

# Wisconsin Human Resources Handbook

## Chapter 420

### Appeal Procedures for Classification Actions

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#### **Sec. 420.010 Introduction**

Section 230.44, Wis. Stats., provides represented and non-represented employees the right to appeal specific classification actions. This chapter is intended to provide guidance to agencies on the procedures to follow in notifying employees of their right to appeal those actions.

#### **Sec. 420.020 Statutory Authority**

Section 230.44(1)(b), Wis. Stats., grants to employees and appointing authorities the right to appeal personnel decisions made by the Office of State Employment Relations (OSER) Director or by an appointing authority on behalf of the OSER Director, as delegated under s. 230.09(2)(a) or (d), Wis. Stats.:

1. “After consultation with the appointing authorities, the director shall allocate each position in the classified service to an appropriate class on the basis of its duties, authority, responsibilities or other factors recognized in the job evaluation process. The director may reclassify or reallocate positions on the same basis.” s. 230.09(2)(a), Wis. Stats.
2. “If after review of a filled position the director reclassifies or reallocates the position, the director shall determine whether the incumbent shall be regraded or whether the position shall be opened to other applicants.” s. 230.09(2)(d), Wis. Stats.

#### **Sec. 420.030 Appealable Actions**

1. Delegated and non-delegated reclassification actions.
2. Delegated and non-delegated reallocation actions.
3. Effective dates of reclassification and reallocation actions.
4. Delegated and non-delegated certification actions. [1- 4 per s. 230.44(1)(b) Wis. Stats.]

### Sec. 420.040 Actions Not Subject To Appeal

1. The assignment or reassignment of classifications to pay ranges or pay bands.

**Note:** For represented employees the assignment or reassignment of classifications to pay ranges or pay bands is a mandatory subject of collective bargaining.

2. The classification title or formal subtitle assigned to the job duties.
3. The classification specification language.
4. Survey methodology.

### Sec. 420.050 Appeal Rights for Employees and Appointing Authorities

When the first, second, or third classification transaction listed under Section 420.030 of this handbook chapter is denied or modified, written notice must be provided to an employee communicating the denial and the reason(s) for the denial. An employee, or a designee, or the appointing authority has a right to appeal that action. The appeal rights for a delegated or non-delegated transaction should<sup>1</sup> be provided in writing to the employee with the appropriate manual or automated form, such as [OSER-DMRS-122](#), [OSER-DMRS-37](#), or [OSER-DMRS-30](#). OSER strongly recommends that the appointing authority secure written evidence of the date that the employee was personally provided with a copy of the personnel decision in order to determine when the 30 calendar days for appeal begins. Attached is the form entitled “Receipt of Reclassification or Reallocation Decision” ([OSER-DMRS-30](#)) which can be used.

When a classification action is approved, an employee or the appointing authority may still appeal the decision. However, it is not necessary to provide an incumbent of a filled position with a written notice separate from those contained on the reclassification or reallocation form.

**Note:** Pay range assignments and reassignments are not appealable as noted in Section 420.040. These actions are most often implemented by processing reallocation forms. If an agency uses an automated reallocation form to notify an employee of these actions, the appeal rights written on the reallocation form should be crossed off or eliminated. Also, employees may not appeal a settlement agreement resulting from a reclassification appeal and, if an automated reallocation form is used to process that action, the appeal rights should be crossed off or eliminated from the form.

### Sec. 420.060 Delegated Classification Actions

Agencies that have delegation from OSER, under s. 230.04(1m), Wis. Stats., for the administration of specific classifications and personnel transactions are also delegated responsibility for defending appeals of those classification and transaction decisions. Delegated classification action decisions may be appealed directly to the Wisconsin Employment Relations Commission (WERC). The employing agency with delegation should<sup>1</sup> provide an employee whose reclassification or reallocation is denied with a written explanation of his/her appeal rights to WERC by providing the employee with, at the very least, the appropriate manual or automated transaction form. Although OSER will be named as a party in delegated appeals and an OSER Executive Human Resources Specialist

<sup>1</sup> While WERC has ruled that an agency has no legal requirement (per s. 230.44, Wis. Stats.) to advise an employee as to his or her appeal rights (Austin-Erickson v. DHRS & DER, 97-0113-PC (2/25/98)), OSER strongly recommends that notice of appeal rights should be given in writing to employees in all denied personnel transaction decisions, delegated or nondelegated, which are appealable.

(EHRS) may assist the agency or WERC as a resource upon request, the agency is responsible for defending the classification decision before the WERC.

### **Sec. 420.070 Non-Delegated Classification Actions**

The appointing authority is required to provide a written recommendation for approval to OSER of non-delegated classification transactions. If the non-delegated action is denied by the agency, the agency HR Office must provide written notice to the employee of the right to appeal the decision to OSER. If the employee feels that the decision is incorrect, the employee may submit a written request for review by OSER to the agency HR Office. Information pertaining to the denial, including the denial letter, pertinent position descriptions, and any other information to be considered in the review of the request, will be made available to OSER upon request.

**Note:** If the appointing authority is recommending a different classification than originally requested, appeal rights must still be provided to the employee as if the request is a denial. The recommendation would then be submitted to OSER. If the employee appeals the denial of the requested classification, that should be forwarded to OSER upon receipt by the agency.

### **Sec. 420.080 OSER Review of Non-Delegated Classification Actions**

OSER reviews non-delegated classification transactions that agencies recommend for approval or that an employee has appealed to the OSER Director. The review may include a position audit (an in-person or phone interview with the employee and/or the supervisor) at the discretion of OSER if an audit has not already been completed at the agency/campus level; a comparison of the position's duties and responsibilities to the appropriate classification specification(s); comparable and/or contrasting positions; a review of the rationale provided by the agency; and information provided by the employee and/or supervisor of the position.

1. If OSER's review results in any determination other than that recommended by the agency, the OSER analyst will discuss the rationale with the agency HR analyst prior to issuing a final decision.
2. If the OSER analyst agrees with the agency recommendation to deny the original request, the OSER analyst will write a letter to the employee explaining the rationale for the decision and providing<sup>1</sup> appeal rights to the WERC.

### **Sec. 420.090 Responsibilities of Agency HR Analyst for a WERC Appeal (Delegated)**

When a decision delegated to an agency is appealed to WERC, the agency is responsible for working with the agency legal counsel to defend the decision. The analyst's responsibilities include explaining the circumstances of the denial; explaining the specific statutes, administrative rules, and/or policies used for the basis of the denial; providing copies of pertinent information; recommending exhibits and witnesses; and preparing to testify as the expert witness. The analyst may contact either an OSER analyst or the Office of Legal Counsel at OSER for assistance.

The OSER analyst may be called upon to testify or assist in preparing for an agency appeal hearing. The OSER analyst will work with the agency to identify and/or confirm the appropriate rules that apply and testify as an expert witness if requested.

**Note:** Agencies are encouraged to contact OSER prior to changing a classification when entering into a settlement agreement with an employee. Classification changes resulting from a settlement agreement must be in compliance with the classification specifications and the delegation agreement.

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<sup>1</sup> See page 2

### **Sec. 420.100 Responsibilities of OSER EHRS for a WERC Appeal (Non-delegated)**

The OSER analyst whose decision is appealed is responsible for working with the Office of Legal Counsel to prepare for the hearing. Responsibilities include explaining the circumstances of the denial; explaining the specific statutes, administrative rules, and/or policies used for the basis of the denial; providing copies of pertinent information; recommending exhibits and witnesses; and preparing to testify as the state's expert witness. The agency HR analyst may also be requested to testify.

### **Sec. 420.110 Use of Paid Work Time by Employees for Preparing Appeals**

Section 230.44(4)(b), Wis. Stats., is the statutory basis for determining that time spent by state employee appellants, complainants, non-represented grievants, and subpoenaed witnesses attending WERC hearings is to be without loss of pay.

However, s. 230.44(4)(b), Wis. Stats., does not provide authority to compensate employees for time spent preparing for an appeal. No special leave time for case preparation is provided under s. 230.35, Wis. Stats. Employees may not use time during normally scheduled work hours to prepare for appeals, unless such time is charged to vacation, accrued compensatory time, holidays or leave without pay. Preparation includes, but is not limited to, interviewing potential witnesses, reviewing documents, or being interviewed as a potential witness. Granting paid leave time or leave without pay for case preparation is at the discretion of the appointing authority in accordance with the work requirements of the agency and good management practices.

### **Sec. 420.120 Administrative Information**

This chapter was originally issued as Chapter 340 of the *Wisconsin Personnel Manual*.

It was revised and reissued in October 2001 to reflect current procedures and renumbered to Chapter 420 of the *Wisconsin Human Resources Handbook*.

In February 2009, the chapter was revised to clarify Section 420.080, OSER Review of Non-Delegated Classification Actions; to update formatting; to update OSER-DCLR-3—Employee Notification Form/Receipt of Reclassification or Reallocation Decision; and to add an Administrative Information section.

In August 2010, the chapter was revised to accommodate the re-titling of the Reclassification Request (OSER-DCLR-122) and Reallocation Notice (OSER-DCLR-37) forms and again update Attachment #1, OSER-DCLR-3—Employee Notification Form/Receipt of Reclassification or Reallocation Decision to revise the appeal language in the form.

In December 2013, the attachment was changed to the current Receipt of Reclassification or Reallocation Decision form, which had been renumbered to DMRS-30, because the function of reclassification and reallocation is now housed in DMRS. References to forms within the chapter were changed accordingly.

State of Wisconsin  
Office of State Employment Relations  
Division of Merit Recruitment and Selection

**EMPLOYEE NOTIFICATION FORM**

**RECEIPT OF RECLASSIFICATION OR REALLOCATION DECISION**

**FIRST LINE SUPERVISOR**

Attached is a **Reclassification Request** (OSER-DMRS-37), **Reallocation Notice** (OSER-DMRS-122) and/or **denial letter** concerning an employee you supervise. Please complete the following actions:

1. Give the affected employee 1 copy of the written decision.
2. Have the employee sign and date this form acknowledging receipt.
3. Advise the employee that, if he/she chooses to appeal, it is very important to ensure that the appeal is received at the proper authority within 30 calendar days of today's date.
4. Send a completed copy of this form to your agency's Human Resources Manager immediately.
5. Provide the employee with a copy of this form, if the employee requests one.

I hereby certify that I have completed each of the actions noted above.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**EMPLOYEE**

I hereby acknowledge that I have received a copy of the attached (check appropriate box/es)

Reclassification

Reallocation

Denial letter

Effective date or date of letter \_\_\_\_\_, concerning my position.

I certify that I am aware I have a right to appeal this decision within 30 calendar days of today's date and that I have read the instructions for filing an appeal, as noted on the bottom of this form.

Print Name: \_\_\_\_\_

Employee's Signature \_\_\_\_\_ Date: \_\_\_\_\_

**APPEAL RIGHTS**

- ❖ If the Reclassification, Reallocation, or denial decision was made by the agency and is a nondelegated action, a written request for OSER to conduct a re-review must be received by the agency Human Resources Manager within 30 calendar days. Upon receipt of this appeal, the agency Human Resources Manager will forward the employee's request and pertinent materials to OSER.
- ❖ If the Reclassification, Reallocation or denial decision was made as (1) a delegated action by the agency or (2) the Office of State Employment Relations, the appeal must be received, within 30 calendar days, by the Wisconsin Employment Relations Commission, 4868 High Crossing Boulevard; Madison, WI; 53704-7403; phone: 608-243-2433.
- ❖ Employee: If you have any questions about where you should send your appeal, contact your agency Human Resources Manager for this information. Note: see the top of the Reclassification or Reallocation Form to determine if the action is delegated or nondelegated. If the proper authority does not receive your appeal within the 30 calendar days, you will lose your right to appeal this decision.

**AGENCY HUMAN RESOURCES MANAGER**

Ensure that a signed copy of this document is in the employee's personnel file for future reference.

OSER-DMRS-30 (rev 12/2013)

s. 230.44 Wis. Stats.

*Continued*

State of Wisconsin  
Office of State Employment Relations  
Division of Merit Recruitment and Selection

**PROCEDURE FOR RECEIPT OF RECLASSIFICATION OR REALLOCATION DECISION**

**PURPOSE** Ensure timeliness of receipt of reclassification or reallocation decisions and establishment of employee appeal rights on such action.

**USE** Each time an employee receives a notification of an appealable classification decision.

**AGENCY HR OFFICE** Attach the Receipt of Reclassification or Reallocation Decision form to every reclassification or reallocation decision:

Mandatory - When the decision is non-delegated or the decision is made by the Office of State Employment Relations.

Optional - When the decision is delegated to the agency.

**SUPERVISOR** Follow the instructions for the First Line Supervisors on the front of the form.

**AGENCY HR OFFICE** Maintain the signed form in the employee's Personnel File