



2023 Wis Act 4 Classification of Jailers as Protective Under WRS

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Sheriff Todd Delain

Important Disclaimer



**CONSULT WITH CORPORATION COUNSEL
ON ALL MATTERS INVOLVING THE
APPROPRIATE CLASSIFICATION OF
EMPLOYEES FOR WRS PURPOSES!**

WRS Classifications – General vs Protective (An Overview)

- **Protective Employment Category Benefits**
 - **Minimum Retirement Age (50 vs 55)**
 - **Duty Disability – provides income continuation at 75% if permanent disability arises in course of employment**

Who is Protective? (pre-Act 4)

- **Wis. Stat. § 40.02(48)(am):**
 - A conservation warden.
 - A conservation patrol boat captain.
 - A conservation patrol boat engineer.
 - A conservation pilot.
 - A conservation patrol officer.
 - A forest fire control assistant.
 - A member of the state traffic patrol.
 - A state motor vehicle inspector.
 - A police officer.
 - A fire fighter.
 - A sheriff.
 - An undersheriff.
 - A deputy sheriff.
 - A state probation and parole officer.
 - A county traffic police officer.
 - A state forest ranger.
 - A fire watcher employed at Wisconsin veterans facilities.
 - A state correctional-psychiatric officer.
 - An excise tax investigator employed by the department of revenue.
 - A special criminal investigation agent in the department of justice.
 - An assistant or deputy fire marshal.

The background features several concentric, overlapping curved lines in shades of light gray and white, some solid and some dashed, creating a sense of depth and movement. In the center, there is a large orange callout box with a pointed bottom edge, containing white text.

Act 4 – Background and Intent

Sheriff Schmidt and Sheriff Delain

Definitions – Who is Impacted?

- Secs. 1, 3, 4 and 5 of the Bill
 - A “County Jailer” is
 - An employee of a county
 - Whose principal duties (51% or more) involve
 - Supervising, controlling or maintaining a jail or the persons confined in a jail
 - Sworn status is irrelevant to the definition

Who Pays the Extra Costs?

- Section 8 of Act 4
 - Except as otherwise provided in a collective bargaining agreement, the employer (i.e., County) may NOT pay the enhanced contribution.

What if a county currently bargaining with jailers wants to stop bargaining with jailers?

- **Section 19 of Act 4**
 - A county that treats a county jailer as a public safety employee on [1-1-24], shall continue to treat any person it employs as a county jailer as a public safety employee except that, if the county raises a question concerning the appropriateness of including county jailers in a collective bargaining unit that includes public safety employees, no person it employs as a county jailer may be treated as a public safety employee.

Tax Implications for Employees

- Section 12 of Act 4
 - Jailers hired ON or AFTER 1-1-24 in a county that did NOT classify jailers as protective
 - Contributions are PRE-TAX
 - Existing jailers (current employees as of 1-1-24) in a county that did NOT classify jailers as protective
 - Contributions are POST-TAX
 - In counties where jailers are currently protective and county “opts out” of bargaining
 - Existing jailers make contributions POST-TAX
 - New hires make contributions PRE-TAX

Limitation on Claims

- Section 16 of Act 4
 - County jailers who become protective on 1-1-24 are NOT entitled to claim duty disability because of an injury or disease occurring before 1-1-24.

Opt Out Provisions

- **Nonstatutory Provision of Act 4**
 - Within 60 days of 1-1-24, current jailers (in counties that did not treat jailers as protective) may opt out of protective
 - County **MUST** provide opt out form
 - The election to opt out is **IRREVOCABLE** as to that employer

Election Provisions

- Section 18 of Act 4
 - Within 60 days of date of hire (in counties that did not treat jailers as protective) a new jailer must make an election of protective or general (also applies to new hires in counties that treated jailers as protective)
 - County **MUST** provide opt out form
 - The election is **IRREVOCABLE** as to that employer

Opt Out Provisions

- Section 18 of Act 4
 - Within 60 days of date a county decides not to treat jailers as public safety employees (i.e., stop bargaining) a jailer can opt out
 - In such counties, all new hires can also opt out
 - County **MUST** provide opt out form
 - The election to opt out is **IRREVOCABLE**
 - County must provide notice of the county board's decision:
 - Individually to each jailer; and
 - Posting in typical posting place for employee notices

Opt Out/Opt In and Future Employment

- The choice a jailer makes related to protective vs general is IRREVOCABLE as long as the jailer stays with the same employer.
 - If a jailer takes a job as jailer in a different county, they get a new choice.

Status of Notices and Forms

- **ETF has provided notice of Act 4 and its implications to County WRS agents**
 - The notice indicates that additional information will be coming as ETF implements the IT changes required by Act 4
 - WCA is working on standard notice forms for distribution to counties
- **Opt Out and Election Forms are Drafted**
 - Reviewing with BSSA, WSDSA, WCA and WACCC



Questions? Comments?