



# EMPLOYER BULLETIN

Employer Communication Center  
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- **Good-Faith Termination of Employment**
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The Department of Employee Trusts Funds (ETF) has received several inquiries regarding terminations and the break in service required before returning to Wisconsin Retirement System (WRS) eligible employment. It is important that all employers become familiar with WRS rules governing participation and coverage provisions to ensure accurate reporting and to avoid any potentially negative effects on an employee's benefits. The guidelines outlined below will assist you in evaluating when the good-faith termination and the break in service requirements have been satisfied.

## Good-Faith Termination of Employment

Federal law requires a good-faith termination of employment in order to qualify for a retirement benefit distribution from a qualified retirement plan, such as the WRS. Wis. Admin. Code ETF § 10.08 defines the conditions that constitute a valid termination and applies to terminations of WRS participating employment that occur on or after July 1, 1998.

A valid termination must meet all the following conditions:

- The employee ceases to render compensable services.
- The employee and employer comply with the employer's policy for voluntary termination.
- As of the termination date, the employer has no "rights" to any future services to be rendered by the employee that meet the qualifications for WRS coverage for which compensation has or will be paid. This means the rule:
  1. Prohibits an enforceable agreement as of the termination date for **any** future compensable employment with the same WRS participating employer, regardless of

whether that employment would meet WRS participation standards.

2. Prohibits an enforceable agreement as of the termination date for future employment with a different WRS participating employer that would meet WRS participation standards.

**Note:** This rule does not prohibit an agreement as of the termination date for future employment with a different WRS employer that does not meet WRS participation standards nor prohibit an agreement prior to termination for purely voluntary future services for which no compensation has been or will be paid.

- The employee is treated consistently with the status of a former employee.
- The terminated employee has no authority to act as a representative of the employer or exercise any authority/control over employees of the employer, except as provided above.
- The employer has paid the employee any accumulated benefits that are customarily paid to employees at the time of termination.

An agreement to return to work entered into soon after an alleged termination may call into question whether a good-faith termination of employment has occurred. In the event ETF discovers or is notified of a possible invalid termination, the employer and employee must demonstrate that the termination was made in good faith. Substantial changes in duties after rehire, re-employment with a different WRS employer, and the timing of discussions concerning re-employment are among the factors that would be considered by ETF in ultimately determining whether a good-faith termination had occurred.

If ETF determines that the conditions of a good-faith termination were not met, the result is that the employee did not meet the legal minimum break in service requirements. The consequences of this decision have the following effect on the employer and employee:

- The retirement benefit is considered paid in error. If the annuitant is receiving a monthly retirement benefit, the monthly payments will be discontinued and ETF will collect any monthly payments paid in error. ETF will also collect any lump sum paid in error.
- Once the determination is made that the benefit has been paid in error, the employer is required to report the hours and earnings that would have been reported had the termination not been reported. ETF will assess interest penalties if the earnings' adjustment is not part of the current processing year.
- Other ETF- administered benefits such as Health, Life, and Income Continuation Insurance may also be affected. In some cases, insurance coverage may be lost, as Wisconsin Statute Chapter 40 does not allow enrollment due to employer error.
- When the employee reapplies for a subsequent benefit, termination of the current employment is required and the employee must reapply for the retirement benefit.

### Required Break in Service

Employees who terminate WRS-covered employment are ineligible for any benefit (including

retirement annuities, lump-sum retirement benefits, and separation benefits) per Wis. Stat. § 40.23 (1) (a) 1, if they return to WRS eligible employment before the “latest” of the following dates:

1. The day after the annuity effective date, or
2. The 31st day after termination of participating employment, or
3. The 31st day after the ETF receives the benefit application.

#### Example of an employee who meets the 30-day minimum break in service:

Employee terminated on June 30, 2006; the annuity effective date is July 1, 2006; and the benefit application was received by ETF on July 3, 2006. The employee returns to work on August 8, 2006.

The day after the annuity effective date is July 2, 2006; the 31st day after the termination date is August 1, 2006; and the 31st day after ETF's receipt of the benefit application date is August 3, 2006. The latest date is ETF's receipt of the benefit application and the employee returned to work after that date.

#### Example of an employee who does not meet the 30-day minimum break in service:

Employee terminates on June 6, 2006; annuity is effective June 7, 2006; and the benefit application was received on June 28, 2006. The employee returns to work on July 24, 2006.

The day after the annuity effective date is June 8, 2006; the 31st day after the termination date is July 7, 2006; and the 31st day after ETF's receipt of the benefit application date is July 29, 2006. The latest date is ETF's receipt of the benefit application and the employee returned to work prior to that date. The employee has not met the minimum 30-day break

### Rehired Annuitants

Rehired annuitants who have fulfilled the required break in service and who meet the eligibility criteria for participation under the WRS may choose to return to active WRS participation by completing a *Rehired Annuitant Election* (ET-2319) form.

**Note:** This is the only time an employee may choose to participate or not participate in the WRS upon meeting the WRS eligibility requirements.

Rehired Annuitant elects to return to active WRS coverage:

1. Rehired annuitant completes a *Rehired Annuitant Election* (ET-2319) electing to participate in the WRS as an active employee.
2. Their annuity is cancelled until the employee again retires and reapplies for an annuity.
3. The employee earns creditable service.
4. The employee is eligible for ETF administered insurance benefits offered by the employer.
5. Retirement contributions are due on the employee's earnings.

Rehired Annuitant elects not to return to active WRS coverage:

1. Rehired annuitant completes a *Rehired Annuitant Election* (ET-2319) electing not to participate in the WRS as an active employee.
2. Their annuity continues.
3. The employee does not earn creditable service.
4. The employee is not eligible for ETF administered insurance benefits offered by the employer.
5. Retirement contributions are not due on the employee's earnings.
6. The employee may elect active WRS coverage at any future time, as long as they meet the eligibility requirements by filing a new *Rehired Annuitant Election* (ET-2319)

Additional information on valid terminations and employment of annuitants can be found in Chapters 14 and 15 of the *WRS Administration Manual* (ET-1127 Rev. 07/2004).

For questions regarding this *Bulletin*, please contact the Employer Communication Center toll-free at (888) 681-3952 or locally at (608) 264-7900 or via e-mail at [etf.descomm@etf.state.wi.us](mailto:etf.descomm@etf.state.wi.us).

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