

Clearinghouse Rule 07-039

State of Wisconsin

**Department of Workforce Development
Unemployment Insurance Division**

Wages for Unemployment Insurance Benefit Purposes

Chapter DWD 130

The Wisconsin Department of Workforce Development proposes an order to repeal s. DWD 130.03; to amend s. DWD 130.05; to repeal and recreate s. DWD 130.07; and to create s. DWD 130.01, relating to wages for unemployment insurance benefit purposes.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 108.02 (26), 108.14 (2), 108.015, and 227.11, Stats.

Statutes interpreted: Section 108.02 (26) Stats.

Related statute or rule: 26 USC 3306 (b); Section 108.05 (3), Stats.; Chapter DWD 101

Explanation of agency authority. Section 108.02 (26), Stats., defines what is and what is not included as “wages” for purposes of unemployment insurance, unless the department otherwise specifies by rule.

Section 108.015, Stats., provides that unless the department otherwise provides by rule, s. 108.02 (26), Stats., shall be interpreted consistently with 26 USC 3306 (b). 26 USC 3306 (b) is the federal definition of “wages” for purposes of unemployment insurance.

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 the proposed rule. Chapter DWD 130 clarifies how the department applies the definition of wages at s. 108.02 (26), Stats., for benefit purposes. The current Chapter DWD 130 has not been updated since Wisconsin adopted the federal definition of wages at s. 108.02 (26), Stats.

The proposed rule will repeal s. DWD 130.03, relating to the treatment of tips. This section contains obsolete terms and cross-references and inaccurately states that there is a different treatment of tips for contribution purposes and benefit purposes based on an obsolete statutory provision. The current treatment of tips is governed solely by s. 108.02

(26) (b) 3., Stats., which provides that “wages” includes the value of tips that are received while performing services which constitute employment, and that are included in a written statement furnished to an employer under 26 USC 6053 (a).

The proposed rule will also repeal s. DWD 130.07, which contains obsolete information on supplemental unemployment benefit plans. Under s. 108.02 (26) (c) 16., Stats., any contribution made by an employer into or payment made from a supplemental unemployment benefit plan for employees is not considered wages if the contribution or payment is not considered wages under 26 USC 3306 (b), regardless of whether the plan is part of an employer profit-sharing plan.

The proposed rule creates a new section that provides that when s. 108.02 (26), Stats., or the Federal Unemployment Tax Act, 26 USC 3301 to 3311, require that a payment meet the requirements of a particular section of the internal revenue code to not be considered wages, the employer shall demonstrate to the satisfaction of the department that the payment meets such requirements. This standard will apply to the determination of whether supplemental unemployment benefit plans are considered wages, as well as other issues raised under s. 108.02 (26), Stats., or FUTA.

The proposed rule also corrects an obsolete cross-reference and clarifies language in the section on the value of room or meals.

Summary of factual data and analytical methodologies. The provision on tips is repealed because the information on the treatment of tips for contribution purposes is obsolete and the information on the treatment of tips for benefit purposes duplicates the statute. The provision on supplemental unemployment benefit plans is repealed because it does not add to the information in the statute.

Summary of and comparison with federal regulations. There are no federal regulations on the issues in the proposed rule.

Comparison with rules in adjacent states. The department did not find rules on the specific issues in the proposed rules in the adjacent states.

Effect on small business. The proposed rule does not affect small businesses. The DWD Small Business Regulatory Coordinator is Jennifer Jirschele, (608) 266-1023, jennifer.jirschele@dwd.state.wi.us.

Analysis used to determine effect on small business. The proposed rule repeals obsolete provisions and brings the rule into conformity with current statutory provisions. There are no significant substantive changes.

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

Place where comments are to be submitted and deadline for submission.

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 May 31, 2007.

SECTION 1. DWD 130.01 is created to read:

DWD 130.01 Purpose. The definition of wages in s. 108.02 (26), Stats., is patterned after the FUTA definition of wages found in 26 USC 3306 (b). This chapter clarifies how the department shall apply the definition of wages in s. 108.02 (26), Stats., for benefit purposes. This chapter also specifies changes to the definition of wages in s. 108.02 (26), Stats., and provides interpretations that may be inconsistent with those applied to 26 USC 3306 (b), under the authority granted in s. 108.015, Stats.

SECTION 2. DWD 130.03 is repealed.

SECTION 3. DWD 130.05 is amended to read:

DWD 130.05 Value of room or meals. The provisions of s. ~~DWD 110.05 (2)~~ 101.05, relating to the value of room or meals for contribution purposes, shall also apply ~~not only for contribution purposes but also for benefit purposes under ch. 108, Stats.~~

SECTION 4. DWD 130.07 is repealed and recreated to read:

DWD 130.07 Internal revenue code requirements. When s. 108.02 (26), Stats., or FUTA require that a payment meet the requirements of a particular section of the internal revenue code to not be considered wages, the employer shall demonstrate to the satisfaction of the department that the payment meets such requirements.

SECTION 5. 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.