Second step.* 1. If the grievant is dissatisfied with the decision received from the ~~employer representative~~ appointing authority at the first step under par. (a), the decision ~~must~~ may be grieved to the ~~next designated employer representative~~ within 7 administrator, or his or her designee, no later than 14 calendar days ~~from receipt of the answer at the first step~~ after the date of the appointing authority's decision under par. (a).

(2) (b) 2. ~~The employer representative shall meet with the grievant and representative and attempt to resolve the grievance. A~~ Within 30 calendar days after the date the employee files a timely grievance with the administrator under subd. 1., the administrator, or designee, shall review the grievance and issue a written decision ~~shall be placed on the grievance form following the meeting by the employer representative and delivered to the grievant and representative within 7~~ calendar days from receipt of the grievance ~~by the employer representative.~~

**SECTION 33.** ER 46.06 (2) (c), (4), and (6) are repealed.

**SECTION 34.** ER 46.06 (7) is amended to read:

**ER 46.06 (7)** The employer and grievant may ~~mutually agree in writing to conduct either or both the second and third~~ first step meetings meeting under sub. (2) ~~(b) and (c), respectively,~~ (a) by telephone, videoconference, or by other comparable means.

**SECTION 35.** ER 46.065 is repealed.

**SECTION 36.** ER 46.07 (1) (intro.), (1) (a), and (2) are amended to read:

**ER 46.07 Wisconsin Employment Relations Commission.** (1) If the grievant is dissatisfied with the decision received from the ~~appointing authority~~ administrator or designee at the ~~third~~ second step under s. ER 46.06 (2) ~~(e)~~ (b) 2., the decision may be grieved to the commission only if it alleges that the employer abused its discretion in applying subch. II of ch. 230, Stats., or the rules of the director promulgated under that subchapter, subchs. I and II of ch. 230, Stats., or the rules of the administrator promulgated under

those subchapters, or written agency rules, policies, or procedures, except that decisions involving the following personnel transactions may not be grieved to the commission:

(1) (a) A written ~~reprimand~~ instruction;

(2) Grievances to the commission must be filed within ~~30~~ 14 calendar days after ~~service~~ receipt of a decision issued at the ~~third~~ second step of the grievance procedure under s. ER 46.06 (2) ~~(e)~~ (b) 2., or within ~~30~~ 15 calendar days after the last day on which the employer could have served a timely decision, whichever is sooner.

**SECTION 37.** ER 46.08 (2) and (3) are amended to read:

**ER 46.08 (2)** If the grievance is not answered within the time limits set forth in this chapter, the grievant may proceed to the next step under s. ER 46.06 (2) within ~~7~~ 14 calendar days after the last day on which the grievance could have been timely answered.

(3) If the grievance at the ~~third~~ second step under s. ER 46.06 (2) ~~(e)~~ (b) 2. is not answered within the time limits set forth in this chapter, the grievant may proceed directly to the Wisconsin employment relations commission in accordance with s. ER 46.07.

**SECTION 38.** ER 46.09 (1) is amended to read:

**ER 46.09 Grievant representation. (1)** Each employee may have assistance by a representative of his or her own choice during the grievance procedure, ~~including during informal resolution efforts.~~

**SECTION 39.** ER 46.09 (2) is repealed and recreated to read:

**ER 46.09 (2)** The administrator may allow a reasonable, yet limited, period of time without loss of pay for the employee and representative, if a state employee, to prepare for a grievance.

**SECTION 40.** ER 46.09 (3) is repealed.

**SECTION 41.** ER 46.11 is amended to read:

**ER 46.11 Retroactivity.** No employer may grant any relief retroactive to more than ~~30~~ 14 calendar days prior to the filing of the grievance at the first step under s. ER 46.06 (2) (a).

**SECTION 42.** ER-MRS 1.02 (10) and (10m) are created to read:

**ER-MRS 1.02 (10)** “Involuntary demotion” means a demotion directed by the appointing authority.

**(10m)** “Involuntary transfer” means a transfer directed by the appointing authority.

**SECTION 43.** ER-MRS 1.02 (18) and (30) (intro.) are amended to read:

**ER-MRS 1.02 (18)** “Original appointment” means the appointment of a person who has not attained permanent status in class or permanent status, or the appointment of a current or former employee on a basis other than a demotion, promotion, reinstatement or, restoration basis or transfer to a classified position in which permanent status can be attained. ~~Under s. ER-MRS 13.03, “original appointment” does not include appointment of an incumbent employee who is certified and appointed under s. 230.15 (1m) (c), Stats.~~

**(30)** “Restoration” means the act of mandatory reappointment without competition of an employee or former employee under s. 230.34, 2013 Stats., s. 230.31, 230.32, or 230.33 ~~or 230.34, Stats.~~, to a position:

**SECTION 44.** Chapter ER-MRS 6 (title) is amended to read:

## **CHAPTER ER-MRS 6**

### **RECRUITMENT AND ~~EXAMINATION~~ SELECTION**

**SECTION 45.** ER-MRS 6.01 is amended to read:

**ER-MRS 6.01 Base of recruitment.** The director, in determining the most appropriate base of recruitment for classified civil service positions, shall consider such factors as: affirmative action; agency goals; staff development patterns; availability of qualified applicants in the service, agency or the employing unit, and effect on employee morale or turnover; designated promotional patterns in the classification series; availability of trained people in the labor market, including the number who have completed or are completing training for the type and level of positions; value of bringing new personnel with different backgrounds into the service; current pay; employee benefits and hiring practices for the types of positions; the interests of other agencies which may use the eligible lists; and efficiency in conducting recruitment and selection programs ~~and examinations~~.

**SECTION 46.** ER-MRS 6.027, 6.03, and 6.04 are amended to read:

**ER-MRS 6.027 Employees on temporary interchange.** A classified employee who is on a temporary interchange under s. 230.047, Stats., is eligible to compete in ~~promotional examinations~~ competitive procedures during the interchange assignment on the same basis as if the interchange assignment had not occurred.

**ER-MRS 6.03 Insufficient number of applicants.** In the event that a sufficient number of qualified applicants fail to apply for ~~an examination~~ a vacancy or to qualify after the ~~examination~~ competitive procedure, the director may reannounce the vacancy or extend the date for filing of applications and resumes, or, if necessary, cancel the ~~examination~~ competitive procedure.

**ER-MRS 6.04 Employment register exception.** An existing appropriate register for a class shall be used to fill all vacancies in the class, except that the director may authorize new recruitment ~~and examination~~ leading to the establishment of a different register for some positions in the class when substantial differences in the duties of those positions and the qualifications required for successful

performance distinguish them from other positions in the same class. The director may also establish separate registers on the basis of geographic location or when program emphasis or other recognized employment considerations could be expected to attract new applicants who may be better qualified for “placement on the new register” to be established. Separate registers for different positions in the same class may also be established under s. ER-MRS 11.02.

**SECTION 47.** ER-MRS 6.05 (title), 6.05 (1), 6.05 (2), 6.05 (3) (intro.), 6.05 (3) (b), 6.05 (3) (c), and 6.05 (3) (d) are amended to read:

**ER-MRS 6.05 (title) ~~Examinations~~ Competitive Procedures.**

(1) The director shall establish criteria for evaluating applicant qualifications and shall require the same or equivalent ~~examination~~ competitive procedure for all applicants competing for eligibility on a register except as may be provided in ch. ER-MRS 27.

(2) ~~Examinations~~ Competitive procedures may include any technique or techniques which the director deems appropriate to evaluate applicants.

(3) ~~All examinations~~ The competitive procedures shall be:

(3) (b) Developed in such a manner as to establish the relationship between skills and knowledges required for successful performance ~~on in the test~~ competitive procedure and skills and knowledges required for successful performance on the job;

(3) (c) Supported by data documenting that the skills and knowledges required for successful performance ~~on in the test~~ competitive procedure are related to skills and knowledges which differentiate among levels of job performance ~~if the examination results are to be used as a basis for ranking candidates~~;

(3) (d) Sufficiently reliable to comply with appropriate standards for ~~test~~ validation; and

**SECTION 48.** ER-MRS 6.07 (title) and 6.07 are amended to read:

**ER-MRS 6.07 (title) ~~Examination results~~ Notification.**

**ER-MRS 6.07** The director shall make available to each ~~examinee~~ applicant the final results of his or her ~~examinations~~ eligibility for consideration through such methods as written notice, public posting or any other means deemed appropriate by the director.

**SECTION 49.** ER-MRS 6.08 (title), (1) (intro.), (1) (a), and (1) (b) are amended to read:

**ER-MRS 6.08 (title) ~~Release of examination~~ competitive procedure information.**

(1) The following ~~examination~~ competitive procedure information may be released to an ~~examinee~~ applicant:



(1) (a) ~~The composition of the examination~~ final score or equivalent result; and

(1) (b) ~~The~~ When applicable, the weight of, the total possible score of, and the ~~examinee's~~ applicant's score on, each separately scored component of the ~~examination~~ competitive procedure.; and

**SECTION 50.** ER-MRS 6.08 (1) (c) is repealed.

**SECTION 51.** ER-MRS 6.08 (2) (intro.), (2) (a), (2) (c), (2) (d), (3) (intro.), (3) (a), and (3) (c) are amended to read:

**ER-MRS 6.08 (2)** Except as provided in sub. (3), ~~examination~~ competitive procedure information which may not be released includes ~~but is not limited to~~ the following:

(2) (a) copies of ~~examination booklets~~ competitive procedures, rating guides and scoring keys;

(2) (b) copies of written comments of ~~examination raters~~ panel members including oral board members;

(2) (c) tapes of oral ~~examinations~~ evaluations;

(2) (d) results of medical or physical examinations except through the ~~examinee's~~ applicant's designated physician;

(3) For certified individuals, the director may release to the appointing authority the following ~~examination~~ information, but only after the employment interview questions have been finalized:

(3) (a) Narrative responses to open-ended ~~examination~~ questions such as essay or ~~achievement history~~ training and experience assessments.

(3) (b) Tapes of oral ~~examinations~~ evaluations.

(3) (c) Resumes, letters of interest, and other narrative ~~examination~~ material provided by the certified candidates as long as the materials released do not contain scores, comments, ratings, or other evaluations.

**SECTION 52.** ER-MRS 6.09 (title) and 6.09 (1) are amended to read:

**ER-MRS 6.09 (title)** Anonymity of examinees applicants and security for examinations competitive procedures.

**ER-MRS 6.09 (1)** The director shall ~~delete the names of the examinees from written examination papers that will be scored by raters and instruct raters who nonetheless recognize the identity of examinees to disqualify themselves from rating any examinee whom they cannot objectively evaluate~~

instruct all applicants to omit any reference to political affiliations, identifying information such as social security number, ethnicity, gender, photos, and any other non-job related information from their application materials including resumes, cover letters, and training and experience assessments.

**SECTION 53.** ER-MRS 6.09 (1m) is created to read:

**ER-MRS 6.09 (1m)** The director shall instruct panel members who recognize the identity of applicants to disqualify themselves from screening an applicant whom they cannot objectively evaluate.

**SECTION 54.** ER-MRS 6.09 (2) is amended to read:

**ER-MRS 6.09 (2)** The director shall provide appropriate security for all ~~examination~~ competitive procedure materials.

**SECTION 55.** ER-MRS 6.095 (2) is amended to read:

**ER-MRS 6.095 (2)** One or more applicants gained knowledge of the content of the ~~examination~~ competitive procedure not available to every applicant; or

**SECTION 56.** ER-MRS 6.10 (intro.), 6.10 (2), (4), (7), and (10) is amended to read:

**ER-MRS 6.10 Disqualification of applicants.** In addition to provisions stated elsewhere in the law or rules, the director may refuse to ~~examine~~ or certify an applicant, or may remove an applicant from a certification:

**ER-MRS 6.10 (2)** Who has participated in the scheduled selection process so recently that the results of a ~~reexamination~~ reconsideration would provide an undue advantage;

**(4)** Who has been dismissed from the state service for cause, or resigned in lieu of termination for cause, and the action is requested by the appointing authority;

**(7)** Who practices, or attempts to practice, any deception or fraud in his or her application, certification, ~~examination~~, or in securing eligibility or appointment;

**(10)** Who has in any manner gained access to special or secret information regarding the content of ~~an examination~~ the competitive procedure or subsequent selection steps.

**SECTION 57.** ER-MRS 6.12 (2) is amended to read:

**ER-MRS 6.12 (2)** Specialized recruitment, ~~examination~~ competitive procedure, and certification processes may be established to fill positions in these classes, provided that due notice is given so that all interested and qualified applicants may be considered.

**SECTION 58.** Chapter ER-MRS 7 (title) is amended to read:

## CHAPTER ER-MRS 7

### APPOINTING PROCEDURE FOR UNSKILLED LABOR AND SERVICE ~~CLASSES~~ CLASSIFICATIONS

**SECTION 59.** ER-MRS 7.01 is amended to read:

**ER-MRS 7.01 General.** The director may designate unskilled labor and service ~~classes~~ classifications and may establish separate recruitment, ~~examination~~ selection and certification procedures for such ~~classes~~ classifications.

**SECTION 60.** ER-MRS 8.01 is amended to read:

**ER-MRS 8.01 Policy.** This subchapter implements s. 230.213, Stats., which authorizes the director, for affirmative action purposes, to establish such recruitment, ~~examination~~ and certification procedures for positions in the department of corrections as will enable the agencies to increase the number of employees of a specified gender or a specified racial or ethnic group.

**SECTION 61.** ER-MRS 8.04 (2) is amended to read:

**ER-MRS 8.04 (2)** With the director's approval, the appointing authority may assess applicants using techniques including ~~but not limited to written examinations;~~ oral examinations evaluations; performance exercises; evaluation of training, education or experience; writing samples or other techniques. An appointing authority may design the assessment techniques to categorize applicants into groups of eligible applicants.

**SECTION 62.** ER-MRS 8.05 and 8.06 are amended to read:

**ER-MRS 8.05 Certification.** With the director's approval, the appointing authority may determine how many applicants to interview. The director may provide an appointing authority with additional names of qualified applicants from affirmative action groups in order to comply with an approved affirmative action plan or program or to hire persons with ~~handicaps~~ disabilities. The number of names shall not be limited to the number specified in s. 230.25 (1n) (a), Stats.

**ER-MRS 8.06 Review of recruitment and hiring results.** The director shall periodically review the results of recruitment and hiring procedures established under this subchapter. The ~~departments~~ department of corrections and health services shall, on request, provide the director with the information and data needed to evaluate ~~these programs~~ the program.

**SECTION 63.** ER-MRS 8.20 (2) is amended to read:

**ER-MRS 8.20 (2)** In accordance with ss. 230.15 (1) and 230.16 (4), Stats., all appointments under this subchapter shall be made only according to merit and fitness and all ~~examinations~~ selection criteria shall be job-related in compliance with appropriate validation standards.

**SECTION 64.** ER-MRS 8.21 (1) is amended to read:

**ER-MRS 8.21 Applicability. (1)** An appointing authority may use the recruitment, evaluation and certification procedures in this subchapter to fill vacancies in entry professional positions for which open recruitment under s. ER-MRS 11.02 (1) is used. ~~The procedures in this subchapter or registers created under this subchapter may not be used to fill vacancies which an appointing authority elects to fill through agency or servicewide promotional registers under s. ER-MRS 11.02 (2).~~

**SECTION 65.** ER-MRS 8.22 (Note) is repealed.

**SECTION 66.** ER-MRS 8.24 (2) is amended to read:

**ER-MRS 8.24 (2)** The director may provide an appointing authority with additional names of qualified applicants from affirmative action groups in order to comply with an approved affirmative action plan or program or to hire persons with ~~handicaps~~ disabilities. The number of names shall not be limited to the number specified in s. 230.25 (1n) (a), Stats.

**SECTION 67.** ER-MRS 10.035 is created to read:

**ER-MRS 10.035 Exclusions.** An individual appointed to a limited term position must be qualified to perform the duties of the position. A limited term appointment may not be made for a person who is not a state resident, under s. 230.26 (1m), Stats., unless approved by the director. A limited term appointment may not violate s. ER-MRS 24.04 or subch. II of ch. 40, Stats.

**SECTION 68.** ER-MRS 10.04 (2) is amended to read:

**ER-MRS 10.04 (2)** In order to safeguard the public interest, recruitment and selection procedures must be approved in accordance with the standards established by the director, and the appointing authority shall maintain such records of the procedures followed in making limited term appointments as are determined to be necessary by the director. Limited term appointments shall be made so as to contribute to a competent work force with due consideration given to affirmative action.

**SECTION 69.** ER-MRS 10.06 is created to read:

**ER-MRS 10.06 Violations. (1)** If the director finds an agency has failed to comply with limited term appointment standards established under this chapter, the director may remove the incumbents of positions for which appointment standards were not followed. Employees subject to removal under this section shall be given notice of removal. The director may also withdraw all delegated authority for making limited term appointments from the agency until such time as, in the judgment of the director, the agency takes appropriate measures to ensure that future limited term appointments will be in compliance with established standards.

**(2)** Limited term employees who have reached or exceeded the hours or earnings limitations established by s. 230.26 (1) or 16.417(2), Stats. respectively, shall be immediately removed from the position.

**SECTION 70.** ER-MRS 11.02 (2) is repealed.

**SECTION 71.** ER-MRS 11.03 (1) (title) and 11.03 (2) are amended to read:

**ER-MRS 11.03 (1)** (title) OPEN COMPETITIVE ~~OR PROMOTIONAL~~ REGISTERS.

**ER-MRS 11.03 (2)** REACTIVATION OF REGISTER. The director may reactivate a register up to ~~3~~ years one year from the date it was established. The appointing authority may request an extension of the reactivation, not to exceed a total of 3 years. Names on the reactivated register may be integrated with those on a subsequently established register.

**SECTION 72.** ER-MRS 11.04 (1) (b) is amended to read:

**ER-MRS 11.04 (1)** (b) *Failure to respond to inquiry.* When a person does not respond within ~~5 the~~ established deadline, not less than 2 work days ~~of the day following the mailing of an inquiry relative to availability for employment~~ an invitation to participate in subsequent steps.

**SECTION 73.** ER-MRS 11.04 (1) (e) is repealed.

**SECTION 74.** ER-MRS 11.04 (1) (h) is amended to read:

**ER-MRS 11.04 (1)** (h) *Failure to appear for scheduled interview.* When a person does not appear for a mutually agreed upon scheduled interview and does not provide a valid reason for such failure to appear within ~~5 one~~ one work ~~days~~ day of the interview date.

**SECTION 75.** ER-MRS 11.05 is amended to read:

**ER-MRS 11.05** **Statement of availability.** It shall be the responsibility of an applicant to inform the director of any change in the applicant's availability, ~~mailing address and telephone number, if applicable~~ contact information, and the conditions under which the applicant will accept employment.

**SECTION 76.** ER-MRS 12.02 (intro.) and 12.02 (3) are consolidated, renumbered ER-MRS 12.02 and amended to read:

**ER-MRS 12.02** **Action by the director.** The director shall certify eligible applicants as provided in the law and rules or authorize appointment by other means as provided in s. 230.08 (7), 230.15 (1) and (2), 230.213 or, 230.22 (3), 230.24 (1), or 230.275 (1), Stats. ~~(3)~~ The director may submit the names of persons interested in transfer, reinstatement or voluntary demotion along with a certification or, at the request of the appointing authority, in lieu of a certification.

**SECTION 77.** Sections ER-MRS 12.02 (1) and (2) are repealed.

**SECTION 78.** ER-MRS 12.04 (2) is amended to read:

**ER-MRS 12.04 (2)** The director may certify additional names from registers of related classes in the same, counterpart or higher pay ranges to fill out an incomplete certification, or may make a certification from registers of classes in the same, counterpart or higher pay ranges when no register exists for the class for which certification is requested. Such decisions shall include a determination by the director that the ~~examinations~~ competitive procedures for the same or higher classes or classes in counterpart pay ranges are job related for the work of the position for which certification is to be made.

**SECTION 79.** ER-MRS 12.06 (1) and (3) are amended to read:

**ER-MRS 12.06 Disability expanded certification. (1)** ~~Upon request of an agency, the~~ The director may provide for certifications under the provisions of s. 230.25 (1n), Stats., as a supplement to certifications made under the provisions of s. 230.24 (1) or 230.25 (1) and (1m), Stats.

**(3)** Eligibility for certification under this section shall be limited to persons who provide the director a written verification of their impairment prior to certification. The verification shall be submitted on a form provided by the director and shall be completed by a qualified professional who is knowledgeable about the person's impairment and its effect on the person's ability to work. In this subsection, a "qualified professional" means a physician, psychologist, psychiatrist, rehabilitation-vocational counselor, high school special education teacher, counselor at the division of vocational rehabilitation, or other persons, as approved by the director. ~~The verification eligibility~~ shall be valid for all positions for which the person applies for 5 years after the date the director receives the verification. A person may submit an additional verification at any time after a previous verification expires.

**SECTION 80.** ER-MRS 12.07 is amended to read:

**ER-MRS 12.07 Additional certifications.** ~~Upon request of an agency, the~~ The director may, under s. 230.08 (7), Stats., certify additional names to supplement those certified under s. ER-MRS 12.06. The additional names shall be those of candidates with a disability for whom the director has waived the ~~test~~ competitive procedure requirement. The director may waive the ~~test~~ competitive procedure requirement for a person with a disability under this section if the director determines that the disability precludes the person from equitably participating in the ~~tests~~ competitive procedure used to ~~examine~~ evaluate candidates certified under s. 230.24 (1) or 230.25, Stats., because of impaired sensory, manual, reading or speaking skills not related to the tasks to be performed after reasonable accommodations have been made on the job.

**SECTION 81.** ER-MRS 12.08 is amended to read:

**ER-MRS 12.08 Confirmation of appointment.** Confirmation of appointment shall be in writing by the appointing authority and shall be ~~sent~~ provided to the employee no later than the first day of employment. Such letter of appointment shall include conditions of employment such as starting date, rate of pay, and probationary period to be served.

**SECTION 82.** ER-MRS 13.02 (intro.), 13.02 (2) (intro.), (4), and (5) are amended to read:

**ER-MRS 13.02 Duration.** All probationary periods shall be ~~for 6 months~~ one year in duration, except:

**ER-MRS 13.02 (2)** In the case of employees who have not demonstrated the capacity to be granted permanent status in class within ~~6~~ 12 months after the beginning of an original or promotional probationary period, the director may, at the request of an appointing authority, extend the probationary period for up to ~~3~~ 12 additional months, provided the extension is desirable on the basis of factors such as:

(4) In the case of permissive probationary periods, ~~the duration may be less than the last 6 months at the discretion of the~~ may be waived by the appointing authority.

(5) In the case of initial ~~original or promotional~~ appointments to positions designated as supervisory or managerial as defined under s. 111.81, Stats., all probationary periods shall be for one year duration, ~~unless the last 6 months or a portion thereof is waived by the director at the request of the appointing authority~~ no portion of which may be waived.

**SECTION 83.** ER-MRS 13.04 (1) (a) and (3) are amended to read:

**ER-MRS 13.04 (1)** (a) Transfer: See ss. ER-MRS 15.03 ~~and 15.04,~~ and 15.08.

(3) The appointing authority may waive these permissive probationary periods at any time following the initial six month requirement. The employee shall be notified by the appointing authority of the determination to waive such employee's probationary period

**SECTION 84.** ER-MRS 13.05 (1) (title), (1), (2) (title), (2) and (3) are amended to read:

**ER-MRS 13.05 Absence from employment. (1)** UP TO ~~174~~ 348 WORK HOURS. If an employee has absences from employment not exceeding ~~174~~ 348 work hours or prorated portion for part-time employees for any reason approved by the appointing authority, the appointing authority shall determine whether such absence shall be waived from the probationary time or the probationary period is to be extended to cover such absence. The employee shall be given written notice of such extension.

(2) MORE THAN ~~174~~ 348 work hours. If an employee has such absence from employment totaling more than ~~174~~ 348 work hours or the prorated portion for part-time employees, during a probationary period identified in s. ER-MRS 13.03, the probationary period shall be extended by the length of the time absent, except that up to ~~174~~ 348 work hours or prorated portion for part-time employees may be waived by the appointing authority. For permissive probationary periods, such extension is at the discretion of the appointing authority except that the employee must serve a minimum of 6 months consistent with s. ER-MRS 13.02 (4). The employee shall be given written notice of such extension.

(3) TERMINATION DUE TO PENDING LAYOFF. If an employee ~~is~~ was terminated during a probationary period due to a pending layoff prior to July 1, 2016, and is later reinstated, the time served may be carried over at the discretion of the new appointing authority. Determination of any such carry-over shall be specified at the time of the reinstatement and written notice given to the employee and a record of such notification kept on file.

**SECTION 85.** ER-MRS 14.015 is amended to read:

**ER-MRS 14.015 Policy.** Promotional appointments shall be made so as to contribute to a competent and balanced workforce. Promotional appointments shall be made as a result of open competition.

**SECTION 86.** ER-MRS 14.02 (5) and (6) are amended to read:

**ER-MRS 14.02 (5)** The permissive appointment of an employee to a different position in a higher class than the highest position currently held in which the employee has permanent status in class, when the employee has been certified from a register as eligible for appointment, may be considered a promotion when the position is in a class, class subtitle or progression series in which the employee has not previously attained permanent status in class. ~~Such appointments are reinstatements when the employee is appointed on the basis of qualifying for the position other than as a result of being certified as eligible for appointment from a register.~~

(6) For provisions relating to the appointment of persons or employees to positions classified as trainee, see s. ~~ER-MRS 6.12~~ ch. ER 44.

**SECTION 87.** ER-MRS 14.03 (2) is amended to read:

**ER-MRS 14.03 (2) PROMOTION BETWEEN AGENCIES.** In accordance with s. 230.28 (1), Stats., the promoted employee shall be required to serve a probationary period. At any time during this period the appointing authority may dismiss the promoted employee from the service without the right of appeal. ~~See s. 230.28 (3), Stats., for provisions relating to reinstatement eligibility of an employee so dismissed.~~

**SECTION 88.** ER-MRS 14.05 is repealed.

**SECTION 89.** ER-MRS 15.02 is amended to read:

**ER-MRS 15.02 Authorization by director.** ~~The director will authorize~~ may waive competition for a voluntary transfer when requested upon written request by an appointing authority ~~providing the appointing authority has determined that~~ provided the employee meets the eligibility requirement under s. ER-MRS 15.01 and that the position to which the employee is transferring is assigned to a class in the same or counterpart pay rate or pay range to which any of the employee's current positions is assigned, and such documentation is provided to the director. The director may delegate this authority to appointing authorities. The director may authorize an involuntary transfer, upon written request by an appointing authority, due to performance, discipline, or operational needs.

**SECTION 90.** ER-MRS 15.03 is amended to read:

**ER-MRS 15.03 Transfer between agencies.** An employee who transfers between agencies may be required by the appointing authority to serve a probationary period, except that a probationary period shall be required upon transfer to any position identified in s. ER-MRS 13.02 (1). An employee serving such a probationary period after transferring from a position in which the employee had permanent status in class or who has transferred under s. ER-MRS 15.07, may be separated from the service without the right of appeal at the discretion of the appointing authority. ~~See s. 230.31, Stats., for provisions relating to the reinstatement eligibility of a person so dismissed.~~



**SECTION 91.** ER-MRS 15.04 is renumbered ER-MRS 15.04(1) and amended to read:

**ER-MRS 15.04 (1)** An employee who transfers ~~or is involuntarily transferred~~ between different employing units of the same agency may be required by the appointing authority to serve a probationary period, except that a probationary period shall be required upon a transfer to a trainee position. If the transfer is to a position in a different class and no probationary period resulting from the transfer is required, the employee shall immediately attain permanent status in class. An employee who transfers ~~or who is involuntarily transferred~~ while serving a probationary period may continue in the probationary status being served prior to transfer or begin a new probationary period under s. ER-MRS 15.07.

**SECTION 92.** ER-MRS 15.04 (2) is created to read:

**ER-MRS 15.04 (2)** An employee currently serving a permissive probationary period or an employee not currently serving a probationary period who is involuntarily transferred will not be required to serve a probationary period and the employee shall immediately attain permanent status in class.

**SECTION 93.** ER-MRS 15.07 (1) and 15.08 are amended to read:

**ER-MRS 15.08 Transfer while serving a probationary period. (1)** Employees serving a probationary period may transfer ~~or be involuntarily transferred~~ to a different position. The probationary period time served prior to such movement shall be carried over if the transfer is within an employing unit. If the transfer is between employing units of the same agency or between agencies, the probationary period time served prior to such movement may be carried over at the discretion of the appointing authority.

**ER-MRS 15.08 Transfer to a supervisory or management position.** ~~An employee who transfers to a supervisory or management position within the same employing unit may not be required to serve a probationary period. An employee who transfers to a supervisory or management position in a different employing unit of the same agency or in another agency may be required, at the discretion of the appointing authority, to serve a probationary period. Such a probationary period shall be served in accordance with the provisions of s. 230.28 (1) (am) and (4), Stats.~~

**SECTION 94.** ER-MRS 16.025 (2) (intro.) is amended to read:

**ER-MRS 16.025 (2)** For reinstatements, the period of eligibility shall begin with the date of separation from the position in which the eligibility was earned and end ~~with the last day of the 5th year after the date of separation.~~ as follows:

**SECTION 95.** ER-MRS 16.025 (2) (a) and (2) (b) are created to read:

**ER-MRS 16.025 (2) (a)** Five years after the date of separation if separation occurred prior to July 1, 2016.

**(2) (b)** Three years after the date of layoff if layoff occurred on or after July 1, 2016.

**SECTION 96.** ER-MRS 16.025 (3) is amended to read:

(3) For restorations following layoff that occurred prior to July 1, 2016, the period of eligibility shall begin with the date of separation from the position in which the eligibility was earned and end ~~with the last day of the 3rd year~~ 3 years after the date of separation due to layoff.

**SECTION 97.** ER-MRS 16.03 (1) (title), (3), (5) (title), and (5) are amended to read:

**ER-MRS 16.03 Types and conditions of restoration.** (1) LAYOFF BEFORE JULY 1, 2016. See s. ER-MRS 22.10.

**ER-MRS 16.03 (3) RESTORATION IN ACCORDANCE WITH ORDER OF WISCONSIN EMPLOYMENT RELATIONS COMMISSION OR COURT ACTION.** See s. 230.44 (4) or 230.445, Stats. A probationary period shall not be required as a result of such restoration.

**(5) RESTORATION FOLLOWING NON-COMPLETION OF PROBATIONARY PERIOD UPON PROMOTION OR TRANSFER WITHIN AN AGENCY.** See s. 230.28 (1) (d), Stats., and s. ~~ER-MRS 14.03 (1)~~, ss. ER-MRS 14.03 (1) and 15.055.

**SECTION 98.** ER-MRS 16.035 (1) is amended to read:

**ER-MRS 16.035 (1) GENERAL.** An employee who, prior to July 1, 2016, has separated from a position in the classified service without misconduct or delinquency or who has accepted a voluntary demotion for personal reasons shall be eligible for reinstatement in any agency for 5 years from the date of such separation or demotion.

**SECTION 99.** ER-MRS 16.035 (3m) is created to read:

**ER-MRS 16.035 (3m) LAYOFF.** See s. ER-MRS 22.11.

**SECTION 100.** ER-MRS 16.04 (1) (b) and (c) are amended to read:

**ER-MRS 16.04 (1) (b) *Reinstatement to a different employing unit in the same agency.*** A person who is reinstated to a different employing unit in the same agency from which the person earned reinstatement eligibility may be required by the appointing authority to serve a probationary period. If not required to serve a probationary period, the employee shall immediately attain permanent status in class. If required to serve a probationary period, the employee may be terminated from the service by the appointing authority during the probationary period without the right of appeal. However, if the probation is terminated without misconduct, following reinstatement as a result of layoff, the employee shall continue to have reinstatement eligibility under s. ER-MRS 22.11.

**(1) (c) *Reinstatement to the same employing unit.*** A person shall not be required to serve a probationary period when reinstated to the same employing unit from which the person earned reinstatement eligibility and shall immediately attain permanent status in the class, except that a probationary period may be required for reinstatement to a supervisory or management position in accordance with the provisions of s. 230.28 (4), Stats.

**SECTION 101.** ER-MRS 16.04 (2) is amended to read:

**ER-MRS 16.04 (2) SEPARATION DURING THE PROBATIONARY PERIOD.** A person who ~~separates, prior to July 1, 2016, separated~~ from a position without misconduct or delinquency while serving a probationary period may be reinstated to a position in a class in the same pay range or counterpart pay range or in a lower class than the position from which the employee separated at any time during a 5 year period from the date of separation providing the person is qualified to perform the work after the customary orientation provided to a newly hired worker in the position. The probationary time already served may be carried over by the appointing authority, except as provided in s. 230.32 (2) (b), Stats. The appointing authority shall determine the amount of carry-over at the time of the reinstatement and shall give written notice of the amount to the employee. The appointing authority shall keep a copy of that notice on file.

**SECTION 102.** ER-MRS 17.04 (3) (b), (3) (d), and (4) (a) are amended to read:

**ER-MRS 17.04 (b)** If the voluntary demotion is to a position in the same employing unit no probationary period for employment in the lower class may be required, except that a probationary period shall be required upon a voluntary demotion to a trainee position and a probationary period may be required upon voluntary demotion to a supervisory or management position in accordance with the provisions of s. 230.28 (4), Stats. If the employee is not required to serve a probationary period, the employee immediately attains permanent status in class in the class to which voluntarily demoted.

**(3) (d)** If an employee is required to serve a probationary period under par. (b) or (c), the employee may be removed from the position during the probationary period by the appointing authority without the right of appeal and shall be ~~either involuntarily transferred to a different position or reinstated~~ for which the employee is qualified in the same or counterpart pay range or pay rate at the discretion of the appointing authority. ~~If the employee is not required to serve a probationary period upon transfer or reinstatement, the employee immediately attains permanent status in class in the class to which transferred or reinstated.~~

**(4) (a)** The employee shall have no ~~restoration~~ rights to the previously held position or class.

**SECTION 103.** ER-MRS 22.025 (2) is amended to read:

**ER-MRS 22.025 (2)** Through restoration following layoff for persons with restoration rights obtained from layoff prior to July 1, 2016.

**SECTION 104.** ER-MRS 22.03 (2) is amended to read:

**ER-MRS 22.03 (2)** This chapter shall apply only to those employees not included in certified bargaining units ~~having labor agreements~~ under s. 111.825 (1)(g), Stats.

**SECTION 105.** ER-MRS 22.035 (1) (intro.) is amended to read:

**ER–MRS 22.035 Layoff group. (1)** The layoff group, within the employing unit, may be identified by, but not limited to:

**SECTION 106.** ER-MRS 22.04 (intro.) is amended to read:

**ER–MRS 22.04 Certain employees released first.** Before an employee with permanent status in class may be laid off, the appointing authority shall terminate all employees in the approved layoff group in the employing unit in which the layoff occurs ~~who are performing duties which the employee would be qualified to perform after being given the customary orientation provided to newly hired workers and who are~~ servicing an original appointment probationary period unless authorized by the director.

**SECTION 107.** ER-MRS 22.04 (1), (2), and (3) are repealed.

**SECTION 108.** ER-MRS 22.06 (1), (2), (3), and (4) are amended to read:

**ER–MRS 22.06 Procedure for making layoffs.** (1) In the layoff plan submitted to the director, under s. ER–MRS 22.05, the appointing authority shall recommend the layoff group in which the layoff is to occur. The layoff group shall reflect the staffing processes followed for included positions. Full-time and part-time positions may constitute different layoff groups. The primary order of layoff is determined by job performance. Thereafter disciplinary records, seniority, and ability are factors used to determine the order of layoff action.

(2) The appointing authority ~~may exempt from the layoff group up to 2 employees or 20%, whichever is greater, of the number of employees in the layoff group to retain employees having special or superior skills or for other purposes as determined by the appointing authority. In addition, for affirmative action purposes, as defined in s. 230.03 (2), Stats., the appointing authority may exempt, subject to the approval of the director, female, minority and employees with a disability in the layoff group. Exercise of these exemptions may be requested by the appointing authority as part of the layoff plan submitted under s. ER–MRS 22.05 will determine the order of layoff primarily based on job performance. Employees, including those on an approved leave of absence, in the layoff group, will be grouped by category of performance based on the evaluation categories established in the employee’s annual performance evaluation. To determine the most appropriate category for layoff grouping, the appointing authority will use the current year and previous 4 years.~~

(3) ~~The remaining~~ Within each performance category, the employees, plus those on an approved leave of absence, in the layoff group, shall be ranked by seniority computed on the basis of continuous service as set forth in s. ER18.02 (2) and (3), with any resulting tied cases to be ranked, relative to each other, according to their total continuous service in the approved layoff group. If, after completing this ranking, a tie still exists between 2 or more employees, continuous service of the tied employees shall be determined by age, with the oldest employee deemed to have the greatest continuous service. Disciplinary record review will consist of an employee’s disciplinary records from the current and previous 4 years. An appointing authority may request the exemption of an employee from the seniority order due to the results of the disciplinary record review. Ability is applied by requesting to retain up to 20% of the employees in the layoff group who have special or superior skills as determined by the appointing authority. ~~Employees Remaining employees~~ shall be laid off according to their continuous service ranking, with the employee with the least continuous service laid off first.

(4) With the agreement of the appointing authority, an employee with more continuous service in the layoff group may volunteer to be terminated from employment in lieu of the layoff of an employee with less continuous service, with the guarantee that the appointing authority will not challenge the volunteering employee's eligibility for unemployment compensation, ~~unless that employee later refuses a reasonable offer of reappointment.~~

**SECTION 109.** ER-MRS 22.07 is renumbered ER-MRS 22.07 (1) and amended to read:

**ER-MRS 22.07 Notice prior to layoff; appeal notice.** (1) Any employee affected by layoff shall be given written notice of the anticipated action, not less than ~~15~~ 60 calendar days prior to its effective date. If the appointing authority is provided fewer than 60 days' notice of the need for layoff, because of loss of funding or otherwise, the director may authorize a layoff notice of 30 calendar days prior to the effective date. The written notice of layoff shall, to the extent practicable, include the specific alternatives within the agency available at that time to the employee in lieu of termination. The appointing authority shall continue to keep the employee aware of new alternatives available up to the effective date of the layoff. ~~The employee shall be entitled to appeal the layoff action to the commission upon filing a written request with the commission within 30 calendar days of the effective date of the decision or within 30 calendar days after receipt of notice of the action, whichever is later. No notice of appeal or pending litigation as a result thereof, affects any determination previously or subsequently made by the appointing authority, until an order is entered by the commission, unless the order is stayed by a court of competent jurisdiction.~~

**SECTION 110.** ER-MRS 22.07 (2) is created to read:

**ER-MRS 22.07 (2)** Seven calendar days prior to the layoff effective date, the appointing authority will issue the employee a final written notice of impending layoff. The notice shall include the employee's right to grieve the layoff decision under s. 230.445, Stats. No notice of appeal or pending litigation as a result thereof, affects any determination previously or subsequently made by the appointing authority, until an order is entered by the commission, unless the order is stayed by a court of competent jurisdiction.

**SECTION 111.** ER-MRS 22.08 (intro.) and 22.08 (1) (a) (intro.) are amended to read:

**ER-MRS 22.08 Alternatives to termination from the service as a result of layoff.** If an employee with permanent status in a class has received a notice of layoff under s. ER-MRS 22.07 (1), ~~these~~ alternatives shall be available in the order listed ~~below~~ in this section until the effective date of the layoff. Employees in the same layoff group who are laid off on the same date shall have the right to exercise the following alternatives to termination from the service as a result of layoff, ~~in direct order of their seniority, most senior first~~ with the most qualified employee, as determined by the appointing authority, being offered the available vacancy first. This offer shall be subject to the criteria for a reasonable offer of appointment under s. ER-MRS 22.09:

**ER-MRS 22.08 (1) TRANSFER.** (a) All employees who have received a notice of layoff have the right to transfer: within the agency to any vacancy in the same or counterpart pay range for which the employee is qualified to perform the work after being given the customary orientation provided to newly hired workers in the position.

**SECTION 112.** ER-MRS 22.08 (1) (a) 1., (1) (a) 2., (b) 3., and (c) are repealed.

**SECTION 113.** ER-MRS 22.08 (2) (title) and (2) (intro.) are amended to read:

**ER-MRS 22.08 (2) DEMOTION AS A RESULT OF LAYOFF.** If no transfer under sub. (1) is available and if there is a vacancy available within the agency for which the employee is qualified to perform the work after being given the customary orientation provided to newly hired workers in such positions, ~~in a higher level position than could be obtained through displacement under sub. (3),~~ an appointing authority shall offer the employee a demotion to that vacancy. This offer shall be subject to the criteria for a reasonable offer of appointment under s. ER-MRS 22.09 and the following:

**SECTION 114.** ER-MRS 22.08 (2) (a) (intro.) and (2) (a) 1. are consolidated, renumbered ER-MRS 22.08 (2) (a) and amended to read:

**ER-MRS 22.08 (2) (a)** ~~*Within an agency.* An employee may demote to a position in a lower classification in the same agency in lieu of being terminated as a result of layoff.~~ 1. An employee demoted under this sub. subsection immediately attains permanent status in class in the class to which the employee is demoted, except that an employee who is serving a promotional probationary period must complete that probationary period in the new position if that position is at a higher level than the position from which the employee promoted. ~~demoted to a position in a different employing unit of the same agency may be required to serve a probationary period in accordance with s. 230.28 (1) (am) or (4), Stats., as applicable. During this probationary period, the employee may be removed from the position without the right of appeal and restored to his or her former position or transferred to a different position. If the employee's former position has been abolished, the employee shall be given consideration for any vacancy within the agency in the same or counterpart pay range for which the employee is qualified to perform the work after being given the customary orientation provided for newly hired workers. If no such vacancy exists, the employee shall be treated as if he or she has been restored to the previous position, and the provisions for making layoffs under this chapter shall apply.~~

**SECTION 115.** ER-MRS 22.08 (2) (a) 2. and (2) (a) 3. are renumbered ER-MRS 22.08 (2) (b) and (c) and amended to read:

**ER-MRS 22.08 (2) (a) 2. (b)** For pay provisions regarding an employee who is demoted by the appointing authority, as a result of a layoff to the highest level vacancy available for which the employee is qualified, see s. ER 29.03 (8) (c) or the compensation plan.

~~(2) (a) 3. (c)~~ For pay provisions regarding an employee who chooses, with the approval of the appointing authority, to be demoted as a result of layoff to a vacancy which is at a lower level than other available vacancies to which the employee could be demoted or transferred under sub. (1), see s. ER 29.03 (8) (d) 1. or the compensation plan.

**SECTION 116.** ER-MRS 22.08 (2) (b) (intro.), (2) (b) 1., (2) (b) 2., and (3) are repealed.

**SECTION 117.** ER-MRS 22.09 (1), (2) (c), and (2) (e) are amended to read:

**ER–MRS 22.09 Failure to accept reasonable offer of appointment. (1)** An employee who has been notified of layoff and fails to accept a reasonable offer of permanent appointment within the agency within ~~5~~ 2 work days of the offer or who, upon acceptance, fails to be available for work within 5 work days after acceptance forfeits any further rights to an appointment under ss. ER–MRS 22.08 and 22.10.

(2) (c) The assigned shift or number of work hours required does not vary substantially from the number of work hours previously worked.

(2) (e) The pay range of the position offered is no more than 3 pay ranges or counterpart pay ranges, or one broadband pay range, lower than the pay range of the position from which the employee was laid off.

**SECTION 118.** ER-MRS 22.10 is repealed and recreated to read:

**ER–MRS 22.10 Restoration rights and conditions.** An employee laid off prior to July 1, 2016 maintains the restoration rights that existed at the time the employee was laid off.

**SECTION 119.** ER-MRS 22.11 (1) is created to read:

**ER–MRS 22.11 Reinstatement eligibility and conditions. (1)** An employee laid off prior to July 1, 2016 maintains the reinstatement eligibility that existed at the time the employee was laid off.

**SECTION 120.** ER-MRS 22.11 (1m) is repealed.

**SECTION 121.** ER-MRS 22.11 (2) is repealed and recreated to read:

**ER-MRS 22.11 (2)** Any person who has held a position and obtained permanent status in class under the civil service law and rules and who is laid off on or after July 1, 2016, is eligible for reinstatement in a position having a comparable or lower pay rate or range for which such person is qualified for a 3-year period from the date of the layoff.

**SECTION 122.** ER-MRS 22.11 (2m) is amended to read:

**ER-MRS 22.11 (2m)** A person who is reinstated to an employing unit or agency other than the one from which the person earned reinstatement eligibility may be required to serve a probationary period. See s. ER–MRS 16.04 (1) (a).

**SECTION 123.** ER-MRS 27.02 (5) is amended to read:

**ER-MRS 27.02 (5)** “Periods of disaster” or “periods of national emergency” mean periods of time when, as a result of natural disasters, epidemics or war, existing merit system techniques and procedures for recruitment and ~~examination~~ selection are unable to provide an adequate number of eligible applicants to meet the needs of the service.

**SECTION 124.** ER-MRS 27.03 (1) is amended to read:

**ER-MRS 27.03 (1)** An agency has set aside positions for employment opportunities to provide training and permanent employment to individuals with a severe disability and it has been determined that the ~~examination method~~ selection procedure traditionally used to ~~examine for similar vacancies~~ would measure the applicants' disability instead of their ability, aptitude or skill, or whatever other factor the ~~test selection procedure~~ purports to measure.

**SECTION 125.** ER-MRS 27.05 (3) is amended to read:

**ER-MRS 27.05 (3)** DURING PERIODS OF DISASTER OR NATIONAL EMERGENCY. During periods of disaster or national emergency, a critical shortage of qualified applicants in the labor supply occurs and existing merit system techniques and procedures for recruitment and ~~examination~~ selection do not provide an adequate number of eligible applicants to meet the needs of the service.

**SECTION 126.** ER-MRS 27.06 (4) and (5) are amended to read:

**ER-MRS 27.06 (4)** ~~Examination~~ Selection procedure waivers; and

(5) Seeking the creation of emergency classifications and suitable salary ranges for the classifications, which may be entirely new classes or the counterpart of existing classes except for qualification requirements. Emergency classifications created and positions filled under this subsection shall be abolished 6 months after the condition of disaster or emergency ceases to exist. The ~~examination methods~~ selection procedures to be used in these emergency situations may include traditional ~~testing assessment~~ instruments ~~or one or more of the following:~~ including evaluations of training, experience or general qualifications. The ~~testing~~ selection method may be either competitive or noncompetitive in whole or in part.

**SECTION 127.** ER-MRS 30.03 (2) is repealed.

**SECTION 128.** ER-MRS 30.06 (1) and (3) are amended to read:

**ER-MRS 30.06 Career executive trial period. (1)** Upon initial appointment to the career executive program, a career executive employee, prior to attaining permanent status, shall serve a 2 year continuous service trial period. ~~However, one year, or any portion thereof, may be waived by the appointing authority at any time after a one year continuous service trial period has been served after both the employee and the director have been notified in writing.~~ If an employee transfers to a different agency while serving a trial period, the trial period shall be ~~extended to provide for 6 continuous months of service in~~ restarted at the receiving agency. Upon successful completion of the trial period, a career executive employee attains permanent status as a career executive. Termination during a trial period will be in accordance with s. ER-MRS 30.11. Except as provided in ~~sub. (3) and~~ s. ER-MRS 30.11, career executive employees shall be required to complete only one trial period regardless of subsequent movement to other career executive positions, including movement between agencies.

(3) ~~At the discretion of the appointing authority in the receiving agency, a career executive employee may be required to serve up to a 6 month trial period upon movement between agencies. An employee who has completed a trial period, upon transfer to a new agency, may be required by the appointing authority at~~



the receiving agency to serve a permissive probation of up to 12 continuous months. At any time, during the trial period permissive probationary period, the receiving agency may terminate remove the employee from the career executive position without right of appeal. Upon termination, the employee shall be returned to the sending agency and be restored to the employment status that existed at the time of movement to the receiving agency. Any other removal or discharge during the probationary period shall be subject to s. 230.34, Stats. Termination of the permissive probationary period shall be in accordance with ch. ER-MRS 13.

**SECTION 129.** ER-MRS 30.07 (2) is amended to read:

**ER-MRS 30.07 (2)** When an appointing authority determines that the agency's program goals can best be accomplished by reassigning an employee in a career executive position within the agency to another career executive position in the same or lower classification level for which the employee is qualified and when the reassignment creates a subsequent vacancy for open recruitment consistent with s. 230.24, Stats., the appointing authority may, upon approval of the director, make such reassignment, provided it is reasonable and proper. All such reassignments shall be made in writing to the affected employee, with the reasons stated therein.

**SECTION 130.** ER-MRS 30.07 (3) is created to read:

**ER-MRS 30.07 (3)** An employee may not be reassigned between agencies under the provisions of s. 230.24 (4), Stats. while serving the trial period.

**SECTION 131.** ER-MRS 30.08 is amended to read:

**ER-MRS 30.08 Career executive transfer.** ~~Transfer~~ Voluntary transfer of career executive employees shall be in accordance with ch. ER-MRS 15, except that where ch. ER-MRS 15 conflicts with this chapter, the provisions of this chapter shall apply. ~~Career executive employment reinstatement and restoration shall be in accordance with s. ER-MRS 30.11.~~

**SECTION 132.** ER-MRS 30.10 (1) and (2) are amended to read:

**ER-MRS 30.10 Career executive employee redress rights. (1)** Career executive program employment grants to each employee thereunder rights and privileges of movement between positions within the program ~~without examination~~ and additional competition as determined by the director. Career executive reassignment and career executive voluntary movement to a position allocated to a classification assigned to a lower or higher pay range shall not be considered a demotion, or a promotion, respectively, and the statutory appeal rights provided thereto shall not apply.

**(2)** Career executive reassignment by the appointing authority, as defined under s. ER-MRS 30.07 (1) and referred to in sub. (1), is authorized ~~without limitation~~ when the reassignment creates a subsequent vacancy for open recruitment consistent with s. 230.24, Stats. and upon approval of the director. However, an employee with permanent status in the career executive program may appeal the reassignment to the Wisconsin Employment Relations Commission if it is alleged that such reassignment either constitutes an unreasonable and improper exercise of an appointing authority's discretion or is prohibited by s. 230.18, Stats.

**SECTION 133.** ER-MRS 30.105 is amended to read:

**ER-MRS 30.105 Layoff of career executive employees.** Layoff of career executive employees shall be in accordance with ch. ER-MRS 22, except that where ~~ch. ER-MRS 15~~ ch. ER-MRS 22 conflicts with this chapter, the provisions of this chapter shall apply. ~~Restoration from layoffs shall be in accordance with s. ER-MRS 22.10.~~

**SECTION 134.** ER-MRS 30.11 (title) is repealed and recreated to read:

**ER-MRS 30.11 (title) Re-employment following termination of trial period.**

**SECTION 135.** ER-MRS 30.11 (1) (intro.), (1) (a), (1) (b), and (2) are amended to read:

**ER-MRS 30.11 (1)** ~~If the a career executive appointment is terminated prior to the time that the employee attains permanent status~~ completion of a trial period, the employee shall have the same reemployment rights and eligibility as an employee in a non-career executive position who is terminated prior to completing a probationary period. In addition, an employee with permanent status in a ~~class~~ non-career executive position who is appointed to a career executive position in an agency referred to as the “trial” agency, which is other than the agency, referred to as the “status” agency, in which the employee was serving with permanent status in class, and the termination was without misconduct or delinquency, the employee shall have mandatory restoration rights to be re-employed in a position at or closest to the same or counterpart pay range level in which the employee last achieved permanent status in class, as follows:

(1) (a) Within the “status” agency, if terminated during the first ~~6~~ 12 months of the trial period, and

(1) (b) Within the “trial” agency, if terminated after the first ~~6~~ 12 months of the trial period.

(2) If the position to which the employee is to be ~~restored~~ re-employed has been abolished, the employee shall be given consideration for any other vacant position in the same or counterpart pay range for which the employee is qualified to perform the work after being given the customary orientation provided for newly hired workers. If no such vacant position exists, the employee shall be treated as if he or she had ~~been restored to re-employed in~~ the previous position and the provisions for making layoffs under ch. ER-MRS 22 shall apply.

**SECTION 136.** ER-MRS 30.11 (3) is repealed.

**SECTION 137.** ER-MRS 32.01 is amended to read:

**ER-MRS 32.01 Acting assignments.** When a position is vacant and the needs of the service require the performance of the duties of that position, a permanent employee may be temporarily assigned to perform those duties. When the employee intends to compete for the vacant position, the appointing authority will ensure an exceptional competitive advantage is not afforded for the position by virtue of the acting assignment.

**SECTION 138.** ER-MRS 32.02 is amended to read:

**ER-MRS 32.02 Approval of the director.** The appointing authority shall submit a written request to make acting assignments which exceed ~~45~~ 60 calendar days in length to the director for approval. This request shall state the anticipated duration of the acting assignment and provide such additional information as the director requires. Acting assignments not to exceed ~~45~~ 60 calendar days shall be made at the discretion of the appointing authority.

**SECTION 139.** ER-MRS 32.03 (2) is amended to read:

**ER-MRS 32.03 (2)** If the appointing authority is unable to make a permanent appointment to that position within that 6-month period, a written request for approval to extend the acting assignment shall be submitted to the director. The extension request shall indicate the expected date by which a permanent appointment shall be made and include additional information as required by the director.

**SECTION 140.** ER-MRS 34.08 (3) and (4) are amended to read:

**ER-MRS 34.08 (3)** Employees so terminated do not have layoff, or restoration ~~or displacement~~ rights to any permanent, seasonal or sessional position unless those rights were previously earned in a permanent, seasonal, or sessional position and are being applied within three years of the date of separation from that position or prior to the expiration of an approved leave of absence.

**(4)** Employees so terminated do not have reinstatement eligibility to any permanent, seasonal or sessional position unless the eligibility was previously earned in a permanent, seasonal, or sessional position and is being applied within five years of the date of separation from that position ~~or prior to the expiration of an approved leave of absence~~ if separated prior to July 1, 2016, or within 3 years of layoff on or after July 1, 2016.

**SECTION 141:** 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.), Wis. Stats.