

OFFICE OF STATE EMPLOYMENT RELATIONS

- COMPENSATION & LABOR RELATIONS BULLETIN -

Date: August 1, 2008

Subject: Continuous Service Due to 2003 Wisconsin Act 22

Locator No: OSER-0212-CLR

The purpose of this bulletin is to replace bulletin OSER-0018-CLR dated March 2, 2004, with a new interpretation of the effects of 2003 Wisconsin Act 22 on continuous services for certain nonrepresented employees. *For that reason, bulletin OSER-0018-CLR is now obsolete and should be destroyed.*

OSER-0018-CLR stated that, because of 2003 Wisconsin Act 22, an employee terminating state employment and subsequently returning to a nonrepresented position in state service with FLSA exempt status shall have state continuous service restored regardless of the length of time outside of state service. The bulletin stated that the reason for this unlimited restoration of continuous service was that s. 230.35(1m)(f), Wis. Stats., indicates that continuous service is not interrupted "*if the employee leaves the service and is reemployed by the state in another position covered by this subsection.*"

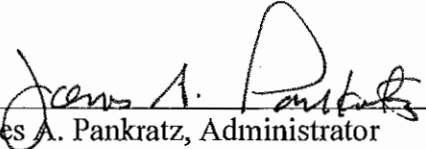
However, recent review of s. 230.35(1m)(f), Wis. Stats., has led to a stricter interpretation of this statutory provision than the one provided in OSER-0018-CLR. The first phrase of the provision states "*The continuous service of an employee eligible for annual leave under this subsection shall not be interrupted*" (underlining added for emphasis). The underlined text defines "the employee" for the phrase at the end of this provision which reads "*if the employee leaves the service and is reemployed by the state in another position covered under this subsection.*" When these two parts of the provision are read together, they indicate that the employee must leave state service while covered by the leave schedule in subsection (1m) for nonrepresented FLSA exempt employees to be eligible for state continuous service restoration regardless of the length of time outside of state service. Therefore, **any employee who left state service as a represented employee, as a FLSA nonexempt employee, or as a nonrepresented employee not covered under s. 230.35(1m), Wis. Stats., (for example, academic staff employees, state courts staff, legislative service agency employees), is not eligible for this unlimited restoration of continuous service.**

In addition, to be consistent with the interpretation of the word "reemployed" as it is used in other parts of s. 230.35, Wis. Stats., OSER will now require that **the return to state service must be directly to a nonrepresented FLSA exempt position.**

This unlimited restoration of continuous service will continue to apply only if the return to state service is on or after July 1, 2003.

Because this bulletin reflects a new interpretation, not a new provision, any restoration of continuous service made in accordance OSER-0018-CLR prior to the date of this bulletin shall not be reviewed.

Questions regarding the information provided in this bulletin should be directed to Paul Ostrowski by phone at (608) 267-0343 or by e-mail to paul.ostrowski@wisconsin.gov.

A handwritten signature in black ink, appearing to read "James A. Pankratz", written over a horizontal line.

James A. Pankratz, Administrator
Division of Compensation and Labor Relations