

Chapter DWD 133

TEMPORARY HELP EMPLOYERS

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DWD 133.001 Definitions. (1) Except as provided in sub. (2) and unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

(2) Notwithstanding ch. DWD 100 and unless the context clearly indicates a different meaning, in this chapter:

(a) "Assignment" means work assigned by an employer to an employee to be performed for a client company of the employer. An assignment ends when it is completed or when the employee is removed from the assignment.

(b) "Client company" means an entity that contracts with an employer for the employer to provide labor for a determinate or indeterminate time.

(c) "Employer" has the same meaning given "temporary help company," in s. 108.02 (24m), Stats., and does not include a "professional employer organization" as defined in s. 108.02 (21e), Stats.

Note: Section 108.02 (24m), Stats., provides that "temporary help company" means "an entity which contracts with a client to supply individuals to perform services for the client on a temporary basis to support or supplement the workforce of the client in situations such as personnel absences, temporary personnel shortages, and workload changes resulting from seasonal demands or special assignments or projects, and which, both under contract and in fact:

- (a) Negotiates with clients for such matters as time, place, type of work, working conditions, quality, and price of the services;
- (b) Determines assignments or reassignments of individuals to its clients, even if the individuals retain the right to refuse specific assignments;
- (c) Sets the rate of pay of the individuals, whether or not through negotiation;
- (d) Pays the individuals from its account or accounts; and
- (e) Hires and terminates individuals who perform services for the clients."

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DWD 133.01 Purpose. The purpose of this chapter is to recognize that the employment relationship between a temporary help employer and an employee is, in limited circumstances, unlike that of other employment relationships. An employee of a temporary help employer commonly performs multiple assignments for one or more client companies. An assignment may end with little or no advance notice. While the employer and employee may intend to continue the employment relationship, the employer may not immediately be able to provide a new assignment to the employee. This chapter establishes standards for determining whether the employment relationship continues or is terminated for the purpose of unemployment insurance benefit eligibility.

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DWD 133.02 Employment relationship. (1) CONTINUATION OF EMPLOYMENT RELATIONSHIP. When an assignment ends, the employment relationship between an employer and an employee shall be considered a continuing relationship if all of the following conditions are met:

(a) Prior to the end of the second full business day after the end of the assignment, the employee contacts the employer, or the employer contacts the employee, and informs the other that the assignment has ended or will end on a certain date. The department may waive the requirement for the deadline or notice, or both, if it determines that the employee's failure to so contact the employer was for good cause and the employer and employee

have otherwise acted in a manner consistent with the continuation of the employment relationship.

(b) Prior to the end of the second full business day after the end of the assignment, or prior to the end of the first full business day after the date notice was given under par. (a) if the deadline for the notice was waived, the employer informs the employee that the employer will provide a new assignment that will begin within 7 days and any of the following occur:

1. The employer provides a new assignment that begins within 7 days of the date of the notice.

2. A new assignment does not begin within the 7-day period specified in par. (b) (intro.), but within that same 7-day period, the employer notifies the employee that the start of the assignment will be delayed for a period not to exceed an additional 7 days. The delayed assignment begins within 7 days of the date that the employer notified the employee of the delay.

3. A new assignment does not begin within the 7-day period specified in par. (b) (intro.), but within that same 7-day period, the employer notifies the employee that the employer will provide another assignment that will begin within 7 days. This assignment begins within 7 days of the date that the employer notified the employee of the assignment.

(c) The assignment offered by the employer meets the conditions under which the individual offered to work, including the type of work, rate of pay, days and hours of availability, distance willing to travel to work, and available modes of transportation, as set forth in the individual's written application for employment with the employer submitted prior to the first assignment, or as subsequently amended by mutual agreement. The employer shall have the burden of proof to show that the assignment meets the requirements of this paragraph. If the employer offers an assignment that does not conform to the requirements of this paragraph, the employment relationship ends under sub. (2).

(2) SEPARATION OF EMPLOYMENT BY EMPLOYER. If the employment relationship does not continue under sub. (1), the employment shall be considered separated by the employer unless the employee has voluntarily separated from the employment under sub. (3).

(3) SEPARATION OF EMPLOYMENT BY EMPLOYEE. (a) An employee voluntarily separates from the employment when any of the following occur:

1. The employee fails to notify the employer that an assignment has ended if the employer's policy requires the notification prescribed by sub. (1) (a) and the employee had notice of this policy prior to the end of the assignment, provided that the employer is not aware that the assignment has ended, and provided that the notice requirement was not waived under sub. (1) (a).

2. The employee refuses an assignment while the employment relationship continues.

3. The employee fails to respond to an offer of work by the employer within a reasonable time period, while the employment relationship continues.

4. The employer is unable to communicate an offer of work to the employee because of the employee's failure to provide the employer with his or her correct address, telephone number, or

other contact information while the employment relationship continues.

(b) Nothing in this chapter shall preclude the application of other provisions of ch. 108, Stats., to determine whether the employee separated from the employment.

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DWD 133.03 Treatment of time between assignments. An employee shall be eligible for unemployment insurance benefits while the employment relationship continues between assignments pursuant to s. DWD 133.02 (1), if the

employee is otherwise qualified for those benefits.

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DWD 133.04 Relationship following termination. When an employee's employment relationship with an employer terminates, his or her application for employment with that employer shall expire. If the employee returns to work for the employer, a new written application for employment shall be required for this chapter to be applicable. If the employee agrees in writing, the original application may be treated as a new application for employment.

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