

Chapter DWD 127

WORK SEARCH

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Note: Chapter ILHR 127 was created by emergency rule effective 1-8-84. Chapter ILHR 127 was renumbered Chapter DWD 127 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1997, No. 498.

DWD 127.001 Definitions. Unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

History: Cr. Register, September, 1995, No. 477, eff. 10-1-95.

DWD 127.01 Work search; policy; requirements.

(1) Under s. 108.04 (2), Stats., a claimant shall be eligible for unemployment benefits for any week only when the department finds, among other things, that the claimant has within that week made a reasonable search for suitable work. Mere registration for work under ch. DWD 126 does not establish that the claimant is making a reasonable search for suitable work. It is essential that the claimant personally and diligently search for work on his or her own behalf. The reasonableness of a search for work will, in part, depend on the employment opportunities in the claimant's labor market area. A work search which may be appropriate in a labor market area with limited opportunities may be totally unacceptable in an area with greater opportunities. Unreasonable limitations by a claimant as to salary, hours or conditions of work indicate that a claimant is not making a reasonable search for suitable work. The department expects each claimant to conduct himself or herself as would a prudent person who is out of work and seeking work.

(2) The following are examples of actions by a claimant which the department may consider to constitute a reasonable search for suitable work under the facts and circumstances of each claimant's situation:

(a) Making applications for work with employers who may reasonably be expected to have openings for suitable work;

(b) Applying for work with former employers; however, a claimant may refuse to apply for work with an employer if the claimant previously terminated employment with the same employer with good cause attributable to the employer under s. 108.04 (7) (b), Stats., or because the employer made employment, compensation, promotion or job assignments contingent upon the employee's consent to sexual contact or sexual intercourse under s. 108.04 (7) (i), Stats.;

Note: 1999 Wis. Act 15 repealed s. 108.04 (7) (i), Stats., and amended s. 108.04 (7) (b), Stats., to include sexual harassment.

(c) Making applications or taking examinations for suitable work in the civil service of a governmental unit;

(d) Registering with a union referral or hiring hall and complying with the various union registration requirements and job referral procedures;

(e) Registering with a placement facility of the claimant's professional organization;

(f) Registering with a placement facility of a school, college or university if one is available to the claimant in his or her occupation or profession;

(g) Responding to classified advertisements for suitable work;

(h) Registering with a private employment agency or an employer's placement facility; however, no claimant may be denied benefits solely on the ground that he or she has failed or refused to register with a private employment agency or any other placement facility which charges a fee for its services;

(i) Participating in employment workshops which offer instruction in improving the claimant's skills for finding and obtaining employment; or

(j) Performing any other reasonable action which the department finds to constitute an effective means of searching for suitable work.

(3) A claimant shall be ineligible for benefits in any week in which the department determines that the claimant's search for suitable work was not reasonable under the requirements of this section unless the search has been waived by the department.

History: Cr. Register, July, 1984, No. 343, eff. 8-1-84.

DWD 127.02 Waiver of work search requirements; personal circumstances.

The department may waive a claimant's search for suitable work requirement under s. DWD 127.01 for any week under any of the following circumstances:

(1) The claimant performs any work for his or her customary employer.

(2) The claimant has been laid off from work but has a reasonable expectation of reemployment by an employer within 12 weeks after the week in which he or she appears at the public employment office to initiate the benefit claim or within 6 weeks after the week in which an eligibility review is conducted under s. DWD 128.03. In determining whether a claimant has a reasonable expectation of reemployment, the department shall consider factors including, but not limited to, the following:

(a) The past history of layoffs and reemployments by the employer;

(b) Any information which the employer furnished to the claimant or the department about the expected reemployment date; and

(c) Whether the claimant has recall rights with the employer under the provisions of any applicable collective bargaining agreement.

(3) The claimant has a reasonable expectation of starting work with a new employer within 4 weeks after the week in which he or she appears at the public employment office to initiate the benefit claim or within 4 weeks after the week in which an eligibility review is conducted under s. DWD 128.03. In determining whether a claimant has a reasonable expectation of starting work with a new employer, the department shall consider factors including, but not limited to, the following:

(a) The hiring practices of employers in the claimant's labor market area for workers who perform work which is similar to the work which the claimant is expected to perform for the new employer;

(b) Any information which the new employer furnished to the claimant or the department about the time within which the work is expected to commence; and

(c) Whether the work is suitable work for the claimant.

(4) The claimant has been laid off from work and routinely obtains work through a union referral or hiring hall process. Waiver under this subsection may be permitted only if:

(a) The union referral or hiring hall process is the primary method by which workers obtain work in the claimant's customary occupation;

(b) The union maintains a record of unemployed members and the referral activities of these members and allows the department to inspect such records;

(c) The union provides, upon the request of a department deputy, any information regarding a claimant's registration or a job opening or referral;

(d) Prospective employers of the claimant seldom place orders with the public employment office for jobs requiring occupational skills similar to those of the claimant;

(e) The claimant is registered for work with his or her union and satisfies the requirements of the union relating to job referral procedures and maintenance of membership in good standing; and

(f) The union enters into a written agreement with the public employment office regarding the requirements of this subsection.

(5) During any calendar week in which any of the following days fall:

(a) January 1;

(b) The fourth Thursday in November; and

(c) December 25.

History: Cr. Register, July, 1984, No. 343, eff. 8-1-84.

DWD 127.03 Mandatory waiver of work search requirements. The department shall waive a claimant's search for suitable work requirement under s. DWD 127.01 for any week under any of the following circumstances:

(1) The claimant is summoned to serve as a prospective or impaneled juror.

(2) The claimant is enrolled in and satisfactorily participating in a course of approved training under s. 108.04 (16), Stats.

(3) The claimant has not made a search for suitable work because of an error made by personnel of the department.

(4) The failure of the claimant's most recent employer to post or maintain any notice as to claiming unemployment benefits which has been supplied to the employer under s. DWD 120.01.

(5) The claimant reasonably expected to perform work during the week but did not receive timely notice from the employer that work would not be available so as to allow the claimant sufficient time to comply with the search for suitable work requirement in that week.

(6) The claimant has been determined, pursuant to a profiling system established by the department, to be likely to exhaust regular unemployment insurance benefits and to need reemployment services in order to make a successful transition to new employment, and

(a) The claimant has been referred for and is participating in reemployment services by complying with department directions regarding such services;

(b) The claimant has been referred for reemployment services and is enrolled and satisfactorily participating in educational and training programs which were recommended based on a reemployment services assessment; or

(d) The claimant has been referred for reemployment services and is not participating in such services, but has justifiable cause for his or her failure to participate. Justifiable cause includes, but is not limited to, the following:

1. The claimant is summoned to serve as a prospective or paneled juror;

2. The claimant is enrolled and satisfactorily participating in a course of training approved by the department;

3. The claimant is unable to participate because the claimant is employed;

4. The claimant is unable to participate because of a job interview; or

5. The claimant is unable to participate due to circumstances which the department determines are beyond the claimant's control.

History: Cr. Register, July, 1984, No. 343, eff. 8-1-84; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1993, No. 451; cr. (6), Register, October, 1994, No. 466, eff. 11-1-94; am. (6) (intro.), r. (6) (a) and renum. (6) (b) and (c) to be (6) (a) and (b), Register, September, 2000, No. 537, eff. 10-1-00.

DWD 127.035 Limited waiver of work search requirements. The department may waive a claimant's search for suitable work requirement under s. DWD 127.01 for a period up to 18 weeks if the claimant is a member of an identified group of affected employees and all of the following conditions are met concerning that group:

(1) The employer or any employee has submitted a request to the department for a waiver.

(2) The layoff is due to a disaster at the employer's work site or the temporary closing of the employer's work site for retooling, refurbishing, remodeling, or relocation of the employer's work site.

(3) The employees are reasonably assured of recall to work at the end of the disaster recovery period or temporary closing.

(4) Based on labor market information, the department determines both of the following:

(a) A customary work search by the affected employees would impose a hardship on employers in the labor market.

(b) Requiring a customary work search would not be likely to result in suitable employment for a substantial number of the affected employees. In making this determination the department shall include consideration of the overall job availability and unemployment rate in the labor market.

History: Cr. Register, September, 2000, No. 537, eff. 10-1-00.

DWD 127.04 Claimants to present evidence of work search efforts. (1) The department may require a claimant to present evidence of his or her work search efforts to the department for any time period up to and including the 8-week period prior to the date that the department makes the request. The department may verify the evidence submitted. Evidence which a claimant customarily would be expected to submit includes the following:

(a) In the case of employer contacts: the date on which the claimant made an employer contact; the name and address of the employer and the name of the employer representative contacted; the type of work applied for; and the results of the contact;

(b) In the case of civil service examinations: the date on which the claimant took an examination and the type of work applied for;

(c) In the case of registration with a union referral or hiring hall, professional organization or educational placement facility or private employment agency: the date on which the claimant registered and the type of work for which the claimant is registered; and

(d) Evidence of any other action which the claimant took during a given week to seek work including, but not limited to, any responses to advertisements for suitable work and submission of personal resumes to prospective employers.

(2) The department may disqualify a claimant for benefits in any week for which the evidence of work search efforts is insufficient to establish that the claimant made a reasonable search for suitable work.

History: Cr. Register, July, 1984, No. 343, eff. 8-1-84.

DWD 127.05 Certification as to work search; submission to public employment office. (1) The department may require any claimant to certify each week as part of the claim filing procedure under ch. DWD 129 that a work search was made.

(2) The department may also require any claimant to report his or her work search efforts either in person or by mail to a public employment office.

(3) A claimant shall be ineligible for benefits in any week in which he or she fails, without good cause, to comply with the requirements of this section.

History: Cr. Register, July, 1984, No. 343, eff. 8-1-84.

DWD 127.06 Added efforts to secure work. (1) The department may require any claimant whose employment history or conduct indicates that he or she may not be genuinely interested in accepting new work to make a minimum number of weekly in-person applications for work with employers and may also require the claimant to comply with any of the provisions under s. DWD 127.01 (2). The department shall provide each claimant with instructions as to how to comply with the requirements under this section. A claimant shall be ineligible for benefits for any week in which the claimant has failed, without good cause, to comply with any requirements imposed by the department under this subsection.

(2) After a claimant has been unemployed for 4 or more consecutive weeks, the department may require the claimant to develop a work search plan for approval by the department. A claimant shall be ineligible for benefits in any week in which the department determines that the claimant failed, without good cause, either to develop or comply with the work search plan.

(3) A claimant who is claiming extended benefits under s. 108.141, Stats., shall, in addition to complying with the requirements for extended benefits, comply with any requirements imposed by the department under subs. (1) and (2). A claimant who fails to comply with the requirements under this subsection shall be ineligible for benefits until the claimant has again worked within at least 4 subsequent weeks and earned wages equal to at least 4 times his or her extended weekly benefit rate.

History: Cr. Register, July, 1984, No. 343, eff. 8-1-84; emerg. r. (3) eff. 3-6-93; r. (3), Register, July, 1993, No. 451, eff. 8-1-93; cr. (3), Register, October, 1994, No. 466, eff. 11-1-94.

DWD 127.07 Employment workshops. (1) The department may require a claimant to participate in a public employment office workshop which offers instruction in improving the claimant's skills for finding and obtaining employment. The claimant shall be ineligible for benefits for any week for which the department determines that the claimant failed, without good cause, to participate in such a workshop.

(2) A claimant may not be disqualified from benefits under this section if:

(a) The claimant is required to pay a participation fee of any kind for the workshop; or

(b) The workshop is more than 5 days in duration.

History: Cr. Register, July, 1984, No. 343, eff. 8-1-84.

DWD 127.08 Further disqualifications; retroactivity.

(1) A claimant shall be ineligible for benefits in any week for which the claimant knowingly makes a false statement or conceals or misrepresents any information pertaining to his or her work search efforts.

(2) The department may not disqualify a claimant under ss. DWD 127.01, 127.04 and 127.05 (2), for any week for which a benefit check has been mailed prior to the date of an initial determination resolving an eligibility issue under the aforementioned sections. The department may disqualify a claimant under ss. DWD 127.05 (1), 127.06 and 127.07 and sub. (1) whether or not a benefit check has been mailed for a given week.

History: Cr. Register, July, 1984, No. 343, eff. 8-1-84.

DWD 127.09 Self-employment; bona fide search for work. (1) 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. The legislature has directed the department to define, by rule, the terms "self-employment" for purposes of administering s. 108.04 (1) (e), Stats. The purpose of this chapter is to implement this legislative directive.

Note: Section 108.04 (1) (e), Stats., was repealed by 2005 Wis. Act 86, eff. 1-1-06.

(2) DEFINITION. (a) For purposes of s. 108.04 (1) (e), 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.

Note: Section 108.04 (1) (e), Stats., was repealed by 2005 Wis. Act 86, eff. 1-1-06.

(b) A claimant is not self-employed within the meaning of 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.

(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. DWD 127.01, 127.04, 127.05, 127.06 and 127.07.

Note: Prior to enactment of 1991 Wis. Act 89, if a claimant earned income in a given week from 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 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.

History: Cr. (3), (1) and (2) renum. from ILHR 131.01 and 131.02 and am., Register, July, 1993, No. 451, eff. 8-1-93.