

# DEPARTMENT OF EMPLOYMENT RELATIONS

## - DIVISION OF MERIT RECRUITMENT AND SELECTION BULLETIN -

**Date:** July 1, 1998

**Locator No.:** OS- 74 & MRS- 188

**Subject:** Implementing 1997 Wisconsin Act 307  
Civil Service Law Changes (AB-790)

The purpose of this *Bulletin* is to inform agencies of several Civil Service law changes enacted as 1997 Wisconsin Act 307, signed into law by Governor Thompson on June 30, 1998, and effective July 5, 1998, (except for the provision on non-competitive appointment of 30% disabled veterans, which becomes effective September 1, 1998). The purpose is also to provide administrative and implementation guidance. Wisconsin Act 307 (AB-790) contained a number of the recommendations of the Governor's Human Resources Reform Commission. Below is a brief list of the changes followed by a more detailed explanation of each change.

- Allows flexibility in the number of names certified for classified civil service vacancies;
- Repeals the residency requirement for applying for classified positions;
- Repeals the ban on out-of-state recruitment;
- Increases the permissive reinstatement period from 3 to 5 years prospectively;
- Allows employment registers to expire in 3 months, instead of 6 months;
- Repeals the requirement that one oral board member be from outside the state civil service;
- Permits non-competitive appointment of 30 percent or greater disabled veterans to EPP and non-professional vacancies; and
- Allows the UW System to modify pay grade assignments for academic staff titles and modify the salary structure without the need for approval by DER.

### **Certification Flexibility**

Under the old law, with certain exceptions, the Division of Merit Recruitment and Selection (DMRS) was required to certify for vacant classified civil service positions the top five names from the register of eligible candidates if the register contained fewer than 50 names; or the top 10 percent of names (to a maximum of 10 names,) if the register contained more than 50 names. In addition, veterans preference and expanded certification candidates could be added, where applicable. The amended law (§230.25(1), Wis. Stats.) repeals this provision of the "five to ten" names and instead allows the DMRS to determine the number of names to certify, using sound statistical methods and personnel management principles that are designed to maximize the number of certified names that are appropriate for the specific, classified civil service position.

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Certification flexibility is available for new registers established after the effective date of the revised law. For registers in existence at the time of the effective date of the revised law, DMRS will review agency requests for certification flexibility on a case-by-case basis.

The new law does not change the authority and specific provisions already in place to use expanded certification for racial/ethnic minorities, women, persons with disabilities, or the law on veterans preference points.

The amendment gives DMRS the authority to certify larger numbers of qualified applicants, depending on the type of job, the number and quality of the applicants, and the needs of the agency. For example, using statistical principles, we can group applicants with similar scores into “bands.” Or, we can use a pass/fail system based on objective criteria developed by agency job experts, which would classify applicants as either “qualified” or “not qualified.” We already use these approaches in the Entry Professional Program (EPP), which provides the same kind of flexibility for entry-level professional positions as contained in the new law for other civil service classifications. These approaches can speed hiring, give hiring managers more choices, and provide larger numbers of qualified applicants with interview opportunities.

It will take time to fully implement this new provision. When requesting to use the new flexible certification, please be aware of DMRS’ limited resources. Agency Human Resource Directors and Managers are asked to please restrict initial agency requests to the most critical and urgent of your flexible certification needs.

To implement this new approach, DMRS plans to use the same general request and approval process that has worked well with the EPP program. Agencies with immediate needs for flexible certification should contact the DMRS Team responsible for the title (i.e., Centered Exam Team, Delegated Team, Non-Centered Team). Agencies wishing to use flexible certification must submit their assessment and proposed certification approach or rule and rationale along with the *Exam Plan Checklist* (DER-MRS-98). Agencies must provide this form to the appropriate DMRS Staffing Team for approval before the new approach can be used. For an overview of flexible certification in the EPP, see sections 148.050 through 148.070 of the Wisconsin Personnel Manual - Staffing: Entry Professional Program Procedures.

Agencies with staffing delegation agreements must receive approval the first time they use the new flexibility in certification for a delegated classification and thereafter only if the assessment or certification approach changes. In addition, agencies with staffing delegation agreements are encouraged to develop proposals to amend their delegation agreement to include delegation of certification rules, development, approval and management.

DER will continue to maintain the AIMS/ERCS system to meet agency certification needs, particularly for jobs that attract hundreds or even thousands of applicants. Agencies are advised not to place low volume applicant titles into AIMS/ERCS if flexible certification is desired. ERCS is designed to process certifications only under the Rule of 5 names or top 10 percent (maximum 10 names plus veterans and expanded certification) and will not readily accommodate flexible certification options. Where the Rule of 5/10 (plus veterans/expanded) satisfies agency business needs, ERCS will continue to meet those needs.

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DER will consider properly documented and justified requests for flexible certifications from ERCS registers on a case-by-case basis, but may be unable to honor such requests until the date by which the Shared Human Resource System (SHRS) is scheduled to come on-line. SHRS is designed to provide this type of certification flexibility

Career Executive, Critical Recruitment Program (CRP), and Entry Professional Program (EPP) vacancies are already separate programs covered by separate statutes and administrative rules. These respective titles will continue to use assessment techniques, certification rules and procedures previously established prior to the recent law change.

The flexibility provision allows DMRS and agencies to more effectively use assessment techniques that can already be used, but which were limited by the old 5/10 statutory requirement. These assessment tools include evaluations of an applicant's education, credentials, experience and training using approaches such as achievement questionnaires, skills inventories, resume screens, and reviews of other application materials.

Under any method, DMRS and agencies must ensure that:

- All applicants certified are qualified;
- Hiring agencies give equal consideration to all certified applicants;
- Expanded certification for affirmative action purposes is still used in underutilized classifications;
- Veterans preference points are still applied to add the names of qualifying veterans to the certified list.

Another advantage of this flexibility is that DMRS and agencies are no longer required to use "tie-breaker" approaches if two or more applicants earn the same score. All applicants who have identical scores can be certified except where necessary to comply with the expanded certification limit of up to 3 names for racial/ethnic expanded certification, up to 3 names for female expanded certification, up to 3 names of persons with a handicap, and additional veterans not to exceed the number certified under basic certification.

A nonstatutory provision of the new law requires DER to evaluate the new certification procedures with respect to the impact of the certification procedures on the State's affirmative action policy and the affirmative action plans of state agencies. This evaluation must be submitted to the State Legislature no later than July 5, 1999. Thus, an important consideration in the new certification flexibility will be how it impacts on affirmative action policy and plans of state agencies.

The discussion above is relatively brief and does not answer all questions about flexible certification. It provides a discussion of what DMRS is ready to do now in the early stages of the change process and what we hope to do in the future. It will take us time to work out more details but we encourage agencies to offer any suggestions they feel may help us make this important undertaking a success.

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### Repeal of Residency Requirement

Under the old law, competitive examinations for positions in the classified service were free and open to all applicants who were residents of Wisconsin. The new law repeals the statutory requirement that all applicants for competitive examinations must be residents of Wisconsin at the time of application [(§230.16(2), Wis. Stats.)]. With the exception noted immediately below, all job titles are now open to resident and non-resident applicants.

The provisions of MRS-187 issued earlier this year dealing with reinstatement of residency requirements shall continue to be enforced for the job titles announced during the brief time immediately before the new law was enacted. Titles announced April 1, 1998, through July 3, 1998, require residency unless residency was waived by DMRS at the time of announcement.

The new law does **not** change the long-standing residency requirement that exists for Limited Term Employees (LTEs) and for Project employees. An LTE must be a resident of the state upon appointment unless the administrator waives the prohibition because the person's work site is located outside this state (§230.26(1m)(b), Wis. Stats.).

Project employees must also be residents at the time of appointment unless the administrator waives residency because of a critical need for employees in a specific classification or position [(§230.27(1m)(b), Wis. Stats.)].

### Repeal of Prohibition on Out-of-State Recruitment

Under the old law (§230.14(2), Wis. Stats.), the Administrator (or agency) was prohibited from recruiting outside of Wisconsin unless the Administrator determined that there was a critical shortage of residents of this state who possess the skills or qualifications necessary for the positions. The new law eliminates this provision. Agencies can now recruit outside of Wisconsin without DMRS approval. For example, agencies can now recruit at historically black colleges, major professional conferences, at universities with leading programs in specific academic areas, etc. The new law also opens up the unrestricted use of technology such as the Internet as a recruiting tool.

Use of the out-of-state recruitment option should be reflected on the *Recruitment Activity Plan* for the staffing transaction.

### Five-Year Reinstatement Period

The period for permissive reinstatement increases from three to five years under the new law, including the reinstatement period for individuals who are granted a leave of absence from the classified service for an unclassified appointment, or to fill an elective position. The increase is **prospective only**, applying only to situations in which reinstatement eligibility was established **on and after** July 5, 1998. The new law applies only to reinstatement eligibilities granted under the Wisconsin Statutes or Administrative Code. The new

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law does not apply to any reinstatement that is specifically granted otherwise under the provisions of a collective bargaining agreement.

The prospective nature of the new law may cause multiple and concurrent reinstatement privileges. An individual could have reinstatement eligibility for three years based on separation from a position or positions prior to July 5, 1998, and at the same time, have reinstatement eligibility for five years based on separation from a position or positions on and after that date.

### EXAMPLE

A Program and Planning Analyst 5 (PR 07-15) voluntarily demotes on June 1, 1998, to a Human Services Program Coordinator-Objective (PR 07-13). This individual has reinstatement eligibility through May 31, 2001, to positions in PR 07-14 and PR 07-15, their counterpart pay ranges, and noncounterparts having pay range maximums between those of PR 07-13 and PR 07-15. However, if the individual would leave state service on January 1, 1999, the individual would retain reinstatement eligibility to positions in the same pay ranges stated above through May 31, 2001 (still 3 years) based on the prior situation. At the same time, the individual would have reinstatement eligibility to positions in PR 07-13 and below, their counterparts pay ranges, and noncounterparts having pay range maximums below that of PR 07-13 through December 31, 2003 (5 years).

**SCOPE:** These statutory changes refer only to reinstatement, which is the permissive reappointment without competition of an employe or former employe. The changes do not apply to sick leave restoration, continuous service calculation and seniority, which are treated by separate provisions in the applicable statutes, administrative code or collective bargaining agreement.

Within the next year, DER will make changes to provisions of the Wisconsin Administrative Code affected by this new law. DER will also review, and anticipates changing, other rules having a direct relationship to the reinstatement period. For example, DER anticipates that the restoration period for sick leave will also be extended to 5 years for employes covered by the Code. Notification of these changes will be provided in subsequent bulletins as they become official.

## Oral Examination Boards

The new law eliminates the requirement that one oral board member be from outside the state civil service. This requirement often delayed the hiring process, because it was difficult to find willing outside participants

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for boards taking a full day or more (§230.16(3), Wis. Stats.). Under the new law, boards of examiners must continue to consist of at least two well-qualified and impartial persons.

### **Shortened Register Life**

Previous law required an employment register to be maintained for at least six months, but it could be extended for up to three years. The new law is permissive, allowing (but not requiring) employment registers to expire in three months. In deciding whether to let registers expire after three months, the DMRS Administrator must consider the impact of such action on equal employment opportunity/affirmative action (EEO/AA).

The permissive flexibility to allow a register to expire in three months improves the hiring process for jobs where turnover among applicants is high and where it is difficult to find enough interested candidates on a register before the initial six-month period expires.

Agencies wishing to use the flexibility of abbreviated three-month registers (rather than the standard six months) must send a written request to the DMRS Staffing Analyst, being sure to address EEO/AA concerns. For instance, agencies should indicate the extent to which the current register is depleted of qualified candidates in general and AA target group members in particular; the extent to which a fresh recruitment might be expected to enhance the candidate group in general and target AA group members in particular; the extent to which a fresh recruitment will serve legitimate AA Plan goals, etc.

Agencies with staffing delegation agreements must receive approval the first time they propose to use the new three-month flexibility for the life of a register following the guidelines outlined in the paragraph immediately above. Please direct your agency request to the appropriate DMRS Staffing Team.

DMRS realizes this treatment is relatively brief with regard to shortened register life. We will work out more of the details and share them with you later. Keep in mind that our resources to review and respond to your requests for shortened three-month registers are limited, so please restrict your agency requests to the most critical needs, at least initially.

### **Non-Competitive Appointment of 30% Disabled Veterans**

An amendment to the civil service reform bill was adopted to permit (but not require) state appointing authorities to make non-competitive appointments of 30 percent disabled veterans to classified civil service vacancies without following existing procedures for filling classified positions (announcement, recruitment, competitive examination, certification, etc.). This authority applies only to non-professional positions and positions included under the Entry Professional Program (EPP), and is permissive, not mandatory. This provision takes effect September 1, 1998.

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The disability must be service-connected. The appointing authority must determine that the individual is qualified to perform the duties of the position and must notify the DMRS Administrator of its intention to fill a vacancy through non-competitive appointment. The appointing authority must give equal consideration to all 30 percent disabled veterans who express an interest in the position if they appear qualified or if they have been certified through competitive examination for that position. Certification from a civil service register is not required.

Agencies wishing to use this option should send a letter of intent to the DMRS Administrator before staffing the vacancy, including the civil service job title involved. While DMRS has not developed a complete list of titles for which this new option is permitted, we offer the following initial guidance:

Use Definitely Approvable for: All EPP Titles

All random ranked Labor and Service Titles  
All Positions in Pay Schedules 02, 03, 06, 22, 23

Use Definitely Denied for:

All Career Executive and Senior Manager Titles  
All Pay Range 01-16 and Counterparts and Above --  
unless the position title is included in the EPP  
program  
All Positions in Pay Schedules 08, 09, 10, 11, 13, 14,  
31, 32, 34, 49, 50, 51, 15, 36, 70, 80 -- unless  
the position title is included in the EPP program.

Remainder:

Review and Approve on a case-by-case basis until  
further notice

Unlike the other provisions of the new law, the effective date of this provision is the first day of the second month after the law is published, or September 1, 1998.

### UW Academic Staff Job Categories and Pay Ranges

This law change repeals the requirement that the UW System use DER's job evaluation system in establishing pay ranges for UW academic staff. It also repeals the requirement that DER must review and approve changes in job categories and pay ranges for UW academic staff.

This change allows the UW System to make needed changes more quickly and also provides the UW System the autonomy to adapt to the academic staff labor market. However, DER and the UW System will continue to share joint responsibility for determining whether particular positions belong in the Classified service or the Academic staff group.

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If you have policy questions on certification, residency, out-of-state recruitment, oral exam boards, shortened register life, reinstatement eligibility, and non-competitive appointment of 30 percent disabled veterans, please contact Denny Huett (608-266-7296). If you have questions on matters involving process and procedure in these areas, contact Jeanne Benck (608-267-2411) and Deb Schwab (608-267-3361).

Questions and issues on UW academic staff job categories and pay ranges should be directed to John Vincent (608-266-1729). Questions and issues involving pay/seniority/sick leave on reinstatement should be directed to Jeanne Meyer (608-267-5164).

Questions and issues on reinstatement under collective bargaining contracts should be directed to Allen Cottrell (608-267-7240).

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