

Department of Employee Trust Funds
WISCONSIN RETIREMENT SYSTEM ADMINISTRATION MANUAL

CHAPTER 4 — EMPLOYMENT CATEGORY DETERMINATION

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400 Employment Category

Once an employer has determined an employee is WRS eligible, it is necessary to determine the appropriate employment category within which to enroll them. Determination of the proper employment category for each eligible employee is essential because contribution rates and benefit payments vary for participants in different categories.

It is the employer's responsibility to determine the appropriate employment category classification for its WRS eligible employees. Use the criteria in subchapter 401 to assist in making the employment category determination. Employment category classifications must be based on an employee's duties as performed in the service of their employer.

Certifications such as teacher, police or firefighter certifications, for example, do not automatically confer teacher employment category or protective employment category classification upon their holders.

EXAMPLE 1: Employee 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 less than the 600 hours required to qualify as an independent employment category. The employee must be enrolled in the WRS under the general (00) employment category. All hours and earnings, including those as a firefighter, must be reported to WRS under the general employment 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 recent college graduate with a degree in Elementary Education and teacher certification from the Department of Public Instruction is hired by a school district as a full-time teachers' aide. The employee is expected to work about 1,500 hours per year and the position is permanent. The employee must be enrolled in the WRS under the educational support personnel category (12) based on the duties required. Teacher certification does not automatically confer teacher employment category status on the employee.

An employee may appeal your determination of WRS employment category. Subchapter 403 provides detailed information on employment category appeals.

401 Employment Category Descriptions

Employment Code/Title		Description																				
00	General Employee	Includes all reserve judges, court reporters and employees not specifically designated under one of the other employment categories.																				
01	Court Reporter (used only by state agencies)																					
02	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.																				
03	Protective Occupation Under Social Security	<p>Includes only those employees whose principal duties (51% or more) meet all of 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. However, bearing the title of one of the occupations listed does not 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. The specifically enumerated occupations are:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">◆ Police Officer</td> <td style="width: 50%;">◆ Firefighter</td> </tr> <tr> <td>◆ Conservation Warden</td> <td>◆ Conservation Patrol Boat Captain</td> </tr> <tr> <td>◆ Conservation Patrol Boat Engineer</td> <td>◆ Conservation Pilot</td> </tr> <tr> <td>◆ Conservation Patrol Officer</td> <td>◆ Forest Fire Control Assistant</td> </tr> <tr> <td>◆ Member of the State Traffic Patrol</td> <td>◆ State Motor Vehicle Inspector</td> </tr> <tr> <td>◆ Sheriff/Under Sheriff</td> <td>◆ County Traffic Police Officer</td> </tr> <tr> <td>◆ Deputy Sheriff</td> <td>◆ State Probation /Parole Officer</td> </tr> <tr> <td>◆ State Correctional/Psychiatric Officer</td> <td>◆ State Forest Ranger</td> </tr> <tr> <td>◆ Fire Watcher Employed at Wisconsin veteran facilities</td> <td>◆ Excise Tax Investigator</td> </tr> <tr> <td></td> <td>◆ Deputy Fire Marshall</td> </tr> </table>	◆ Police Officer	◆ Firefighter	◆ Conservation Warden	◆ Conservation Patrol Boat Captain	◆ Conservation Patrol Boat Engineer	◆ Conservation Pilot	◆ Conservation Patrol Officer	◆ Forest Fire Control Assistant	◆ Member of the State Traffic Patrol	◆ State Motor Vehicle Inspector	◆ Sheriff/Under Sheriff	◆ County Traffic Police Officer	◆ Deputy Sheriff	◆ State Probation /Parole Officer	◆ State Correctional/Psychiatric Officer	◆ State Forest Ranger	◆ Fire Watcher Employed at Wisconsin veteran facilities	◆ Excise Tax Investigator		◆ Deputy Fire Marshall
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Employment Code/Title		Description
03	Protective Occupation Under Social Security (cont.)	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. 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.
04	Protective Occupation NOT Under Social Security (hired/rehired after March 31, 1986 have Medicare coverage)	Firefighters who meet protective requirements are the only employees who qualify under this category. 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 Code 03.
05	Supreme Court Justice	Note that reserve judges and deputy/assistant district attorneys are treated as General Employees (Code 00).
06	Legislative or State Constitutional Officers including District Attorneys	
07	Appellate Judge	
08	Circuit Court Judge	
09	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 (Code 03).
10	Teacher	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)). Teacher includes: librarians, 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 included in this definition of teacher.
11	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 1904 hours.
12	Educational Support Personnel	Effective 07/01/1997, this category applies to non-teaching employees of school districts. 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.)

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 service and earnings separately for each employment category (Wis. Admin. Code § ETF 10.03 (4) (a)).

EXAMPLE 1: Employee is a half-time (660 hours) teacher, category 10, and also has a half-time (952 hours) administrative position, category 12,

with the same employer. This employee should be reported in both categories 10 and 12 for the respective earnings and hours.

EXAMPLE 2: Employee is a part-time (625 hours) police officer, category 03, and also works as a part-time (625 hours) dispatcher, category 00, with the same employer. This employee should be reported in both category 03 and category 00 for the respective earnings and hours.

- 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 service 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 is a half-time (660 hours) teacher, category 10, and also is a one-fourth time (476 hours) teacher's aide, category 12, with the same employer. This employee's total earnings and hours for both positions should be reported in the teacher category (10) because the employee does not meet the criteria to qualify separately in the educational support personnel category (12).

EXAMPLE 2: Employee works part-time (650 hours) as a dispatcher, category 00, and works part-time (400 hours) as a police officer, category 03, for the same employer. The employee's total earnings and hours should be reported in the general category (00) because the employee does not meet the criteria to qualify separately in protective category (03).

- 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 qualifying service and earnings under their respective employment categories, and report the service and earnings for employment in categories that do not meet the eligibility criteria under the:

- the employment category in which the greatest number of hours is worked
- OR -
- 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 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.

Table 4.1 – Employment Category Priority

Priority	Category	Category Number(s)
1	Protective without Social Security Coverage	04
2	Protective with Social Security Coverage	03
3	State Executive Retirement Plan, Elected Official including Judges	02, 05, 06, 07, 08, 09, 11
4	Teacher	10
5	Educational Support Personnel	12
6	General and Court Reporters (State only)	00 and 01

EXAMPLE 1: Employee is a part-time (350 hours) firefighter, category 04; a half-time (950 hours) city parks director, category 00; and a part-time (650 hours) elected official, category 09, for the same employer. The employee meets the eligibility criteria separately in both the elected official and general categories so the respective hours and earnings are reported separately.

However, the firefighter category does not separately meet eligibility criteria, hence the firefighter hours and earnings must be added to the qualifying category with the greatest number of hours. In this case, the general category has the greatest number of hours worked. The hours and earnings associated with the firefighter category are combined with the hours and earnings reported in the general category.

This employee would have 1,300 hours (350 firefighter and 950 general) reported in the general (00) category and 650 hours reported in the elected official (09) category.

EXAMPLE 2: Employee is a part-time (350 hours) firefighter, category 04; works part-time (800 hours) as a custodian, category 00; and is a part-time (800 hours) elected official, category 09, for the same employer. The hours and earnings associated with the firefighter category must be reported in the elected official (09) category because:

- a. the number of hours in the separately qualifying categories (00 and 09) are equal, and
- b. the elected official (09) category has a higher priority than the general (00) category on the category priority listing.

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 are met when all employment is added together. Report the combined service and earnings under:

- the employment category in which the greatest number of hours is worked
- OR -

- the 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 and hours and earnings must be reported to their respective category.

EXAMPLE 1: An employee is a less than one-third time local elected official, category 09; a firefighter, category 04 which requires less than 600 hours per year; and a grounds keeper, category 00, which requires less than 600 hours per year. The employee actually worked the following: 320 hours as a local elected official, 440 hours as a firefighter, and 440 hours as a grounds keeper. Since the firefighter (protective without Social Security, category 04) and the grounds keeping job (general category 00) had the same number of hours, all hours and earnings must be reported under the protective category 04 because: none of the categories meet eligibility criteria separately, and the protective (04) category is the higher priority of the two categories (as shown in the priority listing) with 440 hours.

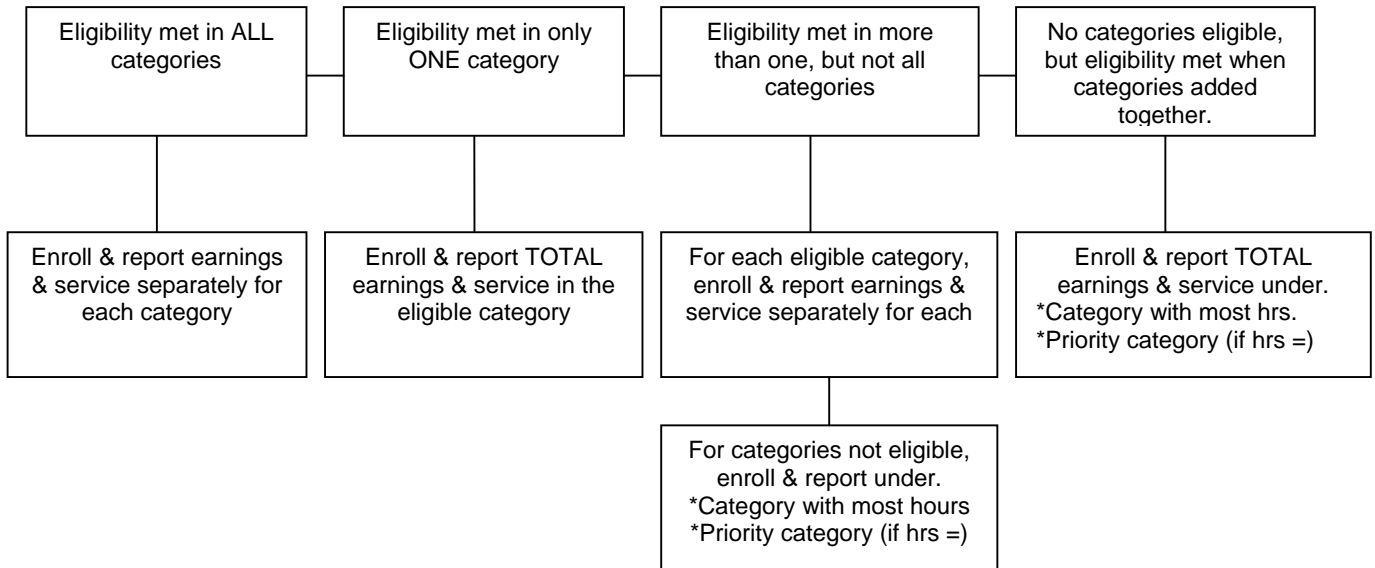
EXAMPLE 2: An employee is hired by a school district as a part-time instructor and part-time secretary. The employee is not eligible for WRS on the date of hire. On the one-year anniversary date, the individual has worked 200 hours as a teacher and 240 hours as non-teaching support staff. Note: The greatest number of hours worked is non-teaching. Even though this school district covers non-teachers under WRS, and WRS eligibility is determined by combining hours for both employment categories, the employee is not eligible for WRS. This is because the total number of hours worked ($200 + 240 = 440$ hours) is less than the 600 hours necessary to be reported as employment category 12, Educational Support Personnel.

EXAMPLE 3: An employee is hired by a school district as a part-time instructor and part-time secretary. The employee is not eligible for WRS on the date of hire. On the one-year anniversary date, the individual has worked 240 hours as a teacher and 200 hours as non-teaching support staff. NOTE: The greatest number of hours worked is teaching. 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 to be reported as employment category 10, Teacher.

- E. **Employment at a school district that does not cover its non-teachers under WRS.** 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 one of the categories.

EXAMPLE 1: An employee works 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 determining WRS eligibility. The employee must work one-third of full-time (440 hours) as a teacher to be eligible for WRS, therefore this employee is WRS ineligible. Once eligible, only teaching hours and earnings are WRS reportable.



403 Employment Category Appeals

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

Employment Category Appeals. An employee may appeal an employment category determination made by their employer. 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.

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 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

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 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 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.

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 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.