

State of Wisconsin

DEPARTMENT OF EMPLOYMENT RELATIONS

– *MERIT RECRUITMENT AND SELECTION BULLETIN* –

– *COMPENSATION AND LABOR RELATIONS* –

Date: July 28, 2003

Locator No: MRS-238/
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Subject: **Additional Restoration Rights for Certain
Represented and Nonrepresented Employees
Laid Off During the 2003-05 Fiscal Biennium**

PURPOSE

The Budget Bill (Act 33), effective July 26, 2003, contains the following non-statutory language:

Section 9118(2x) REINSTATEMENT PRIVILEGES AND RESORATION RIGHTS FOR CERTAIN STATE EMPLOYEES LAID OFF DURING THE 2003-05 FISCAL BIENNIUM.

- (a) Notwithstanding section 230.31 of the statutes, if a person described under section 230.31(1)(intro.) of the statutes is laid off during the 2003-05 fiscal biennium because the agency at which the person was last employed is eliminated or because the functions performed by the person are transferred to a different agency, the person shall have the reinstatement privileges under section 230.31(1)(a) of the statutes and restoration rights under section 230.31 (1)(b) of the statutes to the agency to which the functions previously performed by the person are transferred.
- (b) Except as provided in paragraph (c) and notwithstanding sections 111.84(1) and (2), 111.91(1) and (2), and 111.93(3) of the statutes, paragraph (a) applies to state employees and the state regardless of whether the employees are nonrepresented or represented by a labor organization, as defined in section 111.81 (12) of the statutes.
- (c) For any state employee represented by a labor organization, as defined in section 111.81 (12) of the statutes, paragraph (a) applies until the day before the effective date of any act ratifying the collective bargaining agreement for the 2003-05 fiscal biennium that covers that employee. Beginning on the effective date of any such act, paragraph (a) applies only if provided by the terms of the collective bargaining agreement.”

The purpose of this Bulletin is to alert Human Resources personnel to this provision so they can immediately take appropriate steps to ensure that the eligible employees (as defined below) are afforded their additional restoration right.

BACKGROUND

Section 230.31, Wis. Stats., and collective bargaining agreements provide for reinstatement privileges and restoration rights for employees who are separated from state service. The Budget bill provides for the transfer of some functions from one agency, commission or board to another. It is recognized that the transfer of a function from an agency, commission or board would likely result in the separation from state service of some employees who worked within that functional area. Whether or not the agency, commission or board is abolished along with the transfer of functions, the restoration rights of eligible employees separated from state service would effectively be eliminated or adversely affected if the non-statutory language quoted above was not enacted.

INTENT OF NONSTATUTORY LANGUAGE

Section 9118(2x) was drafted to cover situations where: (a) an employee was employed within a functional area that was transferred to another agency, commission or board; and (b) an employee was separated from state service because the functional area was transferred from his or her agency, commission or board. The purpose of this Section is to make eligible employees whole when the transfer of functions results in certain employees losing all or a part of their restoration rights, even if their employing agency was not eliminated. To accomplish this purpose, the language grants to an eligible employee (as defined by law) restoration rights to the agency, commission or board where the function was transferred in addition to those provided by sec. 230.31, Wis. Stats.

The language was **not** designed to apply to: (a) an employee who, because of the transfer of a function to another agency, commission or board, transferred, demoted in lieu of layoff or displaced into another position; or (b) an employee who was separated from state service because he or she was displaced by another employee as the result of the transfer of a function from one agency, commission or board to another. Employees in those two situations would continue to benefit from their restoration rights to their agency, commission or board.

EMPLOYEES ELIGIBLE FOR ADDITIONAL RESTORATION RIGHT

In order for an employee to be eligible for the additional restoration right, he or she must meet all of the following conditions:

1. Be a classified employee with permanent status in class.
2. Has been employed in a functional area at the time that the function was transferred to another agency, commission or board.
3. Has been separated from state service because the function was transferred to another agency, commission or board.
4. Has not separated from state service because of delinquency or misconduct on his or her part.
5. Has not transferred, demoted in lieu of layoff or displaced to another position because of the transfer of a functional area in which he or she was employed.
6. Has not separated from state service because he or she was displaced when a functional area in which an employee was not employed was transferred from his or her agency, commission or board to another.

EXAMPLES OF SITUATIONS

Examples of situations, not intended to be exclusive, where eligible employees will have an additional restoration right include:

1. Employees of the Department of Electronic Government will have rights to the Department of Administration (DOA).
2. Employees of the Personnel Commission will have rights to the Wisconsin Employment Relations Commission and the Department of Workforce Development.
3. Employees of the Department of Employment Relations will have rights to the Office of State Employment Relations and DOA.
4. Employees of Technology for Educational Achievement in Wisconsin Board will have rights to DOA.
5. Employees of the Tobacco Control Board will have rights to the Department of Health and Family Services (DHFS).
6. Employees of the Division of Housing at DOA will have rights to DOA and the Department of Commerce.
7. Employees in the milk certification program at DHFS will have rights to DHFS and Department of Agriculture, Trade and Consumer Protection.

CONTACT PERSON:

Questions regarding nonrepresented employees may be directed to David J. Vergeront at (608) 266-0047 or by e-mail at david.vergeront@der.state.wi.us.

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