

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Note: Chapter Ind 132 as it existed on August 31, 1987 was repealed and a new chapter ILHR 132 was created effective September 1, 1987.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

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

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

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

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 in-

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stead 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

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

History: Cr. Register, August, 1987, No. 330, eff. 9-1-87.

ILHR 132.03 Voluntary termination of part-time employment. (1) **SCOPE.** Under s. 108.04 (7) (k), Stats., a claimant who terminates certain part-time employment is not disqualified from receiving benefits. This section explains the department's interpretation of what employment constitutes qualifying part-time employment under that statute.

(2) **STANDARD.** (a) A claimant's employment is qualifying part-time employment under s. 108.04 (7) (k), Stats., if in at least 65% of the weeks of work with the part-time employer the claimant worked 30 hours or

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less per week and earned a weekly wage which was less than the applicable weekly benefit rate with another employer from which benefits are payable.

(b) In applying par. (a), the department shall consider only the weeks with the part-time employer in which the claimant earned wages and which occurred in the base period or the benefit year or both prior to the termination of the employment relationship.

(3) **EFFECT ON ELIGIBILITY.** (a) If a claimant meets the part-time employment requirements and is otherwise eligible, the claimant shall be entitled to benefits based on employment with an employer other than the part-time employer notwithstanding the provisions of s. 108.04 (7) (a), Stats.

(b) If a claimant does not meet the part-time employment requirements, 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.

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

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

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(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 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.