

CHAPTER 3 — WRS ELIGIBILITY DETERMINATION

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300 Eligibility for Participation in WRS

Employers are responsible for evaluating and determining each employee's eligibility for WRS participation. Anyone who receives earnings for personal services rendered must be evaluated for WRS eligibility, including those hired as seasonal, project, temporary and/or part-time employees, members of boards and commissions, and elected officials. It is the intent of the statutes that all employees participate in WRS, unless your employee is excluded as defined in Wis. Stat. § 40.22.

Employees can appeal their employer's determination regarding WRS eligibility. Upon such an appeal the employer will be required to justify their determination. Refer to subchapter 314 for appeal information.

- Employees who meet the eligibility criteria must be enrolled in the WRS. (The employee has no choice unless the employee is a WRS annuitant upon hire. Refer to Chapter 15.)

- Employees who do not meet the eligibility criteria may **not** be enrolled in the WRS.

Several opportunities exist in statute for an employee to be eligible for participation in the WRS. The various opportunities for the eligibility criteria to be met are as follows:

1. Upon Hire.
2. When Expectations Change.
3. On Their One-Year Anniversary Date of Employment.
4. During a 12-Month Rolling Look-Back.

301 Eligibility Upon Hire

All employees who meet **BOTH** of the following criteria upon hire, as listed in Wis. Stat. § 40.22, must be enrolled in the WRS on the date they first render compensable service for the employer:

1. Employee is expected to work one-third of full-time per year (defined as 600 hours for non-teaching employees and 440 hours for teachers in Admin. Code ETF 20.015).

AND

2. Employee is expected to be employed for at least one year (365 consecutive days, 366 in leap year) from their date of hire.

NOTE: Employees hired to work only nine or ten months per year (e.g., teacher contract) but expected to return year after year are considered to have met the one-year requirement.

EXAMPLE 1: An employee is hired as a permanent, nine-month contract cafeteria cook. Breakfast and lunch preparation will require 4 hours per day or 720 hours per fiscal year. Because the cook is a permanent employee expected to work over 600 hours (one-third full-time) the employee is WRS eligible upon hire.

EXAMPLE 2: A long-term substitute teacher is taking over during another teacher's leave. The assignment is expected to require over 440 hours (one-third full-time). The substitute teacher is not eligible for WRS participation unless the district has an expectation that the duration of employment will be for at least a year.

302 Considerations in Determining WRS Eligibility

Employers must assess the reasonable number of hours necessary for an employee to perform their assigned duties in an acceptable manner.

EXAMPLE 1: A part-time teacher, expected to return year after year, is hired at a community college to teach two one-hour classes per day. The college compensates the teacher on a per/class basis. The employer must determine whether the teacher is expected to work 440 hours for one year to qualify for WRS when hired.

The employer must consider the number of hours the teacher is expected to work, including preparation time, rather than just the actual number of hours the teacher is in the classroom even though classroom hours are the basis upon which the teacher receives compensation. Reasonable preparation time must be considered, as it is a necessary and required component of a successful classroom experience.

EXAMPLE 2: A part-time bus driver is hired by a school district to drive a morning and an afternoon route. The employer estimates each route will take one and one-half hours to complete for a total of three hours each day and pays the drivers on a per route basis.

The driver is also required to inspect, clean, and fuel the bus each morning and each afternoon. The employer estimates this will take 15 minutes in the morning and 15 minutes in the afternoon for a total of 30 minutes each day. There are 180 days in the school year. [180 days x 3.5 hours/day = 630 hours per school year.] The bus driver is expected to meet the 600 hours and one-year duration of employment expectation. Therefore, the employee qualifies for WRS upon hire because the bus preparation time is necessary and mandatory in the acceptable performance of the driver's duties, even though the driver is paid on a per route basis.

EXAMPLE 3: A coach is hired for the high school football team. The coach does not hold any other position with the school district. The coach receives a stipend and the number of hours expected to work is unknown. The employer must determine a reasonable number of hours needed to perform the job. In this example, the duties include:

- attend all practices, games and tournaments,
- meet with coaching assistants on a regularly scheduled basis or as needed,
- evaluate game film,
- attend team meals,
- serve as a counselor to team members.

In the event the employer is unable to determine a standard number of hours, requirements from other athletic programs can be considered. Once the reasonable number of hours is determined, the standard hours must be applied to all future employees hired to fill the football coaching position. This is true even in cases where the coach works more or less hours than the employer previously determined to be reasonable. The hours of overzealous or under-performing

coaches should not be used; reasonable hours to complete the duties must be the standard.

All employment for which an employee receives earnings for personal services rendered at one employer must be included when determining WRS eligibility.

Employment for which an amount is paid to the employee by the employer—regardless of the source of funding (e.g., grants, class reduction grants) and regardless of whether reimbursement for earnings is made by a second employing entity—must be included in the evaluation of WRS eligibility. If an employee is employed at two school districts but only one district reports to WRS while the other reimburses part of the total earnings, eligibility is determined using the hours worked for both districts.

The WRS eligibility criteria must be met at each state agency or local government employer independently.

Employers who have elected WRS participation may not limit participation to a particular department, a classification of employees, special interest groups or union contract groups nor may it be limited to only full-time employees. Employers with mandatory participation need only cover those employees that are statutorily mandated, such as teachers of a school district, until such time that they elect WRS coverage for their other employees. (Refer to subchapter 101.)

303 Employees Not WRS Eligible on Date of Hire and Expectations Change

An employee who does not meet the WRS eligibility requirements on their date of hire may subsequently become eligible and must be enrolled any time the employer's expectation of either hours to be worked or duration of employment change. A previously WRS ineligible employee must be enrolled in WRS as soon as the expectation of meeting the eligibility criteria in subchapter 301 exists.

EXAMPLE 1: On March 2, 2006 an employee was hired as a full-time clerical assistant. At the time of hire only two months of employment (approximately 320 hours) were expected. Effective April 6, employment changes to a half-time (1,040 hours per year) permanent position. The clerical employee should be enrolled in WRS with a begin date of April 6, 2006, the date they were expected to work at least one year and for at least 600 hours per year.

EXAMPLE 2: A limited term employee (LTE) is hired on March 1, 2006 to work 1,043 hours for an expected duration of six months through August 31, 2006. On August 15, 2006 the LTE is offered and accepts another six-month appointment to begin on September 1, 2006 and end February 28, 2007.

On August 15, 2006, the employer's expectation that the employee would be employed for less than a year changes to an expectation that the employee would be employed for at least one year. The employee

becomes eligible to participate in WRS on August 15, 2006, the date expectations changed, and not the first day of the second appointment.

EXAMPLE 3: An employee is hired to teach full-time for one semester from January 4, 2006 to June 3, 2006. On March 14, 2006 the employee is offered and accepts a contract to teach full-time for the following school year beginning September 9, 2006 and ending June 2, 2007.

On March 14, 2006, the employer's expectation that the employee would be employed for less than a year changes to an expectation that the employee would be employed for at least one year. The employee becomes eligible to participate in WRS on March 14, 2006.

EXAMPLE 4: Funding for park maintenance and staffing is done on a yearly basis. Two months into the fiscal year an employee is hired full time for the remaining 10 months of the funded position. At the time of hire it is unknown whether funding will be renewed for the park employee's position. The employee is not enrolled in WRS at the time of hire since there is only an expectation of 10 months of funding. However, 8 months later the position is funded for another 12 months. The employee is WRS eligible on the date the funding is renewed because at that time the expectation that the employee will work at least one third full-time for at least a year has been met.

304 Evaluation on the One-Year Anniversary of Employment

Once an employer has made an initial determination that a person will be employed for less than one year OR will work less than one-third of full-time, the employee is ineligible for WRS coverage at that time. On the one-year anniversary of the initial date of employment (if the expectations did not change during the year) the employer must evaluate whether the employee has actually worked over 440 hours (teacher) or 600 hours (non-teacher) during the preceding 12 month period. Employees who have worked the required one-third of full-time hours must then be enrolled on their one-year anniversary date (not retroactively to the hire date), since both WRS eligibility criteria were met.

EXAMPLE 1: A non-teaching employee begins work on March 13, 2006. It is determined they will be employed for at least one year, but they are not expected to be employed for at least 600 hours. As a result, they are not enrolled in WRS upon hire. One year later, March 13, 2007, the employer reviews the actual hours worked from March 13, 2006 to March 12, 2007 and determines the employee actually worked 625 hours. The employer must enroll the employee in WRS effective March 13, 2007, the date both WRS eligibility criteria were met.

305 Evaluation on a 12-Month Rolling Look-Back

Employees who work the required hours in any 12 consecutive months must be enrolled. On the employee's one-year anniversary date, if they have not worked the

required number of hours for WRS participation, continuous monitoring on a rolling 12-month basis must begin. The employee must be enrolled in the WRS on the day after they have worked over 440 hours (teacher) or 600 hours (non-teachers) in any immediately preceding 12-month period.

EXAMPLE 1: A non-teaching employee begins work on March 10, 2006. It is determined that they will be employed for at least one year but will not be employed for at least 600 hours. As a result, the employee is not enrolled in WRS upon hire. The employee is still employed one year later. On March 10, 2007, the employer reviews the actual hours worked from March 10, 2006 to March 9, 2007 and determines the employee did not work at least 600 hours. Since both the WRS eligibility criteria have not been met, the employee is not enrolled in the WRS on their one-year anniversary date.

However, the employer now must continue to evaluate the employee's eligibility on a "**12-month rolling period.**" The employer has a biweekly payroll. As each future payroll is processed, the employer must add the hours from the most recent payroll period and subtract the hours from the oldest payroll period to determine the total hours worked in the immediately preceding 12 months.

In this case, the employee reached 600 hours for one-year threshold in the April 10-23, 2007 payroll cycle. Therefore, the employer must determine the actual date on which the employee reached 600 hours and enroll the employee in the WRS effective the next day.

Table 3.1 - Rolling Look-Back (How to Monitor Employee Hours)

Pay Period		One Year Review		Hours Worked - One Year Review
From:	Through:	From:	Through:	
3/10/2007	3/23/2007	3/24/2006	3/23/2007	540
3/24/2007	4/06/2007	4/07/2006	4/06/2007	530
4/07/2007	4/20/2007	4/21/2006	4/20/2007	580
4/21/2007	5/04/2007	5/05/2006	5/04/2007	600

NOTE: In these situations you may not use the first day of the next pay period as the WRS effective date unless the employee reaches 600 hours on the last day of the pay period.

EXAMPLE 2: A non-teaching employee is hired part-time seasonal to work 260 hours from June 1, 2006 to August 29, 2006 on the City's street crew. Upon hire the employee is not expected to meet the 600-hour and one-year requirement to qualify for WRS participation.

On October 1, 2006, the employee is rehired by the City to do snow removal for a maximum of 200 hours. This second position with the City also does not meet the 600-hour and one-year requirement to qualify for WRS. However, the employer is required to look back to determine if the employee has worked 600 hours in the immediately preceding 12-month period. In this case the employee has not worked

600 hours in the preceding 12-month period and does not qualify for WRS participation.

On June 1, 2007, (the employee's anniversary date of hire) the employee is again rehired to work on the City's street crew as part-time seasonal for 260 hours until August 28, 2007. This appointment does not meet the 600 hours for one-year criteria to qualify for WRS participation. Again the employer uses the one-year look-back provision and determines the employee has worked 460 hours in the immediately preceding 12-month period. Therefore, the employee still does not qualify for WRS participation.

For each subsequent pay period, the employer must continue to assess the number of hours worked in the immediately preceding 12-month period (subtract the oldest pay period hours and add the most recent pay period hours). Refer to subchapter 305, Table 3.1

306 WRS Eligibility for Employees of a Joint Instrumentality

Some local units of government are permitted under state law to join together to create a joint instrumentality. It is possible for two or more employers to create a joint instrumentality that is not recognized as a separate unit of government for purposes of Titles II and XVIII of the Federal Social Security Act and for WRS purposes. One example would be a joint library district.

An employee of a joint instrumentality is a participating employee under the WRS if any of the units of government forming the joint instrumentality is a participating employer under the WRS and the employee meets the WRS eligibility criteria. In determining whether an employee meets the WRS eligibility criteria, the employee's work for the joint instrumentality is to be considered as a whole, without regard to the number of separate units of government which created the joint instrumentality or any agreement among them apportioning responsibility for the retirement contributions.

EXAMPLE 1: A librarian in a permanent position works 900 hours per year for a joint library district created by six towns and villages. At least one of the employers of the joint library district is a WRS participating employer.

For purposes of determining eligibility in the WRS, the employee's hours of service for the joint instrumentality is to be considered as a whole, without regard to the number of separate units of government which created the joint instrumentality. Therefore, the librarian is eligible for participation in the WRS due to the total number of hours to be worked.

Although all hours are considered for eligibility purposes, this is not the case for determining the hours and earnings actually reported to the WRS. The number of hours and amount of earnings to be reported by each WRS participating employer with respect to an employee of the joint instrumentality are determined by prorating the hours and earnings among the employers that created the joint instrumentality. If

the proration is not specified by the agreement establishing the joint instrumentality, it must be in accord with the agreed proration of other expenses. If no proration is provided in the agreement, each WRS participating employer must report as hours and earnings, the total amount divided by the number of units of government forming the joint instrumentality.

Refer to subchapters 506 M. and 507 for additional information on determining what earnings and associated hours are WRS reportable for a WRS eligible employee working for a joint instrumentality.

307 WRS Eligibility for Emergency Workers

Employers are responsible for making WRS eligibility determinations for all types of emergency workers, taking into consideration the number of hours required in the performance of the job's duties and the expected duration of employment. "Emergency worker" is undefined in Chapter 40, Wis. Stat., but for purposes of this discussion includes—but is not limited to—permanently staffed firefighters, volunteer firefighters and Emergency Medical Technicians (EMTs). Due to the varying employment conditions and compensation schemes employers assign to this type of employee, it can be difficult to project the number of work hours required. These guidelines should assist employers in evaluating which hours to consider for WRS eligibility purposes. Ultimate responsibility for determining the reasonable hours necessary to perform the job, along with the expected duration of employment, resides with the employer.

Frequently asked questions pertaining to Firefighters/EMTs:

1. Is the firefighter/EMT who donates time or receives a token payment considered a volunteer and therefore not eligible for WRS?

Not necessarily. The definition of employee varies, depending on the context in which the term is used. The federal Fair Labor Standards Act (FLSA), US Code Title 29, s. 203 (e) (4) (a) (i), excludes someone who performs "volunteer" services for local governments from its definition of employee as such:

(4) (a) The term "employee" does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if—

(i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

(ii) such services are not the same type of services which the individual is employed to perform for such public agency.

However, the WRS is administered in accordance with Chapter 40 of the Wisconsin Statutes. Sections 40.22 and 40.02 (26), Wis. Stat., define "employee" as one who is providing compensated services to a participating employer. Emergency workers not receiving compensation other than expense reimbursement are not considered

employees for WRS eligibility purposes. On the other hand, once compensated, even with a token payment, the worker is no longer a volunteer and must be considered for WRS eligibility.

Chapter 40 neither permits ETF to set a minimum threshold for earnings, nor provides guidance in setting a minimum threshold for hourly compensation. The statute only requires that there be compensated service. WRS eligibility is based on the expectation of hours and duration of employment; therefore, the compensation scheme employed is irrelevant to the eligibility determination.

2. Are an employee's on-call/standby hours considered when determining WRS eligibility?

Not always. Although an employee who is on-call/standby may be receiving some form of compensation, the employee isn't actually rendering service to the employer. Instead, they are being compensated for making themselves available to work. Even if the employer has placed restrictions on the employee while serving on-call/standby—for example, requiring that they stay within a set radius of the firehouse—that employee is still able to perform personal activities until they actually respond to a call.

The ETF Board has determined that on-call/standby time is not counted in determining WRS eligibility in every instance. Including on-call hours when no actual service was rendered would unfairly result in WRS eligibility for an employee who actually renders less service hours than required by state statute. The exception would occur if an employer actually directed the employee to perform compensable service while on-call/standby.

3. May an employer apply Wisconsin Administrative Code ETF 10.03 (7) for determining eligibility?

No. ETF 10.03 (7) codifies a method for determining the number of on-call/standby hours to report AFTER the employee is determined WRS eligible. ETF 10.03 (7) is therefore appropriately discussed in subchapter 513 of the *WRS Employer Administration Manual*, which addresses earnings and service issues, not WRS eligibility. The rule instructs employers to calculate on-call/standby hours for reporting purposes by dividing the compensation by the employee's base hourly rate of pay.

4. In the event an emergency worker becomes eligible for WRS, should an employer report only those hours associated with the emergency call or may the employer also include on-call/standby hours?

Report all earnings and associated service hours once WRS eligibility has been determined. Again, hours used to assess WRS eligibility are not necessarily the hours that will be used for reporting once eligibility has been determined. If a WRS-eligible employee receives earnings for on-call/standby or other service incidental to primary employment, all earnings and associated hours [using ETF 10.03 (7)] are reportable and contributions are due.

5. What time should be included in determining the length of an emergency call?

Situations vary by employer and employment situation. One method is to begin tracking the hours when the emergency worker arrives at the station/fire/emergency and end tracking when the emergency call is over and the worker is dismissed from or leaves the station, fire or emergency. Depending on the employer requirements, the worker could be dismissed as late as the time equipment clean up at the station is completed, or as early as arrival at the emergency, due to already-adequate staffing.

Employment Situation	Description	Requirements Expectations	Compensation	WRS Eligibility Determination Guidelines
Firefighter (FT or PT) assigned to staff firehouse shifts.	<p>Provide shift coverage in the firehouse.</p> <p>Employer doesn't employ on-call/standby workers.</p>	<p>Serve in the capacity of professional firefighter; attends to firehouse duties when not responding to calls.</p>	<p>Salary or hourly wage.</p>	<p>All shift hours at the station or attending calls are used in determining WRS eligibility.</p> <p>Compensation scheme employed is irrelevant.</p>
Rotation between staff firefighter & on-call/standby duty.	<p>Staff firehouse on a rotating basis.</p> <p>Provide on-call/standby coverage on a rotating basis.</p>	<p>Weekly rotation of firehouse shift work and on-call/standby when not on the firehouse rotation. Employee is on-call for a set number of shifts per month.</p> <p>While on-call the employee must:</p> <ul style="list-style-type: none"> • Remain within a set radius of the station (may stay at their homes if within the radius); • Stay at the station or elsewhere within the radius if they reside outside the radius; • Be available by phone or radio; • Use their own vehicle to respond to fire/ambulance station; • Refrain from consuming alcoholic beverages. 	<p>Hourly rate when filling a normal shift.</p> <p>Paid a set dollar per hour amount while on-call and paid a higher rate if responds to call.</p>	<p>Hours worked staffing the firehouse and responding to incoming calls must be included in determining WRS eligibility.</p> <p>Only on-call hours actually responding to calls or performing other employer directed activities are considered in determining WRS eligibility.</p> <p>On-call hours not spent responding to actual calls are not considered in determining WRS eligibility. Employees are making themselves available to work but are not performing actual duties.</p> <p>Travel time to the firehouse is not considered in determining WRS</p>

Employment Situation	Description	Requirements Expectations	Compensation	WRS Eligibility Determination Guidelines
				eligibility. Compensation scheme employed is irrelevant.
On-call/standby	Employed in an on-call/standby capacity only.	Employee is on-call for a set number of shifts per month. While on-call the employee must: <ul style="list-style-type: none"> • Remain within a set radius of the station (may stay at their homes if within the radius); • Stay at the station or elsewhere within the radius if they reside outside the radius; • Be available by phone or radio; • Use their own vehicle to respond to fire/ambulance station; • Refrain from consuming alcoholic beverages. 	Stipend or flat rate while on call; a higher rate if responding to a call.	Only on-call hours actually responding to calls or performing other employer directed activities are considered in determining WRS eligibility. On-call hours not spent responding to actual calls are not considered in determining WRS eligibility. Employees are making themselves available to work but are not performing actual duties. Travel time to the firehouse is not considered in determining WRS eligibility. Compensation scheme employed is irrelevant.
Volunteer Firefighter	Responds to fire calls conveyed over employing entity's emergency siren system.	Employer schedules specific group of "volunteers" to be on-call/standby during certain weeks. Volunteer decides to respond to siren or not. They may also elect to respond to calls during weeks they are not specifically scheduled to do so. During the scheduled week, employee: <ul style="list-style-type: none"> • Remains close to the community; • Is available by phone or radio; • Uses their own 	Reimbursement for personal expenses only. (OR) Yearly stipend; or a flat rate while on-call/standby with a higher rate if responding to call.	If working for reimbursement of personal expenses only, employee is a true volunteer and not WRS eligible. Employer must document expense payments. If compensated, only the hours actually responding to calls or performing other employer directed activities must be included in determining WRS eligibility.

Employment Situation	Description	Requirements Expectations	Compensation	WRS Eligibility Determination Guidelines
		vehicle to respond to fire/ambulance station <ul style="list-style-type: none"> Refrains from consuming alcoholic beverages. 		On-call hours not spent responding to actual calls are not considered in determining WRS eligibility since the employees are making themselves available to work but are not performing actual duties. Travel time to the firehouse is not considered in determining WRS eligibility. Compensation scheme employed is irrelevant.
Travel time to and from the firehouse or the site of the emergency when responding while on-call/standby.	Travel time to firehouse or emergency from home, job, etc. and return to home or job, etc. at end of call.	When on-call/standby, employee is expected to report either to the firehouse or the site of the emergency.	Possible yearly stipend or hourly rate, depending upon employer's compensation scheme.	Travel times to and from are not considered in determining WRS eligibility. Compensation scheme employed is irrelevant.
On the job training/drills	Weekly training and drills held for all firefighters.	All firefighters, including those enrolled in the firefighter certification training, are required to attend weekly training/drill sessions at the fire station if they are not in class or on duty.	Pay is dependent upon status. FT & PT staff firefighters are paid their hourly rate. On-call/standby is paid an hourly rate or it's included in their yearly or monthly stipend.	Since the training is mandatory and compensated, it is for the benefit of the employer and the hours are considered in determining WRS eligibility. Travel times to and from training site are not considered in determining WRS eligibility. Compensation scheme employed is irrelevant.
Certification Training	Attending courses at local technical	State law requires fire fighters/EMT's to be certified when hired as	Employer pays for the cost of the course and may	Since the course is State mandated, the hours in attendance

Employment Situation	Description	Requirements Expectations	Compensation	WRS Eligibility Determination Guidelines
	schools for the purpose of attaining state certification.	emergency worker. The firefighter/EMT programs are offered at the technical colleges.	or may not pay the employee for their time in attendance.	are not considered in determining WRS eligibility, unless the employee is being paid to be there. The fact the employer pays the tuition is irrelevant.
Responds to call but remains on scene only for a short period of time.	Employee provides minimal service when responding to a call due to: <ul style="list-style-type: none"> • Adequate staffing so employee dismissed; • False alarm; • Responds to call long after being dispatched. 	Employee performs service for the employer from the time arriving at the station or site of the emergency until the employer determines service is not required.	Set dollar amount or stipend paid regardless of the length of time spent responding to the call.	Hours spent from the time arriving at scene or firehouse until the time of dismissal are considered in determining WRS eligibility. If the employer uses historical information to set a standard, the shortened calls must be built into the standards. Compensation scheme employed is irrelevant.
Fraction of hour worked.	Calls are paid at value of whole hours, i.e., employer rounds up for pay purposes.	Employee responds to 200 calls per year and the average time allocated is 2.5 hours per call so real hours worked equals 500 hours. However, employer rounds to whole hours, paying employee for 600 hours.	Employee is paid hourly fee for every hour or fraction of hour worked.	Only the hours performing actual duties are considered in determining WRS eligibility. If the employer has set a standard of 2.5 hours per call, that must be used in determining WRS eligibility, not the paid hours.
Multiple employment positions for a WRS participating employer.	Primary employment is WRS eligible; secondary emergency worker position does not meet WRS eligibility criteria on its own.	Due to primary employment being WRS eligible, both primary employment and emergency worker earnings and service are reported to WRS.	All compensation reported to WRS, with on-call hours reported per ETF 10.07(3).	If employee terminates primary employment, but retains the emergency worker position, the employee has not ended the employee-employer relationship and the termination transaction applies to the primary employment only. Emergency worker service and earnings must continue to be reported under protective category.

308 Duration of Employment Exceeds 30 Calendar Days

In order for an employee to be WRS eligible, their duration of employment (as opposed to duration of WRS covered employment) must be at least 30 calendar days, regardless of original expectations. Per Wis. Stat. § 40.22 (6), in the event an employee's employment with an employer terminates after a period of service of less than 30 calendar days, the employee is not eligible for WRS for that period of service, regardless of whether the period was originally expected to be WRS eligible. On the other hand, an employee may be eligible for WRS coverage of less than 30 calendar days if their duration of employment was at least 30 calendar days.

EXAMPLE 1: Duration of Employment is Over 30 Days:

A limited term employee is hired and is not expected to meet the minimum 600-hour and/or one-year requirement to qualify for WRS participation. One year later the employer determines the employee actually worked 600 or more hours during the preceding 12-month period. The employee is enrolled in WRS on the one-year anniversary date.

The employee then terminates employment less than 30 calendar days after becoming WRS eligible. In this situation, the employee's period of service from the time of WRS enrollment through termination continues to be covered under WRS even though the period of WRS coverage is less than 30 calendar days because the duration of employment has been for more than 30 calendar days.

EXAMPLE 2: Duration of Employment is Under 30 Days:

A school hired an employee to work as a full-time data entry clerk. The employee was expected to meet the WRS eligibility criteria and was enrolled in WRS upon hire.

The employee then terminates employment less than 30 calendar days after becoming hired and the employer having enrolled them in the WRS. In this situation, the employee's period of service is not WRS eligible because the duration of employment was less than 30 calendar days. The employer must process a termination transaction with an action code "03" (not eligible) to nullify the enrollment.

309 Continuation of Participation

A WRS covered employee continues to be WRS eligible even if hours are subsequently reduced to less than 1/3 full-time.

An employee covered under WRS who terminates, does not apply for a WRS benefit and subsequently returns to work for the same employer **within** 12 consecutive

months must be reenrolled in WRS without consideration as to the duration of the new period of employment (Wis. Stat. § 40.22 (3m) and (6)).

Once an employee becomes eligible for WRS, eligibility continues until:

- The employee-employer relationship has been terminated for 12 or more consecutive months.
- The employee terminates and receives a benefit under Wis. Stat. §§ 40.23 (retirement annuity), 40.25(1), (2) (separation benefit or lump sum payment) or 40.63 (disability annuity).

310 Employees Not Eligible for WRS Participation

Employees who do not meet the eligibility criteria as enumerated in subchapters 301 are not eligible for participation in the WRS. In addition, the following individuals are not considered "participating employees":

- A. Persons employed under a contract involving the furnishing by the person of more than personal services.
- B. Persons engaged in an independently established trade, business or profession whose services are not compensated for on a payroll of that employer. Refer to subchapter 313 for guidelines to determine employee vs. independent contractor status.
- C. Persons employed for less than 30 calendar days. For exceptions, refer to subchapters 308 and 311, Rehired Employees.
- D. Patients or inmates of a hospital, home or institution performing service therein.
- E. Welfare recipients performing services in return for assistance payments. The primary intent of such work relief programs is to provide assistance to needy individuals and their families. Work is not compensated, but is a condition of receiving assistance.
- F. Students under age 20 regularly enrolled—or expected to be enrolled—as a full-time student in grades 1-12 in a public, private, or parochial elementary or high school and hired on or after April 23, 1992. (Eligibility evaluation begins when the student obtains a high school or equivalency diploma, turns age 20 or supplies the employer with written notification of leaving school. Do not use any hours worked while a student when making the WRS eligibility determination.)
- G. WRS annuitants who have not elected to return to active participation in the WRS.
- H. Employees appointed by a school or other education system (in which the individual is regularly enrolled as a student and attends classes) to perform services incidental to their course of study at that school or education system.

- I. Employees appointed by the University under Wis. Stat. § 36.19, or by the University of Wisconsin Hospitals and Clinics Authority, as student assistants or employees in training.

311 Employees Returning to Work at the Same Employer

When rehiring an employee, employers must consider the previous employment when determining WRS eligibility for the employee's new period of employment. Refer to subchapter 309 regarding continuation of WRS participation.

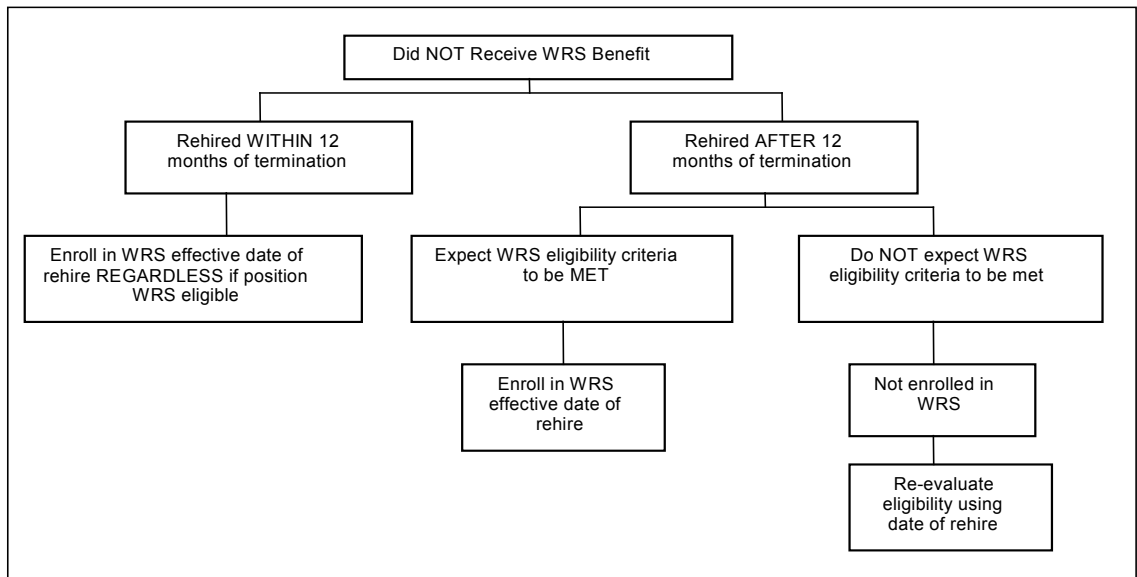
- A. **WRS covered** employee terminates, **does not receive a WRS benefit**, and **returns** to employment:
 - a. **within 12 months** of termination. Because the employee returned to work within 12 months of their previous termination without having received a WRS benefit, they retain their WRS eligibility. The employee must be re-enrolled in the WRS immediately upon rehire, regardless of whether or not the new period of employment is expected to meet the WRS eligibility criteria, and even if their new period of employment is expected to last less than 30 calendar days.

EXAMPLE 1: A previous WRS covered teacher is rehired into a non-teaching position within 12 months of termination and has not received a WRS benefit. The school district covers non-teachers under WRS. Due to the employee returning within 12 months and not having received a WRS benefit, they are WRS eligible upon hire regardless of the expected hours or duration of their new period of employment. Because the employee's new duties are do not meet the definition of a teacher, the employee is enrolled in employment category 12, Educational Support Personnel. (If the school district did not provide WRS coverage for its non-teachers, the employee would not be eligible to participate in WRS for the new period of employment.)

- b. **after 12 months** of termination. Because 12 months have elapsed since the employee's previous termination the employee no longer retains their WRS eligibility. Upon rehire, you must reevaluate the rehired employee's eligibility for WRS participation as you would any newly hired employee. Refer to subchapter 300 for WRS eligibility criteria.

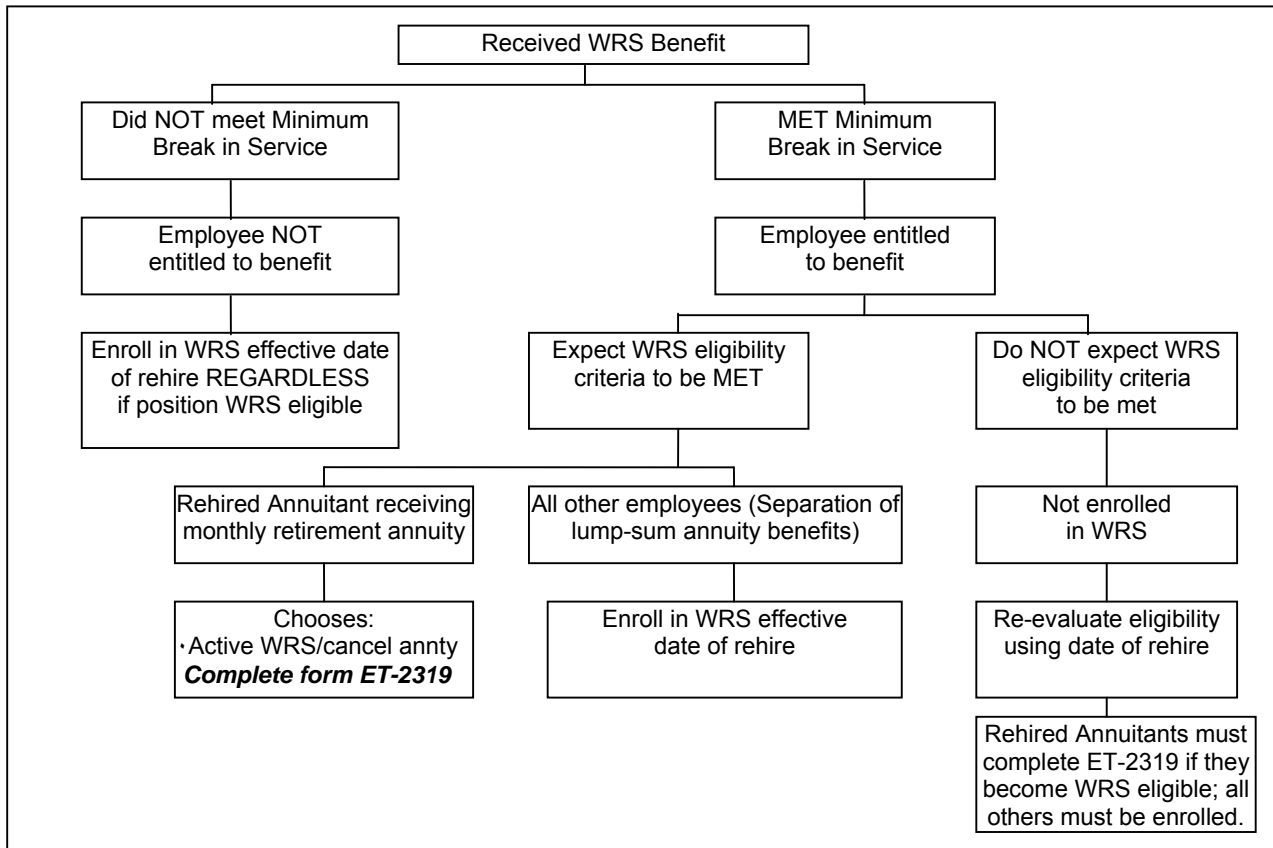
EXAMPLE 1: A WRS covered employee is rehired after 12 months from the date of their previous termination. They are expected to work 1,040 hours for a period of 6 months. Because 12 months have passed since their previous employment they no longer automatically retain their WRS eligibility. Upon rehire you must reevaluate the employee's WRS eligibility. In this example, the employee is not expected to meet the WRS eligibility criteria of at least 12 months of employment and is therefore not WRS eligible upon rehire.

EXAMPLE 2: A WRS covered employee is rehired after 12 months from the date of their previous termination. They are hired into a permanent, full-time position. Because 12 months have passed since their previous employment they no longer automatically retain their WRS eligibility. Upon rehire you must reevaluate the employee's WRS eligibility. In this example, the employee is expected to meet the WRS eligibility criteria of at least 600 hours with a duration of at least 12 months of employment and is therefore WRS eligible upon rehire.



- B. **WRS covered** employee terminates, **takes a WRS lump sum benefit** (refer to Chapter 15 for examples where the employee returns to work after receiving a WRS annuity), and **returns** to employment:
- a. **prior to fulfilling the minimum break in service requirement** for lump sum benefit eligibility (refer to subchapter 1401, Eligibility for Benefits – Minimum Break in Service). Because the employee is rehired (possibly at a different WRS employer) prior to fulfilling the minimum break in service requirement, the lump sum benefit is invalid. Since the benefit is not valid, an employee rehired within 12 months of termination is WRS eligible upon rehire; an employee rehired after 12 months of termination must be reevaluated for WRS participation as you would any newly hired employee. Note: the employee will be required to repay the invalid lump sum benefit.
 - b. **after fulfilling the minimum break in service requirement** for lump sum benefit eligibility (refer to subchapter 1401, Eligibility for Benefits – Minimum Break in Service). Because the employee is rehired after fulfilling the minimum break in service required for lump sum benefit eligibility, the benefit is valid. Upon rehire, you must reevaluate the rehired employee's eligibility for WRS participation as you would any newly hired employee, even if the

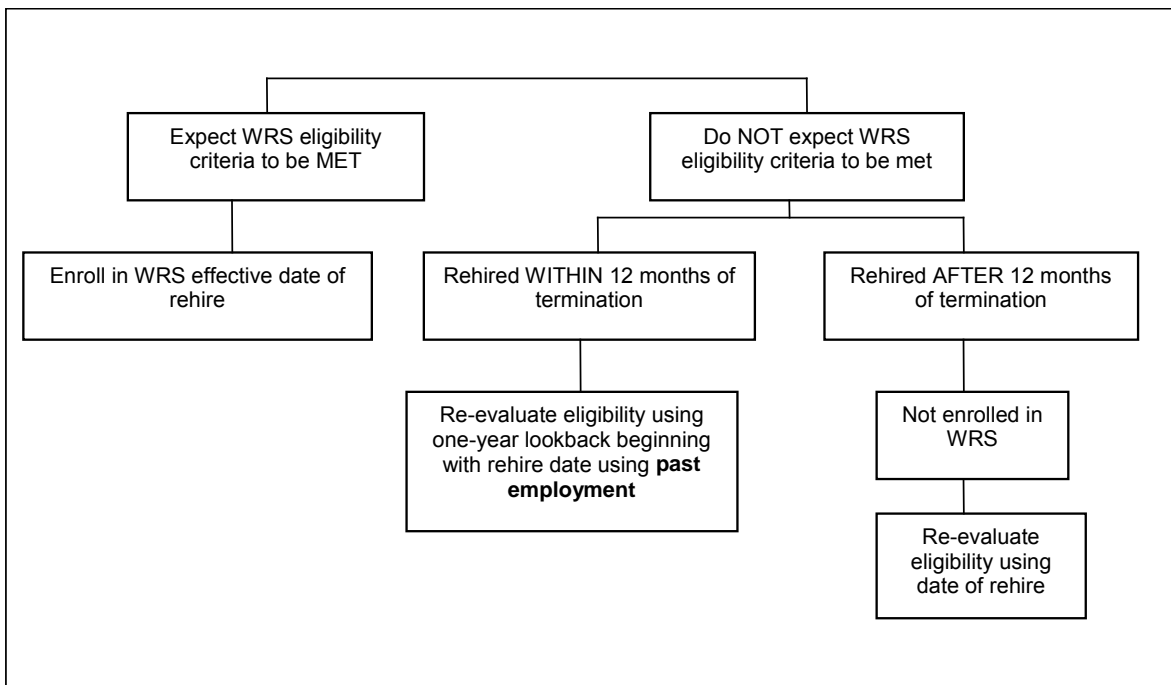
employee returns within 12 months of the previous termination. Refer to subchapter 301.



C. **Non-WRS covered** employee terminates and **returns** to employment:

- a. **regardless of the interval between termination and rehire**, if you expect the new period of employment to qualify for WRS you must enroll the employee under the WRS on the rehire date.
- b. **within 12 months** of termination and you **do not** expect the new period of employment to meet the WRS eligibility criteria of 1/3 full-time and at least one-year in duration, you must still consider their previous employment.
 - If the rehire was your employee 12 months prior to the rehire date and worked 1/3 of full time within the immediately preceding 12-month period, you must enroll them in the WRS on the rehire date because on that date the employee met both the 1/3 full time and one year duration of employment criteria.
 - If the rehire was your employee 12 months prior to the rehire date and did not work 1/3 of full time within the immediately preceding 12-month period, you must begin monitoring the employee's hours on a 12-month rolling period basis beginning with the rehire date. Enroll the employee in WRS on the date the 1/3 of full time criterion is met (because the one-year duration criterion has already been met).

- If the rehire was your employee less than 12 months prior to the rehire date you must reevaluate their WRS eligibility on the 12-month anniversary date of their original hire date.
- c. **after 12 months** of termination and you **do not** expect the new period of employment to meet the WRS eligibility criteria of 1/3 full-time and at least one-year in duration. Do not enroll the employee in WRS; reevaluate their WRS eligibility on the 12-month anniversary of the rehire date. If still not WRS eligible on their 12 month anniversary date, you must begin monitoring the employee's hours on a 12-month rolling period basis.



312 Examples of Employment Situations and Eligibility for Participation

Table 3.1 – WRS Eligibility Situations

EX.	Employment Characteristics	Eligible to Participate?	Reason
A	Non-teaching employee is hired to work 2,080 hrs. on a special project to last one year and there is no expectation of reassignment to another.	Yes	Expected duration of employment is one year and employed for at least one-third full-time (600 hours for non-teachers).
B	Non-teaching employee is hired permanently to work 1,040 hrs. per year and to perform several functions for one or more departments at the same employer.	Yes	All work for the same employer is considered in determining whether a person meets requirement of one-third of full-time employment for a 12-month period.
C	Employee newly hired to fill full-time permanent position, but terminates after two months.	Yes	Employee was expected to work at least one-third of full-time and for at least one year upon hire.

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EX.	Employment Characteristics	Eligible to Participate?	Reason
D	Employee newly hired to fill full-time position, but terminates before working 30 calendar days.	No	The employee is not eligible for retirement coverage for that period of service and any retirement contributions withheld from the employee's salary should be refunded. (Wis. Stat. § 40.22(6))* . For exceptions, refer to subchapters 309 and 311.
E	Employee becomes WRS eligible upon their one-year anniversary. Employee terminates with 30 calendar days of becoming WRS eligible.	Yes	The employee met the WRS eligibility criteria upon their one-year anniversary. Since their period of employment was over 30 calendar days, the Wis. Stat. § 40.22(6) exception doesn't apply.
F	WRS active participant changes from working 1,500 hours to approximately 300 hours per year.	Yes	Participation continues until employee-employer relationship is terminated for 12 or more consecutive months or employee terminates and receives a separation, retirement or disability benefit.
G	Employee permanently hired to work unknown hours with a probability to be more than 600 hours per year.	Yes	Expected to work at least one-third of full-time and expected duration of employment is at least one year.
H	Employee hired late in year. Half-time position expected to be about 1,000 hours a year for two years.	Yes	Expected to work at least one-third of full-time and expected duration of employment is at least one year.
I	Upon employment, employee is not expected to work one-third of full-time per year; after employment, expectations change to at least one-third of full-time per year.	Yes, upon change of expectations	Report when the change occurs with the expectation of one-third full-time employment per year. (WRS enrollment is effective on the date expectations changed.)
J	Employee hired on "stand-by," "temporary," "LTE," "on-call," "seasonal," or "substitute teacher" basis. Employment is full-time, but for five months only.	No	Expected to work less than one year. (Refer to subchapter 301.)
K	Participating employee terminates employment, takes a WRS retirement annuity, meets the minimum break in service requirement and is rehired to work less than one-third full-time.	No	A participant to whom a retirement annuity is payable under § 40.23, and who is subsequently employed by any participating employer shall not be a participating employee until the employee qualifies as an eligible employee, and the employee elects to return to active WRS participation by filing the ET-2319 election form. (Refer to Chapter 15.)
L	Participating employee terminates employment, takes a WRS retirement annuity, meets the minimum break in service requirement, is rehired to work in excess of one-third full-time for more than one year and elects to participate in WRS on the ET-2319.	Yes	A participant to whom a retirement annuity is payable under Wis. Stat. § 40.23, and who is subsequently employed by a participating employer shall be a participating employee if the employee qualifies as an eligible employee and the employee elects to return to active WRS participation by filing the ET-2319 election form. (Refer to Chapter 15.)
M	Employee is expected to work one year and one-third time at Employer A and also works 150 hours per year at Employer B.	Yes, at Employer A; No at Employer B	Employees must meet the eligibility criteria at each employer independently to be reported by the employer.
N	Participating non-teaching employee terminates WRS-covered employment, does not take a WRS benefit and is rehired by the same employer within 12 consecutive months in a position not expected to exceed 600 hours in a year.	Yes, immediately upon hire	Regardless of expected hours of employment, a participating employee remains eligible unless terminated from employer 12 consecutive months or receives a benefit under §§ 40.23, 40.25 (1) (2) or (2m), or 40.63.
O	Seasonal employee who is not enrolled in WRS was hired May 1, 2006, works over 600 hours before terminating in September. Employee is rehired on May 1, 2007.	Yes, immediately upon rehire	Employee completed 600 hours in the immediately preceding 12 month period. WRS begin date is May 1, 2007.

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EX.	Employment Characteristics	Eligible to Participate?	Reason
P	Seasonal employee is hired to a position that typically requires about 800 hours during summer months. The employer considers the employee-employer relationship to remain intact since the employee is committed to returning year after year.	Yes	Although a seasonal employee, the employee-employer relationship is expected to be continuous in nature. Since the employee is also expected to work more than 600 hours per year, the employer has the expectation that the WRS eligibility criteria will be met and the employee should be enrolled in WRS upon hire.
Q	Non-teaching employee hired to work 500 hours for six months. After five months, you notice he has worked 600 hours.	No	Enroll employee if and when expectations change such that he is expected to work both for one year and 600 hours. Or, enroll on one-year anniversary if a look back indicates at least 600 hours had been worked during the previous 12-month period.
R	Substitute teacher is hired on September 10, 2006. Employment is sporadic. On September 20, 2007, she is subbing for the first time in the new school year. Upon evaluation, you discover that from September 21, 2006 to September 20, 2007, she has worked 445 hours.	Yes	As of September 20, 2007 she had worked for both one year and for at least 440 hours. Her WRS begin date is September 21, 2007, the day following working 440 hours.
S	A school bus driver who previously had not worked 600 hours in any 12-month period takes on additional extracurricular driving for basketball season. She is now expected to work at least one year and at least 600 hours per year.	Yes	Her WRS begin date is the date that she takes on the additional hours. On this date, you are able to reasonably determine that the driver is expected to work for one year and for 600 hours.
T	Employer only covers teachers in WRS. Teacher participates in WRS while also employed as a substitute bus driver.	No	Earnings paid for driving the bus are not reportable for WRS since the employer does not cover non-teaching positions under WRS.
U	Employee hired September 1 and expectation is that the employee will not be employed for 600 hours. On September 1 of the next year, the employee did work 600 hours and becomes eligible for WRS. The employee terminates on September 17.	Yes	Even though the employee's WRS coverage was for less than 30 calendar days, the employee's duration of employment exceeded 30 calendar days, therefore they are eligible.
V	Employee terminates from WRS eligible position and continues working "on-call" for the same employer.	Yes	Regardless of the expected hours or number of expected working days, a participating employee remains eligible unless terminated from all employment with the employer for 12 consecutive months or receives a benefit under Wis. Stat. §§ 40.23, 40.25 (1) (2) or (2m) or 40.63.
W	Participating teacher's aide reduces hours to less than 600 and continues to work for the school district.	Yes	WRS eligibility continues until the employee terminates from all employment with the employer for 12 consecutive months or receives a benefit under Wis. Stat. §§ 40.23, 40.25 (1) (2) or (2m) or 40.63.
X	Permanent, WRS covered state employee transfers to a LTE position within the same state agency.	Yes	WRS eligibility continues because an employee that was already under WRS has filled the typically non-WRS eligible LTE position.
Y	Permanent, WRS covered state employee transfers to a LTE position with a different state agency.	No	Each state agency is a separate employer for WRS eligibility purposes. The new employing agency must make their WRS eligibility determination based on the expectations of their newly hired LTE.
Z	Long-term substitute teacher is hired in a 9-month academic year appointment. At the end of the appointment the teacher signs a contract to teach the following year. Change in expectation occurs when the employee signs the new contract.	Yes, Upon change of expectations	Employee is not eligible when hired. Report when the change occurs with the expectation of 440 hours for a 12-month period, not retroactive to date of hire.

- This provision does not affect an employee's eligibility for insurance coverage during this period of time.

313 Employee or Independent Contractor?

An independent contractor is not an employee of the employer and is not eligible for participation in WRS.

Employers must determine whether an individual is an employee or an independent contractor. The following information is taken from IRS Publication 15A, *Employer's Supplemental Tax Guide* (revised January 2007) and can be used as an aid in making this determination.

- To determine whether the individual is an employee or an independent contractor under the common law, the relationship of the worker and the business must be examined.
- Evidence of control and independence must be considered. They fall into three categories: behavioral control, financial control and type of relationship between parties.

A. Behavioral Control. Factors indicating whether the business has a right to direct and control how the worker performs the task for which the worker is hired include the type and degree of instructions the business gives the worker. An employee is generally subject to the business' instructions about when, where and how to work. All of the following are examples of types of instructions about performing the work:

- When and where to do the work.
- What tools or equipment to use.
- What workers to hire or to assist with the work.
- Where to purchase supplies and services.
- What work a specified individual must perform.
- What order or sequence to follow.
- Training the business provides for the worker. An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods.

B. Financial Control. Factors indicating whether the business has a right to control the business aspects of the worker's job include:

- The extent to which the worker has not been reimbursed for business expenses. Independent contractors are more likely to have expenses that have not been reimbursed. Fixed ongoing costs that are incurred regardless of whether work is currently being performed are especially important. However, employees may also incur expenses that are not reimbursed in connection with the services they perform for their business.

- The extent of the worker's investment. An independent contractor often has a significant investment in the facilities they use in performing services for someone else. However, a significant investment is not necessary for independent contractor status.
- The extent to which the worker makes services available to the relevant market. An independent contractor is generally free to seek out business opportunities. Independent contractors often advertise, maintain a visible business location, and are available to work in the relevant market.
- How the business pays the worker. An employee is generally paid a regular wage amount for an hourly, weekly, or other time-period. This usually indicates that a worker is an employee, even when commission supplements the wage or salary. An independent contractor is usually paid a flat fee for the job. However, it is common in some professions, such as law, to pay independent contractors hourly.
- The extent to which the worker can realize a profit or incur a loss. An independent contractor can incur a profit or loss.

C. Type of Relationship. Factors indicating the type of relationship include:

- Written contracts describing the relationship the parties intended to create.
- Whether the business provides the worker with employee-type benefits such as insurance, a pension plan, vacation, or sick pay.
- The permanency of the relationship. If you engage a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, it is generally considered evidence that your intent was to create an employer-employee relationship.
- The extent to which services performed by the worker is a key aspect of the regular business of the company. If a worker provides services that are a key aspect of your regular business activity, it is more likely that you will have the right to direct and control their activities. For example, when a law firm hires an attorney, it is likely that it will present the attorney's work as its own and would have the right to control or direct that work. This situation indicates an employer-employee relationship.

If you want the IRS to determine whether a worker is an employee, file Form SS-8, *Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding* with the IRS

314 WRS Eligibility Appeals

- A. An employee may appeal the employer's determination of WRS eligibility as outlined below:

An employee may challenge their employer's determination that they are not eligible for WRS, or if covered by WRS, their WRS effective-date. The employee must file a written appeal directly to the Employee Trust Funds Board based on the following criteria:

- a. **Employees hired on or after April 27, 1984** — Are subject to the seven-year statute of limitations in Wis. Stat. § 40.06 (1) (e) that became effective on April 27, 1984. These appeals may not apply to any service rendered more than seven years prior to the date the appeal is received by the Board.
- b. **Employees hired before April 27, 1984** — Are not subject to the seven-year statute of limitations in Wis. Stat. § 40.06 (1) (e) because the statute was not in effect at the time of their hire.

B. Appeal Process

An *Appeal Form* (ET-4938) is available on ETF's Internet site or can be requested from ETF by calling the Employer Communication Center toll free at (888) 681-3952 or locally at (608) 264-7900. However, use of the form is optional. A letter from the employee providing the same information is also acceptable. Employee appeals must be submitted in writing to:

Appeals Coordinator
Department of Employee Trust Funds
P. O. Box 7931
Madison, WI 53707-7931

An employee appealing an employer's determination of WRS eligibility or WRS effective date is required to present sufficient information at a hearing before a hearing examiner. An employee may request or subpoena documents and witnesses from the employer. Depending on the nature of the appeal, relevant information may include a log of hours worked during the dates in question, a position description with percentage breakdowns of time spent on each task or other information maintained by the employer.

Employers and employees may request applicable ETF records or information. Under normal circumstances the hearing examiner will prepare a proposed decision for the Board to consider before it issues its final decision. Board decisions are appealable to the Dane County Circuit Court.

315 Statute of Limitations for Corrections to Service, Earnings and Contributions that Impact WRS Disability and Retirement Benefit Payments

The Wisconsin Court of Appeals has held that the period of limitation under Wis. Stat. § 40.08 (10) within which errors may be corrected begins when the Department calculates a participant's benefits. Based on this ruling, the period of time for which an employer is accountable for payment to correct any potential errors is greatly expanded.

Correction of such an error can entail substantial cost to the employer since contributions and interest at the effective rate will be assessed on late reported earnings. Employers should exercise extreme caution to guarantee compliance with WRS requirements and take measures to audit their employees' accounts to ensure that errors do not go undetected for extended periods. Requests for correction must be received prior to the end of seven full calendar years beginning on the date the final annuity computation notice is issued **OR** on the date payment is issued for a lump sum.

Refer to Chapter 9 for corrections of service and earnings that have been reported for the current calendar year and to Chapter 11 for corrections for service and/or earnings reported for a prior year.

316 Maintaining Records Longer than Seven Years

Employers are advised to retain employee payroll and benefit records, since WRS eligibility and effective date determinations, as well as account adjustments, may not be time barred and employers may be liable for past service and earnings reporting regardless of when the error occurred. However, the employer must submit acceptable evidence for ETF to make a correction beyond seven years. If the employer no longer has records or refuses to submit records, ETF will consider acceptable evidence from the employee in making the determination to correct errors. Clerical errors made in reporting or recording contributions, service or earnings have no time limit.

Employers may also be asked to provide earnings for Qualified Domestic Relations Orders (QDRO) going back to 1982