

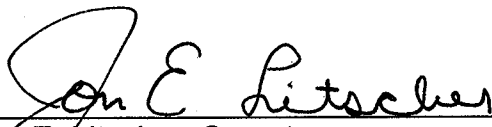
# Clearinghouse Rule 97-005

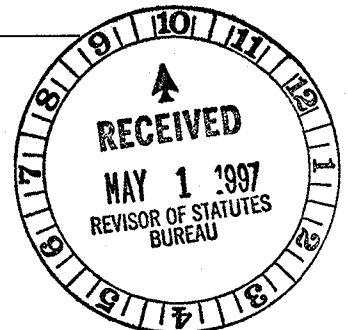
STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF EMPLOYMENT RELATIONS )

I, Jon E. Litscher, Secretary of the Department of Employment Relations and custodian of the official records, certify that the annexed rules, relating to the creation of a catastrophic leave program that permits classified nonrepresented employees to donate certain types and amounts of leave credits to other classified nonrepresented employees who have been granted an unpaid leave of absence due to a catastrophic need, and removal of the reference to Good Friday as a legal holiday for state employees, were duly approved and adopted by this Department on the 1st day of May, 1997.

I further certify that this copy has been compared by me with the original on file in this Department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand as Secretary of the Department of Employment Relations at 137 E. Wilson Street in the city of Madison, this 1st day of May, 1997.

  
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Jon E. Litscher, Secretary  
Department of Employment Relations



7-1-97  
97-005

**ORDER OF THE SECRETARY**  
**OF THE DEPARTMENT OF EMPLOYMENT RELATIONS**  
**ADOPTING RULES**

AN ORDER to amend ER 18.01(5) and 18.04(2); and to create ER 18.15, relating to the creation of a catastrophic leave program that permits classified nonrepresented employees to donate certain types and amounts of leave credits to other classified nonrepresented employees who have been granted an unpaid leave of absence due to a catastrophic need, and removal of the reference to Good Friday as a legal holiday for state employees.

**ANALYSIS PREPARED BY THE DEPARTMENT OF EMPLOYMENT RELATIONS**

The Department's authority to promulgate these rules is found in s. 230.04 (5), Stats. The rules implement the powers and duties of the Secretary under s. 230.04 (1) and 230.35 (2r), Stats.

Current statutes and administrative rules provide specified amounts of paid annual leave, personal and legal holidays, sick leave, and leaves of absence without pay to classified nonrepresented state employees for use by the employee. Situations have occurred where an employee has had to use all available paid leave and then take an unpaid leave of absence due to a catastrophic need of the employee or family member and has consequently experienced a severe financial crisis. Although fellow employees were willing to assist the employee in need by donating their own leave, these donations were not possible due to a lack of authority for such donations in the statutes or administrative rules. 1995 Wisconsin Act 37 provides the authority (in s. 230.35 (2r)) for the Secretary of the Department of Employment Relations to establish a catastrophic leave program, by rule, which would address such situations.

The proposed rule creates a catastrophic leave program for classified nonrepresented state employees. It contains eligibility criteria which an employee must meet before being considered an eligible donor or recipient. Under the program, donors may donate certain types and amounts of leave credits to recipients who have been granted an unpaid leave of absence due to a catastrophic need, as defined under the rule. The rules specify the conditions under which leave may be donated by a donor and used by a recipient.

Appointing authorities will be responsible for implementing and administering the catastrophic leave program within the individual agency in accordance with policies specified in this rule.

Similar catastrophic leave programs are currently provided to the majority of state employees covered by collective bargaining agreements under subch. V of ch. 111, Stats.

The rule also contains a technical amendment to s. ER 18.04(2) to remove the reference to Good Friday which is no longer recognized as a legal holiday for state employees under s. 230.35 (4)(a), Stats., pursuant to enactment of 1995 Wisconsin Act 178.

## **TEXT OF RULE**

### **SECTION 1. ER 18.01(5) is amended to read:**

ER 18.01 (5) ~~“Leave~~ Except as provided in s. ER 18.15, “leave credits” mean means earned but unused annual leave, termination leave, sabbatical leave, sick leave, personal and legal holiday time, and holiday compensatory time off. ~~Leave credits do~~ “Leave credits” does not include compensatory time off credits earned for working overtime.

### **SECTION 2. ER 18.04(2) is amended to read:**

ER 18.04(2)(a) ~~Equivalent~~ Employes shall receive equivalent time off when the legal holiday falls on the employe’s regularly scheduled day off.

(b) ~~Compensatory~~ Subject to subds. 1. to 5., employes shall receive compensatory time off at a rate of one and one-half times the number of hours worked, or a cash payment at a rate of one and one-half times the employe’s regular rate for each hour the employe is assigned to work on a holiday enumerated in s. 230.35(4)(a)1., ~~1m. and 3. to 9., Stats., and the 5th through the 8th hours worked on Good Friday.~~ In addition, such working employe also receives the holiday off at a later date.

### **SECTION 3. ER 18.15 is created to read:**

ER 18.15 CATASTROPHIC LEAVE. (1) DEFINITIONS. In this section:

(a) “Catastrophic need” has the meaning given in s. 230.35(2r)(a), Stats.

(b) “Donor” means any person meeting the eligibility requirements under sub. (3).

(c) “Employe” means any person who receives remuneration for services rendered to the state under an employer-employe relationship in the classified service, except limited term employes and employes covered by a collective bargaining agreement under subch. V of ch. 111, Stats.

(d) “Leave credits” means earned but unused termination leave, sabbatical leave, personal and legal holiday time, and anticipated and earned but unused annual leave, subject to s. 230.35(1)(b), Stats. “Leave credits” does not include sick leave credits or compensatory time off credits.

(e) “Recipient” means any person meeting the eligibility requirements under sub. ( 2).

(2) DETERMINING RECIPIENT ELIGIBILITY. To be an eligible recipient, an employe shall satisfy all of the following conditions:

(a) Complete the first 6 months of an original probationary period in a permanent position or 6 months in a project position.

(b) Be on approved unpaid leave due to a catastrophic need of the employe or an immediate family member. The unpaid leave may be taken in noncontinuous increments.

(c) Anticipate an approved unpaid leave of at least 160 hours duration. The 160 hours shall be prorated for seasonal, sessional, school year, and part-time employes.

(d) Provide medical certification of the catastrophic need if required by the appointing authority.

(e) Use all available sick leave credits earned under ss. 36.30 and 230.35(2), Stats.

(f) Have a leave balance of no more than 16 hours of combined accrued annual leave, including sabbatical or termination leave, and holiday credits.

(g) May not be receiving other salary replacement income.

(h) Be approved as an eligible recipient by the appointing authority or a designee.

(3) DETERMINING DONOR ELIGIBILITY. To be an eligible donor, an employe shall satisfy all of the following conditions:

(a) Complete the first 6 months of an original probationary period in a permanent position or 6 months in a project position.

(b) Have at least one year of continuous service.

(4) LEAVE CREDIT DONATIONS AND USAGE. (a) 1. Subject to subds. 2. to 5., a donor may donate leave credits to one or more recipients in any calendar year.

2. The total amount of leave credits donated by a donor to all recipients in any calendar year may not exceed 24 hours. The 24 hour limit shall be prorated for seasonal, sessional, school year, and part-time employes.

3. A donor may donate leave credits only to recipients within the same employing unit, except that donations may be made to recipients in different employing units in the same agency with the approval of the appointing authority.

4. Leave credit donations shall be in whole hour increments and on an hour-for-hour basis irrespective of the base hourly rates of the donor and recipient.

5. Leave credits donated in excess of the maximum number of leave credits required for a recipient shall be returned to the donor.

(b) A recipient may not receive more than 640 hours of donated leave credits during any calendar year. The 640 hour limit shall be prorated for seasonal, sessional, school year, and part-time employes. The donated leave credits shall be used in order of receipt.

(c) In a biweekly pay period, a recipient may not use more than 80 hours of leave or the number of hours consistent with the recipient's regularly scheduled hours per pay period at the time the unpaid leave commenced, whichever is less.

(d) Leave credits earned by a recipient shall be used prior to using donated leave credits, subject to subs. (2)(e) and (f). The appointing authority shall determine the increments in which leave credits are deducted.

(e) If a recipient or donor no longer meets the definition of employe under s. ER 18.15(1)(c), moves to another agency, or separates from employment, all unused donated leave credits shall be returned to the donor.

(f) Leave credits donated to a recipient are not subject to limitations on end of year carryover of leave credits under ss. ER 18.02(6)(b), and ER 18.04(4)(c).

(g) Donors shall have the remainder of the calendar year and the first 6 months of the ensuing calendar year in which to use previously donated leave credits returned to the donor during the last 6 months of the calendar year.

(5) APPEAL PROVISIONS. No employe may grieve under an agency's grievance procedure any appointing authority's decision relating to a catastrophic leave program or appeal any such decision to the commission under s. 230.44 or 230.45(1)(c), Stats.

#### **EFFECTIVE DATE**

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2)(intro), Stats.

#### **CONTACT PERSON**

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