

State of Wisconsin

DOA – DIVISION OF PERSONNEL MANAGEMENT

- CLASSIFICATION & COMPENSATION BULLETIN -

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Locator No: DPM-0546-CC

Subject: Continuous Service Eligibility for
Returning Former Employees

The purpose of this bulletin is to advise state agencies on correct application and restoration of continuous service for former employees returning to state service, due to 2015 Wisconsin Act 150 and the implementation of the 2017-2019 Compensation Plan. Act 150 modified s. 230.12 (1) (h), Wis. Stats., to remove the authority of the compensation plan to supersede provisions of civil service, statutes and rules promulgated by the Division of Personnel Management.

Historically, most employees have had to return to state service within five years of leaving state service to be eligible for restoration of previous continuous service. An exception allowing career executives and higher-level executives to recover previous continuous service after any length of absence was provided under s. 230.35 (1m), Wis. Stats. Modifications to s. 230.35 (1m) to cover FLSA-exempt employees in addition to executives, and creation and elimination of Compensation Plan provisions limiting restoration of continuous service for FLSA exempt employees has created confusion as to the correct application of continuous service for former employees returning to state service.

I. HISTORY

Prior to 2003, the annual leave schedule at s. 230.35 (1m), Wis. Stats., applied only to career executives and higher-level state executives. The language was modified with 2003 Wisconsin Act 22 to expand application to all employees who were FLSA exempt. Bulletins OSER-0018-CLR (*obsolete*) and OSER-0212-CLR, published in 2004 and 2008, respectively, issued direction that the changes to s. 230.35 (1m) (f), Wis. Stats., resulted in unlimited restoration of continuous service for nonrepresented FLSA exempt employees who terminated from and then returned to FLSA exempt status. Per Bulletin OSER-0294-CLR, published in 2011, with the elimination of collective bargaining agreements, language was added to Section K, 2.01 of the 2011-2013 Compensation Plan to supersede the statutory and code language to limit indefinite continuous service to “apply only if the employee leaves and returns to a career executive position or positions designated in s. 19.42 (10) (L) or s. 20.9253 (4), (7), (8), and (9), or authorized under s. 230.08 (2) (e).” In 2013, the Joint Committee on Employment Relations, as recommended by OSER, introduced statutory language changes to incorporate some superseding provisions from the Compensation Plan. The changes in 2013 Wisconsin Act 123 to s. 230.35 (1m) (f), Wis. Stats., while intended to mirror the language in the Compensation Plan and limit the application of indefinite continuous service to former career executive or higher-level state executives, did not provide a limit on the duration of an absence for non-career executive, FLSA exempt employees to return to state service and recover previous continuous service. The language in Section K, 2.01 continued to be included in the 2013-2015 and 2015-2017 Compensation Plans. The 2017-2019 and subsequent Compensation Plans no longer limit application of statutory continuous service provisions. Therefore, the language contained in statutes and rules must be applied.

II. APPLICATION

Section 230.35 (1m) (f), Wis. Stats., reads as follows:

“The continuous service of an employee eligible for annual leave under this subsection shall not be considered interrupted if the employee was on an approved leave of absence to participate in providing specialized disaster relief services or **if the employee leaves the service and is reemployed by the state in another position covered under this subsection.** Employees appointed to career executive positions under s. 230.24 or positions designated in s. 19.42 (10) (L) or 20.923 (4), (7), (8), or (9) or authorized under s. 230.08 (2) (e) are not subject to the continuous service requirements under sub. (1) (g) if they are reemployed in any of those positions, regardless of the duration of their absence. If the employees are reemployed in a position other than a career executive position or a position designated in s. 19.42 (10) (L) or 20.923 (4), (7), (8), or (9) or authorized under s. 230.08 (2) (e), continuous service shall be established in accordance with rules of the administrator.” (Emphasis added)

The bold text governs the calculation of continuous service for all returning FLSA exempt employees and does not provide limitation on the duration of the absence in the calculation of continuous service upon return. As a result, the application of the language in s. 230.35 (1m) (f), Wis. Stats., is that if an employee terminated state employment from a position with FLSA exempt status, in which the employee received the leave schedule in subsection (1m), and subsequently returns to a position in state service with FLSA exempt status also covered by (1m), the employee’s state continuous service is restored regardless of the length of time not employed by the state. The employee’s continuous service date would, however, be adjusted for the time period not employed by the state or employed in a position not eligible to accrue continuous service.

This change applies only to employees **returning to state service on or after February 18, 2018**, with the implementation of the 2017-2019 Compensation Plan.

Note. Intervening employment in a classified or unclassified limited term position, whether FLSA exempt or non-exempt, will not affect the right of an employee to recover continuous service from a previous permanent position. For example, an employee worked as a permanent classified FLSA exempt Forestry Specialist from 2010 to 2013, then worked as an LTE Forestry Technician in 2020. Upon rehire into a FLSA-exempt Forester-Advanced position in 2021, this employee is eligible to recover continuous service accrued from 2010 to 2013.

III. EXCLUSIONS FROM WAIVER ON FIVE-YEAR LIMIT FOR RETURN

Non-exempt Employees. Returning employees whose most recent prior position eligible for continuous service accrual was not both FLSA exempt and eligible for annual leave under s. 230.35 (1m) (f) will still be subject to returning within five years to receive credit for prior continuous service.

Project Employees. Returning employees whose most recent prior position was a project position, and who never previously held a permanent classified or unclassified position, are not eligible to recover past continuous service under any circumstances.

Discharged Employees. As provided in ss. ER 18.02(2) (b) 2m.b. and 18.03(5), Wis. Adm. Code, an employee who is terminated for misconduct or delinquency and is subsequently re-employed in state service will not have prior service counted towards their continuous service date.

Sick Leave. The waiver on the five-year limit for certain FLSA exempt employees with regard to continuous service does not apply to restoration of prior sick leave credits. The restoration of sick leave

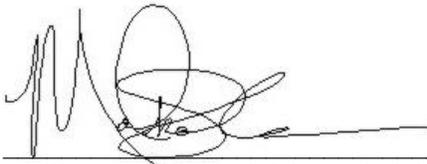
credits after an absence from service of more than five years is limited to certain former executives returning to executive positions as detailed at s. 230.35 (2), Wis. Stats, and ER 18.03 (5) (b), Wis. Adm. Code. Therefore, a former exempt employee returning to an exempt position after a break in service of more than five years may be eligible for continuous service credit for prior service, but not eligible to recover previously accrued unused sick leave credits.

IV. CORRECTION OF ADJUSTED CONTINUOUS SERVICE AND RECONCILIATION OF ANNUAL LEAVE BENEFITS

The Division of Personnel Management has identified employees who need review of their continuous service due to these changes since February 18, 2018 and is working with agencies to correct adjusted continuous service dates and reconcile annual leave benefits as necessary.

V. REFERRAL OF QUESTIONS

Questions regarding these continuous service provisions should be directed to John Wiesman by phone at (608) 266-1418 or by e-mail at John.Wiesman@Wisconsin.gov.

A handwritten signature in black ink, appearing to read 'Malika S. Evanco', written over a horizontal line.

Malika S. Evanco, Division Administrator
Division of Personnel Management