

## Chapter ER-MRS 13

### PROBATIONARY PERIODS

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**Note:** Chapter Pers 13 was renumbered chapter ER-Pers 13, effective March 1, 1983. Chapter ER-Pers 13 was renumbered chapter ER-MRS 13 under s. 13.93 (2m) (b) 1., Stats., Register, October, 1994, No. 466.

**ER-MRS 13.01 Definitions.** The following are definitions for terms used in this chapter.

(1) "Student cooperative program" means those cooperative programs in which individuals participate as provided in s. 230.22 (4), Stats.

(2) "Understudy" means any person appointed under s. 230.04 (11), Stats.

**Note:** The definition of probationary period is set forth under s. ER-MRS 1.02 (24).

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, February, 1981, No. 302, eff. 3-1-81; am. Register, February, 1983, No. 326, eff. 3-1-83; r. and recr. Register, May, 1988, No. 389, eff. 6-1-88.

**ER-MRS 13.015 Purpose.** During the probationary period the work of the employee is to be closely observed to determine if the employee is effectively able to carry out the assigned duties and responsibilities on a continuing basis.

**History:** Cr. Register, May, 1988, No. 389, eff. 6-1-88.

**ER-MRS 13.02 Duration.** All probationary periods shall be one year in duration, except:

(1) In the case of an understudy, intern, trainee, student cooperative program or an apprentice appointment, the probationary period shall be lengthened by the total length of such understudy, intern, trainee, student cooperative program or apprentice period.

(2) In the case of employees who have not demonstrated the capacity to be granted permanent status in class within 12 months after the beginning of an original or promotional probationary period, the director may, at the request of an appointing authority, extend the probationary period for up to 12 additional months, provided the extension is desirable on the basis of factors such as:

(a) Unanticipated change in the program or duty assignment, or

(b) Substantial change in performance.

(3) In the case of administrative, technical or professional positions, at the request of an appointing authority, the director may, prior to certification of applicants, establish a probationary period of up to 2 years in order to provide the appointing authority assurance that the employee will have adequate exposure during the probationary period to the various duties and responsibilities which are a part of the position.

(4) In the case of permissive probationary periods, the last 6 months may be waived by the appointing authority.

(5) In the case of initial appointments to positions designated as supervisory or managerial as defined under s. 111.81, Stats., all probationary periods shall be for one year duration, no portion of which may be waived.

(6) In cases where it is specifically provided otherwise in separate pay schedules.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; r. (2), am. (1) and (6), renum. (3) to (5) to be (2) to (4) and am., cr. (5), Register, February, 1981, No. 302,

eff. 3-1-81; am. (1), Register, May, 1988, No. 389, eff. 6-1-88; corrections in (2), (3), (5) made under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717; CR 18-006: am. (intro.), (2) (intro.), (4), (5) Register July 2018 No. 751, eff. 8-1-18.

**ER-MRS 13.03 When probation required.** A probationary period is required for:

(1) All original appointments;

(2) All promotional appointments;

(3) The duration that an employee is serving a trainee, intern, apprentice, student cooperative program or understudy appointment; and

(4) Upon qualifying for the objective classification after completion of the trainee, intern, apprentice, student cooperative program or understudy period.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; cr. (intro.), am. (1) and (2), renum. (3) to be (3) (a) and am., cr. (3) (b), r. (4), Register, February, 1981, No. 302, eff. 3-1-81; renum. from Pers 13.04, Register, February, 1983, No. 326, eff. 3-1-83; am. Register, May, 1988, No. 389, eff. 6-1-88.

**ER-MRS 13.04 Permissive probationary period provisions.** (1) For the application of permissive probationary periods on:

(a) Transfer: See ss. ER-MRS 15.03 15.04, and 15.08.

(b) Reinstatement: See s. ER-MRS 16.04 (1).

(c) Voluntary demotion: See s. ER-MRS 17.04 (3) (b) and (c).

(2) The appointing authority shall make a determination as to whether the appointee shall serve a permissive probationary period and shall so notify that employee in the letter of appointment.

(3) The appointing authority may waive these permissive probationary periods at any time following the initial six month requirement. The employee shall be notified by the appointing authority of the determination to waive such employee's probationary period.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, February, 1981, No. 302, eff. 3-1-81; renum. from Pers 13.05, Register, February, 1983, No. 326, eff. 3-1-83; corrections in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466; CR 18-006: am. (1) (a), (3) Register July 2018 No. 751, eff. 8-1-18.

**ER-MRS 13.045 Probationary period for positions brought into the classified service.** If an incumbent employee is certified and appointed under s. 230.15 (1m) (c), Stats., the director shall determine the employee's probationary status under s. 230.28, Stats., except that the employee shall receive credit toward any probationary period for the time the employee had been employed in the position immediately prior to appointment under s. 230.15 (1m) (c), Stats.

**History:** Emerg. cr. eff. 3-5-93; cr. Register, August, 1993, No. 452, eff. 9-1-93; correction made under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717.

**ER-MRS 13.05 Absence from employment.** (1) UP TO 348 WORK HOURS. If an employee has absences from employment not exceeding 348 work hours or prorated portion for part-time employees for any reason approved by the appointing authority, the appointing authority shall determine whether such absence shall be waived from the probationary time or the proba-

tionary period is to be extended to cover such absence. The employee shall be given written notice of such extension.

(2) **MORE THAN 348 WORK HOURS.** If an employee has such absence from employment totaling more than 348 work hours or the prorated portion for part-time employees, during a probationary period identified in s. ER-MRS 13.03, the probationary period shall be extended by the length of the time absent, except that up to 348 work hours or prorated portion for part-time employees may be waived by the appointing authority. For permissive probationary periods, such extension is at the discretion of the appointing authority except that the employee must serve a minimum of 6 months consistent with s. ER-MRS 13.02 (4). The employee shall be given written notice of such extension.

(3) **TERMINATION DUE TO PENDING LAYOFF.** If an employee was terminated during a probationary period due to a pending layoff prior to July 1, 2016, and is later reinstated, the time served may be carried over at the discretion of the new appointing authority. Determination of any such carry-over shall be specified at the time of the reinstatement and written notice given to the employee and a record of such notification kept on file.

(4) **RESIGNATION.** If an employee resigns during a probationary period, and is later reappointed from the same employment register, the time served shall not be carried over.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (5) Register, September, 1975, No. 237, eff. 10-1-75; am. (1) and (5), Register, December, 1976, No. 252, eff. 1-1-77; am. (1) to (4), r. (5), Register, February, 1981, No. 302, eff. 3-1-81; renum. from Pers 13.06, Register, February, 1983, No. 326, eff. 3-1-83; **CR 18-006:** am. (1) to (3) Register July 2018 No. 751, eff. 8-1-18.

**ER-MRS 13.06 Transfer while serving a probationary period.** See s. ER-MRS 15.07.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; r. and recr. Register, February, 1981, No. 302, eff. 3-1-81; renum. from Pers 13.07, Register, February, 1983, No. 326, eff. 3-1-83; correction made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466.

**ER-MRS 13.07 Time not counted.** Time served in a project appointment or limited term appointment, including an emergency or provisional appointment, shall not be counted as a part of any probationary period.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, February, 1981, No. 302, eff. 3-1-81; renum. from Pers 13.08, Register, February, 1983, No. 326, eff. 3-1-83.

**ER-MRS 13.08 Dismissal. (1) ACTION BY APPOINTING AUTHORITY.** The appointing authority may dismiss any employee without the right of appeal during the employee's probationary period. Dismissals shall not be made on a discriminatory basis as defined under ss. 111.31 to 111.395, Stats.

(2) **DISMISSAL NOTICE REQUIRED.** When a probationary employee is to be dismissed, the appointing authority shall immediately provide written notice to the employee to be dismissed of the reasons for dismissal, the date on which dismissal is to occur, and that the employee may be restored to the register from which he or she was appointed, if it still exists, upon request to and with the approval of the director pursuant to s. 230.28 (3), Stats. A copy of such notice shall be sent to the director. An employee who has permanent status and is dismissed while on a probationary period under the provisions of s. ER-MRS 14.03 or 15.055, shall also be notified whether or not the employee will be restored to the employee's former position, or to a position assigned to a class having the same pay rate or pay range maximum, or to a position in a class assigned to a counterpart pay rate or pay range.

**Note:** For rights of employees who are terminated from a position while serving a probationary period resulting from promotion, transfer or demotion, see ch. ER-MRS 14, 15 or 17, respectively.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (1) and (2), Register, December, 1976, No. 252, eff. 1-1-77; am. Register, February, 1981, No. 302, eff. 3-1-81; renum. from Pers 13.09 and am. Register, February, 1983, No. 326, eff. 3-1-83; r. (1) (b) and (3), am. (2), Register, May, 1988, No. 389, eff. 6-1-88; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466; correction in (2) made under s. 13.92 (4) (b) 6., Stats., Register September 2015 No. 717.

**ER-MRS 13.09 Attainment of permanent status in class.** Permanent status in class is attained immediately upon completion of the last work period to which the employee was assigned to work during his or her probationary period regardless of whether it falls on or before the last day of the probationary period. Prior to the end of the probationary period, the appointing authority shall notify the employee in writing that the employee will attain permanent status in class. No employee may be denied permanent status in class after successfully completing a probationary period because an appointing authority fails to submit notice.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, February, 1981, No. 302, eff. 3-1-81; renum. from Pers 13.10, Register, February, 1983, No. 326, eff. 3-1-83; am., Register, May, 1988, No. 389, eff. 6-1-88.