

Wisconsin Human Resources Handbook

Chapter 716

Annual Leave/Holiday Benefits

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Sec. 716.010 Introduction

The purpose of this chapter is to provide guidance in determining annual leave and holiday benefits eligibility. The provisions in this chapter apply as follows:

1. They have full application to:
 - a. Nonrepresented classified permanent and project employees.
 - b. Unclassified employees in the executive branch of State government *except* elected officials.
 - c. Unclassified officials of the University of Wisconsin system identified in s. 20.923(4), or (4m), Wis. Stats.
 - d. Unclassified staff of the legislature identified in s. 20.923(4), Wis. Stats.

Note: The provisions in this chapter also apply to project craft employees. These employees do *not* have the option to select the additional week of annual leave as provided to represented craft employees under the collective bargaining agreement.

2. They do *not* apply to:
 - a. Employees covered by a collective bargaining agreement.
 - b. Elected officials.
 - c. Employees of the judicial branch of State government.
 - d. Unclassified employees of the University of Wisconsin system *except* those identified in 1., c., above.
 - e. Unclassified employees in the legislative branch of State government *except* those identified in 1., d., above.
 - f. One stenographer employed by each elective executive officer under s. 230.08(2)(g), Wis. Stats.
3. They have limited application to:
 - a. Boys and girls employed in youth camps (these employees receive payment at a rate of time and one-half for work performed on a holiday, see b., below).
 - b. Limited term employees. (See section 716.050, 2., c., 3), of this chapter, relative to pay for work performed on a holiday by limited term employees.)

Sec. 716.020 Statutory and Rule Authority

1. Section 230.35, Wis. Stats., sets forth the provisions for granting annual leave/holiday benefits to nonrepresented classified and eligible unclassified employees.
2. Section ER 18, Wis. Adm. Code, Rules of the Office of State Employment Relations, sets forth the policies to be followed in the administration of annual leave/holiday benefits.
3. Chapter ER 18.02(2), Wis. Adm. Code, sets forth the policies to be followed in calculating continuous service for employment other than project, and ss. ER 34.06(4) and (5), Wis. Adm. Code, for project employment.

Sec. 716.030 Definitions

For purposes of this chapter, terms are defined as follows:

1. Effective Date of Termination of an employee means the date of the employee’s resignation as determined under Chapter ER 21, Wis. Adm. Code, or the date specified by the appointing authority for involuntary termination. In either case, the effective date of termination should be, but need not always be, the day the employee was last physically present for work or the last day of an employee’s approved paid or unpaid leave of absence. Temporary layoff shall be treated as a leave of absence.
2. “Leave Credits means earned but unused annual leave, termination leave, sabbatical leave, sick leave, personal and legal holiday time, and holiday compensatory time off. Leave credits do not *include* compensatory time off credits earned for working overtime.”
s. ER 18.01(5), Wis. Adm. Code
3. “Pay Status means the status of an employee when receiving payment for hours worked or paid leave. Pay status does not mean the status of an employee while on a leave of absence without pay, on layoff, serving a suspension without pay, or receiving income continuation or worker’s compensation benefits.”
s. ER 1.02(24), Wis. Adm. Code
4. Termination/sabbatical is annual leave that was deferred during the year earned to be used in a subsequent year to extend the annual leave, unless used for termination leave. As such, termination/sabbatical leave is subject to the same usage and scheduling policies as annual leave.

Sec. 716.040 Annual Leave

1. Amounts.
 - a. Full-time employees in Fair Labor Standards Act (FLSA) nonexempt status are provided annual leave in an amount based on their accumulated continuous service as designated in the following table (see s. 230.35(1), Wis. Stats., s. ER 18.02(3)(c)1., Wis. Adm. Code):

<u>Full Years of Service</u>	<u>Hours Earned Each Year</u>
During First 5	104
5+ to 10	144
10+ to 15	160
15+ to 20	184
20+ to 25	200
25 & Over	216

Note: The information provided in a., above, reflects a change in eligibility for the schedule pursuant to s. 230.35(1m), Wis. Stats., in accordance with 2005 Wisconsin Act 21. The changes are effective January 1, 2005, for such employees in state service on or after July 23, 2005, and for those employees who died, retired or were laid off between June 12, 2005 and July 23, 2005. At the time of issuance for this handbook chapter, s. ER 18.02(3)(c)1., Wis. Adm. Code, had not yet been revised to reflect the change in the statute.

- b. Full-time employees in FLSA exempt status are provided annual leave in an amount based on their accumulated continuous service as designated in the following table (see s. 230.35(1m), Wis. Stats., s. ER 18.02(3)(c)3., Wis. Adm. Code):

<u>Full Years of Service</u>	<u>Hours Earned Each Year</u>
During First 5	120
5+ to 10	160
10+ to 15	176
15+ to 20	200
20 & Over	216

- c. Employees who are regularly employed for less than 2088 hours per year (seasonal, session, school year, and part-time) are granted prorated annual leave in accordance with the above tables, based on up to a maximum of 80 hours per biweekly pay period. A projection of the number of hours in pay status in the calendar year is used to anticipate the amount of annual leave that each employee will accrue during that year. If an employee's *actual* hours in pay status differs from the projected hours, the employee's annual leave balance must be adjusted accordingly (see s. ER 18.02(6)(b)5., Wis. Adm. Code).

Note: For employees whose actual hours in pay status are *less than* their regularly scheduled hours of work in the pay period, an adjustment to the annual leave balance is made automatically by the payroll system. For employees whose actual hours in pay status exceed their regularly scheduled hours of work in the pay period, agencies are not required to make manual adjustments on a biweekly basis but rather should establish a timeframe (e.g., annual or biannual) for making these adjustments which leaves sufficient time for employees to use any additional annual leave earned.

- d. When an employee's annual leave earning rate changes during a calendar year, or when an employee terminates, retires, or dies, the amount of leave for which the employee is eligible is computed for the applicable portion of the year using the hourly conversion table in e., below.
- e. When computation on an hourly basis is needed, the following conversion table shall be used (see s. ER 18.02(4)(d), Wis. Adm. Code):

Annual Leave Rate	Conversion Factor
80 hour rate	.038314 per hour
104 hour rate	.049808 per hour
120 hour rate	.057471 per hour
136 hour rate	.065134 per hour
144 hour rate	.068966 per hour
160 hour rate	.076628 per hour
176 hour rate	.084291 per hour
184 hour rate	.088123 per hour
200 hour rate	.095785 per hour
216 hour rate	.103448 per hour

2. Usage.

Note: Annual leave credits donated or received under the Catastrophic Leave Program will be subject to the carry over provisions specified s. ER 18.15, Wis. Adm. Code. Comprehensive information is provided in Handbook Chapter 752, entitled "Catastrophic Leave Program."

Note: Annual leave credits accrued just prior to, or while on, military leave are exempted from the rules described below. See bulletin OSER-0046-CLR/LR dated August 4, 2004.

Annual leave shall be taken during the calendar year in which it is earned as provided in s. ER 18.02(6), Wis. Adm. Code, *except* as follows:

- a. Employees who request and receive approval from their appointing authority or are required by their appointing authority to defer all or part of their annual leave for a given calendar year shall be permitted to take it within the first six months of the ensuing calendar year.
- b. However, employees who are unable to take unused annual leave as provided in a., above, due to their work responsibilities shall be granted an additional six month extension of time in which to use the annual leave. Any such extension shall be approved by the appointing authority. Any carried over leave credits remaining on December 31 shall be dropped. This limit does not apply to leave designated as termination/sabbatical leave under the provisions of s. ER 18.02(5)(a)2., or (b)2, Wis. Adm. Code.
- c. Employees granted additional leave during the last six months of the calendar year due to changes in the projected number of hours in pay status shall have the remainder of the calendar year and the first six months of the ensuing calendar year in which to use the additional leave earned in the previous year.
- d. Employees completing the first six months of continuous service as defined in section 716.020(3), of this chapter, during the *first* six months of the calendar year shall have the remainder of the calendar year in which to use annual leave earned in the previous year.
- e. Employees completing the first six months of continuous service as defined in section 716.020(3), of this chapter, during the *last* six months of the calendar year shall have the remainder of that calendar year and the first six months of the following calendar year in which to use annual leave earned in the previous year.
- f. Permanent and project employees are not eligible to take annual leave during the first six months of the most recent period of continuous service in the classified service. Continuous service earned during employment in the unclassified service *does not count* toward this six month qualifying period (see s. ER 18.02(3)(a), Wis. Adm. Code).
- g. Unclassified employees are not required to complete a qualifying period prior to taking annual leave.

Examples :

An employee has been in a classified position for three months and is serving a six-month original probationary period. The employee transfers to a new classified position and begins a new six-month original probationary period. The employee is eligible to use annual leave after three months in the new position (when a total of six months of continuous service has been reached).

An employee is appointed to an unclassified position. The employee may begin using annual leave immediately since unclassified employees are not required to complete a qualifying period prior to using annual leave.

The unclassified employee is subsequently hired into a classified position on an original appointment and begins a six-month original probationary period. The employee is not eligible to use annual leave until the six-month probationary period has been completed because continuous service earned during employment in the unclassified service does not count toward the six-month qualifying period required in the classified service.

Sec. 716.050 Legal Holidays

1. Amount.

- a. The State of Wisconsin grants full-time, nonrepresented employees nine days of paid leave per calendar year for the following legal holidays in accordance with s. 230.35(4)(a), Wis. Stats.
 - 1) January 1 (New Year's Day) - 8 hours
 - 2) Third Monday in January for Martin Luther King, Jr. Day - 8 hours
 - 3) Last Monday in May for Memorial Day - 8 hours
 - 4) July 4 (Independence Day) - 8 hours
 - 5) First Monday in September (Labor Day) - 8 hours
 - 6) Fourth Thursday in November (Thanksgiving Day) - 8 hours
 - 7) December 24 (Christmas Eve Day) - 8 hours
 - 8) December 25 (Christmas Day) - 8 hours
 - 9) December 31 (New Year's Eve Day) - 8 hours
- b. If January 1, July 4, or December 25 fall on a Sunday, state offices are closed on the following day. Therefore, employees working the regular workweek observe the holiday by not reporting for work on the Monday following the respective holiday.

2. Eligibility for Paid Leave and Equivalent Time Off.

- a. Eligibility for paid leave for a holiday.

An individual must be an employee on the holiday *and either* work on the holiday, *or* be in pay status on the last scheduled workday immediately preceding the holiday or on the first scheduled work day immediately following the holiday. An employee who terminates employment immediately prior to a holiday or a person who becomes an employee immediately after the holiday, shall not be paid for the holiday. *Exception:* School year employees on a leave of absence requested by the appointing authority due to classes not being in session, shall receive pay for all holidays which occur during that leave of absence provided they work or are in pay status on the last scheduled day immediately preceding or the first scheduled day immediately following such leave of absence.

Examples (Termination):

If an employee's effective date of termination is at the end of the day immediately preceding a holiday, the employee is not eligible for pay for that holiday. For example, an employee who terminates effective the end of the workday on July 3 when it is the Friday before the Saturday/legal holiday of July 4 is not eligible for pay for that Saturday holiday. If the employee has already used some or all of this Saturday holiday, payment for the number of hours used must be collected from the employee in accordance with section 716.080(4), of this chapter.

If an employee's effective date of termination is at the end of the day on the holiday, the employee is eligible to receive pay for the holiday. For example, an employee who terminates employment effective at the end of the day on Saturday, July 4, is eligible for pay for the holiday.

The conditions outlined in the examples above also apply to dual holidays (i.e., December 24/December 25 and December 31/January 1). For example, if December 31 and January 1 fall on a Thursday and Friday; then the following apply:

- 1) *If an employee's effective date of termination is at the end of the last scheduled workday on Wednesday, December 30, the employee is not eligible for pay for the two holidays.*
- 2) *If an employee's effective date of termination is at the end of the day on Thursday, December 31, the employee is eligible for pay for the December 31 holiday, but is not eligible for pay for the January 1 holiday.*
- 3) *If an employee's effective date of termination is at the end of the day on Friday, January 1, the employee is eligible for pay for the two holidays. In addition, since the employee is in pay status for one day in the new calendar year, the employee is also entitled to the personal holidays as provided in section 716.060, of this chapter.*

Examples (Leave of Absence):

If an employee's last day in pay status prior to beginning an unpaid leave of absence is the last scheduled work day prior to the holidays (Wednesday, December 30), the employee is eligible for pay for the two holidays (i.e. December 31 and January 1).

If an employee returns to pay status from an unpaid leave of absence on Monday, January 4, which is the first scheduled workday following the holidays, the employee is eligible for pay for the two holidays.

- b. Time off with pay for hours worked on a holiday.
- 1) Except as specified in b., 2., below, an employee required to work on any of the legal holidays enumerated under 1., a., above, will be granted the number of holiday hours (or a prorated number for part-time employees) off at a future date.
 - 2) When January 1, July 4, or December 25 fall on a Sunday, the Monday following the holiday is treated as the holiday for purposes of time off with pay. Consequently, no holiday time off with pay is provided for work performed on a Sunday holiday. An employee required to work on the Monday following the Sunday holiday will be granted the number of holiday hours (or a prorated number for part-time employees) off at a future date.
 - 3) Time off with pay granted for hours worked on a holiday pursuant to c., below, may not be used until after the holiday for which the time is granted has occurred. Prospective use of compensatory time off is not permitted (see s. ER 18.04(2)(b)5., Wis. Adm. Code).
- c. Pay for hours worked on a holiday.
- 1) An employee required to work on any of the legal holidays enumerated in 1., a., above, shall receive compensatory time off or cash payment, either of which will be at the rate of time and one-half, for all hours worked on the holiday. The employee will also be granted time off with pay as provided under the provisions of either b., 1. or 2., above, as applicable.
 - 2) An employee required to work on the Monday following a Sunday holiday (enumerated in 1., b., above) will be compensated at the straight time rate. The employee will also be granted time off with pay as provided under b., 2., above.
 - 3) Limited term employees shall be paid cash at the rate of time and one-half for all time worked on a holiday.

Examples:

A full-time employee who works eight hours on Sunday, July 4, receives pay for eight hours at a time and one-half rate; the employee does not receive eight hours of paid holiday leave for use at a future date.

A full-time employee who works eight hours on Monday, July 5, receives pay for eight hours at the straight time rate and also receives eight hours of paid holiday leave for use at a future date.

- d. When a holiday falls on an employee's regularly scheduled day off, including holidays which occur on Saturday or are observed on a Monday when the holiday occurs on a Sunday, the employee will be granted equivalent time off. Such time off shall be scheduled at the discretion of the appointing authority who may permit such time to be anticipated or carried over to the next calendar year and used on the same basis as annual leave.

- e. Employees working nonstandard work schedules such as full-time employees working four 10-hour days weekly or part-time employees who alternately work an 8-hour day and are off an 8-hour day, should be advised to use their paid holiday hours each year to maintain a uniform number of hours in pay status reported for them each pay period. Thus, they will receive their regular pay regardless of when the holiday occurs. Use of annual leave or working additional hours may be necessary to supplement regularly scheduled work hours during a pay period in which a holiday occurs.

Example: *A 100% employee works four 10-hour days per week, Monday through Thursday. Christmas Eve Day and Christmas Day fall on a Tuesday/Wednesday. In order to be paid for 80 hours that pay period, the employee must either supplement the two 8-hour holidays with four hours of other paid leave (excluding sick leave) or work an additional four hours in the pay period (two hours for each holiday).*

Note: It may be necessary to require FLSA nonexempt employees working additional hours to supplement regularly scheduled hours to do so during the “defined work week” rather than the “pay period” to avoid incurring premium overtime.

- f. Employees who are regularly employed for less than 80 hours per biweekly pay period are granted a prorated amount of paid legal holiday time consistent with the employee’s regularly scheduled hours per pay period *at the time the holiday occurs* (see s. ER 18.04(3)(c), Wis. Adm. Code).

Examples:
A 50% FTE employee is directed to work 100% during the pay period in which Memorial Day occurs. Because the award of legal holiday hours is based on hours in pay status in the pay period in which the legal holiday occurs, this employee will receive the full 8 hours of legal holiday for Memorial Day rather than the usual prorated amount.

A 100% FTE employee requested and was approved to work a reduced schedule (75%) from March 1 through September 30. Because the award of legal holiday hours is based on hours in pay status in the pay period in which a legal holiday occurs, this employee will receive only 6 hours (75%) of holiday time for each of the holidays that fall during the term of the employee’s reduced schedule.

Sec. 716.060 Personal Holidays

1. In addition to the legal holidays enumerated in section 716.050, of this chapter, full-time, nonrepresented employees earn three and one-half personal holidays (equivalent to 28 hours of paid leave), plus one personal holiday in recognition of Veterans Day (equivalent to 8 hours of paid leave), each calendar year. These 36 hours of personal holidays are to be used at the discretion of the appointing authority based on the needs of the service and the preferences of the employee. Personal holidays earned each year are noncumulative except that, if an appointing authority fails to give an employee the opportunity to take all personal holiday hours during the calendar year in which they are earned, the employee may carry over the remaining personal holiday hours to the ensuing calendar year, but such carryover is limited to that subsequent year.

Note: The information regarding a personal holiday in recognition of Veterans Day reflects a change in s. 230.35(1m), Wis. Stats., effective January 14, 2004. This change was made in accordance with 2003 Wisconsin Act 117. At the time of issuance for this handbook chapter, ss. ER 18.04(4), Wis. Adm. Code, had not yet been revised to reflect the change in the statute.

Note: Personal holidays accrued just prior to, or while on, military leave are exempted from the rules described below. See bulletin OSER-0046-CLR/LR dated August 4, 2004.

Employees serving the first six months of a probationary period for an original appointment as defined in s. ER 1.02(22), Wis. Adm. Code, or an equivalent trial period for project employees, are eligible to take anticipated personal holidays. However, in the event the employee fails to complete such a period of service,

any personal holiday time granted will be changed to approved leave without pay by the agency and the value of the time used shall be recovered from the employee.

2. Employees who are regularly employed for less than 80 hours per biweekly pay period are granted a prorated amount of paid personal holiday time. The maximum amount granted is governed by the percentage of budgeted FTE designated for the position to which the person was appointed. When a new certification request is effectuated during the calendar year to change the percentage of FTE of a position:

- a. If the change results in an *increase* in the percentage of FTE, the number of personal holiday hours generated for the employee will change on the transaction effective date appearing on the certification request.

Example: A 50% FTE position is increased to 100% effective in November. A manual adjustment must be made to provide the employee the additional personal holiday time necessary to equal the full 36 hours for the calendar year.

- b. If the change results in a *decrease* in the percentage of FTE, the number of personal holiday hours generated for the employee will not change until the beginning of the next calendar year.

Example: A 100% FTE position is decreased to 50% effective in March. The employee still receives the full 36 hours of personal holiday time for that calendar year. Effective with the **beginning of the subsequent calendar year**, the employee will receive a prorated amount of **personal holiday time**.

3. An employee who moves to a nonrepresented position from a represented position, which was covered by a collective bargaining agreement providing three and one-half days of personal holiday, will be granted an additional day of personal holiday.

Sec. 716.070 Treatment of Leave Credits Upon Movement Within State Service

Note: For more detailed information, including a guide to determine which employees are covered or not covered by transfer of leave credit provisions, see Wisconsin Human Resources Handbook Chapter 732 Transfer of Continuous Service and Accumulated Leave Credits Upon Movement within State Service.

Note: Compensatory time credits earned are nontransferable between agencies. If these credits are not used while the employee holds a position in the agency in which the compensatory time credits were earned, the credits must be paid in a lump sum amount by the sending agency upon the employee's movement from that agency to a new position in a different agency. For more detailed information, see Wisconsin Human Resources Handbook Chapter 520 Administration of the FLSA Overtime Provisions for State Classified Employees and Certain Unclassified Employees.

1. Except as noted otherwise in this paragraph, upon entry to employment covered by these provisions from state employment which was not covered by these provisions, leave credits accumulated under the employment not covered by these provisions may be retained by the employee upon mutual agreement between the employee and the new appointing authority. Such agreements are subject to approval by the Director of the Office of State Employment Relations. When positions are converted from the unclassified to the classified service, benefits for employees who remain in such positions pursuant to a waiver of competition under s. 230.15(1m), Wis. Stats., are determined by the Director of the Office of State Employment Relations.
Represented employees who move to a nonrepresented position shall be treated as employees in 2., below. Treatment of leave credits for employees moving between represented positions shall be in accordance with the applicable collective bargaining agreement.
2. When an employee moves from a position to a different position, both of which are covered by the annual leave/holiday benefit provisions described herein, any unused accumulated leave credits shall be assumed by the new appointing authority.

3. When an employee in a covered position moves to a state position not covered by these provisions, the employee may carry forward any unused accumulated leave credits to his/her new place of employment providing the new appointing authority agrees to assume them.
4. When an employee in a covered position moves to a state position not covered by these provisions and the new appointing authority is unwilling to assume any unused accumulated leave credits, the employee is to be paid for the leave credits in a lump sum amount by the sending agency.

Sec. 716.080 Payment for Unused Leave Credits

1. Upon termination from employment from a position covered by the annual leave and holiday provisions described in this chapter, payment for unused prorated annual leave and accrued personal/legal holiday leave credits to which an employee is entitled will be made as follows:
 - a. For termination as a result of resignation: Whenever the conditions of resignation as described under s. ER 21.02(1), Wis. Adm. Code, are met, the employee's termination date will be extended by the amount of leave credits to which the employee is entitled, unless:
 - 1) The employee requests payment in a lump sum in the notice of resignation; or
 - 2) The appointing authority and the employee mutually agree in writing to a payment of all or part of the balance in a lump sum. If part of the balance is paid in a lump sum, the remainder of the leave credits will extend the employee's termination date as provided under a., above.
 - b. For termination as a result of layoff, death, or discharge, payment for unused prorated annual leave and accrued personal/legal holiday leave credits to which the employee is entitled will be made to the employee or beneficiary in a lump sum amount.
 - c. For termination as a result of disability, any unused prorated annual leave and accrued personal/legal holiday leave credits to which an employee is entitled will be treated as an extension of the employee's termination date.
2. Employees who terminate during the first six months of a probationary period of an original appointment as defined in s. ER 1.02(22), Wis. Adm. Code, or an equivalent trial period for project employees, are not eligible to receive payment for any annual leave or personal holiday credits earned during such period of service. There is no similar qualifying period for employment in the unclassified service.
3. There shall be no lump sum payment for unused accumulated annual leave or personal/legal holiday credits except as specified in section 716.070 of this chapter, or upon termination from employment with the state.
4. If prior to termination, an employee has used legal holiday or annual leave time on an anticipated basis, the employee shall be required to reimburse the employing agency, at the employee's current rate of pay, for any anticipated leave used in excess of leave actually earned.

Sec. 716.090 Referral of Questions

Questions should be directed to staff at the Bureau of Compensation.

Sec. 716.100 Administrative Information

This handbook chapter revision provides the new annual leave schedule and hourly conversion factors for FLSA nonexempt nonrepresented employees in accordance with 2005 Wisconsin Act 21.