

Chapter DWD 129

BENEFIT CLAIMING PROCEDURES

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Note: Chapter ILHR 129 was created by emergency rule effective 1-8-84. Chapter ILHR 129 was renumbered Chapter DWD 129 under s. 13.93 (2m) (b) 1., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1998, No. 498.

DWD 129.001 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 129.01 Notice of unemployment. (1) INITIATING A CLAIM. A claimant is not eligible under s. 108.08, Stats., for benefits for any week of total or partial unemployment unless the claimant notifies the department by telephone, internet, or as otherwise prescribed by the department, during that week or within 7 days after the close of that week, of the claimant's intent to initiate the claim and the claimant complies with the department's procedures for initiating and continuing claims.

(2) CONTINUING A CLAIM BY FILING A WEEKLY CERTIFICATION. (a) A claimant is not eligible for benefits for any week of total or partial unemployment unless the claimant files a timely weekly certification with the department by telephone, internet, mail, or as otherwise prescribed by the department.

(b) The department shall consider a weekly certification to be filed when the certification is complete and submitted in compliance with the requirements of one of the following methods:

1. A claimant may continue a claim only by filing timely weekly certifications by telephone, internet, mail, or as otherwise prescribed by the department, no later than 14 days following the end of the week for which benefits are claimed. A weekly certification submitted by mail must be received by the department within 14 days following the end of the week for which benefits are claimed or within 14 days following the date the department mailed the weekly certification to the claimant, whichever occurs later. If a claimant submits a timely but incomplete weekly certification by mail, the department shall send the claimant a duplicate weekly certification that must be received by the department within 14 days following the date the department mailed the duplicate weekly certification to the claimant. If the last day for filing a mailed weekly certification falls on Saturday, Sunday, or any of the holidays enumerated under ss. 230.35 (4) (a) and 995.20, Stats., or any other day on which mail is not delivered by the United States postal service, a weekly certification must be received by the department on the next business day. If the claimant attempts to submit a weekly certification by telephone or the internet, the department shall notify the claimant for which weeks the claimant may file a weekly certification and at the end of the transaction whether the weekly certification has been accepted. The department shall consider a weekly certification to be filed when the certification is complete, timely submitted, and accepted by the department.

2. A claimant may not file a weekly certification for any week unless a timely weekly certification for the immediately preceding week was filed or a timely initial claim was filed for the week.

Note: Example 1:

Week 1 Weekly certification filed timely
Week 2 No weekly claim filed
Week 3 No weekly claim filed

Week 4 Weekly certification for week 2 can still be filed. However, a weekly certification for week 3 cannot be filed until a weekly certification for week 2 is filed. If the claimant wants to file a weekly certification for week 3, but not for week 2, an initial claim must be filed for week 3 by the close of week 4.

Example 2:

Week 1 Weekly certification filed timely
Week 2 No weekly claim filed
Week 3 No weekly claim filed
Week 4 No weekly claim filed

Week 5 Weekly certification for week 2 can no longer be filed because the 14-day period has expired. Weekly certification for week 3 cannot be filed because a weekly certification for the immediately preceding week has not been filed and a timely initial claim can no longer be filed for week 3. Weekly claim for week 4 can be filed if an initial claim is filed by the close of week 5.

(4) WAIVER; EXCEPTIONAL CIRCUMSTANCES. The department shall waive the requirements of this section if exceptional circumstances exist. Exceptional circumstances include all of the following:

(a) An error made by an employee of the department relating to the giving of notice by the claimant or a reasonable misunderstanding by the claimant based on information given to the claimant by the department.

(b) Action by an employer, in any manner, directly or indirectly, instructing, warning, or persuading the claimant not to file a benefit claim.

(c) The claimant did not comply because the claimant was not aware of the duty to notify the department, and the claimant's most recent employer failed to post and maintain the notice on claiming unemployment benefits that was supplied to the employer under s. DWD 120.01.

(d) The claimant performed services as a school year employee in other than an instructional, research, or principal administrative capacity and had reasonable assurance of performing services for the employer in a similar capacity in the 2nd academic year or term but was subsequently not offered the opportunity to perform such services.

(e) The claimant made an unsuccessful attempt to access the telephone initial claims system during a week when the system was inoperable or was unavailable for more than 40% of the time the system is scheduled to be staffed by claimstakers during that week. The times during which the system is inoperable or unavailable will be measured as follows:

1. Each day during the week will be divided into half-hour time periods, beginning with the time when the system is first scheduled to be staffed by claimstakers and ending with the time when the system is scheduled to no longer be staffed by claimstakers.

2. The system will be considered to be inoperable or unavailable for any such half-hour time period during which a busy signal occurs or during which the system is not operating.

(f) Other exceptional circumstances over which the claimant has no control.

History: Cr. Register, July, 1984, No. 343, eff. 8-1-84; emerg. am. (1), eff. 2-2-93; am. (1), Register, July, 1993, No. 451, eff. 8-1-93; correction in (3) (e) made under s. 13.93 (am) (b) 7., Stats., Register, July, 1993, No. 451; am. (1) and (2) (a), cr. (2) (a) 1. and 2., r. and recr. (2) (b), (3) (a) and (b), r. (2) (c), (3) (g) and (4), renum. (2) (d), (3) (intro.), (c) to (f) to be (2) (c), (4) (intro.) to (d) and am. (4) (intro.), (a), (c) and (d), Register, December, 1995, No. 480, eff. 1-1-96; cr. (4) (e), Register, November, 1999, No. 527, eff. 12-1-99; correction in (2) (b) 2. made under s. 13.93 (2m) (b) 7., Stats., Register, September, 2000, No. 537; am. (2) (a) (intro.), Register, September, 2000, No. 537, eff. 10-1-00; emerg. am. (1), eff. 4-14-02; CR 02-088:

am. (1) Register November 2002 No. 563, eff. 12-1-02; CR 06-073: am. (1), (4) (intro.), (a) (b), (c), (d) and (e), r. and recr. (2) (a), (b) and (c), and (3), r. (a) 1. and 2., cr. (4) (f), Register December 2006 No. 612, eff. 1-1-07; correction in (2) (b) 3. made under s. 13.93 (2m) (b) 7., Stats., Register June 2007 No. 618; **CR 10-018: am. (1) and (2) (a), r. and recr. (2) (b) 1. and 2., r. (2) (b) 3., 4., (c) and (3) Register September 2010 No. 657, eff. 10-1-10.**

DWD 129.02 Establishment of benefit year. (1) In order to establish a benefit year under s. 108.06 (2) (a), Stats., a claimant shall:

(a) Comply with the notification and filing requirements under s. DWD 129.01; and

(b) Have the minimum amount of wages in the claimant's base period as required under s. 108.04 (4) (a), Stats.

(2) A claimant establishing a second or subsequent benefit year shall, in addition to the requirements of sub. (1), comply with the earnings requirement of s. 108.04 (4) (c), Stats.

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; emerg. am. (1) (a), eff. 2-2-93; am. (1) (a), Register, July, 1993, No. 451, eff. 8-1-93; r. and recr. (1) (a), am. (1) (b), r. (2) and (3), cr. (2), Register, December, 1995, No. 480, eff. 1-1-96.

DWD 129.03 Backdating of benefit year; circumstances. Under s. 108.06 (2) (bm), Stats., a claimant's benefit year begins on the Sunday of the week in which the claimant meets the requirements to establish a benefit year under s. DWD 129.02, except that the department may, by rule, permit a claimant to begin a benefit year prior to that time. The department shall permit the backdating of a benefit year if an exceptional circumstance exists. Exceptional circumstances include, but are not limited to, those listed in s. DWD 129.01 (4).

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; renum. (1) to be 129.03 and am., r. (2), Register, December, 1995, No. 480, eff. 1-1-96; CR 06-073: am. Register December 2006 No. 612, eff. 1-1-07.

DWD 129.04 Department set aside of benefit year.

(1) **REQUEST TO SET ASIDE A BENEFIT YEAR.** Under s. 108.06 (2) (d), Stats., a claimant may request the department to set aside a benefit year.

(2) **GRANTING A REQUEST TO SET ASIDE A BENEFIT YEAR.** Under s. 108.06 (2) (d), Stats., the department shall grant the claimant's request and cancel the benefit year if the request is voluntary, benefits have not been paid to the claimant, and at the time the department acts upon the request for that benefit year the claimant's benefits eligibility is not suspended. If the claimant does not meet all of the requirements under s. 108.06 (2) (d), Stats., the department may set aside the benefit year if the conditions in both pars. (a) and (b) are met:

(a) The department has recovered, or has waived the recovery of, all benefits paid to the claimant for that benefit year or offsets this amount against benefits the claimant would otherwise be eli-

gible to receive at the time the request to set aside a benefit year is made.

(b) Any of the following exceptional circumstances apply to the claim:

1. The department terminates coverage of an employer previously subject to ch. 108, Stats., for whom the claimant performed services in the base period and the claimant could not have foreseen this termination of coverage.

2. The department makes an error relating to the establishment of the claimant's benefit year.

3. The wage data used by the department to establish the benefit year is erroneous.

4. The claimant established a benefit year in the two weeks immediately preceding the first full week of a new calendar quarter, but a benefit year established as of the first full week of the new calendar quarter would give the claimant a higher weekly benefit rate or a higher maximum benefit amount.

5. The claimant's first payment in the benefit year was made after an additional initial claim was filed.

6. The claimant is eligible to start a benefit year in another state.

7. The cancellation of wage credits under s. 108.04 (5), Stats., reduces the claimant's maximum benefit amount to less than 5 times the weekly benefit rate.

8. Other exceptional circumstances exist over which the claimant has no control that are related to establishing a benefit year.

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; am. (1) (intro.), (2) (a) (intro.), 2., 3. and (b) 1., r. (1) (a) to (c), cr. (2) (a) 4., Register, December, 1995, No. 480, eff. 1-1-96; CR 06-073: am. (1), r. and recr. (2), Register December 2006 No. 612, eff. 1-1-07.

DWD 129.05 Payment of benefits. (1) METHOD OF PAYMENT.

The department shall pay benefits by checks mailed to the claimant's address of record with the department, by electronic deposit to a claimant's designated bank account, or by debit card issued by the department or its designee, unless the benefits are applied by the department for overpayments, forfeitures, child support payments under s. 108.13, Stats., or other assignments permitted under state or federal law.

(2) **CHARGING OF PAYMENT.** The department shall charge each benefit payment against an account in the unemployment reserve fund or the administrative account and shall periodically send each employer a record of each payment charged against its account in the fund.

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; am. Register, December, 1995, No. 480, eff. 1-1-96; **CR 10-018: am. (1) Register September 2010 No. 657, eff. 10-1-10.**