

RULES CERTIFICATE

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

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Carol Skornicka, 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 Waiver of recovery of TRA and other TAA overpayments were duly approved and adopted by this department on May 10, 1991.

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 9:00 a.m. in the city of Madison, this 10th day of May A.D. 1991.

Carol Skornicka
Secretary

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ORDER OF ADOPTION

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 101.02(1) and 101.31, Stats., the Department of Industry, Labor and Human Relations creates; amends; repeals and recreates; repeals and adopts rules of Wisconsin Administrative Code chapter (s):

ILHR 135 (Number) Waiver of recovery of TRA and other TAA overpayments (Title)

The attached rules shall take effect on the first day of the month following publication in the Wisconsin administrative register pursuant to section 227.22, Stats.

Adopted at Madison, Wisconsin, this

date: May 10, 1991

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN
RELATIONS

Carol Spary
Secretary

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Rule: Chapter ILHR 135
Relating to: Waiver of recovery of TRA and other TAA overpayments

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The Wisconsin Department of Industry, Labor and Human Relations proposes an order to create chapter ILHR 135 relating to waiver of recovery of TRA and other TAA overpayments.

* * * * *

Statutory authority: ss. 101.02(1) and 101.31, Stats.

Statutes interpreted: s. 101.31, Stats.

Analysis of Proposed Rule Prepared by the Department of Industry, Labor and Human Relations:

Under section 101.31, Stats., the Legislature required the department of industry, labor and human relations to adopt an emergency rule setting forth its policy on the waiver of overpayments made under the trade adjustment assistance for workers program under 19 U.S.C. ss. 2271 to 2319. The department proposes this permanent rule to replace the aforementioned emergency rule. The Legislature has ordered the department to comply with the guidelines issued by the U. S. secretary of labor under 19 U.S.C. s. 2315 in connection with the waiver policy. These guidelines are specified at 20 CFR s. 617.55.

Under section ILHR 135.02, the department shall waive recovery of the overpayment if:

(a) The overpayment was made without fault on the part of the claimant who received the overpayment; and

(b) Recovery of the overpayment would be contrary to equity and good conscience.

To determine whether the claimant was without fault and whether recovery of the overpayment would be contrary to equity and good conscience, the department will apply the rules established by the U.S. department of labor at 20 CFR s. 617.55.

Section ILHR 135.03 requires the department to inform, in writing, any claimant from whom the department is attempting to recover an overpayment of the availability of the waiver procedures under chapter ILHR 135.

Under section ILHR 135.04, a claimant may request the department to waive the recovery of an overpayment. The department then issues a determination which is appealable under s. 108.09. Stats.

SECTION 1. Chapter ILHR 135 is created to read:

CHAPTER ILHR 135

WAIVER OF RECOVERY OF TRA AND OTHER TAA OVERPAYMENTS

ILHR 135.001 Definitions

ILHR 135.03 Departmental notice
of waiver

ILHR 135.01 Purpose

ILHR 135.04 Application for
waiver; procedure

ILHR 135.02 Waiver of recovery
of overpayments

135.001 DEFINITIONS. In this chapter:

(1) "Benefits" means any payment made under the trade adjustment assistance for workers program under 19 U.S.C. ss. 2271 to 2319, including Trade Readjustment Allowances and other forms of Trade Adjustment Assistance.

(2) "Department" means the department of industry, labor and human relations.

(3) "Overpayment" means a payment of benefits to which a claimant was not entitled under the trade adjustment assistance for workers program under 19 U.S.C. ss. 2271 to 2319 and federal regulations promulgated thereunder at 20 CFR part 617.

ILHR 135.01 PURPOSE. (1) The department administers the trade adjustment assistance for workers program as an agent for the U. S. department of labor. In administering this program, the department is required to apply the applicable federal laws and regulations specified at 19 U.S.C. ss. 2271 to 2319 and 20 CFR part 617. Section 101.31, Stats., requires the department to establish a policy for waiving recovery of overpayments of benefits made under the trade adjustment assistance for workers program under 19 U.S.C. ss. 2271 to 2319. This chapter implements this statutory directive and specifies the conditions under which the department may grant such waivers.

135.02 WAIVER OF RECOVERY OF OVERPAYMENTS. (1) If the department determines that a claimant received an overpayment of benefits, he or she shall be liable to reimburse the department for the amount of the overpayment.

(2) Under 19 U.S.C. s. 2315 and s. 101.31, Stats., the department shall waive recovery of the overpayment if:

(a) The overpayment was made without fault on the part of the claimant who received the overpayment; and

(b) Recovery of the overpayment would be contrary to equity and good conscience.

(3) In determining whether an overpayment was made without fault on the part of the claimant and whether recovery of the overpayment would be contrary to equity and good conscience, the department shall incorporate and adhere to the federal regulations promulgated by the U. S. department of labor at 20 CFR s. 617.55. The department shall furnish a claimant who so requests with a copy of the federal regulations.

135.03 DEPARTMENTAL NOTICE OF WAIVER. The department shall issue a written notice to any claimant to whom benefits have been overpaid of the claimant's right to request a waiver of the recovery of an overpayment.

135.04 APPLICATION FOR WAIVER; PROCEDURE. (1) A claimant may request the department to waive the recovery of an overpayment which the department has assessed against the claimant. The claimant shall file the application for waiver on forms furnished by the department and may submit the application to a representative of the department at any time. The claimant may obtain an application for waiver by sending a request to: Department of Industry, Labor and Human Relations, Unemployment Compensation Division, TRA Unit, P. O. Box 7965, Madison, Wisconsin, 53707.

(2) The department shall issue a determination after receiving an application with complete financial information. The department may not waive recovery of any part of an overpayment which has been recovered prior to the date of the determination.

(3) The department shall issue a determination within 15 days after receiving a completed application. The department's determination is appealable under s. 108.09, Stats.

(4) After an application is filed, the department may not initiate any new collection activity until a determination is issued on the application, except that the department shall recover the overpayment by direct offset against any unemployment benefits payable under a state or federal law.

SECTION 2. EFFECTIVE DATE. Pursuant to s. 227.22(2), Stats., this rule shall take effect on the first day of the month following the date of publication in the Wisconsin administrative register.

Tommy G. Thompson
Governor
Carol Skornicka
Secretary



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State of Wisconsin Department of Industry, Labor and Human Relations

May 10, 1991

Gary Poulson
Assistant Revisor of Statutes
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Madison, Wisconsin 53703

Douglas LaFollette
Secretary of State
10th Floor
30 West Mifflin Street
Madison, Wisconsin 53703

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Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 90-241

RULE NO. Chapter ILHR 135

RELATING TO: Waiver of recovery of TRA and other TAA overpayments

Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with 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 227.114, Stats., a summary of the final regulatory flexibility analysis is included for permanent rules. A fiscal estimate and fiscal estimate worksheet is included with an emergency rule.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Carol Skornicka".

Carol Skornicka
Secretary