

**ORDER OF THE WISCONSIN  
DEPARTMENT OF WORKFORCE DEVELOPMENT**

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The Wisconsin Department of Workforce Development adopts the following order *to repeal* DWD 111.05 and Figure DWD 147.02; *to amend* DWD 102.02 (2), 102.02 (3) (am), 103.01 (2), 132.04 (1) and (2) (intro.), 132.04 (3), 147.01 (2), 147.02, 149.001 (2) (c) 1.; *to repeal and recreate* Figure DWD 102.02 (2) and DWD 150 (title); and *to create* DWD 102.02 (3) (am) (Note) and DWD 147.02 (Note), relating to converting references from Standard Industrial Classification codes to the North American Industry Classification System codes; and other minor technical changes to the unemployment insurance program.

The Governor approved the scope statement for this rule, SS 116-21, on December 22, 2021. The scope statement was published in register No. 792B, on December 27, 2021. This rule was approved by the Governor on \_\_\_\_\_, 2022.

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**Analysis Prepared by the Department of Workforce Development**

*Statutes Interpreted*

Chapter 108, Stats.

*Statutory Authority*

Section 108.14 (2), Stats.

*Explanation of Statutory Authority*

Under s. 108.14 (2), Stats., the department may adopt and enforce all rules which it finds necessary or suitable to carry out the unemployment insurance program.

*Plain Language Analysis*

The Wisconsin unemployment insurance program is administered under chs. DWD 100-150. The rule replaces current references to Standard Industrial Classification (SIC) codes in chs. DWD 102 and 147 with North American Industry Classifications System (NAICS) codes. NAICS codes were first adopted in 1997 to replace the SIC code system. SIC codes have not been updated since 1987 and do not reflect modern changes in the economy.

Under s. 108.18 (2), Stats., an employer's initial contribution rate to the unemployment trust fund is based on certain factors, including whether the employer is "engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects." See s. 108.18 (2) (c), Stats. Chapter DWD 102 requires the Department to determine whether an employer is engaged in those projects based, in part, on

whether the employer's primary business activity is specified in groups assigned in the SIC manual.

In addition, certain employment may be excluded from unemployment insurance coverage, including certain service for a seasonal employer, which is an employer the Department designates as satisfying specified criteria, including being classified by the Department as primarily engaged in the following activities: agricultural production, agricultural services, forestry, or commercial fishing, hunting or trapping. Sections 108.02 (15) (k) 19. and 108.066 (3) (a) 2., Stats. Chapter DWD 147 requires the Department to determine whether an employer is primarily engaged in those activities based on specified groups assigned in the SIC manual.

The rule replaces the above references to SIC codes with NAICS codes to bring the rules up to date with current federal terminology and modern designation codes.

The rule also makes the following minor and technical changes:

- Amends s. DWD 103.01 (2) so that the rule aligns with ch. 108, Stats.
- Repeals s. DWD 111.05, related to filing certain employer reports, because it is obsolete.
- Amends s. DWD 132.04 (1) to correct cross-references to ch. 108, Stats.
- Amends s. DWD 149.001 (2) (c) 1. to correct a reference to the Labor and Industry Review Commission to be consistent with the definition of “commission” in s. DWD 100.02 (9).
- Repeals and recreates the title for ch. DWD 150 from “Miscellaneous” to “Forms” to reflect the purpose of that chapter.

#### *Summary of, and comparison with, existing or proposed federal regulations*

Federal regulations require that state laws conform to and substantially comply with federal unemployment laws. 20 C.F.R. § 601.5.

#### *Comparison with rules in adjacent states*

Minnesota uses NAICS codes to determine construction industry employers (Minn. Stat. Ann. § 268.051 (5) (b)). Illinois uses SIC codes to determine tax rates (820 Ill. Comp. Stat. Ann. 405/1500 (B)). It appears that Michigan and Iowa do not reference SIC codes or NAICS codes for unemployment employer determinations or tax rates.

#### *Summary of factual data and analytical methodologies*

This rule does not depend on complex data analysis. The rule changes are largely minor and technical in nature. The Department reviewed Wisconsin statutes, administrative rules, and other states' laws to determine the use of NAICS codes instead of SIC codes.

***Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis***

The rule will have no significant economic effect on small businesses as defined in s. 227.114 (1), Stats. and there is no economic impact created by this rule because the rule changes are either minor and technical or do not affect current employers' tax rates. The Statement of Scope for the rule was posted for 14 days to solicit comments on economic impact from the public and no comments were received. The Department consulted the Unemployment Insurance Advisory Council regarding the rule.

***Fiscal Estimate and Economic Impact Analysis***

The Fiscal Estimate and Economic Impact Analysis is attached.

***Effect on small business***

The rule is not expected to have a significant economic effect on small businesses, as defined in s. 227.114 (1), Stats.

***Agency contact person***

Questions and comments related to this rule may be directed to:

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***Place where comments are to be submitted and deadline for submission***

Mark Kunkel, Rules and Records Coordinator  
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Comments will be accepted until a date to be determined.

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1           **SECTION 1.** DWD 102.02 (2) is amended to read:

1           **DWD 102.02 (2)** The department shall examine the factors enumerated in this section to  
2 determine whether an employer is “engaged in the construction of roads, bridges, highways,  
3 sewers, water mains, utilities, public buildings, factories, housing or similar construction projects”  
4 within the meaning of s. 108.18 (2) (c), Stats. The department shall first determine whether the  
5 employer’s primary type of business activity is one of the activities specified in Figure DWD  
6 102.02 (2), which enumerates certain business activities listed in ~~Major Group 17—Construction—~~  
7 ~~Special Trade Contractors in the Standard Industrial Classification (SIC) Manual furnished by the~~  
8 ~~Federal government~~ the current North American Industry Classification System, Sector 23 –  
9 Construction. [See Figure DWD 102.02 (2) following]

10           **SECTION 2.** DWD Figure 102.02 (2) is repealed and recreated to read:

238110 POURED CONCRETE FOUNDATION AND STRUCTURE CONTRACTORS Grouting (i.e., reinforcing with concrete)
238150 GLASS AND GLAZING CONTRACTORS Glass coating and tinting (except automotive) contractors
238160 ROOFING CONTRACTORS Solar reflecting coating, roof, application
238190 OTHER FOUNDATION, STRUCTURE, AND BUILDING EXTERIOR CONTRACTORS Awning installation Epoxy application contractors Ornamental metal work installation contractors
238210 ELECTRICAL CONTRACTORS AND OTHER WIRING INSTALLATION CONTRACTORS Burglar alarm system, electric, installation only Cable splicing, electrical or fiber optic Cable television hookup contractors Communication equipment installation Electronic control system installation Fire alarm system, electric, installation only Intercommunication (intercom) system installation Sound equipment installation Telecommunications equipment and wiring (except transmission line) installation Telephone installation contractors
238220 PLUMBING, HEATING AND AIR-CONDITIONING CONTRACTORS

Air system balancing and testing  
Air-conditioning system (except window) installation  
Boiler, heating, installation  
Dust collecting and bag house equipment installation  
Fuel oil burner installation  
Gas line installation, individual hookup, contractors  
Heating equipment installation  
Heating contractors  
Lawn sprinkler system installation  
Refrigeration system (e.g., commercial, industrial, scientific) installation  
Water system balancing and testing contractors

238290 OTHER BUILDING EQUIPMENT CONTRACTORS

Boiler and pipe insulation installation  
Dismantling large-scale machinery and equipment  
Gasoline pump, service station, installation  
Lightning rod and conductor installation  
Machinery and equipment, large-scale, installation  
Machine rigging  
Millwrights  
Motor vehicle garage and service station mechanical equipment (e.g., gasoline pumps, hoists) installation  
Power generating equipment installation

238310 DRYWALL AND INSULATION CONTRACTORS

Fireproofing buildings

238320 PAINTING AND WALLCOVERING CONTRACTORS

Electrostatic painting, on-site, contractors  
Paint and wallpaper stripping  
Paperhanging or removal contractors  
Ship painting contractors  
Wallpaper stripping  
Whitewashing contractors

238330 FLOORING CONTRACTORS

Linoleum, installation only  
Parquet flooring installation  
Resilient floor tile or sheet (e.g., linoleum, rubber, vinyl), installation only  
Vinyl flooring contractors

238340 TILE AND TERRAZZO CONTRACTORS

Ceramic tile installation  
Tile (except resilient) laying and setting

238350 FINISH CARPENTRY CONTRACTORS

Countertop, residential-type, installation  
Ship joinery contractors

238390 OTHER BUILDING FINISHING CONTRACTORS

Bathtub refinishing, on-site  
Building fixture and fitting (except mechanical equipment) installation  
Caulking (i.e., waterproofing) contractors  
Coating concrete structures with plastics  
Dampproofing contractors  
Concrete coating, glazing or sealing  
Waterproofing contractors  
Weather stripping installation  
Window shade and blind installation

238910 SITE PREPARATION CONTRACTORS

Boring, for building construction  
Core drilling and test boring for construction  
Grave excavation contractors  
Test boring for construction

238990 ALL OTHER SPECIALTY TRADE CONTRACTORS

Artificial turf installation  
Cable splicing (except electrical or fiber optic)  
Cleaning building interiors during and immediately after construction  
Dewatering contractors  
Fence installation (except electronic containment fencing for pets)  
House moving (i.e., raising from one site, moving, and placing on a new foundation)  
Manufactured (mobile) home set up and tie-down work  
Posthole digging  
Sandblasting, building exterior  
Scaffold erecting and dismantling

1           **SECTION 3.** DWD 102.02 (3) (am) is amended to read:

2           **DWD 102.02 (3) (am)** The department shall determine that the provisions of s. 108.18 (2)  
3 (c), Stats., apply to an employer whose primary type of business activity in this state is listed in  
4 ~~Major Group 15—Building Construction—General Contractors and Operative Builders or in Major~~  
5 ~~Group 16—Heavy Construction Other Than Building Construction—Contractors in the Standard~~  
6 ~~Industrial Classification (SIC) Manual or is listed in Major Group 17~~ the current North American

1 Industry Classification System, Sector 23 – Construction but not in Figure DWD 102.02 (2), if any  
2 of the following factors apply:

3 1. The primary business activity of the employer in this state involves the improvement of  
4 real property rather than improvement or refurbishing of personal property.

5 2. Employers within the same listing in the ~~Standard Industrial Classification (SIC)~~  
6 ~~Manual~~ current North American Industry Classification System, Sector 23 – Construction as the  
7 employer customarily suspend or significantly curtail business operations in this state for  
8 regularly recurring periods because of climatic conditions or because of the seasonal nature of  
9 the employment.

10 **SECTION 4.** DWD 102.02 (3) (am) (Note) is created to read:

11 **DWD 102.02 (3) (am) Note:** The current North American Industry Classification System  
12 standard is available at <https://www.census.gov/naics/>.

13 **SECTION 5.** DWD 103.01 (2) is amended to read:

14 **DWD 103.01 (2) UNPAID MANAGERS OF A LIMITED LIABILITY COMPANY.** Under s. 108.02  
15 (15) (k) 8., Stats., service as an unpaid manager of a limited liability company is not  
16 “employment”, but all paid managers of a limited liability company are in “employment” under  
17 ch. 108, Stats., subject to ~~s.~~ ss. 108.02 (12), 108.02 (15) (L), and 108.068, Stats.

18 **SECTION 6.** DWD 111.05 is repealed.

19 **SECTION 7.** DWD 132.04 (1) and (2) (intro.) are amended to read:

20 **DWD 132.04 (1) SCOPE.** Under s. ~~108.04 (17) (a), (b) and (c)~~ 108.04 (17) (a) to (i), Stats.,  
21 a claimant is ineligible for benefits based upon services provided to or on behalf of an educational  
22 institution for weeks of unemployment which occur between academic years or terms or during an  
23 established and customary vacation period or holiday recess if the claimant performed the services

1 in the first such year or term or in the year or term immediately before the vacation period or  
2 holiday recess and if there is reasonable assurance that the claimant will perform such services for  
3 any educational institution in the year or term immediately following the academic year, term,  
4 vacation period or holiday recess.

5 (2) STANDARD. (intro.) Except as provided under sub. (3), the terms and conditions of the  
6 employment for which the claimant receives assurance from an educational institution under s.  
7 ~~108.04 (17) (a), (b) and (c)~~ 108.04 (17) (a) to (i), Stats., for the academic year or term immediately  
8 following the weeks of unemployment which occurred between academic years or terms or during  
9 an established and customary vacation period or holiday recess are reasonably similar if all of the  
10 following apply:

11 SECTION 8. DWD 132.04 (3) is amended to read:

12 DWD 132.04 (3) EFFECT ON ELIGIBILITY. (a) If the employment for which the claimant  
13 receives assurance is not reasonably similar under sub. (2), the claimant is eligible for benefits  
14 based on services provided to or on behalf of an educational institution between academic years  
15 or terms or during established and customary vacation periods or holiday recesses under s. ~~108.04~~  
16 ~~(17) (a), (b) and (c)~~ 108.04 (17) (a) to (i), Stats., if otherwise qualified.

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

21 SECTION 9. DWD 147.01 (2) is amended to read:



1           **DWD 147.01 (2)** This chapter ~~enumerates which employers~~ specifies the industries that  
2 the department shall consider to be primarily engaged in agricultural production, agricultural  
3 services, forestry, or commercial fishing, hunting, or trapping.

4           **SECTION 10.** DWD 147.02 is amended to read:

5           **DWD 147.02 Affected employers.** An employer shall be considered to be primarily  
6 engaged in agricultural production, agricultural services, forestry, or commercial fishing, hunting,  
7 or trapping if the department determines that the employer’s primary type of business activity is  
8 one of those specified in ~~figure DWD 147.02 and assigns the employer one of the Standard~~  
9 ~~Industrial Classification (SIC) codes listed in that figure. [see Figure 147.02 following]~~ the current  
10 North American Industry Classification System, Sector 11 – Agriculture, Forestry, Fishing and  
11 Hunting.

12           **SECTION 11.** DWD 147.02 (Note) is created to read:

13           **DWD 147.02 Note:** The current North American Industry Classification System standard  
14 is available at <https://www.census.gov/naics/>.

15           **SECTION 12.** Figure DWD 147.02 is repealed.

16           **SECTION 13.** DWD 149.001 (2) (c) 1. is amended to read:

17           **DWD 149.001 (2) (c) 1.** Information about the organization of the department’s  
18 unemployment insurance division and the ~~labor and industrial review~~ commission.

19           **SECTION 14.** DWD 150 (title) is repealed and recreated to read:

20           **DWD 150 (Title) FORMS.**

21           **SECTION 15. EFFECTIVE DATE.** This rule shall take effect on the first day of the  
22 month following publication in the Wisconsin administrative register, as provided under s.  
23 227.22 (2) (intro.), Stats.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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Amy Pechacek, Secretary-designee