



Employer *Bulletin*

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Legislative Audit Bureau Conducting Audit of Rehired Annuitants

The Joint Legislative Audit Committee, at its December 8, 2011 hearing, approved an audit of Wisconsin Retirement System (WRS) rehired annuitants. The audit will be conducted by the Legislative Audit Bureau (LAB), a non-partisan legislative service agency created to assist the Legislature in maintaining effective oversight of state operations. This audit stems from concerns raised about the extent to which employers participating in the WRS have employed rehired annuitants, the circumstances under which some of these individuals were rehired, whether it is cost effective to employ rehired annuitants, and the general practice of employing rehired annuitants.

This audit will be focused on:

- Determining the extent to which individuals retired in recent years from employers participating in the WRS, began collecting annuities, and were subsequently rehired by participating employers, including a review of where they were employed before retirement and after being rehired, the length of time that elapsed between retirement and being rehired, their position classifications before retirement and after being rehired, the length of time they were employed after being rehired, and their compensation levels before retirement and after being rehired;
- Determining whether participating employers adhered to legal and other requirements when rehiring annuitants;
- Determining the reasons participating employers rehired annuitants, rather than hiring non-annuitants, and the actual or expected duration of their re-employment.

Please be aware that employers may be contacted by the Department of Employee Trust Funds (ETF) and/or LAB to provide any and all information required by the LAB to assist with this audit.

Rehiring WRS Annuitants Requires a Good-Faith Termination

When hiring or rehiring a WRS annuitant, you must ensure you are complying with state statutes and administrative code provisions. To do otherwise may risk invalidating the WRS benefit of the annuitant being hired.

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 Wisconsin Administrative Code ETF 10.08 (2), **and**
2. Fulfill a minimum break in service as set forth in Wis. Stat. § 40.23 (1) (a) 1.

First and foremost, there must be a valid, good-faith termination of employment. Wis. Admin. Code 10.08 (2), specifies that regardless of “[w]ether the termination is a voluntary termination by the employee or an involuntary termination by the employer, **the employer and employee shall act with the good-faith intent of ending the employee-employer relationship.**” [emphasis added]

ETF’s determination of whether a termination was made in good-faith is arrived at by a thorough consideration of the totality of events surrounding the employee’s departure. The underlying

component of a valid termination is a good-faith intention of retiring without interest in returning to WRS covered employment, especially with regard to one's former employer. Terminating with the intention of returning to employment after meeting the required minimum break in service is not considered a good-faith termination.

It is essential that you become familiar with WRS rules governing participation and coverage to ensure accurate reporting and to avoid any potentially negative effects on an employee's benefits.

All WRS Annuitants Returning to Work Must Complete a *Rehired Annuitant Election (ET-2319)*

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, per Wis. Stat. § 40.26 (1). 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. The employer is responsible for submitting the completed form to ETF.

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.

Annuitants who do not elect to return to active WRS coverage still **must complete a *Rehired Annuitant Election***; the employer's designated agent must sign and submit the form to ETF. Their annuity continues, no creditable service is earned on their new employment, 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).

Non-Compliance with Required Conditions has Consequences for the Annuitant

ETF reserves the right to investigate any termination (or subsequent hiring of a WRS annuitant) when it appears there was not a good-faith termination.

During an investigation, the burden of demonstrating that a termination was done in good-faith and complied with all termination requirements 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 WRS annuitants can be found in:

- Chapters 14 and 15 of the *WRS Administration Manual* (ET-1127). The manual can be found on ETF's Internet site at <http://etf.wi.gov> under the Employer Tab.
- *Employer Bulletin*, Vol. 28, No. 8, dated May 20, 2011.
- *Employer Bulletin*, Vol. 27, No. 16, dated August 16, 2010.

Contact

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

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