

Frequently Asked Questions About Act 150

Unless otherwise noted, these changes relate to classified staff. Act 150 is the law that was enacted on February 12, 2016 which made numerous changes to Wisconsin's civil service laws.

EFFECTIVE DATE

Q: When does Act 150 take effect?

A: The Act takes effect on July 1, 2016.

APPLYING FOR JOBS

Q: What changes will be made to the application process?

A: On or after July 1, 2016, you must submit a resume along with your application when applying for a position in the classified service.

Q: Do I have to supply information about my conviction record when I apply?

A: Not on or after July 1, 2016, unless you are applying for a position which would disqualify an applicant with a particular conviction record. After you are certified as an eligible applicant, your conviction record may be considered. This probably isn't really a change in how things work now except it's become part of state law not to ask about conviction records at the time of application.

CERTIFICATION

Q: What is certification and how has it changed?

A: Certification is the process used to determine the number and names of qualified candidates from the employment register to the next step of the selection process according to the certification rules established for the type of position or for a specific position vacancy. Prior to July 1, 2016 this process started with an employment register which contained the names of people who had passed the civil service test for the position and their score and rank. This worked differently for different classifications. For example, some civil service exams were pass/fail and everyone who passed was given a score of 70.

Act 150 calls for using resumes instead of tests. DOA must come up with rules for how resumes will be evaluated and translated into a list of eligible people and ineligible people. The list of eligible people must then be ranked somehow so that only the top X number of people get referred to the agency for interviewing. The number of people certified for a position can vary, but often it was the top ten. The

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presence of veterans on the employment register may increase the number of people on the certification list.

CERTIFICATION & HIRING OF VETERANS

Q: What changes apply to veterans applying for classified jobs?

A: Act 150 changes the process for giving preferences to veterans applying on or after July 1, 2016:

- The three highest ranking disabled veterans whose disability is at least 70% must be added to the certified list of eligible applicants.
- If a veteran has equal qualifications to any other applicant, the agency must give preference to the veteran.
- There are also provisions for additional certifications of additional disabled veterans, veterans without a disability, the spouse of a disabled veteran whose disability is at least 70%, and the unremarried spouse of a veteran who was killed in action or died of a service-connected disability.

HIRING OF CURRENT STATE EMPLOYEES

Q: Do I get any preference as a current state employee when applying for a state job?

A: Not on or after July 1, 2016. Act 150 removes the preference to fill a vacant position, or career executive position, from within the classified service and from former employees with a right of restoration.

In addition, a current state employee being considered for hire on or after July 1, 2016, must have his or her personnel file reviewed before an offer can be made.

Q: If I'm a current state employee being considered for a state job, who will do the review of my personnel file?

A: Act 150 says the appointing authority will review the file, but that may be delegated to someone else within the agency. DOA may address this when they publish new rules and procedures. An appointing authority is defined as "The chief administrative officer of an agency unless another person is authorized to appoint subordinate staff in the agency by the constitution or statutes." The appointing authority is often the Department Secretary but in larger agencies Division Administrators may also be appointing authorities.

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HIRING TIMELINES

Q: Will hiring be done more quickly after July 1, 2016?

A: Act 150 made changes in deadlines for providing lists and making appointments. DOA must now provide a certified list in 30 days instead of 45 days. An agency must make an appointment after receiving the certified list within 30 days instead of 60 days. However, it remains to be seen how closely DOA or agencies will follow those deadlines.

Q: What happens if DOA doesn't provide a list in 30 days?

A: Most likely, nothing. There is no penalty in Act 150.

Q: What happens if an agency doesn't make an appointment within 30 days?

A: According to Act 150, the agency must report immediately to DOA that they failed to make an appointment. If DOA determines that not making an appointment is not justified, it will direct the agency to make an appointment. However, DOA has been known to ignore deadlines. For example, they routinely ignore the statutory deadline which requires them to provide a report on contracting out by October 31 of each year. One year they didn't produce it at all.

Probationary Periods & Performance Evaluations

Q: What happened with probationary periods?

A: They were lengthened. Any employee hired on or after July 1, 2016 must serve a one-year probationary period, which may be extended up to 12 additional months, but can't be shortened.

Q: What about performance evaluations?

A: A performance evaluation must be done annually, which is not new.

Q: Will there be so called merit raises?

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A: Yes, dependent on funding. A separate \$6 million fund was established for the year 2016-17 for “performance exceeding expectations”. Any awards must be lump sum. There are over 30,000 classified staff. If you divide \$6,000,000 by 30,000, you get \$200 per person. However, it’s more likely that a few people will receive large amounts. If the amounts are \$2,000, a maximum of 3,000 people could get them. That sounds like a lot of people, but it’s only 1/10 of the workforce. It’s also likely to be the only raise. The procedures have yet to be announced, however, it will likely be supervisors, who are competing for the same pot of money, nominating employees within the constraints their agencies develop.

GRIEVANCES

Q: Has the grievance procedure changed?

A: Yes. There are two types of grievances – general grievances and grievances involving adverse employment actions.

General Grievances are related to employment conditions. DOA still has the authority to establish “the scope and minimum requirements of a state employee grievance procedure relating to conditions of employment.” Agencies can then create their own grievance procedures within the framework DOA creates. This isn’t really a change but DOA may make changes.

Adverse Employment Actions Grievances involve demotions, suspensions, discharges, lay-offs, and pay reductions. These grievances can be appealed up through the Wisconsin Employment Relations Commission (WERC).

Q: What has changed regarding Adverse Action Grievances?

A: Act 150 created a new process for Adverse Action Grievances. In some cases, it cut the deadlines for taking action in half.

Step 1: The employee must file a complaint with the appointing authority **no later than 14 days** after the employee becomes aware of, or should have become aware of, the decision that is the subject of the complaint.

Step 2: The appointing authority must issue a decision **no later than 14 days** after receiving the complaint.

Step 3: If the appointing authority does not issue a timely decision or denies the employees complaint, the employee has **14 days** to file an appeal with DOA.

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Step 4: DOA has **30 days** to issue a decision. If they do not issue a timely decision or if they deny the appeal, the employee has 14 days to file an appeal with the Wisconsin Employment Relations Commission (WERC).

Step 5: The WERC has **10 days** to determine if all of the procedural requirements, like deadlines, have been met.

Step 6: If all the procedural requirements have been met, the WERC will hear the appeal and issue a decision within **120 days** after the appeal was filed with the Commission. There are also a series of deadlines for pre-hearings, discovery, etc. during this 120 day window.

Q: Can I hire an attorney and take legal action?

A: Yes, but you'll need to go through the above process first. Otherwise, a court will likely say that you need to follow the agency procedures first.

Q: Can I be fired, suspended without pay, reduced in base pay or demoted without reason?

A: No. Act 150 retains the language that a permanent employee may be removed, suspended without pay, discharged, reduced in base pay, or demoted only for just cause. However, Act 150 adds language saying it is just cause to remove, suspend without pay, reduce the base pay of, or demote an employee without imposing progressive discipline for any of the following conduct:

1. While on duty, harassing a person.
2. While on duty, intentionally inflicting physical harm on another person.
3. While on duty, being intoxicated or under the influence of a controlled substance, as defined in s. 961.01 (4), or a controlled substance analog, as defined in s. 961.01 (4m).
4. While on duty, being in possession of a controlled substance, as defined in s. 961.01 (4), or a controlled substance analog, as defined in s. 961.01 (4m), without a prescription.
5. Falsifying records of the agency.
6. Theft of agency property or services with intent to deprive an agency of the property or services permanently, theft of currency of any value, felonious conduct connected with the employee's employment with the agency, or intentional or negligent conduct by an employee that causes substantial damage to agency property.

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7. A conviction of an employee of a crime or other offense subject to civil forfeiture, while on or off duty, if the conviction makes it impossible for the employee to perform the duties that the employee performs for the agency.

8. Misuse or abuse of agency property, including the intentional use of the agency's equipment to download, view, solicit, seek, display, or distribute pornographic material.

9. A serious violation of the code of ethics established by the director under s. 19.45 (11) (a), as determined by the director.

Act 150 also requires that DOA establish a general standard for progressive discipline plans for performance or personal conduct that is "inadequate, unsuitable, or inferior". This general standard must allow agencies to accelerate discipline that is severe in its adequacy, unsuitability, or inferiority".

Q: Where the above nine things OK to do before Act 150?

A: No they weren't. But they weren't explicitly listed in statute. It was enough to say a permanent employee may be removed, suspended without pay, discharged, reduced in base pay, or demoted only for just cause.

Q: So what is just cause?

A: Basically, it's the right to due process. Over the years, that due process came to require things such as:

1. Did the employee know about policy?
2. Is the policy reasonable?
3. Did management investigate to determine that the employee violated the policy?
4. Was the investigation fair and objective?
5. Was there substantial evidence that the employee violated the policy?
6. Has the policy been consistently applied?
7. Was the discipline reasonable and proportional (the punishment fit the crime)?

OTHER DISCIPLINARY ACTIONS

Q: What is "job abandonment" and what has changed?

A: Job abandonment is when you don't show up for work and don't call in. Previously, it was considered job abandonment if you didn't show up to work as scheduled and didn't contact your supervisor for at

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least 5 consecutive working days. After July 1, 2016, that will change to 3 working days within a calendar year. (They don't have to be consecutive days.) After that time you may be disciplined or your agency can consider your absence as a resignation.

Q: Can I get documents regarding disciplinary actions removed from my personnel file after a certain time?

A: Yes, but only if removal is ordered by a court or is part of an agreement during a grievance process with your agency, DOA or the WERC. Otherwise, Act 150 prohibits them from being removed.

LEAVING AND RETURNING TO STATE SERVICE

Q: Can I still return to state service if I'm laid off?

A: Yes, but there will be changes to how that works. If you're laid off before July 1, 2016 your agency must keep you on a restoration register. If they have a vacancy in your classification, they must contact you or whoever was the first person laid off. They have to hire you if you're qualified. This is referred to as Restoration Rights. You have these rights for three years.

If you are laid off on or after July 1, you won't have Restoration Rights, you'll have Reinstatement Rights instead. The biggest difference between the two is Restoration is mandatory and Reinstatement is permissive.

Your agency won't keep your name on a register of people who were laid off and they don't have to contact you if there's an opening. They also don't have to hire you. Your return will be permissive rather than mandatory. This is referred to as Reinstatement Rights. You will have these rights for three years.

Q: If I leave state service to go back to school, stay home with my young children, serve an elective position or for other reasons, can I be reinstated later?

A: If you leave before July 1, 2016, you have a 5-year period from the date of separation, to be eligible for reinstatement in a position having a comparable or lower pay rate or range for which you are qualified. Your agency does not have to hire you back but if your agency or any other agency chooses to hire you back, your absence will be treated as a gap in your seniority. This is referred to as Reinstatement Rights.

If you leave on or after July 1, 2016 and want to return to state service, any agency can hire you but you will be treated like a new state hire. You won't have reinstatement rights. If you know when you leave that you want to come back, you may want to ask for an unpaid leave of absence.

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Q: What is the benefit of having Reinstatement and Restoration rights?

A: Restoration Rights give you first dibs on job openings and the agency has to hire you if you are qualified. Both Reinstatement and Restoration Rights allow you to be rehired as a continuing state employee, not a new hire. This included whether you had to serve a probationary period and what your seniority date would be.

NOTE: See Reinstatement and Restoration in the Glossary to learn more about the differences between the two.

Q: Will anyone have restoration rights after July 1, 2016?

A: Yes. Employees who accept certain unclassified positions such as Department Secretary or Division Administrator will continue to have Restoration Rights to their old classification after their political appointments end. Employees who are on military leave will also continue to have restoration rights.

Q: What about those of us who were part of the classified civil service as UW employees?

A: Act 150 didn't change anything for you. As of July 1, 2015, you became university staff as part of other legislation. If you don't change jobs at the university, you have reinstatement rights to a job in the same classification in a state agency until June 30, 2020. You may also have reinstatement rights to what is known as a counterpart pay range classification. You should have received a letter from your UW Personnel Department outlining your specific Reinstatement Rights. To learn more about your reinstatement rights as a former UW classified employee, go to:
<https://www.wisconsin.edu/ohrwd/download/policies/ops/tr4.pdf>

To read OSER's glossary of human resource terms, go to: <http://oser.state.wi.us/docview.asp?docid=1424>

To read the Wisconsin Legislative Council Summary of Act 150, go to:
<https://docs.legis.wisconsin.gov/2015/related/lcactmemo/act150>

To read 2015 Wisconsin Act 150, go to: <https://docs.legis.wisconsin.gov/2015/related/acts/150>