

RULES CERTIFICATE

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

RECEIVED

JUN 9 1993
4:00 pm
Revisor of Statutes
Bureau

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 Self Employment Wage Offset, Labor Standards, Substitute Teachers and Suspension of Extended Benefit/Emergency Unemployment Compensation Provisions, s. 108.141(3g), Stats.

(Subject)

were duly approved and adopted by this department on June 9, 1993
(Date)

I further certify that said copy has been compared by me with the original on file in the 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 11:30 a.m. in the city of Madison, this 9th day of June A.D. 19 93.

Carol Skornicka
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), 108.14(2), 108.14(3) and 227.11(2), Stats.

Stats., the Department of Industry, Labor and Human Relations creates; amends;

repeals and recreates; repeals and adopts rules of Wisconsin Administrative Code chapter(s):

Chapter ILHR 131 and Sections
ILHR 132.02, 132.04, 132.06

(Number)

Self Employment Wage Offset, Labor Standards, Substi-
tute Teachers and Suspension of Extended Benefit/
Emergency Unemployment Compensation Provisions,
s. 108.141(3g), Stats.

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.

RECEIVED

JUN 9 1993

Revisor of Statutes
Bureau

Adopted at Madison, Wisconsin this

date: June 9, 1993

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN
RELATIONS


Secretary



State of Wisconsin \ Department of Industry, Labor and Human Relations

RULES in FINAL DRAFT FORM

Rule No.: CHAPTER ILHR 131 AND SECTIONS ILHR 132.02, 132.04, 132.06

Relating to: Self Employment Wage Offset, Labor Standards, Substitute Teachers and Suspension of Extended Benefit/Emergency Unemployment Compensation Provisions, s. 108.141(3g), Stats.

The Wisconsin Department, of Industry, Labor and Human Relations proposes an order to repeal ILHR 1267.06(3), 131.001, 131.03, 131.04, 131.05, 131.06 and 131.07; to renumber and amend ILHR 131.01, 131.02 and 132.04(4); and to create 127.09(1)(title) and (3) and 132.06, relating to a self-employment wage offset, labor standards, substitute teachers and suspensions of extended benefits and emergency unemployment compensation.

STATUTORY AUTHORITY: ss. 101.02(1), 108.14(2), 108.14(3), and 227.11(2),

STATUTES INTERPRETED: ss.108.04(1)(e), 108.04(2), 108.04(9), 108.04(17) and 108.141(3g)

ANALYSIS OF PROPOSED RULES PREPARED BY THE DEPARTMENT OF INDUSTRY,
LABOR AND HUMAN RELATIONS.

This rule affects four features of the unemployment compensation program: a. Self-employment wage offset; b. Application of federal labor standards to offers of new work; c. Substitute teachers; and, d. Suspension of provisions applicable to extended benefits and emergency unemployment compensation.

a. Self-employment wage offset. 1991 Wisconsin Act 89 deleted the direct offset provision for wages earned by self-employed individuals contained in s.108.05(8), Stats. The work search requirements for self-employed individuals required by s.108.04(1)(e), Stats., will be retained. This rule repeals those provisions of the self-employment administrative rule (ILHR 131) relating to the offset of wages and moves to Chapter ILHR 127, Work Search, the requirement for a bona fide search for work, the definition of self-employment and the effect on eligibility that the failure to conduct such a work search will have (Sections 2-8 of the rule).

b. Application of federal labor standards to offers of new work. 1991 Wisconsin Act 89 repealed the labor standard provision, s.108.04(9)(b), Stats., which was previously found to be out of conformity with federal law. Section ILHR 132.02 is repealed because the related statutory provisions have been eliminated (Section 9 of the rule).

c. Substitute teachers. This rule also repeals the provisions of ILHR 132.04(3) regarding eligibility for substitute teachers. The Court of Appeals decision of DILHR v. LIRC, 155 Wis. 2d 256, 257-258 (Ct. App. 1990), *aff'd*, 161 Wis. 2d 231 (1991), found that the department's definition of "reasonably similar work" contained in ILHR 132.04(3) did not conform with the language and intent of s.108.04(17), Stats., concerning whether or not a substitute teacher had reasonable assurance of employment in the subsequent academic year or term. The definition of "reasonably similar work" contained in ILHR 132.04(2) must be applied to all categories of teachers since the statute does not provide for distinctions between full-time and substitute teachers (Sections 10-11 of the rule).

d. Suspension of provisions applicable to extended benefits and emergency unemployment compensation. Public Law 102-318, enacted by Congress in July 1992, requires all states to suspend certain provisions of state law in order to remain in conformity with the federal unemployment tax act. Those statute sections which require the application of federal law for extended benefit/emergency unemployment compensation disqualifications relating to failures to apply for or accept offers of suitable work, failures to actively engage in seeking work and the requalifications for benefits related to refusals of suitable work, discharges for misconduct and voluntary terminations to claims for extended benefits and emergency unemployment compensation must be suspended from March 6, 1993, through December 31, 1995. The newly created ILHR 132.06 repeals a statutory provision, s.108.141(3g), Stats., under authority granted in s.108.14(13), Stats., and subsection ILHR 127.06(3) is also repealed. The Unemployment Compensation Advisory Council approved the use of an emergency rule to suspend these provisions on November 17, 1992 and adopted the draft permanent rule on March 30, 1993 (Section 1 and 12 of the rule).

SECTION 1. ILHR 127.06(3) is repealed.

SECTION 2. ILHR 127.09 (title) is created to read:

ILHR 127.09 (title) SELF-EMPLOYMENT; BONA FIDE SEARCH FOR WORK.

SECTION 3. ILHR 127.09(3) is created to read:

(3) EFFECT ON ELIGIBILITY. A claimant shall be ineligible for benefits for any week in which the department determines that the claimant has not made a bona fide search for suitable work under the requirements of ss. ILHR 127.01, 127.04, 127.05, 127.06 and 127.07.

SECTION 4. Chapter ILHR 131 (title) is repealed.

SECTION 5. ILHR 131.001 is repealed.

SECTION 6. ILHR 131.01 is renumbered ILHR 127.09(1) and amended to read:

ILHR 127.09(1) (title) ELIGIBILITY. 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(3), 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 purposed of administering the aforementioned statutes s.108.04(1)(e), Stats. The purpose of this chapter is to implement this legislative directive.

SECTION 7. ILHR 131.02 is renumbered 127.09 (2) and amended to read:

(2) (title) DEFINITION. (a) For purposes of ~~ss. s.~~ s. 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.

(b) A claimant is not self-employed within the meaning of ~~sub.(1)~~ par.(a) 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, trust, 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.

SECTION 8. ILHR 131.03, 131.04, 131.05, 131.06, 131.07 are repealed.

NOTE: Prior to enactment of 1991 Wisconsin Act 89, if a claimant earned income in a given week from his or her self-employment, the income was treated as wages for purposes of determining the claimant's benefit rate for that week. The more wages that a claimant received in a given week, the lower the claimant's benefit rate for that week. This Act deletes this direct offset. However, the Act does not affect existing law which requires a claimant to be able to work, available for work and actively seeking work. Additionally, under current law, a self-employed claimant is ineligible to receive benefits for any week in which the claimant works at his or self-employment, unless the claimant demonstrates that, in view of labor market conditions, he or she has made an active and bona fide search for work. This administrative rule repeal is made to conform with the changes in the aforementioned Act.

SECTION 9. ILHR 132.02 is repealed.

SECTION 10. ILHR 132.04(3) is repealed.

SECTION 11. ILHR 132.04(4) is renumbered ILHR 132.04(3) and amended to read:

(3) EFFECT ON ELIGIBILITY. (a) If the employment for which the claimant receives assurance is not reasonably similar under sub. (2) ~~or (3)~~, the claimant is eligible for benefits based on services provided to or on behalf of an educational institution between academic years or terms or during established and customary vacation periods or holiday recesses under s.108.04(17) (a), (b), and (c), Stats., if otherwise qualified.

(b) If the employment for which the claimant receives assurance is reasonably similar under sub. (2) ~~or (3)~~, the claimant is not eligible for benefits based on services to or on behalf of an educational institution between academic years or terms or during established and customary vacation periods or holiday recesses under s.108.04(17) (a), (b), and (c), Stats.

SECTION 12. ILHR 132.06 is created to read:

ILHR 132.06 SUSPENSION OF ADDITIONAL REQUIREMENTS FOR EXTENDED BENEFITS. Under the authority granted in s.108.14(13), Stats., the department suspends s.108.141(3g), Stats., relating to additional requirements for extended benefits for the period March 6, 1993, through December 31, 1995, so that ch. 108, Stats., will continue to be certified for grants under Title III of the federal social security act and for maximum credit allowances to employers under the federal unemployment tax act. Sections 108.04(8), 108.04(2), 108.04(5) and 108.04(7), Stats. will now apply to failures to apply for or accept offers of suitable work, failures to actively engage in seeking work and the requalifications for benefits related

to refusals of suitable work, discharges for misconduct and voluntary terminations.

SECTION 13. EFFECTIVE DATE. 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.

Tommy G. Thompson
Governor
Carol Skornicka
Secretary



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State of Wisconsin
Department of Industry, Labor and Human Relations

June 9, 1993

Gary Poulson
Assistant Revisor of Statutes
2nd Floor
119 Martin Luther King Blvd.
Madison, Wisconsin 53703

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

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 93 - 51

RULE NO. CHAPTER ILHR 131 AND SECTIONS ILHR 132.02, 132.04, 132.06

RELATING TO: Self Employment Wage Offset, Labor Standards, Substitute Teachers and
~~Suspension of Extended Benefit/Emergency Unemployment Compensation~~
Provisions, s. 108.141(3g), Stats.

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,

Carol Skornicka
Secretary