

STATEMENT OF SCOPE

Department of Workforce Development

Rule No:

Chs. DWD 100, 126 to 129, 131, 132, 140, and 149

Relating to:

Occupational Drug Testing

Rule Type

Permanent and Emergency

Finding/nature of emergency

Under 2015 Wis. Act 55, no finding of emergency is required.

Detailed Description of the Objective of the Proposed Rule

The proposed permanent and emergency rules will amend chs. DWD 100, 126, 127, 128, 129, 132, 140 and 149, relating to the unemployment insurance program, and create ch. DWD 131, subchapter III, relating to occupational drug testing for unemployment insurance benefit claimants. The proposed rules will establish a drug screening and testing program to require certain claimants to submit to tests for the unlawful use of controlled substances, if the claimant is determined to be an individual for whom suitable work is only available in an occupation that regularly conducts drug testing.

If the department determines that the claimant's only suitable work is in an occupation that regularly conducts drug testing, the proposed rules will provide the department must screen the claimant to determine if there is a reasonable suspicion the claimant has engaged in the unlawful use of controlled substances before requiring the claimant to submit to a drug test.

In addition, the proposed rules will provide that if a claimant who is required to test declines to submit to a drug test, or submits to a drug test, but tests positive for controlled substances without providing a valid prescription for the control substance and refuses to participate in a substance abuse program, the claimant will be ineligible for unemployment insurance benefits.

Description of Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

No existing policies are related to the proposed permanent or emergency rules. As directed by 2015 Wis. Act 55, the proposed rules will:

- Establish a drug testing program to test claimants who apply for regular unemployment insurance benefits for the presence of controlled substances.
- Identify occupations for which drug testing is regularly conducted in this state.
- Establish procedures to determine whether a claimant who applies for UI benefits is an individual for whom suitable work is only available in an occupation that regularly conducts drug testing.
- Create a screening process for determining whether there is a reasonable suspicion that a claimant has engaged in the unlawful use of controlled substances.
- Identify a process for testing claimants for the presence of controlled substances.
- Identify the parameters for a substance abuse treatment program for claimants who engage in the unlawful use of controlled substances in order to be considered in full compliance with the requirements of the substance abuse treatment program.
- Provide that if a claimant enrolled in a substance abuse treatment program is required to submit to additional drug tests, the claimant is allowed to have at least one more positive test, following the initial drug test, and still be considered in compliance with the substance abuse treatment program requirements.
- Identify the parameters for a jobs skills assessment for claimants who engage in the unlawful use of controlled substances in order to be considered in full compliance with the requirements of the job skills assessment.
- Identify a period of ineligibility that must elapse or a requalification requirement that must be satisfied, or both, in order for a claimant to again qualify for benefits after becoming ineligible after the claimant declined to submit to a drug test, or the claimant submitted to the drug test, and tested positive for the use of controlled substances for which the claimant did not hold a valid prescription.
- Establish other protocols and procedures necessary to implement Act 55 as it relates to the UI drug testing program.

Detailed explanation of statutory authority for the rule, including the statutory citation and language

Section 108.133 (2), Stats.

"(2) The department shall establish a program to test claimants who apply for regular benefits under this chapter for the presence of controlled substances in accordance with this section and shall, under the program, do all of the following:

(a) Promulgate rules to establish the program. The department shall do all of the following in the rules promulgated under this paragraph:

1. Identify a process for testing claimants for the presence of controlled substances. The department shall ensure that the process adheres to any applicable federal requirements regarding drug testing.

2. Identify the parameters for a substance abuse treatment program for claimants who engage in the unlawful use of controlled substances and specify criteria that a claimant must satisfy in order to be considered in full compliance with requirements of the substance abuse treatment program. If the rules require that a claimant enrolled in the substance abuse treatment program submit to additional tests for the presence of controlled substances following the initial test conducted under sub. (3) (c), the rules shall allow the claimant to have at least one more positive test result following the initial test without, on that basis, being considered not to be in full compliance with the requirements of the substance abuse treatment program.

3. Create a screening process for determining whether there is a reasonable suspicion that a claimant has engaged in the unlawful use of controlled substances.

4. Identify the parameters for a job skills assessment for claimants who engage in the unlawful use of controlled substances and specify criteria that a claimant must satisfy in order to be considered in full compliance with the requirements of the job skills assessment.

5. Identify a period of ineligibility that must elapse or a requalification requirement that must be satisfied, or both, in order for a claimant to again qualify for benefits after becoming ineligible for benefits under sub. (3) (a) or (c).

(am) Promulgate rules identifying occupations for which drug testing is regularly conducted in this state. The department shall notify the U.S. department of labor of any rules promulgated under this paragraph."

Estimate of amount of time that state employees will spend developing the rule and other resources necessary to develop the rule

The total amount of staff time is estimated to be approximately 1,000 hours.

List with description of all entities that may be affected by the proposed rule

The proposed permanent and emergency rules may affect individuals who apply for unemployment insurance benefits and are subject to the screening process or, if required by the department, decline to take a drug test, or fail a drug test and fail to provide a valid prescription for the controlled substance.

Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule

Federal law permits states to test unemployment insurance applicants for the unlawful use of controlled substances as a condition of eligibility under the following two specific conditions:

- The applicant was terminated from employment with the applicant's most recent employer because of the unlawful use of a controlled substance.
- The only available suitable work for an individual is in an occupation that regularly conducts drug testing.

A state may deny unemployment insurance benefits to an applicant who tests positive for unlawful drug use under those two circumstances.

Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses)

The proposed permanent and emergency rule may have a positive effect on businesses, including small businesses. Individuals who are not available for suitable work due to the illegal use of controlled substances would receive the drug treatment necessary to be available for suitable employment, increasing the size of the skilled and work ready labor pool in Wisconsin.

Contact Person: Janell Knutson, Director, UI Bureau of Legal Affairs, (608) 266-1639, janell.knutson@dwd.wisconsin.gov.