



# Employer *Bulletin*

Employer Communication Center 608-266-3285

Toll free: 1-877-533-5020

etf.wi.gov

## Important Tips - Rehired Annuitants/Return to Work Laws

The Department of Employee Trust Funds (ETF) has encountered several circumstances in which employees have terminated and then returned to work before ETF has received their Wisconsin Retirement System (WRS) retirement or separation benefit application. This has invalidated their WRS annuity or separation benefit.

The purpose of this bulletin is to emphasize that the break in service requirement applies to all three important dates:

- the employee's termination date;
- the benefit effective date; and
- the date that ETF receives the retirement or separation application.

This bulletin explains how employers can ensure that these requirements are met and provides background information.

## What Can Employers Do to Ensure That Waiting Period Requirements Are Met?

Employers should always check the *Previous Service and Benefit Inquiry* application on the [Online Network for Employers \(ONE\)](#) site **before an employee starts work** to ensure they meet the minimum break in service criterion for a rehired annuitant.

- To determine the member's termination date, benefit effective date and application received date, employers can go to the *Previous Service and Benefit Inquiry* application in the ONE system.
- All three dates – not just the termination date – are vital in determining if the member followed the termination and break in service rules. You must consider all three dates when making your determination.

As a reminder, a former employee who has taken a separation or retirement benefit must wait until the **latest of the following** to return to work. Whether the break must be 30 or 75 days depends on when the member terminated employment (see below):

- The day after the benefit effective date.
- The 31st or 76th day after termination of participating employment.
- The 31st or 76th day after ETF receives the benefit application.

## Reference Materials

For further information on the termination and break in service rules, please see the following information:

## Internal Revenue Code Requirements

The WRS is a federal Internal Revenue Code § 401 (a) defined benefit plan. Under rules of the IRS, ETF is prohibited from paying benefits to a member unless the member has both:

- a good-faith termination from employment, as outlined in subchapter 1402 of the [WRS Administration Manual](#) (ET-1127), and
- a minimum required break in service, as outlined in [subchapter 1401](#) of the *WRS Administration Manual*.

Employers must be aware of these two requirements when hiring people who have previously worked under the WRS, particularly those who are currently 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 break in service have been satisfied, as well as the possible consequences if these conditions are not met.

This applies to members who are receiving any of the following:

- a retirement annuity.
- a lump sum retirement benefit.
- a separation benefit.

## Consequences of Not Meeting the IRS Requirements

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 met all termination requirements will fall on the employer and the employee. If ETF determines that the requirements were not met, the employer and employee face the following consequences:

- Any retirement benefit would be considered paid in error. If an 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 a 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 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 Wis. Stat. Chapter 40 does not allow enrollment due to employer error.
- When the employee eventually terminates in good faith, the employer must submit a termination report and the employee must reapply for the retirement or separation benefit.

## What is a Good Faith Termination?

A termination, whether voluntary or involuntary, must be made with the good-faith intent of ending the employment relationship. The IRS has focused on the intent of the employee to completely terminate employment with no prior arrangements to return to work for the employer. This means that the work relationship between the employee and the employer has ended and there are no plans to resume it.

A valid termination must meet all six of these conditions:

1. The employee ceases to render compensable services to the employer.
2. The employee and the employer comply with the employer's policy for voluntary termination.
3. The employer has no rights to future services from the employee as of the termination date.
  - This prohibits an enforceable agreement for any future employment with the same employer, even if it does not meet WRS participation standards.
  - This prohibits an enforceable agreement for any future employment with a different WRS employer that would meet WRS participation standards.
4. The employee is treated as a former employee.
5. The employee has no authority to act on behalf of the employer.
6. The employer has paid the employee any accumulated benefits customarily paid to employees at termination.

Contracts or agreements for WRS employment entered into during the 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 break in service period. Refer to subchapter 1404 of the [WRS Administration Manual](#).

## What is a Break in Service?

The Internal Revenue Code does not dictate a specific waiting period, but requires a waiting period that indicates a complete severance of the employment relationship with the former employer(s). Wisconsin state law defines the specific waiting period as 30 days or 75 days, depending on when the annuitant terminated employment.

### 1. WRS Termination Date is Before July 2, 2013:

An employee who terminates WRS-covered employment is ineligible for any benefit (including a retirement annuity, a lump sum retirement benefit or a separation benefit) per Wis. Stat. § 40.23 (1) (a) 1. if there is a return to WRS-eligible employment before the **latest** of the following dates:

- The day after the benefit effective date.
- The 31st day after termination of participating employment.
- The 31st day after ETF receives the benefit application.

### 2. WRS Termination Date is On or After July 2, 2013:

An employee who terminates WRS-covered employment is ineligible for any benefit (including a retirement annuity, a lump sum retirement benefit or a separation benefit) per Wis. Stat. § 40.23 (1) (a) 1. if there is a return to WRS-eligible employment before the **latest** of the following dates:

- The day after the benefit effective date.
- The 76th day after termination of participating employment.
- The 76th day after ETF receives the benefit application.

## Additional ETF Resources

For further explanatory materials, you can review these other ETF resources:

- [Return to Work FAQs](#)
- [Rehired Annuitants video](#) (not updated for change in length of break in service time period, but other requirements remain the same).
- Chapter 14 of the [WRS Administration Manual](#) (Termination Rule and Reporting)
- Chapter 15 of the [WRS Administration Manual](#) (Employment of Annuitants)
- Any questions concerning valid terminations, termination conditions, disability termination requirements and breaks in service can be directed to the Employer Communication Center at 608-266-3285 or toll free at 1-877-533-5020.

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 or hearing impaired and need assistance, call the Wisconsin Relay Service toll free at 7-1-1 or 1-800-947-3529 (English) 1-800-833-7813 (Español). If you are visually or cognitively impaired, call 1-877-533-5020 toll-free or 608-266-3285 locally. 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. If you have any questions, please contact the Employer Communications Center toll free at 1-877-533-5020 or locally at 608 266-3285. 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 [etf.wi.gov/employers.htm](http://etf.wi.gov/employers.htm).

Wisconsin Department of Employee Trust Funds  
P.O. Box 7931  
Madison, WI 53707-7931  
[etf.wi.gov](http://etf.wi.gov).