

OFFICE OF STATE EMPLOYMENT RELATIONS

- DIVISION OF MERIT RECRUITMENT AND SELECTION -

Date: August 30, 2004

Locator No. OSER-0049-MRS

**Subject: Computing Probationary Periods
for Employees Performing
“Light or Modified Duty” Tasks**

The purpose of this bulletin is to clarify how to compute probationary periods for employees who are performing “light or modified duty” tasks (duties and responsibilities) that do not constitute a majority of the essential job duties for which the employee was hired.

On occasion, an employee serving a probationary period is injured on the job and may be able to perform only “light or modified duty” tasks that are not those for which the employee was hired. It is in the best interest of both the employee and the state to have the employee perform “light or modified duty” tasks until he/she is able to return to the duties for which he/she was hired. The concern is that the appointing authority will not be able to observe and evaluate the employee’s performance of the duties and responsibilities for which he/she was originally hired for the prescribed probationary period.

An employee is placed on probation because he/she was appointed to a position that requires probation, or because the appointing authority placed the employee on permissive probation. A “position” is a “group of duties and responsibilities . . . which require the services of an employee.” (s. ER 1.02(30), Wis. Adm. Code). The purpose of a probationary period is set forth in s. ER-MRS 13.015, Wis. Adm. Code:

During the probationary period the work of the employee is to be closely observed to determine if the employee is effectively able to carry out the assigned duties and responsibilities on a continuing basis.

While an employee is performing “light or modified duty” tasks that are not those to which the employee was appointed, the purpose of the rule cannot be achieved. The appointing authority would not be in a position to “determine that the employee is effectively able to carry out the assigned duties and responsibilities [for which he/she was hired] on a continuing basis” for the full term of the probationary period. It therefore follows that the time during which the employee is performing “light or modified duty” tasks should not count toward the time of probation, if those duties do not constitute a majority of the primary duties and responsibilities for which the employee was hired.

Section ER-MRS 13.05, Wis. Adm. Code, reaffirms this point. That provision allows the employer the discretion to count or not count the time an employee is absent from employment

(when the absence is less than 174 hours) in computing the time of the probationary period. If an employee is absent for more than 174 hours, the probationary period must be extended by the length of the absence, although any part of the first 174 hours can be waived. This provision underscores the importance of the employer having the opportunity to observe the employee performing the duties for which the employee was hired for the full probationary period; it highlights the purpose of the probationary period as stated in s. ER-MRS 13.015, Wis. Adm. Code. There is little difference whether an employee does not perform the duties for which he/she was hired because he/she is performing “light or modified duty” tasks or because he/she is not at work. In both instances the appointing authority is denied the opportunity to observe the employee performing the duties for which he/she was hired. That in turn denies the appointing authority the opportunity to make the determination that it is entitled to make under s. ER-MRS 13.015, Wis. Adm. Code.

Therefore, any time spent on “light or modified duty” tasks is to be excluded from the prescribed probationary period, if the “light or modified duty” tasks do not constitute a majority of the primary duties and responsibilities for which the employee was hired. For example, in the event an employee is placed on “light or modified duty” because he/she can not perform lifting tasks as required by the position for which he/she was hired, the time the employee spends on “light or modified duty” should be excluded from the probationary period if the light or modified duty does not constitute a majority of the duties and responsibilities for which the employee was hired.

At the time the employee is assigned “light or modified duty” tasks, the appointing authority must notify the employee in writing that the time the employee performs “light or modified duty” tasks will not count toward the probationary period.

For situations where an agency may have to assign “light or modified duty” tasks to an employee, it is recommended that the agency work closely with the Risk Management Office at the Department of Administration. Questions regarding risk management may be directed to Laura Ellingson, Risk Management Officer at the Department of Administration, at (608) 264-9575 or by e-mail at Laura.Ellingson@doa.state.wi.us. Questions regarding probationary periods may be directed to Diane Siegler, Human Resources Consultant at the Office of State Employment Relations, at (608) 267-0408 or by e-mail at Diane.Siegler@oser.state.wi.us.

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