

Milwaukee County
Department of Human Resources
INTER-OFFICE COMMUNICATION

Date: December 2, 2024

To: Marcelia Nicholson, Chairwoman, Milwaukee County Board of Supervisors

From: Erika Bronikowski, Retirement Plan Services Director



**Subject: Proposed Amendments for the ERS Pension Plan and Pension Contributions
in Response to 2023 WI Act 12**

Background

The Employees' Retirement System of the County of Milwaukee ("ERS") is a tax-qualified retirement plan under the Internal Revenue Code ("Code"). In order to maintain its tax-qualified status, ERS must comply with Code requirements applicable to governmental plans, including being administered in accordance with the Plan document, which consists of Milwaukee County Ordinance section 201.24 and Appendix B. The Ordinance changes in this package are updates to the ERS Plan document in response to 2023 WI Act 12.

In 2023, the Milwaukee County Board of Supervisors adopted the local option sales tax permitted by 2023 WI Act 12, which requires that the County freeze ERS to new hires after December 31, 2024. This Ordinance package is intended to execute the soft freeze of the ERS.

Summary of Request

Retirement Plan Services ("RPS") is asking the County Board to consider Ordinance amendments that execute the soft freeze of the ERS as required by 2023 WI Act 12.

To summarize, the changes include the following:

- closing the ERS to new entrants as of January 1, 2025;
- documenting the mandatory employee pension contributions to the ERS for 2024 and going forward; and
- vesting members of the ERS who will not have the opportunity to return to active ERS service to become vested after December 31, 2024. (The IRS requires vesting of affected members if there is a partial termination of a pension plan. To ensure there is no risk of IRS disqualification, we are proposing to vest all members who have already left County employment but still have valid ERS service as of January 1, 2025).

RPS has worked with the Pension Board, Corporation Counsel, and external Counsel to the Pension Board and has consulted with the Comptroller's Office on these outlined pension changes to the Milwaukee County Code of General Ordinances. Pursuant to Milwaukee County General Ordinance 201.24 (8.17), the fiscal analysis is attached to the file.

Description of Proposed Ordinance Amendments

Section 1 of the Resolution – ERS Plan Closed to New Entrants

Background.

The amendments regarding the ERS plan freeze are in Ordinance Section 201.24 (2.4). These amendments add language that revises the definition of an employee in the ERS to only include those who are employed in an ERS eligible position on December 31, 2024.

This update closes the ERS to new entrants and clarifies which individuals employed at Milwaukee County are eligible for ERS benefits.

The defined term “employee” is used later in the ERS ordinance to indicate who is eligible for certain ERS benefit provisions. Without these revisions to the defined term “employee” the literal reading of the Ordinance may give the impression that certain ERS benefits are available to individuals who are not in the ERS.

Proposed Amendments.

Ordinance section 201.24(2.4). The proposed amendments to Ordinance section 201.24(2.4) revise Section 201.24 (2.4) as follows:

- The definition of an “employee” in the ERS is revised to exclude those hired after December 31, 2024.
- The definition of an “employee” in the ERS is also revised to exclude those who are separated from service as of December 31, 2024 and who return to County employment in the future.
- The definition of an “employee” in the ERS is further revised to clarify that those who are in positions eligible for the Wisconsin Retirement System and OBRA retirement system (Social Security replacement plan for seasonal employees) are not eligible for ERS.
- Finally, the definition of an “employee” in the ERS is revised to exclude those who are employed but not in a position eligible for the ERS as of December 31, 2024 who, after December 31, 2024, move into a position that would otherwise be eligible for the ERS.

Effective Date. Effective upon passage.

Section 2 of the Resolution – Definition of Earnable Compensation

Background.

The amendments regarding the definition of earnable compensation include changes to Ordinance Section 201.24 (2.7). They provide clarification that earnings included in the ERS pension calculation must be earned while earning service credit in the ERS. This is to ensure that individuals who are actively employed at Milwaukee County and covered by the WRS will not have earnings count toward an ERS benefit.

Proposed Amendments.

Ordinance section 201.24(2.7). The proposed amendments to Ordinance section 201.24(2.7) add clarification that only earnings received while earning service in the ERS may be used in the ERS pension calculation.

Effective Date. Effective upon passage.

Section 3 of the Resolution – No ERS Service for Hires after 2024

Background.

The amendments regarding ERS pension service are in Ordinance Section 201.24 (2.9). They provide the following:

- Clarification that employees hired after 2024 will enter the WRS, if eligible, and will not enter the ERS.

Proposed Amendments.

Ordinance section 201.24(2.9). The proposed amendment to Ordinance section 201.24(2.9) adds language that clarifies that individuals hired after December 31, 2024 and individuals who were previously employed but not in active service on December 31, 2024 shall participate in the WRS if hired/rehired.

Effective Date. Effective upon passage.

Section 4 of the Resolution – Normal Retirement Age in ERS Only Applies to ERS

Background.

The amendments regarding normal retirement age are in Ordinance Section 201.24 (2.18). They provide that normal retirement age shall be determined by employee eligibility when they leave active service in the ERS. This is to ensure that ERS benefit determinations are made based on service in the ERS and not other subsequent County employment in another pension system such as the WRS.

Proposed Amendments.

Ordinance section 201.24(2.18). The proposed amendments to Ordinance section 201.24(2.18) revise the section to replace “employment” with “active service employment” to clarify that normal retirement age shall be determined by employee eligibility when they leave active service in the ERS.

Effective Date. Effective upon passage.

Section 5 of the Resolution – Codifying ERS Employee Contributions

Background.

The amendments regarding ERS employee contributions are in Ordinance Section 201.24 (3.11). They provide the following:

- Codification of the types of pay that are subject to ERS mandatory employee pension contributions.
- Clarification that ERS employee pension contributions are calculated using the normal cost, as required by 2023 WI Act 12, instead of the actuarially required contribution.
- Codification of who is subject to the general employee contribution rate and the public safety employee contribution rate.

Proposed Amendments.

Ordinance section 201.24(3.11). Generally, the proposed amendments to Ordinance section 201.24(3.11) document the ERS employee contribution amounts by codifying the types of pay that are subject to contributions, by codifying the change to the calculation of employee contributions to only the normal cost, and by defining which employees are subject to the public safety contribution rate.

The proposed amendments to Ordinance section 201.24(3.11(1)) remove language that is outdated because it applies to pension contributions prior to 2024.

The proposed amendments to Ordinance section 201.24(3.11(2)) define the types of pay that are subject to ERS pension contributions.

The proposed amendments to Ordinance section 201.24(3.11(3)) revise language regarding the calculation of the ERS employee pension contribution amount to comply with 2023 WI Act 12 and add clarifying language to define which employees are subject to the public safety employee pension contribution rate.

Effective Date. Effective January 1, 2024.

Section 6 of the Resolution – Normal Retirement Requirements in ERS Only Apply to ERS

Background.

The amendments regarding normal retirement requirements are in Ordinance Section 201.24 (4.1). They provide the following:

- Only the employees who are in the ERS or OBRA at the time of retirement may retire under these normal retirement provisions.
- Only the employees who are in the ERS at the time of retirement can be eligible for the Rule of 75.

This clarifies that County employees who are in the WRS are considered deferred vested members if they have ERS service credit. This is administratively cleaner for RPS.

Proposed Amendments.

Ordinance section 201.24(4.1). The proposed amendments to Ordinance section 201.24(4.1) revise language referring to “members” with language referring to “Employees” (as defined in Ordinance 201.24 (2.4)).

Effective Date. Effective upon passage.

Section 7 of the Resolution – Early Retirement Requirements in ERS only apply to ERS

Background.

The amendments regarding early retirement requirements are in Ordinance Section 201.24 (4.2). They provide that only employees who are in the ERS or OBRA at the time of retirement may retire from the ERS early.

This is to clarify that WRS members are treated as deferred vested members if they have ERS service credit. .

Proposed Amendments.

Ordinance section 201.24(4.2). The proposed amendments to Ordinance section 201.24(4.2) provide that a member must be in the ERS to take their pension early from the ERS.

Effective Date. Effective upon passage.

Section 8 of the Resolution – ADR Requirements in ERS Only Apply to ERS

Background.

The amendments regarding Accidental Disability Retirement (ADR) requirements are in Ordinance Section 201.24 (4.3). They provide the following:

- Only employees who are actively earning service credit in the ERS at the time of injury may receive an ADR benefit.

This is to clarify that County employees who are actively in WRS are not eligible to apply for an ADR.

Proposed Amendments.

Ordinance section 201.24(4.2). The proposed amendments to Ordinance section 201.24(4.3) revise language referring to “members” with language referring to “Employees” (as defined in Ordinance 201.24 (2.4)).

Effective Date. Effective upon passage.

Section 9 of the Resolution – ODR Requirements in ERS Only Apply to ERS

Background.

The amendments regarding Ordinary Disability Retirement (ODR) requirements are in Ordinance Section 201.24 (4.4). They provide the following:

- Only employees who are in the ERS at the time of injury may receive an ODR benefit.

This is to clarify that like ADR benefits, County employees actively in WRS cannot receive an ODR from ERS.

Proposed Amendments.

Ordinance section 201.24(4.4). The proposed amendments to Ordinance section 201.24(4.4) revise language referring to “members” with language referring to “Employees” (as defined in Ordinance 201.24 (2.4)).

Effective Date. Effective upon passage.

Section 10 of the Resolution – Deferred Vested Retirement

Background.

The amendments regarding Deferred Vested are in Ordinance Section 201.24 (4.5). They provide the following:

- ERS members who are not employed on December 31, 2024, who also are not vested, who also have valid service credit (i.e. did not cash out and have not been gone for more than five years) will automatically be vested because they will no longer have the opportunity to return to the ERS after December 31, 2024 to become vested.
- Only employees who are in the ERS may receive a deferred vested benefit from the ERS. This is to ensure that ERS benefit determinations are made based on service in the ERS and not other subsequent County employment in another pension system such as the WRS.

Proposed Amendments.

Ordinance section 201.24(4.5). The proposed amendments to Ordinance section 201.24(4.5) revise the ordinance to provide that ERS members who lose the opportunity to become vested due to the ERS soft freeze will be automatically vested.

Additionally, the proposed amendments to Ordinance section 201.24(4.5) revise language referring to “members” with language referring to “Employees” (as defined in Ordinance 201.24 (2.4)).

Effective Date. Effective upon passage.

Section 11 of the Resolution – BackDROP Benefit Eligibility in ERS Only Applies to ERS

Background.

The amendments regarding BackDROP eligibility are in Ordinance Section 201.24 (5.16). They provide the following:

- Only employees who are actively earning service credit in the ERS at the time of retirement may receive a BackDROP benefit. Therefore, employees enrolled in the WRS cannot receive a backDROP.
- Remove obsolete language regarding backdrop elections prior to 2004.

Proposed Amendments.

Ordinance section 201.24(5.16). The proposed amendments to Ordinance section 201.24(5.16) revise language referring to “members” with language referring to “Employees” (as defined in Ordinance 201.24 (2.4)) and remove obsolete language in subsection 6.

Effective Date. Effective upon passage.

Section 12 of the Resolution – Clarifying Who can Earn ERS Service

Background.

The amendments clarifying who can earn ERS service are in Ordinance Section 201.24 (8.7). They provide the following:

- Only employees who are in the ERS may earn service in the ERS.
- Employees cannot earn service in more than one pension system offered by Milwaukee County at the same time.

Proposed Amendments.

Ordinance section 201.24(8.7). The proposed amendments to Ordinance section 201.24(8.7) clarify that ERS service can only be earned by employees who are in the ERS and that service can only be earned in one pension offered by Milwaukee County at a time. They revise language referring to “members” with language referring to “Employees” (as defined in Ordinance 201.24 (2.4)) and remove obsolete language in subsection 6.

Effective Date. Effective upon passage.

Section 13 of the Resolution – Plan Amendment and Termination

Background.

The creation of Ordinance Section 201.24 (8.25) provides the ERS plan amendment and termination guidance, which is part of 2023 WI Act 12. It provides the following:

- No benefit enhancements may be made to the ERS unless required by federal law.

- The ERS plan shall be terminated after payments are made to all members and beneficiaries.

Proposed Amendments.

Ordinance section 201.24(8.25). The proposed creation of Ordinance section 201.24(8.25) codifies that no benefit enhancements may be made to the ERS unless required by federal law and that the ERS plan shall be terminated after payments are made to all members and beneficiaries.

Effective Date. Effective January 1, 2024.

CC: Supervisor Willie Johnson Jr., Chair, Finance Committee
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