

CR 93-55

# RULES CERTIFICATE

RECEIVED

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

JUN 9 1993  
*H. B. B.*  
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 Lump Sum Pension Payments

(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 11:00 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), 108.14(2), 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):

SUBSECTION ILHR 130.001  
AND SECTION ILHR 130.09

LUMP SUM PENSION PAYMENTS

(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.

RECEIVED

JUN 9 1993

Revisor of Statutes  
Bureau

Adopted at Madison, Wisconsin this

date: June 9, 1993

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN  
RELATIONS

*Carol Sporn*  
Secretary



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

# RULES in FINAL DRAFT FORM

**Rule No.:** \_\_\_\_\_ ~~SUBSECTION ILHR 130.001 AND SECTION ILHR 130.09~~

**Relating to:** \_\_\_\_\_ Lump Sum Pension Payments  
\_\_\_\_\_  
\_\_\_\_\_

The Wisconsin Department of Industry, Labor and Human Relations proposes an order to create ILHR 130.001 and ILHR 130.09 relating to lump sum pensions.

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

STATUTES INTERPRETED: s. 108.05(7)

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

The Federal Unemployment Compensation Tax Act requires states to reduce unemployment compensation (UC) benefits for retirement plan periodic payments received by UC claimants which are funded in part or in total by a base period employer. States are given the freedom to decide how to handle lump sum payments. Before January 5, 1992, s. 108.05(7), Stats., required that unemployment compensation (UC) benefits for a week be reduced by an amount equal to the portion of the pension payment received on a periodic basis which was attributable to that week. Lump sum distributions were considered income for UC purposes only in the week in which the lump sum was received.

In 1991, the management side of the UCAC proposed that lump sum pension payments be allocated and attributed to weeks in a manner similar to periodic pension payments. This proposal was adopted as part of the UCAC's negotiated bill which was submitted to the legislature and enacted as 1991 Wisconsin Act 89. The new s. 108.05(7), Stats., requires the department to allocate and attribute lump sum pension payments to specific weeks if, by the close of each such week, the pension has become definitely payable to the claimant and the claimant has had due notice of the allocation.

The statute does not distinguish between claimants who voluntarily take a pension distribution and those that must take a distribution due to business closure or lay off. A claimant may actually or constructively receive a lump sum pension distribution. The law is not clear as to the treatment of claimants who "roll over" a pension distribution into another retirement plan. One current interpretation considers the claimant to have constructively received the pension and

the pension is allocated accordingly. The amount is considered wages for the purposes of determining weekly unemployment compensation eligibility and is used to reduce UC benefits.

Some employees who have been forced to take their pension distribution due to a layoff and their legislators complained to the department about this law change. The department became aware of the magnitude of the problem when AMERITECH began a 300-person layoff. AMERITECH and many other employers have invested retirement funds in programs which require the imposition of taxes and penalties for early withdrawals. Claimants who are required to take a lump sum distribution of their pension due to layoff or business closure frequently do not meet the federal age requirements for withdrawal and must rollover their lump sum pension distribution to avoid early withdrawal taxes and penalties. However, since a distribution has occurred, the money is considered wages for UC purposes even though it has been rolled over. Claimants are usually ineligible for UC benefits during the weeks to which the distribution is allocated although those monies are not actually received in the sense of being available for the claimant to live on.

The UCAC did not address the question of whether rollovers constituted receipt when they amended s. 108.05(7), Stats. The UCAC discussed this problem on June 1, 1992, and it is anticipated that the Council will recommend further amendment of s. 108.05(7), Stats., to clarify that a rollover of pension monies received as a lump sum does not constitute constructive receipt of remuneration requiring reduction of unemployment compensation benefits. The department believes it necessary to promulgate this administrative rule in order to avoid extreme hardship for employees who have been forced to take pension distributions since the effective date of 1991 Wisconsin Act 89, which they must rollover into other retirement plans to avoid the penalties imposed by other federal and state laws.

Sections ILHR 130.001 and ILHR 130.09 are created to clarify that pension payments will not be considered actively or constructively received if all or part of the pension payment is rolled into another retirement by the end of the week to which the payment would be attributable. The rollover must occur within 60 days of receipt of the pension payment. The rule also recognizes that a claimant may rollover only a portion of the lump sum and the amount not rolled over will be treated as though it was the entire pension payment and attributed pursuant to section

108.05(7)(a), Stats.

The interpretation of constructive receipt provided in this rule will apply to claimants who filed for unemployment compensation on and after January 5, 1992. This is necessary to ensure equitable treatment for all claimants who have been found ineligible for UC benefits since January 5, 1992, because a rollover of their pension monies into other retirement plans was considered constructive receipt of benefit-reducing remuneration.

SECTION 1. ILHR 130.001 is created to read:

ILHR 130.001 DEFINITIONS. In this chapter:

(1) "Pension payment" has the meaning specified in s. 108.05(7)(b), Stats.

(2) "Rollover" means the transfer of all or part of a pension payment from one retirement plan or account to another retirement plan or account, whether the transfer occurs directly between plan or account trustees, or from the trustee of one plan or account to an individual payee and from that payee to the trustee of another plan or account. It is not material whether the retirement plans or accounts are considered qualified under 26 U.S.C. 401.

(3) "Week" has the meaning specified in s. 108.02(27), Stats.

SECTION 2. ILHR 130.09 is created to read:

ILHR 130.09 LUMP SUM PENSION PAYMENTS. (1) Pension payments made on other than a periodic basis will not be considered actually or constructively received by a claimant if:

(a) A rollover has occurred by the end of the week to which the payment is attributable, and

(b) The rollover occurred within 60 days of receipt of the pension payment.

(2) If the rollover in sub. (1) consisted of only a portion of the pension payment, the department will treat the pension payment as follows:

(a) The portion rolled over will not be considered actually or constructively received by the claimant, and

(b) The remaining portion will be treated as though it were the entire pension payment and will be allocated and attributed pursuant to s. 108.05(7)(a).

SECTION 3. 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. and shall first apply to new claims filed for unemployment compensation on January 5, 1992.

Tommy G. Thompson  
Governor  
Carol Skornicka  
Secretary



Mailing Address:  
201 E. Washington Avenue  
Post Office Box 7946  
Madison, WI 53707-7946  
Telephone (608) 266-7552

**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

**RECEIVED**  
JUN 9 1993  
Revisor of Statutes  
Bureau

Dear Messrs. Poulson and LaFollette:

**TRANSMITTAL OF RULE ADOPTION**

CLEARINGHOUSE RULE NO. 93 - 55

RULE NO. SUBSECTION ILHR 130.001 AND SECTION ILHR 130.09

RELATING TO: Lump Sum Pension Payments

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