

Modernizing Wisconsin's Civil Service System

Statistics show that Wisconsin's working population is aging. As a result, future hiring of civil servants is expected to grow exponentially in years to come. To best meet the needs of our future workforce, this bill enhances an already comprehensive system by expediting the hiring process and better rewarding employees for exemplary service with merit-based raises.

The State is in direct competition with the private sector to hire the highest quality employees, and when the State is not as nimble as the private sector, we lose. Ultimately like any employer, the State of Wisconsin wants to attract and retain the most capable of employees. This bill helps to ensure that this goal is possible.

Highlights of the legislation:

Streamlines the hiring process of state employees, ensuring that the best and most qualified employees are hired in a timely fashion.

Removes the requirement of the flawed entrance exam and updates the policy to be a resume-based screening process, similar to the private sector.

Creates a central clearinghouse agency to collect, retain and dispense resumes of qualified candidates to state agencies seeking new employees.

Modernizes and enhances Wisconsin's strong civil service protections by expediting the grievance processes – requiring the state to respond in a more timely fashion to complaints by employees.

Clearly defines "just cause" to provide stability for employees and eliminates the grey area surrounding the state's ability to terminate employment.

Implements an annual performance review in an effort to maximize employee effectiveness and for use in distributing merit-based bonuses.

Shields:

This bill aims to gut what protections public-sector employees have left by eliminating Wisconsin's civil service protections.

*This bill **does not eliminate Wisconsin's civil service system**. Instead, it builds on and enhances many of the protections currently enjoyed by classified employees.*

*The legislation **expedites the grievance processes** so employee concerns can be addressed without lengthy delays.*

*Similar to the current system, it gives interviewing **preference to veterans and their spouses**.*

***Statutorily defines "just cause"** to help eliminate grey area surrounding the state's ability to initiate terminations, providing stability for employees.*

Unlike other states who have eliminated civil service protections entirely, this bill instead reforms the out-dated hiring process and provides employees with clarity as it relates to workplace discipline and termination.

This bill will allow for favoritism and political cronyism in hiring employees.

The hiring and termination process under this bill will largely remain unchanged. The changes being made help to ensure that strong candidates are not deterred by excessive wait-times in the application process and that candidates are no longer screened by a flawed exam system.

State employees are an integral part of our state's operation; however, these positions by and large have nothing to do with politics. A change in political control is not going to result in extensive shifts of those employed.

Changing the requirements of Wisconsin's civil service system is anti-worker.

The original intent of Wisconsin's civil service system was to help ensure employees were hired based on merit and shielded from political influence. This bill maintains these protections, while also incentivizing employees to grow in their positions.

After Act 10, repealing the Prevailing Wage and passing Right-to-Work legislation, why is this a priority?

Statistics show Wisconsin's working population is aging. As a result, future hiring of civil servants is expected to climb in years to come. To best meet the needs of our future workforce, this bill enhances an already comprehensive system by expediting the hiring process and better rewarding employees for exemplary service with merit-based raises. Ultimately, like any employer, the State of Wisconsin wants to attract and retain the most capable of employees - this bill helps to ensure that this is possible.

Removing the exam requirement opens the door to unfair hiring practices.

As noted by several supervisors within state agencies, the civil service entrance exam is not an effective tool for measuring the skill set of a potential employee. Often candidates are able to "game-the-system" by using select keywords in their responses to artificially inflate their exam scores.

By moving to a system that relies on the evaluation of an applicant's resume, the state would be adopting a practice commonly used in the private-sector for measuring an applicant's skill set. The revised process places more value on an applicant's past experience than on the results of a manipulable exam.

The current civil service system exam gives preference points to military veterans and their spouses. By eliminating the exam, you are putting veterans and their families at a disadvantage.

This bill does not eliminate and preferential treatment of veterans or their spouses. In fact, it actually expands the deference given to include the spouses of active members of the military.

Rather than providing preference points on an exam, this bill requires that veterans, their spouses and the spouses of active members of the military are given preference for an interview.

By relying on DPM to be a clearinghouse for resumes, you are essentially promoting big government and more bureaucracy.

This assertion is false. In fact, by working with DPM, agencies will enjoy a streamlined process for receiving qualified, prescreened resumes to help fill vacancies in a timely fashion. This bill does not require agencies to eliminate their human resource department, instead it provides them with a specialized tool for finding qualified job applicants.

The agency also will promote the sharing of applicants - as a hypothetical example, the resume of a qualified accountant applying for a position within the Department of Administration may also be shared with those administrators looking to hire an accountant at the Department of Corrections. This sharing of resources is not currently taking place.

By extending the probation period of a new hire, you're making it too difficult to gain civil service protections.

A probationary period for new hires in the civil service program is not a new concept. This proposal standardizes the probationary period for all civil servants and allows for the remainder of the period to be waved at the discretion of an employee's supervisor.

This bill makes it easier for good state employees to be terminated.

Under the current configuration, an employee that has received permanent status can only be terminated or demoted for "just cause." However, because there is no clear definition of just cause, a cloud of confusion currently hangs over employees for what action they can and cannot be fired for.

Using language already employed in other areas of state government, this bill clearly defines "just cause" as a list of egregious acts, such as possession of drugs, theft, and the display or distribution of porn.

The ability of an employee to challenge a demotion or termination is greatly hindered by this bill.

Like the hiring process, the current process for dispute resolution is, in many instances, a very lengthy endeavor. As these disputes are litigated, it often results in a scenario where an agency is paying for the temporary leave and benefits of the employee contesting the agency's decision. This scenario results in a vacant spot that remains unfilled until the situation in question is resolved - meaning the taxpayers are left to pick up the tab for an employee that is producing no work product.

This bill acknowledges the fact that a formal and in-depth dispute resolution process is necessary for a fair place of work. This proposal however would require that from start-to-finish this process takes no longer than seven months as opposed to far lengthier processes that currently occur.



DHS LRB-2783 ISSUE PAPER

The Department of Health Services (DHS) is pleased to support efforts to modernize the civil service system to help the State of Wisconsin remain competitive in its recruitment and retention practices. After reviewing LRB-2783, DHS is hopeful that the recommended changes will create the efficiencies necessary to recruit and retain Wisconsin's best and brightest. As such, DHS respectfully presents this issue paper, which provides suggestions to provisions of the bill in the hopes of creating a smooth and effective civil service process. This paper is formatted by identifying particular sections of the bill, followed by corresponding suggestions.

SECTION 28. 230.15 (7) of the statutes is created to read:

230.15 (7) An appointing authority may not make an offer of employment to any individual who currently holds a position unless the appointing authority has reviewed the personnel file of the individual.

Hiring managers should certainly be encouraged and able to review p-files when practicable. However, making this provision a requirement is burdensome, unnecessary, and likely will not accomplish what it is intended to accomplish.

- The added mandatory review of a p-file will add time to the hiring process. The logistics involved in securing employee p-files from multiple agencies, including the time necessary for shipping, can take several days to weeks. This will delay a hire.
- P-files do not contain all the documents necessary to truly gauge an employee's qualifications and fitness for duty. For instance, if a supervisor has been delinquent in completing regular performance evaluations, those documents will not be in a p-file because they don't exist. Also, the only disciplinary documents available in an employee's p-file are actual disciplinary letters, which means that employees currently under investigation will not have any documentation in their p-file to demonstrate that. Nor will there be documentation in the p-file of items such as work directives or investigations that may have demonstrated a performance or character/judgment issue, but did not result in discipline. Employee attendance records are also not included in a p-file.
- The p-file is an unreliable source for truly measuring if a current employee is a good fit for a position. A better tool to measure a current employee's ability and fitness for a position would be to require hiring managers to check with the employee's current or most recent supervisor for a reference.

SECTION 30. 230.16 (1) (a) of the statutes, as affected by 2015 Wisconsin Act 55, is amended to read:

230.16 (1) (a) The director shall require persons applying for admission to any examination under this subchapter or under the rules of the director a position in the classified service to file an application and resume with the bureau a reasonable time prior to the proposed examination.

The way this is written makes it sound as if all applicants, even existing employees applying for a transfer opportunity, will be required to submit a resume and application for review. Most of the time this is not problematic. However, in unskilled or entry level positions, many applicants, even existing employees, do not have resumes. Many also have limited access to a computer on which to create a resume. The Department of Health Services (DHS) encounters this frequently for positions such as Food Service Assistants, Custodians, Groundskeepers, Resident Care Technicians, and Psychiatric Care Technicians. In these cases, applicants complete an application which includes a work history rather than submitting a resume.

SECTION 31. 230.16 (1) (ap) of the statutes is created to read:

230.16 (1) (ap) 1. Except as provided in subd. 2., the director may not request a person applying for a position in the civil service, on an application or otherwise, to supply information regarding the conviction record of the applicant, or otherwise inquire into or consider the conviction record of the applicant before the applicant has been certified for the position. This paragraph does not prohibit the administrator from notifying an applicant for a position in the civil service that, by law or policy, a particular conviction record may disqualify an applicant from employment in a particular position.

2. If a particular conviction record disqualifies applicants for a certain position in the state civil service, the administrator may request a person applying for the position to supply information regarding the conviction record of the applicant, or otherwise inquire into or consider the conviction record of the applicant, to determine whether the applicant's conviction record disqualifies him or her for the position before the applicant is certified for the position.

The Department of Health Services has a policy of conducting background checks for all finalists for a position, and this includes transfer candidates who are not certified but rather considered through the existing permissive transfer process. This language prohibits DHS from conducting background checks on non-certified transfer candidates under 230.16(1)(ap)1.

Additionally, according to the Department of Workforce Development, an employer may refuse to hire an applicant for conviction of an offense that is "substantially related" to the job. The law does not specifically define "substantially related," but rather looks at the circumstances of an offense, where it happened, when, etc. - compared to the circumstances of a job - where is this job typically done, when, etc. The more similar the circumstances, the more likely it is that a substantial relationship will be found.

Therefore, under 230.16(1)(ap)2, for most jobs it is impossible to define what convictions would disqualify an applicant for a particular position because under the law, because each job and conviction record must be considered individually.

http://dwd.wisconsin.gov/dwd/publications/erd/pdf/erd_7609_p.pdf

SECTION 34. 230.16 (4) of the statutes is amended to read:

230.16 (4) All examinations selection criteria, including minimum training and experience requirements, for positions in the classified service shall be job-related in compliance with appropriate validation standards and shall be subject to the approval of the administrator. All relevant experience, whether paid or unpaid, shall satisfy experience requirements.

SECTION 35. 230.16 (5) of the statutes, as affected by 2015 Wisconsin Act 55, is amended to read:

230.16 (5) In the interest of sound personnel management, consideration of applicants, and service to agencies, the director may set a standard for proceeding to subsequent steps in an examination the selection process, provided that all applicants are fairly treated and due notice has been given. ~~The standard may be at or above the passing point set by the director for any portion of the examination.~~ The director shall utilize appropriate scientific techniques and procedures in administering the selection process, in rating the results of examinations any evaluations used in the selection process, and in determining the relative ratings of the competitors.

These sections maintain the phrases “validation standards” and “appropriate scientific techniques” in describing the hiring selection process. In order to meet the appropriate validation standards and scientific techniques set forth by statute, the recruitment process has historically focused on scoring tasks and statistically quantifiable metrics rather than qualitative performance indicators of successful employees such as core competencies and behaviors. This has frequently resulted in applicants who have real world relevant experience and qualifications being screened out, while applicants who “look good on paper” and have mastered how to write a civil service exam are screened in. If the goal of this bill is create efficiencies in the recruitment process, and ensure that highly qualified and skilled applicants are screened in, then the phrases “validation standards” and “appropriate scientific techniques” need to be removed from the statute. If they are not removed from the statute the selection process will still be focused on creating statistically valid performance ratings based on quantifiable metrics rather than focusing on the totality of an applicant’s relevant skills, abilities, competencies, and knowledge.

SECTION 47. 230.19 (2) of the statutes, as affected by 2015 Wisconsin Act 55, is repealed.

The repeal of this provision removes an agency’s ability to limit the applicant pool for filling vacancies to classified employees. On the surface, it seems common sense that in order to hire the most qualified applicant for a job, an agency should cast a wide net in its recruitment efforts rather than limiting the applicant pool. However, due to the unique nature of many DHS programs, a viable pool of applicants for many positions does not exist outside of classified service. We have learned through experience that announcing those unique positions for open competition results in outside applicants being screened out because they don’t have the required programmatic knowledge for the position, which is a waste of time and resources for everyone.

DHS uses this provision judiciously, and typically only applies it in situations when the position in question is highly technical, requires extensive programmatic knowledge upon appointment, and there are highly qualified candidates in the internal applicant pool. In fact, in 2014 DHS only used this provision for 13 of 542 total recruitments. Furthermore, agencies are limited from using this provision of the statutes broadly because of affirmative action plan requirements in ensuring that the area of competition represents the diversity of the relevant labor pool for the state.

Finally, this provision gives agencies a tool to provide development and growth opportunities for high performing employees. Just like in the private sector, state agencies look to their own emerging leaders first in thinking about succession planning for the future. This benefits everyone by creating a career path for high potential employees and allowing state agencies to retain their best and brightest. If the goal of this bill is to increase efficiency in the recruitment and retention process, then it makes sense that agencies are able to retain as many tools as possible to remain nimble in responding to the changing needs of its workforce. Perhaps the statute could be amended to read:

"If, in the judgment of the administrator, the group of applicants best able to meet the requirement for vacancies in positions in the classified service are available within the classified service, the vacancies ~~shall~~ may be filled by competition limited to persons in the classified service who are not employed under s. 230.26 or 230.27 ~~and persons with the right of restoration resulting from layoff under s. 230.34 (2)~~, unless it is necessary to go outside the classified service to be consistent with an approved affirmative action plan or program. The administrator may also limit competition for promotion to the employees of an agency or an employing unit within an agency if the resulting group of applicants would fairly represent the proportion of members of racial and ethnic, gender or disabled groups in the relevant labor pool for the state."

SECTION 54. 230.24 (2) of the statutes is amended to read:

230.24 (2) A vacancy in a career executive position may be filled only through an open competitive examination, ~~a competitive promotional examination or by restricting competition to employees in career executive positions~~ hiring process in order to achieve and maintain a highly competent work force in career executive positions, with due consideration given to affirmative action. ~~The appointing authority shall consider the guidelines under s. 230.19 when deciding how to fill a vacancy under this paragraph.~~

On the surface, it seems common sense that in order to hire the most qualified applicant for a job, an agency should cast a wide net in its recruitment efforts rather than limiting the applicant pool. However, due to the unique nature of many DHS programs, a viable pool of applicants for many positions does not exist outside of classified service. We have learned through experience that announcing those unique Career Executive positions for open competition results in outside applicants being screened out because they don't have the required programmatic knowledge for the position, which is a waste of time and resources for everyone.

DHS uses this provision judiciously, and typically only applies it in situations when the position in question is highly specialized, requires extensive programmatic knowledge upon appointment, and there are highly qualified candidates in the internal applicant pool. In fact, in 2014 DHS only used this provision for 3 of 542 total recruitments. Furthermore, agencies are limited from using this provision of the statutes broadly because of affirmative action plan requirements in ensuring that the area of competition represents the diversity of the relevant labor pool for the state.

Finally, this provision gives agencies a tool to provide development and growth opportunities for high performing employees. Just like in the private sector, state agencies look to their own emerging leaders first in thinking about succession planning for the future. This benefits everyone by creating a career path for high potential employees and allowing state agencies to

retain their best and brightest. If the goal of this bill is to increase efficiency in the recruitment and retention process, then it makes sense that agencies are able to retain as many tools as possible to remain nimble in responding to the changing needs of its workforce.

SECTION 60. 230.25 (2) (am) of the statutes is created to read:

230.25 (2) (am) 1. If the certification list for a position includes a veteran and the appointing authority extends invitations to interview candidates for the position, the appointing authority shall extend an invitation to interview to the veteran.

2. If a veteran is included on a certification list and if the minimum qualifications and the skills, abilities, competencies, and knowledge of the veteran and any other applicant being interviewed for the position are equal, the appointing authority shall give a preference to the veteran for the position.

4. If an appointing authority does not appoint an eligible veteran and does appoint an eligible nonveteran to a position, no later than 30 days after making the appointment the appointing authority shall file with the director, in writing, the reasons for the appointing authority's decision. Any information filed under this subdivision is part of the veteran's record. The director may not make any information filed under this subdivision available to anyone other than the veteran unless directed to do so by the appointing authority who filed the information.

DHS supports hiring veterans. In fact, we have included provisions related to increasing our use of the non-competitive hiring process for disabled veterans as a goal in our Affirmative Action plan. However, we believe that directing appointing authorities to hire veterans on the basis of being a veteran is not a good hiring practice. There are a variety of factors that play into determining an individual's potential success in a position. Some are mentioned in this proposed addition to the statute. Others not mentioned include references, background checks, interview performance, and the notion of "fit", which is a term used to describe an applicant's ability to fit into the culture of a work unit or organization. Appointing authorities should be relying on job-related criteria that can predict an applicant's success on the job in making a hiring decision rather than selecting a candidate based on that candidate's status as a veteran.

Additionally, requiring appointing authorities to provide a justification for the hire of a non-veteran creates an additional workload for the supervisors and HR staff in the hiring process and adds time to the hiring process. Finally, making that information available to the non-hired veteran puts agencies at risk for increased non-selection appeals for "abuse of discretion" under 230.44(1)(d). In DHS's experience, applicants who do not perform well in the interview, or who are not the best fit for the position, or who have poor references can appeal their non-selection and claim the employer "abused its discretion" in hiring the selected candidate. Almost anything can be alleged as an "abuse of discretion." However, these appeals are nearly impossible for an applicant to win, because the employer has some articulable basis for hiring the candidate selected over the appellant. As a result, these appeals (which are common) become a waste of resources and are typically brought by applicants who performed poorly in the interview, or had poor references, or who are simply not a good fit for the position. The fact that applicants and employees can appeal a hiring action for a reason as nebulous as "abuse of discretion" has created a litigious culture of entitlement among the state workforce and also a culture of fear among hiring supervisors, resulting in ineffective hiring practices.

SECTION 61. 230.25 (2) (b) of the statutes, as affected by 2015 Wisconsin Act 55,

is amended to read:

230.25 (2) (b) Unless otherwise provided in this subchapter or the rules of the director, appointments shall be made by appointing authorities to all positions in the classified service from among those certified to them in accordance with this section. Appointments shall be made within ~~60~~ 30 days after the date of certification unless an exception is made by the director. If an appointing authority does not make an appointment within ~~60~~ 30 days after certification, he or she shall immediately report in writing to the director the reasons therefor. If the director determines that the failure to make an appointment is not justified under the merit system, the director shall issue an order directing that an appointment be made.

This amendment, which changes the timeframe from 60 days to 30 days for an appointing authority to make an appointment after the date of certification, is unreasonable because of the number of steps in the post-certification process.

- The Division of Personnel Management (DPM), has advised agencies that they must give applicants five work days to respond to a request to interview, which means that interviews can't be scheduled until at least a week after the date of the certification. This is in order to comply with ER-MRS 11.04 (b) Wis. Adm. Code.
- Depending on the number of candidates certified, a supervisor could have as few as one or as many as over 100 candidates to interview. Interviews could take anywhere from a day to several weeks. If supervisors want to conduct a second round of interviews, they again need to give candidates five work days to respond, which delays second interviews for yet another week.
- After the finalists have been identified, reference checks and background checks (if necessary) are done. This may take a few days.
- Once the supervisor has selected a final candidate, final approvals need to be completed. This includes pay upon appointment approval, approval of the hire of a non-minority into an underutilized position if applicable, justification of the hire of a non-veteran if applicable (as proposed in this bill), and a review of the p-file if the finalist is an existing state employee (as proposed in this bill). These approvals and the accompanying paperwork required may take a few days to a week or more.
- When the supervisor receives approval to make an offer, an applicant typically needs to give a two week notice to his or her existing employer before the appointment date.
- Finally, in PeopleSoft, all new appointments must start at the beginning of a pay period, which could add an additional week to the process if the offer is made in the middle of a pay period.

The following table demonstrates the timeline of post-certification activities resulting in the hire of a non-minority, non-veteran, current state employee. The timeline included in this table reflects a realistic best case scenario with an organized supervisor and highly responsive HR unit/Appointing Authority. As demonstrated in the table below, which includes the hiring reviews proposed in this bill (highlighted in yellow), the time required to complete all these steps exceeds 30 days already.

One item that may make this amendment more reasonable would be to change the language from "appointment" to "offer of employment." For example, "*If an appointing authority does not make an ~~appointment~~ offer of employment within ~~60~~ 30 days after certification...*" Another

item would be to modify the language in ER-MRS 11.04 (b) to decrease the number of days before an applicant can no longer be considered for failure to respond from five work days to three work days.

Task	# Days	Fictional Timeline
Certification list created and given to supervisor	0	Thursday, October 1, 2015
Applicants are given 5 work days to respond to an interview request in accordance with ER-MRS 11.04 (b)	7	Thursday, October 1, 2015 to Wednesday, October 7, 2015
Supervisor conducts interviews with 10 applicants	2	Thursday, October 8, 2015 to Friday, October 9, 2015
Supervisor notifies applicants of second interview. Applicants are given 5 work days to respond to an interview request in accordance with ER-MRS 11.04 (b)	5	Monday, October 12, 2015 to Friday, October 16, 2015
Supervisor conducts second interviews with 4 applicants	3	Monday, October 19, 2015
Supervisor conducts reference checks on 2 finalists while HR conducts background checks on the finalists	2	Tuesday, October 20, 2015 to Wednesday, October 21, 2015
Supervisor makes hiring decision and requests p-file from another state agency	1	Thursday, October 22, 2015
Supervisor receives and reviews p-file	4	Monday, October 26, 2015
Supervisor completes paperwork completes paperwork for final hiring approvals (pay upon appointment, non-hire justification for affirmative action, non-hire justification for veteran status)	1	Tuesday, October 27, 2015
Agency processes final hiring approvals	2	Wednesday, October 28, 2015 to Thursday, October 29, 2015
Supervisor makes offer to candidate	1	Friday, October 30, 2015
Candidate accepts and gives current employer a two week notice	14	Monday, November 2, 2015 to Friday, November 13, 2015
Candidate begins appointment at the beginning of a pay period	2	Sunday, November 15, 2015
Total Number of Days	44	

SECTION 70. 230.31 (1) (intro.) of the statutes is amended to read:

230.31 (1) (intro.) Any person who has held a position and obtained permanent status in a class under the civil service law and rules and who has separated from the service before the effective date of this subsection [LRB inserts date], without any delinquency or misconduct on his or her part but owing to reasons of economy or otherwise shall be granted the following considerations:

SECTION 71. 230.31 (2) of the statutes, as affected by 2015 Wisconsin Act 55, is repealed.

Reinstatement is not a mandatory right, it is an eligibility. It gives employees who have separated from service without delinquency the ability to be considered permissively for reappointment to a position at a comparable or lower level at the discretion of the appointing authority. This tool is often used by supervisors to recruit qualified employees who separated from service for a variety of reasons. DHS hired 85 people using the reinstatement provision of the statute in 2014. All separated from service for a variety of reasons – to return to school, raise a family, retirement, for a job in the private sector, a geographical move, etc. However, due to reinstatement eligibility, DHS was able to recruit these qualified candidates back to the workforce. Since appointing authorities have discretion to decide whether or not to even consider reinstatement candidates, reinstatement doesn't have any adverse recruitment consequences for supervisors. If the goal of this bill is to increase efficiency in the recruitment and retention process, then it makes sense that agencies are able to retain as many tools as possible to remain nimble in responding to the changing needs of its workforce. DHS recommends that 230.31(2) remain in the statute.

SECTION 79. 230.37 (1) of the statutes, as affected by 2015 Wisconsin Act 55, is amended to read:

230.37 (1) In cooperation with appointing authorities the administrator shall establish an employee performance evaluation program to provide a continuing record of employee development and, when applicable, to serve as a basis for pertinent personnel actions. Under the employee performance evaluation program established under this subsection, the administrator shall require each appointing authority to conduct an annual performance evaluation of each employee appointed by the appointing authority. Similar evaluations shall be conducted during the probationary period but may not infringe upon the authority of the appointing authority to retain or dismiss employees during the probationary period.

If the statute is amended to include a requirement for annual performance evaluations, there needs to be a disclaimer to say something like, "Under the employee performance evaluation program established under this subsection, the administrator shall require each appointing authority to conduct an annual performance evaluation of each employee appointed by the appointing authority for whom performance evaluations are required." For instance, performance evaluations are not required for limited term employees, patient workers, supported workers, or foster grandparents.

Arrest and Conviction Records Under the Law

How does the law define (Wisconsin Fair Employment Law, Wisconsin Statutes. 111.31-111.395) Arrest record?

Arrest record is defined as information that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense by any law enforcement or military authority.

How does the law define conviction record?

Conviction record is defined as information indicating that a person has been convicted of any felony, misdemeanor or other offense, has been judged delinquent, has been less than honorably discharged, or has been placed on probation, fined, imprisoned or paroled by any law enforcement or military authority.

Can an employer discharge a current employee because of a pending criminal charge?

No. An employer may, however, **suspend** an employee, **if** the offense-giving rise to the pending criminal charge is **substantially related** to the circumstances of the particular job or licensed activity.

Can an employer refuse to hire a person because of a record of arrests that did not lead to conviction?

No. An employer is not allowed to ask about arrests, other than pending charges.

What can an employer ask regarding arrest and conviction records?

An employer may ask whether an applicant has any pending charges or convictions, as long as the employer makes it clear that these will only be given consideration if the offenses are substantially related to the particular job. An employer cannot, legally, make a rule that no persons with conviction records will be employed. Each job and record must be considered individually.

Can an employer refuse to hire an applicant because of a lengthy record of convictions or conviction for a crime the employer finds upsetting?

An employer may only refuse to hire a qualified applicant because of a conviction record for an offense that is substantially related to the circumstances of a particular job. Whether the crime is an upsetting one may have nothing to do with whether it is substantially related to a particular job.

What is meant by substantially related?

The law does not specifically define it. The "substantially related" test looks at the circumstances of an **offense**, where it happened, when, etc. - compared to the circumstances of a job - where is this job typically done, when, etc. The more similar the circumstances, the more likely it is that a substantial relationship will be found. The legislature has determined that certain convictions are substantially related to employment in child and adult caregiving programs regulated by the Department of Health and Family Services.

What if an employer believes a pending charge or conviction is substantially related but the employee or applicant believes it is not?

In this situation, the employee or applicant may file a complaint and the Equal Rights Division will make a determination as to whether there is a substantial relationship, with either party having the right to appeal the decision.

Can an employer refuse to hire or discharge a person with a pending charge or conviction because other workers or customers don't want the person with a conviction there?

No. The law makes no provision for this type of problem. The employer must show that the conviction record is substantially related to the particular job. Co-worker or customer preference is not a consideration.

Is it a violation of the law if the applicant's conviction record is a part of the reason for not being hired, but not the whole reason?

Yes. A conviction record that is not substantially related to the particular job should be given no consideration in the hiring process.

How should an applicant answer questions on an application regarding conviction record?

It is best to answer all questions on an application as honestly and fully as possible, and to offer to explain the circumstances of the conviction to the employer.

Should an employer ask about the circumstances of a conviction during an interview?

Yes. An employer must obtain enough information to determine if the conviction record is substantially related to the job. If the employer decides there is a substantial relationship, employment may be refused but the employer must be prepared to defend the decision if the applicant believes there is not a substantial relationship and files a complaint.

What should a person do if refused employment or discharged because of an arrest or conviction record (that is not substantially related)?

Complaints about violations of the law protecting persons from discrimination because of arrest and/or conviction may be filed with:

This is one of a series of fact sheets highlighting Wisconsin Department of Workforce Developments programs. It is intended to provide only a general description, not a legal interpretation.

For additional information contact us at:

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Chapter 18 Discipline, Including Dismissal

Just Cause Checklist

Just cause is a standard of fairness which is established when the employer can answer "yes" to all of the following questions. These are the standards against which the disciplinary action will be measured upon appeal. A "no" to any one question will likely result in the action being overturned upon appeal.

1. Did the employer give the employee warning about the possible discipline?

The employee must have been forewarned that the particular behavior would result in discipline. This may have occurred verbally, or by means of a policy which stated the consequences of noncompliance or the Work Rules for Classified Employees.

2. Was the employer's order or rule related to the safe and efficient operation of the work unit or institution?

The broken rule or disobeyed directive must be reasonably related to the University's mission or business.

3. Did an investigation take place to find out if the employee actually violated the order or rule, and if so, the reasons for it?

Refer to **Investigation** above.

4. Was the employer's investigation fair and objective?

The employer should interview all witnesses and consider all available information not just information that supports the discipline. In case of conflicting accounts, the employer may have to make credibility determinations.

5. Was substantial evidence present to establish that a violation took place?

The evidence cannot be mere rumor or unsupported accusations.

6. Did the employer apply its rules equally?

If it appears that other similarly situated employees have been treated differently, the employer must be able to provide reasonable explanations for what appears to be unequal treatment.

7. Was the penalty reasonable?

The degree of discipline must be related to the seriousness of the offense and to the employee's record of progressive discipline. Typically, the employer's failure to take corrective discipline earlier will not be viewed by an arbitrator as justification for skipping a disciplinary step and taking more severe discipline.

Summary of Disciplinary Documents

Attached are several examples of significant misconduct that the Department was forced to address through written reprimands and/or suspensions, despite the seriousness of the conduct involved, due to our progressive disciplinary policy. In a private sector setting where there are no due process concerns or progressive disciplinary processes in place, the misconduct identified in these letters would likely have led to termination of the individuals' employment.

1. Letter Dated December 11, 2012: This incident involved a male employee who allegedly made physical contact with a female employee and made an inappropriate comment to her as well. The investigation determined that the female employee's account was a credible one, and that the male employee had been untruthful during the investigation. The male employee had no formal disciplinary history. Because there were no witnesses to the misconduct, the Department was limited to issuing a written reprimand.
2. Letter Dated February 7, 2013: This incident involved a male employee who was verbally goaded by a coworker and who responded by punching the coworker in the back. The employee had no prior disciplinary history and provided a written statement apologizing for his conduct. He received a 5-day suspension due to the seriousness of the misconduct. [Note: This employee was ultimately terminated by the Department in July of 2014 for additional misconduct.]
3. Letter Dated August 28, 2013: This incident involved a supervisory male employee who removed state property (a cedar rowboat) from a fisheries facility without authorization. The employee apparently intended to work on the boat as a project following his retirement. The employee had no prior disciplinary history. He received a 5-day suspension due to the seriousness of the misconduct (i.e., stealing) and the fact that he was a supervisor and was therefore held to a higher standard.
4. Letter Dated October 14, 2013: This incident involved a female employee with chronic attendance issues. She had received a written reprimand in June of 2013 related to attendance, but continued to exhibit sporadic attendance and to fail to follow supervisory direction. She received a letter in lieu of a 2-day suspension. [Note: This employee was the subject of yet another investigation in November of 2013, and ended up resigning from her position with the Department.]
5. Letter Dated February 14, 2014: This incident involved alleged sexual harassment (both physical and verbal) perpetrated by a male employee against at least two female employees. The conduct was confirmed by witnesses. The employee had no prior disciplinary history. He received a letter in lieu of a 3-day suspension due to the seriousness of the misconduct (i.e., unlawful sexual harassment).



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Scott Walker, Governor
Cathy Stepp, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

February 7, 2013

Dear _____:

This letter is to inform you that the Department of Natural Resources ("Department") is suspending you without pay for five (5) work day(s). Your suspension will be served from February 11, 2013 through February 15, 2013. As a result, you will be off duty and not in work or pay status on those dates.

This discipline is being imposed because of your misconduct, which violated the following Department Work Rules, as set forth in Manual Code 9121.06: (4)(c): Threatening, attempting or inflicting bodily injury to another person; (4)(e): Disorderly or illegal conduct including, but not limited to, the use of profane or abusive language, horseplay, immoral or indecent conduct and other such behavior unbecoming a Department employee; and (4)(n): Lack of good judgment, such as discourtesy, in dealing with Department employees, representatives of other agencies or the general public.

This disciplinary action is based on the following incidents: On Monday, January 14, 2013 you were involved in an incident at the _____ fisheries facility during which you physically struck your coworker, _____.


You have acknowledged both in a conversation with your immediate supervisor and during the subsequent investigatory interview and pre-disciplinary hearing that you "sucker punched" _____ in the back while he was turned away from you, following a verbal exchange between the two of you that took place in the facility's kitchen area. You have also provided the Department with a written statement indicating that you "own [your] actions" on January 14, 2013 and apologizing for your lapse in judgment.

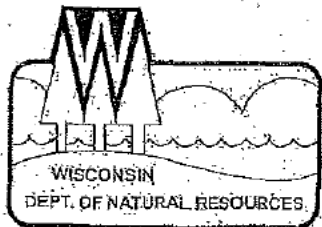
In light of the foregoing, the Department has determined that your conduct was in violation of the work rules referenced above. The misconduct described in this letter is extremely serious, and will not be tolerated in the future. Please be advised that further violation of any of the Department's work rules will result in further disciplinary action, up to and including termination of your employment.

You are reminded of the availability of the Department's Employee Assistance Program (EAP) to assist you in resolving any personal problems which may be affecting your job performance and conduct. The program is voluntary and confidential. You may contact Jeff Carroll in Madison at (608) 266-2133.

If you believe that this action is not based on just cause, you may appeal it through the grievance procedure set forth in Chapter 430 of the Wisconsin Human Resources Handbook.

Sincerely,


Matt Moroney
Deputy Secretary



State of Wisconsin DEPARTMENT OF NATURAL RESOURCES

Scott Walker, Governor
Cathy Stepp, Secretary

101 S. Webster St.
Box 7921
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Telephone 608-266-2621
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TDD 608-267-6897

December 11, 2012

Re: Written Reprimand

Dear

This letter constitutes a written reprimand for your actions which violated the following Department of Natural Resources Work Rule(s) as provided in Manual Code 9121.06: (1)(e) Failure to provide accurate and complete information whenever such information is requested by an authorized person.

This disciplinary action is based on the following: On October 3, 2012, you participated in an investigatory interview conducted by Human Resources Manager [redacted] and acting SER Remediation and Redevelopment Team Supervisor [redacted].

1. The purpose of that investigatory interview was to look into allegations made by Private Water Supply Specialist [redacted] regarding your alleged conduct on August 28, 2012 at the Jackson gasoline spill site located at 1880 Western Ave, Jackson, Wisconsin. As you were advised during that investigatory interview, [redacted] has complained that on the date in question, you grabbed her right side buttock and, when [redacted] moved away and commented on the inappropriateness of this alleged conduct, commented, "I've been to Australia, and all sheilas like it like that."

During your investigatory interview you denied having even seen [redacted] at the Jackson spill site on the date in question. You continued to deny having seen [redacted] despite being told that at least two other individuals had already confirmed that she was present that day and that the two of you were observed together in the same group of people. Moreover, two of the individuals present during the alleged incident have confirmed hearing the remark to [redacted] about having been to Australia, etc. though neither of the other individuals present during the exchange witnessed the physical contact that [redacted] has complained of.

Please note that you were advised in writing prior to the investigatory meeting, as well as verbally at the outset of that meeting, that you were required to fully and completely respond to any questions asked of you, to the best of your ability. You were also advised that your refusal to answer any questions related to this investigation could result in disciplinary action, and that if you did not answer the investigation questions management would have to rely solely upon other sources of information in making its determination with regard to the outcome of the investigation and any appropriate disciplinary action.

Based on the corroboration that at least two individuals have provided regarding the alleged comment to [redacted], the Department finds [redacted]'s complaint to be credible. In light of the foregoing, the Department has therefore determined that you provided inaccurate and/or incomplete information during the course of your investigatory interview. This is in violation of the work rule referenced above, and this written reprimand is therefore appropriate. Please be advised that further violation of this or any other of the Department's work rules may result in more severe disciplinary action against you, up to and including termination of your employment.



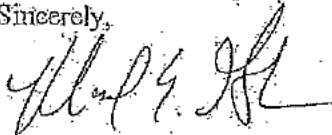
Quality Natural Resources Management
Through Excellent Customer Service



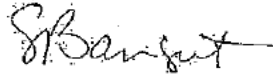
You are reminded of the availability of the Department's Employee Assistance Program (EAP) to assist you in resolving any personal problems which may be affecting your job performance and conduct. The program is voluntary and confidential. You may contact Jeff Carroll, Director of EAP in Madison at (608) 266-2133, or the Department's Employee Assistance Service Deer Oaks at (866) 327-2400.

If you believe that this action is not based on just cause, you may appeal it up to Step Two of the grievance procedure set forth in Chapter 430 of the Wisconsin Human Resources Handbook.

Sincerely,



Mark Gordon, P.E., Chief
Policy and Technical Resources Section
Bureau for Remediation and Redevelopment



Suzanne Bangert
Deputy Division Administrator
AWaRe Division

c:



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Scott Walker, Governor
Cathy Stepp, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

August 28, 2013

Dear

This letter is to inform you that the Department of Natural Resources (DNR) is suspending you without pay for five (5) work day(s). Your suspension will be served from September 16, 2013 to September 20, 2013. As a result, you will be off duty and not in work or pay status on those dates.

This discipline is being imposed because of your misconduct, which violated the following DNR Work Rules, as set forth in Manual Code 9121.06:

- Manual Code 9121.06(3)(a): Unauthorized removal of Department, state, or private property, equipment, or supplies.
- Manual Code 9121.06(4)(n): Lack of good judgment, such as discourtesy, in dealing with Department employees, representatives of other agencies or the general public.

Your conduct is also believed to be in violation of the Department's Code of Ethics, specifically ER-MRS 24.04(2)(a) which provides as follows: No employee may use or attempt to use his or her public position or state property, including property leased by this state, or use the prestige or influence of a state position to influence or gain financial or other benefits, advantages or privileges for the private benefit of the employee, the employee's immediate family or an organization with which the employee is associated.¹

This disciplinary action is based on the following:

In approximately June of 2012, you and fellow DNR employee removed a cedar row boat and boat motor from the Fish Ops building in Spooner. The boat in question was apparently donated to the Department by a private party and had been stored in a locked fisheries building, to which the public did not have access, for many years. While you have disputed who the rightful owner of the property is, the Department maintains its position that the boat and motor are state property. However, regardless of who the rightful owner is, the property does not belong to you or and your admitted removal of said property from the building was therefore in violation of the work rules and code of ethics provisions cited herein. You have also indicated that the boat and motor were removed on a weekend, and that you and used his Department-issued keys to access the locked building. Lastly, you have acknowledged that neither you nor

¹ Note that the Department's Code of Ethics is based on the following statutory language: "No state public official may intentionally use or disclose information gained in the course of or by reason of his or her official position or activities in any way that could result in the receipt of anything of value for himself or herself, for his or her immediate family, or for any other person, if the information has not been communicated to the public or is not public information." (Wis. Stats. 19.45(4), emphasis added.)

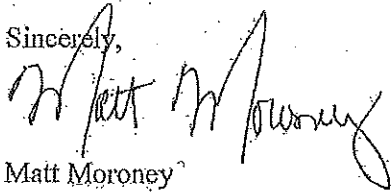
had obtained permission from your supervisor(s) to remove the boat or motor, and that following their removal you transported these items to your private residence using your personal vehicle and boat trailer.

In light of the foregoing, the Department has determined that your conduct was in violation of the work rules and the code of ethics provisions set forth herein. Given the seriousness of the conduct involved, your supervisory role with the Department, and the implications of having violated the Department's code of ethics, the Department has determined that a five-day suspension is appropriate under the circumstances.

You are reminded of the availability of the Department's Employee Assistance Program (EAP) to assist you in resolving any personal problems which may be affecting your job performance and/or conduct. The program is voluntary and confidential. You may contact the Department's Employee Assistance Service LifeMatters at (800) 634-6433 or at <http://www.mylifematters.com> (password: SOWI).

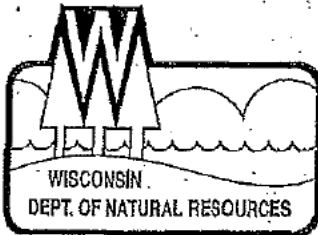
If you believe that this action is not based on just cause, you may appeal it through the grievance procedure set forth in Chapter 430 of the Wisconsin Human Resources Handbook.

Sincerely,



Matt Moroney
Deputy Secretary

Cc:



State of Wisconsin | DEPARTMENT OF NATURAL RESOURCES

Scott Walker, Governor
Cathy Stepp, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
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October 14, 2013

Re: Letter in Lieu of Suspension

Dear

This letter is to inform you that the Department of Natural Resources ("the Department") is issuing you this letter in lieu of a two-day suspension. Because you are an employee who is exempt from the provisions of the Fair Labor Standards Act (FLSA), you must be paid your full salary for any week within which you perform work. For this reason, you will not actually serve your suspension or lose pay but are instead being issued this letter in lieu of suspension in order to maintain the exempt status of your position. However, please be advised that for purposes of progression with regard to any disciplinary action in the future, this letter will have the same cause and effect as an unpaid two-day suspension.

This discipline is being imposed because of your misconduct, which violated the following DNR Work Rules, as set forth in Manual Code 9121.06: (1)(a) Insubordination, disobedience, failure or refusal to follow written or oral supervisory instructions, directions or assignments; (2)(a) Failure to report promptly at the starting time of a shift or leaving before the scheduled quitting time of a shift without the specific approval of the supervisor; (2)(b) Failure to notify the supervisor promptly of unanticipated absence or tardiness; and (2)(b) Unexcused or excessive absenteeism.

This disciplinary action is based on the following incidents:

On June 12, 2013 you received a written reprimand for violation of several work rules related to attendance, as well as failure to follow direction from your supervisor. That reprimand addressed several issues, which included failure to notify your supervisor of tardies and/or absences in a timely and acceptable manner, and excessive absenteeism. Following issuance of the June 12, 2013 reprimand, your supervisor provided you with a revised work schedule intended to accommodate your needs and to help you improve your attendance record. That schedule was documented via a June 20, 2013 memorandum that you, I, and signed.

Since that time, your supervisors have documented a continuing pattern of attendance issues, including tardies and/or late call-ins on June 25th, June 28th, July 30th, August 5th, August 12th, August 14th, and September 12th.

In addition, you failed to attend an off-site training on September 11th and did not contact your supervisor to advise him that you would be absent that day. During the investigatory meeting that was held with you on October 4, 2013, you initially stated that you had called your supervisor the morning of September 11th to tell him you would not be attending the training; you later amended this statement to say that you believe you contacted him the day before, on September 10th. This was in direct violation of the direction you have been given regarding acceptable check-ins and check-outs with your supervisor, and the absence is therefore considered unexcused.

The misconduct described in this letter is serious, particularly in light of the fact that you received a written reprimand in June of this year for several issues related to attendance. In light of the foregoing, the Department has determined that your conduct was in violation of the work rules set forth above, and that a two-day suspension (for which this letter is to be considered the equivalent) is appropriate. Please be advised that further violation of any of the Department's work rules will result in further disciplinary action, up to and including termination of your employment.

You are reminded of the availability of the Department's Employee Assistance Program (EAP) to assist you in resolving any personal problems which may be affecting your job performance and/or conduct. The program is voluntary and confidential. You may contact the Department's Employee Assistance Service LifeMatters at (800) 634-6433 or at <http://www.mylifematters.com> (password: SOWI).

If you believe that this action is not based on just cause, you may appeal it through the grievance procedure set forth in Chapter 430 of the Wisconsin Human Resources Handbook.

Sincerely,

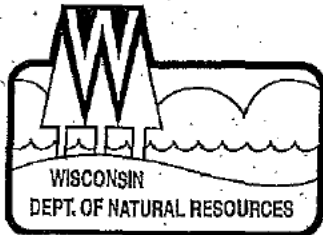


Matt Moroney
Deputy Secretary

Cc:

Receipt of the original of the letter of discipline dated October 14, 2013 is acknowledged this 17th day of October, 2013.


Signed: _____



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Scott Walker, Governor
Cathy Stepp, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

February 14, 2014

Re: Letter in Lieu of Suspension

Dear :

This letter is to inform you that the Department of Natural Resources (DNR) is issuing you this letter in lieu of a three-day suspension. Because you are an employee who is exempt from the provisions of the Fair Labor Standards Act (FLSA), you must be paid your full salary for any week within which you perform work. For this reason, you will not actually serve your suspension or lose pay but are instead being issued this letter in lieu of suspension in order to maintain the exempt status of your position. However, please be advised that for purposes of progression with regard to any disciplinary action in the future, this letter will have the same cause and effect as an unpaid three-day suspension.

This discipline is being imposed because of your misconduct, which violated the following DNR Work Rules, as set forth in Manual Code 9121.06: (4)(d): Acts which create an intimidating, hostile or offensive work environment, such as physical, sexual, racial, or other acts of harassment; (4)(e): Disorderly or illegal conduct including, but not limited to, the use of profane or abusive language, horseplay, immoral or indecent conduct and other such behavior unbecoming a Department employee; and (4)(n): Lack of good judgment, such as discourtesy, in dealing with Department employees, representatives of other agencies or the general public.

Your conduct was also in violation of the Department's Code of Ethics (Manual Code 9121.1), which requires that Department personnel "refrain from acts which create an intimidating, hostile, or offensive working environment, such as physical, sexual and racial or other forms of harassment," as well as the Department's policy regarding sexual harassment (Manual Code 9121.11).

This disciplinary action is based on the following incidents:

It has been reported that on the evening of January 14, 2014, following the daytime portion of the Forestry Division Statewide Meeting, you were socializing with fellow Department employees at the Clubhouse Bar and Grill located in the Radisson Paper Valley Hotel in Appleton. During the course of the evening, you allegedly rubbed a female coworker's thigh and repeatedly commented on her appearance (e.g., "you're so beautiful," "you're so sexy"). You allegedly also, while rubbing another female coworker's back, made contact with and began rubbing a third female coworker's thigh; when that third female employee commented on your conduct, you allegedly commented about her attire in a manner that suggested she was dressed inappropriately. Both the first and third employees referenced above felt that your conduct was inappropriate and unwelcome. This conduct has been confirmed by several other employees who were present at the time.

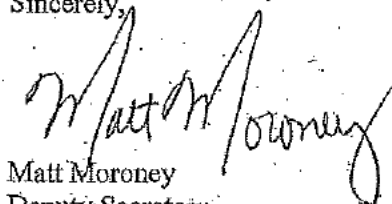
An investigatory interview and pre-disciplinary hearing were held on January 29, 2014. You did not provide any information during or subsequent to those meetings which mitigates the conduct that has been reported, and which has subsequently been confirmed by witnesses who were present at the time. In light of the foregoing, the

Department has determined that your conduct was in violation of the work rules set forth above and that a three-day suspension (for which this letter is to be considered the equivalent) is appropriate. Please be advised that further violation of any of the Department's work rules will result in further disciplinary action, up to and including termination of your employment.

You are reminded of the availability of the Department's Employee Assistance Program (EAP) to assist you in resolving any personal problems which may be affecting your job performance and/or conduct. The program is voluntary and confidential. You may contact the Department's Employee Assistance Service LifeMatters at (800) 634-6433 or at <http://www.mylifematters.com> (password: SOWI).

If you believe that this action is not based on just cause, you may appeal it through the grievance procedure set forth in Chapter 430 of the Wisconsin Human Resources Handbook.

Sincerely,



Matt Moroney
Deputy Secretary

Cc:

Receipt of the original of the letter of discipline dated February 14, 2014 is acknowledged this 14 day of February, 2014.

Signed:

Average Time to Fill Position

Based on recruitments completed between January 3, 2014 and August 23, 2015, the Department's average time to fill a position* is as follows:

- 94.3 calendar days
- 67.6 work days

*This is defined as the date the job is posted on WiscJobs to the employee's start date. (Information regarding offer dates is not available.)

Summary of Issues Related to Exams

The Department does not have a record of any recent (i.e., in the last several years) failed recruitments. A failed recruitment is defined as a recruitment that does not produce any candidates who are actually qualified to do the job. This would likely be due to a faulty exam that did not properly screen the applicants.

There have been situations where a hiring manager is simply unhappy with the resulting candidate pool in a given recruitment, and chooses to reannounce the position rather than making a hire. Typically the same exam would be used in the reannounced job posting. This is not something that is tracked as a matter of course, but would require surveying hiring managers.

Not being required to conduct civil service exams would unquestionably expedite the hiring process by reducing the amount of time spent screening candidates. However, this could potentially result in increased costs due to a higher rate of employee turnover due to less informed hiring decisions.



WISCONSIN LEGISLATURE

P.O. Box 7882 • Madison, WI 53707-7882

October 1, 2015

WI DNR

Attn: Kurt Thiede

PO Box 7921

Madison, WI 53707-7921

Dear Deputy Secretary Thiede,

As you are aware, I, in conjunction with Representative Jim Steineke, introduced legislation to modernize Wisconsin's civil service system. One aspect of our legislation addresses concerns raised by various agencies regarding procedures relating to position availability within agencies and the practice of "bumping." We'd appreciate your thoughts on the following questions. Out of respect for current and former employees, there is no need to refer to anyone by name in requested examples.

- Could you please provide us with examples where the process and procedures associated with proposed, not enacted, position reductions resulted in impacts to your agency's ability to function efficiently and manage programs?
- Could you please attempt to quantify the staff resources and/or expenditures associated with managing staff layoffs and navigating the "bumping" process?
- Without identifying individuals, could you provide examples of the "bumping" process or reinstatement resulting in the placement of individuals in positions that they were not best suited for either by individual skillset or what managers deemed best for the agency?
- Finally, what are some of the other challenges your agency faces as it pertains to "bumping"?

Respectfully,

Roger Roth
19th District
State Senator

Jim Steineke
5th District
State Representative

DSPS

Case 1-Supervisor

Wide range of performance issues, detailed Letter of Instruction, failed to improve, resulted in written reprimand, poor performance continued, complex Performance Improvement Plan (PIP) to begin, employee retired prior to start of PIP

Issues – progressive discipline despite extensive violations, career executive rules complicated discipline process

Case 2

Extensive absenteeism; verbal reprimand; written reprimand; 1-day suspension; 3-day suspension; 5-day suspension; despite extensive absenteeism and no work product, progressive discipline required more than one year to complete; employee resigned; potential termination letter more than one year after initial reprimand

Issues – complicated by FMLA, employee played system which extended discipline process over one year

Case 3

Wide range of issues, deteriorating work performance, insubordination, attendance, use of state property, discourteous behavior, annual performance evaluation resulted in needs improvement, began PIP, during course of year received Letter of Instruction, disciplinary process began following PIP, corresponding Equal Rights Division case

Issues – hard to tease out performance vs. bonified medical issues which often leaves many work performance issues unresolved, may keep employee in job for extended period of time

Case 4

Multiple instances of proceeding through the disciplinary process, two written reprimands, 1-day suspension, 3-day suspension, to WERC, settlement with confidentiality agreement and both suspensions reduced to reprimands

Issues – same types of issues extended over a 3-year timeframe

Case 5

Misconduct, use of state property, attendance, misuse of state time, allegations of hostile work environment and discrimination against agency, prediscipline letter sent, employee resigned

Issues – had employee not resigned this would have lasted for years and would have been labor intensive and costly

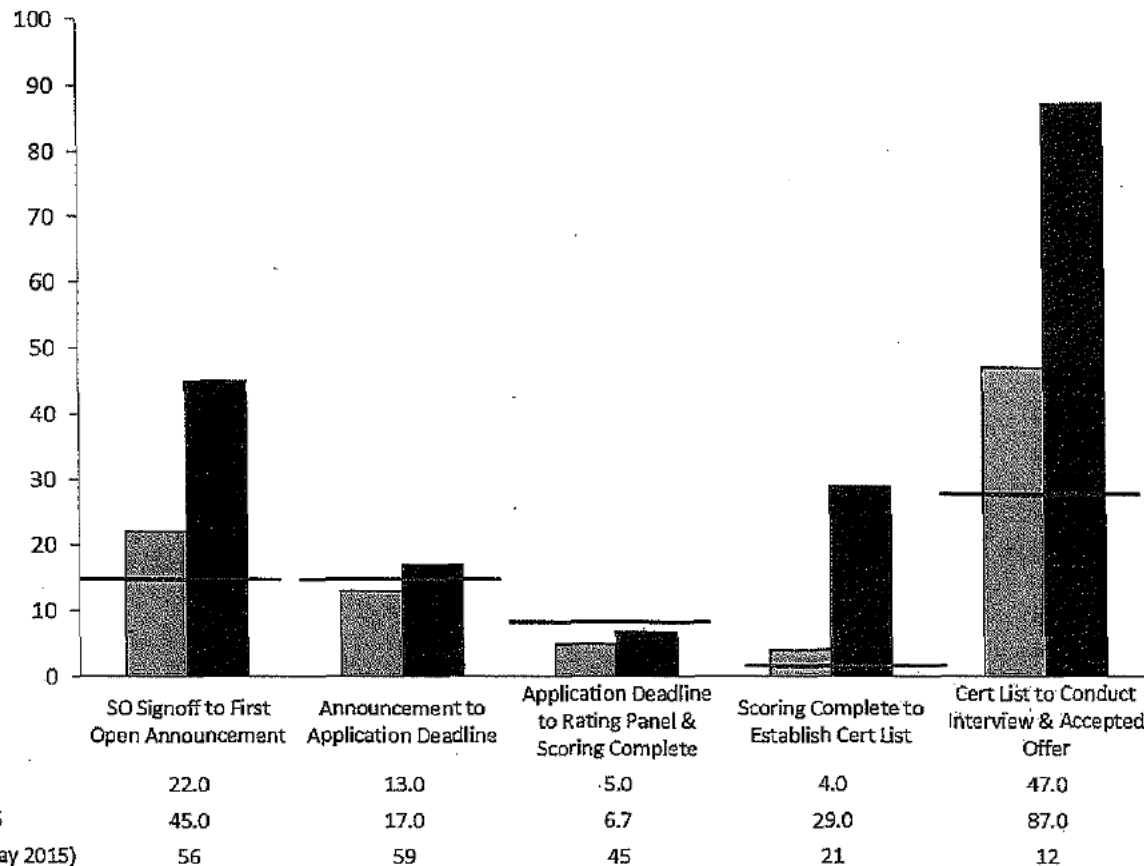
Position bumping has not affected this agency.

Management Services

Target Direction:



HR- Number of Days for Key Steps in the Hiring Process



Analysis

- Bars at or below the red line meet the benchmark:
 - 1 of 5 steps met the benchmark between February 2015 and May 2015.
 - 2 of 5 steps met the benchmark between October 2014 and January 2015.
- Comparing this to the previous KidStat (October 2014 – January 2015):
 - The average number of days improved in 0 of 5 steps.
 - The average total time from SO Signoff to Accepted Offer increased from 102 days to 135 days.
- A hiring freeze existed from February 2015 until mid-May 2015.

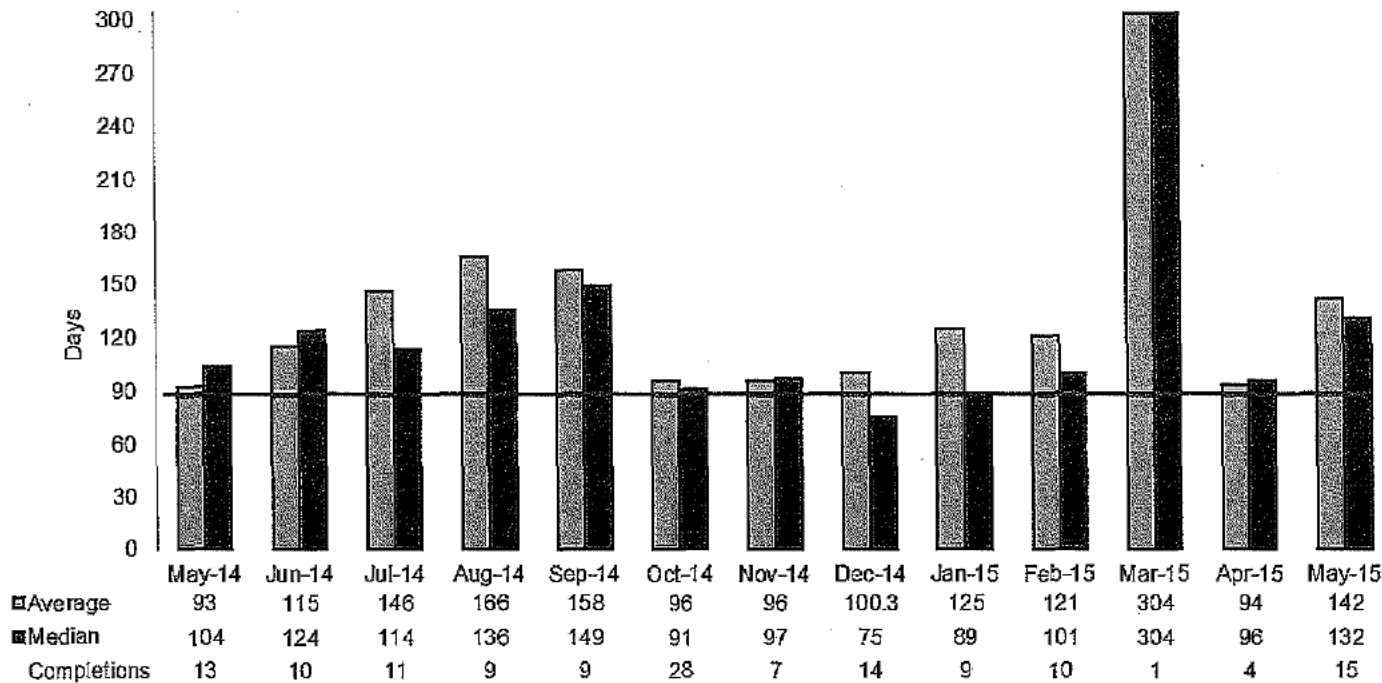
Median Number of Days for Key Steps in the Hiring Process for Recruitments in Process from February 2015 to May 2015 compared to the last KidStat (October 2014 - January 2015). The benchmarks are indicated by the red lines: the first two steps is 14 days, the third step 7-9 days, the fourth 2 days, and the last 28 days.

Management Services

Target Direction



HR- Total Length of the Hiring Process for Completed Recruitments



Total Length of the Hiring Process for Completed Recruitments by Month Recruitment Ended from February 2015 to May 2015. The benchmark is 90 days.

In May 2015, DCF did not meet the benchmark 142 > 90 days.

Analysis

- Bars at or below the red line meet the benchmark:
 - Average: 0 of 13 months meet the benchmark
 - Median: 1 of 13 months meet the benchmark
- Monthly statistics are based on a small number of observations:
 - Average: 11 completed recruitments per month
- Length of hiring process over the entire May 2014 – May 2015 period:
 - Average: 135 days (does not meet the benchmark of 90 days)
- A hiring freeze existed from February 2015 until mid-May 2015.

Hiring/Civil Service Examples

1. Examination types: For some positions, the type of examination and the process itself may pose challenges to an applicant's ability to successfully compete, e.g., the process may require a higher degree of literacy than the job actually necessitates. This may result in some individuals not completing the application process or not being a successful candidate. ER-MRS 7, Wis. Adm. Code, currently provides the authority for separate recruitment, examination and certification procedures for such classes. Consideration of expanded use of this type of certification for a broader range of classes, such as entry level food service, could improve the candidate pool and speed up the hiring process and allow tailoring of the application process more appropriately to the type of position and skill set.
2. Difficulty in removing applicants from certifications: Current administrative code (ER-MRS 6.10, Disqualification of applicants) identifies certain circumstances under which an applicant may be refused the ability to be examined or certified, or may be removed from a certification. Among the enumerated reasons are an individual who has been convicted of any felony, misdemeanor or other offense, the circumstances of which substantially related to the job or licensed activity, and individuals who have been dismissed from the state service for cause and the action is requested by the appointing authority. For reasons that are unclear, this provision is used very rarely. As a result, discharged employees are interviewed as are recently released inmates or individuals newly released from community supervision. A more expeditious method of requesting and receiving approval for such removals would eliminate the need to continue to consider individuals who are not qualified for a position.
3. Job abandonment: Under current administrative code, an employee must be absent from work or fail to contact the supervisor for a minimum of 5 consecutive days before the employer may consider the position abandoned and initiate discipline or terminate the employee for job abandonment. The DOC Bureau of Personnel and Human Resources hired an individual new to state service who worked one day and began calling in on subsequent days and providing assurances that she would be returning to work. Even though she never returned to work, the contacts she made to the supervisor delayed the ability to terminate her employment due to job abandonment.
4. Frivolous litigants: When applicants are not hired for a position, there are opportunities for the individual to appeal or challenge the non-selection. A small number of applicants engage in frivolous litigation and appeal almost every instance of non-selection. These repeat litigators take up considerable resources, including that of human resources professionals in the agency and at DPM, attorneys, and others engaged in the hiring process. Instituting limitations or penalties to deter frivolous litigation would be efficiency.
5. Layoff and at-risk: Currently, individuals who are at risk of layoff or who have been designated at risk for other reasons (Employee Referral Service, ERS, candidates) must be considered for vacancies prior to those who are provided as the result of a competitive examination process. This often adds to the time required to fill positions and also at times, may limit the ability of the agency to hire the most qualified applicant for a position. If ERS candidates are given consideration outside the competitive process, including them in the larger pool of candidates would treat the same as others.

When the DOC has experienced layoff situations, it has avoided actual bumping situations due to the size of the agency, advanced planning, and number of vacancies across the entire department. However, the pay protections for layoff movements often create pay inequities between similarly situated employees and supervisors and subordinates. Greater discretion in pay-setting in these circumstances would help to avoid these types of outcomes.

Labor Relations Examples:

1. Suspension Modification Decision: Failure to Conduct Strip Searches at Hospital and Institution.
A male Correctional Officer received a one level skip (5 day suspension) for not insuring that inmates were strip searched before departing the hospital and upon reaching the institution. Additionally, he did not provide truthful and accurate information when questioned. This employee assumed his female coworker had conducted the searches while he was conducting other transportation related duties.

The WERC reduced the suspension to progression (3 day suspension), yet upheld the skip in progression for the female coworker, after deeming the male employee's misconduct as less egregious than that of his female coworker.

2. Termination Reversal Decision: Fraternization with Inmates.

A female Correctional Sergeant was terminated after an investigation regarding several infractions, including fraternization with inmates. Of the 14 infractions included in the disciplinary letter terminating her employment, she admitted to 9 of them. The evidence for the 5 other infractions was hearsay and conflicted with the direct testimony of the grievant. Because the evidence was hearsay there was no opportunity for the employee's representative to cross examine.

An arbitrator ruled the Employer's discharge was not for just cause because it relied on all 14 of the cited infractions in making the decision to terminate employment and was only able to prove 9 of them. The Department was ordered to reinstate her with no back pay or benefits.

Note: One year later, this employee was terminated due to being charged with 2nd Degree Sexual Assault by a Correctional Staff. She was found guilty due to a no contest plea and was sentenced to 24 months in prison and placed on extended supervision for 60 months.

3. WERC Process:

Delays in decisions: The WERC process requires that a proposed decision be issued by the hearing examiner, which is then subject to approval by the Commission before it is a final decision. In those cases involving the Department in which a proposed or final decision has been issued by the WERC, the average time from the issuance of the discipline to the receipt of a proposed decision by the hearing examiner is 14 months. There is an additional average of four months before a final decision by the Commission is received, for an average of 18 months (1.5 years) from the issuance to conclusion of a discipline when it is appealed to the WERC. The DOC is waiting for a final decision on four cases from 2012, 2 cases from 2013 and 2 cases from 2014. These lengthy delays between the issuance of discipline and the conclusion of the appeal process create a high degree of uncertainty and limit the Department's ability to manage its operations.

WERC interactions outside the formal process: There have been several instances in which WERC hearing examiners have approached both parties regarding the outcome of a hearing, after it was litigated and prior to issuing a proposed decision. This seems to be done as a scare tactic to predispose the Department to enter into a settlement agreement. There have been other times where the examiners have approached the Department while at another hearing to stress the need to settle on other cases that have already been litigated. Historically, there has been a push from WERC hearing examiners to settle cases prior to litigation. These interactions outside the formal process introduce ambiguity as to the purpose of the formal process, and absent decisions, we are not sure what the system will tolerate and the risk we may be taking in not settling a case.

Miscellaneous disciplinary information:

- Average time from Date of Incident (staff misconduct) to issue discipline: 2.5 months
(Based on a representative sample of investigations over the past year)
- Examples of factors contributing to internal delays (more than 60 days from incident to discipline) in investigations:
 - Employee absences related to FMLA and/or Medical Leave
 - Absence from work for other reasons of investigators and/or subject of investigation
 - Request from law enforcement to hold on our investigation until theirs is completed
 - Internal review by Appointing Authority, Division, Legal and/or Secretary's office
 - The need to interview multiple witnesses
 - Internal DOC policies, such as those related to use of force or PREA violations, that may have specialized procedures or processes that contribute to the overall timeline

The attached chart shows DATCP's success with the Office Support Position Exam from 2014 to present. On average, 69 percent of certified candidates declined interviews. In one case, 100 percent of candidates declined interviews.

Also attached is DATCP Employee Handbook (in process of updating).

Best wishes,

Sandy Chalmers

DATCP Office Support Exam Positions 2014/2015

Position Title	Initial Certification Date/Date names provided to a division for interview purposes	Total Certified	Total not accepting an interview (e.g., Failed to Respond, No Show, Not Available, Not Interested)	Percentage of declined interviews
LPPA	8/5/2015	11	5	45%
Office Associate (.60 FTE)	8/25/2014	5	3	60%
Office Operations Associate	8/8/2014	30	22	73%
LPPA (.65 FTE)	7/22/2014	11	4	36%
Operations Program Associate	5/5/2014	18	18	100%
TOTALS	N/A	75	52	69%

DOT

Disciplinary Actions

Over the past five years, the Department of Transportation has experienced similar situations to other state agencies that resulted in termination due to work rule violations. These have included situations related to excessive and inappropriate internet usage, theft and falsifying records.

The length of time the department spent investigating the violations to when a termination letter was issued varied due to the specifics of the case. The department ensures a thorough investigation is completed to provide the employee appropriate due process and to ensure the disciplinary action taken is defensible.

Below are examples of disciplinary actions the department has experienced which resulted in termination of the employee.

- Operating a state vehicle while intoxicated and on duty.
 - 12 weeks from incident to termination letter issued.
- Excessive use of state equipment (internet) for personal use; inappropriate internet use
 - 10 weeks from incident to termination letter issued.
- Theft
 - 7 weeks from incident to termination letter issued
- Falsifying records and theft (gas)
 - 8 weeks from incident to termination letter issued.
- Falsifying records and unexcused/excessive absenteeism
 - Approximately 4-5 weeks from learning of incident (falsification) to termination letter issued.
- Accessing and processing DMV records for self/family/friends/coworkers
 - 4 weeks from learning of incident to termination letter issued.

Hiring Processes

The department uses a variety of effective recruitment methods to fill vacancies in a timely manner. These efforts include statewide recruitments, continuous recruitments and combined recruitments/interviews. The department has experienced failed recruitments. In the past four years, the following failed recruitments have occurred.

- In 2012, the department had two failed recruitments prior to filling a Deputy IT Director position.
- In 2013, the department was required to use the OSER multiple choice exam to try to fill vacant entry level Payroll and Benefits Specialist positions. This exam was outdated, measured irrelevant KSAs and did not yield any results. The department had to go through extra efforts with OSER to use a more effective recruitment method.
- In 2014, the department had one failed recruitment for a Career Executive Payroll and Benefits Program Officer position before filling the position.
- In 2015, the department had one failed recruitment for an IS Professional Senior position to assist with policy, finance and improvement activities. This position was not filled and the vacancy was used to meet other needs.

DRAFT

Hiring Reforms

- Remove exam requirement to a resume-based eligibility requirement
- Central HR agency (DPM) – shared services for all agencies
 - DPM acts as resume clearinghouse
 - Appoints at least 2 evaluators (one rep/designee of DPM and one from agency) to conduct interviews
- 30 Day goal to hire for agencies after receiving list of resumes from DPM
 - Agencies shall submit annual report to DPM re: # of days to make offer of employment
- “Ban the Box” – Prohibited from asking about conviction record unless it would disqualify applicant from a particular position

Employment Reforms

- Probationary period (230.28): Extend from 6 months to 2 years, option to waive at 1 year
- Eliminate/minimize mandatory Reinstatement and Restoration (230.31)
- Annual Performance evaluation required
- No call/no show for any three working days in a calendar year = abandonment of position (Currently 5 consecutive days 230.34(1)(am))
- Maintain permanent disciplinary record of employees
 - Agencies must review the personnel file of applicant
- Layoffs determined primarily by performance, and then seniority, abilities, and disciplinary record
- Open competitive promotion process 230.19(2)
- Just cause definitions
 - Immediate termination (no progressive discipline measures):
 - Harassment of employees
 - Physical violence
 - Intoxication/drug substance/possession
 - Theft
 - Conviction of a crime
 - Falsifying business records
 - Misuse or abuse of property, including intentional use of workplace equipment to download, view, solicit, seek, display or distribute pornographic material
 - Progressive discipline:
 - Those whose performance and personal conduct is Unacceptable conduct or performance of duties
- Merit pay program (\$6 million in second year of biennium)

Due Process Reforms

- Three step appeals process w/ deadlines
 - Regarding appeals on dismissal, demotion or suspension:
 - Step 1: Informal discussion between employee and agency appointing authority
 - 14 days to file, 15 days for agency decision
 - Step 2: Decision by DPM
 - 14 days to file, DPM then has 30 days
 - Step 3: Hearing before WERC
 - 14 days to file, 120 days for Commission decision

- In 1905, Wisconsin's civil service law passed under Gov. Robert M. La Follette with the original slogan of "The best shall serve the state."
- Today we must continue that mission to attract and retain the best workforce to serve our state.
- One of state government's biggest costs is labor – recruiting, hiring, and maintaining a good labor force that provides good service to the state and its taxpayers.
- It's time to update a system based on a 19th century mentality in favor of one that serves a 21st century workforce through common sense reforms.
 - Came from an era where there was a need to professionalize government work and insulate workers from political pressure.
 - We need a system that adopts best management principles from the private sector

HOW THE BILL WAS DEVELOPED

- This should be viewed as a workforce and government reform issue
 - The state workforce is aging.
 - Every agency had a greater percentage of employees immediately eligible for normal retirement in June 2014 than 10 years earlier.
 - One in every 12 employees is already eligible for normal retirement (3,288 classified employees).
 - An additional 5,785 employees (23%) are projected to become eligible within five years.
 - 40% will be eligible for normal retirement within 10 years.
 - There has been a decreasing number of applicants per job announcement over the last four years.
- Thorough review Of Chapter 230 (State Employment Relations)
- Asked agency contacts for feedback on what issues were obstacles
- Looked at other states that have made reforms
 - Tennessee (2012), Arizona, Indiana, Colorado

FINDINGS AND WHY REFORM IS NECESSARY

- Antiquated employment procedures mixed among statute, rules, handbook procedures and long-standing practices
- Lack of consistency across state government agencies
 - Differing interpretations in hiring practices, variations in discipline and performance reviews
- Slow and cumbersome hiring process, losing well-qualified job candidates
- Good employees are not recognized or rewarded for any greater value than bad employees
- Difficult to separate those employees who do not enhance the mission of state government

Examples:

- *Employee spending almost all working hours watching pornography had job restored because he wasn't sufficiently warned and the agency should accommodate his addiction (pre Act 10)*
- *DOC employee using illegal drugs with a parolee came back through arbitration (pre Act 10)*
- *Five consecutive days necessary for agency to consider a position abandoned by an employee*

GOALS OF REFORM

- Assure fair treatment of applicants and employees
- But not only seek fairness, the system must value our workers potential by recognizing their skills and abilities, not merely hours worked
- Reduce cost of paperwork and time to hire and fire employees
- Hiring, retaining and promoting employees based on their performance
- Correcting inadequate performance, if possible
- If not possible, Separating employees whose performance and personal conduct are inadequate
- Improve workplace environment so that good employees are rewarded and not demoralized by bad employees and the cumbersome process it takes to remove them
- Centralize human resource functions so there is consistency and fairness across state agencies
- Our bill recognizes that the State is a unique employer and should rightly provide protections from political backlashes, however, we can also implement private sector best practices to make state employment run smoothly and efficiently.

PLAN SPECIFICS: Reforms in Hiring, Employment, and Due Process

Hiring Reforms

- Resume-based eligibility requirement
 - *Current: competitive examination requirement in statute*
 - *Example: A short order cook was a top candidate for an accountant position through the exam process*
- OSER was eliminated in the state budget and functions moved to DOA Division of Personnel Management (DPM)
 - This bill further creates a centralized HR agency (DPM) – shared services for all agencies (pilot program in budget for small agencies)
 - DPM acts as resume clearinghouse
 - Appoints at least 2 evaluators (one rep/designee of DPM and one from agency) to conduct interviews
- 30 Day goal to hire for agencies after receiving list of resumes from DPM
 - Agencies shall submit annual report to DPM re: # of days to make offer of employment
 - *Examples: An agency reported between 116 and 239 days to hire; 8 months to hire IT positions*

Employment Reforms

- 2 Year Probationary period, with waiver at one year
 - Critical juncture for agencies to know if employees are good workers and capable of duties assigned
 - *Current: All positions have a 6 month probation, with the exception of supervisor or management which are one year and possible extension up to two years*
- Annual Performance evaluation required that is uniform across agencies
 - *Current: Evaluation program is in statute but had little meaning before the current administration. They are also inconsistent across agencies.*
- Maintain permanent disciplinary records of employees
 - Agencies must review the personnel file if hiring an applicant from another agency
 - Move to maintaining electronic records
 - *Current: Difficult for an agency to access files and records can be expunged*
- Layoffs must be determined by factors of merit, disciplinary records, seniority, and performance
 - *Current: Layoffs may be determined by seniority or performance, but have primarily been determined by seniority in the past.*

- Eliminate/minimize "Bumping"
 - Eliminate 5 year reinstatement privilege for voluntary separation
 - Change 3yr mandatory restoration to 3 yr permissive reinstatement for Layoff status
 - Eliminate for Elected officials (*Current: reinstatement for 5 years following termination from the classified service or for one year following termination from the elective position, whichever longer*)
- Open, competitive promotion process
 - The goal should be to find the most qualified job candidates, not simply promote from within.
 - *Current: Available positions can be limited to those already within classified service*
- Spell out Just Cause definitions in statute
 - *Current: In statute, "An employee with permanent status in class...may be removed, suspended without pay, discharged, reduced in base pay or demoted **only for just cause.**" The only definition in statute is the 5 consecutive day absence. Some agencies may have "code of ethics" in handbook.*
 - Immediate termination (no progressive discipline measures):
 - Harassment of employees
 - Physical violence
 - Intoxication/drug substance/possession
 - Theft
 - Conviction of a crime
 - Falsifying business records
 - Misuse or abuse of property, including intentional use of workplace equipment to download, view, solicit, seek, display or distribute pornographic material
 - No call/no show for any three working days in a calendar year
 - Progressive discipline:
 - Those whose performance and personal conduct is unacceptable conduct or performance of duties
 - Direct DPM to develop consistent and documented process
- Merit pay program
- Good Government Reforms
 - Direct DPM to review and update current handbook, compensation plan, uniform performance evaluations, and move toward electronic personnel records

Due Process Termination

- Reform Wisconsin Employment Relations Commission (WERC) Appeals process because it is currently a lengthy process
 - *Current: 2-3 steps at agency (up to 120 Days), OSER (30 days), WERC (90+ Days)*
 - *Typical process may take 1 ½ years or drag out longer*
 - *Example: Agencies may settle cases more frequently because employees manipulate the system to drag out appeals*
- Three step appeals process w/ deadlines
 - Regarding appeals on dismissal, demotion or suspension:
 - Step 1: Informal discussion between employee and agency appointing authority
 - 14 days to file, 15 days for agency decision
 - Step 2: Decision by DPM
 - 14 days to file, DPM then has 30 days
 - Step 3: Hearing before WERC
 - 14 days to file, no more than 120 days for Commission decision (timeline conditions imposed in order to meet deadline)
 - Goal of entire process to take no longer than 6-7 months

Department of Children and Families

Follow-up Examples

DCF has no additional examples of hiring or discipline problems to forward. This is due:

1. DCF has only been an agency for 7 years and therefore has a limited time reference.
2. The current HR Director has been on the job for only 6 months and does not have a history with the agency which may limit our historical perspective. Records going back to the Department's creation were reviewed.

Since the Department's creation there have been no layoffs that have resulted in bumping

- Disciplinary statistics – attached
- Hiring time lines – attached (note CY15 timelines have been skewed due to hiring freeze during first half of year).
- Employee Handbook – attached.

Original Examples submitted previously

Hiring Frustrations

- Repetitive interviewing of serial or frequent applicant – there are individuals who are serial job applicants. They often meet the minimum job qualifications to get to the interview stage but they are already well known to the hiring Supervisor from prior interviews. The result is a waste of time and effort by all concerned. The capacity to screen these applicants out upfront would avoid this effort.
- Inability to extend Probation during periods of Supervisory turnover – occasionally a new hire will be made where the hiring Supervisor subsequently leaves, there is a timeline delay before the new Supervisor is on board and they subsequently conclude the probationary employee is not performing. Because of the time delays there may not be a written track record on performance which could be used as justification for termination. Because there is a “hard” 6 month time limit there is not enough time to address the performance issue and the employee is passed from probation when there is reasonable doubt as their capacity to perform in to the future. The capacity to extend probation would address this issue.

- Lack of recognition of contractor staff oversight in setting Supervisory levels – Many areas of the organization relies on staff augmentation through “contractors” to complete work. This is especially true in Information Technology. Contractors work side by side with state employees doing similar and related tasks. They are directed in their work by state supervisors. When establishing classification levels for hiring supervisors the current system often does not recognize these positions and responsibilities which results in not setting classifications high enough to attract the qualified candidates required.
- Delays in reposting required by interviewing all qualified applicants – Agencies are often required to interview all “qualified” applicants on a register even if the initial round of interviews provided a lack of good results. This delays the process to re-post and extends the hiring process. The ability to determine a register is no longer valid and allow a reposting would speed up the process to find a quality hire.

Discipline and Grievance Frustrations

- Appeal of Disciplinary actions – Employees are still able to appeal discipline to WERC and Agencies actions are often subject to the presumption that the employee should be made whole. Case in point an employee brought a gun to work, made comments as to “who should I shoot today”. The employee did considerable unsupervised work outside the office with clients. As an indication of the seriousness of this behavior the employee was put on leave and required to have a medical assessment. On Appeal to WERC the employee was “made whole” and all Agency discipline reversed. The employee continues to act out at the worksite. Redefining or clarifying what kind of actions can go to WERC may prevent this type of result. **<case is posted on WERC website – Decision number 35080>**
- Appeal of non-grieveable action - An employee was given a medical separation. This is non-grieveable. OSER / DPM has directed Agency HR departments to meet with the employee and their representative even though the action is non-grieveable. The employee was able to appeal to WERC which will likely result in a settlement. Redefining or clarifying what kind of action can go to WERC may prevent this type of result. **<case is under WERC review and cannot be discussed>**

Department of Children and Families
Disciplinary Actions/Grievances

	2013	2014	2015 (Jan. – June)
Discipline-Related Investigation Completed	42	21	9
Grievances Filed	9	9	4
Results:			
Settled	1	3	
Modified	2	1	
Upheld	1		
Partially Upheld			2
Dropped by Union			
Denied	2	2	2
Denied and Appealed to OSER	3	4	
Pending Mediation			1
EEOC/ERD/Harassment/Hostile Work Environment			
Investigations	4	1	1
Mediations	2	2	0

Civil Service Notes

Issues:

1) Hiring

- a. The number of classifications – If you recruit for a Senior Accountant but only find people qualified to be Advanced Accountants, you have to begin a new recruitment for Advanced Accountant and hope they apply...in 3-4 months. The way to get around this is to recruit for every classification you might end up with, at 2-3 times the work.
- b. Professionals (attorneys, engineers, etc.) are not required to take written exams to qualify for jobs outside government. The exam prevents many of the best from applying.
- c. When the private sector can offer a job in days, the best candidates will not wait for months.
- d. A 3-6 month hiring process that, due to the elimination of open positions, can't begin until a vacancy occurs can cause serious problems in critical positions or with an aging workforce.
 - i. Critical positions – The PSC has five gas pipeline inspectors. Federal regulations require us to have a minimum of five gas pipeline inspectors to keep federal funding. Recruitments often fail for these positions because the state can't compete for pay for these engineers. Once one is hired, it can take over a year to become fully certified to inspect gas line projects alone.
 - ii. Aging Workforce – 36 of about 140 PSC employees (25%) are currently eligible to retire.

2) Discipline

- a. An incident requires discipline.
 - i. First offence: Verbal reprimand
 - ii. Second offence: Written reprimand; this triggers an investigation by Chief Legal Counsel.
 - iii. Third offence: Suspension without pay – 2 to 3 days in length
 - iv. Fourth or later offence: possible termination.
- b. Multiple quarterly performance reviews show an employee is not doing their job
 - i. Performance Improvement Plan (PIP) is drafted specific to that employee
 - ii. The employee has a minimum of 6-months to improve.
 - iii. During the PIP timeframe, the supervisor must meet with and evaluate the employee weekly (a built-in disincentive to engage in the process)
 - iv. After the PIP period, the employee may be suspended for 2-3 days and then the termination process may begin.

State Hiring Process: Background Information

18 September 2015

When recruitment is requested the following steps are taken (this entire process takes a minimum of 3-4 months; can be longer given longer applicant pools, analysis of PD, management and supervisory exclusion forms, HAMs and TAMs, AA review of interview questions and candidate selection).

1. Staff prepare Request to Recruit Form, PD (reviewed and revised, including filling out supervisory and management analysis forms, if necessary) and an Org Chart.
2. Email request to DOA HR specialist with all attachments; this will include Hiring Above Minimum (HAM) and Temporary Appointment Maximum (TAM) requests that need OSER review and approval.
3. PD may need OSER classification review if a new position.
4. Exam Security Agreement(s) completed and returned to DOA (Supervisor, Agency HR liaison, and Operations Program Associate...anyone working on or with access to exam benchmarks)
5. Craft exam and benchmarks; submit to DOA HR Specialist for review.
6. DOA will draft a job announcement for our review based on the PD requirements, the exam and benchmarks. This draft is thoroughly reviewed by staff, including checking wages/salary range and all details.
7. Depending on the position, it will need to be posted on the at-risk site for 8 days. Once that is complete, job will be posted at a minimum for 8 days, at a minimum on the state's recruitment website: wisc.jobs.
8. Selection of at least 2 raters and 2-3 interviewers for the process. Send those lists to DOA.
9. When posting deadline is complete, DOA creates a register of applicants.
10. Raters to fill out Job Expert Certificate and return to DOA (before rating)
11. A rater meeting is conducted between DOA HR specialist, Supervisor, and rating panel. Paper Rater "packets" distributed at meeting and these exams are scored by the raters based on the benchmarks established in step No. 5.
12. Exams scored by DOA HR Specialist
13. Exam materials and completed scoresheets collected and returned to DOA (note scan scoresheets and send via e-mail, send all other paper via snail mail)
14. Once scored, DOA creates a certification list of those who passed the exam; the cert list and resumes of the applicants are sent to the interview panel. Make sure that the interviewers sign the EEO letter. Those are returned to assigned DOA recruitment specialist prior to the interviews starting.
15. Interview Questions and Templates Prepared/Interview Questions approved by DOA HR/Reviewed by Affirmative Action Office if position is underutilized.
16. Phone and/or in-person Interviews scheduled with candidates.
17. Binders assembled (EEO guidelines sheet & cover memo—cover memo on pink if underutilized; Schedule and pink AA forms; Exam responses; interview q's template; resumes; background check envelopes & forms) and delivered, including instructions to hiring supervisor that is new to process

18. Under-utilized electronic document emailed to supervisor.
19. Interview schedule changed to reflect situation, under-utilized or not.
20. Interviews conducted and top candidate(s) determined by supervisor
21. Under-utilized review document prepared by supervisor and approved/authorized by DOA Affirmative Action Officer
22. Supervisor/Hiring Manager grades certification list on the report of action codes listed at the bottom of the list; this is then scanned and sent to DOA recruitment specialist.
23. Once top candidate is selected and vetted; Send information to DOA for review to ensure salary is within appointment range.
24. Supervisor to do reference checks; DBPM administrator to conduct DOJ background check.
25. Once those are complete, DOA will draft an appointment letter which DBPM staff will edit and place on agency letterhead.

Civil Service Reform

Examples Hiring and Firing Challenges

Hiring

1. Marketing Specialist Entry: International, Travel Green and Sports Show Coordination
 - There were 150 candidates who passed the test and were eligible to interview. This lets me know there was a flaw in the testing process. (Only 5 did not pass the test)
 - We had to go back to the cert list three times before we found a candidate. (Interviewed over 35 people).
 - The candidate who was hired stayed with us only 16 months. It takes that long to do a good job of training and on-boarding. Starting over with another recruitment is frustrating and time consuming.
2. Office Coordinator
 - Initial attempt at hiring this position resulted in a failed recruitment

Why: The certification list for this job classification comes from a written test. This method is not conducive to the kind of soft skills necessary in this small office/ tourism promotional environment. Things like "Emotional Intelligence/Soft Skills" are not measured in this kind of evaluation process.

We tried again to find a person to fill this position. First, we changed the job title to Office Manager and then beefed up the position description and job duties. Again, the candidates came from a certification list through a written test. The cert list had some of the same people on it who were on the Office Coordinator cert list.. Many of the candidates did not return our phone calls or respond to our request for interview because they may not have been serious about a new job or perhaps already got another job. What remains in the pool of candidates are the lesser desirable.

Firing

1. Employees who should be dismissed from state service
 - Issue: Employees are recruited and hired for skill, but behaviors are typically the reason they don't succeed.
 - Reference checks on someone who habitually have behavior problems don't flush out the behavior because the previous employer is eager to move the person off as someone else's problem.

Example: A toxic employee brings the morale down of the entire team but terminating them is difficult because they have the skill set necessary for the position. The skills were tested for in the recruitment process, but nothing screens for personality.

Other challenges in general:

- Recruitments typically require 2 separate panels of people. One group of 2-3 to do the test review and another group of 2-3 to conduct the interview panel. It is hard to find people willing to do this work because of the time commitment. By the time all of the calendar coordinating takes place, the best candidates have found other positions.

Personal notes 09/18/15

- The same civil service process used to recruit dozens of call center staff must be used to recruit for a highly specialized professional position with a limited talent pool.
- Unlike temporary employees in the private sector, full-time LTEs who succeed in short-term jobs can't become full-time permanent positions based solely on performance. They must still go through the lengthy written and interview steps required under civil service system.
- Applicants who pass the written exam are placed on a registered list for six months that hiring authorities must consider for future openings, regardless of how poorly a registered candidate performed interviews for the original position.
- Unlike the private sector, the civil service system prohibits supervisors from extending probation beyond six months to monitor a newly hired employee whose performance may be marginal. Nor does the system encourage accountability once a person is off probation and transfers from position to position and supervisor to supervisor.
- Two levels of civil service career executives with limited movement between levels; system could be streamlined to have one CE level.
- Project employees lose all benefits they accrued during the two-year life of a project position if they successfully apply for and accept a permanent position.
- Those who go above and beyond their job description and demonstrate additional skills cannot easily be rewarded with pay raises to account for those additional skills.

230 chap (all examples mainly WI only) (didn't include fed law)

- civil service Testing for highly specialized positions (low volume applications) eliminate, (instead do a resume review)

IT positions for example

save huge time and paperwork

- Prohibits hiring LTE's "project ~~05~~" (long term LTE)

DWD can't move them into perm civil service positions under current law. Now must compete for exact same job they are currently in. Could get interns, etc, then move into actual positions. ~~the~~ ~~can~~ Have to start process all over. UI call center winter workload positions examples

- when hire ~~big~~ large groups of people register good for 6 mths

then new positions open up or new position granted but tied to the old ~~a~~ register

Answer: not to bind to utilizing register and they could immediately expire (if they want)

don't want to be tied to list

- How badly we can recruit ^{in under utilized} positions

if under utilized is a position (minority) in agency, we have to open it up to entire state, public. But it's unlikely that person doesn't exist. Hire from within' extremely difficult. Affirmative action quota may not be possible to meet, but the person we want to hire isn't the right type. ~~Proper~~ Ignores qualified internal candidates, opening up way more paperwork

probationary period

if employee transfers within their employing unit, could be to a new class, but can't put that person on a new probationary period. We should be able to put these people on any prob. period on any employee transfer/transactions.

NO ability to ~~extend~~^{extend} probationary period

example: they get put on special ~~project~~^{project} ~~and~~ accommodation or a disability need and can't see how they perform.

Career Executive (2 levels) 81.101 ^{to} 81.102

law prevents moving an internal candidate between 81.102 level to 81.101. Have to open & up.

Answer: create just one level exec.

When a "project 05" transfers into a perm position, their accrued benefits don't transfer. ~~what's the~~. Essentially they are starting over, and they have no incentive to move up.

Pay flexibility for employees (chap 230)

Setting a rate to the appropriate level. It's just a set rate based on classification. Could be doing more work than their class allows.

Written reprimands (chap 111)

Stay within the agencies, ~~they should~~ grievable to level 2, can't go any further, they shouldn't be grievable at all. There would be no formal process (it's a lot of paperwork)
No property loss to employee

didn't include do III in employment relations

Hiring/Recruitment Process

So far today, we've had three people say "no" to job offers.

We have numerous examples – really too many to count – where applicants are called for an interview or are offered a position, but decline because they have already accepted another position. Then when we call the second choice, they have also accepted another position. We often end up having to re-advertise the vacancy.

On average, it takes DATCP 90 days to fill a position. We are hamstrung by outmoded processes and arbitrary processing dates. Give us flexibility.

1. We are not allowed to use resumes to screen applicants. This means staff resources must be invested in developing exams, which in turn lengthens the hiring process.

For IT jobs and many other positions, private sector employees are used to submitting a resume.

Applicants are turned off by the exam requirement and look elsewhere for a position. A typical scenario is that 35 people view the job announcement, but only 10 complete the exam.

2. Jobs must be posted a minimum of 10 calendar days. Reduce the minimum to 5 days. Provide agencies with flexibility to determine the amount of time they need to post a job vacancy.
3. Eliminate the required Office Support Exam for certain job titles. It is not unusual to get a list of 60 people, calling down the list only to find that one or two are interested in our vacancy. This is a time-waster for everyone and especially frustrating for hiring managers.
4. Lower level positions are not broad-banded, which makes it difficult to attract quality applicants. There's no pay flexibility to reward previous job experience. Instead, everyone starts at the same pay.
5. WISCERS (layoff referral system) receives few applicants. It's not effective, and just adds time to the process.
6. Administrative items that unnecessarily extend the process:
 - Requiring managers to complete a High Importance Job Content (HIJC) rating.
 - Completing the exam plan to summarize the areas being tested for – we already have the PD as a reference.
 - Exam center testing – an antiquated method. Use technology to connect to applicants.
7. DPM/DMRS must review non-delegated positions, which adds time to the process.
 - Example: At DATCP, the HR Specialist job title is non-delegated. DPM's required statistical review took 4 days to receive back before we could finalize a certification list and begin scheduling interviews. We could have completed the review in one business day.

Discipline process

1. We contacted OSER about shortening the timeline of our performance improvement process. OSER asked what our "past practice" was, and advised us to stay with past practice. Unfortunately, our past practice was based on the union contracts. We obviously wanted to move in a different direction, so made the change on our own.
2. Streamline the appeal process, while maintaining appropriate due process. We now have too many appeal levels: division, agency, DPM, WERC.

Examples:

An employee abandoned his job and fled to Canada while under criminal investigation, but the Department could not take action to terminate him until 5 days expired to comply with 230.34(1)(am) related to "Job Abandonment".

After years of discipline, an employee was terminated for violating work rules and the Code of Ethics for State Employees. These included stealing state property, subordination, violating safety requirements, unprofessional conduct, using his state position for personal gain, etc. He would often leverage state rates at hotels even though no state business was conducted. We learned of this because he was stealing from the hotel. The termination process was lengthy and costly, as he made appeals through both ERD and WERC.

Time to Fill – Position Action Request Date to Start Date

2013 – 101 Days

2014 – 77 Days

2015 – 35 Days (through June 30, 2015)

Negative costs resulting from lengthy hiring process

Loss of revenue from revenue generating positions

Cost of retraining employees

Shifting of higher level duties prolongs lower level duties

Hiring

Compensation

- Private sector vs. public sector inequities
- Positions have evolved such that the level of pay for certain lower level classifications lags behind the duties and responsibilities
- Highly complex technical positions results in low applicant pools
- Availability of qualified applicants
- Availability of applicants in regional labor markets
- Lag in addressing compensation surveys across all classifications contributes to an overly lengthy hiring process due to compensation
- Simplified hiring process for lower level positions

Terminations

Performance and medical issues, reassignment, Performance Improvement Plans (PIPs), extensive supervision required resulting in extensive staff time to resolve

Misuse of state resources, software tracking did not allow sufficient evidence of details of use, necessary to obtain experts

Intentionally trying to create constant disruptions affecting all staff, multiple grievances, poor performance, tardiness, good faith efforts not returned, FMLA, medical issues, discrimination, retaliation, harassment

Misconduct made complex due to past practices, activities occurred in remote parts of WI so documentation of activities in field is difficult

Poor performance, reassignment resulting in retraining, PIPs, medical, FMLA

WERC is a wildcard

Revise, clarify and streamline WHRH Chapter 430 on Employee Grievance Procedure

Solutions - Precise Position Descriptions with measurables

(I) Recruitment

Average recruitment takes the DFI 116 days
Maximum recruitment time has been 239 days

Using an average \$20.00/hr cost
Average cost \$18,560.00
Maximum cost \$38,240.00

(II) Discipline - The multi-levels of redundant appeal rights enhance the cost and time to the agency. Additionally, the burden of proof standard for an agency is high, requiring an agency to engage legal counsel, which also leads to many settlements in lieu of discipline.

Example A – Employee had 11 years of service and was disciplined 3 times

First incident – work rule violation
Disciplinary action – 2 day suspension
Elapsed time – 1 month
Cost - \$2,000.00

Second incident – purchasing card abuse
Disciplinary action – 5 day suspension
Elapsed time – 2 months
Cost - \$3,100.00

Third incident – purchasing card abuse, record falsification, misuse of state-issued equipment

Disciplinary action – 3 weeks administrative leave, termination with settlement
Elapsed time – 3 months
Cost - \$6,000.00 + \$25,000 settlement

Example B – Employee had 29 years of service and was disciplined 2 times

First incident – falsifying time
Disciplinary action – 2 weeks administrative leave
Elapsed time – 1 month
Cost - \$2,000.00

Second incident – inappropriate internet use
Disciplinary action – 2 weeks administrative leave, employee retired (in lieu of discipline)
Elapsed time – 1 month
Cost - \$6,000.00

Example C – Employee had 3 years of service and was disciplined 4 times

First incident – grabbing female employee
Disciplinary action – verbal warning
Elapsed time – 1 week
Cost - \$100.00

Second incident – excessive personal use of internet
Disciplinary action – letter of instruction
Elapsed time – 1 month
Cost - \$3,000.00

Third incident – excessive personal use of internet
Disciplinary action – written reprimand
Elapsed time – 1 week
Cost - \$3,000.00

Fourth incident – harassment
Disciplinary action – written reprimand
Elapsed time – 2 weeks
Cost - \$2,100.00

Note: Employees probationary period was 6 months. Issues began within the 1st year of employment and after the end of probation.

Definitions:

Elapsed time:

Time from beginning of disciplinary process to end.

Cost:

Estimated departmental cost of implementing disciplinary action (investigation, interviews, hearing, and settlement)

- In accordance with Ch. 230.16 (4) and (5) Wis. Stat., examinations are required to meet appropriate validation standards, and appropriate scientific techniques and procedures must be used in the administration of the selection process. Unfortunately, these requirements have resulted in an application process that is cumbersome and labor intensive for applicants, while also ineffective for supervisors. In order to meet the appropriate validation standards and scientific techniques set forth by statute, the recruitment process focuses on scoring tasks and statistically quantifiable metrics rather than qualitative performance indicators of successful employees such as core competencies and behaviors. This often results in applicants who have real world relevant experience and qualifications being screened out, while applicants who “look good on paper” and have mastered how to write a civil service exam are screened in. In fact, the whole exercise of writing an exam at all, rather than submitting a resume and cover letter, often deters qualified applicants from applying for jobs in the first place.
- The existing compensation structure limits the employer’s ability to provide appropriate and timely market and performance based pay adjustments to recruit and retain qualified individuals. As the labor market continues to change, agencies make the best use of broadbanding to exercise pay upon appointment flexibility for new hires in setting an equitable and market-driven salary. This often means that the salaries of new hires are set at a higher rate than the salaries of existing staff because past General Wage Adjustments (GWA) and market adjustments have not kept up with compensation trends in the labor market. For example, the current Discretionary Equity and Retention Award (DERA) criteria prohibit the use of external labor market factors in determining equity, and instead uses years of state service as the only indicator of equity. This means that someone with years of relevant experience outside of state government cannot be awarded a DERA if it will result in leapfrogging someone with more years of state service, but not as many total years of relevant experience, even if that experience was gained in another branch of government.
- Employees may file civil service appeals related to hiring (non-selection) and discipline (including termination) to the Wisconsin Employment Relations Commission (WERC) under Ch. 230.44 Wis. Stat.
 - Non-Selection Under Ch. 230.44(1)(d) Wis. Stats, any applicant not selected for a state civil service position may appeal the hiring decision. The standard is whether the hiring action was illegal (meaning in conflict with Ch. 230 Wis. Stat.) or an abuse of discretion. Most appeals relate to the decision to hire one candidate over the appellant, alleging “abuse of discretion.”

Applicants who do not perform well in the interview, or who are not the best fit for the position, or who have poor references can appeal their non-selection and claim the employer “abused its discretion” in hiring the selected candidate. Almost anything can be alleged as an “abuse of discretion.” However, these appeals are nearly impossible for an applicant to win, because the employer has some articulable basis for hiring the candidate selected over the appellant. As a result, these appeals (which are common) become a waste of resources and are typically brought by applicants who performed poorly in the interview, or had poor references, or who are simply not a good fit for the position. We also see repeat appeals by repeat applicants who apply for multiple jobs and are not selected, who fail to recognize their own shortcomings as the reason for non-

selection. The fact that applicants and employees can appeal a hiring action for a reason as nebulous as "abuse of discretion" has created a litigious culture of entitlement among the state workforce and also a culture of fear among hiring supervisors, resulting in ineffective hiring practices.

- Discipline Wisconsin is an at-will employment state, which means that an employer can terminate an employee at any time for any reason, except an illegal one, or for no reason without incurring legal liability. Likewise, an employee is free to leave a job at any time for any or no reason with no adverse legal consequences. At-will also means that an employer can change the terms of the employment relationship with no notice and no consequences. However, classified employees with permanent status in class in state government are not subject to this rule. Our employees have a property right to their job as defined by Ch. 230.34(1)(a) Wis. Stat., in that they may be removed, suspended without pay, discharged, reduced in base pay, or demoted only for "just cause." The standard of "just cause" has been set historically based on protections provided by collective bargaining agreements and precedent setting arbitration decisions. Consequently, the standard of "just cause" has crept higher and higher over the years, resulting in a progressively more difficult and lengthy process in taking any type of employment action based on misconduct or poor performance.

Under Ch. 230.44(1)(c) Wis. Stat., certain disciplinary actions (demotion, layoff, suspension, discharge, or reduction in base pay) may be appealed to the WERC after the grievance process has been exhausted if the appeal alleges that the disciplinary decision was not based on "just cause." The appeal process is repetitive and can put form [process] over substance. Also, much of the process was created out of collective bargaining. An employee already has the right to challenge discipline through the grievance process (a 3-step process). The statute then provides a 4th step by appealing to the WERC. Providing yet another layer of appeal is not only repetitive but has resulted in decisions by the WERC ordering the employer to take back employees who engaged in serious misconduct that put the health and safety of patients at risk, when the WERC has equated "just cause" with being able to meet a criminal standard of proof or suggested that circumstantial evidence is not enough. As an employer, we should not have to meet the criminal standard of proof to discharge an employee for workplace misconduct.

Confidential – Recruitment/Selection Examples

Health Care Positions- A psychologist applicant is required to have a PhD, PsyD or Masters degree in specific fields of study with a certain level of academic rigor before referral to a supervisor for interview. The applicant pool is very small and highly competitive between state agencies, federal agencies, local government and private practice.

A pure interpretation of the civil service process begins with the requirement for the applicant to submit the State application and complete the "exam" on-line in wisc.jobs. The HR Specialist retrieves the materials submitted by the applicant comprised of responses to several yes/no questions and information about their educational background. Those materials are to be "blinded" to remove any personal information that would identify the applicant (name, address, SSN, etc) to a rater and then numbered for anonymity. Those materials are provided to three subject matter experts (typically supervisors) to rate or evaluate. The scores from the raters are entered into wisc.jobs and the scored and ranked electronically to create a list of candidates for referral to a supervisor for interviews. This process takes several weeks (10 days to post, time to collect and blind the materials, rate, create scores and list, etc) to get to the interview. This process is repeated over and over for each vacancy until each vacant position is filled.

To simplify this process, the agency posts one announcement for multiple vacancies, directs the applicant to the wisc.jobs site to complete the application and "exam". The HR Specialist reviews each response and determines whether the applicant meets the eligibility criteria, e.g. appropriate degree and then refers all eligible candidates who want to work in a specific geographic location to the supervisor for interview. In an ideal situation, HR organizes the supervisors together to make multiple hires in multiple locations via the same interview process. Because the number of candidates who possess the appropriate skill set is small, the expedited hiring process is clearly the preferred method. Implementation of this change at DOC saved months of time off the recruitment process for this classification. An open debate remains regarding whether the process meets the requirements of civil service. However, DOC is permitted to conduct an "exam" for nurses and doctors which is simply verification of a license to practice in Wisconsin. The candidate is scored as eligible or not eligible and referred for interview. DOC permits an HR Specialist to verify the license rather than involving overburdened medical providers.

IT Positions: An expedited review process as described above is not permitted for IT positions. This means small numbers of applicants arrive in response to a job announcement (often less than 5 or 10) and HR Specialists are required to convene rating panels taking supervisors from their jobs and causing substantial delays in the hiring process. Often the job requires a very specific skill set and it is clear whether the applicant meets the criteria. Frequently applicants are unable to distinguish among civil service titles so they apply for the wrong job. HR Specialists can easily make the determination on skill set and move confused applicants to appropriate positions. Because an HR Specialist is not permitted to make these decisions now, a good applicant might have to apply over and over to get to the correct position while the agency struggles to deal with the vacancy.

From 2011 to 2015, this process has averaged 31 days at DOC with a range of 12 days to 80 days. DOC has averaged 65 days from the development of the interview list to hire. The total time from job announcement to hire has averaged 95 days with a range of 45 days to 384 days. This is consistent across State government with some transactions taking much longer time to complete.

Provided to SOC by
DOA/DPM

Steve Morgan
608-516-0888

Corrections Non-supervisory State Pay Comparisons
Hourly pay rates as of October 2014

CONFIDENTIAL

	Officer Min	Officer Median	Officer Max	Sergeant Min	Sergeant Median	Sergeant Max
Wisconsin	15.194	17.90	26.59	15.954	21.40	29.196
Iowa	18.02	25.62	26.70	19.62	29.35	29.35
Illinois* **	20.32	30.49	30.99	26.28	35.28	35.79
Michigan*	16.32	25.00	25.00	no comparable Michigan class		
Minnesota*	16.34	21.70	25.77	20.54	28.78	29.59

*IL, MI and MN have an entry officer level preceding the regular officer level. The pay ranges shown in this table are the minimum of the entry level and the maximum of the regular level, thereby showing the career low pay and top pay without advancing to the "Sergeant" level.

Note. The median rate shown for Minnesota is for the full-performance Corrections Officer 2. The entry-level Corrections Officer 1 median is equal to the minimum rate of \$16.34.

Note. The median rate shown for Illinois is for the full-performance Correctional Officer. The Correctional Officer Trainee median is equal to the minimum rate of \$20.32.

Note. The median rate shown for Michigan is for the Entry and Experienced levels combined.

**All standard workweeks are 40 hours, except that for Illinois a Correctional Officer has a standard workweek of 38.75 hours, while for a Trainee and Sergeant it is 37.5 hours. To equitably compare actual base earnings between states over a week, month, or year, the official monthly IL pay rates have been converted to hourly on the basis of 40 hours per week. Therefore, multiplying any hourly rate by 40 will reflect one week of actual earnings.

Comparable salaries
by County for jailers.
These are not Sheriffs
Deputies.

Thanks,

Steve Morgan
(608) 516-0788

Pay rates shown for each level are the "guaranteed" progression rate; any discretionary or variable amounts are not reflected										
Pay rates are for non-sworn position that is most comparable to our CO classification.										
Entity	Job Class 1	Hire	12 mo	24	36	48	60	84	144	216
LaCrosse Co	Jailer	\$ 22.16	22.16	23.24	23.9	24.6	25.31	25.31	25.31	25.31
Brown Co	Corrections Officer	\$ 19.11	20	20.47	20.47	20.47	20.92	22.57	22.57	22.57
Grant Co	Jailer	\$ 17.02	19.15	19.57	19.99	19.99	19.99	19.99	19.99	19.99
Douglas Co	Jailer	\$ 15.00	15	15	15	15	15	15	15	15
Racine Co	Corrections Officer	\$ 16.89	17.47	17.84	18.26	18.68	19.08	19.48	19.48	19.48
Iowa Co	Correctional Officer	\$ 18.91	19.5	21.01	21.01	21.01	21.01	21.01	21.01	21.01
Eau Claire Co	Correctional Officer	\$ 18.45	19.41	20.43	20.43	21.38	21.39	21.48	21.68	21.68
Fond du Lac Co	Correctional Officer	\$ 21.57	22.29	23	23.51	23.98	24.6	25.1	25.1	25.1
Barron Co	Correctional Officer	\$ 18.16	18.68	19.19	19.71	20.23	20.75	20.75	20.75	20.75
Waushara Co	Correctional Officer	\$ 18.00	18	18.9	18.9	18.9	19.9	19.9	19.9	19.9
Manitowoc Co	Corrections Officer	\$ 18.25	18.83	19.4	19.98	20.56	21.14	21.14	21.14	21.14
Columbia Co	Jailer	\$ 19.68	20.24	20.8	21.36	21.92	22.48	22.48	22.48	22.48
Oneida Co	Corrections Officer	\$ 16.50	16.97	17.44	17.91	18.39	18.86	19.33	20.27	21.21
Waupaca Co	Correctional Officer	\$ 19.17	19.17	19.17	19.17	19.17	19.17	19.17	19.17	19.17
St Croix Co	CO1	\$ 20.45	20.95	20.95	20.95	20.95	20.95	20.95	20.95	20.95
Outagamie Co	Corrections Officer	\$ 21.18	varies							
	Average using OHR	\$18.78	19.19	19.77	20.04	20.35	20.71	20.92	20.99	21.05

Spring 2015

James R. Scott
Chairman
Rodney G. Pasch
Commissioner
James J. Daley
Commissioner



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State of Wisconsin Employment Relations Commission

MEMORANDUM

TO: Cindy Polzin, Office of Governor Scott Walker
FROM: James J. Daley, Commissioner, Wisconsin Employment Relations Commission
DATE: October 12, 2015
RE: Civil Service Legislation

Thank you for taking the time to speak with me the other week. I would like to personally share some areas of concern with the proposed legislation and, where appropriate, suggest potential improvements towards implementation mindful of Governor Walker's policy goals. This memo is a private communication to you and not intended for distribution in any other capacity.

1. Just Cause for Termination

Section 74 defines just cause and provides a list of nine specified actions that may result in termination. Written in the manner proposed, the legislation would create an exclusive list that could specifically prohibit termination of an employee if they displayed negative behavior not specifically listed. A suggestion for alternative language, replacing lines 10-16 of Section 74:

It is just cause to remove, suspend without pay, reduce the base pay of, or demote an employee for engaging in conduct which impairs the performance of an employee's duties or the efficiency of the organization for which he works. The appointing authority shall utilize progressive discipline that complies with the administrator's standards under § 230.04(13m), Stats. The appointing authority may advance the progressive discipline steps based on the severity of the conduct. It is just cause to discharge employees without progressive discipline for engaging in acts of serious misconduct, including, but not limited to, the following conduct:

2. Employee Grievance Procedure

Section 90 forms the process with deadlines for an employee to grieve the discipline imposed by the appointing authority. Specific to the beginning stages of this procedure (page 32, line 14

through page 33, line 21), the administrative review rarely if ever produces a result contrary to reinforcing the initial decision of the appointing authority. If these sections were removed, the process would receive the additional efficiency of saving up to 72 days of process that exist under the proposed legislation and current law. Appeals of discipline could be filed directly with the Commission removing the delay in process and the accompanying additional workload to the agency under the current procedure. If the state employer prefers to resolve the matter short of hearing, they have ample opportunity to do so in the Commission process. While this may seem like something that would create additional attacks against the proposed reform, we think there actually may be some agreement on both sides in creating this efficiency and we would be happy to speak to members of the opposition to educate them on the benefits of applying this policy for all parties.

3. Just Cause General Concerns

The current law states that an employer is obligated to prove (1) that the employee engaged in the conduct; (2) that the employee knew or should have known that the conduct was prohibited; and (3) the discipline was proportionate to the conduct, e.g., that the "punishment fit the crime." Additionally, our Supreme Court has defined just cause for termination of a state employee as being conduct which "impairs the performance of the employee's duties or the efficiency of the group with which he works." *Safransky v. State Personnel Board*, 62 Wis.2d 464, 215 N.W.2d 379 (1974). The existing definition is fairly broad and allows latitude to the appointing agency in disciplinary measures. The new definition does not create any additional clarification and may create additional litigation.

Ultimately, our decisions are appealable by either party to circuit court which requires the Commission to adequately form a record supporting its decision. In reality, based on both my time serving since being appointed as well as reviewing past cases, changing the definition of just cause as presented would not create a different result in the decisions that have previously been decided.

There are two primary reasons that disciplinary action is overturned by the Commission. The first is the failure on the part of the agency to be able to prove that the violation occurred. That is a consequence of inadequate preparation and presentation by advocates on behalf of the employer. Use of attorneys by OSER over the past two years has improved the results in this area.

The second problem is internal inconsistency by the state employers in meting out discipline. One component of "just cause" is that within the work group and within similarly situated employees the discipline is consistent. Some agencies (notably the Department of Corrections) have developed policies committing themselves to statewide uniformity in handing out discipline for comparable acts. If DOC would drop their self-imposed requirement for statewide consistency, it would certainly increase their success before the Commission and in

Cindy Polzin
October 12, 2015
Page 3

judicial proceedings. Notwithstanding the self-imposed standard, there are frequent violations that result in the agency not prevailing.

While the Legislature could eliminate the requirement for uniformity of treatment, that would be very poor policy. Employment discrimination claims are frequently based upon disparate treatment claims in the form of differential discipline, e.g., protected class employee discharged for x behavior while unprotected class employee only received minor discipline for the same behavior. Inconsistency in discipline also suggests arbitrariness on the part of supervisors and a perception of favoritism.

I hope this proves of some value to you as you prepare final legislation on this matter. My purpose, and that of your other appointed Wisconsin Employment Relations Commission Commissioners, is only to further the Governor's policy goals and create positive dialogue towards that end. We are more than happy to fulfill whatever policy you adopt to the best of our ability and in conformity thereof. The information contained in item 3 is for your personal usage and not meant to be distributed to other parties as a distraction from your efforts to pass this legislation. Please let me know if I or the Commission can provide any additional information, clarification, or assistance in this matter.

Carne, Danielle L - DOA

From: Davis, Peter G - WERC
Sent: Thursday, October 08, 2015 11:23 AM
To: Carne, Danielle L - DOA
Subject: Suggestions
Attachments: 2288_001.pdf

From: scanner@wisconsin.gov [<mailto:scanner@wisconsin.gov>]
Sent: Thursday, October 08, 2015 11:39 AM
To: Davis, Peter G - WERC
Subject: Attached Image

It is just cause to remove, suspend without pay, reduce the base pay of, or demote an employee for engaging in conduct which impairs the performance of an employee's duties or the efficiency of the organization for which he works. The appointing authority shall utilize progressive discipline that complies with the administrator's standards under § 230.04(13m), Stats. The appointing authority may advance the progressive discipline steps based upon the severity of the conduct. It is just cause to discharge employees without progressive discipline for engaging in acts of serious misconduct, including, but not limited, to the following conduct:

§ 230.04(13m)

The administrator shall establish standards for progressive discipline plans to be prepared by all agencies and applied to all employees in the classified service. The standards shall address progressive discipline for all types of misconduct.

Carne, Danielle L - DOA

From: West, Marcy J - KRM
Sent: Tuesday, October 06, 2015 3:23 PM
To: Carne, Danielle L - DOA
Subject: RE: SB 285 - Request for Technical Corrections

Thank you for the opportunity to comment.

All of our permanent employees are Unclassified therefore hiring and disciplinary action is already pretty straightforward. However, retention of good employees is a challenge; could the Merit Award Fund include support for agencies with unclassified employees?

Sincerely,



Marcy West, Executive Director
Kickapoo Valley Reserve
608-625-2963
<http://kvr.state.wi.us>

From: Surillo, Dominga - DOA **On Behalf Of** Carne, Danielle L - DOA

Sent: Tuesday, October 06, 2015 2:50 PM

To: Scherer, Alison J - DATCP; Rahal, Kim M - DCF; Risch, Jay - DFI; Jirschele, Jennifer - DHS; Mathews, Joni - DMA; Passno, Amber D - DNR; Beier, Kari J - DOC; Swingen, Jayne L - DOJ; Thompson, Scott C - DOR; Sarver, Randy - DOT; Kohout, Denise - DPI; Herl, Angela K - DSPS; Kaalele, Kelli - DVA; Tetting, Laura A - DVA; Laesch, Steve - DWD; Meyer, Stacie - ETF; Hauge, Sharrie - GAB; Nelson, Sherrie A - HEAB; Deprey, Kendra - LIRC; Ludlum, Kate J - OCI; Henning, Teri - OSPD; Smith, Cynthia - PSC; Klein, Sarah - PSC; Burns, Ryan T - SFP; Werner, Phil W - DOA; Lynch, Carol K - WERC; Jochimsen, Kate J - WHS; Marti, Judy A - WTCS

Cc: Tzougros, George - TOURISM; Bruemmer, Heather - BOALTC; Brancel, Ben - DATCP; Anderson, Eloise - DCF; Allen, Ray - DFI; Rhoades, Kitty - DHS; Dunbar, Donald P - DMA; Stepp, Cathy L - DNR; Neitzel, Scott - DOA; Wall, Edward F - DOC; Schimel, Brad - DOJ; Chandler, Richard G - DOR; Gottlieb, Mark - DOT; Evers, Anthony S - DPI; Ross, Dave - DSPS; Scocos, John - DVA; Newson, Reggie J - DWD; Purcell, Gene P - ECB; Conlin, Bob - ETF; Kennedy, Kevin - GAB; Zipperer, Rich - GOV; West, Marcy J - KRM; Jordahl, Bill - LIRC; Cupp, Mark E - LWR; Suhr, Daniel R - LTGOV; Nickel, Ted - OCI; Plale, Jeff - OCR; Thompson, Kelli - OSPD; Nowak, Ellen - PSC; Frenette, Rick P - SFP; Boll, Lorna H - TAC; Klett, Stephanie - TOURISM; Scott, James R - WERC; Brown, Ellsworth H - WHS; Lidbury, Christine - WWC; Foy, Morna - WTCS; Kopp, Kathy - DOA; Gracz, Greg L - DOA; Rolston, Stacey L - DOA; Johnson, Jeanette - DOA

Subject: SB 285 - Request for Technical Corrections

Importance: High

State HR Community – As you are all aware, SB 285 has been proposed. Attached please find a copy of the bill. To the extent that your agency has identified any technical corrections that need to be made to the bill, please forward those corrections to me no later than end-of-business tomorrow, October 7, 2015.

Danielle Carne
Office: 608-266-0047
Cell: 608-287-6803

Carne, Danielle L - DOA

From: Meyer, Stacie - ETF
Sent: Wednesday, October 07, 2015 8:59 AM
To: Carne, Danielle L - DOA
Cc: Henning, Pamela - ETF
Subject: FW: SB 285 - Request for Technical Corrections

Hi Danielle-

In review of SB 285, below are some suggestions on behalf of ETF:

1. Eliminate requirement that DPM select an evaluator for an oral evaluation as part of the application process.
2. Eliminate provision that requires certification in 30 days and the requirement to submit an annual report to DPM on the number of days from certification to making an offer. 30 days is unrealistic to making an offer due to scheduling and timing of managers and applicants.
3. Ensure that the waiving of a probationary period is made by the agency and not DPM (or that DPM can delegate that responsibility to an agency). A one-year probationary period would be preferable than two years. Two years will discourage new hires from seeking state employment (not a hiring standard in the industry).

If you have questions or need clarification on these points, please let me know.

Stacie

Stacie A. Meyer, DMS Deputy Administrator/HR Director
Department of Employee Trust Funds
Phone (608) 266-5803
Fax (608) 267-0633
<http://etf.wi.gov>



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From: Surillo, Dominga - DOA On Behalf Of Carne, Danielle L - DOA
Sent: Tuesday, October 6, 2015 2:50 PM
To: Scherer, Alison J - DATCP <Alison.Scherer@wisconsin.gov>; Rahal, Kim M - DCF <KimM.Rahal@wisconsin.gov>; Risch, Jay - DFI <Jay.Risch@dfi.wisconsin.gov>; Jirschele, Jennifer - DHS <Jennifer1.Jirschele@dhs.wisconsin.gov>; Mathews, Joni - DMA <Joni.Mathews@wisconsin.gov>; Passno, Amber D - DNR <AmberD.Passno@wisconsin.gov>; Beier, Kari J - DOC <Kari.Beier@wisconsin.gov>; Swingen, Jayne L - DOJ <swingenjl@doj.state.wi.us>; Thompson, Scott C - DOR <Scott.Thompson@revenue.wi.gov>; Sarver, Randy - DOT <Randy.Sarver@dot.wi.gov>; Kohout, Denise - DPI <Denise.Kohout@dpi.state.wi.us>; Herl, Angela K - DSPS <Angela.Herl@wisconsin.gov>; Kaalele, Kelli - DVA <kelli.kaalele@dva.wisconsin.gov>; Tetting, Laura A - DVA <laura.tetting@dva.wisconsin.gov>; Laesch, Steve - DWD

<Steve.Laesch@dwd.wisconsin.gov>; Meyer, Stacie - ETF <Stacie.Meyer@etf.wi.gov>; Hauge, Sharrie - GAB <Sharrie.Hauge@wisconsin.gov>; Nelson, Sherrie A - HEAB <Sherrie.Nelson@wisconsin.gov>; Deprey, Kendra - LIRC <Kendra.Deprey@wisconsin.gov>; Ludlum, Kate J - OCI <Kate.Ludlum@wisconsin.gov>; Henning, Teri - OSPD <henningt@opd.wi.gov>; Smith, Cynthia - PSC <Cynthia.Smith@wisconsin.gov>; Klein, Sarah - PSC <Sarah.Klein@wisconsin.gov>; Burns, Ryan T - SFP <RyanT.Burns@wistatefair.com>; Werner, Phil W - DOA <phil.werner@wisconsin.gov>; Lynch, Carol K - WERC <Carol.Lynch@wisconsin.gov>; Jochimsen, Kate J - WHS <KateJ.Jochimsen@wisconsinhistory.org>; Marti, Judy A - WTCS <judy.marti@wtcsystem.edu>

Cc: Tzougros, George - TOURISM <GTzougros@travelwisconsin.com>; Bruemmer, Heather - BOALTC <Heather.Bruemmer@wisconsin.gov>; Brancel, Ben - DATCP <Ben.Brancel@wisconsin.gov>; Anderson, Eloise - DCF <Eloise.Anderson@wisconsin.gov>; Allen, Ray - DFI <Ray.Allen@dfi.wisconsin.gov>; Rhoades, Kitty - DHS <Kitty.Rhoades@dhs.wisconsin.gov>; Dunbar, Donald P - DMA <donald.p.dunbar.mil@mail.mil>; Stepp, Cathy L - DNR <Cathy.Stepp@wisconsin.gov>; Neitzel, Scott - DOA <Scott.Neitzel@wisconsin.gov>; Wall, Edward F - DOC <Edward.Wall@wisconsin.gov>; Schimel, Brad - DOJ <schimelbd@doj.state.wi.us>; Chandler, Richard G - DOR <Richard.Chandler@revenue.wi.gov>; Gottlieb, Mark - DOT <Mark.Gottlieb@dot.wi.gov>; Evers, Anthony S - DPI <Anthony.Evers@dpi.state.wi.us>; Ross, Dave - DSPS <Dave.Ross@wisconsin.gov>; Scocos, John - DVA <john.scocos@dva.wisconsin.gov>; Newson, Reggie J - DWD <Reggie.Newson@dwd.wisconsin.gov>; Purcell, Gene P - ECB <Gene.Purcell@ecb.org>; Conlin, Bob - ETF <Bob.Conlin@etf.wi.gov>; Kennedy, Kevin - GAB <Kevin.Kennedy@wisconsin.gov>; Zipperer, Rich - GOV <Rich.Zipperer@wisconsin.gov>; West, Marcy J - KRM <Marcy.West@wisconsin.gov>; Jordahl, Bill - LIRC <Bill.Jordahl@wisconsin.gov>; Cupp, Mark E - LWR <Mark.Cupp@wisconsin.gov>; Suhr, Daniel R - LTGOV <Daniel.Suhr@wisconsin.gov>; Nickel, Ted - OCI <Ted.Nickel@wisconsin.gov>; Plale, Jeff - OCR <Jeff.Plale@wisconsin.gov>; Thompson, Kelli - OSPD <ThompsonK@opd.wi.gov>; Nowak, Ellen - PSC <Ellen.Nowak@wisconsin.gov>; Frenette, Rick P - SFP <Rick.Frenette@wistatefair.com>; Boll, Lorna H - TAC <Lorna.Boll@wisconsin.gov>; Klett, Stephanie - TOURISM <SKlett@travelwisconsin.com>; Scott, James R - WERC <James.Scott@wisconsin.gov>; Brown, Ellsworth H - WHS <Ellsworth.Brown@wisconsinhistory.org>; Lidbury, Christine - WWC <Christine.Lidbury@wisconsin.gov>; Foy, Morna - WTCS <morna.foy@wtcsystem.edu>; Kopp, Kathy - DOA <Kathy.Kopp@wisconsin.gov>; Gracz, Greg L - DOA <Greg.Gracz@wisconsin.gov>; Rolston, Stacey L - DOA <Stacey.Rolston@wisconsin.gov>; Johnson, Jeanette - DOA <Jeanette.Johnson@wisconsin.gov>

Subject: SB 285 - Request for Technical Corrections

Importance: High

State HR Community – As you are all aware, SB 285 has been proposed. Attached please find a copy of the bill. To the extent that your agency has identified any technical corrections that need to be made to the bill, please forward those corrections to me no later than end-of-business tomorrow, October 7, 2015.

Danielle Carne
Office: 608-266-0047
Cell: 608-287-6803

Carne, Danielle L - DOA

From: Marschman, Kathy <Kathy.Marschman@dva.wisconsin.gov>
Sent: Wednesday, October 07, 2015 9:17 AM
To: Carne, Danielle L - DOA
Subject: SB 285 // WDVA grant to counties and tribes (WIS Statute 45.82)

Danielle, please let me know if you have questions about this request to amend SB 285.

Amend s. 45.82(2) to read:

The department of veterans affairs shall award a grant annually, on a reimbursable basis as specified in this subsection, to a county that meets the standards developed under this section if the county executive, administrator, or administrative coordinator certifies to the department that it employs a county veterans service officer who, if chosen after April 15, 2015, is chosen from a list of candidates who have taken a civil service examination for the position of county veterans service officer developed and administered by the bureau of merit recruitment and selection in the department of administration, or is appointed under a civil service competitive examination procedure under s. 59.52 (8) or ch. 63. The department of veterans affairs shall twice yearly reimburse grant recipients for documented expenses under sub. (5), subject to the following annual reimbursement limits: \$8,500 for a county with a population of less than 20,000, \$10,000 for a county with a population of 20,000 to 45,499, \$11,500 for a county with a population of 45,500 to 74,999, and \$13,000 for a county with a population of 75,000 or more. The department of veterans affairs shall use the most recent Wisconsin official population estimates prepared by the demographic services center when making grants under this subsection.

Thanks,

Kathy Marschman | Assistant Deputy Secretary | Office of the Secretary | Wisconsin Department of Veterans Affairs
608.266.2256 | WisVets.com | Facebook.com/WisVets | Twitter.com/WisVets

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Carne, Danielle L - DOA

From: Kohout, Denise E. DPI <Denise.Kohout@dpi.wi.gov>
Sent: Wednesday, October 07, 2015 3:14 PM
To: Carne, Danielle L - DOA
Subject: RE: SB 285 - Request for Technical Corrections

Good afternoon Danielle -

Whereas we have not identified technical corrections, we are concerned the bill lacks clarity regarding provisions to consolidate human resource services and how that may affect our staff and the role of the State Superintendent. Clarification on those provisions and assurance that delegation practices will remain the same as soon as possible would be greatly appreciated.

Denise Kohout Human Resources Director

Department of Public Instruction · denise.kohout@dpi.wi.gov · (608)266-0282

Learn More: [Facebook](#), [Twitter](#), [DPI-Connect-Ed](#)

From: Surillo, Dominga - DOA [<mailto:Dominga.Surillo@wisconsin.gov>] **On Behalf Of** Carne, Danielle L - DOA

Sent: Tuesday, October 06, 2015 2:50 PM

To: Scherer, Allison J - DATCP; Rahal, Kim M - DCF; Risch, Jay - DFI; Jirschele, Jennifer - DHS; Mathews, Joni - DMA; Passno, Amber D - DNR; Beier, Karl J - DOC; Swingen, Jayne L - DOJ; Thompson, Scott C - DOR; Sarver, Randy - DOT; Kohout, Denise E. DPI; Herl, Angela K - DSPS; Kaalele, Kelli - DVA; Tetting, Laura A - DVA; Laesch, Steve - DWD; Meyer, Stacie - ETF; Hauge, Sharrie - GAB; Nelson, Sherrie A - HEAB; Deprey, Kendra - LIRC; Ludlum, Kate J - OCI; Henning, Teri - OSPD; Smith, Cynthia - PSC; Klein, Sarah - PSC; Burns, Ryan T - SFP; Werner, Phil W - DOA; Lynch, Carol K - WERC; Jochimsen, Kate J - WHS; Marti, Judy A - WTCS

Cc: Tzougros, George - TOURISM; Bruemmer, Heather - BOALTC; Brancel, Ben - DATCP; Anderson, Eloise - DCF; Allen, Ray - DFI; Rhoades, Kitty - DHS; Dunbar, Donald P - DMA; Stepp, Cathy L - DNR; Neitzel, Scott - DOA; Wall, Edward F - DOC; Schimel, Brad - DOJ; Chandler, Richard G - DOR; Gottlieb, Mark - DOT; Evers, Anthony S DPI; Ross, Dave - DSPS; Scocos, John - DVA; Newson, Reggie J - DWD; Purcell, Gene P - ECB; Conlin, Bob - ETF; Kennedy, Kevin - GAB; Zipperer, Rich - GOV; West, Marcy J - KRM; Jordahl, Bill - LIRC; Cupp, Mark E - LWR; Suhr, Daniel R - GOV; Nickel, Ted - OCI; Plale, Jeff - OCR; Thompson, Kelli - OSPD; Nowak, Ellen - PSC; Frenette, Rick P - SFP; Boll, Lorna H - TAC; Klett, Stephanie - TOURISM; Scott, James R - WERC; Brown, Ellsworth H - WHS; Lidbury, Christine - WWC; Foy, Morna - WTCS; Kopp, Kathy - OSER; Gracz, Greg L - OSER; Rolston, Stacey L - DOC; Johnson, Jeanette - OSER

Subject: SB 285 - Request for Technical Corrections

Importance: High

State HR Community – As you are all aware, SB 285 has been proposed. Attached please find a copy of the bill. To the extent that your agency has identified any technical corrections that need to be made to the bill, please forward those corrections to me no later than end-of-business tomorrow, October 7, 2015.

Danielle Carne

Office: 608-266-0047

Cell: 608-287-6803

Carne, Danielle L - DOA

From: Thompson, Scott C - DOR
Sent: Wednesday, October 07, 2015 4:46 PM
To: Carne, Danielle L - DOA
Cc: Reneau, Jon A - DOR; Porter, Edward J - DOR
Subject: RE: SB 285 - Request for Technical Corrections

Hi Danielle –

Section 54 of SB 285 proposes amending 230.24 (2), Wis. Stats., to state that vacant career executive positions "may be filled only through an open competitive hiring process". The other changes to the existing language in that section suggest an intent to eliminate the ability to restrict the area of competition when career executive positions are filled by a competitive process. However, the addition of the word "only" seems broaden the restrictions on filling career executive positions.

As you know, career executive positions may currently be filled by several methods other than a competitive process. Specifically, ER-MRS 30.07, Wis. Adm. Code, provides appointing authorities the power to reassign career executive employees to other career executive positions, and ER-MRS 30.08 provides for the transfer of career executive employees. In accordance with section 156.060 of the Wisconsin Human Resources Handbook, "announcement of a career executive transfer opportunity is not required".

I am seeking interpretation of this proposed amendment, specifically if it would affect the authority currently established in Chapter ER-MRS 30, Wis. Adm. Code., with regard to the reassignment and voluntary movement of career executive employees. If the intent is not to limit such authority, I would respectfully submit that we look to make a technical correction to the language.

If you have any further questions, please let me know.

Thanks,

SCT

From: Surillo, Dominga - DOA On Behalf Of Carne, Danielle L - DOA

Sent: Tuesday, October 06, 2015 2:50 PM

To: Scherer, Alison J - DATCP <Alison.Scherer@wisconsin.gov>; Rahal, Kim M - DCF <KimM.Rahal@wisconsin.gov>; Risch, Jay - DFI <Jay.Risch@dfi.wisconsin.gov>; Jirschele, Jennifer - DHS <Jennifer1.Jirschele@dhs.wisconsin.gov>; Mathews, Joni - DMA <Joni.Mathews@wisconsin.gov>; Passno, Amber D - DNR <AmberD.Passno@wisconsin.gov>; Beier, Kari J - DOC <Kari.Beier@wisconsin.gov>; Swingen, Jayne L - DOJ <swingenjl@doj.state.wi.us>; Thompson, Scott C - DOR <Scott.Thompson@revenue.wi.gov>; Sarver, Randy - DOT <Randy.Sarver@dot.wi.gov>; Kohout, Denise - DPI <Denise.Kohout@dpi.state.wi.us>; Herl, Angela K - DSPS <Angela.Herl@wisconsin.gov>; Kaalele, Kelli - DVA <kelli.kaalele@dva.wisconsin.gov>; Tetting, Laura A - DVA <laura.tetting@dva.wisconsin.gov>; Laesch, Steve - DWD <Steve.Laesch@dwd.wisconsin.gov>; Meyer, Stacie - ETF <Stacie.Meyer@etf.wi.gov>; Hauge, Sharrie - GAB <Sharrie.Hauge@wisconsin.gov>; Nelson, Sherrie A - HEAB <Sherrie.Nelson@wisconsin.gov>; Deprey, Kendra - LIRC <Kendra.Deprey@wisconsin.gov>; Ludlum, Kate J - OCI <Kate.Ludlum@wisconsin.gov>; Henning, Teri - OSPD <henningt@opd.wi.gov>; Smith, Cynthia - PSC <Cynthia.Smith@wisconsin.gov>; Klein, Sarah - PSC <Sarah.Klein@wisconsin.gov>; Burns, Ryan T - SFP <RyanT.Burns@wistatefair.com>; Werner, Phil W - DOA

& 4.1
<phil.werner@wisconsin.gov>; Lynch, Carol K - WERC <Carol.Lynch@wisconsin.gov>; Jochimsen, Kate J - WHS
<KateJ.Jochimsen@wisconsinhistory.org>; Marti, Judy A - WTCS <judy.marti@wtcsystem.edu>
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<Cathy.Stepp@wisconsin.gov>; Neitzel, Scott - DOA <Scott.Neitzel@wisconsin.gov>; Wall, Edward F - DOC
<Edward.Wall@wisconsin.gov>; Schimel, Brad - DOJ <schimelbd@doj.state.wi.us>; Chandler, Richard G - DOR
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WTCS <morna.foy@wtcsystem.edu>; Kopp, Kathy - DOA <Kathy.Kopp@wisconsin.gov>; Gracz, Greg L - DOA
<Greg.Gracz@wisconsin.gov>; Rolston, Stacey L - DOA <Stacey.Rolston@wisconsin.gov>; Johnson, Jeanette - DOA
<Jeanette.Johnson@wisconsin.gov>

Subject: SB 285 - Request for Technical Corrections

Importance: High

State HR Community – As you are all aware, SB 285 has been proposed. Attached please find a copy of the bill. To the extent that your agency has identified any technical corrections that need to be made to the bill, please forward those corrections to me no later than end-of-business tomorrow, October 7, 2015.

Danielle Carne
Office: 608-266-0047
Cell: 608-287-6803

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Carne, Danielle L - DOA

From: Sarver, Randy - DOT
Sent: Wednesday, October 07, 2015 4:14 PM
To: Carne, Danielle L - DOA
Subject: Re: SB 285 - Request for Technical Corrections

Hi Danielle, Here are the comments from DOT. Let me know if you have any questions...Thanks.

COMMENT/QUESTION: Under Section 1 and 2, does 20.865 allow for segregated funded agencies to receive DMC program supplements?

COMMENT/QUESTION: Under Section 14, regarding standards for progressive discipline plans, it states that "the standards shall address progressive discipline for personal conduct and work performance that is inadequate, unsuitable, or inferior." In addition, under Section 73, it states "It is just cause to remove, suspend without pay, discharge, reduce the base pay of, or demote an employee for work performance or personal conduct that is inadequate, unsuitable, or inferior, as determined by the appointing authority, but only after imposing progressive discipline that complies with the administrator's standards under s. 230.04 (13m)."

Agencies don't use progressive discipline for work performance issues. For example, would this require agencies to go through progressive discipline before placing an employee on a performance improvement plan (or final performance improvement plan)? It is unclear how agencies would actually handle work performance issues under current practice if progressive discipline was required.

COMMENT/QUESTION: Under Section 16, regarding DMCs, it states "the administrator shall develop and implement a discretionary merit award program to distribute money....to classified employees whose job performance has exceeded agency expectations." This appears to only allow employees that exceed expectations the ability to receive a DMC. Would this limit an agency from giving a DMC to an employee who "meets expectations" on their annual performance evaluation? An employee who "meets expectations" may still be considered a top performer based on what their goals and expectations are.

COMMENT/QUESTION: Under Section 33, it states "all questions asked and answers made in any oral evaluation shall be recorded and made a part of the records of the applicant's records." Would an employment interview be considered an "oral evaluation"? Is it the intent to record all employment interviews or just oral board processes (e.g., oral board exams).

COMMENT/QUESTION: Sections 53 and 54 regarding the Career Executive Program appear to be contradictory – in that Section 53 allows for the director may provide policies and standards for "recruitment" and "transfer", but Section 54 indicates a vacancy in a career executive position may be filled only through an open competitive hiring process.

COMMENT/QUESTION: Under Section 60, it states "if the certification list for a position includes a veteran and the appointing authority extends invitations to interview candidates for the position, the appointing

authority shall extend an invitation to interview to the veteran.” Under this bill, it appears the certification list is the interview list – so this reference seems redundant unless agencies will be able to further screen from a certification list to determine who is invited for an interview.

COMMENT/QUESTION: We also recommend that DPM look at how the proposed reinstatement language will impact the WLEA contract (and negotiations) which also references reinstatement in Article 8, Section 8.

Thank you.

Sent from my iPad

On Oct 6, 2015, at 2:50 PM, Carne, Danielle L - DOA <Danielle.Carne@wisconsin.gov> wrote:

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Danielle Carne
Office: 608-266-0047
Cell: 608-287-6803

<SB 285.pdf>

Carne, Danielle L - DOA

From: Beier, Kari J - DOC
Sent: Wednesday, October 07, 2015 4:32 PM
To: Carne, Danielle L - DOA
Subject: RE: SB 285 - Request for Technical Corrections

Hi Danielle – Below are some questions/comments related to the proposed bill. I've grouped things together by topic, for the most part.

Please feel free to call me to discuss more if anything needs additional explanation.

Thanks – Kari

Progressive Discipline/Just Cause –

Section 14 – 230.04(13m) – The proposed language states “the standards shall address progressive discipline for personal conduct and work performance that is inadequate, unsuitable, or inferior.”

Comment/Question: Progressive discipline isn't used on all work performance issues. Specifically, in order to demonstrate that we have provided an employee an opportunity to improve his or her performance, we place him or her on a Performance Improvement Plan (PIP) or Concentrated Performance Planning and Development (CPPD) Plan. It has been our experience that terminations that follow a PIP/CPPD often result in much stronger cases when appealed to the WERC. It is unclear how agencies would actually handle work performance issues in the future if progressive discipline is required. Will we still be able to place individuals on PIPs or CPPDs?

Section 73 & 74 – 230.34 (1) (a) and newly created 1-9 – The proposed language states “It is just cause to remove, suspend without pay, discharge, reduce the base pay of, or demote an employee without imposing progressive discipline for any of the following conduct.” Section 74 goes on to list 9 very egregious actions which would warrant going outside of progression.

Comment: The agency agrees that the behaviors in 1-9 are egregious and may warrant going outside of progression, however, there are several things the DOC has skipped progression or have issued a constructive discharge for that are not covered (e.g. fraternization which doesn't involve sexual activity or bringing in contraband which could be criminal, excessive use of force or other serious security concerns). It is unclear where these other egregious behaviors would fit in the currently proposed 1-9. We propose 9 be amended or number 10 be added to include a general statement about other egregious behaviors which seriously violate the rules of the director.

Oral Evaluations –

Section 33 – 230.16 (3) – The proposed language states “all questions asked and answers made in any oral evaluation shall be recorded and made a part of the applicant's records.”

Question: Is this section specific to oral boards, or does oral evaluation mean interview?

Career Executive Program -

Section 54 – 230.24 (2) – The proposed language states “a vacancy in a career executive position may be filled only through an open competition.”

Comment/Question – The DOC uses career executive reassignment to effectively manage the workforce, e.g. we move career execs sometimes to provide new leadership to an area that is struggling, or because we have a need in a different area and someone is uniquely suited to take on the duties. We understand the importance of not limiting career executive recruitments to just other career executives in a recruitment process. However, career executive reassignments are often a very helpful tool for agencies to manage its workforce. It is unclear whether the concept will exist when the bill is effective.

P-File Review -

Section 24 – 230.13 (3) (c) – The proposed language states “the director shall provide an appointing authority with access to the personnel files of any individual who currently holds a position whom the appointing authority intends to make an offer of employment.”

Question – The analysis from LRB indicated the review of p-files is mandatory before any appointment may be made. The language appears to indicate the agency needs to make the information available to other appointing authorities upon request. The language of the bill makes the most sense, but is the DOC’s interpretation of the actual bill language correct?

Section 19 - 230.06 (4) – The proposed language requires that an employee’s disciplinary records be permanently maintained in an employee’s personnel file.

Comments - Currently only the final discipline letter is retained in a p-file. Agencies may need clarification on whether the practice will remain the same or whether the term “disciplinary records” is meant to be more than a disciplinary letter.

From: Surillo, Dominga - DOA **On Behalf Of** Carne, Danielle L - DOA

Sent: Tuesday, October 06, 2015 2:50 PM

To: Scherer, Alison J - DATCP; Rahal, Kim M - DCF; Risch, Jay - DFI; Jirschele, Jennifer - DHS; Mathews, Joni - DMA; Passno, Amber D - DNR; Beier, Kari J - DOC; Swingen, Jayne L - DOJ; Thompson, Scott C - DOR; Sarver, Randy - DOT; Kohout, Denise - DPI; Herl, Angela K - DSPS; Kaalele, Kelli - DVA; Tetting, Laura A - DVA; Laesch, Steve - DWD; Meyer, Stacie - ETF; Hauge, Sharrie - GAB; Nelson, Sherrie A - HEAB; Deprey, Kendra - LIRC; Ludlum, Kate J - OCI; Henning, Teri - OSPD; Smith, Cynthia - PSC; Klein, Sarah - PSC; Burns, Ryan T - SFP; Werner, Phil W - DOA; Lynch, Carol K - WERC; Jochimsen, Kate J - WHS; Marti, Judy A - WTCS

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Danielle Carne
Office: 608-266-0047
Cell: 608-287-6803

Carne, Danielle L - DOA

From: Jirschele, Jennifer - DHS
Sent: Wednesday, October 07, 2015 3:24 PM
To: Carne, Danielle L - DOA
Cc: Mashado, Robert G - DHS; Johnson, Cheryl K - DHS; Engels, Tom - DHS; Hoelter, Jon - DHS; Rolston, Stacey L - DOA
Subject: RE: SB 285 - Request for Technical Corrections
Attachments: SB 285 Issue Paper.pdf

Hi Danielle,

Attached are DHS's recommendations. Please let me know if you need any additional information.

Jenny Jirschele
Chief Human Resources Officer
State of Wisconsin Department of Health Services
608.266.3305



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From: Surillo, Dominga - DOA **On Behalf Of** Carne, Danielle L - DOA

Sent: Tuesday, October 06, 2015 2:50 PM

To: Scherer, Alison J - DATCP; Rahal, Kim M - DCF; Risch, Jay - DFI; Jirschele, Jennifer - DHS; Mathews, Joni - DMA; Passno, Amber D - DNR; Beler, Kari J - DOC; Swingen, Jayne L - DOJ; Thompson, Scott C - DOR; Sarver, Randy - DOT; Kohout, Denise - DPI; Herl, Angela K - DSPS; Kaalele, Kelli - DVA; Tetting, Laura A - DVA; Laesch, Steve - DWD; Meyer, Stacie - ETF; Hauge, Sharrie - GAB; Nelson, Sherrie A - HEAB; Deprey, Kendra - LIRC; Ludlum, Kate J - OCI; Henning, Teri - OSPD; Smith, Cynthia - PSC; Klein, Sarah - PSC; Burns, Ryan T - SFP; Werner, Phil W - DOA; Lynch, Carol K - WERC; Jochimsen, Kate J - WHS; Marti, Judy A - WTCS

Cc: Tzougros, George - TOURISM; Bruemmer, Heather - BOALTC; Brancel, Ben - DATCP; Anderson, Eloise - DCF; Allen, Ray - DFI; Rhoades, Kitty - DHS; Dunbar, Donald P - DMA; Stepp, Cathy L - DNR; Neitzel, Scott - DOA; Wall, Edward F - DOC; Schimel, Brad - DOJ; Chandler, Richard G - DOR; Gottlieb, Mark - DOT; Evers, Anthony S - DPI; Ross, Dave - DSPS; Scocos, John - DVA; Newson, Reggie J - DWD; Purcell, Gene P - ECB; Conlin, Bob - ETF; Kennedy, Kevin - GAB; Zipperer, Rich - GOV; West, Marcy J - KRM; Jordahl, Bill - LIRC; Cupp, Mark E - LWR; Suhr, Daniel R - LTGOV; Nickel, Ted - OCI; Plale, Jeff - OCR; Thompson, Kelli - OSPD; Nowak, Ellen - PSC; Frenette, Rick P - SFP; Boll, Lorna H - TAC; Klett, Stephanie - TOURISM; Scott, James R - WERC; Brown, Ellsworth H - WHS; Lidbury, Christine - WWC; Foy, Morna - WTCS; Kopp, Kathy - DOA; Gracz, Greg L - DOA; Rolston, Stacey L - DOA; Johnson, Jeanette - DOA

Subject: SB 285 - Request for Technical Corrections

Importance: High

State HR Community -- As you are all aware, SB 285 has been proposed. Attached please find a copy of the bill. To the extent that your agency has identified any technical corrections that need to be made to the bill, please forward those corrections to me no later than end-of-business tomorrow, October 7, 2015.

OVERVIEW

In addition to the technical changes DPM has been asked to provide thus far, we have concerns with SB 285 that have not been fully conveyed. The comments address the following major areas of concern:

1. Resume Review – The proposed bill is ambiguous and has created widespread confusion as to whether resume reviews would be conducted by DOA DPM or by agencies. DPM lacks the subject matter expertise in all the agencies' many programs to conduct valid resume reviews.
2. Exclusive Reference to "Resumes" – The removal of all references to exams and the replacement of those references with the term "resume" suggests that the intent was to eliminate exams all together, but the amendments do not function that way. Further, relying exclusively on resumes would not be practical, because no single selection procedure is adequate for such a large, diverse workforce. A full shift to resume reviews also would likely increase the number of qualified applicants inadvertently turned away and the number of unqualified applicants who inappropriately reach the interview stage. Further, the shift may require resume filtering software, which is costly and of limited utility.
3. Reinstatement – The proposed bill eliminates permissive reinstatement in all situations except layoff, but reinstatement is a permissive, efficient, and effective tool the agencies frequently utilize in hiring. This amendment also creates a situation in which unionized employees have greater benefits than non-unionized employees.
4. Career Executive Program – The bill eliminates the ability to transfer and reassign career executives without conducting recruitments, but the ability to do so is a critical aspect of managing state government.
5. Personnel File Review – The requirement for personnel file reviews is impractical, and has the potential to create new problems and a slow-down in the hiring process.
6. Shortened Hiring Timeframes – Given various existing (and proposed) factors that impact hiring, the shortened timeframes are unrealistic.
7. Just Cause Standard – The definition of just cause introduced by the bill is unclear, limits the agencies in being able to administer discipline, and creates the potential for increased litigation.
8. Elimination of Override Provision – For no apparent reason, the bill proposes to repeal a compensation provision that is critical to the ability of the state Compensation Plan to address issues that arise related to employee benefits and working conditions and to implement changes that may be essential to the operations of state agencies.

While these items represent immediate concerns, it is important to note that even human resource professionals in the state who have a solid understanding of the functioning of the civil service system cannot fully predict the outcomes of these amendments. Changes of such significance never have been made to the civil service statute without being preceded by a study involving subject matter experts. Notwithstanding such unpredictability, it is reasonable to forecast that hiring in the state generally will take longer under the proposed amendments than it does under the current statute.

COMMENTS

1. Resume Review—Section 30

Change Proposed in SB 285:

- The bill amends 230.16(1)(a) to provide the following: “The director shall require persons applying for a position in the classified service to file an application and resume with the bureau.” The reference to “bureau” here is the DOA DPM Bureau of Merit Recruitment and Selection.

Problems:

- There is widespread confusion as to the effect of this amendment. Some have developed the understanding that the proposed provision creates an obligation on DPM’s part to conduct all resume reviews for all recruitments in state government. The statement also can be read, however, to indicate only that DPM is the clearinghouse for applications and resumes, which may be forwarded to the agencies for review. The latter option mirrors what currently occurs in state government. Through the Wisc.Jobs website, DPM receives applications and exams for posted positions. Then, in the vast majority of instances, the work of scoring the exams has been formally delegated to agencies (through “delegation agreements”), and the agencies perform this function. The proposed bill appears to continue to allow for such delegation, in which case resumes will be received by DPM but reviewed by the agencies.
- If the intention is to have all resumes reviewed by DPM, additional problems arise. Even as amended, Chapter 230 still contains a merit-based civil service system, which requires that the criteria used to fill positions in the classified service “shall be job-related in compliance with appropriate validation standards”. Such validation requirements mean that subject matter experts must review resumes and other materials submitted by applicants in light of actual job content. Subject matter experts necessarily work in agencies, not at DPM. If such work was handled at DPM, the addition of significant resources would be provided.

2. References to Resumes—Sections 22, 25, 26, 29, 30, 32, 33, 34, 35, 36, etc.

Change Proposed in SB 285:

- The proposed bill has struck all references to the use of examinations in state hiring and has left only reference to the following: “resume(s)”, “evaluations of applicants”, “selection criteria”, “competitive procedures”, “selection process”, and “evaluation used in the hiring process”.

Problems:

- This across-the-board elimination of references to examinations in the statute suggests that the intent of the SB 285 is to eliminate exams altogether from the state hiring process. The use of alternative phrases, however, leaves open the option of using a variety of selection procedures to fill classified positions, including examinations. However, the many references to resumes suggest that the preferred standard selection procedure is resume review. The emphasis on resume reviews is problematic because there is no procedure (resume review or any other) that would be appropriate for all recruitments in all agencies. For example, there are some classifications for which the number of applicants is very large and, in many cases, the appropriate applicants lack the experience and skills to produce a meaningful resume. In these cases, exams will be required to objectively and efficiently evaluate applicants. The following examples suggest the size of some applicant pools for state government positions:

- Number of Office Support applicants examined through multiple choice:
June through December 2014 – 2,347

January through October 2015 – 2,386

- Number of Initial Assessment Specialists applicants examined with multiple choice:

June through September 2015 – 677

- Number of applicants to be examined in Probation and Parole Agent recruitments:

October 2014 – 1,500

July 2015 – 967

- Number of applicants in DOC Correctional Sergeant recruitments:

Single posting in 2014 – 2051

January through July 2015 – 856

- Applicants in DOC Supervising Officer recruitment only open to current state employees:

July 2015 – 309

- Applicants in Ranger recruitment:

January 2015 – 1,151

- In recruitments where multiple choice exams are used, there is currently no demand on hiring agencies in conducting and scoring exams. If multiple choice and the various other types of exams used in state service are eliminated and resume (or some other application material) review is required, the agencies will be overloaded with review obligations that will only be accomplished through the addition of significant FTE and/or the purchase of costly resume filtering software. Such software is notoriously unreliable. Any additional costs will have to be assessed to the agencies.

- In the absence of an examination requirement, it is likely that the numbers of applicants for positions in state government will increase substantially. Without the deterrence of the obligation to put effort into completing an exam, this increase will include unqualified applicants who will apply regardless of the job requirements and their actual qualifications. These numbers will be much, much greater than the very small number of unqualified applicants who, under the current system, have been able to slip through the exam process by providing inaccurate responses.

- It is widely understood that resume review is the least reliable and valid selection method. For this reason, it is likely that some qualified applicants will be turned away inappropriately. It is also likely that agencies will have to devote more time than they currently devote to post-certification screening processes to identify the truly qualified candidates.

3. Reinstatement—Sections 70, 71, 72, 80

Change Proposed in SB 285:

- The bill limits reinstatement privileges to permanent employees in the classified service who are on layoff status, and it reduces the eligibility period for reinstatement to 3 years following the date of layoff.

Problems:

- Reinstatement is the fastest and most cost effective way to hire state employees. Moreover, it is purely permissive, so it does not obligate the state as an employer to anything. It merely gives management the option to rehire good employees, who chose to leave state service for any number of reasons (to earn college degrees? to get private sector experience? to raise children? to care for an ill or aging family member?). The removal of reinstatement in all cases except layoff, not to mention the shortening of remaining reinstatement eligibilities from five to three years, makes rehiring good employees with proven track records more difficult and time consuming.

- Under the proposed bill, if an employee voluntarily demotes or is reclassified / reallocated to a lower pay range and then later gets a position in the former pay range, that employee will be eligible for a mandatory pay increase. If that employee has reinstatement eligibility, however, the employee will not be eligible for a pay increase. The absence of reinstatement creates a loophole where employees can yo-yo back and forth from higher to lower to higher classifications and get repeated, unwarranted pay increases.
- The WLEA contract provides for reinstatement. If reinstatement is eliminated in the statutes, union employees will have greater benefits than non-union employees, where Act 10 sought to eliminate such discrepancies.

4. Career Executive Hiring—Section 54

Change Proposed in SB 285:

- The career executive hiring process is changed such that career executive positions may be filled only through open competitive hiring processes.
- Amendment 1 proposed the following change: “An appointing authority shall fill a vacancy in a career executive position using an open competitive hiring process, with due consideration given to affirmative action.”

Problems:

- The basic point of the career executive program is to allow the State to transfer or reassign trained, successful executives from one position to another, as needed for effective management, through limited recruitments or without having to conduct recruitments at all. The amendment in the bill eliminates the critical usefulness of this program.¹
- It is unclear as to what is intended by the proposed change in Amendment 1.

5. Review of Personnel Files—Sections 24, 28

Change Proposed in SB 285:

- The bill requires that before making an offer of employment to an individual who currently holds a civil service position, an appointing authority must review the individual's personnel file.

Problems:

- This amendment presents serious logistical problems. It would result in the movement of many files between the many offices located around the state of every day. Personnel files can be several hundred pages, and they will be cumbersome to transport. The addition of this step to the process will slow down hiring in state government. Moreover, there are serious privacy and loss concerns involved in passing files with sensitive, original documents from agency to agency. To avoid these problems, physical files could be converted to electronic storage, but this is a massive undertaking that would take years to accomplish statewide and that would potentially involve significant costs resulting from additional FTE (to convert the files) and the purchase of software that organizes and stores personnel files. These costs would have to be assessed against the agencies.
- The objective of this amendment appears to be to ensure that the bad apples among state employees do not get hired unwittingly by another agency. A personnel file may not, however, contain the relevant information. Prior disciplinary records might not be in the

¹ Similarly useful is the ability to make promotional appointments through recruitments limited to current state employees. Section 47 eliminates this option at the cost of efficiency in hiring as well.

file due to previous requirements that they be removed after a certain period of time², and the most recent annual evaluation could be many months old. If a performance problem emerged after the evaluation, it would not be reflected in the file. Personnel files simply do not contain as much information as many believe. The most effective way to address the legislators' concerns is to require the appointing authority to obtain a reference from the prior agency before hiring. (This requirement seems to be more appropriate for enterprise-wide DPM policy rather than statute, but it could be written into the statute.)

6. Hiring Timeframes—Sections 17, 27, 61

Change Proposed in SB 285:

- The bill requires the BMRS Director to certify applicants for vacant permanent positions within 30 (rather than 45) days after receiving a request from an appointing authority.
- The bill changes the deadline for making appointments from 60 to 30 days after certification. The appointing authority is to report to the Director reasons for failing to make a hire in this timeframe.

Problems:

- Some agencies have indicated that these timeframes are too short, due to the challenge of scheduling managers and candidates for interviews, the need to conduct background checks, the need to allow candidates to give notice to current employers, *etc.* Beyond this concern, it is likely that the shift to resume reviews will add time to the hiring process (both pre-certification in reviewing the resumes and post-certification when more filtering work may be required during the interview process—see item 2, above). Given these factors, this shortened timeline may likely be unrealistic.

7. Progressive Discipline and the Just Cause Standard—Sections 16, 73, 74

Change Proposed in SB 285:

- The bill requires the administrator to establish standards for progressive discipline plans that address “personal conduct and work performance that is inadequate, unsuitable, or inferior”. The bill also expressly states that work performance or personal conduct that an appointing authority determines to be “inadequate, unsuitable, or inferior” may constitute just cause, after the appointing authority has imposed progressive discipline that complies with the DPM standards.
- The bill expressly states that the following specific conduct constitutes just cause:
 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;

² The bill requires that disciplinary records are to permanently remain in personnel files. In the past, however, such records often have been removed after a certain period of time under agency policy or provisions in collective bargaining agreements. This prior manner of handling disciplinary record could create a discrepancy in the contents of employee files for several decades, between employees who were working for the state prior to the effective date of the bill and employees who are hired after the effective date of the bill.

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;
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.

Problems:

- The reference to "personal conduct and work performance that is inadequate, unsuitable, or inferior" is extremely vague in a number of ways. The same is true of the reference to "harassment" in Section 74. Such vagueness is likely to create confusion, disparity in application, and increased litigation. The potential for an increase in administrative challenges to disciplinary decisions is particularly problematic given the reduced staff at the WERC and the shortened timeframe for handling state civil service appeals.
- By defining the offenses that automatically constitute just cause, there is a risk that the statute will be interpreted to provide that all other offenses must always be treated with progressive discipline. The fact is, however that there are many kinds of offenses that warrant immediate discharge from state service that are not listed here.

8. Elimination of Override Provision—Section 21

Change Proposed in SB 285 / Amendment 1:

- The bill amends 230.12(1)(h), as follows:
Other pay, benefits, and working conditions. The compensation plan may include other provisions relating to pay, benefits, and working conditions that ~~shall supersede the provisions of the civil service and other applicable statutes and rules promulgated by the director and administrator.~~
- The proposed amendment further amends 230.12(1)(h), as follows:
Other pay, benefits, and working conditions. The compensation plan may include other provisions relating to pay, benefits, and working conditions ~~that shall supersede the provisions of the civil service and other applicable statutes and rules promulgated by the director and administrator.~~

Problems:

- In the original draft that was presented to us, this provision was repealed entirely. We questioned this change, because it does not appear to have any relationship to the areas of interest for the bill's sponsors. In response, we were told that the provision was struck because the drafter thought it was odd. We recognize that this is an unusual provision, but it is critical to the ability of the Compensation Plan to address issues that arise related to employee benefits and working conditions and to implement changes that may be essential to the operations of state agencies. When such action has been taken through the Compensation Plan in the past, OSER often followed up with a Compensation Plan companion bill so that an appropriate corresponding statutory change was made. The following are just two examples of problems created by amending this provision:

1. The previous unclassified Administrator of the Division of Merit Recruitment and Selection (DMRS) in the Office of State Employment Relations (OSER) was formerly statutorily assigned to the Executive Salary Group 3 pay range (ESG 3). Through the biennial budget, OSER was abolished and the Division of Personnel Management (DPM) was created within DOA. For that reason, DMRS became a bureau (BMRS) and the unclassified Administrator became an unclassified Bureau Director, which was supposed to be assigned to a new pay range, NTE 81-01, a range consistent with classified Bureau Directors. Due to an oversight, the appropriate change was not made to the statutes, nor was a revision made as a result of a request submitted through an errata. For that reason, the new pay range for this position was established in the Compensation Plan, which OSER was able to accomplish due to the authorizing language of s.230.12(1)(h). If this statutory provision is not retained as it currently exists, then the Compensation Plan provision becomes null and void. This would result in the BMRS Director position reverting to pay range ESG 3, which potentially could impact the pay of the incumbent, since the maximum rate for this range is lower than the maximum of pay range 81-01.
2. Section K of the Comp Plan, 4.01, the last paragraph, is the following which overrides s. 230.35(4)(d), with the following: "An employee who resigns from state service within the first six months of an original probationary period or project position, but who has a total of more than six months without a break in service due to any other classified, unclassified or project service, will be considered to be entitled to all personal holiday hours for which the employee had been eligible." If 230.12(1)(h) is repealed, this needed language cannot appear in the compensation plan.

Hiring Frustrations

- Repetitive interviewing of serial or frequent applicant – there are individuals who are serial job applicants. They often meet the minimum job qualifications to get to the interview stage but they are already well known to the hiring Supervisor from prior interviews. The result is a waste of time and effort by all concerned. The capacity to screen these applicants out upfront would avoid this effort.
- Inability to extend Probation during periods of Supervisory turnover – occasionally a new hire will be made where the hiring Supervisor subsequently leaves, there is a timeline delay before the new Supervisor is on board and they subsequently conclude the probationary employee is not performing. Because of the time delays there may not be a written track record on performance which could be used as justification for termination. Because there is a “hard” 6 month time limit there is not enough time to address the performance issue and the employee is passed from probation when there is reasonable doubt as their capacity to perform in to the future. The capacity to extend probation would address this issue.
- Lack of recognition of contractor staff oversight in setting Supervisory levels – Many areas of the organization relies on staff augmentation through “contractors” to complete work. This is especially true in Information Technology. Contractors work side by side with state employees doing similar and related tasks. They are directed in their work by state supervisors. When establishing classification levels for hiring supervisors the current system often does not recognize these positions and responsibilities which results in not setting classifications high enough to attract the qualified candidates required.
- Delays in reposting required by interviewing all qualified applicants – Agencies are often required to interview all “qualified” applicants on a register even if the initial round of interviews provided a lack of good results. This delays the process to re-post and extends the hiring process. The ability to determine a register is no longer valid and allow a reposting would speed up the process to find a quality hire.

Discipline and Grievance Frustrations

- Appeal of Disciplinary actions – Employees are still able to appeal discipline to WERC and Agencies actions are often subject to the presumption that the employee should be made whole. Case in point an employee brought a gun to work, made comments as to “who should I shoot today”. The employee did considerable unsupervised work outside the office with clients. As an indication of the seriousness of this behavior the employee was put on leave and required to have a medical assessment. On Appeal to WERC the employee was “made whole” and all Agency discipline reversed. The employee continues to act out at the worksite. Redefining or clarifying what kind of actions can go to WERC may prevent this type of result.
- Appeal of non-grieveable action - An employee was given a medical separation. This is non-grieveable. OSER / DPM has directed Agency HR departments to meet with the employee and their representative even though the action is non-grieveable. The employee was able to appeal to WERC which will result in a settlement. Redefining or clarifying what kind of action can go to WERC may prevent this type of result.

- **Office Relations** – Two employees were utilizing various state facilities, including a conference room, for extra-marital relations on the job. Even after being caught with their pants down, so to speak, they denied the incident forcing an investigation. Examination of work emails revealed active imaginations that weren't focused on work. Discipline included a reprimand. Dismissal was not viewed as a realistic alternative.
- **Job done, retirement years away** – The agency had to put up with a long term employee walking the halls daily for years waiting to retire after a law change took away past responsibilities. Firing an employee for doing nothing is often more costly and time consuming than letting them hang around.
- **A year's worth of evidence and a five figure award** – Even when firing is the only option, it isn't. An attorney advised the supervisor of how to gather evidence to make the case for firing after all other options were exhausted. When a year's worth of evidence had been carefully collected, the employee was terminated. The result was a \$50,000 award for the released employee.
- **The bathroom barbershop** – An employee would give haircuts to other employees in the bathroom during working hours, leaving the clippings behind. The employee was identified and told not to do it anymore. Clippings are still occasionally found because the employee understands his employer has no real power to close his barbershop.
- **Hair-Trigger Firings** – Probationary periods are generally 6-months after hiring (they can be extended once). After that period, the employee owns the job for 30-years. This can lead to releasing employees who might just develop slowly because the risk of having a bad employee for 30-years is too great.

see #4

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ANDREA J. SAWALL, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case 182
No. 71913
PA(adv)-284

DECISION NO. 34019-D

Appearances:

Mr. Michael J. Kuborn, Attorney, Curtis Law Office, P.O. Box 2845, Oshkosh, Wisconsin, appearing on behalf of Appellant Andrea J. Sawall.

Mr. Karl R. Hanson, Office of State Employment Relations, 101 East Wilson Street, Madison, Wisconsin, appearing on behalf of Respondent Department of Corrections.

DECISION AND ORDER

Appellant Andrea J. Sawall filed an appeal with the Wisconsin Employment Relations Commission on December 28, 2012, contesting a one-day disciplinary suspension she received from her employer. The matter was assigned to Examiner Lauri A. Millot who held a hearing in the matter on November 8, 2013. Subsequently, Examiner Millot issued a proposed decision and order, and the Department of Corrections filed a timely request for review by the Commission.

The Commission, having reviewed the record and arguments of the parties makes the following:

FINDINGS OF FACT

1. Respondent Department of Corrections ("DOC") is an agency of the State of Wisconsin and operates the State prison system including the Redgranite Correctional

Institution (hereinafter referred to as "RCI") in Redgranite, Wisconsin. RCI is a medium level security facility providing treatment to 1,000 inmates.

2. Appellate Andrea J. Sawall is employed by the DOC at RCI and holds the rank of sergeant.

3. Sawall was suspended for one day for violations of DOC Work Rules #6 – Falsification of records and #12 – Verbally threatening, intimidating, demeaning or interfering with another employee or using profane or abusive language with another employee. The date of Sawall's suspension was August 8, 2012.

4. Sawall used the words "fuck" and/or "fucking" in the course of a brief conversation with her supervisor who is also her husband. The conversation took place while both were on duty on May 17, 2012.

5. The use of crude and profane language is commonplace at RCI and typically does not lead to the imposition of discipline.

6. Sawall was charged with violating DOC Work Rule #12 and was the subject of an investigation.

7. Following the completion of the investigation, it was determined that Sawall's recollection of the conversation was different from that of her supervisor and a coworker who overheard the conversation. She was also charged with violating DOC Work Rule #6 which prohibited knowingly providing false information.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following:

CONCLUSIONS OF LAW

1. The Wisconsin Employment Relations Commission has jurisdiction over this matter pursuant to § 230.44(1)(c), Stats.

2. The DOC has failed to establish just cause for the discipline imposed on July 30, 2012 upon Sawall.

3. Sawall is a prevailing party under § 227.485(3), Stats.

4. The DOC was not substantially justified in taking the position it took in these proceedings.

5. Sawall is entitled to an award of attorney fees and costs.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following:

ORDER

1. That Appellant Andrea Sawall's one-day suspension is rejected. Sawall shall be made whole for all wages and benefits lost as a result of the suspension.

2. That Appellant Andrea Sawall's petition for fees and costs is granted in the amount of \$3,220.28.

Dated at Madison, Wisconsin, this 12th day of May 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

MEMORANDUM ACCOMPANYING DECISION AND ORDER

On May 17, 2012, while on third shift, Appellant Andrea Sawall used the word "fuck" or "fucking" twice in a brief phone call with Lieutenant Terry Sawall. T. Sawall was A. Sawall's supervisor and her husband. The DOC concedes that the use of profanity in RCI is common and rarely results in discipline.¹ In any event, A. Sawall's profane comments made to her husband referenced another employee and his (in her judgment) inadequate work performance. Word of the comments spread to another sergeant in RCI who did not like A. Sawall and she filed an incident report approximately one week later. The report focused on another incident between the two and made passing reference to the May 17 comments. This incident report triggered a full blown investigation by the DOC. Three weeks after the incident, A. Sawall was interviewed by two DOC employees. She was asked whether she made two specific statements with the word "fucking" in the statements. She denied doing so. Two months later, she was again asked about specific statements she allegedly made during the very brief conversation she had with her supervisor/husband.

The DOC interviewed everyone involved and produced transcripts of the interviews. The DOC brought in an "outside the institution" employee to conduct the investigation. He concluded that A. Sawall's "memory lapses" about specific language were not intentional and that no discipline was recommended, particularly in light of the fact that inappropriate language is "common in corrections."

Notwithstanding that recommendation, the warden imposed a one-day disciplinary suspension for violating two work rules. The first of those rules, DOC Work Rule #12, does in fact prohibit using "profane or abusive language." Everyone involved concedes that the use of profane language is commonplace at RCI. The language itself was not abusive because it was uttered between a sergeant (lead worker) and her supervisor who happened to be her husband. As a sergeant, A. Sawall was presumably obliged to share her observations, good or bad, about the employees she directed. Referring to someone as lazy is not abusive, it is descriptive.

If an employer maintains a work rule that is widely and commonly violated, it forfeits the right to suddenly, with no explanation, single one employee out for a violation. There can be no just cause for a violation of a rule that is frequently violated and never enforced.

As to the second rule violation, A. Sawall is accused of "failing to provide truthful, accurate and complete information when required." We have in the past criticized DOC's use of this rule as a "throw in" on virtually any situation where an employee's version of events leading to discipline differs from another's recollection. In other words, if DOC believes one employee's version of events over another's, the disfavored employee is accused of violating the truthfulness standard.

¹ In fact, no evidence of any employee ever being disciplined for use of profanity was provided.

We believe there is no cause for that purported rule violation in this case. It is unreasonable to expect that someone who is asked about the use of two specific phrases three weeks after they were allegedly uttered to recall them with certainty.² Secondly, the use of profanity did not violate the rule because application of the rule has been forfeited by non-enforcement. There never should have been an investigation in the first place given the complete lack of enforcement of the rule. Whether A. Sawall intentionally lied or had a memory lapse is irrelevant. There was no basis for discipline to be imposed and no reason to conduct an investigation.

Attorney Fees

The examiner awarded attorney fees to Sawall pursuant to § 227.485(3), Stats. The award was reduced by 20 percent based upon the examiner finding that there was just cause for a portion of the discipline meted out to Sawall.

We agree that the DOC's position was not substantially justified and that an award of attorney fees is warranted. We have increased the amount to be paid based upon our conclusion that there was no substantial justification for any discipline arising out of this incident to be imposed upon Sawall.

The DOC's initial argument is that we are barred from awarding attorney fees because the Wisconsin Human Resources Handbook, Chapter 430, includes a provision preventing us from doing so in any appeal. According to the DOC, our statutory authority to award fees under Chapters 227 and 230, Stats., has been "superseded" by Section 430.130 of the Handbook. In our view, the "repeal by reference" of our statutory authority is unlawful under *Milwaukee Journal Sentinel v. Department of Administration*, 2009 WI 79, 319 Wis.2d 439, 768 N.W.2d 700. We recognize that *Milwaukee Journal Sentinel* is not squarely on point; however, the principles set forth in that decision are equally applicable to the circumstances here. The issue of repeal by reference has not been briefed by either side and this is not the case that will finally resolve that issue.

The DOC also argues that its position in this matter was substantially justified and hence no attorney fee award should be made. Under § 227.485(1), Stats., we are directed to follow the case law developed under 5 U.S.C. § 504, the federal Equal Access to Justice Act which is very similar to our own law. The DOC's position is substantially justified if the discipline "has a reasonable basis in law and fact, that is, if a reasonable person could believe the position was correct." *Golembiewski v. Barnhardt*, 382 F.3d 721, 724 (7th Cir. 2004), citing *Marcus v. Shalala*, 17 F.3d 1033, 1036 (7th Cir. 1994).

² The warden's letter imposing the discipline notes that A. Sawall acknowledged using the term "fucking lazy officer." He concludes that falsehoods were uttered because witnesses said A. Sawall used the term "fucking Reichenberger" and/or "the laziest fucking officer."

Here the action of the DOC disciplining a non-supervisory employee for commenting about a coworker's work ethic while using strong language is simply unsupported. It is difficult to imagine any large workplace where someone has never made a derogatory comment about a coworker. The arbitrariness of the discipline here is on its face obvious. We see this case as clearly warranting a conclusion that the DOC has failed to establish that its actions were substantially justified.

Dated at Madison, Wisconsin, this 12th day of May 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

Included below is a summary of the steps, timelines and an estimate on the amount of salary dollars it costs WisDOT to accomplish each process. The examples included in the document include:

- I. Recruitment and Selection
 - a. Hiring DMV Customer service representatives
 - b. Hiring professional positions, including IT, purchasing, budget, and general supervisors
- II. Discipline
- III. Unsatisfactory Performance

RECRUITMENT AND SELECTION

Example 1

DMV Customer Service Representatives for Dane County

Total Hours of FTE = 250 or \approx \$4500 per hire.

Recruitment Process

- Employees in these positions work at our DMV Service Centers or in the central office in Madison. Each year, WisDOT hires at least 30 employees into these positions → *Dane County DMV.*
- This recruitment is announced on a monthly basis by HR staff using an exam that was previously developed. (15 minutes)

Exam Process

- Following the deadline date, HR staff print off the application materials from WiscJobs and blind the materials for the rating panel. We typically receive approximately 200 to 250 applications per month. (8 hours)
- The rating panel consists of three to four individuals to rate the applications (20 hours).
- After receiving the scores from the raters, HR enters the scores into WiscJobs (3 hours)
- The scores are reviewed by HR staff and the candidates are notified if they passed or failed the exam. (1 hour)

Interview Process

- The applicants that passed the exam participate in a phone interview. Each phone interview lasts up to 15 minutes.
- Following the phone interviews, the top candidates are invited for face to face, Skype or another phone interview. The interview panel typically consists of three staff and each interview lasts approximately 30 minutes.
- Upon completion of the interviews, the supervisor does reference checks on their top candidates. (2 hours)

- Once the supervisor has a top candidate, he/she notifies HR and HR prepares a pay recommendation (30 minutes)
- The recommendation for hire is approved by upper management within WisDOT. This review is typically done by three different individuals and each review takes approximately 10 minutes.
- Upon approval to make the hire, the supervisor extends the job offer and HR prepares the appointment letters, notifies the candidates that weren't selected for the job, and completes the hiring information into the computer systems. (2 hours)

Estimate on overall HR cost: \$500

Estimate on overall Manager cost: \$4000

~~\$4500~~

Example 2

Professional positions, including IT, purchasing, budget, and general supervisors

Total Hours of FTE - 56 or \approx \$3400 per hire.

Recruitment Process

- Most positions require a unique exam due to the differences between positions.
- The supervisor of the position completes the high importance job content ratings to determine the critical tasks on the PD. (30 minutes)
- HR staff use the ratings to develop an exam and announce the position. This process also includes announcing on recruitment websites and other resources. (1 hour)
- Each position is announced for approximately 10 days and after the deadline date, HR prints and blinds the application materials (2 hours)

Exam Process

- The rating panel consists of two to three staff. (8 hours)
- After receiving the scores from the raters, HR enters the scores into WiscJobs. The scores are reviewed by HR staff and the candidates are notified if they passed or failed the exam. (30 minutes)

Interview Process

- Applicants that passed the exam are invited to an interview. WisDOT uses Appointment Plus to schedule interviews, so HR establishes the interview schedule in Appointment Plus and applicants schedule their own interviews. Once the interview schedule is complete, HR sends the schedule to the interview panel. (30 minutes)
- A panel of two to three individuals conducts the interviews. Each interview typically lasts 30 to 45 minutes.

- Upon completion of the interviews, the supervisor does reference checks on their top candidates. (2 hours)
- Once the supervisor has a top candidate, he/she notifies HR and HR prepares a pay recommendation. (30 minutes)
- The recommendation for hire is approved by upper management within DOT. This review is typically done by three different individuals and each review takes approximately 10 minutes.
- Upon approval to make the hire, the supervisor extends the job offer and HR prepares the appointment letters, notifies the candidates that weren't selected for the job, and completes the hiring information into the computer systems. (2 hours)

Estimate on overall HR cost: \$400

Estimate on overall Manager cost: \$3000

DISCIPLINE (INCLUDING SUSPENSIONS AND TERMINATION)

WisDOT applies the sevens tests of just cause when investigating and determining the appropriate level of discipline.

Total Hours of FTE – 75 Hours *or ≈ \$2250 per disciplinary action*

Example

- If an employee is suspected of violating a work rule(s), notice to appear for a personnel investigation is given to the employee. The development of the questions is done by the supervisor and HR and takes approximately 4 hours for an average case.
- The personnel investigation is done by management and/or HR and lasts approximately 1 hour for an average case. Employees may choose to have a personal representative present in pay status.
- The recording from the investigation is transcribed by a professional transcriptionist company. Based on the information presented during the investigation, a Loudermill will be held if the suspected discipline will be anything more than a letter of reprimand and the employee is issued a notice for the Loudermill. The Loudermill questions are developed by the supervisor and HR and takes approximately 2 hours to complete.
- The Loudermill is done by management and/or HR and lasts approximately 1 hour for an average case. Employees may choose to have a personal representative present in pay status.
- The recording from the Loudermill is transcribed by a professional transcriptionist company and all of the facts are put together and an administrative review is held with the division management, legal counsel, and HR. The administrative review board makes a decision on discipline. WisDOT's level of discipline is determined based on the number of work rule violations and comparable discipline within WisDOT. Examples of progressive discipline used are Letter of Reprimand, 1 day, 3 day, 5 day, 10 day, 15, day, 30 day suspensions, and termination. (1 hour)
- If the decision from the administrative review board is termination, the Deputy Secretary reviews the recommendation. (30 minutes)
- The discipline/termination letter is written by the supervisor and reviewed by HR. In serious cases like theft or actions that reflect negatively on the department, employees may be discharged regardless if there was previous discipline. (2 hours)
- For simple cases like this, the overall time can be 2 weeks.
- NOTE: If a union member is suspected of work rule violations, the same steps as listed above apply. The difference is that employees are entitled to a union representative (rather than a personal representative) that is in pay status at the investigation and Loudermill.

Estimate on overall HR cost: \$750

Estimate on overall Manager cost: \$1500

UNSATISFACTORY PERFORMANCE

Total Hours of FTE – 150 Hours or \$4200 per unsat performance problem

Example

- Employees that receive an annual unsatisfactory performance evaluation are placed on an accelerated performance evaluation process that lasts 3 to 6 months.
- If the employee is unsatisfactory at that time, the supervisor works with HR to place the employee on a Final Performance Improvement Plan (FPIP) that typically lasts six months. During this time, the supervisor works with HR to establish criteria to evaluate the employee on during the FPIP. The six month time frame can be shortened if the employee is not showing any improvement.
- The supervisor meets with the employee on a biweekly basis and documents the progress or lack thereof. These meetings continue throughout the FPIP process. Each meeting typically lasts 1 hour.
- At the conclusion of the FPIP, the supervisor makes a determination if the employee was successful or not. If the employee was not successful, the supervisor compiles the summary of the FPIP.
- The summary is reviewed by the division management, legal counsel, and HR to make a determination if the employee should be transferred to a vacant position, demoted, or terminated. If the decision is to terminate the employee, the Deputy Secretary reviews this decision.

Estimate on overall HR cost: \$1200

Estimate on overall Manager cost: \$3000

Example 1.

Removal from Certification Lists once a State employee has been terminated.

- Each time the former employee applies we must request approval to remove them from the cert list. This extends the time to fill the position.
- Employee is terminated for Insubordination, discourtesy to other employees, threatening or intimidating behavior and making false and

Example 2.

Utilizing the system to challenge a hiring decision even after the employee was offered a job previously and turned it down.

- Applicant applied for one opening and was selected, they turned the offer down to accept job outside of the agency. A new vacancy occurs and he is interviewed a second time but is not selected.

Example 3.

Progressive Discipline – Appropriate action should be taken for the offense that has occurred not following just following the progressive steps of dripline.

- Neglecting job duties and responsibilities, loitering, or engaging in unauthorized personal business or visiting.
- Failure to provide accurate and complete information when required by management
- Failure to give proper notice, without good cause, when unable to report for, or continue, work as scheduled.

Example 4.

The inability to reorganize or repurpose employees without the fear off losing highly qualified employees to more senior staff.

Example 5.

Unexcused or excessive absenteeism

- Not being able to discipline based on leave hour balances remaining.

- Employee is placed on a medical verification letter, when an employee calls in sick they must bring in a doctor's excuse. This doesn't solve the issue of the employee not coming in and adds extra work to the supervisor.

1. **Progressive discipline.** Agencies must go through multiple disciplinary steps prior to terminating an employee who is unwilling to follow reasonable work rules.

Example: An employee swears at another employee and is verbally reprimanded. Repeated swearing results in a written reprimand, one-day suspension and five-day suspension. Then they are found sleeping at their desk. Because it is a different type of violation, discipline starts over with a verbal reprimand. Bad employees should be dealt with more effectively.

2. **Interview too many candidates.** Recruitment emphasis is on attracting a high number of candidates, not the highest quality candidates.

Example: Hiring policies prevent agencies to set high standards for specialized positions. Time is wasted evaluating marginally-unqualified candidates.

3. **Cumbersome interview process.** Up to six managers must participate in the exam review and interview process.

Example: Policies recommend that three managers evaluate job applicants, and a different group of three managers must conduct interviews. Productivity is lost.

4. **Inflexible compensation scales.** Compensation system based on seniority system; agencies not able to offer higher compensation for high performers.

Example: Highly-specialized information technology professionals are not interested in state careers because starting salary levels are intended to maintain parity with senior and perhaps less specialized employees.

5. **Seniority vs. performance.** Layoffs are based on tenure, not who provides the greatest service to the taxpayers.

Example: Agencies lack flexibility to layoff poor performers because state law requires the least senior employees to be let go first (regardless of their skills and performance).

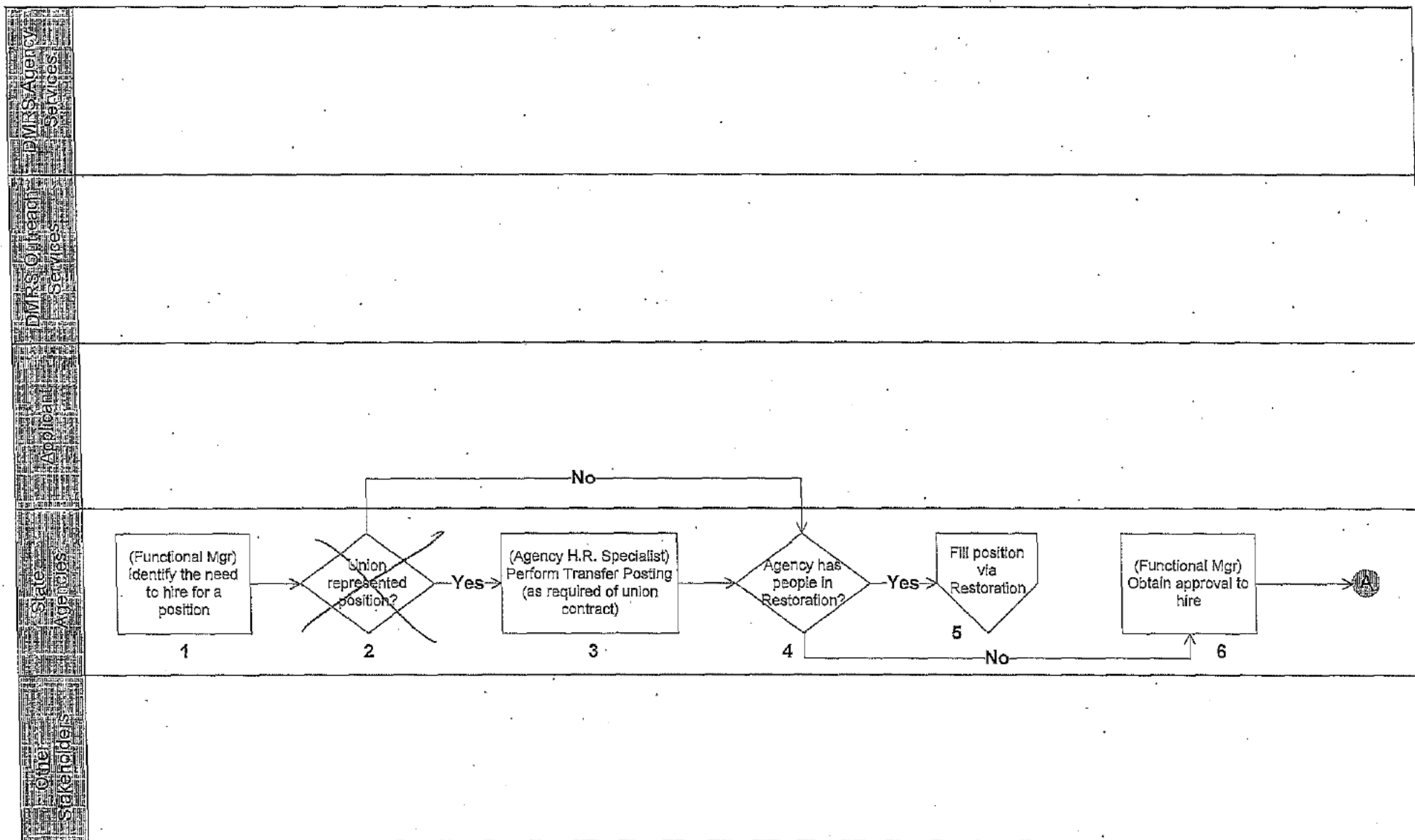
6. **Performance improvement plans.** Low performers are given months to correct performance issues, improvement should be expected quickly.

Example: Performance improvement plans are required to last at least six months. Agencies should expect poor performers to correct issues quickly.

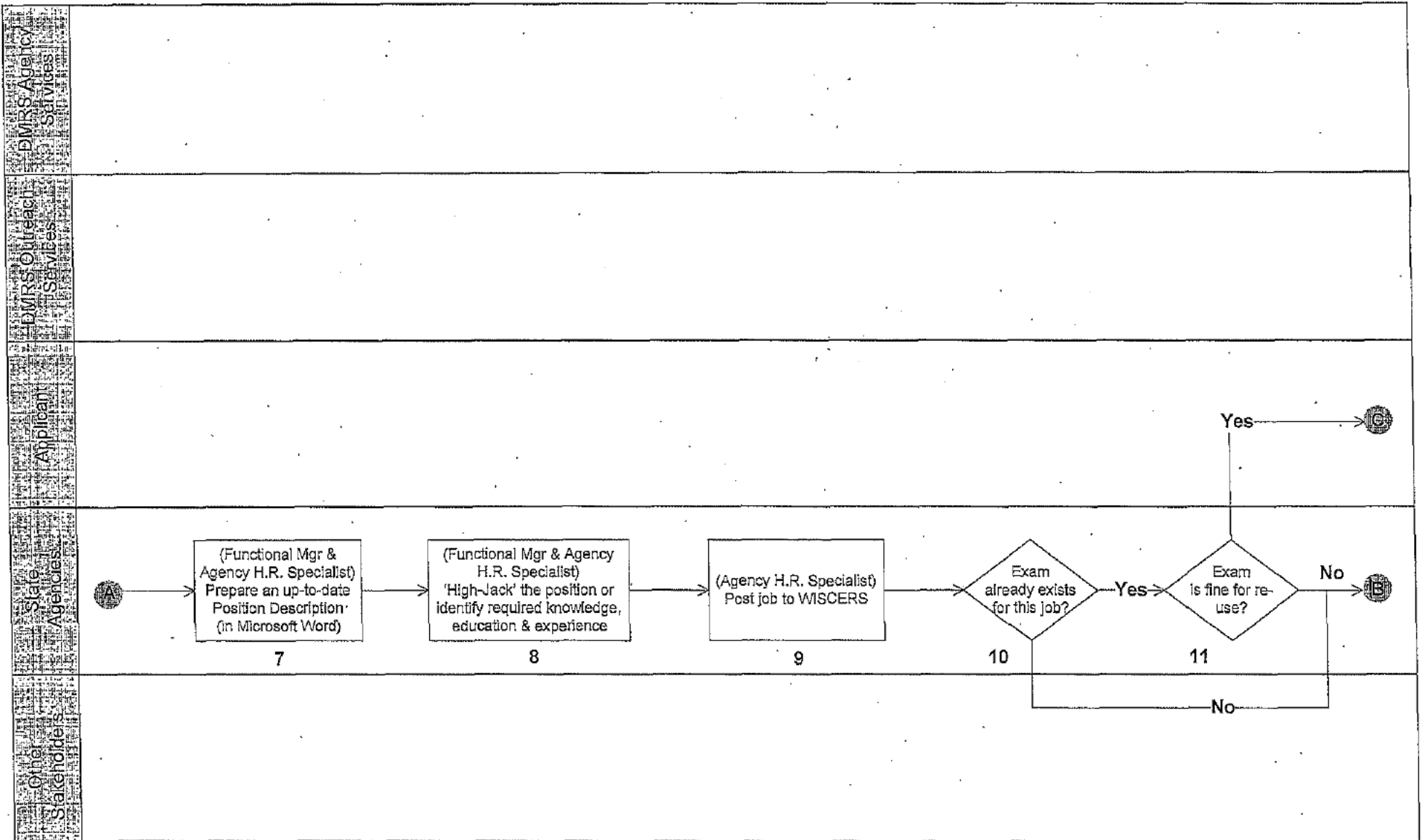
7. **Inability to reward high performance.** Managers are unable to offer promotional incentives for performance.

Example: A manager is not empowered to offer a promotion; promotions are available only on a competitive basis. As a result, ambitious and productive employees seek other opportunities.

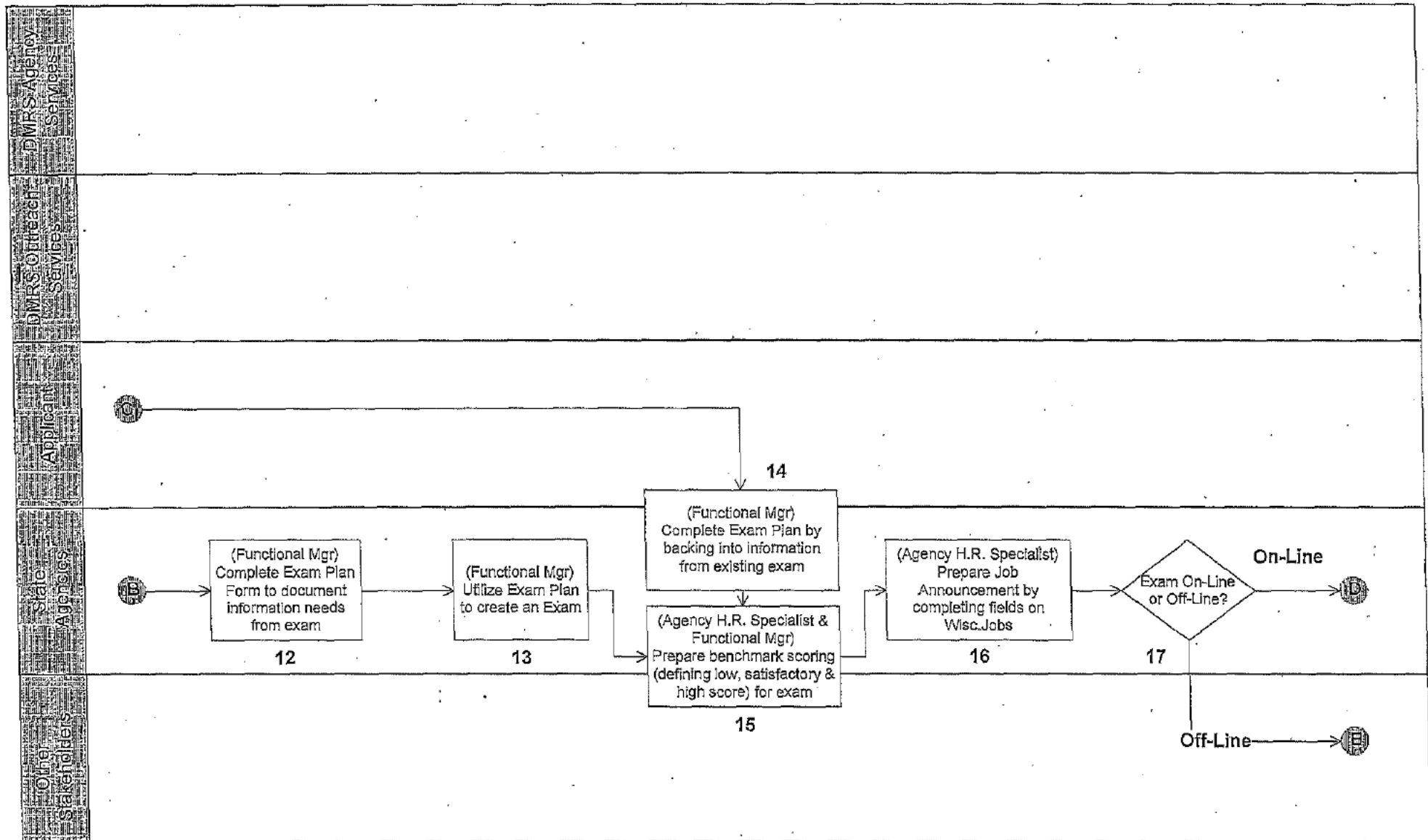
Process 100: Post State Job (Non-Delegated Position)



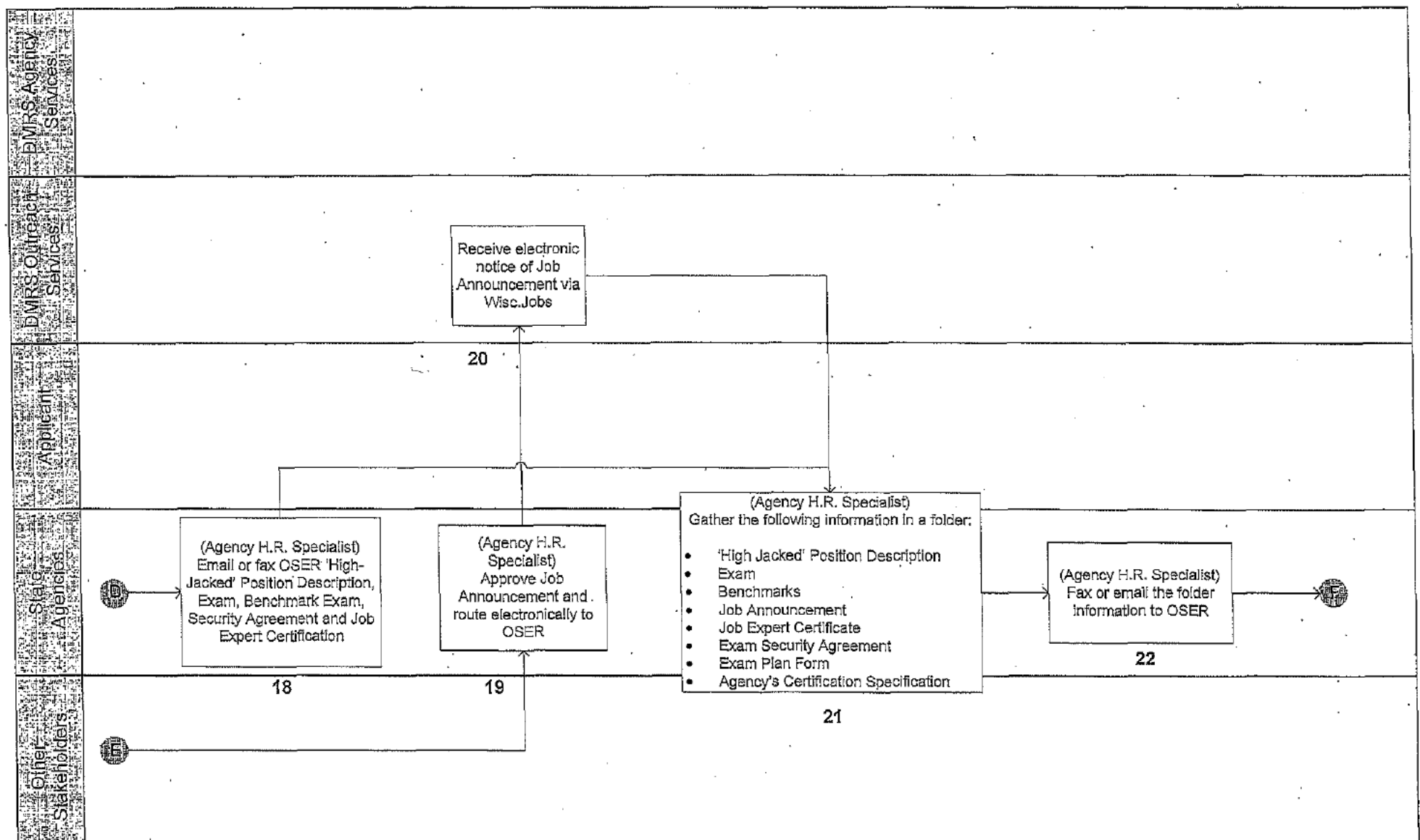
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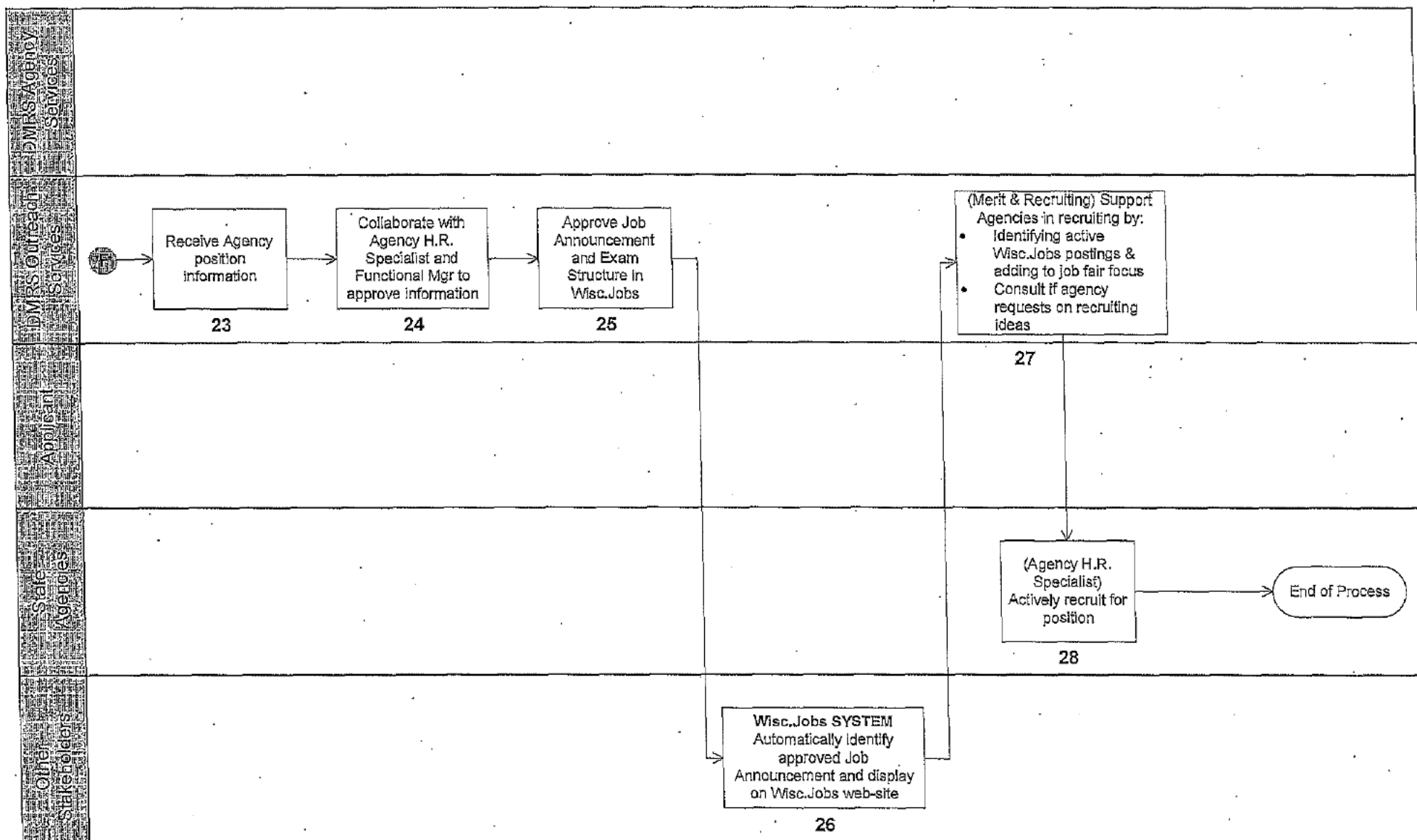
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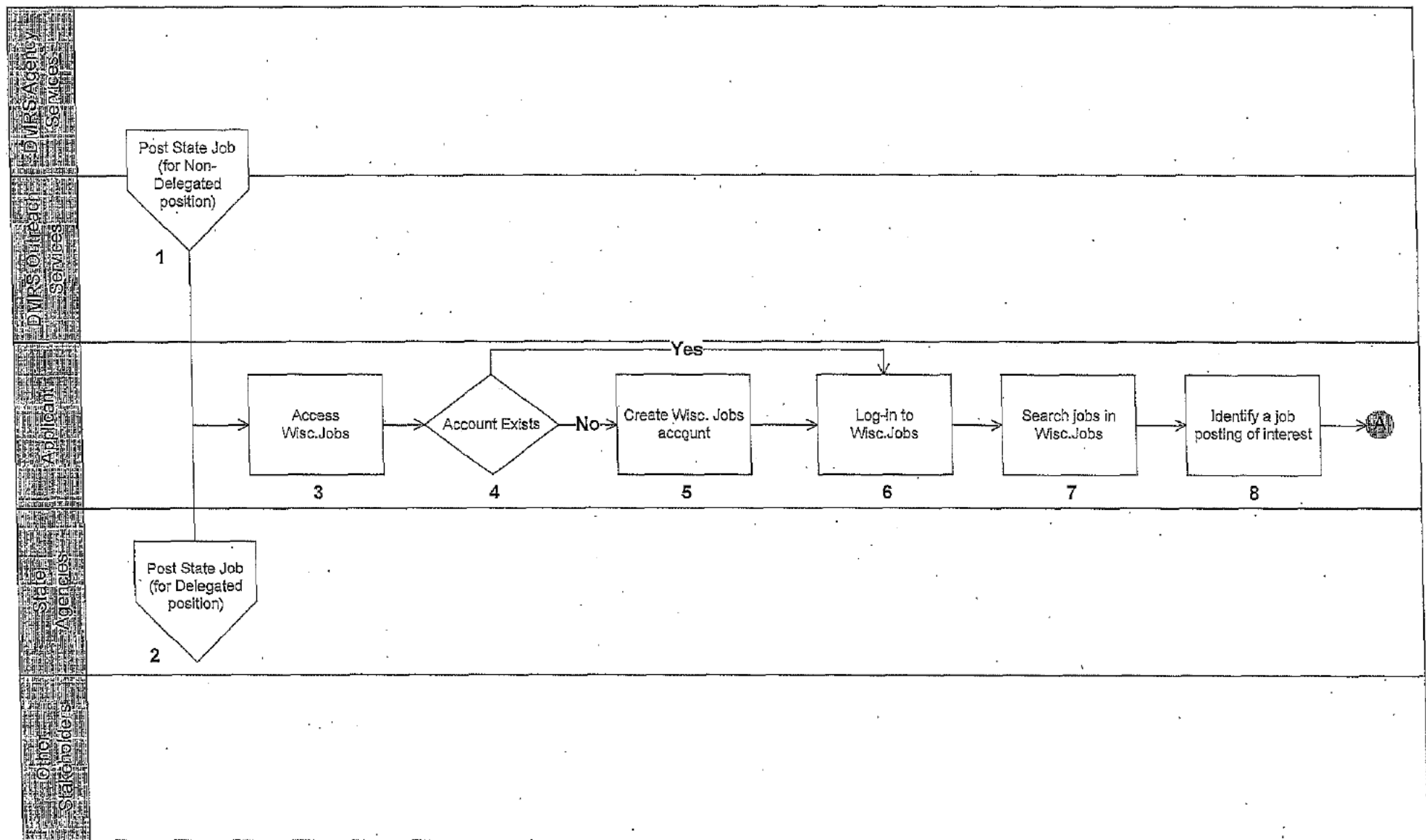
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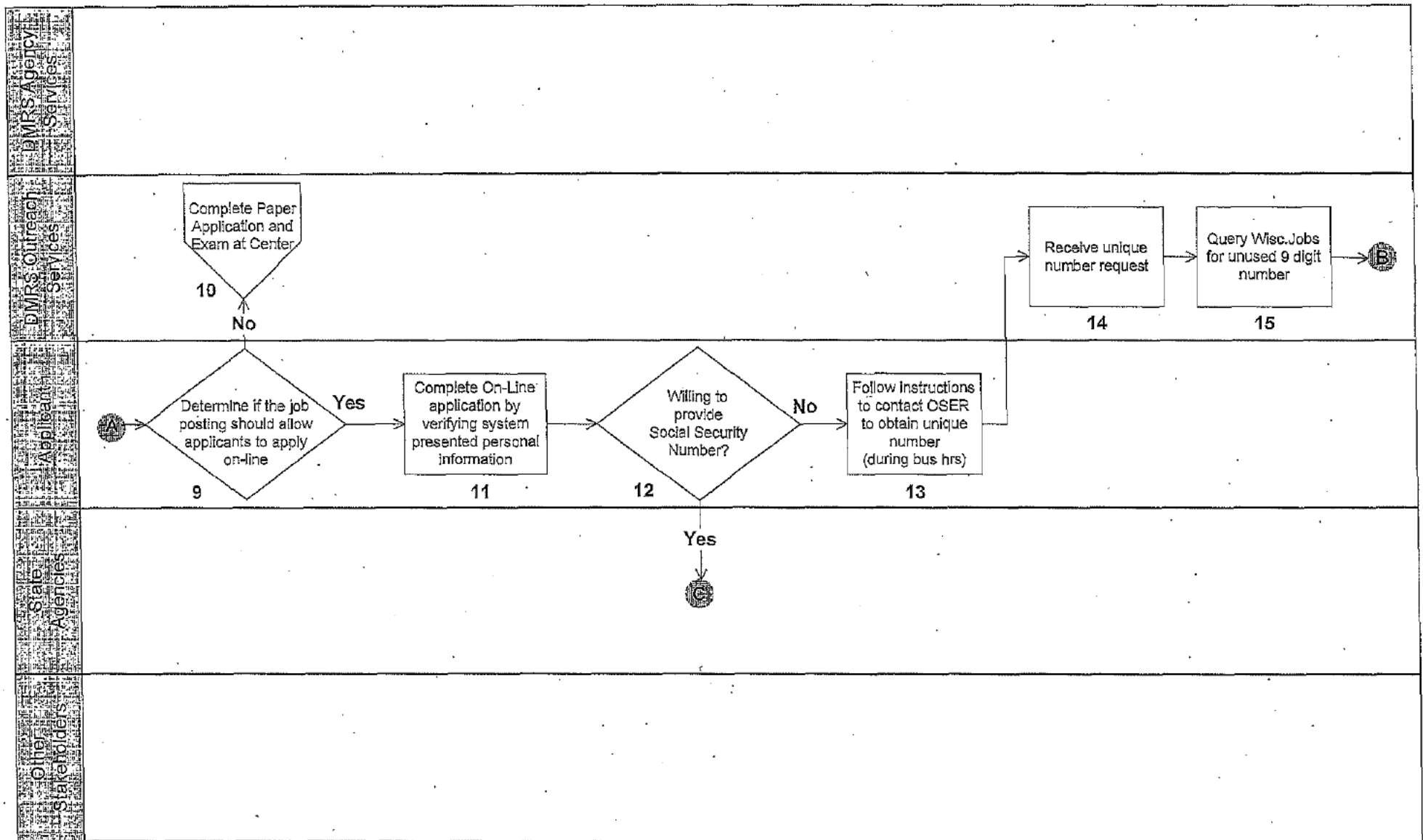


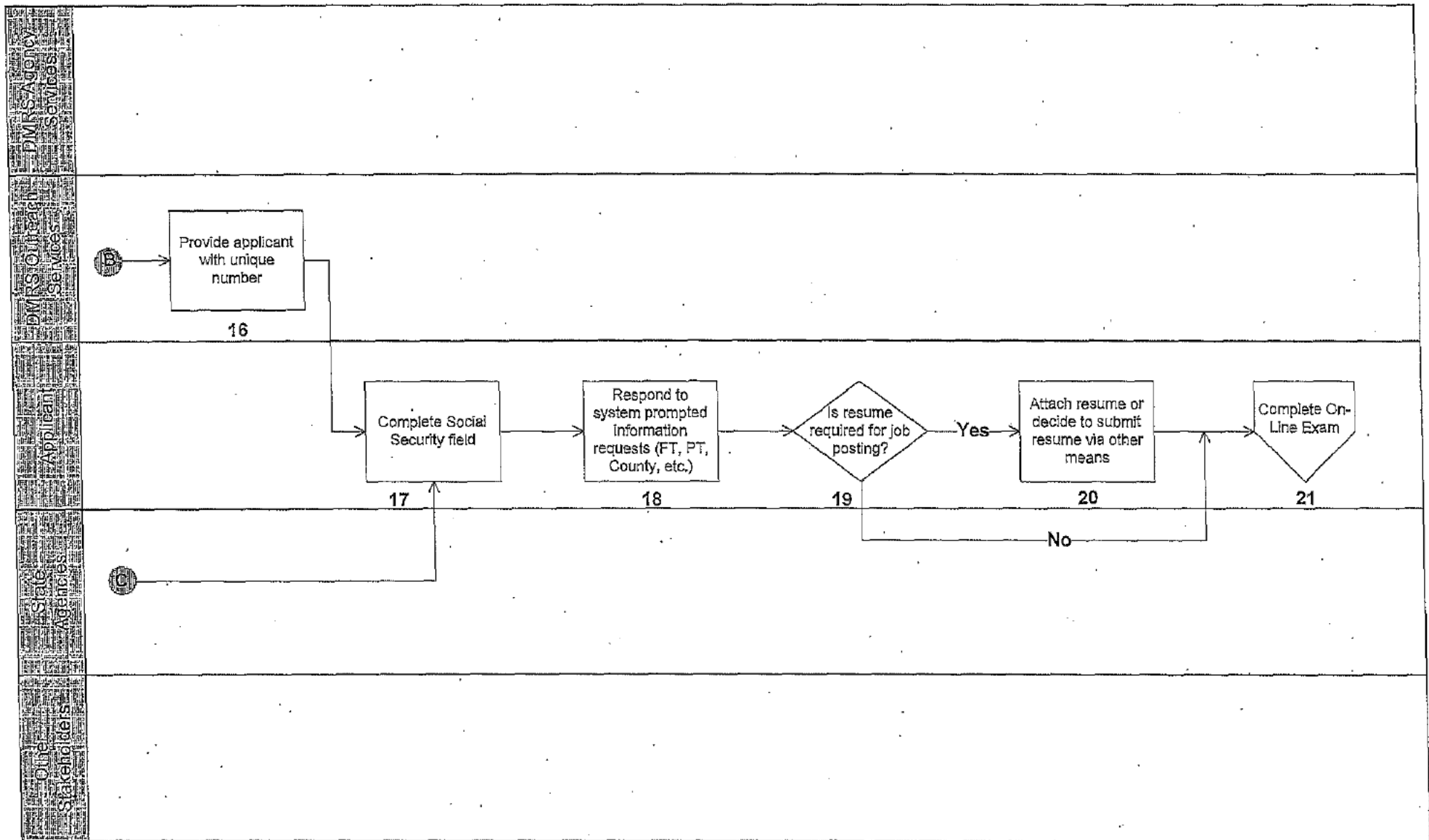
Process 100: Post State Job (Non-Delegated Position)



3. Transfer posting requires 7 days of posting the union represented position to the required source.
4. An Agency may have people in Restoration if the particular agency has laid off staff within the past 5 years.
7. The Position Description is prepared in Microsoft Word.
9. The Agency may post the job to WISCERS at this point in the process or they may wait until later in the process. If the position is filled utilizing WISCERS the agency can bypass the rest of the process.
12. The Exam Plan is a paper form that is completed. It is a useful tool when prepared before an exam is created. However, if the previously used exam is being utilized the completion of this form is less useful as the Exam Plan form is derived from the existing exam simply to fulfill this OSER requirement.
15. Benchmark scoring defines the exam score or answer that will be considered correct (if multiple choice), high score, satisfactory score or low score.
18. When an agency wishes to utilize the on-line exam process OSER must review and approve this information prior to linking the Job Announcement and Exam on Wisc.Jobs. Wisc.Jobs requires that the Job Announcement be attached to the exam to publish the Job Announcement. The system also requires the Exam to be approved before attaching it to a Job Announcement. Wisc.Jobs will not allow changes to the Exam once it is attached to the Job Announcement.
21. The Agency H.R. Specialist uses Wisc.Jobs to select the appropriate OSER representative (based on Job Classification) to route an email notifying the OSER representative that a Job Announcement awaits their review on Wisc.Jobs.
26. Jobs must be posted a minimum of 10 days in Wisc.Jobs.







5. Creating a new account in Wisc.Jobs requires the user provide their first name and last name. Additionally, two of the following four items must be provided:

- Date of Birth
- Social Security Number
- Mothers Maiden Name
- E-mail Address

Additionally, a username and password are created and the user is required to answer two security questions.

8. State jobs are posted through various mediums including:

- Wisc.Jobs posting
- Newspaper advertisement
- Wisc.Jobs bulletin (two page flier sent to various organizations such as libraries)
- WISCERS (for at risk, laid off, SIWRP candidates)
- Agency web-sites

Each medium directs the applicant to Wisc.Jobs for directions on applying for the job.

9. When a job announcement is created the delegated agency or OSER determines if on-line applications should be accepted for this particular job. This decision is based on the decision makers discretion.
11. When completing the on-line application, the applicant is presented with their personal information from their account for validation or changes.

The system accepts any 9 digit number or letter combination for the Social Security field as long as it is not currently associated with another Wisc.Jobs user account.

99% of applicants provide an entry in the Social Security number field.

The on-line application presents a multiple choice question asking the applicant to select "Yes" or "No" for their preference to be referred to other possible job postings. However, regardless of their answer they will be referred to matching job postings.

19. When a job announcement is created the delegate agency or OSER determines if a resume should be a requirement for a particular job.
20. It is the applicants responsibility to submit their resume if required. Applicants who do not submit resumes for jobs requiring a resume may be eliminated for further consideration. However, most applicants who apply on-line submit their resume on-line as well.
21. There are several types of on-line or off-line exams offered, including the following:
 - Multiple Choice: 80% applicants with an exam requirement complete this type of exam.
 - Essay: required very infrequently.
 - AMR: short narrative questions about experience and education.
 - AHQ (Achievement History Question): same as AMR with more details.
 - OIQ (Objective Inventory Questionnaire): multiple choice question on experience, such as years of experience.
 - Random Rank: (very frequent) assigned to job postings without exam requirement.
 - Oral Exam: same as AMR but done in front of a panel (required very infrequently).
 - Simulation: required very infrequently. Present simulation of job responsibilities such as typing test.

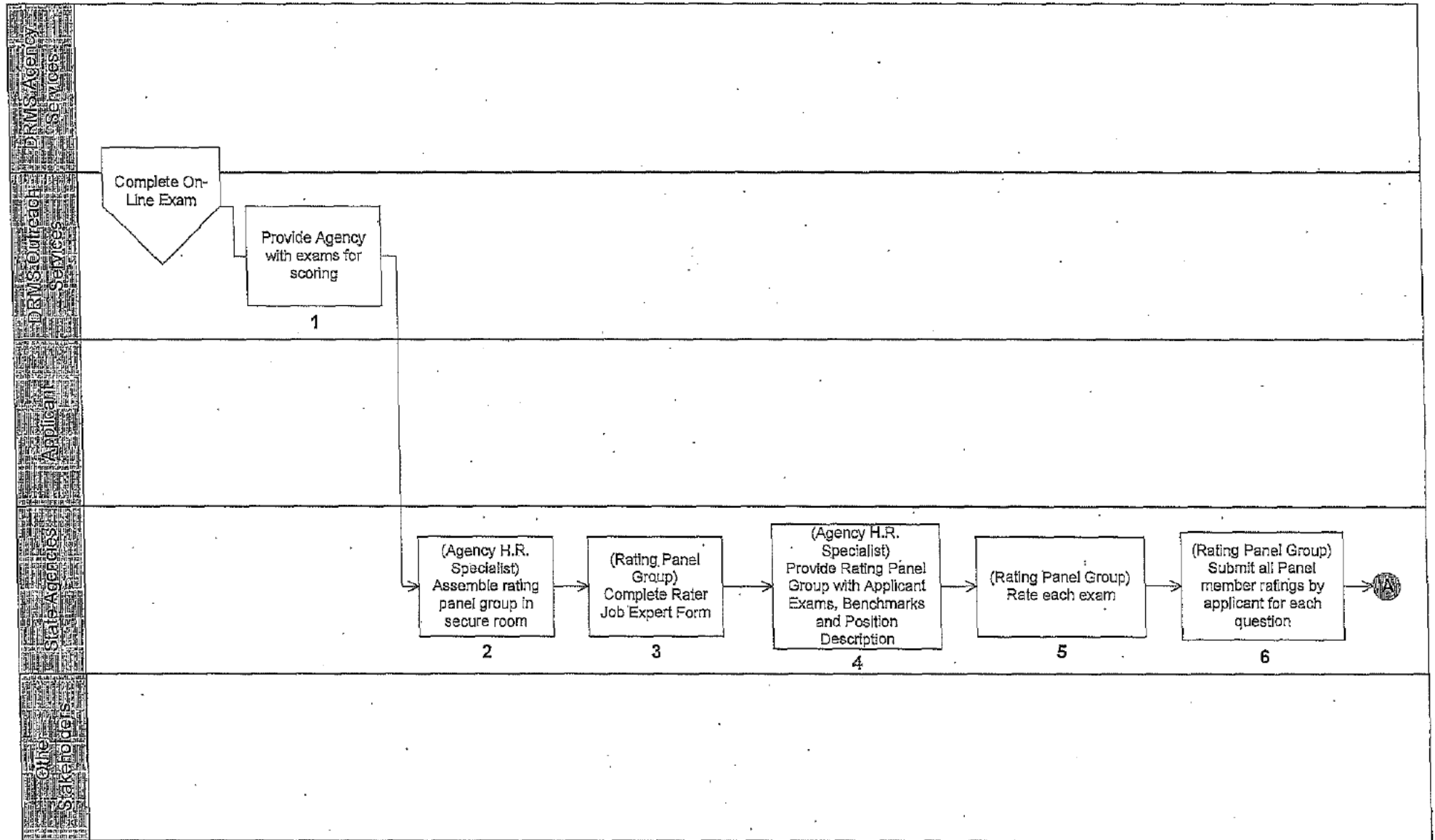
However, 99% of the applications that are submitted on-line also require an exam be completed on-line.

The types of exams that can be mailed to an applicant include: AMR, AHQ, and OIQ or a combination.

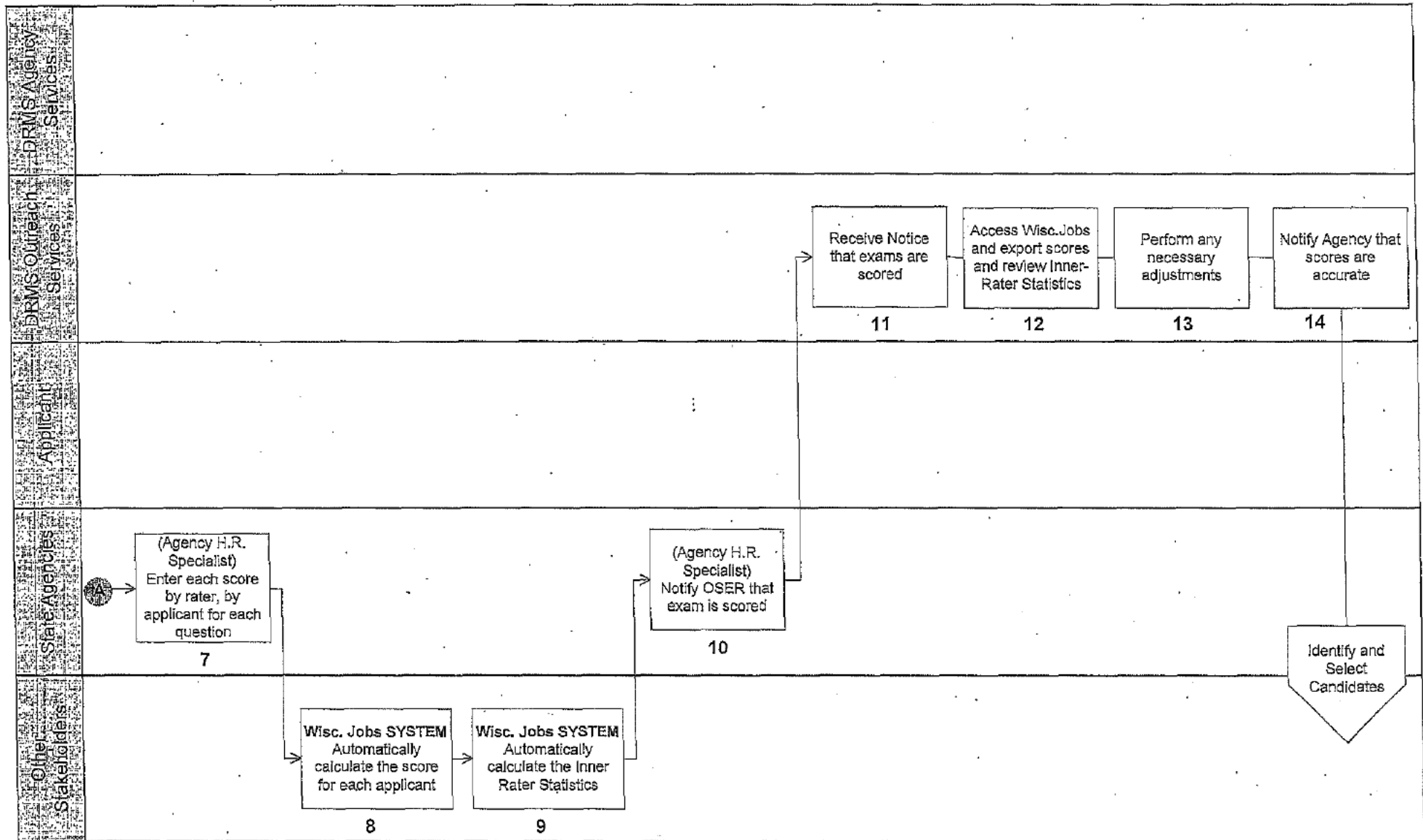
The types of exams that can be completed on-line include: AMR, AHQ, OIQ, and some proctored Multiple Choice or a combination.

The types of exams that must be completed at an exam center or at OSER include: Multiple Choice and Essays. These types of exams require validation of the individual completing the exam.

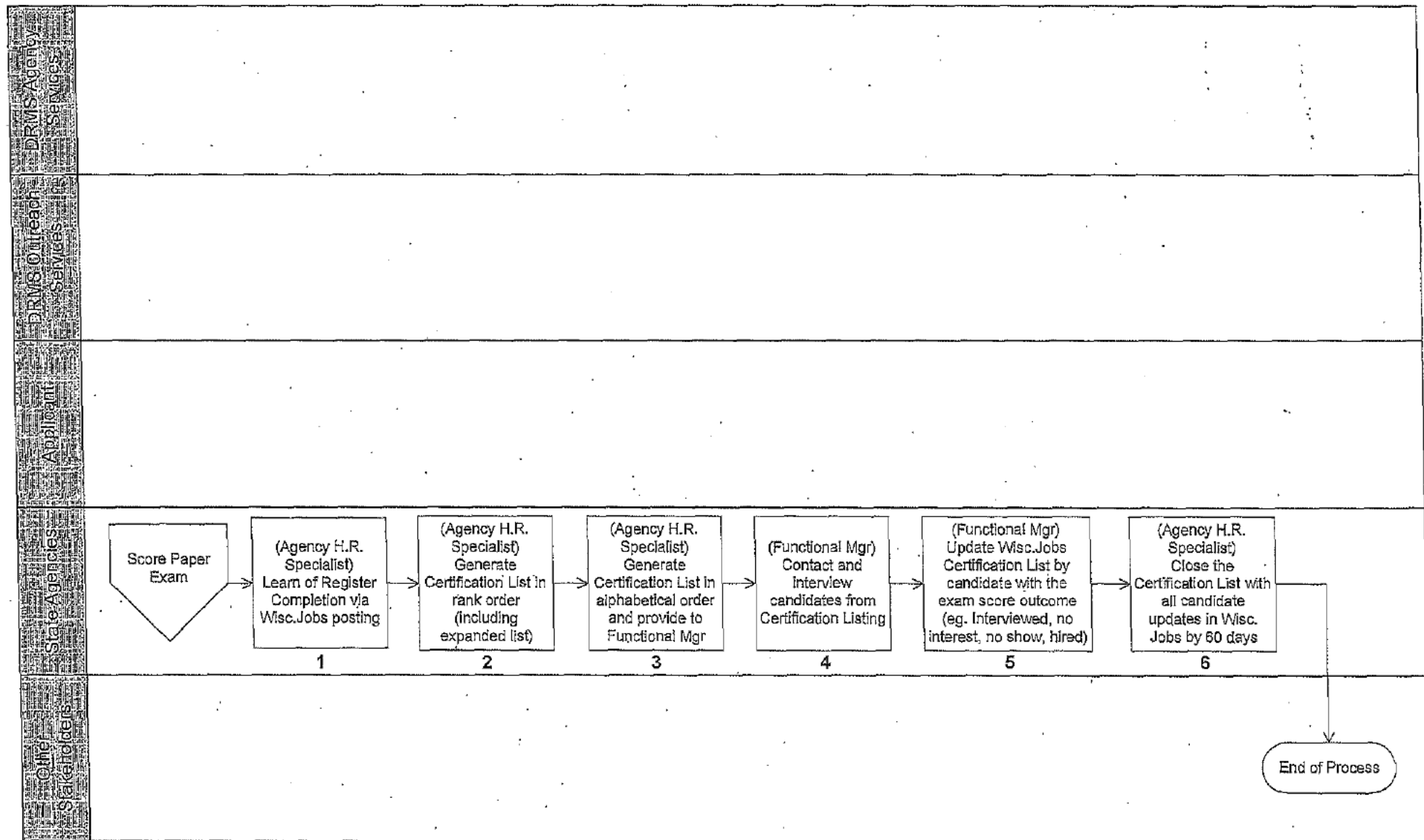
Process 700: Score Narrative Exam



Process 700: Score Narrative Exam



Process 800: Identify and Select Candidates



Notes

1. OSER posts on Wisc.Jobs that Registers are ready. The information posted includes date, classification of position and Register Number.
2. The Certification List in rank order is not revealed to the Functional Managers who are hiring. The Expanded List includes Vet and DEC status candidates who are given special consideration.
3. Functional Managers receive a Certification List in alphabetical order of candidates.
5. The Agency is required to update each candidate in the Certification List with a Report of Action or ROA. The ROA is essential for OSER to manage the candidate pool, ensuring those hired are extracted from the list or candidates who are no-shows or not interested three times are contacted and potentially removed from the candidate pool. The status entered by the agency for the candidate includes: Not Interested, Declined Offer, Failed to Respond, Selected or Interviewed Not Selected.

SENATE BILL 285
Agency Responses to DPM Request for Technical Corrections
(And DPM Technical Corrections)

Sections 1 and 2. (DMC program)

-20.865 does not appear to allow for segregated (or other non-GPR) funded agencies to receive DMC program supplements. This would be a detriment to those agencies, because they would have no way to provide their employees with this additional benefit. DOT / DPM

Section 14. (Standards for progressive discipline plans)

-Under Section 14, regarding standards for progressive discipline plans, it states that "the standards shall address progressive discipline for personal conduct and work performance that is inadequate, unsuitable, or inferior." In addition, under Section 73, it states "It is just cause to remove, suspend without pay, discharge, reduce the base pay of, or demote an employee for work performance or personal conduct that is inadequate, unsuitable, or inferior, as determined by the appointing authority, but only after imposing progressive discipline that complies with the administrator's standards under s. 230.04 (13m)." Agencies don't use progressive discipline for work performance issues. For example, would this require agencies to go through progressive discipline before placing an employee on a performance improvement plan (or final performance improvement plan)? It is unclear how agencies would actually handle work performance issues under current practice if progressive discipline was required. DOT

-Progressive discipline isn't used on all work performance issues. Specifically, in order to demonstrate that we have provided an employee an opportunity to improve his or her performance, we place him or her on a Performance Improvement Plan (PIP) or Concentrated Performance Planning and Development (CPPD) Plan. It has been our experience that terminations that follow a PIP/CPPD often result in much stronger cases when appealed to the WERC. It is unclear how agencies would actually handle work performance issues in the future if progressive discipline is required. Will we still be able to place individuals on PIPs or CPPDs? DOC

-Recommended language: "The administrator shall establish standards for progressive discipline plans to be prepared by all agencies and applied to all employees in the classified service. The standards shall address progressive discipline for all types of misconduct." WERC *or other improvement plan*

Section 16. (Administrator develops and implements a discretionary merit award program)

20 -Request to include unclassified employees in the discretionary merit program to assist with retention. KVR

20 -This section states that "the administrator shall develop and implement a discretionary merit award program to distribute money....to classified employees whose job performance has exceeded agency expectations." This appears to only allow employees that exceed expectations the ability to receive a DMC. Would this limit an agency from giving a DMC to an employee who "meets expectations" on their annual performance

evaluation? An employee who "meets expectations" may still be considered a top performer based on what their goals and expectations are. DOT

Section 19. (Permanent retention of disciplinary records)

NO
-Currently only the final discipline letter is retained in a p-file. Clarification is needed as to whether the practice will remain the same or whether the term "disciplinary records" is meant to be more than a disciplinary letter. DOC

*Comp Plan
back?*
Section 21. (Amends 230.12(1)(h), as follows: *Other pay, benefits, and working conditions.* The compensation plan may include other provisions relating to pay, benefits, and working conditions that shall supersede the provisions of the civil service and other applicable statutes and rules promulgated by the director and administrator.)

*shall be
amended
to read*
-Section K of the Comp Plan, 4.01, the last paragraph, is the following which overrides s. 230.35(4)(d): "An employee who resigns from state service within the first six months of an original probationary period or project position, but who has a total of more than six months without a break in service due to any other classified, unclassified or project service, will be considered to be entitled to all personal holiday hours for which the employee had been eligible." Either 230.12(1)(h) needs to be left intact, or a new provision is needed to add the above language to the statutes (perhaps s. 230.35(4)(d)). DPM

Section 23. (Providing agency with personnel information)

*ask
draft*
-The opening sentence is still confused from the former titles where OSER head was Director and DMRS was Administrator. This was not an edit from the bill just an error for the movement of DPM from OSER. The text should read "the administrator and the director" not the opposite, as is currently written. DPM

Section 24. (Access to personnel files)

NO
-The LRB summary indicates that an appointing authority "must" review an individual's personnel file, but the language of the bill appears to indicate only that the agency needs to make the personnel file available to other appointing authorities, upon request. The language of the bill makes the most sense. DOC

Section 28. (P-file review prior to offer of employment)

NO
-Making this a requirement is burdensome, unnecessary, and likely will not accomplish what is intended. DHS

Section 29. (Amends title to read "Applications and ~~examinations~~ resumes")

draft
-This revised title does not sufficiently represent the language in this portion of the statute. "Examinations" was a broad reference to selection process while resume is now a method of evaluation. To leave just resume is to imply that no other part of the selection process is necessary. Recommend retitling to "Applicants and evaluation procedures"—or just "evaluations" or "evaluation process" or "selection process". DPM

Section 30. (Resume replaces exam)

- no* -Applicants for unskilled, entry level positions do not have resumes, access to computers. DHS (*DPM believes this can be mitigated.*)

Section 31. (Consideration of conviction records)

- draft* -Lines 11 and 15 should say "director" instead of "administrator". DPM
-This language prohibits an agency from conducting background checks on non-certified transfer candidates. Also a problem relative to the "substantially related" standard. DHS

Section 33. (Requires the director to appoint boards of evaluators of at least 2 persons, one of which is selected by the bureau and one of which is a representative of the appointing authority.)

- Request that the requirement that DPM select an evaluator be eliminated. ETF
-General confusion as to what "boards of evaluators" means. Is this the interview? DPM reads this as an oral board only.
-This section states that "all questions asked and answers made in any oral evaluation shall be recorded and made a part of the records of the applicant's records." Would an employment interview be considered an "oral evaluation"? Is it the intent to record all employment interviews or just oral board processes (e.g., oral board exams)? DOT
-Is this section specific to oral boards, or does oral evaluation mean interview? DOC

no **Section 34.** (Selection criteria shall be job-related)

- Line 17 should read "director" instead of "administrator". DPM

no **Sections 34/35.** (Selection criteria / selection techniques)

- The references to "validation standards" and "appropriate scientific techniques" should be removed. DHS (*DPM not in agreement with this suggestion, in order to preserve the merit principle.*)

promotes employment no **Section 47.** (Repeal of ability to fill vacancies through limited competition)

- Repeal of this provision removes a tool agencies need to use. Amendment suggested in issue paper at page 4. DHS.

draft **Section 54.** (Amends 230.24(2) to state that career executive positions "may be filled only through an open competitive hiring process".)

- Line 7 appears to contradict itself. "A vacancy in a career executive position may be filled only through an open competitive hiring process..." "Only" was added here but it follows "may". One could interpret "may" to imply flexibility in application of "only". DPM

-Career executive positions may currently be filled by several methods other than a competitive process. Specifically, ER-MRS 30.07, Wis. Adm. Code, provides appointing authorities the power to reassign career executive employees to other career executive positions, and ER-MRS 30.08 provides for the transfer of career executive employees. In accordance with section 156.060 of the Wisconsin Human Resources Handbook, "announcement of a career executive transfer opportunity is not required". If the amendment would limit the authority currently established in Chapter ER-MRS 30, Wis.

Adm. Code., with regard to the reassignment and voluntary movement of career executive employees, a technical correction is requested. DOR

-Section 54 contradicts Section 53, in that Section 53 allows for the director may provide policies and standards for "recruitment" and "transfer", but Section 54 indicates a vacancy in a career executive position may be filled only through an open competitive hiring process. DOT

-We use career executive reassignment to effectively manage the workforce, e.g. we move career execs sometimes to provide new leadership to an area that is struggling, or because we have a need in a different area and someone is uniquely suited to take on the duties. We understand the importance of not limiting career executive recruitments to just other career executives in a recruitment process. However, career executive reassignments are often a very helpful tool for agencies to manage its workforce. It is unclear whether the concept will exist when the bill is effective. DOC

-Repeal of this provision removes a tool agencies need to use. DHS

Section 60. (Veterans Preference)

-Line 20 on page 22 and line 3 on page 23 should be "register" not "certification list". DPM

-Line 12 conflicts with s.230.25(1p) which requires an annual report. DPM

-Line 14/15 provides that information filed under this subdivision is part of the "veterans record." No such record exists and to create a separate document file would be duplicative and nonsensical. DPM

-Language in lines 15-17 conflicts with other provisions regarding release of interview/evaluation materials elsewhere in statute. In addition, if the provision is not struck the last phrase "directed to do so by the appointing authority who filed the information" should at least be modified to "otherwise directed (required?) by provisions of this chapter". DPM

-This section states "if the certification list for a position includes a veteran and the appointing authority extends invitations to interview candidates for the position, the appointing authority shall extend an invitation to interview to the veteran." Under this bill, it appears the certification list is the interview list – so this reference seems redundant unless agencies will be able to further screen from a certification list to determine who is invited for an interview. DOT

-This is not good hiring practice. The requirement of a report creates additional workload / creates exposure to "abuse of discretion" claims. DHS

Section 61. (Shortens time frame from 60 to 30 days for hiring after date of certification; requires report to Director if timeframe is not met.)

-These timeframes are too short due to the scheduling for managers and applicants; shortened timeframes should be eliminated; requirement for report for failure to meet shortened timeframes should be eliminated. ETF

-This amended timeframe is unreasonable because of steps involved in post-certification process. DHS

Section 62. (Register lifespan)

-Line 7 should read "director" instead of "administrator". DPM

Section 65. (Amends 230.28(1)(a) to create a 2 year probationary period, “unless the probationary period is waived after one year under par. (c)”. 230.28(1)(c) provides that “upon request by the appointing authority, the director may waive any portion of the lengthened probationary period”.)

- Request that this be shortened to 1 year, because this is not a hiring standard in the industry and two years will discourage new hires from seeking state employment. ETF

- Request that the waiver can be made by the appointing authority and not the Director. ETF

- It is understood through case law and Admin Code that an employee who has completed permanent status who subsequently serves a promotional probationary period and fails that probation will be reinstated to his/her former classification where permanent status had been obtained. With the limitation of reinstatement to just layoff, I’m not sure how we would handle this. I also think the missing reinstatement language would make recruitment to supervisory jobs much more difficult. DPM

- A clause should be added to clarify that existing employees currently on a probationary period are not required to now complete a two year probationary period. They should also have all of the same protections and resources presently available until the probationary period is complete. DPM

Sections 70/71/72. (Repeal of provision allowing for 5-year reinstatement / create provision allowing for reinstatement for 3 years in the event of layoff.)

- There needs to be an exception written into the bill to preserve reinstatement eligibility for employees who voluntarily demote or are reclassified / reallocated to a lower pay range; otherwise they will be eligible for pay increases if they go back into their former classification. This could create an opportunity for “yo-yo” demotions/promotions with guaranteed increases each time a promotion occurs. DPM

- The absence of reinstatement in instances of reclassification / reallocation could be perceived as an effort to penalize employees for management decisions regarding the classification system. DPM

- Concerns about how the reinstatement change impacts the WLEA contract, which references reinstatement at Article 8, Section 8. DOT

- Reinstatement is a tool used by agencies, should remain in the statutes. DHS

Section 73. (Just cause for work performance or personal conduct that is inadequate, unsuitable, or inferior, as determined by the appointing authority, but only after imposing progressive discipline that complies with the administrator’s standards under 230.04(13m).)

- The wording of this limits the progressive discipline system to actions that are not considered adverse employment actions under the statutes, *i.e.*, could not have suspension as part of progressive discipline system, because you have to have just cause to suspend, and this section states that there is no just cause until progressive discipline has been followed. DPM

- Recommended language: “It is just cause to remove, suspend without pay, reduce the base pay of, or demote an employee for engaging in conduct which impairs the performance of an employee’s duties or the efficiency of the organization for which he works. The appointing authority shall utilize progressive discipline that complies with the

administrator's standards under § 230.04(13m), Stats. The appointing authority may advance the progressive discipline steps based upon the severity of the conduct. It is just cause to discharge employees without progressive discipline for engaging in acts of serious misconduct, including, but not limited to, the following conduct:... WERC

Section 74. (Automatic just cause for certain conduct)

-There is a risk, in defining the offenses that constitute just cause, that the implication will be that other items do not justify discipline / discharge without progressive steps. This ties the agencies' hands. Is that intended? How will the state defend a termination for first offense fraternization with an inmate at DOC if these are the only "deadly sins" available? The language, if retained, should be modified to include a clause such as "including but not limited to". DPM

-What is harassment? Is this intended to be sexual harassment? Needs to be clarified. DPM

-Agreement that the behaviors in 1-9 are egregious and may warrant going outside of progression, however, there are several things the DOC has skipped progression or have issued a constructive discharge for that are not covered (e.g. fraternization which doesn't involve sexual activity or bringing in contraband which could be criminal, excessive use of force or other serious security concerns). It is unclear where these other egregious behaviors would fit in the currently proposed 1-9. We propose 9 be amended or number 10 be added to include a general statement about other egregious behaviors which seriously violate the rules of the director. DOC

Section 76. (Order of layoff)

-Line 4 includes disciplinary records as a factor in determining layoff. Use of such a record would create an unfair situation for formerly non-represented employees. If you were conducting a layoff in 2015 of employees with seniority and p-file records back to 2005, you would never find a disciplinary record for a represented employee as those would have been removed from the file pursuant to contractual provisions. Agencies have been inconsistent since Act10 in handling of this process. Use of the "record", unless appropriately explained via Admin Code and policy, would harm certain groups of employees and not present the true facts regarding an employee's disciplinary experience. Could limit review of disciplinary records to specific period of time, e.g., last 12 months. DPM

-Line 5 uses "ability" which is a broad, vague term that would be difficult to administer and it should be struck or replaced. Does ability mean my ability to bake or to do my job? If the former, it is not appropriate. If the latter, it is redundant with the requirement of "job performance". If ability means something more broad like my ability to learn, supervisors are then making judgments with no evidence which ultimately punishes one employee with separation. DPM

Section 79. (Establishment of performance evaluation program)

-Page 30, line 2 references the "authority to conduct an annual performance evaluation of each employee...". This should be modified to "authority to conduct **at least** an annual performance evaluation of each employee". As currently written, not clear that we would have the necessary latitude to require monthly or quarterly performance reviews of

probationary periods. This process is essential to properly evaluate of an employee on probation and ideal for all employees. Feedback should happen regularly not just once a year. DPM

-Performance evaluations are not required for some employees (e.g., LTEs, patient workers, supported workers, foster grandparents), and these exceptions should be recognized. See recommended language in issue paper at page 8. DHS

Section 90. (Grievance process)

-Page 33, line 13, "compliant" should be "complaint". DPM

Section 93. (Consolidation of HR services)

-Concern that the bill lacks clarity regarding provisions to consolidate human resource services and how that may affect our staff and the role of the State Superintendent. Request for clarification. DPI

Other.

-DVA requests amendment to s. 45.82(2) to read as follows:

The department of veterans affairs shall award a grant annually, on a reimbursable basis as specified in this subsection, to a county that meets the standards developed under this section if the county executive, administrator, or administrative coordinator certifies to the department that it employs a county veterans service officer who, if chosen after April 15, 2015, is chosen from a list of candidates who have taken a civil service examination for the position of county veterans service officer developed and administered by the bureau of merit recruitment and selection in the department of administration, or is appointed under a civil service competitive examination procedure under s. 59.52 (8) or ch. 63. The department of veterans affairs shall twice yearly reimburse grant recipients for documented expenses under sub. (5), subject to the following annual reimbursement limits: \$8,500 for a county with a population of less than 20,000, \$10,000 for a county with a population of 20,000 to 45,499, \$11,500 for a county with a population of 45,500 to 74,999, and \$13,000 for a county with a population of 75,000 or more. The department of veterans affairs shall use the most recent Wisconsin official population estimates prepared by the demographic services center when making grants under this subsection.

SECTION 28. 230.15 (7) of the statutes is created to read:

230.15 (7) An appointing authority may not make an offer of employment to any individual who currently holds a position unless the appointing authority has reviewed the personnel file of the individual.

Hiring managers should certainly be encouraged and able to review p-files when practicable. However, making this provision a requirement is burdensome, unnecessary, and likely will not accomplish what it is intended to accomplish.

- The added mandatory review of a p-file will add time to the hiring process. The logistics involved in securing employee p-files from multiple agencies, including the time necessary for shipping, can take several days to weeks. This will delay a hire.
- P-files do not contain all the documents necessary to truly gauge an employee's qualifications and fitness for duty. For instance, if a supervisor has been delinquent in completing regular performance evaluations, those documents will not be in a p-file because they don't exist. Also, the only disciplinary documents available in an employee's p-file are actual disciplinary letters, which means that employees currently under investigation will not have any documentation in their p-file to demonstrate that. Nor will there be documentation in the p-file of items such as work directives or investigations that may have demonstrated performance or character/judgment issue, but did not result in discipline. Employee attendance records are also not included in a p-file.
- The p-file is an unreliable source for truly measuring if a current employee is a good fit for a position. A better tool to measure a current employee's ability and fitness for a position would be to require hiring managers to check with the employee's current or most recent supervisor for a reference.

SECTION 30. 230.16 (1) (a) of the statutes, as affected by 2015 Wisconsin Act 55, is amended to read:

230.16 (1) (a) The director shall require persons applying for admission to any examination under this subchapter or under the rules of the director a position in the classified service to file an application and resume with the bureau a reasonable time prior to the proposed examination.

The way this is written makes it sound as if all applicants, even existing employees applying for a transfer opportunity, will be required to submit a resume and application for review. Most of the time this is not a problem. However, in unskilled or entry level positions, many applicants, even existing employees, do not have resumes. Many also have limited access to a computer on which to create a resume. The Department of Health Services (DHS) encounters this frequently for positions such as Food Service Assistants, Custodians, Groundskeepers, Resident Care Technicians, and Psychiatric Care Technicians. In these cases, applicants complete an application which includes a work history rather than submitting a resume.

SECTION 31. 230.16 (1) (ap) of the statutes is created to read:

230.16 (1) (ap) 1. Except as provided in subd. 2., the director may not request a person applying for a position in the civil service, on an application or otherwise, to supply information regarding the conviction record of the applicant, or otherwise inquire into or consider the conviction record of the applicant before the applicant has been certified for the

position. This paragraph does not prohibit the administrator from notifying an applicant for a position in the civil service that, by law or policy, a particular conviction record may disqualify an applicant from employment in a particular position.

2. If a particular conviction record disqualifies applicants for a certain position in the state civil service, the administrator may request a person applying for the position to supply information regarding the conviction record of the applicant, or otherwise inquire into or consider the conviction record of the applicant, to determine whether the applicant's conviction record disqualifies him or her for the position before the applicant is certified for the position.

The Department of Health Services has a policy of conducting background checks for all finalists for a position, and this includes transfer candidates who are not certified but rather considered through the existing permissive transfer process. This language prohibits DHS from conducting background checks on non-certified transfer candidates under 230.16(1)(ap)1.

Additionally, according to the Department of Workforce Development, an employer may refuse to hire an applicant for conviction of an offense that is "substantially related" to the job. The law does not specifically define "substantially related," but rather looks at the circumstances of an offense, where it happened, when, etc. - compared to the circumstances of a job - where is this job typically done, when, etc. The more similar the circumstances, the more likely it is that a substantial relationship will be found.

Therefore, under 230.16(1)(ap)2, for most jobs it is impossible to define what convictions would disqualify an applicant for a particular position because under the law, because each job and record must be considered individually.

http://dwd.wisconsin.gov/dwd/publications/erd/pdf/erd_7609_p.pdf

SECTION 34. 230.16 (4) of the statutes is amended to read:

230.16 (4) All ~~examinations~~ selection criteria, including minimum training and experience requirements, for positions in the classified service shall be job-related in compliance with appropriate validation standards and shall be subject to the approval of the administrator. All relevant experience, whether paid or unpaid, shall satisfy experience requirements.

SECTION 35. 230.16 (5) of the statutes, as affected by 2015 Wisconsin Act 55, is amended to read:

230.16 (5) In the interest of sound personnel management, consideration of applicants, and service to agencies, the director may set a standard for proceeding to subsequent steps in ~~an examination~~ the selection process, provided that all applicants are fairly treated and due notice has been given. ~~The standard may be at or above the passing point set by the director for any portion of the examination.~~ The director shall utilize appropriate scientific techniques and procedures in administering the selection process, in rating the results of ~~examinations~~ any evaluations used in the selection process, and in determining the relative ratings of the competitors.

These sections maintain the phrases "validation standards" and "appropriate scientific techniques" in describing the hiring selection process. In order to meet the appropriate validation standards and scientific techniques set forth by statute, the recruitment process has

historically focused on scoring tasks and statistically quantifiable metrics rather than qualitative performance indicators of successful employees such as core competencies and behaviors. This has frequently resulted in applicants who have real world relevant experience and qualifications being screened out, while applicants who “look good on paper” and have mastered how to write a civil service exam are screened in. If the goal of this bill is create efficiencies in the recruitment process, and ensure that highly qualified and skilled applicants are screened in, then the phrases “validation standards” and “appropriate scientific techniques” need to be removed from the statute. If they are not removed from the statute the selection process will still be focused on creating statistically valid performance ratings based on quantifiable metrics rather than focusing on the totality of an applicant’s relevant skills, abilities, competencies, and knowledge.

SECTION 47. 230.19 (2) of the statutes, as affected by 2015 Wisconsin Act 55, is repealed.

The repeal of this provision removes an agency’s ability to limit the applicant pool for promotional positions to classified employees. On the surface, it seems common sense that in order to hire the most qualified applicant for a job, an agency should cast a wide net in its recruitment efforts rather than limiting the applicant pool. However, due to the unique nature of many DHS programs, a viable pool of applicants for many positions does not exist outside of classified service. We have learned through experience that announcing those unique promotional positions for open competition results in outside applicants being screened out because they don’t have the required programmatic knowledge for the position, which is a waste of time and resources for everyone.

DHS uses this provision judiciously, and typically only applies it in situations when the position in question is highly technical and requires extensive programmatic knowledge upon appointment. Furthermore, agencies are limited from using this provision of the statutes broadly because of affirmative action plan requirements in ensuring that the area of competition represents the diversity of the relevant labor pool for the state.

Finally, this provision gives agencies a tool to provide development and growth opportunities for high performing employees. Just like in the private sector, state agencies look to their own emerging leaders first in thinking about succession planning for the future. This benefits everyone by creating a career path for high potential employees and allowing state agencies to retain their best and brightest. If the goal of this bill is to increase efficiency in the recruitment and retention process, then it makes sense that agencies are able to retain as many tools as possible to remain nimble in responding to the changing needs of its workforce.

SECTION 54. 230.24 (2) of the statutes is amended to read:

230.24 (2) A vacancy in a career executive position may be filled only through an open competitive examination, ~~a competitive promotional examination or by restricting competition to employees in career executive positions~~ hiring process in order to achieve and maintain a highly competent work force in career executive positions, with due consideration given to affirmative action. ~~The appointing authority shall consider the guidelines under s. 230.19 when deciding how to fill a vacancy under this paragraph.~~

This
could be
problematic
at some
DHS facilities
i.e. - Sand Ridge
- DDB

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On the surface, it seems common sense that in order to hire the most qualified applicant for a job, an agency should cast a wide net in its recruitment efforts rather than limiting the applicant pool. However, due to the unique nature of many DHS programs, a viable pool of applicants for many positions does not exist outside of classified service. We have learned through experience that announcing those unique Career Executive positions for open competition results in outside applicants being screened out because they don't have the required programmatic knowledge for the position, which is a waste of time and resources for everyone.

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SECTION 60. 230.25 (2) (am) of the statutes is created to read:

230.25 (2) (am) 1. If the certification list for a position includes a veteran and the appointing authority extends invitations to interview candidates for the position, the appointing authority shall extend an invitation to interview to the veteran.

2. If a veteran is included on a certification list and if the minimum qualifications and the skills, abilities, competencies, and knowledge of the veteran and any other applicant being interviewed for the position are equal, the appointing authority shall give a preference to the veteran for the position.

4. If an appointing authority does not appoint an eligible veteran and does appoint an eligible nonveteran to a position, no later than 30 days after making the appointment the appointing authority shall file with the director, in writing, the reasons for the appointing authority's decision. Any information filed under this subdivision is part of the veteran's record. The director may not make any information filed under this subdivision available to anyone other than the veteran unless directed to do so by the appointing authority who filed the information.

DHS supports hiring veterans. In fact, we have included provisions related to increasing our use of the non-competitive hiring process for disabled veterans as a goal in our Affirmative Action plan. However, we believe that directing appointing authorities to hire veterans on the basis of being a veteran is not a good hiring practice. There are a variety of factors that play into determining an individual's potential success in a position. Some are mentioned in this proposed addition to the statute. Others not mentioned include references, background checks, interview performance, and the notion of "fit", which is a term used to describe an applicant's ability to fit into the culture of a work unit or organization. Appointing authorities should be relying on job-related criteria that can predict an applicant's success on the job in making a hiring decision rather than selecting a candidate based on that candidate's status as a veteran.

Additionally, requiring appointing authorities to provide a justification for the hire of a non-veteran creates an additional workload for the supervisors and HR staff in the hiring process. Finally, making that information available to the non-hired veteran puts agencies at risk for increased non-selection appeals for "abuse of discretion" under 230.44(1)(d). In DHS's experience, applicants who do not perform well in the interview, or who are not the best fit for the position, or who have poor references can appeal their non-selection and claim the employer "abused its discretion" in hiring the selected candidate. Almost anything can be alleged as an "abuse of discretion." However, these appeals are nearly impossible for an applicant to win, because the employer has some articulable basis for hiring the candidate selected over the appellant. As a result, these appeals (which are common) become a waste of resources and are typically brought by applicants who performed poorly in the interview, or had poor references, or who are simply not a good fit for the position. The fact that applicants and employees can appeal a hiring action for a reason as nebulous as "abuse of discretion" has created a litigious culture of entitlement among the state workforce and also a culture of fear among hiring supervisors, resulting in ineffective hiring practices.

SECTION 61. 230.25 (2) (b) of the statutes, as affected by 2015 Wisconsin Act 55, is amended to read:

230.25 (2) (b) Unless otherwise provided in this subchapter or the rules of the director, appointments shall be made by appointing authorities to all positions in the classified service from among those certified to them in accordance with this section. Appointments shall be made within 60 30 days after the date of certification unless an exception is made by the director. If an appointing authority does not make an appointment within 60 30 days after certification, he or she shall immediately report in writing to the director the reasons therefor. If the director determines that the failure to make an appointment is not justified under the merit system, the director shall issue an order directing that an appointment be made.

This amendment, which changes the timeframe from 60 days to 30 days for an appointing authority to make an appointment after the date of certification, is unreasonable because of the number of steps in the post-certification process.

- The Division of Personnel Management (DPM), has advised agencies that they must give applicants five work days to respond for a request to interview, which means that interviews can't be scheduled until at least a week after the date of the certification. This is in order to comply with ER-MRS 11.04 (b) Wis. Adm. Code.
- Depending on the number of candidates certified, a supervisor could have as few as one or as many as over 100 candidates to interview. Interviews could take anywhere from a day to several weeks. If supervisors want to conduct a second round of interviews, they again need to give candidates five work days to respond, which delays second interviews for yet another week.
- After the finalists have been identified, reference checks and background checks (if necessary) are done. This may take a few days.
- Once the supervisor has selected a final candidate, final approvals need to be completed. This includes pay upon appointment approval, approval of the hire of a non-minority into an underutilized position if applicable, justification of the hire of a non-veteran if applicable (as proposed in this bill), and a review of the p-file if the finalist is

maybe
45 days would
be a compromise

an existing state employee (as proposed in this bill). These approvals and the accompanying paperwork required may take a week or more.

- When the supervisor receives approval to make an offer, an applicant typically needs to give a two week notice to his or her existing employer before the appointment date.
- Finally, in PeopleSoft, all new appointments must start at the beginning of a pay period, which could add an additional week to the process if the offer is made in the middle of a pay period.

The time required to complete all these steps typically exceeds 30 days already, and will undoubtedly take longer with the added hiring reviews proposed by this bill.

SECTION 70. 230.31 (1) (intro.) of the statutes is amended to read:

230.31 (1) (intro.) Any person who has held a position and obtained permanent status in a class under the civil service law and rules and who has separated from the service before the effective date of this subsection [LRB inserts date], without any delinquency or misconduct on his or her part but owing to reasons of economy or otherwise shall be granted the following considerations:

SECTION 71. 230.31 (2) of the statutes, as affected by 2015 Wisconsin Act 55, is repealed.

Reinstatement is not a mandatory right, it is an eligibility. It gives employees who have separated from service without delinquency the ability to be considered permissively for reappointment to a position at a comparable or lower level at the discretion of the appointing authority. This tool is often used by supervisors to recruit qualified employees who separated from service for a variety of reasons. DHS hired 85 people using the reinstatement provision of the statute in 2014. All separated from service for a variety of reasons – to return to school, raise a family, retirement, for a job in the private sector, a geographical move, etc. However, due to reinstatement eligibility, DHS was able to recruit these qualified candidates back to the workforce. Since appointing authorities have discretion to decide whether or not to even consider reinstatement candidates, reinstatement doesn't have any adverse recruitment consequences for supervisors. If the goal of this bill is to increase efficiency in the recruitment and retention process, then it makes sense that agencies are able to retain as many tools as possible to remain nimble in responding to the changing needs of its workforce. DHS recommends that 230.31(2) remain in the statute.

SECTION 79. 230.37 (1) of the statutes, as affected by 2015 Wisconsin Act 55, is amended to read:

230.37 (1) In cooperation with appointing authorities the administrator shall establish an employee performance evaluation program to provide a continuing record of employee development and, when applicable, to serve as a basis for pertinent personnel actions. Under the employee performance evaluation program established under this subsection, the administrator shall require each appointing authority to conduct an annual performance evaluation of each employee appointed by the appointing authority. Similar evaluations shall be conducted during the probationary period but may not infringe upon the authority of the appointing authority to retain or dismiss employees during the probationary period.

If the statute is amended to include a requirement for annual performance evaluations, there needs to be a disclaimer to say something like, "Under the employee performance evaluation

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program established under this subsection, the administrator shall require each appointing authority to conduct an annual performance evaluation of each employee appointed by the appointing authority for whom performance evaluations are required. For instance, performance evaluations are not required for limited term employees, patient workers, supported workers, or foster grandparents.

DRAFT

Recent UW Madison Human Resource Policy Changes

The University of Wisconsin Madison shifted employees to new human resources policies as of July 1, 2015. Formerly classified staff became university staff. Formerly the classified staff were covered under chapter 230 of Wisconsin statutes. Now, changes were made and UW Madison is on its own system governed by its own policies. These are a few of the changes that apply to university staff and are relevant to 2015 Senate Bill 285.

Examinations and Hiring

UW moved from the chapter 230 examination process to its own merit-based hiring process. Now, the university has centralized hiring policies but individual decisions about how candidates are assessed are at the discretion of the campus divisions. The individual divisions continue to make their own hiring decisions. Candidate assessments may mean resume based, online applications, hands-on assessments, oral interviews, etc. or some combination thereof, depending on the job functions and competencies the job requires. The university also considers the new hire's probationary period to be part of the assessment process.

Probationary Periods

The default probationary period is six months; however, this can be adjusted longer. For example, campus police are 18 months and supervisors are generally 12 months. It can vary depending on the job specialty.

Just Cause

Just cause is outlined in the attached 7 question checklist. This does not mean that they cannot immediately terminate in instances such as theft. They maintain due process, but don't mandate progressive discipline in these cases. Just cause policy did not change with the new policies.

Reinstatement

There is no reinstatement in the new UW Madison policies. In other words, if you leave your position you cannot come back to the university within 5 years via reinstatement as is the case under current chapter 230 state laws.

Restoration

Restoration was carried forward in the new policies, but narrowed to only last for one year and only applies to positions within the employee's division (e.g., College of Letters and Science). The old policy let individuals use restoration throughout the entire university. Wisconsin law has it at 3 years across the entire agency.

Grievances and Appeals

If an employee is terminated they can appeal to their supervisor, human resources staff or Office of Human Resources. After that, the employee can appeal to a 4 person panel, with 2 management and 2 staff members. If the panel deadlocks, the employee can then take the appeal to an impartial hearing officer. If that doesn't resolve things it can move to the chancellor and then to the Board of Regents (If the appeal involves a termination). Employees hired prior to July 1, 2015 can appeal to WERC as an alternative if they so choose. Employees hired on or after July 1 do not have that option.

Right of Return

The right to return to your position if an individual moves to another position in the university was changed from six months to one month.

Layoff Priority

They moved away from seniority as the only layoff priority. Now, seniority is the primary factor but other factors can be considered, with the approval of the central human resources office. In addition, layoff groups have been narrowed from entire divisions to smaller operational areas within divisions (e.g., instead of the entire College of Letters and Science, the layoff group could be just the Chemistry Department).

Iowa

- Inefficiency,
- *Insubordination*,
- Less Than Competent Job Performance,
- Refusal Of A Reassignment,
- Failure To Perform Assigned Duties,
- Inadequacy In The Performance Of Assigned Duties,
- Dishonesty,
- Improper Use Of Leave,
- Unrehabilitated Substance Abuse,
- Negligence,
- Conduct Which Adversely Affects The Employee's Job Performance Or The Agency Of Employment,
- Conviction Of A Crime Involving Moral Turpitude,
- Conduct Unbecoming A Public Employee,
- Misconduct,
- Or Any Other Just Cause."

(Iowa, ARC 11--60.2(8A))

Michigan

- Failure To Carry Out The Duties And Obligations Imposed By Agency Management, Work Rule Or Law,
- Conduct Unbecoming A State Employee
- Unsatisfactory Job Performance

(Michigan, Civil Service Rules, Chapter 2-6)

North Carolina

- Unsatisfactory Job Performance And
- Unacceptable Personal Conduct)

(North Carolina, Id. § 126-35(a), (d).)

Unacceptable Personal Conduct Is Defined In Code.

- Conduct For Which No Reasonable Person Should Expect To Receive Prior Warning; Or
- Job-Related Conduct Which Constitutes A Violation Of State Or Federal Law; Or
- Convictions Of A Felony Or An Offense Involving Moral Turpitude That Is Detrimental To Or Impacts The Employee's Service To The State; Or
- The Willful Violation Of Known Or Written Work Rules; Or
- Conduct Unbecoming Of State Employees That Is Detrimental To State Service; Or
- The Abuse Of Client(S), Patient(S), Student(S), Or A Person(S) Over Whom The Employee Has Charge Or To Whom The Employee Has A Responsibility Or An Animal Owned By The State; Or
- Absence From Work After All Authorized Leave Credits And Benefits Have Been Exhausted; Or
- Falsification Of A State Application Or In Other Employment Documentation."

(North Carolina, 25 Ncac 011.2304)

Colorado

- **Failure To Perform Competently;**
- **Willful Misconduct Or Violation Of These Or Department Rules Or Law That Affect The Ability To Perform The Job;**
- **False Statements Of Fact During The Application Process For A State Position;**
- **Willful Failure To Perform, Including Failure To Plan Or Evaluate Performance In A Timely Manner, Or Inability To Perform;**
- **Final Conviction Of A Felony Or Other Offense Of Moral Turpitude That Adversely Affects The Employee's Ability To Perform The Job Or May Have An Adverse Effect On The Department If Employment Is Continued.**

(Colorado, [Department Of Personnel](#), Board Rules, Accessed 9/10/15)

South Carolina

South Carolina Outlines Just Cause For Revocation Or Suspension Of Teachers Licenses

- **"Incompetence;**
- **Willful Neglect Of Duty;**
- **Willful Violation Of The Rules And Regulations Of The State Board Of Education;**
- **Unprofessional Conduct;**
- **Drunkenness; Cruelty;**
- **Crime Against The Law Of This State Or The United States;**
- **Immorality;**
- **Any Conduct Involving Moral Turpitude;**
- **Dishonesty;**
- **Evident Unfitness For Position For Which Employed;**
- **Or Sale Or Possession Of Narcotics."**

(2013 South Carolina Code of Laws, Title 59 - Education, CHAPTER 25 - TEACHERS, SECTION 160.)

Tennessee

- **"A Preferred Service Employee May Be Dismissed By The Appointing Authority For Unacceptable Conduct Or Performance Of Duties."** (State Of Tennessee [Department Of Human Resources Employee Handbook](#), January 2015)
- **Tennessee State Employees Can Be Dismissed For Failure To Adopt Ethical Standards.** (8-17-106. Removal From Office For Failure To Adopt Ethical Standards Violations Of Standards.)
- **Unauthorized Use of State Computers Is Grounds For Dismissal.** (State Of Tennessee [Department Of Human Resources Employee Handbook](#), January 2015)

Indiana

- **Improper Disclosure Of Confidential Information By A State Employee Is Cause For Action To Dismiss The Employee.** ([Indiana, IC 4-1-6-4-1-6-8.6](#))
- **Failure To Appear; Failure To Testify** (Indiana, IC 4-15-2.2-49)
- **State Agency Employees Working With Children; Sex Crime Convictions** (Indiana, IC 4-13-2-14.7)
- **Employees And Employees Of State Contractors That Fail Drug Tests Could Be Dismissed.** (Indiana, IC 4-13-18-6)

NOTES

What is the legislative risk of turning all state employees to "at will" employees?

- Can a legislature remove the "good cause" standard for terminating a state employee?

3 parts: hiring reform, disciplinary, and firing

Board of Regents of State Colleges v Roth, 408 U.S. 564.

- Property interests in employment are not created by the Due Process Clause, rather it exists if created by an independent source such as a State Law

Vorwald v School Dist. of River Falls, 167 Wis. 2d 549.

- Public employment is a property right for those given tenure by operation of law (Wis. Stat 230.34)

Currently, State workers have a property interest in their job after 12 months because of Wis Stat 230.34.

- Pros: protects the civil system from politicians firing employees who disagrees with them or whistleblows.
 - Does not allow politicians to hire their political supporters (cronyism) (Wis. Stat. 19.45)
 - protection from political free thinking
- Cons: makes it difficult for the state to manage their employees
 - Disciplining or firing a state employee requires a willingness to go to court
 - Bad workers don't get punished, rather they are rewarded based on seniority
 - Inefficiencies in hiring or creating new position
- There needs to be a buffer between the state worker and the politician that does not require the worker to have a property right.
 - The current buffer in states that have moved to the "at will" system is that it is a crime to use political power to affect the job status of a state worker

What other states have done.

Texas is considered the grandfather of "civil service free states." – Never truly had a centralized civil service system to begin with

- Abolished the Texas Merit Council in 1985 – ensured that state agencies were hiring/promoting the most competent workers based on test scores.
 - Moved the civil service system to a more privatized model
 - Agencies are free to hire/ discipline as they see fit
 - Firing follows private sector: warning, write up, terminated
 - Can appeal to a panel
- No real evidence of appoints being a result of cronyism
- HR managers enjoy the flexibility of the new system

Georgia has performed the greatest reform the civil service system

- Act 1816 – Merit System Reform Act – all employees hired AFTER 1996 are "at will"
 - Agencies able to hire, fire, promote, demote as they see fit
 - State employees still offered the right to appeal termination if based on: poor performance or termination for cause

- Georgia has had no discrimination or arbitrary termination law suits to date
- No increased evidence of political abuse in hiring's to date

Indiana – 2011 Colorado and Tennessee also have enacted Civil Service reform

- Georgia, Indiana – At will employment was created by the elimination of property interest in employment

Florida – “Service First Act” – Converted all supervisory positions to “at will” – also simplified compensation system and eliminated the use of seniority in promotions

- Jeb Bush initially attempted to make ALL state employees at will but ran into back lash from the Florida Senate – was not politically feasible and had to compromise
- CANT FIND ANY LITIGATION FROM STATE WORKERS WHO WERE SWITCHED TO AT WILL (supervisors)

Contract Clause Issue - Madison Teachers, Inc. v. Walker, 2014 WI 99, ¶ 135.

The Contract Clause of the Wisconsin Constitution prohibits the state of Wisconsin from impairing its contractual obligations

Three element test to see if a new law has impaired the State's contractual obligations:

1. whether there is a **contractual** relationship
2. whether a change in law impairs that **contractual** relationship
3. Whether the impairment is substantial.

If there does seem to be impairment on the State's contractual obligation, it will still be upheld if there is a legitimate and significant public purpose for the new legislation to exist

If there is a legitimate and significant public purpose, then you must ask if the legislature's impairment of the contract is reasonable and necessary to serve that public purpose

- Courts employ a “very strong” presumption that “legislative enactments do not create **contractual** rights.
- “legislatures should not bind future legislatures from employing their sovereign powers in the absence of the clearest of intent to create vested rights protected under the **Contract Clause**

Chapter 36 of Milwaukee Charter Ordinance (pensions) – “shall thereby have a benefit **contract** in....” – ruled to still not be a contractually protected benefit

Equal Protection using Rational Basis Review

Does this affect a fundamental right? – I don't even know what right would be argued as being affected. Their right to work? Their right to be free from political pressure in a public sector workplace? Might need some more thought here...

- No, this does not effect a fundamental right so the rational basis review is used

Does this law classify people on the basis of race, alienage, gender, or a protected class?

- No state workers are not members of a protected class

Therefore, Rational basis review is used...

1. The law must be designed to fulfill a legitimate state interest
 - a. Current civil service system makes it difficult for the state to manage their employees
 - i. Disciplining or firing a state employee requires a willingness to go to court
 - ii. Bad workers don't get punished, rather they are rewarded based on seniority
 - iii. Inefficiencies in hiring or creating new position
2. The means employed under the law must be rationally related to achieving that legitimate state interest
 - a. Classifying employees as "at will" has negated these issues in the states which has been enacted with little evidence of cronyism or hiring discrimination.

WI uses a five part test to determine whether a classification passes the rational basis test

- A classification must be based on substantial distinctions; 2. A classification must be germane to the purpose of the law; 3. A classification may not be based on existing circumstances only; 4. The law must apply equally to each member of a class; 5. The characteristics of each class should be so far different from those of other classes as to reasonably suggest the propriety of the substantially different legislation (*Omernik v State*, 64 Wis. 2d 19)
 - I'm fairly certain there is not an issue here, any thoughts?

Issues:

1. Due Process – has been addressed that the 14th amendment does not confer a property right in regards to employment, this property right is conferred by a state law (WIS STAT 230.34)
2. Cronyism – kind of a buzz word of sorts, there is already a protection against cronyism using Wis Stat 19.45
3. Not the intent of the legislatures – this is not in the State Constitution but rather the legislature which should not be used to bind future legislation, it is against public policy to promote inefficiency ???

Things still to look into:

1. Shirley Abraham – voted out of Chief Justice seat, made a due process argument

WHISTLEBLOWER LAWS

Wisconsin Whistleblower Law

Protection From Retaliation For Wisconsin Workers - The Whistleblower Law: "Under Sections 230.80-85 of the Wisconsin Statutes, an employee of the State of Wisconsin, except for certain exceptions listed in s. 230.80(3), may not be retaliated against for disclosing information regarding a violation of any state or federal law, rule or regulation, mismanagement or abuse of authority in state or local government, substantial waste of public funds or a danger to public health or safety. An employee may disclose information to any other person. However, before disclosing information to anyone other than an attorney, collective bargaining representative or legislature, the employee must do one of the following: disclose the information in writing to the employee's supervisor, or disclose the information in writing to an appropriate governmental unit designated by the Equal Rights Division. Contact the Equal Rights Division for information about the appropriate governmental unit to disclose information to." (State Of Wisconsin Department Of Workforce Development, "Protection From Retaliation For Wisconsin Workers - The Whistleblower Law," Accessed 9/10/15)

- **Exceptions To This Provision Are A "Person Employed By The Office Of The Governor, The Courts, The Legislature Or A Service Agency," Or A Person Who Is, Or Whose Immediate Supervisor Is Assigned To An Executive Salary Group..." Or Who Works For The Chancellors, Vice-Chancellors, Or Vice Presidents Of The University System Or Specific Campuses.** (Wisconsin s.20.923; Wisconsin s. 36.115(3m)(ae) to (f))

"Victims Of Unlawful Retaliation May File A Complaint With The Equal Rights Division Of The Department Of Workforce Development Within 60 Days After The Retaliation Or Threat Of Retaliation Occurred." (State Of Wisconsin Department Of Workforce Development, "Protection From Retaliation For Wisconsin Workers - The Whistleblower Law," Accessed 9/10/15)

In 2014, The Public Employees For Environmental Responsibility Ranked Wisconsin Tied For Sixth For State Employee Whistleblower Laws. According to this organization, Wisconsin ranked first in the Midwest. (Public Employees For Environmental Responsibility (PEER), State Rankings 2014 Whistleblower Laws, Accessed 9/10/15)

Neighboring States

Minnesota

"Public And Private Employers Cannot Discharge, Discipline, Threaten, Discriminate Against Or Penalize An Employee Regarding Compensation, Terms, Conditions, Location Or Privileges Of Employment Because The Employee In Good Faith Reports A Violation Or Suspected Violation Of A State Or Federal Law Or Rule Or Refuses To Participate In Any Activity That The Employee In Good Faith Believes To Be A Violation Of A State Or Federal Law Or Rule. Remedies include civil action for damages, costs and attorneys fees. Employees are not protected for knowingly making a false statement. A discharged employee must request within five days a written explanation of the reason for their discharge. An employer that fails to notify a discharged employee of the true reason for their discharge within five working days of the employees request will be fined \$25 per day, up to \$750 per injured employee. Any notice provided to an employee cannot be the subject of an action for libel, slander or defamation brought by the employee against the employer." (Minnesota §181.931-937; NCSL, State Whistleblower Laws, November 2010, Accessed 9/10/15)

Michigan

"Employers Cannot Discharge Or Cause The Constructive Discharge Or Discriminate Against An Employee Because The Employee Or A Person Acting On Behalf Of The Employee Reports Or Is About To Report A Violation Of Local, State Or Federal Law To A Public Body Or Is Requested By A Public Body To Take Part In An Investigation, Hearing, Inquiry Or Court Action." "Protections do not apply if the employee knows the report to be false." (Michigan §15.361-369; NCSL, [State Whistleblower Laws](#), November 2010, Accessed 9/10/15)

Iowa

"It Is Unlawful To Discharge Or Take Personnel Action Against A State Employee In Reprisal For A Disclosure Of A Violation Of A Law Or Rule, Mismanagement, Abuse Of Fund, Abuse Of Authority, Or Substantial And Specific Danger To Public Health Or Safety, Unless Such Disclosure Is Specifically Prohibited By Law." "Employees of a state political subdivision cannot be discharged or retaliated against for disclosing similar information to a member of the General Assembly or an official of the state or a political subdivision." (Iowa §§19A.19 & 70A.29; NCSL, [State Whistleblower Laws](#), November 2010, Accessed 9/10/15)

Illinois

"Public Employees Cannot Be Disciplined For Disclosing Information That They Reasonably Believe Shows A Violation Of Any Rule Or Law, Or Mismanagement, Waste Of Funds, Abuse Of Authority, Or Specific And Substantial Danger To Public Health Or Safety." "The reporting employee's name cannot be disclosed without their consent." (Illinois 20 ILCS 415/19c.1; NCSL, [State Whistleblower Laws](#), November 2010, Accessed 9/10/15)

**Public Employees for Environmental Responsibility (PEER)
State Whistleblower Laws - Overview**

# of states w/ coverage	(24) Peers	WI
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A. BREADTH OF COVERAGE

Does the statute cover disclosures of:

1. Violation of state or federal law, rules or regulations	51	6	6
2. Gross mismanagement	27	3	3
3. Abuse of authority (including violations of agency policy)	24	3	3
4. Waste of public funds or resources	37	3	3
5. Danger to health and/or public safety and/or environment	39	9	5
6. Communication of scientific opinion or alteration of technical findings	2	0	
7. Breaches of professional ethical canons	8	5	

Does the statute provide:

8. Employee may refuse to carry out illegal or improper orders	24	1	
9. Prohibition on "gag orders" to prevent employee disclosures	15	1	
10. Whistleblower protection does not preclude collective bargaining or other rights	27	1	1

B. USABILITY: SCOPE OF PROTECTION

Do the laws protect disclosures made to:

1. Any person or organization, including public media	13	20	24
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Or does the statute only protect disclosures made to:

	or		
2. Any state executive or legislative body or person employed by such entities	32	4	
3. Testimony in any official proceeding	30	1	
4. Any state or federal law enforcement or investigative body or entity or its employees	36	3	
5. Any federal or non-state governmental entity	13	3	
6. Co-workers or supervisors within the scope of duty	17	2	
7. Anyone as provided in ¶s 2-6 (above) w/o prior disclosure to another state official or supervisor	29	3	

Does the state law:

8. Require an investigation by state auditor or other investigative entity of whistleblower disclosures	5	1	
9. Have a statute of limitations of one year or longer for filing complaints	44	3	1
10. Allow qui tam or false claim actions for recovery of "bounty" in cases of fraud against the state	21	5	

C. STRENGTH: REMEDIES AGAINST RETALIATION

Does the statute provide for:

1. Prohibition on retaliatory actions affecting state employee's terms & conditions of employment	51	3	1
2. Opportunity for administrative challenge	39	4	4
3. Opportunities for court challenge	40	1	4
4. Trial by jury	3	0	
5. Burden shifting upon prima facie showing.	11	1	1
6. Make whole remedies (court costs, attorney fees, back pay; restoration of benefits, etc.)	49	3	3
7. Actual and/or compensatory damages	35	3	
8. Interim relief, injunction or stay of personnel actions	33	5	3
9. Transfer preference for prevailing whistleblower or ban on blackballing	0	3	
10. Punitive damages or other fines and penalties	31	2	0
11. Personnel actions against managers found to have retaliated	14	3	3

Posting or employee notice of whistleblower rights required.

1. Posting	34	1	
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STATE BY STATE POINT TOTALS		100	70
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October 6, 2015
Assembly Committee on X
Assembly Bill X

Testimony of:
Secretary Ray Allen
Department of Financial Institutions

Good Morning Chairman X, committee members and thank you for giving me the opportunity to testify before your committee regarding Assembly Bill X.

Wisconsin has a long history of being a leader in government reform and this legislation continues that tradition. Assembly Bill X seeks to reform the state's processes for recruitment and retention of employees in a way that will encourage the best to apply and the best to stay in state service. Simply put, certain key portions of the current civil service system are woefully outdated. They need to be modernized so that our state agencies are able to attract and retain the best and brightest employees.

This bill addresses three critical pieces of the recruitment and retention of employees:

- It will streamline the hiring process, a process that often can take months, and at times resulting in qualified applicants accepting other jobs before an offer can be made. A key component of this change is replacing the current self-exam process with a resume-based system. The current exam system often times leads to poorly matched, even unqualified "top candidates." The private sector uses resume-based recruitment, and it's time for the State of Wisconsin to get into the 21st century and employ the same recruitment method.
- Second, this bill will specifically allocate money for state agencies to reward excellent job performance through the Discretionary Merit Compensation program. Making sure our top performers are rewarded for their excellent work sends a powerful message to the entire workforce – and state taxpayers – that we are serious about paying employees for their performance.
- Third, this bill will clearly define "just cause" so that agencies won't have to tolerate egregious on-the-job offenses such as drug use, theft of state property, or threatening co-workers. It is time we give our supervisors the ability to justifiably terminate employees who commit serious violations of our workplace rules.

Allow me to share a couple of examples from DFI's perspective of why the current system is outdated:

- Regarding the length of the hiring process: Over the past X years, the average time it took to recruit, interview and hire for open positions took, on average, nearly four months. The maximum recruitment time for one of our positions was 239 days, or nearly eight months. Delays such as those place an undue burden on the rest of our staff and, more importantly, impede our ability to provide timely customer service to our constituents. Under the changes being proposed, a goal of 30 days to employment offer would be set for agencies after they receive resumes for a vacant position. This would be a very welcome improvement.
- Regarding disciplinary action: We had an employee who was disciplined three times over 11 years. The first incident was a work-rule violation. It took the agency a month to

invoke a 2-day suspension, at a cost of \$2,000 to the agency. The second incident involved purchasing card abuse. After 2 months, a 5-day suspension was invoked. Cost to the agency? \$3,100. The third incident involved purchasing card abuse, falsification of records, and misuse of state-owned equipment. It took the agency 3 months to place the employee on 3 weeks of administrative leave and finally reach a termination settlement, at a cost of \$31,000 to the agency. Total cost of dealing with this employee's unacceptable behavior: \$36,100.

In closing, I want to address what I believe is a common misperception about the current exam process. When you say the words "civil service exam," I believe that many people think the exam is some sort of universal tool that measures the aptitude of the applicants. It's not. In many cases, the "exam" is a self-assessment survey that gives applicants the opportunity to answer open-ended questions about themselves or rate themselves on a series of skills, the responses to which may or may not match the applicant's real-life experience level.

In either case, the current "civil service exam" affords applicants the opportunity to engage in creative writing about their life experiences or overstate their own qualifications. The "score" that an applicant receives on his or her "civil service exam" can be very misleading. Let's do away with that cumbersome and outdated part of the process and use resumes as the first step in identifying the most qualified candidates. The private sector has been using resume-based recruitment and screening for decades. It's time state agencies entered the 21st century and used a resume-based system for screening applicants.

The common sense reforms included in this bill will give us the ability to modernize our recruitment and retention efforts while at the same time maintaining and enhancing the core principles of Wisconsin's civil service system. Just because something is 100-plus years old doesn't mean it is somehow above change. The current system is antiquated and ineffective. Let's give our state agency leaders the tools they need to hire, keep and reward great employees.

October 6, 2015

Senate Committee on Labor and Government Reform

Senate Bill 285

Deputy Secretary Cate Zeuske

INTRO:

Good morning, Chairman Nass and committee members. Thank you for giving me the opportunity to testify before the Senate Committee on Labor and Government Reform regarding Senate Bill 285, the Recruitment and Retention Reform legislation.

TESTIMONY:

Under Governor Walker's leadership, the administration has made it a priority to provide quality and efficient services to taxpayers as well as State employees. At the Department of Administration, we have been implementing lean government initiatives, developing the STAR project, and working on establishing a shared services model for state government, as directed in the most recent budget. With these important projects underway, DOA has already begun to realize efficiencies in the services we provide to taxpayers and employees.

Further developing on these goals, Senate Bill 285 requires DOA to consult with each state agency to develop a plan for assuming the responsibility of human resources services. DOA will have to finalize this plan by January 1, 2017. DOA currently provides HR services for 24 agencies and over 2,300 employees. This shared services model was established in 2005 under the Accountability, Consolidation and Efficiency Initiative. Furthermore, current law centralizes HR services at DOA, but allows the department to delegate the services to other agencies. DOA has in the past delegated HR services to numerous, often larger, agencies. Senate Bill 285 requires a true consolidation of HR services, which will create efficiencies as well as quality and uniform services for state employees.

In working to develop a shared services pilot program, as directed by the 2015-2017 biennial budget, DOA has looked towards Utah, Ohio, Iowa, and Tennessee – four states who have all successfully implemented shared services models for human resources, finance, IT, and procurement. After studying these successful shared services models, DOA has learned important lessons that will make the HR shared services model in SB 285 highly successful:

- Stay flexible and take the time to do the process right – shared services is not a one size fits all program for each agency or for each shared service.
- Human resources consolidation allows for important uniformity in the services that are offered to state employees.
- Provide all the information and tools necessary for employees
- Continuous improvements will be needed in order to ensure the most efficient and quality HR services for employees

It is important to note that Utah was able to implement shared services for human resources, procurement, finance, administrative rules, facilities, fleet risk management and IT without moving any of their employees.

For state employees, there is currently 1 HR person for every XXXXXXXXX employees. By developing the shared services plan called for in SB 285, the state will be able to provide the same services for employees at an estimated ratio of XXXXXXXXXXXXXXXX, without eliminating positions, and instead by not filling vacancies in HR departments. For comparison purposes, the state of Iowa has a ratio of XXXXXXXXXXXXXXXX after the state adopted shared services. Further, the private sector average is XXXXXXXXXXXXXXXX [if this data is available]. From this information, it is clear that SB 285 will align Wisconsin's HR services more closely with other states and the private sector.

Previously, Wisconsin did not have the ability to implement a meaningful shared services model due to outdated technology. However, with the ongoing implementation of STAR the state now has the technology and data to create and develop shared services. The STAR implementation is updating the technology used for procurement, finance, payroll, and human resources into one uniform PeopleSoft program across the enterprise, replacing numerous outdated and cumbersome programs. With the successful launch of Phase 1 (procurement and finance) earlier this month, the state is already beginning to see how the more accurate data can be used to realize efficiencies.

CONCLUSION:

Again, thank you Chairman Nass and committee members for allowing me to testify on the importance of Senate Bill 285. I am happy to take any questions from the committee at this time.

Recruitment and Retention Reform Public Hearing Senate Labor and Government Reform Committee

Department of Revenue
Deputy Secretary Jack Jablonski

October 6, 2015

Introduction

Thank you for the opportunity to testify in favor of the Recruitment and Retention Reform legislation as introduced by Senator Roth and Representative Steineke.

The Walker administration has made it a priority to deliver taxpayer services in an efficient and effective manner. At the Department of Revenue, we have improved our ability to deliver quality and affordable government to taxpayers because of changes made in Act 10, our Lean Government initiatives, and the administration's ongoing efforts to target and combat fraud.

The recruitment and retention reform bill as offered by the Legislature today is a continuation of these efforts that will modernize hiring practices, enhance integrity of the state employees that serve, and enable better management throughout state government.

Recruitment

At the Department of Revenue, hiring capable employees requires timeliness in recruiting and responding to applicants. In 2013, DOR undertook a comprehensive effort to apply lean principles to our hiring process in an effort to reduce the number of days it takes from an approval to fill a position to an offer a candidate. Before the lean project, the average was 155 days. Today it stands at 57 days.

However, even after an exhaustive commitment through administrative actions to narrow this timeline, we know more must and should be done. Eliminating a cumbersome and outdated examination process that requires redirecting resources beyond human resources will allow us to keep auditors auditing, assessors assessing, and economists forecasting.

A recent panel evaluating written examinations for an attorney position had more than 50 applications that required two attorneys and a compliance manager to spend a day and a half grading them. Just as bad as the lost productivity is the barrier the examinations we present to potential applicants. You will find few dedicated current state employees that think we should spend more time grading

such examinations, especially since an interview process that holds more weight follows.

We believe the goal of 30 days to an employment offer can be met by moving to a resume-based screening system that is consistent with good hiring practices.

Having a shorter timeline to get to an employment offer will enable us to access the best set of candidates. Many of our managers grow frustrated by the length of time the hiring process takes – and are filled with stories of top candidates that we lost because other organizations make offers much quicker. We operate in a competitive environment and must move to update our hiring procedures accordingly. In a world where you can file a resume with the web site Indeed.com and get a response from an employer in hours, a hiring timeframe of 150 days, 100 days, or even 50 days is laughable to the next generation of prospective employees.

Probably many of you have heard how ridiculous some of these examples can be. In one case I knew before I got to the agency, an employee applied in the summer of 2010 and did not hear back from the DOR until six months later. I fear there are many examples where the state lost valuable talent because of our antiquated processes. In a time where more than 50% of DOR employees will be eligible for retirement in the next five years and 32% are eligible today, it is incumbent for us to be competitive.

Retention

The second issue of retention is more than just about terminating employees that betray the public trust.

By and large, the state employees that I work with on a daily basis are committed to public service. However, it can only take a few employees to drag down morale and corrode a work unit.

It is not uncommon for groups of state employees to come to management, including me, asking for action against an employee that has either performance or misconduct issues. Often, under our current set of laws, the solution requires a vast amount of time and resources to get results.

This legislation will significantly assist us in building a positive work environment. There are many changes that I would applaud in this regard:

Extending to two year probationary periods will ensure we are not burdened with employees for years because we did not have the necessary on-the-job experience to make a judgement at six months. For example, attorneys might not often have completed a case in this timeframe for us to judge performance. An economist's first modeling project might extend beyond six months. There is

no downside to extending the probationary period, and this provision is supported by the many managers and supervisors that are charged with making personnel decisions.

Improving the provisions regarding "just cause" for certain misconduct will maintain the integrity of all state employees. If an employee is stealing, falsifying records, or inflicting personal harm, we believe the ability to terminate should be easy and clear. Remarkably, the Department has lost arbitration cases when terminating an employee who engaged in theft. We believe this reform legislation sends the right message – taxpayers deserve to be served with integrity and state employees should not be tarnished by the actions of a few.

We also welcome changes on job abandonment, moving the number of days from 5 consecutive to 3 over a calendar year. One of our employees over less than a year and a half time frame was absent 14 days without notification. We were finally able to move to termination after a time consuming process. If we were able to terminate the employee after the third absenteeism, we would have avoided a lengthy and costly 18 month process of reprimands and suspensions. Along the way, this employee consumed management time and added in an additional 25 tardy appearances.

Finally, we believe the added resources for a discretionary merit award program will allow us to both incentivize and reward top employees. The Department of Revenue has worked to provide a very transparent DMC program since its origination in 2011, with input from employees and oversight from our full management team.

These retention measures will help maintain a positive work environment for state employees by eliminating those that betray the public trust and impugn the reputation of all state employees. Furthermore, it will provide the tools to reward and review employee performance.

Conclusion

Once again, thank you for the opportunity to testify. We are pleased that the Legislature is working with the administration to streamline hiring and prioritize merit and job performance, while providing management the resources consistent with best practices.



Scott Walker
Governor

Richard G. Chandler
Secretary of Revenue

Recruitment and Retention Reform Public Hearing Senate Labor and Government Reform Committee

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However, even after an exhaustive commitment through administrative actions to narrow this timeline, we know more must and should be done. Eliminating a cumbersome front-loaded exam process will allow us to better hire quality candidates while better expending resources on meaningful work.

A recent panel evaluating written examinations for an attorney position had more than 50 applications that required two attorneys and a compliance manager to spend a day and a half grading them. Just as bad as the lost productivity is the barrier the examinations present to potential applicants. You will find few dedicated current state employees that think we should spend more time grading such examinations, especially since an interview process that holds more weight follows.

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Having a shorter timeline to get to an employment offer will enable us to access the best set of candidates. Many of our managers grow frustrated by the length of time the hiring process takes – and are filled with stories of top candidates that we lost because other organizations make offers much quicker. We operate in a competitive environment and must move to update our hiring procedures accordingly. In a world where you can file a resume with the web site Indeed.com and get a response from an employer in hours, a hiring timeframe of 150 days, 100 days, or even 50 days is laughable to today's graduates entering the workforce.

Probably many of you have heard how ridiculous some of these examples can be. In one case I knew before I got to the agency, an employee applied in the summer of 2010 and did not hear back from the DOR until six months later. I fear there are many examples where the state lost valuable talent because of our antiquated processes. In a time where more than 50% of DOR employees will be eligible for retirement in the next five years and 32% are eligible today, it is incumbent upon us to be competitive.

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LRB—2783/P4

DOA—DPM Comments

SK Section 2 – This indicates DMC lump sum awards will be granted through funds create at this section. Is it accurate that the DMC/DERA program set forth in the compensation plan, per 230.12(1)(a)2, Wis. Stats., which allows agencies to fund their own lump sum DMCs, will continue?

SK Section 23 – repeals Section 230.12(1)(h) , which is problematic. Eg, all of section K in comp plan is created under this provision (eg, allows holidays / vacations for various groups; continuous service). This provision could be revised to make it more narrow if required, but should not be repealed.

SK Section 24, I. 24 – an example of a place where examination “scores” are still referenced. Needs a double-check for editing.

SK Section 29 – requires no later than 30 days – this conflicts with 230.25(2)(b) where 60 days is allowed.

Section 32 – Needs to be retitled to application and evaluation procedures – applications and resumes is a too narrow focus on only one stage in the process, where subsequent stages are addressed in the provisions that follow.

SK Section 33 – 230.16(1)(a) as amended requires everyone who applies for a state job to submit an application and resume – there should be the option for this director to waive this. (can't get resumes for 4,000 correctional recruits)

-also, I 16 – the reference to “civil service” includes both classified and unclassified. This underscores the need to provide for the waiver.

SK Section 34 – ll 19, 24, and 4 – references to the administrator should reference the director

SK Section 35 – Do not repeal this provision. Ok to take out our references to examinations, but need to maintain that the competitive process shall be free and open to all applicants and that the process shall occur at times and places that meet the convenience of applicants and needs of the service.

SK Section 36 – This provision does not address the interview process. The oral board is a specific type of evaluation process. The statute does not address the interview process, and it would take extensive work to do so.

Section 37, l. 21 – “Eligibility requirements” could be read very narrowly to apply only to the very first step in the process, to allow for biased selections later in the process. This phrase should be replaced with “selection criteria”.

Section 38, ll 6-7 – Do not strike this line; instead replace “examination” with “evaluation process”.

Section 38, ll 9-10 – Using phrase “applications, resumes, and oral evaluations” is too narrow. This should read “evaluation process”.

Section 39 – 230.16(6) is repealed, but needs to be maintained for legal protection. Could read “The director will develop procedures to ensure that an applicant is not prohibited from participating in a selection process due to a disability.”

Section 40 – This new system does not allow for a situation in which scoring is not available. Needs to be created to allow for that possibility.

Section 43 – 230.16(9) is repealed. This needs to be maintained to ensure space for evaluation processes.

Section 44 – 230.16(10) is repealed. Needs to be maintained, but remove “examinations” and add “evaluation process”.

Section 45 – 230.16(11) – resume, application, and oral evaluations is too narrow – needs to include “and other parts of the evaluation process”.

Section 48, l.17 – Instead of adding oral evaluation, should add “any part of the selection or evaluation process”.

Section 56, l.24 – where “examination” is struck, “evaluation” should be added.

Section 50 repeals 230.19(2) such that promotional opportunities may only be provided to state employees through recruitments that are open (ie, no closed recruitments that would result in a promotion). But Section 57 allows for closed recruitment for career executive promotional opportunities. Is this discrepancy intended?

Section 66 amends 230.28(1)(a) to provide for a 2-year probationary period for original and promotional appointments to permanent, sessional and seasonal positions; Section 67 amends 230.28(1)(c) to create two-year probations for supervisory and managerial employees, but contains a one-year waiver option. We understood it was the intention to provide the waiver option for non-supervisory, non-managerial employees under 230.28(1)(a), as well.

Section 69 amends 230.28(1)(c), which addresses lengthened probationary periods. This section needs to be repealed, because there is no option for lengthening remaining after the amendments created by the legislation.

-Section 70, which addresses probation for employees returning from layoff, is repealed. Subsection 6 should be retained and revised to address a person with "reinstatement eligibility" resulting from layoff rather than "right of restoration". This is consistent with the general preservation of reinstatement eligibility resulting from layoff.

Reinstatement / Restoration –

-This legislation eliminates reinstatement rights and restoration eligibilities in most cases. Is it intended that employees currently possessing reinstatement eligibilities and restoration rights will lose them? Or will they have them until their natural expiration?

-Section 5 amends 36.115(6) to eliminate reinstatement privileges for former classified UW employees. Same as question above – do employees retain the rights and eligibilities they were formerly granted until they expire?

-Section 71. Was it the intent going forward to eliminate reinstatement for employees who have no separated from state service? For example, an employee who demotes has reinstatement eligibility to the previously held higher level for 5 years. The return to the higher position is classified as a reinstatement to prevent yo-yo transactions whereby the employee may receive an increase each time they promote.

Section 75 – Despite the fact that items are listed as constituting just cause, there are still due process considerations.

~~X~~ Section 77 – Identifying working days rather than consecutive days could have unintended consequences.

Section 78 – The rules for this should be established by the DOA—DPM Director, not the appointing authority. Should add "pursuant to rules established by the director" here.

Section 91. 1. 3 – Reads compliant instead of complaint.

Section 91 – What happens if the Commission does not issue a decision in a timely manner? Does it lose jurisdiction? Is the grievance denied?

— technical amendment —

Section 91 – How does this interact with the existing procedure in the WHRH Chapter 430? ER Chapter 46? 230.04(14)?

Section 94 requires the development of plans for consolidated HR and Section 95 requires a study and report to be completed in all DPM functional areas, both by 1/1/17. Without the significant addition of resources, this timeframe is not feasible. Also, clarification needed as to what is being sought by study / report.

Appears to be a problem with the veterans changes, which cannot be examined in the time allotted. We are happy to provide an analysis to this in a separate document.

- only accndy to ment & fitness