

Chapter ILHR 132

DETERMINING ELIGIBILITY FOR BENEFITS

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Note: Chapter Ind 132 as it existed on August 31, 1987 was repealed and a new chapter ILHR 132 was created effective September 1, 1987.

ILHR 132.001 Definitions. In this chapter:

(1) "Applicable weekly benefit rate" means any benefit rate determined from base period employment other than the part-time employment which the claimant terminated.

(2) "Base period" has the meaning designated in s. 108.02 (4), Stats.

(3) "Benefit year" has the meaning designated in s. 108.02 (5), Stats.

(4) "Department" means the department of industry, labor and human relations.

(5) "Employment relationship" means a relationship between an employe and an employer in which the employe performs services for pay for the employer under an informal or formal agreement of employment and which continues when the employment is temporarily suspended for a definite, discernible period of time.

(6) "Health care facility" means any nursing home, community-based residential facility, hospital, clinic, office of a physician or other health care professional, mental health institute, center for the developmentally disabled, alcohol or drug treatment center or other facility providing in-patient or outpatient health care to patients, whether licensed, approved or exempted under state law or certified under federal law.

(7) "Sexual contact" has the meaning designated in s. 940.225 (5) (a), Stats.,

(8) "Sexual intercourse" has the meaning designated in s. 940.225 (5) (b), Stats.,

(9) "Shift" means the arrangement of hours a claimant is required to work. "First shift" means a work period which begins and ends between 6 a.m. and 6 p.m.

(10) "Substitute teacher" means a licensed teacher who occupies temporarily the position of an absent teacher.

(11) "Wages" has the meaning designated in s. 108.02 (26), Stats.

History: Cr. Register, August, 1987, No. 380, eff. 9-1-87; renum. (6) to (8) to be (9) to (11), cr. (6) to (8), Register, January, 1989, No. 397, eff. 2-1-89.

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ILHR 132.01 Purpose. The purpose of this chapter is to provide standards for determining a claimant's eligibility for benefits under certain provisions of s. 108.04, Stats.

History: Cr. Register, August, 1987, No. 380, eff. 9-1-87.

ILHR 132.02 Offer of new work from a previous employer. (1) **SCOPE.** Section 108.04 (9) (b), Stats., provides that a claimant cannot be disqualified from receiving benefits for refusing an offer of new work if the wages, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality. This section explains new work under s. 108.04 (9) (b), Stats., as it applies to an offer of the claimant's former job by a previous employer with which the claimant worked for at least 10 weeks in his or her base period or benefit year or both. If the employer offers a different job instead of the former job or if the claimant worked less than 10 weeks in the former job, this section does not apply.

(2) **STANDARD.** (a) An offer of the claimant's former job by an employer with which the claimant worked for at least 10 weeks in his or her base period or benefit year or both is not substantially less favorable to the individual if:

1. The hourly rate of pay offered is not less than the last hourly rate earned with the employer;

2. The total weekly hours offered are at least 38 hours or the average number of hours per week which the claimant worked for the employer during the six-month period prior to the termination of the employment relationship, whichever is less;

3. The shift offered is first shift or any other shift which the claimant worked with the employer for at least 8 weeks during the six-month period prior to the termination of the employment relationship; and

4. The duties of the position offered are substantially the same as the duties which the employer assigned to the claimant during the six-month period prior to the termination of the employment relationship.

(b) Paragraph (a) does not apply if the claimant has acquired new skills from training or work experience since the termination of the employment relationship with the offering employer which makes the offer of new work less favorable to the claimant due to changed circumstances.

(3) **EFFECT ON ELIGIBILITY.** (a) If a claimant refuses an offer of the claimant's former job from an employer with which the claimant worked for at least 10 weeks in his or her base period or benefit year or both and the offer is determined under this section to be substantially less favorable to the individual, the claimant is eligible for benefits, if otherwise qualified.

(b) If a claimant refuses an offer of the claimant's former job from an employer with which the claimant worked for at least 10 weeks in his or her base period or benefit year or both and the offer is determined under this section not to be substantially less favorable to the individual, the claimant, unless he or she has good cause to refuse the offer or s. 108.04 (16), Stats., applies, shall be:

1. Subject to a reduction in the benefits payable under s. 108.04 (8) (a), Stats.; and

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2. Ineligible for benefits until he or she has requalified under s. 108.04 (8) (a), Stats.

History: Cr. Register, August, 1987, No. 380, eff. 9-1-87.

ILHR 132.03 Voluntary termination of part-time employment. (1) DEFINITIONS. In this section:

(a) "Expenses" mean the expenses incurred by the claimant to maintain part-time work and includes travel expenses, child care expenses and any other reasonable work-related expenses.

(b) "Full-time" means work which is performed for more than 30 hours per week.

(c) "Loss of the full-time work" means loss of full-time work which is expected to be for at least 4 consecutive weeks.

(d) "Part-time" means work which is performed for 30 or less hours per week.

(2) **SCOPE.** Under s. 108.04 (7) (k), Stats., a claimant who terminates part-time work is not disqualified from receiving benefits under s. 108.04 (7) (a), Stats., if the claimant is otherwise eligible to receive benefits because of the loss of the full-time work and this loss makes it economically unfeasible to continue the part-time work. This section specifies the circumstances under which a claimant may meet the requirements under s. 108.04 (7) (k), Stats.

(3) **STANDARD.** (a) A claimant's employment is qualifying part-time work under s. 108.04 (7) (k), Stats., if:

1. In at least 65% of the most recent 26 weeks of work with the part-time employer, the claimant worked only part-time; and

2. The loss of the full-time work makes it economically unfeasible for the claimant to continue the part-time work.

(b) To determine whether the loss of the full-time work makes it economically unfeasible for the claimant to continue the part-time work, the department shall add the amount of the claimant's gross wages from the part-time work for the week preceding the week in which the claimant terminates the part-time work to the amount of unemployment benefits payable for that week and subtract from this sum the expenses incurred by the claimant in that week for the part-time work. If the remainder is less than the claimant's full weekly benefit rate for that week, the department shall consider it economically unfeasible for the claimant to continue the part-time work.

(4) **EFFECT ON ELIGIBILITY.** (a) If a claimant meets the requirements of this section and is otherwise eligible, the claimant shall be entitled to benefits.

(b) If a claimant does not meet the requirements of this section, the claimant shall be subject to a reduction in the benefits payable under s. 108.04 (7) (a), Stats., and shall be ineligible for benefits until he or she has again been employed under s. 108.04 (7) (a), Stats., unless another exception contained in s. 108.04 (7), Stats., applies.

Note: The treatment of s. ILHR 132.03 applies to benefit years which begin during or after the week commencing on April 2, 1989.

History: Cr. Register, August, 1987, No. 380, eff. 9-1-87; r. and recr. Register, November, 1989, No. 407, eff. 12-1-89.

ILHR 132.04 Educational employees: reasonably similar terms and conditions. (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:

(a) The gross weekly wage is more than 80% of the gross weekly wage earned in the academic year or term which preceded the weeks of unemployment;

(b) The number of hours per week is more than 80% of the average number of hours worked per week in the academic year or term which preceded the weeks of unemployment; and

(c) The employment involves substantially the same skill level and knowledge as the employment in the academic year or term which preceded the weeks of unemployment.

(3) **SUBSTITUTE TEACHERS.** This subsection only applies to substitute teachers under s. 108.04 (17) (a) and (c), Stats. A substitute teacher who worked in the academic year or term immediately preceding the weeks of unemployment which occurred between academic years or terms or during an established and customary vacation period or holiday recess has assurance of reasonably similar employment if he or she receives assurance from any educational institution of any employment as a substitute teacher, part-time teacher or full-time teacher, in the academic year or term immediately following the weeks of unemployment.

(4) **EFFECT ON ELIGIBILITY.** (a) If the employment for which the claimant receives assurance is not reasonably similar under sub. (2) or (3), the claimant is eligible for benefits based on services provided to or on behalf of an educational institution between academic years or terms or during Register, November, 1989, No. 407

established and customary vacation periods or holiday recesses under s. 108.04 (17) (a), (b) and (c), Stats., if otherwise qualified.

(b) If the employment for which the claimant receives assurance is reasonably similar under sub. (2) or (3), the claimant is not eligible for benefits based on services provided to or on behalf of an educational institution between academic years or terms or during established and customary vacation periods or holiday recesses under s. 108.04 (17) (a), (b) and (c), Stats.

History: Cr. Register, August, 1987, No. 380, eff. 9-1-87.

ILHR 132.05 Misconduct: abuse of a patient of a health care facility. (1) **SCOPE.** (a) After an employe has been discharged by an employing unit for misconduct connected with his or her employment, he or she is not eligible to receive unemployment benefits under s. 108.04 (5), Stats. The Wisconsin supreme court has defined misconduct for unemployment compensation purposes to mean "*conduct evincing such wilful 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] employe, 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 employe'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 employe 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) (a), Stats.

(c) At any hearing involving this section, the health care facility shall prove by competent evidence that the alleged conduct for which the employe was discharged actually occurred. Section ILHR 140.12 regarding the admissibility of evidence applies in all hearings involving alleged abuse of a patient.

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

(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 pars. (a), (b) or (c) or knowingly failing to take reasonable steps to prevent another person from doing any of the acts in pars. (a), (b) or (c).

(3) EFFECT ON ELIGIBILITY. (a) If a claimant was discharged for conduct which the health care facility alleges was abuse of a patient and that conduct is determined not to be misconduct under this section, the claimant is eligible to receive benefits, if otherwise qualified.

(b) If a claimant was discharged for conduct which the health care facility alleges was abuse of a patient and that conduct is determined to be misconduct under this section, the claimant is not eligible to receive benefits based on credit weeks accrued with respect to that health care facility. The claimant is also ineligible to receive any benefits based upon employment with an employer other than the health care facility which discharged the claimant, for the week in which the discharge occurs and thereafter, until he or she has again worked within at least 7 weeks in employment covered by the unemployment compensation law of any state or the federal government and has earned wages for work actually performed in employment covered by the unemployment compensation law of any state or the federal government equalling at least 14 times the employe's weekly benefit rate with the employer against whom benefits are initially chargeable. The employe's benefit rate shall be that which is otherwise applicable, as provided in s. 108.04 (5), Stats. This paragraph applies if the employe's benefit year commences prior to April 2, 1989.

(c) If a claimant was discharged for conduct which the health care facility alleges was abuse of a patient and that conduct is determined to be misconduct under this section, the claimant is not eligible to receive benefits until 7 weeks have elapsed since the end of the week in which the discharge occurs and the employe earns wages after the week in which the discharge occurs equal to at least 14 times the employe's weekly benefit rate in employment or other work covered by the unemployment compensation law of any state or the federal government. For purposes of requalification, the employe's weekly benefit rate shall be that rate which would have been paid had the discharge not occurred. The wages paid to the employe by the health care facility shall be excluded from the employe's base period wages for purposes of benefit entitlement, as provided in s. 108.04 (5), Stats. This paragraph applies if the employe's benefit year commences on or after April 2, 1989.

History: Cr. Register, January, 1989, No. 397, eff. 2-1-89.