

Clearinghouse Rule 20-031

**ORDER OF THE WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT**

The Wisconsin Department of Workforce Development adopts the following rule *to amend* DWD 80.25 (9) (c) A.2 and C. 2., 272.09 (1) (g) and (m) and (15) (c) 7., 272.13 (2), and 277.03 (2), relating to replacing derogatory or offensive terminology with current, inclusive terminology.

The statement of scope for this rule, SS 053-19, was approved by the Governor on May 30, 2019, published in register No. 762A2, on June 10, 2019, and approved by the Department of Workforce Development on June 21, 2019.

Analysis Prepared by the Department of Workforce Development

Statutes Interpreted: Not applicable.

Statutory Authority: Section 227.11 (2), Stats. and Executive Order # 15.

Explanation of Statutory Authority: Section 227.11 (2), Stats., grants the following rule-making authority to agencies:

(a) "Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute...."

The Governor issued Executive Order # 15 on March 12, 2019, which directed each state agency to review its administrative rules and replace any derogatory or offensive terminology with current, inclusive terminology, including replacing "handicapped" with "disabled," "mentally retarded" with "intellectually disabled," and "mental retardation" with "intellectual disability."

Related Statutes or Rules: There no other applicable statutes or rules.

Plain Language Analysis: The rule revises Department rules to refer to disability or individuals with disabilities, instead of handicap or handicapped individuals.

Summary of, and comparison with, existing or proposed federal statutes and regulations: The Americans with Disabilities Act of 1990 refers to individuals with disabilities, rather than to handicapped individuals. Pub. L. No. 101-336, 104 Stat. 327, codified at 42 USC 12101–12213. In 1990, the federal Education of Handicapped Children Act was renamed the Individuals with Disabilities Education Act. See Pub. L. No. 101-476, s. 901, 104 Stat. 1103, 1142, codified at 20 USC 1400–1445. In 2010, a federal law known as Rosa's Law revised various federal laws to

refer to intellectual disability instead of mental retardation. Pub. L. No. 111-256, 124 Stat. 2643, 2643, codified in various USC sections).

Comparison with rules in adjacent states: The Department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies: Executive Order # 15 requires agencies to review their administrative rules and replace any derogatory or offensive terminology with current inclusive terminology. The Department conducted that review and proposes this rule in order to replace derogatory or offensive terminology. No other data or analysis was needed.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis: Because this rule does not have an effect on small businesses, as defined in s. 227.114 (1), Stats., no analysis was necessary.

Fiscal Estimate and Economic Impact Analysis: See attached.

Effect on small business: This rule does not have an effect on small businesses, as defined in s. 227.114 (1), Stats.

Agency contact person:

Questions related to this rule may be directed to:
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Place where comments are to be submitted and deadline for submission:

Mark Kunkel, Rules and Records Coordinator
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E-Mail: DWDAdminRules@dwd.wisconsin.gov

Comments may be submitted no later than September 9, 2020.

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- 1 **SECTION 1.** DWD 80.25 (9) (c) A. 2. is amended to read:
 - 2 **DWD 80.25 (9)** (c) A. 2. Calculation of hearing ~~handicap~~ disability:
 - 3 Smaller number (better ear)
 - 4 8% x 5 = 40

1 Larger number (poorer ear)

2 $40\% \times 1 = 40$

3 Total $80 \div 6 = 13.33\%$ loss

4 Therefore, a person with the hearing threshold levels shown in this audiogram would
5 have a 13.33% hearing ~~handicap~~ disability.

6 **SECTION 2.** DWD 80.25 (9) (c) C. 2. is amended to read:

7 **DWD 80.25 (9) (c) C. 2.** Hearing ~~handicap~~ disability:

8 Smaller number (better ear)

9 $88\% \times 5 = 440$

10 Larger number (poorer ear)

11 $100\% \times 1 = 100\%$

12 Total $540 \times 6 = 90\%$ loss

13 Therefore, the hearing ~~handicap~~ disability is 90%.

14 **SECTION 3.** DWD 272.09 (1) (g) and (m) are amended to read:

15 **DWD 272.09 (1) (g)** "Sheltered workshop" means a rehabilitation facility which is a
16 charitable organization or institution conducted not for profit, but for the purpose of carrying out
17 a recognized program of rehabilitation for ~~handicapped~~ workers with disabilities providing such
18 individuals with remunerative employment or other occupational rehabilitating activity of an
19 educational or therapeutic nature.

20 (m) "Work activity center" means a rehabilitation facility, a workshop or a physically
21 separated department of a workshop having an identifiable program, separate supervision and
22 records, planned and designed exclusively to provide therapeutic activities for ~~handicapped~~

1 workers with disabilities whose physical or mental impairment is so severe as to make their
2 productive capacity inconsequential.

3 **SECTION 4.** DWD 272.09 (15) (c) 7. is amended to read:

4 **DWD 272.09 (15) (c) 7.** The department may set a rate of less than 75% of the rates in s.
5 DWD 272.03 for ~~handicapped~~ student learners with disabilities if justified by extraordinary
6 circumstances. The rates granted shall be commensurate with the student's ability.

7 **SECTION 5.** DWD 272.13 (2) is amended to read:

8 **DWD 272.13 (2)** LS-37, Application for Subminimum Wage License. This particular
9 form is used for both ~~handicapped~~ workers with disabilities and student learners. WH-226 is the
10 application for a sheltered workshop to employ ~~handicapped~~ workers with disabilities at a
11 subminimum wage. WH-227 is a supplement data sheet for sheltered workshop certificate. WH-
12 247 is an application for a certificate for a training or evaluation program in a sheltered
13 workshop. WH-249 is an application for a special individual rate in a sheltered workshop.

14 **SECTION 6.** DWD 277.03 (2) is amended to read:

15 **DWD 277.03 (2)** "Premises" as used in s. 105.13, Stats., includes components of the
16 following to be considered as fit for the use by private employment agents; such as, location,
17 size, neighborhood, public ~~and handicap~~ access, access for individuals with disabilities, public
18 restroom facilities, compliance with local zoning and building codes, occupancy permit,
19 principal place of business and the types or services provided at the licensed facility.

20 **SECTION 7. EFFECTIVE DATE.** This rule shall take effect on the first day of the month
21 following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2)
22 (intro.), Stats.

Dated this _____ day of _____, 2020.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

By: _____

Caleb Frostman, Secretary