

Clearinghouse Rule 23-023

**State of Wisconsin
Department of Employee Trust Funds
Employee Trust Funds Board
Wisconsin Retirement Board
Teachers Retirement Board**

The scope statement for this rule, SS 005-23, was approved by the Governor on December 15, 2022, published in Register No. 805A3, on January 17, 2023, and approved by ETF Secretary A. John Voelker on January 30, 2023.

The Wisconsin department of employee trust funds proposes an order to repeal ETF 10.61 and 62, 10.82 (2) (f) 3., 52.06 (1) and (2) (b), and 52.10 (2); to renumber ETF 10.50, 10.82 (2) (f) 1., 52.06 (2) (a), and 52.10 (1); to amend ETF 10.01 (3d), 10.64 (1), 10.75 (2) (e), 20.03 (1), 20.07 (3), (5) and (5) Note, 20.35 (1) (a), 50.58 (2), 52.07 (3) (d), 52.28 (2), and 60.53 (2) (e) 1. c., (2) (f) and (2) (g); and to create ETF 10.50 (2), 20.35 (1) (a) Note, and 50.315; relating to technical and minor substantive changes to update ETF rules.

Analysis Prepared by the Department of Employee Trust Funds

1. Statutes interpreted:
Sections 40.02 (48m) and (48r), 40.05 (4), 40.23, 40.63, 40.65, and 40.95 Stats.
2. Statutory authority:
Sections 40.03 (2) (i) and 227.11 (2) (a), Stats.
3. Explanation of agency authority:
By statute, the ETF Secretary is expressly authorized, with approval by the Employee Trust Funds Board, Teachers Retirement Board and Wisconsin Retirement Board to promulgate rules that are required for the efficient administration of the fund or of any of the benefit plans established by ch. 40 of the Wisconsin Statutes.

In addition, each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.
4. Related statutes or rules:
There are no other related statutes or administrative rules directly related to this rule.
5. Brief summary of the proposed rule:
The objective of this rule is to make technical updates to existing ETF rules, delete obsolete language in ETF rules, and make other minor substantive changes. The changes include updating the code to be consistent with required minimum distribution provisions of the federal Setting Every Community Up for Retirement Enhancement (SECURE) Act, SECURE 2.0 Act and 2021 Wisconsin Act 245, updating the definition of “guardian” to be consistent with changes in the child guardianship law, removing obsolete sections related to Social Security wage reporting requirements, adding a reference to the Chapter 244 definition of “incapacity” to power of attorney requirements, clarifying that sick leave must be earned during participating employment to be used in the calculation of accumulated sick leave credits, amending the code to round an

annuity applicant's age to the nearest month, rather than the nearest quarter year for annuity option conversion purposes, require a domestic relations order to be submitted on ETF's form, correcting outdated cross-references, and other minor changes.

6. Summary of, and comparison with, existing or proposed federal statutes and regulations:
The required minimum distribution (RMD) provisions of the of the federal SECURE Act are codified at 26 U.S.C. § 401 (a) (9). Recent amendments change the required beginning date for RMDs. The Wisconsin Retirement System is a qualified plan under the federal Internal Revenue Code and must comply with 26 U.S.C. § 401 (a) (9).
7. Comparison with rules in adjacent states:
As the changes proposed are technical updates to correct obsolete language and make ETF rules consistent with recent changes in Wisconsin law, there is no directly applicable comparison to adjacent states. Periodically, similar agencies in adjacent states promulgate technical rules to update existing administrative rules.
8. Summary of factual data and analytical methodologies:
Due to changes in Wisconsin law, the ETF rules contain obsolete regulatory provisions, terms, and cross-references. The proposed technical changes would allow ETF rules to be consistent with recent changes in Wisconsin law, rather than continuing with outdated language in the code. Additionally, correction of obsolete terms and incorrect links will make the ETF rules more accurate and prevent confusion by those subject to the rules.
9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:
This rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System. Please see attached economic impact analysis.
10. Effect on small business:
The rule has no effect on small businesses.
11. Regulatory Flexibility Analysis
The proposed rule has no effect on small businesses because only governmental employers and their employees may participate in the benefit programs under ch. 40 of the statutes administered by the Department of Employee Trust Funds.
12. Fiscal Estimate
Please see the attached fiscal estimate.
13. Agency contact person (including e-mail and telephone):
Please direct any questions about the proposed rule to Daniel Hayes, Attorney, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707. E-mail: daniel.hayes@etf.wi.gov. Telephone: (608) 266-0222.
14. Place where comments are to be submitted and deadline for submissions:
Written comments on the proposed rule may be submitted to Daniel Hayes, Attorney, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707 or submitted via email to etfadminrulecomments@etf.wi.gov. Written comments must be received at the Department of Employee Trust Funds no later than 4:30 p.m. on June 1, 2023.

15. Proposed Effective Date:
This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.
16. Free Copies of Proposed Rule:
Copies of the proposed rule are available without cost by contacting the Department of Employee Trust Funds, P. O. Box 7931, Madison, WI 53707-7931. You can also obtain a copy by calling (608) 266-0222 or by emailing daniel.hayes@etf.wi.gov.

Text of Proposed Rule

SECTION 1. ETF 10.01 (3d) is amended to read:

ETF 10.01 (3d) “Guardian” has the meaning given in s. 54.01 (10), Stats., and includes conservators appointed pursuant to s. 54.76, Stats. For minor children, “Guardian” also has the meaning given in s. 48.02 (8), Stats., and includes the authority provided in s. 48.023, Stats.

SECTION 2. ETF 10.50 is renumbered ETF 10.50 (1).

SECTION 3. ETF 10.50 (2) is created to read:

ETF 10.50 (2) Only participating employment and sick leave earned during participating employment can be used in the calculation of credits under ss. 40.05 (4) and 40.95, Stats.

SECTION 4. ETF 10.61 and 10.62 are repealed.

SECTION 5. ETF 10.64 (1) is amended to read:

ETF 10.64 (1) Except as provided in s. ETF 10.63 (2) and (3) and this subsection, any report or remittance not received within the period specified in this chapter, ch. 40, Stats., or an insurance contract between the group insurance board and an insurance carrier shall be subject to the charges and interest calculated in accordance with the provisions of s. 40.06, Stats. Reports and remittances required under ~~ss. ETF 10.61, 10.62 and~~ s. 10.63 (1) (f) are not subject to the interest charges under s. 40.06 (5), Stats.

SECTION 6. ETF 10.75 (2) (e) is amended to read:

ETF 10.75 (2) (e) If the power of attorney is conditioned on the incapacitation of the principal, upon request of the department or the Wisconsin deferred compensation program administrator the agent provides evidence satisfactory to the department or the Wisconsin deferred compensation program administrator that the principal has become incapacitated. “Incapacity” has the meaning given in s. 244.02 (7), Stats.

SECTION 7. ETF 10.82 (2) (f) 1. is renumbered ETF 10.82 (2) (f).

SECTION 8. ETF 10.82 (2) (f) 3. is repealed.

SECTION 9. ETF 20.03 (1) is amended to read:

ETF 20.03 (1) For purposes of annuity computations, ~~other than option conversion,~~ an applicant's age shall be determined to the nearest month. ~~For option conversion purposes, an applicant's age shall be determined to the quarter year.~~

SECTION 10. ETF 20.07 (3), (5), and (5) (Note) are amended to read:

ETF 20.07 (3) The effective date of the automatic distribution paid under sub. (2) shall be January 1 of the year in which the participant attains or would have attained the age 70.5 years provided in section 401 (a) (9) of the Internal Revenue Code, or January 1 of the year following the year in which the participant retires, if later. Standard sequence under s. 40.02 (8) (a) 2., Stats., shall become effective with regard to beneficiaries of death benefits under ss. 40.71 and 40.73, Stats., on the effective date of the automatic distribution.

(5) The department shall distribute the account as specified in this section unless the department receives the participant's or alternate payee's application for the benefit on a form provided by the department. The application may specify a deferred effective date which may not be later than March 1 of the calendar year in which the participant will attain the age of 71.5 years after the year in which participant attains the age provided in section 401 (a) (9) of the Internal Revenue Code, or March 1 of the calendar year following the year in which the participant retires, if later. For alternate payees of deceased participants, the deferred effective date may not be later than March 1 of the calendar year in which the participant would have attained the age of 71.5 years after the participant would have attained the age provided in section 401 (a) (9) of the Internal Revenue Code. The department must receive the application specifying a deferred benefit effective date on or after January 1 of the year before the year in which the participant attains (or, for alternate payees of deceased participants, would have attained) the age of 69.5 provided in section 401 (a) (9) of the Internal Revenue Code, but no later than the deadline to request cancellation provided under s. ETF 20.20 (3) or (4) with respect to the benefit which is being automatically distributed.

(5) Note: Federal regulations require that a distribution from a qualified retirement plan begin no later than April 1 of the year following the year in which the participant turns age 70.5 would have attained the age provided in section 401 (a) (9) of the Internal Revenue Code or retires, whichever is later. A form specifying a requested annuity effective date, form ET-4934, is available from the department of employee trust funds at no charge.

SECTION 11. ETF 20.35 (1) (a) is amended to read:

ETF 20.35 (1) (a) This section applies to any order to divide any benefit of the Wisconsin retirement system which is received by the department. Such an order shall be submitted to the department in the form approved by the department.

SECTION 12. ETF 20.35 (1) (a) (Note) is created to read:

ETF 20.35 (1) (a) Note: The department has approved the following forms for orders to divide benefits of the Wisconsin retirement system: ET-4926, Order to Divide Wisconsin Retirement System Benefits, for use if the termination of a marriage or domestic partnership occurred inside of Wisconsin; and ET-4935, Foreign Jurisdiction Order to Divide Wisconsin Retirement System Benefits, for use if the termination of a marriage or domestic partnership occurred outside of Wisconsin but within a state or territory of the United States. Either form is available from the department of employee trust funds at no charge or can be accessed on the department's website by searching for the form number.

SECTION 13. ETF 50.315 is created to read:

ETF 50.315 Termination for fraud, misrepresentation, error, or mistake. (1) Payment of disability annuity benefits under s. 40.63, Stats., may be terminated immediately and overpayment recovered upon a department determination of either of the following:

(a) Disability annuity benefits were granted as the result of fraud or misrepresentation in the application or in required evidence of eligibility.

(b) Disability annuity benefits were granted due to an error or mistake by the department or due to an error or mistake in the information supplied by the employer used for determining eligibility, effective date, or amount of disability annuity benefits.

(2) The amount of monthly disability annuity benefits may be altered upon a determination that the amount of disability annuity benefits was computed in error.

(3) Disability annuity benefits may be terminated effective upon a determination by the department that the recipient has made misrepresentations or submitted false or fraudulent information regarding continued disability, earnings, wages, salary, or other earned income.

(4) If the department alters the amount of monthly disability annuity benefits under sub. (2) or terminates payment of disability annuity benefits under sub. (3), the department shall send notice of the action to the recipient. The notice shall be in the form of a written determination stating the reasons for the alteration or termination. The recipient may file a timely appeal of the alteration or termination with the appropriate board as provided in ch. ETF 11. If no timely appeal is filed, the alteration or termination of disability annuity benefits is final.

SECTION 14. ETF 50.58 (2) is amended to read:

ETF 50.58 (2) EXCEEDING EARNINGS LIMIT. Notwithstanding s. ETF 50.56 (4) (a), LTDI benefits for a recipient under this section may not be terminated for exceeding the earnings limit. The payment of LTDI benefits shall be suspended and no LTDI benefits shall be payable after the first of the month in which ~~a determination is made by the department that~~ the recipient has received during the calendar year earnings or other earned income exceeding the earnings limit. Payment of LTDI benefits suspended under this paragraph shall resume on the first day of the next calendar year.

SECTION 15. ETF 52.06 (1) and (2) (b) are repealed.

SECTION 16. ETF 52.06 (2) (a) is renumbered ETF 52.06 (2).

SECTION 17. ETF 52.07 (3) (d) is amended to read:

ETF 52.07 (3) (d) The employer reduces the applicant's position. Assigning a formerly full-time employee to a part-time position or reducing a part-time employee's hours is considered a reduction of position for the purposes of this chapter. An employee who never returns to work after their last day worked in full protective duty is also considered to have received a reduction in position for the purposes of this chapter if they do not meet any other qualifying criteria prior to or other than retirement. Assigning the applicant to a position which does not satisfy the criteria under s. 40.02 (48), Stats., defining a protective occupation participant is a reduction of position. for the purposes of this chapter.

SECTION 18. ETF 52.10 (1) is renumbered 52.10.

SECTION 19. ETF 52.10 (2) is repealed.

SECTION 20. ETF 52.28 (2) is amended to read:

ETF 52.28 (2) Determinations made by the department under this chapter as to an applicant's eligibility for duty disability benefits may be appealed to the division of hearings and appeals in the

department of ~~workforce development~~ administration under s. 40.65 (2) (b) 3, Stats. The department is a necessary party.

SECTION 21. ETF 60.53 (2) (e) 1. c., (2) (f) and (2) (g) are amended to read:

ETF 60.53 (2) (e) 1. c. For an application for any optional form of payment, the last working day of the year before the year in which the participant would have attained the age 69.5 provided in section 401 (a) (9) of the Internal Revenue Code. The department may not accept an application for a monthly annuity under this subdivision if the department receives the application after the application date specified in par. (c), unless the beneficiary files a beneficiary designation that the department receives by that date or by September 30, 1999, whichever is later.

(2) (f) During the calendar year before the year that the participant would have attained the age 69.5 provided in section 401 (a) (9) of the Internal Revenue Code, a beneficiary who was the spouse of the participant at the time of death and who has filed a beneficiary designation if required under par. (e) 1. c., may apply for a death benefit with a deferred effective date which may not be later than January 1 of the year in which the participant would have attained the age 70.5 provided in section 401 (a) (9) of the Internal Revenue Code.

(2) (g) Unless the account is considered abandoned as provided in s. 40.08 (8) (a) 2. or 2m., Stats., the department shall distribute the death benefit as a lump sum unless it has received an application for the death benefit within the applicable deadline specified in par. (d) or (e). If the application was due under par. (d) or (e) 1. b., the department shall make the distribution on or before the last working day of the fifth calendar year following the year of the death of the participant or alternate payee. If the application was due under par. (e) 1. c., the department shall make the distribution effective January 1 of the year in which the participant would have attained the age 70.5 provided in section 401 (a) (9) of the Internal Revenue Code. Beneficiaries may not cancel distributions made under this paragraph.

SECTION 22. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.