

Rules Certificate

STATE OF WISCONSIN)
) SS
 DEPARTMENT OF WORKFORCE DEVELOPMENT)

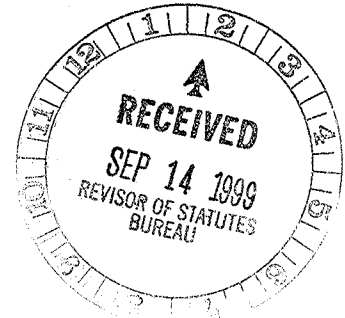
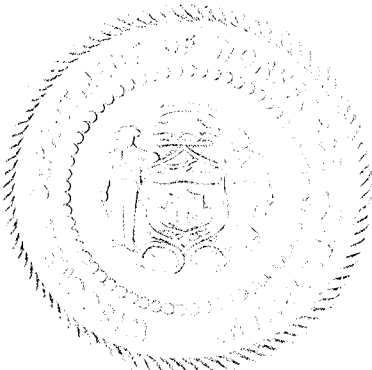
I, Linda Stewart, Secretary of the Department of Workforce Development, and custodian of the official records, certify that the annexed rules, relating to UI Notices and Forms, Ability and Availability for Work, and Exceptional Circumstances for Failing to Apply for UI, were duly approved and adopted by this department on September 14, 1999.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the of the Department of Workforce Development at 201 E. Washington Avenue in the city of Madison, this 14~~th~~ day of September 1999.



 Secretary



12-1-99

Order Adopting Rules


Pursuant to authority vested in the Department of Workforce Development by sections 103.005(1), 108.14(2), and 227.11(2), Stats., the Department of Workforce Development rennumbers and amends, amends, and creates DWD 120 relating to UI Notices and Forms, amends and creates DWD 128 relating Ability to and Availability for Work, creates DWD 129 relating to Exceptional Circumstances for Failing to Apply for UI, and repeals and recreates DWD 150 relating to UI forms.

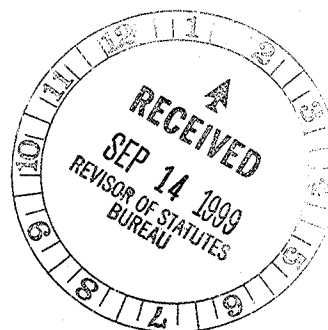
The attached rules shall take effect on November 1, 1999, pursuant to section 227.22, Stats.

Adopted at Madison, Wisconsin, this

14th day of September 1999.

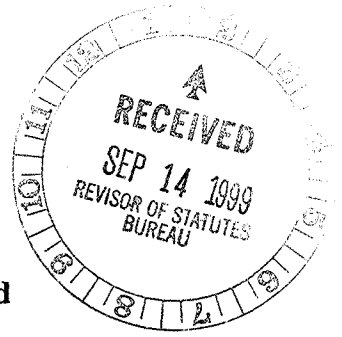
Department of Workforce Development


Secretary



**State of Wisconsin
Department of Workforce Development**

**DWD 120, 128, 129, and 150
UI Notices and Forms, Ability and Availability for Work, and
Exceptional Circumstances for Failing to Apply for UI**



The Wisconsin Department of Workforce Development proposes an order to renumber and amend DWD 120.02(2)(a) and (b); to amend DWD 120.01, 120.02(title), 120.02, 128.02(1)(a), (b), and (c), and to repeal and recreate DWD 150.05; and to create DWD 120.03; 128.02(2)(a), and 129.01(4)(e) relating to ability to and availability for work, unemployment insurance (UI) notices and forms, and exceptional circumstances for failing to apply for UI.

STATUTORY AUTHORITY: ss. 103.005(1), 108.14(2), and 227.11(2), Stats.

STATUTES INTERPRETED: ss. 108.02(15)(k) 14 and 19, 108.04(2), and 108.08, Stats.

**ANALYSIS OF PROPOSED RULES PREPARED BY THE DEPARTMENT OF
WORKFORCE DEVELOPMENT:**

UI Notices and Forms

DWD 120 specifies certain required, employer provided notices concerning unemployment insurance (UI) benefits. Section DWD 120.01 requires employers to post notices advising employes of their right to claim UI benefits. This amendment updates old language to current language (for example, from "unemployment compensation" to "unemployment insurance").

Under s.108.02(15)(k)14, Stats., an individual who works for a fresh perishable fruit or vegetable processing employer, exclusively within that employer's active processing season, is not eligible for Unemployment Insurance (UI) benefits based on that work unless certain conditions are met. Section DWD 120.02 requires processing employers to provide special notice to their employes to inform them of their possible ineligibility for UI benefits. This amendment specifies when notice must be given and describes what information must be provided.

Under s. 108.02(15)(k)19, Stats., an individual who works for a designated seasonal employer is not eligible for UI benefits unless certain conditions are met. An otherwise ineligible employee will nonetheless be eligible for benefits if the employer fails to provide a special written notice of the possibility of ineligibility to the employee before he or she begins performing services. Section DWD 120.03 describes when an employee will be ineligible for UI benefits based on his or her seasonal employment and describes the special notice requirements, including a division provided form which may be used to provide notice.

Section DWD 150.05 is amended to remove an obsolete form relating to work for processing employers, and to add a new form relating to work for designated seasonal employers.

Able to and Available for Work: Grace Periods

Under s. 108.04(2), Stats., UI claimants must be able to and available for work (A&A). This helps ensure that only those with a true attachment to the workforce receive UI benefits.

DWD 128 describes when a claimant will be considered A&A. When a claimant has restrictions which are outside his or her control, such as a physical limitation, he or she is still considered A&A if he or she can perform at least 15% of the suitable work in his or her labor market. If a claimant cannot perform at least 15% of the suitable work, his or her attachment to the workforce has been too severely compromised by the restriction.

However, even if the uncontrollable restriction limits a claimant to less than 15% of the suitable work, he or she may be granted a "grace period" during which he or she will nonetheless be considered A&A. Eligibility for such a grace period requires that wages earned in the preceding 26 weeks have been earned while experiencing the uncontrollable

restriction. Duration of the “grace period” depends on how much of those wages were so earned. This provision is based on the belief that if a person has had a job and worked for a substantial period of time with the uncontrollable restriction, then he or she had established at least some attachment to the workforce despite the restriction.

Paragraph DWD 128.02(2)(a) creates an on-going “grace period” for claimants when all of the wages earned in the immediately preceding 26 weeks were earned while experiencing the uncontrollable restriction. It is believed that such claimants have demonstrated a true attachment to the workforce despite the restriction.

Section 128.02(1) is amended to include psychological restrictions in the description of uncontrollable restrictions. However, this is not a substantive change since courts have interpreted the current language concerning physical restrictions to include psychological restrictions as well. It also expands applicability of the “grace period” to include those whose work was terminated for a reason unrelated to the restriction (in addition to those who have been laid off).

Exceptional Circumstances for Failing to Apply for UI

DWD 129 describes the procedures involved in filing a claim for UI benefits. Claimants are only eligible for benefits as of the week in which they first file a claim. This requirement may be waived under certain exceptional circumstances. Section 129.01(4)(e) expands exceptional circumstances to include when a claimant tries to initiate a claim using the telephone initial claims system but is unable to do so because the telephone system is overloaded or unavailable to a specified degree.

Statement of Scope

No Statement of Scope has been filed because the work on these proposals began before 4/1/96.

SECTION 1. DWD 120.01 is amended to read:

DWD 120.01 NOTICE-POSTERS AS TO CLAIMING UNEMPLOYMENT BENEFITS. Each covered employer shall keep ~~his or her~~ employees informed as to about unemployment insurance under ch.108, Stats., by posting appropriate notice-posters supplied ~~to the employer~~ by the employment security unemployment insurance division. ~~Such~~ The notices shall be permanently posted by each such employer at suitable points (~~on bulletin boards, near time clocks, etc., where all employees will readily see them~~) in each of the employer's work-places and establishments in Wisconsin. Suitable points for posting the notices include: on bulletin boards, near time clocks, and other places where all employees will readily see them.

SECTION 2. DWD 120.02(title) and 120.02 are amended to read:

DWD 120.02 SPECIAL NOTICES, FOR CERTAIN ~~CANNERY~~ FRESH PERISHABLE FRUIT OR VEGETABLE PROCESSING EMPLOYEES. An employer engaged in the canning processing of fresh perishable fruits or vegetables shall, ~~pursuant to instructions from the employment security division,~~ give a special notice (~~on the division's form UC 303E~~) to any employee who works ~~will work~~ for the employer only during an the "active canning processing season" under s. DWD 145.01, ~~to.~~ The special notice shall be provided or posted when the employe commences work and inform such the employe as to his or her special status under the law of the possibility that wages earned in processing employment will be excluded from consideration when determining his or her eligibility for unemployment insurance benefits. The special notice may be provided by posting appropriate posters at suitable points where all employees may readily see them.

SECTION 3. DWD 120.03 is created to read:

DWD 120.03 SPECIAL NOTICES FOR CERTAIN SEASONAL EMPLOYEES.

(a) Under s. 108.02(15)(k)19., Stats., if an individual has received special written notice from an employer which has been designated by the department as a seasonal employer, work for that employer is excluded employment unless the individual is employed by the seasonal employer for at least 90 days in a season that includes any portion of the individual's base period or the individual has earned at least \$500 from another employer during the applicable base period. Failure to provide the special notice negates the exclusion and the employment is included in covered employment for unemployment insurance purposes.

(b) The special written notice shall be provided by the seasonal employer, on either the division's form UCB-9381-P or an equivalent, prior to the individual's performance of services. The special notice shall inform the employe of the possibility that wages earned in seasonal employment will be excluded from consideration when determining his or her eligibility for unemployment insurance benefits.

SECTION 4. DWD 128.02(1)(a), (b), and (c) are amended to read:

DWD 128.02(1)(a) The claimant's physical or psychological condition, or personal circumstances over which the claimant has no control limit the claimant to less than 15% of the opportunities for suitable work, as specified under s. DWD 128.01(2)(b);

(b) The claimant is able to and available for work under the same conditions which applied to the claimant's most recent period of employment; and

(c) The claimant's most recent separation from work was due to a layoff or a termination of the employment relationship unrelated to the limitation in par. (a).

SECTION 5. DWD 128.02(2)(a) is renumbered DWD 128.02(2)(b) and amended to read:

DWD 128.02(2)(b) If at least two-thirds of all of the wages paid in the 26-week period immediately preceding the week in which the claimant initiates the benefit claim were earned under substantially the same conditions as applied to his or her most recent employment, the department shall grant the claimant a grace period of 6 weeks beginning with the week after the week in which the claimant's layoff or termination occurred.

SECTION 6. DWD 128.02(2)(a) is created to read:

DWD 128.02(a) If all of the wages paid in the 26-week period immediately preceding the week in which the claimant initiates the benefit claim were earned under substantially the same conditions as applied to his or her most recent employment, the department shall grant the claimant a continuing grace period beginning with the week after the week in which the claimant's layoff or termination occurred.

SECTION 7. DWD 128.02(2)(b) is renumbered DWD 128.02(2)(c) and amended to read:

DWD 128.02(2)(c) If at least one-third but less than two-thirds of all of the wages paid in the 26-week period immediately preceding the week in which the claimant initiates the benefit claim were earned under substantially the same conditions as applied to his or her

most recent employment, the department shall grant the claimant a grace period of 3 weeks beginning with the week after the week in which the claimant's layoff or termination occurred.

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

DWD 129.01 (4) (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 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 time period during which a busy signal occurs or during which the system is not operating.

SECTION 11. DWD 150.05 is repealed and recreated to read:

DWD 150.05 FORMS. Copies of forms used by the Unemployment Insurance Division may be obtained by writing the Unemployment Insurance Division, P. O. Box 7905, Madison, Wisconsin 53707.

Note:	<u>Form Number</u>	<u>Title or Similar Description</u>
	(1) Coverage.	Wisconsin Employer's Report
	(a) UCT-1	Employer's Report as to Wis. U.I. Coverage
	(b) RC-1	Election to Cover Multi-state Workers
	(c) UCT-115	Report of Business Transfer
	(d) UCT-117	Computation of Partial Transfer Percentage
	(e) UCT-119	Benefit Payment Allocation Report
	(2) Contributions.	
	(a) UCT-101	Employer's Quarterly Contribution Report
	(b) UC-101a	Instructions for Completing Form UC-101
	(c) UCT-100B	Notice of Employer's Contribution Rate
	(3) Benefit notices and reports, required of employers.	
	(a) UCB-201-P	Handbook for Employers
	(b) UCB-7-P	Notice Poster, How to Claim Unemployment Benefits
	(d) RC-2	Special Notice, for Multi-State Employees
	(e) UCB-16	Separation Notice
	(f) UCB-23	Wage Verification Eligibility Report
	(g) UCB-23Q35	Wage Verification Eligibility Report

(h) UCB-9381-P Seasonal Employment Notice

(4) Benefit claims and payments.

(a) UCB-10-P Claiming Wisconsin Unemployment Benefits

(b) UCB-17 Claim Card

(5) Settlement of contested benefit claims.

(a) UCB-18 Fact Finding Interview Notice

(b) UCB-474 Physician's Report, for Determining Eligibility

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.), Stats.