

CHAPTER 4 – EMPLOYMENT CATEGORY DETERMINATION

- 400 Employment Category
- 401 Employment Category Descriptions
- 402 Employment in Multiple Categories at the Same Employer
- 403 Employment Category Appeals
- 404 Statute of Limitations for Corrections to Service, Earnings and Contributions that Impact WRS Disability and Retirement Benefit Payments
- 405 Maintaining Records Longer than Seven Years

400 Employment Category

Once an employer has determined an employee is Wisconsin Retirement System eligible, the next step is to determine the appropriate employment category within which to enroll that employee. Determination of the proper employment category for each eligible employee is essential because contribution rates and benefit payments vary by employment category.

It is the employer's responsibility to determine the appropriate employment category classification for its WRS-eligible employees. Employment category classifications must be based on an employee's duties as performed in the service of the employer. Employees doing the same work for an employer must be enrolled in the same category. Use the criteria in subchapter 401 to assist in making the employment category determination. The process to determine employment category is left to each WRS employer. Whatever process the employer implements for determining employment category should include documentation and a thorough review of position expectations and standards and should be a consistent process applied to all WRS employment positions.

The employer should consider the job duties and expectation of the employee's position and how that fits in the guidance below and with WRS statutory definitions. Irrelevant factors in determining an employment category classification include but are not limited to: perceptions of "professional," contracts or collective bargaining agreements, titles, educational attainment, certifications not related to the job or any other factor not specifically related to the WRS statutory definition of the position. Any change in employment classification should be documented and communicated to any affected employee. While it is the employer's responsibility to determine the correct employment category the WRS agent should consult with ETF directly as changing an employee's category could have unintended consequences such as direct appeals and benefit distortions for employees.

Note: Educational and/or job training certifications earned that denote expertise in areas such as teacher, police officer or firefighter, for example, do not automatically confer Teacher category or Protective category classification upon their holders. Employment categories must be based solely on the employee's duties as performed for the employer.

EXAMPLE 1: Employee without previous WRS service was hired **after** July 1, 2011. and works full time in the town's public works department. In addition, the town requires the employee to be certified as a firefighter and respond to fire calls. Fire response typically requires fewer than the minimum 1,200 hours needed to qualify as an

independent employment category. Since only the public works department service qualifies on its own for WRS participation, employee must be enrolled in the WRS under the General category.

The hours and earnings associated with the firefighter duties also must be reported to WRS under the General category. Firefighter certifications do not automatically confer Protective Occupation status on an employee if the employee does not work the minimum number of hours required for the firefighter employment to qualify on its own. (Refer to subchapter 402 for information on employees working in multiple employment categories at the same employer.)

EXAMPLE 2: A college graduate with a degree in elementary education and teacher certification from the Department of Public Instruction was hired by a school district as a full-time teachers' aide prior to July 1, 2011. The employee was expected to work about 1,500 hours per year and the position is permanent.

The employee is grandfathered under the pre-Act 10 WRS hourly eligibility criterion (440 hours) and was enrolled in the WRS under the Educational Support Personnel category based on the duties required. Teacher certification does not automatically confer Teacher category status on the employee.

An employee may appeal your determination of WRS employment category. This is why documentation and developing a process for determining employment categories should be a priority for WRS employers. Refer to subchapter 403 for detailed information on employment category appeals.

Please note that employers needing to change an employee's WRS employment category after the employee has been enrolled in the WRS should first contact the Employer Communications Center toll free 1-877-533-5020 or locally 608-266-3285, as such a change may have implications on past, present and future benefits.

401 Employment Category Descriptions

2011 Wisconsin Act 32 required the implementation of employment category changes for all WRS members; the new category designations are listed below. The effective date(s) were staggered depending on applicable Wisconsin laws.

Employment Code/Title		Description
30	General Employee	Includes all reserve judges, court reporters and employees not specifically designated under one of the other employment categories.
31	Court Reporter (used only by state agencies)	
32	State Executive Retirement Plan (used only by state agencies)	This applies only to state officers and employees serving in positions specified in Wis. Stat. §19.42 (10) (L) or §20.923 (4), (4m), (8) or (9) or authorized under §230.08 (2) (e) during the time of employment.

33	Protective Occupation Under Social Security	<p>Includes only those employees whose principal duties (51% or more) meet all the following requirements as defined in Wis. Stat. §40.02 (48) (a):</p> <ol style="list-style-type: none"> 1. Involvement in active law enforcement or active fire suppression or prevention. 2. Frequent exposure to a high degree of danger or peril. 3. A high degree of physical conditioning. <p>Wis. Stat. §40.02 (48) (am) enumerates specific occupations typically qualifying for protective occupation participation. Bearing the title of one of the occupations listed does not, however, automatically confer protective occupation participant status upon the employee. The employee’s principal duties must also meet the “protective occupation participant” requirements defined in §40.02 (48) (a), Wis. Stat.</p> <p>The specifically enumerated occupations are:</p> <ul style="list-style-type: none"> • Police officer • Conservation warden • Conservation patrol boat engineer • Conservation patrol officer • Member of the State Traffic Patrol • Sheriff/under sheriff • Deputy sheriff • State correctional-psychiatric officer • Fire watcher employed at Wisconsin veteran facilities • Special criminal investigation agent in the Department of Justice • Firefighter • Conservation patrol boat captain • Conservation pilot • Forest fire control assistant • State motor vehicle inspector • County traffic police officer • State probation/parole officer • State forest ranger • Excise tax investigator • Deputy fire marshal • Village police and firefighter protection services under Wis. Stat. §61.66 (1) <p>Per Wis. Stat. §40.02 (48) (bm), an employer may determine an Emergency Medical Technician (EMT) is a protective occupation participant, and the employer may do so without determining that the principal duties of the EMT involve active law enforcement or active fire suppression. The effective date of a determination that an EMT is protective category is the date ETF is notified of the classification; service prior to that date must remain under the general employment category. EMTs classified as general employees are not eligible for ETF-administered duty-disability benefits.</p> <p>In cases of multiple employment duties with a single employer – if one duty is that of EMT– only those hours in the performance of EMT duties can be classified as protective; the other employment hours would require separate reporting under their appropriate employment category.</p>
34	Protective Occupation <i>not</i> Under Social Security (hired/rehired after March 31, 1986 have Medicare coverage)	<p>Firefighters who meet protective requirements are the only employees who qualify under this category.</p> <p>Note: If an employer acted to provide Social Security coverage before the beginning date of the employer’s participation in WRS, firefighters have Social Security coverage and come under Emp. Code 33.</p>

40	Teacher	<p>Includes any employee (certification is not the defining criteria) engaged in the exercise of any educational function for compensation in the public schools or the University in instructing or controlling pupils or students, or in administering, directing, organizing or supervising any educational activity, but does not include any employee determined to be an auxiliary instructional employee [Wis. Stat. §40.02 (55)].</p> <p>Teacher includes: librarians employed by a school board for a school in a library under the board’s jurisdiction who meet the minimum librarian qualifications prescribed by the state superintendent of public instruction, employee of a full-time social center or community house, adult education or recreation director, instructor, or other employee employed by the Board of School Directors of the City of Milwaukee who possesses the qualifications required for employment as a teacher. A teacher’s aide is not specifically included in the definition of teacher.</p> <p>Note: The definition of <i>teacher</i> in Chapter 40 does not contain specific reference to school nurses, however, the definition is broad enough that it is possible that an employer may determine that their school nurse duties may fall within the language of the statute. Employers should evaluate the duties of school nurses in relation to §40.02(55) to make the determination.</p> <p>The first clause of the statutory definition of <i>teacher</i> is very broad. It seems to require only that the employee perform an educational function in public schools. It does not require any certain amount or percentage of work devoted to an educational function. This classification depends on both the employee’s duties and place of employment. A school nurse could fall in category 40 if determined by the employer. Due to the definition of <i>teacher</i>, employers should evaluate the duties of school nurses in relation to what they constitute an “educational function.” “Educational function” has been customarily viewed as activities related to classroom teaching and instruction.</p>
41	State Teacher Executive Plan (State Agencies Only)	This category applies only to state employees serving in positions specified in Wis. Stat. §20.923 (4), (8) or (9) who meet the definition of “teacher”. For State Teacher Executive Plan category, one year equals 1,904 hours.
42	Educational Support Personnel	<p>Effective 07/01/1997, this category applies to non-teaching employees of school districts.</p> <p>Effective 07/01/1998, this category also applies to non-teaching employees of Wisconsin, technical colleges or cooperative education service agencies. (This does not include employees of the University.)</p> <p>Educational support personnel include all non-teaching staff such as teacher’s aides, custodial staff, administrative assistants, business office staff, etc.</p>
45*	Supreme Court Justice	<p>Note that reserve judges and deputy/assistant district attorneys are treated as General Employees (Emp. Code 30).</p>
46*	Legislative Officers, State Constitutional Officers, or District Attorneys	
47*	Appellate (Court of Appeals) Judge	
48*	Circuit Court Judge	

49*	Local Elected Official or Person Appointed to Fill an Elected Position	This group includes local officials who are elected to office by vote of the people or persons appointed to fill an unexpired elected office term. Elected sheriffs are classified as Protective Occupation Under Social Security (Emp. Code 33).
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*2011 Wisconsin Act 32 changed the Formula Factor applied to accrued service performed after the effective dates for individuals in these employment categories. Implementation required two employment category changes for these employment categories.

402 Employment in Multiple Categories at the Same Employer

A. **All employment categories meet** the WRS-eligibility criteria for an employee with multiple positions at the same employer:

Report the hours and earnings separately for each employment category (Wis. Admin. Code ETF 10.03 (4) (a)).

EXAMPLE 1: Employee **with WRS service prior to July 1, 2011**, is hired by a school district to work 660 hours as a Teacher and 660 hours as an Educational Support Personnel. Since the hours in both employment categories independently meet the eligibility criteria of at least 440 hours, the employee's hours and earnings must be reported separately in their respective employment categories, i.e., the employee must be enrolled in both the Teacher and the Educational Support Personnel categories.

EXAMPLE 2: Employee with **no WRS service prior to July 1, 2011**, is hired to work 1,225 hours as a police officer and 1,225 hours as a dispatcher. Because the hours in both positions meet the WRS-eligibility criteria of at least 1,200 hours, the employee's hours and earnings must be reported separately in their respective employment categories, i.e., the employee must be enrolled in both the Protective with Social Security and the General categories.

EXAMPLE 3: Employee with **no WRS service prior to July 1, 2011**, is hired to work 885 hours as a Teacher and 1,225 hours as an administrative aide. Since the hours in both employment categories meet the eligibility criteria of at least 880 hours, the employee's hours and earnings must be reported separately in their respective employment categories, i.e., the employee must be enrolled in both the Teacher and the Educational Support Personnel categories.

EXAMPLE 4: Employee **with WRS service prior to July 1, 2011**, is hired by the city to work 650 hours as a both a police officer and 650 hours as a dispatcher with an expectation of working beyond 12 months. Since the hours in both positions meet their respective WRS-hourly eligibility criterion of at least 600 hours, the employee's hours and earnings must be reported separately in their respective employment categories, i.e., the employee must be enrolled in both the Protective and the General categories.

B. **Only one employment category meets** the WRS eligibility criteria, **and all other employment with the employer does not**, for an employee with multiple positions at the same employer:

Report all the employee's hours and earnings under the one employment category that meets the eligibility criteria (Wis. Admin. Code ETF 10.03 (4) (b)). Continue to monitor the hours of all other employment that does not originally meet the eligibility criteria on its own. Should the

other employment eventually qualify on its own, the employee must be enrolled in the WRS under that employment category, and hours and earnings must be reported to their respective category.

EXAMPLE 1: Employee with **WRS service prior to July 1, 2011** and is now hired by a school district to work 660 hours as a Teacher and 300 hours as a teacher's aide. The employee's total hours and earnings for both positions must be reported in the Teacher category because the hours performing teacher's aide duties do not meet the minimum required to be WRS eligible in the Educational Support Personnel category. Continuously monitor the hours as a teacher's aide to determine if WRS eligibility in the separate Educational Support Personnel category is required.

EXAMPLE 2: Employee with **no WRS service prior to July 1, 2011**. The town hires him to work as a dispatcher (650 hours) and as a police officer (400 hours). The employee's total hours and earnings must be reported in the General category because the employee does not meet the hourly WRS eligibility criteria of 600 hours required to qualify separately in the Protective category. Continuously monitor the hours as a police officer to determine if WRS eligibility in the separate Protective category is required.

EXAMPLE 3: Employee with **no WRS service prior to July 1, 2011**, is hired by a school district to work 880 hours as a Teacher and 700 hours as a teacher's aide. The employee's hours and earnings for both positions must be reported in the Teacher category because the hours performing the teacher's aide duties do not meet the minimum 880 hours required to be WRS eligible in the Educational Support Personnel category. Continuously monitor the hours as a teacher's aide to determine if WRS eligibility in the Educational Support Personnel category.

EXAMPLE 4: Employee with **no WRS service prior to July 1, 2011**, is hired to work 1,200 hours as a dispatcher and 1,040 hours as a police officer. The employee's total earnings and hours must be reported in the General category because the employee's hours as a police officer do not meet the minimum 1,200 hours required to qualify for WRS coverage separately in the Protective category. Continuously monitor the hours as a police officer to determine WRS eligibility in the separate Protective category is required.

C. More than one, but not all, employment categories meet the WRS eligibility criteria for an employee with multiple positions at the same employer:

Report the employee's hours and earnings in the employment categories that meet the eligibility criteria. The hours and earnings for employment categories that do not meet the eligibility criteria are reported in:

1. the employment category in which the greatest number of hours is worked;
or
2. the priority employment category as listed in Table 4.1 if the greatest number of hours worked is equal in two or more qualifying categories [Wis. Admin. Code ETF 10.03 (4) (c)].

Continue to monitor the hours of all positions that do not originally meet the eligibility criteria on their own. Should the other position eventually qualify on its own, the employee must be enrolled in the WRS under that employment category, and hours and earnings must be reported to their respective category from that point on.

Table 4.1 – Employment Category Priority

Priority	Employment Category	Category Number(s)
1	Protective Occupation NOT Under Social Security	34
2	Protective Occupation Under Social Security	33
3	State executive retirement plan, elected official, including judges	32, 45, 46, 47, 48, 49, 41
4	Teachers	40
5	Educational support personnel	42
6	General and court reporters (state only)	30, 31

EXAMPLE 1: Employee with **no WRS service prior to July 1, 2011**, is hired to work 350 hours as a firefighter, 1,250 hours as a city parks director and 1,200 hours as an elected official. Since the employee meets the hourly eligibility criteria separately in both the Elected Official and General categories, their respective hours and earnings are reported separately in each of those categories.

Hours performed as a firefighter are insufficient to separately meet the hourly eligibility criteria of 1,200 hours; therefore, those earnings and hours must be added to the qualifying category with the greatest number of hours, i.e., the General category.

Of the 2,800 total hours, 1,600 (350 Protective without Social Security hours plus 1,250 General hours) are reported in the General category and 1,200 hours reported in the Elected Official category.

EXAMPLE 2: Employee **with WRS service prior to July 1, 2011**, is hired by the city to work 350 hours as a firefighter, 800 hours as a custodian and 800 hours as an elected official. The hours and earnings associated as a firefighter must be reported in the Elected Official category because the:

- a. number of hours in the separately qualifying categories (General and Protective without Social Security) are equal; and
- b. Elected Official category has a higher priority than the General category.

D. No employment category on its own meets the WRS eligibility criteria for an employee with multiple positions at the same employer, but the criteria is met when all employment hours are added together. Report the combined hours and earnings under the:

- 1. employment category in which the greatest number of hours is worked;
- or**
- 2. priority employment category as listed in Table 4.1 if the greatest number of hours is equal in two or more categories [Wis. Admin. Code ETF 10.03 (4) (d)].

Continue to monitor the hours of all employment that does not originally meet the eligibility criteria on its own. Should the other employment eventually qualify on its own, the employee must be enrolled in the WRS under that employment category with hours and earnings reported to each respective employment category.

EXAMPLE 1: Employee **with WRS service prior to July 1, 2011**, is hired as a local elected official, a firefighter and as a grounds keeper, none of which are expected to require many hours; therefore, the employee is not enrolled in the WRS. On their one-year anniversary date, the employee had worked 320 hours as a local elected official, 440 hours as a firefighter and 440 hours as a grounds keeper.

The total hours exceed the one-third of full time criterion. Since the firefighter (Protective category) and the grounds keeper (General category) had the same number of hours, all hours and earnings must be reported under the Protective category because:

- none of the categories meet eligibility criteria of at least 600 hours separately; and
- the Protective category is the higher priority of the two employment categories (as shown in the priority listing) with 440 hours.

EXAMPLE 2: Employee with **no WRS service prior to July 1, 2011**, is hired by a *school district* as a part-time instructor and part-time secretary. The employee is not expected to be WRS eligible on their date of hire due to low expectations for the number of hours required for both positions.

On their one-year anniversary date, it is determined that the individual worked 400 hours as a Teacher and 420 hours as an Educational Support Personnel.

Note: The employee is **not** WRS eligible on the one-year anniversary date because the total number of hours worked ($400 + 420 = 820$ hours) is less than the minimum 880 hours required to be reported as an Educational Support Personnel.

EXAMPLE 3: An employee with **no WRS service prior to July 1, 2011**, is hired by a *technical college* as a part-time instructor and part-time administrative assistant. Due to the low expectation for hours required, the employee is not eligible for WRS when initially hired. On the one year anniversary date, the individual had worked 400 hours as a Teacher and 520 hours as a *technical college* Educational Support Personnel.

Note: The greatest number of hours worked was as a *technical college* Educational Support Personnel. This employee is **not** WRS eligible on the one-year anniversary date because the total number of hours worked ($400 + 520 = 920$) is less than the minimum 1,200 hours required to be reported as a *technical college* Educational Support Personnel.

EXAMPLE 4: An employee **with WRS service prior to July 1, 2011**, is hired by a *school district* as a part-time instructor and part-time secretary. Due to the low expectation for hours required, the employee is not eligible for WRS on the date of hire. On their one-year anniversary date, the individual had worked 240 hours as a Teacher and 200 hours as an Educational Support Personnel.

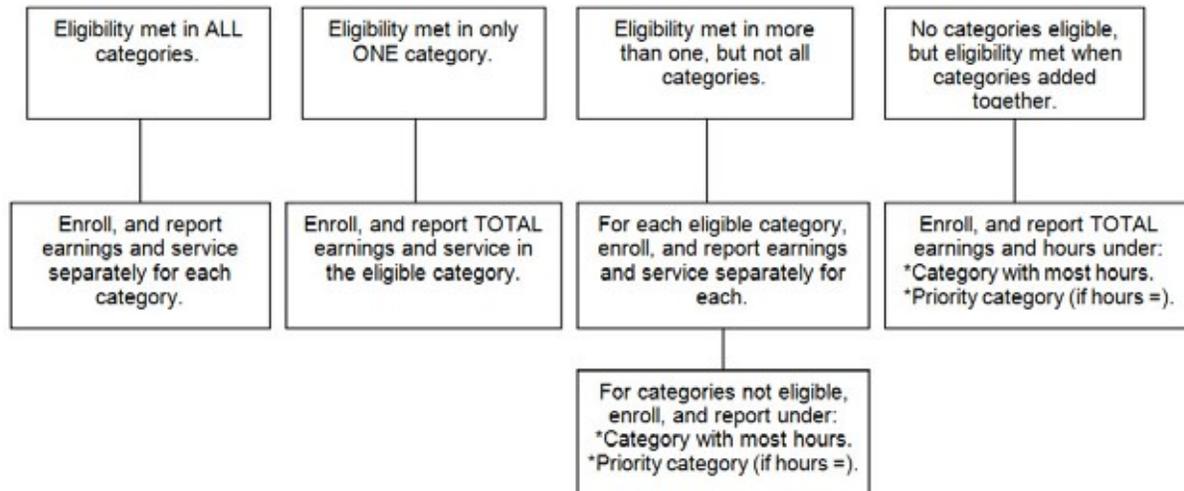
Note: The greatest number of hours worked is as a Teacher. This school district covers non-teachers under WRS; therefore, WRS eligibility is determined by combining hours for both employment categories. The employee is eligible for WRS using combined hours for both employment categories because the total number of hours worked ($240 + 200 = 440$ hours) is equal to the 440 hours necessary for both categories. The employee is ultimately reported in the Teacher category because the greatest number of hours worked is as a Teacher.

E. Employment at a school district that does not cover its non-teachers under WRS. An employer cannot combine hours of both employment categories (teaching and non-teaching) to determine WRS eligibility in cases where the employer does not provide WRS coverage for the non-teaching employment category.

EXAMPLE 1: An employee **with WRS service prior to July 1, 2011**, is hired to work 420 hours as a Teacher and 200 hours in a non-teaching position. The school district does not cover non-teachers under WRS. Therefore, only teaching hours are used in WRS eligibility determinations. Having WRS service prior to the July 1, 2011 change to the hourly criterion for WRS eligibility, the employee is grandfathered under the one-third of full time rule, i.e., at least 440 hours; the non-teaching hours are not factored because the district only provides WRS coverage to its Teachers.

Note: If the Teacher had not had WRS service prior to July 1, 2011, they would be required to meet the new hourly criterion of two-thirds of full time hours, i.e., 880 hours, to be WRS eligible.

EXAMPLE 2: An employee **without WRS service prior to July 1, 2011**, is hired by a *school district* to work 820 hours as a Teacher and 200 hours in a non-teaching position. The school district does not cover non-teachers under WRS. Therefore, only teaching hours are used in WRS eligibility determinations. The employee must work two-thirds of full time, i.e., 880 hours, as a Teacher to be WRS eligible. Once WRS eligible, only teaching hours and earnings are WRS reportable.



403 Employment Category Appeals

An employee may appeal their employer's determination of employment category as outlined below:

The employee must file a written appeal directly to the Employee Trust Funds Board based on the following criteria:

- a. **Determinations made on or after January 1, 1982** - are subject to the seven-year statute of limitations in Wis. Stat. §40.06 (1) (e). Appeals regarding employment category may not apply to any service rendered more than seven years prior to the date the appeal is received by the Board.
- b. **Determinations made prior to January 1, 1982** - 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 the category determination was made.

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 1-877-533-5020 or locally at 608-266-3285. 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-employment category 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.

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

In some circumstances, the Wisconsin Court of Appeals has held that the period of limitation under Wis. Stat. §40.08 (10) within which errors may be corrected may not begin until ETF 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 may be longer than anticipated.

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.

405 Maintaining Records Longer than Seven Years

Employers are advised to retain employee payroll and benefit records, since WRS eligibility and category determinations, as well as account adjustments, may not be time-barred and employers may be liable for past hours and earnings reporting, regardless of when the error occurred. The employer must, however, 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, hours or earnings have no time limit.

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

