



STATE OF WISCONSIN
Department of Employee Trust Funds

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CORRESPONDENCE MEMORANDUM

DATE: February 29, 2008

TO: Employee Trust Funds Board
Teachers Retirement Board
Wisconsin Retirement Board

FROM: John Vincent, Administrator
Division of Trust Finance and Employer Services

Sari King, Administrator
Division of Retirement Services

SUBJECT: Post-Retirement Employment

This memo is for the Board's information only. No action is required.

Interest was expressed at the December board meeting in learning more about the effect of post-retirement employment on Wisconsin Retirement System (WRS) retirement benefits. This memorandum provides some key information on "return to work" rules for WRS annuitants, along with information on the consequences that may result when specific WRS rules governing return to work provisions are not satisfied.

Please note that WRS participants who retire can work in private employment with no affect on benefits (retirement and health/life) administered by Employee Trust Funds (ETF).

Good-Faith Termination

The applicable rule is Wis.Admin. Code ETF § 10.08.

Federal law requires a good-faith termination of employment in order to qualify for a retirement benefit distribution from a qualified retirement plan, such as the WRS.

A valid termination meets all of the following requirements:

- The employee ceases to render compensable services,
- The employee and employer comply with the employer's policy for voluntary termination,
- As of the termination date, no WRS participating employer has "rights" to any future services to be rendered by the employee that meet the qualifications for WRS for which compensation has or will be paid.

Reviewed and approved by Robert J. Conlin, Deputy Secretary

Signature

Date

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However, this rule does not prohibit:

- an agreement as of the termination date for future employment with a different WRS employer that does not meet WRS participation standards,
- an agreement prior to termination for voluntary (uncompensated) future services.

Required Break In Service

The applicable statute is Wis. Stat. § 40.23 (1) (a) 1.

Employees who terminate WRS-covered employment are ineligible for any benefit payment (including retirement annuities, lump sum retirement payments, or separation benefits) if they return to **WRS eligible employment** before the latest of the following dates:

1. the day after the annuity effective date, or
2. the 31st day after termination of all participating employment, or
3. the 31st day after ETF receives the benefit application.

The benefit payment will be cancelled if the person returns to WRS-eligible employment before this required break in service.

In addition, if the WRS employer is the same employer from which the participant terminated employment before the annuity began, the 30-day break in service requirement applies *even if the new employment does not meet WRS participation standards.*

Returning to Work

A rehired annuitant who fulfills the required break in service and meets the eligibility criteria for participation under the WRS may choose whether to remain an annuitant or return to active WRS participation. Either way, a *Rehired Annuitant Election* form (ET-2319) must be filed with the employer.

- Remain an annuitant – The participant elects not to participate in the WRS as an active employee. The participant may elect WRS coverage in the future, provided eligibility requirements are met.
- Return to Active WRS participation – The participant elects to become covered under the WRS again. The Department will terminate the annuity and the member's WRS coverage will be effective on the first of the month after the Department receives the completed *Rehired Annuitant Election* form. Upon terminating WRS covered employment, the member can reapply for a retirement annuity, which will be recalculated using the new final average monthly earnings (if applicable) for all of his or her WRS covered employment, including covered employment after the return to work.

Approximately 96% of rehired annuitants with WRS participating employers elect the first option -- to remain an annuitant and continue their annuities.

For more detailed member-oriented information on this topic, see the Department's brochure, *Information for Retirees* (ET-4116), available online <http://etf.wi.gov/retirees.htm> or by calling (877) 533-5020.

Consequences

An agreement to return to work that is entered into before termination or soon after an alleged termination, may call into question whether a good-faith termination of employment occurred. If ETF discovers or is notified of a possible invalid termination, the employer and employee must demonstrate that the termination was made in good-faith. Substantial changes in duties after rehire, re-employment with a different WRS employer, and the timing of discussions concerning re-employment are among the factors that ETF would consider in determining whether a good-faith termination occurred.

A determination that the conditions of a good-faith termination were not met means the employee did not meet the legal minimum break in service requirement and the retirement benefit was paid in error. The consequences of this decision on the employer and employee are as follows:

- If the annuitant is receiving a monthly retirement benefit, the monthly payments will be discontinued and ETF will collect any monthly benefit payments paid in error. ETF will also collect any lump sum benefit paid in error.
- The employer will be required to report the hours and earnings that would have been reported had the termination not been reported. ETF will assess interest penalties if the earnings adjustment is not part of the current processing year.
- Should the employee wish to reinstate the benefit, valid termination of the current employment is required and the employee must reapply for the retirement benefit, delaying the original annuity effective date.
- ETF-administered benefits such as health, life, and income continuation insurance may be affected. In some cases, insurance coverage may be lost, as State law does not allow enrollment due to employer error.

Staff will be available at the meeting for discussion and questions.