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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-108

AN ORDER to create chapter DWD 42, relating to the state directory of new hires.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

06-23-00 RECEIVED BY LEGISLATIVE COUNCIL.

07-17-00 REPORT SENT TO AGENCY.

RNS:REL:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

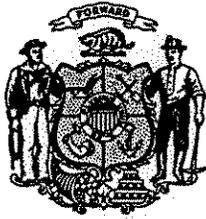
Comment Attached YES NO

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CLEARINGHOUSE RULE 00-108

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. In s. DWD 42.01 (1), only the U.S. Code citation should be listed instead of including "Federal law" at the beginning of the first sentence. Also, parentheses around the full U.S. Code citation should be deleted.

b. In s. DWD 42.02, "the" should replace "such" in two places.

c. In s. DWD 42.02 (3), parentheses around "26 USC 3401 (d)" should be deleted. A similar change should be made in sub. (4).

d. In s. DWD 42.02 (5), "section 2 (5) of the national labor relations act," and "section 8 (3) of the national labor relations act" should be deleted. Also, parentheses around "29 USC 152 (5)" and "29 USC 159 (f) (3)" should be removed. [See s. 1.07 (3) (a), Manual.]

e. In s. DWD 42.02 (7) (intro.), "any of the following" should be inserted before the colon.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. DWD 42.01 (1) "Sec." should be replaced with "Section" in the third line.

b. It would be helpful to the clarity of the rule if the definition of "employee" in s. DWD 42.02 (2) and the definition of "employer" in s. DWD 42.02 (3) included the Internal Revenue Code definition rather than just the federal citation to the definition. This could be done in a note. Also see sub. (5).

Also, "et seq." should be deleted and replaced with a more specific citation. [See s. 1.01 (1), Manual.]

c. In s. DWD 42.03 (1) (intro.), "(1)" should be inserted between "s. DWD 42.04" and "(b)."

d. Section DWD 42.03 (2) (a) 1. provides that an employer may file new hire reports electronically, "as prescribed by the department." Does this refer to a filing format or procedure? If so, why is a format for filing electronically not included in the rule?

e. In s. DWD 42.03 (2) (a) 4. b., "through" should be deleted and replaced with "to."

f. Section DWD 42.03 (3) (c) provides an extension if the deadline for filing a report falls on a Saturday, Sunday, holiday or any day on which mail is not delivered by the U.S. Postal Service. This implies that the deadline and extension apply to reports filed by paper but it is unclear whether the requirements apply to reports filed electronically as well.

g. Section DWD 42.04 (1) (b) refers to the "electronic filing format"; however, an electronic filing format is not defined in the rule. It is suggested that a definition of the format or a subsection explaining the format be inserted into the rule.

Also, in this paragraph, "all the data elements" should be deleted and replaced with "the information" to maintain consistency with earlier provisions.

LRB or Bill No./Adm. Rule No.
DWD 42

Amendment No. if Applicable

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

FISCAL ESTIMATE
DOA-2048 N(R03/97)

Subject
State Directory of New Hires

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

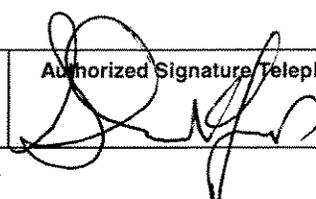
Assumptions Used in Arriving at Fiscal Estimate

The proposed rules have no fiscal impact beyond what has already been identified in the state's budget process. Federal legislation required the implementation of the new hire reporting system. Employers' voluntary compliance with the request to provide the dates of birth for newly hired employees to verify their identities reduces costs to governmental units and employers while protecting employees who do not actually have child support obligations from unwarranted legal or administrative action. Since existing state legislation requires that the state offer both paper and electronic reporting, the numerous options of reporting provided in the proposed rules do not create additional impact.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
DWD/Michelle Kho 266-6684

Authorized Signature Telephone No.

 266-3284

Date

June 22, 2000

FISCAL ESTIMATE WORKSHEET

1999 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. DWD 42	Amendment No.
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Subject
State Directory of New Hires

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
0

II. Annualized Costs:		Annualized Fiscal impact on State funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes		\$0	\$0 -
(FTE Position Changes)		0 (FTE)	(- FTE)
State Operations - Other Costs		0	0
Local Assistance		0	-
Aids to Individuals or Organizations		0	0
TOTAL State Costs by Category		\$0	\$0
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$0	\$0
FED		0	0
PRO/PRS		0	0
SEG/SEG-S		0	0
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		Increased Rev.	Decreased Rev.
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
TOTAL State Revenues		\$0	\$0

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$0	\$0
NET CHANGE IN REVENUES	\$0	\$0

Agency/Prepared by: (Name & Phone No.)
DWD/ Michelle Kho 266-6684

Authorized Signature/Telephone No.

Date

[Handwritten Signature]
266-3284
June 22, 2000

JAN 31 2001

Tommy G. Thompson
Governor

Jennifer Reinert
Secretary



OFFICE OF THE SECRETARY

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**State of Wisconsin
Department of Workforce Development**

January 30, 2001

President of the Senate
220 South, State Capitol
Madison, Wisconsin 53702

Speaker of the Assembly
211 West, State Capitol
Madison, Wisconsin 53702

Notice of Administrative Rules in Final Draft Form

Clearinghouse rule number: 00-108

Rule number: DWD 42

Relating to: State directory of new hires

Dear Senator Risser and Representative Jensen:

I have enclosed proposed rules in final draft form and a rule report as required by s. 227.19(3), Stats., for referral to the appropriate legislative standing committees. If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jennifer Reinert', is written over a printed name and title.

Jennifer Reinert
Secretary

Tommy G. Thompson
Governor

Jennifer Reinert
Secretary



State of Wisconsin

Department of Workforce Development

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Rule Analysis for Legislative Review

Proposed rules relating to the state directory of new hires

DWD 42
(CR 00-108)

Need for rules

DWD 42 implements federal and state statutory requirements to establish a state directory of new hires to which employers report information about new employees for the purpose of assisting child support agencies in locating parents or alleged fathers. Employers submit new hire information to the DWD Unemployment Insurance Division, which checks names against a list of persons who are sought to ascertain paternity or who owe child support. Matches are referred to the state Bureau of Child Support. The state directory is also transmitted to a national directory and used to locate parents or alleged fathers who have moved to other states.

Public hearing response

Public hearings were held August 7, 8, 10, and 22 in Madison, Waukesha, Appleton, and Eau Claire. No comments were received.

Response to Legislative Council staff recommendations

The department's response is attached.

Final regulatory flexibility analysis

The proposed rules impose no significant impact on small businesses since the requirement of employers to file new hire reports is already mandated by federal and state statutes. Six of the items required to be reported are mandated by federal law. Additional items required by rule are "date of birth," "date of hire," and "state in which the employee will work, if other than Wisconsin." The department will waive the "date of birth" requirement if it determines that the employer is unable to obtain it. "Date of hire" and "state in which the employee will work, if other than Wisconsin" are requested only to further the goals of the statutes and are not required if the employer fulfills the new hire filing requirement by submitting a completed W-4 form. These W-4 forms are already required for all businesses with employees under the Internal Revenue Code and therefore do not impose additional paperwork.

Department contacts

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Unemployment Insurance Division
266-6684

Elaine Pridgen
Administrative Rules Coordinator
Office of Legal Counsel
267-9403

State of Wisconsin
Department of Workforce Development
Unemployment Insurance Division

DWD 42

State Directory of New Hires

The Wisconsin Department of Workforce Development proposes an order to create chapter DWD 42, relating to the state directory of new hires.

Analysis Prepared by the Department of Workforce Development

Statutory authority: ss. 103.05(3), 103.005, and 227.11, Stats.

Statute interpreted by the rule: s. 103.05, Stats.

Relevant federal law: 42 USC 653a(a)(1)(A)

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 directed each state to establish a process by which employers report information about employees shortly after the date of hire for the purpose of assisting child support agencies in locating parents or alleged fathers. In response, the State of Wisconsin enacted s. 103.05, Stats., which directed the Department of Workforce Development (DWD) to establish and operate a hiring reporting system that includes a state directory of new hires.

Employers report new hire information to the Department of Workforce Development Unemployment Insurance Division (DWD-UID), which administers the state new hire directory. When employers report new hires to DWD-UID, the names are checked against a list of persons sought to ascertain paternity or who owe child support. Matches are referred to the state Bureau of Child Support. The state directory is also transmitted to a national directory so that it can be similarly used by each state to locate parents or alleged fathers who have moved to other states.

Most employees are considered new hires when they report for work the first time or when they return to work after an unpaid absence of more than 90 days. Poll workers, who generally only work at the polls a few days a year and who tend to do so repeatedly, will be considered newly hired the first time they work for an employer but not each subsequent time they work at the polls for that same employer. Similarly, substitute teachers will be considered newly hired the first time they work for a particular employer during a school year but not each subsequent time they are provided a substitute teaching assignment by that employer during that school year.

Required information in a new hire report include the following: (1) employee name, (2) employee address, (3) employee social security number, (4) employer name, (5) employer address, (6) employer's Federal Employer Identification Number (FEIN), (7) date the employee started work, and (8) employee's date of birth. Multi-state employers that choose Wisconsin as

the sole state to which they report must also report the state in which the employee will work, if other than Wisconsin.

An employer may fulfill its reporting requirement for a newly hired employee using the following formats: (1) on paper by submitting a paper report containing all listed elements, (2) on paper by submitting a completed copy of the employee's federal W-4 form, (3) on paper by submitting a copy of the employee's Wisconsin WT-4 form containing all listed elements, or (4) electronically, as authorized by the department.

An employer who files a new hire report by submitting a federal W-4 form in which the first six elements listed in the rule have been completed has satisfied the reporting requirement.

The department may waive the date of birth reporting requirement if the employer is unable to provide it.

An employer must file new hire reports within 20 days after the newly hired employee starts work.

An employer with employees in more than one state, that is, a multi-state employer, may report all new hires to a single state. Multi-state employers choosing the single-state reporting option must submit written notice of the state to which they choose to report to the federal Department of Health and Human Services.

Any person who violates any provision of this rule may be subject to penalties provided under s. 103.05, Stats.

SECTION 1. Chapter DWD 42 is created to read:

Chapter DWD 42

STATE DIRECTORY OF NEW HIRES

DWD 42.01 Purpose. (1) 42 USC 653a(a)(1)(A) requires each state to establish a state directory of new hires that contains information reported by employers about each newly hired employee and requires employers to report this information. Section 103.05, Stats., implemented the federal new hire reporting requirements by creating a state directory of new hires and requiring employers to report information to the department about each newly hired employee.

(2) This chapter specifies the information that employers must provide, the procedures by which employers may comply with the new hire reporting requirements, and the penalties for violating this rule.

DWD 42.02 Definitions. In this chapter:

(1) "Department" means the department of workforce development or its authorized agent.

(2) "Employee" means an individual who is an employee within the meaning of chapter 24 of the internal revenue code of 1986 (26 USC 3401) but does not include an individual performing intelligence or counterintelligence functions for a federal or state agency if the head of the agency has determined that reporting pursuant to s. DWD 42.01 with respect to the individual could endanger the individual's safety or compromise an ongoing investigation or intelligence mission.

Note: Under 26 USC 3401(c), an "employee" includes "an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term 'employee' also includes an officer of a corporation."

(3) "Employer" means a person who is an employer within the meaning of chapter 24 of the internal revenue code of 1986 26 USC 3401(d) and includes any governmental entity and any labor organization.

Note: Under 26 USC 3401(d), an "employer" means "the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that -

(1) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term 'employer' (except for purposes of subsection (a)) means the person having control of the payment of such wages, and

(2) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term 'employer' (except for purposes of subsection (a)) means such person."

(4) "Federal employer identification number" means the identifying number assigned to the employer under s. 6109 of the internal revenue service code of 1986 26 USC 6109.

(5) "Labor organization" means an organization that is a labor organization within the meaning of 29 USC 152(5) and includes any hiring hall or other organization that is used by the labor organization and an employer to carry out requirements of an agreement described in 29 USC 159(f)(3) between the labor organization and the employer.

Note: Under 29 USC 152(5), the term "labor organization" means "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

(6) "Multi-state employer" means an employer that employs individuals in Wisconsin and in at least one other state.

(7) "Newly hired employee" means any of the following:

(a) An employee who reports for work for the first time.

(b) An employee, other than a poll worker or a substitute teacher, who is rehired, recalled, or returns to work after an unpaid absence of more than 90 days.

(c) A poll worker who the employer has never reported to the state directory of new hires as a newly hired employee.

(d) A substitute teacher who performs services for the employer but who the employer has not reported to the state directory of new hires as newly hired during the current school year.

(8) "Poll worker" means a person who staffs a polling place on election day to assist in holding the election.

(9) "State directory of new hires" means an automated directory containing information supplied by employers about each newly hired employee, pursuant to s. 103.05, Stats.

DWD 42.03 Reporting requirements. (1) REPORT CONTENTS. Except as provided in sub. (2)(b) and s. DWD 42.04(1)(b), each employer that has one or more employees who perform services in Wisconsin shall file a report containing the following information with the department:

(a) Newly hired employee's name.

(b) Newly hired employee's address.

- (c) Newly hired employee's social security number.
- (d) Employer's name.
- (e) Employer's payroll address for the newly hired employee.
- (f) Employer's federal employer identification number.
- (g) Date the newly hired employee started work.
- (h) Employee's date of birth.

(2) REPORT FORMAT. (a) An employer may file new hire reports in any of the following ways:

1. Electronically as authorized by the department.

Note: For further information on electronic reporting, see the "New Hire Reporting" section of the DWD web site at <http://www.dwd.state.wi.us> or call the toll free inquiry line at 1-888-300-HIRE (4473). Specialists are available to take calls Monday through Friday, 8:00am to 4:00pm (CST).

2. On paper by submitting a copy of the newly hired employee's completed WT-4 form (Employee's Wisconsin Withholding Exemption Certificate/New Hire Reporting).

3. On paper by submitting a paper report containing all of the information required under sub. (1).

4. On paper by submitting a copy of the newly hired employee's completed federal W-4 form (Employee's Withholding Allowance Certificate).

(b) If an employer files a new hire report by submitting a copy of the newly hired employee's W-4 that contains completed reporting requirements under par. (a) to (f) of sub. (1), then the employer has satisfied the reporting requirement.

(3) REPORT DUE DATES. (a) Except as provided in par. (b), a report must be filed within 20 days after the newly hired employee starts work.

(b) If an employer is filing new hire reports electronically, reports must be filed twice monthly, not less than 12 days nor more than 16 days apart.

(c) If the deadline for filing a report falls on a Saturday, Sunday, any of the holidays enumerated under ss. 230.35 (4) (a) and 757.17, Stats., or any other day on which mail is not delivered by the United States postal service, then the deadline shall be extended to include the next business day.

(4) The department may waive the requirement to report the date of birth of the newly hired employee if the employer is unable to provide it.

DWD 42.04 Multi-state employers. (1) REPORTING OPTIONS. Multi-state employers may choose to do either of the following:

(a) Report only the newly hired employees working in the state of Wisconsin as described in s. DWD 42.03 and report employees not working in Wisconsin to the respective states in which they work.

(b) Report all newly hired employees to a single state in which the multi-state employer has at least one employee working, regardless of where the other employees work. If the multi-state employer chooses Wisconsin as the single state to which it reports, that employer must file new hire reports electronically as provided in s. DWD 42.03(2)(a)1. In addition to containing all the information in s. DWD 42.03(1), the electronically filed report for any newly hired employee not working in Wisconsin must also include the state in which the employee will work. Report due dates are the same as those provided in s. DWD 42.03(3).

(2) FEDERAL NOTICE. Employers reporting under the option in sub. (1)(b) must submit a written notice to the secretary of the federal department of health and human services informing him or her of which state has been selected for new hire reporting.

(3) REPORT FORMATS. The information to be supplied and the format used by multi-state employers to file new hire reports may vary according to the requirements of the state to which the new hire reports are being filed.

DWD 42.05 Penalties. (1) Any person who violates any provision of this rule may be subject to the penalties provided under s. 103.05, Stats. No penalty may be imposed unless the person has been notified of the violation and has been provided with an opportunity to correct the violation.

(2) Pursuant to s. 103.005(10), Stats., if a penalty is imposed it shall be subject to review in the manner provided in ch. 227, Stats.

This rule 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.

Response to Legislative Council Comments

Proposed rules relating to the state directory of new hires

DWD 42 (CR 00-108)

Response to comment 5d: Section DWD 42.03(2)(a) has been modified from “electronically, as prescribed by the department” to “electronically as authorized by the department” and the following note has been added:

Note: For further information on electronic reporting, see the “New Hire Reporting” section of the DWD web site at <http://www.dwd.state.wi.us> or call the toll free inquiry line at 1-888-300-HIRE (4473). Specialists are available to take calls Monday through Friday, 8:00am to 4:00pm (CST).

The change from “as prescribed by the department” to “as authorized by the department” has been made to better describe the department’s attempts to allow employers to choose a technique for transmission of information among any option that the department is able to efficiently process. If the department prescribes specific electronic formats by rule, there will be considerable delay in allowing new methods of reporting as technology changes.

The department’s restrictions on how information is submitted are procedural. The department’s specifications for information on diskette include allowing MS-DOS but not Apple diskettes, requiring text in ASCII format, and designating the information that must be on the diskette label. The specifications for magnetic tape include type of tape, recording density, and information required on the internal and external tape labels. Information may also be submitted by filling out a form on the department’s web site.

Response to comment 5f: Section DWD 42.03(3)(c) applies to all reports regardless of the method of transmission.

Response to comment 5g: The phrase “electronic filing format” has been removed from s. DWD 42.04(1)(b) to avoid any perception that there is one rigid “electronic filing format.” It has been replaced with “electronically as provided in s. DWD 42.03(2)(a)1.”

Other comments were accepted.