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# WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

## 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 02-057

AN ORDER to repeal ETF 50.48 (3) (b) 7., 8., 9. and 10., and 50.50 (5) (b) 2. and 3.; to amend ETF 50.48 (3) (title), (a), (b), (c) and Note, (4) (b) 1., 2. and 3. and (c) and 50.50 (5) (title), (a) (intro.) 2., (b) (intro.) and 1.; and to repeal and recreate ETF 50.48 (3) (b) 5. and 6., relating to employer medical certification requirements under the long-term disability insurance (LTDI) program.

Submitted by **DEPARTMENT OF EMPLOYEE TRUST FUNDS**

05-02-02 RECEIVED BY LEGISLATIVE COUNCIL.

05-23-02 REPORT SENT TO AGENCY.

RS:WF:tlu;ksm

**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 02-057

### 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. The analysis to the rule should include a statement of the statutes interpreted by the rule.
- b. Each presentation of text within a SECTION should begin with a citation of the rule provision preceding the text. For example, in SECTION 2, the presentation of text should begin with "ETF 50.48 (3) (b)." The entire rule should be reviewed for this problem.
- c. The rule repeals s. ETF 50.50 (5) (b) 2. and 3. Consequently, the amendment to s. ETF 50.50 (5) (b) (intro.) and 1. should strike the colon and the number "1." A unit of text should be subdivided only into two or more subunits.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

- a. The reference to s. ETF 50 in the analysis to Clearinghouse Rule 02-057 should be replaced with a reference to "ch. ETF 50." [See s. 1.07 (2), Manual.] This comment is also applicable to ss. ETF 50.48 (3) (b) 5. and 50.50 (5) (b) 1. In addition, the reference to "s. ETF chapter 50" in s. ETF 50.48 (4) (b) 3. should read "ch. ETF 50." The citation in the second sentence of the analysis should read "ss. ETF 50.48 (3) and 50.50 (5)." Finally, the citation of the statutory authority for the rule should read "Section 40.03 (6), Stats."

b. In the introductory clause to Clearinghouse Rule 02-057, the term “(intro.)” should be placed after the reference to s. ETF 50.50 (5) (a) and also after par. (b). [See s. 1.03 (8), Manual.] In addition, “(b)” should be placed after both occurrences of the reference to s. ETF 50.48 (3) in the introductory clause. This comment is also applicable to the citations in the notice of hearing section to Clearinghouse Rule 02-057.

c. The reference to “ETF 50.48 (3) 5. and 6.” in the treatment clause of SEC. 2 of Clearinghouse Rule 02-057 should be replaced with a reference to s. ETF 50.48 (3) (b) 5. and 6. In addition, the reference to “ETF 50.48 (3) 7., 8., 9., and 10.” in the treatment clause of SEC. 3 of Clearinghouse Rule 02-057 should be replaced with a reference to s. ETF 50.48 (3) (b) 7., 8., 9., and 10.

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

a. In the second paragraph of the analysis, the phrase “they have” should be replaced by the phrase “there is.”

b. In s. ETF 50.48 (3) (a), the use of the word “certify” appears inappropriate in view of the department’s intent to avoid the use of a certification statement.

c. Section ETF 50.48 (3) (b) 5. requires an employer to state if “they wish” to contest the employee’s application for disability benefits as provided in “s. ETF 50.” It is suggested that the phrase “they wish” be replaced with the phrase “it intends.” In addition, it is unclear how, upon what grounds or to what body an employer may contest an employee’s application for disability benefits. Section ETF 50.48 (3) (b) 5., states that the employer may contest the employee’s application for disability benefits “as provided in s. ETF 50.” However, ch. ETF 50 does not appear to contain any provisions relating to an employer contesting an application for disability benefits. It is suggested that the department revise Clearinghouse Rule 02-057 to remedy these deficiencies. This comment is also applicable to s. ETF 50.48 (4) (b) 3. and 50.50 (5) (b) 1.

d. Section ETF 50.50 (5) (b) 1. states that the requirement of s. ETF 50.50 (5) (a) (which is a condition for entitlement to long-term disability insurance (LTDI) benefits), is “not met” if the employer contests the employee’s application for disability benefits under ch. ETF 50. Read literally, this would mean that an employee is not entitled to LTDI benefits at any time that an employer objects to the employee’s application. The department should clarify the procedure to be used to determine whether an employee is entitled to LTDI benefits when an employer contests the employee’s application for disability benefits.

**State of Wisconsin**  
**DEPARTMENT OF EMPLOYEE TRUST FUNDS -- OFFICE OF THE SECRETARY**  
**and**  
**GROUP INSURANCE BOARD**

Clearinghouse Rule #CR

PROPOSED 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), (a) 2., (b) and (b) 1.; repealing and recreating s. ETF 50.48 (3) 5. and 6.; and repealing ss. ETF 50.48 (3) 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

**NOTICE OF HEARING AND PROPOSED RULE**

*(intro) and* NOTICE OF HEARING

*(b)* The Wisconsin Department of Employee Trust Funds will hold a public hearing to review this proposed rule, which amends ss. ETF 50.48 (3) (title), (a), (b), (c), and (Note), (4) (b) 1., 2., 3., and (c), and 50.50 (5) (title), (a), (a) 2., (b) and (b) 1.; repeals and recreates s. ETF 50.48 (3) 5. and 6.; and repeals ss. ETF 50.48 (3) 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 in accordance with the provisions of s. 227.16 (1), Wisconsin Statutes. The public hearing will be held on Tuesday, June 18, 2002, at 1:00 p.m. at the Department of Employee Trust Funds in room 2A, 801 West Badger Road, Madison, Wisconsin. *(b)*

The public record on this proposed rule making will be held open until 4:30 p.m. on Wednesday, June 19, 2002, to permit the submission of written comments from persons unable to attend the public hearing in person, or who wish to supplement testimony offered at the hearing. Any such written comments should be addressed to Mary Pierick, Department of Employee Trust Funds, 801 West Badger Road, P.O. Box 7931, Madison, Wisconsin 53707-7931.

**Analysis Prepared by the Wisconsin Department of Employee Trust Funds**

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 s. ETF 50, including the requirement to be certified by the employer as having left employment due to an apparent disability. Under s. 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. *what service requirement*

there is

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 they have 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.

**Authority for Rule**

Wis. Stats. § 40.03 (6)

stats interp.

**Initial Fiscal Estimate**

The proposed rule has no fiscal impact on county, city, village, town, school district, technical college district or sewerage district fiscal liabilities and revenues. The rule itself has no anticipated state fiscal effect during the current biennium and no future side effect on state funds.

**Initial Regulatory Flexibility Analysis**

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

**Copies of Rule and Contact Persons**

Copies of this rule are available without cost by making a request to the Department of Employee Trust Funds, Office of the Secretary, P.O. Box 7931, Madison, Wisconsin 53707, telephone (608) 266-1071. For questions about this rule making, please call Mary Pierick, Division of Insurance Services, at (608) 267-2847.

TEXT OF RULE

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

**ETF 50.48 (3) (title) EMPLOYER CERTIFICATION STATEMENT.** (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 certify the information necessary under s. ETF 50.50 (5).

(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) 5. and 6. are repealed and recreated to read:

5. The employer shall state if they wish to contest the employee's application for disability benefits as provided in s. ETF 50.

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) 7., 8., 9., and 10. are repealed.

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

(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:

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.~~

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.

3. The department receives a certification 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 indicating they wish to contest the employee's application for disability under s. ETF Chapter 50.

(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.

(b)

it shall intend to contest

(4) unless - Also when in ch 50 can an employer contest an application 50.48(4) allow contestation a determination

(b)

(5) intend to

(4)

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

**ETF 50.50(5) (title) EMPLOYER CERTIFICATION STATEMENT** (a) 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:

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.

(b) 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 employer contests the employee's application for disability benefits under s. ETF 50.

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

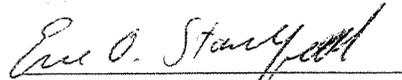
(END OF RULE TEXT)

**Proposed Effective Date**

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.), Wis. Stats.

Signed at Madison, Wisconsin this 2<sup>nd</sup> day of May, 2002.

WISCONSIN DEPARTMENT OF EMPLOYEE TRUST FUNDS

  
Eric O. Stanchfield, Secretary



STATE OF WISCONSIN

**Department of Employee Trust Funds**

**Eric O. Stanchfield**  
*Secretary*  
801 West Badger Road  
P.O. Box 7931  
Madison, WI 53707-7931

August 30, 2002

THE HONORABLE JUDITH ROBSON, CO-CHAIR  
JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES  
STATE SENATE  
15 SOUTH, STATE CAPITOL  
MADISON WI 53702

Re: Clearinghouse Rule #02-057

Dear Senator Robson:

In accordance with Wis. Stats. § 227.19 (2), I am enclosing a copy of this proposed rule in final draft form. The report required under Wis. Stats. § 227.19 (3) is also enclosed.

Sincerely,

Pam Henning, Director  
Office of Strategic Services  
(608) 267-2929  
FAX (608) 267-0633

Enclosure

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

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**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**

For information about this rule, please contact: Mary Pierick, Division of Insurance Services, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931. Telephone: (608) 267-2847. FAX: (608) 267-4549.

**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.



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# WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Laura D. Rose  
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## CLEARINGHOUSE RULE 02-057

### 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. The analysis to the rule should include a statement of the statutes interpreted by the rule.
- b. Each presentation of text within a SECTION should begin with a citation of the rule provision preceding the text. For example, in SECTION 2, the presentation of text should begin with "ETF 50.48 (3) (b)." The entire rule should be reviewed for this problem.
- c. The rule repeals s. ETF 50.50 (5) (b) 2. and 3. Consequently, the amendment to s. ETF 50.50 (5) (b) (intro.) and 1. should strike the colon and the number "1." A unit of text should be subdivided only into two or more subunits.

#### 4. Adequacy of References to Related Statutes, Rules and Forms

- a. The reference to s. ETF 50 in the analysis to Clearinghouse Rule 02-057 should be replaced with a reference to "ch. ETF 50." [See s. 1.07 (2), Manual.] This comment is also applicable to ss. ETF 50.48 (3) (b) 5. and 50.50 (5) (b) 1. In addition, the reference to "s. ETF chapter 50" in s. ETF 50.48 (4) (b) 3. should read "ch. ETF 50." The citation in the second sentence of the analysis should read "ss. ETF 50.48 (3) and 50.50 (5)." Finally, the citation of the statutory authority for the rule should read "Section 40.03 (6), Stats."

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c. The reference to “ETF 50.48 (3) 5. and 6.” in the treatment clause of SEC. 2 of Clearinghouse Rule 02-057 should be replaced with a reference to s. ETF 50.48 (3) (b) 5. and 6. In addition, the reference to “ETF 50.48 (3) 7., 8., 9., and 10.” in the treatment clause of SEC. 3 of Clearinghouse Rule 02-057 should be replaced with a reference to s. ETF 50.48 (3) (b) 7., 8., 9., and 10.

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

a. In the second paragraph of the analysis, the phrase “they have” should be replaced by the phrase “there is.”

b. In s. ETF 50.48 (3) (a), the use of the word “certify” appears inappropriate in view of the department’s intent to avoid the use of a certification statement.

c. Section ETF 50.48 (3) (b) 5. requires an employer to state if “they wish” to contest the employee’s application for disability benefits as provided in “s. ETF 50.” It is suggested that the phrase “they wish” be replaced with the phrase “it intends.” In addition, it is unclear how, upon what grounds or to what body an employer may contest an employee’s application for disability benefits. Section ETF 50.48 (3) (b) 5., states that the employer may contest the employee’s application for disability benefits “as provided in s. ETF 50.” However, ch. ETF 50 does not appear to contain any provisions relating to an employer contesting an application for disability benefits. It is suggested that the department revise Clearinghouse Rule 02-057 to remedy these deficiencies. This comment is also applicable to s. ETF 50.48 (4) (b) 3. and 50.50 (5) (b) 1.

d. Section ETF 50.50 (5) (b) 1. states that the requirement of s. ETF 50.50 (5) (a) (which is a condition for entitlement to long-term disability insurance (LTDI) benefits), is “not met” if the employer contests the employee’s application for disability benefits under ch. ETF 50. Read literally, this would mean that an employee is not entitled to LTDI benefits at any time that an employer objects to the employee’s application. The department should clarify the procedure to be used to determine whether an employee is entitled to LTDI benefits when an employer contests the employee’s application for disability benefits.



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Ronald Sklansky  
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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 02-057

AN ORDER to repeal ETF 50.48 (3) (b) 7., 8., 9. and 10., and 50.50 (5) (b) 2. and 3.; to amend ETF 50.48 (3) (title), (a), (b), (c) and Note, (4) (b) 1., 2. and 3. and (c) and 50.50 (5) (title), (a) (intro.) 2., (b) (intro.) and 1.; and to repeal and recreate ETF 50.48 (3) (b) 5. and 6., relating to employer medical certification requirements under the long-term disability insurance (LTDI) program.

Submitted by **DEPARTMENT OF EMPLOYEE TRUST FUNDS**

05-02-02 RECEIVED BY LEGISLATIVE COUNCIL.

05-23-02 REPORT SENT TO AGENCY.

RS:WF:tlu;ksm

**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

**Response to Legislative Council Staff Recommendations**

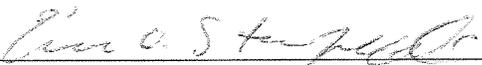
Each of the Legislative Council Staff recommendations concerning form, style and placement in administrative code, adequacy of references to related statutes, rules and forms, and clarity, grammar, punctuation and use of plain language was adopted. The text of the rule was modified accordingly.

**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

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