

State of Wisconsin**DOA – DIVISION OF PERSONNEL MANAGEMENT****- MERIT RECRUITMENT AND SELECTION BULLETIN -****Date:** June 25, 2026**Locator No.** DPM-0664-MRS**Subject: REPLACEMENT BULLETIN:**Guidelines for Restoration from the
Unclassified Service, Pursuant to Sec.
230.33, Wis. Stats.

This is a re-issue of policy bulletin DPM-0484-BMRS (last released November 06, 2018) on guidelines for restoration from the unclassified service, pursuant to s. 230.33, Wis. Stats. Recently, the Bureau of Merit Recruitment and Selection (“BMRS”) has received inquiries from both employees and appointing authorities regarding application of the right of restoration for employees on leave to the unclassified service who seek return to the classified service. This bulletin provides guidance regarding restoration under s. 230.33, Wis. Stats. After being updated to reflect the changes to reinstatement and restoration following modifications made to Chapter 230, Wis. Stats. in 2015 WI Act 150, this current update provides minor clarifying language and additional hypothetical examples in Section VII.

I. SEC. 230.33 LEAVE OF ABSENCE

An employee appointed to serve in an unclassified position does not have restoration rights to the classified service unless the employee has a leave of absence (LOA) from the classified service under s. 230.33, Wis. Stats. This provision is the authority for LOA and return to classified service for those appointed to unclassified service and should not be confused with the provisions under s. ER18.14(2)(a), Wis. Adm. Code which are not applicable.

Prior to administering a LOA for appointments under s. 230.33(1), Wis. Stats., by a judicial body or legislative body or committee, the appointing authority must provide notice to the BMRS director for confirmation of leave eligibility due to the uniqueness of defining judicial bodies, legislative bodies, or committees.

An approved LOA to serve in the unclassified service is limited in duration to the term of the elected official from which appointment authority is derived or, when applicable, the end of a fixed-term appointment. There is no indefinite LOA under s. 230.33, Wis. Stats., and each LOA form must include an end date which is the end of the applicable term plus the three months granted under s.230.33. See part IV below for information regarding successive appointments to the unclassified service.

II. SEC. 230.33 REINSTATEMENT ELIGIBILITY

Reinstatement eligibility is provided regardless of whether the employee was granted a LOA under s. 230.33, Wis. Stats. Reinstatement eligibility is to any agency for five (5) years from the date of the unclassified appointment or one (1) year following separation, whichever is longer. Refer to *Wisconsin Human Resource Handbook* Chapters 104 and 156 for additional information on reinstatement.

III. SEC. 230.33 RESTORATIONS ARE UNIQUE

While rights of restoration exist for several personnel transactions (see s. ER-MRS 16.03, Wis. Adm. Code), restoration rights pursuant to s. 230.33, Wis. Stats., are unique. A s. 230.33, Wis. Stats., restoration has a different period of eligibility than exists for other types of restorations. (s. ER-MRS 16.025(3), Wis. Adm. Code.) Additionally, a s. 230.33, Wis. Stats., restoration is the only type of restoration that provides: "...this section shall supersede any provision of law in conflict therewith...." (s. 230.33(4), Wis. Stats.) Under that provision, the rights under s. 230.33, Wis. Stats., take precedence over other statutes and administrative rules, like Ch. ER-MRS 22, Wis. Adm. Code, when there is a conflict. The Wisconsin Employment Relations Commission has upheld the predominance of s. 230.33, Wis. Stats., restoration rights over seniority considerations when it held that restoration rights to a position in the classified service are not controlled by seniority.¹ Further, under s. 230.33, Wis. Stats., an employee's restoration rights are to their former or equivalent position, not the other types of positions listed in s. ER-MRS 1.02(30), Wis. Adm. Code.

Restoration rights are specifically authorized for the same or equivalent position; not preferred alternatives such as a lower level than the position of restoration right, a position in a different agency, a position at the same level but of a different authority or scope, etc. The employee must restore under these provisions or those rights are forfeited. Preferred alternatives would require reinstatement.

IV. RIGHTS ASSOCIATED WITH SEC. 230.33

In order to be eligible for s. 230.33, Wis. Stats., restoration rights, an employee must first meet the following requirements:

- completion of an original appointment probationary period in the classified service;
- appointment to the unclassified from the classified service; and
- be on an approved LOA to the unclassified service, with a fully completed state form on file with the appropriate agencies.²

An employee who meets these requirements is eligible for leave to the unclassified service and restoration to the classified service as follows:

A. Appointment to an Unclassified Position in His/Her Department³

- an absolute right to a LOA without pay for the duration of the appointment plus three (3) months;
- restoration rights⁴ to their former position or equivalent position in the department;
- accrual of seniority while in the unclassified service;
- reinstatement privileges for five (5) years from the date of

¹ Kelley v. DILHR, 93-0208-PC, 3/16/95.

² Appropriate documentation of any approved leave of absence for each appointment to the unclassified service is the responsibility of the Human Resources office of the agency granting the leave, even in situations where there is a restoration between different appointments to the unclassified service.

³ Sec. 230.33(1), Wis. Stats., governs appointments to the unclassified by the governor, elected officer, judicial body or a legislative body or committee; appointments under that subsection are treated in the same manner as unclassified appointments by an appointing authority within the same department, pursuant to sec. 230.33(1)(m), Wis. Stats.

⁴ Restoration is a mandatory reappointment. (s. ER 1.02(42), Wis. Adm. Code)

appointment or for one (1) year after the termination of the appointment, whichever is longer. (s. 230.33(1m), Wis. Stats.)

B. Appointment to an Unclassified Position in Another Department

- if the employee's former appointing authority approves, a LOA without pay for the duration of the appointment plus three (3) months, as well as the restoration rights, reinstatement privileges and accrual of seniority noted in A. above;
- if the employee's former appointing authority does not approve a LOA, the employee only has the reinstatement privileges noted in A. above. (s. 230.33(2), Wis. Stats.)

NOTE: The right of restoration and reinstatement privilege are forfeited if the reason for termination of the unclassified appointment would also constitute the basis for discharge from his/her former position in the classified service. (ss. 230.33(1) and (1m), Wis. Stats.)

Additionally, restoration rights are to "the former position or equivalent position." "The former position" is the same position (same position number) or another position assigned the same duties and responsibilities. An "equivalent position" is not equivalent merely because it has the same salary, hours and benefits. In adopting a standard used by the Wisconsin Supreme Court, the Commission has held that not only must the salary,⁵ hours and benefits be the same, but the responsibilities, authority and status must be equivalent.⁶

NOTE: Human Resources staff are reminded that any restoration, even a restoration between different appointments to the unclassified service, must result in a reappointment to a "real" authorized position. This may include reappointment to a pool coded (surplus) position as approved by the Department of Administration, Division of Executive Budget and Finance.

A further consideration is that s. 230.33, Wis. Stats., restoration rights do not protect the employee indefinitely after they are restored to the classified service. Once restored⁷ to the former or equivalent position, the employee is subject to subsequent personnel actions by the appointing authority in the same manner as classified employees who do not have restoration rights. Thus, should a reorganization or lay-off situation arise after the employee has been restored, that employee's right to their former position or equivalent position no longer protects them from the consequences of lay-off or other movements pursuant to applicable laws or rules.

V. RECOMMENDED ANALYSIS WHEN RESTORING UNDER SEC. 230.33

The following analysis should be used to facilitate a s. 230.33, Wis. Stats., restoration in a lawful manner:

⁵ The method used to calculate the compensation for an employee restoring pursuant to sec. 230.33, Wis. Stats., is set forth at V.B. of this bulletin.

⁶ Kelley v. DILHR, supra.

⁷ "Restored" refers to the act of mandatory reappointment to his/her former or equivalent position and the movement (layoff, transfer, displacement) of other employees to accommodate the restoration. Sec. 230.33, Wis. Stats., and Kelley v. DILHR, supra

A. **Restoring the Employee to a Position**

- Determine if there is a vacancy in the employee's former position:
 - If there is a vacancy, restore them to the former position.
 - If there is no vacancy, look to equivalent positions.
- Determine if there is a vacancy in an equivalent position:
 - If there is a vacancy, restore them to an equivalent position.
 - If there is no vacancy, then they must be restored to the former or equivalent position without regard to seniority.
- If the same or equivalent positions are filled, the movement of another employee is necessary to accomplish the restoration. In executing this movement, the provisions of Ch. ER-MRS 22 (Layoff), Wis. Adm. Code are most likely applied. However, an appointing authority may identify a vacancy for involuntary transfer under Ch. ER-MRS 15 (Transfer), Wis. Adm. Code, unless the action affects a career executive. In that instance, follow the provisions of Career Executive re-employment (s. ER-MRS 30.11(2), Wis. Adm Code) and career executive reassignment (s. ER-MRS 30.07, Wis. Adm. Code) **prior to restoring the unclassified employee from LOA**, or layoff (s. ER-MRS 30.105, Wis. Adm. Code). If layoff must be administered, the appointing authority will establish a layoff group which **does not** include the restored employee and then determine the appropriate employee movements of those in the layoff group.⁸

B. **Determining the Appropriate Pay Upon Restoration**

Pay upon restoration from a leave to serve in an unclassified position is determined under s. ER 29.03(7), Wis. Adm. Code, or any applicable provisions of the Compensation Plan. The employee being restored shall receive the last base pay rate received in the position from which restoration rights are derived, plus intervening adjustments. These adjustments shall be those of the appropriate collective bargaining agreement or the Compensation Plan, based on the pay schedule for the class from which the restoration rights are derived. Discretionary Merit Compensation awards or predecessor Discretionary Compensation Adjustments received by the employee while in the unclassified position may be included in the calculation of pay on restoration, limited to two within pay range steps per fiscal year for each year the employee received a discretionary increase. (See Section J, 2.00(8) of the Compensation Plan.)

When an employee is to be restored to a broadband position, the Compensation Plan provides that if the appointment maximum corresponding to that position is greater than the last rate received plus intervening adjustments, the appointing authority may set the employee's pay at a rate not to exceed the appointment maximum. The maximum adjustment that can be given is the total amount that would have been generated for each adjustment during the employee's leave had the employee been in the classified position on the effective date of each adjustment. The discretionary adjustments that would have been permitted to the employee had he/she remained in the classified service will thus create a range from which the appointing

⁸ Employees who have to move as a result of a restoration may have rights to vacant positions in a bargaining unit, depending on which collective bargaining agreement governs.

authority may choose to pay the individual who is being restored. This follows since agencies have discretion in how much of generated salary increase is distributed. If the adjustments that the employee would have been eligible for had they remained in the classified service result in a base pay rate upon restoration that is above the appropriate pay range maximum, the rate shall be red circled.

VI. SUCCESSIVE UNCLASSIFIED APPOINTMENTS

If an employee serving an unclassified appointment is appointed to a different unclassified position, or appointed for another term to the same unclassified position, a restoration to classified service is required to execute the successive appointment. The restoration to classified service and new appointment to unclassified service can occur on the same day, in that order.

A new leave of absence shall be granted if appointed under provisions of ss. 230.33(1) or (1m), Wis. Stats. If appointed under provisions of s. 230.33(2), Wis. Stats., a new leave of absence may be granted by the agency appointing authority of the classified position. If a new leave of absence under s. 230.33(2), Wis. Stats., is not granted and the employee accepts the new unclassified appointment, the employee must either resign from the classified service or be terminated for failure to return from leave.

These transactions must be entered in HCM. An appointment letter must be generated for the new unclassified appointment.

VII. HYPOTHETICALS TO ILLUSTRATE RESTORATION TO A POSITION

For purposes of the following examples, assume that “Employee A” seeks restoration to the classified service from the unclassified service. “Employee B” and “Employee C”, when mentioned, currently occupy Employee A’s former position or an equivalent position.

Example 1:

Facts

- Employee A’s former position is vacant.

Action

- Restore Employee A to his/her former position.

Example 2:

Facts

- Employee A’s former position is not vacant. However, a position with the same salary, hours, benefits, responsibility, authority and status is vacant.

Action

- Restore Employee A to the equivalent position.

Example 3:

Facts

- Neither Employee A’s former position nor an equivalent position are vacant.
- Employee B who has less seniority than Employee A occupies his/her former position.

Action

- Restore Employee A to his/her former position and provide Employee B with their lay off

rights under Ch. ER-MRS 22, Wis. Adm. Code and any rights they may have pursuant to a bargaining agreement, if applicable. [NOTE: If the action affects Career Executives, s. ER-MRS 30.11, s. ER-MRS 30.105, and s. ER-MRS 30.07, Wis. Adm. Code, should be followed.]

Example 4:

Facts

- Same facts as in Example 3, except Employee B has more seniority than Employee A.

Action

- Same Action as in Example 3.

Example 5:

Facts

- Employee A's former position was eliminated. Employee B and C occupy equivalent positions.
- Employee A has more seniority than Employee B, but less seniority than Employee C.

Action

- Employee A is restored to one of the two equivalent positions. The appointing authority establishes a layoff group that consists of Employees B and C and follows the rules of Ch. ER-MRS 22, Wis. Adm. Code, as well as any rights an employee may have pursuant to a bargaining agreement, if applicable. [NOTE: If the action affects Career Executives, s. ER-MRS 30.11, s. ER-MRS 30.105 and s. ER-MRS 30.07, Wis. Adm. Code, should be followed.]

Example 6:

Facts

- The duties of Employee A's former position have been changed and the position has been moved to another division.
- Two equivalent positions remain – one occupied by Employee B and one by Employee C.
- Employee A has less seniority than both Employee B and C.

Action

- Same Action as in Example 5.

For purposes of the following examples, assume that both "Employee A" and "Employee X" seek restoration to the classified service from the unclassified service, and both were provided a LOA from the same position. Employee A was the first to be given a LOA upon appointment to an unclassified position. Employee X occupied the classified position after Employee A was appointed, but was subsequently appointed to another unclassified position and can also claim restoration rights to the same position as Employee A.

Example 7:

Facts

- Both are restoring at the same time.

Action

- Follow Action recommendations in appropriate scenario from examples 1-6 for Employee A, regardless of seniority.
- For Employee X, if a position with the same salary, hours, benefits, responsibility, authority

and status is vacant, restore Employee X to that position.

- If no equivalent positions are available, the Appointing Authority establishes an appropriate layoff group that does **not** include Employee A nor Employee X and follows the rules of Ch. ER-MRS 22, Wis. Adm. Code, as well as any rights an employee may have pursuant to a bargaining agreement, if applicable. [NOTE: If the action affects Career Executives, s. ER-MRS 30.11, s. ER-MRS 30.105 and s. ER-MRS 30.07, Wis. Adm. Code, should be followed.]

Example 8:

Facts

- Employee X has already restored to the former position.
- Employee A now wishes to exercise their restoration rights.

Action

- If an equivalent position with the same salary, hours, benefits, responsibility, authority and status is vacant, restore Employee A to that position.
- If no equivalent positions are available, restore Employee A to the original position ('bump' Employee X), and the Appointing Authority establishes an appropriate layoff group that does **not** include Employee A and follows the rules of Ch. ER-MRS 22, Wis. Adm. Code, as well as any rights an employee may have pursuant to a bargaining agreement, if applicable. [NOTE: If the action affects Career Executives, s. ER-MRS 30.11, s. ER-MRS 30.105 and s. ER-MRS 30.07, Wis. Adm. Code, should be followed.]

Example 9:

Facts

- Employee A has already restored to the former position.
- Employee X now wishes to exercise their restoration rights.

Action

- If an equivalent position with the same salary, hours, benefits, responsibility, authority and status is vacant, restore Employee X to that position.
- If no equivalent positions are available, the Appointing Authority establishes an appropriate layoff group that does **not** include Employee X and follows the rules of Ch. ER-MRS 22, Wis. Adm. Code, as well as any rights an employee may have pursuant to a bargaining agreement, if applicable. [NOTE: If the action affects Career Executives, s. ER-MRS 30.11, s. ER-MRS 30.105 and s. ER-MRS 30.07, Wis. Adm. Code, should be followed.]

Inquiries regarding s. 230.33, Wis. Stats., restorations, whether rights of restoration, layoff or classification issues, should be directed to the BMRS Director. Compensation questions should be directed to the Bureau of Classification and Compensation.

Signed by:



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James Feldhausen, Director

Bureau of Merit Recruitment and Selection