



**2019 WISCONSIN ACT 185
Q & A ON EMPLOYING WRS ANNUITANTS DURING
THE PUBLIC HEALTH EMERGENCY**

April 16, 2020

On April 15, 2020, Governor Evers signed 2019 Wisconsin Act 185 (“Act 185”) into law. Act 185 becomes effective on April 17, 2020. Act 185 provides a number of relief measures addressing the ongoing COVID-19 pandemic. One relief measure particularly important to counties relates to the ability to employ Wisconsin Retirement System (“WRS”) annuitants during the ongoing public health emergency to fill immediate needs and also to utilize their experience and expertise. Act 185 eases the restrictions typically applicable to the employment of WRS annuitants by WRS participating employers. Importantly, Act 185 provides that an annuitant who is hired during the public health emergency may elect to not suspend his or her annuity for the duration of the declared public health emergency if the position for which the annuitant is hired is a “critical position.” Further, Act 185 reduces the wait time typically required for an annuitant to be reemployed by a WRS covered employer.

The Wisconsin Counties Association and its general counsel, von Briesen & Roper, s.c., have received many questions surrounding these changes to the employment status of WRS annuitants. Our general counsel has prepared the Q & A below to provide information related to this aspect of Act 185 based upon the questions received.

This information should be reviewed carefully with corporation counsel to ensure county compliance with other applicable laws and regulations, including its own policies and procedures.

Employment of WRS Annuitants

Q: Who is a WRS annuitant?

A: A WRS annuitant is a person who is receiving a retirement benefit (i.e., an annuity) from WRS. This generally includes past WRS participating employees who (1) have a valid termination of their employment from a WRS participating employer (e.g., retirement); (2) meet the applicable minimum retirement age; and (3) satisfy any applicable vesting requirements. Retired county employees are typically WRS annuitants.

Q: Are counties a WRS participating employer?

A: Yes. All counties except for Milwaukee County are participating employers under the WRS.

Q: Our county wants to rehire recent retirees to assist during the public health emergency. May counties re-employ these retirees and/or employ other such WRS annuitants?

A: Yes. However, there are certain restrictions applicable to the employment of WRS annuitants that must be adhered to in order for an annuitant to remain eligible to receive his or her annuity. These requirements are (1) a break in service requirement; and (2) a maximum hours threshold.

Q: What is the break in service requirement? Was the break in service requirement modified by Act 185?

A: Typically, a WRS annuitant must wait 75 days before returning to work for a WRS covered employer in order to continue eligibility to receive his or her annuity. A WRS annuity benefit will be cancelled if the break in service requirement is not satisfied. However, Act 185 reduced the break in service requirement to only 15 days for individuals who are hired to a “critical position” during the declared public health emergency. This means that WRS annuitants may be employed in “critical positions” beginning on the 16th day of their retirement during the emergency.

Q: What is the maximum hours threshold? Was the maximum hours threshold modified by Act 185?

A: Typically, a WRS annuitant becomes ineligible to continue receiving a WRS annuity if they are employed by a WRS participating employer and meet the WRS participation eligibility standards. If a WRS annuitant meets the standards they become a WRS participating employee and do not have the option to decline participation. An individual becomes a WRS participating employee if they are expected to work, or actually work, more than two-thirds of full time (i.e., 1200 hours). In other words, any WRS annuitant who is expected to work, or actually works, more than two-thirds time (1200 hours) becomes a WRS participating employee, and their annuity is cancelled until they again separate their employment.

However, Act 185 exempts WRS annuitants employed in “critical positions” from coverage under the WRS altogether. Stated another way, Act 185 eliminated the two-thirds full time hours threshold for all WRS annuitants employed in “critical positions” during the declared public health emergency. This means that WRS annuitants employed in “critical positions” may work more than two-thirds of full time during the declared public health emergency while still remaining eligible to receive their WRS annuity. Further, rehired WRS annuitants will also be ineligible to accrue new or additional WRS benefits because they are not considered participating employees.

Q: What is a “critical position” under Act 185?

A: A “critical position” is any position designated as critical by a county’s local health officer. Every local health officer is required to determine which public employee positions within his or her jurisdiction are critical during the public

health emergency based on guidance provided by the Secretary of the Wisconsin Department of Health Services (“DHS”).

For this reason, it is critical for counties to work closely with their local health officer to make this determination. Every county has different needs and faces different challenges, so it is important that these specific needs be reviewed in addition to the general statewide guidance provided by the Secretary of DHS.

Q: How long does the relaxed break in service requirement and elimination of the maximum hours threshold under Act 185 apply?

A: The reduced break in service requirement and elimination of the maximum hours threshold for employees employed in critical positions are effective only for the duration of the state of emergency declared by Executive Order 72 (“EO 72”). This means that: (1) any WRS annuitant hired after the expiration of EO 72 must satisfy the 75 day break in service requirement, regardless of whether the employee is hired for a critical position; and (2) a WRS annuitant’s annuity will be suspended if they are anticipated to work, or actually work, more than two thirds of full time after the expiration of EO 72.

Currently, EO 72 is set to expire on May 11, 2020, and these benefits would no longer apply after that date. A joint resolution of the legislature is required to extend the period of a declared public health emergency.