



# **ACE Newsletter**

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### **Analysis of the Wisconsin Administrative Code Changes Related to the Civil Service Reforms**

As many of you already know, the civil service law, Chapter 230 – State Employment Relations, was changed by 2015 Act 150 effective July 1, 2016. Much of the change was controversial and ACE formally opposed the legislation because the overall effect was to weaken civil service protections, lessen the promotional job opportunities of state employees and to create a

threatening environment for them. In spite of our efforts and those of many others, the Act passed the Legislature and was signed into law by Governor Walker.

Once this type of legislation governing state operations is passed and signed, it is up to the agencies involved to draft administrative rules to fully implement the law and submit them to the Governor and Legislature. In this case all of the rule changes belonged to the Division of Personnel Management (DPM) in two parts: the Administrator’s chapter (cited as “ER”) and the Director of the Division of Merit Recruitment chapter (cited as “ER-DMRS”). The two chapters cover generally distinct subject areas but there are some complex interactions and the chapters must be considered together. DPM submitted the amendments to the rules to the Legislature last year and they were approved with the effective date of August 1, 2018.

The ACE Board of Directors has evaluated the changes and we want you to know of the issues presented by them. Our initial concern was that there might be some nasty surprises hiding in the details but we found that the rules appear to accurately reflect the content of the new Chapter 230. That doesn’t mean that the changes were necessarily good for the civil service; just that they are in conformance with the law.

Unfortunately, the overall impact lessens the value of state employees as a group, decreases the opportunities for advancement and creates an environment where employees may feel more intimidated by possible political pressure to do the bidding of supervisors or upper management regardless of ethical or legal considerations. Beyond those critical concerns, the changes also make managing the workforce substantially more cumbersome for agency leadership especially during the transition from the last administration to this one.

The changes that are particularly important to us are described in the following chart, grouped by subject matter with the legal citations included. For the moment we are ignoring other, less significant changes such as simple updates and clarifications.

Beyond the updates presented in this newsletter, ACE will be closely monitoring the policies and procedures the new administration issues to implement the law and rule changes.

<b>Topic</b>	<b>New Provision</b>	<b>Old Provision</b>
Absences		
During Layoff	Employment status in layoff exists only for layoffs before 7/1/16 [ER-18.3]. This means that laid off employees no longer have their time in layoff counted towards seniority. This is tied to the layoff chapter, ER-MRS 22.	All employment lapses with restoration rights were included for seniority calculations.
Unexcused Absences.	A failure to report for <u>any</u> three days in a calendar year is just cause for termination. While agency management will have	An unexcused absence of at least five consecutive days could have been counted as job abandonment.

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	the discretion to handle these situations in a reasonable way, it leaves the door open for abuse [ER-MRS 21.03(2)].	
<p>Grievance Procedure: the administrative code (ER 46) contains the process for non-represented grievances. Although the changes to the code are not very big, the difference between this process and the provisions that had been in the various labor contracts is quite vast. There is no substitute for effective representation in grievances.</p>		
Group Grievances	Group grievances can be designated only by the employer, not by employees. This will force groups of employees who have the same problem with agency management to individually file grievances rather than simply adding a name to an existing form. The agencies may group grievances at their discretion [ER 46.05(4)].	Group grievances were designated by the employees.
Steps	The steps are reduced to (1) the agency and (2) Office of Personnel Management. This minimizes any variance in individual agency processes which may have been valuable in resolving issues [ER 46.06(2)].	There were three or four steps depending on the agency: 1) the supervisor, if the agency allowed it; 2) an intermediate step, usually a division administrator, 3) the agency head and 4) DPM.
Case Preparation Time	Employee preparation times are set by DPM, not the appointing authority [ER 46.09(2)].	The appointing authority determined the time.
<b>Recruitment and Selection</b>		
Examinations	The terms “examination” and “test” have been replaced by “selection process” and “competitive procedures”. These changes appear to reflect a rather strange idea that somehow there is a difference among the terms. In Federal case law and employee selection professional standards they are all treated the	

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	same.	
Objective Testing	<p>A huge change to the concept of fair and objective applicant evaluation is the elimination of a requirement that applicant's names be removed from selection materials before they are scored [ER-MRS 6.09(1)].</p> <p>There is a mountain of scientific evidence that raters exhibit serious unconscious bias when they know the applicants' names.</p>	Names and other personal identifying information were removed from exam materials, except for oral exams.
Employment Registers	<p>Recruitments limited to individual agencies or employing units are eliminated.</p> <p>This generally causes both HR and program staff to waste time and money dealing with outside applicants who don't have a clue in recruitments for advanced agency jobs [ER-MRS 11.02].</p>	Agencies could limit recruitments to the agency or an employing unit if certain criteria were met.
<b>Reinstatement and Restoration</b>		
Promotion	Reinstatement is no longer possible if employee is terminated during the probationary period for a promotion between agencies [ER-MRS 14.03(2)]. We expect this to dampen employees' enthusiasm to explore moving to a different agency and therefore reduce the interchange of ideas among agencies.	Reinstatement to any agency was possible.
Reinstatement	Only resignations before 7/1/16 result in reinstatement eligibility [ER-MRS 16.025(2)]. This eliminates the fastest possible way to fill a vacancy.	Reinstatement to any agency was possible.

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Restoration	Only layoffs before 7/1/16 result in restoration rights [ER-MRS 16.025(2)].	Three years of restoration rights were provided.
<p>Layoffs: It is important to note that doing layoffs in public agencies historically has been designed to be a difficult process which includes many aspects to protect employee rights as part of the general shield from political influences that civil service is supposed to provide. It has never before been constructed as a mechanism to get rid of employees whom management dislikes for whatever reason. Now it will be much easier to maneuver layoffs to target individual employees who will have limited opportunities to regain employment.</p>		
Order of Layoff	<p>The order is determined by job performance during the previous five years, and then any ties are broken by a combination of disciplinary history, seniority and ability. The agency is expected to use performance categories to group employees by (presumably) whatever uniform performance evaluation system exists [ER-MRS 22.06(1) and (2)]. It's not clear how an agency would arrive at a fair evaluation for employees with five years of working under a variety of supervisors and evaluation techniques. The Wisconsin Human Resources Handbook Chapter 262 (Layoff) sets out requirements for uniformity of performance evaluations that make this process nearly impossible. For many layoffs, especially those in big classifications, we doubt that this requirement can be met. We intend to audit any instances where agency management chooses to use it.</p>	Employees in the layoff group were ranked by seniority. The agency could request exemptions to layoff due to special skills.
Displacement	Displacement (bumping) to previously held classifications is abolished [ER-MRS	Displacement (bumping) to previously held classifications was an option for the employees subject to

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	22.08]. This critical change means that if you are in a unique or somewhat unique classification in an agency, the appointing authority will find it easier to lay you off regardless of seniority, giving you no mandatory options in lieu of layoff.	layoff. This assured that the more senior employees were more likely to retain employment.
Transfer or Demotion in lieu of layoff	No change. This provision is the best hope for employees facing layoff but depends entirely on the existence of vacancies. Unfortunately, during layoff the vacancies are usually the first things to disappear.	Employees who get a layoff letter are entitled to a transfer or demotion to the highest level available that is a reasonable offer. In broad-banded classes, only one level of demotion is considered.
Restoration (Recall)	Restoration following layoff after July 1, 2016 is eliminated but reinstatement eligibility remains [ER-MRS 22.10 and 22.11]. In combination with the item above, this means that once laid off you have no concrete options for state employment	Restoration to previously held classifications was mandatory for laid off employees
Career Executive		
Recruitment	Only open recruitments are allowed [ER-MRS 30.03].	Recruitments could have been limited to permanent state employees statewide, in an agency or in an employing unit.
Reassignment	Career Exec reassignments within an agency (even to the same classification) are permitted only when they create vacancies to be filled via competition. [ER-MRS 30.10(2)]. This has the largest impact of all of the changes. It means that managers cannot easily shift Career Executive staff around to make best use of	Reassignments within agencies were permitted regardless of whether a vacancy was left.

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	skills and provide cross training.	