The linked image cannot be displayed. The file may have been moved, renamed, or deleted. Verify that the link points to the correct file and location.

State of Wisconsin
Department of Workforce Development
Unemployment Insurance Division

Wages Exempt from Unemployment Insurance Levy

Chapter DWD 136

The Wisconsin Department of Workforce Development proposes an order to create ch. DWD 136, relating to wages exempt from unemployment insurance levy and affecting small businesses.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 108.225 (16) (a) 3. and (am) 2., 108.14 (2), and 227.11, Stats.
Statutes interpreted: Sections 108.225 (16), Stats.
Related statutes and rules: Section 812.34, Stats., and 15 USC 1673

Explanation of agency authority. Section 108.225, Stats., gives the department the power of administrative levy upon any property of the debtor to allow the department to collect forfeitures or benefit overpayments owed under the unemployment insurance program. The individual debtor is entitled to a subsistence allowance of a dollar amount or percent of wages that are exempt from levy by the department.

Levy to recover forfeitures. Pursuant to s. 108.04 (11) (c), Stats., any employing unit that aids and abets or attempts to aid and abet a claimant in committing an act of concealment may be required to forfeit an amount equal to the amount of the benefits the claimant improperly received as a result of the concealment plus an additional forfeiture for each single act of concealment the employing unit aids and abets or attempts to aid and abet. When the department collects the forfeiture by levy, s. 108.225 (16) (a), Stats., provides that an individual is entitled to an exemption from levy of the greater of the following:

1. A subsistence allowance of 75% of the debtor's disposable earnings.
2. An amount equal to 30 times the federal minimum hourly wage for each full week of the debtor's pay period.
3. In the case of earnings for a period other than a week, a subsistence allowance computed so that it is equivalent to 30 times the federal minimum hourly wage using a multiple of the federal minimum hourly wage prescribed by rule of the department.

Levy to recover benefit overpayments. When the department collects benefit overpayments by levy, s. 108.225 (16) (am), Stats., provides that an individual is entitled to an exemption from levy of 80% of the individual's disposable earnings, except that:

1. A debtor's disposable earnings are totally exempt from levy if the debtor's wages are below the federal poverty guidelines for a household of the debtor's size or the levy would cause that result.
2. Upon petition by a debtor demonstrating hardship, the department may increase the portion of the debtor's disposable earnings that are exempt from levy.
3. The department may decrease or eliminate the exemption from levy if a final determination has been issued under s. 108.09, Stats., or a judgment has been entered under s. 108.24 (1), Stats., in which the debtor has been found guilty of making a false statement or representation to obtain benefits and the benefits and any assessment under s. 108.04 (11) (cm), Stats., have not been paid or reimbursed at the time that the levy is issued, unless the fund's treasurer has written off the debt under s. 108.16 (3) (a), Stats.

The law requires the department to prescribe by rule a methodology for application of the exemption that provides that a debtor's disposable earnings are totally exempt from levy if the debtor's wages are below the federal poverty guidelines for a household of the debtor's size or the levy would cause that result.

Summary of the proposed rule. The proposed rule prescribes the methodology for application of s. 108.225 (16), Stats., and 15 USC 1673, for a third party employer to determine an individual's wages exempt from levy by the department. The proposed rule expresses the calculations necessary to determine the amount of wages excluded from department levy and the maximum amount that may levied by the department to recover benefit overpayments and forfeitures.

- To calculate the maximum levy amount for collecting forfeitures or benefit overpayments involving fraud or concealment, s. DWD 136.02 provides that the maximum levy amount shall be 25% of the individual's disposable earnings for the pay period unless by levying that amount, the total aggregate of all levies against the individual will exceed 25% of the individual's disposable earnings plus prior levies for the pay period, or exceed the amount by which the individual's disposable earnings exceed 30 times the federal minimum hourly wage for a week or for equivalent pay periods (the federal garnishment protections). If the department cannot take the full 25% levy amount, the proposed rule provides that the department may levy the lesser of the difference between:
  - 25% of the individual's disposable earnings plus prior levies for the pay period, and the amount of prior levies in effect for the pay period, or
  - the individual's weekly disposable earnings and 30 times the federal minimum hourly wage (or an equivalent pay period).
- To calculate the maximum levy amount for collecting benefit overpayments, s. DWD 136.03 (1) (a) directs that the department may not levy any amount if the individual's wages are below the federal poverty guidelines. The maximum levy amount shall be 20% of the individual's disposable earnings for the pay period unless by levying that amount, the full levy amount will put the individual's disposable earnings below the poverty guidelines for the individual's household size, or if the total aggregate of all levies against the individual will exceed 25% of the total of the individual's disposable

earnings plus prior levies for the pay period, or exceed the amount by which the individual's disposable earnings exceed 30 times the federal minimum hourly wage for a week or for equivalent pay periods (the federal garnishment protections). If the department cannot take the full 20% levy amount, the proposed rule provides that the department may levy the lesser of the difference between:

- the individual's gross earnings and the federal poverty guidelines, or
- 25% of the individual's disposable earnings plus prior levies for the pay period and the amount of prior levies in effect for the pay period, or
- the individual's weekly disposable earnings and 30 times the federal minimum hourly wage (or an equivalent pay period).

The proposed rule defines relevant terms and directs the department to use the guidelines adopted by the judicial conference annually under s. 812.34(3), Stats., or a comparable table. Finally, the proposed rule establishes amounts to be used in the exemption calculations that are equivalent to 30 times the federal minimum hourly wage for a week (for two-week, semi-monthly and monthly pay periods).

Summary of, and comparison with, existing or proposed federal regulations. In addition to the state exemptions from levy, the federal law, 15 USC 1673, prescribes that the maximum part of the aggregate disposable earnings of an individual for any workweek that is subject to garnishment may not exceed the smaller of the following:

1. 25% of the individual's disposable earnings for that week.

2. The amount by which the individual's earnings for that week exceed 30 times the federal minimum hourly wage in effect at the time the earnings are payable.

Comparison with rules in adjacent states. Iowa's Administrative Code provides that a garnishment of an individual's wages may not exceed the restrictions imposed by the state garnishment law or by the federal Consumer Protection Act, 15 USC 1671 et seq. 875 IAC 217.39. Iowa law provides maximum amounts of an employee's earnings that may be garnished during one calendar year depending on the earnings of the employee. Michigan law provides that unemployment levies are subject to the same wage protections as the state's garnishment law. Minnesota law provides for garnishment for delinquent taxes and unemployment benefit overpayments. The maximum garnishment allowed for any one pay period must be decreased by any amounts payable under any other garnishment action. Illinois provides that unemployment insurance liens may be made against employers, subject to personal property exemptions which have been interpreted to include wages up to $4,000.

Summary of factual data and analytical methodologies. The rule implements the requirements of s. 108.225 (16), Stats., and 15 USC 1673. The Department reviewed forms prepared by the Judicial Conference for implementation of s. 812.34, Stats., regarding exemptions from earnings garnishment based on a judgment debt.

Effect of rule on small businesses. The rule affects small businesses as defined in s. 227.114 (1), Stats., but does not have a significant economic impact on a substantial number of small businesses.

Analysis used to determine effect on small businesses. The substantive provisions are in the statute. The rule merely prescribes the methodology for application of the statutes. Management representatives of the Unemployment Insurance Advisory Council disseminated the worksheet and forms that will be used to implement the rule to businesses for comments. Two comments were received and will be incorporated into the forms.

Fiscal effect. No significant impact was expected from the law change adopting s. 108.226 (16) (am), Stats. The rule implements the statute and no other fiscal impact is expected.

Agency contact person. Tracey Schwalbe, Research Attorney, Unemployment Insurance Bureau of Legal Affairs, (608) 266-9641, tracey.schwalbe@dwd.state.wi.us.

Place where comments are to be submitted and deadline for submission. Comments may be submitted to Tracey Schwalbe, Research Attorney, Department of Workforce Development, P.O. Box 8942, 201 E. Washington Avenue, Madison, WI 53707-8942, or tracey.schwalbe@dwd.state.wi.us. The comment deadline is July 23, 2008.

SECTION 1. Chapter DWD 136 is created to read:

Chapter DWD 136

WAGES EXEMPT FROM LEVY

DWD 136.001 Definitions. **(1)** Unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

(2) In this chapter:

(a) "Disposable earnings" means that part of the earnings of any individual after the deduction from those earnings of any amounts required by law to be withheld; any life, health, dental or similar type of insurance premiums; union dues; any amount necessary to comply with a court order to contribute to the support of minor children; and any levy, wage assignment or garnishment executed prior to a levy issued under s. 108.225, Stats.

(b) "Federal minimum hourly wage" means that wage prescribed by 29 USC 206 (a) (1) in effect at the time an exemption is calculated.

(c) "Federal poverty guidelines" means the poverty guidelines updated periodically in the Federal Register by the U.S. department of health and human services under the authority of 42 USC 9902 (2) and in effect at the time an exemption is calculated.

(d) "Gross earnings" includes, but is not limited to, wages, tips, salary, commissions, bonuses, value of room and board, and periodic payments such as longevity pay or proceeds from a pension or retirement plan.

(e) "Household" means all people who reside together and share income and expenses, but does not include all members of cooperative housing, group homes, or similar group housing or care arrangements.

(f) "Levy" means a procedure through which earnings of an individual are required to be withheld for payment of a debt, except a court order to contribute to the support of minor children.

DWD 136.01 Purpose. The purpose of this chapter is to prescribe a methodology for computing wages exempt from department levy under ss. 108.225 (16) (a) and (am), Stats., and as required by 15 USC 1673.

DWD 136.02 Levy to recover forfeitures. In the case of an individual responsible for forfeitures imposed on an employing unit under s. 108.04 (11) (c), Stats., the individual is entitled to an exemption from department levy of 75% of the individual's disposable earnings pursuant to s. 108.225 (16) (a), Stats. For purposes of computing the amount of the exemption, the department shall provide the third party employer with a worksheet to assist in computing the amount of the exemption that is based on earnings per pay period and provides as follows:

(1) The department may levy 25% of the individual's disposable earnings unless any of the following apply:

(a) The total aggregate of all levies against an individual for the pay period will exceed 25% of the total of the individual's disposable earnings plus prior levies for the pay period.

(b) The total aggregate of all levies against an individual for the pay period will exceed the amount by which the individual's weekly disposable earnings exceed 30 times the federal minimum hourly wage. If the pay period is other than weekly, the department levy shall be calculated using the amount exempt for pay periods other than weekly under s. DWD 136.04.

(2) If the department may not levy 25% of the individual's disposable earnings under sub. (1), the department may levy the lesser of the following:

(a) The difference between 25% of the total of the individual's disposable earnings plus prior levies for the pay period, and the amount of prior levies in effect for the pay period.

(b) The difference between the individual's weekly disposable earnings and 30 times the federal minimum hourly wage. If the pay period is other than weekly, the department levy shall be calculated using the amount exempt for pay periods other than weekly under s. DWD 136.04.

Note: Form UCT-8306-2-E is used to calculate the exemption. This form is available from the Unemployment Insurance Division, Department of Workforce Development, 201 East Washington Avenue, P.O. Box 7942, Madison, Wisconsin 53708-7942.

DWD 136.03 Levy to recover benefit overpayments. (1) Except as provided in sub. (2), in the case of benefit overpayments, an individual is entitled to an exemption from department levy of 80% of the individual's disposable earnings pursuant to s. 108.225 (16) (am) 1., Stats. For purposes of computing the amount of the exemption, the department shall provide the third party employer with a schedule of the federal poverty guidelines and a worksheet to assist the third party in computing the amount of the exemption that is based on earnings per pay period and that provides as follows:

(a) If the individual's gross earnings for the pay period are below the federal poverty guidelines based on the individual's household size, the individual's wages are totally exempt from department levy. If the individual's gross earnings are not below the federal poverty guidelines based on the individual's household size, the individual's disposable earnings shall be computed and the individual is entitled to an exemption from department levy of 80% of the individual's disposable earnings.

(b) The department may levy 20% of the individual's disposable earnings unless any of the following apply:

1. The individual's gross earnings for the pay period minus the 20% department levy amount equal an amount less than the federal poverty guidelines for the individual's household size.

2. The total aggregate of all levies against the individual for the pay period will exceed 25%

of the total of the individual's disposable earnings plus prior levies for the pay period.

3. The total aggregate of all levies against an individual for the pay period will exceed the amount by which the individual's weekly disposable earnings exceed 30 times the federal minimum hourly wage. If the pay period is other than weekly, the department levy shall be calculated using the amount exempt for pay periods other than weekly under s. DWD 136.04.

(c) If the department may not levy 20% of the individual's disposable earnings under par. (b), the department may levy the lesser of the following:

1. The difference between the individual's gross earnings for the pay period and the federal poverty guidelines for the individual's household size.

2. The difference between 25% of the total of the individual's disposable earnings plus prior levies for the pay period, and the amount of prior levies in effect for the pay period.

3. The difference between the individual's weekly disposable earnings and 30 times the federal minimum hourly wage. If the pay period is other than weekly, the department levy shall be calculated using the amount exempt for pay periods other than weekly under s. DWD 136.04.

Note: Form UCT-8306-3-E is used to calculate the exemption. This form is available from the Unemployment Insurance Division, Department of Workforce Development, 201 East Washington Avenue, P.O. Box 7942, Madison, Wisconsin 53708-7942.

(2) If a final determination has been issued under s. 108.09, Stats., or a judgment has been entered under s. 108.24 (1), Stats., in which the individual has been found guilty of making a false statement or representation to obtain benefits, the department shall calculate the exemption from levy as provided in sub. (1).

(3) The department shall use the federal poverty guidelines schedule for earnings exempt from garnishment adopted by the judicial conference annually under s. 812.34 (3), Stats., covering earnings commencing each July 1 to the following June 30. If the schedule under s.

812.34, Stats, is unavailable, the department shall prepare a comparable schedule using the federal poverty guidelines as published in the Federal Register.

DWD 136.04 Pay periods other than weekly. In the case of earnings for a period paid other than weekly, the amount exempt from levy shall be computed so that it is equivalent to 30 times the federal minimum hourly wage for a week by using one of the following:

(1) An amount equal to 60 times the federal minimum hourly wage for a two-week pay period.

(2) An amount equal to 65 times the federal minimum hourly wage for a semi-monthly pay period.

(3) An amount equal to 130 times the federal minimum hourly wage for a monthly pay period.

EFFECTIVE DATE: This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro), Stats.