

Chapter ILHR 110

COVERAGE AND RELATED RECORDS AND REPORTS

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Note: Chapter ILHR 110 as it existed on June 30, 1990 was repealed and a new chapter ILHR 110 was created effective July 1, 1990.

ILHR 110.001 Definitions. In this chapter:

(1) "Constructively paid" means wages paid by an employer which are credited to the employe or set apart for the employe without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and which are available to the employe so that the wages may be drawn upon at any time, and their payment brought within the employe's own control and disposition.

(2) "Covered wages" means wages less the exclusion under s. 108.02 (15) (L), Stats., and any applicable exclusions under s. 108.02 (15) (f) to (k), Stats., unless the wages attributed to an exclusion are subject to a tax under the Federal Unemployment Tax Act and are not subject to a tax under any other unemployment compensation law.

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

(4) "Employee" has the meaning specified in s. 108.02 (12), Stats.

(5) "Employer" means any person who is or becomes subject to the reimbursement financing or contribution requirements of ch. 108, Stats., including multiemployer benefit plans and other third party payors.

(6) "Employer's account" has the meaning specified in s. 108.02 (14), Stats.

(7) "Employer's contribution report" or "contribution report" means the written document in which an employer makes a quarterly report of total employment or wages or both to the department.

(8) "Employing unit" means any employer and any other person who engages one or more individuals to perform services, whether or not that person is subject to the reimbursement financing or contribution requirements of ch. 108, Stats.

(9) "Employment" has the meaning specified in s. 108.02 (15), Stats.

(10) "Government unit" has the meaning specified in s. 108.02 (17), Stats.

(11) "Multiemployer benefit plan" means a benefit plan maintained pursuant to one or more collective bargaining agreements between 2 or more employers and one or more employe organizations under which each employer makes contributions to provide sickness or accident disability payments through the plan to eligible employes or their dependents.

(12) "Nonprofit organization" has the meaning specified in s. 108.02 (19), Stats.

(13) "Payroll" has the meaning specified in s. 108.02 (21), Stats.

(14) "Sickness or accident disability payment" means any payment made on account of sickness or accident disability which is considered wages under s. 108.02 (26), Stats.

(15) "Wages" has the meaning specified in s. 108.02 (26), Stats.

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

History: Cr. Register, June, 1990, No. 414, eff. 7-1-90; emerg. renum. (5m) to (8), (16) and (17) to be (6) to (9), (15) and (16), renum. (9) and (15) to be ILHR 101.001 (4) and (9) and am. (9), r. and recr. (14), eff. 2-19-93; renum. (5m) to (8), (16) and (17) to be (6) to (9), (15) and 16, renum. (9) and (15) to be ILHR 101.001 (4) and (9) and am. (9), r. and recr. (14), Register, May, 1993, No. 449, eff. 6-1-93.

ILHR 110.01 Purpose. This chapter requires employing units to maintain work records for individuals who perform services for them and to submit such records for the department's inspection and submit and file other reports requested by the department to determine the employing unit's status and contribution liability under ch. 108, Stats. The chapter specifies the department's investigative powers and enumerates the dates by which certain records and reports are to be submitted to the department.

History: Cr. Register, June, 1990, No. 414, eff. 7-1-90; emerg. renum. (1) to be ILHR 110.01, r. (2), eff. 2-19-93; renum. (1) to be ILHR 110.01, r. (2), Register, May, 1993, No. 449, eff. 6-1-93.

ILHR 110.02 Required records to retain; retention periods; department's investigative powers. (1) Pursuant to s. 108.21, Stats., each employing unit shall maintain a true and accurate work record for every individual who performs services for that employing unit so that the department may determine the employing unit's status and contribution liability under ch. 108, Stats.

(2) The work record shall include:

(a) The full name, address and social security number of each individual who performs services for the employing unit;

(b) The dates on which each individual performed services;

(c) The weekly wages earned by each individual who performed services; and

(d) The dates on which the wages were paid to each individual.

(3) Pursuant to s. 108.21, Stats., the department may, at any reasonable time, inspect the work records and any other records of an employing

unit, or of any entity which the department has reason to believe may be an employing unit, which may show payments for personal services.

(4) Each employing unit shall preserve the work records and any other records which may show payments for personal services for 6 years from the date on which each individual last performed services for the employing unit.

History: Cr. Register, June, 1990, No. 414, eff. 7-1-90.

ILHR 110.03 Required records and reports to submit. Pursuant to ss. 108.14 and 108.21, Stats., each employing unit shall submit any work records and any other records and reports concerning the services performed by individuals for the employing unit which the department may request. The department may require the employing unit to make either verbal or written reports or both.

History: Cr. Register, June, 1990, No. 414, eff. 7-1-90.

ILHR 110.04 Conditions for coverage and liability; reporting requirements. Any employing unit which is not subject to the reimbursement financing or contribution provisions under ch. 108, Stats., becomes subject if the employing unit meets the coverage requirements under ch. 108, Stats. Any employing unit which meets the coverage requirements under ch. 108, Stats., shall notify the department and accurately and completely report its employment and wages so that the department may determine the employing unit's status and contribution liability. The employing unit shall submit this report to the department within 30 days after meeting the coverage requirements under ch. 108, Stats.

History: Cr. Register, June, 1990, No. 414, eff. 7-1-90.

ILHR 110.05 Conditions for status as a nonprofit organization; reporting requirements. Except as further provided in this section, no employing unit may be considered to be a nonprofit organization eligible to apply for reimbursement financing until the date on which the department receives a copy of the letter issued by the internal revenue service determining that the employing unit is exempt from taxation under section 501 (c) (3) of the internal revenue code. If an employing unit receives such a letter from the internal revenue service after the employing unit becomes an employer under s. 108.02 (13) (d) or (e), Stats., the department shall consider the employing unit to be a nonprofit organization beginning on January 1 of the year after the year in which the internal revenue service issues the letter. The department shall consider the employing unit to be a nonprofit organization as of the date specified by the internal revenue service if:

(1) The employing unit has filed a written notice with the department electing reimbursement financing under s. 108.151 (2), Stats.;

(2) The employing unit acted diligently in requesting such a determination from the internal revenue service;

(3) Any delays concerning such a determination are attributable solely to the internal revenue service; and

(4) There is no overpayment of benefits to any claimant due to the department's adopting the date specified by the internal revenue service.

History: Cr. Register, June, 1990, No. 414, eff. 7-1-90.

ILHR 110.06 Liability due to sickness or accident disability payments. (1) **POLICY.** Under s. 108.02 (13) (j), Stats., an employer includes a person who makes sickness or accident disability payments if the person is classified as an employer under rules promulgated by the department. This section specifies the circumstances under which persons who make sickness or accident disability payments are to be considered employers for contribution purposes under ch. 108, Stats. This section also specifies the procedures such employers shall follow in reporting payments and making contributions.

(2) **AMOUNTS INCLUDED AS TAXABLE WAGES.** The department shall treat as wages for contribution purposes under ch. 108, Stats., any sickness or accident disability payments whether made by an employer, a third party payor, or a multiemployer benefit plan. Whichever employer, third party payor or multiemployer benefit plan is liable for payment of contributions under this section shall report these payments as wages on the contribution report for the quarter in which the payments are made.

(3) **PAYMENTS MADE DIRECTLY BY EMPLOYERS.** An employer which makes sickness or accident disability payments directly to an employee or his or her dependents shall be treated as the employer for contribution purposes under ch. 108, Stats., with respect to these payments.

(4) **PAYMENTS BY THIRD PARTY PAYORS AND MULTIEMPLOYER BENEFIT PLANS.** (a) *General rule for third party payors.* Except as provided in pars. (b) to (f), a third party payor which makes sickness or accident disability payments shall be treated as the employer for contribution purposes under ch. 108, Stats., with respect to these payments.

(b) *Notice by third party payors to shift tax.* If a third party payor timely notifies the employer for which services are normally performed of the amount of the sickness or accident disability payments made during any quarter, the employer shall be treated as the employer for contribution purposes under ch. 108, Stats. The third party payor shall notify the employer, in writing, by the 15th day of the month after the end of the quarter in which the payments are made. In this paragraph, the employer for which services are normally performed is the last employer which made contributions on behalf of the employee to the plan or system under which the sickness or accident disability payments are being made and for which the employee worked prior to the sickness or disability.

(c) *Third party payors as agents or insurers.* A third party payor which makes sickness or accident disability payments as an agent for the employer or directly to the employer may not be treated as the employer for contribution purposes under ch. 108, Stats., unless the agency agreement so provides. The determining factor as to whether a third party payor is an agent of the employer is whether the third party payor bears any insurance risk and is reimbursed on a cost plus fee basis. If the third party payor bears no insurance risk and is reimbursed on a cost plus fee basis, the third party payor is an agent of the employer even if the third party payor is responsible for determining eligibility of the employee or dependent for sickness or accident disability payments. If the third party payor is paid an insurance premium and is not reimbursed on a cost plus fee basis, the third party payor is not an agent of the employer but rather a third party insurer and shall be treated as the employer for contribution purposes under ch. 108, Stats., unless the third party insurer complies with par. (b).

(d) *Relationship among third party insurers, multiemployer benefit plans and employers.* A third party insurer under a contract of insurance with a multiemployer benefit plan which is required to make sickness or accident disability payments pursuant to a collective bargaining agreement shall be treated as the employer for contribution purposes under ch. 108, Stats., with respect to these payments unless the third party insurer notifies the multiemployer benefit plan of the amount of these payments, in writing, by the 15th day of the month after the end of the quarter in which the payments are made. If such timely notice is given, the multiemployer benefit plan shall be treated as the employer unless, within 6 business days after receipt of the notice, the multiemployer benefit plan notifies the employer for which services are normally performed of the amount of the sickness or accident disability payments made during the quarter. If the multiemployer benefit plan gives such timely notice, the employer for which services are normally performed shall be treated as the employer for contribution purposes under ch. 108, Stats. In this paragraph, the employer for which services are normally performed is the last employer which made contributions on behalf of the employee to the plan or system under which the sickness or accident disability payments are being made and for which the employee worked prior to the sickness or disability.

(e) *Multiemployer benefit plans as insurers.* If the multiemployer benefit plan is the insurer under par. (d), the multiemployer benefit plan shall be treated as the employer for contribution purposes under ch. 108, Stats., unless the plan notifies the employer of the amount of the sickness or accident disability payments, in writing, by the 15th day of the month after the end of the quarter in which the payments are made.

(f) *Third party administrators for multiemployer benefit plans.* A third party administrator which makes sickness or accident disability payments as an agent for a multiemployer benefit plan may not be treated as the employer for contribution purposes under ch. 108, Stats.

(5) **REQUIRED RECORDS TO RETAIN; DEPARTMENT'S POWERS.** (a) Pursuant to s. 108.21, Stats., each payor of sickness or accident disability payments shall maintain a true and accurate payment record for every individual who receives such payments so that the department may determine the payor's status and contribution liability under ch. 108, Stats.

(b) The payment record shall include:

1. The full name, address and social security number of each individual who receives a sickness or accident disability payment;
2. The date on which the payment was made; and
3. The amount of the payment.

(c) Pursuant to s. 108.21, Stats., the department may, at any reasonable time, inspect the records of a payor, or of any entity which the department has reason to believe may be a payor, which may show sickness or accident disability payments so that the department may determine the payor's status and contribution liability under ch. 108, Stats.

(d) Each payor shall preserve the sickness or accident disability payment records for 6 years from the date on which the last payment was made.

(6) **REQUIRED RECORDS AND REPORTS TO SUBMIT.** Pursuant to ss. 108.14 and 108.21, Stats., each payor of sickness or accident disability payments shall submit any records and reports concerning these payments which the department may request so that the department may determine the payor's status and contribution liability under ch. 108, Stats. The department may require the payor to make verbal or written reports or both.

(7) **APPLICABLE PROVISIONS.** The provisions of ss. ILHR 110.04, 110.05, 110.07 and 110.08 as these provisions relate to employers and employing units shall also apply to payors of sickness or accident disability payments.

History: Cr. Register, June, 1990, No. 414, eff. 7-1-90; emerg. renum. from ILHR 110.11 and am. (1) and (7), eff. 2-19-93; renum. from ILHR 110.11 and am. (1) and (7), Register, May, 1993, No. 449, eff. 6-1-93.

ILHR 110.07 Due date for certain reports; contribution reports; reimbursement financing. (1) **NEWLY SUBJECT EMPLOYERS; PAYMENT OF CONTRIBUTIONS.** Under s. 108.17 (1m), Stats., an employer which becomes newly subject to the contribution provisions of ch. 108, Stats., based on employment during any year shall pay contributions based on payroll for all quarters beginning with the first quarter in the year in which the employer became subject to ch. 108, Stats. The employer shall pay such contributions by the close of the month next following the first full quarter occurring after the quarter during which the liability was incurred except that the due date may not be later than January 31 of the succeeding year.

(2) **ELECTION OF REIMBURSEMENT FINANCING; NOTICES AND ASSURANCES.** (a) Any notice of election of reimbursement financing by an employer other than a newly subject employer under sub. (1) and any assurance of reimbursement are delinquent unless the department receives the notice or assurance by its due date. If the due date of the notice or assurance would otherwise be a Saturday, Sunday or legal holiday under state or federal law, the due date is the next following day which is not a Saturday, Sunday or legal holiday under state or federal law.

(b) A nonprofit organization which discontinues participation in a group reimbursement account under s. 108.151 (6), Stats., may elect reimbursement financing in its own name by filing a notice of election of reimbursement financing with the department on or before December 31 of the year in which the group reimbursement account is terminated.

(3) **FILING OF CONTRIBUTION REPORTS; GENERAL DUE DATES.** (a) Each employer, including a nonprofit organization which has elected reimbursement financing or a government unit on reimbursement financing, shall file an employer's contribution report with the department whether or not any contributions or reimbursement payments are currently due. Each employer shall pay any required contributions to the department concurrent with the filing of the report, except that each government unit and nonprofit organization which has elected reimbursement financing shall submit reimbursement payments when billed by the department. The department may exempt any employer whose account the department has placed on inactive status with a view toward termination of the account from the filing requirements of this subsection. The department may also exempt any employer whose business reflects a seasonal pattern from the filing requirements of this subsection for quarters in which the employer customarily has no payroll.

(b) Except as otherwise provided in this section, under s. 108.17 (2), Stats., the due dates for each contribution report are as follows:

1. The first quarterly report covering the months of January, February and March is due on the following April 30th;

2. The second quarterly report covering the months of April, May and June is due on the following July 31st;

3. The third quarterly report covering the months of July, August and September is due on the following October 31st;

4. The fourth quarterly report covering the months of October, November and December is due on the following January 31st.

(4) **DUE DATES FALLING ON WEEKENDS AND HOLIDAYS.** Under s. 108.22 (1) (b) and (c), Stats., any contribution report or payment is delinquent unless the department receives the report or payment by its due date except as further provided under sub. (5). If the due date of the report or payment would otherwise be a Saturday, Sunday or legal holiday under state or federal law, the due date is the next following day which is not a Saturday, Sunday or legal holiday under state or federal law.

(5) **DUE DATES FOR MAILED REPORTS AND REIMBURSEMENTS.** Under s. 108.22 (1) (c), Stats., the department shall consider as timely any contribution report or payment which is either postmarked no later than the applicable due date or received by the department no later than 3 days after that due date, except that the department shall only consider a payment required under s. 108.15 (5) (b) or 108.151 (5) (f), Stats., as timely if it is received by the department no later than the due date specified on the bill.

(6) **MONTHLY REPORTING IN CERTAIN CASES.** The department may require an employer which is delinquent in submitting a contribution report or payment required under this chapter or under ch. 108, Stats., to submit succeeding contribution reports on a monthly basis until the department again approves a return to quarterly reporting. The employer shall submit the payments by the close of the month next following the end of each month.

(7) **OTHER DUE DATES.** For other applicable due dates and dates beyond which various reports and notices are considered to be delinquent, see ss. 108.15 (3), (5), (6), (7), (8) and (9), 108.151 (2) to (5), 108.16 (8), 108.17 (1m) and (2), 108.18 (2) and (7), 108.19 (1m), 108.205 and 108.22 (1), Stats.

(8) **PAYMENTS.** The employer shall remit contributions and any other payments due under this chapter to the address specified by the department in its correspondence with the employer in the form of a check, draft or money order payable to the department of industry, labor and human relations.

History: Cr. Register, June, 1990, No. 414, eff. 7-1-90; emerg. renum. from ILHR 110.06 eff. 2-19-93; renum. from ILHR 110.06, Register, May, 1993, No. 449, eff. 6-1-93.

ILHR 110.08 General provisions relating to reporting wages on the employer's contribution report. (1) **WISCONSIN TOTAL WAGES.** Each employer shall report all covered wages paid or constructively paid during the applicable quarter on the employer's contribution report.

(2) **CLAIMING EXCLUSIONS.** Each employer shall total the amount of wages paid to its employees which are in excess of \$10,500 per employee for the calendar year. This sum shall be subtracted from the amount of covered wages and the remainder shall be reported on the employer's contribution report as "defined taxable payroll".

History: Cr. Register, June, 1990, No. 414, eff. 7-1-90; emerg. renum. from ILHR 110.07 eff. 2-19-93; renum. from ILHR 110.07, Register, May, 1993, No. 449, eff. 6-1-93.

ILHR 110.09 Supplemental unemployment benefits. History: Cr. Register, June, 1990, No. 414, eff. 7-1-90; emerg. r. eff. 2-19-93; r. Register, May, 1993, No. 449, eff. 6-1-93.

ILHR 110.09 Termination of coverage. (1) **PROCEDURE.** Under the provisions of s. 108.02 (13) (i), Stats., the department may terminate an employer's coverage on its own motion or on application by the employer. The department may terminate coverage and close the employer's account if the employer:

- (a) Ceases to exist;
- (b) Transfers its entire business; or
- (c) Has not met the minimum payroll or employment requirements or is not otherwise subject under s. 108.02 (13) (b) to (g), Stats., for a calendar year.

(2) **EFFECTIVE DATES OF TERMINATION.** If the termination of coverage is based on an employer's application, the department shall terminate coverage and close the employer's account at the close of the quarter in which the department received the application. If the department terminates an employer's coverage on its own motion, the department shall close the account as of the date specified in the notice of termination.

(3) **EMPLOYERS OF AGRICULTURAL LABOR OR DOMESTIC SERVICE.** (a) The department may make a refund of any contributions paid on employment excluded under s. 108.02 (15) (k) 1 or 2, Stats., by an employer of agricultural labor or domestic service whose coverage has been terminated, unless the department paid benefits based on this excluded employment.

(b) An employer of agricultural labor or domestic service which no longer meets the minimum payroll or employment requirements under s. 108.02 (13) (c) or (d), Stats., shall continue to report all payroll to the department as long as the employer is subject under another provision of s. 108.02 (13), Stats.

History: Cr. Register, June, 1990, No. 414, eff. 7-1-90; emerg. rn. from ILHR 110.16 eff. 2-19-93; rn. from ILHR 110.16, Register, May, 1993, No. 449, eff. 6-1-93.

ILHR 110.10 Value of discounts. History: Cr. Register, June, 1990, No. 414, eff. 7-1-90; emerg. r. eff. 2-19-93; r. Register, May, 1993, No. 449, eff. 6-1-93.

ILHR 110.10 Reactivating employer accounts. (1) If the balance in the employer's account is to be or has been credited to the balancing account under s. 108.16 (6) (c), Stats., the department may reactivate the employer's account, on its own motion or at the employer's request, as of the date of coverage if:

- (a) The employer had payroll within 6 months of the effective date of an initial determination terminating coverage under s. 108.02 (13) (i), Stats.; or

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(b) The account was closed because the employer failed to report any payroll.

History: Cr. Register, June, 1990, No. 414, eff. 7-1-90; emerg. renum. from ILHR 110.17, eff. 2-19-93; renum. from ILHR 110.17, Register, May, 1993, No. 449, eff. 6-1-93.

ILHR 110.13 Cafeteria plans. **History:** Cr. Register, June, 1990, No. 414, eff. 7-1-90; emerg. r. eff. 2-19-93; r. Register, May, 1993, No. 449, eff. 6-1-93.

ILHR 110.14 Certain deferred compensation, retirement and salary reduction arrangements. **History:** Cr. Register, June, 1990, No. 414, eff. 7-1-90; emerg. r. eff. 2-19-93; r. Register, May, 1993, No. 449, eff. 6-1-93.