

CR 84-78

RULES CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPT. OF INDUSTRY,)
LABOR & HUMAN RELATIONS)

RECEIVED

SEP 17 1984
11:30 am
Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Howard S. Bellman, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to Ch. ILHR 131 - Self-employment and Income were duly approved and adopted by this department on September 17, 1984.

(Subject)
(Date)
I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 9 am in the city of Madison, this 17th day of September A.D. 19 84.

Howard S. Bellman
Secretary

ORDER OF ADOPTION

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 101.02(1), 108.04(1)(e), 108.05(8) and 108.14(2), Stats., the Department of Industry, Labor and Human Relations hereby creates; amends; repeals and recreates; and repeals and adopts rules of Wisconsin Administrative Code chapter(s):

Ind. ILHR 131 Self-employment and Income
(Number) (Title)

The attached rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to section 227.026, Stats.

Adopted at Madison, Wisconsin, this 17th
day of September, A.D., 1984.

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

Howard S. Bellman
Secretary



RULES in FINAL DRAFT FORM

Rule: _____ Ch. ILHR 131
Relating to: _____ Self-employment and Income
CLEARINGHOUSE RULE NO. _____ 84-78

ANALYSIS OF RULES

PREPARED BY

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

The Job Service Division of the Department of Industry, Labor and Human Relations is responsible for administering the Unemployment Compensation program under chapter 108 of the Wisconsin Statutes.

Under 1983 Wisconsin Act 168, the Legislature enacted a law which provides that any income earned by a claimant in a given week from self-employment is to be treated as wages for purposes of determining the claimant's weekly benefit amount. The Legislature directed the department to define, by rule, the terms "self-employment" and "income" for purposes of administering this act. This act applies retroactively to weeks of unemployment commencing on or after January 1, 1984.

Under these rules, a claimant who engages in a business undertaken to produce income and which is in the form of a sole proprietorship, partnership or other similar entity is considered to be self-employed. A claimant is not self-employed if the income from the business is principally in the nature of a return on investment unless the claimant performs services for at least 17.5 hours a week in connection with the production or acquisition of such income. Self-employment income is defined as gross income minus deductions allowable on the applicable federal income tax returns.

In the case of partnerships, the department assumes that all partners share equally in the enterprise unless there is evidence of an agreement to the contrary.

Claimants are required to report their self-employment income on the claim form submitted to the department for a given week. The department may authorize the claimant to report the amount of actual self-employment income or, if this is not feasible, the claimant must report the estimated weekly self-employment

income as determined by the department. The department may require the claimant to submit federal income tax returns for the previous 2 years to assist in the calculation of the estimates of self-employment income. Alternatively, the department may require the claimant to complete a form listing the amount of expected gross income and deductions that would be reportable for federal income tax purposes.

The department may make adjustments to the estimated self-employment income figures for weeks for which benefits have not been paid but these adjustments may not be made more frequently than every 4 weeks. The department may also make retroactive adjustments if the adjustment would affect the total benefits paid by more than \$15.00. No adjustments will be made for cases in which a claimant received benefits before June 9, 1984, for weeks 1 through 22 of 1984 or any combination thereof, if the adjustment would result in an overpayment of benefits. However, adjustments may be made in these cases if fraud is involved or if benefits were improperly paid because of a technical or clerical mistake.

Statutory Authority. Pursuant to the authority vested in the department of industry, labor and human relations by ss. 101.02(1), 108.04(1)(e), 108.05(8) and 108.14(2), Stats., the department of industry, labor and human relations hereby proposes to create rules interpreting ss. 108.04(1)(e) and 108.05(8), Stats., as follows:

SECTION 1. Chapter ILHR 131 is created to read:

CHAPTER ILHR 131.

SELF-EMPLOYMENT AND INCOME

ILHR 131.001 DEFINITIONS. In this chapter:

- (1) "Benefit year" has the meaning designated in s. 108.02(24), Stats.
- (2) "Claim form" means the weekly form provided by the department or the employment security office of an agent state to a claimant on which the claimant submits information regarding the claimant's employment status and availability for work and which serves as a basis for the payment of unemployment benefits.
- (3) "Department" means the department of industry, labor and human relations.
- (4) "Week" has the meaning designated in s. 108.02(12), Stats.
- (5) "Gross income", "gross profits" and "total income" have the meaning designated on the appropriate federal income tax forms relating to sole proprietorships, partnerships and farms.

ILHR 131.01 LEGISLATIVE DIRECTIVE; DEPARTMENT POLICY. Under s. 108.04(1)(e), Stats., a claimant who is self-employed is ineligible for unemployment benefits for any week in which the claimant has worked at self-employment unless the claimant establishes to the satisfaction of the department that he or she has made an active and bona fide search for employment. Under s. 108.05(8), Stats., any income earned by a claimant in a given week from his or her self-employment is to be treated as wages for purposes of determining the claimant's weekly benefit amount for the week or weeks at issue. The Legislature has directed the department to define,

by rule, the terms "self-employment" and "income" for purposes of administering the aforementioned statutes. The purpose of this chapter is to implement this legislative directive.

ILHR 131.02 SELF-EMPLOYMENT. (1) For purposes of ss. 108.04(1)(e) and 108.05(8), Stats., "self-employed" means engaged, not in the employ of another, in the formation, development or operation of a trade, business, enterprise, profession or any other activity undertaken for the purpose of producing income and which is in the form of a sole proprietorship, partnership, joint venture or other similar legal entity.

(2) A claimant is not self-employed within the meaning of sub. (1) if the income from his or her activity is principally in the nature of a return on investment including, but not limited to, income from rent, royalties, estates, trusts, interest and dividends, unless the claimant performs services for 17.5 hours or more in any week in connection with the production or acquisition of such income.

ILHR 131.03 INCOME AND ALLOWABLE DEDUCTIONS. For purposes of s. 108.05(8), Stats., "income" from self-employment means the amount of gross income, gross profits or total income earned from the self-employment activity for a given period of time minus total allowable deductions. Allowable deductions are those which are attributable to the self-employment activity and which are legally reportable on the claimant's federal income tax return and accompanying schedules.

ILHR 131.04 PARTNERSHIP OR JOINT VENTURE. In the case of a claimant whose self-employment income is derived from a partnership, joint venture or other similar legal entity, the department shall consider that all partners or joint participants share equally unless the claimant shows evidence of an agreement

to the contrary.

ILHR 131.05 DETERMINATION OF SELF-EMPLOYMENT INCOME. (1) REPORTING OF SELF-EMPLOYMENT INCOME. Any claimant who is self-employed within the meaning of s. ILHR 131.02 shall report his or her weekly self-employment income on the claim form which the claimant submits to the department for a given week. The income to be reported is the amount which the department authorizes the claimant to report as actual or estimated weekly self-employment income under this section.

(2) PROCEDURE FOR REPORTING OF ACTUAL AMOUNTS. A claimant may, with the department's approval, report the amount of actual self-employment income earned for a given week. The department may require the claimant to establish to the satisfaction of the department that the amount of actual self-employment income so reported is accurate and that the method used to make that calculation is reasonable. If the department finds that the amount of actual self-employment income reported is inaccurate or that the method used to make that calculation is not reasonable, the department shall make an estimate of the claimant's self-employment income.

(3) PROCEDURE FOR REPORTING OF ESTIMATED AMOUNTS. (a) To assist the department in making an estimate of self-employment income, the department may require the claimant to furnish a copy of his or her federal income tax returns and accompanying schedules filed with the internal revenue service within the 2-year period prior to the date on which the request for such returns and schedules is made. The department may also require the claimant to provide, on a form furnished by the department, the amount of expected gross income, gross profits or total income together with allowable deductions that would be reportable for federal income tax purposes for the self-employment activity during the benefit year.

(b) The department shall make an estimate of the claimant's prospective self-employment income during the benefit year taking into consideration the available tax returns and schedules, departmental forms and any other evidence submitted to or available to the department. The department shall divide the figure representing the claimant's prospective self-employment income during the benefit year by the number of weeks in which the department determines that the claimant is expected to be engaged in self-employment during that benefit year. The quotient obtained represents the estimated prospective weekly self-employment income which is to be treated as wages in determining the claimant's benefit amount for a given week.

ILHR 131.06 DEPARTMENTAL ADJUSTMENTS. (1) ADJUSTMENTS FOR WEEKS NOT YET PAID. The department may, on its own initiative or at the claimant's request, make an adjustment to the estimated prospective weekly self-employment income figure for weeks for which benefits have not yet been paid. The department may not make an adjustment more frequently than once every 4 weeks.

(2) ADJUSTMENTS FOR WEEKS PREVIOUSLY PAID. (a) The department may, on its own initiative or at the claimant's request, make an adjustment to the weekly self-employment income figure previously reported by a claimant for weeks for which benefits have already been paid. The department shall only make adjustments under this subsection if the adjustment increases or decreases the figure which represents the amount of total benefits paid during the current benefit year by more than \$15.00.

(b) If an adjustment results in an overpayment of benefits, the claimant shall repay the benefits that the claimant was not entitled to receive. If an adjustment results in an underpayment of benefits, the department shall pay the

claimant the additional benefits that the claimant is entitled to receive.

(c) The department may refuse to make an adjustment to benefits previously paid for weeks within a benefit year if the claimant's request for adjustment is received after May 30 following the year in which the benefit year ended. The request may be received on the next succeeding business day if May 30 falls on Saturday, Sunday, the last Monday in May or if mail is not delivered by the postal authorities on that day.

(d) The department may not make an adjustment to any case in which a claimant received benefits on or before June 9, 1984, for weeks 1 through 22 of 1984, or any combination thereof, if the application of this chapter to a case would result in an overpayment of benefits. The department may make an adjustment if s. 108.04(11), Stats., applies or if benefits were improperly paid because of a technical or clerical mistake.

ILHR 131.07 DEPARTMENT VERIFICATION. The department may verify the amounts reported by a claimant as self-employment income. In order to make the verification, the department may require the claimant to produce any books, papers, documents or other records relating to the self-employment.

SECTION 2. EFFECTIVE DATE. Pursuant to s. 227.026(1), Stats., this rule shall take effect on the first day of the month following publication in the Wisconsin administrative register.

The Wisconsin Department of Industry, Labor and Human Relations

September 17, 1984

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Gary Poulson
Assistant Revisor of Statutes
for Administrative Rules
411 West, State Capitol
Madison, Wisconsin

Douglas LaFollette
Secretary of State
Room 271, GEF-1
201 East Washington Avenue
Madison, Wisconsin

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 84-78

RULE NO. Ch. ILHR 131

RELATING TO: Self-employment and Income

Pursuant to section 227.023, Stats., agencies are required to file a certified copy of every rule adopted by the agency in the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.016 (6), Stats., a summary of the final regulatory flexibility analysis is also included.

Respectfully submitted,



Howard S. Bellman
Secretary

cc: Agency Contact Person