

## Chapter DWD 128

### ABILITY TO WORK AND AVAILABILITY FOR WORK

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**Note:** Chapter ILHR 128 was created by emergency rule effective 1-8-84. Chapter ILHR 128 was renumbered Chapter DWD 128 under s. 13.93 (2m) (b) 1., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1997, No. 498.

**DWD 128.001 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 128.01 Able and available for work. (1)** Under s. 108.04 (2), Stats., a claimant shall be eligible for unemployment benefits for any week of total unemployment only if the claimant is able to work and available for suitable work. A representative of the department may test the claimant's ability to work and availability for work through questioning of the claimant and other procedures at any time. The department may not disqualify a claimant under this section for any week for which a benefit check has been mailed prior to the date of an initial determination resolving an eligibility issue under this section, except as provided under sub. (3).

**(2)** A claimant is not considered to be able to work or available for work in any given week if:

(a) The claimant, without good cause, restricts his or her availability for work to less than 50% of the full-time opportunities for suitable work, including all such jobs whether vacant or filled, in the claimant's labor market area;

(b) The claimant's physical or psychological condition or personal circumstances over which the claimant has no control limit the claimant to less than 15% of the opportunities for suitable work, including all such jobs whether vacant or filled, in the claimant's labor market area; or

(c) The claimant, without good cause, fails to report for an interview scheduled by the public employment office relating to the claimant's eligibility under ch. 108, Stats.

**(3)** 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 ability to work or availability for work. The department may disqualify a claimant for benefits under this subsection whether or not a benefit check has been mailed for a given week.

**(4)** The department shall consider a claimant to be in compliance with the provisions of this chapter in any week when the claimant is summoned to serve as a prospective or an impaneled juror.

**(5)** The department may require a claimant who is partially unemployed to comply with the requirements of this chapter if there is some definite indication that the claimant is not genuinely interested in working full time, or if the claimant is incarcerated and is not permitted to look for work on the general labor market.

**Note:** Section DWD 128.01 (2) (a) applies to a claimant whose restrictions on availability for work are within his or her power to change or alter. School attendance is generally a controllable restriction and, therefore, "without good cause" unless the person is enrolled in an approved training program under s. 108.04 (16), Stats. The wage demand of a claimant is also considered a controllable restriction. A claimant obligated to care for minor children is expected to make arrangements which would permit the claimant to accept suitable work. Unwillingness or failure to make such arrangements are controllable restrictions and, normally, without good cause.

Section DWD 128.01 (2) (b) applies to a claimant whose physical condition or uncontrollable personal circumstances limit the opportunity for suitable work. A claimant may be severely limited in the type of work which he or she could perform

because of illness, disability, injury or age, but still be able to perform at least 15% of the suitable jobs in the claimant's labor market area.

**History:** Cr. Register, July, 1984, No. 343, eff. 8-1-84; am. (5), Register, September, 2000, No. 537, eff. 10-1-00; CR 01-039: am. (2) (b); Register September 2001 No. 549 eff. 10-1-01.

**DWD 128.02 Availability for work; temporary grace periods for claimants with uncontrollable restrictions.**

**(1)** The department shall consider a claimant to have satisfied the requirements of this chapter for certain designated grace periods enumerated under sub. (2) if:

(a) The claimant's physical or psychological condition, or personal circumstances over which the claimant has no control limit the claimant to less than 15%, but more than 0%, of the opportunities for suitable work, as specified under s. DWD 128.01 (2) (b);

(b) The claimant is able to and available for work under the same conditions which applied to the claimant's most recent period of employment; and

(c) The claimant's most recent separation from work was due to a layoff or a termination of the employment relationship unrelated to the limitation in par. (a).

**(2)** (a) If all of the wages paid in the 26-week period immediately preceding the week in which the claimant initiates the benefit claim were earned under substantially the same conditions as applied to his or her most recent employment, the department shall grant the claimant a continuing grace period beginning with the week after the week in which the claimant's layoff or termination occurred.

(b) If at least two-thirds of all of the wages paid in the 26-week period immediately preceding the week in which the claimant initiates the benefit claim were earned under substantially the same conditions as applied to his or her most recent employment, the department shall grant the claimant a grace period of 6 weeks beginning with the week after the week in which the claimant's layoff or termination occurred.

(c) If at least one-third but less than two-thirds of all of the wages paid in the 26-week period immediately preceding the week in which the claimant initiates the benefit claim were earned under substantially the same conditions as applied to his or her most recent employment, the department shall grant the claimant a grace period of 3 weeks beginning with the week after the week in which the claimant's layoff or termination occurred.

**(3)** This section is not applicable to an alien whose authorized work has ended or whose authorization to work has expired, whichever is earlier.

**History:** Cr. Register, July, 1984, No. 343, eff. 8-1-84; am. (2), Register, November, 1989, No. 407, eff. 12-1-89; am. (1) (a), (b) and (c), renum. (2) (a) to be (2) (b) and am. (2) (b), renum. (2) (b) to be (2) (c) and am. (2) (c), cr. (2) (a), Register, November, 1999, No. 527, eff. 12-1-99; CR 01-039: am. (1) (a), cr. (3), Register September 2001 No. 549 eff. 10-1-01.

**DWD 128.03 Eligibility review. (1)** A department deputy shall periodically review the records of all persons claiming unemployment benefits to determine whether such persons meet the continuing eligibility requirements of chs. DWD 126 to 128 so as to remain eligible for benefits. A claimant shall report to the public employment office when notified by the department for review of the claimant's continuing eligibility for benefits.

**(2)** (a) The eligibility review shall include:

1. An interview with the claimant conducted by a department deputy;
2. A review of the appropriateness of the claimant's registration or waiver of registration under ch. DWD 126;
3. A determination as to whether the claimant is able to work and available for work under ch. DWD 128;
4. An assessment of the claimant's work search efforts under ch. DWD 127; and
5. Determination that the claimant is making satisfactory

progress under s. 108.04 (16), Stats., if the claimant is participating in approved training.

(b) The eligibility review may include:

1. Identification of any employment assistance provided by the public employment office; and
2. Preparation of an employability plan as reasonably necessary to assist the claimant in his or her efforts to obtain work.

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