

**STATE OF WISCONSIN
DEPARTMENT OF EMPLOYEE TRUST FUNDS – OFFICE OF THE SECRETARY AND
GROUP INSURANCE BOARD**

FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #02-057

A RULE Amending ss. ETF 50.48 (3) (title), (a), (b), (c), and (Note), (4) (b) 1., 2., 3., and (c), and 50.50 (5) (title), (a) (intro), (a) 2., (b) (intro) and (b) 1.; repealing and recreating s. ETF 50.48 (3) (b) 5. and 6.; and repealing ss. ETF 50.48 (3) (b) 7., 8., 9., and 10., and 50.50 (5) (b) 2., and 3.; Wisconsin Administrative Code, relating to employer medical certification requirements under the Long-Term Disability Insurance (LTDI) program

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Agency Person to be Contacted for Questions

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Statement Explaining Need for Rule

The Department of Employee Trust Funds is required by Wis. Stats. § 227.10 (1) to promulgate as a rule each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute. The purpose of the rule change is to remove the employer's requirement of making a medical certification when determining if a claimant meets the eligibility requirements for LTDI benefits. This rule will clarify that the Department of Employee Trust Funds will rely on the physicians to make this determination.

Analysis Prepared by the Wisconsin Department of Employee Trust Funds

Authority for Rule: Section 40.03 (6), Stats.

Statutes Interpreted: Section 40.03 (6), Stats.

Currently under the LTDI program, an employee is eligible for a LTDI disability benefit from the Wisconsin Retirement System (WRS) if he or she meets certain requirements under ch. ETF 50, including the requirement to be certified by the employer as having left employment due to an apparent disability. Under ss. 50.48 (3) and 50.50 (5), the employer is required to provide a medical determination whether the employee is disabled within the meaning of the LTDI subchapter and to certify whether the disability was employment related in cases where the employee did not meet the service requirement.

If the Department receives a certification from the employer indicating that the employee is not disabled within the meaning of the LTDI subchapter or if the employer indicates there is no information on which to base an opinion, the Department is required to deny the application (claim) for LTDI benefits. The application is denied even if the Department receives the required medical documentation from the two required physicians certifying the claimant's disability. The proposed rule will be amended to remove the responsibility of the employer to make a medical determination related to employment and to instead rely on the physicians' medical determinations.

Fiscal Estimate

The Department estimates that there will be no direct fiscal impact from this proposed rule upon the state and anticipates no effect upon the fiscal liabilities or revenues of any county, city, village, town, school district, technical college or sewerage district.

Final Regulatory Flexibility Analysis

The Department anticipates that the provisions of this proposed rule will have no direct adverse effect on small businesses.

(BEGINNING OF RULE TEXT)

SECTION 1. ETF 50.48 (3) (title), (a) and (b) are amended to read:

ETF 50.48 (3) (title) EMPLOYER ~~CERTIFICATION~~-STATEMENT.

ETF 50.48 (3) (a) The department shall provide the employer with a ~~copy of the application and the department~~ description of the claimed disability on the department form for the employer certification to state the information necessary under s. ETF 50.50 (5).

ETF 50.48 (3) (b) Each participating employer shall provide and ~~certify~~ state the following information to the department in response to an application for LTDI benefits:

SECTION 2. ETF 50.48 (3) (b) 5. and 6. are repealed and recreated to read:

ETF 50.48 (3) (b) 5. The employer shall state in writing on the employer statement form it intends to contest the employee's application for disability benefits as provided in ch. ETF 50.

ETF 50.48 (3) (b) 6. For a claimant who is an elected official only, the employer shall state the date of the end of the elected official's term of office.

SECTION 3. ETF 50.48 (3) (b) 7., 8., 9., and 10. are repealed.

SECTION 4. ETF 50.48 (3) (c) and "Note" are amended to read:

ETF 50.48 (3) (c) If an employer fails to provide the required report within 90 days of the department's request for an employer ~~certification~~ statement, the department may charge the employer \$20 for each calendar day following until the report is received by the department, plus interest at 0.04% per day on the unpaid balance of any charges under this paragraph as provided in s. 40.06 (3), Stats. This paragraph shall not in any way limit the employer's liability to a claimant whose application is void under sub. (5) as a result of the employer's failure to provide information required under this sub-section.

Note: Form ET-5315, “Employer ~~Certification~~ Statement (LTDI),” is sent to the employer by the department after a claim form is received.

SECTION 5. ETF 50.48 (4) (b) 1., 2., 3., and (c) are amended to read:

ETF 50.48 (4) (b) 1. The department receives a statement from the employer certifying that the employee's participating employment has not been terminated, or the employee is on a leave of absence and ~~not~~ is expected to resume active service, ~~for a reason other than the medically determinable impairment described in the claimant's application.~~

ETF 50.48 (4) (b) 2. The department determines the claimant fails to meet the minimum service requirements under s. ETF 50.50 (2) (b) and the ~~employer physicians~~ denies deny that the medically determinable impairment described in the claimant's application is a result of employment as a participating employee with the employer.

ETF 50.48 (4) (b) 3. The department receives a ~~certification~~ written statement from the employer ~~denying that the claimant is totally and permanently disabled. With respect to a claimant who is a protective occupation participant, the department shall deny the application if the employer certification also denies that the claimant is likely permanently disabled to the extent that the claimant can no longer efficiently and safely perform the duties required by the claimant's position on the employer statement form indicating they wish to contest the employee's application for disability under ch. ETF 50.~~

ETF 50.48 (4) (c) If the department's denial is based solely on par. (b) 1. or 3., or both, the claimant may appeal to the group insurance board. The group insurance board's decision shall include a finding as to whether the employer's ~~negative certification~~ certifying non-termination or contesting approval of the employee's disability claim was reasonable and correct. If the group insurance board determines that the employer's action was unreasonable and incorrect, the group insurance board decision shall include an order to the employer to amend the ~~certification statement~~ and an order to the department to process the LTDI application when the amended ~~certification statement~~ is received.

SECTION 6. ETF 50.50 (5) (title), (a) (intro) and (a) 2. and (b) (intro) and (b) 1. are amended to read:

ETF 50.50 (5) (title) EMPLOYER CERTIFICATION STATEMENT

ETF 50.50 (5) (a) (intro) The department receives a ~~certification~~ statement from the employer certifying the information required under s. ETF 50.48 (3) (b) and certifying that the employer has paid to the employee all earnings to which the employee is entitled, and that one of the following applies:

ETF 50.50 (5) (a) 2. The employee's participating employment has been terminated ~~because of a disability as described in sub. (3)~~ and, as a consequence, the employee is not entitled to any further earnings from the employer.

ETF 50.50 (5) (b) (intro) and (b) 1. The requirement of par. (a) is not met if ~~any of the following~~ apply:

~~1. The employer certifies the employee was not terminated or not on leave of absence for some reason other than disability as described in sub. (3).~~ The LTDI benefit will be denied if the employer contests the employee's application for disability benefits under ch. ETF 50.

SECTION 7. ETF 50.50 (5) (b) 2. and 3. are repealed.

(END OF RULE TEXT)

Effective Date

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in Wis. Stat. § 227.22 (2).

Explanation of Modifications as Result of Testimony at Public Hearing

No testimony was offered at the public hearing. The only modifications made to the text of the rule were in response to the recommendations of the Legislative Council Staff.

List of Persons Appearing or Registering For or Against the Rules

No persons appeared or registered either for or against the rule at the public hearing on June 18, 2002. The record was held open for written comments until June 19, 2002, but no comments were received.

Legislative Council Staff Clearinghouse Report on CR #02-057

See pages 6-9 for the complete report.

Response to Legislative Council Staff Recommendations

Each of the Legislative Council Staff recommendations concerning form, style and placement in administrative code, adequacy of references to related statutes, rules and forms, and clarity, grammar, punctuation and use of plain language was adopted. The text of the rule was modified accordingly.

Board Authorization for Promulgation

This final draft report on Clearinghouse Rule #02-057 has been duly approved for submission to the Legislature and for promulgation by the Group Insurance Board at its meeting on August 27, 2002.

Respectfully submitted,

DEPARTMENT OF EMPLOYEE TRUST FUNDS

Eric O. Stanchfield, Secretary
Wisconsin Department of Employee Trust Funds