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**INFORMATION FOR EMPLOYERS**  
**REGARDING 2011 WISCONSIN ACT 10 and 2011 WISCONSIN ACT 32**

2011 Wisconsin Act 10 and 2011 Wisconsin Act 32 contain a number of provisions that affect the retirement and health insurance programs administered by the Department of Employee Trust Funds (ETF). This document is intended to help Wisconsin Retirement System (WRS) employers implement those provisions. ETF also developed a frequently asked questions (FAQ) document for WRS members to help answer employee questions related to these Acts. Both of the documents focus only on the provisions that relate to the programs administered by ETF. The primary focus of this particular document is the WRS. Health insurance questions are answered in the Member FAQ. ETF will continue to add questions we receive from employers to this document; therefore, updated versions will only be available on the ETF Internet site and will not be mailed as Employer Bulletins.

- For the Member FAQ visit: [http://etf.wi.gov/news/changes\\_to\\_your\\_WRS\\_Benefits.pdf](http://etf.wi.gov/news/changes_to_your_WRS_Benefits.pdf)
- For the Act 10 language visit: <http://legis.wisconsin.gov/2011/data/acts/11Act10.pdf>
- For the Act 32 language visit: <http://legis.wisconsin.gov/2011/data/acts/11Act32.pdf>

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## 1. WRS Contribution Rate Changes (Revised 9/26/11)

The Acts made changes to the actual employee and employer required contributions to the WRS, and the Acts also made changes to what an employer is allowed to pay (pick-up) toward WRS contributions for its employees.

First, the acts made changes to WRS contribution rates and how the contributions are allocated to the accounts of WRS members. These changes apply to all WRS members and employers, regardless of whether WRS employers and members had a collective bargaining agreement in place prior to June 29, 2011. The WRS contribution rate changes brought about by the Acts are listed in the table below and are effective the first day of the first pay period on or after June 29, 2011.

Second, Act 10 prohibited WRS employers from paying the WRS employee required contribution with a few exceptions. This change applies to all WRS employers and all WRS employees who did not have a collective bargaining agreement in place prior to the effective date of Act 10, which was June 29, 2011, or who are not exempt from the prohibition against WRS employers paying the WRS employee required contribution. Specifically, the act first applies to employees covered by a collective bargaining agreement that contains provisions inconsistent with the amount employees are required to contribute on the day on which the agreement expires or is terminated, extended, modified or renewed, whichever occurs first. Employers should consult their legal counsel regarding the act's effect on existing collective bargaining agreements and contracts with employees.

### 2011 WRS CONTRIBUTION RATES

Employment Category	<u>Before June 29, 2011</u>				<u>June 29, 2011 and After</u>		
	EERC	BAC	ERRC	Total	EERC	ERRC	Total
General/Teachers	5.0%	1.5%	5.1%	11.6%	5.8%	5.8%	11.6%
Protective w/SS	5.8%	0%	8.9%	14.7%	5.8%	8.9%	14.7%
Protective w/out SS	4.8%	0%	12.2%	17.0%	5.8%	11.2%	17.0%
Elected/Executive	3.9%	0%	9.4%	13.3%	6.65%	6.65%	13.3%

- The WRS contribution rate changes listed above were effective the first day of the first pay period on or after June 29, 2011 for all WRS members.
- WRS contribution rates are adjusted each calendar year depending on investment performance and actuarial factors.
- ETF's ONE system has been updated to reflect the changes above.
- The rates above do not include disability rates, sick leave rates (state only) or unfunded liability.
- Notes about table above:  
EERC=employee required contribution  
ERRC=employer required contribution  
BAC=Benefit Adjustment Contribution

## **A. Employment Categories—How the WRS Contribution Rate Will Be Split**

- General/Teacher/Educational Support Employees: 50% of the actuarially required WRS contributions are reportable as employee required contributions,<sup>1</sup> and the remaining 50% as employer required contributions. The 2011 total WRS contribution for general employees is 11.6% of earnings, therefore 5.8% of earnings must be reported as employee required contributions, and 5.8% reported as employer required contributions.
- Elected Officials and Executive Employees: 50% of the actuarially required WRS contributions are reportable as employee required contributions,<sup>2</sup> and the remaining 50% as employer required contributions. The 2011 total WRS contribution for elected and executive employees is 13.3% of earnings, therefore 6.65% of earnings must be reported as employee required contributions, and 6.65% reported as employer required contributions.
- Protective Category Employees with Social Security Coverage: The employee required contribution rate for Protectives with Social Security is the same as general category employees, which in 2011 is 5.8%. The total WRS contribution is 14.7% in 2011, so 8.9% of earnings are reportable as employer required contributions.
- Protective Category Employees without Social Security: The employee required contribution rate for Protectives without Social Security is the same as general category employees, which in 2011 is 5.8%.<sup>3</sup> The total WRS contribution is 17.0% in 2011, so 11.2% of earnings are reportable as employer required contributions.

NOTE: If an employee belongs to multiple employment categories, earnings from employment covered by a collective bargaining agreement that specifies who pays the employee required contribution part of the rate would be held to that percentage. The earnings in any other employment category not covered by a collective bargaining agreement would be subject to the rates specified by Act 10.

## **B. Effective Date of WRS Contribution Rate Changes and Elimination of the Benefit Adjustment Contribution**

Act 10, effective June 29, 2011, made two major changes to how WRS contributions (submitted by the employer) were allocated by ETF. First, Act 10 eliminated the Benefit Adjustment Contribution (BAC). Under previous law, the BAC was an employee responsibility unless the employer agreed to pay the BAC portion for the employee. The BAC was credited to the employer reserve, not the employee, regardless of who picked up the cost.

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<sup>1</sup> Prior to Act 10, the employee required contribution rate for this employment category was 5%. That rate will increase to 5.8% in 2011 due to Act 10, and that entire amount will be credited to members' accounts. This will have the effect of increasing WRS benefits that are based on the member's account balance, including separation benefits, money purchase retirement benefits and death benefits from accounts that have not been annuitized.

<sup>2</sup> Prior to Act 10, the employee required contribution rate for this employment category was 3.9%. This rate will increase to 6.65% in 2011 due to Act 10, and that entire amount will be credited to members' accounts. This will have the effect of increasing WRS benefits that are based on the member's account balance, including separation benefits, money purchase retirement benefits and death benefits from accounts that have not been annuitized.

<sup>3</sup> Prior to Act 10, the employee required contribution rate for the Protective Without Social Security employment category was 4.8%. This rate will increase to 5.8% in 2011 due to Act 10, and that entire amount will be credited to members' accounts. This will have the effect of increasing WRS benefits that are based on the member's account balance, including separation benefits, money purchase retirement benefits and death benefits from accounts that have not been annuitized.

Second, Act 10 changed the employee required contribution rates, as detailed in the table on page 2. These changes to the WRS contribution rates are effective June 29, 2011 for all WRS employers and employees, even those with a collective bargaining agreement in place prior to the effective date of Act 10. Because the contribution rates changed, contributions credited to WRS active members will change as of the first payroll period on or after June 29, 2011, even though there will be variations with respect to when WRS employers will start collecting the WRS employee required contributions from employees.

The elimination of the BAC will be effective for all WRS active members the first pay period on or after June 29, 2011.

It is important to note that employers will continue reporting the actuarially required contribution for each employee to ETF. ETF will determine how to apply these changes, such as the elimination of the BAC, to the employee's account once our information technology systems are modified to reflect the changes brought about by Acts 10 and 32. Please see the Interim Employer Reporting Instructions below for more specific guidance on how to report hours and earnings for your employees for the current year.

### **C. Pre-Tax Treatment of WRS Employee Required Contributions**

Act 32 specifies that the employee required contributions be made on a pre-tax basis. These pre-tax contributions are allowed under Internal Revenue Code Section 414(h)(2), which provides for pre-tax employee required contributions to a governmental 401(a) plan, such as the WRS.

"Pre-tax" means that an employee's contributions are not included as taxable income at the time wages are paid. The taxation of this amount is deferred until the member starts receiving a retirement annuity from the WRS.

The effective date of the pre-tax mandate in Act 32 is July 1, 2011, which means it will be effective the first pay period that begins on or after July 1, 2011.

The Act 32 language states that the pre-tax treatment of WRS employee required contributions applies to all WRS employees unless there is a collective bargaining agreement in place that explicitly prohibits the pre-tax treatment of an employee contribution.

Below are some of the common questions ETF has received from employers about the pre-tax treatment provision in section 1145n of Act 32. For more information about the reporting of pre-tax WRS employee required contributions, please review the interim employer reporting section of this document.

#### **Questions about Pre-Tax Treatment of WRS Employee Required Contributions**

- **Are WRS employee required contributions deducted on a pre-tax basis excluded from the employee's gross income for purposes of state and federal income taxes?**
- Yes. The WRS employee required contributions are excluded from both federal and state income taxes while he/she is an active employee and taxes on the contributions are deferred until distributed in the employee's annuity. Wisconsin law (Wis. Stat. § 71.01(6)(um)) provides that the Internal Revenue Code (IRC) applies for Wisconsin purposes at the same time as for federal purposes, unless Wisconsin statute specifies otherwise. Wisconsin Statutes do not exclude the IRC section (414(h)(2)) that permits the contributions to be excluded from federal income tax, nor do the statutes otherwise specify any variance from the federal tax treatment of employee contributions under IRC § 414(h)(2).

- **Are WRS employee required contributions excluded from the employee's gross income for FICA purposes?**
- No. FICA deductions will be calculated on the full gross salary, unlike state and federal income taxes. Under the Federal Insurance Contributions Act, 12.4% of earned income up to an annual limit must be paid into Social Security, and an additional 2.9% must be paid into Medicare. A provision of the Internal Revenue Code (IRC), § 3121(v)(1), has been interpreted by the IRS to mean that all salary reduction pickups are subject to FICA.
- **Are WRS employee required contributions excluded from WRS reportable earnings?**
- No. WRS earnings are defined in Wis. Stat. § 40.02 (22) as "the gross amount paid to an employee by a participating employer as salary or wages ..." and further, that "... the gross amount shall be determined prior to deductions for taxes, insurance premiums, retirement contributions [emphasis added] ...."

#### **D. Effective Date of Deductions from Employees for WRS Employee Required Contributions**

State employees will see the first new deductions coming out of their August 25, 2011 paychecks. The Department of Administration (DOA) has recommended (<http://etf.wi.gov/news/doa0630.pdf>) to local officials that the effective date for WRS, City of Milwaukee and County of Milwaukee pension contribution deductions from local employees parallel as closely as possible the timing for state employees. As the letter from DOA points out, the first pay period that the state will deduct money for the WRS employee required contributions is the pay period from July 31, 2011 to August 14, 2011. Therefore, per DOA's guidance, local employers should consider deducting the WRS employee required contributions from employees on or after the first pay period after July 31, 2011.

#### **E. Employer Liabilities (Duty Disability, Sick Leave)**

Act 10 and Act 32 do not affect duty disability, sick leave credits (state only), and other contributions. These liabilities remain the responsibility of the employer, as does any unfunded actuarial accrued liability.

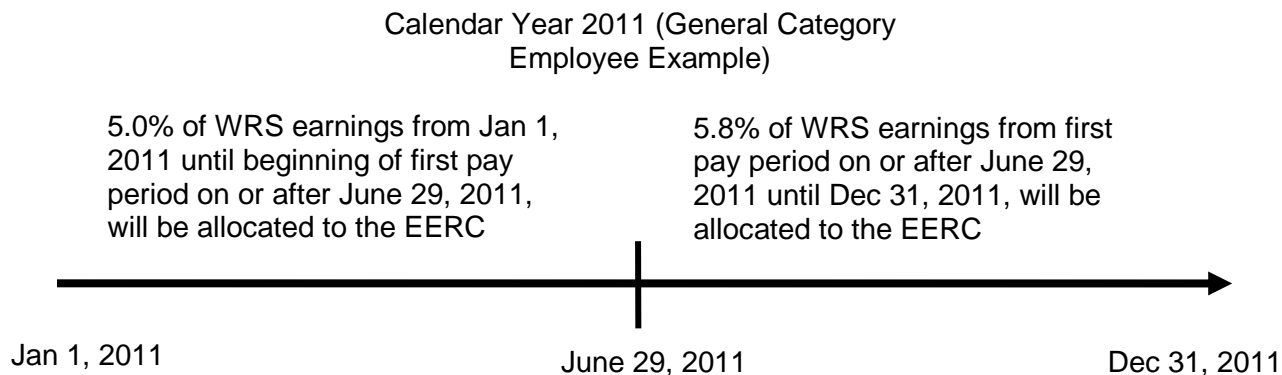
#### **2. Interim Employer Reporting Instructions (Revised 8/8/11)**

Due to the provisions in Act 10 and Act 32, there will be variations in: 1) when the WRS employee required contributions will be deducted; 2) the taxability of those contributions because some existing contracts may not have employee required contributions taken out on a pre-tax basis; and 3) the effective date of the multiplier change for elected official and executive category employees.

ETF is in the process of reviewing what ETF IT system changes will need to be made to accommodate the Act 10 and Act 32 provisions. We are still determining which data elements employers will need to report for purposes of the WRS and will issue more guidance in the near future. Employers should be prepared, however, to provide a report containing individual employee-level detail in addition to the WRS Annual Report. Under normal operating conditions, the WRS contribution rate allocation is held constant for each calendar year. Act 10 and Act 32 created a mid-year change for how the contribution rates are applied to all WRS members.

As of the first pay period on or after June 29, 2011, all active WRS members will see an increase in the Employee Required Contribution (EERC), regardless of whether the employee will be statutorily required to pay the EERC. For a general category employee, the EERC will increase

from 5.0% to 5.8% on the first pay period on or after June 29, 2011. All employment categories will see an increase in the EERC.



In order to implement the provisions of Act 10 and Act 32 and correctly allocate the EERC, ETF is expecting to require all employers to supply the following information for all employees participating in the WRS:

- Actual hours and earnings up until the date of employee contribution changes for 2011, depending on payroll dates for each individual agency. These earnings will be credited different contribution rates based on Wisconsin Statutes prior to Act 10 and Act 32
- Our long-term plan is to create new employment categories for the employees affected by the Act 10 and Act 32 provisions. ETF will supply the new employment categories and actions will need to be taken by employers once we get closer to updating our IT systems.

ETF will issue more specific guidance on how to report this additional information in the near future. In the meantime, please find below temporary reporting instructions.

#### Pre-Tax Employee Required Contributions:

Act 32 requires that the new employee required contributions be made on a pre-tax basis. At this point, please do not report these contributions to ETF on any periodic transaction, such as a termination or employment category change, in the EERC (Employee Required Contribution) or BAC (Benefit Adjustment Contribution) fields. These fields currently assess the EERC and the BAC as post-tax contributions. Until ETF updates the reporting applications and forms with fields for pre-tax employee paid contributions, employers should track the amounts of pre-tax contributions for reporting at a later time.

#### Interim Instructions:

ETF must make IT system changes to account for the contribution rate changes and the ability to accept pre-tax contributions. Until ETF completes these changes and disseminates further implementation instructions to employers, please continue to report WRS information to ETF as follows:

#### Monthly Remittance Reporting:

- No changes to the monthly remittance reporting, as those reports consist of reporting the *total* earnings and the *total* contributions by employment category paid to ETF.<sup>4</sup>

<sup>4</sup> While employers may be deducting employee required contributions directly from the employee, along with the corresponding employer required contributions, the monthly remittance report only consists of total contributions, and does not include that breakdown.

Periodic Reporting for Current Year: (Terminations, Employment Category Changes, etc.)

- Continue to report all transactions to ETF, except do not report any pre-tax employee paid contributions until ETF has updated the reporting applications and forms with fields for pre-tax employee paid contributions. Continue to track the amount of pre-tax contributions for each employee to be reported at a later date. Remember the pre-tax contributions became effective July 1, 2011 except for those who had collective bargaining agreements that explicitly prohibit the pre-tax treatment of an employee contribution. For those employers with collective bargaining agreements in place as described above, post-tax employee paid contributions may still be reported in the field Deducted from Employee – Employee Required Contribution.

Periodic Reporting for Prior Years: (Contract Settlements, Prior Year Corrections, etc.)

- Continue to report all prior year transactions to ETF and place any post-tax contributions (if applicable) paid by the employee for prior year transactions with hours and/or earnings in the fields Deducted from Employee – Employee Required Contribution and Benefit Adjustment Contribution.

**3. New WRS Vesting Requirement (Revised 8/8/11)**

Act 32 contains a new WRS vesting provision. The new vesting provision applies to an employee who initially becomes a WRS member on or after July 1, 2011. The provision would not apply to a person with WRS service prior to the effective date.

The vesting provision provides that WRS members are not eligible for a WRS retirement annuity or lump sum retirement benefit until they have five years of creditable service, as defined in Wisconsin Administrative Code Section 10.03. If an employee were to leave a WRS-covered position prior to fulfilling the five-year vesting requirement, that employee would remain eligible to take a separation benefit. The separation benefit would include the employee contributions (and investment returns) only. The employer contributions and years of creditable service would be forfeited and their WRS account closed.

If an employee were to work in a WRS-covered position for less than five years, leave that position, and subsequently return to a WRS-covered position without having taken a separation benefit, that employee's WRS employee and employer contributions would be unaffected by the termination (meaning their account would remain whole). That employee would also receive creditable service toward the five-year vesting requirement for years worked in the previous WRS-covered position.

ETF will determine who is and isn't vested based on what employers report to ETF.

**4. Changes to WRS Eligibility Requirement (Revised 9/26/11)**

Act 32 changes the eligibility requirements for employees initially working for a WRS employer on or after July 1, 2011. The provision would not apply to a person employed by a WRS employer prior to that date, in which case the old statutory WRS eligibility criteria would apply. In order to qualify for participation in the WRS, new employees (first hired by a WRS employer on or after July 1, 2011) must meet **BOTH** of the following criteria:

**A. Employee is expected to work at least two-thirds of full time per year, defined as:**

- **1,200** hours for non-teachers and non-school district educational support personnel, or;



- **880 hours** for teachers and school district educational support personnel (not including educational support personnel for technical colleges and other educational institutions).

**AND**

**B. Employee is expected to be employed for at least one year (365 consecutive days, 366 in leap year) from employee's date of hire.**

NOTE: Once the employer sets the expectation that the employee (who is affected by the new WRS eligibility criteria defined in Act 32) will work 1200 hours or more, the employee is enrolled in the WRS and he/she doesn't need to work 1200 hours every year to remain in the WRS. Employees hired to work nine or ten months per year, (e.g. teacher contracts), but expected to return year after year are considered to have met the one-year requirement.

The changes outlined in Act 32 do not modify the eligibility criteria for any employee initially employed by a WRS participating employer prior to July 1, 2011, including both WRS eligible and non-WRS eligible employees. Employers must consider any employment with a participating WRS employer prior to July 1, 2011, when determining WRS eligibility under Act 32. Any employee who received earnings for personal services rendered from a participating employer would have been evaluated for WRS eligibility, to include seasonal, project, limited-term, temporary and/or part-time employees, members of boards and commissions, and elected officials. The eligibility criteria regarding expected hours for these employees remains at least one-third of full time per year (600 and 440 hours). For example:

- A non-WRS eligible employee, hired prior to July 1, 2011, terminates. If rehired by the same or different WRS employer, the employee must be evaluated under the old eligibility requirements prior to July 1, 2011.
  - Note: The language in Act 32 hinges on whether an employee previously worked for a WRS employer and does not hinge on whether the employee was previously in a WRS eligible position. Therefore, there may be cases where employees do not have prior service with the WRS, yet the employee worked for a WRS employer. As a result, WRS employers will not be able to look up the employee's prior WRS service in ETF IT systems, such as the ONE system. It will be up to the employer and employee to determine whether a newly hired employee previously worked for a WRS employer.
- A WRS eligible employee, hired prior to July 1, 2011, terminates and remains terminated for 12 or more consecutive months. If the employee returns to the same or different WRS agency after the 12 months have elapsed, he or she must be evaluated under the old eligibility requirements prior to July 1, 2011. If the employee returns to the same agency within 12 months of termination, he or she is automatically re-enrolled in the WRS.
- A WRS eligible employee, hired prior to July 1, 2011, terminates and receives a separation benefit and adheres to the criteria of a good faith termination. If the employee returns to the same or different WRS agency after receiving a WRS separation benefit, he or she must be evaluated under the old eligibility requirements prior to July 1, 2011.

WRS employers determine who is eligible for the WRS and report the information to ETF. Chapter 3 of the WRS Employer Administration Manual provides guidance about how to determine eligibility. [http://www.etf.wi.gov/employers/manual\\_wrs.htm](http://www.etf.wi.gov/employers/manual_wrs.htm) ETF will update the manual with information about the recent law changes.

## **Questions Regarding Changes to the WRS Eligibility Requirement**

**Q: Does an individual who performed services without earnings (volunteer, unpaid teaching assistant, etc.) for a participating WRS employer prior to July 1, 2011, fall under the old eligibility criteria?**

A: No. Wis. Stat. Sec. 40.02(26) provides that an employee is considered any person who receives earnings as payment for personal services rendered. An individual who provided services but was not compensated on a payroll by that employer is not considered an employee and would not fall under the old WRS eligibility criteria.

**Q: Is there any type of employment with earnings that would not qualify an employee for eligibility under the old WRS eligibility criteria?**

A: Yes, patients or inmates of a hospital, home, or institution who perform services for earnings in their respective hospital, home, or institution, are not considered employees under Wis. Stat. Sec. 40.02(26). Additionally, an employee classified as an independent contractor is not considered an employee of a WRS employer.

**Q: An employee states that he or she worked for a WRS employer while enrolled in high school. Would this employment allow him or her to be evaluated under the old WRS eligibility criteria?**

A: Yes, as long as that employee had received earnings prior to July 1, 2011 and the employer was a WRS participating employer at the time of employment. While Wis. Stat. Sec. 40.22(2) (gm) states that an employee under the age of 20 who is regularly enrolled, or is expected to be enrolled, as a full-time student in high school may not receive benefits from the Wisconsin Retirement System, the eligibility language in Act 32 does not require the employee's previous position to have been WRS eligible.

**Q: If an employee in a school district educational support staff role, who previously worked for a school district in which support staff were not covered under the WRS, took a job in another school district with WRS coverage for support staff, would that employee come under the old eligibility requirements?**

A: Yes, as long as that employee had worked for the previous school district prior to July 1, 2011. The eligibility changes in Act 32 provide that an employee who was initially employed by a participating employer before July 1, 2011, would come under the old eligibility requirements. The key would be that the previous employer was a WRS participating employer at the time of employment, even if the school district educational support staff were not covered under the WRS. Wis. Stat. Sec. 40.22(2m) does not require the employee's previous position to have been WRS eligible.

## **5. Formula Multiplier Change (Revised 8/8/11)**

Act 10 provides that the WRS formula multiplier decreases from 2.0% to 1.6% for executive members, elected officials (state and local), constitutional officers, Supreme Court justices, and Appeals Court and Circuit Court judges.

The effective date of the change to the multiplier will vary among different employee categories. More information about the employee categories can be found in Chapter 4 of the WRS Employer Administration Manual.

- **Executive Retirement Plan and Teacher Executive Retirement Plan Members** (Employment Category Codes 02 and 11, respectively): The new formula multiplier applies to service earned in these categories after June 29, 2011, the effective date of Act 10.
- **State Elected Officials/Constitutional Officers and Local Elected Officials** (Employment Category Codes 06 and 09, respectively): The new formula multiplier applies to service earned by each WRS member in one of these categories on the first day of a term of office that begins after June 29, 2011, the effective date of Act 10.
- **Supreme Court Justice, Court of Appeals Judge and Circuit Court Judge** (Employment Category Codes 05, 07 and 08, respectively): The new formula multiplier applies to service earned after a judge or justice in any one of these categories assumes office after June 29, 2011, the effective date of Act 10. In other words, whenever any new judge or justice assumes office after the effective date of the Act (June 29, 2011), the new formula multiplier applies to all service earned by all judges and justices in all three categories.

ETF will provide more guidance to employers about how to report service that will be subject to the 1.6% formula multiplier as soon as our IT systems are updated to reflect the changes brought about by Acts 10 and 32. However, these members cannot be reported as general category members, because while they will have the same formula multiplier as general category members they will still have a different Normal Retirement Age (NRA).

Finally, the total (employee and employer combined) contribution rate for these members will not change for the remainder of 2011. However, the changed benefit may factor into the contribution rates for the service earned after the multiplier change in future years.

## **6. Former Milwaukee County Employees Appointed to State Positions** (Revised 9/26/11)

Act 32 transferred certain Milwaukee County Enrollment Services Unit Employees (MiES) positions to state positions. Once the employees transferred to state positions are vested in the Milwaukee County Retirement System, they will no longer be participating members of the Milwaukee County Retirement System. Instead, they will immediately become participating members in the WRS. A Milwaukee County employee whose position transfers to a state position pursuant to Act 32, but who is not vested in the Milwaukee County Retirement System and therefore not a WRS participant, will be eligible for state group health insurance. State contributions for these employees will be available as soon the health insurance goes into effect. Eligibility in all other State Group Insurance programs require that the employee be a participating member of the WRS and fulfill the creditable service requirement specific to each insurance program as defined by statute.

When a Milwaukee County employee is transferred to a state position, the state and/or the employee will make retirement contributions to Milwaukee County until the employee is vested in the Milwaukee County Retirement System. Once the employee is vested in the Milwaukee County Retirement System, the employer and employee will start making WRS contributions to ETF.

Please note that although the employee's seniority with the state will be computed by treating his or her total service with the county as state service, the employee's years of service with Milwaukee County will **not** apply to his or her WRS account. Two separate accounts will exist—one Milwaukee County account, based on years of service until the employee is vested, and one WRS account, based on years of service after the employee is vested in the Milwaukee County Retirement System.

Employees potentially impacted by this provision should contact their employer for more information.

**A. County Staff Member Who Becomes a State Employee on or After July 1, 2011:**

- The employee is required to serve any applicable probationary period, but seniority with the state is computed by treating the employee's total service with the county as state service;
- Annual leave for the employee accrues, at the rate prescribed under state law, using the employee's state service;
- The employee remains in Milwaukee County's retirement system until the employee becomes vested and all of the contributions are paid by, or on behalf of, the employee in the retirement system. When the employee becomes vested and all of the contributions are paid by, or on behalf of, the employee in Milwaukee County's retirement system, the employee is no longer a participating employee in that system and immediately becomes a participating employee in the WRS. The state is required to pay, on behalf of the employee, all required employer contributions to the Milwaukee County Retirement System.
- The employee has sick leave accrued with the state computed by treating the employee's unused balance of sick leave accrued with the county as sick leave accrued in state service, not to exceed the amount of sick leave the employee would have accrued in state service for the same period, if the employee is able to provide adequate documentation to account for sick leave used during the accrual period with the county. Sick leave that transfers under this provision would not be subject to the right of conversion under s. 40.05(4) of the statutes, or otherwise, upon death or termination of creditable service for payment of health insurance benefits on behalf of the employee or the employee's dependents.

This employee is exempt from the new WRS vesting requirements detailed in the **New WRS Vesting Requirement** section.

**B. County Staff Member Who Became a State Employee Before July 1, 2011:**

- Any former Milwaukee County employee who was appointed to a state position before July 1, 2011 and who chose to remain in the Milwaukee County Retirement System is required to remain in the Milwaukee County Retirement System until the employee has vested and all retirement contributions are paid by, or on behalf, of the employee. When the employee becomes vested and all retirement contributions are paid by, or on behalf of, the employee, the employee may no longer participate in the Milwaukee County Retirement System and, instead, would immediately become a participating employee in the WRS.

**7. Uniformed Services Employment and Reemployment Rights Act (USERRA) Questions:**  
(Revised 8/8/11)

**Q: If an employee is called to active military duty and makes a USERRA election, pursuant to Acts 10 and 32, would the employee be required to make the employee required contributions to the WRS?**

**A:** Absent a collective bargaining agreement with provisions to the contrary, the Acts provide that the employee would be responsible for making WRS employee required contributions.

USERRA allows for employee required contributions to a contributory defined benefit plan, such as the WRS, to be made beginning with the date of reemployment, and

ending on the earlier of: (1) three times the period of military service, or; (2) five years. An employee could choose to make all, some, or none of the employee required make-up contributions.

**Q: If an employee is called to active military duty and makes a USERRA election, pursuant to Acts 10 and 32, when would the employee required WRS contributions be effective?**

A: The effective date would be the same as for other state or local employees without a collective bargaining agreement with provisions to the contrary. For state employees, the first pay period that the state will deduct money for the WRS employee required contributions is the pay period from July 31, 2011 to August 13, 2011. The Department of Administration suggested that local employers consider deducting the WRS employee required contributions from employees on or after the first pay period after July 31, 2011.

**Q: If an employee is called to active military duty and makes a USERRA election, what responsibility does an employer have related to WRS contributions?**

A: USERRA does not require an employer to make employer required contributions until the employee returns from active military duty and is reemployed with that same employer. Once the employee is no longer on active military duty, and is reemployed with a WRS-covered employer, the employer is required to make employer required contributions to match the contributions made by the employee. The employer is also required to fund any additional obligations, including interest that would have accrued on the employee and employer-required contributions, once those contributions have been made.

With respect to Employer Reporting, ETF would still provide employers two options. The first option for employers would be placing the employee on an unpaid leave of absence, and remitting WRS contributions for the period of service retroactively when the employee returns to work for the employer. The employer could collect the employee share of the required employee contributions from the employee, but according to the USERRA law, the employee cannot be required to pay interest charges for late reported employee contributions. This means the employer would be responsible for both the employee and the employer share of any interest assessed on late reported WRS contributions.

The second option for employers would be to continue to treat employees on active military duty as having remained actively employed with the employer, which results in the employer continuing to make WRS contributions while the employee is on active military duty. This option allows the employer to avoid having to pay interest that would accrue over time on the employer required contributions.

**Q: What information do employers need to send to ETF if an employee returning from a military leave of absence makes a USERRA election?**

A: ETF is in the process of reviewing what ETF IT system changes will need to be made to accommodate the Act 10 and Act 32 provisions. We are still determining what data elements employers will need to report for purposes of the WRS.

At this point, please continue to send ETF the employee's DD-214 and military orders when the employee returns to his or her position with the employer. If the employee does not receive a DD-214 based on the length of the employee's military leave, please continue to send the employee's leave and earnings statements when the employee returns to his or her position with the employer.

8. **Sick Leave Questions-State Agencies Only** (New 9/26/11)

**Q: A WRS state employee who began employment on or after July 1, 2011, terminates employment before he or she has accrued 5.00 years of creditable service. Will that employee be eligible for state group health insurance coverage after termination since the employee did not meet the vesting requirement in Act 32?**

A: The terminated employee may be eligible for COBRA continuation coverage, but will not be eligible for lifetime coverage in the state group health insurance program unless he or she has met the retirement benefit eligibility requirements.

**Q: A WRS state employee began employment on or after July 1, 2011, and terminated employment before the employee accrued 5.00 years of creditable service. Will he or she be eligible to convert unused sick leave credits to pay health insurance premiums since the employee did not meet the vesting requirement in Act 32?**

A: No.

9. **Additional Questions on Act 10 and Act 32:** (Revised 8/8/11)

**Q: If an employer has an individual compensation and fringe benefit agreement/contract with an employee and it isn't a collective bargaining agreement, do the collective bargaining provisions in Act 10 affect the agreement/contract between the employer and employee?**

A: ETF cannot answer this question. ETF does not play a role in the enforcement and interpretation of collective bargaining agreements or the collective bargaining changes in Act 10. ETF recommends that employers consult with their legal counsel.

**Q: What if an employee belongs to multiple employment categories?**

A: Earnings from employment covered by a collective bargaining agreement that specifies who pays the employee required contribution part of the rate would be held to that percentage. The earnings in any other employment category not covered by a collective bargaining agreement would be subject to the rates specified by Act 10.

**Q: A teacher works the 2010-11 school year. The teacher has elected to have his/her earnings spread out over 12 months. The employer must report summer payments in the July 1, 2010-June 30, 2011 fiscal year, since the contract expires on June 30<sup>th</sup>. How does the employer determine from which earnings to withhold the 5.8%?**

A: Nine-month contract employees who defer a portion of their salary so they receive payments throughout the summer should not have the 5.8% employee-required contribution withheld from the deferred payments if the employee's compensation was earned prior to the effective date of Wisconsin Act 10 (June 29, 2011). **Note:** Employees under an existing collective bargaining agreement will not be affected by Act 10. Employees not under a collective bargaining agreement must have the 5.8% employee-required contribution withheld from salary earned beginning with the first day of the first pay period on or after June 29, 2011.

**Q: Do the provisions in Acts 10 and 32 relating to WRS contributions apply to all WRS employers, including quasi-governmental employers such as public authorities and housing authorities?**

**A:** Yes. As with all WRS employers, the timing of implementation may vary based on whether there are employees with a collective bargaining agreement.

10. **Whom to Contact with Additional Questions**

ETF recommends checking our Internet site for updates to this information on a frequent basis. Employers are encouraged to send their specific questions to ETF via e-mail using the “Contact Us” feature of the employer page on the ETF Internet site. Although we may not be able to answer every question at this time, it will help us make future communications more helpful to employers.