



**STATE OF WISCONSIN**  
**Department of Employee Trust Funds**  
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 SECRETARY

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**Correspondence Memorandum**

**Date:** May 28, 2019

**To:** Employee Trust Funds Board  
 Teachers Retirement Board  
 Wisconsin Retirement Board

**From:** David H. Nispel, General Counsel

**Subject:** The Department of Employee Trust Funds (ETF) Appeals Process

**This memo is for informational purposes only. No Board action is required.**

Training regarding ETF's administrative appeals process was last provided in June 2016 at the Joint Meeting of the Retirement Boards. This training is designed to inform new board members and remind long-term members about that process. Also, an appeal is scheduled to be heard on June 20, 2019, at the Teachers Retirement Board meeting.

**I. Introduction**

- a) Ch. ETF 11, Wis. Admin. Code and Ch. 40, Wis. Stats.
- b) Generally, "Appeal" means the review of a determination made by the Department conducted by a Board under s. 40.03 (1) (j), (6) (i), (7) (f), (8) (f), Wis. Stats. or 40.80 (2g), Wis. Stat.
- c) "Direct Appeal" relates to an employer's determination.
- d) Nature of the appeal determines which Board hears the case (s. 40.03 (7)).
- e) Common complaint/appeal issues (see attached sheet).
- f) Customer service initiative (ETF's approach to resolve disagreements, disputes, and appeals at the most appropriate level).
- g) Role of Assistant Attorney General advising the boards.

**II. Informal Review Process Conducted by ETF**

Concerns of participants often are resolved without a formal appeal being filed because of:

- Daily customer service activities of staff
- ETF Ombudsperson Services
- Attorney in Office of Legal Services
- Settlement authority of the ETF Secretary

Reviewed and approved by Robert J. Conlin, Secretary

Electronically Signed 6/10/19/19

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- Settlement authority of supervisors and managers
- a) Member and Department discuss whether the concerns or appeal can be resolved informally.
- b) If informal resolution is not possible, appeal is referred to the Department of Administration's Division of Hearings and Appeals.

**III. ETF Appeals Process: The Hearing Examiner (or Administrative Law Judge, ALJ)**

- a) Determine the parties and the issues for each appeal.
- b) Conduct the pre-hearing conference and evidentiary hearing, receive relevant evidence at the hearing, rule on all objections and motions, issue the proposed decision.

**IV. ETF Appeals Process: The Prehearing Conference**

- a) Identify the specific issues to be resolved and any factual and legal disputes.
- b) Identify witnesses including any expert witnesses.
- c) Discuss reaching agreement on a Stipulation of Facts and relevant exhibits.
- d) Discuss authority of the Boards to hear and decide issues in the appeal.
- e) Office of Legal Services Attorney represents ETF.

**V. ETF Appeals Process: The Hearing**

- a) Burden of proof rests with the appellant; presents case first.
- b) Testimony of witnesses and receipt of other relevant evidence (exhibits, Stipulation of Facts).
- c) Rulings made on evidence offered at the hearing: what is admissible, what is hearsay, when objections are sustained or overruled.
- d) Record of the hearing is developed:
  - Stipulation of Facts.
  - Exhibits admitted and not admitted into evidence.
  - Transcripts (electronic or paper).

**VI. ETF Appeals Process: Briefs Filed Following the Hearing**

- a) Parties have the opportunity to file briefs or letters:
  - Reference made to the evidence offered at the hearing.
  - Reference made to the laws supporting arguments made by the parties.
  - Cannot contain new evidence or documents not previously offered at the hearing.
- b) Briefs become part of the appeal record.

**VII. ETF Appeals Process: The Proposed Decision by Hearing Examiner (ALJ)**

- a) Findings of Fact, Conclusions of Law, Order
- b) Parties may file objections to the proposed decision (become part of record)

**VIII. ETF Appeals Process: Role of the Board**

- a) Appeals Coordinator organizes the appeal record.
- b) Board staff provides appeal record to each Board member.
- c) Board meets to consider the appeal.
- d) Board issues the final decision in the appeal.

**IX. Role of Department of Justice Assistant Attorney General**

- a) Closed session deliberation—parties not present during the deliberation
- b) Review on the record—Board does not take evidence or hear testimony
- c) Provide oversight of the initial decision-making process—either that of the Department, or, in direct appeals, the participant's employer
- d) Prior to Board meeting: read the record, identify the specific issues to be resolved and any factual and legal disputes.
- e) At Board meeting: counsel provides summary of case and a recommendation for deciding the appeal
- f) Board discusses the facts and law at issue
- g) Proposed Decision can be adopted in part or in full, or rejected
- h) Final Decision is issued by the Board
- i) Only ETF Board has equity power and that is limited
- j) Options include remanding the appeal back to the hearing examiner

**X. Final Thoughts**

-Appeals process is working well

-Number of formal appeals that go to hearing continues to be very low

-Online training document:

<http://etf.wi.gov/VideoLibrary/AdministrativeAppealsSeptember2018.pdf>

Staff will be available at the Board meeting to answer any questions.

Attachment: Common Complaint/Appeal Issues

## Common Complaint/Appeal Issues

- Beneficiary designation forms
- What constitutes Wisconsin Retirement System earnings
- Health insurance coverage disputes
- Disability Appeals—particularly where the employer will not certify
- Income Continuation Insurance and Disability offsets
- Category of employment
- Participation in the WRS
- Eligibility for benefits
- Overpayment of benefits
- Life insurance coverage
- Annuity calculation
- Separation Benefits
- Retaliation, discrimination, negligence by ETF staff, health care provider or third-party administrator
- Misinformation from ETF staff and third-party administrator
- Mistreatment by ETF staff or third-party administrator