

Clearinghouse Rule 06-073

State of Wisconsin

**Department of Workforce Development
Unemployment Insurance Division**

**Unemployment Insurance Benefit Claiming Procedures
Chapter DWD 129**

The Wisconsin Department of Workforce Development proposes an order to repeal s. DWD 129.01(2)(a)1. and 2.; to amend ss. DWD 129.01(1), 129.01(2), 129.01(4)(intro.), 129.01(4)(a), 129.01(b), 129.01(c), 129.01(d), 129.01(e), 129.03, 129.04(1)(title), 129.04(1); to repeal and recreate ss. DWD 129.01(2)(title), 129.01(2)(b) and (c), 129.01(3), and 129.04(2); and to create s. DWD 129.01(4)(f), relating to unemployment benefit claiming procedures.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 108.06 (2) (bm), 108.06 (2) (d), 108.08 (1), 108.14 (2), and 227.11, Stats.

Statutes interpreted: Sections 108.06 (2) and 108.08 (1), Stats.

Explanation of agency authority. Section 108.08 (1), Stats., provides that to receive unemployment insurance benefits for any given week of employment, a claimant shall give notice to the department with respect to such week of unemployment within such time and in such manner as the department may by rule prescribe.

Section 108.06 (2) (bm), Stats., provides that an employee's benefit year begins on the Sunday of the week in which the employee files a valid request to establish a benefit year with the department, except that the department may permit an employee to begin a benefit year prior to that time under circumstances prescribed by rule of the department.

Section 108.06 (2) (d), Stats., provides that a claimant may request that the department set aside a benefit year by filing a written, verbal or electronic request in the manner that the department prescribes by rule. If the statutory criteria for set aside are not met, the department shall not set aside the benefit year unless the department defines by rule exceptional circumstances in which a claimant may be permitted to set aside a request to establish a benefit year and the claimant qualifies to make such a request under the circumstances described in the rule.

Section 108.14 (2), Stats., provides that the department may adopt and enforce all rules which it finds necessary or suitable to carry out Chapter 108, Stats., regarding unemployment insurance.

Summary of proposed rule. Initiating a claim. Section 108.08 (1), Stats., provides that to receive unemployment insurance benefits for any given week of unemployment, a claimant shall give notice to the department with respect to such week of unemployment within such time and such manner as the department may by rule prescribe. Section DWD 129.01 (1) currently provides that a claimant is eligible only if, as of the first week being claimed, the claimant notifies the department in person, by telephone, or as otherwise prescribed by the department during that week or within 7 days after the close of that week, of the claimant's intent to initiate the claim. The proposed rules repeal the phrase "as of the first week being claimed." This clarifies that all claims can be backdated one week. The current language does not clearly state when a claim can be automatically backdated, which has resulted in the provision being applied inconsistently. The proposed rules also remove in-person as a specified option for filing an initial claim. It would still be an option under the "as otherwise prescribed" phrase. The proposed rules also add the option of filing via the Internet. Internet filing has been allowed since 2003 under the "as otherwise prescribed" language.

Continuing a claim. Section DWD 129.01 (2) describes the requirements for continuing a claim by filing a weekly certification. The current rule provides that the claimant is eligible for benefits for any week only if the claimant files a weekly certification in the manner prescribed by the department within 14 days following the end of the week for which benefits are claimed. The 14-day deadline is extended to 19 days for claimants who claim through the interstate system.

The proposed rules are rewritten for clarity, specify the option of filing a weekly certification via the Internet, and repeal the extended 19-day deadline for interstate claims. Since the vast majority of claims are filed by telephone or Internet, extra time for interstate claims is not needed. In addition, the proposed rules repeal the requirement that the claimant contact the department to receive directions on how to proceed if neither a check nor a reason for not receiving a check is received within 7 days after submitting weekly claim. This language has no bearing on the payment of benefits.

Resuming a claim. If a weekly certification is not filed for a benefit week as described in s. DWD 129.01 (2) on continuing a claim, the claim becomes inactive as of the first week after the last week in which a timely weekly certification could have been filed. The subsection on resuming a claim, s. DWD 129.01 (3), currently provides that a claim may be resumed by filing the notice required for initiating a claim under s. DWD 129.01 (1), except the deadline for resuming a claim is within 14 days after the close of the week falling between the week for which the untimely weekly certification was submitted and the week in which the claimant notifies the department. The proposed rules on resuming a claim are rewritten for clarity and repeal the provision that allows payment for the 14 days prior to a resumed claim so that all initial claim applications, including resuming a claim, have the same time limit, which is "within 7 days after the close of the first week being claimed."

Waiver for exceptional circumstances. Section DWD 129.01 (4) lists criteria under which the department will waive the requirements for initiating a claim, continuing a claim, resuming a claim, or backdating a benefit year. The proposed rule adds the general criteria, “other exceptional circumstances over which the claimant has no control.”

Set aside a benefit year. Section 108.06 (2) (d), Stats., provides that a claimant may request that the department set aside a benefit year by filing a written, verbal, or electronic request in the manner that the department prescribes by rule. The department shall grant the request and cancel the benefit year if the request is voluntary, benefits have not been paid to the claimant and at the time the department acts upon the request for that benefit year the claimant’s benefit eligibility is not suspended. If the claimant does not meet these requirements, the department shall not set aside the benefit year unless the department defines by rule exceptional circumstances in which a claimant may be permitted to set aside a benefit year and the claimant qualifies to make such a request under the circumstances described in the rule.

The current s. DWD 129.04 provides that the request to set aside a benefit year must be in writing and that the department has recovered, or has waived the recovery of, all benefits paid to the claimant for that benefit year or offsets this amount against benefits the claimant would otherwise be eligible to receive at the time the request to set aside a benefit year is made. If the statutory criteria for set aside are not met, the department may set aside the benefit year under other conditions. Other conditions include the following:

- The department terminates coverage of an employer previously subject to ch. 108, Stats., for whom the claimant performed services in the base period and the claimant could not have foreseen this termination of coverage.
- The department makes an error relating to the claimant’s establishing of a benefit year;
- The wage data used by the department to establish the benefit year is erroneous.
- The claimant elects alternative filing because the claimant’s benefit year was established in the last month of a calendar quarter and benefits were paid to the claimant prior to the department advising the claimant of the choice of alternative filing.

The proposed rules repeal the requirement that a request to set aside a benefit year be in writing and create new exceptional circumstances when set aside of a benefit year may be allowed. The new exceptional circumstances are as follows:

- The claimant’s first payment in the benefit year was made after an additional initial claim was filed.
- The claimant is eligible to start a benefit year in another state.
- The cancellation of wage credits under s. 108.04 (5), Stats., reduces the claimant’s maximum benefit amount to less than 5 times the weekly benefit rate.
- Other exceptional circumstances exist over which the claimant has no control that are related to establishing a benefit year.

Summary of factual data and analytical methodologies. The proposed rules are modernized to specify the Internet as a method for filing initial claims and weekly certifications. The proposed rules also remove the specified in-person filing option since initial claims are no longer routinely filed at local offices. It would still be an option under the “as otherwise prescribed” phrase. New exceptional circumstances are added to allow the set aside of a benefit

year based on the department's experience with appropriate circumstances that have occurred with some frequency.

Comparison with federal law. There are no federal standards or regulations for unemployment insurance benefits regarding filing or notice requirements.

Comparison with rules in adjacent states. Minnesota. Applications for unemployment benefits are effective the Sunday of the calendar week in which the completed application is submitted. Applications and weekly certifications may be submitted by Internet, telephone, or mail. An account that has become inactive may be reactivated effective the Sunday of the calendar week in which the account was reactivated.

Iowa. An initial claim may be filed by telephone, in person, or by other means prescribed by the department. Claims are deemed filed as of Sunday of the week in which the claim is filed. A claimant must generally complete a voice response telephone claim to continue benefits. A request to set aside a benefit year must be in writing. Iowa lists numerous reasons to allow set aside of a benefit year. Reasons in common with Wisconsin include that a claimant could refile after the change of a calendar quarter to obtain an increase in the maximum benefit amount if the benefit year cancellation were allowed; if a claimant would receive more benefits from another state; or if a claimant received erroneous information from an employee of the department.

Michigan. The Michigan administrative rules provide that a claimant shall file an initial claim, continued claim, or resumed claim as directed by the agency. To be considered a timely filing and effective as of the beginning of the claimant's first week of unemployment, a new claim shall be received by the agency not later than the Friday after the end of the week containing the claimant's last day of work. A continued claim shall be received by the agency not later than the Friday after the end of the last week of the period for which the claimant is instructed to report. A resumed claim is effective as of the beginning of the week in which it is received by the agency. If a claimant does not file a new, continued, or resumed claim pursuant to these deadlines but files the new or resumed claim not later than the 14th day after these time limits, the claim is considered filed on time if the claimant has good cause for the lateness of the filing.

A claimant who has established a benefit year but has not received a benefit check may request a redetermination of benefit rights and cancellation of the established benefit year and may file a new claim to establish a new benefit year.

Illinois. An initial claim for benefits must be filed in person at the local office unless a claimant is otherwise instructed by the agency. An initial claim for benefits should be filed no later than the end of the first week in which the claimant is separated from work and the claim shall begin in the week in which it was filed. Filing by mail may be allowed for claimants with special circumstances, such as lack of transportation or physical disabilities. Claimants generally file a certification for continuing benefits by telephone. Claimants are given a certification day in which they call and respond to questions concerning their claims for the prior 2 weeks. If the claimant misses the certification day, a call may be placed on Thursday or Friday of that week, or on the designated certification day or Thursday or Friday of the next week. Filing a certification by mail may be allowed in special circumstances, such as language issues, hearing impairment, or lack of access to a touch tone phone.

Effect on small business. The proposed rules do not add or change any requirements for small businesses. There are no reporting, bookkeeping, or other procedures required for compliance with the proposed rule and no professional skills are required. The DWD Small Business Regulatory Coordinator is Jennifer Jirschele, (608) 266-1023, jennifer.jirschele@dwd.state.wi.us.

Agency contact person. Carla Breber, UI Disputed Benefit Claims, (608)266-7564, carla.breber@dwd.state.wi.us.

Place where comments are to be submitted and deadline for submission. Written comments may be submitted to Elaine Pridgen, Office of Legal Counsel, Dept. of Workforce Development, P.O. Box 7946, Madison, WI 53707-7946; fax: (608) 266-1784; or elaine.pridgen@dwd.state.wi.us. The comment deadline is July 26, 2006.

SECTION 1. DWD 129.01 (1) is amended to read:

DWD 129.01 Notice of unemployment. (1) INITIATING A CLAIM. A claimant is eligible under s. 108.08, Stats., for benefit purposes for any week of total or partial unemployment ~~only if, as of the first week being claimed,~~ the claimant notifies the department ~~in person,~~ by telephone, ~~if authorized by the department~~ internet, or as otherwise prescribed by the department, during that week or within 7 days after the close of that week, of the claimant's intent to initiate the claim and the claimant complies with the initial and weekly filing procedures as directed by the department. Any claimant ~~who stops filing weekly certifications for one or more weeks or who files a late weekly certification~~ whose claim has become inactive under sub. (2) (c) must comply with the requirements of this subsection to resume a claim, unless expressly excepted in sub. (3).

SECTION 2. DWD 129.01 (2) (title) is repealed and recreated to read:

(2) CONTINUING A CLAIM BY FILING A WEEKLY CERTIFICATION.

SECTION 3. DWD 129.01 (2) (a) is amended to read:

(a) A claimant is eligible for benefits for any week of total or partial unemployment only if the claimant files a weekly certification with the department ~~in the manner prescribed by the department, within 14 days following the end of the week for which benefits are claimed. A claimant filing either the weekly certification by telephone or mail shall comply with the procedures in subd. 1. or 2~~ by telephone, internet, mail, or as otherwise prescribed by the department.

SECTION 4. DWD 129.01 (2) (a) 1. and 2. are repealed.

SECTION 5. DWD 129.01 (2) (b) and (c) are repealed and recreated to read:

(b) The department considers a weekly certification to be filed when the certification is complete and submitted timely in compliance with the following requirements:

1. 'By telephone, internet or other method prescribed by the department, other than by mail.' A completed weekly certification by telephone, internet, or any other method prescribed by the department, other than by mail, must be submitted within 14 days following the end of the week for which benefits are claimed.

a. If the claimant submits a weekly certification by telephone, the department will notify the claimant during the telephone transaction for which weeks the claimant may file a weekly certification. The department will notify the claimant at the end of the telephone transaction if the weekly certification has been accepted. If the department notifies the claimant at the end of the telephone transaction that the weekly certification has been accepted, that certification is filed. An incomplete telephone weekly certification will not be accepted. If the claimant is not notified at the end of the telephone transaction that the weekly certification has been accepted, that certification is not filed.

b. If the claimant submits a weekly certification via internet, the department will notify the claimant during the internet transaction for which weeks the claimant may file a weekly certification. After the claim is submitted, the department will notify the claimant if the weekly certification has been accepted. If the department notifies the claimant at the end of the internet transaction that the weekly certification has been accepted, that certification is filed. An incomplete internet weekly certification will not be accepted. If the claimant is not notified at the end of the internet transaction that the weekly certification has been accepted, that certification is not filed.

2. 'By mail.' A completed weekly certification must be received by the department within 14 days following the end of the week for which benefits are claimed or within 14 days following the date the department mailed the weekly certification to the claimant, whichever occurs later. If the last day for filing falls on Saturday, Sunday, or any of the holidays enumerated under ss. 230.35 (4) (a) and 895.20, Stats., or any other day on which mail is not delivered by the United States Postal Service, a weekly certification must be received by the department on the next business day. If a claimant submits a timely but incomplete mailed weekly certification, the department will send the claimant a duplicate weekly certification, and that duplicate weekly certification must be received by the department within 14 days following the date the department mailed the duplicate weekly certification to the claimant.

(c) If a weekly certification is not filed for a benefit week as described in par. (b), the claim becomes inactive as of the first week after the last week in which a timely weekly certification could have been filed.

SECTION 6. DWD 129.01 (3) is repealed and recreated to read:

DWD 129.01 (3) RESUMING A CLAIM. After a claim becomes inactive under sub. (2) (c), a claimant may resume the claim during the current benefit year only by complying with the notice provisions of sub. (1) for initiating a claim, except if the claimant attempts to file an untimely certification for any week prior to the week the claim became inactive, notice of the claimant's intent to resume the claim must be made in the week the claim became inactive or within 7 days after the close of that week.

SECTION 7. DWD 129.01 (4) (intro.), (a), (b), (c), (d), and (e) are amended to read:

(4) WAIVER; EXCEPTIONAL CIRCUMSTANCES. The department shall waive the requirements of this ~~chapter~~ section if exceptional circumstances exist. Exceptional circumstances include, ~~but are not limited to,~~ the following:

(a) An error made by an employee of the department relating to the ~~claimant's~~ giving of notice ~~made by personnel of the department, by the claimant~~ or a reasonable misunderstanding by the claimant based on information given to the claimant by the department.

(b) Action by an employer, in any manner, directly or indirectly, instructing, warning, or persuading the claimant not to file a benefit claim.

(c) The claimant did not comply because the claimant was not aware of the duty to notify the department, and the claimant's most recent employer failed to post ~~or~~ and maintain ~~any~~ the notice ~~as to~~ on claiming unemployment benefits ~~which has been~~ that was supplied to the employer ~~as required~~ under s. DWD 120.01.

(d) The claimant performed services as a school year employee in other than an instructional, research, or principal administrative capacity and had reasonable assurance of performing services for the employer in a similar capacity in the 2nd academic year or term but was subsequently not offered the opportunity to perform such services.

(e) The claimant made an unsuccessful attempt to access the telephone initial claims system during a week when the system was inoperable or was unavailable for more than 40% of the time the system is scheduled to be staffed by claimstakers during that week. The times during which the system is inoperable or unavailable will be measured as follows:

1. Each day during the week will be divided into ~~half-hour~~ half-hour time periods, beginning with the time when the system is first scheduled to be staffed by claimstakers and ending with the time when the system is scheduled to no longer be staffed by claimstakers.

2. The system will be considered to be inoperable or unavailable for any such ~~half-hour~~ half-hour time period during which a busy signal occurs or during which the system is not operating.

SECTION 8. DWD 129.01 (4) (f) is created to read:

(f) Other exceptional circumstances over which the claimant has no control.

SECTION 9. DWD 129.03 is amended to read:

DWD 129.03 Backdating of benefit year; circumstances. Under s. 108.06 (2) (bm), Stats., a claimant's benefit year begins on the Sunday of the week in which the claimant meets the requirements to establish a benefit year under s. DWD 129.02, except that the department may, by rule, permit a claimant to begin a benefit year prior to that time. The department shall permit the backdating of a benefit year if an exceptional ~~circumstances~~ circumstance exists. Exceptional circumstances include, but are not limited to, those listed in s. DWD 129.01 (4).

SECTION 10. DWD 129.04 (1) (title) and (1) are amended to read:

DWD 129.04 Department set aside of benefit year. (1) ~~EXCEPTIONAL CIRCUMSTANCES REQUEST TO SET ASIDE A BENEFIT YEAR~~. Under s. 108.06 (2) (d), Stats., a claimant may, ~~in writing,~~ request the department to set aside a benefit year. ~~The department shall set aside the benefit year if the requirements of s. 108.06 (2) (d), Stats., are met.~~

SECTION 11. DWD 129.04 (2) is repealed and recreated to read:

(2) GRANTING A REQUEST TO SET ASIDE A BENEFIT YEAR. Under s. 108.06 (2) (d), Stats., the department shall grant the claimant's request and cancel the benefit year if the request is voluntary, benefits have not been paid to the claimant, and at the time the department acts upon the request for that benefit year the claimant's benefits eligibility is not suspended. If the claimant does not meet all of the requirements under s. 108.06 (2) (d), Stats., the department may set aside the benefit year if the conditions in both par. (a) and (b) are met:

(a) The department has recovered, or has waived the recovery of, all benefits paid to the claimant for that benefit year or offsets this amount against benefits the claimant would otherwise be eligible to receive at the time the request to set aside a benefit year is made.

(b) Any of the following exceptional circumstances apply to the claim:

1. The department terminates coverage of an employer previously subject to ch. 108, Stats., for whom the claimant performed services in the base period and the claimant could not have foreseen this termination of coverage.

2. The department makes an error relating to the establishment of the claimant's benefit year.

3. The wage data used by the department to establish the benefit year is erroneous.

4. The claimant established a benefit year in the two weeks immediately preceding the first full week of a new calendar quarter, but a benefit year established as of the first full week of the new calendar quarter would give the claimant a higher weekly benefit rate or a higher maximum benefit amount.

5. The claimant's first payment in the benefit year was made after an additional initial claim was filed.

6. The claimant is eligible to start a benefit year in another state.

7. The cancellation of wage credits under s. 108.04 (5), Stats., reduces the claimant's maximum benefit amount to less than 5 times the weekly benefit rate.

8. Other exceptional circumstances exist over which the claimant has no control that are related to establishing a benefit year.

SECTION 12. 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.