

CR 94-73

RULES CERTIFICATE

STATE OF WISCONSIN)
) SS
 DEPT. OF INDUSTRY,)
 LABOR & HUMAN RELATIONS)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Carol Skornicka, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to Definitions, Work Registration and Work Search
 (Subject)

were duly approved and adopted by this department on August 18, 1994.
 (Date)

I further certify that said copy has been compared by me with the original on file in the department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 11:05 a.m.
 in the city of Madison, this 18th
 day of August A.D. 19 94.

Pat Skornicka
 Secretary



ORDER OF ADOPTION

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s)

101.02(1), 108.14(2), and 227.11(2), Stats.

Stats., the Department of Industry, Labor and Human Relations creates; amends;
 repeals and recreates; repeals and adopts rules of Wisconsin Administrative Code
chapter(s):

ILHR 100, 126 and 127
(Number)

Definitions, Work Registration and Work Search
(Title)

The attached rules shall take effect on the first day of the month following publication in the

Wisconsin Administrative Register pursuant to section 227.22, Stats.

Adopted at Madison, Wisconsin this

date: August 18, 1994

DEPARTMENT OF INDUSTRY, LABOR AND
HUMAN RELATIONS


Secretary

ADM-6055





State of Wisconsin \ Department of Industry, Labor and Human Relations

RULES in FINAL DRAFT FORM

Rule No.: ILHR 100, 126 and 127

Relating to: Definitions, Work Registration and Work Search

Clearinghouse Rule No. 94 - 73

The Wisconsin Department of Industry, Labor and Human Relations proposes an order to amend ILHR 100.01; to repeal and recreate ILHR 126; and to create ILHR 100.02(2) and 127.03(6) relating to Definitions, Work Registration, and Work Search.

Statutory Authority: ss. 101.02(1), 108.04(2)(b), 108.14(2) and 227.11(2)

Statutes Interpreted: ss. 108.04(2)(a) and (b).

ANALYSIS OF PROPOSED RULES PREPARED BY THE DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS.

Section 108.04(2), Stats., provides that a claimant for unemployment compensation must register for work and must seek suitable work. The statute authorizes the Department of Industry, Labor and Human Relations (Department) to promulgate rules establishing the requirements for registration for work and work search.

The Department has promulgated permanent rules establishing the requirements with which a claimant must comply to satisfy the work registration requirement. These rules are set forth in ILHR 126. The present administrative rules were established at a time when the public employment offices were able to make careful, personal attempts to match jobs to claimants. At that time the public employment office closely examined each claimant's work history and experience (as provided in the work registration), reviewed requests from employers for qualified applicants, and referred appropriately qualified claimants to those employers offering suitable work.

The job referral function of the public employment office has changed. The public employment office today posts the majority of its job openings for self-referral. Self-referral is the process whereby claimants review posted job announcements at the job service office, select those announcements in which they are interested, and follow procedures for application set forth in those announcements. With the advent of automation, approximately 95% of all job orders will be posted for self-referral, and the public employment office will become essentially a bulletin board where employers may place notices advertising job openings. The self-screening and self-referral approach requires neither the work registration rules nor the specified exceptions to the work registration requirement, currently set forth in ILHR 126.

However, the U.S. Department of Labor has recently issued a requirement that all states develop a profiling system which will identify those claimants who are most likely to exhaust their regular unemployment compensation benefits and to need reemployment services in order to make a successful transition to new employment. Such claimants who are referred for, but fail to participate in, reemployment services must be found ineligible for benefits for the week during which they do not participate. Therefore, the ILHR 126 concept of work registration has been changed to encompass the profiling and reemployment services participation requirements.

Since claimants who are actively participating in reemployment services are not considered job market ready, they are not expected to conduct a work search during that time. As a result, a new work search waiver provision is required.

ILHR 126 does contain important definitions with continuing effect in ILHR 126 to ILHR 129. The Department is consolidating all its administrative code definitions within ILHR 100. Therefore, the definitions set forth in ILHR 126.001 will be moved to ILHR 100. Section ILHR 100.02 is created to include definitions both current and new which are applicable in Administrative Code Chapter ILHR provisions which are not being repealed.

Section ILHR 126.01 describes the purpose of the rule as specifying what registration is, when the registration requirement will be waived, and when it will be presumed that a claimant is participating in reemployment services.

Section ILHR 126.03 states that the work registration requirement will be waived for claimants who have been referred for reemployment services and have either completed those services or have failed to participate in those services but have justifiable cause for that failure. The requirement will also be waived for those claimants who are determined not to be likely to exhaust their unemployment benefits or to need reemployment services to make a successful transition to new employment.

Section ILHR 126.02 explains that a claimant will generally be considered registered for work if he or she is providing the information requested by the Department for use in its profiling system, and that the claimant will not be considered registered for work if he or she has been referred for reemployment services and the presumption of participation in those services has been overcome.

Section ILHR 126.04 establishes a presumption that those who have registered for work are participating in reemployment services and provides examples of circumstances under which a claimant will be considered to be participating. The section also explains that the presumption will be overcome if a claimant fails to participate in reemployment services without justifiable cause for that failure.

Section ILHR 126.05 explains that justifiable cause will be interpreted to mean such circumstances as a claimant failing to participate because he or she was summoned to be a juror, was on a job interview, or was unable to participate for reasons which were beyond his or her control.

ILHR 127.03(6) provides that the work search requirement will be waived for claimants who have been referred for and are actively participating in reemployment services.

STATUTORY AUTHORITY. Pursuant to the authority vested in the department of industry, labor and human relations by ss. 101.02(1), 108.14(2), and 227.11(2), Stats., the department hereby proposes to amend, repeal and recreate, and create rules relating to definitions, work registration, and work search.

SECTION 1. ILHR 100.01 (title) and 100.01 are amended to read:

ILHR 100.01 (title) GENERAL RULE. Except as provided in s. ILHR 100.02 or where the ~~context,~~ context clearly requires otherwise, the definitions in ch. 108, Stats., shall apply to the terms used in chs. ILHR 100 to 150.

SECTION 2. ILHR 100.02 is created to read:

ILHR 100.02 DEFINITIONS. (1) CHAPTERS ILHR 126 to 129. In chs. ILHR 126 to 129, the following words and phrases have the designated meanings unless a different meaning is expressly provided or the context clearly indicates a different meaning:

- (a) "Agent state" means any state in which a person files a claim for unemployment benefits from the state of Wisconsin.
- (b) "Base period" has the meaning specified in s. 108.02(4), Stats.
- (c) "Benefit year" has the meaning specified in s. 108.02(5), Stats.
- (d) "Customary occupation" means the occupation for which a claimant is most qualified based on the claimant's skills, abilities, training, education and work experience.
- (e) "Department" means the department of industry, labor and human relations.
- (f) "Employer" has the meaning specified in s. 108.02(13), Stats.
- (g) "Full time" means work which is performed for 35 or more hours in a week.
- (h) "Job search assistance demonstration project" means the demonstration program to provide job search assistance which was developed pursuant to an agreement between the department and the U.S. Department of Labor as authorized under Title II of the Emergency Unemployment Compensation Act of 1991 (P.L. 103-164, November 15, 1991).
- (i) "Labor market area" means a geographical area in which there are jobs deemed to be suitable work for the claimant and which encompasses the geographical area in which workers with similar occupational skills customarily travel to obtain or perform suitable work.
- (j) "Lag period" means the period between the end of the base period and the valid new claim week under s. 108.02 (25m), Stats.
- (k) "Local office" means an office of the unemployment compensation division of the department of industry, labor and human relations which is responsible for the processing and adjudication of unemployment compensation claims including any itinerant office used by the division.

- (l) "Partial unemployment" and "partially unemployed" have the meaning designated in s. 108.02 (20), Stats.
 - (m) "Profiling system" means a system established by the department to promptly identify claimants who are: permanently laid off, unlikely to return to their previous industry or occupation, likely to exhaust their regular unemployment compensation benefits, and likely to need reemployment services in order to make a successful transition to new employment by examining factors including economic conditions, industry characteristics, and claimant characteristics.
 - (n) "Reemployment services" means job search assistance and job placement services, such as: assessment, testing, counseling, provision of occupational and labor market information, job search workshops, referrals to potential employers, and other similar services.
 - (o) "Representative of the department" means any person employed by the department of industry, labor and human relations who has job duties involving the taking, processing or adjudication of benefit claims.
 - (p) "Similar work" means the standard which compares a particular job with other work in the claimant's labor market which has substantially equivalent duties and responsibilities and which requires substantially equivalent skills, abilities and knowledge.
 - (q) "Suitable work" means work that is reasonable considering the claimant's training, experience, and duration of unemployment as well as the availability of jobs in the labor market.
 - (r) "Total unemployment" and "totally unemployed" have the meaning designated in s. 108.02 (25), Stats.
 - (s) "Wages" has the meaning designated in s. 108.02 (26), Stats.
 - (t) "Week" has the meaning designated in s. 108.02 (27), Stats.
 - (u) "Weekly certification" means the method by which a claimant submits information regarding the claimant's employment status and availability for work and which establishes a basis for the payment of unemployment benefits, including but not limited to voice recognition units and claim forms.
- (2) OTHER CHAPTERS. In all chapters other than ILHR 127 to 129 the following words and phrases have the designated meanings unless a different meaning is expressly provided or the context clearly indicates a different meaning:
- (c) "Employer" has the meaning specified in s. 108.02(13), Stats.

SECTION 3. Chapter ILHR 126 is repealed and recreated to read:

CHAPTER 126
WORK REGISTRATION

ILHR 126.01 Purpose.
ILHR 126.02 Registration.
ILHR 126.03 Waiver of Work Registration Requirement.
ILHR 126.04 Presumption of Participation.
ILHR 126.05 Justifiable Cause for Failure to Participate.

126.01 PURPOSE. Under s. 108.04(2), Stats., a claimant who is totally unemployed is eligible for unemployment benefits for any week only if the claimant has registered for work, unless the registration requirement has been waived by the department. This chapter specifies what registration is, when the requirement shall be waived, and when it shall be presumed that the claimant is participating in reemployment services.

126.02 REGISTRATION. (1) Except as provided in sub. (4), a claimant shall be considered registered for work with respect to any week if he or she files an application to establish a benefit year pursuant to s. ILHR 129.02.

(2) Except as provided in sub. (4), a claimant shall be considered registered for work if the presumption of participation in reemployment services under s. ILHR 126.04 is applicable to him or her.

(3) A claimant shall be considered registered for work if he or she is enrolled in or otherwise complying with department directives concerning other reemployment programs approved by the department for this purpose.

(4) No claimant may be considered registered for work or eligible for benefits with respect to any week if:

(a) He or she has been referred for reemployment services; and

(b) The presumption of participation in reemployment services under s. ILHR 126.04(1) has been determined to be inapplicable under s. ILHR 126.04(3).

126.03 WAIVER OF WORK REGISTRATION REQUIREMENT. Under s. 108.04(2)(b), Stats., the department may waive a claimant's work registration requirement. The department shall waive the requirement for any week if:

(1) The claimant has been determined, pursuant to a profiling system established by the department, to be unlikely to exhaust regular unemployment compensation benefits and to not need reemployment services in order to make a successful

transition to new employment; or

(2) The claimant:

- (a) Has been determined, pursuant to a profiling system established by the department, to be likely to exhaust regular unemployment compensation benefits and to need reemployment services in order to make a successful transition to new employment;
- (b) Has been referred for reemployment services; and
- (c) Has satisfactorily completed such services.

126.04 PRESUMPTION OF PARTICIPATION. (1) A claimant who has registered for work under s. ILHR 126.02 shall be presumed to be participating in reemployment services, except as provided in sub. (3).

(2) Circumstances under which a claimant shall be presumed to be participating in reemployment services include, but are not limited to, the following:

- (a) The claimant has filed an application to establish a benefit year pursuant to s. ILHR 129.02 but the department has not yet determined, pursuant to a profiling system which it has established, whether or not the claimant is likely to exhaust regular unemployment compensation benefits and to need reemployment services in order to make a successful transition to new employment; or
- (b) The claimant has been determined, pursuant to a profiling system established by the department, to be likely to exhaust regular unemployment compensation benefits and to need reemployment services in order to make a successful transition to new employment, and:

1. The claimant has not been referred for reemployment services;
2. The claimant has been selected to participate in the job search assistance demonstration project; or
3. The claimant has been referred for reemployment services and:
 - a. Is participating by complying with department directions regarding such services;
 - b. Is not participating because he or she has justifiable cause for failure to participate in such services under s. ILHR 126.05; or
 - c. Has elected not to enroll in educational and training programs which were recommended based on a reemployment services assessment, but has been referred for additional reemployment services and is participating by complying with department directions regarding such services.

(3) The department shall determine that the presumption of participation under sub. (1) does not apply if the claimant has failed to participate in reemployment services

without justifiable cause under s. ILHR 126.05. Circumstances which the department shall consider as overcoming the presumption of participation under s. ILHR 126.04(1), unless justifiable cause under s. ILHR 126.05 exists, include but are not limited to the following:

- (a) The claimant's failure to provide information requested by the department for use in its profiling system;
- (b) The claimant's failure to attend a reemployment services orientation meeting for which he or she was scheduled;
- (c) The claimant's failure to attend a reemployment services assessment or testing appointment for which he or she was scheduled; or
- (d) The claimant's failure to attend a job search or other reemployment services workshop for which he or she was scheduled.

126.05 JUSTIFIABLE CAUSE FOR FAILURE TO PARTICIPATE. The department may find that a claimant has justifiable cause for failing to participate in reemployment services in any week. Justifiable cause includes, but is not limited to, the following:

- (1) The claimant is summoned to serve as a prospective or paneled juror;
- (2) The claimant is enrolled and satisfactorily participating in a course of training approved by the department;
- (3) The claimant is unable to participate because the claimant is employed;
- (4) The claimant is unable to participate because of a job interview; or
- (5) The claimant is unable to participate due to circumstances which the department determines are beyond the claimant's control.

SECTION 4. ILHR 127.03(6) is created to read:

ILHR 127.03(6) The claimant has been determined, pursuant to a profiling system established by the department, to be likely to exhaust regular unemployment compensation benefits and to need reemployment services in order to make a successful transition to new employment, and

- (a) The claimant has been selected to participate in the job search assistance demonstration project but is assigned to a demonstration project group which does not require performance of a job search;
- (b) The claimant has been referred for and is participating in reemployment services by complying with department directions regarding such services;

- (c) The claimant has been referred for reemployment services and is enrolled and satisfactorily participating in educational and training programs which were recommended based on a reemployment services assessment; or
- (d) The claimant has been referred for reemployment services and is not participating in such services, but has justifiable cause for his or her failure to participate. Justifiable cause includes, but is not limited to, the following:
 - 1. The claimant is summoned to serve as a prospective or paneled juror;
 - 2. The claimant is enrolled and satisfactorily participating in a course of training approved by the department;
 - 3. The claimant is unable to participate because the claimant is employed;
 - 4. The claimant is unable to participate because of a job interview; or
 - 5. The claimant is unable to participate due to circumstances which the department determines are beyond the claimant's control.

These rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Tommy G. Thompson
Governor

Carol Skornicka
Secretary



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State of Wisconsin Department of Industry, Labor and Human Relations

August 18, 1994

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Douglas LaFollette
Secretary of State
10th Floor
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Madison, Wisconsin 53703

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO.: 94-73

RULE NO.: ILHR 100, 126 and 127

RELATING TO: Definitions, Work Registration and Work Search.

Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is included for permanent rules. A fiscal estimate and fiscal estimate worksheet is included with an emergency rule.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Carol Skornicka".

Carol Skornicka
Secretary