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**State of Wisconsin**  
**Department of Workforce Development**

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**Report From Agency**

**Rule Analysis for Legislative Review**

**Proposed Rules Relating to Unemployment Insurance Ability and Availability for Work**  
**Chapter DWD 128**  
**CR 007-054**

**Basis and Purpose of the Proposed Rules**

To be eligible to receive unemployment insurance benefits, a claimant must, in addition to other requirements, be “able” to perform suitable work and be “available” for suitable work. Under the current Chapter DWD 128, a claimant is not considered “able” to work if the claimant’s physical or psychological ability to work limits the claimant to less than 15% of the opportunities for work in the claimant’s labor market area. A claimant is not considered “available” for work if the claimant restricts his or her availability for work to less than 50% of the full-time opportunities for suitable work. The Department has found that rigid adherence to the percentage standards sometimes produces arbitrary and inconsistent results.

The proposed rule eliminates the percentage standards and provides general standards and factors that the Department will apply in making the able and available determinations. The proposed rule will help the Department determine whether a claimant is “able and available” for work by methods that are more transparent than the percentage standards and are more understandable to claimants and employers.

The proposed rule is consistent with a new federal rule on the able and available requirement issued on January 16, 2007.

**Public Hearing Summary**

A public hearing was held on July 18, 2007. There were no comments. Michael Metz of Wisconsin Independent Businesses observed for information only.

**Response to Legislative Council Staff Recommendations**

All comments were accepted or rendered moot by revisions, except Comment 2. The Department does not agree that “able to work” and “availability for work” are terms that should be in the definition section of the rule. The entire s. DWD 128.01 (3) is what “able to work” means and the entire s. DWD 128.01 (4) is what “availability for work” means. These are substantive provisions.

**Changes to Analysis Prepared under s. 227.14 (2), Stats.**

- Use of terms “suitable work” and “work” clarified with no substantive change.
- Introduction to factors in determining whether the claimant is “able” to perform suitable work modified from “shall consider, but will not be limited to, any of the following

factors” to “shall consider all factors relevant to the circumstances of the case, which may include the following”.

- Factor in determining whether claimant able to perform suitable work modified from “able to be trained for another occupation” to “could be qualified to perform other work within the claimant’s restrictions with additional training.”
- Introduction to factors in determining whether a claimant is “available” for suitable work modified from “the department shall consider any of the following factors” to “the department shall consider one or more of the following factors”.

### **Final Regulatory Flexibility Analysis**

The proposed rule affects small businesses but does not have a significant economic impact on a substantial number of small businesses as defined in s. 227.114 (1), Stats.

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