

Clearinghouse Rule 99-163

Rules Certificate

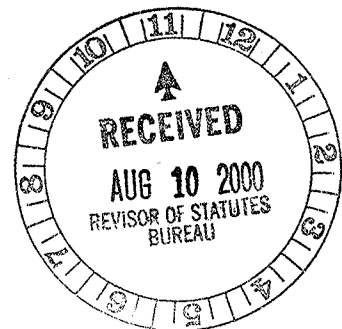
STATE OF WISCONSIN)
) SS
DEPARTMENT OF WORKFORCE DEVELOPMENT)

I, Linda Stewart, Secretary of the Department of Workforce Development, and custodian of the official records, certify that the annexed rules, relating to a limited waiver of the work search requirement, ability to work and availability for work, and various minor changes relating to unemployment insurance were duly approved and adopted by this department on August 10, 2000.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the of the Department of Workforce Development at 201 E. Washington Avenue in the city of Madison, this 10th day of August 2000.


Secretary or designee



10-1-00

99-163

Order Adopting Rules

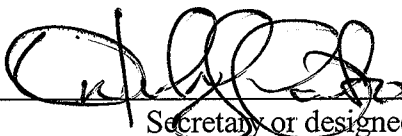
Pursuant to authority vested in the Department of Workforce Development by ss. 103.005, 108.04(2)(b), 108.14(2), and 227.11, Stats., the Department of Workforce Development amends, creates, renumbers, and repeals rules of Wisconsin Administrative Code chapters 100, 127, 128, 129, 132, 135, 140, and 149.

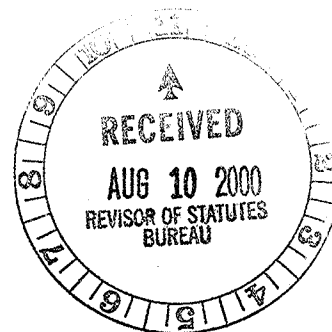
The attached rules shall take effect on October 1, 2000, pursuant to s. 227.22, Stats.

Adopted at Madison, Wisconsin this

Date: 8/10/00

Department of Workforce Development


Secretary or designee



**State of Wisconsin
Department of Workforce Development
Unemployment Insurance Division**



Limited waiver of work search requirement, ability to work and availability for work, and various minor changes relating to unemployment insurance

The Wisconsin Department of Workforce Development proposes an order to repeal DWD 100.02(34), 127.03(6)(a), 132.05(3)(b), 140.22, and 140.23; to renumber DWD 127.03(6)(a) and (b) and 132.05(3)(c); to amend DWD 100.02(14), (32), (43), (46), (50), (51), (66), and (67)(intro.), 101.01, 102.02(1), 102.03, 110.07(8), 111.06(1) and (2), 126.02(3), 126.03(2)(b) and (c), 127.03(6)(intro.), 128.01(5), 129.01(2)(a)(intro.), 132.05(1)(a), (1)(c) and (3)(c), 135.04(1), Ch. DWD 140 (title), 149.03(1)(intro.) and (2), 149.04(title), (2)(intro), and (2)(a); and to create DWD 100.02(16m) and 127.035, relating to a limited waiver of the work search requirement, ability to work and availability for work, and various minor changes relating to unemployment insurance.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Secs. 103.005(1), 108.04(2)(b), 108.14(2), 227.11(2), Stats.

Statutes interpreted: Sec. 108.04(2)(a)1, Stats.

Limited Waiver of the Work Search Requirement

Section 108.04(2), Stats., provides that a claimant for unemployment insurance benefits must search for work. The statute authorizes the Department of Workforce Development to promulgate rules waiving the work search requirement under conditions to be stated by the department. The existing DWD 127 allows the department to waive a claimant's work search requirement if 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 the claimant files a claim for unemployment insurance benefits.

The proposed rule change will extend the waiver to 18 weeks for employees of a primary employer in a small labor market who are laid off due to a disaster or a temporary closing of the employer's work site. The rule requires the department to determine that the usual work search activities will not be likely to result in a substantial number of employees finding alternative suitable work in their labor market because of their numbers and the nature of the labor market. In making this determination, the department must consider the overall job availability and unemployment rate in the local labor market. The waiver must be requested by the employer or an employee.

Without the extended waiver of the work search requirement, laid-off employees will be required to repeatedly contact other employers in the small labor market in order to satisfy the work search requirement. Employers may receive numerous applications from laid-off employees who fully intend to return to their former employer when recalled and are contacting other employers solely to fulfill their UI work search requirement. The department may expend limited resources in informing claimants of the work search requirement and in monitoring work searches that are not expected to find alternative suitable work. Other unemployed workers without the same assurance of recall by their employer may also be disadvantaged in their work search efforts.

Ability to Work and Availability for Work

The proposed rule adds language concerning the “able and available” requirements in DWD 128. Generally, partially-employed individuals are considered to have demonstrated their ability to work and availability for work by the fact that they are already working. A formal determination of whether such an individual is “able and available” is not done unless there is some indication that the person is not interested in or willing to work full-time. The rule change adds language that requires the “able and available” test to be applied to prisoners whose work hours are reduced enough that they might qualify for benefits. Although they might be interested in and willing to work full-time, these individuals may not be “able and available” for the general labor market. This restriction will not apply to prisoners with Huber privileges since they are allowed to search for work on the general labor market.

Various Minor Changes

Several changes in this rule package are minor and technical in nature, such as changing the phrase “unemployment compensation” to “unemployment insurance” to be consistent with statutory language, removing names of obsolete publications, and updating citations.

The hearing version of the proposed rule included an amendment to DWD 129.01(4) that provided additional examples of exceptional circumstances that would allow backdating a claim to a week prior to the filing of an initial claim. The department has determined that these additional examples are unnecessary and withdrawn these amendments. The withdrawal of these additional examples was approved by the Unemployment Insurance Advisory Council.

SECTION 1. DWD 100.02(14) is amended to read:

DWD 100.02(14) “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 under s. 108.02 (15) (f) to (k) are subject to a tax under the Federal Unemployment Tax Act and are not subject to a tax under any other unemployment ~~compensation~~ insurance law.

SECTION 2. DWD 100.02(16m) is created to read:

DWD 100.02(16m) “Disaster” means a fire, flood, or other physical occurrence beyond the employer’s control that is caused naturally or accidentally.

SECTION 3. DWD 100.02(32) is amended to read:

DWD 100.02(32) “Hearing office” means an office of the unemployment ~~compensation~~ insurance division of the department of ~~industry, labor and human relations~~ workforce development which is responsible for scheduling and conducting hearings arising under ch. 108, Stats.

SECTION 4. DWD 100.02(34) is repealed.

SECTION 5. DWD 100.02(43), (46), (50), (51), (66), and (67)(intro.) are amended to read:

DWD 100.02(43) “Payroll base” means the first \$10,500 of wages paid by an employer during a calendar year to an individual, including any wages paid for any work covered by the unemployment ~~compensation~~ insurance law of any other state, which is payroll under s. 108.02 (21), Stats.

DWD 100.02(46) “Profiling system” means a system established by the department to examine factors including economic conditions, industry characteristics, and claimant characteristics in order to promptly identify claimants who are: permanently laid off, unlikely to return to their previous industry or occupation, likely to exhaust their regular unemployment ~~compensation~~ insurance benefits, and likely to need reemployment services in order to make a successful transition to new employment.

DWD 100.02(50) “Representative of the department” means any person employed by the department of ~~industry, labor and human relations~~ workforce development who has job duties involving the taking, processing, or adjudication of benefit claims.

DWD 100.02(51) “Same business or operation” means operation under the same unemployment ~~compensation~~ insurance employer account, including any account transferred under s. 108.16 (8), Stats., with no intervening final determination of account termination under s. 108.02 (13) (i), Stats., provided, however, that ‘same business or operation’ shall not be deemed to extend beyond the date as of which the account would have been terminated under s. 108.02 (13) (i), Stats., and s. DWD 110.16 but for an unpaid liability, unless the account was reopened under s. DWD 110.17.

DWD 100.02(66) “Unemployment ~~compensation~~ insurance office” means an office of the unemployment ~~compensation~~ insurance division of the department of ~~industry, labor and human relations~~ workforce development which is responsible for the processing and adjudication of unemployment ~~compensation~~ insurance claims and includes any itinerant office used by the division.

DWD 100.02(67) “Unemployment ~~compensation~~ insurance record” means any material which contains, records or preserves written, drawn, printed, spoken, visual or electromagnetic information, regardless of physical form or characteristics:

SECTION 6. DWD 101.01 is amended to read:

DWD 101.01 Purpose. The definition of wages in s. 108.02(26), Stats., is patterned after the FUTA definition of wages found in 26 USC 3306(b). This chapter clarifies how the department shall apply the definition of wages in s. 108.02(26), Stats., to assess employer contributions to the unemployment ~~compensation~~ insurance reserve fund. This chapter also specifies changes to the definition of wages in s. 108.02(26), Stats., and provides interpretations which may be inconsistent with those applied to 26 USC 3306(b), under the authority granted in s. 108.015, Stats.

SECTION 7. DWD 102.02(1) is amended to read:

DWD 102.02(1) Under 108.18(2)(c), Stats., an employer engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects shall pay contributions for each of the first ~~2~~ 3 calendar years at the average rate for construction industry employers as determined by the department.

SECTION 8. DWD 102.03 is amended to read:

DWD 102.03 Payors of sickness or accident disability payments: contribution rates. A person not previously subject to the contribution requirements under ch. 108, Stats., which becomes an employer subject to these provisions because of sickness or accident disability payments under DWD 110.06, shall be subject to the initial contribution rate under 108.18, Stats., for each of the first ~~2~~ 3 calendar years.

SECTION 9. DWD 110.07(8) is amended to read:

DWD 110.07(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~~ workforce development.

SECTION 10. DWD 111.06(1) and (2) are amended to read:

DWD 111.06(1) Each employer shall notify the department of any corrections which are necessary on wage reports. An employer which desires to make a correction to a prior wage report should consult ~~either the departmental booklet, Employer's Guide to Wage Reporting, or the booklet, Employer's Guide to Magnetic Tape Reporting~~ Unemployment Insurance Handbook for Employers.

(2) Employers with corrections to reports shall mail corrections to the Department of Workforce Development, Unemployment ~~Compensation~~ Insurance Division, Attention: Wage Record Unit, P.O. Box 7962, Madison, Wisconsin 53707.

SECTION 11. DWD 126.02(3) is amended to read:

DWD 126.02(3) A claimant shall be considered registered for work if he or she is enrolled in or otherwise complying with department directions concerning other reemployment programs approved by the department for this purpose, or if the claimant is not complying but has justifiable cause for failure to participate under s. DWD 126.05. ~~Such programs include, but are not limited to, the job search assistance demonstration project.~~

SECTION 12. DWD 126.03(2)(b) and (c) are amended to read:

DWD 126.03(2)(b) Has been referred during the current benefit year for reemployment services ~~or to the job search demonstration project~~; and

(c) Has satisfactorily completed such services ~~or project participation~~.

SECTION 13. DWD 127.03(6)(intro.) is amended to read:

DWD 127.03(6)(intro) The claimant has been determined, pursuant to a profiling system established by the department, to be likely to exhaust regular unemployment ~~compensation~~ insurance benefits and to need reemployment services in order to make a successful transition to new employment, and

SECTION 14. DWD 127.03(6)(a) is repealed.

SECTION 15. DWD 127.03(6)(b) and (c) are renumbered as DWD 127.03(6)(a) and (b), respectively.

SECTION 16. DWD 127.035 is created to read:

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.

SECTION 17. DWD 128.01(5) is amended to read:

DWD 128.01(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.

SECTION 18. DWD 129.01(2)(a)(intro.) is amended to read:

DWD 129.01(2)(a) ~~A claimant~~ claimant is eligible for benefits for any week of total or partial unemployment only if the claimant files a weekly certification with the department in the manner prescribed by the department, within 14 days following the end of the week for which benefits are claimed. A claimant filing either the weekly certification by telephone or mail shall comply with the procedures in subd. 1. or 2.

SECTION 19. DWD 132.05(1)(a) and (1)(c) are amended to read:

DWD 132.05(1)(a) After an employe has been discharged by an employing unit for misconduct connected with his or her employment, he or she is not eligible to receive unemployment benefits under s. 108.04 (5), Stats. The Wisconsin supreme court has defined misconduct for unemployment ~~compensation~~ insurance purposes to mean *“conduct evincing such wilful or wanton disregard of an employer’s interest as is found in deliberate violations or disregard of standards of behavior which the employer has a right to expect of his [or her] employe, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer’s interests or of the employe’s duties and obligations to his [or her] employer.”* The intent of this section is to ensure that the statutory provision and the court decision are consistently interpreted and applied in cases involving alleged abuse of a patient in a health care facility.

DWD 132.05(1)(c) At any hearing involving this section, the health care facility shall prove by competent evidence that the alleged conduct for which the employe was discharged actually occurred. Section DWD ~~140.12~~ 140.16 regarding the admissibility of evidence applies in all hearings involving alleged abuse of a patient.

SECTION 20. DWD 132.05(3)(b) is repealed.

SECTION 21. DWD 132.05(3)(c) is renumbered DWD 132.05(3)(b) and as (3)(b) is amended to read:

DWD 132.05(3)(b) If a claimant was discharged for conduct which the health care facility alleges was abuse of a patient and that conduct is determined to be misconduct under this section, the claimant is not eligible to receive benefits until 7 weeks have elapsed since the end of the week in which the discharge occurs and the employe earns wages after the week in which the discharge occurs equal to at least 14 times the employe’s weekly benefit rate in employment or other work covered by the unemployment ~~compensation~~ insurance law of any state or the federal government. For purposes of requalification, the employe’s weekly benefit rate shall be that rate which would have been paid had the discharge not occurred. The wages paid to the employe by the health care facility shall be excluded from the employe’s base period wages for purposes of

benefit entitlement, as provided in s. 108.04 (5), Stats. ~~This paragraph applies if the employee's benefit year commences on or after April 2, 1989.~~

SECTION 22. DWD 135.04(1) is amended to read:

DWD 135.04(1) A claimant may request the department to waive the recovery of an overpayment which the department has assessed against the claimant. The claimant shall file the application for waiver on forms furnished by the department and may submit the application to a representative of the department at any time. The claimant may obtain an application for waiver by sending a request to: Department of Workforce Development, Unemployment ~~Compensation Insurance~~ Division, TRA Unit, P. O. Box 7965, Madison, Wisconsin, 53707.

SECTION 23. Ch. DWD 140 (title) is amended to read:

UNEMPLOYMENT ~~COMPENSATION~~ INSURANCE APPEALS

SECTION 24. DWD 140.22 and 140.23 are repealed.

SECTION 25. DWD 149.03(1)(intro.) and (2) are amended to read:

DWD 149.03(1) CLAIMANTS AND EMPLOYING UNITS. Except as otherwise provided under s. DWD ~~140.08~~ 140.09, the department shall make the following records available to the following persons upon request:

DWD 149.03(2) AGENTS AND ATTORNEYS. Except as provided under s. DWD ~~140.08~~ 140.09, the department may release an unemployment ~~compensation insurance~~ record to an attorney or agent of a claimant or employing unit under sub. (1), only if the attorney or agent furnishes a written statement from the claimant or employing unit authorizing release of the record or if the department verifies that this attorney or agent represents the claimant or employing unit.

SECTION 26. DWD 149.04 (title), (2)(intro), and (2)(a) are amended to read:

DWD 149.04 Mandatory disclosure of unemployment ~~compensation insurance~~ records and other information.

DWD 149.04(2) UNEMPLOYMENT ~~COMPENSATION~~ INSURANCE RECORDS; DISCLOSURE TO CERTAIN AGENCIES. The department shall disclose unemployment ~~compensation insurance~~ records to the following:

(a) Any government unit in its administration of a program of general relief or general assistance; ~~aid to families with dependent children;~~ Wisconsin works; medicaid; food stamps; assistance for the aged; aid for the blind; aid for the permanently and totally disabled; aid for the aged, blind or disabled; supplemental security income; federal old-age survivors and disability benefits; and child support, including the federal parent locator service.

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