

Wisconsin Human Resources Handbook

Chapter 236

Designation of Employees as At-Risk and Use of the Employee Referral Service

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Sec. 236.010 Introduction

This handbook chapter provides state agencies with policies and procedures for designating employees as “at-risk of serious employment disruption,” including layoff and long-distance job reassignments, and for initiating or terminating employees’ eligibility to use the State of Wisconsin Employee Referral Service (WiscERS). WiscERS is a web-based job referral service for certain designated employees. <http://wiscers.state.wi.us/public/indexers.asp>

It is the goal of the at-risk program and WiscERS to assist at-risk or laid-off employees and injured workers in finding other permanent, classified positions within state government. To achieve this goal, it is essential that agencies carefully plan the scope and timing of their at-risk designations. Unless otherwise approved by the DMRS Administrator, appointing authorities are expected to designate as “at risk” employees who meet any of the conditions specified in section 236.030 of this handbook chapter.

Sec. 236.020 Statutory and Rule Authority

Section 230.01(2), Wis. Stats., provides the policy of the State to ensure its employees opportunities for satisfying careers and fair treatment based on the value of each employee’s services.

Section 230.34(2), Wis. Stats., recognizes that employees may be laid off because of a reduction in force due to a stoppage or lack of work or funds or owing to material changes in duties or organization.

Note: In 1996, the Department of Administration (Bureau of Risk Management), Department of Workforce Development and the then Department of Employment Relations (DER) (Division of Merit Recruitment and Selection), agreed that state employees in the Injured Worker Program (SIWRP) may participate in the Employee Referral Service (formerly the Layoff Referral Service) on the same basis as employees designated as at-risk.

In 2009, the agreement was clarified between the Department of Administration, Worker’s Compensation Section (State Injured Worker Re-Employment Program) and the Office of State Employment Relations (OSER), Division of Merit Recruitment and Selection (DMRS), so as to better define eligibility of persons enrolled in SIWRP to use the Employee Referral Service, now defined in section 236.050 of this handbook chapter.

Sec. 236.030 Definitions

The following are definitions of terms used in this handbook chapter.

1. **At-Risk:** Agencies will designate employees as “at-risk” if they meet any of the following criteria:
 - a. Employees whose positions have been scheduled for deletion or reduction in budgeted time percentage.
 - b. Employees whose position may be affected by reassignment or displacement (“bumping”) as a result of layoff.
 - c. Employees returning from leave of absence who need to be returned to a classification in the layoff group if no suitable vacancy exists.
 - d. Employees serving an original probationary period who, because they are part of an approved layoff group, will be terminated.
 - e. Employees whose positions have been identified for relocation to another geographic location. For changes to the geographical area, the newly assigned headquarters must be 40 miles or greater from the employee’s home except in cases where the new work site is at a shorter distance than the current work site is from his/her home.
 - f. Employees in filled positions whose duties and responsibilities will be changed significantly enough to require significantly different skills and the position will be re-filled on a promotion, demotion or transfer basis.
2. **Displacement:** A process whereby an employee with permanent status in one classification and who is faced with no other alternatives to layoff (i.e., transfer or demotion to a vacant position) is allowed to replace an employee in a filled position in a lower level classification or a lateral, comparable position. Displacement is commonly referred to as “bumping.” See [Chapter 232](#)—Permanent Layoff of Classified Employees of the *Wisconsin Human Resources Handbook*.
3. **Layoff group:** An aggregation of related positions which is the group of employees from which the layoff will be made. See [Chapter 232](#)—Permanent Layoff of Classified Employees of the *Wisconsin Human Resources Handbook*.
4. **Reasonable Offer:** A reasonable offer of appointment is defined as an offer of a permanent position:
 - a. Where the position is one which the employee would be qualified to perform after customary orientation provided to new workers in the position.
 - b. With an assigned headquarters located less than 40 miles from the employee’s home unless the employee’s work site prior to his/her layoff was at a greater distance from his/her home, in which case a job offer will be reasonable if the headquarters of the position offered is no farther from the employee’s home than was the distance of the previous work site.
 - c. Where the number of work hours required are the same as the number of hours previously allocated to the position from which the employee was laid off.

- d. Where the pay range of the position offered is no more than three pay ranges lower than the pay range of the position from which the employee was laid off unless the employee's rate of pay at the time of the layoff is maintained in the position offered. When a broadband pay schedule is involved in the counting of pay ranges, each broadband pay range will be considered to be equivalent to three pay ranges.

Note: An offer of limited term employment or project-project employment does not constitute a reasonable offer.

Sec. 236.040 At-Risk Designations

While each situation is unique, the number of employees designated as at-risk and the timing of at-risk letters should reflect the actual impact of potential layoffs and allow employees enough time to make effective use of at-risk services. In cases where a large portion of a layoff group meets the at-risk criteria, the appointing authority may choose to designate additional employees as at-risk because any successful out-placements from the group will lessen the overall impact of the layoff. In all cases, designated employees must be clearly informed as to their specific circumstances and the services available to them through their agency. It is then the employee's responsibility to use the tools available, including searching and applying for jobs on WiscERS, attending scheduled interviews, requesting job-related training, and making reasonable employment choices. If time constraints do not allow for at-risk designation to occur prior to the issuance of a layoff notice, relevant information regarding use of WiscERS may be included with the layoff notice.

Employee rights related to layoffs and mandatory alternatives to layoff such as transfer, voluntary demotion and displacement in lieu of layoff are established by the various labor agreements for represented employees and the administrative code for nonrepresented employees. See [Chapter 232](#)—Permanent Layoff of Classified Employees of the *Wisconsin Human Resources Handbook* for more information on these rights for classified employees.

Sec. 236.050 Conditions and Duration of Eligibility for Participation in WiscERS

Employees are eligible to participate in WiscERS if they meet one or more of the following criteria:

1. Employees formally designated by their agency as being at-risk according to one of the criteria listed in section 236.030 of this handbook chapter.
2. Employees who have received a layoff notice.
3. Employees who have demoted or displaced in lieu of layoff and wish to return to a position closer to or at the level from which they were laid off, within the last five years.
4. Employees who have been terminated as a result of layoff.

With the approval of the appointing authority, an employee who has received notice from the appointing authority of being designated At-Risk of layoff or who has received a notice of layoff may be granted one or more of the following:

- a. Time off without loss of pay to attend job training.
- b. Assistance or training in the preparation of a resume.

- c. Up to 80 hours' time without loss of pay for job search activities; including interviews and examinations in addition to the time specified in Ch. ER 18, Wis. Adm. Code.
- d. Additional leave of absence (paid or unpaid) for interviews, examinations, and other job search activities.
- e. Use of office equipment and supplies for job search activities where available.

For job search activities that require the employee to be absent from the work site, the employee shall give his/her supervisor at least five workdays notice, where possible.

The employees described in 1-4 above and placed in WiscERS will remain in the system until they have accepted an appointment to a position at their original level which is considered a reasonable offer or until five years from eligibility have elapsed, whichever occurs first.

If an employee eligible to use WiscERS is laid off, voluntarily moves to another position at a lower level in lieu of layoff or transfers in lieu of layoff to a position that does not meet the definition of a reasonable offer in lieu of layoff, the employee may continue to use WiscERS and retains eligibility for permissive appointment for the duration of the five-year term of eligibility.

When the employee no longer has eligibility to use WiscERS, the agency's human resources office will update the employee's status in WiscERS from "at-risk" to "not at-risk."

Additionally, employees are eligible to participate in WiscERS if they meet one or more of the following non-layoff related criteria:

1. Employees who are currently enrolled in the State Injured Worker Re-Employment Program (SIWRP).
2. Employees who have been medically separated within the last five years as a result of permanent work restrictions due to a worker's compensation compensable injury and enrolled in SIWRP.
3. Employees enrolled in SIWRP within the last five years who have demoted or displaced following permanent work restrictions due to a worker's compensation compensable injury and wish to return to a position closer to or at the level from which he or she was previously employed at the time of enrollment in SIWRP.

When employees are injured on the job, a Worker's Compensation claims examiner's findings may include referral of certain employees to SIWRP for vocational services. Employees who are enrolled in SIWRP may apply as a WiscERS applicant for state vacancies during the 30- to 60-day accommodation period pending a medical separation. Following a medical separation, SIWRP vocational services continue and expand to include non-state employment searches. Those employees enrolled in SIWRP may apply as WiscERS applicants for five years from date of medical separation until they have been restored or have declined a reasonable offer of restoration.

Note: Employees enrolled in SIWRP should be provided a notice by their agency that their status in WiscERS will be the same as other employees eligible to use WiscERS and they will be flagged as an at-risk employee solely for the purpose of inclusion in the list of employees eligible to use the automated WiscERS. The notice should clearly state that the designation does not imply at-risk of layoff but rather is an administrative designation. The Department of Administration Worker's Compensation unit is responsible for providing eligibility verification on the status of individual employees with regard to SIWRP enrollment.

A quick-reference chart illustrating the eligibility for and removal from WiscERS is found in Attachment #1 of this handbook chapter.

Sec. 236.060 Mandatory Use of WiscERS for Vacancy Announcements

Unless otherwise required by contract, a vacancy announcement in WiscERS is required after all of the agency's internal hiring activities have been completed, such as any contractual obligations pursuant to a collective bargaining agreement and any internal permissive opportunities and recruitments with the unit or agency designated as the Area of Competition (AOC). This means that agencies with a permanent classified vacant position which has not been filled internally must announce the vacancy in WiscERS before they can fill the position through other approved methods, for example:

1. Certifying from an existing register (including related registers) with a statewide or open AOC.
2. Establishing a new register by announcing the vacancy in Wisc.Jobs with a statewide or open AOC.
3. Filling the vacancy through permissive transfer, demotion or reinstatement (of non-at-risk employees) from outside the agency or University of Wisconsin System.

All WiscERS announcements must be posted for a minimum of eight calendar days before proceeding to fill the position from other authorized sources from outside the agency or campus. However, longer posting periods are encouraged. Announcing continuously in WiscERS, with indefinite response/reply dates, is allowed and encouraged for those position types where continuous vacancies occur. Continuous announcements allow agencies to quickly ascertain whether there are interested WiscERS candidates, thus shortening the recruitment timeline.

Agencies are allowed to conduct simultaneous vacancy postings (e.g., transfer postings, WiscERS posting and Wisc.Jobs posting) unless individual labor agreements specify otherwise. However, this does not change the sequence of consideration of candidates or applicants. Applicable contract provisions must be followed before permissive or certified candidates may be considered. Additionally, while a WiscERS announcement and a Wisc.Jobs announcement of a vacancy may have occurred simultaneously, WiscERS candidates must be provided first consideration for permissive appointment.

Agencies may request an exemption from posting positions on WiscERS from the DMRS Administrator. Such a request may be made when the position has bona fide occupational requirements such that there would be no eligible at-risk candidates. Information that will be considered includes, but is not limited to, the following: unusual qualifications required for the position that are unlikely to found on the list of at-risk employees; positions for classifications that have been found difficult to fill; whether an WiscERS posting had been completed for the same classification and at the same location within a reasonable amount of time, as determined by the DMRS Administrator. All requests will be reviewed on a case-by-case basis.

Sec. 236.070 Consideration of Eligible Employees

1. Eligible employees who apply during the WiscERS announcement period. The agency human resources office should work with hiring authorities to ensure equal consideration of all eligible employees who apply during the WiscERS announcement period. Eligible employees are those who meet eligibility requirements listed in section 236.050 of this handbook chapter. Equal consideration does not necessarily mean an interview for each applicant. For example, if there are many applicants for a single position, the agency may apply a job-related screen to the group of candidates so that a smaller group of finalists would be interviewed. Typically, a civil service exam used for an open recruitment is not considered to be an appropriate job-related screen.

If an agency does not find an acceptable WiscERS candidate, it then can proceed to fill the vacancy through other authorized means.

2. Eligible employees who apply after the WiscERS announcement period. Eligible employees who apply after the WiscERS announcement period must be added to the list of other authorized applicants. For example, if an agency certifies from an existing register (after the WiscERS announcement period has expired), any qualified at-risk employee also applying for the position after the WiscERS announcement period will be added to the list of candidates to be considered if they can be included in the selection process prior to the final screening of applicants. Agencies are encouraged, but not required, to continue to provide special consideration for at-risk and SIWRP employees who apply after the WiscERS announcement period has expired (up to the point of hire). In all cases, employees who are added must be provided not less than equal consideration along with the other candidates.

Eligible employees whose status changes before selection. Employees who are eligible at the time of application for a specific vacancy continue to be eligible as WiscERS candidates throughout the selection process for that vacancy. The exception to this is an employee who is appointed to a position at the former level that meets the definition of a reasonable offer before the selection is made. In this case the employee would be no longer eligible to use WiscERS but could still be considered as a permissive candidate for that specific vacancy.

Sec. 236.080 Appointments of WiscERS Candidates

If an agency selects a WiscERS candidate for hire, the agency will prepare a letter of appointment following the requirements of s. ER-MRS 12.08, Wis. Adm. Code. As with any other appointment, to determine the base pay the agency should refer to the State of Wisconsin Compensation Plan. For specific requirements for the fulfillment of probationary periods see ss. ER-MRS 22.08(1) and (2), and Chs. ER-MRS 15 and 17, Wis. Adm. Code. The current *Wisconsin Human Resources Handbook* Chapter 732—Transfer of Continuous Service and Accumulated Leave Credits Upon Movement Within State Service contains information for the transfer of continuous service and accumulated leave credits upon movement within state service. Please consult the Bureau of Compensation, Division of Compensation and Labor Relations for assistance with specific leave credit and other benefit-related questions regarding a WiscERS candidate's appointment.

If the individual is appointed to a position in another agency at his/her original level which is considered a reasonable offer and is placed on a permissive probation, the receiving agency's human resources office will change the employee's status in WiscERS from "at-risk" to "not at-risk" after the employee has attained permanent status. OSER will assist in keeping the system up-to-date.

Sec. 236.090 Instructional Manuals

OSER maintains instructional manuals for employees and for human resources staff regarding the practical use of WiscERS. Attachment #2 contains information regarding website location for these resources.

Sec. 236.100 Administrative Information

This new handbook chapter is a replacement for the policy and procedure guidance issued in Bulletin MRS-223/CLR/POL-70 dated February 13, 2002, related to the establishment of the Employee Referral Service (ERS) and implementation of ERS, the web-based WiscERS job posting system.

This handbook chapter was updated in July 2003 to reflect new URL sites for WiscERS and to provide clarification on the eight-day window for posting a vacancy in WiscERS. In addition, changes were made to recognize the 1996 agreement between DOA, DWD and (then) DER to allow State Injured Workers Re-Employment Program (SIWRP) workers to participate in ERS. The SIWRP was transferred to DOA as a result of the 2003-2005 budget (2003 Wisconsin Act 33).

In January 2005 the handbook chapter was updated to clarify the definition of at-risk (section 236.030) and the employees eligible to participate in ERS (section 236.040). Lastly, a link to the FAQs for employees was added to Attachment #1.

The handbook chapter was updated in May 2005 to clarify that announcements must be posted in WiscERS prior to any non-at-risk reinstatement hiring (section 236.050).

This handbook chapter was updated in March 2009 to note the use of the WiscERS online application as the mechanism for employee referral services. “WiscERS” has been substituted for “ERS” wherever appropriate throughout the document for consistency and clarity.

In February 2010, OSER updated section 236.030 of this handbook chapter to modify the definition of “At-Risk” and to add other definitions. New sections 236.040, 236.050 and 236.060 and a paragraph to section 236.080 were added to clarify the policy for designating employees as at-risk and for employee eligibility to use WiscERS. This eligibility guidance is illustrated in a new Attachment #1. This information replaces Bulletin OSER-0141-MRS Eligibility of Formerly At-Risk Employees for WiscERS (October 10, 2006), which is now obsolete. The additional sections necessitated a renumbering of the sections of the handbook chapter.

Note: Agencies are directed to evaluate their recent at-risk designations and, when appropriate, take action to modify the at-risk status of employees so as to be consistent with the standards established in this chapter.

In October 2010, OSER updated section 236.060 to remove language which identified a category of employees who may be eligible to use WiscERS but were distinguished as “at-risk for administrative purposes.” Additionally, sections 236.050 and 236.060 were combined to describe the eligibility for WiscERS participation.

This handbook chapter was updated in March 2014 to address changes in the procedural guidance and provide policy clarification in relation to the use of WiscERS and the applicants eligible to use the service. Information regarding the courtesies that should be afforded to at-risk individuals has been included in this update. Section 236.080 has been added to clarify the procedures that should be completed for the appointment of a WiscERS candidate.

Attachment #1

This chart is intended as a quick reference illustration of the policy direction detailed in this handbook chapter in Section 236.050, Conditions and Duration of Eligibility for Participation in WiscERS.

Eligibility to use WiscERS	WiscERS Removal Conditions
Employees formally designated by their agency as being at-risk according to one of the criteria listed above in section 236.030 of this handbook chapter.	<ul style="list-style-type: none"> ▪ Accepted an appointment to a position that would be considered a reasonable offer to their original level if they had been laid off, or ▪ 5 years from date of at-risk notice.
Employees who have received a layoff notice.	<ul style="list-style-type: none"> ▪ Accepted an appointment to a position at his/her original level that is considered a reasonable offer, or ▪ 5 years from effective date of layoff notice.
Employees who have demoted or displaced in lieu of layoff and wish to return to a position closer to or at the level from which he or she was previously laid off.	<ul style="list-style-type: none"> ▪ Accepted an appointment to a position at his/her original level that is considered a reasonable offer, or ▪ 5 years from date of layoff notice.
Employees who have been terminated as a result of layoff.	<ul style="list-style-type: none"> ▪ Accepted an appointment to a position at his/her original level that is considered a reasonable offer, or ▪ 5 years from date of layoff termination.
Employees enrolled in SIWRP.	<ul style="list-style-type: none"> ▪ Accepted an appointment to a position that is considered a reasonable offer, or ▪ 5 years from date of enrollment in SIWRP.

Use of Wisc.Jobs in Processing ERS-related Transactions

1. Human Resources Staff

Instructions for Human Resources staff for using WiscERS are contained in the *Employee Referral Service Manual*. This manual provides administrative details on posting and maintaining vacancies and related data in WiscERS. These instructions are available on the Wisc.Jobs Helpdesk at: <https://wiscjobs.state.wi.us/hradmin/wiscjobshelpdesk/default.asp>. Accessing the HR Admin site requires a user ID and password.

The URL location of the **Human Resources Administration** portion of ERS is:

<https://wiscjobs.state.wi.us/hradmin/index.asp>

Agencies are cautioned that these production web sites are live, and changes made affect actual employee data and status. Agency staff wishing to train employees or other staff on the new system should contact DMRS for the appropriate site to use.

2. Information to Provide Employees

The URL location of the Employee (Public) website is:

<http://ers.state.wi.us/public/indexers.asp>

The instructions are titled *WiscERS—An Instruction Manual for the Employee Referral Service User* and provide information to employees on how to use ERS. The direct link to the instructions is:

<http://oser.state.wi.us/docview.asp?docid=1350>

Frequently asked questions and answers for at-risk employees can be found at:

<http://oser.state.wi.us/docview.asp?docid=1278>

Attachment #3

SAMPLE AT-RISK LETTER TO EMPLOYEE

Date

Employee Name
Employee Address

Dear **Employee Name**:

As you are aware, **[Reason for potential layoff]** effective **[date]**. In accordance with ER-MRS 22, Layoff Procedures, we are designating you as “at-risk” of layoff.

The Wisconsin Employee Referral Service (WiscERS) is available to you as a service designed to give all State of Wisconsin “at-risk” employees first access to all jobs available around the state. WiscERS is located at <http://ers.state.wi.us/public/indexers.asp>. I encourage you to begin participating in this process now to provide you with some alternatives during this pre-layoff period while opportunities to see other employment are still permissive.

Please know that this decision does not reflect negatively upon you or your contributions as an employee of the State of Wisconsin. We are aware that your “at-risk” designation may cause personal and financial pressure. Our Employee Assistance Program (EAP) is available to help employees and their family members sort out solutions to work-related and personal problems and identify specific community resources that may be helpful. If you are interested in obtaining such assistance, please contact **[EAP Designee of Agency & phone #]** or LifeMatters 1-800-634-6433. Further Workforce Reduction Resources for State Employees may be found on OSER’s website at <http://oser.state.wi.us/docview.asp?docid=1249>.

The Department will continue to work with you while you are “at-risk” as well as keep you apprised of any changes that affect your position. If you have any questions, please contact **[HR Designee, Title]** at **[phone #]**

Sincerely,

[Department Secretary’s Name]
Secretary

Cc:P-file
Agency Payroll
HR Director
OSER