



**STATE OF WISCONSIN**  
**Department of Employee Trust Funds**

**Robert J. Conlin**  
SECRETARY

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December 5, 2013

STEVE CORBEILLE  
FINANCE DIRECTOR/TREASURER  
CITY OF MANITOWOC  
900 QUAY ST.  
MANITOWOC, WI 54220-4543

Dear Mr. Corbeille:

I am writing in response to a letter you sent requesting written confirmation that the City of Manitowoc may opt out of Social Security coverage and create an alternative retirement plan for all of its part-time, seasonal, and temporary employees working less than 1200 hours annually.

After a review of Wisconsin's Section 218 Agreement, it is my conclusion that the City of Manitowoc may opt out of Social Security coverage and create an alternative retirement plan for those of its part-time, seasonal, and temporary employees who are not covered by the Wisconsin Retirement System (WRS). This cannot include any employees who work less than 1200 hours annually but are covered by the WRS.

2011 Wisconsin Act 32 changed the standard for participation in the WRS. On or before July 1, 2011, employees who worked at least 1/3 of full-time (600 hours) were covered by the WRS. Even though the participation standard has increased to 1200 hours, these employees continue to be covered by the WRS. You may not include any such employees in your alternative retirement plan.

**Social Security Coverage for Public Employees**

As background, when the Social Security Act was initially passed, there was a question as to whether the Act applied to individual states. In response, Section 218 of the Social Security Act was created to allow the federal government to enter into an agreement with each state regarding Social Security coverage. Those agreements made it possible for individual states to offer Social Security coverage to public employees.

In 1951, the State of Wisconsin entered into a Section 218 Agreement with the federal government, allowing public employers to provide Social Security coverage for their employees. Individual employers come under the Section 218 Agreement via modifications to that agreement.

Regarding Social Security coverage in general, governmental entities in the State of Wisconsin provide Social Security coverage for their employees in two ways, either via the State's Section 218 Agreement, or via the mandatory coverage provisions of the federal OBRA law (1990).

- **Section 218 Agreement Coverage**

Section 218<sup>1</sup> Agreement coverage refers to the State of Wisconsin's 1951 agreement with the federal government to provide Social Security coverage for public employees. There are two types of Section 218 Social Security coverage—absolute and restricted. Absolute or Section (b)(5) coverage covers all employees, except a limited number of employees specifically excluded by the Section 218 Agreement and federal law. Restricted coverage is limited to those eligible for participation in the Wisconsin Retirement System (WRS). The Social Security Amendments of 1983 prohibit governmental entities from terminating Section 218 Agreement coverage as of April 20, 1983, even if another qualifying retirement plan becomes available.

- **Omnibus Budget Reconciliation Act of 1990**

The second way for governmental entities to provide Social Security coverage for their employees is through the mandatory coverage provisions in the federal OBRA law (1990). These mandatory coverage provisions apply to employees not covered under a Section 218 Agreement, not covered by a qualifying retirement plan, as defined by the Internal Revenue Code, and not excluded under the Section 218 Agreement or the Social Security Act.

### **Social Security Coverage for City of Manitowoc Employees**

Employees of the City of Manitowoc fall into two categories regarding Social Security coverage.

- Employees who are covered by the WRS are provided Social Security coverage through Modification 45 of the State of Wisconsin's Section 218 agreement. This is considered "restricted coverage," as discussed above. The City may not remove any of these employees from Social Security coverage and include them in an alternative retirement plan.
- All other City employees have Social Security coverage under the Omnibus Budget and Reconciliation Act of 1990 (OBRA). The City may opt out of Social Security for employees covered under the OBRA provision if it covers them under a qualifying alternative retirement plan.

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<sup>1</sup> Section 218 refers to a portion of the Social Security Act, cited at 42 U.S.C. §418.

Although the City may opt out of Social Security coverage for non-teacher employees who are ineligible for participation in the WRS, it is very important to note the following:

If an employee is opted out of Social Security (because he/she does not meet the criteria for participation in the WRS) and then later becomes eligible for participation in the WRS because job expectations change or based on the "look-back" provisions in Chapter 40 of the Wisconsin Statutes, the employee must be enrolled in the WRS and full Social Security coverage under the Section 218 Agreement will begin, irrespective of coverage under an alternative retirement system. The City would then be responsible for both WRS and Social Security contributions.

Please contact me with any questions.

Sincerely,



Julie Keal  
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