



# Employer *Bulletin*

Employer Communication Center (608) 264-7900 Toll free: 1-888-681-3952 <http://etf.wi.gov>

## Educational Bulletin: Rehired Annuitants

The Department of Employee Trust Funds (ETF) routinely receives inquiries from employers regarding employer reporting requirements for the hiring of WRS annuitants, or “rehired annuitants.” These inquiries often come from an employer wanting to reduce personnel expenses associated with the required retirement contributions for employees who have reached minimum retirement age.

**The intent of this bulletin is to stress the two requirements employers must be aware of when rehiring WRS annuitants.** 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 whether all requirements of a valid termination and minimum break in service have been satisfied and the possible consequences if these conditions are not met.

Prior to receiving a WRS annuity and subsequently returning to WRS eligible employment, annuitants must:

1. meet all conditions of a valid termination, as set forth in Wis. Admin Code ETF 10.08 (2); and
2. fulfill a minimum break in service as set forth in Wis. Stat. § 40.23 (1) (a) 1.

### Annuitant Option

Rehired WRS annuitants who have fulfilled the proper termination and minimum break in service requirements **and** meet the eligibility criteria for participation under the WRS, may elect to participate or not participate in the WRS. The employer must advise the employee of this right to elect WRS coverage and each rehired annuitant should be made aware of the impact on life and health insurance coverage, if applicable. The employer and rehired annuitant must complete the *Rehired Annuitant Election* form (ET-2319), to inform ETF of the rehired annuitant’s choice to either elect or not elect WRS coverage.

In the event a rehired annuitant elects to return to active WRS coverage, their WRS annuity is cancelled until the employee again terminates employment and reapplies for an annuity. Once the election to participate is made, the rehired annuitant’s WRS account is reestablished, they earn creditable service for their new employment, and are eligible for ETF-administered insurance benefits offered by the employer. Retirement contributions are due on the employee’s earnings.

Should the annuitant elect not to return to active WRS coverage, the annuity continues, no creditable service is earned, the employee is ineligible for active ETF-administered insurance, and no WRS retirement contributions are due. Though initially declining WRS participation, an election to participate can be made by the rehired annuitant at any time in the future. When hiring a new or former employee, employers should perform a WRS previous service check to determine whether the employee is currently receiving an annuity from the WRS (refer to Chapter 23 of the *WRS Administration Manual*, ET-1127, for more information regarding previous service checks).

## Required Conditions to be Eligible for a Retirement or Separation Benefit

In order for an employee to receive a WRS benefit (including retirement annuities, lump-sum retirement benefits, and separation benefits) two requirements must be met.

### 1. All Required Conditions of a Valid Termination

A termination, whether voluntary or involuntary, must be made with the good-faith intent of ending the employee-employer relationship. A valid termination, for purposes of establishing eligibility to receive benefits (including retirement annuities, lump-sum retirement benefits, and separation benefits) under Wis. Stat. § 40.23 (1) (a) 1., must meet all the conditions set forth in Wis. Admin. Code ETF 10.08 (2).

- The employee ceases to render compensable services.
- The employee and employer comply with the employer's policies 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 :
  - There cannot be an enforceable agreement as of the termination date for any future WRS compensable employment with the same WRS employer, regardless of whether that employment would meet WRS participation standards.
  - There cannot be an enforceable agreement as of the termination date for future employment with a different WRS employer that would meet WRS participation standards.
  - 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.

**Note:** Contracts or agreements for WRS employment entered into during the minimum break in service period bring into question whether the termination was done in "good-faith". To ensure compliance with federal IRC § 401(a), ETF may investigate situations where a contract or agreement was entered into during the minimum break in service period.

### 2. 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:

- The day after the annuity effective date.
- The 31st day after termination of participating employment.
- The 31st day after ETF receives the benefit application. The employee's annuity or lump-sum benefit will be canceled if the return to WRS-eligible employment occurs before this required break in service is fulfilled.

## Consequences of Required Conditions Not Being Met

If the minimum break in service or any required condition of a valid termination is not met, the termination is not in "good faith" and the member is potentially ineligible for their benefits.

ETF may investigate the termination of any WRS employee to ensure compliance with federal IRC § 401(a). During an investigation, the burden of demonstrating that a termination was done in “good-faith” and that all termination requirements were met will fall on the employer and rehired employee. A determination by ETF that the conditions of a “good-faith” termination or minimum break in service were not met, will have the following effect on the employer and employee.

- Any retirement or separation benefit will be considered paid in error. If the rehired annuitant is receiving a monthly retirement benefit, the monthly payment will be discontinued, the rehired annuitant’s WRS account will be reestablished, and ETF will collect monthly payments paid in error. ETF will also collect any lump sum retirement and separation benefits paid in error.
- The employer must reverse the termination reported and report the hours of service and earnings that would have been reported had the termination not been reported. If the termination occurred in a prior calendar year, ETF will assess interest on the contributions due 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 and in some cases, insurance coverage may be lost.

## Summary

Additional information regarding rehired annuitants can be found in Chapters 14 and 15 of the *WRS Administration Manual* (ET-1127). This manual can be found on the ETF Internet site at [etf.wi.gov](http://etf.wi.gov) under the Employer Tab.

For questions regarding this Employer Bulletin, please contact the Employer Communication Center toll-free at (888) 681-3952 or locally at (608) 264-7900.

The Department of Employee Trust Funds does not discriminate on the basis of disability in the provision of programs, services, or employment. If you are speech, hearing or visually impaired and need assistance, call the Wisconsin Relay Service at 7-1-1 or 1-800-947-3529 (English) 1-800-833-7813 (Español). We will try to find another way to get the information to you in a usable form.

This *Employer Bulletin* is published by the Wisconsin Department of Employee Trust Funds. Questions should be directed to contact persons listed in the Bulletin, or to the Division of Retirement Services (DRS). Call Jean Gilding, DRS administrator, at (608) 266-1210. Employer agents may copy this Bulletin for further distribution to other payroll offices, subunits or individuals who may need the information. Copies of the most recent Employer Bulletins are available on our Internet site at the following URL: <http://etf.wi.gov/employers.htm>

Wisconsin Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931; <http://etf.wi.gov>.