



EMPLOYER BULLETIN

Employer Communication Center
(608) 264-7900

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- **New! Educational *Employer Bulletins***
- **WRS Eligibility for Emergency Workers**

Educational Bulletins

The Department of Employee Trust Funds (ETF) is pleased to announce plans to publish *Employer Bulletins* dedicated to continuing employer education. Historically, *Employer Bulletins* were produced to announce new policies, offer forms and manuals, and advertise important dates (e.g., Dual-Choice enrollment, training sessions, benefit presentations, and annual reporting). Beginning with this bulletin, ETF will also use this forum to review current policy and procedures as well as Wisconsin Retirement System (WRS) and other benefit program definitions (e.g., eligibility and enrollment). In addition, ETF will offer information in response to frequently asked employer questions—inquiries raised at our Employer Training Sessions as well as through ETF’s Employer Communication Center—regarding our policies and procedures.

WRS Eligibility for Emergency Workers

Employers are responsible for making WRS eligibility determinations for all types of emergency workers, taking into consideration the number of hours required in the performance of the job’s duties and the expected duration of employment. “Emergency worker” is not defined in Chapter 40, Wis. Stat., but for purposes of this discussion includes—but is not limited to—permanently staffed firefighters, volunteer firefighters and Emergency Medical Technicians (EMTs). Due to the varying employment conditions and compensation schemes employers assign to this type of employee, it can be difficult to project the number of work hours required. These guidelines should assist employers in evaluating which hours to consider for WRS eligibility purposes. Ultimate responsibility for determining the reasonable hours necessary to perform the job, along with the expected duration of employment, belongs to the employer.

Frequently asked questions pertaining to Firefighters/EMTs:

1. Is the firefighter/EMT who donates time or receives a token payment considered a volunteer and therefore not eligible for WRS?

Not necessarily. The definition of employee varies, depending on the context in which the term is used. The federal Fair Labor Standards Act (FLSA), US Code Title 29, s. 203 (e) (4) (a) (i), excludes someone who performs “volunteer” services for local governments from its definition of employee as such:

(4) (a) The term “employee” does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if—

(i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

(ii) such services are not the same type of services which the individual is employed to perform for such public agency.

However, the WRS is administered in accordance with Chapter 40 of the Wisconsin Statutes. Sections 40.22 and 40.02 (26), Wis. Stat., define “employee” as one who is providing compensated services to a

participating employer. Emergency workers not receiving compensation other than expense reimbursement are not considered employees for WRS eligibility purposes. On the other hand, once compensated, even with a token payment, the worker is no longer a volunteer and must be considered for WRS eligibility.

Chapter 40 neither permits ETF to set a minimum threshold for earnings, nor provides guidance in setting a minimum threshold for hourly compensation. The statute only requires that there be compensated service. WRS eligibility is based on the expectation of hours and duration of employment; therefore, the compensation scheme employed is irrelevant to the eligibility determination.

2. Are an employee's on-call/standby hours considered when determining WRS eligibility?

Not always. Although an employee who is on-call/standby may be receiving some form of compensation, the employee isn't actually rendering service to the employer. Instead, they are being compensated for making themselves available to work. Even if the employer has placed restrictions on the employee while serving on-call/standby—for example, requiring that they stay within a set radius of the firehouse—that employee is still able to perform personal activities until they actually respond to a call. The ETF Board has determined that on-call/standby time is not counted in determining WRS eligibility in every instance because to do so would result in an employee accruing many on-call hours without actually rendering more than a few hours of service. The exception would occur if an employer actually directed the employee to perform a compensable service while on-call/standby.

3. May an employer apply Wisconsin Administrative Code ETF 10.03 (7) for determining eligibility?

No. ETF 10.03 (7) codifies a method for determining the number of on-call/standby hours to report AFTER the employee is determined WRS eligible. ETF 10.03 (7) is therefore appropriately discussed in Subchapter 408 C of the *WRS Employer Administration Manual*, which addresses earnings and service issues, not WRS eligibility. The rule instructs employers to calculate on-call/standby hours for reporting purposes by dividing the compensation by the employee's base hourly rate of pay.

4. In the event an emergency worker becomes eligible for WRS, should an employer report only those hours associated with the emergency call or may the employer also include on-call/standby hours?

Report all earnings and associated service hours once WRS eligibility has been determined. Again, hours used to assess WRS eligibility are not necessarily the hours that will be used for reporting once eligibility has been determined. If a WRS-eligible employee receives earnings for on-call/standby or other service incidental to primary employment, all earnings and associated hours [using ETF 10.03 (7)] are reportable and contributions are due.

5. What time should be included in determining the length of an emergency call?

Situations vary by employer and employment situation. One method is to begin tracking the hours when the emergency worker arrives at the station/fire/emergency and end tracking when the emergency call is over and the worker is dismissed from or leaves the station, fire or emergency. Depending on the employer requirements, the worker could be dismissed as late as the time equipment clean-up at the station is completed, or as early as arrival at the emergency, due to already-adequate staffing.

Please see the attached table for employment conditions for emergency workers.

EMPLOYMENT CONDITIONS FOR EMERGENCY WORKERS

#	Employment Situation	Description	Requirements/Expectations	Compensation	WRS Eligibility Determination Guidelines
1	Firefighter (FT or PT) assigned to staff firehouse shifts.	Provide shift coverage in the firehouse. Employer doesn't employ on-call/standby workers.	Serve in the capacity of professional firefighter; attends to firehouse duties when not responding to calls.	Salary or hourly wage.	All shift hours at the station or attending calls are used in determining WRS eligibility. Compensation scheme employed is irrelevant.
2	Rotation between staff firefighter & on-call/standby duty.	Staff firehouse on a rotating basis. Provide on-call/standby coverage on a rotating basis.	Weekly rotation of firehouse shift work and on-call/standby when not on the firehouse rotation. Employee is on-call for a set number of shifts per month. While on-call the employee must: <ul style="list-style-type: none"> • Remain within a set radius of the station (may stay at their homes if within the radius); • Stay at the station or elsewhere within the radius if they reside outside the radius; • Be available by phone or radio; • Use their own vehicle to respond to fire/ambulance station; • Refrain from consuming alcoholic beverages. 	Hourly rate when filling a normal shift. Paid a set dollar per hour amount while on-call and paid a higher rate if responds to call.	Hours worked staffing the firehouse and responding to incoming calls must be included in determining WRS eligibility. Only on-call hours actually responding to calls or performing other employer directed activities are considered in determining WRS eligibility. On-call hours not spent responding to actual calls are not considered in determining WRS eligibility. Employees are making themselves available to work but are not performing actual duties. Travel time to the firehouse is not considered in determining WRS eligibility. Compensation scheme employed is irrelevant.
3	On-call/Standby	Employed in an on-call/standby capacity only.	Employee is on-call for a set number of shifts per month. While on-call the employee must: <ul style="list-style-type: none"> • Remain within a set radius of the station (may stay at their homes if within the radius); • Stay at the station or elsewhere within the radius if they reside outside the radius; • Be available by phone or radio; 	Stipend or flat rate while on call; a higher rate if responding to a call.	Only on-call hours actually responding to calls or performing other employer directed activities are considered in determining WRS eligibility. On-call hours not spent responding to actual calls are not considered in determining WRS eligibility. Employees are making themselves available to work but are

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			<ul style="list-style-type: none"> • Use their own vehicle to respond to fire/ambulance station; • Refrain from consuming alcoholic beverages. 		<p>not performing actual duties. Travel time to the firehouse is not considered in determining WRS eligibility.</p> <p>Compensation scheme employed is irrelevant.</p>
4	Volunteer Firefighter	Responds to fire calls conveyed over employing entity's emergency siren system.	<p>Employer schedules specific group of "volunteers" to be on-call/standby during certain weeks. Volunteer decides to respond to siren or not. They may also elect to respond to calls during weeks they are not specifically scheduled to do so.</p> <p>During the scheduled week, employee:</p> <ul style="list-style-type: none"> • Remains close to the community; • Is available by phone or radio; • Uses their own vehicle to respond to fire/ambulance station • Refrains from consuming alcoholic beverages. 	<p>Reimbursement for personal expenses only.</p> <p>(OR)</p> <p>Yearly stipend; or a flat rate while on-call/standby with a higher rate if responding to call.</p>	<p>If working for reimbursement of personal expenses only, employee is a true volunteer and not WRS eligible. Employer must document expense payments.</p> <p>If compensated, only the hours actually responding to calls or performing other employer directed activities must be included in determining WRS eligibility.</p> <p>On-call hours not spent responding to actual calls are not considered in determining WRS eligibility since the employees are making themselves available to work but are not performing actual duties.</p> <p>Travel time to the firehouse is not considered in determining WRS eligibility.</p> <p>Compensation scheme employed is irrelevant.</p>
5	Travel time to and from the firehouse or the site of the emergency when responding	Travel time to firehouse or emergency from home, job, etc., and return to home or job, etc., at end of	When on-call/standby, employee is expected to report either to the firehouse or the site of the emergency.	Possible yearly stipend or hourly rate, depending upon employer's compensation scheme.	<p>Travel times to and from are not considered in determining WRS eligibility.</p> <p>Compensation scheme employed is irrelevant.</p>

Employment Conditions for Emergency Workers

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#	Employment Situation	Description	Requirements/Expectations	Compensation	WRS Eligibility Determination Guidelines
	while on-call/standby.	call.			
6	On the job Training/Drills	Weekly training and drills held for all firefighters.	All fire fighters, including those enrolled in the fire-fighter certification training, are required to attend weekly training/drill sessions at the fire station if they are not in class or on duty.	<p>Pay is dependent upon status. FT & PT staff firefighters are paid their hourly rate.</p> <p>On-call/standby is paid an hourly rate or it's included in their yearly or monthly stipend.</p>	<p>Since the training is mandatory and compensated, it is for the benefit of the employer and the hours are considered in determining WRS eligibility.</p> <p>Travel times to and from training site are not considered in determining WRS eligibility.</p> <p>Compensation scheme employed is irrelevant.</p>
7	Certification Training	Attending courses at local technical schools for the purpose of attaining state certification.	State law requires fire-fighters/EMT's to be certified when hired as emergency worker. The fire fighting/EMT programs are offered at the technical colleges.	Employer pays for the cost of the course and may or may not pay the employee for their time in attendance.	<p>Since the course is State mandated, the hours in attendance are not considered in determining WRS eligibility, unless the employee is being paid to be there.</p> <p>The fact the employer pays the tuition is irrelevant.</p>
8	Responds to call but remains on scene only for a short period of time.	<p>Employee provides minimal service when responding to a call due to:</p> <ul style="list-style-type: none"> • Adequate staffing so employee dismissed; • False alarm; • Response to call long after being dispatched. 	Employee performs service for the employer from the time arriving at the station or site of the emergency until the employer determines service is not required.	Set dollar amount or stipend paid regardless of the length of time spent responding to the call.	Hours spent from the time arriving at scene or firehouse until dismissal are considered in determining WRS eligibility. If the employer uses historical information to set a standard, the shortened calls must be built into the standards. Compensation scheme employed is irrelevant.
9	Fraction of hour worked.	Calls are paid at value of whole hours, i.e., employer rounds	Employee responds to 200 calls per year and the average time allocated is 2.5 hours per call so real hours	Employee is paid hourly fee for every hour or fraction of hour worked.	Only the hours performing actual duties are considered in determining WRS

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		up for pay purposes.	worked equals 500 hours. However, employer rounds to whole hours, paying employee for 600 hours.		eligibility. If the employer has come up with a projection of 2.5 hours per call, that must be used in determining WRS eligibility, not the paid hours.
10	Multiple employment positions for a WRS participating employer.	Primary employment is WRS eligible; secondary emergency worker position does not meet WRS eligibility criteria on its own.	Due to primary employment being WRS eligible, both primary employment and emergency worker earnings and service are reported to WRS.	All compensation reported to WRS, with on-call hours reported per ETF 10.07(3).	If employee terminates primary employment but retains the emergency worker position, the employee has not ended the employee-employer relationship and the termination transaction applies to the primary employment only. Emergency worker service and earnings must continue to be reported under protective category.

For additional information regarding this bulletin and/or to offer topics/questions for future educational *Employer Bulletins*, contact the Employer Communication Center at (608) 264-7900. You may also send an e-mail from the Contact Us page of our Internet site, <http://etf.wi.gov>.

The Department of Employee Trust Funds does not discriminate on the basis of disability in the provision of programs, services or employment. If you are speech, hearing or visually impaired and need assistance, call (608) 266-0728 or TTY (608) 267-0676. We will try to find another way to get the information to you in a usable form.

The ETF EMPLOYER BULLETIN is published by the Wisconsin Department of Employee Trust Funds. There are three editions: one for all employers, one for local employers with items just for

their interest, and one for state agencies. Questions should be directed to contact persons listed or to the Division of Trust Finance & Employer Services. Call John Vincent at (608) 261-7942.

EMPLOYER AGENTS: This Bulletin may be copied for further distribution to other payroll offices, subunits or individuals who may need the information. Copies of the most recent Employer Bulletins are available on our internet site at <http://etf.wi.gov>.