Clearinghouse Rule 18-033

**PROPOSED ORDER OF THE WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT
CREATING AND ADOPTING RULES**

The Wisconsin department of workforce development proposes the following order ***to repeal*** DWD 100.02 (1), (25), (26), (46), and (66), 102.02 (3) (b), 110.07 (5) and (7), 111.02 (1) (b), (4), and (Note), 111.03 (2), 111.04, 111.06 (3), 129.01 (4) (e) (intro.), 1., and 2., ch. 130, 132.04 (2) (b), 140.01 (2) (b) 1., 3., and (c) 7. (Note), 147.01 (1) (a) to (c), and 150.03 (intro.) and (1); ***to renumber*** DWD 100.02 (17), (28), (31), (33), (44m), (52), (55), (64), (65), and (69), 111.001, 128.001, 132.001, and 140.001 (2) (ag), (am), and (ar); ***to renumber and amend*** DWD 100.02 (2), (10), (32), (51), (53), (54), (62), (63), (68), and (72), 101.001 (2), 111.02 (1) (a), 111.03 (1), 113.001 (2) (b), 115.001 (2), 140.001 (2) (b), and 147.01 (1) (intro.); ***to amend*** DWD 100.02 (43), 101 (title), 101.01, 101.05 (1), 102.02 (1), (3) (a) (intro.), 1., and 2., 103.01 (intro.) and (1), 110.02 (2) (intro.), (a) to (d), and (3), 110.05 (intro.) and (1) to (4), 110.06 (5) (a), (b) (intro.), 1., 2., (c), and (d), 110.07 (3) (a), (4), and (8), 110.08 (2), 110.09 (1) (intro.) and (a) to (c), 110.10 (1) (intro.) and (a), 111.02 (2) (intro.) and (a) to (c), 111.06 (1) and (2), 113.001 (1), (2) (intro.), and (d), 113.02 (1) (a), (b), (2) (intro.), (a) to (d), (f), (3) (intro.), and (a) to (d), 113.025 (1) (c) to (f), 113.03 (1) (intro.), (a) to (c) (intro.), 1., 2., (d), (e) (intro.), 1. to 3., (3), and (4) (intro.), (a), and (b), 113.04 (1) (intro.), (a), (b) (intro.), 1., 2., (c), and (2) to (6), 113.05 (1), (2), and (4), 113.06, 113.07 (intro.), (1), and (2), 114.20 (1) (intro.) and (a), 114.30 (1), 114.50, 115.01 (5) (intro.), (a) to (j), and (6), 115.02 (intro.), (1), and (2), 115.03 (2) and (4), 115.04 (1) (intro.), (a), and (b), 115.05 (intro.) and (1) to (3), 115.06 (1) (intro.) and (a) to (c), 115.07 (1)

(intro.), (a) to (d), and (2) (a) to (c), 115.08 (title), (1), (2) (intro.), and (a) to (e), 115.09 (1), (4) (intro.), (a), and (b), 115.10 (3) (a) and (b), 115.11 (1) (intro.), (a), (2) (b), and (c), 127.01 (3), 127.02 (11) (intro.), 127.06 (2), 127.07 (2) (intro.), 128.01 (1), 129.01 (4) (intro.) and (a), 129.03, 131.001 (2) (intro.) and (b), 131.10 (title), (1) (intro.), (a), (2) (intro.), (b), (c) 4., (d), (e) (intro.), (g), (3) (intro.), (a), (4) (intro.), (b), (c) 4., (d), (e) (intro.), (f), (6) (b) (intro.), 1., 2., 4., (c) (intro.), 1., 2., and (7) (a) to (c), 131.30 (1) (a) (intro.), 131.40 (1), 132.04 (1), (2) (intro.), and (a), 132.05 (1) (a), (b), (2) (intro.), and (a) to (d), 133.02 (1) (a), (b) (intro.), and (c), 135.04 (1), 136.001 (2) (a), (b), and (f), 136.02 (2) (b) (Note), 136.03 (1) (c) 3. (Note), 140.01 (1), (2), (a), (b) 4., (c) 1., and 5. to 7., 140.04 (2), 140.05 (1) to (4), 140.06 (1) to (3), 140.07 (1) (intro.), (2), (3) (intro.), and (4), 140.08 (1), (2) (intro.), and (a) to (g), 140.09 (1) (a) to (c), (2), (3) (intro.), (b), (4) (a) 1., and (b) to (d), 140.10 (1), (2) (intro.), (3), and (4), 140.11 (title) and (1) to (6), 140.12 (1) (intro.), (a) to (c), (2), and (3), 140.13, 140.15 (1) to (4), 140.16 (1) and (2), 140.17 (1) to (3), 140.18 and (Note), 140.19 (1) to (3), 140.20 (1), (2), and (4) (c), 140.21 (1), (2), and (Note), 140.22 (1) (c) and (3) (a) and (b), 142.02 (2) to (5) and (7) (b), 149.001 (2) (d), 149.02 (2) (b), 149.05 (1) (intro.), (a), (c), (d) (intro.), and 5., 149.06 (4), 149.07 (6), 150.05, and 150 (table); ***to repeal and recreate*** DWD 140.22 (1) (c) (Note) and 142.02 (5) (Note); and ***to create*** DWD 100.02 (16f), 103.01 (2), 111.001 (2) (intro.), 111.03 (Note), 111.06 (2) (Note), 113.001 (2) (ar), 120.01 (Note), 120.03 (2) (Note), 128.001 (2) (intro.), 132.001 (2) (intro.), 136.001 (2) (a) (Note), (b) (Note), and (f) (Note), 140.001 (2) (d), 140.01 (2) (c) 8., 140.09 (3) (f) (Note), 149.001 (2) (d) (Note), 150.05 (Note) relating to minor and technical changes to the unemployment insurance program.

Analysis Prepared by the Department of Workforce Development

Statutes Interpreted

Statutes interpreted: ch. 108, Stats.

Statutory Authority

Section 108.14 (2), Stats.

Explanation of Statutory Authority

Under s. 108.14 (2), Stats., the department may adopt and enforce all rules which it finds necessary or suitable to carry out the unemployment insurance program.

Related Statutes or Rules

Ch. 108, Stats. and chs. DWD 100-150.

Plain Language Analysis

The Wisconsin unemployment insurance program is administered under chs. DWD 100-150. The proposed rule is minor and technical in nature, and is designed as a "clean-up." The proposed rule is promulgated to align current rules with federal laws and state statute. In addition, the rule updates obsolete or incorrect cross-references, informs the public of where to obtain information or how to contact the department, and clarifies language.

Chapter DWD 100 provides definitions for all terms that are applied to chs. DWD 100-150. The proposed rule made changes to ch. DWD 100, such as:

- Repeals the definitions "fax," "first shift," "profiling system," and "unemployment insurance office" because they are no longer used in chs. DWD 100-150.
- Renumbers the definition "decision" from ch. DWD 113 to ch. DWD 100, because the term is referenced in multiple chapters within chs. DWD 100-150.
- Amends the definition "payroll base" to specify the statutory amount.
- Repeals the definition "employer" because that term is already defined in statute.
- Amends the definition "total unemployment and totally unemployed" to only "total unemployment".
- Amends the definitions "disposable earnings," "federal minimum hourly wage," and "levy" to reference statute because they are already defined in statute.
- Amends the definition of "newly hired employee" under s. DWD 142.02 (7) (b) to reflect an unpaid absence of 60 days rather than 90 days as required by federal guidance.

- Amends the definition of “public official” in s. DWD 149.001 to reflect the new federal definition that was enacted to align with the Wisconsin Innovation and Opportunity Act.

The following definitions were renumbered from ch. DWD 100 because the terms are only used in specific chapters:

- “Informer” is renumbered in ch. DWD 101.
- “Wage report” and “wage reporting” are renumbered in ch. DWD 111.
- “Compromise,” “same business or operation,” and “settle” are renumbered in ch. DWD 113.
- “Transfer percentage,” transferee,” and “transferor” are renumbered in ch. DWD 115.
- “Full-time,” “shift,” “total unemployment,” and “weekly certification” are renumbered in ch. DWD 128.
- “Health care facility,” “sexual contact,” and “sexual intercourse” are renumbered in ch. DWD 132
- “Agent state,” “ease of access,” and “hearing office” are renumbered in ch. DWD 140.

In addition, the proposed rule:

- Amends the title for ch. DWD 101 to include “benefit purposes” and s. DWD 101.01 to clarify how the department shall apply the definition of wages for benefit purposes.
- Creates s. DWD 103.01 (2) to include “unpaid managers of a limited liability company” as excluded “employment” to align with statute.
- Repeals ss. DWD 110.07 (5) and (7) because due dates for filing certain reports are already identified in statute.
- Amends DWD 110.07 (8) to clarify the requirement for an employer to remit contributions as prescribed by the department.
- Repeals the requirement that employers notify the department as to whether the employer provides health insurance for employees under ch. DWD 111 because the department no longer collects this information.
- Amends s. DWD 111.03 to require employers to submit a wage report to the department as prescribed.
- Repeals ss. DWD 111.04 and DWD 111.05 because the proposed changes under DWD 111.03 will make these sections obsolete.
- Amends “individual” with “person” under ch. DWD 113 to align with statute.
- Amends s. DWD 115.06 to include “limited liability company” as a transferee to align with statute for transfers involving fiduciaries.
- Repeals the requirement the department consider a mailed application timely if postmarked by the due date or received no more than 3 days after the due date under s. DWD 115.07 because this is not allowed by statute.
- Amends s. DWD 115.11 from 2 years to 3 years for new employers assigned an initial rate to align with statute.
- Amends references to “justifiable cause” and replaces with “good cause” for consistency under. Ch. DWD 127.

- Repeals 129.01 (4) (e) because the automated telephone claim system for filing benefit claims is no longer used.
- Repeals chapter DWD 130 because the proposed amendments to ch. DWD 101 make this chapter unnecessary.
- Amends language in ch. DWD 131 to align with statute by changing "presence" to "unlawful use."
- Repeals s. DWD 132.04 (2) (b) relating to the number of hours worked for educational employees, due to updated guidance by the U.S. Department of Labor in UIPL 5-17.
- Amends the table in ch. DWD 150 to reflect forms currently used.

Chapter DWD 140 outlines the unemployment insurance appeals process. Numerous updates and amendments were made to this chapter to conform to statute changes. The definition "appeal tribunal" was created to align with state statute and it replaced the term "administrative law judge," which was repealed in ch. DWD 100. The proposed rule specifies that appeals be filed with a hearing office or public employment office in an agent state rather than with the department. In addition, hearings may be conducted via videoconference. Current rule allows 15 minutes for an appellant to appear by telephone and 5 minutes for a respondent to appear after the start time of a hearing (in person or via telephone or videoconference). The proposed rule allows 10 minutes for both appellant or respondent to appear after the start time of a hearing.

Summary of, and comparison with, existing or proposed federal statutes and regulations

Under 20 CFR § 601.5, federal law requires that state laws conform to and comply with federal requirements.

Comparison with rules in adjacent states

All adjacent states are required to conform to federal law requirements for unemployment insurance and the rules are similar to Wisconsin.

Summary of factual data and analytical methodologies

This rule does not depend on any complex analysis of data. The rule changes are minor and technical in nature.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis

The proposed rule will have no significant economic effect on small businesses as defined in s. 227.114 (1), Stats. and there is no economic impact created by this proposed rule because the changes are all minor or technical in nature. The department also consulted the Unemployment Insurance Advisory Council.

Effect on small business

The proposed rule will not have a negative effect on small businesses as defined in s. 227.114 (1), Stats.

Agency contact person

Questions and comments related to this rule may be directed to:

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Place where comments are to be submitted and deadline for submission

Janell Knutson, Bureau of Legal Affairs
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Hearing comments will be accepted until July 12, 2018.

SECTION 1. DWD 100.02 (1) is repealed.

SECTION 2. DWD 100.02 (2) is renumbered 140.001 (2) (c) and as renumbered, is amended to read:

DWD 140.001 (2) (c) "Agent state" means any state other than Wisconsin in which a person files a claim for unemployment benefits from the state of Wisconsin.

SECTION 3. DWD 100.02 (10) is renumbered DWD 113.001 (1) (cm) and as renumbered, is amended to read:

DWD 113.001 (1) (cm) "Compromise" means department agreement to accept payment of less than the full amount of contributions, payments in lieu of contributions, interest, penalties and costs, as applicable, owed by an employer, former employer, or by ~~an individual~~ a person liable for ~~corporate~~ an employing unit's liabilities, in complete fulfillment of the outstanding liability.

SECTION 4. DWD 100.02 (16f) is created to read:

DWD 100.02 (16f) "Determination" means an initial determination issued under s. 108.09, 108.095, or 108.10 (1), Stats.

SECTION 5. DWD 100.02 (17) is renumbered DWD 140.001 (2) (f).

SECTION 6. DWD 100.02 (25) and (26) are repealed.

SECTION 7. DWD 100.02 (28) and (31) are renumbered DWD 128.001 (2) (a) and DWD 132.001 (2) (a).

SECTION 8. DWD 100.02 (32) is renumbered 140.001 (2) (g) and as renumbered, is amended to read:

DWD 140.001 (2) (g) "Hearing office" means an office of the ~~unemployment insurance~~ division ~~of the department of workforce development which~~ that is responsible for scheduling and conducting hearings arising under ch. 108, Stats., and s. 103.06 (6), Stats.

SECTION 9. DWD 100.02 (33) is renumbered DWD 101.001 (2) (b).

SECTION 10. DWD 100.02 (43) is amended to read:

DWD 100.02 (43) "Payroll base" means the ~~first $10,500 of wages~~ applicable amount under s. 108.02 (21) (b) or (c), Stats., paid by an employer during a calendar year to an individual, including any wages paid for any work covered by the unemployment insurance law of any other state, which is payroll under s. 108.02 (21), Stats.

SECTION 11. DWD 100.02 (44m) is renumbered DWD 140.001 (2) (h).

SECTION 12. DWD 100.02 (46) is repealed.

SECTION 13. DWD 100.02 (51) is renumbered DWD 113.001 (2) (e) and as renumbered, is amended to read:

DWD 113.001 (2) (e) "Same business or operation" means operation under the same unemployment insurance employer account, including any account transferred under s. 108.16 (8), Stats., with no intervening final determination of account termination under s. 108.02 (13) (i), Stats., provided~~, however,~~ that 'same business or operation' shall not be deemed to extend beyond the date ~~as of which~~ the account would have been terminated under s. 108.02 (13) (i), Stats., and s. DWD 110.09 but for an unpaid liability, unless the account was reopened under s. DWD 110.10.

SECTION 14. DWD 100.02 (52) is renumbered DWD 113.001 (2) (f).

SECTION 15. DWD 100.02 (53) and (54) are renumbered DWD 132.001 (2) (b) and (c) and as renumbered, are amended to read:

DWD 132.001 (2) (b) "Sexual contact" has the meaning ~~designated~~ specified in s. 940.225 (5) (b), Stats.

(c) "Sexual intercourse" has the meaning ~~designated~~ specified in s. 940.225 (5) (c), Stats.

SECTION 16. DWD 100.02 (55) is renumbered DWD 128.001 (2) (b).

SECTION 17. DWD 100.02 (62) is renumbered DWD 128.001 (2) (c) and as renumbered, is amended to read:

DWD 128.001 (2) (c) "Total unemployment" ~~and "totally unemployed" have~~ has the meaning ~~designated~~ specified in s. 108.02 (25), Stats.

SECTION 18. DWD 100.02 (63) is renumbered DWD 115.001 (2) (a) and as renumbered, is amended to read:

DWD 115.001 (2) (a) "Transfer percentage" means the percent of the transferor's total payroll for a recent and representative period preceding the transfer date, which is properly assignable to the transferred business. The recent and representative period shall be the ~~four~~ 4 most recently completed calendar quarters preceding the transfer date, except that the period may be expanded to include the partial quarter immediately preceding the transfer if the transfer date did not fall on a quarter ending date and there was no payroll assignable to the transferred portion of the business in the ~~four~~ 4 most recently completed quarters.

SECTION 19. DWD 100.02 (64) and (65) are renumbered DWD 115.001 (2) (b) and (c).

SECTION 20. DWD 100.02 (66) is repealed.

SECTION 21. DWD 100.02 (68) is renumbered DWD 111.001 (2) (a) and as renumbered, is amended to read:

DWD 111.001 (2) (a) "Wage report" has the meaning ~~designated~~ specified in s. 108.205, Stats.

SECTION 22. DWD 100.02 (69) is renumbered DWD 111.001 (2) (b).

SECTION 23. DWD 100.02 (72) is renumbered DWD 128.001 (2) (d) and as renumbered, is amended to read:

DWD 128.001 (2) (d) "Weekly certification" means the method used by ~~which~~ a claimant ~~submits~~ to submit information regarding the claimant's employment status and availability for work and ~~which establishes~~ to establish a basis for the payment of unemployment benefits~~, including but not limited to voice recognition units and claim forms~~.

SECTION 24. DWD 101 (title) is amended to read:

DWD 101 (title) WAGES FOR CONTRIBUTION AND BENEFIT PURPOSES

SECTION 25. DWD 101.001 (2) is renumbered DWD 101.001 (2) (intro.) and as renumbered, is amended to read:

DWD 101.001 (2) (intro.) ~~Notwithstanding ch. DWD 100 and unless the context clearly indicates a different meaning, in~~ In this chapter ~~"employer"~~:

(a) "Employer" means any person who is or becomes subject to the reimbursement financing or contribution requirements of ch. 108, Stats., including multiemployer benefit plans and other third-party payors which become liable under s. DWD 110.06.

SECTION 26. DWD 101.01 is amended to read:

DWD 101.01 Purpose. The definition of wages in s. 108.02 (26), Stats., is patterned after the FUTA definition of wages found in 26 USC 3306(b). This chapter clarifies how the department shall apply the definition of wages in s. 108.02 (26), Stats., for benefit purposes and to assess employer contributions to the unemployment insurance reserve fund. This chapter also specifies changes to the definition of wages in s. 108.02 (26), Stats., and provides interpretations which may be inconsistent with those applied to 26 USC 3306(b), under the authority granted in s. 108.015, Stats.

SECTION 27. DWD 101.05 (1) is amended to read:

DWD 101.05 (1) Lodging - $105.00 per week or $15.00 per day~~; and~~.

SECTION 28. DWD 102.02 (1), and (3) (a) (intro.) and 1. and 2. are amended to read:

DWD 102.02 (1) Under s. 108.18 (2) (c), Stats., the department shall determine the contribution rate for the first 3 calendar years for an employer engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or

similar construction projects~~ shall pay contributions for each of the first 3 calendar years at the average rate for construction industry employers as determined by the department~~.

(3) (a) If the employer's primary type of business activity is specified in Figure DWD 102.02 (2), the department may not consider the employer as being within the provisions of s. 108.18 (2) (c), Stats. ~~If the employer's~~

(am) The department shall determine that the provisions of s. 108.18 (2) (c) apply to an employer whose primary type of business activity in this state is listed in Major Group 15 - Building Construction - General Contractors and Operative Builders or in Major Group 16 - Heavy Construction Other Than Building Construction - Contractors in the Standard Industrial Classification (SIC) Manual or is listed in Major Group 17 but not in Figure DWD 102.02 (2), ~~the department shall consider~~ if any of the following factors ~~to determine whether the employer is an employer to which the provisions of s. 108.18 (2) (c), Stats.,~~ apply:

1. ~~Whether the~~ The primary business activity of the employer in this state involves the improvement of real property rather than improvement or refurbishing of personal property~~; and~~.

2. ~~Whether employers~~ Employers within the same listing in the Standard Industrial Classification (SIC) Manual as the employer customarily suspend or significantly curtail business operations in this state for regularly recurring periods because of climatic conditions or because of the seasonal nature of the employment.

SECTION 29. DWD 102.02 (3) (b) is repealed.

SECTION 30. DWD 103.01 (intro.) and (1) are amended to read:

DWD 103.01 (intro.) **Certain excluded employments.** ~~The~~ All of the following provisions shall apply in interpreting ~~certain paragraphs of~~ s. 108.02 (15), Stats.:

(1) UNPAID CORPORATION OR ASSOCIATION OFFICERS AND MERE DIRECTORS EXCLUDED. ~~Pursuant to~~ Under s. 108.02 (15) (k) 8., Stats., service as an unpaid officer of a corporation or association is not "employment", but all paid officers of any association or corporation are in "employment" under ch. 108, Stats., subject to s. 108.02 (15) (L), Stats. Mere "directors", however, who perform no paid duties for a corporation or association other than attendance at directors' meetings shall not be deemed in an "employment" or be deemed the employer's "employees" for the purposes of ch. 108, Stats. Directors who perform multiple paid duties for a corporation or association, including attendance at directors' meetings, shall not be considered "employees" in "employment" when attending directors' meetings but shall be considered "employees" in "employment" when performing other paid duties.

SECTION 31. DWD 103.01 (2) is created to read:

DWD 103.01 (2) UNPAID MANAGERS OF A LIMITED LIABILITY COMPANY. Under s. 108.02 (15) (k) 8., Stats., service as an unpaid manager of a limited liability company is not "employment", but all paid managers of a limited liability company are in "employment" under ch. 108, Stats., subject to s. 108.02 (15) (L), Stats.

SECTION 32. DWD 110.02 (2) (intro.), (a) to (d), and (3) are amended to read:

DWD 110.02 (2) (intro.) The work record shall include all of the following:

(a) The full name, address and social security number of each individual who performs services for the employing unit~~;~~.

(b) The dates ~~on which~~ that each individual performed services~~;~~.

(c) The weekly wages earned by each individual who performed services~~; and~~.

(d) The dates ~~on which~~ that the wages were paid to each individual.

(3) ~~Pursuant to~~ Under s. 108.21, Stats., the department may, at any reasonable time, inspect the work records and any other records of an employing unit, or ~~of~~ any entity ~~which~~ the department ~~has reason to believe~~ believes may be an employing unit, which may show payments for personal services.

SECTION 33. DWD 110.05 (intro.), and (1) to (4) are amended to read:

DWD 110.05 (intro.) **Conditions for status as a nonprofit organization; reporting requirements.** Except as further provided in this section, no employing unit may be considered to be a nonprofit organization eligible to apply for reimbursement financing until the date ~~on which~~ that the department receives a copy of the letter issued by the internal revenue service determining that the employing unit is exempt from taxation under section 501 (c) (3) of the internal revenue code. If an employing unit receives such a letter from the internal revenue service after the employing unit becomes an employer under s. 108.02 (13) (d) or (e), Stats., the department shall consider the employing unit to be a nonprofit organization beginning on January 1 of the year after the year in which the internal revenue service issues the letter. The department shall consider the employing unit to be a nonprofit organization as of the date specified by the internal revenue service if all of the following apply:

(1) The employing unit has filed a written notice with the department electing reimbursement financing under s. 108.151 (2), Stats.~~;~~

(2) The employing unit acted diligently in requesting ~~such~~ a determination from the internal revenue service~~;~~.

(3) Any delays concerning such a determination are attributable solely to the internal revenue service~~; and~~.

(4) There is no overpayment of benefits to any claimant due to the ~~department's~~ department adopting the date specified by the internal revenue service.

SECTION 34. DWD 110.06 (5) (a), (b) (intro.), 1., 2., (c), and (d) are amended to read:

DWD 110.06 (5) (a) ~~Pursuant to~~ Under s. 108.21, Stats., each payor of sickness or accident disability payments shall maintain a true and accurate payment record for every individual who receives such payments so that the department may determine the payor's status and contribution liability under ch. 108, Stats.

(b) The payment record shall include all of the following:

1. The full name, address and social security number of each individual who receives a sickness or accident disability payment~~;~~.

2. The date ~~on which~~ that the payment was made~~; and~~.

(c) ~~Pursuant to~~ Under s. 108.21, Stats., the department may, at any reasonable time, inspect the records of a payor, or ~~of~~ any entity ~~which~~ the department ~~has reason to believe~~ believes may be a payor, which may show sickness or accident disability payments so ~~that~~ the department may determine the payor's status and contribution liability under ch. 108, Stats.

(d) Each payor shall preserve the sickness or accident disability payment records for 6 years from the date ~~on which~~ the last payment was made.

SECTION 35. DWD 110.07 (3) (a) and (4) are amended to read:

DWD 110.07 (3) (a) Each employer, including ~~a nonprofit organization which has elected reimbursement financing or a government unit on~~ employers subject to reimbursement financing under s. 108.15, 108.151 or 108.152, Stats., shall file ~~an employer's~~ a contribution report with the department ~~whether or not any~~ for each quarter the employer is subject to ch. 108, Stats., whether or not any contributions or reimbursement payments are ~~currently~~ due for each

quarter. Each employer shall pay any required contributions to the department ~~concurrent with the~~ when filing ~~of~~ the report, except that ~~each government unit and nonprofit organization which has elected~~ employers subject to reimbursement financing shall submit reimbursement payments when billed by the department. The department may exempt any employer whose account the department has placed on inactive status ~~with a view toward termination of the account~~ from the filing requirements of this subsection. The department may also exempt any employer whose business reflects a seasonal pattern from the filing requirements of this subsection for quarters in which the employer customarily has no payroll.

(4) DUE DATES FALLING ON WEEKENDS AND HOLIDAYS. Under s. 108.22 (1) (b) and (c), Stats., any contribution report or payment is delinquent unless the department receives the report or payment by its due date ~~except as further provided under sub. (5)~~. If the due date of the report or payment would otherwise be a Saturday, Sunday or legal holiday under state or federal law, the due date is the next following day which is not a Saturday, Sunday or legal holiday under state or federal law.

SECTION 36. DWD 110.07 (5) and (7) are repealed.

SECTION 37. DWD 110.07 (8) is amended to read:

DWD 110.07 (8) PAYMENTS. ~~The~~ An employer shall remit contributions and any other payments due under ~~this chapter to the address specified~~ ch. 108, Stats., as directed by the department ~~in its correspondence with the employer in the form of a check, draft or money order payable to the department of workforce development~~.

SECTION 38. DWD 110.08 (2) is amended to read:

DWD 110.08 (2) ~~CLAIMING EXCLUSIONS. Each employer shall total the amount of wages paid to its employees which are in excess of $10,500 per employee for the calendar year. This~~

~~sum~~ DEFINED TAXABLE PAYROLL. An employer's defined taxable payroll is the amount of covered wages of the payroll base and shall be ~~subtracted from the amount of covered wages and the remainder shall be~~ reported on the ~~employer's~~ contribution report ~~as "defined taxable payroll"~~.

SECTION 39. DWD 110.09 (1) (intro.) and (a) to (c) are amended to read:

DWD 110.09 (1) (intro.) PROCEDURE. Under ~~the provisions of~~ s. 108.02 (13) (i), Stats., the department may ~~terminate an employer's coverage~~, on its own motion or on application by the employer~~. The department may~~, terminate coverage and close the employer's account if any of the ~~employer~~ following apply:

(a) ~~Ceases~~ The employer ceases to exist~~;~~.

(b) ~~Transfers~~ The employer transfers its entire business~~; or~~.

(c) ~~Has~~ The employer has not met the minimum payroll or employment requirements or is not otherwise subject under s. 108.02 (13) (b) to (g), Stats., for a calendar year.

SECTION 40. DWD 110.10 (1) (intro.) and (a) are amended to read:

DWD 110.10 (1) (intro.) If the balance in the employer's account is to be or has been credited to the balancing account under s. 108.16 (6) (c), Stats., the department may reactivate the employer's account, on its own motion or at the employer's request, as of the date of coverage if any of the following apply:

(a) The employer had payroll within 6 months of the effective date of ~~an initial~~ a determination terminating coverage under s. 108.02 (13) (i), Stats~~; or~~.

SECTION 41. DWD 111.001 is renumbered DWD 111.001 (1).

SECTION 42. DWD 111.001 (2) (intro.) is created to read:

DWD 111.001 (2) (intro.) In this chapter:

SECTION 43. DWD 111.02 (1) (a) is renumbered DWD 111.02 (1) and as renumbered, is amended to read:

DWD 111.02 (1) Under s. 108.205, Stats., each employer shall submit a wage report to the department. The wage report shall contain the name, social security number, and the amount of covered wages paid or constructively paid to each employee who is employed by the employer during the quarter. Each employer shall ~~make certain~~ ensure that the amount specified as covered wages ~~on~~ in the contribution report equals the total wages reported for all employees ~~on~~ in the wage report.

SECTION 44. DWD 111.02 (1) (b) is repealed.

SECTION 45. DWD 111.02 (2) (intro.) and (a) to (c) are amended to read:

DWD 111.02 (2) (intro.) Under s. 108.205, Stats., the due ~~dates~~ date for each wage report ~~are~~ is as follows:

(a) The wage report covering the months of January, February and March is due on the following April 30th~~;~~.

(b) The wage report covering the months of April, May and June is due on the following July 31st~~;~~.

(c) The wage report covering the months of July, August and September is due on the following October 31st~~;~~.

SECTION 46. DWD 111.02 (4) and (Note) are repealed.

SECTION 47. DWD 111.03 (1) is renumbered DWD 111.03 and as renumbered is amended to read:

DWD 111.03 Processing of reports. Each employer shall submit ~~the~~ a wage ~~reports on forms provided by the department, on magnetic media in a format authorized by the department, or on other media authorized~~ report as prescribed by the department.

SECTION 48. DWD 111.03 (Note) is created to read:

Note: For assistance filing a wage report, contact the department by telephone at (608) 266-6877 or email WageNet@dwd.wisconsin.gov.

SECTION 49. DWD 111.03 (2) is repealed.

SECTION 50. DWD 111.04 is repealed.

SECTION 51. DWD 111.06 (1) and (2) are amended to read:

DWD 111.06 (1) Each employer shall notify the department of any corrections ~~which are necessary on~~ to wage reports. An employer ~~which desires to make a correction to a prior wage report should~~ may consult the departmental booklet, Unemployment Insurance Handbook for Employers, for guidance regarding wage report corrections.

(2) Employers with corrections to reports shall ~~mail~~ submit wage report corrections ~~to the Department of Workforce Development, Unemployment Insurance Division, Attention: Wage Record Unit, P.O. Box 7962, Madison, Wisconsin 53707~~ as directed by the department.

SECTION 52. DWD 111.06 (2) (Note) is created to read:

Note: For assistance filing a wage adjustment report, contact the department by telephone at (608) 266-6877 or email WageNet@dwd.wisconsin.gov.

SECTION 53. DWD 111.06 (3) is repealed.

SECTION 54. DWD 113.001 (1) and (2) (intro.) are amended to read:

DWD 113.001 (1) ~~IN GENERAL.~~ Except as provided in sub. (2), unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

(2) ~~IN THIS CHAPTER. Notwithstanding ch. DWD 100, the following words and phrases have the designated meanings unless the context clearly indicates a different meaning~~ In this chapter:

SECTION 55. DWD 113.001 (2) (b) is renumbered DWD 100.02 (15m) and as renumbered, is amended to read:

DWD 100.02 (15m) "Decision" means a written resolution by an ~~administrative law judge~~ appeal tribunal of an appeal from a determination or a written resolution of a petition for review by the commission or a written resolution of an action for judicial review by a court of competent jurisdiction.

SECTION 56. DWD 113.001 (2) (ar) is created to read:

DWD 113.001 (2) (ar) "Bureau of legal affairs" means legal counsel in the unemployment insurance division within the department.

SECTION 57. DWD 113.001 (2) (d) is amended to read:

DWD 113.001 (2) (d) "Employer", in addition to the meaning ~~contained~~ specified in s. 108.02 (13), Stats., includes an employing unit which was formerly an employer under s. 108.02 (13), Stats.

SECTION 58. DWD 113.02 (1) (a), (b), (2) (intro), (a) to (d), (f), (3) (intro.), and (a) to (d) are amended to read:

DWD 113.02 (1) (a) Any determination ~~which~~ that has been appealed, ~~which~~ has not become final and ~~which~~ has been referred from the bureau of tax and accounting to the bureau of legal affairs~~; and~~.

(b) Any decision or action ~~which~~ that has not become final.

(2) Settlement shall be based upon advice of ~~counsel for the unemployment compensation division,~~ the bureau of legal affairs, who shall certify that, after having fully investigated the matter, it is ~~his or her~~ the opinion of the bureau of legal affairs that one or more of the following conditions exists:

(a) The department has made an error of law or fact which, if corrected, would negate or change the ~~initial~~ determination issued in the case.

(b) Given the available evidence, there is significant doubt ~~as to the ability of~~ that the department ~~to~~ will prevail in the dispute ~~with respect to one or more~~ on specific issues and there is little or no likelihood of producing sufficient additional evidence in favor of the department regarding the issues ~~prior to~~ before or at a hearing under s. 108.10 (2), Stats.

(c) ~~Prior to~~ Before a hearing under s. 108.10 (2), Stats., the department has discovered additional relevant and material evidence ~~which~~ that would negate or change the ~~initial~~ determination in the case.

(d) Given the evidence in the record or the nature of a decision at a lower level, or both, there is significant doubt ~~as to the ability of~~ that the department ~~to~~ will prevail on appeal ~~with respect to~~ on one or more specific issues.

(f) There are valid legal defenses of estoppel or laches against the department as to all or part of the ~~initial determination(s)~~ determination.

(3) A settlement may be implemented by any ~~one or more~~ of the following methods:

(a) Under s. 108.10 (1), Stats., the department may amend any ~~initial~~ determination affected by the settlement ~~prior to~~ before a hearing on the ~~determination(s)~~ determination.

(b) Under s. 108.10 (1), Stats., the department may set aside the applicable ~~initial determination(s) prior to~~ determination before a hearing on the ~~determination(s)~~ determination

and issue ~~whatever~~ a new ~~initial determination(s) are~~ determination as necessary to reflect the terms of the settlement.

(c) The department and the opposing party may enter into a written stipulation which sets forth the terms of the settlement. The stipulation is subject to the ~~approval of the administrative law judge assigned to the case~~ requirements of s. DWD 140.12 (1).

(d) The ~~opposing party~~ appellant may withdraw all or part of the appeal of the ~~department's~~ ~~initial determination(s)~~ determination.

SECTION 59. DWD 113.025 (1) (c) to (f) are amended to read:

DWD 113.025 (1) (c) The employer has no other outstanding reports, contributions, interest, ~~penalty~~ penalties, or other fees due.

(d) The employer was determined within the last year to be subject to ~~Wisconsin unemployment insurance law~~ ch. 108, Stats., or has a history of timely filing required reports, including wage and ~~tax~~ contribution reports, and of making payments in a timely manner.

(e) The employer or a business for which the employer is a successor, ~~pursuant to~~ under the requirements of s. 108.16 (8), Stats., has never ~~previously~~ received a waiver or decrease in interest charged under s. 108.22 (1) (a) or 108.17 (2c) (c), Stats.

(f) There has not been a hearing ~~before an administrative law judge~~ on an appeal under s. 108.10, Stats., regarding the tax liability associated with the interest.

SECTION 60. DWD 113.03 (1) (intro.), (a) to (c) (intro.), 1. and 2., (d), (e) (intro.), 1. to 3., (3), (4) (intro.), and (a) and (b) are amended to read:

DWD 113.03 (1) (intro.) Under s. 108.10 (8), Stats., the department may compromise the liability of any employer as established in any final determination, decision or action, together with any subsequent collection costs, if all of the following apply:

(a) The employer makes a sworn application for the compromise of the employer's liability to the department, including a financial statement if requested, in ~~such~~ a form ~~as~~ prescribed by the department ~~prescribes;~~.

(b) The employer is not a government unit~~;~~.

(c) The employer is not ~~the~~ a debtor in a case under title 11 of the United States ~~bankruptcy code~~ Code with respect to any liability under ch. 108, Stats., which is not dischargeable in bankruptcy unless any of the following apply:

1. In a case under chapter 7 of title 11 of the ~~bankruptcy code~~ United States Code, there are insufficient assets to pay the liability in full under ~~with~~ the statutory order of distribution~~; or~~.

2. In a case under chapter 11 or 12 of title 11 of the ~~bankruptcy code~~ United States Code, the confirmed plan of reorganization provides for the sale of or distribution to creditors of all of the property of the employer and there are insufficient assets to pay the liability.

(d) ~~With respect to an~~ If the employer ~~that~~ is a nonprofit organization ~~and whose liability or any part of whose liability was~~ that incurred ~~while~~ all or part of its liability when it was subject to reimbursement financing status under s. 108.151 (2), Stats., the employer's assurance of reimbursement has either been applied to the liability or the application for compromise provides for such assurance~~; and~~.

(e) The department finds that the employer is unable to pay the full amount of the contributions or payments in lieu of contributions, interest, penalties and costs~~, except, with respect to an~~. If the employer is still in the same business or operation as when the liability sought to be compromised was incurred, and all of the following apply:

1. The employer's application for compromise ~~must offer~~ offers payment in an amount not less than the unpaid contributions or unpaid payments in lieu of contributions, including any contributions owed as a successor under s. 108.16 (8) (f), Stats.~~;~~

2. The required payment of all interest, penalties or costs would pose an immediate threat to the financial viability of the employer~~; and~~.

3. ~~Current~~ The employer is paying all current contributions or payments in lieu of contributions ~~are being paid~~.

(3) Notwithstanding ~~the exception in~~ sub. (1) (e), the department may compromise unpaid contributions on wages for domestic service arising under s. 108.02 (13) (d), Stats., for any time period ~~prior to~~ before the effective date of the existence of a fiscal agent or fiscal intermediary under s. 46.27 (5) (i), 46.272 (7) (e), or 47.035, Stats.

(4) Notwithstanding sub. (1) (e), in determining the amount of the accepted compromise, the department may consider ~~whether~~ the following:

(a) ~~Any part~~ A portion of any interest liability was incurred as a result of undue delay on the part of the department such that there is valid reason to compromise the interest liability.

(b) In the opinion of ~~counsel for the unemployment compensation division~~ the bureau of legal affairs, the employer could have raised valid legal defenses of estoppel or laches against the ~~initial determination(s)~~ department.

SECTION 61. DWD 113.04 (1) (intro.), (a), (b) (intro.), 1. and 2., (c), and (2) to (6) are amended to read:

DWD 113.04 (1) (intro.) The department may compromise the personal liability of ~~any individual~~ a person whose liability for the unpaid contributions, interest, penalties and costs of ~~a~~

~~corporation~~ an employer has been finally established under s. 108.22 (9), Stats., if all of the following apply:

(a) The ~~individual makes~~ person submits a sworn application to the department for the compromise of the ~~individual's~~ person's liability, including a financial statement if requested, in ~~such~~ a form ~~as~~ prescribed by the department ~~prescribes;~~.

(b) The ~~individual~~ person is not the debtor in a case under ~~the~~ title 11 of the United States ~~bankruptcy code~~ Code with respect to any liability under ch. 108, Stats., which is not dischargeable in bankruptcy unless any of the following apply:

1. In a case under chapter 7 of title 11 of the ~~bankruptcy code~~ United States Code, there are insufficient assets to pay the liability in full under the statutory order of distribution~~; or~~.

2. In a case under chapter 11 or 12 of title 11 of the ~~bankruptcy code~~ United States Code, the confirmed plan of reorganization provides for the sale of or distribution to creditors of all of the property of the individual and there are insufficient assets to pay the liability~~; and~~.

(c) The department finds that the ~~individual~~ person is unable to pay the full amount of the liability.

(2) If the conditions of sub. (1) are satisfied, the department shall determine the amount that the ~~individual~~ person is able to pay and may issue an acceptance of the application for compromise in the determined amount.

(3) In making its finding that the ~~individual~~ person is unable to pay the full amount of the liability under sub. (1) (c) and its determination of the amount that the ~~individual~~ person is able to pay, the department shall consider the ~~individual's~~ person's present and prospective income.

(4) The department's acceptance of a compromise under this section shall not affect the liability of any other ~~entity~~ person against which the department may issue or has issued a determination of liability for the unpaid contributions of the same ~~corporation~~ employer.

(5) In an application for compromise under this section, ~~an individual~~ a person liable or potentially liable at the time of application for the liabilities of more than one ~~corporation~~ employer under s. 108.22 (9), Stats., shall disclose all such liabilities, including any liabilities which are not final. Failure to make such disclosure shall make the ~~individual~~ person ineligible for compromise of the undisclosed liability in any later application for compromise under this section.

(6) ~~An individual~~ A person granted a compromise under this section shall not be eligible for a compromise of any liabilities~~, of whatever nature,~~ incurred for tax periods ~~subsequent to~~ after the acceptance of the compromise.

SECTION 62. DWD 113.05 (1), (2), and (4) are amended to read:

DWD 113.05 (1) The department may request additional information and may also examine the employer and ~~such~~ any other ~~persons~~ person as it deems necessary, under oath, regarding the employer's or person's application.

(2) The department shall acknowledge in writing the receipt of an application for compromise within 30 days of such receipt. The department's acceptance of the application for compromise shall be in writing and be issued with the concurrence of the treasurer of the unemployment ~~compensation~~ insurance fund or ~~his or her~~ the treasurer's designee. The acceptance shall be effective only if the amount determined in the acceptance is paid to the department within 30 days from the date of the acceptance, except as otherwise provided under

an installment arrangement under sub. (3). ~~Payment must be in cash or by guaranteed instrument payable only to the department~~ The department shall prescribe the payment form.

(4) The submission of an application for compromise shall not operate to stay collection proceedings. ~~However, the~~ The department may defer collection during the pendency of an application if it is satisfied that the interests of the state will not be jeopardized.

SECTION 63. DWD 113.06 is amended to read:

DWD 113.06 Disposition of warrants. Upon timely payment of the amount set forth in the department's acceptance of compromise, the department shall issue a release of any outstanding warrant against the employer or ~~individual~~ person.

SECTION 64. DWD 113.07 (intro.), (1), and (2) are amended to read:

DWD 113.07 (intro.) **Reopening compromised liability.** The department may declare a compromise void at any time if ~~it ascertains that~~ any of the following apply:

(1) The employer or ~~individual~~ person submitted a materially false application for compromise~~; or~~.

(2) ~~Prior to its acceptance of~~ Before the department accepted the application for compromise, the employer or ~~individual~~ person concealed or disposed of income or property which could have been used to pay any part of the original liability.

SECTION 65. DWD 114.20 (1) (intro.) and (a) are amended to read:

DWD 114.20 (1) (intro.) After the department has issued ~~an initial~~ a determination ~~as specified~~ under s. 108.10, Stats., finding a license holder or applicant for a license delinquent in making contributions ~~as specified~~ under s. 108.227 (1) (d), Stats., and after all potential appeals by the license holder or applicant for a license are exhausted, the department shall do any of the following:

(a) Issue a warrant ~~as specified~~ under s. 108.22 (2) and (3), Stats., unless the department previously issued a warrant.

SECTION 66. DWD 114.30 (1) is amended to read:

DWD 114.30 (1) Any license holder or applicant for a license who is unable to pay the full amount of the delinquent unemployment insurance contributions, costs, penalties, and interest may negotiate with the department to pay such contributions, costs, penalties, and interest in installments through a payment plan. The license holder or applicant for a license shall provide a statement of the reasons such contributions, costs, penalties, and interest cannot be paid in full and shall set forth the plan of installment payments proposed by the license holder or applicant for a license. Upon approval of such plan by the department and the timely payment of installments set forth in the plan, collection proceedings with respect to such contributions, costs, penalties, and interest shall be withheld. If the license holder or applicant for a license fails to make any installment payment as scheduled, the department may cancel the installment payment plan and proceed to collect the unpaid portion of such contributions, costs, penalties, and interest in the manner provided by law, and after providing 7 days' notice to the license holder or applicant for a license, issue a certificate of delinquency. The department may require license holders or applicants for a license who make installment payments under this paragraph to do so by electronic funds transfer.

SECTION 67. DWD 114.50 is amended to read:

DWD 114.50 Other enforcement actions not prohibited. A financial institution doing business in this state shall enter into an agreement with the department to participate in the exchange of data on a quarterly basis. To the extent feasible, the information required under this agreement shall be submitted by electronic means as prescribed by the department. The financial

institution shall sign the agreement and return the agreement to the department within 20 business days of receipt of the agreement. The department shall review the agreement and, if all conditions under s. 108.223, Stats., have been met, shall sign the agreement and provide the financial institution with a copy of the signed agreement. Any changes to the conditions of the agreement shall be submitted by the financial institution or the department at least 60 days ~~prior to~~ before the effective date of the change.

SECTION 68. DWD 115.001 (2) is renumbered (2) (intro.) and as renumbered, is amended to read:

DWD 115.001 (2) (intro.) ~~Notwithstanding ch. DWD 100 and unless the context clearly indicates a different meaning, in~~ In this chapter ~~"employer" means any person who is or becomes subject to the reimbursement financing or contribution requirements of ch. 108, Stats.~~:

SECTION 69. DWD 115.01 (5) (intro.), (a) to (j), and (6) are amended to read:

DWD 115.01 (5) (intro.) TRANSFER OF A BUSINESS ACTIVITY. For a transfer of a business activity to be a business transfer under this section and s. 108.16 (8) (a), Stats., the business activity after the transfer shall be similar to the business activity before the transfer. In determining whether a business activity has been transferred, continued or resumed, the department shall consider factors which suggest a similarity in business activity including any of the following:

(a) The existence of the same customers or the same type of customer after the transfer~~;~~.

(b) The closeness of the transferee's business location to that of the transferor when location is important to the business~~;~~.

(c) The continued use of the transferor's trade name by the transferee~~;~~.

(d) A lapse in operation of 6 months or less unless extensive remodeling is involved or the business is seasonal in nature but in no event shall the lapse be considered if greater than 2 years~~;~~.

(e) Few if any changes in the product or in brand names after the transfer~~;~~.

(f) The similarity in days and hours of the business under both the transferor and transferee~~;~~.

(g) The transfer of inventory, expensive plant machinery, heavy equipment or unique assets as opposed to general office furniture and fixtures~~;~~.

(h) The transfer of key employees or employees with highly technical professional skills~~;~~.

(i) The transfer of goodwill~~;~~.

(j) The existence of a noncompetition clause in the contract prohibiting the transferor from engaging in the same kind of business activity in the area~~; and~~.

(6) TOTAL OR PARTIAL TRANSFER. The transfer of a business may be a total transfer or a partial transfer. If only a portion of a business is transferred, the department shall compute and apply the transfer percentage under s. DWD ~~115.08~~ 115.09.

SECTION 70. DWD 115.02 (intro.), (1) and (2) are amended to read:

DWD 115.02 (intro.) **Determining date of transfer.** The effective date of a transfer of business shall be the date on which the transferee first has actual operating control over business assets and business activities. In determining the effective date of a transfer of business, the department shall consider all of the following:

(1) Legal documents related to the transfer~~;~~.

(2) Any statements or documents tending to show that actual operating control was transferred on a date earlier than that reflected in legal documents related to the transfer~~; and~~.

SECTION 71. DWD 115.03 (2) and (4) are amended to read:

DWD 115.03 (2) The transferor and transferee shall submit in writing any information ~~which~~ requested by the department ~~may request~~ relating to the transfer, or to any transaction ~~which the department has reason to believe~~ that may be a transfer~~, to permit the~~. The department ~~to~~ shall determine if the transaction is a transfer of business and ~~whether~~ if the transaction is a total or partial transfer under this chapter and ch. 108, Stats.

(4) The department may issue determinations, computations, ~~re-computations~~ recomputations and appeal tribunal decisions as necessary under ss. 108.09, 108.095, and 108.10, Stats., in connection with any issue arising under this chapter.

SECTION 72. DWD 115.04 (1) (intro.), (a), and (b) are amended to read:

DWD 115.04 (1) (intro.) STANDARD FOR SUCCESSOR. The transferee becomes a successor under s. 108.16 (8), Stats., if all of the following apply:

(a) A transfer of business has occurred under s. DWD 115.01~~; and~~.

(b) The department ~~finds successorship status~~ determines that the transferee is a successor under ~~s.~~ ss. DWD 115.05 ~~or 115.06, or the transferee requests successorship status under s. DWD~~ to 115.07.

SECTION 73. DWD 115.05 (intro.) and (1) to (3) are amended to read:

DWD 115.05 (intro.) **Mandatory successor.** The department shall ~~find~~ determine that a transferee is a mandatory successor under s. 108.16 (8) (e), Stats., if the business transfer satisfies s. DWD 115.01 and ~~if~~ all of the following apply:

(1) At the time of business transfer, the transferor and the transferee are owned, managed, or controlled in whole or in substantial part under s. DWD 115.08, either directly or indirectly by legally enforceable means or otherwise, by the same interest or interests under s. DWD 115.08~~;~~.

(2) The transferee has continued or resumed the business of the transferor either in the same establishment or elsewhere, or the transferee has employed substantially the same employees under s. DWD 115.08 as those the transferor had employed in connection with the business transferred~~; and~~.

(3) The same financing provisions under s. 108.15, 108.151, 108.152, or 108.18, Stats., apply to the transferee as applied to the transferor on the date of the transfer.

SECTION 74. DWD 115.06 (1) (intro.) and (a) to (c) are amended to read:

DWD 115.06 (1) (intro.) TRANSFER TO A FIDUCIARY. The department shall find that a transferee is a mandatory successor under s. 108.16 (8) (c), Stats., if all of the following apply:

(a) The transferee is a legal representative, trustee in bankruptcy or a receiver or trustee of a person, partnership, limited liability company, association or corporation, or a guardian of the estate of a person, or legal representative of a deceased person~~;~~.

(b) The transferee has continued or resumed the business of the transferor, either in the same establishment or elsewhere, or the transferee has employed substantially the same employees under s. DWD 115.08 as those the transferor had employed in connection with the business transferred~~; and~~.

(c) The same financing provisions under s. 108.15, 108.151, 108.152 or 108.18, Stats., apply to the transferee as applied to the transferor on the date of the transfer.

SECTION 75. DWD 115.07 (1) (intro.), (a) to (d), and (2) (a) to (c) are amended to read:

DWD 115.07 (1) (intro.) STANDARD. A transferee may elect to become a successor under s. 108.16 (8) (b), Stats., if the business transfer satisfies s. DWD 115.01 and ~~if~~ all of the following apply:

(a) The transfer included at least a transfer percentage of 25% of the transferor's total business as determined under s. DWD 115.09~~;~~.

(b) The same financing provisions under s. 108.15, 108.151, 108.152 or 108.18, Stats., apply to the transferee as applied to the transferor on the date of the transfer~~;~~.

(c) The transferee has continued or resumed the business of the transferor either in the same establishment or elsewhere, or the transferee has employed substantially the same employees under s. DWD 115.08 as those the transferor had employed in connection with the business transferred~~; and~~.

(d) The department ~~has~~ received a timely written application from the transferee requesting successorship status.

(2) (a) The department shall consider as timely under sub. (1) (d) any written application from the transferee or its representative ~~which is~~ received by the department on or before: July 31 of the year in which the transfer date is January 1 to March 31; October 31 of the year in which the transfer date is April 1 to June 30; January 31 of the year following the year in which the transfer date is July 1 to September 30; and April 30 of the year following the year in which the transfer date is October 1 to December 31, unless par. (b) applies. The department shall accept a late application received no more than 90 days after its due date if the transferee satisfies the department that the application was late as a result of excusable neglect.

(b) If the due date of the written application would otherwise be a Saturday, Sunday or legal holiday under state or federal law, the due date is the next following day which is not a

Saturday, Sunday or legal holiday under state or federal law. ~~The department shall also consider as timely any application which if mailed is either postmarked no later than the applicable due date or received by the department no later than 3 days after that due date.~~

(c) ~~The~~ A transferee may withdraw its application requesting ~~successorship~~ successor status if a written withdrawal is received by the department before the issuance of ~~an initial~~ a determination regarding its application or within 21 days after issuance.

SECTION 76. DWD 115.08 (title), (1), (2) (intro.), and (a) to (e) are amended to read:

DWD 115.08 (title) Owned, managed, or controlled in substantial part; the same interest or interests; employed substantially the same employees.

(1) OWNED, MANAGED, OR CONTROLLED IN SUBSTANTIAL PART. The conditions of s. DWD ~~115.04 (1)~~ 115.05 (1) are satisfied if 50% or more of both entities are owned, managed, or controlled, either directly or indirectly, by the same interest or interests.

(2) THE SAME INTEREST OR INTERESTS. The department shall presume, unless shown to the contrary, that the same interest or interests includes the spouse, child or parent of the individual who owned, managed, or controlled the business, or any combination of more than one of them. To overcome the presumption that these are the same interest or interests, ~~it must~~ all of the following shall be established ~~that~~:

(a) Usual and customary sales procedures were followed~~;~~.

(b) All transactions were at fair market value and similar to those available to unrelated parties under similar circumstances~~;~~.

(c) The spouse, child or parent of the individual who owned, managed, or controlled the business was not employed by the business in the 12-month period ~~prior to~~ before the transfer in

a position in which ~~he or she~~ the spouse, child or parent of the individual was able to make management decisions~~;~~.

(d) The individual who owned, managed, or controlled the business ~~prior to~~ before the transfer has no ownership interest, either directly or indirectly, in the transferee~~; and~~.

(e) The individual who owned, managed, or controlled the business ~~prior to~~ before the transfer is not employed by the transferee in a position in which ~~he or she~~ the individual is able to make management decisions.

SECTION 77. DWD 115.09 (1), (4) (intro.), and (a) and (b) are amended to read:

DWD 115.09 (1) DETERMINING TRANSFER PERCENTAGE. The transfer percentage is computed by dividing the payroll in the transferred portion of the transferor's business ~~prior to~~ before the transfer date by the transferor's total payroll. The transfer percentage is not based on the number of employees taken over by the transferee, but rather on the payroll incurred in the transferred portion ~~prior to~~ before the transfer date. The payroll for overhead and combined positions shall be allocated in the same proportion as the direct payrolls involved, or on such other reasonable basis as may better correspond with and reflect the facts of the transfer.

(4) APPLYING THE TRANSFER PERCENTAGE. For any partial transfer, whether optional or mandatory, the department shall do all of the following:

(a) Apply the transfer percentage to the positive or negative balance in the employer's account of the transferor as of the transfer date and to the appropriate June 30 balances of the transferor~~;~~.

(b) Apply the transfer percentage to the transferor's payroll ~~prior to~~ before the transfer date as needed to correctly calculate the transferee's contribution rates~~; and~~.

SECTION 78. DWD 115.10 (3) (a) and (b) are amended to read:

DWD 115.10 (3) (a) *Successor not an employer at time of transfer.* If the successor was not an employer at the time of transfer under ch. 108, Stats., the department shall assign to the successor, as of the date of transfer, the ~~basic~~ contribution rate assigned or assignable to the transferor on the date of transfer under s. 108.16 (8) (g), Stats. If ~~there are several transfers~~ more than one transfer of business occurs on the same date of transfer to a single successor, the ~~basic~~ contribution rate ~~which will be~~ assigned to the successor may not be higher than the highest ~~basic~~ contribution rate ~~which~~ that applied to any of the transferors ~~of which the transferee is a successor~~ for the year in which the transfer occurred.

(b) *Successor an employer at time of transfer*. If the successor was an employer at the time of transfer under ch. 108, Stats., the successor shall retain the assigned rate for the calendar year of the transfer. For subsequent years as required by s. 108.18, Stats., the department shall assign a contribution rate which reflects the combined experience of the transferor and successor. For the purposes of s. 108.18, Stats., the department shall determine the experience of the successor's account by allocating to that account the respective proportions of the transferor's payroll and benefits properly assignable to the business transferred.

SECTION 79. DWD 115.11 (1) (intro.), (a), (2) (b), and (c) are amended to read:

DWD 115.11 (1) (intro.) STANDARD. A transferee ~~which~~ that is not a successor under ch. 108, Stats., and this chapter becomes an employer as of the date of transfer under s. 108.16 (8) (j), Stats., when all of the following conditions are met:

(a) A transfer of business has occurred under s. DWD 115.01~~; and~~.

(2) (b) The transferee shall be assigned an initial ~~or new employer~~ rate as a new employer for the first ~~2~~ 3 years as prescribed under s. 108.18 (2), Stats.

(c) The first contribution report shall be due from the transferee on the due date ~~specified in~~ under s. DWD ~~110.06~~ 110.07 (3), (4) and (5) for the quarter following the quarter ~~in which~~ the transfer occurred or January 31 for those becoming liable in the fourth quarter of the preceding year.

SECTION 80. DWD 120.01 (Note) is created to read:

Note: A copy of the notice to employees about applying for unemployment benefits is available online at https://dwd.wisconsin.gov/dwd/publications/ui/notice.htm and may be posted on an employer's work website that is accessible by all employees or distributed by electronic mail.

SECTION 81. DWD 120.03 (2) (Note) is created to read:

Note: A copy of the seasonal employer notice under this section is available online at https://dwd.wisconsin.gov/dwd/publications/ui/ucb_9381_p.pdf.

SECTION 82. DWD 127.01 (3) is amended to read:

DWD 127.01 (3) ~~Except if the work search requirement has been waived by~~ Unless the department waives the work search requirement, a claimant ~~shall be~~ is ineligible for unemployment benefits in any given week in which the department determines the claimant did not conduct at least 4 actions to search for suitable work within that week.

SECTION 83. DWD 127.02 (11) (intro.) is amended to read:

DWD 127.02 (11) (intro.) The claimant has been referred for reemployment services, is participating in such services, or is not participating in such services, but has ~~justifiable~~ good cause for failure to participate. ~~Justifiable~~ For purposes of this section, good cause includes that the claimant is unable to participate due to any of the following:

SECTION 84. DWD 127.06 (2) is amended to read:

DWD 127.06 (2) A claimant shall be ineligible for benefits in any given week in which the department determines that the claimant failed, without ~~justifiable~~ good cause, as described in s. DWD 127.02 (11), to comply with the requirements under sub. (1).

SECTION 85. DWD 127.07 (2) (intro.) is amended to read:

DWD 127.07 (2) (intro.) The department may find that a claimant has ~~justifiable~~ good cause for failure to participate in reemployment services in any given week. ~~Justifiable~~ For the purposes of this section, good cause for failure to participate in reemployment services includes that the claimant is unable to participate due to any of the following:

SECTION 86 . DWD 128.001 is renumbered DWD 128.001 (1).

SECTION 87. DWD 128.001 (2) (intro.) is created to read:

DWD 128.001 (2) (intro.) In this chapter:

SECTION 88. DWD 128.01 (1) is amended to read:

DWD 128.01 (1) APPLICABILITY. Under s. 108.04 (2), Stats., a claimant shall be eligible for unemployment benefits for any week of total unemployment only if the claimant is able to perform suitable work and available for suitable work. Under s. 108.04 (1) (b), (7) (c), and (8) ~~(e)~~, Stats., a claimant shall be eligible for unemployment benefits only if the claimant is able to perform suitable work and is available for suitable work. The department may determine the claimant's ability to perform suitable work and availability for suitable work at any time through questioning of the claimant and other procedures.

SECTION 89. DWD 129.01 (4) (intro.) and (a) are amended to read:

DWD 129.01 (4) (intro.) WAIVER; EXCEPTIONAL CIRCUMSTANCES. The department shall waive the requirements of this section if exceptional circumstances exist. Exceptional circumstances include ~~all~~ any of the following:

(a) An error made by an employee of the department ~~relating to the giving of~~ when providing notice ~~by~~ to the claimant or a reasonable misunderstanding by the claimant based on information given to the claimant by the department.

SECTION 90. DWD 129.01 (4) (e) (intro.), 1., and 2. are repealed.

SECTION 91. DWD 129.03 is amended to read:

DWD 129.03 Backdating of benefit year; circumstances. Under s. 108.06 (2) (bm), Stats., a claimant's benefit year begins on the Sunday of the week in which the claimant meets the requirements to establish a benefit year under s. DWD 129.02, except that the department may, by rule, permit a claimant to begin a benefit year ~~prior to~~ before that time. The department shall permit the backdating of a benefit year if an exceptional circumstance exists. Exceptional circumstances include~~, but are not limited to,~~ those listed in s. DWD 129.01 (4).

SECTION 92. Chapter DWD 130 is repealed.

SECTION 93. DWD 131.001 (2) (intro.) and (b) are amended to read:

DWD 131.001 (2) (intro.) ~~Notwithstanding ch. DWD 100, all of the following definitions apply to~~ In this chapter:

(b) "Positive test results" means a test outcome that confirms the ~~presence~~ unlawful use of one or more controlled substances and which is conducted or confirmed by a laboratory certified by the substance abuse and mental health services administration of the United States department of health and human services.

SECTION 94. DWD 131.10 (title), (1) (intro.), (a), (2) (intro.), (b), (c) 4., (d), (e) (intro.), (g), (3) (intro.), (a), (4) (intro.), (b), (c) 4., (d), (e) (intro.), (f), (6) (b) (intro.), 1., 2.,4., (c) (intro), 1., 2., and (7) (a) to (c) are amended to read:

DWD 131.10 (title) Pre-employment testing for the ~~presence~~ unlawful use of controlled substances. (1) (intro.) POSITIVE TEST RESULTS ~~OF A TEST~~; APPLICABILITY. An employing unit may report to the department ~~the~~ an individual's positive test results ~~of a test for the presence of controlled substances conducted on an individual~~ if all of the following apply:

(a) The test for the ~~presence~~ unlawful use of controlled substances was conducted as a condition of an offer of employment and the employing unit informed the individual, before testing, that ~~the~~ positive test results may be submitted to the department.

(2) REPORTING POSITIVE TEST RESULTS ~~OF A TEST~~ TO THE DEPARTMENT. To report positive test results to the department, the employing unit shall provide all of the following information, on a form prescribed by the department, within 3 business days after the date on which the employing unit received the positive test results:

(b) The name, address, telephone number, and social security number of the individual that tests positive for the ~~presence~~ unlawful use of controlled substances.

(c) 4. The date and manner in which the employing unit informed the individual that, as a condition of the offer of employment, the individual must submit to a test for the ~~presence~~ unlawful use of controlled substances.

(d) The date and manner in which the employing unit informed the individual that ~~the~~ positive test results may be submitted to the department.

(e) The following information related to the administration of the test and the positive test results:

(g) The date and manner in which the employing unit withdrew the conditional offer of employment after the employing unit received the positive test results.

(3) INDIVIDUAL DECLINING TO SUBMIT TO A TEST FOR THE ~~PRESENCE~~ UNLAWFUL USE OF CONTROLLED SUBSTANCES. An employing unit may notify the department that an individual declined to submit to a test for the ~~presence~~ unlawful use of controlled substances if all of the following apply:

(a) The test for the ~~presence~~ unlawful use of controlled substances was required as a condition of an offer of employment and the employing unit informed the individual, before testing, that the employing unit may notify the department if the individual declines to submit to the test.

(4) NOTIFICATION TO DEPARTMENT OF INDIVIDUAL DECLINING TEST. To notify the department that an individual declined to submit to a test for the ~~presence~~ unlawful use of controlled substances, the employing unit shall provide all of the following information, on a form prescribed by the department, within 3 business days after the date on which the individual declined to submit to the test:

(b) The name, address, telephone number, and social security number of the individual that declined to submit to a test for the ~~presence~~ unlawful use of controlled substances.

(c) 4. The date and manner in which the employing unit informed the individual that, as a condition of the offer of employment, the individual must submit to a test for the ~~presence~~ unlawful use of controlled substances.

(d) The date and manner in which the employing unit informed the individual that the employing unit may notify the department if the individual declined to submit to a test for the ~~presence~~ unlawful use of controlled substances.

(e) The following information related to the individual declining to submit to a test for the ~~presence~~ unlawful use of controlled substances:

(f) The date and manner the employing unit withdrew the conditional offer of employment after the employing unit received notice that the individual declined to submit to a test for the ~~presence~~ unlawful use of controlled substances.

(6) (b) An individual may overcome the presumption that the individual failed, without good cause, to accept suitable work when offered under s. 108.04 (8) (b), Stats., if the individual tested positive for the ~~presence~~ unlawful use of one or more controlled substances, and the individual establishes by a preponderance of the evidence, any of the following:

1. The employing unit did not extend an offer of employment contingent on the individual submitting to a test for the ~~presence~~ unlawful use of controlled substances.

2. The employing unit withdrew the offer of employment before the employing unit received the positive test results ~~of the test~~.

4. The test for the ~~presence~~ unlawful use of controlled substances was not conducted or confirmed by a laboratory certified by the substance abuse and mental health services administration of the United States department of health and human services.

(c) The individual may overcome the presumption that the individual failed, without good cause, to accept suitable work when offered under s. 108.04 (8) (b), Stats., by declining to submit to a test for the ~~presence~~ unlawful use of controlled substances if the individual establishes by a preponderance of the evidence, any of the following:

1. The employing unit did not extend an offer of employment contingent on the individual submitting to a test for the ~~presence~~ unlawful use of controlled substances.

2. The individual was unable to complete a test for the ~~presence~~ unlawful use of controlled substances due to medical reasons.

(7) (a) An individual under this section who has failed, without good cause, to accept suitable work due to ~~the~~ positive test results ~~of a test~~ without presenting evidence of a valid prescription, is ineligible to receive benefits until the individual earns wages after the week in which the failure occurs equal to at least 6 times the individual's weekly benefit rate under s. 108.05 (1), Stats., in employment or other work covered by the unemployment insurance law of any state or the federal government.

(b) Notwithstanding par. (a), an individual under this section who has failed, without good cause, to accept suitable work due to ~~the~~ positive test results ~~of a test~~ without presenting evidence of a valid prescription, may maintain eligibility for benefits under ch. 108, Stats., by enrolling in and complying with a substance abuse treatment program under s. DWD 131.30 and completing a job skills assessment as prescribed under s. DWD 131.40.

(c) An individual under this section who has failed, without good cause, to accept suitable work by declining to submit to a test for the ~~presence~~ unlawful use of controlled substances, is ineligible to receive benefits until the individual earns wages after the week in which the failure occurs equal to at least 6 times the individual's weekly benefit rate under s. 108.05 (1), Stats., in employment or other work covered by the unemployment insurance law of any state or the federal government.

SECTION 95. DWD 131.30 (1) (a) (intro.) is amended to read:

DWD 131.30 (1) (a) (intro.) An individual whose positive test results are reported under s. DWD 131.10 (2) may enroll in a substance abuse treatment program if all of the following apply:

SECTION 96. DWD 131.40 (1) is amended to read:

DWD 131.40 (1) An individual whose positive test results are reported under s. DWD 131.10 (2) and who elects to enroll in and comply with a substance abuse treatment plan under s. DWD 131.30 shall complete a job skills assessment as directed by the department.

SECTION 97. DWD 132.001 is renumbered DWD 132.001 (1).

SECTION 98. DWD 132.001 (2) (intro.) is created to read:

DWD 132.001 (2) (intro.) In this chapter:

SECTION 99. DWD 132.04 (1), (2) (intro.), and (a) are amended to read:

DWD 132.04 (1) SCOPE. Under s. 108.04 (17) (a), (b) and (c), Stats., a claimant is ineligible for benefits based upon services provided to or on behalf of an educational institution for weeks of unemployment which occur between academic years or terms or during an established and customary vacation period or holiday recess if the claimant performed the services in the first such year or term or in the year or term immediately before the vacation period or holiday recess and if there is reasonable assurance that the claimant will perform such services for any educational institution in the year or term immediately following the academic year, term, vacation period or holiday recess. ~~The Wisconsin supreme court has ruled that reasonable assurance exists if the terms and conditions of the employment in the academic year or term immediately following the weeks of unemployment which occurred between academic years or terms or during an established and customary vacation period or holiday recess are reasonably similar to those terms and conditions of employment which existed in the year or term before such weeks.~~

(2) STANDARD. Except as provided under sub. (3), the terms and conditions of the employment for which the claimant receives assurance from an educational institution under s. 108.04 (17) (a), (b) and (c), Stats., for the academic year or term immediately following the

weeks of unemployment which occurred between academic years or terms or during an established and customary vacation period or holiday recess are reasonably similar if all of the following apply:

(a) The ~~gross weekly wage is more than 80% of the gross weekly wage~~ claimant will earn at least 90% of the amount the claimant earned in the academic year or term which preceded the weeks of unemployment~~;~~.

SECTION 100. DWD 132.04 (2) (b) is repealed.

SECTION 101. DWD 132.05 (1) (a), (b), (2) (intro.), and (a) to (d) are amended to read:

DWD 132.05 (1) (a) After an employee has been discharged by an employing unit for misconduct connected with ~~his or her~~ the employee's employment as defined under 108.04 (5), Stats., ~~he or she~~ the employee is not eligible to receive unemployment benefits under s. 108.04 (5), Stats.~~ The Wisconsin supreme court has defined misconduct for unemployment insurance purposes to mean *"conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has a right to expect of his [or her] employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his [or her] employer."* The intent of this section is to ensure that the statutory provision and the court decision are consistently interpreted and applied in cases involving alleged abuse of a patient in a health care facility.~~

(b) This section provides a standard by which to determine if misconduct exists under s. 108.04 (5), Stats., when an employee is discharged for alleged abuse of a patient of a health care

facility. This standard also applies to ~~disciplinary~~ suspensions for misconduct under s. 108.04 (6), Stats.

(2) STANDARD. Discharge of an employee by an employing unit for misconduct connected ~~with his or her~~ with the employee's employment under s. 108.04 (5), Stats., may include the discharge of an employee by a health care facility for abuse of a patient. Abuse of a patient includes, but is not limited to any of the following:

(a) Except when required for treatment, care or safety, any single or repeated intentional act or threat through contact or communication involving force, violence, harassment, deprivation, withholding care, sexual contact, sexual intercourse, or mental pressure, which causes physical pain or injury, or which reasonably could cause physical pain or injury, fear or severe emotional distress~~;~~.

(b) Any gross or repeated failure to provide treatment or care without good cause which reasonably could adversely affect a patient's health, comfort or well-being~~;~~.

(c) Any intentional act which subjects a patient to gross insult, ridicule or humiliation, or repeated failure to treat a patient with dignity and respect~~; and~~.

(d) Knowingly permitting another person to do any of the acts in par. (a)~~, (b) or~~ to (c) or knowingly failing to take reasonable steps to prevent another person from doing any of the acts in par. (a)~~, (b) or~~ to (c).

SECTION 102. DWD 133.02 (1) (a), (b) (intro.), and (c) are amended to read:

DWD 133.02 (1) (a) ~~Prior to~~ Before the end of the second full business day after the end of the assignment, the employee contacts the employer, or the employer contacts the employee, and informs the other that the assignment has ended or will end on a certain date. The department may waive the requirement for the deadline or notice, or both, if it determines that the

employee's failure to so contact the employer was for good cause and the employer and employee have otherwise acted in a manner consistent with the continuation of the employment relationship.

(b) ~~Prior to~~ Before the end of the second full business day after the end of the assignment, or prior to the end of the first full business day after the date notice was given under par. (a) if the deadline for the notice was waived, the employer informs the employee that the employer will provide a new assignment that will begin within 7 days and any of the following occur:

(c) The assignment offered by the employer meets the conditions under which the individual offered to work, including the type of work, rate of pay, days and hours of availability, distance willing to travel to work, and available modes of transportation, as set forth in the individual's written application for employment with the employer submitted ~~prior to~~ before the first assignment, or as subsequently amended by mutual agreement. The employer shall have the burden of proof to show that the assignment meets the requirements of this paragraph. If the employer offers an assignment that does not conform to the requirements of this paragraph, the employment relationship ends under sub. (2).

SECTION 103. DWD 135.04 (1) is amended to read:

DWD 135.04 (1) A claimant may request the department to waive the recovery of an overpayment which the department has assessed against the claimant. The claimant shall file the application for waiver on forms furnished by the department and may submit the application to a representative of the department at any time. The claimant may obtain an application for waiver by sending a request to: Department of Workforce Development, Unemployment Insurance Division, TRA Unit, P. O. Box ~~7965~~ 7905, Madison, Wisconsin, 53707.

SECTION 104. DWD 136.001 (2) (a) is amended to read:

DWD 136.001 (2) (a) "Disposable earnings" ~~means that part of the earnings of any individual after the deduction from those earnings of any amounts required by law to be withheld; any life, health, dental or similar type of insurance premiums; union dues; any amount necessary to comply with a court order to contribute to the support of minor children; and any levy, wage assignment or garnishment executed prior to a levy issued under s. 108.225~~ has the meaning specified in s. 108.225 (1) (d), Stats.

SECTION 105. DWD 136.001 (2) (a) (Note) is created to read:

Note: Under 108.225 (1) (d) "Disposable earnings" means that part of the earnings of any individual after the deduction from those earnings of any amounts required by law to be withheld, any life, health, dental or similar type of insurance premiums, union dues, any amount necessary to comply with a court order to contribute to the support of minor children, and any levy, wage assignment or garnishment executed prior to the date of a levy under this section.

SECTION 106. DWD 136.001 (2) (b) is amended to read:

DWD 136.001 (2) (b) "Federal minimum hourly wage" ~~means that wage prescribed by 29 USC 206 (a) (1) in effect at the time an exemption is calculated~~ has the meaning specified in s. 108.225 (1) (e), Stats.

SECTION 107. DWD 136.001 (2) (b) (Note) is created to read:

Note: Under 108.225 (1) (e) "Federal minimum hourly wage" means that wage prescribed by 29 USC 206 (a) (1).

SECTION 108. DWD 136.001 (2) (f) is amended to read:

DWD 136.001 (2) (f) "Levy" ~~means a procedure through which earnings of an individual are required to be withheld for payment of a debt, except a court order to contribute to the support of minor children~~ has the meaning specified in s. 108.225 (1) (f), Stats.

SECTION 109. DWD 136.001 (2) (f) (Note) is created to read:

Note: Under 108.225 (1) (f) "Levy" means all powers of distraint and seizure.

SECTION 110. DWD 136.02 (2) (b) (Note) is amended to read:

Note: Form UCT-8306-2-E is used to calculate the exemption. This form is available from the Unemployment Insurance Division, Department of Workforce Development, 201 East Washington Avenue, P.O. Box ~~7942~~ 7888, Madison, Wisconsin ~~53708-7942~~ 53707-7888.

SECTION 111. DWD 136.03 (1) (c) 3. (Note) is amended to read

Note: Form ~~UCT-8306-3-E~~ UCT-8306-E is used to calculate the exemption. This form is available from the Unemployment Insurance Division, Department of Workforce Development, 201 East Washington Avenue, P.O. Box ~~7942~~ 7888, Madison, Wisconsin ~~53708-7942~~ 53707-7888.

SECTION 112. DWD 140.001 (2) (ag) and (am) are renumbered DWD 140.001 (2) (a) and (bm).

SECTION 113. DWD 140.001 (2) (d) is created to read:

DWD 140.001 (2) (d) "Appeal tribunal" means an individual designated under s. 108.09 (3), Stats., to conduct hearings arising under ch. 108, Stats., and s. 103.06 (6), Stats.

SECTION 114. DWD 140.001 (2) (ar) is renumbered DWD 140.001 (2) (e).

SECTION 115. DWD 140.001 (2) (b) is renumbered DWD 140.001 (2) (i), and as renumbered DWD 140.001 (2) (i) is amended to read:

DWD 140.001 (2) (i) "Representative" means any attorney or agent who notifies the department ~~has notice is~~ they are authorized to represent any party.

SECTION 116. DWD 140.01 (1), (2), and (a) are amended to read:

DWD 140.01 (1) APPEAL RIGHTS. Any party to a determination issued under ~~ss.~~ s. 108.09, 108.095 or 108.10, Stats., has the right to an appeal. An appeal as to any matter in a determination is a request for hearing and shall be filed with ~~the department~~ an appeal tribunal by the appellant or its representative. An appeal is filed with an appeal tribunal when it is submitted to a hearing office or public employment office in an agent state under sub. (2) (b). Each

determination issued under ~~ss.~~ s. 108.09, 108.095 or 108.10, Stats., shall specify the time limit within which any appeal is required to be filed ~~with the department~~ under ch. 108, Stats.

(2) TIME LIMIT AND METHOD FOR FILING. (a) An appeal shall be filed after a copy of the determination is electronically delivered, mailed or given to a party, whichever first occurs, as specified under ~~ss.~~ s. 108.09, 108.095 or 108.10, Stats. If a party first receives a determination after the statutory appeal period has expired and through no fault of that party, the statutory appeal period as specified under ~~ss.~~ s. 108.09, 108.095 or 108.10, Stats., shall extend from the date the party receives the determination. An appeal received within these time limits is timely filed. If the deadline for filing an appeal falls on a Saturday, Sunday, any of the holidays enumerated under ss. 230.35 (4) (a) and 995.20, Stats., or any other day on which mail is not delivered by the United States postal service, then the deadline shall be extended to include the next business day.

SECTION 117. DWD 140.01 (2) (b) 1. and 3. are repealed.

SECTION 118. DWD 140.01 (2) (b) 4., (c) 1., and 5. to 7. are amended to read:

DWD 140.01 (2) (b) 4. An appeal by an interstate claimant may ~~also~~ be filed at a public employment office in the agent state under s. 108.14 (8), Stats., in the manner prescribed for timely filing with the department under this section.

(c) 1. The date ~~on which the department~~ a hearing office actually receives the written appeal.

5. If the appeal was mailed and bears no United States postal service postmark, no private meter mark, or an illegible mark, 2 business days ~~prior to~~ before the date the appeal was actually received by ~~the department~~ a hearing office.

6. If the appeal was sent using a delivery service other than the United States postal service, on the date ~~the department~~ a hearing office actually receives the appeal.

7. If the appeal was ~~faxed~~ filed by facsimile transmission, ~~the date of transmission recorded on the faxed appeal. If the fax is received without a date of transmission recording,~~ the date the facsimile is actually received by ~~the department~~ a hearing office is presumed to be the date of transmission.

SECTION 119. DWD 140.01 (2) (c) 7. (Note) is repealed.

SECTION 120. DWD 140.01 (2) (c) 8. is created to read:

DWD 140.01 (2) (c) 8. The date the department receives an electronically-filed appeal.

SECTION 121. DWD 140.04 (2) is amended to read:

DWD 140.04 (2) The ~~administrative law judge~~ appeal tribunal shall issue a decision which makes ultimate findings of fact and conclusions of law as to whether or not the appellant's late appeal was for a reason beyond the appellant's control. If the ~~administrative law judge~~ appeal tribunal decides this question in favor of the appellant, the same or another ~~administrative law judge~~ appeal tribunal shall then make ultimate findings of fact and conclusions of law on the merits of the case. If the ~~administrative law judge~~ appeal tribunal decides that the late appeal was late for a reason within the appellant's control, the ~~administrative law judge~~ appeal tribunal shall dismiss the appeal.

SECTION 122. DWD 140.05 (1) to (4) are amended to read:

DWD 140.05 (1) An appellant may withdraw ~~its~~ an appeal at any time before the issuance of a decision on the merits by notifying the hearing office or by choosing not to continue to participate in a hearing. The ~~administrative law judge~~ appeal tribunal shall issue a withdrawal decision after determining that an appeal has been withdrawn.

(2) An appellant may submit a request to retract its withdrawal and reinstate ~~its~~ an appeal. The retraction request shall be in writing and state ~~a~~ the reason for the request. The ~~administrative law judge~~ appeal tribunal may not grant a request to retract a withdrawal unless the request establishes good cause for the retraction and is received within 21 days after the withdrawal decision was electronically delivered or mailed to the appellant.

(3) If the hearing office receives a ~~timely~~ retraction request before the issuance of a withdrawal decision and the request establishes good cause for the retraction, the ~~administrative law judge~~ appeal tribunal shall acknowledge the request ~~by letter~~ in writing to the appellant. If a timely retraction request is received by the hearing office after issuance of the withdrawal decision and the request establishes good cause for the retraction, the ~~administrative law judge~~ appeal tribunal shall issue a decision setting aside the withdrawal decision and the hearing office shall schedule another hearing.

(4) If the hearing office receives a retraction request before or after the issuance of a withdrawal decision and the request does not establish good cause for the retraction, the ~~administrative law judge~~ appeal tribunal shall deny the request ~~by letter~~ in writing to the appellant.

SECTION 123. DWD 140.06 (1) to (3) are amended to read:

DWD 140.06 (1) The ~~department~~ hearing office shall schedule a hearing at the earliest feasible time after the appeal is received. ~~The hearing office shall mail a notice of hearing to each party.~~

(2) The notice of hearing shall state the time and place of the hearing, the department's statutory authority for convening the hearing and the issues to be heard. The hearing office shall

electronically deliver or mail the notice of hearing to the last-known address of each party not less than 6 calendar days before the hearing, unless all parties waive the notice requirement.

(3) The ~~administrative law judge~~ appeal tribunal may receive evidence and render a decision on issues not listed on the notice of hearing if ~~each party is so~~ all parties are notified at the hearing and ~~does~~ do not object.

SECTION 124. DWD 140.07 (1) (intro.), (2), (3) (intro), and (4) are amended to read:

DWD 140.07 (1) (intro.) After an appeal is filed, ~~an administrative law judge~~ the appeal tribunal may direct the parties to appear before the ~~administrative law judge~~ appeal tribunal for a prehearing conference. In determining whether a prehearing conference is necessary, the ~~administrative law judge~~ appeal tribunal may consider any of the following criteria:

(2) Prehearing conferences may be conducted in person ~~or~~, by telephone or by videoconference. The date and time for the prehearing conference shall be set by the hearing office. Parties shall have at least 10 ~~days~~ calendar days' notice of the prehearing conference. The ~~administrative law judge~~ appeal tribunal may adjourn the conference or order additional prehearing conferences.

(3) Following the prehearing conference, the ~~administrative law judge~~ appeal tribunal shall issue an order with respect to the course of the conference on any ~~or all~~ of the following matters:

(4) If a party fails to appear or is unprepared to participate in a prehearing conference, the ~~administrative law judge~~ appeal tribunal may conduct a conference and enter the prehearing order without participation by the party.

SECTION 125. DWD 140.08 (1), (2) (intro.), and (a) to (g) are amended to read:

DWD 140.08 (1) A party who requests a postponement of a hearing shall ~~make the request known to~~ notify the hearing office as soon as the party becomes aware that a postponement is necessary. Unreasonable delay in requesting a postponement may be the basis for denial of the request.

(2) No postponements may be granted for the mere convenience of a party. All parties are expected to arrange time off from their everyday affairs, including management duties, work, and school, to attend hearings. The hearing office or the ~~administrative law judge~~ appeal tribunal scheduled to conduct the hearing may grant a postponement only for an exceptional reason. An exceptional reason may include any of the following circumstances ~~such as the following~~:

(a) Serious illness of a party or a necessary witness~~;~~.

(b) Death of an immediate family member of a party or a necessary witness~~;~~.

(c) Weather conditions on the day of the hearing which make it hazardous for a party or a necessary witness to travel to the hearing location~~;~~.

(d) Transportation difficulties arising suddenly which prevent a party or a necessary witness from traveling to the hearing location~~;~~.

(e) A business meeting of a necessary witness which was scheduled ~~prior to~~ before receipt of the hearing notice and ~~which~~ cannot be ~~re-scheduled;~~ rescheduled.

(f) Commitment of a representative which was scheduled ~~prior to his or her~~ before being retained and which cannot be ~~re-scheduled~~ rescheduled, if the party contacted the representative within a reasonable time after receipt of the hearing notice~~; or~~.

(g) An unavoidable delay on the day of the hearing which prevents the ~~administrative law judge~~ appeal tribunal from conducting the hearing as scheduled.

SECTION 126. DWD 140.09 (1) (a) to (c), (2), (3) (intro.), and (b) are amended to read:

DWD 140.09 (1) (a) The hearing office shall compile a hearing file for every case in which a request for hearing has been received which shall contain the papers, documents and departmental records relating to the issue of the hearing. ~~Prior to~~ Before the scheduled date of the hearing, a party to a hearing may inspect the hearing file and procure copies of file contents during regular hearing office hours at the hearing office or other convenient location ~~as determined~~ approved by the hearing office. If requested, the hearing office may electronically deliver or mail copies of file contents to a party. The department may allow such inspection or release of file contents to a party's representative, union agent or legislator ~~only if that individual indicates by a written or verbal statement that the individual has authorization from the party~~, as prescribed under s. DWD 149.03 (2).

(b) Unless the ~~administrative law judge~~ appeal tribunal orders otherwise, the sole means of discovery available to a party or party's representative ~~prior to~~ before a hearing is inspection of the hearing file and procurement of copies of file contents. The ~~administrative law judge~~ appeal tribunal may also order a prehearing conference under s. DWD 140.07. The provisions of ch. 804, Stats., do not apply to hearings under ss. 108.09, 108.095 and 108.10, Stats.

(c) The ~~administrative law judge~~ appeal tribunal may deny a request to inspect the hearing file or procure copies of file contents on the day of the hearing if ~~such~~ the inspection or procurement would delay or ~~otherwise~~ interfere with the hearing.

(2) HEARING STAGE. At the hearing, evidence and exhibits are open to inspection by any party or party's representative except that the ~~administrative law judge~~ appeal tribunal may conduct a closed inspection of evidence and exhibits if the interests of justice so require. The ~~judge~~ appeal tribunal may sequester from the hearing ~~room~~ any person, party or representative as part of the closed inspection. The ~~judge~~ appeal tribunal may also issue a protective order to

prohibit the parties ~~and their representatives~~ or the parties' representatives from disclosing any evidence and exhibits listed as confidential in the protective order if the interests of justice so require.

(3) POST HEARING STAGE. After the hearing is concluded, a party or a party's representative may inspect any hearing file contents that the party or party's representative may inspect under subs. (1) and (2), and also the hearing recording, written synopsis of testimony, and any transcript that is prepared at the department's direction. Any person who is not a party or party's representative at the hearing may inspect only the following and only if ~~social security numbers have~~ personally identifiable information, as defined in s. 19.62 (5), Stats., has been redacted from the documents:

(b) The exhibits submitted and marked as exhibits at the hearing, whether or not received by the ~~administrative law judge~~ appeal tribunal.

SECTION 127. DWD 140.09 (3) (f) (Note) is created to read:

Note: Under s. 19.62 (5), Stats., "Personally identifiable information" means information that can be associated with a particular individual through one or more identifiers or other information or circumstances.

SECTION 128. DWD 140.09 (4) (a) 1., and (b) to (d) are amended to read:

DWD 140.09 (4) (a) 1. The ~~worker's~~ individual's unemployment insurance record as that record relates to work for another employing unit unless ~~an administrative law judge~~ the appeal tribunal approves a request.

(b) Notwithstanding subs. (1) to (3), the ~~administrative law judge~~ appeal tribunal may declare all or parts of documents or other material ~~which~~ that contains records or preserves information ~~and which~~ that the ~~administrative law judge~~ appeal tribunal examined in a closed

inspection under sub. (2) to be, in whole or in part, confidential and closed to inspection by one or more parties, representatives or other persons.

(c) Notwithstanding subs. (1) to (3), evidence and exhibits declared to be confidential under a protective order issued by the ~~administrative law judge~~ appeal tribunal under sub. (2) are closed to inspection as stated in the order.

(d) Notwithstanding subs. (1) to (3), no party, party's representative or other person, except a statutory reviewing body, as specified under ss. 108.09, 108.095 and 108.10, Stats., may inspect the ~~handwritten~~ notes made by the ~~administrative law judge~~ appeal tribunal at the hearing.

SECTION 129. DWD 140.10 (1), (2) (intro.), (3), and (4) are amended to read:

DWD 140.10 (1) Only the department, an ~~administrative law judge~~ appeal tribunal or a party's attorney of record may issue a subpoena to compel the attendance of any witness or the production of any books, papers, documents or other tangible things. A party ~~who desires that the department issue~~ may request, as soon as possible after receipt of the hearing notice, that the appeal tribunal issue a subpoena ~~shall make the request known to the hearing office as soon as possible~~. Subpoenas issued by the department or an ~~administrative law judge~~ appeal tribunal shall be issued on completed department forms ~~and may not be issued blank~~.

(2) Subpoenas shall only be issued when necessary to ensure fair adjudication of the ~~issue or~~ issues of the hearing. The department or ~~administrative law judge~~ an appeal tribunal may refuse to issue any subpoena if any of the following occur:

(3) A party whose request for a subpoena has been denied may, at the hearing, request the ~~administrative law judge who conducts the hearing~~ presiding appeal tribunal to issue the subpoena. If the ~~administrative law judge~~ appeal tribunal grants the request for a subpoena, the

~~judge~~ appeal tribunal may adjourn the hearing to allow sufficient time for service of and compliance with the subpoena.

(4) The ~~administrative law judge~~ appeal tribunal scheduled to conduct a hearing for which a subpoena has been issued may quash or modify the subpoena if the ~~administrative law judge~~ appeal tribunal determines that the witness or tangible things subpoenaed are not necessary to a fair adjudication of the issues of the hearing or that the subpoena has not been served ~~in the proper manner~~ as required under sub. (5).

SECTION 130. DWD 140.11 (title), and (1) to (6) are amended to read:

DWD 140.11 (title) Telephone and videoconference hearings. (1) The ~~department~~ appeal tribunal may conduct hearings in whole or in part by telephone or videoconference when it is impractical for the ~~department~~ appeal tribunal to conduct an in-person hearing, when necessary to ensure a prompt hearing or when one or more of the parties would be required to travel an unreasonable distance to the hearing location. When 2 or more parties are involved, the evidence shall be presented during the same hearing unless the ~~department~~ appeal tribunal determines that it is impractical to do so. A party scheduled to appear by telephone or videoconference may appear in person at the ~~administrative law judge's~~ appeal tribunal's location. The ~~department~~ appeal tribunal may postpone or adjourn a hearing initially scheduled as a telephone or videoconference hearing and reschedule the hearing for an in-person appearance if circumstances make it impractical to conduct a telephone or videoconference hearing.

(2) If the appellant is scheduled to testify by telephone or videoconference and fails to provide the hearing office with the appellant's telephone number or the name and telephone number of the appellant's ~~authorized~~ representative or fails to connect to the videoconference

within a reasonable time ~~prior to~~ before the hearing and if the ~~administrative law judge~~ appeal tribunal has made reasonable attempts to contact the appellant, the ~~administrative law judge may~~ appeal tribunal shall dismiss the appeal. If the respondent fails to provide the hearing office with the telephone number or the name and telephone number of the respondent's ~~authorized~~ representative ~~prior to~~, or the representative fails to connect to the videoconference before the hearing, and if the ~~administrative law judge~~ appeal tribunal has made reasonable attempts to contact the respondent, the ~~administrative law judge may~~ appeal tribunal shall proceed with the hearing.

(3) If the appellant is scheduled to appear by telephone or videoconference, the ~~administrative law judge~~ appeal tribunal shall, within ~~15~~ 10 minutes after the starting time for the hearing, attempt to place at least two calls to the appellant's telephone number of record or the telephone number furnished to the hearing office. One of the calls shall be attempted at or near the end of the ~~15~~ 10 minute period unless the ~~administrative law judge~~ appeal tribunal determines after reasonable efforts that the appellant cannot be reached at that number. If, within ~~15~~ 10 minutes after the starting time for the hearing, neither the appellant nor the appellant's ~~authorized~~ representative can be reached at the telephone number of record or the telephone number furnished to the hearing office, then the ~~administrative law judge may~~ appeal tribunal shall dismiss the appeal.

(4) If the respondent is scheduled to appear by telephone or videoconference, the ~~administrative law judge may~~ appeal tribunal shall proceed with the hearing if, within ~~5~~ 10 minutes after the starting time for the hearing, neither the respondent nor the respondent's ~~authorized~~ representative can be reached at the respondent's telephone number of record or the telephone number furnished to the hearing office. The ~~administrative law judge~~ appeal tribunal

may refuse to allow a respondent to testify if the ~~administrative law judge~~ appeal tribunal is unable to reach the respondent or the respondent's ~~authorized~~ representative and neither the respondent nor the respondent's ~~authorized~~ representative have contacted the hearing office within ~~15~~ 10 minutes after the starting time for the hearing. The respondent ~~shall be~~ is considered to have failed to appear for the hearing if the ~~administrative law judge~~ appeal tribunal so refuses. The respondent may ~~appeal~~ petition such a finding under ~~this chapter~~ s. 108.09 (6), Stats.

(5) All parties shall remain available for the hearing up to one hour after the scheduled starting time in the event ~~the administrative law judge is unable to timely place a telephone call due to~~ of a delay in the prior hearings or other unforeseen circumstances. If the respondent cannot be contacted by telephone or connect by videoconference within one hour of the scheduled starting time of the hearing, the ~~administrative law judge may~~ appeal tribunal shall proceed with the hearing if the appellant has appeared. If the appellant cannot be contacted within one hour of the scheduled starting time of the hearing, the ~~administrative law judge may~~ appeal tribunal shall dismiss the appeal.

(6) The hearing office shall mark and electronically deliver or mail the potential exhibits for a telephone or videoconference hearing from the hearing file to ~~both~~ all parties as soon as possible ~~prior to~~ before the date of the telephone or videoconference hearing. A party may submit additional documents as potential exhibits by simultaneously electronically delivering or mailing those documents to the hearing office and copies to ~~the other~~ each party. A party may submit potential exhibits which are not documents in the manner designated by the hearing office to which the case is assigned. The ~~administrative law judge conducting the hearing~~ appeal tribunal may refuse to consider any documents not received by the hearing office or ~~the other~~ each party ~~within~~ at least 3 days ~~prior to~~ before the hearing.

SECTION 131. DWD 140.12 (1) (intro.), (a) to (c), (2), and (3) are amended to read:

DWD 140.12 (1) (intro.) After an appeal is filed, the parties may stipulate to relevant facts and request that the stipulation be used in lieu of a hearing. The ~~administrative law judge~~ appeal tribunal may accept the stipulation in lieu of a hearing only if all of the following occur:

(a) The parties entered into the stipulation voluntarily~~;~~.

(b) The stipulation contains all the relevant and necessary facts to resolve the issues as determined by the ~~administrative law judge~~ appeal tribunal.

(c) The stipulation is in writing and signed, or electronically executed, by the parties.

(2) If the ~~administrative law judge~~ appeal tribunal does not accept the stipulation of the parties, a hearing shall be held unless the ~~administrative law judge~~ appeal tribunal provides the parties with additional opportunities to submit an acceptable stipulation.

(3) At the hearing, the ~~administrative law judge~~ appeal tribunal may accept a partial stipulation of relevant facts not in dispute if the stipulation is entered into the hearing record and is agreed to on the record by the parties.

SECTION 132. DWD 140.13 is amended to read:

DWD 140.13 Parties who fail to appear; general provisions. All parties who are required to appear in person shall appear at the hearing location no later than the starting time listed on the notice of hearing. If the appellant does not appear within ~~15~~ 10 minutes after the scheduled starting time of the hearing, the ~~administrative law judge may~~ appeal tribunal shall dismiss the appeal. If the respondent does not appear within ~~5~~ 10 minutes after the scheduled starting time of the hearing and the appellant is present, the ~~administrative law judge may~~ appeal tribunal shall commence the hearing. The provisions of s. 108.09 (4), Stats., apply ~~as to the rights~~

~~of the parties and procedures to be followed with regard to the failure of either~~ when a party fails to appear at a hearing under this chapter.

SECTION 133. DWD 140.15 (1) to (4) are amended to read:

DWD 140.15 (1) All testimony shall be given under oath or affirmation. The ~~administrative law judge~~ appeal tribunal shall administer the oath or affirmation to each witness. No person who refuses to swear or affirm the veracity of ~~his or her~~ their testimony may testify. Each party shall be given an opportunity to examine and cross-examine witnesses. The ~~administrative law judge~~ appeal tribunal may limit ~~the~~ testimony to only those matters that are disputed. The appeal tribunal may not allow into the record, either on direct or cross-examination ~~of witnesses so as not to unduly burden the record~~, redundant, irrelevant or repetitive testimony.

(2) The ~~administrative law judge~~ appeal tribunal has the responsibility to develop the facts and may call and examine any witness that ~~he or she~~ the appeal tribunal deems necessary ~~and may also~~, determine the order ~~in which~~ that witnesses are called and the order of examination of each witness. The ~~administrative law judge~~ appeal tribunal may deny the request of any party to examine a witness adversely. The ~~administrative law judge~~ appeal tribunal may hear closing arguments from the parties ~~but~~ and may limit the time of such arguments. The ~~administrative law judge~~ appeal tribunal may adjourn and continue a hearing to a future date when the hearing cannot be completed in the time scheduled.

(3) The ~~administrative law judge~~ appeal tribunal may, upon motion of a party or upon the ~~judge's~~ appeal tribunal's own motion, exclude witnesses from the hearing ~~room~~ until called to testify and may instruct the excluded witnesses not to discuss the matter being heard until the hearing has been concluded. The ~~administrative law judge~~ appeal tribunal may close the hearing to any person to the extent necessary to protect the interests and rights of either party to a fair

hearing. This subsection does not authorize exclusion of a party who is a natural person; one officer or employee of a party which is not a natural person; or a person whose presence is shown by a party to be essential to the presentation of the party's case.

(4) The ~~administrative law judge~~ appeal tribunal may exclude any person who disrupts the hearing. The ~~administrative law judge~~ appeal tribunal may recess or adjourn the hearing if any person disrupts the hearing. The ~~administrative law judge~~ appeal tribunal may prohibit any excluded representative from representing a party at that hearing or any continuance. The ~~administrative law judge~~ appeal tribunal shall offer a party whose representative has been excluded or refused admittance an opportunity to secure another representative.

SECTION 134. DWD 140.16 (1) and (2) are amended to read:

DWD 140.16 (1) Statutory and common law rules of evidence and rules of procedure applicable to courts of record are not controlling with respect to hearings. The ~~administrative law judge~~ appeal tribunal shall secure the facts in as direct and simple a manner as possible. Evidence having reasonable probative value is admissible~~, but irrelevant,~~. Irrelevant, immaterial and ~~repetitious~~ repetitive evidence is not admissible. Hearsay evidence is admissible if it has reasonable probative value but no issue may be decided solely on hearsay evidence unless the hearsay evidence is admissible under ch. 908, Stats.

(2) The ~~administrative law judge~~ appeal tribunal may take administrative notice of any department records, generally recognized fact or established technical or scientific fact having reasonable probative value but the parties shall be given an opportunity to object and to present evidence to the contrary before the ~~administrative law judge~~ appeal tribunal issues a decision.

SECTION 135. DWD 140.17 (1) to (3) are amended to read:

DWD 140.17 (1) The ~~administrative law judge~~ appeal tribunal may issue an oral decision at the hearing on the matters at issue but the ~~judge~~ appeal tribunal shall confirm the oral decision with a written decision. ~~The only~~ Only the written decision ~~which~~ is appealable ~~is the written decision~~.

(2) The written decision of the ~~administrative law judge~~ appeal tribunal shall contain ultimate findings of fact and conclusions of law. The findings of fact shall consist of concise and separate findings necessary to support the conclusions of law. The decision shall contain the reasons and rationale which follow from the findings of fact to the conclusions of law.

(3) The decision of the ~~administrative law judge~~ appeal tribunal shall specify the time limit ~~within which any~~ to file a petition for commission review ~~is required to be filed~~ with the ~~department or the~~ commission under ~~ch. 108~~ s. 108.09 (6), 108.095 (6) or 108.10 (2), Stats~~., and ss. LIRC 1.02 and 2.01~~.

SECTION 136. DWD 140.18 and (Note) are amended to read:

DWD 140.18 Fees for representation of parties. No representative ~~attorney~~ may charge or receive from a claimant for representation in a dispute concerning benefit eligibility or liability for overpayment of benefits, or in any administrative proceeding under ch. 108, Stats., concerning such a dispute, a fee which, in the aggregate, is more than 10% of the maximum benefits at issue unless the department has approved a specified higher fee before the claimant is charged. When a request for waiver of the 10% limitation is received, the department shall consider whether extended benefits or any other state or federal unemployment benefits are at issue. Any request for waiver of the 10% limitation on fees shall be submitted in writing to the central administrative office of the bureau of legal affairs~~, unemployment insurance~~ in the division~~, department of workforce development. The department is not authorized under~~. Under

s. 108.13, Stats., ~~to~~ the department shall not assign any past or future benefits for the collection of ~~attorney~~ representative fees.

Note: ~~The address of the central administrative office of the bureau of legal affairs, unemployment insurance division, department of workforce development is;~~ Any request for a waiver under this section shall be submitted in writing to: Department of Workforce Development, Division of Unemployment Insurance, Central Administrative Office of the Bureau of Legal Affairs, 201 E. Washington Avenue, P.O. Box 8942, Madison, Wisconsin 53708-8942.

SECTION 137. DWD 140.19 (1) to (3) are amended to read:

DWD 140.19 (1) The department may, at its own expense, provide a person to assist a person with a hearing impairment in communicating at a hearing, if the person with a hearing impairment notifies the ~~department~~ hearing office within a reasonable time ~~prior to~~ before the date of the hearing and the ~~department~~ appeal tribunal determines that the impairment is of a type which may hinder or prevent the person from communicating.

(2) If the person with a hearing impairment makes arrangements on ~~his or her~~ their own behalf to have a person assist ~~him or her~~ them in communicating, the department may reimburse such person for fees and travel expenses at the rate specified for interpreters under s. DWD 140.20, if the ~~department~~ appeal tribunal determines that such person is necessary to assist the person with the hearing impairment in communicating.

(3) The ~~department~~ hearing office shall attempt to schedule hearings in buildings which have ease of access for any person with a temporary or permanent incapacity or disability. The ~~administrative law judge~~ appeal tribunal may reschedule any hearing in which such a person who is a party or a necessary witness to the hearing does not have ease of access into the building ~~in which~~ where the hearing is scheduled.

SECTION 138. DWD 140.20 (1), (2), and (4) (c) are amended to read:

DWD 140.20 (1) The ~~administrative law judge~~ appeal tribunal may authorize reimbursement by the department to any witness subpoenaed by a party or any party who has already made reimbursement to such a witness for witness fees and travel expenses. The ~~administrative law judge~~ appeal tribunal may also require reimbursement for an interpreter who is necessary to interpret testimony of a witness offered at the hearing.

(2) The department may refuse to reimburse a witness subpoenaed on behalf of a party other than the department for witness fees or travel expenses if the ~~administrative law judge~~ appeal tribunal determines that the testimony was not relevant or material to the issue of the hearing.

(4) (c) For interpreters, $35.00 per half day, or the contracted amount.

SECTION 139. DWD 140.21 (1), (2), and (Note) are amended to read:

DWD 140.21 (1) Copies of hearing transcripts may be obtained from the ~~labor and industry review~~ commission under s. LIRC 1.045.

(2) Under s. 108.09 (5), Stats., if testimony at a hearing is recorded, the department may furnish a person with a copy of the hearing recording ~~in lieu of a transcript~~. The fee is $7.00 per ~~compact disk~~ electronic recording. The department may waive this fee if the department is satisfied that the person is unable to pay.

Note: ~~Requests for~~ To request hearing recordings and waivers of fees ~~may be made to~~ contact the Department of Workforce Development, Division of Unemployment Insurance, Bureau of Legal Affairs, ~~Unemployment Insurance Division, Department of Workforce Development,~~ 201 E. Washington Avenue, P.O. Box 8942, Madison, Wisconsin 53708-8942 or telephone (608) 266-3174.

SECTION 140. DWD 140.22 (1) (c) is amended to read:

DWD 140.22 (1) (c) The department's standard affidavit form for appeals under ss. 108.09, 108.095 and 108.10, Stats., is available at the department's website or by requesting a copy from the hearing office.

SECTION 141. DWD 140.22 (1) (c) (Note) is repealed and recreated to read:

Note: To obtain the department's standard affidavit form, call (608) 266-8010 or visit the website https://dwd.wisconsin.gov/dwd/forms/ui/ucl_17500_e.htm.

SECTION 142. DWD 140.22 (3) (a) and (b) are amended to read:

DWD 140.22 (3) (a) A party may submit an affidavit as a potential exhibit by simultaneously delivering the affidavit to the hearing office and electronically delivering or mailing a copy to ~~the other~~ each party. The ~~administrative law judge~~ appeal tribunal conducting the hearing may refuse to consider an affidavit not received by the hearing office and ~~the other~~ each party at least 3 days ~~prior to~~ before the hearing.

(b) At the hearing, the ~~administrative law judge~~ appeal tribunal may accept the affidavit as evidence as provided under s. DWD 140.16.

SECTION 143. DWD 142.02 (2) to (5) are amended to read:

DWD 142.02 (2) "Employee" means an individual who is an employee ~~within the meaning of chapter 24 of the internal revenue code of 1986 (~~under 26 USC 3401~~)~~ (c) but does not include an individual performing intelligence or counterintelligence functions for a federal or state agency if the head of the agency has determined that reporting ~~pursuant to~~ under s. DWD 142.01 with respect to the individual could endanger the individual's safety or compromise an ongoing investigation or intelligence mission.

(3) "Employer" means a person who is an employer ~~within the meaning of chapter 24 of the internal revenue code of 1986~~ under 26 USC 3401(d) and includes any governmental entity and any labor organization.

(4) "Federal employer identification number" means the identifying number assigned to the employer under ~~section 6109 of the internal revenue service code of 1986~~ 26 USC 6109.

(5) "Labor organization" ~~means an organization that is a labor organization within the meaning of 29 USC 152(5) and includes any hiring hall or other organization that is used by the labor organization and an employer to carry out requirements of an agreement described in 29 USC 159(f)(3) between the labor organization and the employer~~ has the meaning specified in 42 USC 653a(a)(2)(B)(ii).

SECTION 144. DWD 142.02 (5) (Note) is repealed and recreated to read:

Note: 42 USC 653a(a)(2)(B)(ii) provides: The term "labor organization" shall have the meaning given such term in section 152(5) of title 29, and includes any entity (also known as a "hiring hall") which is used by the organization and an employer to carry out requirements described in section 158(f)(3) of title 29 of an agreement between the organization and the employer.

SECTION 145. DWD 142.02 (7) (b) is amended to read:

DWD 142.02 (7) (b) An employee, other than a poll worker or a substitute teacher, who is rehired, recalled, or returns to work after an unpaid absence of more than ~~90~~ 60 days.

SECTION 146. DWD 147.01 (1) (intro.) is renumbered DWD 147.01 (1) and as renumbered, is amended to read:

DWD 147.01 (1) Under s. 108.066, Stats., an employer engaged in agricultural activities may apply to the department by May 31 for designation as a seasonal employer. ~~In response to such application the~~ The department shall issue an appealable determination regarding the application by June 30. The department shall grant seasonal employer designation if ~~it determines that:~~ all of the requirements under s. 108.066 (3), Stats., are met.

SECTION 147. DWD 147.01 (1) (a) to (c) are repealed.

SECTION 148. DWD 149.001 (2) (d) is amended to read:

DWD 149.001 (2) (d) "Public official" means an official, agency, or public entity within the executive branch of the federal, state, Indian tribal, or local government with responsibility for administering or enforcing a law, or an elected official in federal, state, Indian tribal, or local government and includes the meaning specified in 20 CFR 603.2 (d) (2) to (5).

SECTION 149. DWD 149.001 (2) (d) (Note) is created to read:

Note: Under 20 CFR 603.2 (d) (2) to (5) "public official" means:

(2) Public postsecondary educational institutions established and governed under the laws of the State. These include the following:

(i) Institutions that are part of the State's executive branch. This means the head of the institution must derive his or her authority from the Governor, either directly or through a State WDB, commission, or similar entity established in the executive branch under the laws of the State.

(ii) Institutions which are independent of the executive branch. This means the head of the institution derives his or her authority from the State's chief executive officer for the State education authority or agency when such officer is elected or appointed independently of the Governor.

(iii) Publicly governed, publicly funded community and technical colleges.

(3) Performance accountability and customer information agencies designated by the Governor of a State to be responsible for coordinating the assessment of State and local education or workforce training program performance and/or evaluating education or workforce training provider performance.

(4) The chief elected official of a local area as defined in WIOA sec. 3(9).

(5) A State educational authority, agency, or institution as those terms are used in the Family Educational Rights and Privacy Act, to the extent they are public entities.

SECTION 150. DWD 149.02 (2) (b) is amended to read:

DWD 149.02 (2) (b) Appeals records and decisions with ~~social security numbers~~ personally identifiable information, as defined in s. 19.62 (5), Stats., redacted as provided in s. DWD 140.09.

SECTION 151. DWD 149.05 (1) (intro.), (a), (c), (d) (intro.), and 5. are amended to read:

DWD 149.05 (1) (intro.) The department may disclose unemployment insurance records to any of the following persons or government units if the department approves the purposes for which the records are requested:

(a) The ~~U. S.~~ United States department of labor, including for purposes of the federal ~~Workforce Investment Act~~ workforce investment and opportunity act, and the bureau of labor statistics.

(c) A local, state, Indian tribal, or federal government official, other than a clerk of court on behalf of a litigant, with authority to obtain the information pursuant to a subpoena or court order.

(d) A public official or its agent or contractor for use in the performance of official duties, including any of the following:

5. Any federal law enforcement agency or law enforcement agency of the state or any of its political subdivisions, if the ~~worker~~ individual or employing unit whose record is being sought is the subject of a criminal investigation.

SECTION 152. DWD 149.06 (4) is amended to read

DWD 149.06 (4) This section does not apply to disclosures of unemployment insurance records to a unit of the federal government that has safeguards in place that meet the confidentiality requirements of 42 USC ~~303~~ 503 (a) (1), as determined by the department of labor with notice published in the Federal Register.

SECTION 153. DWD 149.07 (6) is amended to read

DWD 149.07 (6) The requirements of this section do not apply to disclosures of unemployment insurance records to a federal agency that has in place safeguards adequate to

satisfy the confidentiality requirements of 42 USC ~~303~~ 503 (a) (1), as determined by the department of labor and published in the Federal Register.

SECTION 154. DWD 150.03 (intro.) and (1) are repealed.

SECTION 155. DWD 150.05 is amended to read:

DWD 150.05 Forms. Copies of forms ~~used by the Unemployment Insurance Division may be obtained by writing the Unemployment Insurance Division, P.O. Box 7905, Madison, Wisconsin 53707~~ are provided by the department.

SECTION 156. DWD 150.05 (Note) is created to read:

Note: Copies of forms are available online at:
https://dwd.wisconsin.gov/dwd/forms_publications_search.htm

SECTION 157. DWD 150 (table) is amended to read:

TABLE DWD 150

Form Number			Title or Similar Description
(1) Coverage.			~~**Wisconsin Employer's Report**~~
(a)	UCT-1-E	—	~~Employer's~~ Wisconsin Employer Report ~~as to Wis. U.I. Coverage~~
(b)	RC-1	—	Election to Cover Multi-state Workers
(c)	UCT-115-E	—	Report of Business Transfer
(d)	UCT-117-E	—	Computation of Partial Transfer Percentage
(e)	UCT-119-E	—	Benefit Payment Allocation Report
(f)	UCT-43-E	—	Preliminary Report
(g)	UCT-673-E	—	Nonprofit Organization Employer's Report
(h)	UCT-5332-E	—	Domestic Employer's Report
(i)	UCT-5334-E	—	Agricultural Employer's Report
(j)	UCT-6491-E	—	Account Change Information
(2) Contributions.			
(a)	UCT-101-E	—	~~Employer's~~ Quarterly Contribution Report to be Filed with Quarterly Wage Report
~~(b)~~	~~UC-101a~~	~~—~~	~~Instructions for Completing Form UC-101~~
(c)	UCT-100B-E	—	~~Notice of Employer's Contribution~~ Annual Tax Rate Notice and Schedule-with Voluntary
(d)	UCT-100B1-E	—	Annual Tax Rate Notice and Schedule-Without Voluntary
(e)	UCT-100B2-E	—	UI Tax Rate Adjustment/Rate Schedule
(f)	UC-7823-E	—	Quarterly Wage Report
(g)	UCT-7842-E	—	Contribution Adjustment Report
(h)	UCT-7878-E	—	Wage Adjustment Report
(i)	UCT-7937	—	Election to Exclude Principal Officers
(j)	UCT-8055	—	Worksheet-Corporate Officer Exclusion
(k)	UCT-17927-E	—	Reelection of Coverage of Principal Officers

(3) Benefit notices and reports, required of employers.

(a)	UCB-201-P	—	Wisconsin Unemployment Insurance Handbook for Employers
(b)	UCB-7-P	—	Notice ~~Poster, How to Claim~~ to Employees About Applying for Wisconsin Unemployment Benefits
~~(d)~~	~~RC-2~~	~~—~~	~~Special Notice, for Multi-State Employees~~
(e)	UCB-16	—	Separation Notice
(f)	UCB-23	—	Wage Verification Eligibility Report
~~(g)~~	~~UCB-23Q35~~	~~—~~	~~Wage Verification Eligibility Report~~
(h)	UCB-9381-P	—	Seasonal Employment Notice
(i)	UCB-719	—	Urgent Request for Wages

(4) Benefit claims and payments.

(a)	UCB-10-P	—	~~Claiming Wisconsin~~ Unemployment ~~Benefits~~ Insurance Handbook for Claimants
~~(b)~~	~~UCB-17~~	~~—~~	~~Claim Card~~

(5) Settlement of contested benefit claims.

~~(a)~~	~~UCB-18~~	~~—~~	~~Fact Finding Interview Notice~~
(b)	UCB-474	—	Physician's Report, for Determining Eligibility

SECTION 158. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin administrative register, as provided under s. 227.22 (2) (intro.), Stats.

Dated this _____ day of _____, 2018.

WISCONSIN DEPARTMENT OF
WORKFORCE DEVELOPMENT

By: _____
Raymond Allen, Secretary