2023 Wis Act 4
Classification of Jailers as Protective Under WRS

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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.
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.

- **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
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?