



# JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

COMMITTEE CO-CHAIRS: SENATOR STEVE NASS AND REPRESENTATIVE ADAM NEYLON

Emergency Rule 2106

2021 SB 378 (LRB-3406/1)

## Report to the Legislature Emergency Rule 2106 The Joint Committee for Review of Administrative Rules

Produced pursuant to 227.26 (2) (g), Stats.

Emergency Rule 2106, promulgated by the Department of Workforce Development (DWD), modified current rules by waiving work search requirements, availability for work, and work available rules for people filing claims with the unemployment insurance program to be eligible for UI benefits during the Covid-19 pandemic.

### Description of Problem

At the request of Senator Steve Nass, the Joint Committee for Review of Administrative Rules (JCRAR) held a public hearing on Emergency Rule 2106, relating to work search waivers, availability for work, and work available for people filing claims with the unemployment insurance program during the Covid-19 pandemic. This rule is in conflict with state law, because it duplicates a previous emergency rule (EmR 2006) in violation of the maximum duration of an emergency rule specified under s. 227.24 (1) (c) and (2), Stats. Agencies are not allowed to “stack” duplicative emergency rules to avoid the normal permanent rule process [62 Atty. Gen. 305, 308].

Moreover, circumstances have changed significantly since the first version of this rule, waiving work search requirements for UI eligibility, was put in place back in May 9, 2020. The worst of the pandemic is behind us, the Covid-19 vaccine is now widely available, the country and state have reopened, and Wisconsin’s unemployment rate is down to 3.8%. The original federal law (Families First Coronavirus Response Act – FFCRA) that provided additional UI funding to states that waived work search requirements has been replaced, and the federal government has advised states to reinstate work searches for UI eligibility.

### Arguments In Favor of Objection

- *EmR 2106 is in conflict with state law. It duplicates a previous emergency rule (EmR 2006) in violation of the maximum duration of an emergency rule specified under s. 227.24 (1) (c) and (2), Stats. Agencies are not allowed to stack duplicative emergency rules to avoid the permanent rule process, per 62 Atty. Gen. 305, 308.*
- *DWD by its own admission stated that EmR 2106 “accomplishes the same result” of a previous emergency rule on the same topic (EmR 2006).*

- *There has been a significant change in circumstances since the first version of this rule, waiving work search and other requirements for UI eligibility, was put in place on May 9, 2020, rendering its policies no longer necessary or desirable.*
- *The worst of the pandemic is behind us, the Covid-19 vaccine is now widely available, our country and state have safely reopened, and Wisconsin's unemployment rate has fallen substantially to 3.8%. 30 states have already or are planning to reinstate work search requirements for UI eligibility.*
- *The original federal law (The Families First Coronavirus Response Act – FFCRA) that provided additional UI funding to states that waived work search requirements has been replaced, and the federal government has advised states to bring back work searches.*
- *Legislative Fiscal Bureau confirms Wisconsin is not at risk of losing federal funds by suspending this rule and reimposing work search requirements for UI recipients.*
- *EmR 2106 and the suspension of work search requirements is creating a disincentive to work. Businesses throughout the state are hiring and in desperate need of employees, however it can be more lucrative to remain on unemployment than return to work under this rule.*

### **Arguments Against Objection**

- *DWD officials testified that they did not currently have a plan in place to return to requiring and verifying work searches for UI eligibility and that agency UI staff were not yet properly trained to administer these requirements.*
- *A lack of available child care options has made it difficult for some workers to return to the workforce, particularly single parents.*
- *Agency officials did not believe waiver of UI work search requirements were keeping people from returning to work and that suspending the rule and reinstating work searches could cause some recipients to lose eligibility for UI benefits.*

### **Action by Joint Committee for Review of Administrative Rules**

On May 19, 2021, the Joint Committee for Review of Administrative Rules (JCRAR) held a public hearing and executive session on Emergency Rule 2106. The committee passed the following motion on a 6-4 vote, suspending the rule in full (YES: Nass, Neylon, Stroebel, Bradley, August, and Spiros; NO: Larson, Roys, Hebl, and Subeck):

*Moved, that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.26 (2) (d), Stats., suspend Emergency Rule 2106, relating to work search waivers, availability for work, and work available for people filing claims with the unemployment insurance program during the COVID-19 pandemic, on the grounds that the emergency rule fails to comply with legislative intent and conflicts with state law, as it duplicates certain effects of Emergency Rule 2006 in violation of the maximum duration of an emergency rule specified under s. 227.24 (1) (c) and (2), Stats., and further, that there*

*has been a change in circumstances since enactment of the earliest law upon which the proposed rule is based.*

On May 19, 2021, the Joint Committee for Review of Administrative Rules (JCRAR) voted 6-4 (YES: Nass, Neylon, Stroebel, Bradley, August, and Spiros; NO: Larson, Roys, Hebl, and Subeck) to introduce LRB-3406 and LRB-3512, which support the suspension of Emergency Rule 2106 by the joint committee. The bills were introduced as Senate Bill 378 and Assembly Bill 380 in the 2021-22 legislative session.

Passage of one of these bills in support of the JCRAR suspension would permanently remove DWD's ability to promulgate Emergency Rule 2106.