STATE OF WISCONSIN
DWD
Department of Workforce Development

DEPARTMENT OF WORKFORCE DEVELOPMENT

RAY ALLEN, Secretary

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2013-2014 TEXT of

WISCONSIN'S
UNEMPLOYMENT INSURANCE LAW

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Wisconsin's Unemployment Insurance Law, passed in January 1932, is now Chapter 108 of the statutes.

Contributions have been paid by covered employers since July 1934. Unemployment benefits have been paid to eligible workers since August 1936.

2013−14 Wisconsin Statutes updated through 2015 Wis. Act 392 and all Supreme Court Orders entered before April 21, 2016. Published and certified under s. 35.18. Changes effective after April 21, 2016 are designated by NOTES. (Published 4−29−16)

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Plain Language Summary of Recent Changes to Wisconsin Unemployment Insurance Law

Governor Walker signed five bills into law during the 2015-2017 biennium that relate to unemployment insurance: 2015 Wis. Act 55, the 2015-2017 budget; 2015 Wis. Act 86, an agreed-upon bill of the Unemployment Insurance Advisory Council regarding certain federal requirements; 2015 Wis. Act 203, regarding franchisor liability for unemployment insurance contributions; 2015 Wis. Act 258, amending the real estate agent exclusion; and 2015 Wis. Act 334, an agreed-upon bill of the Unemployment Insurance Advisory Council with eighteen law changes. Amended administrative rules regarding work search and work registration waivers also became effective in 2015.

Benefit Changes

Drug Testing and Treatment

2015 Wis. Act 55 created Wis. Stat. § 108.04(8)(b) and 108.133, which require the department, by administrative rule, to create a voluntary program for employers to report the results of a failed or refused pre-employment drug test to the department. A claimant's failed or refused pre-employment drug test is presumed to be a failure to accept suitable work and the department, by rule, must determine a period of ineligibility or requalification requirement, or both, for a claimant who fails or refuses a test. A claimant may overcome the presumption by proving certain facts to the department, as will be determined by administrative rule. A claimant who fails a pre-employment drug test without evidence of a valid prescription for the drug may remain eligible for unemployment insurance benefits if the claimant enrolls in and complies with a drug treatment program and completes a job skills assessment.

Under 2015 Wis. Act 55, the department must also, by administrative rule, create a program for testing certain unemployment insurance benefit applicants. The department will determine whether an applicant's only suitable work is in an occupation that regularly conducts drug testing. If an applicant's only suitable work is in an occupation that regularly conducts drug testing, the department will screen the applicant in order to determine whether there is a reasonable suspicion that the applicant is using controlled substances. If the screening demonstrates that the applicant is using controlled substances, the applicant must take a drug test. A failed or refused drug test under Wis. Stat. § 108.133 will disqualify the claimant from receiving benefits and the department, by rule, must determine a period of ineligibility or requalification requirement, or both, for a claimant who fails or refuses a test. A claimant who fails a drug test under Wis. Stat. § 108.133 without evidence of a valid prescription for the drug may remain eligible for unemployment insurance benefits if the claimant enrolls in and complies with a drug treatment program and completes a job skills assessment.

The department, by administrative rule, will determine the requirements of the drug treatment program and the job skills assessment.

The **effective date** for Wis. Stat. §§ 108.04(8)(b) and 108.133 is the date on which the administrative rules regarding pre-employment drug testing, occupational drug testing, and drug treatment take effect.

Concealment Penalty

2011 Wis. Act 236 created a civil penalty in Wis. Stat. § 108.04(11)(bh) of 15% of the amount of benefits obtained by claimant fraud. 2015 Wis. Act 55 amended Wis. Stat. § 108.04(11)(bh) to increase the civil penalty to 40% of a fraudulent overpayment. The amount of the civil penalty that represents 15% of the overpayment will continue to be deposited into the

Trust Fund and the amount of the penalty that represents 25% of the overpayment will be deposited into the Unemployment Program Integrity Fund.

The **effective date** for the increased civil penalty in Wis. Stat. § 108.04(11)(bh) is October 4, 2015 and the penalty first applies to overpayments established on or after that date.

Concealment Definition

2007 Wis. Act 59 defined "conceal" to mean "to intentionally mislead or defraud the department by withholding or hiding information or making a false statement or misrepresentation." 2015 Wis. Act 334 amends the definition of "conceal" as follows: "to intentionally mislead the department by withholding or hiding information or making a false statement or misrepresentation." 2015 Wis. Act 334 creates a duty of care for claimants to "provide an accurate and complete response to each inquiry made by the department in connection with his or her receipt of benefits" and provides a list of factors for the department to consider when making a concealment determination. Finally, 2015 Wis. Act 334 clarifies that the department need not prove that a claimant knew the effect of his or her false answers on their unemployment insurance benefit eligibility in order to find concealment.

The **effective date** for the amended definition of "conceal" in Wis. Stat. § 108.04(11) is April 3, 2016 and the amended definition first applies to determinations issued on or after that date.

Suitable Work

2015 Wis. Act 55 created Wis. Stat. § 108.14(27), which directs the department, by administrative rule, to define "suitable work" and to specify levels of suitable work based on the number of weeks that the claimant is unemployed. But 2015 Wis. Act 334 repealed this provision and creates a statutory definition of "suitable work" in Wis. Stat. §§ 108.04(8)(d) and

(dm). During the six-week canvassing period, "suitable work" means work that is not at a lower grade of skill than one of the claimant's most recent jobs and that pays at least 75% of what the claimant recently earned at one of the claimant's most recent jobs. This is a 5% reduction in wages from previous department policy. After the canvassing period, the statutory definition of "suitable work" is "any work that the employee is capable of performing, regardless of whether the employee has any relevant experience or training, that pays wages that are above the lowest quartile of wages for similar work in the labor market area in which the work is located, as determined by the department." This codifies previous department policy.

2015 Wis. Act 334 provides that claimants have "good cause" for refusing to accept suitable work if the refusal is related to the claimant's personal safety, sincerely held religious beliefs, an unreasonable commuting distance, or another compelling reason that would have made accepting the offer unreasonable.

The **effective date** for the definitions of "suitable work" and "good cause" is May 1, 2016.

Social Security Disability Insurance Disqualification

2013 Wis. Act 36 created a disqualification for unemployment insurance benefit claimants who concurrently receive Social Security Disability payments in Wis. Stat. § 108.04(12)(f). 2015 Wis. Act 334 clarifies that an unemployment insurance claimant who receives a monthly SSDI payment is disqualified from receiving unemployment insurance benefits for each week of that month.

The **effective date** for the amendment to the SSDI disqualification is retroactive to January 5, 2014.

Worker's Compensation Disqualification

Current law, Wis. Stat. § 108.04(12)(e), provides that an individual who receives a temporary total disability worker's compensation payment for any week is disqualified from receiving unemployment insurance benefits for the same week. Current law also provides that worker's compensation payments for temporary total disability or temporary partial disability that are paid for part of a week are treated as wages for the purposes of calculating a claimant's benefit payment. 2015 Wis. Act 334 adds permanent total disability worker's compensation payments as a type of disqualifying payment.

The **effective date** for the amendment to the worker's compensation disqualification is May 1, 2016.

Real Estate Agent Exclusion

Prior law, Wis. Stat. § 108.02(15)(k)7., excluded from the definition of "employment" services performed by an individual as a real estate agent if the services are "performed for remuneration solely by way of commission." 2015 Wis. Act 258 amends the real estate agent exclusion to more closely match the federal real estate agent exclusion. The amended exclusion excludes the services of a real estate "licensee" if 75% or more of the worker's remuneration is directly related to sales or other output, including the performance of services, rather than to the number of hours worked. Additionally, in order to qualify for the amended exclusion, the individual must perform the services under a written contract that provides that the individual will not be treated as an employee with respect to the services for federal tax purposes.

The **effective date** for the amendment to the real estate exclusion is October 1, 2016.

Work Share Benefit Formula

2013 Wis. Act 11 created the work share law, Wis. Stat. § 108.062, which is also known as short-time compensation. Employers with work share programs reduce their employees' hours but employees retain their retirement and health insurance benefits and receive unemployment insurance benefits. Under the old law, employees in a work share program were eligible for unemployment benefits in the amount of the proportionate reduction in hours worked multiplied by the employee's weekly benefit rate or the amount of benefits calculated under the partial wage formula, whichever is greater.

2015 Wis. Act 86 repealed Wis. Stat. § 108.062(7), so employees in a work share program are only eligible for unemployment benefits under the work share benefit formula, not the partial wage formula.

The **effective date** for the amendment to the work share law is December 27, 2015, for work share plans approved on or after that date.

Work Search and Work Registration (Administrative Rule Change)

From 2004 until June 14, 2015, the department, by administrative rule, waived a claimant's work search requirement if certain circumstances applied. Before June 14, 2015, if the claimant was laid off but there was a "reasonable expectation of reemployment of the claimant by that employer," the work search requirement was waived under Wis. Admin. Code § DWD 127.02(2).

As of June 14, 2015, Wisconsin's administrative rule provides for a work search waiver if the claimant "is currently laid off from employment with an employer but there is a reasonable expectation that the claimant will be returning to employment within a period of 8 weeks, which

may be extended an additional 4 weeks but may not exceed a total of 12 weeks." The rule change also provides an equivalent waiver for work registration.

Tax Changes

Administrative and Criminal Penalties for Intentional Misclassification

2015 Wis. Act 334 creates a **new administrative penalty** in Wis. Stat. § 108.221(1) for construction employers who knowingly and intentionally misclassify workers as independent contractors. The penalty is $500 per employee intentionally misclassified with a maximum penalty of $7,500 per employer per incident. The penalty proceeds will be deposited into the Unemployment Program Integrity Fund.

The **effective date** for the worker misclassification administrative penalty is October 2, 2016, for violations committed on or after that date.

Current law, Wis. Stat. § 108.24(2m), provides for a criminal fine of $25,000 for construction employers who willfully misclassify workers. 2015 Wis. Act 334 amends that law and provides for a criminal fine against construction employers that knowingly and intentionally provide false information in order to misclassify workers after being assessed a civil misclassification penalty under Wis. Stat. § 108.221(1). Under the new law, the department must assess the civil penalty before the employer can be charged for the criminal fine. The criminal fine is $1,000 per employee misclassified with a maximum fine of $25,000 per employer per incident.

The **effective date** for the amended **worker misclassification criminal fine** is October 2, 2016, for violations committed on or after that date.

Administrative Penalty for Coercion

2015 Wis. Act 334 creates a new administrative penalty in Wis. Stat. § 108.221(2) for construction employers who coerce individuals to adopt independent contractor status. The penalty is $1,000 per employee coerced with a maximum penalty of $10,000 per employer per year. The penalty proceeds will be deposited into the program integrity account.

The **effective date** for the coercion penalty is October 2, 2016, for violations committed on that date.

Recovery of Tax Debts under the Treasury Offset Program

2009 Wis. Act 287 created Wis. Stat. § 108.22(8)(b)1.d., which permits the department to recover unemployment insurance overpayment debts that resulted from fraud by intercepting claimants' federal income tax refunds. 2015 Wis. Act 86 creates Wis. Stat. § 108.22(1r), which permits the department to intercept federal income tax refunds in order to recover tax debts from employers and personally liable individuals.

The **effective date** for the statute that permits intercepting federal income tax refunds in order to recover tax debts is November 15, 2015.

Personal Liability Assessments for LLP Partners

Under current law, Wis. Stat. § 108.22(9), permits the department to hold officers, members or managers with at least 20% ownership interest of a corporation or LLC personally liable for unpaid UI contributions. 2015 Wis. Act 334 adds partners and other responsible persons to the list of those who may be held personally liable if they have at least a 20% ownership interest in the employer.

The **effective date** for the amendment to the personal liability law is April 3, 2016, for determinations issued on or after that date.

Reimbursable Employer ID Theft Charging

Under current law, reimbursable employer accounts (public employers, nonprofits and tribes) are charged for benefits erroneously paid due to identity theft fraud unless the department recovers the overpayments from the identity thief. For contribution employers, identity theft charges are credited to the employer's account and the charges are transferred to the balancing account. 2015 Wis. Act 334 creates Wis. Stat. § 108.155, which sets aside $2 million in the balancing account for accounting purposes in order to credit reimbursable employer charges due to identity theft. Each year, the department will determine the amount of interest accrued on the funds set aside and the total charges for identity theft against reimbursable employer accounts. When there is only $100,000 remaining, all reimbursable employers will be assessed for identity theft charges. The department will report to the Unemployment Insurance Advisory Council annually on the set aside amount remaining.

The **effective date** for the reimbursable employer identity theft charging law is October 2, 2016.

Program Integrity Assessment

The department previously assessed contribution employers a 0.01% administrative assessment in order to fund information technology modernization projects. That assessment resulted in no additional tax because there was a corresponding reduction in employers' solvency tax. 2015 Wis. Act 334 creates a new program integrity assessment under Wis. Stat. § 108.19(1f) that assesses contribution employers a 0.01% assessment with a corresponding reduction in the solvency tax. The proceeds of this assessment will be deposited into the Unemployment Program Integrity Fund. The new law requires the department's Secretary to

consider the balance in the trust fund and to consult with the Unemployment Insurance Advisory Council before the department may levy the assessment.

The **effective date** for the program integrity assessment is April 3, 2016.

Franchisor Exclusion

Current law, Wis. Stat. § 108.065(1e), provides the framework for determining which employing unit is the employer of an employee if more than one employing unit has an employment relationship with the employee. 2015 Wis. Act 203 adds a new exclusion for franchisors. First, the department applies the current law for determination of employer. Second, if the department determines that a franchisor is the employer of a franchisee or the franchisee's employees, the department applies the new Wis. Stat. § 108.065(4).

New Wis. Stat. § 108.065(4) provides that a franchisor is not an employer of a franchisee or a franchisee's employees unless the franchisor agrees in writing to be the employer or the franchisor "exercised a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand." If, after applying subsection (4), the department determines that the franchisor is not the employer, the franchisee is the employer of the employee.

The **effective date** for the franchisor exclusion is March 3, 2016, for work performed on or after that date.

Technical Changes

Appeals Modernization

2015 Wis. Act 334 allows the department to deliver hearing notices and decisions by electronic means. It also permits an appeal tribunal to issue a decision regarding a party's failure

to appear at a hearing based on the parties' written submissions instead of holding a formal hearing on that issue.

The **effective date** for the appeals modernization provisions in Wis. Stat. § 108.09 is April 3, 2016.

Judicial Review

Currently, the statute that provides the procedures for appeal of LIRC decisions in unemployment insurance cases to circuit court is contained in Wis. Stat. § 102.23, which is in the worker's compensation law. 2015 Wis. Act 334 amends Wis. Stat. § 108.09(7) to incorporate the judicial review process for unemployment insurance cases into the unemployment insurance law. 2015 Wis. Act 334 also modifies certain appellate procedures, including: the department is not required to exhaust its administrative remedies before filing an action for judicial review, that the department is a party to judicial review actions of benefit issues, and LIRC must transmit the appeal record to circuit court within 60 days. Also, the action must be filed in the county where the plaintiff resides. If the department is the plaintiff, the action should be filed in the county where a defendant that is not LIRC resides.

The **effective date** for the judicial review provisions is August 1, 2016, for circuit court actions filed on or after that date.

Able and Available Decisions

Currently, the department issues one determination regarding a claimant's job separation, availability for work and ability to work. 2015 Wis. Act 334 amends certain statutes so that the department will issue two separate determinations: one regarding the separation and one regarding the claimant's availability for work and the ability to work.

The **effective date** for the able and available amendments is April 3, 2016, for determinations issued on or after that date.

Definition of "Employer" Regarding Fiscal Agents

2015 Wis. Act 55 created a provision, Wis. Stat. § 46.272(7)(e), that permits fiscal agents to act on behalf of children who receive long-term community support services. This new law is similar to existing laws related to fiscal agents acting on behalf of elderly individuals who receive long-term community support services. Under existing law, Wis. Stat. § 108.02(13)(k), the definition of "employer" in the unemployment insurance law excludes fiscal agents for certain individuals who receive long-term support services. 2015 Wis. Act 334 amends the definition of "employer" to also exclude fiscal agents acting on behalf of children receiving long-term support services.

The **effective date** for the amendment to the definition of "employer" is April 3, 2016.

Transfer of SAFI Funds

Under current law, Wis. Stat. § 108.19(1m), employers paid special assessments for interest ("SAFIs") in order to pay the interest on the money borrowed from the federal government for the Trust Fund during the recession. 2015 Wis. Act 334 permits the department to transfer SAFI funds that exist after the repayment of the interest on the federal loans to the balancing account, the Unemployment Program Integrity Fund or both.

The **effective date** for the law permitting the transfer of SAFI funds is April 3, 2016.

Repeal of Unemployment Program Integrity Fund Sunset

Under current law, the Unemployment Program Integrity Fund is scheduled to sunset (expire) on January 1, 2034. 2015 Wis. Act 334 provides that the sunset of the program integrity

fund will be repealed. This is necessary due to the new assessments and penalties that will be deposited into the Unemployment Program Integrity Fund.

The **effective date** for the repeal of the Unemployment Program Integrity Fund sunset is April 3, 2016.

Elimination of Statutory Benefit Tables

Current law, Wis. Stat. § 108.05(1)(r), provides a formula for calculating the amount of weekly benefits to which a benefit claimant is entitled. The statutory chart following paragraph (r) provides that a claimant's minimum weekly benefit rate is $54 and the maximum weekly benefit rate is $370. 2015 Wis. Act 334 amends the law to provide that the weekly benefit rate will be calculated by a formula in the statute and that the charts will be deleted from the statutes. This amendment does not change claimants' weekly benefit rates. The tables will continue to be published on the department's website.

The **effective date** for the elimination of the benefit tables is April 3, 2016.

Combined Wage Claims

A combined wage claim exists if a claimant has base period wages in more than one state. Pursuant to federal requirements, 2015 Wis. Act 86 creates Wis. Stat. § 108.04(13)(g), which permits the department to issue determinations to an out-of-state employer if that employer is at fault for the erroneous payment of benefits under a combined wage claim.

The **effective date** for the combined wage claim law change is November 15, 2015.

CHAPTER 108

UNEMPLOYMENT INSURANCE AND RESERVES

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Cross−reference: See definitions in s. 103.001.
Cross−reference: See also ch. DWD 100 to ch. DWD 150, Wis. adm. code.

108.01 Public policy declaration. Without intending that this section shall supersede, alter or modify the specific provisions hereinafter contained in this chapter, the public policy of this state is declared as follows:

(1) Unemployment in Wisconsin is recognized as an urgent public problem, gravely affecting the health, morals and welfare of the people of this state. The burdens resulting from irregular employment and reduced annual earnings fall directly on the unemployed worker and his or her family. The decreased and irregular purchasing power of wage earners in turn vitally affects the livelihood of farmers, merchants and manufacturers, results in a decreased demand for their products, and thus tends partially to paralyze the economic life of the entire state. In good times and in bad times unemployment is a heavy social cost, directly affecting many thousands of wage earners. Each employing unit in Wisconsin should pay at least a part of this social cost, connected with its own irregular operations, by financing benefits for its own unemployed workers. Each employer's contribution rate should vary in accordance with its own unemployment costs, as shown by experience under this chapter. Whether or not a given employing unit can provide steadier work and wages for its own employees, it can reasonably be required to build up a limited reserve for unemployment, out of which benefits shall be paid to its eligible unemployed workers, as a matter of right, based on their respective wages and lengths of service.

(2) The economic burdens resulting from unemployment should not only be shared more fairly, but should also be decreased and prevented as far as possible. A sound system of unemployment reserves, contributions and benefits should induce and reward steady operations by each employer, since the employer is in a better position than any other agency to share in and to reduce the social costs of its own irregular employment. Employers and employees throughout the state should cooperate, in advisory committees under government supervision, to promote and encourage the steadiest possible employment. A more adequate system of free public employment offices should be provided, at the expense of employers, to place workers more efficiently and to shorten the periods between jobs. Education and retraining of workers during their unemployment should be encouraged. Governmental construction providing emergency relief through work and wages should be stimulated.

(3) A gradual and constructive solution of the unemployment problem along these lines has become an imperative public need.

History: 1989 a. 77; 1997 a. 39.

Wisconsin courts should not look to other jurisdictions, federal or state, in interpreting this chapter. National Labor Relations Board law does not constitute persuasive authority within Wisconsin unemployment law. Bernhardt v. LIRC, 207 Wis. 2d 292, 558 N.W.2d 874 (Ct. App. 1996), 95−3549.

Effects of unemployment compensation proceedings on related labor litigation. Mazurak, 64 MLR 133 (1980).

108.015 Construction. Unless the department otherwise provides by rule, s. 108.02 (26) shall be interpreted consistently with 26 USC 3306 (b).

History: 1991 a. 89.
Cross−reference: See also ch. DWD 101, Wis. adm. code.

108.02 Definitions. As used in this chapter:

(1) ADMINISTRATIVE ACCOUNT. "Administrative account" means the account established in s. 108.20.

(2) AGRICULTURAL LABOR. "Agricultural labor" means service performed:

(a) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, and fur−bearing animals and wildlife.

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in s. 15 (g) of the federal agricultural marketing act, as amended (46 Stat. 1550, s. 3; 12

USC 1141j) or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(d) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one−half of the commodity with respect to which such service is performed.

(dm) In the employ of a group of operators of farms, or a cooperative organization or unincorporated cooperative association of which operators of farms are members, in the performance of service described in par. (d), but only if such operators produced more than one−half of the commodity with respect to which such service is performed.

(dn) The provisions of pars. (d) and (dm) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(e) As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur−bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(3) ALCOHOL BEVERAGES. "Alcohol beverages" has the meaning given in s. 125.02 (1).

(4) BASE PERIOD. "Base period" means the period that is used to compute an employee's benefit rights under s. 108.06 consisting of:

(a) The first 4 of the 5 most recently completed quarters preceding the employee's benefit year; or

(b) If an employee does not qualify to receive any benefits using the period described in par. (a), the period consisting of the 4 most recently completed quarters preceding the employee's benefit year.

(4m) BASE PERIOD WAGES. "Base period wages" means all of the following:

(a) All earnings for wage−earning service that are paid to an employee during his or her base period as a result of employment for an employer except any payment made to or on behalf of an employee or his or her beneficiary under a cafeteria plan within the meaning of 26 USC 125, if the payment would not be treated as wages without regard to that plan and if 26 USC 125 would not treat the payment as constructively received.

(b) All sick pay that is paid directly by an employer to an employee at the employee's usual rate of pay during his or her base period as a result of employment for an employer.

(c) All holiday, vacation, and termination pay that is paid to an employee during his or her base period as a result of employment for an employer.

(d) For an employee who, as a result of employment for an employer, receives temporary total disability or temporary partial disability payments under ch. 102 or under any federal law which provides for payments on account of a work−related injury or illness analogous to those provided under ch. 102, all payments that the employee would have been paid during his or her base period as a result of employment for an employer, but not exceeding the amount that, when combined with other wages, the employee would have earned but for the injury or illness.

(e) Back pay that an employee would have been paid during his or her base period as a result of employment for an employer, if the payment of the back pay is made no later than the end of the 104−week period beginning with the earliest week to which the back pay applies.

(f) All wages that an employer was legally obligated to pay in an employee's base period but failed to pay, or was prohibited from paying as a result of an insolvency proceeding under ch. 128 or as a result of a bankruptcy proceeding under 11 USC 101 et seq.

(5) BENEFIT YEAR. "Benefit year" means the 52−week period beginning with a valid new claim week for which an employee's benefit rights are computed under s. 108.06, except that the "benefit year" of an employee who files consecutive claims shall be extended to 53 weeks whenever necessary to avoid utilizing the same quarter as a part of the base period for 2 successive benefit years.

(6) BENEFITS. "Benefits" means the money allowance payable to an employee as compensation for the employee's wage losses due to unemployment as provided in this chapter.

(6m) CHILD. "Child" means a natural child, adopted child, or stepchild.

(7) COMMISSION. "Commission" means the labor and industry review commission.

(8) COMPUTATION DATE. "Computation date" means that date as of the close of which the department computes reserve percentages and determines contribution rates for the next calendar year. The computation date shall be June 30, starting in 1963.

(9) CONTROLLED SUBSTANCE. "Controlled substance" has the meaning given in s. 961.01 (4).

(9m) CONTROLLED SUBSTANCE ANALOG. "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(10) DEPARTMENT. "Department" means the department of workforce development.

(10e) DEPARTMENTAL ERROR. (am) "Departmental error" means an error made by the department in computing or paying benefits which results exclusively from:

1. A mathematical mistake, miscalculation, misapplication or misinterpretation of the law or mistake of evidentiary fact, whether by commission or omission; or

2. Misinformation provided to a claimant by the department, on which the claimant relied.

(bm) "Departmental error" does not include an error made by the department in computing, paying, or crediting benefits to any individual, whether or not a claimant, or in crediting contributions or reimbursements to one or more employers that results from any of the following:

1. A computer malfunction or programming error.

2. An error in transmitting data to or from a financial institution.

3. A typographical or keying error.

4. A bookkeeping or other payment processing error.

5. An action by the department resulting from a false statement or representation by an individual, including a statement or representation relating to the individual's identity.

6. An action by the department resulting from an unauthorized manipulation of an electronic system from within or outside the department.

(10m) EDUCATIONAL SERVICE AGENCY. "Educational service agency" means a governmental entity or Indian tribal unit which is established and operated exclusively for the purpose of providing services to one or more educational institutions.

(11) ELIGIBILITY. An employee shall be deemed "eligible" for benefits for any given week of the employee's unemployment unless the employee is disqualified by a specific provision of this chapter from receiving benefits for such week of unemployment, and shall be deemed "ineligible" for any week to which such a disqualification applies.

(12) EMPLOYEE. (a) "Employee" means any individual who is or has been performing services for pay for an employing unit, whether or not the individual is paid directly by the employing unit, except as provided in par. (bm), (c), (d), (dm) or (dn).

(bm) Paragraph (a) does not apply to an individual performing services for an employing unit other than a government unit or nonprofit organization in a capacity other than as a logger or trucker, if the employing unit satisfies the department that the individual meets the conditions specified in subds. 1. and 2., by contract and in fact:

1. The services of the individual are performed free from control or direction by the employing unit over the performance of his or her services. In determining whether services of an individual are performed free from control or direction, the department may consider the following nonexclusive factors:

a. Whether the individual is required to comply with instructions concerning how to perform the services.

b. Whether the individual receives training from the employing unit with respect to the services performed.

c. Whether the individual is required to personally perform the services.

d. Whether the services of the individual are required to be performed at times or in a particular order or sequence established by the employing unit.

e. Whether the individual is required to make oral or written reports to the employing unit on a regular basis.

2. The individual meets 6 or more of the following conditions:

a. The individual advertises or otherwise affirmatively holds himself or herself out as being in business.

b. The individual maintains his or her own office or performs most of the services in a facility or location chosen by the individual and uses his or her own equipment or materials in performing the services.

c. The individual operates under multiple contracts with one or more employing units to perform specific services.

d. The individual incurs the main expenses related to the services that he or she performs under contract.

e. The individual is obligated to redo unsatisfactory work for no additional compensation or is subject to a monetary penalty for unsatisfactory work.

f. The services performed by the individual do not directly relate to the employing unit retaining the services.

g. The individual may realize a profit or suffer a loss under contracts to perform such services.

h. The individual has recurring business liabilities or obligations.

i. The individual is not economically dependent upon a particular employing unit with respect to the services being performed.

(c) Paragraph (a) does not apply to an individual performing services for a government unit or nonprofit organization, or for any other employing unit in a capacity as a logger or trucker if the employing unit satisfies the department:

1. That such individual has been and will continue to be free from the employing unit's control or direction over the performance of his or her services both under his or her contract and in fact; and

2. That such services have been performed in an independently established trade, business or profession in which the individual is customarily engaged.

(d) Paragraph (a) does not apply to a contractor who, in fulfillment of a contract with an employing unit, employs any individual in employment for which the contractor is subject to the contribution or reimbursement provisions of this chapter.

(dm) Paragraph (a) does not apply to an individual who owns a business that operates as a sole proprietorship with respect to services the individual performs for that business.

(dn) Paragraph (a) does not apply to a partner in a business that operates as a partnership with respect to services the partner performs for that business.

(e) This subsection shall be used in determining an employing unit's liability under the contribution provisions of this chapter, and shall likewise be used in determining the status of claimants under the benefit provisions of this chapter.

(f) The department may promulgate rules to ensure the consistent application of this subsection.

Cross−reference: See also chs. DWD 105 and 107, Wis. adm. code.

(13) EMPLOYER. (a) "Employer" means every government unit and Indian tribe, and any person, association, corporation, whether domestic or foreign, or legal representative, debtor in possession or trustee in bankruptcy or receiver or trustee of a person, partnership, association, or corporation, or guardian of the estate of a person, or legal representative of a deceased person, any partnership or partnerships consisting of the same partners, except as provided in par. (L), any limited liability company, and any fraternal benefit society as defined in s. 614.01 (1) (a), which is subject to this chapter under the statutes of 1975, or which has had employment in this state and becomes subject to this chapter under this subsection and, notwithstanding any other provisions of this section, any service insurance corporation organized or operating under ch. 613, except as provided in s. 108.152 (6) (a) 3.

(b) Any employing unit which is a nonprofit organization shall become an employer as of the beginning of any calendar year if it employed as many as 4 individuals in employment for some portion of a day on at least 20 days, each day being in a different calendar week, whether or not such weeks were consecutive, in either that year or the preceding calendar year.

(c) 1. Any employing unit which employs an individual in agricultural labor shall become an employer as of the beginning of any calendar year if the employing unit paid or incurred a liability to pay cash wages for agricultural labor which totaled $20,000 or more during any quarter in either that year or the preceding calendar year, or if the employing unit employed as many as 10 individuals in some agricultural labor for some portion of a day on at least 20 days, each day being in a different calendar week, whether or not such weeks were consecutive, in either that year or the preceding calendar year.

2. For the purpose of this paragraph any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be an employee of such crew leader if:

a. Such crew leader holds a valid certificate of registration under the federal farm labor contractor registration act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment which is provided by such crew leader; and

b. If such crew leader is not an employee of such other person under sub. (12).

3. For the purposes of this paragraph, if any individual who is furnished by a crew leader to perform service in agricultural labor is not an employee of the crew leader under subd. 2., such other person, and not the crew leader, is the employer of that individual and the other person shall be considered to have paid or incurred liability to pay cash remuneration to the individual in an amount equal to the amount of cash remuneration paid or payable to the individual by the crew leader, either on behalf of the crew leader or such other person, for the service in agricultural labor performed for such other person.

4. For the purpose of this paragraph, "crew leader" means an individual who furnishes individuals to perform service in agricultural labor for any other person, pays on behalf of himself or herself or on behalf of such other person the individuals so furnished to perform such labor, and has not entered into a written agreement with such other person under which he or she is designated as an employee of such other person.

(d) Any employing unit of an individual or individuals in domestic service shall become an employer as of the beginning of any calendar year if the employer paid or incurred liability to pay

cash wages of $1,000 or more during any quarter in either that year or the preceding calendar year for such domestic service.

(e) Any other employing unit, except a government unit, shall become an employer as of the beginning of any calendar year if the employing unit:

1. Paid or incurred liability to pay wages for employment which totaled $1,500 or more during any quarter in either that year or the preceding calendar year; or

2. Employed at least one individual in some employment in each of 20 or more calendar weeks in either that year or the preceding calendar year, whether or not the same individual was in employment in each such week and whether or not such weeks were consecutive; except that

3. Wages and employment for agricultural labor which meets the conditions of par. (c) shall be counted under this paragraph, but wages and employment for domestic service shall not be so counted except as par. (i) applies.

(f) Any employing unit which is subject to the federal unemployment tax act for any calendar year, or which, as a condition for approval of this chapter for full tax credit against the tax imposed by the federal unemployment tax act, is required, pursuant to such act, the social security act, or any other federal law, to be an employer, shall become an employer as of the beginning of such calendar year.

(g) Any employing unit which succeeds to the business of any employer shall become an employer as provided in s. 108.16 (8).

(h) Any employing unit which files with the department a written election to become an "employer" for not less than 2 calendar years may become an "employer" if the department approves the election in writing, as of the date and under the conditions stated in the approved election.

1. The department may refuse to approve any such election in the interest of the proper administration of this chapter. The department shall not approve any such election by a nonprofit organization unless the employing unit also elects reimbursement financing in accordance with s. 108.151 (2), and shall terminate such election under this chapter if the election of reimbursement financing is terminated under s. 108.151 (3). The department may at any time by written notice to the employer terminate an election in the interest of the proper administration of this chapter.

2. Notwithstanding par. (i), an electing employer may terminate the election no earlier than 2 calendar years after the election and thereby cease to be an employer at the close of any week which ends after the month in which the employer files a written notice to that effect with the department if the employer is not then subject to this chapter under pars. (b) to (g).

(i) An "employer" shall cease to be subject to this chapter only upon department action terminating coverage of such employer. The department may terminate an "employer's" coverage, on its own motion or on application by the "employer", by mailing a notice of termination to the "employer's" last−known address. An employer's coverage may be terminated whenever the employer ceased to exist, transferred its entire business, or would not otherwise be subject under any one or more of pars. (b) to (g). If any employer of agricultural labor or domestic service work becomes subject to this chapter under par. (c) or (d), with respect to such employment, and such employer is otherwise subject to this chapter with respect to other employment, the employer shall continue to be covered with respect to agricultural labor or domestic service or both while the employer is otherwise subject to this chapter, without regard to the employment or wage requirements under par. (c) or (d). If a termination of coverage is based on an employer's application, it shall be effective as of the close of the quarter in which the application was filed. Otherwise, it shall be effective as of the date specified in the notice of termination.

Cross−reference: See also s. DWD 110.09, Wis. adm. code.

(j) "Employer" includes a person who pays wages to an individual on account of sickness or accident disability if the person is classified as an "employer" under rules promulgated by the department. If the person is so classified, no other person is an "employer" by reason of making such payments.

Cross−reference: See also s. DWD 110.06, Wis. adm. code.

(k) "Employer" does not include a county department, an aging unit, or, under s. 46.2785, a private agency that serves as a fiscal agent or contracts with a fiscal intermediary to serve as a fiscal agent under s. 46.27 (5) (i), 46.272 (7) (e), or 47.035 as to any individual performing services for a person receiving long−term support services under s. 46.27 (5) (b), 46.272 (7) (b), 46.275, 46.277, 46.278, 46.2785, 46.286, 46.495, 51.42, or 51.437 or personal assistance services under s. 47.02 (6) (c).

(L) "Employer" means all partnerships consisting of the same partners except that "employer" means each partnership consisting of the same partners if:

1. Each partnership maintains separate accounting records;

2. Each partnership otherwise qualifies as an "employer" under this subsection;

3. Each partnership files a written request with the department to be treated as an "employer"; and

4. The department approves the requests.

(14) EMPLOYER'S ACCOUNT. "Employer's account" means a separate account in the fund, reflecting the employer's experience with respect to contribution credits and benefit charges under this chapter.

(14m) EMPLOYING UNIT. "Employing unit" means any person who employs one or more individuals.

(15) EMPLOYMENT. (a) "Employment", subject to the other provisions of this subsection means any service, including service in interstate commerce, performed by an individual for pay.

(b) The term "employment" shall include an individual's entire service performed within, or partly within and partly outside, Wisconsin, if such service is "localized" in Wisconsin; and shall also include such service, if it is not "localized" in any state but is performed partly within Wisconsin, and if:

1. The base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in Wisconsin; or

2. The base of operations or place from which such service is directed or controlled is not in any state in which some part of such service is performed, but the individual's residence is in Wisconsin.

(c) An individual's entire service for an employer, whether performed partly within or entirely outside Wisconsin, shall be deemed "employment" subject to this chapter, provided both the following conditions exist:

1. Such service is deemed "employment" covered by this chapter pursuant to a reciprocal arrangement between the department and each agency administering the unemployment insurance law of a jurisdiction in which part of such service is performed; or no contributions are required with respect to any of such service under any other unemployment insurance law; and

2. The employer so elects with the department's approval and with written notice to the individual.

(d) An individual's entire service shall be deemed "localized" within a state, if such service is performed entirely within such state, or if such service is performed partly within and partly outside such state but the service performed outside such state is incidental to the individual's service within such state (for example, is temporary or transitory in nature or consists of isolated transactions).

(dm) "Employment" includes an individual's service, wherever performed within the United States or Canada, if:

1. Such service is not covered under the unemployment insurance law of any other state or Canada; and

2. The place from which the service is directed or controlled is in Wisconsin.

(dn) "Employment" includes the service of an individual who is a citizen of the United States, performed outside the United States, except in Canada, in the employ of an American employer, other than service which is deemed "employment" under par. (b), (c) or (d) or the parallel provisions of another state's law, if:

1. The employer's principal place of business in the United States is located in Wisconsin; or

2. The employer has no place of business in the United States, but:

a. The employer is an individual who is a resident of Wisconsin; or

b. The employer is a corporation or a limited liability company which is organized under the laws of Wisconsin; or

c. The employer is a partnership or a trust and the number of the partners or trustees who are residents of Wisconsin is greater than the number who are residents of any one other state; or

3. None of the criteria of subds. 1. and 2. is met but the employer has elected coverage in Wisconsin or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under this chapter.

(do) 1. An "American employer", for purposes of par. (dn), means a person who is:

a. An individual who is a resident of the United States; or

b. A partnership if two−thirds or more of the partners are residents of the United States; or

c. A trust, if all the trustees are residents of the United States; or

d. A corporation or limited liability company organized under the laws of the United States or of any state.

2. For the purposes of pars. (dm) to (do), the term "United States" includes the states, the District of Columbia, commonwealth of Puerto Rico, and the Virgin Islands.

(e) In determining whether an individual's entire services shall be considered "employment" subject to this chapter, under pars. (b), (c), (d), (dm) and (dn), the department may determine and redetermine the individual's status hereunder for such reasonable periods as it considers advisable, and may refund, as paid by mistake, any contributions that have been paid hereunder with respect to services duly covered under any other unemployment insurance law.

(f) "Employment" as applied to work for a government unit or Indian tribe, except as such unit or tribe duly elects otherwise with the department's approval, does not include service:

1. As an official elected by vote of the public;

2. As an official appointed to fill part or all of the unexpired term of a vacant position normally otherwise filled by vote of the public;

3. As a member of a legislative body or the judiciary of a state or political subdivision, or as a member of an elective legislative body or the judiciary of an Indian tribe;

4. As a member of the Wisconsin national guard in a military capacity;

5. As an employee serving solely on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency; or

6. In a position which, under or pursuant to the laws of this state, or of an Indian tribe, is designated as a major nontenured policymaking or advisory position, or is designated as a policymaking or advisory position the performance of the duties of which does not ordinarily require more than 8 hours per week.

(g) "Employment" as applied to work for a government unit, an Indian tribe, or a nonprofit organization, except as such unit, tribe, or organization duly elects otherwise with the department's approval, does not include service:

1. By an individual receiving work relief or work training as part of an unemployment work−relief or work−training program assisted or financed in whole or in part by any federal agency or by an agency of a state or political subdivision thereof or by an Indian tribe, unless otherwise required as a condition for participation by the unit or organization in such program;

2. In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

3. By an inmate of a custodial or penal institution.

(gm) "Employment," as applied to work for an Indian tribe, does not include service performed after the department terminates application of this chapter to the tribe under s. 108.152 (6) (a) 3.

(h) "Employment" as applied to work for a nonprofit organization, except as such organization duly elects otherwise with the department's approval, does not include service:

1. In the employ of a church or convention or association of churches;

2. In the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

3. By a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

(i) "Employment" as applied to work for an educational institution, except as such institution duly elects otherwise with the department's approval, does not include service:

1. By a student who is enrolled and is regularly attending classes at such institution; or

2. By the spouse of such a student, if given written notice at the start of such service, that the work is under a program to provide financial assistance to the student and that the work will not be covered by any program of unemployment insurance.

(j) "Employment" as applied to work for a given employer, except as such employer duly elects otherwise with the department's approval, does not include service:

1. By an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full−time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program and such institution has so certified to the employer, except as to a program established by or on behalf of an employer or group of employers;

2. As a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school;

3. As an intern in the employ of a hospital by an individual who has completed a 4−year course in a medical school;

4. In the employ of a hospital by a patient of such hospital;

5. In any quarter in the employ of any organization exempt from federal income tax under section 501 (a) of the internal revenue code, other than an organization described in section 401 (a) or 501 (c) (3) of such code, or under section 521 of the internal revenue code, if the remuneration for such service is less than $50;

6. By a nonresident alien for the period that he or she is temporarily present in the United States as a nonimmigrant under 8 USC 1101 (a) (15) (F), (J), (M), or (Q), if the service is performed to carry out the purpose for which the alien is admitted to the United States, as provided in 8 USC 1101 (a) (15) (F), (J), (M), or (Q), or by the spouse or minor child of such an alien if the spouse or child was also admitted to the United States under 8 USC 1101 (a) (15) (F), (J), (M), or (Q) for the same purpose; or

7. By an individual who is a participant in the AmeriCorps program in a program that is funded under 42 USC 12581 (a) or

(d) (1) or (2), except service performed pursuant to a professional corps program as described in 42 USC 12572 (a) (8) or service performed pursuant to an innovative education award only program under 42 USC 12653 (b).

(k) "Employment" as applied to work for a given employer other than a government unit or nonprofit organization, except as the employer elects otherwise with the department's approval, does not include service:

1. In agricultural labor unless performed for an employer subject to this chapter under sub. (13) (c) or (i);

2. As a domestic in the employ of an individual in the individual's private home, or as a domestic in the employ of a local college club or of a local chapter of a college fraternity or sorority, unless performed for an individual, club, or chapter that is an employer subject to this chapter under sub. (13) (d) or (i);

3. As a caddy on a golf course;

4. As an individual selling or distributing newspapers or magazines on the street or from house to house;

5. With respect to which unemployment insurance is payable under the federal railroad unemployment insurance act (52 Stat. 1094);

6. By an individual for a person as an insurance agent or an insurance solicitor, if all of the service performed as an insurance agent or solicitor by the individual for the person is performed for remuneration solely by way of commissions;

7. By an individual to whom all of the following apply:

a. The individual is a real estate licensee, as defined in s. 452.01 (5).

b. Seventy−five percent or more of the remuneration, whether or not paid in cash, for the services performed by the individual as a real estate licensee is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

c. The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed and the contract provides that the individual will not be treated as an employee with respect to the services for federal tax purposes;

NOTE: Subd. 7. is shown as repealed and recreated eff. 10−1−16 by 2015 Wis. Act 258. Prior to 10−1−16 it reads:

7. By an individual for a person as a real estate agent or as a real estate salesperson, if all of the service performed as a real estate agent or sales person by the individual for the person is performed for remuneration solely by way of commission;

8. As an unpaid officer of a corporation or association or as an unpaid manager of a limited liability company;

9. Covered by any other unemployment insurance law pursuant to a reciprocal arrangement made by the department under s. 108.14 (8m);

10. For an employer who would otherwise be subject to this chapter solely because of sub. (13) (f), if and while the employer, with written notice to and approval by the department, covers under the unemployment insurance law of another jurisdiction all services for such employer that would otherwise be covered under this chapter;

11. By an individual in the employ of the individual's son, daughter or spouse, and by an individual under the age of 18 for his or her parent;

15. By an individual as a court reporter if the individual receives wages on a per diem basis;

16. By an individual who is engaged, in a home or otherwise than in a permanent retail establishment, in the service of selling or soliciting the sale of consumer products for use, sale, or resale by the buyer, if substantially all of the remuneration therefor is directly related to the sales or other output related to sales rather than to hours worked;

17. In any type of maritime service specifically excluded from coverage under the federal unemployment tax act;

18. By an individual who leases a motor vehicle used for taxicab purposes or other taxi equipment attached to and becoming a part of the vehicle under a bona fide lease agreement, if:

a. The individual retains the income earned through the use of the leased motor vehicle or equipment during the lease term;

b. The individual receives no direct compensation from the lessor during the lease term; and

c. The amount of the lease payment is not contingent upon the income generated through the use of the motor vehicle or equipment during the lease term;

19. Performed by an individual for a seasonal employer if the individual received written notice from the seasonal employer prior to performing any service for the employer that the service is potentially excludable under this subdivision unless:

a. The individual is employed by the seasonal employer for a period of 90 days or more, whether or not service is actually performed on each such day, during any season, as determined under s. 108.066, that includes any portion of the individual's base period; or

b. The individual has been paid or is treated as having been paid wages or other remuneration of $500 or more during his or her base period for services performed for at least one employer other than the seasonal employer that is subject to the unemployment insurance law of any state or the federal government; or

20. Provided to a recipient of medical assistance under ch. 49 by an individual who is not an employee of a home health agency, if the service is:

a. Private duty nursing service or part−time intermittent care authorized under s. 49.46 (2) (b) 6. g., for which medical assistance reimbursement is available as a covered service, provided by an individual who is certified by the department of health services under s. 49.45 (2) (a) 11. as a nurse in independent practice or as an independent nurse practitioner; or

b. Respiratory care service for ventilator−dependent individuals authorized under s. 49.46 (2) (b) 6. m., for which medical assistance reimbursement is available as a covered service, provided by an individual who is certified by the department of health services under s. 49.45 (2) (a) 11. as a provider of respiratory care services in independent practice.

(km) "Employment", as applied to work for a given employer other than a government unit or a nonprofit organization, except as the employer elects otherwise with the department's approval, does not include service:

1. Provided by an individual to an ill or disabled family member who is the employing unit for such service, if the service is personal care or companionship. For purposes of this subdivision, "family member" means a spouse, parent, child, grandparent, or grandchild of an individual, by blood or adoption, or an individual's step parent, step child, or domestic partner. In this subdivision, "domestic partner" has the meaning given in s. 770.01 (1).

(kt) "Employment," as applied to work for a given employer other than a government unit, an Indian tribe, or a nonprofit organization, except as the employer elects otherwise with the department's approval, does not include service performed by an inmate of a state prison, as defined in s. 302.01, or a federal prison.

(L) "Employment" includes an individual's service for an employer organized as a corporation or a limited liability company that is treated as a corporation under this chapter in which the individual is a principal officer and has a direct or indirect ownership interest, except as provided in s. 108.025.

(n) If any employment for a government unit, Indian tribe, or nonprofit organization excluded under other paragraphs of this subsection is required by the federal unemployment tax act, the social security act, or any other federal law, to be employment covered by this chapter as a condition for approval of this chapter for full tax credit against the tax imposed by the federal unemployment tax act, such exclusion shall not apply under this chapter.

Cross−reference: See also ch. DWD 103, Wis. adm. code.

(15m) FAMILY CORPORATION. "Family corporation" means:

(a) A corporation or a limited liability company that is treated as a corporation under this chapter in which 50% or more of the ownership interest, however designated or evidenced, is or during a claimant's employment was owned or controlled, directly or indirectly, by the claimant or by the claimant's spouse or child, or by the claimant's parent if the claimant is under the age of 18, or by a combination of 2 or more of them; or

(b) Except where par. (a) applies, a corporation or a limited liability company that is treated as a corporation under this chapter in which 25% or more of ownership interest, however designated or evidenced, is or during a claimant's employment was owned or controlled, directly or indirectly, by the claimant.

(15s) FULL−TIME WORK. "Full−time work" means work performed for 32 or more hours per week.

(16) FUND. "Fund" means the unemployment reserve fund established in s. 108.16.

(17) GOVERNMENT UNIT. "Government unit" means:

(a) This state, including all of its constitutional offices, branches of government, agencies, departments, boards, commissions, councils, committees and all other parts and subdivisions of state government, and all public bodies or instrumentalities of this state and one or more other states; and

(b) Any school district, county, city, village, town and any other public corporation or entity, any combination thereof and any agency of any of the foregoing, and any public body or instrumentality of any political subdivision of this state and one or more other states or one or more political subdivisions of one or more other states.

(17m) INDIAN TRIBE. "Indian tribe" has the meaning given in 25 USC 450b (e), and includes any subdivision, subsidiary, or business enterprise that is wholly owned by such an entity.

(18) INSTITUTION OF HIGHER EDUCATION. "Institution of higher education" means a nonprofit or public educational institution which provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree or a program of training to prepare students for gainful employment in a recognized occupation, and admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate.

(18m) LOGGER. "Logger" means a skidding operator or piece cutter with a forest products manufacturer or a logging contractor.

(19) NONPROFIT ORGANIZATIONS. A "nonprofit organization" is an organization described in section 501 (c) (3) of the internal revenue code which is exempt from federal income tax under section 501 (a) of the internal revenue code.

(20) PARTIAL UNEMPLOYMENT. An employee is "partially unemployed" in any week for which he or she earns some wages and is eligible for some benefits under s. 108.05 (3).

(20g) PART−TIME INTERMITTENT CARE. "Part−time intermittent care," as defined by the department of health services under s. 49.45 (10), means skilled nursing service that is provided in the home of a recipient of medical assistance under ch. 49 under a written plan of care that specifies the medical necessity of the care.

(20m) PART−TIME WORK. "Part−time work" means work performed for less than 32 hours per week.

(20r) PARTNERSHIP. "Partnership" has the meaning given in s. 178.0102 (11).

NOTE: Sub. (20r) is shown as amended eff. 7−1−16 by 2015 Wis. Act 295. Prior to 7−1−16 it reads:

(20r) PARTNERSHIP. "Partnership" has the meaning given in s. 178.03.

(21) PAYROLL. (a) "Payroll" means all wages paid directly or indirectly by an employer within a certain period to individuals with respect to their employment by that employer, and includes all such wages for work which is excluded under sub. (15) (k) if the wages paid for such work:

1. Are subject to a tax under the federal unemployment tax act or are exempted from that tax only because the federal unemployment tax act (26 USC 3301 to 3311) applies to a lesser amount of wages paid to an individual during a calendar year than the amount specified in par. (b); and

2. Are not subject to contributions under another unemployment insurance law.

(b) Notwithstanding par. (a), except as provided in ss. 108.151 (7) (a) and 108.155 (1) (a), an employer's payroll for calendar years prior to 2009 includes only the first $10,500 of wages paid by an employer to an individual during each calendar year, for calendar years 2009 and 2010 includes only the first $12,000 of such wages, for calendar years 2011 and 2012 includes only the first $13,000 of such wages, and for calendar years after 2012 includes only the first $14,000 of such wages, including any wages paid for any work covered by the unemployment insurance law of any other state, except as authorized in s. 108.17 (5).

NOTE: Par. (b) is shown as amended eff. 10−2−16 by 2015 Wis. Act 334. Prior to 10−2−16 it reads:

(b) Notwithstanding par. (a), except as provided in s. 108.151 (7) (a), an employer's payroll for calendar years prior to 2009 includes only the first $10,500 of wages paid by an employer to an individual during each calendar year, for calendar years 2009 and 2010 includes only the first $12,000 of such wages, for calendar years 2011 and 2012 includes only the first $13,000 of such wages, and for calendar years after 2012 includes only the first $14,000 of such wages, including any wages paid for any work covered by the unemployment insurance law of any other state, except as authorized in s. 108.17 (5).

(c) If the federal unemployment tax is amended to apply to a higher amount of wages paid to an individual during a calendar year than the amount specified in par. (b), then the higher amount shall likewise apply under par. (b), as a substitute for the amount there specified, starting with the same period to which the federal amendment first applies.

(21c) PRIVATE−DUTY NURSING SERVICE. "Private−duty nursing service" means skilled nursing service under a written plan of care that specifies the medical necessity of the care, which is provided to a recipient of medical assistance under ch. 49 whose medical condition requires more continuous skilled nursing service than may be provided as part−time intermittent care.

(21e) PROFESSIONAL EMPLOYER ORGANIZATION. "Professional employer organization" means any person who is currently registered as a professional employer organization with the department of financial institutions in accordance with subch. III of ch. 202, who contracts to provide the nontemporary, ongoing employee workforce of more than one client under a written leasing contract, the majority of whose clients are not under the same ownership, management, or control as the person other than through the terms of the contract, and who under contract and in fact:

(a) Has the right to hire and terminate the employees who perform services for the client and to reassign the employees to other clients;

(b) Sets the rate of pay of the employees, whether or not through negotiations and whether or not the responsibility to set the rate of pay is shared with the client;

(c) Has the obligation to and pays the employees from its own accounts;

(d) Has a general right of direction and control over the employees, including corporate officers, which right may be shared with the client to the degree necessary to allow the client to conduct its business, meet any fiduciary responsibility, or comply with any applicable regulatory or statutory requirements;

(e) Assumes responsibility for the unemployment insurance coverage of the employees, files all required reports, pays all required contributions or reimbursements due on the wages of the employees, and otherwise complies with all of the provisions of this chapter that are applicable to employers on behalf of the client;

(f) Has the obligation to establish, fund, and administer employee benefit plans for the employees; and

(g) Provides notice of the employee leasing arrangement to the employees.

(21m) QUARTER. "Quarter" means a 3−month period ending on March 31, June 30, September 30 or December 31.

(21s) RELATED CORPORATIONS. "Related corporations" means 2 or more corporations to which at least one of the following conditions applies:

(a) The corporations are members of a controlled group of corporations, as defined in 26 USC 1563, or would be members if 26 USC 1563 (a) (4) and (b) did not apply and if the phrase "more than fifty percent" were substituted for the phrase "at least eighty percent" wherever it appears in 26 USC 1563 (a).

(b) If the corporations do not issue stock, either 50% or more of the members of one corporation's governing body are members of the other corporation's governing body, or the holders of 50% or more of the voting power to select such members are concurrently the holders of more than 50% of that power in respect to the other corporation.

(c) Fifty percent or more of one corporation's officers are concurrently officers of the other corporation.

(d) Thirty percent or more of one corporation's employees are concurrently employees of the other corporation.

(22) RESERVE PERCENTAGE. "Reserve percentage" shall for contribution purposes refer to the status of an employer's account, as determined by the department as of the applicable "computation date". In calculating an employer's net reserve as of any computation date, the employer's account shall be charged with benefits paid on or before said date, and shall be credited with contributions, on the employer's payroll through said date, if paid by the close of the month which follows said date or if paid pursuant to s. 108.18 (7) and within the period therein specified. The employer's "reserve percentage" means the net reserve of the employer's account as of the computation date, stated as a percentage of the employer's "payroll" in the year ending on such date or in the year applicable under s. 108.18 (6).

(22m) SCHOOL YEAR EMPLOYEE. "School year employee" means an employee of an educational institution or an educational service agency, or an employee of a government unit, Indian tribe, or nonprofit organization which provides services to or on behalf of an educational institution, who performs services under an employment contract which does not require the performance of services on a year−round basis.

(23) SEASONAL EMPLOYER. "Seasonal employer" means an employer designated by the department under s. 108.066.

(23g) SKILLED NURSING SERVICE. "Skilled nursing service" means professional nursing service that is provided under a physician's order, that requires the skills of a licensed registered nurse or licensed practical nurse, and that is provided directly by the licensed registered nurse or licensed practical nurse or directly by the licensed practical nurse under the supervision of the licensed registered nurse.

(24) STANDARD RATE. As to any calendar year, "standard rate" means the combined rate of contributions from the applicable schedules of s. 108.18 (4) and (9) which is closest to but not less than 5.4%.

(24m) TEMPORARY HELP COMPANY. "Temporary help company" means an entity which contracts with a client to supply individuals to perform services for the client on a temporary basis to support or supplement the workforce of the client in situations such as personnel absences, temporary personnel shortages, and workload changes resulting from seasonal demands or special assignments or projects, and which, both under contract and in fact:

(a) Negotiates with clients for such matters as time, place, type of work, working conditions, quality, and price of the services;

(b) Determines assignments or reassignments of individuals to its clients, even if the individuals retain the right to refuse specific assignments;

(c) Sets the rate of pay of the individuals, whether or not through negotiation;

(d) Pays the individuals from its account or accounts; and

(e) Hires and terminates individuals who perform services for the clients.

(25) TOTAL UNEMPLOYMENT. An employee is "totally unemployed" in any week for which he or she earns no wages.

(25e) TRUCKER. "Trucker" means a contract operator with a trucking carrier.

(25m) VALID NEW CLAIM WEEK. "Valid new claim week" means the first week of an employee's benefit year.

(25s) VOCATIONAL TRAINING. "Vocational training" includes technical, skill−based, or job readiness training intended to pursue a career.

(26) WAGES. Unless the department otherwise specifies by rule:

(a) "Wages" means every form of remuneration payable, directly or indirectly, for a given period, or payable within a given period if this basis is permitted or prescribed by the department, by an employing unit to an individual for personal services.

(b) "Wages" includes:

1. Any payment in kind or other similar advantage received from an individual's employing unit for personal services, except as provided in par. (c).

2. The value of an employee achievement award that is compensation for services.

3. The value of tips that are received while performing services which constitute employment, and that are included in a written statement furnished to an employer under 26 USC 6053 (a).

4. Any payment under a deferred compensation and salary reduction arrangement which is treated as wages under 26 USC 3306 (r).

5. Any payment made by a corporation electing to be taxed as a partnership under subchapter S of chapter 1 of the federal internal revenue code, 26 USC 1361 to 1379, to an officer, which is reasonable compensation for services performed for the corporation, or the reasonable value of services performed by an officer for such a corporation, if the officer receives no payment for the services or less than the reasonable value of the services, except:

a. A distribution of earnings and profits which is in excess of any such payment;

b. A loan to an officer evidenced by a promissory note signed by the officer prior to the payment of the loan proceeds and recorded in the records of such a corporation as a loan to the officer;

c. A repayment of a loan or payment of interest on a loan made by an officer to such a corporation and recorded in the records of the corporation as a liability of the corporation;

d. A reimbursement by such a corporation of reasonable corporate expenses incurred by an officer which is documented by a written expense voucher and recorded in the records of the corporation as corporate expenses; or

e. A reasonable lease or rental payment to an officer who owns property which is leased or rented to such a corporation.

(c) "Wages" does not include:

1. The amount of any payment, including any amount paid by an employer for insurance or annuities or into an account to provide for such payment, made to or on behalf of an employee or any of his or her dependents under a plan or system established by an employer which makes provision for its employees generally, or for its employees generally and their dependents, or for a class or classes of its employees, or for a class or classes of its employees and their dependents, on account of:

a. Sickness or accident disability, except that in the case of payments made to an employee or any of his or her dependents, "wages" excludes only payments which are received under ch. 102 or under any federal law which provides for payments on

account of a work−related injury or illness analogous to those provided under ch. 102 as a result of employment for an employer;

b. Medical or hospitalization expenses in connection with sickness or accident disability; or

c. Death.

2. Any payment for sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to or on behalf of an employee after the expiration of 6 months following the last month in which the employee worked for the employer.

3. Any payment made to or on behalf of an employee or his or her beneficiary under a cafeteria plan, within the meaning of 26 USC 125, if the payment would not be treated as wages without regard to that plan and if 26 USC 125 would not treat the payment as constructively received.

4. Except as provided in par. (b) 4., any payment made to, or on behalf of, an employee or his or her beneficiary:

a. From or to a trust described in 26 USC 401 (a) which is exempt from taxation under 26 USC 501 (a) at the time of the payment unless the payment is made to an employee of the trust as remuneration for services rendered as an employee and not as a beneficiary of the trust;

b. Under or to an annuity plan which, at the time of the payment, is a plan described in 26 USC 403 (a);

c. Under a simplified employee pension, as defined in 26 USC 408 (k) (1), other than any contributions described in 26 USC 408 (k) (6);

d. Under or to an annuity contract described in 26 USC 403 (b), other than a payment for the purchase of such a contract which is made by reason of a salary reduction agreement, whether evidenced by a written instrument or otherwise;

e. Under or to an exempt governmental deferred compensation plan, as defined in 26 USC 3121 (v) (3); or

f. To supplement pension benefits under a plan or trust described in subd. 4. a. to e. to take into account some portion or all of the increase in the cost of living, as determined by the U.S. secretary of labor, since retirement but only if the payment is under a plan which is treated as a welfare plan under 29 USC 1002 (2) (B) (ii).

5. The payment by an employer, without deduction from the remuneration of an employee, of the tax imposed on the employee under 26 USC 3101 with respect to remuneration paid to the employee for domestic service in a private home of the employer or for agricultural labor.

6. Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business.

7. Remuneration paid to or on behalf of an employee if and to the extent that at the time of the payment it is reasonable to believe that a corresponding deduction is allowable under 26 USC 217, determined without regard to 26 USC 274 (n).

8. Any payment or series of payments by an employer to an employee or any of his or her dependents which is paid:

a. Upon or after the termination of an employee's employment relationship because of the employee's death or retirement for disability; and

b. Under a plan established by the employer which makes provision for its employees generally or a class or classes of its employees, or for such employees or class or classes of employees and their dependents, other than a payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated.

9. Any contribution, payment or service provided by an employer which may be excluded from the gross income of an employee, or the employee's spouse or dependents, under the provisions of 26 USC 120 relating to amounts received under qualified group legal services plans.

10. Any payment made or benefit furnished to or for the benefit of an employee if, at the time of the payment or furnishing, it is reasonable to believe that the employee will be able to exclude the payment or benefit from income under 26 USC 127 or 129.

11. The value of any meals or lodging furnished by or on behalf of an employer if, at the time of the furnishing, it is reasonable to believe that the employee will be able to exclude such items from income under 26 USC 119.

12. Any payment made by an employer to a survivor or the estate of a former employee after the year in which the employee died.

13. Any benefit provided to or on behalf of an employee if at the time the benefit is provided it is reasonable to believe that the employee will be able to exclude the benefit from income under 26 USC 117 or 132.

14. The amount of any refund required to be made by an employer under section 421 of the federal medicare catastrophic coverage act of 1988, P.L. 100−360.

15. Remuneration for services performed in a fishing rights−related activity of an Indian tribe by a member of that tribe for another member of that tribe or for a qualified Indian entity, as provided in 26 USC 7873.

16. Any contribution made by an employer into or payment made from a supplemental unemployment benefit plan for employees, if the contribution or payment is not considered "wages" under 26 USC 3306 (b), regardless of whether the plan is part of an employer profit−sharing plan.

(26m) WAITING PERIOD. "Waiting period" means any period of time under s. 108.04 (3) for which no benefits are payable to a claimant as a condition precedent to receipt of benefits.

(27) WEEK. "Week" means calendar week, starting Sunday and ending Saturday; but, where an employee starts a working shift on a given Saturday, all of the employee's hours and pay for that shift shall be counted in the calendar week which includes that Saturday.

(28) WEEKLY BENEFIT RATE. An employee's "weekly benefit rate" from a given employer means the amount computed in accordance with s. 108.05.

(29) WORKING DAY. "Working day" has the meaning given in s. 227.01 (14).

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83; 2001 a. 35, 103, 105; 2003 a. 197; 2005 a. 25, 86, 149, 441; 2007 a. 20 s. 9121 (6) (a); 2007 a. 59; 2009 a. 180, 287; 2011 a. 32, 123; 2013 a. 20, 36, 104, 151; 2013 a. 173 s. 33; 2015 a. 55; 2015 a. 195 s. 83; 2015 a. 258, 295, 334; s. 35.17 correction in (19).

An employee can at the same time be an employer, responsible for unemployment compensation contributions. Price County Telephone Co. v. Lord, 47 Wis. 2d 704, 177 N.W.2d 904 (1970).

Under sub. (3) [now sub. (12)], the person must first be found to be an employee under par. (a); the second step is to determine whether an exemption applies. Transport Oil, Inc. v. Cummings, 54 Wis. 2d 256, 195 N.W.2d 649.

CETA employees are disqualified for unemployment compensation by sub. (5) (g) 1. [now sub. (15) (g) 1.]. Bliss v. DILHR, 101 Wis. 2d 245, 304 N.W.2d 783 (Ct. App. 1981).

Owner−operators of semitractors who leased services to a trucking company were considered employees of the trucking company. Stafford Trucking, Inc. v. DILHR, 102 Wis. 2d 256, 306 N.W.2d 79 (Ct. App. 1981).

Corporate owner−operators of trucks were both employers and employees under this section. Wisconsin Cheese Service, Inc. v. DILHR, 108 Wis. 2d 482, 322 N.W.2d 495 (Ct. App. 1982).

Truck owner−operators who leased trucks to a trucking company were not company employees. Star Line Trucking Corp. v. DILHR, 109 Wis. 2d 266, 325 N.W.2d 872 (1982).

Coverage under sub. (3) (a) [now sub. (12) (a)] is broad, almost presumptive. Princess House, Inc. v. DILHR, 111 Wis. 2d 46, 330 N.W.2d 169 (1983).

Graduate students preparing dissertations were "regularly attending classes" under sub. (5) (i) 1. [now sub. (15) (i) 1.] even though they attended no class meetings. Bachrach v. DILHR, 114 Wis. 2d 131, 336 N.W.2d 698 (Ct. App. 1983).

"Wages" includes salaries and benefits received while taking compensatory time off. Transportation Dept. v. LIRC, 122 Wis. 2d 358, 361 N.W.2d 722 (Ct. App. 1984).

When a contractor, in fulfilling a contract with a principal, employs an individual for whom the contractor is subject to the compensation or reimbursement requirements of ch. 108, the individual is the employee of the contractor and not of the principal. Robert Hansen Trucking, Inc. v. LIRC, 126 Wis. 2d 323, 377 N.W.2d 151 (1985).

Profit−sharing distributions are includable under the definition of "wages." La Crosse Footwear v. LIRC, 147 Wis. 2d 419, 434 N.W.2d 392 (Ct. App. 1988).

As the refund of dues to union stewards was not remuneration for services, it did not constitute "wages" under sub. (26), and was not assessable to the union for contribution purposes. Local No. 695 v. LIRC, 154 Wis. 2d 75, 452 N.W.2d 368 (1990).

The direct seller exclusion under sub. (15) (k) 16. is not restricted to persons who actually make sales to consumers in the home, but includes distributors who sell to dealers engaged in the sale of products for resale in the home whose compensation is directly related to the amount of sales made. National Safety Associates, Inc. v. LIRC, 199 Wis. 2d 106, 543 N.W.2d 584 (Ct. App. 1995), 95−1053.

An employment contract under sub. (22m) need not be in writing. Ashleson v. LIRC, 216 Wis. 2d 23, 573 N.W.2d 554 (Ct. App. 1997), 97−1346.

The test of whether work is localized under sub. (15) (b) and (d) focuses not on where the majority of the work is performed, but on whether the work performed outside of the state is incidental to the work performed within the state. Gilbert v. LIRC, 2008 WI App 173, 315 Wis. 2d 726, 762 N.W.2d 671, 06−2694.

The test for determining whether an individual is an employee within the meaning of sub. (12) (bm) follows a two−step analysis. The department carries the burden of proof on this question. If the department demonstrates that the individual performed services for pay, the individual is presumed to be an employee for purposes of unemployment compensation and the burden shifts to the employer to prove that the individual is exempt under sub. (12) (bm). Gilbert v. LIRC, 2008 WI App 173, 315 Wis. 2d 726, 762 N.W.2d 671, 06−2694.

Institutions of higher education, including VTAE [technical college] districts, are included within the unemployment compensation act by reason of 26 U.S.C.A., sec. 3309 (a) and (d). 61 Atty. Gen. 18.

Strict compliance with all criteria in sub. (12m) and s. 108.065 is required before a company will qualify as an employee service company and the employer for unemployment compensation purposes. 80 Atty. Gen. 154.

Sub. (15) (k) 14. does not conflict with federal law or violate the equal protection clause of the 14th Amendment of the U.S. Constitution. Zambrane v. Reinert, 291 F.3d 964 (2002).

108.025 Coverage of certain corporate officers and limited liability company members. (1) In this section, "principal officer" means:

(a) An individual named as a principal officer in a corporation's most recent annual report or, if that information is not current, an individual holding an office described in the corporation's most recent annual report as a principal officer; or

(b) An individual named as a member of a limited liability company that is treated as a corporation under this chapter in the records of the company required to be kept under s. 183.0405 as of the date of an election under this section.

(2) If an employer is organized as a corporation or limited liability company that is treated as a corporation under this chapter, the employer has no annual payroll for the calendar year preceding an election or has an annual payroll of less than the amount specified in s. 108.18 (9) which establishes separate solvency contribution rates for the calendar year preceding an election, and the employer files a notice of election, in the manner prescribed by the department, to exclude the service of all of its principal officers who have a direct or indirect substantial ownership interest in the corporation or limited liability company, employment does not include the service of those officers.

(3) An election of an employer under this section does not apply in any calendar year if the annual payroll of the employer for the preceding calendar year equaled or exceeded the amount specified in s. 108.18 (9) which establishes separate solvency contribution rates.

(4) An employer which files an election under this section may reelect coverage of its principal officers under this section by filing a notice of reelection with the department. An employer which reelects coverage of its principal officers is not eligible to file a notice of election of noncoverage under this section.

(5) To be effective for any calendar year, a notice of election or reelection must be received by the department no later than March 31 except that in the case of an employing unit which becomes an employer during a calendar year, notice of election must be received by the department no later than the date on which the initial contributions of the employer become payable under s. 108.17 (1m), and except that if the due date for a notice of election or reelection falls on a Saturday, Sunday or legal holiday under state or federal law, the due date is the next following day which is not a Saturday, Sunday or legal holiday under state or federal law. If a notice of election or reelection is mailed, it is timely if it is either postmarked by the due date or received by the department no later than 3 days after that date. An election is effective for each calendar year until the employer files a timely notice of reelection.

(6) A principal officer has a direct or indirect substantial ownership interest in a corporation or limited liability company that is treated as a corporation under this section if 25% or more of the ownership interest, however designated or evidenced, in the corporation or limited liability company is owned or controlled, directly or indirectly, by the officer.

History: 1991 a. 89; 2003 a. 197.

108.03 Payment of benefits. (1) Benefits shall be paid to each unemployed and eligible employee from his or her employer's account, under the conditions and in the amounts stated in, or approved by the department pursuant to, this chapter, and at such times, at such places, and in such manner as the department may from time to time approve or prescribe.

(2) The benefit liability of each employer's account shall begin to accrue under s. 108.07 in the first week completed on or after the first day of that calendar year within which the employer's contributions first began to accrue under this chapter.

History: 1971 c. 53; 1975 c. 343; 1985 a. 17; 1987 a. 38 ss. 23, 136; 1993 a. 492; 1999 a. 83.

108.04 Eligibility for benefits. (1) GENERAL DISQUALIFICATIONS AND LIMITATIONS. (a) Except as provided in s. 108.062 (10), if an employee is with due notice called on by his or her current employing unit to report for work actually available within a given week and is unavailable for, or unable to perform:

1. Sixteen or less hours of the work available for the week, the employee's eligibility for benefits for that week shall be reduced under par. (bm).

2. More than 16 hours of the work available for the week, the employee is ineligible for benefits for that week.

(b) Except as provided in s. 108.062 (10), if an employee is absent from work for 16 hours or less in the first week of his or her leave of absence or in the week in which his or her employment is suspended or terminated due to the employee's unavailability for work with the employer or inability to perform suitable work otherwise available with the employer, the employee's eligibility for benefits for that week shall be determined under par. (bm).

(bm) For purposes of pars. (a) 1. and (b), the department shall treat the amount that the employee would have earned as wages for a given week in available work as wages earned by the employee and shall apply the method specified in s. 108.05 (3) (a) to compute the benefits payable to the employee. The department shall estimate wages that an employee would have earned if it is not possible to compute the exact amount of wages that would have been earned by the employee.

(f) If an employee is required by law to have a license issued by a governmental agency to perform his or her customary work for an employer, and the employee's employment is suspended or terminated because the employee's license has been suspended, revoked or not renewed due to the employee's fault, the employee is not eligible to receive benefits until 5 weeks have elapsed since the end of the week in which the suspension or termination occurs or until the license is reinstated or renewed, whichever occurs first. The wages paid by the employer with which an employee's employment is suspended or terminated shall be excluded from the employee's base period wages under s. 108.06 (1) for purposes of benefit entitlement while the suspension, revocation or nonrenewal of the license is in effect. This paragraph does not preclude an employee from establishing a benefit year using the wages excluded under this paragraph if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits paid during a benefit year otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 from which base period wages are excluded under this paragraph if an employee qualifies to receive benefits for any week in that benefit year using wages that were excluded under this paragraph.

(g) Except as provided in par. (gm), the base period wages utilized to compute total benefits payable to an individual under s. 108.06 (1) as a result of the following employment shall not exceed 10 times the individual's weekly benefit rate based solely on that employment under s. 108.05 (1):

1. Employment by a partnership or limited liability company that is treated as a partnership under this chapter, if a one−half or greater ownership interest in the partnership or limited liability company is or during such employment was owned or controlled, directly or indirectly, by the individual's spouse, or by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them.

2. Employment by a corporation or limited liability company that is treated as a corporation under this chapter, if one−half or more of the ownership interest, however designated or evidenced, in the corporation or limited liability company is or during such employment was owned or controlled, directly or indirectly, by the individual or by the individual's spouse, or by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them.

3. Except where subd. 2. applies, employment by a corporation or limited liability company that is treated as a corporation under this chapter, if one−fourth or more of the ownership interest, however designated or evidenced, in the corporation or limited liability company is or during such employment was owned or controlled, directly or indirectly, by the individual.

(gm) Paragraph (g) does not apply if the department determines that the individual whose base period wages are being computed was employed by an employer which is a family corporation and the individual's employment was terminated by the employer because of involuntary cessation of business of the family corporation under one or more of the following circumstances:

1. Dissolution of the family corporation, due to economic inviability, under ch. 180 or the analogous applicable laws of the jurisdiction in which the corporation is incorporated or organized;

2. Filing of a petition in bankruptcy by the family corporation;

3. Filing of a petition in bankruptcy by all owners who are personally liable for any of the debts of the family corporation; or

4. Disposition of a total of 75% or more of the assets of the family corporation using one or more of the following methods:

a. Assignment for the benefit of creditors.

b. Surrender to one or more secured creditors or lienholders.

c. Sale, due to economic inviability, if the sale does not result in ownership or control by substantially the same interests that owned or controlled the family corporation. It is presumed unless shown to the contrary that a sale, in whole or in part, to a spouse, parent or child of an individual who owned or controlled the family corporation, or to any combination of 2 or more of them, is a sale to substantially the same interests that owned or controlled the family corporation.

(h) Each employer shall inform the department in its report under s. 108.09 (1) whenever an individual claims benefits based on employment to which par. (g) applies. Each employee who claims benefits based on employment to which par. (g) applies shall so inform the department when claiming benefits.

(hm) The department may require any claimant to appear before it and to answer truthfully, orally or in writing, any questions relating to the claimant's eligibility for benefits or to provide such demographic information as may be necessary to permit the department to conduct a statistically valid sample audit of compliance with this chapter. A claimant is not eligible to receive benefits for any week in which the claimant fails to comply with a request by the department to provide the information required under this paragraph, or any subsequent week, until the claimant complies with the request. Except as provided in sub. (2) (e) and (f), if a claimant later complies with a request by the department within the period specified in s. 108.09 (2) (c), the claimant is eligible to receive benefits as of the week in which the failure occurred, if otherwise qualified.

(2) GENERAL QUALIFYING REQUIREMENTS. (a) Except as provided in par. (b) and sub. (16) (am) and (b) and as otherwise expressly provided, a claimant is eligible for benefits as to any given week only if:

1. Except as provided in s. 108.062 (10), the individual is able to work and available for work during that week;

2. Except as provided in s. 108.062 (10m), as of that week, the individual has registered for work as directed by the department;

3. The individual conducts a reasonable search for suitable work during that week, unless the search requirement is waived under par. (b) or s. 108.062 (10m). The search for suitable work must include at least 4 actions per week that constitute a reasonable search as prescribed by rule of the department. In addition, the department may, by rule, require an individual to take more than 4 reasonable work search actions in any week. The department shall require a uniform number of reasonable work search actions for similar types of claimants. This subdivision does not apply to an individual if the department determines that the individual is currently laid off from employment with an employer but there is a reasonable expectation of reemployment of the individual by that employer. In determining whether the individual has a reasonable expectation of reemployment by an employer, the department shall request the employer to verify the individual's employment status and shall also consider other factors, including:

a. The history of layoffs and reemployments by the employer;

b. Any information that the employer furnished to the individual or the department concerning the individual's anticipated reemployment date; and

c. Whether the individual has recall rights with the employer under the terms of any applicable collective bargaining agreement; and

4. If the claimant is claiming benefits for a week other than an initial week, the claimant provides information or job application materials that are requested by the department and participates in a public employment office workshop or training program or in similar reemployment services that are required by the department under sub. (15) (a) 2.

(ae) A claimant is not available for work under par. (a) 1. in any week in which he or she is located in a country other than the United States, as defined in s. 108.02 (15) (do) 2., or Canada for more than 48 hours unless the claimant has authorization to work in that other country and there is a reciprocal agreement concerning the payment of unemployment insurance benefits between that other country and the United States.

(b) The requirements for registration for work and search for work shall be prescribed by rule of the department, and the department may by general rule waive these requirements under certain stated conditions.

(bm) A claimant is ineligible to receive benefits for any week for which there is a determination that the claimant failed to conduct a reasonable search for suitable work and the department has not waived the search requirement under par. (b) or s. 108.062 (10m). If the department has paid benefits to a claimant for any such week, the department may recover the overpayment under s. 108.22 (8).

(c) Each employer shall inform his or her employees of the requirements of this subsection in such reasonable manner as the department may prescribe by rule.

(e) Each claimant shall furnish to the department his or her social security number. If a claimant fails, without good cause, to provide his or her social security number, the claimant is not eligible to receive benefits for the week in which the failure occurs or any subsequent week until the week in which he or she provides the social security number. If the claimant has good cause, he or she is eligible to receive benefits as of the week in which the claimant first files a claim for benefits or first requests the department to reactivate an existing benefit claim.

(f) A claimant is ineligible to receive benefits for any week for which benefits are paid or payable because the claimant knowingly provided the department with a false social security number.

Cross−reference: See also chs. DWD 126, 127, and 128, Wis. adm. code.

(g) 1. Each claimant shall create security credentials in order to engage in transactions with the department, including the filing of an initial or continued claim for benefits. The security credentials may consist of a personal identification number, username, and password, or any other means prescribed by the department.

2. If a claimant's security credentials are used in the filing of an initial or continued claim for benefits or any other transaction, the individual using the security credentials is presumed to have been the claimant or the claimant's authorized agent. This presumption may be rebutted by a preponderance of evidence showing that the claimant who created the security credentials or the claimant's authorized agent was not the person who used the credentials in a given transaction. If a claimant uses an agent to engage in any transaction with the department using the claimant's security credentials, the claimant is responsible for the actions of the agent. If a claimant who created security credentials or the claimant's authorized agent divulges the credentials to another person, or fails to take adequate measures to protect the credentials from being divulged to an unauthorized person, and the department pays benefits to an unauthorized person because of the claimant's action or inaction, the department may recover from the claimant the benefits that were paid to the unauthorized person in the same manner as provided for overpayments to claimants under s. 108.22 (8) or under s. 108.245. If a claimant who created security credentials or the claimant's authorized agent divulges the credentials to another person, or fails to take adequate measures to protect the credentials from being divulged to an unauthorized person, the department is not obligated to pursue recovery of, or to reimburse the claimant for, benefits payable to the claimant that were erroneously paid to another person.

(h) A claimant shall, when the claimant first files a claim for benefits under this chapter and during each subsequent week the claimant files for benefits under this chapter, inform the department whether he or she is receiving social security disability insurance payments, as defined in sub. (12) (f) 2m.

(i) 1. There is a rebuttable presumption that a claimant who is subject to the requirement under par. (a) 3. to conduct a reasonable search for suitable work has not conducted a reasonable search for suitable work in a given week if all of the following apply:

a. The claimant was last employed by a temporary help company.

b. The temporary help company required the claimant to contact the temporary help company about available assignments weekly, or less often as prescribed by the temporary help company, and the company gave the claimant written notice of that requirement at the time the claimant was initially employed by the company.

c. During that week, the claimant was required to contact the temporary help company about available assignments and the claimant did not contact the temporary help company about available assignments.

d. The temporary help company submits a written notice to the department within 10 business days after the end of that week reporting that the claimant did not contact the company about available assignments.

2. A claimant may only rebut the presumption under subd. 1. if the claimant demonstrates one of the following to the department for a given week:

a. That the claimant did contact the temporary help company about available assignments during that week.

b. That the claimant was not informed by the temporary help company of the requirement to contact the temporary help company or had other good cause for his or her failure to contact the temporary help company about available assignments during that week.

3. If a claimant who was last employed by a temporary help company contacts the temporary help company during a given week about available assignments, that contact constitutes one action that constitutes a reasonable search for suitable work, for purposes of par. (a) 3.

(3) WAITING PERIOD. The first week of a claimant's benefit year for which the claimant has timely applied and is otherwise eligible for regular benefits under this chapter is the claimant's waiting period for that benefit year.

(4) QUALIFYING CONDITIONS. (a) A claimant is not eligible to start a benefit year unless the claimant has combined base period wages equal to at least 35 times the claimant's weekly benefit rate under s. 108.05 (1), including combined base period wages equal to at least 4 times the claimant's weekly benefit rate under s. 108.05 (1) in one or more quarters outside of the quarter within the claimant's base period in which the claimant has the highest base period wages.

(b) There shall be counted toward the wages required by par. (a) any federal service, within the relevant period, which is assigned to Wisconsin under an agreement pursuant to 5 USC 8501 to 8525.

(c) An employee is not eligible to start a new benefit year unless, subsequent to the start of the employee's most recent benefit year in which benefits were paid to the employee, the employee has performed services and earned wages for those services equal to at least 8 times the employee's latest weekly benefit rate under s. 108.05 (1) that was payable to the employee in the employee's most recent benefit year in employment or other work covered by the unemployment insurance law of any state or the federal government.

(5) DISCHARGE FOR MISCONDUCT. An employee whose work is terminated by an employing unit for misconduct by the employee connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least 14 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be the rate that would have been paid had the discharge not occurred. The wages paid to an employee by an employer which terminates employment of the employee for misconduct connected with the employee's employment shall be excluded from the employee's base period wages under s. 108.06 (1) for purposes of benefit entitlement. This subsection does not preclude an employee who has employment with an employer other than the employer which terminated the employee for misconduct from establishing a benefit year using the base period wages excluded under this subsection if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 from which base period wages are excluded under this subsection. For purposes of this subsection, "misconduct" means one or more actions or conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which an employer has a right to expect of his or her employees, or in carelessness or negligence of such degree or recurrence as to manifest culpability, wrongful intent, or evil design of equal severity to such disregard, or to show an intentional and substantial disregard of an employer's interests, or of an employee's duties and obligations to his or her employer. In addition, "misconduct" includes:

(a) A violation by an employee of an employer's reasonable written policy concerning the use of alcohol beverages, or use of

a controlled substance or a controlled substance analog, if the employee:

1. Had knowledge of the alcohol beverage or controlled substance policy; and

2. Admitted to the use of alcohol beverages or a controlled substance or controlled substance analog or refused to take a test or tested positive for the use of alcohol beverages or a controlled substance or controlled substance analog in a test used by the employer in accordance with a testing methodology approved by the department.

(b) Theft of an employer's property or services with intent to deprive the employer of the property or services permanently, theft of currency of any value, felonious conduct connected with an employee's employment with his or her employer, or intentional or negligent conduct by an employee that causes substantial damage to his or her employer's property.

(c) Conviction of an employee of a crime or other offense subject to civil forfeiture, while on or off duty, if the conviction makes it impossible for the employee to perform the duties that the employee performs for his or her employer.

(d) One or more threats or acts of harassment, assault, or other physical violence instigated by an employee at the workplace of his or her employer.

(e) Absenteeism by an employee on more than 2 occasions within the 120−day period before the date of the employee's termination, unless otherwise specified by his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature, or excessive tardiness by an employee in violation of a policy of the employer that has been communicated to the employee, if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness.

(f) Unless directed by an employee's employer, falsifying business records of the employer.

(g) Unless directed by the employer, a willful and deliberate violation of a written and uniformly applied standard or regulation of the federal government or a state or tribal government by an employee of an employer that is licensed or certified by a governmental agency, which standard or regulation has been communicated by the employer to the employee and which violation would cause the employer to be sanctioned or to have its license or certification suspended by the agency.

(5g) DISCHARGE FOR SUBSTANTIAL FAULT. (a) An employee whose work is terminated by an employing unit for substantial fault by the employee connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the termination occurs and the employee earns wages after the week in which the termination occurs equal to at least 14 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's benefit rate shall be the rate that would have been paid had the discharge not occurred. For purposes of this paragraph, "substantial fault" includes those acts or omissions of an employee over which the employee exercised reasonable control and which violate reasonable requirements of the employee's employer but does not include any of the following:

1. One or more minor infractions of rules unless an infraction is repeated after the employer warns the employee about the infraction.

2. One or more inadvertent errors made by the employee.

3. Any failure of the employee to perform work because of insufficient skill, ability, or equipment.

(b) The department shall charge to the fund's balancing account the cost of any benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 if the employee is discharged by the employer and paragraph (a) applies.

(6) DISCIPLINARY SUSPENSION. An employee whose work is suspended by an employing unit for good cause connected with the employee's work is ineligible to receive benefits until 3 weeks have elapsed since the end of the week in which the suspension occurs or until the suspension is terminated, whichever occurs first. This subsection does not preclude an employee from establishing a benefit year during a period in which the employee is ineligible to receive benefits under this subsection if the employee qualifies to establish a benefit year under s. 108.06 (2) (a).

(7) VOLUNTARY TERMINATION OF WORK. (a) If an employee terminates work with an employing unit, the employee is ineligible to receive benefits until the employee earns wages after the week in which the termination occurs equal to at least 6 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be that rate which would have been paid had the termination not occurred. This paragraph does not preclude an employee from establishing a benefit year by using the base period wages paid by the employer from which the employee voluntarily terminated, if the employee is qualified to establish a benefit year under s. 108.06 (2) (a).

(am) Paragraph (a) does not apply if the department determines that the suspension or termination of the claimant's work was in lieu of a suspension or termination by the employer of another employee's work. The claimant shall not be deemed unavailable for the claimant's work with the employer by reason of such suspension or termination.

(b) Paragraph (a) does not apply if the department determines that the employee terminated his or her work with good cause attributable to the employing unit. In this paragraph, "good cause" includes, but is not limited to, a request, suggestion or directive by the employing unit that the employee violate federal or Wisconsin law, or sexual harassment, as defined in s. 111.32 (13), by an employing unit or employing unit's agent or a co−worker, of which the employer knew or should have known but failed to take timely and appropriate corrective action.

(c) Paragraph (a) does not apply if the department determines that the employee terminated his or her work but had no reasonable alternative because of the verified illness or disability of the employee.

(cg) Paragraph (a) does not apply if the department determines that the employee terminated his or her work because of the verified illness or disability of a member of his or her immediate family and the verified illness or disability reasonably necessitates the care of the family member for a period of time that is longer than the employer is willing to grant leave.

(cm) Paragraph (a) does not apply if an employee is hired to work a particular shift and if the department determines that the employee terminated his or her work as the result of a requirement by his or her employing unit to transfer his or her working hours to a shift occurring at a time that would result in a lack of child care for his or her minor children, provided that the employee is able to work and available for full−time work during the same shift that the employee worked in the employee's most recent work with that employing unit. For purposes of sub. (2) (a), such an employee is not deemed unavailable for work solely for refusing to work a shift other than the one for which the employee was hired.

(e) Paragraph (a) does not apply if the department determines that the employee accepted work which the employee could have failed to accept under sub. (8) and terminated such work on the same grounds and within the first 30 calendar days after starting the work, or that the employee accepted work which the employee could have refused under sub. (9) and terminated such work within the first 30 calendar days after starting the work. For purposes of this paragraph, an employee has the same grounds for

voluntarily terminating work if the employee could have failed to accept the work under sub. (8) (d) when it was offered, regardless of the reason articulated by the employee for the termination.

NOTE: Par. (e) is shown as amended eff. 5−1−16 by 2015 Wis. Act 334. Prior to 5−1−16 it reads:

(e) Paragraph (a) does not apply if the department determines that the employee accepted work which the employee could have failed to accept with good cause under sub. (8) and terminated such work with the same good cause and within the first 30 calendar days after starting the work, or that the employee accepted work which the employee could have refused under sub. (9) and terminated such work within the first 30 calendar days after starting the work. For purposes of this paragraph, an employee has the same good cause for voluntarily terminating work if the employee could have failed to accept the work under sub. (8) (d) when it was offered, regardless of the reason articulated by the employee for the termination.

(h) The department shall charge to the fund's balancing account benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 if the employee voluntarily terminates employment with that employer and par. (a), (c), (cg), (e), (L), (q), (s), or (t) applies.

(L) Paragraph (a) does not apply if the department determines that the employee terminated work to accept employment or other work covered by the unemployment insurance law of any state or the federal government if the work:

1. Offered average weekly wages at least equal to the average weekly wages that the employee earned in the terminated work;

2. Offered the same or a greater number of hours of work than those performed in the work terminated;

3. Offered the opportunity for significantly longer term work; or

4. Offered the opportunity to accept a position for which the duties were primarily discharged at a location significantly closer to the employee's domicile than the location of the terminated work.

(q) Paragraph (a) does not apply if the department determines that an employee, while serving as a member of the U.S. armed forces, was engaged concurrently in other work and terminated that work as a result of the employee's honorable discharge or discharge under honorable conditions from active duty as a member of the U.S. armed forces for a reason that would qualify the employee to receive unemployment compensation under 5 USC 8521.

(s) 1. In this paragraph:

a. "Domestic abuse" means physical abuse, including a violation of s. 940.225 (1), (2) or (3), or a threat of physical abuse by an adult family or adult household member against another family or household member; by an adult person against his or her spouse or former spouse; by an adult person against a person with whom the person has a child in common; or by an adult person against an unrelated adult person with whom the person has had a personal relationship.

b. "Family member" means a spouse, parent, child or person related by blood or adoption to another person.

bn. "Health care professional" has the meaning given in s. 180.1901 (1m).

c. "Household member" means a person who is currently or formerly residing in a place of abode with another person.

d. "Law enforcement agency" has the meaning given in s. 165.83 (1) (b) and includes a tribal law enforcement agency as defined in s. 165.83 (1) (e).

e. "Protective order" means a temporary restraining order or an injunction issued by a court of competent jurisdiction.

2. Paragraph (a) does not apply if the employee:

a. Terminates his or her work due to domestic abuse, concerns about personal safety or harassment, concerns about the safety or harassment of his or her family members who reside with the employee or concerns about the safety or harassment of other household members; and

b. Provides to the department a protective order relating to the domestic abuse or concerns about personal safety or harassment issued by a court of competent jurisdiction, a report by a law enforcement agency documenting the domestic abuse or concerns, or evidence of the domestic abuse or concerns provided by a health care professional or an employee of a domestic violence shelter.

(t) Paragraph (a) does not apply if the department determines that all of the following apply to an employee:

1. The employee's spouse is a member of the U.S. armed forces on active duty.

2. The employee's spouse was required by the U.S. armed forces to relocate to a place to which it is impractical for the employee to commute.

3. The employee terminated his or her work to accompany the spouse to that place.

(7m) VOLUNTARY REDUCTION IN HOURS OF EMPLOYMENT. An employee whose employer grants the employee's voluntary request to reduce indefinitely the number of hours of employment usually worked by the employee voluntarily terminates his or her employment within the meaning of sub. (7). The wages earned by the employee from that employer for any week in which the reduction requested by the employee is in effect may not be used to meet the requalification requirement provided in sub. (7) (a) applicable to that termination if the employer has notified the employee in writing, prior to the time that the request is granted, of the effect of this subsection. The department shall charge to the fund's balancing account benefits paid to such an employee that are otherwise chargeable to the account of an employer that grants an employee's request under this subsection, for each week in which this subsection applies, if the employer is subject to the contribution requirements of ss. 108.17 and 108.18.

(8) SUITABLE WORK. (a) Except as provided in par. (b), if an employee fails, without good cause, to accept suitable work when offered, the employee is ineligible to receive benefits until the employee earns wages after the week in which the failure occurs equal to at least 6 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be that rate which would have been paid had the failure not occurred. This paragraph does not preclude an employee from establishing a benefit year during a period in which the employee is ineligible to receive benefits under this paragraph if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). Except as provided in par. (b), the department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 whenever an employee of that employer fails, without good cause, to accept suitable work offered by that employer.

(b) There is a rebuttable presumption that an employee has failed, without good cause, to accept suitable work when offered if the department determines, based on a report submitted by an employing unit in accordance with s. 108.133 (4), that the employing unit required, as a condition of an offer of employment, that the employee submit to a test for the presence of controlled substances and withdrew the conditional offer after the employee either declined to submit to such a test or tested positive for one or more controlled substances without evidence of a valid prescription for each controlled substance for which the employee tested positive. In the case of the employee declining to submit to such a test, the employee shall be ineligible for benefits until the employee again qualifies for benefits in accordance with the rules promulgated under this paragraph. In the case of the employee testing positive in such a test without evidence of a valid prescription, the employee shall be ineligible for benefits until the employee again qualifies for benefits in accordance with the rules

promulgated under this paragraph, except that the employee may maintain his or her eligibility for benefits in [the] same manner as is provided in s. 108.133 (3) (d). The department shall promulgate rules identifying a period of ineligibility that must elapse or a requalification requirement that must be satisfied, or both, in order for an employee who becomes ineligible for benefits as provided in this paragraph to again qualify for benefits and specifying how a claimant may overcome the presumption in this paragraph. The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 whenever an employee of that employer fails, without good cause, to accept suitable work as described in this paragraph.

NOTE: A missing word is shown in brackets. Corrective legislation is pending.

(c) If an employee fails, without good cause, to return to work with a former employer that recalls the employee within 52 weeks after the employee last worked for that employer, the employee is ineligible to receive benefits until the employee earns wages after the week in which the failure occurs equal to at least 6 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be that rate which would have been paid had the failure not occurred. This paragraph does not preclude an employee from establishing a benefit year during a period in which the employee is ineligible to receive benefits under this paragraph if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of any employer that is subject to the contribution requirements under ss. 108.17 and 108.18 whenever an employee of that employer fails, without good cause, to return to work with that employer. This paragraph does not apply to an employee who fails to return to work with a former employer if the work offered would not be considered suitable work under par. (d) or (dm), whichever is applicable. If an employee receives actual notice of a recall to work, par. (a) applies in lieu of this paragraph.

NOTE: Par. (c) is shown as amended eff. 5−1−16 by 2015 Wis. Act 334. Prior to 5−1−16 it reads:

(c) If an employee fails, without good cause, to return to work with a former employer that recalls the employee within 52 weeks after the employee last worked for that employer, the employee is ineligible to receive benefits until the employee earns wages after the week in which the failure occurs equal to at least 6 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be that rate which would have been paid had the failure not occurred. This paragraph does not preclude an employee from establishing a benefit year during a period in which the employee is ineligible to receive benefits under this paragraph if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of any employer that is subject to the contribution requirements under ss. 108.17 and 108.18 whenever an employee of that employer fails, without good cause, to return to work with that employer. If an employee receives actual notice of a recall to work, par. (a) applies in lieu of this paragraph.

(d) With respect to the first 6 weeks after the employee became unemployed, "suitable work," for purposes of par. (a), means work to which all of the following apply:

1. The work does not involve a lower grade of skill than that which applied to the employee on one or more of his or her most recent jobs.

2. The hourly wage for the work is 75 percent or more of what the employee earned on the highest paying of his or her most recent jobs.

NOTE: Par. (d) is shown as affected eff. 5−1−16 by 2015 Wis. Act 334. Prior to 5−1−16 it reads:

(d) An employee shall have good cause under par. (a) or (c), regardless of the reason articulated by the employee for the failure, if the department determines that the failure involved work at a lower grade of skill or significantly lower rate of pay than applied to the employee on one or more recent jobs, and that the employee had not yet had a reasonable opportunity, in view of labor market conditions and the employee's degree of skill, but not to exceed 6 weeks after the employee became unemployed, to seek a new job substantially in line with the employee's prior job skill and rate of pay.

(dm) With respect to the 7th week after the employee became unemployed and any week thereafter, "suitable work," for purposes of par. (a), means any work that the employee is capable of performing, regardless of whether the employee has any relevant experience or training, that pays wages that are above the lowest quartile of wages for similar work in the labor market area in which the work is located, as determined by the department.

NOTE: Par. (dm) is created eff. 5−1−16 by 2015 Wis. Act 334.

(em) An employee shall have good cause under this subsection only if the department determines that the failure related to the employee's personal safety, the employee's sincerely held religious beliefs, or an unreasonable commuting distance, or if the employee had another compelling reason that would have made accepting the offer unreasonable.

NOTE: Par. (em) is created eff. 5−1−16 by 2015 Wis. Act 334.

(f) This subsection does not apply to an individual claiming extended benefits if the individual fails to provide sufficient evidence that his or her prospects for obtaining work in his or her customary occupation within a period of time not exceeding 4 weeks, beginning with the first week of eligibility for extended benefits, are good.

(9) PROTECTION OF LABOR STANDARDS. Benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If the position offered is vacant due directly to a strike, lockout or other labor dispute.

(b) If the wages, hours, including arrangement and number, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

(c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(10) LABOR DISPUTE. (a) An employee who has left or partially or totally lost his or her work with an employing unit because of a strike or other bona fide labor dispute, other than a lockout, is not eligible to receive benefits based on wages paid for employment prior to commencement of the dispute for any week in which the dispute is in active progress in the establishment in which the employee is or was employed, except as provided in par. (b).

(b) An employee who did not establish a benefit year prior to commencement of a strike or other bona fide labor dispute, other than a lockout, may establish a benefit year after commencement of the dispute if the employee qualifies to establish a benefit year under s. 108.06 (2) (a), but the wages paid to the employee for employment prior to commencement of the dispute shall be excluded from the employee's base period wages under sub. (4) (a) and ss. 108.05 (1) and 108.06 (1) for any week in which the dispute is in active progress in the establishment in which the employee is or was employed.

(c) For purposes of this subsection, if the active progress of a strike or other bona fide labor dispute ends on a Sunday, it is not in "active progress" in the calendar week beginning on that Sunday as to any employee who did not normally work on Sundays in the establishment in which the labor dispute occurs.

(d) In this subsection, "lockout" means the barring of one or more employees from their employment in an establishment by an employer as a part of a labor dispute, which is not directly subsequent to a strike or other job action of a labor union or group of employees of the employer, or which continues or occurs after the termination of a strike or other job action of a labor union or group of employees of the employer.

(11) FRAUDULENT CLAIMS. (a) If a claimant, in filing his or her application for benefits or claim for any week, conceals any material fact relating to his or her eligibility for benefits, the claimant is ineligible for benefits as provided in par. (be).

(b) If a claimant, in filing a claim for any week, conceals any of his or her wages earned or paid or payable or hours worked in

that week, the claimant is ineligible for benefits as provided in par. (be).

(be) A claimant is ineligible for benefits for acts of concealment described in pars. (a) and (b) as follows:

1. For each single act of concealment occurring before the date of the first determination of concealment under par. (a) or (b), the claimant is ineligible for benefits for which he or she would otherwise be eligible in an amount equivalent to 2 times the claimant's weekly benefit rate under s. 108.05 (1) for the week in which the claim is made.

2. For each single act of concealment occurring after the date of the first determination of concealment under par. (a) or (b), the claimant is ineligible for benefits for which he or she would otherwise be eligible in an amount equivalent to 4 times the claimant's weekly benefit rate under s. 108.05 (1) for the week in which the claim is made.

3. For each single act of concealment occurring after the date of a 2nd or subsequent determination of concealment under par. (a) or (b), the claimant is ineligible for benefits for which he or she would otherwise be eligible in an amount equivalent to 8 times the claimant's weekly benefit rate under s. 108.05 (1) for the week in which the claim is made.

(bh) In addition to ineligibility for benefits resulting from concealment as provided in par. (be), the department shall assess a penalty against the claimant in an amount equal to 40 percent of the benefit payments erroneously paid to the claimant as a result of one or more acts of concealment described in pars. (a) and (b).

(bm) The department shall apply any ineligibility under par. (be) against benefits and weeks of eligibility for which the claimant would otherwise be eligible after the week of concealment and within 6 years after the date of an initial determination issued under s. 108.09 finding that a concealment occurred. The claimant shall not receive waiting period credit under s. 108.04 (3) for the period of ineligibility applied under par. (be). If no benefit rate applies to the week for which the claim is made, the department shall use the claimant's benefit rate for the claimant's next benefit year beginning after the week of concealment to determine the amount of the benefit reduction.

(c) Any employing unit that aids and abets a claimant in committing or attempts to aid and abet a claimant in committing an act of concealment described in par. (a) or (b) may, by a determination issued under s. 108.10, be required, as to each act of concealment the employing unit aids and abets or attempts to aid and abet, to forfeit an amount equal to the amount of the benefits the claimant improperly received as a result of the concealment. In addition, the employing unit shall be penalized as follows:

1. The employing unit shall forfeit $500 for each single act of concealment that the employing unit aids and abets or attempts to aid and abet a claimant to commit occurring before the date of the first determination that the employing unit has so acted.

2. The employing unit shall forfeit $1,000 for each single act of concealment that the employing unit aids and abets or attempts to aid and abet a claimant to commit occurring after the date of the first determination that the employing unit has so acted in which a penalty is applied under subd. 1. but on or before the date of the first determination that the employing unit has so acted in which a penalty is applied under this subdivision.

3. The employing unit shall forfeit $1,500 for each single act of concealment that the employing unit aids and abets or attempts to aid and abet a claimant to commit occurring after the date of the first determination that the employing unit has so acted in which a penalty is applied under subd. 2.

(cm) If any person makes a false statement or representation in order to obtain benefits in the name of another person, the benefits received by that person constitute a benefit overpayment. Such person may, by a determination or decision issued under s. 108.095, be required to repay the amount of the benefits obtained and be assessed an administrative assessment in an additional amount equal to the amount of benefits obtained.

(d) In addition to other remedies, the department may, by civil action, recover any benefits obtained by means of any false statement or representation or any administrative assessment imposed under par. (cm). Chapter 778 does not apply to collection of any benefits or assessment under this paragraph.

(e) This subsection may be applied even when other provisions, including penalty provisions, of this chapter are applied.

(f) All amounts forfeited under par. (c) and all collections from administrative assessments under par. (cm) shall be credited to the administrative account.

(g) 1. In this subsection, "conceal" means to intentionally mislead the department by withholding or hiding information or making a false statement or misrepresentation.

2. A claimant has a duty of care to provide an accurate and complete response to each inquiry made by the department in connection with his or her receipt of benefits. The department shall consider the following factors in determining whether a claimant intended to mislead the department as described in subd. 1.:

a. Whether the claimant failed to read or follow instructions or other communications of the department related to a claim for benefits.

b. Whether the claimant relied on the statements or representations of persons other than an employee of the department who is authorized to provide advice regarding the claimant's claim for benefits.

c. Whether the claimant has a limitation or disability and, if so, whether the claimant provided evidence to the department of that limitation or disability.

d. The claimant's unemployment insurance claims filing experience.

e. Any instructions or previous determinations of concealment issued or provided to the claimant.

f. Any other factor that may provide evidence of the claimant's intent.

3. Nothing in this subsection requires the department, when making a finding of concealment, to determine or prove that a claimant had an intent or design to receive benefits to which the claimant knows he or she was not entitled.

(12) PREVENTION OF DUPLICATE PAYMENTS. (b) Any individual who receives, through the department, any other type of unemployment benefit or allowance for a given week is ineligible for benefits for that same week under this chapter, except as specifically required for conformity with the federal trade act of 1974 (P.L. 93−618).

(c) Any individual who receives unemployment insurance for a given week under any federal law through any federal agency shall be ineligible for benefits paid or payable for that same week under this chapter.

(d) Any individual who receives unemployment insurance for a given week under the law of any other state, with no use of benefit credits earned under this chapter, shall be ineligible for benefits paid or payable for that same week under this chapter.

(e) Any individual who receives a temporary total disability payment or a permanent total disability payment for a whole week under ch. 102 or under any federal law which provides for payments on account of a work−related injury or illness analogous to those provided under ch. 102 shall be ineligible for benefits paid or payable for that same week under this chapter unless otherwise provided by federal law. A temporary total disability payment, a temporary partial disability payment, or a permanent total disability payment under those provisions received by an individual for part of a week shall be treated as wages for purposes of eligibility for benefits for partial unemployment under s. 108.05 (3).

NOTE: Par. (e) is shown as amended eff. 5−1−16 by 2015 Wis. Act 334. Prior to 5−1−16 it reads:

(e) Any individual who receives a temporary total disability payment for a whole week under ch. 102 or under any federal law which provides for payments on account of a work−related injury or illness analogous to those provided under ch. 102 shall be ineligible for benefits paid or payable for that same week under this chapter unless otherwise provided by federal law. A temporary total disabil-

ity payment or a temporary partial disability payment under those provisions received by an individual for part of a week shall be treated as wages for purposes of eligibility for benefits for partial unemployment under s. 108.05 (3).

(f) 1m. The intent of the legislature in enacting this paragraph is to prevent the payment of duplicative government benefits for the replacement of lost earnings or income, regardless of an individual's ability to work.

2m. In this paragraph, "social security disability insurance payment" means a payment of social security disability insurance benefits under 42 USC ch. 7 subch. II.

3. a. Except as provided in subd. 3. b. to d., an individual is ineligible for benefits under this chapter for each week in the entire month in which a social security disability insurance payment is issued to the individual.

b. In the first month a social security disability insurance payment is first issued to an individual, the individual is ineligible for benefits under this chapter for each week beginning with the week the social security disability insurance payment is issued to the individual and all subsequent weeks in that month.

c. Following a cessation of social security disability insurance payments to an individual and upon the individual again being issued a social security disability insurance payment, the individual is ineligible for benefits under this chapter for each week beginning with the week the social security disability insurance payment is issued to the individual and all subsequent weeks in that month.

d. Following cessation of social security disability insurance payments, an individual may be eligible for benefits under this chapter, if otherwise qualified, beginning with the week following the last Saturday of the month in which the individual is issued his or her final social security disability insurance payment.

4. Information that the department receives or acquires from the federal social security administration regarding the issuance of social security disability insurance payments is considered conclusive, absent clear and convincing evidence that the information was erroneous.

(13) NOTIFICATION AS TO INELIGIBILITY. (a) The department shall apply any provision of this chapter which may disqualify a claimant from receiving benefits whether or not the claimant's employing unit questions the claimant's eligibility or files the report required under s. 108.09 (1).

(b) If an employer fails to file the required wage report under s. 108.205 for an employee who has claimed benefits from the employer's account, the department may compute and proceed to pay the benefits thus claimed, based on the claimant's statements and any other information then available.

(c) If an employer, after notice of a benefit claim, fails to file an objection to the claim under s. 108.09 (1), any benefits allowable under any resulting benefit computation shall, unless the department applies a provision of this chapter to disqualify the claimant, be promptly paid. Except as otherwise provided in this paragraph, any eligibility question in objection to the claim raised by the employer after benefit payments to the claimant are commenced does not affect benefits paid prior to the end of the week in which a determination is issued as to the eligibility question unless the benefits are erroneously paid without fault on the part of the employer. Except as otherwise provided in this paragraph, if an employer fails to provide correct and complete information requested by the department during a fact−finding investigation, but later provides the requested information, benefits paid prior to the end of the week in which a redetermination is issued regarding the matter or, if no redetermination is issued, prior to the end of the week in which an appeal tribunal decision is issued regarding the matter, are not affected by the redetermination or decision, unless the benefits are erroneously paid without fault on the part of the employer as provided in par. (f). If benefits are erroneously paid because the employer and the employee are at fault, the department shall charge the employer for the benefits and proceed to create an overpayment under s. 108.22 (8) (a). If benefits are erroneously paid without fault on the part of the employer, regardless of whether the employee is at fault, the department shall charge the benefits as provided in par. (d), unless par. (e) applies, and proceed to create an overpayment under s. 108.22 (8) (a). If benefits are erroneously paid because an employer is at fault and the department recovers the benefits erroneously paid under s. 108.22 (8), the recovery does not affect benefit charges made under this paragraph.

(d) 1. If the department finds that any benefits charged to an employer's account have been erroneously paid to an employee without fault by the employer, the department shall notify the employee and the employer of the erroneous payment.

2. If recovery of an overpayment is permitted under s. 108.22 (8) (c) and benefits are currently payable to the employee from the employer's account, the department may correct the error by adjusting the benefits accordingly.

3. To correct any erroneous payment not so adjusted that was charged to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18, the department shall do one of the following:

NOTE: Subd. 3. (intro.) is shown as amended eff. 10−2−16 by 2015 Wis. Act 334. Prior to 10−2−16 it reads:

3. To correct any erroneous payment not so adjusted that was charged to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18, the department shall:

a. If recovery of an overpayment is permitted under s. 108.22 (8) (c), restore the proper amount to the employer's account and charge that amount to the fund's balancing account, and shall thereafter reimburse the balancing account by crediting to it benefits which would otherwise be payable to, or cash recovered from, the employee.

NOTE: Subdpar. a. is shown as amended eff. 10−2−16 by 2015 Wis. Act 334. Prior to 10−2−16 it reads:

a. If recovery of an overpayment is permitted under s. 108.22 (8) (c), restore the proper amount to the employer's account and charge that amount to the fund's balancing account, and shall thereafter reimburse the balancing account by crediting to it benefits which would otherwise be payable to, or cash recovered from, the employee; or

b. If recovery of an overpayment is not permitted under s. 108.22 (8) (c), restore the proper amount to the employer's account and charge that amount to the fund's balancing account unless s. 108.07 (5) (c) applies.

4. To correct any erroneous payment not so adjusted from the account of an employer that is subject to reimbursement financing, the department shall do one of the following:

NOTE: Subd. 4. (intro.) is shown as amended eff. 10−2−16 by 2015 Wis. Act 334. Prior to 10−2−16 it reads:

4. To correct any erroneous payment not so adjusted from the account of an employer which is a government unit, an Indian tribe, or a nonprofit organization and which has elected reimbursement financing, the department shall:

a. If recovery of an overpayment is permitted under s. 108.22 (8) (c), credit to the account benefits which would otherwise be payable to, or cash received from, the employee, unless subd. 4. c. applies.

NOTE: Subdpar. a. is shown as amended eff. 10−2−16 by 2015 Wis. Act 334. Prior to 10−2−16 it reads:

a. If recovery of an overpayment is permitted under s. 108.22 (8) (c), credit to the account benefits which would otherwise be payable to, or cash received from, the employee; or

b. If recovery of an overpayment is not permitted under s. 108.22 (8) (c), restore the proper amount to the employer's account and charge that amount in accordance with s. 108.07 (5).

c. If the erroneous payment resulted from a false statement or representation about an individual's identity and the employer was not at fault for the erroneous payment, restore the proper amount to the employer's account and reimburse the balancing account by crediting to it benefits that would otherwise be payable to, or cash recovered from, the individual who caused the erroneous payment.

NOTE: Subdpar. c. is created eff. 10−2−16 by 2015 Wis. Act 334.

(e) If the department erroneously pays benefits from one employer's account and a 2nd employer is at fault, the department shall credit the benefits paid to the first employer's account and charge the benefits paid to the 2nd employer's account. Filing of a tardy or corrected report or objection does not affect the 2nd

employer's liability for benefits paid prior to the end of the week in which the department makes a recomputation of the benefits allowable or prior to the end of the week in which the department issues a determination concerning any eligibility question raised by the report or by the 2nd employer. If the 2nd employer fails to provide correct and complete information requested by the department during a fact−finding investigation, but later provides the requested information, the department shall charge to the account of the 2nd employer the cost of benefits paid prior to the end of the week in which a redetermination is issued regarding the matter or, if no redetermination is issued, prior to the end of the week in which an appeal tribunal decision is issued regarding the matter, unless the benefits erroneously are paid without fault on the part of the employer as provided in par. (f). If the department recovers the benefits erroneously paid under s. 108.22 (8), the recovery does not affect benefit charges made under this paragraph.

(f) If benefits are erroneously paid because the employer fails to file a report required by this chapter, the employer fails to provide correct and complete information on the report, the employer fails to object to the benefit claim under s. 108.09 (1), the employer fails to provide correct and complete information requested by the department during a fact−finding investigation, unless an appeal tribunal, the commission, or a court of competent jurisdiction finds that the employer had good cause for the failure to provide the information, or the employer aids and abets the claimant in an act of concealment as provided in sub. (11), the employer is at fault. If benefits are erroneously paid because an employee commits an act of concealment as provided in sub. (11) or fails to provide correct and complete information to the department, the employee is at fault.

Cross−reference: See also ch. DWD 123, Wis. adm. code.

(g) 1. In this paragraph:

a. "Combined−wage claim" means a claim for benefits under this chapter that is filed pursuant to a reciprocal arrangement entered into under s. 108.14 (8n).

b. "Out−of−state employer" means a person that employs an individual who files a combined−wage claim in which the wages and employment from that person are covered under the unemployment compensation law of another state.

2. The department may issue a determination that an out−of−state employer is at fault for the erroneous payment of benefits under a combined−wage claim in the same manner as the department issues determinations under s. 108.10, if the unemployment insurance account of the out−of−state employer is potentially chargeable.

3. A determination issued under subd. 2. is subject to s. 108.10 and may be appealed in the same manner as a determination issued under s. 108.10.

(14) WAR−TIME APPLICATION OF SUBSECTION (7) OR (8). If the department finds that the official war−time manpower policies of the United States are or may be materially hampered, in any clearly definable class of cases, by any application of sub. (7) or (8), so as to interfere with the effective war−time use of civilian manpower in Wisconsin, the department may by general rule, after public hearing, modify or suspend such application accordingly.

(15) DEPARTMENT POWERS TO ASSIST CLAIMANTS. (a) Except as provided in par. (b), the department may do any of the following for the purpose of assisting claimants to find or obtain work:

1. Use the information or materials provided under sub. (2) (a) 4. to assess a claimant's efforts, skills, and ability to find or obtain work and to develop a list of potential opportunities for a claimant to obtain suitable work. A claimant who otherwise satisfies the requirement under sub. (2) (a) 3. is not required to apply for any specific positions on the list in order to satisfy that requirement.

2. Require a claimant to participate in a public employment office workshop or training program or in similar reemployment services that do not charge the claimant a participation fee and that offer instruction to improve the claimant's ability to obtain suitable work.

(b) This subsection does not apply with respect to a claimant who is exempt from any of the requirements in sub. (2) (a) 2. or 3. in a given week.

(16) APPROVED TRAINING. (a) In this subsection, "approved training" means:

1. A course of vocational training or basic education which is a prerequisite to such training in which an individual is enrolled if:

a. The course is expected to increase the individual's opportunities to obtain employment;

b. The course is given by a school established under s. 38.02 or another training institution approved by the department;

c. The individual is enrolled full time as determined by the training institution;

d. The course does not grant substantial credit leading to a bachelor's or higher degree; and

e. The individual is attending regularly and making satisfactory progress in the course.

2. A program administered by the department for the training of unemployed workers, other than the youth apprenticeship program under s. 106.13;

3. The plan of any state for training under the federal trade act, 19 USC 2296; or

4. A plan for training approved under the federal workforce investment act, 29 USC 2822.

(am) The department shall not apply any benefit reduction or disqualification under sub. (1) (a), (2) (a), or (8), or s. 108.141 (3g) (a) or (c) to any otherwise eligible individual for any week as a result of the individual's enrollment in approved training.

(b) The department shall not apply any benefit reduction or disqualification under sub. (1) (b), (2) (a), or (7) (c) or (cg) or s. 108.141 (3g) (d) that is not the result of approved training while an individual is enrolled in approved training.

(d) If an individual is enrolled in approved training specified in par. (a) 3. or 4.:

1. The department shall not deny benefits under sub. (7) as a result of the individual's leaving unsuitable work to enter or continue such training, as a result of the individual's leaving work that the individual engaged in on a temporary basis during a break in the training or a delay in the commencement of the training, or because the individual left on−the−job training not later than 30 days after commencing that training because the individual did not meet the requirements of the federal trade act under 19 USC 2296 (c) (1) (B); and

2. The requalifying requirements under subs. (7) and (8) do not apply while the individual is enrolled in approved training specified in par. (a) 3. or 4.

(e) The department shall charge to the fund's balancing account the cost of benefits paid to an individual that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 if the individual receives benefits based on the application of par. (am), (b), or (d).

(f) As a condition to qualification of a course as approved training for an individual under this subsection, the department may require a certification from the training institution showing the individual's attendance and progress in the course.

(17) EDUCATIONAL EMPLOYEES. (a) A school year employee of an educational institution who performs services in an instructional, research or principal administrative capacity is ineligible for benefits based on such services for any week of unemployment which occurs:

1. During the period between 2 successive academic years or terms, if the school year employee performed such services for any educational institution in the first such year or term and if there is

reasonable assurance that he or she will perform such services for any educational institution in the 2nd such year or term; or

2. During the period between 2 regular but not successive academic terms, when an agreement between an employer and a school year employee provides for such a period, if the school year employee performed such services for any educational institution in the first such term and if there is reasonable assurance that he or she will perform such services for any educational institution in the 2nd such term.

(b) A school year employee of a government unit, Indian tribe, or nonprofit organization which provides services to or on behalf of an educational institution who performs services in an instructional, research, or principal administrative capacity is ineligible for benefits based on such services for any week of unemployment which occurs:

1. During the period between 2 successive academic years or terms, if the school year employee performed such services for any such government unit, Indian tribe, or nonprofit organization in the first such year or term and if there is reasonable assurance that he or she will perform such services for any such government unit, Indian tribe, or nonprofit organization in the 2nd such year or term; or

2. During the period between 2 regular but not successive academic terms, when an agreement between an employer and a school year employee provides for such a period, if the school year employee performed such services for any such government unit, Indian tribe, or nonprofit organization in the first such term and if there is reasonable assurance that he or she will perform such services for any such government unit, Indian tribe, or nonprofit organization in the 2nd such term.

(c) A school year employee of an educational service agency who performs services in an instructional, research or principal administrative capacity, and who provides such services in an educational institution or to or on behalf of an educational institution, is ineligible for benefits based on such services for any week of unemployment which occurs:

1. During the period between 2 successive academic years or terms, if the school year employee performed such services for any educational service agency in the first such year or term and if there is reasonable assurance that he or she will perform such services for any educational service agency in the 2nd such year or term; or

2. During the period between 2 regular but not successive academic terms, when an agreement between an employer and a school year employee provides for such a period, if the school year employee performed such services for any educational service agency in the first such term and if there is reasonable assurance that he or she will perform such services for any educational service agency in the 2nd such term.

(d) A school year employee of an educational institution who performs services other than in an instructional, research or principal administrative capacity is ineligible for benefits based on such services for any week of unemployment which occurs during a period between 2 successive academic years or terms if the school year employee performed such services for any educational institution in the first such year or term and there is reasonable assurance that he or she will perform such services for any educational institution in the 2nd such year or term.

(e) A school year employee of a government unit, Indian tribe, or nonprofit organization which provides services to or on behalf of any educational institution who performs services other than in an instructional, research or principal administrative capacity is ineligible for benefits based on such services for any week of unemployment which occurs during a period between 2 successive academic years or terms if the school year employee performed such services for any such government unit or nonprofit organization in the first such year or term and there is reasonable assurance that he or she will perform such services for any such government unit, Indian tribe, or nonprofit organization in the 2nd such year or term.

(f) A school year employee of an educational service agency who performs services other than in an instructional, research or principal administrative capacity, and who provides such services in an educational institution or to or on behalf of an educational institution, is ineligible for benefits based on such services for any week of unemployment which occurs during a period between 2 successive academic years or terms if the school year employee performed such services for any educational service agency in the first such year or term and there is reasonable assurance that he or she will perform such services for any educational service agency in the 2nd such year or term.

(g) A school year employee of an educational institution who performs services as described in par. (a) or (d) is ineligible for benefits based on such services for any week of unemployment which occurs during an established and customary vacation period or holiday recess if the school year employee performed such services for any educational institution in the period immediately before the vacation period or holiday recess, and there is reasonable assurance that he or she will perform the services described in par. (a) or (d) for any educational institution in the period immediately following the vacation period or holiday recess.

(h) A school year employee of a government unit, Indian tribe, or nonprofit organization which provides services to or on behalf of an educational institution who performs the services described in par. (b) or (e) is ineligible for benefits based on such services for any week of unemployment which occurs during an established and customary vacation period or holiday recess if the school year employee performed such services for any such government unit, Indian tribe, or nonprofit organization in the period immediately before the vacation period or holiday recess, and there is reasonable assurance that the school year employee will perform the services described in par. (b) or (e) for any such government unit, Indian tribe, or nonprofit organization in the period immediately following the vacation period or holiday recess.

(i) A school year employee of an educational service agency who performs the services described in par. (c) or (f), and who provides such services in an educational institution or to or on behalf of an educational institution, is ineligible for benefits based on such services for any week of unemployment which occurs during an established and customary vacation period or holiday recess if the school year employee performed such services for any educational service agency in the period immediately before the vacation period or holiday recess, and there is reasonable assurance that the school year employee will perform the services described in par. (c) or (f) for any educational service agency in the period immediately following the vacation period or holiday recess.

(j) A school year employee who did not establish a benefit year prior to becoming ineligible to receive benefits under pars. (a) to (i) may establish a benefit year on or after that date if the school year employee qualifies to establish a benefit year under s. 108.06 (2) (a), but the wages paid the school year employee for any week during which pars. (a) to (i) apply shall be excluded from the school year employee's base period wages under sub. (4) (a) and ss. 108.05 (1) and 108.06 (1) for any week during which pars. (a) to (i) apply. A school year employee who established a benefit year prior to becoming ineligible to receive benefits under pars. (a) to (i) may receive benefits based on employment with other employers during the benefit year only if he or she has base period wages from such employment sufficient to qualify for benefits under sub. (4) (a) and ss. 108.05 (1) and 108.06 (1) for any week during which pars. (a) to (i) apply.

(k) If benefits are reduced or denied to a school year employee who performed services other than in an instructional, research or principal administrative capacity under pars. (d) to (f), and the department later determines that the school year employee was

not offered an opportunity to perform such services for an applicable employer under pars. (d) to (f) in the 2nd academic year or term, the department shall recompute the school year employee's base period wages under sub. (4) (a) and ss. 108.05 (1) and 108.06 (1) and shall make retroactive payment of benefits for each week of such reduction or denial if the school year employee:

1. Establishes a benefit year for the period for which retroactive payment is to be made, in the manner prescribed by rule of the department, if the school year employee has not established such a benefit year;

2. Files a claim under s. 108.08 for each week of reduction or denial in the manner prescribed by rule of the department; and

3. Was otherwise eligible to receive benefits for those weeks.

(18) ILLEGAL ALIENS. (a) The wages paid to an employee who performed services while the employee was an alien shall, if based on such services, be excluded from the employee's base period wages for purposes of sub. (4) (a) and ss. 108.05 (1) and 108.06 (1) unless the employee is an alien who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212 (d) (5) of the federal immigration and nationality act (8 USC 1182 (d) (5)). All claimants shall be uniformly required to provide information as to whether they are citizens and, if they are not, any determination denying benefits under this subsection shall not be made except upon a preponderance of the evidence.

(am) Paragraph (a) does not preclude an employee from establishing a benefit year during a period in which the employee is ineligible to receive benefits under par. (a) if the employee qualifies to establish a benefit year under s. 108.06 (2) (a).

(b) Any amendment of s. 3304 (a) (14) of the federal unemployment tax act specifying conditions other than as stated in par. (a) for denial of benefits based on services performed by aliens, or changing the effective date for required implementation of par. (a) or such other conditions, which is a condition of approval of this chapter for full tax credit against the tax imposed by the federal unemployment tax act, shall be applicable to this subsection.

(19) PROFESSIONAL ATHLETES. An employee who performs services substantially all of which consist of participating in sports or athletic events, or training or preparing to so participate, shall be ineligible for benefits based on any employment for any week of unemployment which occurs during the period between 2 successive sport seasons or similar periods if the employee performed such services in the first such season or period and there is a reasonable assurance that the employee will perform such services in the 2nd such season or period.

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86; 2007 a. 59; 2009 a. 11, 287; 2011 a. 32, 123, 198, 236; 2013 a. 11, 20, 36; 2013 a. 173 ss. 13, 33; 2013 a. 276; 2015 a. 55, 86; 2015 a. 195; 2015 a 197 s. 51; 2015 a. 334.

Cross−reference: See also chs. DWD 132 and 133, Wis. adm. code.

Employees at Wisconsin terminals of trucking companies who were laid off as a result of a strike at a Chicago terminal were eligible for unemployment compensation because the Chicago terminal was a separate establishment. Liberty Trucking Co. v. DILHR, 57 Wis. 2d 331, 204 N.W.2d 457 (1973).

"New work" in sub. (9) includes indefinitely laid off employees who are recalled, as well as new job applicants. The department must determine whether a laid−off employee had good cause for refusing work on a different shift with a higher pay scale. Allen−Bradley Co. v. DILHR, 58 Wis. 2d 1, 205 N.W.2d 129 (1973).

When a union that had given a notice of contract termination withdrew it before a strike began, there was no labor dispute in progress when the employer later closed its plant. Kansas City Star Co. v. DILHR, 60 Wis. 2d 591, 211 N.W.2d 488 (1973).

Intent is a crucial question in determining misconduct under sub. (5), but is not determinative. Carelessness or negligence that manifests equal culpability, wrongful intent, or evil design is misconduct. McGraw−Edison Co. v. DILHR, 64 Wis. 2d 703, 221 N.W.2d 677 (1974).

A self−employed claimant who was both the employee and the employer could not disassociate his fault or misfortune as an employer so as to become eligible for unemployment benefits under sub. (7) (b). Fish v. White Equipment Sales & Service, Inc. 64 Wis. 2d 737, 221 N.W.2d 864 (1974).

Masons, unemployed because their employer locked out masons' laborers, were ineligible under sub. (10) for benefits because the masons would have been working "but for" a bona fide labor dispute. De Leeuw v. DILHR, 71 Wis. 2d 446, 238 N.W.2d 706 (1976).

Refusal to comply with an employer's grooming code that was not necessary for safety was not misconduct under sub. (5). If an employee's grooming choices create an unreasonable safety hazard in violation of an employer's reasonable safety rule, the rule may be justified notwithstanding the right of free expression. Consolidated Construction Co., Inc. v. Casey, 71 Wis. 2d 811, 238 N.W.2d 758 (1976).

Striking employees discharged during a strike are not ineligible for benefits because of sub. (10). Hiring permanent replacements is not an automatic discharge of the employees who are replaced. The employer must take some affirmative action to replace the employees, determined by the conduct of the employer and employees. Carley Ford Lincoln Mercury, Inc. v. Bosquette, 72 Wis. 2d 569, 241 N.W.2d 596.

"Fault" under sub. (1) (f), in the context of an employee's failure to pass a licensing examination, means blameworthy or negligent conduct, not incompetence. Milwaukee County v. DILHR, 80 Wis. 2d 445, 259 N.W.2d 118 (1977).

Picketing in violation of a collective bargaining agreement was misconduct under sub. (6) (a), 1977 stats. Universal Foundry Co. v. DILHR, 86 Wis. 2d 582, 273 N.W.2d 324 (1979).

Indefinite layoff severs an employment relationship. A. O. Smith Corp. v. DILHR, 88 Wis. 2d 262, 276 N.W.2d 279 (1979).

The decision of a company's sole shareholders, who were also its sole employees, to file for voluntary bankruptcy disqualified them for unemployment benefits. Hanmer v. DILHR, 92 Wis. 2d 90, 284 N.W.2d 587 (1979).

An employee who refused on religious grounds to pay mandatory union dues did not voluntarily terminate employment under sub. (7) (a). Nottelson v. DILHR, 94 Wis. 2d 106, 287 N.W.2d 763 (1980).

An employee who voluntarily terminated part−time employment, which prior to termination had not affected eligibility, became ineligible under sub. (7) (a). Ellingson v. DILHR, 95 Wis. 2d 710, 291 N.W.2d 649 (Ct. App. 1980).

An employee who was transferred to a workplace 25 miles away and did not receive a pay increase to cover the increased commuting costs had good cause to quit. Farmers Mill of Athens, Inc. v. DILHR, 97 Wis. 2d 576, 294 N.W.2d 39 (Ct. App. 1980).

Falsification of an employment application with respect to a criminal record constitutes "misconduct" under sub. (5), regardless of materiality to the employee's particular job. Miller Brewing Co. v. DILHR, 103 Wis. 2d 496, 308 N.W.2d 922 (Ct. App. 1981).

Whether leaving work without permission as the result of an alleged safety violation was misconduct is determined based on whether a reasonable person would reasonably believe that the given working conditions presented a hazard to health or safety. Wehr Steel Co. v. DILHR, 106 Wis. 2d 111, 315 N.W.2d 357 (1982).

Sub. (10) does not deny equal protection to nonstriking workers laid off because of a strike. Jenks v. DILHR, 107 Wis. 2d 714, 321 N.W.2d 347 (Ct. App. 1982).

Under sub. (1) or (7), a pregnant employee who could not perform her specific job but could do other work was eligible for benefits. Rhinelander Paper Co., Inc. v. DILHR, 120 Wis. 2d 162, 352 N.W.2d 679 (Ct. App. 1984).

A teacher who forgot to accept an employment offer under s. 118.22 (2) and who was consequently terminated did not voluntarily terminate employment under sub. (7). Nelson v. LIRC, 123 Wis. 2d 221, 365 N.W.2d 629 (Ct. App. 1985).

A claimant who was physically able to perform less than 15% of the jobs in the job market was ineligible under sub. (2) (a). Brooks v. LIRC, 138 Wis. 2d 106, 405 N.W.2d 705 (Ct. App. 1987).

"Reasonable assurance" under sub. (17) (b) is a written, implied, or verbal agreement pursuant to which the employee will perform similar services during the following academic term. Farrell v. LIRC, 147 Wis. 2d 476, 433 N.W.2d 269 (Ct. App. 1988).

Under sub. (10) (d), "lockout" requires that the employer physically bar employees' entrance into the workplace; there is no inquiry into the cause for the work stoppage. Trinwith v. LIRC, 149 Wis. 2d 634, 439 N.W.2d 581 (Ct. App. 1989).

The federal immigration act did not retroactively confer permanent resident status on an alien for compensation purposes under sub. (18). Pickering v. LIRC, 156 Wis. 2d 361, 456 N.W.2d 874 (Ct. App. 1990).

A teacher was entitled to unemployment benefits during the summer break between academic years when the teacher was permanently employed for all of the first academic year but was offered employment as a long−term substitute for the first semester of the second academic year. DILHR v. LIRC, 161 Wis. 2d 231, 467 N.W.2d 545 (1991).

Sub. (17) (c) [now (17) (g)] was not applicable to a teacher who qualified for benefits although working periodically as substitute. Wanish v. LIRC, 163 Wis. 2d 901, 472 N.W.2d 596 (Ct. App. 1991).

Employment offers by a temporary employment agency at rates substantially lower than the prevailing rates for similar work was "good cause" under sub. (7) (b); sub. (7) (f) does not preclude a finding of "good cause" when the offered wage is more than two−thirds of the prior wage. Cornwell Personnel Associates v. LIRC, 175 Wis. 2d 537, 499 N.W.2d 705 (Ct. App. 1993).

The intent of sub. (16) (b) is discussed. Murphy v. LIRC, 183 Wis. 2d 205, 515 N.W.2d 487 (Ct. App. 1994).

LIRC's interpretation of "suitable work" in sub. (8) (a) as being work that is reasonable considering the claimant's training, experience, and length of unemployment and of "became unemployed" in sub. (8) (d) as being when the person is no longer performing services for the employer are reasonable and consistent with the scheme of ch. 108. Hubert v. LIRC, 186 Wis. 2d 590, 522 N.W.2d 512 (Ct. App. 1994).

Sub. (8) (d) describes a situation when "good cause" under sub. (8) (a) must be found. It does not mean there is no "good cause" if its conditions are not met. DILHR v. LIRC, 193 Wis. 2d 391, 535 N.W.2d 6 (Ct. App. 1995).

Excessive tardiness, which disrupted an office work schedule, rose to the level of misconduct under sub. (5). Charette v. LIRC, 196 Wis. 2d 956, 540 N.W.2d 239 (Ct. App. 1995), 94−3238.

A "reasonable assurance" of employment under sub. (17) (a) 1. requires an offer of employment under similar terms and circumstances, including location. Jobs 180 miles apart are not similar; the offer of such a job does not terminate benefits. Bunker v. LIRC, 197 Wis. 2d 606, 541 N.W.2d 168 (Ct. App. 1995), 95−0174.

Misconduct under sub. (5) is the intentional and substantial disregard of an employer's interests. The crucial question is the employee's intent or attitude that attends the conduct alleged to be misconduct. Bernhardt v. LIRC, 207 Wis. 2d 292, 558 N.W.2d 874 (Ct. App. 1996), 95−3549.

To be entitled to benefits under sub. (7) (am), there must be an identifiable, threatened suspension or termination of another employee's work and not just a response to separation incentives offered by the employer as a cost−cutting measure. Berry v. LIRC, 213 Wis. 2d 397, 570 N.W.2d 610 (Ct. App. 1997), 97−0260.

The definition of "employer" under sub. (10) (d) does not include an employer joined or associated with another for the purpose of collective bargaining who is not subject to a strike against the other employer. Brauneis v. LIRC, 2000 WI 69, 236 Wis. 2d 27, 612 N.W.2d 635, 98−2212.

Sub. (6) makes no distinction between suspensions with pay or without pay. City of Kenosha v. LIRC, 2000 WI App 131, 237 Wis. 2d 304, 614 N.W.2d 508, 99−1456.

LIRC could reasonably decide that an employee's physical assault of another employee in reaction to discriminatory, harassing comments of a non−physical nature was misconduct under sub. (5) even though the employer may have failed to properly respond to the employee's past complaints. Lopez v. LIRC, 2002 WI App 63, 252 Wis. 2d 476, 642 N.W.2d 561, 01−0165.

To demonstrate voluntary termination of employment for good cause under sub. (7) (b), the employee must show that the termination involved real and substantial fault on the part of the employer. Moving in violation of residency requirements of a collective bargaining agreement was inconsistent with continuation of an employer−employee relationship and constituted voluntarily termination of employment. That both the employee and her new spouse were subject to residency requirements that, if honored, would have prevented their living together was not "good cause" for termination. Klatt v. LIRC, 2003 WI App 197, 266 Wis. 2d 1038, 669 N.W.2d 752, 02−3218.

The appropriateness of establishing an off−duty work rule is determined at the time of the creation of the rule and not at the time of the violation of the rule. In this case, the employer and the union established a last chance agreement process to assist employees with drug and alcohol problems while providing a safe work environment for all employees. It is not relevant that the precipitating fact of the employee's discharge was violating his last chance agreement without causing a safety−related incident. Patrick Cudahy Incorporated v. LIRC, 2006 WI App 211, 296 Wis. 2d 751, 723 N.W. 2d 756, 05−2074.

Although the petitioner stated he was not quitting, he nonetheless refused to sign a document, knowing it would cause his termination. These circumstances are the epitome of conduct inconsistent with continuation of the employment relationship, and it must be held that the employee intended and did leave his employment voluntarily under sub. (7) (a). It was reasonable for the commission to determine that a failure to sign an employee disciplinary form is never an automatic quit without good cause when signing would not constitute an admission of conduct, and that this situation always requires a good cause inquiry into whether the employee knew signing would not be an admission. Kierstead v. Labor and Industry Review Commission, 2012 WI App 57, 341 Wis. 2d 343, 817 N.W.2d 878, 11−0938.

Nothing in sub. (6) suggests that suspensions that are the result of conduct connected with the employee's work are excluded from the requirements of sub. (6) while awaiting the conclusion of pending investigations or hearings. Although "good cause" is not defined in the statute, the term has a commonly understood meaning, which is "a legally sufficient reason." Under sub. (6) an employer's reasons for suspending an employee must involve specific conduct by the employee which is directly connected to the employee's work. Milwaukee County v. Labor and Industry Review Commission, 2014 WI App 55, ___ Wis. 2d ___, ___ N.W.2d ___, 13−1613.

The denial of unemployment compensation to a Jehovah's Witness who quit a job due to religious beliefs was a violation of the right to free exercise of religion. Thomas v. Review Board of the Indiana Employment Security Division, 450 U.S. 707 (1981).

Voluntary termination not found where there is meritorious excuse for refusal to pay union dues based on religious ground. 64 MLR 203 (1980).

Unemployment compensation − An examination of Wisconsin's "active progress" labor dispute disqualification provision. 1982 WLR 907.

Winning denials of unemployment compensation claims. Thorne. WBB June 1983.

108.05 Amount of benefits. (1) WEEKLY BENEFIT RATE FOR TOTAL UNEMPLOYMENT. (r) Except as provided in s. 108.062 (6) (a), each eligible employee shall be paid benefits for each week of total unemployment that commences on or after January 5, 2014, at the weekly benefit rate specified in this paragraph. Unless sub. (1m) applies, the weekly benefit rate shall equal 4 percent of the employee's base period wages that were paid during that quarter of the employee's base period in which the employee was paid the highest total wages, rounded down to the nearest whole dollar, except that, if that amount is less than $54, no benefits are payable to the employee and, if that amount is more than $370, the employee's weekly benefit rate shall be $370 and except that, if the employee's benefits are exhausted during any week under s. 108.06 (1), the employee shall be paid the remaining amount of benefits payable to the employee under s. 108.06 (1). The department shall publish on its Internet site a weekly benefit rate schedule of quarterly wages and the corresponding weekly benefit rates as calculated in accordance with this paragraph.

NOTE: As the result of an error in the transcription of 1991 Wis. Act 89, sub. (1) (title) was omitted from the publication of sub. (1) in the 1991 to 2013 statute volumes and through the July 7, 2015 publication of the statutes. It is reinserted under s. 35.17.

(1m) FINAL PAYMENTS IN CERTAIN CASES. Whenever, as of the beginning of any week, the difference between the maximum amount of benefits potentially payable to an employee, as computed under this section and s. 108.06 (1), and the amount of benefits otherwise payable to the employee for that week is $5 or less, the benefits payable to the employee for that week shall be that maximum amount.

(3) BENEFITS FOR PARTIAL UNEMPLOYMENT. (a) Except as provided in pars. (c), (d) and (dm) and s. 108.062, if an eligible employee earns wages in a given week, the first $30 of the wages shall be disregarded and the employee's applicable weekly benefit payment shall be reduced by 67% of the remaining amount, except that no such employee is eligible for benefits if the employee's benefit payment would be less than $5 for any week. For purposes of this paragraph, "wages" includes any salary reduction amounts earned that are not wages and that are deducted from the salary of a claimant by an employer pursuant to a salary reduction agreement under a cafeteria plan, within the meaning of 26 USC 125, and any amount that a claimant would have earned in available work under s. 108.04 (1) (a) which is treated as wages under s. 108.04 (1) (bm), but excludes any amount that a claimant earns for services performed as a volunteer fire fighter, volunteer emergency medical technician, or volunteer first responder. In applying this paragraph, the department shall disregard discrepancies of less than $2 between wages reported by employees and employers.

(c) Except when otherwise authorized in an approved work−share program under s. 108.062, a claimant is ineligible to receive any benefits for a week in which one or more of the following applies to the claimant for 32 or more hours in that week:

1. The claimant performs work; or

2. The claimant has wages ascribed under s. 108.04 (1) (bm); or

3. The claimant receives holiday pay, vacation pay, termination pay, or sick pay under circumstances satisfying the requirements of subs. (4), (5), or (5m) for treatment as wages in that week.

(d) A claimant is ineligible to receive benefits for any week in which the claimant conceals wages or hours worked as provided in s. 108.04 (11) (b).

(dm) Except when otherwise authorized in an approved work−share program under s. 108.062, a claimant is ineligible to receive any benefits for a week if the claimant receives or will receive from one or more employers wages earned for work performed in that week, amounts treated as wages under s. 108.04 (1) (bm) for that week, sick pay, holiday pay, vacation pay, termination pay, bonus pay, back pay, or payments treated as wages under s. 108.04 (12) (e), or any combination thereof, totalling more than $500.

(e) For purposes of this subsection, a bonus or profit−sharing payment is considered to be earned in the week in which the bonus or payment is paid by the employer. A bonus or profit−sharing payment is considered to be paid on the date of the check if payment is made by check, on the date of direct deposit by the employer at a financial institution if payment is deposited by the employer to an employee's account at a financial institution, or on the date that the bonus or payment is received by the employee if any other method of payment is used.

(4) HOLIDAY OR VACATION PAY. (a) 1. Except as provided in subd. 2., the department shall treat as wages an employee's holiday pay for purposes of eligibility for benefits for partial unemployment under sub. (3) for a given week only if it has become definitely payable to the employee within 4 days after the close of that week.

2. The department shall treat as wages an employee's holiday pay for purposes of eligibility for benefits for partial unemployment under sub. (3) for the week that includes December 25 only if it has become definitely payable to the employee within 9 days after the close of that week.

(b) An employee's vacation pay shall, for purposes of eligibility for benefits for partial unemployment under sub. (3), be treated as wages for a given week only if it has by the close of that week become definitely allocated and payable to the employee for that week and the employee has had due notice thereof, and only if such pay until fully assigned is allocated:

1. At not less than the employee's approximate full weekly wage rate; or

2. Pursuant to any other reasonable basis of allocation, including any basis commonly used in computing the vacation rights of employees.

(5) TERMINATION PAY. An employee's dismissal or termination pay shall, for purposes of eligibility for benefits for partial unemployment under sub. (3), be treated as wages for a given week only if it has by the close of that week become definitely allocated and payable to the employee for that week, and the employee has had due notice thereof, and only if such pay, until fully assigned, is allocated:

(a) At not less than the employee's approximate full weekly wage rate; or

(b) Pursuant to any other reasonable basis of allocation, including any basis commonly used in computing the termination pay of employees.

(5m) SICK PAY. For purposes of eligibility for benefits for partial unemployment under sub. (3), "wages" includes sick pay only when paid or payable directly by an employer at the employee's usual rate of pay.

(6) BACK PAY. The department shall treat as wages for benefit purposes any payment made to an individual by or on behalf of his or her employing unit to which that individual is entitled under federal law, the law of any state or a collective bargaining or other agreement and which is in lieu of pay for personal services for past weeks, or which is in the nature of back pay, whether made under an award or decision or otherwise, and which is made no later than the end of the 104−week period beginning with the earliest week to which such pay applies.

(7) PENSION PAYMENTS. (a) *Definitions.* In this subsection:

1. "Pension payment" means a pension, retirement, annuity, or other similar payment made to a claimant, based on the previous work of that claimant, whether or not payable on a periodic basis, from a governmental or other retirement system maintained or contributed to by an employer from which that claimant has base period wages, other than a payment received under the federal Social Security Act (42 USC 301 et seq.) that is based in whole or in part upon taxes paid by the claimant.

2. "Rollover" means the transfer of all or part of a pension payment from one retirement plan or account to another retirement plan or account, whether the transfer occurs directly between plan or account trustees, or from the trustee of a plan or account to an individual payee and from that payee to the trustee of another plan or account, regardless of whether the plans or accounts are considered qualified trusts under 26 USC 401.

(b) *Pension payment information.* Any claimant who receives, is entitled to receive or has applied for a pension payment, and any employer by which the claimant was employed in his or her base period, shall furnish the department with such information relating to the payment as the department may request. Upon request of the department, the governmental or other retirement system responsible for making the payment shall report the information concerning the claimant's eligibility for and receipt of payments under that system to the department.

(c) *Required benefit reduction.* Except as provided in par. (cm), if a claimant actually or constructively receives a pension payment, the department shall reduce benefits otherwise payable to the claimant for a week of partial or total unemployment, but not below zero, if pars. (d) and (e) or if pars. (d) and (f) apply.

(cm) *Payments received under Social Security Act.* If a claimant receives a pension payment under the federal Social Security Act (42 USC 301 et seq.), the department shall not reduce the benefits otherwise payable to the claimant because the claimant contributed to a portion of the pension payment received by the claimant.

(d) *Allocation.* 1. If a pension payment is not paid on a weekly basis, the department shall allocate and attribute the payment to specific weeks in accordance with subd. 2. if the payment is actually or constructively received on a periodic basis. If a pension payment is actually or constructively received on other than a periodic basis, the department shall allocate the payment to the week in which it is received.

1m. For purposes of this paragraph, a payment is actually or constructively received on other than a periodic basis if it has become definitely allocated and payable to the claimant by the close of a given week, and the department has provided due notice to the claimant that the payment will be allocated in accordance with subd. 1.

2. The department shall allocate a pension payment that is actually or constructively received on a periodic basis by allocating to each week the fraction of the payment attributable to that week.

(e) *Total employer funding.* If no portion of a pension payment actually or constructively received by a claimant under this subsection is funded by the claimant's contributions, the department shall reduce the weekly benefits payable for a week of partial or total unemployment by an amount equal to the weekly pension amount if:

1. The claimant has base period wages from the employer from which the pension payment is received; and

2. The claimant has performed work for that employer since the start of the claimant's base period and that work or remuneration for that work affirmatively affected the claimant's eligibility for or increased the amount of the pension payment.

(f) *Partial or total employee funding.* If any portion of a pension payment actually or constructively received by a claimant under this subsection is funded by the claimant's contributions, the department shall compute the benefits payable for a week of partial or total unemployment as follows:

1. If the pension payment is received under the railroad retirement act (45 USC 231 et seq.), the department shall reduce the weekly benefits payable for a week of partial or total unemployment by 50% of the weekly pension amount.

2. If the pension payment is received under another retirement system, the claimant has base period wages from the employer from which the pension payment is received, the claimant has performed work for that employer since the start of the claimant's base period, and that work or remuneration for that work affirmatively affected the claimant's eligibility for or increased the amount of the pension payment, the department shall reduce the weekly benefits payable for a week of partial or total unemployment by 50% of the weekly pension amount, or by the percentage of the employer's contribution if acceptable evidence of a contribution by the employer other than 50% is furnished to the department.

(g) *Constructive receipt.* A claimant constructively receives a pension payment under this subsection only for weeks occurring after:

1. An application for a pension payment has been filed by or on behalf of the claimant; and

2. The claimant has been afforded due notice from his or her retirement system of his or her entitlement to a pension payment and the amount of the pension payment to which he or she is entitled.

(h) *Rollovers.* If a pension payment is received by a claimant on other than a periodic basis and a rollover of the pension payment, or any portion thereof, occurs by the end of the 60th day following receipt of the payment by the claimant, the payment or any portion thereof affected by the rollover is not actually or constructively received by the claimant. If a portion of a pension payment received on other than a periodic basis is affected by a rollover, the remaining portion is subject to allocation under par. (d).

(9) ROUNDING OF BENEFIT AMOUNTS. Notwithstanding sub. (1), benefits payable for a week of unemployment as a result of applying sub. (1m), (3) or (7) or s. 108.04 (11) or (12), 108.06 (1), 108.13 (4) or (5) or 108.135 shall be rounded down to the next lowest dollar.

(10) DEDUCTIONS FROM BENEFIT PAYMENTS. After calculating the benefit payment due to be paid for a week under subs. (1) to (7), the department shall make deductions from that payment to the extent that the payment is sufficient to make the following payments in the following order:

(a) First, to recover forfeitures assessed under s. 108.04 (11).

(b) Second, to recover overpayments under s. 108.22 (8) (b) 1.

(c) Third, to pay child support obligations under s. 108.13 (4).

(d) Fourth, to withhold federal income taxes under s. 108.135.

(e) Fifth, to withhold state income taxes under s. 108.135.

(f) Sixth, to deduct amounts for any purpose authorized under s. 108.13 (5).

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 29; 1979 c. 52; 1981 c. 28, 36; 1983 a. 8, 168, 384; 1985 a. 17, 40; 1987 a. 38 ss. 60 to 66, 136; 1987 a. 255; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15, 56, 185, 186; 2001 a. 35, 43, 105; 2003 a. 197; 2005 a. 86, 142; 2007 a. 20, 59, 97; 2009 a. 287; 2011 a. 198; 2013 a. 11, 36; 2013 a. 165 s. 115; 2013 a. 173 s. 33; 2015 a. 334; s. 35.17 correction in (1) (title).

When a claimant had not applied for pension benefits, a document from the pension fund describing the claimant's annuity alternatives and estimating monthly payments did not satisfy the "due notice of eligibility" requirement under sub. (7) (d) [now (7) (g)]. The claimant was entitled to receive both pension and unemployment benefits for a limited period. Calumet County v. LIRC, 120 Wis. 2d 297, 354 N.W.2d 216 (Ct. App. 1984).

108.06 Benefit entitlement. (1) Except as provided in sub. (6) and ss. 108.141 and 108.142, no claimant may receive total benefits based on employment in a base period greater than 26 times the claimant's weekly benefit rate under s. 108.05 (1) or 40% of the claimant's base period wages, whichever is lower. Except as provided in sub. (6) and ss. 108.141 and 108.142, if a claimant's base period wages are reduced or canceled under s. 108.04 (5) or (18), or suspended under s. 108.04 (1) (f), (10) (a), or (17), the claimant may not receive total benefits based on employment in a base period greater than 26 times the claimant's weekly benefit rate under s. 108.05 (1) or 40% of the base period wages not reduced, canceled or suspended which were paid or payable to the claimant, whichever is lower.

(2) (a) A claimant may establish a benefit year in the manner prescribed by the department by rule, whenever the claimant qualifies to start a benefit year under s. 108.04 (4) (a) and:

1. The employee is eligible to receive benefits;

2. The employee has experienced a reduction in hours of employment of at least 25% in one week as compared to his or her average number of hours of employment for the preceding 13 weeks; or

3. The employee reasonably expects to be eligible to receive benefits during the next 13 weeks.

(b) No employee is eligible to receive benefits before the employee establishes a benefit year.

(bm) An employee's benefit year begins on the Sunday of the week in which the employee files a valid request to establish a benefit year with the department, except that the department may permit an employee to begin a benefit year prior to that time under circumstances prescribed by rule of the department.

(c) No benefits are payable to a claimant for any week of unemployment not occurring during the claimant's benefit year except under ss. 108.141 and 108.142.

(cm) If an employee qualifies to receive benefits using the base period described in s. 108.02 (4) (b), the wages used to compute the employee's benefit entitlement are not available for use in any subsequent benefit computation for the same employee, except under s. 108.141 or 108.142.

(d) A claimant may request that the department set aside a benefit year by filing a written, verbal or electronic request in the manner that the department prescribes by rule. The department shall grant the 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 benefit eligibility is not suspended. If the claimant does not meet these requirements, the department shall not set aside the benefit year unless the department defines by rule exceptional circumstances in which a claimant may be permitted to set aside a request to establish a benefit year and the claimant qualifies to make such a request under the circumstances described in the rule.

Cross−reference: See also s. DWD 129.04, Wis. adm. code.

(2m) Wisconsin supplemental benefits are only available to claimants during a Wisconsin supplemental benefit period. If an extended benefit period ends prior to the end of a claimant's previously established benefit year, any remaining Wisconsin supplemental benefit entitlement, reduced by the amount of extended benefits paid to him or her, shall again be available to the claimant within the remainder of the benefit year only if there is a Wisconsin supplemental benefit period in effect. In this subsection, "extended benefits", "extended benefit period", "Wisconsin supplemental benefits" and "Wisconsin supplemental benefit period" have the meanings given in ss. 108.141 and 108.142.

(3) There shall be payable to an employee, for weeks ending within the employee's benefit year, only those benefits computed for that benefit year based on the wages paid to the employee in the immediately preceding base period. Wages used in a given benefit computation are not available for use in any subsequent benefit computation except under s. 108.141.

(5) An employee has a valid new claim week starting a new benefit year if all the following conditions are met:

(a) The week is not within an unexpired benefit year or similar period of eligibility for unemployment insurance in another state unless the employee's eligibility for unemployment insurance in the other state is exhausted, terminated, indefinitely postponed or affected by application of a seasonal restriction.

(b) The employee has claimed benefits for that week under s. 108.08 (1).

(c) The employee has met the general qualifying requirements provided in s. 108.04 (2) applicable to the employee for that week.

(d) As of the start of that week, the employee has base period wages under s. 108.04 (4) which have not been canceled under s. 108.04 (5) or excluded under s. 108.04 (10), (17) or (18).

(6) If a claimant has established a benefit year prior to the effective date of any increase in the maximum weekly benefit rate provided under s. 108.05 (1), the claimant has not exhausted his or her total benefit entitlement under sub. (1) for that benefit year on that effective date, and the claimant was entitled to receive the maximum weekly benefit rate under s. 108.05 (1) that was in effect prior to that effective date, the limitation on the total benefits authorized to be paid to a claimant under sub. (1) does not apply to that claimant in that benefit year. Unless s. 108.141 or 108.142 applies, the claimant's remaining benefit entitlement in that benefit year for the period beginning on that effective date shall be computed by:

(a) Subtracting the total benefits received by the claimant prior to that effective date from the claimant's maximum benefit entitlement established prior to that effective date under sub. (1);

(b) Dividing the result obtained under par. (a) by the maximum weekly benefit rate that was in effect prior to that effective date; and

(c) Multiplying the result obtained under par. (b) by the weekly benefit rate which is payable to the claimant under s. 108.05 (1) after that effective date.

History: 1971 c. 53; 1975 c. 343; 1981 c. 36; 1983 a. 8 ss. 23 to 27, 53, 55 (3), (4), (12), (13) and (14) and 56; 1983 a. 27 s. 1807m; 1983 a. 337; 1985 a. 17; 1987 a. 38, 255; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15; 2001 a. 43; 2009 a. 11, 287; 2013 a. 36.

108.062 Work−share programs; benefit payments. (1) DEFINITIONS. In this section:

(a) "Regular benefits" means benefits payable to an individual under this chapter or any other state law, including benefits payable to federal civilian employees and to former military personnel pursuant to 5 USC ch. 85, other than Wisconsin supplemental benefits, extended benefits, and additional benefits as defined in P.L. 91−373.

(b) "Work−share program" means a program approved by the department under which the hours of work of employees in a work unit are reduced in lieu of the layoffs of 2 or more employees in the work unit.

(c) "Work unit" means an operational unit of employees designated by an employer for purposes of a work−share program, which may include more than one work site.

(2) ELEMENTS OF PLAN. Any employer may create a work−share program. Prior to implementing a work−share program, an employer shall submit a work−share plan for the approval of the department. In its submittal, the employer shall certify that its plan is in compliance with all requirements under this section. Each plan shall:

(a) Specify the work unit in which the plan will be implemented, the affected positions, and the names of the employees filling those positions on the date of submittal.

(b) Provide for inclusion of at least 10 percent of the employees in the affected work unit on the date of submittal.

(c) Provide for initial coverage under the plan of at least 20 positions that are filled on the effective date of the work−share program.

(d) Specify the period or periods when the plan will be in effect, which may not exceed a total of 6 months in any 5−year period within the same work unit.

(e) Provide for apportionment of reduced working hours equitably among employees in the work−share program.

(f) Exclude participation by employees who are employed on a seasonal, temporary, or intermittent basis.

(g) Apply only to employees who have been engaged in employment with the employer for a period of at least 3 months on the effective date of the work−share program and who are regularly employed by the employer in that employment.

(h) Specify the normal average hours per week worked by each employee in the work unit and the percentage reduction in the average hours of work per week worked by that employee, exclusive of overtime hours, which shall be applied in a uniform manner and which shall be at least 10 percent but not more than 50 percent of the normal hours per week of that employee.

(i) Describe the manner in which requirements for maximum federal financial participation in the plan will be implemented, including a plan for giving notice, where feasible, to participating employees of changes in work schedules.

(j) Provide an estimate of the number of layoffs that would occur without implementation of the plan.

(k) Specify the effect on any fringe benefits provided by the employer to the employees who are included in the work−share program other than fringe benefits required by law.

(L) Include a statement affirming that the plan is in compliance with all employer obligations under applicable federal and state laws.

(m) Indicate whether the plan will include training to enhance job skills sponsored by the employer and acknowledge that, pursuant to federal law, the employees in the work unit may participate in training funded under the federal Workforce Investment Act of 1998 without affecting availability for work, subject to the approval of the department.

(3) APPROVAL OF PLANS. The department shall approve a plan if the plan includes all of the elements specified in sub. (2). The approval is effective for the effective period of the plan unless modified under sub. (3m).

(3m) MODIFICATION OF PLANS. Upon application of an employer that created a plan, the department may approve a modification to the plan. An approved modification is effective beginning on the date that the modification is approved by the department and is effective for the remaining effective period of the plan.

(4) EFFECTIVE PERIOD. A work−share program becomes effective on the later of the Sunday of the 2nd week beginning after approval of a work−share plan under sub. (3) or any Sunday after that day specified in the plan. A work−share program ends on the earlier of the last Sunday that precedes the end of the 6−month period beginning on the effective date of the program or any Sunday before that day specified in the plan unless the program terminates on an earlier date under sub. (5), (14), or (15).

(5) REVOCATION OF APPROVAL. The department may revoke its approval of a work−share plan for good cause, including conduct that tends to defeat the purpose and effective operation of the plan, failure to comply with the requirements of this section or the work−share plan, or an unreasonable change to the productivity standards of the employees included under the work−share program. Any revocation is effective on the Sunday of the 2nd week beginning after revocation of approval of the plan under this subsection.

(6) BENEFIT AMOUNT. (a) Except as provided in par. (b), an employee who is included under a work−share program and who qualifies to receive regular benefits for any week during the effective period of the program shall receive a benefit payment for each week that the employee is included under the program in an amount equal to the employee's regular benefit amount under s. 108.05 (1) multiplied by the employee's proportionate reduction in hours worked for that week as a result of the work−share program. Such an employee shall receive benefits as calculated under this paragraph and not as provided under s. 108.05 (3).

(b) No employee who is included in a work unit is eligible to receive any benefits for a week in which the plan is in effect in which the employee is engaged in work for the employer that sponsors the plan which, when combined with work performed by the employee for any other employer for the same week, exceed 90 percent of the employee's average hours of work per week for the employer that creates the plan, as identified in the plan.

(8) BENEFIT YEAR. An employee may be paid a benefit under sub. (6) (a) only for weeks beginning in the employee's benefit year in an amount not exceeding the employee's total benefit entitlement under s. 108.06 (1). Benefits paid under sub. (6) (a) may begin after the first week of the employee's benefit year or may terminate earlier than the last week of the employee's benefit year.

(9) OTHER BENEFITS. An employee who receives benefits under sub. (6) (a) remains eligible for any benefits other than regular benefits for which the employee may qualify and the amount of those benefits is not affected by the employee's receipt of benefits under sub. (6) (a).

(10) AVAILABILITY FOR WORK. An employee who is receiving benefits under sub. (6) (a) for any week need not be available for work in that week other than for the normal hours of work that the employee worked for the employer that creates the work−share program immediately before the week in which the work−share program began and any additional hours in which the employee is engaged in training to enhance job skills sponsored by the employer that creates the plan or training funded under the federal Workforce Investment Act of 1998 that is approved by the department.

(10m) REGISTRATION FOR WORK AND WORK SEARCH. The department shall waive the requirements to register for work under s. 108.04 (2) (a) 2. and to conduct a search for work under s. 108.04 (2) (a) 3. for an employee during each week that the employee is receiving benefits under a work−share agreement under sub. (6) (a).

(11) OTHER EMPLOYMENT. An employee who is included in a work−share program during a benefit year may be paid wages during the same benefit year by an employer other than the employer

who creates the work−share program. An employee's benefit eligibility for such work is subject to the limitation under sub. (6) (b).

(12) RETIREMENT PLAN AND HEALTH INSURANCE COVERAGE. An employer that creates a work−share program shall maintain coverage under any defined benefit or defined contribution retirement plan and any health insurance coverage that the employer provides to the employees who are included in a work−share program, including any particulars of coverage and percentages contributed by the employer for the costs of that coverage, during the effective period of the program under the same terms and conditions as if the employees were not included in the program.

(14) TERMINATION BY EMPLOYER. An employer that creates a work−share program may terminate the program before the end of the effective period as provided in the work−share plan by filing notice of termination with the department. The program is then terminated on the 2nd Sunday following the date that the notice of termination is filed unless the notice specifies that the program is terminated at the beginning of a later week in which case the program terminates at the beginning of that week.

(15) INVOLUNTARY TERMINATION. If in any week there are fewer than 20 employees who are included in a work−share program of any employer, the program terminates on the 2nd Sunday following the end of that week.

(16) SUCCESSORSHIP. If all or any part of the business of an employer that creates a work−share program is transferred as provided in s. 108.16 (8), the successor employer may continue the work−share program as provided in the work−share plan or may terminate the program by filing notice of termination under sub. (14). Termination by a successor employer does not affect any employees of the transferring employer who continue their employment with the transferring employer.

(17) TERMINATION OF EMPLOYMENT. An employee who is included in a work−share program may be terminated or may voluntarily terminate his or her employment during the effective period of the program and the employee's eligibility or ineligibility for benefits for any weeks beginning after the date of termination is not affected solely as a result of the employee's inclusion in the program.

(18) FEDERAL FINANCIAL PARTICIPATION. The department shall seek to qualify this state for full federal participation in the cost of administration of this section and financing of benefits to employees participating in work−share programs under this section.

(19) SECRETARY MAY WAIVE COMPLIANCE. The secretary may waive compliance with any requirement under this section if the secretary determines that waiver of the requirement is necessary to permit continued certification of this chapter for grants to this state under Title III of the federal Social Security Act, for maximum credit allowances to employers under the federal Unemployment Tax Act, or for this state to qualify for full federal financial participation in the cost of administration of this section and financing of benefits to employees participating in work−share programs under this section.

History: 2013 a. 11; 2013 a. 173 s. 33; 2015 a. 86, 197.

108.065 Determination of employer. (1e) Except as provided in subs. (2) and (3), if there is more than one employing unit that has a relationship to an employee, the department shall determine which of the employing units is the employer of the employee by doing the following:

(a) Considering an employing unit's right by contract and in fact to:

1. Determine a prospective employee's qualifications to perform the services in question and to hire or discharge the employee.

2. Determine the details of the employee's pay including the amount of, method of, and frequency of changes in that pay.

3. Train the employee and exercise direction and control over the performance of services by the employee and when and how they are to be performed.

4. Impose discipline upon the employee for rule or policy infractions or unsatisfactory performance.

5. Remove the employee from one job or assign the employee to a different job.

6. Require oral or written reports from the employee.

7. Evaluate the quantity and quality of the services provided by the employee.

8. Assign a substitute employee to perform the services of an employee if the employee is unavailable for work or is terminated from work.

9. Assign alternative work to the employee if the employee is removed from a particular job.

(b) Considering which employing unit:

1. Benefits directly or indirectly from the services performed by the employee.

2. Maintains a pool of workers who are available to perform the services in question.

3. Is responsible for employee compliance with applicable regulatory laws and for enforcement of such compliance.

(c) If, after the application of pars. (a) and (b), a franchisor, as defined in 16 CFR 436.1 (k), is determined to be the employer of a franchisee, as defined in 16 CFR 436.1 (i), or of an employee of a franchisee, applying sub. (4). The department shall apply sub. (4) only as provided in this paragraph.

(2) (a) A temporary help company is the employer of an individual who the company engages in employment to perform services for a client or customer of the company.

(b) A professional employer organization is the employer of the employees who it engages to perform services for its client, including a corporate officer if the officer's position is included in the employee leasing agreement with the client.

(c) A corporation which pays wages to an employee who is concurrently employed by that corporation and one or more related corporations for work performed for the corporation which pays the wages and the related corporation or corporations is the employer of that employee. For purposes of this subsection, if 2 or more corporations are related corporations at any time during a quarter, they are related corporations during that entire quarter.

(3) A provider of home health care and personal care services for medical assistance recipients under ch. 49 may elect to be the employer of one or more employees providing those services. As a condition of eligibility for election to be the employer of one or more employees providing those services, the provider shall notify in writing the recipient of any such services of its election, for purposes of the unemployment insurance law, to be the employer of any worker providing such services to the recipient, and must be treated as the employer by the federal internal revenue service for purposes of federal unemployment taxes on the worker's services.

(4) (a) A franchisor, as defined in 16 CFR 436.1 (k), is not considered to be an employer of a franchisee, as defined in 16 CFR 436.1 (i), or of an employee of a franchisee, unless any of the following applies:

1. The franchisor has agreed in writing to assume that role.

2. The franchisor has been found by the department to have exercised a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

(b) This subsection shall be applied only as provided in sub. (1e) (c).

History: 1987 a. 255; 1993 a. 373; 1997 a. 39; 2001 a. 35; 2011 a. 198; 2013 a. 165 s. 114; 2015 a. 203.

108.066 Seasonal employers and seasons. (1) Any employer may apply to the department between January 1 and May 31 of any year to be designated a seasonal employer. If mailed, an application shall be postmarked no later than May 31

or received by the department no later than June 3. If June 3 falls on a Saturday, Sunday or legal holiday under state or federal law, a mailed application shall be received by the department no later than the next following day which is not a Saturday, Sunday or legal holiday under state or federal law.

(2) By June 30 of each year the department shall examine each application timely submitted under sub. (1) and issue a determination as to whether the employer is a seasonal employer. If the department designates an employer as a seasonal employer, the department shall determine the applicable season of the employer under sub. (4).

(3) The department shall designate an employer a seasonal employer if:

(a) The employer:

1. Is in a tourism, recreational, or tourist service industry, including operation of a hotel, inn, camp, tourism attraction, restaurant, ice cream or soft drink stand, drive−in theater, racetrack, park, carnival, country club, golf course, swimming pool, chair lift or ski resort; or

2. Has been classified by the department as primarily engaged in agricultural production, agricultural services, forestry or commercial fishing, hunting or trapping;

(b) The employer customarily operates primarily during 2 calendar quarters within a year;

(c) At least 75% of the wages paid by the employer during the year immediately preceding the date of the proposed designation were paid for work performed during the 2 calendar quarters under par. (b); and

(d) The employer is not delinquent, at the time of designation, in making any contribution report or payment required under this chapter.

(4) A seasonal employer's season, for purposes of this section, is the 2 calendar quarters under sub. (3) (b) which include 75% or more of the employer's payroll for the year preceding the date of the proposed designation.

(5) The department shall, by June 30 of each year, examine and redetermine whether any employer which it has designated a seasonal employer continues to qualify for designation as a seasonal employer under sub. (3).

(6) Any determination or redetermination made under this section is effective on January 1 of the succeeding year.

History: 1991 a. 89; 1993 a. 373.

Cross−reference: See also ch. DWD 147, Wis. adm. code.

108.067 Professional employer organizations and leasing agreements. (1) Each professional employer organization that enters into an employee leasing agreement with a client during any calendar quarter shall submit to the department, no later than the due date for payment of contributions under s. 108.17 (2) relating to that quarter, in the form prescribed by the department, a report disclosing the identity of that client and such other information as the department prescribes.

(2) If a professional employer organization and client terminate an employee leasing agreement, the professional employer organization and client shall notify the department within 10 working days of the termination.

(3) Notwithstanding s. 108.02 (13) (i), if an employer that is a client of a professional employer organization enters into an employee leasing agreement with the organization that results in the discontinuance of all employees of the employer who are engaged in employment, the department shall maintain the employer account of the client for a period of 5 full calendar years after the beginning of the agreement. If the employee leasing agreement is terminated prior to the end of the 5−year period, the client shall so notify the department and resume all responsibilities as the employer of its employees under this chapter as of the date of termination. Section 108.02 (13) (i) applies if the employee leasing agreement is terminated before the end of the 5−year period and the conditions for termination of coverage set forth in s. 108.02 (13) (i) exist.

History: 2001 a. 35; 2007 a. 59.

108.068 Treatment of limited liability companies and members. (1) Subject to subs. (2) to (6) and (8), the department shall treat a multimember limited liability company as a partnership and shall treat a single−member limited liability company as a sole proprietorship under this chapter unless the company has filed an election with the federal internal revenue service to be treated as a corporation for federal tax purposes and files proof with the department that the internal revenue service has agreed to treat the company as a corporation for such purposes.

(2) The department shall treat a limited liability company that files proof under sub. (1) as a corporation under this chapter beginning on the same date that the federal internal revenue service treats the company as a corporation for federal tax purposes, except that for benefit purposes the treatment shall apply to benefit years in existence on or beginning on or after the date that the federal internal revenue service treats the company as a corporation for federal tax purposes if the benefit year to which the treatment is to be applied has not ended on the date that the department first has notice of a benefit eligibility issue that relates to treatment of that limited liability company.

(3) Subject to subs. (1), (2), and (6) to (8), a limited liability company that is treated as a corporation for federal tax purposes shall be treated as a corporation under this chapter, and each member of the limited liability company shall be treated as a corporate officer for contribution and benefit purposes.

(4) Subject to subs. (2) and (6) to (8), a multimember limited liability company that is not treated as a corporation for federal tax purposes shall be treated as a partnership under this chapter, and the members of the limited liability company shall be treated for contribution and benefit purposes as partners of that partnership.

(5) Subject to subs. (2) and (6) to (8), a single−member limited liability company that is not treated as a corporation for federal tax purposes shall be treated as a sole proprietorship under this chapter, and the member shall be treated as a sole proprietor for contribution and benefit purposes.

(6) The department may, in the interests of justice or to prevent fraud upon the unemployment insurance program, determine that a member of a limited liability company is an employee of that company.

(7) Subject to subs. (2) to (6), if a limited liability company is treated as a corporation under this chapter the department shall treat the company as a partnership under this chapter, if the company has multiple members or shall treat the company as a sole proprietorship under this chapter if the company has a single member if the company files proof with the department that the internal revenue service has agreed to treat the company as a partnership or sole proprietorship for federal tax purposes.

(8) The department shall treat a limited liability company that files proof under sub. (7) as a partnership or sole proprietorship under this chapter beginning on the same date that the federal internal revenue service treats the company as a partnership or sole proprietorship for federal tax purposes, except that for benefit purposes the treatment shall apply to benefit years in existence on or beginning on or after the date that the federal internal revenue service treats the company as a partnership or sole proprietorship for federal tax purposes if the benefit year to which the treatment is to be applied has not ended on the date that the department first has notice of a benefit eligibility issue that relates to treatment of that limited liability company.

History: 2003 a. 197; 2005 a. 86; 2007 a. 97.

108.07 Liability of employers. (1) Except as otherwise provided in subs. (4), (5) and (5m) and s. 108.04 (13), the department shall charge benefits payable to a claimant who has been paid or is treated as having been paid base period wages with

respect to work performed for one employer only to the account of that employer.

(2) Except as provided in subs. (3) to (5), if a claimant has been paid or is treated as having been paid base period wages with respect to work performed for more than one employer, the department shall charge the account of each employer for all benefits paid to the claimant for weeks ending within the employee's benefit year in the same proportion that the base period wages paid or treated as having been paid to the claimant with respect to work performed for that employer bear to the total base period wages paid or treated as having been paid to the claimant.

(3) Except as provided in sub. (7), if a claimant earns wages during his or her benefit year for work performed for an employer from which the claimant has base period wages, if a claimant receives sick pay, holiday pay, vacation pay or termination pay that is treated as wages under s. 108.05, if any amount that the claimant would have earned from that employer is treated as wages under s. 108.05 (3) (a) or if any combination of wages and such pay or amount is received or treated as received during the claimant's benefit year from such an employer, the department shall charge benefits otherwise chargeable to the account of that employer to the fund's balancing account for each week in which the claimant earns, receives or is treated as receiving such remuneration equal to at least 6.4% of the wages paid by that employer to the claimant during the same quarter of the prior calendar year as the quarter which includes that week.

(3m) If a claimant has base period wages with an employer constituting less than 5% of the claimant's total base period wages, the department shall not charge the benefits to the account of that employer. If benefits are otherwise chargeable to the account of any employer whose share of a claimant's total base period wages is less than 5%, the department shall charge the benefits to the remaining employers with which the claimant has base period wages. The department shall distribute such charges in the same proportion that the claimant's base period wages from such employers bear to the claimant's total base period wages from all such employers. This subsection does not apply to claims for benefits based in whole or in part on employment as federal civilian employees or former military personnel under 5 USC ch. 85, or work covered by the unemployment insurance laws of 2 or more jurisdictions under s. 108.14 (8n).

(3r) Except as otherwise provided in sub. (7), if a claimant has been paid or is treated as having been paid base period wages with respect to work performed for an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 and whose account has been charged for benefits paid to that claimant for an immediately preceding benefit year, the department shall not charge the benefits payable in the subsequent benefit year to the account of that employer if the claimant has not had employment with that employer since the start of the immediately preceding benefit year. The department shall charge benefits otherwise chargeable to the account of that employer to the fund's balancing account.

(4) If benefits based on any employment are chargeable to the fund's balancing account, the department shall not charge the account of the employer who engaged the employee in that employment for those benefits.

(5) Except as provided in sub. (7), whenever benefits which would otherwise be chargeable to the fund's balancing account are paid based on wages paid by an employer that is not subject to the contribution requirements of ss. 108.17 and 108.18, and the benefits are so chargeable under sub. (3) or s. 108.04 (1) (f) or (5) or 108.14 (8n) (e), or under s. 108.16 (6m) (e) for benefits specified in s. 108.16 (3) (b), the department shall charge the benefits as follows:

(a) If no employer from which the claimant has base period wages is subject to the contribution requirements of ss. 108.17 and 108.18, the benefits shall be charged to the administrative account and paid from the appropriation under s. 20.445 (1) (gd).

(b) If one employer from which the claimant has base period wages is not subject to the contribution requirements of ss. 108.17 and 108.18, and one or more employers from which the claimant has base period wages is subject to the contribution requirements of ss. 108.17 and 108.18, the benefits shall be charged to the fund's balancing account.

(c) If 2 or more employers from which the claimant has base period wages are not subject to the contribution requirements of ss. 108.17 and 108.18, and one or more employers from which the claimant has base period wages are subject to the contribution requirements of ss. 108.17 and 108.18, that percentage of the employee's benefits which would otherwise be chargeable to the fund's balancing account under sub. (3) or s. 108.04 (1) (f) or (5), or under s. 108.16 (6m) (e) for benefits specified in s. 108.16 (3) (b), shall be charged to the administrative account and paid from the appropriation under s. 20.445 (1) (gd).

(5m) Whenever benefits are paid to a claimant based in part on employment by a seasonal employer by which the claimant was employed for a period of less than 90 days during the season of the seasonal employer, as determined under s. 108.066 (4), and that season includes any portion of the claimant's base period, and the claimant has been paid or is treated as having been paid base period wages or other remuneration of $500 or more during his or her base period for services performed for at least one employer other than the seasonal employer which is subject to the unemployment insurance law of any state or the federal government, the department shall charge to the fund's balancing account the benefits which would otherwise be chargeable to the account of the seasonal employer.

(6) The department may initially charge benefits otherwise chargeable to the administrative account under this section to the fund's balancing account, and periodically reimburse the charges to the balancing account from the administrative account.

(7) Whenever benefits are chargeable under sub. (1) or (2) based on federal employment, the department shall charge the benefits to the federal government.

History: 1971 c. 53; 1975 c. 343; 1979 c. 110 s. 60 (11); 1983 a. 17; 1987 a. 38, 255; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 2013 a. 36.

108.08 Notification. (1) To receive benefits for any given week of unemployment, a claimant shall give notice to the department with respect to such week of unemployment within such time and in such manner as the department may by rule prescribe.

(2) The department may require from any or each employer notification of the partial or total unemployment of the employer's employees, within such time, in such form, and in accordance with such rules as the department may prescribe.

History: 1985 a. 17; 1993 a. 492.

Cross−reference: See also ch. DWD 129, Wis. adm. code.

108.09 Settlement of benefit claims. (1) FILING. Claims for benefits shall be filed pursuant to department rules. Each employer that is notified of a benefit claim shall promptly inform the department in writing as to any eligibility question in objection to such claim together with the reasons for the objection. The department may also obtain information from the employee concerning the employee's eligibility, employment or wages.

(2) COMPUTATION AND DETERMINATION. (a) The department shall promptly issue a computation setting forth the employee's potential benefit rights based on reports filed by an employer or employers under s. 108.205, or on the employee's statement and any other information then available. The results of the computation, a recomputation, or pertinent portion of either, shall be delivered electronically to, or mailed to the last−known address of, each party. The department may recompute an employee's potential benefit rights at any time on the basis of subsequent information or to correct a mistake, including an error of law, except that a party's failure to make specific written objection, received by the department within 14 days after the electronic delivery or mailing, as to a computation or recomputation is a waiver by such

party of any objection thereto. Any objections to a computation that are not satisfactorily resolved by recomputation shall be resolved by a determination under par. (b).

(b) The department shall issue determinations whenever necessary to resolve any matters that may bar, suspend, terminate or otherwise affect the employee's eligibility for benefits or to resolve any liability for penalties under s. 108.04 (11) (bh).

(bm) In determining whether an individual meets the conditions specified in s. 108.02 (12) (bm) 2. b. or c. or (c) 1., the department shall not consider documents granting operating authority or licenses, or any state or federal laws or federal regulations granting such authority or licenses.

(c) Unless a party has filed a timely request for hearing as to the determination, the department may set aside or amend a determination within 2 years of the date of the determination on the basis of subsequent information or to correct a mistake, including an error of law. Unless a party has filed a timely request for hearing as to the determination, the department may set aside or amend a determination at any time if the department finds that:

1. Fraud or concealment occurred; or

2. The benefits paid or payable to a claimant have been affected by wages earned by the claimant which have not been paid, and the department is provided with notice from the appropriate state or federal court or agency that a wage claim for those wages will not be paid in whole or in part.

(d) A copy of each determination shall be delivered electronically to, or mailed to the last−known address of, each party, except that a party's copy of any determination may be given to such party instead of being electronically delivered or mailed.

(2r) HEARING REQUEST. Any party to a determination may request a hearing as to any matter in that determination if the request is made in accordance with the procedure prescribed by the department and is received by an appeal tribunal or postmarked within 14 days after a copy of the determination was delivered electronically, mailed, or given to the party, whichever first occurs.

(3) APPEAL TRIBUNALS. (a) 1. To hear and decide disputed claims or to resolve liabilities under sub. (2) (b), the department shall establish appeal tribunals. Except as authorized in this paragraph, each tribunal shall consist of an individual who is a permanent employee of the department.

2. The department may appoint an individual who is not a permanent employee of the department to serve as a temporary reserve appeal tribunal. An individual who is appointed to serve as a temporary reserve appeal tribunal shall be an attorney who is licensed to practice in this state.

3. Upon request of a party to an appeal or upon its own motion, the department may appoint an individual who is not a permanent employee of the department to hear an appeal in which the department or an employee or former employee of the department is an interested party. No individual may hear any appeal in which the individual is a directly interested party.

(b) Consistently with applicable state and federal law, the appeal tribunal may affirm, reverse or modify the initial determination of the department or set aside the determination and remand the matter to the department for further proceedings, or may remand to the department for consideration of any issue not previously investigated by the department.

(4) APPEALS. (a) *Opportunity to be heard.* Unless the request for a hearing is withdrawn, each of the parties shall be afforded reasonable opportunity to be heard, and the claim thus disputed shall be promptly decided by such appeal tribunal as the department designates or establishes for this purpose.

(b) *Scheduling of hearing.* At the discretion of the department or the appeal tribunal the hearing may be held in more than one location and may be continued, adjourned or postponed from time to time.

(c) *Late appeal.* If a party files an appeal that is not timely, an appeal tribunal shall review the appellant's written reasons for filing the late appeal. If those reasons, when taken as true and construed most favorably to the appellant, do not constitute a reason beyond the appellant's control, the appeal tribunal may dismiss the appeal without a hearing and issue a decision accordingly. Otherwise, the department may schedule a hearing concerning the question of whether the appeal was filed late for a reason that was beyond the appellant's control. The department may also provisionally schedule a hearing concerning any matter in the determination being appealed. After hearing testimony on the late appeal question, the appeal tribunal shall issue a decision that makes ultimate findings of fact and conclusions of law concerning whether the appellant's appeal was filed late for a reason that was beyond the appellant's control and that, in accordance with those findings and conclusions, either dismisses the appeal or determines that the appeal was filed late for a reason that was beyond the appellant's control. If the appeal is not dismissed, the same or another appeal tribunal established by the department for this purpose, after conducting a hearing, shall then issue a decision under sub. (3) (b) concerning any matter in the determination.

(d) *Appellant's failure to appear.* 1. If the appellant fails to appear at a hearing held under this section and due notice of the hearing was electronically delivered to the appellant or mailed to the appellant's last−known address, the appeal tribunal shall issue a decision dismissing the request for hearing unless subd. 2. applies.

2. If the appellant submits to the appeal tribunal a written explanation for failing to appear at the hearing that is received before a decision is electronically delivered or mailed under subd. 1., an appeal tribunal shall review the appellant's explanation. The appeal tribunal shall electronically deliver or mail to the respondent a copy of the appellant's explanation. The respondent may, within 7 days after the appeal tribunal electronically delivers or mails the appellant's explanation to the respondent, submit to the appeal tribunal a written response to the appellant's explanation. If the appeal tribunal finds that the appellant's explanation does not establish good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding and such a decision may be issued without a hearing. If the appeal tribunal finds that the appellant's explanation establishes good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination. If such a hearing is held concerning any matter in the determination, the appeal tribunal shall only consider testimony and other evidence admitted at that hearing in making a decision.

3. If the appellant submits to the appeal tribunal a written explanation for failing to appear at the hearing that is received within 21 days after a decision is electronically delivered or mailed under subd. 1., an appeal tribunal shall review the appellant's explanation. The appeal tribunal shall electronically deliver or mail to the respondent a copy of the appellant's explanation. The respondent may, within 7 days after the appeal tribunal electronically delivers or mails the appellant's explanation to the respondent, submit to the appeal tribunal a written response to the appellant's explanation. If the appeal tribunal finds that the appellant's explanation does not establish good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. If the appeal tribunal finds that the appellant's explanation establishes good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and the decision may be issued without a hearing. The appeal tribunal shall then set aside the original decision and schedule a hearing concerning any matter in the determination. The same or another appeal tribunal

established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination. If such a hearing is held concerning any matter in the determination, the appeal tribunal shall only consider the testimony and other evidence admitted at that hearing in making a decision.

(e) *Respondent's failure to appear.* 1. If the respondent fails to appear at a hearing held under this section but the appellant is present, and due notice of the hearing was electronically delivered to the respondent or mailed to the respondent's last−known address, the appeal tribunal shall hold the hearing. The appeal tribunal shall consider records and information already submitted to the department by the appellant and the respondent regarding the determination or the appeal, take the testimony of the appellant and any witnesses, and issue a decision under sub. (3) (b) unless subd. 2. applies.

2. If the respondent submits to the appeal tribunal a written explanation for failing to appear at the hearing that is received before a decision favorable to the respondent is electronically delivered or mailed under subd. 1., the appeal tribunal shall acknowledge receipt of the explanation in its decision but shall take no further action concerning the explanation at that time. If the respondent submits to the appeal tribunal a written explanation for failing to appear that is received before a decision unfavorable to the respondent is electronically delivered or mailed under subd. 1., an appeal tribunal shall review the respondent's explanation. The appeal tribunal shall electronically deliver or mail to the appellant a copy of the respondent's explanation. The appellant may, within 7 days after the appeal tribunal electronically delivers or mails the respondent's explanation to the appellant, submit to the appeal tribunal a written response to the respondent's explanation. If the appeal tribunal finds that the respondent's explanation does not establish good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. If the appeal tribunal finds that the respondent's explanation establishes good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination. If such a hearing is held concerning any matter in the determination, the appeal tribunal shall only consider testimony and other evidence admitted at that hearing in making a decision.

3. If the respondent submits to the appeal tribunal a written explanation for failing to appear at the hearing that is received within 21 days after a decision favorable to the respondent is electronically delivered or mailed under subd. 1., the appeal tribunal shall notify the respondent of receipt of the explanation and that since the decision was favorable to the respondent no further action concerning the explanation will be taken at that time. If the respondent submits to the appeal tribunal a written explanation for failing to appear that is received within 21 days after a decision unfavorable to the respondent is electronically delivered or mailed under subd. 1., an appeal tribunal shall review the respondent's explanation. The appeal tribunal shall electronically deliver or mail to the appellant a copy of the respondent's explanation. The appellant may, within 7 days after the appeal tribunal electronically delivers or mails the respondent's explanation to the appellant, submit to the appeal tribunal a written response to the respondent's explanation. If the appeal tribunal finds that the respondent's explanation does not establish good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. If the appeal tribunal finds that the respondent's explanation establishes good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. The appeal tribunal shall then set aside the original decision and schedule a hearing concerning any matter in the determination. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination. If such a hearing is held concerning any matter in the determination, the appeal tribunal shall only consider the testimony and other evidence admitted at that hearing in making a decision.

(f) *Postdecision changes.* 1. Within 21 days after its decision was electronically delivered or mailed to the parties, the appeal tribunal may, on its own motion, amend or set aside its decision and may thereafter make new findings and issue a decision on the basis of evidence previously submitted in such case, or the same or another appeal tribunal may make new findings and issue a decision after taking additional testimony.

2. Unless a party or the department has filed a timely petition for review of the appeal tribunal decision by the commission, the appeal tribunal may set aside or amend an appeal tribunal decision, or portion thereof, at any time if the appeal tribunal finds that:

a. A technical or clerical mistake has occurred; or

b. The benefits paid or payable to a claimant have been affected by wages earned by the claimant which have not been paid, and the appeal tribunal is provided with notice from the appropriate state or federal court or agency that a wage claim for those wages will not be paid in whole or in part.

3. Unless a party or the department has filed a timely petition for review of the appeal tribunal decision by the commission, the appeal tribunal may, within 2 years after the date of the decision, reopen its decision if it has reason to believe that a party offered false evidence or a witness gave false testimony on an issue material to its decision. Thereafter, and after receiving additional evidence or taking additional testimony, the same or another appeal tribunal may set aside its original decision, make new findings, and issue a decision.

Cross−reference: See also ch. DWD 140, Wis. adm. code.

(4m) REPORTS BY EXPERTS. The contents of verified or certified reports by qualified experts presented by a party or the department constitute prima facie evidence as to the matter contained in the reports in any proceeding under this section, insofar as the reports are otherwise competent and relevant, subject to such rules and limitations as the department prescribes.

(4n) EMPLOYMENT DATA SYSTEM REPORTS. If the department maintains a database system consisting of occupational information and employment conditions data, and an employee of the department, including an individual who serves as an appeal tribunal, creates a report from the system, the report constitutes prima facie evidence as to the matters contained in the report in any proceeding under this section if:

(a) The department has provided to the parties an explanation of the system and the reports created from the system prior to admission of the report.

(b) The parties have been given the opportunity to review and object to the report, including the accuracy of any information used in creating the report, prior to its admission into evidence.

(c) The report sets forth all of the information used in creating the report.

(4o) DEPARTMENTAL RECORDS RELATING TO BENEFIT CLAIMS. In any hearing before an appeal tribunal under this section, a departmental record relating to a claim for benefits, other than a report specified in sub. (4m), constitutes prima facie evidence, and shall be admissible to prove, that an employer provided or failed to provide to the department complete and correct information in a fact−finding investigation of the claim, notwithstanding that the record or a statement contained in the record may be uncorroborated hearsay and may constitute the sole basis upon which issue of the employer's failure is decided, if the parties appearing at the hearing have been given an opportunity to review the record at or before the hearing and to rebut the information contained in the record. A record of the department that is admissible under this

subsection shall be regarded as self authenticating and shall require no foundational or other testimony for its admissibility, unless the circumstances affirmatively indicate a lack of trustworthiness in the record. If such a record is admitted and made the basis of a decision, the record may constitute substantial evidence under sub. (7) (f). For purposes of this subsection, "departmental record" means a memorandum, report, record, document, or data compilation that has been made or maintained by employees of the department in the regular course of the department's fact−finding investigation of a benefit claim, is contained in the department's paper or electronic files of the benefit claim, and relates to the department's investigative inquiries to an employer or statements or other matters submitted by the employer or its agent in connection with the fact−finding investigation of a benefit claim. A departmental record may not be admitted into evidence under this subsection or otherwise used under this subsection for any purpose other than to prove whether an employer provided or failed to provide to the department complete and correct information in a fact−finding investigation of a claim.

NOTE: Sub. (4o) is shown as amended eff. 8−1−16 by 2015 Wis. Act 334. Prior to 8−1−16 it reads:

(4o) DEPARTMENTAL RECORDS RELATING TO BENEFIT CLAIMS. **In any hearing before an appeal tribunal under this section, a departmental record relating to a claim for benefits, other than a report specified in sub. (4m), constitutes prima facie evidence, and shall be admissible to prove, that an employer provided or failed to provide to the department complete and correct information in a fact−finding investigation of the claim, notwithstanding that the record or a statement contained in the record may be uncorroborated hearsay and may constitute the sole basis upon which issue of the employer's failure is decided, if the parties appearing at the hearing have been given an opportunity to review the record at or before the hearing and to rebut the information contained in the record. A record of the department that is admissible under this subsection shall be regarded as self authenticating and shall require no foundational or other testimony for its admissibility, unless the circumstances affirmatively indicate a lack of trustworthiness in the record. If such a record is admitted and made the basis of a decision, the record may constitute substantial evidence under s. 102.23 (6). For purposes of this subsection, "departmental record" means a memorandum, report, record, document, or data compilation that has been made or maintained by employees of the department in the regular course of the department's fact−finding investigation of a benefit claim, is contained in the department's paper or electronic files of the benefit claim, and relates to the department's investigative inquiries to an employer or statements or other matters submitted by the employer or its agent in connection with the fact−finding investigation of a benefit claim. A departmental record may not be admitted into evidence under this subsection or otherwise used under this subsection for any purpose other than to prove whether an employer provided or failed to provide to the department complete and correct information in a fact−finding investigation of a claim.**

(4s) EMPLOYEE STATUS. In determining whether an individual meets the conditions specified in s. 108.02 (12) (bm) 2. b. or c. or (c) 1., the appeal tribunal shall not take administrative notice of or admit into evidence documents granting operating authority or licenses, or any state or federal laws or federal regulations granting such authority or licenses.

(5) PROCEDURE. (a) Except as provided in s. 901.05, the manner in which claims shall be presented, the reports thereon required from the employee and from employers, and the conduct of hearings and appeals shall be governed by general department rules, whether or not they conform to common law or statutory rules of evidence and other technical rules of procedure, for determining the rights of the parties.

(b) All testimony at any hearing under this section shall be recorded by electronic means, but need not be transcribed unless either of the parties requests a transcript before expiration of that party's right to further appeal under this section and pays a fee to the commission in advance, the amount of which shall be established by rule of the commission. When the commission provides a transcript to one of the parties upon request, the commission shall also provide a copy of the transcript to all other parties free of charge. The transcript fee collected shall be paid to the administrative account.

(c) The department shall furnish a copy of the electronic recording to the parties upon payment of any fee required by the department by rule.

(d) In its review of the decision of an appeal tribunal, the commission shall use the electronic recording of the hearing or a written synopsis of the testimony or shall use a transcript of the hearing prepared under the direction of the department or commission and shall also use any other evidence taken at the hearing.

(6) COMMISSION REVIEW. (a) The department or any party may petition the commission for review of an appeal tribunal decision, pursuant to rules promulgated by the commission, if the petition is received by the commission or postmarked within 21 days after the appeal tribunal decision was electronically delivered to the party or mailed to the party's last−known address. The commission shall dismiss any petition if not timely filed unless the petitioner shows good cause that the reason for having failed to file the petition timely was beyond the control of the petitioner. If the petition is not dismissed, the commission may take action under par. (d).

(b) Within 28 days after a decision of the commission is electronically delivered or mailed to the parties, the commission may, on its own motion, set aside the decision for further consideration and take action under par. (d).

(c) On its own motion, for reasons it deems sufficient, the commission may set aside any final determination of the department or appeal tribunal or commission decision within 2 years after the date thereof upon grounds of mistake or newly discovered evidence, and take action under par. (d). The commission may set aside any final determination of the department or any decision of an appeal tribunal or of the commission at any time, and take action under par. (d), if the benefits paid or payable to a claimant have been affected by wages earned by the claimant that have not been paid, and the commission is provided with notice from the appropriate state or federal court or agency that a wage claim for those wages will not be paid in whole or in part.

(d) In any case before the commission for action under this subsection, the commission may affirm, reverse, modify, or set aside the decision on the basis of the evidence previously submitted; order the taking of additional evidence as to such matters as it may direct; or remand the matter to the department for further proceedings.

Cross−reference: See also LIRC, Wis. adm. code.

(7) JUDICIAL REVIEW. (a) Any party that is not the department may commence an action for the judicial review of a decision of the commission under this chapter after exhausting the remedies provided under this section. The department may commence an action for the judicial review of a commission decision under this section, but the department is not required to have been a party to the proceedings before the commission or to have exhausted the remedies provided under this section. In an action commenced under this section by a party that is not the department, the department shall be a defendant and shall be named as a party in the complaint commencing the action. If a plaintiff fails to name either the department or the commission as defendants and serve the commission as required by this subsection, the court shall dismiss the action.

NOTE: Par. (a) is shown as amended eff. 8−1−16 by 2015 Wis. Act 334. Prior to 8−1−16 it reads:

(a) The department or either party may commence action for the judicial review of a decision of the commission under this chapter after exhausting the remedies provided under this section if the party or the department has commenced such action in accordance with s. 102.23 within 30 days after a decision of the commission is mailed to a party's last−known address.

(b) Any judicial review under this chapter shall be confined to questions of law and shall be in accordance with this subsection. In any such judicial action, the commission may appear by any licensed attorney who is a salaried employee of the commission and has been designated by it for that purpose, or, at the commission's request, by the department of justice. In any such judicial action, the department may appear by any licensed attorney who is a salaried employee of the department and has been designated by it for that purpose.

NOTE: Par. (b) is shown as amended eff. 8−1−16 by 2015 Wis. Act 334. Prior to 8−1−16 it reads:

(b) Any judicial review under this chapter shall be confined to questions of law, and the provisions of ch. 102 with respect to judicial review of orders and awards shall likewise apply to any decision of the commission reviewed under this section. In any such judicial action, the commission may appear by any licensed attorney who is a salaried employee of the commission and has been des-

ignated by it for this purpose, or at the commission's request by the department of justice.

(c) 1. The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive. The order of the commission is subject to review only as provided in this subsection and not under ch. 227 or s. 801.02. Within 30 days after the date of an order made by the commission, any party or the department may, by serving a complaint as provided in subd. 3. and filing the summons and complaint with the clerk of the circuit court, commence an action against the commission for judicial review of the order. In an action for judicial review of a commission order, every other party to the proceedings before the commission shall be made a defendant. The department shall also be made a defendant if the department is not the plaintiff. If the circuit court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any order, the circuit court may extend the time in which an action may be commenced by an additional 30 days.

2. Except as provided in this subdivision, the proceedings shall be in the circuit court of the county where the plaintiff resides, except that if the plaintiff is the department, the proceedings shall be in the circuit court of the county where a defendant other than the commission resides. The proceedings may be brought in any circuit court if all parties appearing in the case agree or if the court, after notice and a hearing, so orders. Commencing an action in a county in which no defendant resides does not deprive the court of competency to proceed to judgment on the merits of the case.

3. In such an action, a complaint shall be served with an authenticated copy of the summons. The complaint need not be verified, but shall state the grounds upon which a review is sought. Service upon the commission or an agent authorized by the commission to accept service constitutes complete service on all parties, but there shall be left with the person so served as many copies of the summons and complaint as there are defendants, and the commission shall mail one copy to each other defendant.

4. Each defendant shall serve its answer within 20 days after the service upon the commission under subd. 3., which answer may, by way of counterclaim or cross complaint, ask for the review of the order referred to in the complaint, with the same effect as if the defendant had commenced a separate action for the review of the order.

5. Within 60 days after appearing in an action for judicial review, the commission shall make return to the court of all documents and materials on file in the matter, all testimony that has been taken, and the commission's order and findings. Such return of the commission, when filed in the office of the clerk of the circuit court, shall constitute a judgment roll in the action, and it shall not be necessary to have a transcript approved. After the commission makes return of the judgment roll to the court, the court shall schedule briefing by the parties. Any party may request oral argument before the court, subject to the provisions of law for a change of the place of trial or the calling in of another judge.

6. The court may confirm or set aside the commission's order, but may set aside the order only upon one or more of the following grounds:

a. That the commission acted without or in excess of its powers.

b. That the order was procured by fraud.

c. That the findings of fact by the commission do not support the order.

NOTE: Par. (c) is created eff. 8−1−16 by 2015 Wis. Act 334.

(d) Notwithstanding ss. 102.26 (1) and 814.245, upon review of a decision of the commission under this chapter, costs as between the parties shall be in the discretion of the court, but no costs may be taxed against the department.

NOTE: Par. (d) is renumbered to par. (i) and amended eff. 8−1−16 by 2015 Wis. Act 334.

(dm) The court shall disregard any irregularity or error of the commission or the department unless it is made to affirmatively appear that a party was damaged by that irregularity or error.

NOTE: Par. (dm) is created eff. 8−1−16 by 2015 Wis. Act 334.

(e) The record in any case shall be transmitted to the commission within 5 days after expiration of the time for appeal from the order or judgment of the court, unless an appeal is taken from the order or judgment.

NOTE: Par. (e) is created eff. 8−1−16 by 2015 Wis. Act 334.

(f) If the commission's order depends on any fact found by the commission, the court shall not substitute its judgment for that of the commission as to the weight or credibility of the evidence on any finding of fact. The court may, however, set aside the commission's order and remand the case to the commission if the commission's order depends on any material and controverted finding of fact that is not supported by credible and substantial evidence.

NOTE: Par. (f) is created eff. 8−1−16 by 2015 Wis. Act 334.

(g) Any party aggrieved by a judgment entered upon the review of any circuit court order under this subsection may appeal as provided in ch. 808.

NOTE: Par. (g) is created eff. 8−1−16 by 2015 Wis. Act 334.

(h) The clerk of any court rendering a decision affecting a decision of the commission shall promptly furnish all parties a copy of the decision without charge.

NOTE: Par. (h) is created eff. 8−1−16 by 2015 Wis. Act 334.

(i) No fees may be charged by the clerk of any circuit court for the performance of any service required by this chapter, except for the entry of judgments and for certified transcripts of judgments. In proceedings to review an order under this section, costs as between the parties shall be in the discretion of the court. Notwithstanding s. 814.245, no costs may be taxed against the commission or the department.

NOTE: Par. (i) is shown as renumbered from par. (d) and amended eff. 8−1−16 by 2015 Wis. Act 334.

(8) REPRESENTATION AND LIMITATION OF FEES. (a) No employee may be charged fees by the department or its representatives in any proceeding under this chapter.

(b) Any party in a dispute concerning benefit eligibility or liability for overpayment of benefits or a penalty imposed under s. 108.04 (11) (bh), or in any administrative proceeding under this chapter concerning such a dispute, may be represented by counsel or another agent; but no such counsel or agent may together charge or receive from an employee for all such representation in connection with such a dispute a fee which, in the aggregate, exceeds 10% of the maximum benefits at issue unless the department has first approved a specified higher fee. This paragraph does not apply to any fee charged for representation before a court of law.

(9) PAYMENT OF BENEFITS. (a) Benefits shall be paid promptly in accordance with the department's determination or the decision of an appeal tribunal, the commission or a reviewing court, notwithstanding the pendency of the period to request a hearing, to file a petition for commission review or to commence judicial action or the pendency of any such hearing, review or action.

(b) Where such determination or decision is subsequently amended, modified or reversed by a more recently issued determination or decision, benefits shall be paid or denied in accordance with the most recently issued determination or decision.

(c) If any determination or decision awarding benefits is finally amended, modified or reversed, any benefits paid to the claimant which would not have been paid under such final determination or decision shall be deemed an erroneous payment. Sections 108.04 (13) (c) and (d), 108.16 (3) and 108.22 (8) shall apply to the charging and recovery of such erroneous payment.

History: 1971 c. 147; 1973 c. 247; 1975 c. 343; 1977 c. 29, 418; 1979 c. 52, 221; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38 ss. 81 to 86, 136; 1989 a. 56 s. 259; 1989 a. 77; 1991 a. 89, 269; 1993 a. 373; 1995 a. 118; 1997 a. 35, 39; 1999 a. 15; 2001 a. 35; 2003 a. 197; 2005 a. 86, 253; 2007 a. 59; 2009 a. 287; 2011 a. 32, 198, 236; 2015 a. 334.

The findings of the appeal tribunal were conclusive and could not be enlarged upon by the circuit court. McGraw−Edison Co. v. DILHR, 64 Wis. 2d 703, 221 N.W.2d 677 (1974).

An employer whose unemployment compensation account is not affected by the commission's determination has no standing to seek judicial review. Cornwell Personnel Associates v. DILHR, 92 Wis. 2d 53, 284 N.W.2d 706 (Ct. App. 1979).

The failure to disclose a memorandum from the hearing examiner to the commission that related to the claimant's credibility did not deny due process. Rucker v. DILHR, 101 Wis. 2d 285, 304 N.W.2d 169 (Ct. App. 1981).

Judicial review procedures under this section are exclusive. Schiller v. DILHR, 103 Wis. 2d 353, 309 N.W.2d 5 (Ct. App. 1981).

LIRC has authority under sub. (6) (c) to act upon grounds of mistake of fact or law. LaCrosse Footwear v. LIRC, 147 Wis. 2d 419, 434 N.W.2d 392 (Ct. App. 1988).

Courts should accord deference to the findings of LIRC, rather than those of DILHR, when deference to an agency's decision is appropriate. DILHR v. LIRC, 161 Wis. 2d 231, 467 N.W.2d 545 (1991).

The limit on attorney fees under sub. (8) only applies to the filing of claims under this section. It does not restrict fees in cases under this chapter not governed by this section. Witkin v. McMahon, 173 Wis. 2d 763, 496 N.W.2d 688 (Ct. App. 1993).

The department may not reopen and reconsider a decision after the time under sub. (6). 67 Atty. Gen. 226.

108.095 False statements or representations to obtain benefits payable to other persons. (1) The procedures under this section apply to any issue arising under this chapter concerning any alleged false statement or representation of a person to obtain benefits that are payable to another person, and are in addition to any determination, decision or other procedure provided under s. 108.09. The procedures under this section apply whether or not a penalty for an offense is provided under s. 108.24.

(2) The department shall investigate whether any person has obtained benefits that were payable to another person by means of any false statement or representation, and may issue an initial determination concerning its findings. The department shall electronically deliver a copy of the determination to, or mail a copy of the determination to the last−known address of, each party affected thereby. Unless designated by a determination under this section, an employing unit is not a party to the determination. The department may set aside or amend the determination at any time prior to a hearing concerning the determination under sub. (5) on the basis of subsequent information or to correct a mistake, including an error of law.

(3) Any party to a determination may appeal that determination by requesting a hearing concerning any matter in that determination if the request is received by the department or postmarked within 14 days after the electronic delivery or mailing.

(4) Upon issuance of a determination, the department is a party to the determination.

(5) Any hearing shall be held before an appeal tribunal appointed under s. 108.09 (3). Section 108.09 (4) and (5) applies to the proceeding before the tribunal.

(6) Any party may petition the commission for review of the decision of the appeal tribunal under s. 108.09 (6). The commission's authority to take action concerning any issue or proceeding under this section is the same as that provided in s. 108.09 (6).

(7) Any party may commence an action for judicial review of a decision of the commission under this section, after exhausting the remedies provided under this section, by commencing the action within 30 days after the decision of the commission is delivered electronically or mailed to the department and is delivered electronically to, or mailed to the last−known address of, each other party. The scope and manner of judicial review is the same as that provided in s. 108.09 (7).

(8) The mailing of determinations and decisions under this section shall be first class and may include the use of services performed by the postal service requiring the payment of extra fees.

History: 1999 a. 15; 2015 a. 334.

108.10 Settlement of issues other than benefit claims. Except as provided in s. 108.245 (3), in connection with any issue arising under this chapter as to the status or liability of an employing unit in this state, for which no review is provided under s. 108.09 or 108.227 (5) and whether or not a penalty is provided in s. 108.24, the following procedure shall apply:

(1) The department shall investigate the status, and the existence and extent of liability of an employing unit, and may issue an initial determination accordingly. The department may set aside or amend the determination at any time prior to a hearing on the determination on the basis of subsequent information or to correct a mistake, including an error of law. The department shall electronically deliver a copy of each determination to, or mail a copy of each determination to the last−known address of, the employing unit affected thereby. The employing unit may request a hearing as to any matter in that determination if the request is received by the department or postmarked within 21 days after the mailing and in accordance with such procedure as the department prescribes by rule.

(2) Any hearing duly requested shall be held before an appeal tribunal established as provided by s. 108.09 (3), and s. 108.09 (4) and (5) shall be applicable to the proceedings before such tribunal. The department may be a party in any proceedings before an appeal tribunal. The employing unit or the department may petition the commission for review of the appeal tribunal's decision under s. 108.09 (6).

(3) The commission's authority to take action as to any issue or proceeding under this section is the same as that specified in s. 108.09 (6).

(4) The employing unit may commence an action for the judicial review of a commission decision under this section, provided the employing unit has exhausted the remedies provided under this section. The department may commence an action for the judicial review of a commission decision under this section, but the department is not required to have been a party to the proceedings before the commission or to have exhausted the remedies provided under this section. In an action commenced under this section by a party that is not the department, the department shall be a defendant and shall be named as a party in the complaint commencing the action. If a plaintiff fails to name either the department or the commission as defendants and serve them as required under s. 108.09 (7), the court shall dismiss the action. The scope of judicial review, and the manner thereof insofar as applicable, shall be the same as that provided in s. 108.09 (7). [a defendant defendant summons and]

NOTE: Sub. (4) is shown as amended eff. 8−1−16 by 2015 Wis. Act 334 and as affected by 2015 Wis. Acts 180 and 334 as merged by the legislative reference bureau under s. 13.92 (2) (i). The language in brackets was inserted by 2015 Wis. Act 180 but rendered without effect by Act 334. Eff. 7−1−16, as affected by 2015 Wis. Act 180, sub. (4) reads:

(4) The department or the employing unit may commence action for the judicial review of a commission decision under this section, provided the department, or the employing unit, after exhausting the remedies provided under this section, has commenced such action within 30 days after such decision was mailed to the employing unit's last−known address. The scope of judicial review, and the manner thereof insofar as applicable, shall be the same as that provided in s. 108.09 (7). In an action commenced by an employing unit under this section, the department shall be a defendant under s. 102.23 (1) (a) and shall be named as a defendant in the summons and complaint commencing the action.

NOTE: Prior to 7−1−16 sub. (4) reads:

(4) The department or the employing unit may commence action for the judicial review of a commission decision under this section, provided the department, or the employing unit, after exhausting the remedies provided under this section, has commenced such action within 30 days after such decision was mailed to the employing unit's last−known address. The scope of judicial review, and the manner thereof insofar as applicable, shall be the same as that provided in s. 108.09 (7). In an action commenced by an employing unit under this section, the department shall be an adverse party under s. 102.23 (1) (a) and shall be named as a party in the complaint commencing the action.

(5) The mailing of determinations and decisions provided in subs. (1) to (4) shall be first class, and may include the use of services performed by the postal department requiring the payment of extra fees.

(6) Any determination by the department or any decision by an appeal tribunal or by the commission is conclusive with respect to an employing unit unless the department or the employing unit files a timely request for a hearing or petition for review as provided in this section. A determination or decision is binding upon the department only insofar as the relevant facts were included in the record that was before the department at the time the determination was issued, or before the appeal tribunal or commission at the time the decision was issued.

(7) The decision of the commission shall become final and shall be binding upon the employer and upon the department for that case as provided in sub. (6) unless the employer or the department petitions for judicial review under sub. (4). If the commission construes a statute adversely to the department:

(a) Except as provided in par. (b), the department is deemed to acquiesce in the construction so adopted unless the department seeks review of the decision of the commission construing the statute. The construction so acquiesced in shall thereafter be followed by the department.

(b) The department may choose not to appeal and to nonacquiesce in the decision by sending a notice of nonacquiescence to the commission, to the legislative reference bureau for publication in the Wisconsin administrative register and to the employer before the time expires for seeking a judicial review of the decision under sub. (4). The effect of this action is that, although the decision is binding on the parties to the case, the commission's conclusions of law, the rationale and construction of statutes in the case are not binding on the department in other cases.

(8) The department may settle any determination, decision or action involving a determination or decision issued under this section. The department may compromise any liability for contributions or reimbursement of benefits or interest or penalties assessed under this chapter. The department shall promulgate rules setting forth factors to be considered by the department in settling actions or proposed actions or making compromises under this subsection.

History: 1973 c. 247; 1975 c. 343; 1977 c. 29; 1981 c. 36; 1985 a. 17 s. 66; 1987 a. 38 ss. 87, 88, 134; 1989 a. 77; 2007 a. 20; 2009 a. 287; 2013 a. 36; 2015 a. 180, 334; s. 13.92 (2) (i).

Cross−reference: See also LIRC and chs. DWD 113 and 140, Wis. adm. code.

108.101 Effect of finding, determination, decision or judgment. (1) No finding of fact or law, determination, decision or judgment made with respect to rights or liabilities under this chapter is admissible or binding in any action or administrative or judicial proceeding in law or in equity not arising under this chapter, unless the department is a party or has an interest in the action or proceeding because of the discharge of its duties under this chapter.

(2) No finding of fact or law, determination, decision or judgment made with respect to rights or liabilities under s. 108.09 is binding in an action or proceeding under s. 108.10.

(3) No finding of fact or law, determination, decision or judgment made with respect to rights or liabilities under s. 108.10 is binding in an action or proceeding under s. 108.09.

(4) No finding of fact or law, determination, decision or judgment in any action or administrative or judicial proceeding in law or equity not arising under this chapter made with respect to the rights or liabilities of a party to an action or proceeding under this chapter is binding in an action or proceeding under this chapter.

History: 1989 a. 77; 1991 a. 89.

No administrative decision made under a chapter other than ch. 108 is binding on an unemployment insurance claim. A worker's compensation decision does not bind an administrative hearing on an unemployment insurance claim or the commission reviewing it. Goetsch v. DWD, 2002 WI App 128, 254 Wis. 2d 807, 646 N.W.2d 389, 01−2777.

108.105 Suspension of agents. (1) The department may suspend the privilege of any agent to appear before the department at hearings under this chapter for a specified period if the department finds that the agent has engaged in an act of fraud or misrepresentation, has repeatedly failed to comply with departmental rules, or has engaged in the solicitation of a claimant solely for the purpose of appearing at a hearing as the claimant's representative for pay.

(2) The department may suspend the privilege of an agent to act as an employer's representative under this chapter for up to one year if, during any 12−month period, in 5 percent or more of all appeal tribunal hearings held in which employers represented by the agent are appellants there is a final appeal tribunal decision finding that the employer represented by the agent failed to provide correct and complete information requested by the department during a fact−finding investigation and there is no finding that the employer had good cause for that failure.

(3) Prior to imposing a suspension under this section, the secretary of workforce development or the secretary's designee shall conduct a hearing concerning the proposed suspension. The hearing shall be conducted under ch. 227 and the decision of the department may be appealed under s. 227.52.

History: 1985 a. 17; 1985 a. 182 s. 57; 1987 a. 38; 1995 a. 27 ss. 3778, 9130 (4); 1997 a. 3; 2005 a. 86.

108.11 Agreement to contribute by employees void. (1) No agreement by an employee or by employees to pay any portion of the contributions or payments in lieu of contributions required under this chapter from employers shall be valid. No employer shall make a deduction for such purpose from wages. Any employee claiming a violation of this provision may, to recover wage deductions wrongfully made, have recourse to the method set up in s. 108.09 for settling disputed benefit claims.

(2) But nothing in this chapter shall affect the validity of voluntary arrangements whereby employees freely agree to make contributions to a fund for the purpose of securing unemployment compensation additional to the benefits provided in this chapter.

History: 1973 c. 247.

108.12 Waiver of benefit void. No agreement by an employee to waive the employee's right to benefits or any other rights under this chapter shall be valid. No employee shall, in any proceeding involving benefits under this chapter, be prevented from asserting all facts relevant to the employee's eligibility, regardless of any prior erroneous representation with respect to such facts.

History: 1993 a. 492.

108.13 Deductions from benefit payments. (1) ASSIGNMENT BEFORE PAYMENT. Except as provided in subs. (4) and (5) and s. 108.135, no claim for benefits under this chapter nor any interest in the fund is assignable before payment. This subsection does not affect the survival of such a claim or interest.

(2) LIABILITY OF CLAIMANT. Except as provided in subs. (4) and (5), no claim for benefits awarded, adjudged or paid or any interest in the fund may be taken on account of any liability incurred by the party entitled thereto. This subsection does not apply to liability incurred as the result of an overpayment of unemployment insurance benefits under the law of any state or the federal government.

(3) DEATH OF CLAIMANT. If a claimant dies during or after a week of unemployment in which the claimant was otherwise eligible to receive benefits and for which benefits are payable, the department may designate any person who in its judgment should properly receive the benefits in lieu of the claimant. A receipt or an endorsement from the person so designated fully discharges the fund from liability for the benefits.

(4) DEDUCTIONS FOR CHILD SUPPORT OBLIGATIONS. (a) As used in this subsection:

1. "Child support obligations" includes only those obligations which are being enforced pursuant to a plan described in 42 USC 654 which has been approved by the U.S. secretary of health and human services under part D of title IV of the social security act or which is otherwise authorized by federal law.

2. "Legal process" has the meaning given under 42 USC 662 (e).

3. "State or local child support enforcement agency" means any agency of a state or political subdivision of a state operating pursuant to a plan described in subd. 1.

4. "Unemployment insurance" means any compensation payable under this chapter, including amounts payable by the department pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment.

(b) A claimant filing a new claim for unemployment insurance shall, at the time of filing the claim, disclose whether or not he or

she owes child support obligations. If any such claimant discloses that he or she owes child support obligations and is determined to be eligible for unemployment insurance, the department of workforce development shall notify the local child support enforcement agency enforcing the obligations that the claimant has been determined to be eligible for unemployment insurance.

(c) The department shall deduct and withhold from any unemployment insurance payable to a claimant who owes child support obligations:

1. Any amount determined pursuant to an agreement under 42 USC 654 (19) (B) (i) between the claimant and the state or local child support enforcement agency which is submitted to the department by the state or local child support enforcement agency;

2. Any amount required to be so deducted and withheld pursuant to legal process brought by the state or local child support enforcement agency; or

3. Any amount directed by the claimant to be deducted and withheld under this paragraph.

(d) Any amount deducted and withheld under par. (c) shall be paid by the department to the appropriate state or local child support enforcement agency.

(e) Any amount deducted and withheld under par. (c) shall, for all purposes, be treated as if it were paid to the claimant as unemployment insurance and paid by the claimant to the state or local child support enforcement agency in satisfaction of his or her child support obligations.

(f) This subsection applies only if appropriate arrangements are made for the local child support enforcement agency to reimburse the department for administrative costs incurred by the department that are attributable to the interception of unemployment insurance for child support obligations.

(5) OTHER DEDUCTIONS. The department may make a deduction from a claimant's benefit payments for any purpose that is permitted by federal law.

History: 1981 c. 20, 36, 315; 1983 a. 27, 384; 1987 a. 38, 255; 1993 a. 492; 1995 a. 27 ss. 9126 (19), 9130 (4); 1995 a. 118, 404; 1997 a. 3, 39.

108.133 Testing for controlled substances. (1) DEFINITIONS. In this section:

(a) Notwithstanding s. 108.02 (9), "controlled substance" has the meaning given in 21 USC 802.

(b) "Job skills assessment" means an assessment conducted by the department under sub. (2) (d).

(c) "Occupation that regularly conducts drug testing" means an occupation identified in the regulations issued by the federal secretary of labor under 42 USC 503 (l) (1) (A) (ii).

(d) "Screening" means the screening process created by the department under sub. (2) (a) 3.

(e) "Substance abuse treatment program" means the program provided under sub. (2) (c).

(f) "Valid prescription" means a prescription, as defined in s. 450.01 (19), for a controlled substance that has not expired.

(2) DRUG TESTING PROGRAM. The department shall establish a program to test claimants who apply for regular benefits under this chapter for the presence of controlled substances in accordance with this section and shall, under the program, do all of the following:

(a) Promulgate rules to establish the program. The department shall do all of the following in the rules promulgated under this paragraph:

1. Identify a process for testing claimants for the presence of controlled substances. The department shall ensure that the process adheres to any applicable federal requirements regarding drug testing.

2. Identify the parameters for a substance abuse treatment program for claimants who engage in the unlawful use of controlled substances and specify criteria that a claimant must satisfy in order to be considered in full compliance with requirements of the substance abuse treatment program. If the rules require that a claimant enrolled in the substance abuse treatment program submit to additional tests for the presence of controlled substances following the initial test conducted under sub. (3) (c), the rules shall allow the claimant to have at least one more positive test result following the initial test without, on that basis, being considered not to be in full compliance with the requirements of the substance abuse treatment program.

3. Create a screening process for determining whether there is a reasonable suspicion that a claimant has engaged in the unlawful use of controlled substances.

4. Identify the parameters for a job skills assessment for claimants who engage in the unlawful use of controlled substances and specify criteria that a claimant must satisfy in order to be considered in full compliance with the requirements of the job skills assessment.

5. Identify a period of ineligibility that must elapse or a requalification requirement that must be satisfied, or both, in order for a claimant to again qualify for benefits after becoming ineligible for benefits under sub. (3) (a) or (c).

(am) Promulgate rules identifying occupations for which drug testing is regularly conducted in this state. The department shall notify the U.S. department of labor of any rules promulgated under this paragraph.

(b) When a claimant applies for regular benefits under this chapter, do all of the following:

1. Determine whether the claimant is an individual for whom suitable work is only available in an occupation that regularly conducts drug testing.

2. Determine whether the claimant is an individual for whom suitable work is only available in an occupation identified in the rules promulgated under par. (am).

3. If the claimant is determined by the department under subd. 1. to be an individual for whom suitable work is only available in an occupation that regularly conducts drug testing, conduct a screening on the claimant.

4. If the claimant is determined by the department under subd. 2. to be an individual for whom suitable work is only available in an occupation identified in the rules promulgated under par. (am), conduct a screening on the claimant if a screening is not already required under subd. 3.

5. If a screening conducted as required under subd. 3. or 4. indicates a reasonable suspicion that the claimant has engaged in the unlawful use of controlled substances, require that the claimant submit to a test for the presence of controlled substances.

(c) Create and provide, or contract with an entity or another agency to provide, a substance abuse treatment program in accordance with the rules promulgated under par. (a) 2.

(d) Create and conduct job skills assessments in accordance with the rules promulgated under par. (a) 4.

(3) DRUG TESTING; SUBSTANCE ABUSE TREATMENT. (a) If a claimant is required under sub. (2) (b) 5. to submit to a test for the presence of controlled substances and the claimant declines to submit to such a test, the claimant is ineligible for benefits under this chapter until the claimant is again eligible for benefits as provided in the rules promulgated under sub. (2) (a) 5.

(b) If a claimant who is required under sub. (2) (b) 5. to submit to a test for the presence of controlled substances submits to the test and does not test positive for any controlled substance or the claimant presents evidence satisfactory to the department that the claimant possesses a valid prescription for each controlled substance for which the claimant tests positive, the claimant may receive benefits under this chapter if otherwise eligible and may not be required to submit to any further test for the presence of controlled substances until a subsequent benefit year.

(c) If a claimant who is required under sub. (2) (b) 5. to submit to a test for the presence of controlled substances submits to the

test and tests positive for one or more controlled substances without presenting evidence satisfactory to the department that the claimant possesses a valid prescription for each controlled substance for which the claimant tested positive, the claimant is ineligible for benefits under this chapter until the claimant is again eligible for benefits as provided in the rules promulgated under sub. (2) (a) 5., except as provided in par. (d).

(d) A claimant who tests positive for one or more controlled substances without presenting evidence of a valid prescription as described in par. (c) may maintain his or her eligibility for benefits under this chapter by enrolling in the substance abuse treatment program and undergoing a job skills assessment. Such a claimant remains eligible for benefits under this chapter, if otherwise eligible, for each week the claimant is in full compliance with any requirements of the substance abuse treatment program and job skills assessment, as determined by the department in accordance with the rules promulgated under sub. (2) (a) 2. and 4.

(e) All information relating to a claimant's enrollment in the substance abuse treatment program shall, subject to and in accordance with any rules promulgated by the department, be confidential and not subject to the right of inspection or copying under s. 19.35 (1).

(f) The department shall charge to the fund's balancing account the cost of benefits paid to an individual that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 if the individual receives benefits based on the application of par. (d).

(4) PREEMPLOYMENT DRUG TESTING. (a) An employing unit may, in accordance with the rules promulgated by the department under par. (b), voluntarily submit to the department the results of a test for the presence of controlled substances that was conducted on an individual as a condition of an offer of employment or notify the department that an individual declined to submit to such a test, along with information necessary to identify the individual. Upon receipt of any such results of a test conducted and certified in a manner approved by the department or notification that an individual declined to submit to such a test, the department shall determine whether the individual is a claimant receiving benefits. If the individual is a claimant receiving benefits, the department shall, in accordance with rules promulgated by the department under par. (b), use that information for purposes of determining eligibility for benefits under s. 108.04 (8) (b).

(b) The department shall promulgate rules necessary to implement par. (a).

(5) APPLICATION OF THIS SECTION. (a) Notwithstanding subs. (2) (b) 1., 3., and 5., (c), and (d) and (3), subs. (2) (b) 1., 3., and 5., (c), and (d) and (3) do not apply until the rules required under sub. (2) (a) take effect. The department shall submit to the legislative reference bureau for publication in the Wisconsin administrative register a notice identifying the date on which subs. (2) (b) 1., 3., and 5., (c), and (d) and (3) will be implemented.

(b) Notwithstanding sub. (2) (b) 2. and 4., sub. (2) (b) 2. and 4. do not apply until the rules required under sub. (2) (am) take effect. The department shall submit to the legislative reference bureau for publication in the Wisconsin administrative register a notice identifying the date on which sub. (2) (b) 2. and 4. will be implemented.

(c) Notwithstanding sub. (4) (a) and s. 108.04 (8) (b), sub. (4) (a) and s. 108.04 (8) (b) do not apply until the rules required under sub. (4) (b) take effect. The department shall submit to the legislative reference bureau for publication in the Wisconsin administrative register a notice identifying the date on which sub. (4) (a) and s. 108.04 (8) (b) will be implemented.

(d) The secretary may waive compliance with any provision under this section and s. 108.04 (8) (b) if the secretary determines that waiver of the provision is necessary to permit continued certification of this chapter for grants to this state under Title III of the federal Social Security Act or for maximum credit allowances to employers under the federal Unemployment Tax Act.

History: 2015 a. 55.

108.135 Income tax withholding. (1) The department shall advise each claimant filing a new claim for unemployment insurance, at the time of filing the claim, that:

(a) Unemployment insurance is subject to federal and Wisconsin income taxes.

(b) Requirements exist under federal law pertaining to estimated tax payments.

(c) The claimant may elect to have federal income taxes and, if permitted under sub. (3), Wisconsin income taxes withheld and to change each election once during a benefit year.

(2) The department shall permit a claimant to elect to have federal income tax deducted and withheld from the claimant's benefit payments. Except as provided in sub. (5), if a claimant elects federal income tax withholding, the department shall deduct and withhold federal income tax at the rate specified in 26 USC 3402 (p) (2).

(3) The department may permit a claimant to elect to have state income tax deducted and withheld from the claimant's benefit payments. Except as provided in sub. (5), if the department permits and a claimant elects state income tax withholding, the department shall deduct and withhold state income tax at the rate specified by the department.

(4) The department shall permit a claimant to change each previously elected withholding status under sub. (2) or (3) one time within a benefit year.

(5) If any benefit payment due for a week under s. 108.05 (1) to (7), after making any deductions under s. 108.05 (10), is insufficient to equal the amounts required to be withheld under sub. (2) or (3), the department shall deduct and withhold the entire remaining benefit payment for that week.

(6) Upon making a deduction under this section, the department shall transfer the amount deducted from the fund to the federal internal revenue service or to the department of revenue.

(7) The department shall follow all procedures specified by the U.S. department of labor and the federal internal revenue service pertaining to the deducting and withholding of income tax.

History: 1995 a. 118; 1997 a. 39.

108.14 Administration. (1) This chapter shall be administered by the department.

(2) The department may adopt and enforce all rules which it finds necessary or suitable to carry out this chapter. The department shall make a copy of such rules available to any person upon request. The department may require from any employing unit which employs one or more individuals to perform work in this state any reports on employment, wages, hours and related matters which it deems necessary to carry out this chapter.

Cross−reference: See also ch. DWD 123, Wis. adm. code.

(2e) The department may provide a secure means of electronic interchange between itself and employing units, claimants, and other persons that, upon request to and with prior approval by the department, may be used for departmental transmission or receipt of any document specified by the department that is related to the administration of this chapter in lieu of any other means of submission or receipt specified in this chapter. If a due date is established by statute for the receipt of any document that is submitted electronically to the department under this subsection, then that submission is timely only if the document is submitted by midnight of the statutory due date.

(2m) In the discharge of their duties under this chapter an appeal tribunal, commissioner or other authorized representative of the department or commission may administer oaths to persons appearing before them, take depositions, certify to official acts, and by subpoenas, served in the manner in which circuit court sub-

poenas are served, compel attendance of witnesses and the production of books, papers, documents and records necessary or convenient to be used by them in connection with any investigation, hearing or other proceeding under this chapter. A party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07 (4) and must be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the appeal tribunal or other representative of the department responsible for conducting the proceeding. However, in any investigation, hearing or other proceeding involving the administration of oaths or the use of subpoenas under this subsection due notice shall be given to any interested party involved, who shall be given an opportunity to appear and be heard at any such proceeding and to examine witnesses and otherwise participate therein. Witness fees and travel expenses involved in proceedings under this chapter may be allowed by the appeal tribunal or representative of the department at rates specified by department rules, and shall be paid from the administrative account.

(3) The department may appoint, employ and pay as many persons as it deems necessary to administer and to carry out the purposes of this chapter, and may make all other expenditures of any kind and take any other action consistent herewith which it deems necessary or suitable to this end.

(3m) In any court action to enforce this chapter the department, the commission, and the state may be represented by any licensed attorney who is an employee of the department or the commission and is designated by either of them for this purpose or at the request of either of them by the department of justice. If the governor designates special counsel to defend, in behalf of the state, the validity of this chapter or of any provision of Title IX of the social security act, the expenses and compensation of the special counsel and of any experts employed by the department in connection with that proceeding may be charged to the administrative account. If the compensation is being determined on a contingent fee basis, the contract is subject to s. 20.9305.

(4) The department may create as many employment districts and district appeal boards and may establish and maintain as many free public employment offices as it deems necessary to carry out the provisions of this chapter. The department shall have power to finance either partly or completely such public employment offices as it deems necessary under this chapter, from the funds appropriated to the department for its expenses under this chapter, whether or not the political subdivision in which such office is located agrees to pay or does pay any part of the expenses of such office.

(5) (a) The council on unemployment insurance shall advise the department in carrying out the purposes of this chapter. The council shall submit its recommendations with respect to amendments of this chapter to each regular session of the legislature, and shall report its views on any pending bill relating to this chapter to the proper legislative committee.

(ag) The vote of 7 of the voting members of the council on unemployment insurance is required for the council to act on a matter before it.

(ar) The department shall present to the council on unemployment insurance every proposal initiated by the department for changes in this chapter and shall seek the council's concurrence with the proposal. The department shall give careful consideration to every proposal submitted by the council for legislative or administrative action and shall review each legislative proposal for possible incorporation into departmental recommendations.

(b) Under its authority in s. 15.04 (1) (c), the department may appoint employment councils for industries and local districts. Each such council shall be subject to the membership requirements of s. 15.227 (3).

(6) It shall be one of the purposes of this chapter to promote the regularization of employment in enterprises, localities, industries and the state. The department, with the advice and aid of any employment councils appointed under sub. (5) (b) and the council on unemployment insurance, shall take all appropriate steps within its means to reduce and prevent unemployment. The department shall also conduct continuing research relating to the current and anticipated condition of the fund to ensure the continued availability of benefits to unemployed individuals under this chapter. To these ends the department may employ experts, and may carry on and publish the results of any investigations and research which it deems relevant, whether or not directly related to the other purposes and specific provisions of this chapter. At least once a year the department shall compile and publish a summary report stating the experience of employer accounts, without naming any employer, and covering such other material as it deems significant in connection with the operations and purposes of this chapter.

(7) (a) The records made or maintained by the department or commission in connection with the administration of this chapter are confidential and shall be open to public inspection or disclosure only to the extent that the department or commission permits in the interest of the unemployment insurance program. No person may permit inspection or disclosure of any record provided to it by the department or commission unless the department or commission authorizes the inspection or disclosure.

(b) The department may provide records made or maintained by the department in connection with the administration of this chapter to any government unit, corresponding unit in the government of another state or any unit of the federal government. No such unit may permit inspection or disclosure of any record provided to it by the department unless the department authorizes the inspection or disclosure.

(bm) Upon request of the department of revenue, the department may provide information, including social security numbers, concerning claimants to the department of revenue for the purpose of administering state taxes, identifying fraudulent tax returns, providing information for tax−related prosecutions, or locating persons or the assets of persons who have failed to file tax returns, who have underreported their taxable income, or who are delinquent debtors. The department of revenue shall adhere to the limitation on inspection and disclosure of the information under par. (b).

(c) The department may provide for the printing and distribution of such number of copies of any forms, records, decisions, regulations, rules, pamphlets or reports, related to the operation of this chapter, as it deems advisable for the effective operation thereof.

Cross−reference: See also ch. DWD 149, Wis. adm. code.

(8) (a) The department may enter into administrative arrangements with any agency similarly charged with the administration of any other unemployment insurance law, for the purpose of assisting the department and such agencies in paying benefits under the several laws to employees while outside their territorial jurisdictions. Such arrangements may provide that the respective agencies shall, for and on behalf of each other, act as agents in effecting registration for work, notices of unemployment, and any other certifications or statements relating to an employee's claim for benefits, in making investigations, taking depositions, holding hearings, or otherwise securing information relating to coverage or contribution liability or benefit eligibility and payments; and in such other matters as the department may consider suitable in effecting the purpose of these administrative arrangements.

(b) An employee's eligibility to receive benefits based on wages earned in employment in this state may be established through arrangements authorized in this subsection, and the employee shall then be paid the benefits due him or her under this chapter.

(c) Any person who willfully makes a false statement or misrepresentation regarding a benefit claim, to the employment security agency of another state acting under any administrative

arrangement authorized in this subsection, shall be punished in the manner provided in s. 108.24.

(8m) (a) The department may enter into reciprocal arrangements, with any agency administering another unemployment insurance law, whereby all the services performed by an individual for a single employing unit, which services are customarily performed in more than one state or jurisdiction, shall be deemed to be employment covered by the law of a specified state or jurisdiction in which a part of such services are performed, or in which such individual has residence, or in which such employing unit maintains a place of business; provided there is in effect, as to such services, an election by such employing unit, approved by the agency administering the specified law, pursuant to which all the services performed by such individual for such employing unit are deemed to be employment covered by such law.

(b) If the federal unemployment tax act is so amended as to make subject thereto remuneration paid for any maritime employment excluded under s. 108.02 (15) (k) 17., such exclusion under this chapter shall cease if the department enters into a reciprocal arrangement with respect to such employment pursuant to this paragraph, as of the effective date of such arrangement. The department may enter into reciprocal arrangements with the appropriate agencies of other states with respect to such maritime services, whereby all such services by an individual for a single employer, wherever performed, shall be deemed performed wholly within this state or within any such other state. Any such services thus deemed performed in Wisconsin shall also be deemed "employment" covered by this chapter, and the election requirement of s. 108.02 (15) (c) 2. shall not apply.

(8n) (a) The department shall enter into a reciprocal arrangement which is approved by the U.S. secretary of labor pursuant to section 3304 (a) (9) (B) of the internal revenue code, to provide more equitable benefit coverage for individuals whose recent work has been covered by the unemployment insurance laws of 2 or more jurisdictions.

(b) Arrangements under par. (a) may provide, as to any individual whose employment has been covered by this chapter and by the unemployment insurance law of one or more other participating jurisdictions, for transfer by the department to another agency of relevant records or information, and the acceptance and use of the records and information, in combination with similar data from other jurisdictions, by the other agency, as a basis for computing and paying benefits under the law administered by the other agency. Reciprocally, arrangements under par. (a) may provide for similar acceptance, combination and use by the department of data received from other jurisdictions to compute and pay benefits under this chapter.

(c) Arrangements under par. (a) shall provide for mutual acceptance by the participating agencies of data supplied under par. (b), including reasonable estimates of relevant data not otherwise available in the transferring agency.

(d) Arrangements under par. (a) shall specify an equitable basis for reimbursing the unemployment fund of each participating jurisdiction for any benefits paid therefrom on the basis of covered employment in, and data supplied by the agency of, another participating jurisdiction, out of the unemployment fund of the other jurisdiction.

(e) The department shall charge this state's share of any benefits paid under this subsection to the account of each employer by which the employee claiming benefits was employed in the applicable base period, in proportion to the total amount of wages he or she earned from each employer in the base period, except that if s. 108.04 (1) (f), (5), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b), 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) would have applied to employment by such an employer who is subject to the contribution requirements of ss. 108.17 and 108.18, the department shall charge the share of benefits based on employment with that employer to the fund's balancing account, or, if s. 108.04 (1) (f) or (5) or 108.07 (3) would have applied to an employer that is not subject to the contribution requirements of ss. 108.17 and 108.18, the department shall charge the share of benefits based on that employment in accordance with s. 108.07 (5) (a) and (b). The department shall also charge the fund's balancing account with any other state's share of such benefits pending reimbursement by that state.

(f) To facilitate the application of arrangements under par. (a) to this chapter, the department may, from data received by it under such arrangements, make reasonable estimates of quarterly wages and may compute and pay benefits accordingly.

(8s) Notwithstanding s. 108.16 (10), the department may enter into or cooperate in arrangements or reciprocal agreements with authorized agencies of other states or the U.S. secretary of labor, or both, whereby:

(a) Overpayments of unemployment insurance benefits as determined under this chapter may be recouped from unemployment insurance benefits otherwise payable under the unemployment insurance law of another state, and overpayments of unemployment insurance benefits as determined under the unemployment insurance law of that other state may be recouped from unemployment insurance benefits otherwise payable under this chapter; and

(b) Overpayments of unemployment insurance benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this state under an agreement with the U.S. secretary of labor, may be recouped from unemployment insurance benefits otherwise payable under that program, or under the unemployment insurance law of this state or of another state or any such federal unemployment benefit or allowance program administered by the other state under an agreement with the U.S. secretary of labor if the other state has in effect a reciprocal agreement with the U.S. secretary of labor as authorized by 42 USC 503 (g) (2), if the United States agrees, as provided in the reciprocal agreement with this state entered into under 42 USC 503 (g) (2), that overpayments of unemployment insurance benefits as determined under this chapter, and overpayments as determined under the unemployment insurance law of another state which has in effect a reciprocal agreement with the U.S. secretary of labor as authorized by 42 USC 503 (g) (2), may be recouped from benefits or allowances for unemployment otherwise payable under a federal program administered by this state or the other state under an agreement with the U.S. secretary of labor.

(8t) If the agency administering another unemployment insurance law has overpaid benefits to an individual located in Wisconsin, and certifies to the department the facts involved and that the individual is liable, under such law, to repay such benefits, and requests the department to recover such overpayment, and agrees to reimburse the department for any court costs incurred by it in such recovery efforts, the department may in its own name, but acting as agent for such other agency, collect such overpayment by civil action, and shall pay the net amount recovered to such other agency.

(9) The department may make its records relating to the administration of this chapter available to the Railroad Retirement Board, and may furnish the Railroad Retirement Board, at the expense of said board, such copies thereof as said board deems necessary for its purposes. The department may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law. The department may make arrangements or agreements with the Railroad Retirement Board, or any other agency of the United States charged with the administration of an unemployment insurance law, with respect to the establishment, maintenance and use of free employment service facilities, the taking and certifying of claims, the making of investigations, and the supplying of other information or services related to unemployment insurance, but the department may not make or renew any such arrangement or agreement unless it finds that its resulting administrative costs are approximately covered or offset by the facilities, services and payments to be made available thereunder by such federal agency.

Any moneys received by the department under this subsection shall be paid into the federal administrative financing account under s. 108.161.

(9m) The department may afford reasonable cooperation with any government agency charged with war−effort or post−war planning responsibilities or with the administration of any system of unemployment allowances or unemployment assistance or of any other program designed to prevent or relieve unemployment. All moneys payable to or received by this state for any program of allowances pursuant to an agreement with any government or nonprofit agency, whereby moneys are made available to the state solely for that purpose, shall be paid to the state and shall promptly be deposited by the department to the credit of a separate account therefor, with such custodians as the state may from time to time select, who shall hold, release and transfer the cash in any such account in a manner approved by the department of administration. Payments from any such account shall be made upon vouchers or drafts authorized by the department, in such manner as the department of administration may from time to time approve or prescribe. The treasurer of the unemployment reserve fund shall serve as treasurer of any account under this subsection. The bond of the treasurer, as required under ss. 19.01 (2) and 108.16 (4), shall likewise be conditioned upon the faithful performance of the duties under this subsection by the treasurer and the treasurer's subordinates, in such additional amount as may be fixed by the department. The treasurer shall report annually to the department of administration regarding receipts and disbursements under this subsection.

(10) The department shall comply with requirements of the U.S. secretary of labor to determine the degree of accuracy and timeliness in the administration of this chapter with respect to benefit payments, benefit determinations and revenue collections.

(11) The department may require any employing unit which employs one or more individuals to perform work in this state to make such arrangements as will reasonably assure the department that the employing unit will keep such records, make such reports, and pay such contributions as are required under this chapter. Any employing unit which the department has notified, through notice served on it or sent by registered mail to its last−known address or served by publishing a notice under s. 180.1510 (4) (b), that it is required to make such arrangements and which fails to do so within 20 days after such notification may, through proceedings instituted by the department in the circuit court for Dane County, be restrained from doing business in this state until it has made such arrangements.

(12) (a) Consistently with the provisions of pars. (8) and (9) of section 303 (a) of Title III of the federal social security act, all moneys received in the federal administrative financing account from any federal agency under said Title III shall be expended solely for the purposes and in the amounts found necessary by said agency for the proper and efficient administration of this chapter.

(b) Consistently with said provisions of said Title III, any such moneys, received prior to July 1, 1941, and remaining unencumbered on said date or received on or after said date, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by said agency for the proper administration of this chapter, shall be replaced within a reasonable time. This paragraph is the declared policy of this state, as enunciated by the 1941 legislature, and shall be implemented as further provided in this subsection.

(c) If it is believed that any amount of money thus received has been thus lost or improperly expended, the department on its own motion or on notice from said agency shall promptly investigate and determine the matter and shall, depending on the nature of its determination, take such steps as it may deem necessary to protect the interests of the state.

(d) If it is finally determined that moneys thus received have been thus lost or improperly expended, then the department shall either make the necessary replacement from those moneys in the administrative account specified in s. 108.20 (2m) or shall submit, at the next budget hearings conducted by the governor and at the budget hearings conducted by the next legislature convened in regular session, a request that the necessary replacement be made by an appropriation from the general fund.

(e) This subsection shall not be construed to relieve this state of any obligation existing prior to its enactment with respect to moneys received prior to July 1, 1941, pursuant to said Title III.

(13) The department may, with the advice of the council on unemployment insurance, by general rule modify or suspend any provision of this chapter if and to the extent necessary to permit continued certification of this chapter for grants to this state under Title III of the federal social security act and for maximum credit allowances to employers under the federal unemployment tax act.

(14) The department shall fully cooperate with the agencies of other states, and shall make every proper effort within its means, to oppose and prevent any further action which would in its judgment tend to effect complete or substantial federalization of state unemployment insurance funds or state employment security programs.

(15) The department may make, and may cooperate with other appropriate agencies in making, studies as to the practicality and probable cost of possible new state−administered social security programs, and the relative desirability of state, rather than national, action in any such field.

(16) The department shall have duplicated or printed, and shall distribute without charge, such employment security reports, studies and other materials, including the text of this chapter and instructional or explanatory pamphlets for employers or workers, as it deems necessary for public information or for the proper administration of this chapter; but the department may collect a reasonable charge, which shall be credited to the administrative account, for any such item the cost of which is not fully covered by federal administrative grants.

(17) To help provide suitable quarters for the administration of this chapter at the lowest practicable long−run cost, the department may, with the governor's approval and subject to all relevant statutory requirements, use part of the moneys available for such administration under s. 20.445 (1) (n) to buy suitable real property, or to help construct suitable quarters on any state−owned land, or for the long−term rental or rental−purchase of suitable land and quarters. In each such case full and proper use shall be made of any federal grants available for the administration of this chapter.

(18) No later than the end of the month following each quarter in which the department expends moneys derived from assessments levied under s. 108.19 (1e), the department shall submit a report to the council on unemployment insurance describing the use of the moneys expended and the status at the end of the quarter of any project for which moneys were expended.

(19) No later than March 15 annually, the department shall prepare and furnish to the council on unemployment insurance a report summarizing the department's activities related to detection and prosecution of unemployment insurance fraud in the preceding year. The department shall include in the report information about audits conducted by the department under sub. (20), including the number and results of audits performed, in the previous year.

(20) The department shall conduct random audits on claimants for benefits under this chapter to assess compliance with the work search requirements under s. 108.04 (2) (a) 3.

(21) The department shall maintain a portal on the Internet that allows employers to log in and file with the department complaints related to the administration of this chapter.

(22) The commission shall maintain a searchable, electronic database of significant decisions made by the commission on matters under this chapter for the use of attorneys employed by the department and the commission and other individuals employed by the department and the commission whose duties necessitate use of the database.

(23) (a) The department shall create and periodically update a handbook for the purpose of informing employers that are or may be subject to this chapter about the provisions and requirements of this chapter.

(b) The department shall include all of the following in the handbook:

1. Information about the function and purpose of unemployment insurance under this chapter.

2. A description of the rights and responsibilities of employers under this chapter, including the rights and responsibilities associated with hearings to determine whether claimants are eligible for benefits under this chapter.

3. A description of the circumstances under which workers are generally eligible and ineligible for benefits under this chapter.

4. Disclaimers explaining that the contents of the handbook may not be relied upon as legally enforceable and that adherence to the content does not guarantee a particular result for a decision under this chapter.

5. A line to allow an individual employed by an employer to sign to acknowledge that the individual is aware of the contents of the handbook.

(c) The department shall make the handbook available on the Internet.

(d) The department shall distribute printed copies of the handbook to persons who request a copy and may charge a fee as provided in s. 20.908 for the costs of printing and distribution.

(24) The department shall provide information to employers concerning the financing of the unemployment insurance system, including the computation of reserve percentages and their effect upon the contribution and solvency rates of employers, and shall post this information on the Internet. If the department provided a statement of account to any employer, the department shall include the same information on the statement. In addition, the department shall provide the same information in writing to each employer who becomes newly subject to a requirement to pay contributions or reimbursements under this chapter.

(25) (a) In this section, "appeal tribunal" includes appeal tribunals under s. 108.09 (3) (a) 1., 2., and 3.

(b) The department shall conduct an initial training for all individuals who serve as appeal tribunals to prepare them to be able to perform the duties of appeal tribunals established under this chapter.

(c) The department shall require each individual who serves as an appeal tribunal to satisfy continuing education requirements, as prescribed by the department.

(26) The department shall prescribe by rule a standard affidavit form that may be used by parties to appeals under ss. 108.09 and 108.10 and shall make the form available to employers and claimants. The form shall be sufficient to qualify as admissible evidence in a hearing under this chapter if the authentication is sufficient and the information set forth by the affiant is admissible, but its use by a party does not eliminate the right of an opposing party to cross examine the affiant concerning the facts asserted in the affidavit.

History: 1971 c. 53; 1973 c. 90 s. 559; 1973 c. 247; 1975 c. 343; 1977 c. 29, 133; 1977 c. 196 s. 131; 1977 c. 272 s. 98; 1979 c. 34 s. 2102 (25) (a); 1979 c. 110 s. 60 (11); 1979 c. 221; 1981 c. 36 ss. 18, 45; 1983 a. 8 s. 54; 1983 a. 189 s. 329 (28); 1983 a. 388; 1985 a. 17; 1985 a. 29 ss. 1664 to 1668, 3202 (29); 1985 a. 332; 1987 a. 38, 255; 1989 a. 77, 139, 303, 359; 1991 a. 89; 1993 a. 373, 490, 492; 1995 a. 27, 118, 225; 1997 a. 39; 1999 a. 83; 2001 a. 35, 105; 2003 a. 197; 2009 a. 11; 2011 a. 234; 2013 a. 20, 36, 105, 173; 2015 a. 55, 334.

Cross−reference: See also ch. DWD 100 to ch. DWD 150, Wis. adm. code.

Provisions for aggregation of multi−jurisdictional employment and wages do not affect eligibility except when the state's disqualification of a claimant is based on a change in jurisdiction. Fox Valley Vocational, Technical & Adult Educational District v. LIRC, 125 Wis. 2d 285, 371 N.W.2d 811 (Ct. App. 1985).

108.141 Extended benefits. (1) DEFINITIONS. As used in this section, unless the context clearly requires otherwise:

(a) "Eligibility period" of an individual means the period consisting of each week in the individual's benefit year which begins in an extended benefit period and, if the individual's benefit year ends within that extended benefit period, each week thereafter which begins in such a period. For weeks of unemployment beginning on or after February 17, 2009, and ending before June 1, 2010, or the last week for which federal sharing is authorized by section 2005 (a) of P.L. 111−5 and any amendments thereto, whichever is later, "eligibility period" also means the period consisting of each week during which an individual is eligible for emergency unemployment compensation under P.L. 110−252 and P.L. 110−449, or any amendments thereto, and if that week begins in an extended benefit period or if an individual's eligibility for benefits under P.L. 110−252 and P.L. 110−449, or any amendment thereto, ends within an extended benefit period, each week thereafter which begins in that extended benefit period.

(b) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

1. Has received, prior to that week, all of the regular benefits that were available to the individual under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and former military personnel under 5 USC ch. 85, in the individual's current benefit year that includes that week or is precluded from receiving regular benefits by reason of the law of another state which meets the requirement of section 3304 (a) (7) of the internal revenue code or is precluded from receiving regular benefits by reason of a seasonal limitation in the law of another state. An individual is considered to have received all of the regular benefits that were available to the individual although as a result of a pending appeal under s. 108.09 or 108.10 the individual may subsequently be determined to be entitled to added regular benefits; or

2. His or her benefit year having expired in the extended benefit period and prior to such week, lacks base period wages on the basis of which he or she could establish a benefit year under s. 108.06; or

2m. For weeks of unemployment beginning after February 17, 2009, and ending before June 1, 2010, or with the last week for which federal sharing is authorized by section 2005 (a) of P.L. 111−5 and any amendments thereto, whichever is later, has exhausted federal emergency unemployment compensation under P.L. 110−252 and P.L. 110−449, and any amendments thereto, within an extended benefit period that began in a week during or before which the individual has exhausted that emergency unemployment compensation; and

3. Has no right to unemployment benefits or allowances, as the case may be, under the railroad unemployment insurance act or such other federal laws as are specified in regulations issued by the U.S. secretary of labor, and has not received and is not seeking unemployment benefits under the unemployment insurance law of Canada, but if the individual is seeking such benefits and the appropriate agency finally determines that he or she is not entitled to benefits under such law he or she is an exhaustee.

(c) "Extended benefit period" means a period which:

1. Begins with the 3rd week after whichever of the following weeks occurs first:

a. A week for which there is a national "on" indicator; or

b. A week for which there is a Wisconsin "on" indicator, provided that no extended benefit period may begin by reason of a Wisconsin "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to Wisconsin; and

2. Ends with either of the following weeks, whichever occurs later:

a. The 3rd week after the first week for which there is both a national "off" indicator and a Wisconsin "off" indicator; or

b. The 13th consecutive week of such period.

(d) "Extended benefits" means benefits, including benefits payable to federal civilian employees and former military person-

nel under 5 USC ch. 85, payable to an individual under this section for weeks of unemployment in that individual's eligibility period.

(dm) "High unemployment period" means a period during which an extended benefit period would be in effect if par. (f) 3. a. were applied by substituting an average rate of total unemployment that equals or exceeds 8 percent.

(e) There is a Wisconsin "off" indicator for a week if, for the period consisting of that week and the immediately preceding 12 weeks, there is not a Wisconsin "on" indicator.

(f) There is a Wisconsin "on" indicator for a week if:

1. The rate of insured unemployment for the period consisting of that week and the immediately preceding 12 weeks equaled or exceeded 120 percent of the average of such rates for the corresponding 13−week period ending in each of the preceding 2 calendar years, and equaled or exceeded 5 percent; or

2. The rate of insured unemployment for the period consisting of that week and the immediately preceding 12 weeks equaled or exceeded 6 percent, regardless of the rate of insured unemployment in the 2 preceding calendar years; or

3. With respect to weeks of unemployment beginning on or after February 17, 2009, and ending with the week ending 3 weeks prior to the last week in which federal sharing is authorized by section 2005 (a) of P.L. 111−5 and any amendments thereto:

a. The average rate of total unemployment, seasonally adjusted, as determined by the U.S. secretary of labor, for the period consisting of the most recent 3 months for which data for all states are published before the close of that week equals or exceeds 6.5 percent; and

b. The average rate of total unemployment in this state, seasonally adjusted, as determined by the U.S. secretary of labor for the period consisting of the most recent 3 months for which data for all states are published before the close of that week equals or exceeds 110 percent of the average for either or both of the corresponding 3−month periods ending in the 2 preceding calendar years; or

4. With respect to weeks of unemployment beginning on or after the date of enactment of P.L. 111−312 and ending on or before the earlier of the latest date permitted under federal law or the end of the 4th week prior to the last week in which federal sharing is provided as authorized by section 2005 (a) of P.L. 111−5 and any amendments to such federal laws:

a. The rate of insured unemployment for the period consisting of that week and the immediately preceding 12 weeks equaled or exceeded 120 percent of the average of such rates for the corresponding 13−week periods ending in each of the preceding 3 calendar years, and equaled or exceeded 5 percent; or

b. The average rate of total unemployment, seasonally adjusted, as determined by the U.S. secretary of labor, for the period consisting of the most recent 3 months for which data for all states are published before the close of that week equals or exceeds 6.5 percent and equals or exceeds 110 percent of the average for any of the corresponding 3−month periods ending in the preceding 3 calendar years.

(g) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to former military personnel pursuant to 5 USC ch. 85, other than extended benefits and additional benefits as defined in P.L. 91−373.

(h) "State law" means the unemployment insurance law of any state, approved by the U.S. secretary of labor under section 3304 of the internal revenue code.

(i) "Wisconsin rate of insured unemployment" means the percentage determined by the department on the basis of its reports to the U.S. secretary of labor and according to the method or methods prescribed by applicable federal law or regulation.

(1m) SUSPENSION OF EXTENDED BENEFITS. Notwithstanding sub. (1), no extended benefits may be paid for any week of unemployment ending after January 27, 2009, unless benefits are payable for that week under P.L. 91−373, as amended, in this state. The governor may, by executive order, suspend the application of this subsection in order to allow for the payment of extended benefits as provided in this section during a period specified in the order. Any such suspension shall be effective at the beginning of the week specified by the governor in the order and may be rescinded by similar order, which shall be effective at the beginning of the week specified by the governor in that order.

(2) EFFECT OF OTHER PROVISIONS OF THIS CHAPTER. Except when the result would be inconsistent with the other provisions of this section, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(3) ELIGIBILITY REQUIREMENTS FOR EXTENDED BENEFITS. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period only if:

(a) The individual had base period wages equaling at least 40 times the individual's most recent weekly benefit rate;

(b) The individual is an "exhaustee"; and

(c) The individual is not disqualified and has satisfied those other requirements of this chapter for the payment of regular benefits that apply to individuals claiming extended benefits.

(3g) ADDITIONAL REQUIREMENTS FOR EXTENDED BENEFITS. (a) 1. If a claimant fails to provide sufficient evidence that his or her prospects for obtaining work in his or her customary occupation within a period of time not exceeding 4 weeks, beginning with the first week of eligibility for extended benefits, are good, this paragraph, rather than s. 108.04 (8), applies.

2. A claimant who, during or after the first week following the week that the department notifies the claimant in writing of the requirements to apply for and accept suitable work, fails either to apply for suitable work when notified by a public employment office or to accept suitable work when offered is ineligible to receive extended benefits for the week in which the failure occurs and for each week thereafter until the claimant has again been employed during at least 4 subsequent weeks in employment or other work covered by the unemployment insurance law of any state or the federal government and earned wages for such work equal to at least 4 times his or her extended weekly benefit rate.

3. Work is suitable within the meaning of subd. 2. if:

a. It is any work within the claimant's capabilities;

b. The gross average weekly remuneration for the work exceeds the claimant's weekly benefit rate plus any supplemental unemployment benefits, as defined in section 501 (c) (17) (D) of the internal revenue code, then payable to the claimant;

c. Wages for the work equal or exceed the higher of either the minimum wage provided by 29 USC 206, without regard to any exemption, or any state or local minimum wage; and

d. The offer of work to the claimant was in writing or the position was listed with a public employment office.

(b) The department's public employment offices shall refer extended benefit claimants to suitable work meeting the conditions prescribed in par. (a).

(c) A claimant shall make a systematic and sustained effort to obtain work and provide tangible evidence thereof to the department for each week for which the claimant files a claim for extended benefits. If a claimant fails to make the required effort to obtain work or to provide tangible evidence thereof, on a weekly basis, he or she is ineligible to receive extended benefits for the week in which the failure occurs and for each week thereafter until he or she has again been employed during at least 4 subsequent weeks in employment or other work covered by the unemployment insurance law of any state or the federal government and has earned wages for such work equal to at least 4 times his or her weekly extended benefit rate.

(d) Notwithstanding s. 108.04 (6) and (7), a claimant who was disqualified from receipt of benefits because of voluntarily termi-

nating employment or incurring a disciplinary suspension for good cause is ineligible to receive extended benefits for the week in which the termination occurs or the suspension begins and for each week thereafter until he or she has again been employed during at least 4 subsequent weeks in employment or other work covered by the unemployment insurance law of any state or the federal government and earned wages for such work equal to at least 4 times his or her weekly extended benefit rate.

(e) Extended benefits shall not be denied under par. (a) 2. to a claimant for any week if the failure would not result in a denial of benefits under the law of the state governing eligibility for such benefits to the extent that the law is not inconsistent with this subsection.

(3r) LIMITATION ON INTERSTATE EXTENDED BENEFITS. (a) Extended benefits shall not be paid to any individual for a given week if the claim for such benefits is filed outside this state, under interstate claiming arrangements under s. 108.14 (8), unless an extended benefit period is in effect during that week in the state where the claim is filed.

(b) Paragraph (a) does not apply with respect to the first 2 weeks for which extended benefits would be payable except for that paragraph.

(4) WEEKLY EXTENDED BENEFIT RATE. The weekly extended benefit rate payable to an individual for a week of total unemployment is the same as the rate payable to the individual for regular benefits during his or her most recent benefit year as determined under s. 108.05 (1).

(5) TOTAL EXTENDED BENEFIT AMOUNT. (a) Except as provided in pars. (b) and (c), the total extended benefit amount payable to an eligible individual in his or her benefit year is the least of the following amounts:

1. Fifty percent of the total amount of regular benefits that were payable to the individual in the individual's most recent benefit year rounded down to the nearest dollar, including benefits canceled under s. 108.04 (5); or

2. Thirteen times the individual's weekly benefit amount.

(b) The total extended benefit amount payable to an individual in his or her benefit year shall be reduced by the total amount of additional benefits paid or treated as paid under s. 108.142 for weeks of unemployment in the individual's benefit year that began prior to the beginning of the extended benefit period that is in effect in the week in which the individual first claims extended benefits.

(c) Except as provided in par. (b), effective with respect to weeks beginning in a high unemployment period, the total extended benefit amount payable to an individual in his or her benefit year is the least of the following amounts:

1. Eighty percent of the total amount of regular benefits that were payable to the individual in the individual's most recent benefit year rounded down to the nearest dollar, including benefits canceled under s. 108.04 (5); or

2. Twenty times the individual's weekly benefit amount.

(6) PUBLISH INDICATORS. (a) Whenever an extended benefit period is to become effective as a result of a Wisconsin "on" indicator, or an extended benefit period is to be terminated as a result of a Wisconsin "off" indicator, the secretary of workforce development shall publish it as a class 1 notice under ch. 985.

(b) Computations required by sub. (1) (i) shall be made in accordance with regulations prescribed by the U.S. secretary of labor.

(7) CHARGES OF BENEFITS. (a) The department shall charge the state's share of each week of extended benefits to each employer's account in proportion to the employer's share of the total wages of the employee receiving the benefits in the employee's base period, except that if the employer is subject to the contribution requirements of ss. 108.17 and 108.18 the department shall charge the share of extended benefits to which s. 108.04 (1) (f), (5), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b), 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) applies to the fund's balancing account.

(b) The department shall charge the full amount of extended benefits based on employment for a government unit to the account of the government unit, except that if s. 108.04 (5) or (7) applies and the government unit has elected contribution financing the department shall charge one−half of the government unit's share of the benefits to the fund's balancing account.

(c) The department shall charge the full amount of extended benefits based upon employment for an Indian tribe to the account of the Indian tribe.

History: 1971 c. 53; 1973 c. 247; 1975 c. 1, 343; 1977 c. 29, 133, 418; 1979 c. 52; 1981 c. 36 ss. 19 to 32, 45; 1981 c. 315, 390; 1983 a. 8 ss. 28 to 33, 53, 55 (3), (14) and (15) and 56; 1983 a. 27 ss. 1400g and 1807m; 1983 a. 189 ss. 162, 329 (28); 1985 a. 17; 1987 a. 38; 1991 a. 39, 89, 189, 269; 1993 a. 184, 373, 492; 1995 a. 27 ss. 3780, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 35, 39; 2001 a. 35; 2009 a. 1, 11; 2011 a. 42; 2013 a. 20, 36, 173; 2015 a. 55, 334.

108.142 Wisconsin supplemental benefits. (1) DEFINITIONS. As used in this section, unless the context clearly requires otherwise:

(a) "Wisconsin supplemental benefit period" means a period which:

1. Begins with the 3rd week after which there is a Wisconsin "on" indicator under this section, except that no Wisconsin supplemental benefit period may begin with any week during which there is an extended benefit period under s. 108.141 in effect, and that no Wisconsin supplemental benefit period may begin before the 14th week following the end of a prior Wisconsin supplemental benefit period; and

2. Ends with the week before any extended benefit period begins under s. 108.141, or with either of the following weeks, whichever occurs later:

a. The 3rd week after the first week for which there is a Wisconsin "off" indicator under this section; or

b. The 13th consecutive week of any period during which extended benefits under s. 108.141 or Wisconsin supplemental benefits in any combination have been payable.

(b) There is a Wisconsin "on" indicator under this section for a week if the department determines that, for the period consisting of that week and the immediately preceding 12 weeks, the Wisconsin rate of insured unemployment (not seasonally adjusted):

1. Equaled or exceeded 120% of the average of such rates for the corresponding 13−week period ending in each of the preceding 2 calendar years, and equaled or exceeded one percentage point below the percentage specified in s. 108.141 (1) (f) 1; or

2. Equaled or exceeded one percentage point below the percentage specified in s. 108.141 (1) (f) 2.

(c) There is a Wisconsin "off" indicator under this section for a week if the department determines that, for the period consisting of that week and the immediately preceding 12 weeks, the Wisconsin rate of insured unemployment (not seasonally adjusted):

1. Was less than one percentage point below the percentage specified in s. 108.141 (1) (f) 1. and less than 120% of the average of such rates for the corresponding 13−week period ending in each of the preceding 2 calendar years; and

2. Was less than one percentage point below the percentage specified in s. 108.141 (1) (f) 2.

(d) "Wisconsin rate of insured unemployment" means the percentage of unemployment determined by the department on the basis of its reports to the U.S. secretary of labor and according to the method or methods prescribed by applicable federal law or regulation.

(e) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to former military personnel pursuant to 5 USC ch. 85, other than extended benefits under s. 108.141 and federal supplemental compensation.

(f) "Wisconsin supplemental benefits" means benefits payable to an individual under this section for weeks of unemployment in his or her eligibility period.

(g) "Eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in a Wisconsin supplemental benefit period and, if the individual's benefit year ends within that Wisconsin supplemental benefit period, any weeks thereafter which begin in that period.

(h) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

1. Has received, prior to that week, all of the regular benefits that were available to the individual under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and former military personnel under 5 USC ch. 85, in the individual's current benefit year that includes that week or is precluded from receiving regular benefits by reason of the law of another state which meets the requirement of section 3304 (a) (7) of the internal revenue code or is precluded from receiving regular benefits by reason of a seasonal limitation in the law of another state. An individual is considered to have received all of the regular benefits that were available to the individual although as a result of a pending appeal under s. 108.09 or 108.10 the individual may subsequently be determined to be entitled to added regular benefits; or

2. His or her benefit year having expired in the Wisconsin supplemental benefit period and prior to that week, lacks base period wages on the basis of which he or she could establish a benefit year under s. 108.06; and

3. Has no right to unemployment benefits or allowances under the railroad unemployment insurance act or such other federal laws as are specified in regulations issued by the U.S. secretary of labor, and has not received and is not seeking unemployment benefits under the unemployment insurance law of Canada, but if the individual is seeking such benefits and the appropriate agency finally determines that he or she is not entitled to benefits under that law, the individual is an "exhaustee".

(i) "State law" means the unemployment insurance law of any state, approved by the U.S. secretary of labor under section 3304 of the internal revenue code.

(1m) SUSPENSION OF WISCONSIN SUPPLEMENTAL BENEFITS. Notwithstanding sub. (1), no Wisconsin supplemental benefits may be paid for any week of unemployment ending after January 27, 2009, during which additional federally funded benefits are payable in this state, unless the governor, by executive order, suspends the application of this subsection to allow payment of Wisconsin supplemental benefits as provided in this section during a period specified in the order. Any such suspension shall be effective at the beginning of the week specified by the governor in the order and may be rescinded by similar order, which shall be effective at the beginning of the week specified by the governor in that order.

(2) EFFECT OF OTHER PROVISIONS OF THIS CHAPTER. Except when the result would be inconsistent with the other provisions of this section, the provisions of this chapter which apply to claims for, or the payment of, regular benefits apply to claims for, and the payment of, Wisconsin supplemental benefits.

(3) WEEKLY WISCONSIN SUPPLEMENTAL BENEFIT RATE. The weekly Wisconsin supplemental benefit rate payable to an individual for a week of total unemployment is an amount equal to the amount determined under s. 108.05 (1).

(4) DURATION OF WISCONSIN SUPPLEMENTAL BENEFITS. During a Wisconsin supplemental benefit period, no claimant may receive total benefits based on employment in a base period greater than 34 times the claimant's weekly benefit rate under s. 108.05 (1) or 40% of wages paid or payable to the claimant in his or her base period under s. 108.04 (4) (a), whichever is lower.

(5) PUBLISH INDICATORS. Whenever a Wisconsin supplemental benefit period is to become effective as a result of a Wisconsin "on" indicator under this section, or a Wisconsin supplemental benefit period is to be terminated as a result of a Wisconsin "off" indicator under this section, the secretary of workforce development shall publish it as a class 1 notice under ch. 985.

(6) CHARGES OF BENEFITS. Wisconsin supplemental benefits shall be charged in the same manner as provided for charging of regular benefits under s. 108.16 (2).

History: 1983 a. 8, 27; 1983 a. 189 s. 329 (28); 1983 a. 384; 1987 a. 38; 1991 a. 39, 189, 269; 1995 a. 27, ss. 3781, 9130 (4); 1997 a. 3, 39; 2001 a. 43; 2009 a. 1.

108.145 Disaster unemployment assistance. The department shall administer under s. 108.14 (9m) the distribution of disaster unemployment assistance to workers in this state who are not eligible for benefits whenever such assistance is made available by the president of the United States under 26 USC 5177 (a). In determining eligibility for assistance and the amount of assistance payable to any worker who was totally self−employed during the first 4 of the last 5 most recently completed quarters preceding the date on which the worker claims assistance, the department shall not reduce the assistance otherwise payable to the worker because the worker receives one or more payments under the social security act (42 USC 301 et seq.) for the same week that the worker qualifies for such assistance.

History: 1993 a. 373.

108.15 Benefits for public employees. (1g) DEFINITION. In this section, "state" includes all state constitutional offices, all branches of state government, all agencies, departments, boards, commissions, councils, committees, and all other parts or subdivisions of state government however organized or designated.

(1r) BENEFIT PAYMENTS. Benefits shall be payable from the fund to any public employee, if unemployed and otherwise eligible, based on employment by any government unit that is an employer covered by this chapter.

(2) REIMBURSEMENT FINANCING. The state and every other government unit which is an employer subject to this chapter shall be subject to all its provisions except that, in lieu of contributions under ss. 108.17 and 108.18, it shall reimburse the fund for benefits charged to its account.

(3) ELECTION OF CONTRIBUTION FINANCING. Any government unit other than the state may, in lieu of the reimbursement requirement of sub. (2), elect contribution financing under ss. 108.17 and 108.18 as of the beginning of any calendar year, subject to the following requirements:

(a) It shall file a written notice to that effect with the department before the beginning of such year except that if the government unit became newly subject to this chapter as of the beginning of such year, it shall file the notice within 30 days after the date of mailing to it a written notification by the department that it is subject to this chapter. Such election shall remain in effect for not less than 3 calendar years.

(b) A government unit may thereafter terminate its election of contribution financing effective at the end of any calendar year by filing a written notice to that effect with the department before the close of such year.

(c) No election or termination of election of contribution financing is effective if the government unit, at the time of filing notice of such election or termination of election, is delinquent under s. 108.22.

(d) If a government unit elects contribution financing for any calendar year after the first calendar year it becomes newly subject to this chapter, it shall be liable to reimburse the fund for any benefits based on prior employment. If a government unit terminates its election of contribution financing, ss. 108.17 and 108.18 shall apply to employment in the prior calendar year, but after all benefits based on such prior employment have been charged to its contribution account any balance remaining in such account shall be transferred to the balancing account.

(e) Each time a government unit elects or reelects contribution financing its initial contribution rate shall be 2.5% on its payroll for each of the first 3 calendar years in which such election or

reelection is in effect. If a government unit terminates its election of contribution financing it may not reelect contribution financing within a period of 3 calendar years thereafter.

(4) REIMBURSEMENT ACCOUNTS FOR GOVERNMENT UNITS. (a) For each government unit covered by this chapter which is liable for reimbursement to the fund, the fund's treasurer shall maintain a reimbursement "employer account", as a subaccount of the fund's balancing account.

(b) Each government unit's reimbursement account shall be duly charged with any benefits based on work for such unit, and shall be duly credited with any reimbursement paid by or for it to the fund, and with any benefit overpayment from the account recovered by the department. Whenever the account of a government unit is credited with an overpayment under this paragraph, the department shall, at the close of any month, refund that amount to the government unit upon request, after deducting the amount of any reimbursements to the account of such government unit which have been billed but not paid.

(c) Any government unit may at any time make payments into its reimbursement account in the fund.

(d) Whenever a government unit's reimbursement account has a positive net balance, no reimbursement of the benefits charged to that account is required under this section.

(e) Whenever a government unit's reimbursement account has a negative balance, any benefits chargeable to such account shall be duly paid and charged thereto; and reimbursements covering the total negative balance thus resulting shall become due pursuant to this section.

(f) The write−off provisions of s. 108.16 (7) (c) do not apply to the reimbursement account of any government unit.

(g) If any government unit covered by this chapter requests the department to maintain separate accounts for parts of such unit which are separately operated or financed, the department may do so for such periods and under such conditions as it may from time to time determine.

(5) REIMBURSEMENTS AND CONTRIBUTIONS. (a) Each government unit which is an "employer" shall include in its budget for each budgetary period an estimated amount for payment of the contributions required by ss. 108.17 and 108.18 or reimbursements required by this section, including in each case any contribution or reimbursement remaining unpaid for the current or any prior period.

(b) The department shall monthly bill each government unit for any reimbursements required under this section, and any reimbursement thus billed shall be due and shall be paid by such government unit within 20 days after the date such bill is mailed to it by the department.

(c) Reimbursements due hereunder from budget subdivisions of the state shall be paid pursuant to sub. (7).

(d) Reimbursements due under this section or contributions due under ss. 108.17 and 108.18 from government units shall, if they remain unpaid after their due date, be collected under sub. (6) or under any other applicable provision of law.

(6) DELINQUENT PAYMENTS. (a) Any reimbursement duly billed under this section, or contribution payable under s. 108.17 or 108.18, which remains unpaid after its applicable due date is a "delinquent payment" under s. 108.22 (1) (a).

(b) Whenever a government unit's "delinquent payments", including interest and penalties thereon, total more than the benefits charged to such unit's reimbursement account for the 6 most recent months, or contributions, including interest and penalties thereon, are delinquent for at least 2 quarters, the department shall so determine under s. 108.10.

(c) If such delinquency is finally established under s. 108.10, the fund's treasurer shall, in case such unit receives a share of any state tax or any type of state aid, certify to the secretary of administration the existence and amount of such delinquency.

(d) Upon receipt of such certification, the secretary of administration shall withhold, from each sum of any such tax or aid thereafter payable to the government unit, until the delinquency is satisfied, the lesser of the following amounts:

1. The delinquent amount thus certified; or

2. One−half the sum otherwise payable to such government unit.

(e) Any amount withheld by the secretary of administration under par. (d) shall be paid by the secretary of administration to the fund's treasurer, who shall duly credit such payment toward satisfying the delinquency.

(7) STATE COMPLIANCE AND APPROPRIATIONS. (b) Each reimbursement payable by the state under this section shall be duly paid to the fund, upon filing by the fund's treasurer of a certificate to the department of administration specifying the amount of reimbursement due and the appropriation apparently chargeable.

(c) Each of the state's budget subdivisions shall have each such reimbursement amount charged to and deducted from its proper appropriation, unless payment is authorized under ss. 20.865 and 20.928.

(8) NOTICE AND REPORTS. Each government unit which is an employer shall give such suitable benefit notices to its employees as the department may direct, and shall make employment and wage reports to the department under the same conditions as apply to other employers.

(9) GROUP REIMBURSEMENT ACCOUNTS. If any group of government units which have not elected contribution financing file a joint request, they shall be treated as one employer for the purposes of this chapter under the conditions of this subsection.

(a) The group will be treated as one employer for at least 3 calendar years and the group may be discontinued or dissolved at the beginning of any subsequent calendar year by filing advance written notice thereof with the department before the beginning of such subsequent calendar year.

(b) The members of the group are jointly and severally liable for any required reimbursements together with any interest thereon and any tardy filing fees.

(c) The group shall be dissolved at the beginning of any calendar year after the required 3 calendar years of participation if any member of the group files written notice with the department in advance of such calendar year of its intended withdrawal from the group.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1981 c. 36 s. 45; 1983 a. 8, 27; 1985 a 17; 1987 a. 38; 1993 a. 492; 1995 a. 118; 1999 a. 15; 2003 a. 33; 2007 a. 59; 2015 a. 196.

108.151 Financing benefits for employees of nonprofit organizations. (1) EMPLOYER'S CONTRIBUTION RATE. Each nonprofit organization which is or becomes an employer subject to this chapter shall be subject to all its provisions except as it may elect reimbursement financing in accordance with sub. (2). If such an approved election is terminated, the employer's contribution rate shall be 2.5% on its payroll for each of the next 3 calendar years.

(2) ELECTION OF REIMBURSEMENT FINANCING. Any nonprofit organization may, in lieu of the contribution requirements of ss. 108.17 and 108.18, elect reimbursement financing, as of the beginning of any calendar year, subject to the following requirements:

(a) It shall file a written notice to that effect with the department before the beginning of such year except that if the employer became newly subject to this section as of the beginning of such year, it shall file the notice within 30 days after the date of the determination that it is subject to this chapter.

(b) An employer whose prior election of reimbursement financing has been terminated pursuant to sub. (3) may not thereafter reelect reimbursement financing unless it has been subject to the contribution requirements of ss. 108.17 and 108.18 for at least 3 calendar years thereafter and is not, at the time of filing such reelection, delinquent under s. 108.22.

(c) No election of reimbursement financing shall be valid unless the employer has satisfied the requirements of sub. (4) within 60 days after it filed the notice of election.

(d) Sections 108.17 and 108.18 shall apply to all prior employment, but after all benefits based on prior employment have been charged to any account it has had under s. 108.16 (2) any balance remaining therein shall be transferred to the balancing account as if s. 108.16 (6) (c) or (6m) (d) applied.

(3) TERMINATION OF ELECTION. (a) An employer who elected reimbursement financing may terminate its election as of the close of the 2nd calendar year to which such election applies, or at the close of any subsequent calendar year, by filing a written notice to that effect with the department before the close of such calendar year;

(b) The department may terminate any election as of the close of any calendar year if the department determines that any of the following applies.

1. The employer has failed to make the required reimbursement payments.

2. The employer has failed to pay the required assessments authorized by sub. (7) or s. 108.155.

3. The employer no longer satisfies the requirements of sub. (4).

4. Section 108.16 (8) applies with respect to the employer.

NOTE: Par. (b) is shown as affected eff. 10−2−16 by 2015 Wis. Act 334. Prior to 10−2−16 it reads:

(b) The department may terminate any election as of the close of any calendar year if the department determines that the employer has failed to make the required reimbursement payments or no longer satisfies the requirements of sub. (4), or whenever s. 108.16 (8) applies.

(4) ASSURANCE OF REIMBURSEMENT. (a) An employer electing reimbursement financing shall file an assurance of reimbursement with the fund's treasurer, payable to the unemployment reserve fund, guaranteeing payment of the required reimbursement together with any interest and any tardy filing fees. The assurance shall be a surety bond, letter of credit, certificate of deposit or any other nonnegotiable instrument of fixed value.

1. The amount of assurance shall be equal to 4% of the employer's payroll for the year immediately preceding the effective date of the election, or the employer's anticipated payroll for the current year, whichever is greater as determined by the department, but the assurance may be in a greater amount at the option of the employer. The amount of the assurance shall be similarly redetermined prior to the beginning of the 3rd year commencing after the year in which it is filed and prior to the beginning of every other year thereafter.

2. Prior to the beginning of each year, an employer electing reimbursement financing shall file an assurance for the 4−year period beginning on January 1 of that year in the amount determined under subd. 1. An assurance shall remain in force until the liability is released by the fund's treasurer.

3. No assurance may be approved unless the fund's treasurer finds that it gives reasonable assurances that it guarantees payment of reimbursements.

4. Failure of any employer covered by the assurance to pay the full amount of its reimbursement payments when due together with any interest and any tardy filing fees shall render the assurance liable on said assurance to the extent of the assurance, as though the assurance was the employer.

(b) The fund's treasurer shall issue a receipt to the employer for its deposit of assurance. Any assurances shall be retained by the fund's treasurer in escrow, for the fund, until the employer's liability under its election is terminated, at which time they shall be returned to the employer, less any deductions made under this paragraph. The employer may at any time substitute assurances of equal or greater value. The treasurer may, with 10 days' notice to the employer, liquidate the assurances deposited to the extent necessary to satisfy any delinquent reimbursements or assessments due under this section or s. 108.155 together with any interest and any tardy filing fees due. The treasurer shall hold in escrow any cash remaining from the sale of the assurances, without interest. The fund's treasurer shall require the employer within 30 days following any liquidation of deposited assurances to deposit sufficient additional assurances to make whole the employer's deposit at the prior level. Any income from assurances held in escrow shall inure to and be the property of the employer.

NOTE: Par. (b) is shown as amended eff. 10−2−16 by 2015 Wis. Act 334. Prior to 10−2−16 it reads:

(b) The fund's treasurer shall issue a receipt to the employer for its deposit of assurance. Any assurances shall be retained by the fund's treasurer in escrow, for the fund, until the employer's liability under its election is terminated, at which time they shall be returned to the employer, less any deductions made under this paragraph. The employer may at any time substitute assurances of equal or greater value. The treasurer may, with 10 days' notice to the employer, liquidate the assurances deposited to the extent necessary to satisfy any delinquent reimbursements or assessments due under this section together with any interest and any tardy filing fees due. The treasurer shall hold in escrow any cash remaining from the sale of the assurances, without interest. The fund's treasurer shall require the employer within 30 days following any liquidation of deposited assurances to deposit sufficient additional assurances to make whole the employer's deposit at the prior level. Any income from assurances held in escrow shall inure to and be the property of the employer.

(5) REIMBURSEMENT ACCOUNT. (a) For each nonprofit organization which has elected reimbursement financing, pursuant to sub. (2), the fund's treasurer shall maintain a reimbursement account, as a subaccount of the fund's balancing account.

(b) The department shall charge the employer's reimbursement account with all regular benefits, and with its share of any extended benefits under s. 108.141, based on wages paid within each quarter ended while its election is in effect.

(c) The employer's reimbursement account shall be credited with any reimbursement paid by or for it to the fund, and with any benefit overpayment from the account recovered by the department.

(d) The employer may at any time make other payments to be credited into its reimbursement account, in anticipation of future benefit charges.

(e) Whenever the employer's reimbursement account has a positive net balance no reimbursement of the benefits charged thereto shall be required.

(f) Whenever an employer's reimbursement account has a negative balance as of the close of any calendar month, the fund's treasurer shall promptly bill such employer, at its last−known address, for that portion of its negative balance which has resulted from the net benefits charged to such account within such month. Reimbursement payment shall be due within 20 days thereafter. Any required payment which remains unpaid after its applicable due date is a delinquent payment. Section 108.22 shall apply for collecting delinquent payments.

(6) GROUP REIMBURSEMENT ACCOUNTS. If any group of nonprofit organizations who have elected reimbursement financing file a joint request, they shall be treated as if they were one employer for the purposes of this chapter, provided that:

(a) They shall be so treated for at least the 3 calendar years following their request, unless their election of reimbursement financing is terminated under sub. (3), but they may discontinue their group arrangement as of the beginning of any subsequent calendar year by filing advance notice with the department. A member of such a group may discontinue its participation in the group and the group shall be dissolved at the beginning of any calendar year after the 3rd year.

(b) They shall be jointly and severally liable for any required reimbursements together with any interest thereon and any tardy filing fees.

(c) They shall designate one or more individuals as agent for all members of the group for all fiscal and reporting purposes under this chapter.

(d) If such a group is discontinued, par. (a) shall apply to each of its members.

(7) UNCOLLECTIBLE REIMBURSEMENTS. (a) In this subsection, "payroll" has the meaning given in s. 108.02 (21) (a).

(b) Except as provided in par. (f), each employer that has elected reimbursement financing under this section and that is subject to this chapter as of the date that a rate of assessment is established under this subsection shall pay an assessment to the fund at a rate determined by the fund's treasurer under par. (c).

(c) The fund's treasurer shall determine the total amount due from employers electing reimbursement financing under this section that is uncollectible as of June 30 of each year, but not including any amount that the department determined to be uncollectible prior to January 1, 2004. No amount may be treated as uncollectible under this paragraph unless the department has exhausted all reasonable remedies for collection of the amount, including liquidation of the assurance required under sub. (4). The department shall charge the total amounts so determined to the uncollectible reimbursable benefits account under s. 108.16 (6w). Whenever, as of June 30 of any year, this account has a negative balance of $5,000 or more, the treasurer shall determine the rate of an assessment to be levied under par. (b) for that year, which shall then become payable by all employers that have elected reimbursement financing under this section as of that date.

(d) The rate of assessment under this subsection for each calendar year shall be a rate, when applied to the payrolls of all employers electing reimbursement financing under this section for the preceding calendar year, that will generate an amount that equals the total amount determined to be uncollectible under par. (c), but not more than $200,000 for any year.

(e) Except as provided in par. (f), the rate of each employer's assessment under this subsection for any calendar year is the product of the rate determined under par. (d) multiplied by the employer's payroll for the preceding calendar year, as reported by the employer under sub. (8) or s. 108.15 (8), 108.152 (7), 108.17 (2) or 108.205 (1) or, in the absence of reports, as estimated by the department.

(f) If any employer would otherwise be assessed an amount less than $10 for a calendar year, the department shall, in lieu of requiring that employer to pay an assessment for that calendar year, apply the amount that the employer would have been required to pay to the other employers on a pro rata basis.

(g) The department shall bill assessments to employers under this subsection in the same manner as provided in sub. (5) (f) for the month of September in each year, and the assessment is due for payment in the same manner as other payments under sub. (5) (f). If any assessment is past due, the department shall assess interest on the balance due under s. 108.22. If any employer is delinquent in paying an assessment under this subsection, the department may terminate the employer's election of reimbursement financing under this section as of the close of any calendar year in which the employer remains delinquent.

(h) If the payroll of an employer for any quarter is adjusted to decrease the amount of the payroll after an employment and wage report for the employer is filed under s. 108.205 (1), the department shall refund any assessment that is overpaid by the employer under this subsection as a result of the adjustment.

(8) REPORTS. Each nonprofit organization that is an employer shall make employment and wage reports to the department under the same conditions that apply to other employers.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1979 c. 52; 1983 a. 8; 1985 a. 17; 1987 a. 38; 1989 a. 77; 1991 a. 89; 1995 a. 118; 1999 a. 15; 2005 a. 86; 2007 a. 59; 2009 a. 180; 2015 a. 334.

108.152 Financing benefits for employees of Indian tribes. (1) ELECTION OF REIMBURSEMENT FINANCING. Each Indian tribe that is an employer may, in lieu of paying contributions under ss. 108.17 and 108.18, elect reimbursement financing for itself as a whole or for any tribal units or combinations of tribal units that are wholly owned subdivisions, subsidiaries, or business enterprises, as of the beginning of any calendar year, subject to the following conditions:

(a) The Indian tribe or tribal unit shall file a written notice of the election with the department before the beginning of that year except that, if the Indian tribe or tribal unit became an employer as of the beginning of that year, it shall file the notice within 30 days after the date of the determination that it is an employer.

(b) An Indian tribe or tribal unit whose election of reimbursement financing is terminated under sub. (2) (a) may not thereafter reelect reimbursement financing unless it has been subject to the contribution requirements of ss. 108.17 and 108.18 for at least 3 calendar years thereafter and is not, at the time of filing such reelection, delinquent under s. 108.22.

(d) If the Indian tribe or tribal unit is an employer prior to the effective date of an election, ss. 108.17 and 108.18 shall apply to all employment prior to the effective date of the election, but after all benefits based on prior employment have been charged to any account that it has had under s. 108.16 (2), the department shall transfer any positive balance or charge any negative balance remaining therein to the balancing account as if s. 108.16 (6) (c) and (6m) (d) applied.

(2) TERMINATION OF ELECTION. (a) An Indian tribe or tribal unit that elected reimbursement financing may terminate its election as of the close of the 2nd calendar year to which the election applies, or at the close of any subsequent calendar year, by filing a written notice of termination with the department before the close of that year.

(b) If an Indian tribe or tribal unit terminates an election under this subsection, the employer's contribution rate is 2.5% on its payroll for each of the next 3 calendar years.

(4) REIMBURSEMENT ACCOUNT. The department shall maintain a reimbursement account, as a subaccount of the fund's balancing account, for each Indian tribe, tribal unit, or combination of tribal units in accordance with any valid election made under subs. (1) and (5) and subject to the procedures and conditions provided for other employers under s. 108.151 (5).

(5) GROUP REIMBURSEMENT ACCOUNT. An Indian tribe that has elected reimbursement financing for tribal units or one or more combinations of tribal units may request to have specified tribal units treated as one employer for purposes of this chapter. The department shall approve any such request subject to the following conditions:

(a) The tribal units shall be so treated for a period of at least the 3 calendar years following their request, unless their election of reimbursement financing is terminated under sub. (2) or (6), but the Indian tribe may discontinue the treatment as of the beginning of any calendar year following that period by filing notice with the department prior to the beginning of that calendar year.

(b) The tribal units shall be jointly and severally liable for any required reimbursements, together with any interest thereon and any penalties or tardy filing fees.

(c) The Indian tribe shall designate one or more individuals to act as an agent for all members of the group for all fiscal and reporting purposes under this chapter.

(6) FAILURE TO MAKE REQUIRED PAYMENTS. (a) If an Indian tribe or tribal unit fails to pay required contributions, reimbursements in lieu of contributions, penalties, interest, fees, or assessments within 90 days of the time that the department transmits to the tribe a final notice of delinquency:

NOTE: Par. (a) (intro.) is shown as amended eff. 10−2−16 by 2015 Wis. Act 334. Prior to 10−2−16 it reads:

(a) If an Indian tribe or tribal unit fails to pay required contributions, reimbursements in lieu of contributions, penalties, interest, or fees within 90 days of the time that the department transmits to the tribe a final notice of delinquency:

1. The department shall immediately notify the federal internal revenue service and the federal department of labor of that failure.

2. Any valid election of reimbursement financing is terminated as of the end of the current calendar year.

3. The department may consider the Indian tribe not to be an employer and may consider services performed for the tribe not to be employment for purposes of this chapter.

(b) An Indian tribe whose prior election of reimbursement financing has been terminated under par. (a) may not thereafter

reelect reimbursement financing unless it has been subject to the contribution requirements of ss. 108.17 and 108.18 for at least one calendar year thereafter and is not delinquent under s. 108.22 at the time that it files a request for reelection.

(c) The final notice of delinquency specified in par. (a) shall include information that failure to make full payment within the prescribed time will cause the Indian tribe to be liable for taxes under the federal Unemployment Tax Act (26 USC 3301, et seq.), will cause the tribe to be precluded from electing reimbursement financing, and may cause the department to determine that the tribe is not an employer and that services performed for the tribe are not employment for purposes of this chapter.

(7) REPORTS. Each Indian tribe that is an employer shall make employment and wage reports to the department under the same conditions that apply to other employers.

History: 2001 a. 35, 105; 2005 a. 86; 2007 a. 59; 2009 a. 287; 2015 a. 334.

108.155 Liability of reimbursable employers for identity theft. (1) In this section:

(a) "Payroll" has the meaning given in s. 108.02 (21) (a).

(b) "Reimbursable employer" means an employer under s. 108.02 (13) (a) that is subject to reimbursement financing under s. 108.15, 108.151, or 108.152.

(2) (a) On October 2, 2016, the fund's treasurer shall set aside $2,000,000 in the balancing account for accounting purposes. On an ongoing basis, the fund's treasurer shall tally the amounts allocated to reimbursable employers' accounts under s. 108.04 (13) (d) 4. c. and deduct those amounts from the amount set aside plus any interest calculated thereon.

(b) On each June 30, beginning with June 30, 2016, the fund's treasurer shall do all of the following:

1. Determine the current result of the calculations described in par. (a).

2. Determine the amount that was allocated to reimbursable employers' accounts under s. 108.04 (13) (d) 4. c. in the preceding calendar year.

(c) Annually, beginning with the first year in which the amount determined under par. (b) 1. is less than $100,000, the department shall proceed as follows:

1. If the sum of the amount determined under par. (b) 2. in the current year and any amount carried over under subd. 2. or 3. from the preceding year is $20,000 or more, the department shall, subject to subd. 3., assess reimbursable employers for that sum.

2. If the sum of the amount determined under par. (b) 2. in the current year and any amount carried over under this subdivision or subd. 3. from the preceding year is less than $20,000 the department shall, subject to subd. 4., postpone the current year's assessment by carrying that sum over to the following year.

3. If the sum of the amount determined under par. (b) 2. in the current year and any amount carried over under this subdivision or subd. 2. from the preceding year is more than $200,000, the department shall postpone the amount of the assessment that exceeds $200,000 by carrying that amount over to the following year.

4. If the department postponed assessments under subd. 2. in each of the 4 previous years, the department shall, subject to subd. 3., assess reimbursable employers for the sum of the amount determined under par. (b) 2. in the current year and the amount carried over under subd. 2. from the preceding year.

(d) If the department assesses reimbursable employers under par. (c), the department shall determine the amount of assessments to be levied as provided in sub. (3), and the fund's treasurer shall notify reimbursable employers that the assessment will be imposed. Except as provided in sub. (3) (c), the assessment shall be payable by each reimbursable employer that is subject to this chapter as of the date the assessment is imposed. Assessments imposed under this section shall be credited to the balancing account.

(3) (a) The rate of an assessment imposed under sub. (2) (c) for a given calendar year shall be a rate that, when applied to the payrolls of all reimbursable employers for the preceding calendar year, will generate an amount equal to the total amount to be assessed in that year as determined under sub. (2) (c).

(b) Except as provided in par. (c), the amount of a reimbursable employer's assessment imposed under sub. (2) (c) for a given calendar year is the product of the rate determined under par. (a) and the reimbursable employer's payroll for the preceding calendar year, as reported by the reimbursable employer under s. 108.15 (8), 108.151 (8), 108.152 (7), or 108.205 (1), or, in the absence of reports, as estimated by the department.

(c) If a reimbursable employer would otherwise be assessed an amount less than $10 for a calendar year, the department shall, in lieu of requiring that reimbursable employer to pay an assessment for that calendar year, apply the amount that the reimbursable employer would have been required to pay to the other reimbursable employers subject to an assessment on a pro rata basis.

(4) The department shall bill assessments under this section to a reimbursable employer at its last known address in the month of September of each year and the assessment shall be due to the department within 20 days after the date such bill is mailed by the department. Any assessment that remains unpaid after its applicable due date is a delinquent payment. If a reimbursable employer is delinquent in paying an assessment under this section, in addition to pursuing action under the provisions of ss. 108.22 and 108.225, the department may do any of the following:

(a) Pursue action authorized under s. 108.15 (6), if the reimbursable employer is subject to reimbursement financing under s. 108.15.

(b) Terminate the reimbursable employer's election of reimbursement financing under s. 108.151 (3) (b) or liquidate the employer's assurance under s. 108.151 (4) (b), if the reimbursable employer elected reimbursement financing under s. 108.151 (2).

(c) Pursue action authorized under s. 108.152 (6), if the reimbursable employer elected reimbursement financing under s. 108.152 (1).

(5) If the payroll of a reimbursable employer for any quarter is adjusted to decrease the amount of the payroll after an employment and wage report for the reimbursable employer is filed under s. 108.205 (1), the department shall refund the amount of any assessment that was overpaid by the reimbursable employer under this section as a result of the adjustment.

(6) The department shall annually report to the council on unemployment insurance the balance remaining of the amount set aside under sub. (2) (a) and the amount of charges restored to reimbursable employers' accounts under s. 108.04 (13) (d) 4. c.

NOTE: This section is created eff. 10−2−16 by 2015 Wis. Act 334.

History: 2015 a. 334.

108.16 Unemployment reserve fund. (1) For the purpose of carrying out the provisions of this chapter there is established a fund to be known as the "Unemployment Reserve Fund," to be administered by the department without liability on the part of the state beyond the amount of the fund. This fund shall consist of all contributions and moneys paid into and received by the fund pursuant to this chapter and of properties and securities acquired by and through the use of moneys belonging to the fund.

(2) (a) A separate employer's account shall be maintained by the department as to each employer contributing to said fund.

(b) Each employer's account shall be credited with all its contributions paid into the fund, and shall be charged with all benefits duly paid from the fund to its employees based on their past employment by it, except as otherwise specified in this chapter.

(c) Any reference in this chapter to eligibility for, or to payment of, benefits "from an employer's account", or any similar reference, shall mean benefits payable or paid from the fund based on past employment by the employer in question.

(d) The fund shall be mingled and undivided, and nothing in this chapter shall be construed to grant to any employer or employee any prior claim or right to any part of the fund.

(e) Except as provided in par. (em), benefits to be charged against a given employer's account shall be so charged as of the date shown by the check covering such benefits. Each such check shall be promptly mailed and shall, in determining the experience or status of such account for contribution purposes, be deemed paid on the date shown on the check.

(em) Benefits improperly charged or credited to an employer's account for any reason other than adjustment of payroll amounts between 2 or more employers' accounts shall, when so identified, be credited to or debited from that employer's account and, where appropriate, recharged to the correct employer's account as of the date of correction. Benefits improperly charged or credited to an employer's account as a result of adjustment of payroll amounts between 2 or more employers' accounts shall be so charged or credited and, where appropriate, recharged as of the date shown by the check covering such benefits. This paragraph shall be used solely in determining the experience or status of accounts for contribution purposes.

(f) The department shall promptly advise the employer as to benefits charged to its account.

(g) Whenever the department receives a request of 2 or more partnerships consisting of the same partners to be treated as separate employers prior to October 1 of any year, the department shall apportion the balance in any existing account of the partnerships among the separate employers on January 1 following the date of receipt of the request in proportion to the payrolls incurred in the businesses operated by each of the employers in the 4 completed calendar quarters ending on the computation date preceding the date of receipt of the request and shall calculate the reserve percentage of each separate employer in accordance with the proportion of the payroll attributable to that employer. Section 108.18 (2) is not made applicable to the separate employers by reason of such treatment. For purposes of s. 108.18 (7), the department shall treat the partnerships as separate employers on November 1 preceding that January 1. For purposes of s. 108.18 (7) (b) and (c), the department shall treat the separate employers as existing employers on that January 1.

(h) Whenever, prior to October 1 of any year, the department receives a written request by all partnerships consisting of the same partners which have elected to be treated as separate employers for the partnerships to be treated as a single employer, the department shall combine the balances in the existing accounts of the separate employers into a new account on January 1 following the date of receipt of the request and shall calculate the reserve percentage of the single employer in accordance with the combined payroll attributable to each of the separate employers in the 4 completed calendar quarters ending on the computation date preceding that January 1. Section 108.18 (2) is not made applicable to the single employer by reason of such treatment. For purposes of s. 108.18 (7), the department shall treat the partnerships as a single employer on November 1 preceding that January 1. For purposes of s. 108.18 (7) (b) and (c), the department shall treat the single employer as an existing employer on that January 1.

(3) The fund's treasurer shall write off:

(a) Any overpayment for which the claimant's liability to reimburse the fund is established under s. 108.22 (8) or any assessment under s. 108.04 (11) (cm) for which a final determination has been issued under s. 108.09 upon receipt of certification by the department that reasonable efforts have been made to recover the overpayment or the amount of the assessment and that the amount due is uncollectible.

(b) Any overpayment of benefits that was made under the circumstances described in s. 108.22 (8) (c), upon certification by the department to that effect.

(c) Any nonrecoverable payment made without fault on the part of the intended payee.

(4) (a) Consistently with sub. (5), all contributions payable to the fund shall be paid to the department, and shall promptly be deposited by the department to the credit of the fund, with custodians that the department may from time to time select, who shall hold, release and transfer the fund's cash in a manner approved by the department. Payments from the fund shall be made upon vouchers or drafts authorized by the department, in the manner that the department may from time to time approve or prescribe. Any procedure thus approved or prescribed shall be considered to satisfy, and shall be in lieu of, any and all statutory requirements, for specific appropriation or other formal release by state officers of state moneys prior to their expenditure, which might otherwise be applicable to withdrawals from the fund.

(b) The department shall designate a treasurer of the unemployment reserve fund, who shall be either a regular salaried employee of the department or the state treasurer and shall serve as treasurer of the fund until a successor designated by the department has assumed the duties of this office.

(c) The treasurer of the fund shall give a separate bond conditioned upon the faithful performance of these duties pursuant to s. 19.01 (2), which bond shall be considered likewise conditioned upon the faithful performance by his or her subordinates of their duties, in such amount as may be fixed by the department. All premiums upon the bond required pursuant to this section when furnished by an authorized surety company or by a duly constituted governmental bonding fund shall, except as otherwise provided in this section, be paid from the interest earnings of the fund, but shall not exceed one−fourth of one percent, per year, of the amount of the bond.

(5) (a) All money received for the fund shall promptly upon receipt be deposited to the fund's credit in the "Unemployment Trust Fund" of the United States, in the manner that the secretary of the treasury of the United States, or other authorized custodian of the U.S. unemployment trust fund, may approve, so long as the U.S. unemployment trust fund exists and maintains for this state a separate book account, for the purposes of this chapter, from which no other state or agency can make withdrawals, any other statutory provision to the contrary notwithstanding.

(b) The department shall requisition from this state's account in the "Unemployment Trust Fund" necessary amounts from time to time, shall hold such amounts consistently with any applicable federal regulations, and shall make withdrawals therefrom solely for benefits and for such other unemployment insurance payments or employment security expenditures as are expressly authorized by this chapter and consistent with any relevant federal requirements.

(c) While the state has an account in the "Unemployment Trust Fund", public deposit insurance charges on the fund's balances held in banks, savings banks, savings and loan associations and credit unions in this state, the premiums on surety bonds required of the fund's treasurer under this section, and any other expense of administration otherwise payable from the fund's interest earnings, shall be paid from the administrative account.

(6) The department shall maintain within the fund a "balancing account," to which shall be credited:

(a) All interest earnings, on moneys belonging to the fund, received by, or duly apportioned to, the fund, as of the close of the quarter in which the interest accrued.

(b) Any reimbursement made pursuant to s. 108.04 (13) (d).

(c) Any balance credited to an employer's account, if and when the employer ceases to be subject to this chapter, except as provided in sub. (8).

(d) Any reimbursement made under s. 108.07 (6).

(e) The amount of any benefit check duly issued and delivered or mailed to an employee, if the benefit check has not been presented for payment within one year after its date of issue.

(f) Any amount available for such crediting under s. 108.14 (8n) (e) or 108.141.

(g) Any payment or other amount received for the balancing account under s. 108.15, 108.151, 108.152, or 108.155.

NOTE: Par. (g) is shown as amended eff. 10−2−16 by 2015 Wis. Act 334. Prior to 10−2−16 it reads:

(g) Any payment received for the balancing account under s. 108.15 or 108.152.

(h) Any amount of solvency contribution or special contribution received for or transferred to the balancing account pursuant to s. 108.18 (8) to (9m).

(i) Any federal reimbursement of benefits paid under any federal unemployment benefit program administered by the department.

(j) Any federal reimbursement of benefits paid under this chapter, except as this chapter or a federal agreement requires otherwise.

(k) All payments to the fund from the administrative account as authorized under s. 108.20 (2m).

(L) The amount of any overpayments that are recovered by the department by setoff pursuant to s. 71.93 or the amount of any overpayments resulting from fraud or failure to report earnings that are recovered by the department by offset pursuant to 26 USC 6402 (f).

(m) Any amounts transferred to the balancing account from the unemployment interest payment fund.

(n) The amount of any penalty collected under s. 108.04 (11) (bh) that accounts for the minimum penalty required to be assessed and deposited into the fund under 42 USC 503 (a) (11).

(o) Any erroneous payment recovered under s. 108.22 (8e).

(6m) There shall be charged against the fund's balancing account:

(a) The benefits thus chargeable under s. 108.04 (1) (f), (5), (5g), (7) (h), (8) (a) or (b), (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) (b), (5m), or (6), 108.133 (3) (f), 108.14 (8n) (e), 108.141, 108.151, or 108.152 or sub. (6) (e) or (7) (a) and (b).

(b) Any benefits paid under any federal unemployment benefit program administered by the department, pending their reimbursement.

(c) The overdraft write−offs thus chargeable under subs. (7) (c) and (7m).

(d) Any negative balance of a closed employer account, except as provided in sub. (8).

(e) Any overpayment of benefits or assessment that is written off under sub. (3), except, in the case of an overpayment, if it is chargeable to an employer's account under s. 108.04 (13).

(f) The amount of any substitute check issued under sub. (11).

(g) Any payments of fees or expenses assessed by the U.S. secretary of the treasury and charged to the department under 26 USC 6402 (f).

(h) Any amount paid to correct a payment under s. 108.22 (8e) that is not recovered or recoverable.

(i) Any amount restored to the account of an employer subject to reimbursement financing under s. 108.04 (13) (d) 4.

NOTE: Par. (i) is created eff. 10−2−16 by 2015 Wis. Act 334.

(6w) The department shall maintain within the fund an uncollectible reimbursable benefits account to which the department shall credit all amounts received from employers under s. 108.151 (7).

(6x) The department shall charge to the uncollectible reimbursable benefits account the amount of any benefits paid from the balancing account that are reimbursable under s. 108.151 but for which the department does not receive reimbursement after the department exhausts all reasonable remedies for collection of the amount.

(7) (a) All benefits shall be paid from the fund. Benefits chargeable to an employer's account shall be so charged, whether or not such account is overdrawn. All other benefits shall be charged to the fund's balancing account.

(b) Benefit payments made with respect to an employer's account shall be charged directly against the fund's balancing account only when such payments cannot under this chapter be or remain charged against the account of any employer.

(c) Whenever, as of any computation date, the net overdrafts then charged against an employer's account would, even if reduced by any contributions known or subsequently discovered to be then payable but unpaid to the account, exceed 10% of the employer's annual payroll amount used in determining the employer's reserve percentage as of that computation date, the department shall write off, by charging directly to the fund's balancing account, the amount by which such overdrafts would if thus reduced exceed 10% of the employer's payroll.

(7m) The fund's treasurer may write off, by charging to the fund's balancing account, any delinquent contribution, reimbursement in lieu of contribution, assessment, tardy payment or filing fee, or interest for which the employer's liability to the fund was established under s. 108.10, upon receipt of certification by the department that reasonable efforts have been made to recover the delinquency and that the delinquency is uncollectible.

NOTE: Sub. (7m) is shown as amended eff. 10−2−16 by 2015 Wis. Act 334. Prior to 10−2−16 it reads:

(7m) The fund's treasurer may write off, by charging to the fund's balancing account, any delinquent contribution, reimbursement in lieu of contribution, tardy payment or filing fee, or interest for which the employer's liability to the fund was established under s. 108.10, upon receipt of certification by the department that reasonable efforts have been made to recover the delinquency and that the delinquency is uncollectible.

(8) (a) For purposes of this subsection a business is deemed transferred if any asset or any activity of an employer, whether organized or carried on for profit, nonprofit or governmental purposes, is transferred in whole or in part by any means, other than in the ordinary course of business.

(b) If the business of any employer is transferred, the transferee is deemed a successor for purposes of this chapter if the department determines that all of the following conditions have been satisfied:

1. The transferee has continued or resumed the business of the transferor, in the same establishment or elsewhere; or the transferee has employed substantially the same employees as those employed by the transferor in connection with the business transferred.

2. The transfer included at least 25% of the transferor's total business as measured by comparing the payroll experience assignable to the portion of the business transferred with the transferor's total payroll experience for the last 4 completed quarters immediately preceding the date of the transfer.

3. The same financing provisions under s. 108.15, 108.151, 108.152, or 108.18 apply to the transferee as applied to the transferor on the date of the transfer.

4. The department has received a written application from the transferee requesting that it be deemed a successor. Unless the transferee satisfies the department that the application was late as a result of excusable neglect, the application must be received by the department on or before the contribution payment due date for the first full quarter following the date of transfer. The department shall not accept a late application under this subdivision more than 90 days after its due date.

(c) Notwithstanding par. (b), if the business of an employer is transferred, the transferee is deemed a successor for purposes of this chapter if the department determines that all of the following conditions have been satisfied:

1. The transferee is a legal representative or trustee in bankruptcy or receiver or trustee of a person, partnership, limited liability company, association or corporation, or guardian of the estate of a person, or legal representative of a deceased person.

2. The transferee has continued or resumed the business of the transferor, either in the same establishment or elsewhere, or the transferee has employed substantially the same employees as those the transferor had employed in connection with the business transferred.

3. The same financing provisions under s. 108.15, 108.151, 108.152, or 108.18 apply to the transferee as applied to the transferor on the date of transfer.

(cm) The filing of a voluntary petition in bankruptcy by an employer or the filing of an involuntary petition in bankruptcy against an employer under 11 USC 1101 to 1330 or the confirmation of a plan under 11 USC 1101 to 1330 does not render the employer filing the petition or against whom the petition is filed a successor under par. (c).

(d) Notwithstanding par. (b), if the business of an employer of a kind specified in par. (c) 1. is transferred, the transferee is deemed a successor for purposes of this chapter if the transferee would have been a successor under par. (e) but for the intervening existence of the successor employer under par. (c).

(e) Notwithstanding par. (b), a transferee is deemed a successor for purposes of this chapter, if the department determines that all of the following conditions are satisfied:

1. At the time of business transfer, the transferor and the transferee are owned, managed, or controlled in whole or in substantial part, either directly or indirectly by legally enforceable means or otherwise, by the same interest or interests. Without limitation by reason of enumeration, it is presumed unless shown to the contrary that the "same interest or interests" includes the spouse, child, or parent of the individual who owned, managed or controlled the business, or any combination of more than one of them.

2. The transferee has continued or resumed the business of the transferor, either in the same establishment or elsewhere; or the transferee has employed substantially the same employees as those the transferor had employed in connection with the business transferred.

3. The same financing provisions under s. 108.15, 108.151, 108.152, or 108.18 apply to the transferee as applied to the transferor on the date of the transfer.

(em) If, after the transferee of a business has been deemed a successor under par. (e), the department determines that a substantial purpose of the transfer of the business was to obtain a reduced contribution rate, then the department shall treat the transfer as having no effect for purposes of this chapter and shall, retroactively to the date of the transfer, reassign to the transferor all aspects of the transferor's account experience and liability that had been assigned to the transferee, together with all aspects of the transferee's account experience related to the transferred business, and shall recompute the transferor's contribution rate as provided in par. (h).

(f) The successor shall take over and continue the transferor's account, including its positive or negative balance and all other aspects of its experience under this chapter in proportion to the payroll assignable to the transferred business and the liability of the successor shall be proportioned to the extent of the transferred business. The transferor and the successor shall be jointly and severally liable for any amounts owed by the transferor to the fund and to the administrative account at the time of the transfer, but a successor under par. (c) is not liable for the debts of the transferor except in the case of fraud or malfeasance.

(g) If not already subject to this chapter, a successor shall become an employer subject to this chapter on the date of the transfer and shall become liable for contributions or payments in lieu of contributions, whichever is applicable, from and after that date, using the contribution rate assigned or assignable to the transferor on the date of transfer.

(h) The department shall redetermine the contribution rate of a successor that is subject to this chapter immediately prior to the effective date of a transfer as of the applicable computation date effective for contributions payable beginning in the first calendar year following the date of the transfer of the business. The department shall thereafter redetermine the contribution rate whenever required by s. 108.18. For the purposes of s. 108.18, the department shall determine the experience under this chapter of the successor's account by allocating to the successor's account for each period in question the respective proportions of the transferor's payroll and benefits which the department determines to be properly assignable to the business transferred.

(i) The account taken over by the successor shall remain liable with respect to accrued benefit and related rights based on employment in the transferred business, and all such employment is deemed employment performed for the successor.

(im) Notwithstanding pars. (b) to (i), a transferee who is not subject to this chapter on the date of transfer of a business shall not be deemed a successor to the transferor if the department determines that the transfer occurred solely or primarily for the purpose of obtaining a lower contribution rate for the transferee than the rate that would otherwise apply if the transferee were deemed a new employer. In determining whether a business was transferred solely or primarily for the purpose of obtaining a lower contribution rate for the transferee than the rate that would otherwise apply, the department shall use objective factors, which may include the cost of acquiring the business, whether the transferee continued the business enterprise of the transferred business, the length of time that the business enterprise was continued, or whether a substantial number of new employees were hired for the performance of duties unrelated to the business activity conducted by the transferor prior to the transfer.

(j) If not already subject to this chapter, a transferee that is not a successor shall become an employer subject to this chapter on the date of the transfer and shall become liable for contributions or payments in lieu of contributions, whichever is applicable, from and after that date.

(k) Any time a business is transferred, as provided in par. (a), both the transferor and the transferee shall notify the department in writing of the transfer, within 30 days after the date of transfer; and both shall promptly submit to the department in writing such information as the department may request relating to the transfer.

(L) A professional employer organization is not considered to be the successor to the employer account of its client under this section by virtue of engaging the prior employees of the client to perform services for the client under an employee leasing agreement.

Cross−reference: See also ch. DWD 115, Wis. adm. code.

(m) If any person knowingly makes or attempts to make a false statement or representation to the department in connection with any investigation to determine whether an employer qualifies to be deemed a successor under par. (e) or (im) or any other provision of this chapter for the purpose of determining the assignment of a contribution rate, or if any person knowingly advises another person to do so, including by willful evasion, nondisclosure, or misrepresentation, the person is subject to the following penalties:

1. If the person is an employer, then the department shall assign the employer the highest contribution rate assignable under this chapter for the year, during which the violation or attempted violation occurs and the 3 succeeding years, except that if the department assigns the employer the highest contribution rate for any such year under other provisions of this chapter or if the increase in the employer's contribution rate under this subdivision would be less than 2 percent on its payroll for any year, then the department shall increase the employer's contribution rate by 2 percent on its payroll for each year in which a penalty applies under this subdivision.

2. If the person is not an employer, the person may be required to forfeit not more than $5,000.

3. The person is guilty of a Class A misdemeanor.

(n) The department shall utilize uniform procedures to identify businesses that are transferred under this subsection.

(o) Paragraphs (e) 1., (em), (h), (im), and (m) shall be interpreted and applied, insofar as possible, to meet the minimum requirements of any guidance issued by or regulations promulgated by the U.S. department of labor.

(9) (a) Consistently with section 3305 of the internal revenue code, relating to federal instrumentalities which are neither wholly nor partially owned by the United States nor otherwise specifically exempt from the tax imposed by section 3301 of the internal revenue code:

1. Any contributions required and paid under this chapter for 1939 or any subsequent year by any such instrumentality, including any national bank, shall be refunded to such instrumentality in case this chapter is not certified with respect to such year under s. 3304 of said code.

2. No national banking association which is subject to this chapter shall be required to comply with any of its provisions or requirements to the extent that such compliance would be contrary to s. 3305 of said code.

(10) All money withdrawn from the fund shall be used solely in the payment of benefits, exclusive of expenses of administration, and for refunds of sums erroneously paid into the fund, for refund of a positive net balance in an employer's reimbursement account under ss. 108.15 (4), 108.151 (5), and 108.152 (4) on request by the employer, for expenditures made pursuant to s. 108.161 and consistently with the federal limitations applicable to s. 108.161, and for payment of fees and expenses for collection of overpayments resulting from fraud or failure to report earnings that are assessed by the U.S. secretary of the treasury and charged to the department under 26 USC 6402 (f).

NOTE: Sub. (10) is shown as amended eff. 10−2−16 by 2015 Wis. Act 334. Prior to 10−2−16 it reads:

(10) All money withdrawn from the fund shall be used solely in the payment of benefits, exclusive of expenses of administration, and for refunds of sums erroneously paid into the fund, for refund of a positive net balance in an employer's reimbursement account under ss. 108.15 (4) and 108.151 (5) on request by the employer, for expenditures made pursuant to s. 108.161 and consistently with the federal limitations applicable to s. 108.161, and for payment of fees and expenses for collection of overpayments resulting from fraud or failure to report earnings that are assessed by the U.S. secretary of the treasury and charged to the department under 26 USC 6402 (f).

(10m) Except as provided in s. 108.17 (3m), the department shall not pay any interest on any benefit payment or any refund, or collect any interest on any benefit overpayment.

(11) The fund's treasurer may issue a substitute check to an employee to replace a check that is canceled under sub. (6) (e), if the employee makes application therefor within 6 years after the date of issue of the original check.

(12) The fund's treasurer shall estimate at the end of each calendar quarter the earnings rate payable on the fund's bank balances and the earnings rate payable by the federal unemployment account under title XII of the Social Security Act (42 USC 1321 to 1324) for the following quarter. Based on these estimates, the treasurer shall pay for the cost of banking services incurred by the fund in the following quarter either by maintaining compensating bank balances or by payment for the services from the appropriation under s. 20.445 (1) (ne), whichever payment method is estimated to yield the highest net earnings for the fund.

(13) If the secretary determines that employers in this state that are subject to a requirement to pay a federal unemployment tax might experience a lower tax rate if this state were to loan moneys to the fund under s. 20.002 (11) (b) 3m., the secretary shall request the secretary of administration to make one or more transfers to the fund in the amount required to maintain a favorable federal tax experience for employers. The secretary shall not request a transfer under this subsection if the outstanding balance of such transfers at the time of the request would exceed $50,000,000. Whenever the secretary determines that the balance of the fund permits repayment of a transfer, in whole or in part, without jeopardizing the ability of the department to continue to pay other liabilities and costs chargeable to the fund, the secretary shall repay the department of administration for the amount that the secretary determines is available for repayment. The secretary shall ensure that the timing of any repayment accords with federal requirements for ensuring a favorable tax experience for employers in this state.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86, 253; 2007 a. 59; 2009 a. 287; 2011 a. 198, 236; 2013 a. 20, 36; 2015 a. 55, 86, 334.

Whether an employee is potentially eligible for unemployment compensation benefits is immaterial in determining contribution or tax liability based on that employee's services. Hanmer v. ILHR Dept. 92 Wis. 2d 90, 284 N.W.2d 587 (1979).

In the case of a merger, the "time of business transfer" under sub. (8) (e) 1. refers to that point in time immediately prior to the effective date of the merger. First Federal Savings Bank v. LIRC, 200 Wis. 2d 786, 547 N.W.2d 796 (Ct. App. 1996), 95−2158.

Assuming, without deciding, that a Chapter 11 bankruptcy reorganization resulted in a "transfer" under sub. (8) (a), the reorganized company in this case was mandatory successor under sub. (8) (e) 1. Sub. (8) (e) 1. broadly refers to whether an employer is "owned, managed, or controlled in whole or in substantial part, either directly or indirectly by legally enforceable means or otherwise, by the same interest or interests." Given this broad language and a company's retention of 6 of its 8 officers, including its chief operating officer and corporate controller, LIRC reasonably determined that the company was "managed ... in substantial part ... directly ... by the same ... interests" as before its reorganization. Neenah Foundry Co. v. LIRC, 2015 WI App 18, ___ Wis. 2d ___, ___ N.W.2d ___, 14−1113.

108.161 Federal administrative financing account. **(1)** The fund's treasurer shall maintain within the fund an employment security "federal administrative financing account", and shall credit thereto all amounts credited to the fund pursuant to the federal employment security administrative financing act (of 1954) and section 903 of the federal social security act, as amended.

(1m) The treasurer of the fund shall also credit to said account all federal moneys credited to the fund pursuant to sub. (8).

(2) The requirements of said section 903 shall control any appropriation, withdrawal and use of any moneys in said account.

(3) Consistently with this chapter and said section 903, such moneys shall be used solely for benefits or employment security administration by the department, including unemployment insurance, employment service, apprenticeship programs, and related statistical operations.

(3e) Notwithstanding sub. (3), any moneys allocated under section 903 of the federal Social Security Act, as amended, for federal fiscal years 2000 and 2001 and the first $2,389,107 of any distribution received by this state under section 903 of that act in federal fiscal year 2002 shall be used solely for unemployment insurance administration.

(3m) The fund's treasurer shall request restoration from the U.S. secretary of labor of amounts credited to the account under this section which have been used to pay benefits, unless these amounts do not exceed the balance in the account, and unless the state does not have a balance of advances outstanding from the federal unemployment account under title XII of the social security act.

(4) Such moneys shall be encumbered and spent for employment security administrative purposes only pursuant to, and after the effective date of, a specific legislative appropriation enactment:

(a) Stating for which such purposes and in what amounts the appropriation is being made to the administrative account created by s. 108.20.

(b) Directing the fund's treasurer to transfer the appropriated amounts to the administrative account only as and to the extent that they are currently needed for such expenditures, and directing that there shall be restored to the account created by sub. (1) any amount thus transferred which has ceased to be needed or available for such expenditures.

(c) Specifying that the appropriated amounts are available for obligation solely within the 2 years beginning on the appropriation law's date of enactment. This paragraph does not apply to the appropriations under s. 20.445 (1) (nd) and (ne) or to any amounts expended from the appropriation under s. 20.445 (1) (nb) from

moneys transferred to this state on March 13, 2002, pursuant to section 903 (d) of the federal Social Security Act.

(d) Limiting the total amount which may be obligated during any fiscal year to the aggregate of all amounts credited under sub. (1), including amounts credited pursuant to sub. (8), reduced at the time of any obligation by the sum of the moneys obligated and charged against any of the amounts credited.

(5) The total of the amounts thus appropriated for use in any fiscal year shall in no event exceed the moneys available for such use hereunder, considering the timing of credits hereunder and the sums already spent or appropriated or transferred or otherwise encumbered hereunder.

(6) The fund's treasurer shall keep a record of all such times and amounts; shall charge each sum against the earliest credits duly available therefor; shall include any sum thus appropriated but not yet spent hereunder in computing the fund's net balance as of the close of any month, in line with the federal requirement that any such sum shall, until spent, be considered part of the fund; and shall certify the relevant facts whenever necessary hereunder.

(7) If any moneys appropriated hereunder are used to buy and hold suitable land, with a view to the future construction of an employment security building thereon, and if such land is later sold or transferred to other use, the proceeds of such sale (or the value of such land when transferred) shall be credited to the account created by sub. (1) except as otherwise provided in ss. 13.48 (14) and 16.848.

(8) If any sums are appropriated and spent hereunder to buy land and to build a suitable employment security building thereon, or to purchase information technology hardware and software, then any federal moneys thereafter credited to the fund or paid to the department by way of gradual reimbursement of such employment security capital expenditures, or in lieu of the estimated periodic amounts which would otherwise (in the absence of such expenditures) be federally granted for the rental of substantially equivalent quarters, shall be credited to the account created by sub. (1), consistently with any federal requirements applicable to the handling and crediting of such moneys.

(8m) To the extent that employment security moneys finance the capital cost of acquiring office quarters, either in a separate employment security building project or in a larger state building, no rental for the quarters thus financed, or for equivalent substitute quarters, shall be charged the department or its employment security functions at any time. The department shall so certify, in applying for the federal moneys specified in sub. (8).

(9) Any land and building or office quarters acquired under this section shall continue to be used for employment security purposes. Realty or quarters may not be sold or transferred to other use if prior action is taken under s. 13.48 (14) (am) or 16.848 (1) and may not be sold or transferred without the governor's approval. The proceeds from the sale, or the value of realty or quarters upon transfer, shall be credited to the account established in sub. (1) or credited to the fund established in s. 108.20, or both in accordance with federal requirements. Equivalent substitute rent−free quarters may be provided, as federally approved. Amounts credited under this subsection shall be used solely to finance employment security quarters according to federal requirements.

History: 1971 c. 259; 1983 a. 8, 27; 1985 a. 29; 1991 a. 39; 1993 a. 492; 1995 a. 225; 1997 a. 39; 1999 a. 15; 2001 a. 43; 2003 a. 33, 197; 2013 a. 20.

108.162 Employment security buildings and equipment. (1) The amounts appropriated under s. 20.445 (1) (na) shall be used for employment security administration, including unemployment insurance, employment service and related statistical operations; for capital outlay to buy suitable parcels of land for buildings designed for employment security operations; and to finance the designing and construction of such buildings, and for such equipment, facilities, paving, landscaping and other improvements as are required for the proper use and operation of buildings occupied by the department for employment security administration.

(2) The treasurer of the fund shall transfer the amounts appropriated under s. 20.445 (1) (na) from the federal administrative financing account under s. 20.445 (1) (n) only as and to the extent that they are currently needed for expenditures under this section. Any amount thus transferred which has ceased to be needed or available for such expenditures shall be restored to that account.

(3) The amount obligated under this section during any fiscal year may not exceed the aggregate of all amounts credited under s. 108.161 (1), including amounts credited under s. 108.161 (8), reduced by the amount obligated under s. 20.445 (1) (nb), (nd) and (ne) and further reduced at the time of any obligation by the sum of the moneys obligated and charged against any of the amounts thus credited.

(4) As to any building project to be financed under this section, the department shall secure advance assurance that the federal bureau of employment security will apply to that project, after its completion and occupancy, the bureau's policy of gradually reimbursing the fund for the necessary capital costs of any suitable employment security building project thus financed by federal grants covering the amounts which would otherwise be payable during the reimbursement or amortization period for the rental of substantially equivalent office quarters.

(5) The governor, before approving any land purchase or transfer or building project to be financed under this section, shall consult with the building commission as to those cities and sites where early construction of a combined state office building is under active consideration with a view to determining where employment security building projects thus financed would be desirable.

(6) If the building commission with the approval of the governor determines as to any city or site that employment security offices should be part of a combined state office building project, or should be built on state−owned land or on land owned by a Wisconsin state public building corporation, the amounts appropriated under s. 20.445 (1) (na) shall be available to finance such offices or a proper employment security share of such combined project.

(7) Any amount appropriated under s. 20.445 (1) (na) which has not been obligated shall be available for employment security local office building projects, consistent with this section and ss. 108.161 and 108.20.

History: 1985 a. 29 ss. 490, 1674; 1991 a. 39; 1997 a. 39; 2003 a. 33, 197.

108.17 Payment of contributions. (1) Contributions shall accrue and become payable by each employer then subject to this chapter on the first day of July, 1934, and shall be paid thenceforth in accordance with this chapter. Thereafter contributions shall accrue and become payable by any employer on and after the date on which the employer becomes newly subject to this chapter.

(1m) In the case of an employer who becomes newly subject to this chapter based on employment during a given year, contributions based on payrolls through the quarter which includes the date the employer became subject to this chapter shall not be considered as payable for the purposes of s. 108.22 until the close of the month next following the first full quarter occurring after the quarter during which the liability was incurred. In no case may such due date be later than January 31 of the succeeding year.

(2) (a) Except as provided in par. (b), every employer that is subject to a contribution requirement shall file quarterly reports of contributions required under this chapter with the department, and pay contributions to the department, in such manner as the department prescribes. Each contribution report and payment is due at the close of the month next following the end of the applicable calendar quarter, except as authorized in sub. (2c) or as the department may assign a later due date pursuant to sub. (1m) or general department rules.

(b) The department may electronically provide a means whereby an employer that files its employment and wage reports

electronically may determine the amount of contributions due for payment by the employer under s. 108.18 for each quarter. If an employer that is subject to a contribution requirement files its employment and wage reports under s. 108.205 (1) electronically, in the manner prescribed by the department for purposes of this paragraph, the department may require the employer to determine electronically the amount of contributions due for payment by the employer under s. 108.18 for each quarter. In such case, the employer is excused from filing contribution reports under par. (a). The employer shall pay the amount due for each quarter by the due date specified in par. (a).

(2b) The department shall prescribe a form and methodology for filing contribution reports under sub. (2) electronically. Each employer of 25 or more employees, as determined under s. 108.22 (1) (ae), that does not use an employer agent to file its contribution reports under this section shall file its contribution reports electronically in the manner and form prescribed by the department. Each employer that becomes subject to an electronic reporting requirement under this subsection shall file its initial report under this subsection for the quarter during which the employer becomes subject to the reporting requirement. Once an employer becomes subject to a reporting requirement under this subsection, it shall continue to file its reports under this subsection unless that requirement is waived by the department.

(2c) (a) Except as provided in pars. (d) and (e), an employer that has a first quarter contribution liability of $1,000 or more may elect to defer payment to later due dates beyond the due date established under sub. (1m) or (2) of not more than 60% of its first quarter contribution liability, without payment of interest, as follows:

1. The employer shall pay at least 30% of the first quarter contribution liability on or before July 31 of the year in which the liability accrues.

2. The employer shall pay at least an additional 20% of the first quarter contribution liability on or before October 31 of the year in which the liability accrues.

3. The employer shall pay any remaining balance of the first quarter contribution liability on or before January 31 of the year after the year in which the liability accrues.

(b) An employer that elects to defer a payment under par. (a) may pay more than the specified minimum deferred amount or all of the deferred amount at any time before the due date under par. (a).

(c) If an employer fails to pay at least the specified minimum deferred amount for the first quarter, together with the full amount of contributions payable for any subsequent quarter, or fails to file its employment and wage report in the format prescribed under par. (f), by a specified due date, then all unpaid contribution liability of that employer for the first quarter is delinquent under s. 108.22 and interest thereon is payable from April 30 of the year in which the liability accrues.

(d) If an employer fails to pay at least 40% of its first quarter contribution liability on or before April 30 of the year in which the liability accrues, the employer is not permitted to defer the balance of the liability under this subsection.

(e) An employer is not permitted to defer its first quarter contribution liability under this subsection for any year unless the employer pays all delinquent contributions, together with any interest, penalties, and fees assessed under this chapter, prior to April 30 of the year in which the liability accrues.

(f) An employer that elects to defer payment of its first quarter contributions under this subsection shall file the election electronically, shall file its contribution reports under s. 108.17 (2) (a) unless excused from filing under s. 108.17 (2) (b), and shall file its employment and wage reports under s. 108.205 electronically in the manner and form prescribed by the department.

(2g) An employer agent that prepares reports on behalf of employers under sub. (2) shall file contribution reports electronically in the manner and form prescribed by the department under sub. (2b) unless that requirement is waived by the department.

(2m) When a written statement of account is issued to an employer by the department, showing as duly credited a specified amount received from the employer under this chapter, no other form of state receipt therefor is required.

(3) If an employing unit makes application to the department to adjust an alleged overpayment by the employer of contributions or interest under this chapter, and files such an application within 3 years after the close of the calendar year in which such payment was made, the department shall make a determination under s. 108.10 as to the existence and extent of any such overpayment, and said section shall apply to such determination. Except as provided in sub. (3m), the department shall allow an employer a credit for any amount determined under s. 108.10 to have been erroneously paid by the employer, without interest, against its future contribution payments; or, if the department finds it impracticable to allow the employer such a credit, it shall refund such overpayment to the employer, without interest, from the fund or the administrative account, as the case may be.

(3m) If an appeal tribunal or the commission issues a decision under s. 108.10 (2), or a court issues a decision on review under s. 108.10 (4), in which it is determined that an amount has been erroneously paid by an employer, the department shall, from the administrative account, credit the employer with interest at the rate of 0.75% per month or fraction thereof on the amount of the erroneous payment. Interest shall accrue from the month which the erroneous payment was made until the month in which it is either used as a credit against future contributions or refunded to the employer.

(4) An employer's contribution rate for any year, once determined by the department, shall not be redetermined after the last day of February in the year for which the rate was determined unless the rate was determined based on payroll which should have been reported under a different employer's account, in which case the department may redetermine the rates with respect to all affected employers' accounts.

(5) Upon application of an employer, the department may permit employers which are component members of a controlled group of corporations under 26 USC 1563 to combine wages of a single employee for purposes of determining the employers' payroll under s. 108.02 (21) (b) if the employee is subject to transfer between the employers under the terms of a single collective bargaining agreement. The application shall specify the calendar year in which the combination is proposed to occur. This subsection does not apply to any employer for which the department has written off overdrafts under s. 108.16 (7) (c) within the 2 calendar years preceding the year in which the combination is proposed to occur, nor to any employer whose account is overdrawn by 6% or more on the computation date for the calendar year preceding the year in which the combination is proposed to occur. If the department approves the application, the department shall specify the calendar year in which the combination is effective and the method by which the component members will report the payroll of the employee to the department.

(6) If the department determines that a trustee paying wage claims for an employer in a state or federal liquidation proceeding in which priority is given to specified wage claims has insufficient funds to pay all wage claims given priority, and contributions on the wage claims given priority, in full, the department may accept less than the full amount of contributions owed by the employer on those wage claims.

(7) (a) Each employer whose net total contributions paid or payable under this section for any 12−month period ending on June 30 are at least $10,000 shall pay all contributions under this section by means of electronic funds transfer beginning with the next calendar year. Once an employer becomes subject to an electronic payment requirement under this paragraph, the employer shall continue to make payment of all contributions by means of electronic funds transfer unless that requirement is waived by the department.

(b) Each employer agent shall pay all contributions under this section on behalf of each employer that is represented by the agent by means of electronic funds transfer.

History: 1973 c. 247; 1981 c. 36; 1985 a. 29; 1987 a. 38 ss. 112, 134; 1989 a. 77; 1991 a. 89; 1993 a. 492; 2001 a. 35; 2005 a. 86; 2007 a. 59; 2015 a. 197 s. 51.

Cross−reference: See also ss. DWD 110.07 and 110.08, Wis. adm. code.

108.18 Contributions to the fund. (1) TOTAL RATE. (a) Unless a penalty applies under s. 108.16 (8) (m), each employer shall pay contributions to the fund for each calendar year at whatever rate on the employer's payroll for that year duly applies to the employer pursuant to this section.

(b) An employer's contributions shall be credited to the employer's account in the fund, but only after any solvency contribution or special contribution paid or payable by the employer under subs. (8) to (9m) has been credited to the fund's balancing account.

(2) INITIAL RATES. (a) Except as provided in pars. (c) and (d), an employer's contribution rate shall be 2.5% on its payroll for each of the first 3 calendar years with respect to which contributions are credited to its account, except as additional contributions apply under this section.

(c) 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 3 calendar years at the average rate for construction industry employers as determined by the department on each computation date, rounded up to the next highest rate. This rate may in no case be more than the maximum rate specified in the schedule in effect for the year of the computation under sub. (4).

Cross−reference: See also ch. DWD 102, Wis. adm. code.

(d) No later than 90 days after the department issues an initial determination that a person is an employer, any employer other than an employer specified in par. (c), having a payroll exceeding $10,000,000 in a calendar year may elect that its contribution rate shall be one percent on its payroll for the first 3 calendar years with respect to which contributions are credited to its account. In such case, the department shall credit the amount collected in excess of this amount against liability of the employer for future contributions after the close of each calendar year in which an election applies. If an employer qualifies for and makes an election under this paragraph, the employer shall, upon notification by the department, make a special contribution after the close of each quarter equivalent to the amount by which its account is overdrawn, if any, for the preceding quarter. The department shall credit any timely payment of contributions to the employer's account before making a determination of liability for a special contribution under this paragraph. An employer does not qualify for an alternate contribution rate under this paragraph at any time during which the employer's special contribution payment is delinquent. An employer that is the transferee of a business enterprise but does not qualify to be treated as a successor under s. 108.16 (8) (im) does not qualify for an alternate contribution rate under this paragraph.

(3) REQUIREMENTS FOR REDUCED RATE. As to any calendar year, an employer shall be permitted to pay contributions to the fund at a rate lower than the standard rate on its payroll for that year only when, as of the applicable computation date:

(a) Benefits have been chargeable to the employer's account during the 18 months preceding such date; and

(b) Such lower rate applies under this section; and

(c) Permitting the employer to pay such lower rate is consistent with the relevant conditions then applicable to additional credit allowance for such year under section 3303 (a) of the federal unemployment tax act, any other provision to the contrary notwithstanding.

(3m) APPLICATION OF SCHEDULES. For purposes of subs. (4) and (9):

(a) "Schedule A" is in effect for any calendar year whenever, as of the preceding June 30, the fund has a cash balance of less than $300,000,000.

(b) "Schedule B" is in effect for any calendar year whenever, as of the preceding June 30, the fund has a cash balance of at least $300,000,000 but less than $900,000,000.

(c) "Schedule C" is in effect for any calendar year whenever, as of the preceding June 30, the fund has a cash balance of at least $900,000,000 but less than $1,200,000,000.

(d) "Schedule D" is in effect for any calendar year whenever, as of the preceding June 30, the fund has a cash balance of at least $1,200,000,000.

(4) EXPERIENCE RATES. Except as otherwise specified in this section, an employer's contribution rate on the employer's payroll for a given calendar year shall be based on the reserve percentage of the employer's account as of the applicable computation date, as follows: [See Figure 108.18 (4) following]

Figure 108.18 (4):

Schedule A

Line	Reserve Percentage	Contribution Rate
1.	15.0% or more	0.07
2.	At least 10.0% but under 15.0%	0.07
3.	At least 9.5% but under 10.0%	0.25
4.	At least 9.0% but under 9.5%	0.33
5.	At least 8.5% but under 9.0%	0.52
6.	At least 8.0% but under 8.5%	0.59
7.	At least 7.5% but under 8.0%	0.66
8.	At least 7.0% but under 7.5%	0.77
9.	At least 6.5% but under 7.0%	1.03
10.	At least 6.0% but under 6.5%	1.28
11.	At least 5.5% but under 6.0%	1.62
12.	At least 5.0% but under 5.5%	1.96
13.	At least 4.5% but under 5.0%	2.30
14.	At least 4.0% but under 4.5%	2.64
15.	At least 3.5 but under 4.0%	2.98
16.	At least 0 but under 3.5%	3.37
17.	Overdrawn by less than 1.0%	5.30
18.	Overdrawn by at least 1.0% but under 2.0%	5.80
19.	Overdrawn by at least 2.0% but under 3.0%	6.30
20.	Overdrawn by at least 3.0% but under 4.0%	6.80
21.	Overdrawn by at least 4.0% but under 5.0%	7.30
22.	Overdrawn by at least 5.0% but under 6.0%	7.80
23.	Overdrawn by at least 6.0% but under 7.0%	8.50
24.	Overdrawn by at least 7.0% but under 8.0%	9.25
25.	Overdrawn by at least 8.0% but under 9.0%	10.00
26.	Overdrawn by 9.0% or more	10.70

Schedule B

Line	Reserve Percentage	Contribution Rate
1.	15.0% or more	0.00
2.	At least 10.0% but under 15.0%	0.00

3.	At least 9.5% but under 10.0%	0.15
4.	At least 9.0% but under 9.5%	0.25
5.	At least 8.5% but under 9.0%	0.45
6.	At least 8.0% but under 8.5%	0.60
7.	At least 7.5% but under 8.0%	0.70
8.	At least 7.0% but under 7.5%	0.85
9.	At least 6.5% but under 7.0%	1.10
10.	At least 6.0% but under 6.5%	1.40
11.	At least 5.5% but under 6.0%	1.75
12.	At least 5.0% but under 5.5%	2.10
13.	At least 4.5% but under 5.0%	2.45
14.	At least 4.0% but under 4.5%	2.80
15.	At least 3.5 but under 4.0%	3.25
16.	At least 0 but under 3.5%	3.80
17.	Overdrawn by less than 1.0%	5.30
18.	Overdrawn by at least 1.0% but under 2.0%	5.80
19.	Overdrawn by at least 2.0% but under 3.0%	6.30
20.	Overdrawn by at least 3.0% but under 4.0%	6.80
21.	Overdrawn by at least 4.0% but under 5.0%	7.30
22.	Overdrawn by at least 5.0% but under 6.0%	7.80
23.	Overdrawn by at least 6.0% but under 7.0%	8.50
24.	Overdrawn by at least 7.0% but under 8.0%	9.25
25.	Overdrawn by at least 8.0% but under 9.0%	10.00
26.	Overdrawn by 9.0% or more	10.70

Schedule C

Line	Reserve Percentage	Contribution Rate
1.	15.0% or more	0.00
2.	At least 10.0% but under 15.0%	0.00
3.	At least 9.5% but under 10.0%	0.15
4.	At least 9.0% but under 9.5%	0.25
5.	At least 8.5% but under 9.0%	0.45
6.	At least 8.0% but under 8.5%	0.60
7.	At least 7.5% but under 8.0%	0.70
8.	At least 7.0% but under 7.5%	0.85
9.	At least 6.5% but under 7.0%	1.10
10.	At least 6.0% but under 6.5%	1.40
11.	At least 5.5% but under 6.0%	1.75
12.	At least 5.0% but under 5.5%	2.10
13.	At least 4.5% but under 5.0%	2.45
14.	At least 4.0% but under 4.5%	2.80
15.	At least 3.5 but under 4.0%	3.25
16.	At least 0 but under 3.5%	3.80
17.	Overdrawn by less than 1.0%	5.30
18.	Overdrawn by at least 1.0% but under 2.0%	5.80
19.	Overdrawn by at least 2.0% but under 3.0%	6.30
20.	Overdrawn by at least 3.0% but under 4.0%	6.80
21.	Overdrawn by at least 4.0% but under 5.0%	7.30
22.	Overdrawn by at least 5.0% but under 6.0%	7.80
23.	Overdrawn by at least 6.0% but under 7.0%	8.50
24.	Overdrawn by at least 7.0% but under 8.0%	9.25
25.	Overdrawn by at least 8.0% but under 9.0%	10.00
26.	Overdrawn by 9.0% or more	10.70

Schedule D

Line	Reserve Percentage	Contribution Rate
1.	15.0% or more	0.00
2.	At least 10.0% but under 15.0%	0.00
3.	At least 9.5% but under 10.0%	0.05
4.	At least 9.0% but under 9.5%	0.15
5.	At least 8.5% but under 9.0%	0.35
6.	At least 8.0% but under 8.5%	0.50
7.	At least 7.5% but under 8.0%	0.60
8.	At least 7.0% but under 7.5%	0.75
9.	At least 6.5% but under 7.0%	1.00
10.	At least 6.0% but under 6.5%	1.30
11.	At least 5.5% but under 6.0%	1.65
12.	At least 5.0% but under 5.5%	2.00
13.	At least 4.5% but under 5.0%	2.35
14.	At least 4.0% but under 4.5%	2.70
15.	At least 3.5 but under 4.0%	3.15
16.	At least 0 but under 3.5%	3.70
17.	Overdrawn by less than 1.0%	5.30
18.	Overdrawn by at least 1.0% but under 2.0%	5.80
19.	Overdrawn by at least 2.0% but under 3.0%	6.30
20.	Overdrawn by at least 3.0% but under 4.0%	6.80
21.	Overdrawn by at least 4.0% but under 5.0%	7.30
22.	Overdrawn by at least 5.0% but under 6.0%	7.80
23.	Overdrawn by at least 6.0% but under 7.0%	8.50
24.	Overdrawn by at least 7.0% but under 8.0%	9.25
25.	Overdrawn by at least 8.0% but under 9.0%	10.00
26.	Overdrawn by 9.0% or more	10.70

(5) LIMITATION. Except as provided in subs. (2) and (8), the contribution rate for any calendar year of an employer whose reserve percentage equals or exceeds zero may in no case exceed by more than one percent on the employer's payroll the rate which applied to the employer at the close of the preceding calendar year, and the contribution rate for any calendar year of an employer whose reserve percentage is less than zero may in no case exceed by more than 2% on the employer's payroll the rate which applied to the employer at the close of the preceding calendar year.

(5m) LIMITATION, COMPUTATION. The limitation of sub. (5) shall be computed from the employer's experience rate assigned to it under subs. (4), (5) and (6), rounded to the next highest rate.

(6) COMPUTATION IN SPECIAL CASES. If during the year ending on a computation date an employer has been liable for contributions but has had no payroll, the employer's reserve percentage as of that computation date shall be computed on the basis of the employer's most recent year (ending on a computation date which applied to the employer) of some payroll; but the employer's contribution rate for the calendar year following the computation date shall in no case be less than one percent.

(7) VOLUNTARY CONTRIBUTIONS. (a) 1. Except as provided in pars. (b) to (i), any employer may make payments to the fund during the month of November in excess of those required by this section and s. 108.19 (1), (1e), and (1f). Each payment shall be credited to the employer's account for the purpose of computing the employer's reserve percentage as of the immediately preceding computation date.

2. Each payment shall be treated as a contribution required and irrevocably paid under this chapter with respect to payrolls preceding the date it is credited except as a refund or credit is authorized under par. (b), (e), (h), or (i).

(b) Except as provided in par. (i), no employer may, by means of a voluntary contribution under par. (a), reduce the employer's contribution rate to a rate lower than the next lower rate which would have applied to the employer for the following calendar year. Any contributions in excess of the amount required to reduce an employer's rate to the extent permitted under this paragraph shall be applied against any outstanding liability of the employer, or if there is no such liability shall be refunded to the employer or established as a credit, without interest, against future contributions payable by the employer, at the employer's option.

(c) No employer whose overdrafts have been charged to the fund's balancing account under s. 108.16 (7) (c) may make a voluntary contribution under par. (a) prior to the 5th calendar year commencing after the date of the most recent such charge. Any voluntary contribution made prior to that year shall be treated as an excess contribution under par. (b).

(d) A payment under this subsection is timely if it is received by the department no later than November 30 following the computation date for the calendar year to which it applies.

(e) The department may refund a voluntary contribution made under par. (a) if, due to an error of the department or an employer, the department makes an adjustment after the computation date or the November voluntary contribution period to the employer's account or payroll used to calculate the employer's reserve percentage that nullifies the rate reduction obtained by the voluntary payment. No refund may be authorized after the close of the calendar year for which the rate changed by the voluntary contribution applied.

(f) Notwithstanding par. (a), the department shall authorize an employer to make a voluntary contribution for the purpose of computing the employer's reserve percentage as of the immediately preceding computation date after the month of November, but in no case later than 120 days after the beginning of the calendar year to which the reserve percentage applies, in an amount sufficient to obtain a contribution rate that was:

1. Nullified by an erroneous charge or credit to the employer's account made by the department; or

2. Increased to a higher contribution rate by an erroneous charge or credit to the employer's account made by the department.

(g) Any payment under par. (f) must be received by the department within 30 days after the date of notice of the rate change caused by the adjustment and within 120 days after the beginning of the year to which the rate applies.

(h) The department shall establish contributions other than those required by this section and s. 108.19 (1), (1e), and (1f) and contributions other than those submitted during the month of November or authorized under par. (f) or (i) 2. as a credit, without interest, against future contributions payable by the employer or shall refund the contributions at the employer's option.

(i) 1. An employer that suffers physical damage to its business caused by a catastrophic event for which the employer is not primarily responsible, and incurs benefit charges to its account for layoffs due to that damage may, by means of a voluntary contribution under par. (a), increase the employer's reserve percentage to no greater than the reserve percentage that would have applied to the employer as of the next computation date had that damage not caused the employer to lay off its employees. An employer that makes a voluntary contribution under this subdivision shall notify the department of its election to have its contribution treated in the manner provided in this paragraph and shall submit proof, in the form and manner prescribed by the department, to establish that its employees were laid off due to the catastrophic event.

2. If an employer makes a payment under subd. 1. after November 30 and before November 1 of the succeeding year, the department shall establish the payment as a credit and apply the payment as a voluntary contribution to the employer's account when the next rate computation occurs. Any amount paid to the department in excess of the amount that may be applied under subd. 1 in any year may continue to be held as a credit, without interest, against future required or voluntary contributions for a calendar year or refunded to the employer, at the employer's option.

(8) SOLVENCY CONTRIBUTIONS. Each employer's solvency contribution for each calendar quarter of any year shall be figured by applying the solvency rate determined for that year under sub. (9) to the employer's payroll for that quarter, and shall be payable to the fund's balancing account by the due date for payment of contributions by the employer for that quarter.

(9) SOLVENCY RATES. Except as provided in subs. (9c) and (9e), an employer's solvency rate on its payroll for a given calendar year shall be based solely on the contribution rate of its account for the calendar year under this section. For purposes of rate determination under this subsection, an employer's payroll shall be calculated for the 12−month period ending with the computation date preceding the calendar year to which the rate applies. [See Figure 108.18 (9) following]

Figure 108.18 (9):

Schedule A

Line	Contribution Rate	Employers with payroll under $500,000 Solvency Rate	Employers with payroll of $500,000 or more Solvency Rate
1	0.07	0.20	0.63
2	0.07	0.20	0.63
3	0.25	0.20	0.80
4	0.33	0.20	0.90
5	0.52	0.40	0.90
6	0.59	0.50	1.00
7	0.66	0.60	1.10
8	0.77	0.70	1.20
9	1.03	0.80	1.20
10	1.28	0.90	1.30
11	1.62	1.00	1.40
12	1.96	1.10	1.50
13	2.30	1.10	1.60
14	2.50	1.10	1.60
15	2.64	1.20	1.70
16	2.98	1.30	1.80

17	3.37	1.40	1.90
18	5.30	1.30	1.30
19	5.80	1.30	1.30
20	6.30	1.30	1.30
21	6.80	1.30	1.30
22	7.30	1.30	1.30
23	7.80	1.30	1.30
24	8.50	1.30	1.30
25	9.25	1.30	1.30
26	10.00	1.30	1.30
27	10.70	1.30	1.30

Schedule B

		Employers with payroll under $500,000	Employers with payroll of $500,000 or more
Line	Contribution Rate	Solvency Rate	Solvency Rate
1	0.00	0.05	0.10
2	0.00	0.25	0.30
3	0.15	0.25	0.35
4	0.25	0.25	0.40
5	0.45	0.40	0.50
6	0.60	0.40	0.55
7	0.70	0.40	0.60
8	0.85	0.45	0.65
9	1.10	0.50	0.70
10	1.40	0.55	0.75
11	1.75	0.65	0.80
12	2.10	0.70	0.85
13	2.45	0.75	0.90
14	2.50	0.75	0.90
15	2.80	0.80	0.90
16	3.25	0.85	0.90
17	3.80	0.85	0.90
18	5.30	1.30	1.30
19	5.80	1.30	1.30
20	6.30	1.30	1.30
21	6.80	1.30	1.30
22	7.30	1.30	1.30
23	7.80	1.30	1.30
24	8.50	1.30	1.30
25	9.25	1.30	1.30
26	10.00	1.30	1.30
27	10.70	1.30	1.30

Schedule C

		Employers with payroll under $500,000	Employers with payroll of $500,000 or more
Line	Contribution Rate	Solvency Rate	Solvency Rate
1	0.00	0.00	0.05
2	0.00	0.22	0.25
3	0.15	0.22	0.25
4	0.25	0.22	0.25
5	0.45	0.30	0.35
6	0.60	0.30	0.40
7	0.70	0.30	0.45
8	0.85	0.35	0.50
9	1.10	0.35	0.55
10	1.40	0.40	0.60
11	1.75	0.45	0.65
12	2.10	0.50	0.70
13	2.45	0.55	0.75
14	2.50	0.55	0.75
15	2.80	0.60	0.75
16	3.25	0.60	0.75
17	3.80	0.60	0.75
18	5.30	1.10	1.10
19	5.80	1.10	1.10
20	6.30	1.10	1.10
21	6.80	1.10	1.10
22	7.30	1.20	1.20
23	7.80	1.25	1.25
24	8.50	1.30	1.30
25	9.25	1.30	1.30
26	10.00	1.30	1.30
27	10.70	1.30	1.30

Schedule D

		Employers with payroll under $500,000	Employers with payroll of $500,000 or more
Line	Contribution Rate	Solvency Rate	Solvency Rate
1	0.00	0.00	0.05
2	0.00	0.12	0.15
3	0.05	0.22	0.25
4	0.15	0.22	0.25
5	0.35	0.30	0.35
6	0.50	0.30	0.40
7	0.60	0.30	0.45
8	0.75	0.35	0.50
9	1.00	0.35	0.55
10	1.30	0.40	0.60
11	1.65	0.45	0.65
12	2.00	0.50	0.70
13	2.35	0.55	0.75
14	2.50	0.55	0.75
15	2.70	0.60	0.75
16	3.15	0.60	0.75

17	3.70	0.60	0.75
18	5.30	1.10	1.10
19	5.80	1.10	1.10
20	6.30	1.10	1.10
21	6.80	1.10	1.10
22	7.30	1.20	1.20
23	7.80	1.25	1.25
24	8.50	1.25	1.25
25	9.25	1.30	1.30
26	10.00	1.30	1.30
27	10.70	1.30	1.30

(9c) REDUCTION OF SOLVENCY RATE. The department shall reduce the solvency rate payable under sub. (9) by each employer for each year by the rates payable by that employer under s. 108.19 (1e) (a) and (1f) (a) for that year.

(9e) SEASONAL EMPLOYER SOLVENCY RATE. A seasonal employer shall pay an additional solvency contribution of 2% on its payroll for each calendar year unless that rate would result in the employer paying more than the maximum total contribution and solvency rate applicable to any employer in the same year in which the rate applies, in which case the employer shall pay that solvency rate which, when combined with its contribution rate, equals that maximum total rate.

(9m) SOLVENCY CONTRIBUTION EXEMPTION. No solvency contribution is required of any employer which qualifies for and elects an alternate contribution rate under sub. (2) (d).

History: 1971 c. 42, 53, 211; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 12, 52; 1983 a. 8, 27, 99; 1983 a. 189 s. 329 (28); 1983 a. 384; 1985 a. 17, 40, 332; 1987 a. 38 ss. 113 to 121, 134; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89; 1993 a. 373, 492; 1995 a. 118, 225, 417; 1997 a. 39; 1999 a. 15; 2001 a. 43; 2005 a. 86; 2007 a. 59; 2009 a. 287; 2011 a. 260; 2013 a. 20; 2015 a. 334.

108.19 Contributions to the administrative account and unemployment interest payment and program integrity funds. (1) Each employer subject to this chapter shall regularly contribute to the administrative account at the rate of two−tenths of one percent per year on its payroll, except that the department may prescribe at the close of any fiscal year such lower rates of contribution under this section, to apply to classes of employers throughout the ensuing fiscal year, as will in the department's judgment adequately finance the administration of this chapter, and as will in the department's judgment fairly represent the relative cost of the services rendered by the department to each such class.

(1e) (a) Except as provided in par. (b), each employer, other than an employer that finances benefits by reimbursement in lieu of contributions under s. 108.15, 108.151, or 108.152 shall, in addition to other contributions payable under s. 108.18 and this section, pay an assessment to the administrative account for each year prior to the year 2010 equal to the lesser of 0.01% of its payroll for that year or the solvency contribution that would otherwise be payable by the employer under s. 108.18 (9) for that year.

(b) The levy prescribed under par. (a) is not effective for any year unless the department, no later than the November 30 preceding that year, publishes a class 1 notice under ch. 985 giving notice that the levy is in effect for the ensuing year.

(c) Notwithstanding par. (a), the department may, if it finds that the full amount of the levy is not required to effect the purposes specified in par. (d) for any year, prescribe a reduced levy for that year and in such case shall publish in the notice under par. (b) the rate of the reduced levy.

(d) The department may expend the moneys received from assessments levied under this subsection in the amounts authorized under s. 20.445 (1) (gh) for the renovation and modernization of unemployment insurance information technology systems, specifically including development and implementation of a new system and reengineering of automated processes and manual business functions.

(1f) (a) Except as provided in par. (b), each employer, other than an employer that finances benefits by reimbursement in lieu of contributions under s. 108.15, 108.151, or 108.152 shall, in addition to other contributions payable under s. 108.18 and this section, pay an assessment for each year equal to the lesser of 0.01 percent of its payroll for that year or the solvency contribution that would otherwise be payable by the employer under s. 108.18 (9) for that year. Assessments under this paragraph shall be deposited in the unemployment program integrity fund.

(b) The levy prescribed under par. (a) is not effective for any year unless the department, no later than the November 30 preceding that year, publishes a class 1 notice under ch. 985 giving notice that the levy is in effect for the ensuing year. The department shall consider the balance of the unemployment reserve fund before prescribing the levy under par. (a). The secretary of workforce development shall consult with the council on unemployment insurance before the department prescribes the levy under par. (a).

(c) Notwithstanding par. (a), the department may, if it finds that the full amount of the levy is not required to effect the purposes specified in sub. (1s) (b) for any year, prescribe a reduced levy for that year and in such case shall publish in the notice under par. (b) the rate of the reduced levy.

(1m) Each employer subject to this chapter as of the date a rate is established under this subsection shall pay an assessment to the unemployment interest payment fund at a rate established by the department sufficient to pay interest due on advances from the federal unemployment account under Title XII of the social security act (42 USC 1321 to 1324). The rate established by the department for employers who finance benefits under s. 108.15 (2), 108.151 (2), or 108.152 (1) shall be 75 percent of the rate established for other employers. The amount of any employer's assessment shall be the product of the rate established for that employer multiplied by the employer's payroll of the previous calendar year as taken from quarterly employment and wage reports filed by the employer under s. 108.205 (1) or, in the absence of the filing of such reports, estimates made by the department. Each assessment made under this subsection is due on the 30th day commencing after the date on which notice of the assessment is mailed by the department. If the amounts collected from employers under this subsection are in excess of the amounts needed to pay interest due, the department shall use any excess to pay interest owed in subsequent years on advances from the federal unemployment account. If the department determines that additional interest obligations are unlikely, the department shall transfer the excess to the balancing account of the fund, the unemployment program integrity fund, or both in amounts determined by the department.

(1n) The department shall publish as a class 1 notice under ch. 985 any rate established under sub. (1m) within 10 days of the date that the rate is established.

(1p) Notwithstanding sub. (1m), an employer having a payroll of $25,000 or less for the preceding calendar year is exempt from any assessment under sub. (1m).

(1q) There is created a separate, nonlapsible trust fund designated as the unemployment interest payment fund consisting of all amounts collected under sub. (1m) and all interest and penalties on those amounts collected under s. 108.22.

(1s) (a) There is created a separate, nonlapsible trust fund designated as the unemployment program integrity fund consisting of all of the following:

1. All amounts collected under s. 108.04 (11) (bh) other than the amounts required to be deposited in the fund under s. 108.16 (6) (n).

2. Assessments levied and deposited into the unemployment program integrity fund under sub. (1f).

3. Amounts transferred under sub. (1m).

4. Assessments under s. 108.221 (1) and (2).

NOTE: Subd. 4. is created eff. 10−2−16 by 2015 Wis. Act 334.

(b) The department shall use the moneys in the unemployment program integrity fund for payment of costs associated with program integrity activities.

(2) If the department finds, at any time within a fiscal year for which it has prescribed lower contribution rates to the administrative account than the maximum rate permitted under sub. (1), that such lower rates will not adequately finance the administration of this chapter or are excessive for that purpose, the department may by general rule prescribe a new schedule of rates in no case exceeding the specified maximum to apply under this section for the balance of the fiscal year.

(2m) Within the limit specified by sub. (1), the department may by rule prescribe at any time as to any period any such rate or rates or schedule as it deems necessary and proper hereunder. Unless thus prescribed, no such rate or rates or schedule shall apply under sub. (1) or (2).

(3) If the federal unemployment tax act is amended to permit a maximum rate of credit against the federal tax higher than the 90% maximum rate of credit permitted under section 3302 (c) (1) of the internal revenue code on May 23, 1943, to an employer with respect to any state unemployment insurance law whose standard contribution rate on payroll under that law is more than 2.7%, then the standard contribution rate as to all employers under this chapter shall, by a rule of the department, be increased from 2.7% of payroll to that percentage of payroll which corresponds to the higher maximum rate of credit thus permitted against the federal unemployment tax; and such increase shall become effective on the same date as such higher maximum rate of credit becomes permissible under the federal amendment.

(4) If section 303 (a) (5) of title III of the social security act and section 3304 (a) (4) of the internal revenue code are amended to permit a state agency to use, in financing administrative expenditures incurred in carrying out its employment security functions, some part of the moneys collected or to be collected under the state unemployment insurance law, in partial or complete substitution for grants under title III, then this chapter shall, by rule of the department, be modified in the manner and to the extent and within the limits necessary to permit such use by the department under this chapter; and the modifications shall become effective on the same date as such use becomes permissible under the federal amendments.

History: 1979 c. 34; 1979 c. 110 s. 60 (13); 1981 c. 315; 1983 a. 8, 27, 384; 1985 a. 29, 332; 1987 a. 27, 38, 403; 1991 a. 315; 1993 a. 490; 1997 a. 39; 1999 a. 15; 2001 a. 35; 2003 a. 197; 2007 a. 59; 2009 a. 177, 287; 2011 a. 198; 2013 a. 20; 2013 a. 36 s. 236m; 2015 a. 55; 2015 a. 334 ss. 81 to 87, 98, 100.

Cross−reference: See also ch. DWD 150, Wis. adm. code.

108.20 Administrative account. (1) To finance the administration of this chapter and to carry out its provisions and purposes there is established the "administrative account". This account shall consist of all contributions and moneys not otherwise appropriated paid to or transferred by the department for the account under s. 108.19, and of all moneys received for the account by the state or by the department from any source, including all federal moneys allotted or apportioned to the state or the department for the employment service or for administration of this chapter, or for services, facilities or records supplied to any federal agency from the appropriation under s. 20.445 (1) (n). The department shall make to federal agencies such reports as are necessary in connection with or because of such federal aid.

(2) All amounts received by the department for the administrative account shall be paid over to the secretary of administration and credited to that account for the administration of this chapter and the employment service, for the payment of benefits chargeable to the account under s. 108.07 (5) and for the purposes specified in sub. (2m).

(2m) From the moneys not appropriated under s. 20.445 (1) (gg) that are received by the administrative account as interest and penalties under this chapter, the department shall pay the benefits chargeable to the administrative account under s. 108.07 (5) and the interest payable to employers under s. 108.17 (3m), and may expend the remainder to pay interest due on advances to the unemployment reserve fund from the federal unemployment account under title XII of the social security act, 42 USC 1321 to 1324, to conduct research relating to the condition of the unemployment reserve fund under s. 108.14 (6), to administer the unemployment insurance program and federal or state unemployment insurance programs authorized by the governor under s. 16.54, to assist the department of justice in the enforcement of this chapter, to make payments to satisfy a federal audit exception concerning a payment from the fund or any federal aid disallowance involving the unemployment insurance program, or to make payments to the fund if such action is necessary to obtain a lower interest rate or deferral of interest payments on advances from the federal unemployment account under title XII of the social security act, except that any interest earned pending disbursement of federal employment security grants under s. 20.445 (1) (n) shall be credited to the general fund.

(3) There shall be included in the moneys governed by sub. (2m) any amounts collected by the department under ss. 108.04 (11) (c) and (cm) and 108.22 (1) (a), (ac), (ad), and (af) as tardy filing fees, forfeitures, interest on delinquent payments, or other penalties.

(4) Any moneys transferred to the administrative account from the federal administrative financing account pursuant to s. 108.161 shall be expended or restored to that account in accordance with s. 108.161.

History: 1973 c. 90 s. 559; 1981 c. 36 ss. 38, 39, 45; 1983 a. 8, 388; 1985 a. 17, 29, 40; 1987 a. 27, 38, 403; 1989 a. 77; 1991 a. 89; 1997 a. 27, 39, 252; 1999 a. 15; 2001 a. 35; 2003 a. 33; 2005 a. 86; 2007 a. 20, 59; 2009 a. 287.

108.205 Quarterly wage reports. (1) Each employer shall file with the department, in such form as the department by rule requires, a quarterly report showing the name, social security number and wages paid to each employee who is employed by the employer in employment with the employer during the quarter. The employer shall file the report no later than the last day of the month following the completion of each quarter.

(1m) (a) The department shall prescribe the manner and form for filing reports under sub. (1) electronically.

(b) Each employer agent shall file its reports electronically in the manner and form prescribed by the department.

(2) Each employer of 25 or more employees, as determined under s. 108.22 (1) (ae), that does not use an employer agent to file its reports under this section shall file the quarterly report under sub. (1) electronically in the manner and form prescribed by the department. An employer that becomes subject to an electronic reporting requirement under this subsection shall file its initial report under this subsection for the quarter during which the employer becomes subject to the reporting requirement. Once an employer becomes subject to the reporting requirement under this subsection, the employer shall continue to file its quarterly reports under this subsection unless that requirement is waived by the department.

History: 1987 a. 38; 1991 a. 89; 1997 a. 39; 1999 a. 15; 2005 a. 86; 2007 a. 59; 2013 a. 36.

Cross−reference: See also ch. DWD 111, Wis. adm. code.

108.21 Record and audit of payrolls. (1) Every employing unit which employs one or more individuals to perform work in this state shall keep an accurate work record for each individual employed by it, including full name, address and social security number, which will permit determination of the weekly wages earned by each such individual, the wages paid within each quarter to that individual and the salary reduction amounts that are not wages and that would have been paid by the employing unit to that individual as salary but for a salary reduction agreement under a cafeteria plan, within the meaning of 26 USC 125. Each such employing unit shall permit any authorized representative of the department to examine, at any reasonable time, the work record and any other records which may show any wages paid by the employing unit, or any salary reduction amounts that are not wages and that would have been paid by the employing unit as

salary but for a salary reduction agreement under a cafeteria plan, within the meaning of 26 USC 125, regardless of the format in which such a record is maintained. If such a record is maintained by an employing unit in machine−readable format, the employing unit shall provide the department with information necessary to retrieve the record. If the department determines that the employing unit is unable to provide access to such a record or that the retrieval capability at the site where the record is maintained is not adequate for efficient examination, the employing unit shall provide a copy of the record to the department and shall allow the department to remove the copy from that site for such period as will permit examination at another location. Each such employing unit shall furnish to the department upon demand a sworn statement of the information contained in any such record.

(2) The findings of any such authorized representative of the department, based on examination of the records of any such employing unit and embodied in an audit report mailed to the employing unit, shall constitute a determination within the meaning of s. 108.10.

(3) If any such employing unit fails to keep adequate work records under this section or fails to file the reports required by this chapter or required by the department under this chapter, the employing unit's contribution liability with respect to the period for which such records are lacking or deficient or for which such reports have not been filed may be estimated by the department in a determination made under s. 108.10.

History: 1987 a. 38; 1993 a. 373; 1997 a. 39.

Cross−reference: See also ch. DWD 110, Wis. adm. code.

108.22 Timely reports, notices and payments. (1) (a) Except as provided in par. (cm), if any employer, other than an employer which has ceased business and has not paid or incurred a liability to pay wages in any quarter following the cessation of business, is delinquent in making by the assigned due date any payment to the department required of it under this chapter, the employer shall pay interest on the delinquent payment at that monthly rate that annualized is equal to 9 percent or to 2 percent more than the prime rate as published in the Wall Street Journal as of September 30 of the preceding year, whichever is greater, for each month or fraction thereof that the employer is delinquent from the date such payment became due. If any such employer is delinquent in filing any quarterly report under s. 108.205 (1) by the assigned due date, the department may assess a tardy filing fee to the employer for each delinquent quarterly report in the amount of $100 or $20 per employee, as reported on the employer's most recent quarterly report, whichever is greater, or, if the report is filed within 30 days after the date that the department assesses a tardy filing fee, in the amount of $50. If the department cannot determine the number of the employer's employees from the employer's most recent quarterly report, the department may reasonably estimate the number of the employer's employees for purposes of this paragraph.

(ac) In addition to any fee assessed under par. (a), the department may assess an employer or employer agent that is subject to the reporting requirement under s. 108.205 (2) and that fails to file its report in the manner and form prescribed under that subsection a penalty of $20 for each employee whose information is not reported in the manner and form prescribed under s. 108.205 (1m) (b) or (2).

(ad) 1. An employer agent that is subject to the reporting requirements under s. 108.17 (2g) and that fails to file a contribution report in accordance with s. 108.17 (2g) may be assessed a penalty by the department in the amount of $25 for each employer whose report is not filed electronically in the manner and form prescribed by the department.

2. An employer that is subject to the reporting requirements under s. 108.17 (2b) and that fails to file a contribution report in accordance with s. 108.17 (2b) may be assessed a penalty by the department in the amount of $25 for each report that is not filed in accordance with s. 108.17 (2b).

(ae) For purposes of par. (ac), the number of employees employed by an employer is the total number of employees employed by the employer at any time during the reporting period.

(af) In addition to the fee assessed under par. (a), the department may assess an employer or employer agent that is subject to a requirement to make contributions by means of an electronic funds transfer under s. 108.17 (7) and that pays contributions by any method inconsistent with s. 108.17 (7) a penalty of the greater of $50 or an amount equal to one−half of one percent of the total contributions paid by the employer or employer agent for the quarter in which the violation occurs.

(am) The interest, penalties, and tardy filing fees levied under pars. (a), (ac), (ad), and (af) shall be paid to the department and credited to the administrative account.

(b) If the due date of a report or payment under s. 108.15 (5) (b), 108.151 (5) (f) or (7), 108.155, 108.16 (8), 108.17, or 108.205 would otherwise be a Saturday, Sunday, or legal holiday under state or federal law, the due date is the next following day which is not a Saturday, Sunday, or legal holiday under state or federal law.

NOTE: Par. (b) is shown as amended eff. 10−2−16 by 2015 Wis. Act 334. Prior to 10−2−16 it reads:

(b) If the due date of a report or payment under s. 108.15 (5) (b), 108.151 (5) (f) or (7), 108.16 (8), 108.17, or 108.205 would otherwise be a Saturday, Sunday, or legal holiday under state or federal law, the due date is the next following day which is not a Saturday, Sunday, or legal holiday under state or federal law.

(c) Any report or payment, except a payment required by s. 108.15 (5) (b), 108.151 (5) (f) or (7), or 108.155, to which this subsection applies is delinquent, within the meaning of par. (a), unless it is received by the department, in the form prescribed by law or rule of the department, no later than its due date as determined under par. (b). Any payment required by s. 108.15 (5) (b), 108.151 (5) (f) or (7), or 108.155 is delinquent, within the meaning of par. (a), unless it is received by the department, in the form prescribed by law, no later than the last day of the month in which it is due.

NOTE: Par. (c) is shown as amended eff. 10−2−16 by 2015 Wis. Act 334. Prior to 10−2−16 it reads:

(c) Any report or payment, except a payment required by s. 108.15 (5) (b) or 108.151 (5) (f) or (7), to which this subsection applies is delinquent, within the meaning of par. (a), unless it is received by the department, in the form prescribed by law or rule of the department, no later than its due date as determined under par. (b). Any payment required by s. 108.15 (5) (b) or 108.151 (5) (f) or (7) is delinquent, within the meaning of par. (a), unless it is received by the department, in the form prescribed by law, no later than the last day of the month in which it is due.

(cm) In limited circumstances as prescribed by rule of the department, the department may waive or decrease the interest charged under par. (a) or s. 108.17 (2c) (c).

(d) The tardy payment fee or filing fee may be waived by the department if the employer later files the required report or makes the required payment and satisfies the department that the report or payment was tardy due to circumstances beyond the employer's control.

(e) Any notice filed under s. 108.15 (3) (a) or (b), 108.151 (3) (a), or 108.152 (2) (a) or assurance filed under s. 108.151 (2) (a) or (4) (a) 2. is timely if it is received by the department by December 31 or, if mailed, is either postmarked no later than that due date or is received by the department no later than 3 days after that due date.

(f) Any notice of assurance filed under s. 108.151 (2) (c) is timely if it is received by the department by its due date or, if mailed, is either postmarked no later than that due date or is received by the department no later than 3 days after that due date.

(1m) If an employer owes any contributions, reimbursements, or assessments under s. 108.15, 108.151, 108.155, or 108.19 (1m), interest, fees, or payments for forfeitures or other penalties to the department under this chapter and fails to pay the amount owed, the department has a perfected lien upon the employer's right, title, and interest in all of its real and personal property located in this state in the amount finally determined to be owed, plus costs. Except where creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective

when the department issues a determination of the amount owed under s. 108.10 (1) and shall continue until the amount owed, plus costs and interest to the date of payment, is paid. If a lien is initially barred or stayed by bankruptcy or other insolvency law, it shall become effective immediately upon expiration or removal of such bar or stay. The perfected lien does not give the department priority over lienholders, mortgagees, purchasers for value, judgment creditors, and pledges whose interests have been recorded before the department's lien is recorded.

NOTE: Sub. (1m) is shown as amended eff. 10−2−16 by 2015 Wis. Act 334. Prior to 10−2−16 it reads:

(1m) If an employer owes any contributions, reimbursements or assessments under s. 108.15, 108.151, or 108.19 (1m), interest, fees, or payments for forfeitures or other penalties to the department under this chapter and fails to pay the amount owed, the department has a perfected lien upon the employer's right, title, and interest in all of its real and personal property located in this state in the amount finally determined to be owed, plus costs. Except where creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective when the department issues a determination of the amount owed under s. 108.10 (1) and shall continue until the amount owed, plus costs and interest to the date of payment, is paid. If a lien is initially barred or stayed by bankruptcy or other insolvency law, it shall become effective immediately upon expiration or removal of such bar or stay. The perfected lien does not give the department priority over lienholders, mortgagees, purchasers for value, judgment creditors, and pledges whose interests have been recorded before the department's lien is recorded.

(1r) If any employing unit or any individual who is found personally liable under sub. (9) fails to pay to the department any amount found to be due it in proceedings pursuant to s. 108.10, provided that no appeal or review permitted under s. 108.10 is pending and that the time for taking an appeal or review has expired, the department or any authorized representative may offset the amount against a federal tax refund as provided in 26 USC 6402 (f).

(2) (a) 1. If any employing unit or any individual who is found personally liable under sub. (9) fails to pay to the department any amount found to be due it in proceedings pursuant to s. 108.10, provided that no appeal or review permitted under s. 108.10 is pending and that the time for taking an appeal or review has expired, the department or any authorized representative may issue a warrant directed to the clerk of circuit court for any county of the state.

2. The clerk of circuit court shall enter in the judgment and lien docket the name of the employing unit or individual mentioned in the warrant and the amount of the contributions, interest, costs and other fees for which the warrant is issued and the date when such copy is entered.

3. A warrant entered under subd. 2. shall be considered in all respects as a final judgment constituting a perfected lien upon the employing unit's or individual's right, title and interest in all real and personal property located in the county where the warrant is entered.

4. The department or any authorized representative may thereafter file an execution with the clerk of circuit court for filing by the clerk of circuit court with the sheriff of any county where real or personal property of the employing unit or individual is found, commanding the sheriff to levy upon and sell sufficient real and personal property of the employing unit or individual to pay the amount stated in the warrant in the same manner as upon an execution against property issued upon the judgment of a court of record, and to return the warrant to the department and pay to it the money collected by virtue thereof within 60 days after receipt of the warrant.

(b) The clerk of circuit court shall accept, file and enter each warrant under par. (a) and each satisfaction, release, or withdrawal under subs. (5), (6), and (8m) in the judgment and lien docket without prepayment of any fee, but the clerk of circuit court shall submit a statement of the proper fee semiannually to the department covering the periods from January 1 to June 30 and July 1 to December 31 unless a different billing period is agreed to between the clerk of circuit court and the department. The fees shall then be paid by the department, but the fees provided by s. 814.61 (5) for entering the warrants shall be added to the amount of the warrant and collected from the employing unit or individual when satisfaction or release is presented for entry.

(3) The department may issue a warrant of like terms, force and effect to any employee or other agent of the department, who may file a copy of such warrant with the clerk of circuit court of any county in the state, and thereupon such clerk shall enter the warrant in the judgment and lien docket and the warrant shall become a lien in the same manner, and with the same force and effect, as provided in sub. (2). In the execution of the warrant, the employee or other agent shall have all the powers conferred by law upon a sheriff, but shall not be entitled to collect from the employer any fee or charge for the execution of the warrant in excess of the actual expenses paid in the performance of his or her duty.

(4) If a warrant be returned not satisfied in full, the department shall have the same remedies to enforce the amount due for contributions, interest, and costs and other fees as if the department had recovered judgment against the employing unit for the same and an execution returned wholly or partially not satisfied.

(5) When the contributions set forth in a warrant together with interest and other fees to date of payment and all costs due the department have been paid to it, the department shall issue a satisfaction of the warrant and file it with the clerk of circuit court. The clerk of circuit court shall immediately enter a satisfaction of the judgment on the judgment and lien docket. The department shall send a copy of the satisfaction to the employer.

(6) The department, if it finds that the interests of the state will not thereby be jeopardized, and upon such conditions as it may exact, may issue a release of any warrant with respect to any real or personal property upon which the warrant is a lien or cloud upon title, and such release shall be entered of record by the clerk upon presentation to the clerk and payment of the fee for filing said release and the same shall be held conclusive that the lien or cloud upon the title of the property covered by the release is extinguished.

(7) At any time after the filing of a warrant, the department may commence and maintain a garnishee action as provided by ch. 812 or may use the remedy of attachment as provided by ch. 811 for actions to enforce a judgment. The place of trial of such an action may be either in Dane County or the county where the debtor resides and shall not be changed from the county in which such action is commenced, except upon consent of the parties.

(8) (a) If benefits are erroneously paid to an individual, the individual's liability to reimburse the fund for the overpayment may be set forth in a determination or decision issued under s. 108.09. Any determination which establishes or increases an overpayment shall include a finding concerning whether waiver of benefit recovery is required under par. (c). If any decision of an appeal tribunal, the commission or any court establishes or increases an overpayment and the decision does not include a finding concerning whether waiver of benefit recovery is required under par. (c), the tribunal, commission or court shall remand the issue to the department for a determination.

(b) 1. To recover any overpayment to an individual which is not otherwise repaid or recovery of which has not been waived, the department may recoup the amount of the overpayment by:

a. Deducting the amount of the overpayment from benefits the individual would otherwise be eligible to receive;

b. Filing a warrant against the liable individual in the same manner as is provided in this section for collecting delinquent payments from employers;

c. Setting off the amount of the overpayment against a refund or disbursement due pursuant to s. 71.93; or

d. If the overpayment results from fraud or failure to report earnings, offsetting the amount of the overpayment against a federal tax refund as provided in 26 USC 6402 (f).

2. To recover any assessment under s. 108.04 (11) (cm), the department may file a warrant against the liable individual in the

same manner as is provided in this section for collecting delinquent payments from employers.

3. Any recovery under this paragraph is limited to the actual amount of the overpayment or assessment and any costs and disbursements, without interest.

(bh) To recover any penalty under s. 108.04 (11) (bh), the department may recoup the amount of the penalty by filing a warrant against a liable individual in the same manner as is provided in this section for collecting delinquent payments from employers.

(c) 1. The department shall waive recovery of benefits that were erroneously paid if:

a. The overpayment was the result of a departmental error; and

b. The overpayment did not result from the fault of an employee as provided in s. 108.04 (13) (f), or because of a claimant's false statement or misrepresentation.

2. If a determination or decision issued under s. 108.09 is amended, modified or reversed by an appeal tribunal, the commission or any court, that action shall not be treated as establishing a departmental error for purposes of subd. 1. a.

(8e) If the department determines a payment has been made to an unintended recipient erroneously without fault on the part of the intended payee or payee's authorized agent, the department may issue the correct payment to the intended payee if necessary, and may recover the amount of the erroneous payment from the recipient under this section or s. 108.225 or 108.245.

(8m) If the department issues an erroneous warrant, the department shall issue a notice of withdrawal of the warrant to the clerk of circuit court for the county in which the warrant is filed. The clerk shall void the warrant and any liens attached by it.

(9) An individual who is an officer, employee, member, manager, partner, or other responsible person holding at least 20 percent of the ownership interest of a corporation, limited liability company, or other business association subject to this chapter, and who has control or supervision of or responsibility for filing any required contribution reports or making payment of contributions, and who willfully fails to file such reports or to make such payments to the department, or to ensure that such reports are filed or that such payments are made, may be found personally liable for such amounts, including interest, tardy payment or filing fees, costs and other fees, in the event that after proper proceedings for the collection of such amounts, as provided in this chapter, the corporation, limited liability company, or other business association is unable to pay such amounts to the department. Ownership interest of a corporation, limited liability company, or other business association includes ownership or control, directly or indirectly, by legally enforceable means or otherwise, by the individual, by the individual's spouse or child, by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them, and such ownership interest of a parent corporation, limited liability company, or other business association of which the corporation, limited liability company, or other business association unable to pay such amounts is a wholly owned subsidiary. The personal liability of such officer, employee, member, manager, partner, or other responsible person as provided in this subsection survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the corporation, limited liability company, or other business association and shall be set forth in a determination or decision issued under s. 108.10.

History: 1973 c. 247; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 343; 1979 c. 52; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38; 1989 a. 77; 1991 a. 89; 1993 a. 112, 373; 1995 a. 224; 1997 a. 39; 1999 a. 15; 2001 a. 35; 2003 a. 197; 2005 a. 86; 2007 a. 59; 2009 a. 287; 2011 a. 198, 236; 2013 a. 36, 276; 2015 a. 86, 334.

Cross−reference: See also chs. DWD 110 and 111, Wis. adm. code.

Only the department may waive collection of an overpayment. Topp v. LIRC, 133 Wis. 2d 422, 395 N.W.2d 815 (Ct. App. 1986).

Unemployment compensation warrants may be docketed by a clerk of circuit court prior to issuance of the warrants to the sheriff for levy purposes. 61 Atty. Gen. 148.

The department has discretion whether to seek recovery of overpayments due to the department's error. 67 Atty. Gen. 228.

108.221 Misclassification; administrative assessments. (1) (a) Any employer described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures who knowingly and intentionally provides false information to the department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee shall, for each incident, be assessed a penalty by the department in the amount of $500 for each employee who is misclassified, but not to exceed $7,500 per incident.

(b) The department shall consider the following nonexclusive factors in determining whether an employer described under par. (a) knowingly and intentionally provided false information to the department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee:

1. Whether the employer was previously found to have misclassified an employee in the same or a substantially similar position.

2. Whether the employer was the subject of litigation or a governmental investigation relating to worker misclassification and the employer, as a result of that litigation or investigation, received an opinion or decision from a federal or state court or agency that the subject position or a substantially similar position should be classified as an employee.

(2) Any employer described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures who, through coercion, requires an individual to adopt the status of a nonemployee shall be assessed a penalty by the department in the amount of $1,000 for each individual so coerced, but not to exceed $10,000 per calendar year.

(3) Assessments under subs. (1) and (2) shall be deposited in the unemployment program integrity fund.

NOTE: This section is created eff. 10−2−16 by 2015 Wis. Act 334.

History: 2015 a. 334.

108.223 Financial record matching program. (1) DEFINITIONS. In this section:

(a) "Account" means a demand deposit account, checking account, negotiable withdrawal order account, savings account, time deposit account, or money market mutual fund account.

(bg) "Debt" has the meaning given in s. 108.225 (1) (b).

(br) "Debtor" means a debtor, as defined in s. 108.225 (1) (c), whose debt has been finally determined under this chapter and is not subject to further appeal and for whom, with respect to a debt, a warrant has been issued under s. 108.22 (2), (3) or (8).

(c) "Financial institution" has the meaning given in 12 USC 3401 (1).

(2) MATCHING PROGRAM AND AGREEMENTS. (a) The department shall operate a financial record matching program under this section for the purpose of identifying the assets of debtors.

(b) The department shall enter into agreements with financial institutions doing business in this state to operate the financial record matching program under this section. An agreement shall require the financial institution to participate in the financial record matching program by electing either the financial institution matching option under sub. (3) or the state matching option under sub. (4). The financial institution and the department may by mutual agreement make changes to the agreement. A financial institution that wishes to choose a different matching option shall provide the department with at least 60 days notice. The department shall furnish the financial institution with a signed copy of the agreement.

(c) The department shall reimburse a financial institution up to $125 per calendar quarter for participating in the financial record matching program under this section. The department

shall make reimbursements under this paragraph from the appropriation under s. 20.445 (1) (n).

(d) To the extent feasible, the information to be exchanged under the matching program shall be provided by electronic data exchange as prescribed by the department in the agreement under par. (b).

(3) FINANCIAL INSTITUTION MATCHING OPTION. If a financial institution with which the department has an agreement under sub. (2) elects the financial institution matching option under this subsection, all of the following apply:

(a) At least once each calendar quarter, the department shall provide to the financial institution, in the manner specified in the agreement under sub. (2) (b), information regarding debtors. The information shall include names and social security or other taxpayer identification numbers.

(b) Based on the information received under par. (a), the financial institution shall take actions necessary to determine whether any debtor has an ownership interest in an account maintained at the financial institution. If the financial institution determines that a debtor has an ownership interest in an account at the financial institution, the financial institution shall provide the department with a notice containing the debtor's name, address of record, social security number or other taxpayer identification number, and account information. The account information shall include the account number, the account type, the nature of the ownership interest in the account, and the balance of the account at the time that the record match is made. The notice under this paragraph shall be provided in the manner specified in the agreement under sub. (2) (b) and, to the extent feasible, by an electronic data exchange.

(4) STATE MATCHING OPTION. If a financial institution with which the department has an agreement under sub. (2) elects the state matching option under this subsection, all of the following apply:

(a) At least once each calendar quarter, the financial institution shall provide the department with information concerning all accounts maintained at the financial institution. For each account maintained at the financial institution, the financial institution shall notify the department of the name and social security number or other tax identification number of each person having an ownership interest in the account, together with a description of each person's interest. The information required under this paragraph shall be provided in the manner specified in the agreement under sub. (2) (b) and, to the extent feasible, by an electronic data exchange.

(b) The department shall take actions necessary to determine whether any debtor has an ownership interest in an account maintained at the financial institution providing information under par. (a). Upon the request of the department, the financial institution shall provide to the department, for each debtor who matches information provided by the financial institution under par. (a), the address of record, the account number and account type, and the balance of the account.

(5) USE OF INFORMATION BY FINANCIAL INSTITUTION; PENALTY. A financial institution participating in the financial record matching program under this section, and the employees, agents, officers, and directors of the financial institution, may use information received from the department under sub. (3) only for the purpose of matching records and may use information provided by the department in requesting additional information under sub. (4) only for the purpose of providing the additional information. Neither the financial institution nor any employee, agent, officer, or director of the financial institution may disclose or retain information received from the department concerning debtors. Any person who violates this subsection may be fined not less than $50 nor more than $1,000 or imprisoned in the county jail for not less than 10 days or more than one year or both.

(6) USE OF INFORMATION BY DEPARTMENT. The department may use information provided by a financial institution under this section only for matching records under sub. (4), for administering the financial record matching program under this section, and for pursuing the collection of amounts owed to the department by debtors. The department may not disclose or retain information received from a financial institution under this section concerning account holders who are not debtors.

(7) FINANCIAL INSTITUTION LIABILITY. A financial institution is not liable to any person for disclosing information to the department in accordance with an agreement under this section or for any other action that the financial institution takes in good faith to comply with this section.

History: 2013 a. 36.

108.225 Levy for delinquent contributions or benefit overpayments. (1) DEFINITIONS. In this section:

(a) "Contribution" includes a reimbursement or assessment under s. 108.15, 108.151, 108.152, or 108.155, interest for a nontimely payment, fees, and any payment due for a forfeiture imposed upon an employing unit under s. 108.04 (11) (c) or other penalty assessed by the department under this chapter.

NOTE: Par. (a) is shown as amended eff. 10−2−16 by 2015 Wis. Act 334. Prior to 10−2−16 it reads:

(a) "Contribution" includes a reimbursement or assessment under s. 108.15, 108.151, or 108.152, interest for a nontimely payment, fees, and any payment due for a forfeiture imposed upon an employing unit under s. 108.04 (11) (c) or other penalty assessed by the department under this chapter.

(b) "Debt" means a delinquent contribution or repayment of a benefit overpayment, a delinquent assessment under s. 108.04 (11) (cm) or 108.19 (1m), a liability incurred under s. 108.04 (11) (bh), an erroneous payment from the fund recovered under s. 108.245, or any liability of a 3rd party for failure to surrender to the department property or rights to property subject to levy after proceedings under sub. (4) (b) and s. 108.10 to determine that liability.

(c) "Debtor" means a person who owes the department a debt.

(d) "Disposable earnings" means that part of the earnings of any individual after the deduction from those earnings of any amounts required by law to be withheld, any life, health, dental or similar type of insurance premiums, union dues, any amount necessary to comply with a court order to contribute to the support of minor children, and any levy, wage assignment or garnishment executed prior to the date of a levy under this section.

(e) "Federal minimum hourly wage" means that wage prescribed by 29 USC 206 (a) (1).

(f) "Levy" means all powers of distraint and seizure.

(g) "Property" includes all tangible and intangible personal property and rights to such property, including compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, periodic payments received pursuant to a pension or retirement program, rents, proceeds of insurance and contract payments.

(2) POWERS OF LEVY AND DISTRAINT. If any debtor who is liable for any debt neglects or refuses to pay that debt after the department has made demand for payment, the department may collect that debt and the expenses of the levy by levy upon any property belonging to the debtor. Whenever the value of any property that has been levied upon under this section is not sufficient to satisfy the claim of the department, the department may levy upon any additional property of the debtor until the debt and expenses of the levy are fully paid.

(3) DUTIES TO SURRENDER. Any person in possession of or obligated with respect to property or rights to property that is subject to levy and upon which a levy has been made shall, upon demand of the department, surrender the property or rights or discharge the obligation to the department, except that part of the property or rights which is, at the time of the demand, subject to any prior attachment or execution under any judicial process.

(4) FAILURE TO SURRENDER; ENFORCEMENT OF LEVY. (a) Any debtor who fails or refuses to surrender any property or rights to

property that is subject to levy, upon demand by the department, is subject to proceedings to enforce the amount of the levy.

(b) Any 3rd party who fails to surrender any property or rights to property subject to levy, upon demand of the department, is subject to proceedings to enforce the levy. The 3rd party is not liable to the department under this paragraph for more than 25% of the debt. The department shall serve a final demand as provided under sub. (13) on any 3rd party who fails to surrender property. Proceedings shall not be initiated by the department until 5 days after service of the final demand. The department shall issue a determination under s. 108.10 to the 3rd party for the amount of the liability.

(c) When a 3rd party surrenders the property or rights to the property on demand of the department or discharges the obligation to the department for which the levy is made, the 3rd party is discharged from any obligation or liability to the debtor with respect to the property or rights to the property arising from the surrender or payment to the department.

(5) ACTIONS AGAINST THIS STATE. (a) If the department has levied upon property, any person, other than the debtor who is liable to pay the debt out of which the levy arose, who claims an interest in or lien on that property and claims that that property was wrongfully levied upon may bring a civil action against the state in the circuit court for Dane County. That action may be brought whether or not that property has been surrendered to the department. The court may grant only the relief under par. (b). No other action to question the validity of or restrain or enjoin a levy by the department may be maintained.

(b) In an action under par. (a), if a levy would irreparably injure rights to property, the court may enjoin the enforcement of that levy. If the court determines that the property has been wrongfully levied upon, it may grant a judgment for the amount of money obtained by levy.

(c) For purposes of an adjudication under this subsection, the determination of the debt upon which the interest or lien of the department is based is conclusively presumed to be valid.

(6) DETERMINATION OF EXPENSES. The department shall determine its costs and expenses to be paid in all cases of levy.

(7) USE OF PROCEEDS. (a) The department shall apply all money obtained under this section first against the expenses of the proceedings and then against the liability in respect to which the levy was made and any other liability owed to the department by the debtor.

(b) The department may refund or credit any amount left after the applications under par. (a), upon submission of a claim therefor and satisfactory proof of the claim, to the person entitled to that amount.

(8) RELEASE OF LEVY. The department may release the levy upon all or part of property levied upon to facilitate the collection of the liability or to grant relief from a wrongful levy, but that release does not prevent any later levy.

(9) WRONGFUL LEVY. If the department determines that property has been wrongfully levied upon, the department may return the property at any time, or may return an amount of money equal to the amount of money levied upon.

(10) PRESERVATION OF REMEDIES. The availability of the remedy under this section does not abridge the right of the department to pursue other remedies.

(11) EVASION. Any person who removes, deposits or conceals or aids in removing, depositing or concealing any property upon which a levy is authorized under this section with intent to evade or defeat the assessment or collection of any debt is guilty of a Class I felony and shall be liable to the state for the costs of prosecution.

(12) NOTICE BEFORE LEVY. If no appeal or other proceeding for review permitted by law is pending and the time for taking an appeal or petitioning for review has expired, the department shall make a demand to the debtor for payment of the debt which is subject to levy and give notice that the department may pursue legal action for collection of the debt against the debtor. The department shall make the demand for payment and give the notice at least 10 days prior to the levy, personally or by any type of mail service which requires a signature of acceptance, at the address of the debtor as it appears on the records of the department. The demand for payment and notice shall include a statement of the amount of the debt, including interest and penalties, and the name of the debtor who is liable for the debt. The debtor's refusal or failure to accept or receive the notice does not prevent the department from making the levy. Notice prior to levy is not required for a subsequent levy on any debt of the same debtor within one year of the date of service of the original levy.

(13) SERVICE OF LEVY. (a) The department shall serve the levy upon the debtor and 3rd party by personal service or by any type of mail service which requires a signature of acceptance.

(b) Personal service shall be made upon an individual, other than a minor or incapacitated person, by delivering a copy of the levy to the debtor or 3rd party personally; by leaving a copy of the levy at the debtor's dwelling or usual place of abode with some person of suitable age and discretion residing there; by leaving a copy of the levy at the business establishment with an officer or employee of the establishment; or by delivering a copy of the levy to an agent authorized by law to receive service of process.

(c) The department representative who serves the levy shall certify service of process on the notice of levy form and the person served shall acknowledge receipt of the certification by signing and dating it. If service is made by mail, the return receipt is the certificate of service of the levy.

(d) The debtor's or 3rd party's failure to accept or receive service of the levy does not invalidate the levy.

(14) ANSWER BY 3RD PARTY. Within 20 days after the service of the levy upon a 3rd party, the 3rd party shall file an answer with the department stating whether the 3rd party is in possession of or obligated with respect to property or rights to property of the debtor, including a description of the property or the rights to property and the nature and dollar amount of any such obligation. If the 3rd party is an insurance company, the insurance company shall file an answer with the department within 45 days after the service of the levy.

(15) DURATION OF LEVY. A levy is effective from the date on which the levy is first served on the 3rd party until the liability out of which the levy arose is satisfied, or until the levy is released, whichever occurs first.

(16) WAGES EXEMPT FROM LEVY. (a) In the case of forfeitures imposed upon an employing unit under s. 108.04 (11) (c), an individual debtor is entitled to an exemption from levy of the greater of the following:

1. A subsistence allowance of 75% of the debtor's disposable earnings;

2. An amount equal to 30 times the federal minimum hourly wage for each full week of the debtor's pay period; or

3. In the case of earnings for a period other than a week, a subsistence allowance computed so that it is equivalent to that provided in subd. 2. using a multiple of the federal minimum hourly wage prescribed by rule of the department.

(am) 1. In the case of benefit overpayments or a penalty imposed under s. 108.04 (11) (bh), an individual debtor is entitled to an exemption from levy of 80% of the debtor's disposable earnings, except that:

a. A debtor's disposable earnings are totally exempt from levy if the debtor's wages are below the federal income guideline established under 42 USC 9902 (2) for a household of the debtor's size or the levy would cause that result.

b. Upon petition by a debtor demonstrating hardship, the department may increase the portion of the debtor's disposable earnings that are exempt from levy.

c. The department may decrease or eliminate the exemption from levy under this paragraph if a final determination has been issued under s. 108.09 or a judgment has been entered under s.

108.24 (1) in which the debtor has been found guilty of making a false statement or representation to obtain benefits and the benefits and any assessment under s. 108.04 (11) (cm) have not been paid or reimbursed at the time that the levy is issued, unless the fund's treasurer has written off the debt under s. 108.16 (3) (a).

2. The department shall by rule prescribe a methodology for application of the exemption applicable to a levy under subd. 1. a. at the time that the levy is issued.

(17) EXEMPTIONS. The first $1,000 of an account in a depository institution is exempt from any levy to recover a benefit overpayment or penalty imposed under s. 108.04 (11) (bh). No other property is exempt from levy except as provided in sub. (16).

(18) RESTRICTION ON EMPLOYMENT PENALTIES BY REASON OF LEVY. No employer may discharge or otherwise discriminate with respect to the terms and conditions of employment against any employee by reason of the fact that his or her earnings have been subject to levy for any one levy or because of compliance with any provision of this section. Whoever willfully violates this subsection may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(19) APPEAL. Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under s. 108.10. The appeal is limited to questions of prior payment of the debt that the department is proceeding against, and mistaken identity of the debtor. The levy is not stayed pending an appeal in any case where property is secured through the levy.

(20) COST OF LEVY. Whenever property is secured by means of a levy, any 3rd party in possession of the debtor's property is entitled to collect from the debtor a levy fee of $5 for each levy in which a debt is satisfied by means of a single payment and $15 for each levy in which a debt is satisfied by means of more than one payment. The fee is payable from the property levied against and is in addition to the amount of the levy. The 3rd party may charge the fee to the debtor at the time the party transfers the proceeds of the levy to the department.

History: 1989 a. 77; 1997 a. 187, 283; 2001 a. 35, 109; 2003 a. 197; 2005 a. 86, 442; 2011 a. 198, 236; 2013 a. 36; 2013 a. 165 s. 115; 2015 a. 334.

108.227 License denial, nonrenewal, discontinuation, suspension and revocation based on delinquent unemployment insurance contributions. (1) DEFINITIONS. In this section:

(a) "Contribution" includes contributions under ss. 108.17 and 108.18, interest for a nontimely payment or a fee assessed on an employer, an assessment under s. 108.19, any payment due for a forfeiture imposed upon an employing unit under s. 108.04 (11) (c), and any other penalty assessed by the department under this chapter against an employing unit.

(b) "Credential" has the meaning given in s. 440.01 (2) (a).

NOTE: Par. (b) is shown as amended eff. 7−1−16 by 2015 Wis. Act 258. Prior to 7−1−16 it reads:

(b) "Credential" has the meaning given in s. 440.01 (2) (a), but does not include a registration as an inactive licensee under s. 452.12 (6) (b).

(c) "Credentialing board" means a board, examining board or affiliated credentialing board in the department of safety and professional services that grants a credential.

(d) "Liable for delinquent contributions" means that a person has exhausted all of the person's remedies under s. 108.10 to challenge the assertion that the person owes the department any contributions and the person is delinquent in the payment of those contributions.

(e) "License" means any of the following:

1. An approval specified in s. 29.024 (2r) or a license specified in s. 169.35.

2. A license issued by the department of children and families under s. 48.66 (1) (a) to a child welfare agency, group home, shelter care facility, or child care center, as required by s. 48.60, 48.625, 48.65, or 938.22 (7).

3. A license, certificate of approval, provisional license, conditional license, certification, certification card, registration, permit, training permit or approval specified in s. 50.35, 50.49 (6) (a) or (10), 51.038, 51.04, 51.42 (7) (b) 11., 51.421 (3) (a), 51.45 (8), 146.40 (3), (3g), or (3m), 254.176, 254.20 (3), 256.15 (5) (a) or (b), (6g) (a), (7), or (8) (a) or (f) or 343.305 (6) (a) or a permit for operation of a campground specified in s. 254.47 (1).

NOTE: Subd. 3. is amended eff. 7−1−16 by 2015 Wis. Act 55 to read:

3. A license, certificate of approval, provisional license, conditional license, certification, certification card, registration, permit, training permit or approval specified in s. 50.35, 50.49 (6) (a) or (10), 51.038, 51.04, 51.42 (7) (b) 11., 51.421 (3) (a), 51.45 (8), 146.40 (3), (3g), or (3m), 254.176, 254.20 (3), 256.15 (5) (a) or (b), (6g) (a), (7), or (8) (a) or (f) or 343.305 (6) (a) or a license for operation of a campground specified in s. 97.67 (1).

5. A license, as defined in s. 101.02 (20) (a).

6. A license or certificate of registration issued by the department of financial institutions, or a division of it, under ss. 138.09, 138.12, 138.14, 202.12 to 202.14, 202.22, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.725, 224.93 or under subch. IV of ch. 551.

6m. A certificate or registration issued under s. 168.23 (3).

7. A license described in s. 218.0114 (14) (a) and (g), a license described in s. 218.0114 (14) (b), (c) or (e), a license issued under s. 218.11, 218.12, 218.22, 218.32, 218.41, 343.61 or 343.62, a buyer identification card issued under s. 218.51 or a certificate of registration issued under s. 341.51.

7m. A license issued under s. 562.05 or 563.24.

8. A license, registration or certification specified in s. 299.07 (1) (a).

9. A credential.

10. A license or permit granted by the department of public instruction.

11. A license to practice law.

12. A license issued under s. 628.04, 628.92 (1), 632.69 (2), or 633.14, a registration under s. 628.92 (2), or a temporary license issued under s. 628.09.

13. A license issued by the ethics commission under s. 13.63 (1).

NOTE: Subd. 13. is shown as amended eff. 6−30−16 by 2015 Wis. Act 118. Prior to 6−30−16 it reads:

13. A license issued by the government accountability board under s. 13.63 (1).

14. A permit under s. 170.12.

15. A certification under s. 73.09.

(f) "Licensing department" means the department of administration; the department of agriculture, trade and consumer protection; the board of commissioners of public lands; the department of children and families; the ethics commission; the department of financial institutions; the department of health services; the department of natural resources; the department of public instruction; the department of revenue; the department of safety and professional services; the office of the commissioner of insurance; or the department of transportation.

NOTE: Par. (f) is shown as amended eff. 6−30−16 by 2015 Wis. Act 118. Prior to 6−30−16 it reads:

(f) "Licensing department" means the department of administration; the department of agriculture, trade and consumer protection; the board of commissioners of public lands; the department of children and families; the government accountability board; the department of financial institutions; the department of health services; the department of natural resources; the department of public instruction; the department of revenue; the department of safety and professional services; the office of the commissioner of insurance; or the department of transportation.

(g) "Nondelinquency certificate" means a certificate that the department of workforce development issues to a person and that states that the person is not liable for delinquent contributions.

(1m) GENERAL PROVISIONS. The department shall promulgate rules specifying procedures to be used before taking action under sub. (3) (b) or s. 102.17 (1) (ct), 103.275 (2) (bt), 103.34 (10) (d), 103.91 (4) (d), 103.92 (8), 104.07 (7), or 105.13 (4) with respect to a person whose license or credential is to be denied, not

renewed, discontinued, suspended, or revoked, including rules with respect to all of the following:

(a) Permitting the department to take action only when all of the remedies available to the department under this chapter have been exhausted.

(b) Providing persons with a certified notice of liability for delinquent contributions.

(c) Allowing persons to make full payment of contributions owed or to negotiate with the department for a payment plan to pay the delinquent contributions. The rules shall include provisions to consider the ability of persons to pay and provisions to allow persons sufficient time and payment terms for paying delinquent contributions.

Cross−reference: See also ch. DWD 114, Wis. adm. code.

(2) DUTIES AND POWERS OF LICENSING DEPARTMENTS. (a) Each licensing department and the supreme court, if the supreme court agrees, shall enter into a memorandum of understanding with the department of workforce development under sub. (4) (a) that requires the licensing department or supreme court to do all of the following:

1. Request the department of workforce development to certify whether an applicant for a license or license renewal or continuation is liable for delinquent contributions. With respect to an applicant for a license granted by a credentialing board, the department of safety and professional services shall make a request under this subdivision. This subdivision does not apply to the department of transportation with respect to licenses described in sub. (1) (e) 7.

2. Request the department of workforce development to certify whether a license holder is liable for delinquent contributions. With respect to a holder of a license granted by a credentialing board, the department of safety and professional services shall make a request under this subdivision.

(b) Each licensing department and the supreme court, if the supreme court agrees, shall do all of the following:

1. a. If, after a request is made under par. (a) 1. or 2., the department of workforce development certifies that the license holder or applicant for a license or license renewal or continuation is liable for delinquent contributions, revoke the license or deny the application for the license or license renewal or continuation. The department of transportation may suspend licenses described in sub. (1) (e) 7. in lieu of revoking those licenses. A suspension, revocation, or denial under this subd. 1. a. is not subject to administrative review or, except as provided in sub. (6), judicial review. With respect to a license granted by a credentialing board, the department of safety and professional services shall make a revocation or denial under this subd. 1. a. With respect to a license to practice law, the department of workforce development shall not submit a certification under this subd. 1. a. to the supreme court until after the license holder or applicant has exhausted his or her remedies under subs. (5) (a) and (6) or has failed to make use of such remedies.

b. Mail a notice of suspension, revocation, or denial under subd. 1. a. to the license holder or applicant. The notice shall include a statement of the facts that warrant the suspension, revocation, or denial and a statement that the license holder or applicant may, within 30 days after the date on which the notice of suspension, revocation, or denial is mailed, file a written request with the department of workforce development to have the certification of contribution delinquency on which the suspension, revocation, or denial is based reviewed at a hearing under sub. (5) (a) and that the license holder or applicant may seek judicial review under sub. (6) of an affirmation under sub. (5) (b) 2. that the person is liable for delinquent contributions. With respect to a license granted by a credentialing board, the department of safety and professional services shall mail a notice under this subd. 1. b. With respect to a license to practice law, the department of workforce development shall mail a notice under this subd. 1. b. and the notice shall indicate that the license holder or applicant may request a hearing under sub. (5) (a) and may request judicial review under sub. (6) and that the department of workforce development will submit a certificate of delinquency to suspend, revoke, or deny a license to practice law to the supreme court after the license holder or applicant has exhausted his or her remedies under subs. (5) (a) and (6) or has failed to make use of such remedies. A notice sent to a person who holds a license to practice law or who is an applicant for a license to practice law shall also indicate that the department of workforce development may not submit a certificate of delinquency to the supreme court if the license holder or applicant pays the delinquent contributions in full or enters into an agreement with the department of workforce development to satisfy the delinquency.

2. Except as provided in subd. 2m., if notified by the department of workforce development that the department of workforce development has affirmed a certification of contribution delinquency after a hearing under sub. (5) (a), affirm a suspension, revocation, or denial under subd. 1. a. With respect to a license granted by a credentialing board, the department of safety and professional services shall make an affirmation under this subdivision.

2m. With respect to a license to practice law, if notified by the department of workforce development that the department of workforce development has affirmed a certification of contribution delinquency after any requested review under subs. (5) (a) and (6), decide whether to suspend, revoke, or deny a license to practice law.

3. If a person submits a nondelinquency certificate issued under sub. (5) (b) 1., reinstate the license or grant the application for the license or license renewal or continuation, unless there are other grounds for suspending or revoking the license or for denying the application for the license or license renewal or continuation. If reinstatement is required under this subdivision, a person is not required to submit a new application or other material or to take a new test. No separate fee may be charged for reinstatement of a license under this subdivision. With respect to a license granted by a credentialing board, the department of safety and professional services shall reinstate a license or grant an application under this subdivision.

4. If a person whose license has been suspended or revoked or whose application for a license or license renewal or continuation has been denied under subd. 1. a. submits a nondelinquency certificate issued under sub. (3) (a) 2., reinstate the license or grant the person's application for the license or license renewal or continuation, unless there are other grounds for not reinstating the license or for denying the application for the license or license renewal or continuation. With respect to a license granted by a credentialing board, the department of safety and professional services shall reinstate a license or grant an application under this subdivision.

(c) 1. Each licensing department and the supreme court may require a license holder or an applicant for a license or license renewal or continuation to provide the following information upon request:

a. If the license holder or applicant is an individual and has a social security number, the license holder's or applicant's social security number.

am. If the license holder or applicant is an individual and does not have a social security number, a statement made or subscribed under oath or affirmation that the license holder or applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families. A license issued in reliance upon a false statement submitted under this subd. 1. am. is invalid.

b. If the license holder or applicant is not an individual, the license holder's or applicant's federal employer identification number.

2. A licensing department may not disclose any information received under subd. 1. a. or b. to any person except to the depart-

ment of workforce development for the purpose of requesting certifications under par. (a) 1. or 2. in accordance with the memorandum of understanding under sub. (4) and administering the unemployment insurance program, to the department of revenue for the purpose of requesting certifications under s. 73.0301 (2) (a) 1. or 2. in accordance with the memorandum of understanding under s. 73.0301 (4) and administering state taxes, and to the department of children and families for the purpose of administering s. 49.22.

(3) DUTIES AND POWERS OF DEPARTMENT OF WORKFORCE DEVELOPMENT. (a) The department of workforce development shall do all of the following:

1. Enter into a memorandum of understanding with each licensing department and the supreme court, if the supreme court agrees, under sub. (4) (a).

2. Upon the request of any applicant for issuance, renewal, continuation, or reinstatement of a license whose license has been previously revoked or suspended or whose application for a license or license renewal or continuation has been previously denied under sub. (2) (b) 1. a., issue a nondelinquency certificate to the applicant if the applicant is not liable for delinquent contributions.

3. Upon the request of any person whose license or certificate has been previously revoked or denied under s. 102.17 (1) (ct), 103.275 (2) (bt), 103.34 (10) (d), 103.91 (4) (d), 103.92 (8), 104.07 (7), or 105.13 (4), reinstate the license or certificate if the applicant is not liable for delinquent contributions.

(b) If a request for certification is made under sub. (2) (a) 1. or 2., the department of workforce development may, in accordance with a memorandum of understanding entered into under par. (a) 1., certify to the licensing department or the supreme court that the applicant or license holder is liable for delinquent contributions.

(4) MEMORANDUM OF UNDERSTANDING. (a) Each memorandum of understanding shall include procedures that do all of the following:

1. Establish requirements for making requests under sub. (2) (a) 1. and 2., including specifying the time when a licensing department or the supreme court shall make requests under sub. (2) (a) 1. and 2., and for making certifications under sub. (3) (b).

2. Implement the requirements specified in sub. (2) (b) 3. and 4.

(b) The department of workforce development and the licensing department shall consider all of the following factors in establishing requirements under par. (a) 1.:

1. The need to issue licenses in a timely manner.

2. The convenience of applicants.

3. The impact on collecting delinquent contributions.

4. The effects on program administration.

5. Whether a suspension, revocation, or denial under sub. (2) (b) 1. a. will have an impact on public health, safety, or welfare or the environment.

(5) HEARING. (a) The department of workforce development shall conduct a hearing requested by a license holder or applicant for a license or license renewal or continuation under sub. (2) (b) 1. b., or as requested under s. 102.17 (1) (ct), 103.275 (2) (bt), 103.34 (10) (d), 103.91 (4) (d), 103.92 (8), 104.07 (7), or 105.13 (4), to review a certification or determination of contribution delinquency that is the basis of a denial, suspension, or revocation of a license or certificate in accordance with this section or an action taken under s. 102.17 (1) (ct), 103.275 (2) (bt), 103.34 (10) (d), 103.91 (4) (d), 103.92 (8), 104.07 (7), or 105.13 (4). A hearing under this paragraph is limited to questions of mistaken identity of the license or certificate holder or applicant and of prior payment of the contributions that the department of workforce development certified or determined the license or certificate holder or applicant owes the department. At a hearing under this paragraph, any statement filed by the department of workforce development, the licensing department, or the supreme court, if the supreme court agrees, may be admitted into evidence and is prima facie evidence of the facts that it contains. Notwithstanding ch. 227, a person entitled to a hearing under this paragraph is not entitled to any other notice, hearing, or review, except as provided in sub. (6).

(b) After a hearing conducted under par. (a) or, in the case of a determination related to a license to practice law, after a hearing under par. (a) or, if the hearing is appealed, after judicial review under sub. (6), the department of workforce development shall do one of the following:

1. Issue a nondelinquency certificate to a license holder or an applicant for a license or license renewal or continuation if the department determines that the license holder or applicant is not liable for delinquent contributions. For a hearing requested in response to an action taken under s. 102.17 (1) (ct), 103.275 (2) (bt), 103.34 (10) (d), 103.91 (4) (d), 103.92 (8), 104.07 (7), or 105.13 (4), the department shall grant a license or certificate or reinstate a license or certificate if the department determines that the applicant for or the holder of the license or certificate is not liable for delinquent contributions, unless there are other grounds for denying the application or revoking the license or certificate.

2. Provide notice that the department of workforce development has affirmed its certification of contribution delinquency to a license holder; to an applicant for a license, a license renewal, or a license continuation; and to the licensing department or the supreme court, if the supreme court agrees. For a hearing requested in response to an action taken under s. 102.17 (1) (ct), 103.275 (2) (bt), 103.34 (10) (d), 103.91 (4) (d), 103.92 (8), 104.07 (7), or 105.13 (4), the department of workforce development shall provide notice to the license or certificate holder or applicant that the department of workforce development has affirmed its determination of contribution delinquency.

(6) JUDICIAL REVIEW. A license holder or applicant may seek judicial review under ss. 227.52 to 227.60 of an affirmation under sub. (5) (b) 2. that the person is liable for delinquent contributions, except that the review shall be in the circuit court for Dane County.

History: 2013 a. 36, 276, 357; 2015 a. 55, 118, 258.

108.23 Preference of required payments. In the event of an employer's dissolution, reorganization, bankruptcy, receivership, assignment for benefit of creditors, judicially confirmed extension proposal or composition, or any analogous situation including the administration of estates in circuit courts, the payments required of the employer under this chapter shall have preference over all claims of general creditors and shall be paid next after the payment of preferred claims for wages. If the employer is indebted to the federal government for taxes due under the federal unemployment tax act and a claim for the taxes has been duly filed, the amount of contributions which should be paid to allow the employer the maximum offset against the taxes shall have preference over preferred claims for wages and shall be on a par with debts due the United States, if by establishing the preference the offset against the federal tax can be secured under s. 3302 (a) (3) of the federal unemployment tax act.

History: 1977 c. 449.

108.24 Penalties. (1) Any person who knowingly makes a false statement or representation to obtain any benefit payment under this chapter, either for himself or herself or for any other person, shall be fined not less than $100 nor more than $500 or imprisoned not more than 90 days, or both; and each such false statement or representation constitutes a separate offense. This penalty is in addition to any penalty imposed under s. 108.04 (11) (bh).

(2) Except as provided in sub. (2m) and s. 108.16 (8) (m), any person who knowingly makes a false statement or representation in connection with any report or as to any information duly required by the department under this chapter, or who knowingly refuses or fails to keep any records or to furnish any reports or information duly required by the department under this chapter, shall be fined not less than $100 nor more than $500, or imprisoned not more than 90 days or both; and each such false statement

or representation and every day of such refusal or failure constitutes a separate offense.

(2m) Any employer described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures who, after having previously been assessed an administrative penalty by the department under s. 108.221 (1), knowingly and intentionally provides false information to the department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee shall be fined $1,000 for each employee who is misclassified, subject to a maximum fine of $25,000 for each violation. The department may refer violations of this subsection for prosecution by the department of justice or the district attorney for the county in which the violation occurred.

NOTE: Sub. (2m) is shown as amended eff. 10−2−16 by 2015 Wis. Act 334. Prior to 10−2−16 it reads:

(2m) Any employer described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures who willfully provides false information to the department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee shall be fined $25,000 for each violation.

(3) (a) Whoever does any of the following shall be fined not less than $100 nor more than $1,000 or imprisoned for not more than 90 days or both:

1. Makes a deduction from the wages of an employee because of liability for contributions or payments in lieu of contributions under this chapter or because of the employee's potential right to benefits.

2. Knowingly refuses or fails to furnish to an employee any notice, report or information duly required under this chapter by the department to be furnished to such employee.

3. Directly or indirectly, by promise of reemployment or by threat not to employ, to terminate, or not to reemploy or by any other means, attempts to induce an employee to:

a. Refrain from claiming or accepting benefits, participating in an audit or investigation by the department, or testifying in a hearing held under s. 108.09 or 108.10.

b. Waive any right under this chapter.

4. Discriminates or retaliates against an individual because the individual claims benefits, participates in an audit or investigation by the department under this chapter, testifies in a hearing under s. 108.09 or 108.10, or exercises any other right under this chapter.

(b) Each violation of this subsection constitutes a separate offense.

(4) Any person who, without authorization of the department, permits inspection or disclosure of any record relating to the administration of this chapter that is provided to the person by the department under s. 108.14 (7) (a), (b), or (bm) and any person who, without authorization of the commission, permits inspection or disclosure of any record relating to the administration of this chapter that is provided to the person by the commission under s. 108.14 (7) (a), shall be fined not less than $25 nor more than $500 or may be imprisoned in the county jail for not more than one year or both. Each such unauthorized inspection or disclosure constitutes a separate offense.

History: 1973 c. 247; 1983 a. 8; 1991 a. 89; 2005 a. 86; 2009 a. 28, 287, 288; 2011 a. 236; 2013 a. 20; 2015 a. 334; s. 35.17 correction in (3) (a) 3. a.

108.245 Recovery of erroneous payments from fund. **(1)** Except as provided in sub. (2m), the department may commence an action to preserve and recover the proceeds of any payment from the fund not resulting from a departmental error, including any payment to which the recipient is not entitled, from any transferee or other person that receives, possesses, or retains such a payment or from any account, including an account at any financial institution, resulting from the transfer, use, or disbursement of such a payment. The department may also commence an action to recover from a claimant the amount of any benefits that were erroneously paid to another person who was not entitled to receive the benefits because the claimant or the claimant's authorized agent divulged the claimant's security credentials to another person or failed to take adequate measures to protect the credentials from being divulged to an unauthorized person.

(2) The department may sue for injunctive relief to require the payee, transferee, or other person, including a financial institution, in possession of the proceeds from any payment from the fund to preserve the proceeds and to prevent the transfer or use of the proceeds upon showing that the payee, transferee, or other person that receives, possesses, or retains the proceeds is not entitled to receive, possess, or retain the proceeds pending the final order of the court directing disposition of the proceeds. Upon entry of a final order of the court directing the proceeds to be transferred to the department, the payee, transferee, or other person in possession of the proceeds shall transfer the proceeds to the department.

(2m) No action may be commenced under this section asserting any claim against a claimant unless the claimant has first been afforded his or her rights to contest the claim under s. 108.09.

(3) Except as provided in sub. (2m), the existence of an administrative or other legal remedy for recovery of a payment under sub. (1) or the failure of the department to exhaust any such remedy is not a defense to an action under sub. (1). A judgment entered by a court under this section may be recovered and satisfied under s. 108.225.

History: 2013 a. 36; 2013 a. 173 s. 33; 2013 a. 276.

108.26 Saving clause. The legislature reserves the right to amend or repeal all or any part of this chapter at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

STATUTE EXCERPTS

OTHER STATUTORY PROVISIONS SUPPLEMENTING CHAPTER 108

15.03 Attachment for limited purposes. Any division, office, commission, council or board attached under this section to a department or independent agency or a specified division thereof shall be a distinct unit of that department, independent agency or specified division. Any division, office, commission, council or board so attached shall exercise its powers, duties and functions prescribed by law, including rule making, licensing and regulation, and operational planning within the area of program responsibility of the division, office, commission, council or board, independently of the head of the department or independent agency, but budgeting, program coordination and related management functions shall be performed under the direction and supervision of the head of the department or independent agency, except that with respect to the office of the commissioner of railroads, all personnel and biennial budget requests by the office of the commissioner of railroads shall be provided to the department of transportation as required under s. 189.02 (7) and shall be processed and properly forwarded by the public service commission without change except as requested and concurred in by the office of the commissioner of railroads.
History: 1981 c. 347; 1983 a. 27; 1993 a. 123; 1999 a. 9.

15.105 Attached boards, commissions, bureaus, and offices.
(15) *Labor and industry review commission.* There is created a labor and industry review commission which is attached to the department of administration under s. 15.03, except the budget of the labor and industry review commission shall be transmitted by the department to the governor without change or modification by the department, unless agreed to by the labor and industry review commission. The governor shall appoint an individual to serve at the pleasure of the governor as general counsel for the commission.

15.22 Department of workforce development; creation. There is created a department of workforce development under the direction and supervision of the secretary of workforce development.
History: 1977 c. 29; 1995 a. 27 s. 9130 (4); 1997 a. 3.

15.227 Department of workforce development; councils.
(3) COUNCIL ON UNEMPLOYMENT INSURANCE. There is created in the department of workforce development a council on unemployment insurance appointed by the secretary of workforce development to consist of 5 representatives of employers and 5 representatives of employees appointed to serve for 6-year terms and a permanent classified employee of the department of workforce development who shall serve as nonvoting chairperson. In making appointments to the council, the secretary shall give due consideration to achieving balanced representation of the industrial, commercial, construction, nonprofit and public sectors of the state's economy. One of the employer representatives shall be an owner of a small business or a representative of an association primarily composed of small businesses. In this subsection, "small business" means an independently owned and operated business which is not dominant in its field and which has had less than $2,000,000 in gross annual sales for each of the previous 2 calendar years or has 25 or fewer employees. A member vacates his or her office if the member loses the status upon which his or her appointment is based.

16.48 Unemployment reserve financial statement.
(1)
(a) No later than April 15 of each odd-numbered year, the secretary of workforce development shall prepare and furnish to the governor, the speaker of the assembly, the minority leader of the assembly, and the majority and minority leaders of the senate a statement of unemployment insurance financial outlook, which shall contain the following, together with the secretary's recommendations and an explanation for such recommendations:
1. Projections of unemployment insurance operations under current law through at least the 2nd year following the close of the biennium, including benefit payments, tax collections, borrowing or debt repayments and amounts of interest charges, if any.
2. Specific proposed changes in the laws relating to unemployment insurance financing, benefits and administration.
3. Projections specified in subd. 1. under the proposed laws.
4. The economic and public policy assumptions upon which the projections are based, and the impact upon the projections of variations from those assumptions. 16.48(1)(a)5.
5. If significant cash reserves in the unemployment reserve fund are projected throughout the forecast period, a statement giving the reasons why the reserves should be retained in the fund.
6. If unemployment insurance program debt is projected at the end of the forecast period, the reasons why it is not proposed to liquidate the debt.
(b) No later than May 15 of each odd-numbered year, the secretary of workforce development shall prepare and furnish to the governor, the speaker of the assembly, the minority leader of the assembly, and the majority and minority leaders of the senate a report summarizing the deliberations of the council on unemployment insurance and the position of the council, if any, concerning each proposed change in the unemployment insurance laws submitted under par. (a).
(2) Upon receipt of the statement and report under sub. (1), the governor may convene a special committee consisting of the secretary of workforce development and the legislative leaders specified in sub. (1) to review the statement and report. Upon request of 2 or more of the legislative leaders specified in sub. (1), the governor shall convene such a committee. The committee shall attempt to reach a consensus concerning proposed changes to the unemployment insurance laws and shall submit its recommendations to the governor and legislature concurrently with the statement furnished under sub. (3).

(3) No later than June 15 of each odd-numbered year, the secretary of workforce development, under the direction of the governor, shall submit to each member of the legislature an updated statement of unemployment insurance financial outlook which shall contain the information specified in sub. (1) (a), together with the governor's recommendations and an explanation for such recommendations, and a copy of the report required under sub. (1) (b).

History: 1983 a. 388; 1995 a. 27 s. 9130 (4); 1997 a. 3, 39; 2013 a. 36.

Open Meetings of Governmental Bodies

19.85 Exemptions.

(1)

(ee) Deliberating by the council on unemployment insurance in a meeting at which all employer members of the council or all employee members of the council are excluded.

20.445 Workforce development, department of. There is appropriated to the department of workforce development for the following programs:

(1) WORKFORCE DEVELOPMENT.

(aL) *Unemployment insurance administration; controlled substances testing and substance abuse treatment.* Biennially, the amounts in the schedule to conduct testing for controlled substances, for the provision of substance abuse treatment, and for related expenses under s. 108.133.

(gc) *Unemployment administration.* All moneys received by the department under s. 108.19 not otherwise appropriated under this subsection for the administration of ch. 108.

(gd) *Unemployment interest and penalty payments.* All moneys received as interest and penalties collected under ss. 108.04 (11) (c) and (cm) and (13) (c) and 108.22 except interest and penalties deposited under s. 108.19 (1q), and forfeitures under s. 103.05 (5), all moneys not appropriated under par. (gg) and all moneys transferred to this appropriation account from the appropriation account under par. (gh) for the payment of benefits specified in s. 108.07 (5) and 1987 Wisconsin Act 38, section 132 (1) (c), for the payment of interest to employers under s. 108.17 (3m), for research relating to the condition of the unemployment reserve fund under s. 108.14 (6), for administration of the unemployment insurance program and federal or state unemployment insurance programs authorized by the governor under s. 16.54, for satisfaction of any federal audit exception concerning a payment from the unemployment reserve fund or any federal aid disallowance concerning the unemployment insurance program, for assistance to the department of justice in the enforcement of ch. 108, for the payment of interest due on advances from the federal unemployment account under title XII of the social security act to the unemployment reserve fund, and for payments made to the unemployment reserve fund to obtain a lower interest rate or deferral of interest payments on these advances, except as otherwise provided in s. 108.20.

(gg) *Unemployment information technology systems; interest and penalties.* From the moneys received as interest and penalties collected under ss. 108.04 (11) (c) and (cm) and (13) (c) and 108.22 except interest and penalties deposited under s. 108.19 (1q), as a continuing appropriation, the amounts in the schedule for the purpose specified in s. 108.19 (1e) (d).

(gh) *Unemployment information technology systems; assessments.* All moneys received from assessments levied under s. 108.19 (1e) (a) and 1997 Wisconsin Act 39, section 164 (2), for the purpose specified in s. 108.19 (1e) (d). The treasurer of the unemployment reserve fund may transfer moneys from this appropriation account to the appropriation account under par. (gd).

(gm) *Unemployment insurance handbook.* All moneys received under s. 108.14 (23) (d) for the costs of printing and distribution of the unemployment insurance handbook, to pay for those costs.

(n) *Employment assistance and unemployment insurance administration; federal moneys.* All federal moneys received, as authorized by the governor under s. 16.54, for the administration of employment assistance and unemployment insurance programs of the department, for the performance of the department's other functions under subch. I of ch. 106 and ch. 108, and to pay the compensation and expenses of appeal tribunals and of employment councils appointed under s. 108.14, to be used for such purposes, except as provided in s. 108.161 (3e), and, from the moneys received by this state under section 903 (d) of the federal Social Security Act, as amended, to transfer to the appropriation account under par. (nb) an amount determined by the treasurer of the unemployment reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the amounts in the schedule under par. (nb), to transfer to the appropriation account under par. (nd) an amount determined by the treasurer of the unemployment reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the amounts in the schedule under par. (nd), to transfer to the appropriation account under par. (ne) an amount not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the sum of the amounts in the schedule under par. (ne) and the amount determined by the treasurer of the unemployment reserve fund that is required to pay for the cost of banking services incurred by the unemployment reserve fund, and to transfer to the appropriation account under s. 20.427 (1) (k) an amount determined by the treasurer of the unemployment reserve fund.

(nb) *Unemployment administration; information technology systems.* From the moneys received from the federal government under section 903 (d) of the federal Social Security Act, as amended, as a continuing appropriation, the amounts in the schedule, as authorized by the governor under s. 16.54, for the purpose specified in s. 108.19 (1e) (d). All moneys transferred from par. (n) for this purpose shall be credited to this appropriation account. No moneys may be expended from this appropriation unless the treasurer of the unemployment reserve fund determines that such expenditure is currently needed for the purpose specified in s. 108.19 (1e) (d).

(nd) *Unemployment administration; apprenticeship and other employment services.* From the moneys received from the federal government under section 903 (d) of the federal Social Security Act, as amended, the

amounts in the schedule, as authorized by the governor under s. 16.54, to be used for administration by the department of apprenticeship programs under subch. I of ch. 106 and for administration and service delivery of employment and workforce information services, including the delivery of reemployment assistance services to unemployment insurance claimants. All moneys transferred from par. (n) for this purpose shall be credited to this appropriation account. No moneys may be expended from this appropriation unless the treasurer of the unemployment reserve fund determines that such expenditure is currently needed for the purposes specified in this paragraph.

(ne) *Unemployment insurance administration and bank service costs.* From the moneys received by this state under section 903 of the federal Social Security Act, as amended, all moneys transferred from the appropriation account under par. (n) to be used for the administration of unemployment insurance and for the payment of the cost of banking services incurred by the unemployment reserve fund. No moneys may be expended from this appropriation unless the treasurer of the unemployment reserve fund determines that such expenditure is currently needed for the purpose specified in this paragraph.

(u) *Unemployment interest payments and transfers.* From the unemployment interest payment fund, a sum sufficient to make the payments and transfers authorized under s. 108.19 (1m).

(v) *Unemployment program integrity.* From the unemployment program integrity fund, a sum sufficient to make the payments authorized under s. 108.19 (1s).

102.23 Judicial review.

(Changes to 108.09 for judicial review are effective 8/1/2016)

(1)

(a)

1. The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive. The order or award granting or denying compensation, either interlocutory or final, whether judgment has been rendered on the order or award or not, is subject to review only as provided in this section and not under ch. 227 or s. 801.02. The commission shall identify in the order or award the persons that must be made parties to an action for review of the order or award.

2. Within 30 days after the date of an order or award made by the commission, any party aggrieved by the order or award may commence an action in circuit court for review of the order or award by serving a complaint as provided in par. (b) and filing the summons and complaint with the clerk of the circuit court. The summons and complaint shall name the party commencing the action as the plaintiff and shall name as defendants the commission and all persons identified by the commission under subd. 1. If the circuit court determines that any other person is necessary for the proper resolution of the action, the circuit court may join that person as a party to the action, unless joinder of the person would unduly delay the resolution of the action. If the circuit court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any finding or order, the circuit court may extend the time within which an action may be commenced by an additional 30 days. 102.23(1)(a)3.

3. The proceedings shall be in the circuit court of the county where the plaintiff resides, except that if the plaintiff is a state agency, the proceedings shall be in the circuit court of the county where the defendant resides. The proceedings may be brought in any circuit court if all parties stipulate and that court agrees.

NOTE: Par. (a) is shown as affected eff. 7-1-16 by 2015 Wis. Act 180. Prior to 7-1-16 it reads:

(a) The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive. The order or award granting or denying compensation, either interlocutory or final, whether judgment has been rendered on the order or award or not, is subject to review only as provided in this section and not under ch. 227 or s. 801.02. Within 30 days after the date of an order or award made by the commission either originally or after the filing of a petition for review with the department, the division, or the commission under s. 102.18 any party aggrieved by the order or award may by serving a complaint as provided in par. (b) and filing the summons and complaint with the clerk of the circuit court commence, in circuit court, an action against the commission for the review of the order or award, in which action the adverse party shall also be made a defendant. If the circuit court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any finding or order, the circuit court may extend the time in which an action may be commenced by an additional 30 days. The proceedings shall be in the circuit court of the county where the plaintiff resides, except that if the plaintiff is a state agency, the proceedings shall be in the circuit court of the county where the defendant resides. The proceedings may be brought in any circuit court if all parties stipulate and that court agrees.

(b) In such an action a complaint shall be served with an authenticated copy of the summons. The complaint need not be verified, but shall state the grounds upon which a review is sought. Service upon a commissioner or agent authorized by the commission to accept service constitutes complete service on all parties, but there shall be left with the person so served as many copies of the summons and complaint as there are defendants, and the commission shall mail one copy to each other defendant.

(c) The commission shall serve its answer to the complaint within 20 days after the service of the complaint. Except as provided in par. (cm), any other defendant may serve an answer to the complaint within 20 days after the service of the complaint, which answer may, by way of counterclaim or cross complaint, ask for the review of the order or award referred to in the complaint, with the same effect as if the defendant had commenced a separate action for the review of the order or award.

NOTE: Par. (c) is shown as amended eff. 7-1-16 by 2015 Wis. Act 180. Prior to 7-1-16 it reads:

(c) Except as provided in par. (cm), the commission shall serve its answer within 20 days after the service of the complaint, and, within the like time, the adverse party may serve an answer to the complaint, which answer may, by way of counterclaim or cross complaint, ask for the review of the order or award referred to in the complaint, with the same effect as if the party had commenced a separate action for the review thereof.

(cm) If a defendant in an action brought under par. (a) is an insurance company, the insurance company may serve an answer to the complaint within 45 days after the service of the complaint.

NOTE: Par. (cm) is shown as amended eff. 7-1-16 by 2015 Wis. Act 180. Prior to 7-1-16 it reads:

(cm) If an adverse party to the proceeding brought under par. (a) is an insurance company, the insurance company may serve an answer to the complaint within 45 days after the service of the complaint.

(d) The commission shall make return to the court of all documents and papers on file in the matter, all testimony that has been taken, and the commission's order, findings, and award. Such return of the commission when filed in the office of the clerk of the circuit court shall, with the papers specified in s. 809.15, constitute a judgment roll in the action; and it shall not be necessary to have a transcript approved. The action may thereupon be brought on for hearing before the court upon the record by any party on 10 days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge.

(e) Upon such hearing, the court may confirm or set aside such order or award; and any judgment which may theretofore have been rendered thereon; but the same shall be set aside only upon the following grounds:

1. That the commission acted without or in excess of its powers.

2. That the order or award was procured by fraud.

3. That the findings of fact by the commission do not support the order or award.

(2) Upon the trial of an action for review of an order or award the court shall disregard any irregularity or error of the commission, the department, or the division unless it is made to affirmatively appear that the plaintiff was damaged by that irregularity or error.

(3) The record in any case shall be transmitted to the department or the division within 5 days after expiration of the time for appeal from the order or judgment of the court, unless an appeal is taken from that order or judgment.

(4) Whenever an award is made against the state the attorney general may bring an action for review thereof in the same manner and upon the same grounds as are provided by sub. (1).

(5) When an action for review involves only the question of liability as between the employer and one or more insurance companies or as between several insurance companies, a party that has been ordered by the department, the division, the commission, or a court to pay compensation is not relieved from paying compensation as ordered.

(6) If the commission's order or award depends on any fact found by the commission, the court shall not substitute its judgment for that of the commission as to the weight or credibility of the evidence on any finding of fact. The court may, however, set aside the commission's order or award and remand the case to the commission if the commission's order or award depends on any material and controverted finding of fact that is not supported by credible and substantial evidence.

History: 1973 c. 150; 1975 c. 199; Sup. Ct. Order, 73 Wis. 2d xxxi (1976); 1977 c. 29; 1977 c. 187 ss. 59, 135; 1977 c. 195, 272, 447; Sup. Ct. Order, 83 Wis. 2d xiii (1978); 1979 c. 278; 1981 c. 390 s. 252; 1983 a. 98, 122, 538; 1985 a. 83; 1997 a. 187; 2001 a. 37; 2005 a. 172, 442; 2015 a. 55, 180.

Judicial Council Committee's Note, 1976: The procedure for initiating a petition for judicial review under ch. 102 is governed by the provisions of s. 102.23 rather than the provisions for initiating a civil action under s. 801.02. [Re Order effective Jan. 1, 1977]

The fact that a party appealing from a DILHR order as to unemployment compensation labeled his petition "under 227.15" [now 227.52], is immaterial since the circuit court had subject matter jurisdiction. An answer by the department that s. 227.15 [now 227.52] gave no jurisdiction amounted to an appearance, and the department could not later claim that the court had no personal jurisdiction because the appellant had not served a summons and complaint. Lees v. DILHR, 49 Wis. 2d 491, 182 N.W.2d 245 (1971).

A finding of fact, whether ultimate or evidentiary, is still in its essential nature a fact, whereas a conclusion of law accepts those facts, and by judicial reasoning results from the application of rules or concepts of law to those facts whether undisputed or not. Kress Packing Co. v. Kottwitz, 61 Wis. 2d 175, 212 N.W.2d 97 (1973).

A challenge to the constitutionality of sub. (1) was not sustained since it is manifest from the statute that the legislature intended to have the department be the real party in interest and not a mere nominal party. Hunter v. DILHR, 64 Wis. 2d 97, 218 N.W.2d 314 (1974).

When the claimant timely appealed an adverse worker's compensation decision in good faith, but erroneously captioned the appeal, the trial court abused its discretion by dismissing the action. Cruz v. DILHR, 81 Wis. 2d 442, 260 N.W.2d 692 (1978).

An employer whose unemployment compensation account is not affected by the commission's determination has no standing to seek judicial review. Cornwell Personnel Associates v. DILHR, 92 Wis. 2d 53, 284 N.W.2d 706 (Ct. App. 1979).

An agency's mixed conclusions of law and findings of fact may be analyzed by using 2 methods: 1) the analytical method of separating law from fact; or 2) the practical or policy method that avoids law and fact labels and searches for a rational basis for the agency's decision. United Way of Greater Milwaukee v. DILHR, 105 Wis. 2d 447, 313 N.W.2d 858 (Ct. App. 1981).

A failure to properly serve the commission pursuant to sub. (1) (b) results in a jurisdictional defect rather than a mere technical error. Gomez v. Labor and Industry Review Commission, 153 Wis. 2d 686, 451 N.W.2d 475 (Ct. App. 1989).

Discretionary reversal is not applicable to judicial review of LIRC orders under ch. 102. There is no power to reopen a matter that has been fully determined under ch. 102. Kwaterski v. Labor and Industry Review Commission, 158 Wis. 2d 112, 462 N.W.2d 534 (Ct. App. 1990).

A LIRC decision is to be upheld unless it directly contravenes the words of the statute, is clearly contrary to legislative intent, or is otherwise without a rational basis. Wisconsin Electric Power Co. v. Labor and Industry Review Commission, 226 Wis. 2d 778, 595 N.W.2d 23 (1999), 97-2747.

An appeal under s. 102.16 (2m) (e) of a department determination may be served under sub. (1) (b) on the department or the commission. McDonough v. Department of Workforce Development, 227 Wis. 2d 271, 595 N.W.2d 686 (1999), 97-3711.

Under sub. (1) (a), judicial review is available only from an order or award granting or denying compensation. Judicial review by common law certiorari was not available for a claim that LIRC failed to act within the statutory time limitations under s. 102.18 (4), which would be subject to judicial review of any subsequent order or award granting or denying compensation in that case. Vidal v. Labor and Industry Review Commission, 2002 WI 72, 253 Wis. 2d 426, 645 N.W.2d 870, 00-3548.

The plaintiff complied with the requirement of sub. (1) that every adverse party be made a defendant by naming the defendant's insurer in the caption of the summons and complaint, which were timely filed and served even though the insurer was not mentioned in the complaint's body. Selaiden v. Columbia Hospital, 2002 WI App 99, 253 Wis. 2d 553, 644 N.W.2d 690, 01-2046.

Sub. (5) requires an employer to make payment to a disabled employee pending appeal of a date of injury defense in an occupational disease case when the employer's liability is not disputed on appeal and the only question is who will pay benefits. Bosco v. Labor and Industry Review Commission, 2004 WI 77, 272 Wis. 2d 586, 681 N.W.2d 157, 03-0662.

Because s. 102.18 (1) (bp) specifically allows for the imposition of bad faith penalties on an employer for failure to pay benefits and because sub. (5) specifically directs the employer to pay benefits pending an appeal when the only issue is who will pay benefits, an employer may be subject to bad faith penalties under s. 102.18 (1) (bp), independent from its insurer, when it fails to pay benefits in accordance with sub. (5). Bosco v. Labor and Industry Review Commission, 2004 WI 77, 272 Wis. 2d 586, 681 N.W.2d 157, 03-0662.

Under *Miller* an "adverse party" for worker's compensation actions in circuit court includes any party bound by the Commission's order or award granting or denying compensation to the claimant. The interests of an adverse party need not necessarily be adverse to the party filing a circuit court action. Xcel Energy Services, Inc. v. LIRC, 2012 WI App 19, 339 Wis. 2d 413, 810 N.W.2d 865, 11-0203.

Default judgment is unavailable to plaintiffs under this section when the employer has timely answered. Ellis v. Department of Administration, 2011 WI App 67, 333 Wis. 2d 228, 800 N.W.2d 6, 10-1374.

Failure to name an adverse party as a defendant under sub. (1) (a) deprives the circuit court of competency and requires dismissal of the complaint. "Adverse party" includes every party whose interest in relation to the judgment or decree appealed from is in conflict with the modification or reversal sought by the action for judicial review. Xcel Energy Services, Inc. v. Labor and Industry Review Commission, 2013 WI 64, 349 Wis. 2d 234, 833 N.W.2d 665, 11-0203.
The only reasonable reading of sub. (1) (c)'s plain language is that a stipulation is only required from active parties. To require the Department of Workforce Development to obtain stipulations to venue from parties who have not responded to the action and have not expressed any interest in participating is unreasonable and does not further the purpose of preventing inconvenience or hardship to parties involved in the action. The stipulation of the parties is not required prior to the filing of the action. Department of Workforce Development v. Labor and Industry Review Commission, 2015 WI App 56, ___ Wis. 2d ___, ___ N.W.2d ___, 14-2221.
Judicial review of workmen's compensation cases. Haferman, 1973 WLR 576.

103.06 Worker classification compliance.

(1) *Definitions.* In this section:

(a) "Business day" means any day on which the offices of the department are open.

(b) "Employee" means any of the following who is employed by an employer:

1. For purposes of compliance with the requirement specified in sub. (3) (a) 1., an employee, as defined in s. 103.001 (5).

2. For purposes of compliance with the requirement specified in sub. (3) (a) 2., an employee, as defined in s. 102.07.

3. For purposes of compliance with the requirement specified in sub. (3) (a) 3., an employee, as defined in rules promulgated under s. 103.05.

4. For purposes of maintaining records under sub. (3) (a) 4. as required under rules promulgated under s. 103.02, an employee, as defined in s. 103.001 (5).

5. For purposes of maintaining records under sub. (3) (a) 4. as required under rules promulgated under s. 104.035, an employee, as defined in s. 104.01 (2).

6. For purposes of listing deductions from wages under sub. (3) (a) 4. as required under s. 103.457, an employee, as defined in s. 103.001 (5).

7. For purposes of compliance with the requirement specified in sub. (3) (a) 5., an employee, as defined in s. 108.02 (12).

(c) "Employer" means any of the following that is engaged in the work described in s. 108.18 (2) (c):

1. For purposes of compliance with the requirement specified in sub. (3) (a) 1., an employer, as defined in s. 103.001 (6).

2. For purposes of compliance with the requirement specified in sub. (3) (a) 2., an employer, as defined in s. 102.04.

3. For purposes of compliance with the requirement specified in sub. (3) (a) 3., an employer, as defined in rules promulgated under s. 103.05.

4. For purposes of maintaining records under sub. (3) (a) 4. as required under rules promulgated under s. 103.02, an employer, as defined in s. 103.01 (1).

5. For purposes of maintaining records under sub. (3) (a) 4. as required under rules promulgated under s. 104.035, an employer, as defined in s. 104.01 (3).

6. For purposes of listing deductions from wages under sub. (3) (a) 4. as required under s. 103.457, an employer, as defined in s. 103.001 (6).

7. For purposes of compliance with the requirement specified in sub. (3) (a) 5., an employer, as defined in s. 108.02 (13).

(2) *Worker classification compliance; duties of department.* For purposes of promoting and achieving compliance by employers with the laws specified in sub. (3) (a) through the proper classification of persons performing services for an employer as employees and nonemployees, the department shall do all of the following:

(a) Educate employers, employees, nonemployees, and the public about the proper classification of persons performing services for an employer as employees and nonemployees.

(b) Receive and investigate complaints alleging violations of the requirements specified in sub. (3) (a), or investigate any such alleged violations on its own initiative, and, if the department finds that an employer is in violation of a requirement specified in sub. (3) (a), order the employer to stop work and pay a forfeiture as provided under sub. (5).

(c) Refer complaints of misclassification of employees as nonemployees to other state or local agencies that administer laws whose enforcement depends on the proper classification of employees.

(d) Cooperate with other state or local agencies in the investigation and enforcement of laws whose enforcement depends on the proper classification of employees.

(e) Appoint attorneys licensed to practice in this state as appeal tribunals to conduct hearings and issue decisions under sub. (6) (b).

(3) *Compliance requirements.*

(a) For purposes of ensuring that an employer is properly classifying the persons performing services for the employer as employees and nonemployees, the department may require an employer to prove all of the following:

1. That the employer is maintaining records identifying all persons performing work for the employer, including the name, address, and social security number of each of those persons.

2. That the employer is maintaining worker's compensation coverage for its employees as required under s. 102.28 (2).

3. That the employer has provided to the department the information required under s. 103.05 with respect to each newly hired employee of the employer.

4. That the employer is maintaining records of the hours worked by its employees, the wages paid to those employees, any deductions from those wages, and any other information that the employer is required to keep under rules promulgated under s. 103.02 or 104.035, and is listing deductions from wages as required under s. 103.457.

5. That the employer is in compliance with ch. 108.

(b) Any agreement between an employer and employee purporting to waive or modify any requirement under par. (a) is void.

(4) *Compliance investigations.*

(a) The department may conduct investigations to ensure compliance with the requirements specified in

sub. (3) (a). In conducting an investigation, the department may do any of the following:

1. Enter and inspect any place of business or place of employment and examine and copy any records that the employer is required to keep under rules promulgated under s. 103.02 or 104.035; any books, registers, payroll records, records of wage withholdings, records of work activity and hours of work, and records or indicia of the employment status of persons performing work for the employer; and any other records relating to compliance with the requirements specified in sub. (3) (a).

2. Determine the identity and activities of any person performing work at any location where the work described in s. 108.18 (2) (c) is being performed.

3. Interview and obtain statements in writing from any employer or person performing work or present at any location where the work described in s. 108.18 (2) (c) is being performed with respect to the names and addresses of persons performing work for the employer, the payment of wages to and hours worked by those persons, and any other information relating to the remuneration of those persons and the nature and extent of services performed by those persons.

(b) The department may conduct the activities under par. (a) 1. to 3. at any location where the work described in s. 108.18 (2) (c) is performed by or for an employer. In addition, the department may conduct the activities specified under par. (a) 1. at any other location where the records specified in par. (a) 1. are maintained by an employer or an agent of an employer.

(c) If in the course of an investigation of an employer the department determines that there is reason to believe that the employer is not the prime contractor of the work being performed by or for the employer, the department shall seek to determine the identity of the prime contractor. If the department identifies any person other than the employer that it believes to be the prime contractor of the work being performed, the department, for informational purposes, shall serve on that person copies of any notices or orders served on the employer under sub. (5) with respect to the work. Failure of the department to serve a copy of a notice or order under sub. (5) on a person believed to be a prime contractor does not relieve the employer from any liability arising out of the notice or order or impair the department from pursuing any remedy relating to the notice or order.

(5) *Stop work orders and civil penalties.*

(a) If after an investigation under sub. (4) the department determines that an employer has failed to demonstrate compliance with any of the requirements specified in sub. (3) (a), the department may serve on the employer a notice of the department's intent to issue an order requiring the employer to stop work at the locations specified in the notice. The notice shall advise the employer that the order will be issued within 3 business days after the date of the notice unless within those 3 business days the employer provides information satisfactory to the department indicating that the employer is in compliance with the requirements specified in sub. (3) (a) at each location specified in the notice.

(b) If within 3 business days after service of a notice under par. (a) an employer does not demonstrate compliance with the requirements listed under sub. (3) (a) with respect to a location specified in the notice, the department may serve an order on the employer requiring the employer to stop work at the locations specified in the order. The order shall advise the employer that the employer may request a hearing on the order under sub. (6) (a), describe how the employer may request a hearing, and be accompanied by a form for requesting a hearing. The order shall take effect as provided in the order and shall remain in effect until the employer provides evidence satisfactory to the department that it is in compliance with the requirements under sub. (3) (a) and pays the forfeiture under par. (c).

(c) An employer that does not stop work as required under an order under par. (b) may be required to forfeit $250 for each day beginning on the day on which the order is served and ending on the day on which the employer provides evidence satisfactory to the department that it has stopped work as required under the order or is in compliance with sub. (3) (a), whichever occurs first.

(d) An order under this subsection is final unless appealed under sub. (6). An order under this subsection is subject to review only as provided in sub. (6) and not as provided in ch. 227.

(6) *Appeal of stop work order and civil penalty.*

(a) Any employer that is aggrieved by an order to stop work under sub. (5) (b) may appeal the order by filing with the department a written request for a hearing to review the order within 10 days after service of the order. If a request for a hearing is filed within those 10 days, the department shall hold the hearing within 14 days after receipt of the request. The order to stop work shall be automatically stayed from the filing of the request for a hearing until the date on which a decision on the appeal is issued under par. (b). Notwithstanding the stay of the order to stop work, the forfeiture under sub. (5) (c) shall continue to accrue as provided in sub. (5) (c).

(b)

1. The hearing shall be held before an appeal tribunal and shall be conducted in the manner described in s. 108.09 (5). Within 7 days after the hearing, the appeal tribunal shall issue a decision in writing affirming, reversing, or modifying the order to stop work and forfeiture.

2. If the appeal tribunal finds that the employer has at all times been in compliance with the requirements specified in sub. (3) (a), the appeal tribunal shall reverse the order to stop work and forfeiture.

3. If the appeal tribunal finds that the employer has not complied with the requirements specified in sub. (3) (a), the automatic stay under par. (a) shall be lifted and the order to stop work shall remain in effect until the employer provides evidence satisfactory to the department that the employer is in compliance with the requirements specified in sub. (3) (a) and pays the forfeiture under sub. (5) (c).

4. A decision of an appeal tribunal under this paragraph is final unless a review of the decision is requested under par. (c). A decision of an appeal tribunal under this paragraph is subject to review only as provided in par. (c) and not as provided in ch. 227.

(c) The employer or the department may request a review of an appeal tribunal's decision by petitioning the commission for review of the decision within 21 days after the decision was mailed to the employer's last-known address. The commission shall conduct the review in the manner described in s. 108.09 (6). An order to stop work that is in effect under par. (b) 3. shall remain in effect as provided in par. (b) 3. during the pendency of a review under this paragraph. A decision of the commission under this paragraph is final and the provisions of s. 108.10 (6) and (7) shall apply to the decision unless judicial review of the decision is requested under par. (d). A decision of the commission under this paragraph is subject to judicial review only as provided in par. (d) and not as provided in ch. 227.

(d) The employer or the department may commence an action for the judicial review of a decision of the commission under par. (c) within 30 days after the decision was mailed to the employer's last-known address. The scope of judicial review under this paragraph, and the manner of that review insofar as is applicable, shall be the same as that provided in s. 108.09 (7). An order to stop work that is in effect under par. (b) 3. shall remain in effect as provided in par. (b) 3. during the pendency of a review under this paragraph.

(e) In addition to any forfeiture for which the employer may be liable under sub. (5) (c) and any other penalty for which the employer may be liable for a violation of a requirement specified in sub. (3) (a), any employer that violates a final order to stop work of the department under sub. (5) (b) or final decision of an appeal tribunal, the commission, or a court affirming such an order under par. (b), (c), or (d) is subject to a forfeiture of $1,000 for each day of violation. An employer may seek review of a forfeiture imposed under this paragraph in the same manner as an order to stop work is reviewed under pars. (a) to (d).

(7) *Other enforcement action not precluded.* An investigation, order, or decision under sub. (4), (5), or (6) does not preclude or otherwise impair or affect any other action that is required or permitted to enforce a requirement under this chapter or under ch. 101, 102, 104, 108, 109, or 111, including any investigation, order, or decision; any civil or criminal action or administrative proceeding; or any obligation for any payment, reimbursement, assessment, surcharge, forfeiture, or other remedy or penalty under any of those chapters.

(8) *Recovery of unpaid forfeitures.*

(a) If an employer fails to pay a forfeiture imposed under sub. (5) (c) or (6) (e), the department has a perfected lien upon the employer's right, title, and interest in all of its real and personal property located in this state in the amount finally determined to be owed, plus costs. Except when creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective when the stop work order or decision affirming the stop work order becomes final and shall continue until the amount owed, plus costs and interest to the date of payment, is paid. The employer shall pay interest on the amount owed at the rate of 1 percent per month or fraction of a month from the date on which the amount became due. If a lien is initially barred or stayed by bankruptcy or other insolvency law, the lien shall become effective immediately upon expiration or removal of the bar or stay. The perfected lien does not give the department priority over any lienholders, mortgagees, purchasers for value, judgment creditors, or pledges whose interests have been recorded before the lien of the department is recorded.

(b)

1. If an employer fails to pay to the department any amount found to be due the department in proceedings under this section and if no proceeding for review is pending and the time for taking an appeal or review has expired, the department or any authorized representative of the department may issue a warrant directed to the clerk of circuit court for any county of the state. The clerk of circuit court shall enter in the judgment and lien docket the name of the employer mentioned in the warrant and the amount of the forfeiture, interest, costs, and other fees for which the warrant is issued and the date when the warrant is entered. A warrant so entered shall be considered in all respects to be a final judgment constituting a perfected lien upon the employer's right, title, and interest in all real and personal property located in the county where the warrant is entered. The lien is effective when the department issues the warrant and shall continue until the amount owed, including interest, costs, and other fees to the date of payment, is paid. After a warrant is entered in the judgment and lien docket, the department or any authorized representative of the department may file an execution with the clerk of circuit court for filing by the clerk of circuit court with the sheriff of any county where real or personal property of the employer is found, commanding the sheriff to levy upon and sell sufficient real and personal property of the employer to pay the amount stated in the warrant in the same manner as upon an execution against property issued upon the judgment of a court of record, and to return the warrant of the department and pay to the department the money collected by virtue of the execution within 60 days after receipt of the warrant.

Down
Up

2. The clerk of circuit court shall accept, file, and enter each warrant, satisfaction, release, or withdrawal under this subsection in the judgment and lien docket without prepayment of any fee, but the clerk of circuit court shall submit a statement of the proper fee semiannually to the department covering the period from January 1 to June 30 and July 1 to December 31 unless a different billing period is agreed to between the clerk of circuit court and the department. The fees shall then be paid by the department, but the fees provided by s. 814.61 (5) for entering the warrants shall be added to the amount of the warrant and collected from the employer when satisfaction or release is presented for entry.

(c) When the penalties set forth in a warrant together with interest and other fees to the date of payment and all costs due the department have been paid to the department, the department shall issue a satisfaction of the warrant and file that satisfaction with the clerk of circuit court. The clerk of circuit court shall immediately enter a satisfaction of the judgment on the judgment and

lien docket. The department shall send a copy of the satisfaction to the employer.

(d) If the department finds that the interests of the state will not be jeopardized, the department, upon such conditions as it may exact, may issue a release of any warrant with respect to any real or personal property upon which the warrant is a lien or cloud upon title. The clerk of the circuit court shall enter the release upon presentation of the release to the clerk and payment of the fee for filing the release and the release shall be conclusive proof that the lien or cloud upon the title of the property covered by the release is extinguished.

(e) If the department issues an erroneous warrant, the department shall issue a notice of withdrawal of the warrant to the clerk of circuit court for the county in which the warrant is filed. The clerk shall void the warrant and any liens attached by the warrant.

(9) *Levy for delinquent forfeitures.* If any employer who is liable for any forfeiture under sub. (5) (c) or (6) (e) neglects or refuses to pay that forfeiture after the department has made demand for payment, the department may collect that forfeiture and expenses of the levy by levy upon any property belonging to the employer. Section 108.225 applies to a levy under this subsection except as follows:

(a) For purposes of a levy under this subsection, "debt" as used in s. 108.225 means a delinquent forfeiture under sub. (5) (c) or (6) (e) or any liability of a 3rd party for failure to surrender to the department property or rights to property subject to levy after proceedings under ss. 108.10 and 108.225 to determine that liability.

(b) Section 108.225 (16) (a) and not s. 108.225 (16) (am) applies to a levy under this subsection.

History: 2009 a. 292; 2015 a. 55.

106.09 Public employment offices.

(1) The department shall establish and conduct free employment agencies, license and supervise the work of private employment offices, do all in its power to bring together employers seeking employees and working people seeking employment, make known the opportunities for self-employment in this state, aid in procuring employment for the blind adults of the state, aid in inducing minors to undertake promising skilled employments, provide industrial or agricultural training for vagrants and other persons unsuited for ordinary employments, and encourage wage earners to insure themselves against distress from unemployment. It shall investigate the extent and causes of unemployment in this state and the remedies therefor in this and other countries, and it shall devise and adopt the most efficient means within its power to avoid unemployment, to provide employment, and to prevent distress from involuntary idleness.

(2) Any county, city, town or village may enter into an agreement with the department for such period of time as may be deemed desirable for the purpose of establishing and maintaining local free employment offices, and it shall be lawful for any county, city, town or village to appropriate and expend the necessary money and to permit the use of public property for the joint establishment and maintenance of such offices as may be agreed upon, or in counties containing 250,000 inhabitants or more in any city, town or village therein to purchase a site and construct necessary buildings. Provided, that in any county, city, village or town therein, wherein there is a citizens' committee on unemployment, such committee may rent, lease, purchase or construct necessary buildings for the joint establishment and maintenance of such free employment office, subject to the approval of such plans by the department. The department may establish such free employment offices as it deems necessary to carry out the purposes of ch. 108. All expenses of such offices, or all expenses not defrayed by the county, city, town or village in which an office is located, shall be paid from the appropriations to the department provided in s. 20.445 (1) (ga) and (n).

(3) The department may rent, furnish and equip, except as provided in sub. (2), such offices as may be needed in cities for the conduct of its affairs. All payments arising under this section shall be charged against the proper appropriation for the department.

(5) The department is authorized and directed to cooperate with the U.S. employment service in the administration of its functions.

(7) The department may, by rule, fix and collect fees for provision of employment services authorized but not funded by the U.S. employment service.

History: 1971 c. 185 ss. 1, 7; 1971 c. 228 ss. 25, 42; Stats. 1971 s. 101.23; 1973 c. 90 s. 559; 1979 c. 34 s. 2102 (25) (a); 1981 c. 36 s. 45; 1983 a. 27; 1985 a. 29 ss. 1650, 3202 (29); 1995 a. 27 s. 3692; Stats. 1995 s. 106.09; 2003 a. 33.

Cross-reference: See also ch. DWD 310, Wis. adm. code.

106.19 Trade adjustment assistance overpayment waiver.

(1) On or before October 8, 1989, the department shall establish a policy for waiving recovery of overpayments made under the federal adjustment assistance for workers program under 19 USC 2272 to 2318.

(2) The waiver policy shall require the department to grant a waiver if all of the following apply:

(a) The overpayment was not the fault of the person who received it.

(b) Requiring repayment would be contrary to equity and good conscience.

(3) The department shall do all of the following:

(a) Notify all of the following persons of the waiver policy and the person's right to request a waiver:

1. A person from whom the department attempts to recover an overpayment made under 19 USC 2272 to 2318.

2. A person from whom the department is in the process of recovering an overpayment made under 19 USC 2272 to 2318.

(b) Comply with the guidelines issued by the U.S. secretary of labor under 19 USC 2315 in connection with the waiver policy.

(c) Establish the waiver policy by rule, using the procedure under s. 227.24.

History: 1989 a. 31; 1995 a. 27 s. 3719; Stats. 1995 s. 106.19.

Cross-reference: See also ch. DWD 135, Wis. adm. code.

990.01 Construction of laws; words and phrases.
In the construction of Wisconsin laws the words and phrases which follow shall be construed as indicated unless such construction would produce a result inconsistent with the manifest intent of the legislature:

(1) GENERAL RULE. All words and phrases shall be construed according to common and approved usage; but technical words and phrases and others that have a peculiar meaning in the law shall be construed according to such meaning.

Wisconsin Administrative Code

NOTE: Please refer to the Wisconsin Administrative Code for an up-to-date version as code sections may have been amended, added or repealed. Prior to 7/1/97 the following Administrative Codes had an "ILHR" prefix rather than the "DWD" prefix. (The Department of Workforce Development used to be known as the Department of Industry, Labor and Human Relations.)

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Chapter DWD 100

DEFINITIONS

DWD 100.01 General rule. DWD 100.02 Definitions.

Note: Chapter ILHR 100 was renumbered Chapter DWD 100 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 100.01 General rule. Except as otherwise provided or where the context clearly requires otherwise, the definitions in ch. 108, Stats., shall apply to the terms used in chs. DWD 100 to 150.

History: 1−2−56; renum. to be ILHR 100.01 under s. 13.93 (2m) (b) 1. and 2., Stats., Register, August, 1987, No. 380; am. Register, October, 1994, No. 466, eff. 11−1−94, am. Register, September, 1995, No. 477, eff. 10−1−95.

DWD 100.02 Definitions. In chs. DWD 100 to 150, the following words and phrases have the designated meanings unless a different meaning is expressly provided or the context clearly indicates a different meaning:

(1) "Administrative law judge" means the individual appointed by the department under s. 108.09 (3), Stats., to conduct hearings arising under ch. 108, Stats.

(2) "Agent state" means any state in which a person files a claim for unemployment benefits from the state of Wisconsin.

(3) "Agricultural labor" has the meaning specified in s. 108.02 (2), Stats.

(4) "Asset" means any resource of the transferor used in the business, whether owned or not and whether tangible or intangible, including real estate, inventories, machinery and equipment, furniture and fixtures, contracts, franchises, licenses, goodwill, accounts receivable, contracts for leased employees and customer lists. The outstanding shares of stock of an employer which is a corporation are not assets of the issuing corporation for purposes of s. 108.16 (8), Stats.

(5) "Base period" has the meaning specified in s. 108.02 (4), Stats.

(6) "Benefit year" has the meaning specified in s. 108.02 (5), Stats.

(7) "Business activity" includes the product or the service provided by a business.

(8) "Carrier" means a person engaged in the hauling of passengers or freight by motor vehicle and includes a person engaged as a "common motor carrier", under s. 194.01 (1), Stats., as a "contract motor carrier", under s. 194.01 (2), Stats., or as a "private motor carrier", under s. 194.01 (11), Stats.

(9) "Commission" means the labor and industry review commission.

(10) "Compromise" means department agreement to accept payment of less than the full amount of contributions, payments in lieu of contributions, interest, penalties and costs, as applicable, owed by an employer, former employer or by an individual liable for corporate liabilities, in complete fulfillment of the outstanding liability.

(11) "Constructively paid" means credited to or set apart for an employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment may be made, such that the amounts so credited or set aside are available for the employee to draw upon at any time.

(12) "Contract operator" means an individual who contracts to lease a motor vehicle to a carrier for use in the carrier's business.

(13) "Contribution report" means the written document or electronic transmission, submitted in the manner prescribed by the department, in which an employer makes a quarterly report of total employment or wages or both to the department.

(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), Stats., are subject to a tax under the Federal Unemployment Tax Act and are not subject to a tax under any other unemployment insurance law.

(15) "Customary occupation" means the occupation for which a claimant is most qualified based on the claimant's skills, abilities, training, education and work experience.

(16) "Department" means the department of workforce development.

(16m) "Disaster" means a fire, flood, or other physical occurrence beyond the employer's control that is caused naturally or accidentally.

(17) "Ease of access" means the physical characteristics of a building which allow a person with a temporary or permanent incapacity or disability to enter, circulate within and leave the building and to use the public toilet facilities and passenger elevators in the building without assistance.

(18) "Employee" has the meaning specified in s. 108.02 (12), Stats.

(19) "Employer" has the meaning specified in s. 108.02 (13), Stats.

(20) "Employer's account" has the meaning specified in s. 108.02 (14), Stats.

(21) "Employing unit" means any employer or any other person who engages one or more individuals to perform services for pay, whether or not that person is subject to the reimbursement financing or contribution requirements of ch. 108, Stats.

(22) "Employment" has the meaning specified in s. 108.02 (15), Stats.

(23) "Employment relationship" means a relationship between an employee and an employer in which the employee performs services for pay for the employer under an informal or formal agreement of employment and which continues when the employment is temporarily suspended for a definite, discernible period of time.

(24) "FUTA" means the federal unemployment tax act, subtitle C, ch. 23 of the internal revenue code, 26 USC 3301 to 3311.

(25) "Fax" means facsimile images electronically transmitted and printed, and the act of transmitting such images.

(26) "First shift" means a work period which begins and ends between 6 a.m. and 6 p.m.

(27) "Forest products manufacturer" means a business engaged in the processing of logs, and includes pulp mills, saw mills or other manufacturing plants.

(28) "Full−time" means work which is performed for 32 or more hours in a week.

(29) "Government unit" has the meaning specified in s. 108.02 (17), Stats.

(31) "Health care facility" means any nursing home, community−based residential facility, hospital, clinic, office of a physician or other health care professional, mental health institute, center for the developmentally disabled, alcohol or drug treatment center or other facility providing inpatient or outpatient

health care to patients, whether licensed, approved or exempted under state law or certified under federal law.

(32) "Hearing office" means an office of the unemployment insurance division of the department of workforce development which is responsible for scheduling and conducting hearings arising under ch. 108, Stats.

(33) "Informer" means an individual who is receiving a reward or payment for information relating to or assisting in an investigation of a possible violation of law, but not an undercover agent or other individual who is paid for the performance of investigative services or who receives such payment regardless of whether information relating to or assisting in an investigation of a possible violation of law is actually provided.

(35) "Labor market area" means a geographical area in which there are jobs deemed to be suitable work for the claimant and which encompasses the geographical area in which workers with similar occupational skills customarily travel to obtain or perform suitable work.

(36) "Lag period" means the period between the end of the base period and the valid new claim week under s. 108.02 (25m), Stats.

(37) "Logging contractor" means a person who contracts for the cutting of timber, the hauling of logs or the skidding of logs, purchases timber to cut, or sells unmanufactured forest products.

(38) "Motor vehicle" has the meaning designated in s. 194.01 (7), Stats.

(39) "Multiemployer benefit plan" means a benefit plan maintained pursuant to one or more collective bargaining agreements between 2 or more employers and one or more employee organizations under which each employer makes contributions to provide sickness or accident disability payments through the plan to eligible employees or their dependents.

(40) "Nonprofit organization" has the meaning specified in s. 108.02 (19), Stats.

(41) "Partial unemployment" and "partially unemployed" have the meaning designated in s. 108.02 (20), Stats.

(42) "Payroll" has the meaning specified in s. 108.02 (21), Stats.

(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 insurance law of any other state, which is payroll under s. 108.02 (21), Stats.

(44) "Penalty" includes any tardy payment fee or late filing fee provided for in ch. 108, Stats., and a forfeiture assessed under s. 108.04 (11) (c), Stats., but does not include any fine or restitution arising under s. 108.24, Stats.

(44m) "Person with a disability" means any person who, by reason of an impairment of sight, hearing or speech, may be hindered or prevented from communicating at a hearing as effectively as a person who does not have such an impairment.

(45) "Piece cutter" means a person who fells timber, removes branches from timber, saws timber into logs, or stacks logs.

(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 insurance benefits, and likely to need reemployment services in order to make a successful transition to new employment.

(47) "Public housing agency" means any state, county, municipality, or other governmental entity or public body, or agency or instrumentality thereof, which is authorized by the U.S. department of housing and urban development to engage in or assist in the development or operation of low−income housing.

(48) "Quarter" has the meaning designated in s. 108.02 (21m), Stats.

(49) "Reemployment services" means job search assistance and job placement services, such as: assessment, testing, counseling, provision of occupational and labor market information, job search workshops, referrals to potential employers, and other similar services.

(50) "Representative of the department" means any person employed by the department of workforce development who has job duties involving the taking, processing or adjudication of benefit claims.

(51) "Same business or operation" means operation under the same unemployment 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 110.09 but for an unpaid liability, unless the account was reopened under s. DWD 110.10.

(52) "Settle" means to resolve a pending determination, decision or action by agreement.

(53) "Sexual contact" has the meaning designated in s. 940.225 (5) (b), Stats.

(54) "Sexual intercourse" has the meaning designated in s. 940.225 (5) (c), Stats.

(55) "Shift" means the arrangement of hours a claimant is required to work. "First shift" means a work period which begins and ends between 6 a.m. and 6 p.m.

(56) "Shipper" means a customer of the carrier who arranges or contracts for the transportation of goods.

(57) "Sickness or accident disability payment" means any payment made on account of sickness or accident disability which is considered wages under s. 108.02 (26), Stats.

(58) "Similar work" means work in a claimant's labor market which, when compared with a particular job, has substantially equivalent duties and responsibilities and requires substantially equivalent skills, abilities and knowledge.

(59) "Skidding operator" means a person who removes logs from the woods to a roadside landing or other collection point for hauling.

(60) "Successor" means the transferee when a transfer of a business has occurred under ch. DWD 115 and ch. 108, Stats., and when either the department finds successorship status under s. 108.16 (8) (c), (d) or (e), Stats., or the transferee requests successorship status under s. 108.16 (8) (b), Stats.

(61) "Suitable work" means work that is reasonable considering the claimant's training, experience, and duration of unemployment as well as the availability of jobs in the labor market.

(62) "Total unemployment" and "totally unemployed" have the meaning designated in s. 108.02 (25), Stats.

(63) "Transfer percentage" means the percent of the transferor's total payroll for a recent and representative period preceding the transfer date, which is properly assignable to the transferred business. The recent and representative period shall be the four most recently completed calendar quarters preceding the transfer date, except that the period may be expanded to include the partial quarter immediately preceding the transfer if the transfer date did not fall on a quarter ending date and there was no payroll assignable to the transferred portion of the business in the four most recently completed quarters.

(64) "Transferee" means the person to whom an asset or business activity is transferred, whether or not that person is an employer before the transfer.

(65) "Transferor" means an employer which transfers an asset or business activity.

(66) "Unemployment insurance office" means an office of the unemployment insurance division of the department of workforce development which is responsible for the processing and adjudi-

cation of unemployment insurance claims and includes any itinerant office used by the division.

(67) "Unemployment insurance record" means any material that contains, records, or preserves written, drawn, printed, spoken, visual, digital, or electromagnetic information, regardless of physical form or characteristics:

(a) Relating to the wages earned by a worker from one or more employing units including supporting data, and which has been created or is being kept by the department in connection with the administration of ch. 108, Stats., or as required by federal law, and also includes the record on which an employer makes a quarterly report of total employment or wages or both to the department;

(b) Relating to records kept by the department in connection with the processing of a claim for benefits under ch. 108, Stats., or for other benefits or allowances under similar programs administered by the department pursuant to federal law; and

(c) Relating to records kept by the department concerning employers and employing units including but not limited to audit records, coverage records, successorship records, rating records, collection records, and related correspondence.

(68) "Wage report" has the meaning designated in s. 108.205, Stats.

(69) "Wage reporting" means the procedure by which employers comply with the wage reporting requirements under s. 108.205, Stats.

(70) "Wages" has the meaning designated in s. 108.02 (26), Stats.

(71) "Week" has the meaning designated in s. 108.02 (27), Stats.

(72) "Weekly certification" means the method by which a claimant submits information regarding the claimant's employment status and availability for work and which establishes a basis for the payment of unemployment benefits, including but not limited to voice recognition units and claim forms.

History: Renum. (2) (a), (b) and (d) from ILHR 101.001 (1), (2) and (4), cr. (1) and (2) (c), Register, October, 1994, No. 466, eff. 11−1−94,r. (2), (intro.), (b) and (c), cr. (25), (26) and (33), renum. (1) (a) to (j) to be (2), (5), (6), (15), (16), (19), (28), (34), (35) and (36), (1) (l) to (41), (1) (n) and (o) to (49) and (50), (1) (q) to (u) to be (61), (62), (70), (71) and (72), (2) (a) and (d) to (3) and (24), renum. (1) (intro.), (k), (m), (p) to 100.02 (intro.), (66), (46), (58) and am., renum. (11), (13) (14) and (21) from 110.001 (1), (7), (2) and (8) and am., renum. (60) and (63) from 115.001(9) and (10) and am., renum. (53) and (54) from 132.001 (7) and (8) and am., renum. (1) and (32) from 140.001 (1) and (5) and am., renum. (18), (20), (22), (29), (39), (40), (42) and (57) from 110.001 (4), (6) and (9) to (14), renum. (4), (7), (43), (64) and (65) from 115.001 (1), (2), (8), (11) and (12), renum. (23), (31) and (55) from 132.001 (5), (6) and (9), renum. (8), (12), (38) and (56) from 105.001 (1), (2), (4) and (5), renum. (27), (37), (45) and (59) from 107.001 (2) through (5), renum. (48), (68) and (69) from 111.001 (8) to (10), renum. (9) and (10) from 113.001 (2) and (3), renum. (9), (10), (44), (51) and (52) from 113.001 (2), (3), (8), (9) and (10), renum. (64) and (65) from 115.001 (1) and (2), renum. (30) and (17) from 140.19 (1) (a) and (b), renum. (47) and (67) from 149.001 (6) and (7), Register, September, 1995, No. 477, eff. 10−1−95; renum. (44m) from (30) and am., Register, June, 1997, No. 498, eff. 7−1−97; corrections in (51) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 2000, No. 537; am. (14), (32), (43), (46), (50), (51), (66) and (67) (intro.), cr. (16m), r. (34), Register, September, 2000, No. 537, eff. 10−1−00; CR 02−137: am. (28) Register April 2006 No. 604, eff. 5−1−06; **CR 08−019: am. (67) (intro.) Register July 2008 No. 631, eff. 8−1−08.**

Chapter DWD 101

WAGES FOR CONTRIBUTION PURPOSES

DWD 101.001 Definitions.
DWD 101.01 Purpose.
DWD 101.02 Remuneration excluded from the definition of wages.
DWD 101.03 Remuneration included in the definition of wages.
DWD 101.04 Prospective application of federal interpretations.
DWD 101.05 Value of room and meals.
DWD 101.06 Internal revenue code requirements.

Note: Chapter ILHR 101 was renumbered Chapter DWD 101 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 101.001 Definitions. (1) IN GENERAL. Except as provided in sub. (2), unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

(2) Notwithstanding ch. DWD 100 and unless the context clearly indicates a different meaning, in this chapter "employer" means any person who is or becomes subject to the reimbursement financing or contribution requirements of ch. 108, Stats., including multiemployer benefit plans and other third party payors which become liable under s. DWD 110.06.

History: Emerg. cr. (intro.) to (3), (5), (7) and (10), (4) renum. from ILHR 110.001 (9), (6) and (8) renum. from ILHR 110.12 (1) (a) and (b), (9) renum. from ILHR 110.001 (15) and am., eff. 2−19−93; cr. (intro.) to (3), (5), (7) and (10), (4) renum. from ILHR 110.001 (9), (6) and (8) renum. from ILHR 110.12 (1) (a) and (b), (9) renum. from ILHR 110.001 (15) and am., Register, May, 1993, No. 449, eff. 6−1−93; renum. (1) and (2) to be ILHR 100.02 (2) (a) and (b), (3) to be (1), (4) to be ILHR 100.02 (2) (d), r. (5) to (10), Register, October, 1994, No. 466, eff. 11−1−94;r. (intro.), renum. (1) to be (2) and am., cr. (1), Register, September, 1995, No. 477, eff. 10−1−95.

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 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.

History: Emerg. cr. eff. 2−19−93; cr. Register, May, 1993, No. 449, eff. 6−1−93; am. Register, October, 1994, No. 466, eff. 11−1−94; am. Register, September, 2000, No. 537, eff. 10−1−00.

DWD 101.02 Remuneration excluded from the definition of wages. Notwithstanding s. 108.02 (26), Stats., wages shall not include remuneration paid to an informer by any federal law enforcement agency or law enforcement agency of the state or any of its political subdivisions for information provided by the individual to the agency.

History: Emerg. cr. eff. 2−19−93; cr. Register, May, 1993, No. 449, eff. 6−1−93; renum. (intro.) and am., r. (1) to (4), Register, October, 1994, No. 466, eff. 11−1−94; am. Register, September, 1995, No. 477, eff. 10−1−95.

DWD 101.03 Remuneration included in the definition of wages. Notwithstanding s. 108.02 (26), Stats., wages shall include all cash and non−cash remuneration paid for agricultural labor.

History: Emerg. cr. eff. 2−19−93; cr. Register, May, 1993, No. 449, eff. 6−1−93; renum. (intro.) and (1) and am., r. (2) to (5), Register, October, 1994, No. 466, eff. 11−1−94.

DWD 101.04 Prospective application of federal interpretations. A final federal interpretation about whether certain payments constitute wages, either generally or as to a particular case, which differs from an earlier departmental interpretation regarding those payments or kinds of payments shall only be applied prospectively. The department may not retroactively change either its interpretation or a determination based on that interpretation due to a subsequent and different federal interpretation.

History: Emerg. cr. eff. 2−19−93; cr. Register, May, 1993, No. 449, eff. 6−1−93; renum. from ILHR 101.05, Register, October, 1994, No. 466, eff. 11−1−94.

DWD 101.05 Value of room and meals. For purposes of s. 108.02 (26), Stats., the employer shall value lodging and meals at the actual value or, if the actual value is not available, the employer shall make a reasonable estimate of the value. If the actual value or reasonable estimate is not available, the department shall value lodging and meals as follows:

(1) Lodging − $105.00 per week or $15.00 per day; and

(2) Meals − $86.00 per week, $12.30 per day or $4.10 per meal.

History: Cr. Register, June, 1990, No. 414, eff. 7−1−90; emerg. renum. from ILHR 110.08 and am., eff. 2−19−93; renum. from ILHR 110.08 and am., Register, May, 1993, No. 449, eff. 6−1−93; renum. from ILHR 101.09 and am., Register, October, 1994, No. 466, eff. 11−1−94.

DWD 101.06 Internal revenue code requirements. When s. 108.02 (26), Stats., or FUTA requires that a payment must meet the requirements of a particular section of the internal revenue code in order to not be considered wages, the employer shall demonstrate to the satisfaction of the department that the payment meets such requirements.

History: Emerg. cr. eff. 2−19−93; cr. Register, May, 1993, No. 449, eff. 6−1−93; renum. from ILHR 101.10, Register, October, 1994, No. 466, eff. 11−1−94.

Chapter DWD 102

CONTRIBUTION RATES

DWD 102.001 Definitions.
DWD 102.01 Purpose.
DWD 102.02 New construction industry employers; initial contribution rates.
DWD 102.03 Payors of sickness or accident disability payments: contribution rates.

Note: Chapter ILHR 102 was renumbered Chapter DWD 102 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 102.001 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 102.01 Purpose. This chapter specifies the initial contribution rates for certain categories of employers.

History: Emerg. cr. eff. 2−19−93; cr. Register, May, 1993, No. 449, eff. 6−1−93.

DWD 102.02 New construction industry employers; initial contribution rates. (1) Under s. 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 3 calendar years at the average rate for construction industry employers as determined by the department.

(2) The department shall examine the factors enumerated in this section to determine whether an employer is "engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing or similar construction projects" within the meaning of s. 108.18 (2) (c), Stats. The department shall first determine whether the employer's primary type of business activity is one of the activities specified in Figure DWD 102.02 (2), which enumerates certain business activities listed in Major Group 17 − Construction − Special Trade Contractors in the Standard Industrial Classification (SIC) Manual furnished by the Federal government. [See Figure DWD 102.02 (2) following]

Figure DWD 102.02 (2):

Industry No.

1711 PLUMBING, HEATING AND AIR CONDITIONING
Air system balancing and testing−contractors
Air conditioning, with or without sheet metal work−contractor
Boiler erection and installation−contractors
Fuel oil burner installation and servicing−contractors
Furnace repair−contractors
Gasoline hookup−contractors
Heating equipment installation−contractors
Heating, with or without sheet metal work−contractors
Lawn sprinkler system installation−contractors
Plumbing repair−contractors
Refrigeration and freezer work−contractors
Water system balancing and testing−contractors

1721 PAINTING AND PAPER HANGING
Electrostatic painting on site (including of lockers and fixture)−contractors
Paper hanging−contractors
Ship painting−contractors
Whitewashing−contractors

1731 ELECTRICAL WORK
Burglar alarm installation−contractors
Cable splicing, electrical−contractors
Cable television hookup−contractors
Communications equipment installation−contractors
Electronic control system installation−contractors
Fire alarm installation−contractors
Intercommunications equipment installation−contractors
Sound equipment installation−contractors
Telecommunications equipment installation−contractors
Telephone and telephone equipment installation−contractors

1742 PLASTERING, DRYWALL, ACOUSTICAL, AND INSULATION WORK
Solar reflecting insulation film−contractors

1743 TERRAZZO, TILE, MARBLE, AND MOSAIC WORK
Tile installation, ceramic−contractors
Tile setting, ceramic−contractors

1751 CARPENTRY WORK
Joinery, ship−contractors
Ship joinery−contractors
Store fixture installation−contractors

1752 FLOOR LAYING AND OTHER FLOOR WORK, NOT ELSEWHERE CLASSIFIED
Linoleum installation−contractors
Parquet flooring−contractors
Resilient floor laying−contractors
Vinyl floor tile and sheet installation−contractors

1771 CONCRETE WORK
Grouting work−contractors

1781 WATER WELL DRILLING
Servicing water wells−contractors

1796 INSTALLATION OR ERECTION OF BUILDING EQUIPMENT, NOT ELSEWHERE CLASSIFIED
Dismantling of machinery and other industrial equipment−contractors
Dust collecting equipment installation−contractors
Installation of machinery and other industrial equipment−contractors
Machine rigging−contractors
Millwrights
Power generating equipment installation−contractors

1799 SPECIAL TRADE CONTRACTORS, NOT ELSEWHERE CLASSIFIED
Antenna installation, except household type−contractors
Artificial turf installation−contractors
Awning installation−contractors

Figure DWD 102.02 (2): (Continued)

Bath tub refinishing−contractors
Boring for building construction contractors
Cable splicing service, non−electrical contractors
Caulking (construction)−contractors
Cleaning building exteriors−contractors
Cleaning new buildings after construction−contractors
Coating of concrete structures with plastics−contractors
Core drilling for building construction−contractors
Counter top installation−contractors
Dampproofing buildings−contractors
Dewatering−contractors
Diamond drilling for building construction−contractors
Epoxy application−contractors
Fence construction−contractors
Fireproofing buildings−contractors
Gas leakage detection−contractors
Gasoline pump installation−contractors
Glazing of concrete surfaces−contractors
Grave excavation−contractors
House moving−contractors
Insulation of pipes and boilers−contractors
Lead burning−contractors
Lightning conductor erection−contractors
Mobile home site setup and tie down−contractors
Ornamental metalwork−contractors
Paint and wallpaper stripping−contractors
Plastics wall tile installation−contractors
Posthole digging−contractors
Sandblasting of building exteriors−contractors
Scaffolding construction−contractors
Service and repair of broadcasting stations−contractors
Service station equipment installation, maintenance, and repair−contractors
Steam cleaning of building exteriors−contractors
Television and radio stations, service and repair of−contractors
Test boring for construction−contractors
Tile installation, wall plastics−contractors
Tinting glass−contractors
Wallpaper removal−contractors
Waterproofing−contractors
Weather stripping−contractors
Window shade installation−contractors

(3) (a) If the employer's primary type of business activity is specified in Figure DWD 102.02 (2), the department may not consider the employer as being within the provisions of s. 108.18 (2) (c), Stats. If the employer's primary type of business activity in this state is listed in Major Group 15 − Building Construction − General Contractors and Operative Builders or in Major Group 16 − Heavy Construction Other Than Building Construction − Contractors in the Standard Industrial Classification (SIC) Manual or is listed in Major Group 17 but not in Figure DWD 102.02 (2), the department shall consider the following factors to determine whether the employer is an employer to which the provisions of s. 108.18 (2) (c), Stats., apply:

1. Whether the primary business activity of the employer in this state involves the improvement of real property rather than improvement or refurbishing of personal property; and

2. Whether employers within the same listing in the Standard Industrial Classification (SIC) Manual as the employer customarily suspend or significantly curtail business operations in this state for regularly recurring periods because of climatic conditions or because of the seasonal nature of the employment.

(b) If the department determines that either of the factors under par. (a) 1. or 2. is present, the employer shall be deemed to be an employer to which the provisions of s. 108.18 (2) (c), Stats., apply.

History: Cr. Register, June, 1990, No. 414, eff. 7−1−90; emerg. renum. from ILHR 110.15, eff. 2−19−93; renum. from ILHR 110.15, Register, May, 1993, No. 449, eff. 6−1−93; am. (1), Register, September, 2000, No. 537, eff. 10−1−00.

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 s. DWD 110.06, shall be subject to the initial contribution rate under s. 108.18, Stats., for each of the first 3 calendar years.

History: Emerg. renum. from ILHR 110.11 (8) and am., eff. 2−19−93; renum. from ILHR 110.11 (8) and am., Register, May, 1993, No. 449, eff. 6−1−93; am. Register, September, 2000, No. 537, eff. 10−1−00.

Chapter DWD 103

EXCLUDED EMPLOYMENTS

DWD 103.001 Definitions.

DWD 103.01 Certain excluded employments.

Note: Chapter Ind−UC 103 was renumbered to be chapter ILHR 103 under s. 13.93 (2m) (b) 1. and 2., Register, August, 1987, No. 380. Chapter ILHR 103 was renumbered Chapter DWD 103 under s. 13.93 (2m) (b) 1., Stats. and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1998, No. 498.

DWD 103.001 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 103.01 Certain excluded employments. The following provisions shall apply in interpreting certain paragraphs of s. 108.02 (15), Stats.:

(1) UNPAID CORPORATION OR ASSOCIATION OFFICERS AND MERE DIRECTORS EXCLUDED. Pursuant to s. 108.02 (15), Stats., service as an unpaid officer of a corporation or association is not "employment", but all paid officers of any association or corporation are in "employment" under ch. 108, Stats., subject to s. 108.02 (15) (L), Stats. Mere"directors", however, who perform no paid duties for a corporation or association other than attendance at directors meetings shall not be deemed in an "employment" or be deemed the employer's "employees" for the purposes of ch. 108, Stats. Directors who perform multiple paid duties for a corporation or association, including attendance at directors meetings, shall not be considered "employees" in "employment" when attending directors meetings but shall be considered "employees" in "employment" when performing other paid duties.

History: 1−2−56; r. (2), Register, September, 1968, No. 153, eff. 10−1−68; emerg. am. eff. 2−19−93; am. Register, May, 1993, No. 449, eff. 6−1−93.

Chapter DWD 105

RELATIONSHIP OF CARRIERS AND CONTRACT OPERATORS

DWD 105.001 Definitions.
DWD 105.01 Purpose.
DWD 105.02 Requirements of shipper or law; department policy.
DWD 105.03 Contract operators; direction and control.
DWD 105.04 Contract operators; independently established business; customarily engaged.

Note: Chapter ILHR 105 was renumbered Chapter DWD 105 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 105.001 Definitions. Unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter:

History: Cr. Register, June, 1985, No. 354, eff. 7−1−85; am. (intro.), renum (1), (2), (4) and (5) to 100.02 (8), (12), (38) and (56), r. (3), Register, September, 1995, No. 477, eff. 10−1−95.

DWD 105.01 Purpose. The purpose of this chapter is to establish standards for determining whether a contract operator performs services in an independently established business free from the carrier's direction or control so as not to be deemed an "employee" of a carrier under s. 108.02 (12), Stats.

History: Cr. Register, June, 1985, No. 354, eff. 7−1−85.

DWD 105.02 Requirements of shipper or law; department policy. In determining whether the carrier exercises direction or control and whether the contract operator is engaged in an independently established business, the department may not use as evidence any factor to the extent that it is specified by the shipper or required by state or federal laws or regulations. The department believes it is unreasonable to consider mandates of law or specifications of shippers as evidence because they have not been imposed on the relationship between the contract operator and the carrier by those parties of their own volition.

History: Cr. Register, June, 1985, No. 354, eff. 7−1−85.

DWD 105.03 Contract operators; direction and control. (1) The department shall examine the factors enumerated in this section to determine, both under contract and in fact, whether the contract operator is free from a carrier's direction or control, while the contract operator performs services for the carrier. The department shall determine whether:

(a) The contract operator owns the motor vehicle or holds the vehicle under a bona fide lease arrangement with any person other than the carrier;

(b) The contract operator is responsible for the maintenance of the motor vehicle;

(c) The contract operator bears the principal burden of the motor vehicle operating costs including such items as fuel, repairs, supplies, insurance and personal expenses while on the road;

(d) The contract operator supplies, or is responsible for supplying, the necessary personal services to operate the motor vehicle;

(e) The contract operator determines the details and means of performance, namely, the type of equipment, assignment of driver, loading, routes and number of stops to be made during the haul, as well as starting, completion and elapsed times;

(f) The contract operator may refuse to make a haul when requested by the carrier;

(g) The contract operator may terminate the lease at any time after reasonable notice; and

(h) The contract operator is compensated on a division of the gross revenue or by a fee based upon the distance of the haul, the weight of the goods, the number of deliveries, or any combination of these factors.

(2) If the department determines that all of the factors under sub. (1) (a) to (h) are present in the relationship between the contract operator and the carrier, the contract operator shall be deemed to be free from the carrier's direction and control in the performance of services under s. 108.02 (12) (c) 1., Stats. If one or more of the factors under sub. (1) (a) to (h) are not present in the relationship between the contract operator and the carrier, the department shall consider additional factors of the relationship, both under contract and in fact, including whether:

(a) The contract operator may negotiate with the carrier to determine the method, frequency and regularity of payments made to the contract operator;

(b) The contract operator has the authority to discharge any driver whom he or she employs;

(c) The carrier requires decals, lettering, signs, emblems or other markings on the contract operator's motor vehicle for the purpose of advertising the carrier's name or business;

(d) The carrier requires the contract operator to submit reports;

(e) The carrier requires the contract operator to obey any work rules or policies; and

(f) The carrier requires any deductions from payments owing to the contract operator for federal or state income taxes or taxes under the federal insurance contributions act.

(3) If the contract operator is found to be under the carrier's direction or control under subs. (1) and (2), the contract operator shall be deemed to be an employee of the carrier under s. 108.02 (12) (c) 1., Stats.

History: Cr. Register, June, 1985, No. 354, eff. 7−1−85; **CR 07−009: am. (2) (intro.) and (3) Register June 2007 No. 618, eff. 7−1−07.**

DWD 105.04 Contract operators; independently established business; customarily engaged. (1) If the department determines that a contract operator is free from a carrier's direction or control in the performance of services under s. DWD 105.03, the department shall examine the following factors to determine whether a contract operator who performs services for a carrier is performing these services in an independently established business in which the contract operator is customarily engaged. The department shall determine whether:

(a) The contract operator owns the motor vehicle or holds the vehicle under a bona fide lease arrangement with any person other than the carrier;

(b) The contract operator is free to hire another person as a driver in the performance of services for the carrier; and

(c) The contract operator is free to reject hauling a load offered by the carrier.

(2) If the department determines that all of the factors under sub. (1) (a) to (c) are present in the relationship between the contract operator and the carrier, the contract operator shall be deemed to be performing services in an independently established business in which the contract operator is customarily engaged under s. 108.02 (12) (c) 2., Stats. If one or more of the factors under sub. (1) (a) to (c) are not present in the relationship between

the contract operator and the carrier, the department shall consider additional factors including whether:

(a) The contract operator's business may provide a means of livelihood that is separate and apart from the livelihood gained from services performed for a particular carrier;

(b) The business would continue if the relationship with the carrier were terminated; and

(c) The contract operator has an ownership interest in a business that the contract operator alone may sell or give away without restriction from the carrier.

(3) If the contract operator is found to be free from the carrier's direction or control but not engaged in an independently established business under subs. (1) and (2), the contract operator shall be deemed to be an employee of the carrier under s. 108.02 (12) (c) 1. and 2., Stats. If the contract operator is found to be free from the carrier's direction or control and engaged in an independently established business, the contract operator shall be deemed to be an independent contractor and not an employee of the carrier under s. 108.02 (12) (c) 1. and 2., Stats.

History: Cr. Register, June, 1985, No. 354, eff. 7−1−85; **CR 07−009: am. (2) (intro.) and (3) Register June 2007 No. 618, eff. 7−1−07.**

Chapter DWD 107

EMPLOYMENT RELATIONSHIPS IN THE LOGGING INDUSTRY

DWD 107.001 Definitions.
DWD 107.01 Purpose.
DWD 107.02 Requirements of law; department policy.
DWD 107.03 Effect.
DWD 107.04 Direction and control.
DWD 107.05 Independently established business; customarily engaged.

Note: Chapter ILHR 107 as it existed on November 30, 1991 was repealed and a new chapter ILHR 107 was created effective December 1, 1991. Chapter ILHR 107 was renumbered chapter DWD 107 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 107.001 Definitions. Unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

History: Cr. Register, November, 1991, No. 431, eff. 12−1−91; am. (intro.), r. (1), renum. (2) through (5) to be 100.02 (27), (37), (45) and (59), Register, September, 1995, No. 477, eff. 10−1−95**;** correction made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1999, No. 527.

DWD 107.01 Purpose. The purpose of this chapter is to establish standards for determining whether a piece cutter or skidding operator performs services in an independently established business free from a logging contractor's or forest products manufacturer's direction or control so as not to be deemed an "employee" of a logging contractor or forest products manufacturer under s. 108.02 (12), Stats.

History: Cr. Register, November, 1991, No. 431, eff. 12−1−91.

DWD 107.02 Requirements of law; department policy. In determining whether the logging contractor or forest products manufacturer exercises direction or control over the work of a piece cutter or skidding operator and whether the piece cutter or skidding operator is engaged in an independently established business, the department may not use as evidence any requirements of state or federal law governing the logging industry. The department believes it is unreasonable to consider mandates of law as evidence because they have not been imposed on the relationship between the parties of their own volition.

History: Cr. Register, November, 1991, No. 431, eff. 12−1−91.

DWD 107.03 Effect. If a piece cutter or skidding operator has been found, under ss. DWD 107.04 and 107.05, to be free from the direction and control of a logging contractor or forest products manufacturer and to be engaged in an independently established business, the piece cutter or skidding operator is an independent contractor and not an employee of the logging contractor or forest products manufacturer under s. 108.02 (12) (c), Stats.

History: Cr. Register, November, 1991, No. 431, eff. 12−1−91; **CR 07−009: am. Register June 2007 No. 618, eff. 7−1−07**.

DWD 107.04 Direction and control. (1) The department shall examine the factors enumerated in this section to determine, both under contract and in fact, whether a piece cutter or skidding operator is free from a logging contractor's or forest products manufacturer's direction or control while the piece cutter or skidding operator performs services for the logging contractor or forest products manufacturer. The department shall determine whether:

(a) The piece cutter or skidding operator is responsible for providing and maintaining all of the equipment, supplies and tools necessary to meet the contract obligations;

(b) The piece cutter or skidding operator supplies or is responsible for supplying the necessary personal services to meet the contract obligations and may engage the services of individuals, including other piece cutters and skidding operators, without the knowledge or consent of the logging contractor or forest products manufacturer;

(c) The piece cutter or skidding operator may refuse to contract for work, may refuse to perform work not covered by the contract when requested by the logging contractor or forest products manufacturer or may refuse to extend a contract for services;

(d) The logging contractor or forest products manufacturer may not supervise, either directly or indirectly, the piece cutter or skidding operator in the performance of services; and

(e) The logging contractor or forest products manufacturer may not discipline or reprimand the piece cutter or skidding operator or impose work rules to be obeyed by the piece cutter or skidding operator.

(2) If the department determines that all of the factors under sub. (1) (a) to (e) are present in the relationship between the piece cutter or skidding operator and the logging contractor or forest products manufacturer, the piece cutter or skidding operator shall be deemed to be free from the direction and control of the logging contractor or forest products manufacturer in the performance of services under s. 108.02 (12) (c) 1., Stats. If one or more of the factors under sub. (1) (a) to (e) are not present, the department shall consider additional factors of the relationship, both under contract and in fact, including whether:

(a) The piece cutter or skidding operator sets the hours of the day and the days of the week the contract services are to be performed;

(b) The piece cutter or skidding operator does not require training by the logging contractor or forest products manufacturer in order to perform the contract services;

(c) The logging contractor or forest products manufacturer may not discharge the piece cutter or skidding operator except for breach of contract; and

(d) The rate of compensation for services is set by the piece cutter or skidding operator, or is determined through bona fide negotiations with the logging contractor or forest products manufacturer, or the piece cutter and skidding operator are free to reject the rate of compensation offered by the logging contractor or forest products manufacturer.

(3) If the department determines that all of the factors under sub. (2) (a) to (d) are present in the relationship between the piece cutter or skidding operator and the logging contractor or forest products manufacturer, the piece cutter or skidding operator shall be deemed to be free from the direction and control of the logging contractor or forest products manufacturer in the performance of services under s. 108.02 (12) (c) 1., Stats. If one or more of the factors under sub. (2) (a) to (d) are not present, the piece cutter or skidding operator may be deemed to be free from the direction and control of the logging contractor or forest products manufacturer under s. 108.02 (12) (c) 1., Stats.

(4) If the piece cutter or skidding operator is found to be under the direction or control of the logging contractor or forest products manufacturer under subs. (1) and (2), the piece cutter or skidding operator shall be deemed to be an employee of the logging con-

tractor or forest products manufacturer under s. 108.02 (12) (c) 1., Stats.

History: Cr. Register, November, 1991, No. 431, eff. 12−1−91; **CR 07−009: am. (2) (intro.), (3) and (4) Register June 2007 No. 618, eff. 7−1−07**.

DWD 107.05 Independently established business; customarily engaged. (1) If the department determines that a piece cutter or skidding operator is free from a logging contractor's or forest products manufacturer's direction or control in the performance of services under s. DWD 107.04, the department shall examine the following factors to determine whether a piece cutter or skidding operator who performs services for a logging contractor or forest products manufacturer is performing these services in an independently established business in which the piece cutter or skidding operator is customarily engaged. The department shall determine whether:

(a) The piece cutter or skidding operator negotiated a contract with the logging contractor or forest products manufacturer for the right to cut timber or the right to skid logs;

(b) The piece cutter or skidding operator negotiated the compensation to be paid for cutting timber or skidding logs;

(c) The piece cutter or skidding operator has an ownership interest in a business. In determining whether the piece cutter or skidding operator has an ownership interest in a business, the department shall consider whether the piece cutter or skidding operator:

1. May sell or give away the business without restriction from the logging contractor or forest products manufacturer;

2. Has an expectation of profit or bears the risk of loss while performing services for the logging contractor or forest products manufacturer; and

3. Has a monetary investment in the trade, such as tools, equipment and inventory, which are usual and customary in the industry.

(d) The piece cutter or skidding operator is represented to logging contractors and forest products manufacturers as a person who provides timber cutting or log skidding services;

(e) The piece cutter or skidding operator is free to solicit contracts, enter into contracts and perform services under contract for more than one logging contractor or forest products manufacturer at or about the same time; and

(f) The piece cutter or skidding operator determines the rate of pay, is liable for paying the wages, and actually pays the wages of individuals, including other piece cutters and skidding operators, engaged by the piece cutter or skidding operator to meet the contract obligations.

(2) If the department determines that all of the factors under sub. (1) (a) to (f) are present in the relationship between the piece cutter or skidding operator and the logging contractor or forest products manufacturer, the piece cutter or skidding operator shall be deemed to be performing services in an independently established business in which the piece cutter or skidding operator is customarily engaged under s. 108.02 (12) (c) 2., Stats. If one or more of the factors under sub. (1) (a) to (f) are not present in the relationship between the piece cutter or skidding operator and logging contractor or forest products manufacturer, the department shall consider additional factors including whether:

(a) The business of the piece cutter or skidding operator could continue when the contractual relationship with the logging contractor or forest products manufacturer ends;

(b) The piece cutter or skidding operator is free to perform services for other logging contractors or forest products manufacturers while performing services for the logging contractor or forest products manufacturer;

(c) The piece cutter or skidding operator bears the principal burden of maintaining personal expenses such as meals, lodging and transportation, while performing services;

(d) The piece cutter or skidding operator has a reputation in the community generally on which to rely for business as a piece cutter or skidding operator; and

(e) The piece cutter or skidding operator may incur liability for damages if there is a breach of contract by the piece cutter or skidding operator.

(3) If the department determines that all of the factors under sub. (2) (a) to (e) are present in the relationship between the piece cutter or skidding operator and the logging contractor or forest products manufacturer, the piece cutter or skidding operator shall be deemed to be performing services in an independently established business in which the piece cutter or skidding operator is customarily engaged under s. 108.02 (12) (c) 2., Stats. If one or more of the factors under sub. (2) (a) to (e) are not present, the piece cutter or skidding operator may be deemed to be performing services in an independently established business in which the piece cutter or skidding operator is customarily engaged under s. 108.02 (12) (c) 2., Stats.

History: Cr. Register, November, 1991, No. 431, eff. 12−1−91; **CR 07−009: am. (2) (intro.) and (3) Register June 2007 No. 618, eff. 7−1−07.**

Chapter DWD 110

COVERAGE AND RELATED RECORDS AND REPORTS

DWD 110.001 Definitions.
DWD 110.01 Purpose.
DWD 110.02 Required records to retain; retention periods; department's investigative powers.
DWD 110.03 Required records and reports to submit.
DWD 110.04 Conditions for coverage and liability; reporting requirements.
DWD 110.05 Conditions for status as a nonprofit organization; reporting requirements.
DWD 110.06 Liability due to sickness or accident disability payments.
DWD 110.07 Due date for certain reports; contribution reports; reimbursement financing.
DWD 110.08 General provisions relating to reporting wages on the employer's contribution report.
DWD 110.09 Termination of coverage.
DWD 110.10 Reactivating employer accounts.

Note: Chapter ILHR 110 as it existed on June 30, 1990 was repealed and a new chapter ILHR 110 was created effective July 1, 1990. Chapter ILHR 110 was renumbered Chapter DWD 110 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 110.001 Definitions. (1) IN GENERAL. Except as provided in sub. (2), unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

(2) Notwithstanding ch. DWD 100 and unless the context clearly indicates a different meaning, in this chapter "employer" means any person who is or becomes subject to the reimbursement financing or contribution requirements of ch. 108, Stats., including multiemployer benefit plans and other third party payors.

History: Cr. Register, June, 1990, No. 414, eff. 7−1−90; emerg. renum. (5m) to (8), (16) and (17) to be (6) to (9), (15) and (16), renum. (9) and (15) to be ILHR 101.001 (4) and (9) and am. (9), r. and recr. (14), eff. 2−19−93; renum. (5m) to (8), (16) and (17) to be (6) to (9), (15) and 16., renum. (9) and (15) to be ILHR 101.001 (4) and (9) and am. (9), r. and recr. (14), Register, May, 1993, No. 449, eff. 6−1−93; r. (intro.), (3), (15) and (16), renum. (4), (6) and (9) to (14) to be 100.02 (18), (20), (22), (29), (39), (40), (42) and (57), renum. (1), (2), (7), (8) to be 100.02 (11), (14), (13) and (21) and am., renum. (5) to be (2) and am., cr. (1), Register, September, 1995, No. 477, eff. 10−1−95.

DWD 110.01 Purpose. This chapter requires employing units to maintain work records for individuals who perform services for them and to submit such records for the department's inspection and submit and file other reports requested by the department to determine the employing unit's status and contribution liability under ch. 108, Stats. The chapter specifies the department's investigative powers and enumerates the dates by which certain records and reports are to be submitted to the department.

History: Cr. Register, June, 1990, No. 414, eff. 7−1−90; emerg. renum. (1) to be ILHR 110.01, r. (2), eff. 2−19−93; renum. (1) to be ILHR 110.01, r. (2), Register, May, 1993, No. 449, eff. 6−1−93.

DWD 110.02 Required records to retain; retention periods; department's investigative powers. (1) Pursuant to s. 108.21, Stats., each employing unit shall maintain a true and accurate work record for every individual who performs services for that employing unit so that the department may determine the employing unit's status and contribution liability under ch. 108, Stats.

(2) The work record shall include:

(a) The full name, address and social security number of each individual who performs services for the employing unit;

(b) The dates on which each individual performed services;

(c) The weekly wages earned by each individual who performed services; and

(d) The dates on which the wages were paid to each individual.

(3) Pursuant to s. 108.21, Stats., the department may, at any reasonable time, inspect the work records and any other records of an employing unit, or of any entity which the department has reason to believe may be an employing unit, which may show payments for personal services.

(4) Each employing unit shall preserve the work records and any other records which may show payments for personal services for 6 years from the date on which each individual last performed services for the employing unit.

History: Cr. Register, June, 1990, No. 414, eff. 7−1−90.

DWD 110.03 Required records and reports to submit. Pursuant to ss. 108.14 and 108.21, Stats., each employing unit shall submit any work records and any other records and reports concerning the services performed by individuals for the employing unit which the department may request. The department may require the employing unit to make either verbal or written reports or both.

History: Cr. Register, June, 1990, No. 414, eff. 7−1−90.

DWD 110.04 Conditions for coverage and liability; reporting requirements. Any employing unit which is not subject to the reimbursement financing or contribution provisions under ch. 108, Stats., becomes subject if the employing unit meets the coverage requirements under ch. 108, Stats. Any employing unit which meets the coverage requirements under ch. 108, Stats., shall notify the department and accurately and completely report its employment and wages so that the department may determine the employing unit's status and contribution liability. The employing unit shall submit this report to the department within 30 days after meeting the coverage requirements under ch. 108, Stats.

History: Cr. Register, June, 1990, No. 414, eff. 7−1−90.

DWD 110.05 Conditions for status as a nonprofit organization; reporting requirements. Except as further provided in this section, no employing unit may be considered to be a nonprofit organization eligible to apply for reimbursement financing until the date on which the department receives a copy of the letter issued by the internal revenue service determining that the employing unit is exempt from taxation under section 501 (c) (3) of the internal revenue code. If an employing unit receives such a letter from the internal revenue service after the employing unit becomes an employer under s. 108.02 (13) (d) or (e), Stats., the department shall consider the employing unit to be a nonprofit organization beginning on January 1 of the year after the year in which the internal revenue service issues the letter. The department shall consider the employing unit to be a nonprofit organization as of the date specified by the internal revenue service if:

(1) The employing unit has filed a written notice with the department electing reimbursement financing under s. 108.151 (2), Stats.;

(2) The employing unit acted diligently in requesting such a determination from the internal revenue service;

(3) Any delays concerning such a determination are attributable solely to the internal revenue service; and

(4) There is no overpayment of benefits to any claimant due to the department's adopting the date specified by the internal revenue service.

History: Cr. Register, June, 1990, No. 414, eff. 7−1−90.

DWD 110.06 Liability due to sickness or accident disability payments. (1) POLICY. Under s. 108.02 (13) (j),

Stats., an employer includes a person who makes sickness or accident disability payments if the person is classified as an employer under rules promulgated by the department. This section specifies the circumstances under which persons who make sickness or accident disability payments are to be considered employers for contribution purposes under ch. 108, Stats. This section also specifies the procedures such employers shall follow in reporting payments and making contributions.

(2) AMOUNTS INCLUDED AS TAXABLE WAGES. The department shall treat as wages for contribution purposes under ch. 108, Stats., any sickness or accident disability payments whether made by an employer, a third party payor, or a multiemployer benefit plan. Whichever employer, third party payor or multiemployer benefit plan is liable for payment of contributions under this section shall report these payments as wages on the contribution report for the quarter in which the payments are made.

(3) PAYMENTS MADE DIRECTLY BY EMPLOYERS. An employer which makes sickness or accident disability payments directly to an employee or his or her dependents shall be treated as the employer for contribution purposes under ch. 108, Stats., with respect to these payments.

(4) PAYMENTS BY THIRD PARTY PAYORS AND MULTIEMPLOYER BENEFIT PLANS. (a) *General rule for third party payors.* Except as provided in pars. (b) to (f), a third party payor which makes sickness or accident disability payments shall be treated as the employer for contribution purposes under ch. 108, Stats., with respect to these payments.

(b) *Notice by third party payors to shift tax.* If a third party payor timely notifies the employer for which services are normally performed of the amount of the sickness or accident disability payments made during any quarter, the employer shall be treated as the employer for contribution purposes under ch. 108, Stats. The third party payor shall notify the employer, in writing, by the 15th day of the month after the end of the quarter in which the payments are made. In this paragraph, the employer for which services are normally performed is the last employer which made contributions on behalf of the employee to the plan or system under which the sickness or accident disability payments are being made and for which the employee worked prior to the sickness or disability.

(c) *Third party payors as agents or insurers.* A third party payor which makes sickness or accident disability payments as an agent for the employer or directly to the employer may not be treated as the employer for contribution purposes under ch. 108, Stats., unless the agency agreement so provides. The determining factor as to whether a third party payor is an agent of the employer is whether the third party payor bears any insurance risk and is reimbursed on a cost plus fee basis. If the third party payor bears no insurance risk and is reimbursed on a cost plus fee basis, the third party payor is an agent of the employer even if the third party payor is responsible for determining eligibility of the employee or dependent for sickness or accident disability payments. If the third party payor is paid an insurance premium and is not reimbursed on a cost plus fee basis, the third party payor is not an agent of the employer but rather a third party insurer and shall be treated as the employer for contribution purposes under ch. 108, Stats., unless the third party insurer complies with par. (b).

(d) *Relationship among third party insurers, multiemployer benefit plans and employers.* A third party insurer under a contract of insurance with a multiemployer benefit plan which is required to make sickness or accident disability payments pursuant to a collective bargaining agreement shall be treated as the employer for contribution purposes under ch. 108, Stats., with respect to these payments unless the third party insurer notifies the multiemployer benefit plan of the amount of these payments, in writing, by the 15th day of the month after the end of the quarter in which the payments are made. If such timely notice is given, the multiemployer benefit plan shall be treated as the employer unless, within 6 business days after receipt of the notice, the multiemployer benefit plan notifies the employer for which services are normally performed of the amount of the sickness or accident disability payments made during the quarter. If the multiemployer benefit plan gives such timely notice, the employer for which services are normally performed shall be treated as the employer for contribution purposes under ch. 108, Stats. In this paragraph, the employer for which services are normally performed is the last employer which made contributions on behalf of the employee to the plan or system under which the sickness or accident disability payments are being made and for which the employee worked prior to the sickness or disability.

(e) *Multiemployer benefit plans as insurers.* If the multiemployer benefit plan is the insurer under par. (d), the multiemployer benefit plan shall be treated as the employer for contribution purposes under ch. 108, Stats., unless the plan notifies the employer of the amount of the sickness or accident disability payments, in writing, by the 15th day of the month after the end of the quarter in which the payments are made.

(f) *Third party administrators for multiemployer benefit plans.* A third party administrator which makes sickness or accident disability payments as an agent for a multiemployer benefit plan may not be treated as the employer for contribution purposes under ch. 108, Stats.

(5) REQUIRED RECORDS TO RETAIN; DEPARTMENT'S POWERS. (a) Pursuant to s. 108.21, Stats., each payor of sickness or accident disability payments shall maintain a true and accurate payment record for every individual who receives such payments so that the department may determine the payor's status and contribution liability under ch. 108, Stats.

(b) The payment record shall include:

1. The full name, address and social security number of each individual who receives a sickness or accident disability payment;
2. The date on which the payment was made; and
3. The amount of the payment.

(c) Pursuant to s. 108.21, Stats., the department may, at any reasonable time, inspect the records of a payor, or of any entity which the department has reason to believe may be a payor, which may show sickness or accident disability payments so that the department may determine the payor's status and contribution liability under ch. 108, Stats.

(d) Each payor shall preserve the sickness or accident disability payment records for 6 years from the date on which the last payment was made.

(6) REQUIRED RECORDS AND REPORTS TO SUBMIT. Pursuant to ss. 108.14 and 108.21, Stats., each payor of sickness or accident disability payments shall submit any records and reports concerning these payments which the department may request so that the department may determine the payor's status and contribution liability under ch. 108, Stats. The department may require the payor to make verbal or written reports or both.

(7) APPLICABLE PROVISIONS. The provisions of ss. DWD 110.04, 110.05, 110.07 and 110.08 as these provisions relate to employers and employing units shall also apply to payors of sickness or accident disability payments.

History: Cr. Register, June, 1990, No. 414, eff. 7−1−90; emerg. renum. from ILHR 110.11 and am. (1) and (7), eff. 2−19−93; renum. from ILHR 110.11 and am. (1) and (7), Register, May, 1993, No. 449, eff. 6−1−93.

DWD 110.07 Due date for certain reports; contribution reports; reimbursement financing. (1) NEWLY SUBJECT EMPLOYERS; PAYMENT OF CONTRIBUTIONS. Under s. 108.17 (1m), Stats., an employer which becomes newly subject to the contribution provisions of ch. 108, Stats., based on employment during any year shall pay contributions based on payroll for all quarters beginning with the first quarter in the year in which the employer became subject to ch. 108, Stats. The employer shall pay such contributions by the close of the month next following the first full quarter occurring after the quarter during which the

liability was incurred except that the due date may not be later than January 31 of the succeeding year.

(2) ELECTION OF REIMBURSEMENT FINANCING; NOTICES AND ASSURANCES. (a) Any notice of election of reimbursement financing by an employer other than a newly subject employer under sub. (1) and any assurance of reimbursement are delinquent unless the department receives the notice or assurance by its due date. If the due date of the notice or assurance would otherwise be a Saturday, Sunday or legal holiday under state or federal law, the due date is the next following day which is not a Saturday, Sunday or legal holiday under state or federal law.

(b) A nonprofit organization which discontinues participation in a group reimbursement account under s. 108.151 (6), Stats., may elect reimbursement financing in its own name by filing a notice of election of reimbursement financing with the department on or before December 31 of the year in which the group reimbursement account is terminated.

(3) FILING OF CONTRIBUTION REPORTS; GENERAL DUE DATES. (a) Each employer, including a nonprofit organization which has elected reimbursement financing or a government unit on reimbursement financing, shall file an employer's contribution report with the department whether or not any contributions or reimbursement payments are currently due. Each employer shall pay any required contributions to the department concurrent with the filing of the report, except that each government unit and nonprofit organization which has elected reimbursement financing shall submit reimbursement payments when billed by the department. The department may exempt any employer whose account the department has placed on inactive status with a view toward termination of the account from the filing requirements of this subsection. The department may also exempt any employer whose business reflects a seasonal pattern from the filing requirements of this subsection for quarters in which the employer customarily has no payroll.

(b) Except as otherwise provided in this section, under s. 108.17 (2), Stats., the due dates for each contribution report are as follows:

1. The first quarterly report covering the months of January, February and March is due on the following April 30th;

2. The second quarterly report covering the months of April, May and June is due on the following July 31st;

3. The third quarterly report covering the months of July, August and September is due on the following October 31st;

4. The fourth quarterly report covering the months of October, November and December is due on the following January 31st.

(4) DUE DATES FALLING ON WEEKENDS AND HOLIDAYS. Under s. 108.22 (1) (b) and (c), Stats., any contribution report or payment is delinquent unless the department receives the report or payment by its due date except as further provided under sub. (5). If the due date of the report or payment would otherwise be a Saturday, Sunday or legal holiday under state or federal law, the due date is the next following day which is not a Saturday, Sunday or legal holiday under state or federal law.

(5) DUE DATES FOR MAILED REPORTS AND REIMBURSEMENTS. Under s. 108.22 (1) (c), Stats., the department shall consider as timely any contribution report or payment which is either postmarked no later than the applicable due date or received by the department no later than 3 days after that due date, except that the department shall only consider a payment required under s. 108.15 (5) (b) or 108.151 (5) (f), Stats., as timely if it is received by the department no later than the due date specified on the bill.

(6) MONTHLY REPORTING IN CERTAIN CASES. The department may require an employer which is delinquent in submitting a contribution report or payment required under this chapter or under ch. 108, Stats., to submit succeeding contribution reports on a monthly basis until the department again approves a return to quarterly reporting. The employer shall submit the payments by the close of the month next following the end of each month.

(7) OTHER DUE DATES. For other applicable due dates and dates beyond which various reports and notices are considered to be delinquent, see ss. 108.15 (3), (5), (6), (7), (8) and (9), 108.151 (2) to (5), 108.16 (8), 108.17 (1m) and (2), 108.18 (2) and (7), 108.19 (1m), 108.205 and 108.22 (1), Stats.

(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 workforce development.

History: Cr. Register, June, 1990, No. 414, eff. 7−1−90; emerg. renum. from ILHR 110.06 eff. 2−19−93; renum. from ILHR 110.06, Register, May, 1993, No. 449, eff. 6−1−93; am. (8), Register, September, 2000, No. 537, eff. 10−1−00.

DWD 110.08 General provisions relating to reporting wages on the employer's contribution report. (1) WISCONSIN TOTAL WAGES. Each employer shall report all covered wages paid or constructively paid during the applicable quarter on the employer's contribution report.

(2) CLAIMING EXCLUSIONS. Each employer shall total the amount of wages paid to its employees which are in excess of $10,500 per employee for the calendar year. This sum shall be subtracted from the amount of covered wages and the remainder shall be reported on the employer's contribution report as "defined taxable payroll".

History: Cr. Register, June, 1990, No. 414, eff. 7−1−90; emerg. renum. from ILHR 110.07 eff. 2−19−93; renum. from ILHR 110.07, Register, May, 1993, No. 449, eff. 6−1−93.

DWD 110.09 Termination of coverage. (1) PROCEDURE. Under the provisions of s. 108.02 (13) (i), Stats., the department may terminate an employer's coverage on its own motion or on application by the employer. The department may terminate coverage and close the employer's account if the employer:

(a) Ceases to exist;

(b) Transfers its entire business; or

(c) Has not met the minimum payroll or employment requirements or is not otherwise subject under s. 108.02 (13) (b) to (g), Stats., for a calendar year.

(2) EFFECTIVE DATES OF TERMINATION. If the termination of coverage is based on an employer's application, the department shall terminate coverage and close the employer's account at the close of the quarter in which the department received the application. If the department terminates an employer's coverage on its own motion, the department shall close the account as of the date specified in the notice of termination.

(3) EMPLOYERS OF AGRICULTURAL LABOR OR DOMESTIC SERVICE. (a) The department may make a refund of any contributions paid on employment excluded under s. 108.02 (15) (k) 1. or 2., Stats., by an employer of agricultural labor or domestic service whose coverage has been terminated, unless the department paid benefits based on this excluded employment.

(b) An employer of agricultural labor or domestic service which no longer meets the minimum payroll or employment requirements under s. 108.02 (13) (c) or (d), Stats., shall continue to report all payroll to the department as long as the employer is subject under another provision of s. 108.02 (13), Stats.

History: Cr. Register, June, 1990, No. 414, eff. 7−1−90; emerg. rn. from ILHR 110.16 eff. 2−19−93; rn. from ILHR 110.16, Register, May, 1993, No. 449, eff. 6−1−93.

DWD 110.10 Reactivating employer accounts. (1) If the balance in the employer's account is to be or has been credited to the balancing account under s. 108.16 (6) (c), Stats., the department may reactivate the employer's account, on its own motion or at the employer's request, as of the date of coverage if:

(a) The employer had payroll within 6 months of the effective date of an initial determination terminating coverage under s. 108.02 (13) (i), Stats.; or

(b) The account was closed because the employer failed to report any payroll.

History: Cr. Register, June, 1990, No. 414, eff. 7−1−90; emerg. renum. from ILHR 110.17, eff. 2−19−93; renum. from ILHR 110.17, Register, May, 1993, No. 449, eff. 6−1−93.

Chapter DWD 111

QUARTERLY WAGE REPORTING PROCEDURES

DWD 111.001 Definitions.
DWD 111.01 Purpose.
DWD 111.02 Wage reporting procedures; health insurance information; due dates.
DWD 111.03 Processing of reports.
DWD 111.04 Types of wage reports.
DWD 111.05 Original reports required; mailing of reports and magnetic media.
DWD 111.06 Correcting prior wage reports.

Note: Chapter ILHR 111 was renumbered Chapter DWD 111 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 111.001 Definitions. Unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

History: Cr. Register, February, 1989, No. 398, eff. 3−1−89, renum. (intro.) to be 111.001 and am., renum. (8) to (10) to be 100.02 (48), (68) and (69), r. (1) to (7), Register, September, 1995, No. 477, eff. 10−1−95.

DWD 111.01 Purpose. (1) Federal law requires every state to have a system for employers to file quarterly wage reports with an agency of each state. 1987 Wis. Act 38 implemented the federal wage reporting requirements by requiring each employer to file with the department, in such form as the department by rule may require, a quarterly wage report for each employee who is employed by the employer during the applicable quarter.

(2) This chapter specifies the procedures by which employers may comply with the quarterly wage reporting requirements. The chapter also considers such matters as the information required in the various reports, the methods by which employers make corrections to reports, and fees assessed for violation of the reporting requirements.

History: Cr. Register, February, 1989, No. 398, eff. 3−1−89.

DWD 111.02 Wage reporting procedures; health insurance information; due dates. (1) (a) Under s. 108.205, Stats., each employer shall submit a wage report to the department. The report shall contain the name, social security number and the amount of covered wages paid or constructively paid to each employee who is employed by the employer during the quarter. Each employer shall make certain that the amount specified as covered wages on the contribution report equals the total wages reported for all employees on the wage report.

(b) Each employer shall notify the department as to whether or not it provides access to a health insurance plan for any of its employees.

(2) Under s. 108.205, Stats., the due dates for each wage report are as follows:

(a) The wage report covering the months of January, February and March is due on the following April 30th;

(b) The wage report covering the months of April, May and June is due on the following July 31st;

(c) The wage report covering the months of July, August and September is due on the following October 31st;

(d) The wage report covering the months of October, November and December is due on the following January 31st.

(3) A wage report which is delivered other than by mail is timely under sub. (2), if it is received by the department no later than the due date or, if the due date falls on a Saturday, Sunday or legal holiday under state or federal law, by the next following day which is not a Saturday, Sunday or legal holiday under state or federal law. A wage report which is mailed is timely if it is either postmarked by the due date or received by the department no later than 3 days after the due date.

(4) For the procedures to follow in completing and submitting contribution reports, see ch. DWD 110.

Note: The department of health and social services uses the insurance coverage information obtained under s. DWD 111.02 (1) (b) to control abuse and determine the availability of reimbursement for charges incurred by individuals eligible for the Medicaid program.

History: Cr. Register, February, 1989, No. 398, eff. 3−1−89.

DWD 111.03 Processing of reports. (1) Each employer shall submit the wage reports on forms provided by the department, on magnetic media in a format authorized by the department, or on other media authorized by the department.

(2) Each employer which uses a printed medium shall type or print the information in the format specified by the department on the form or template. Employers which use a computer printout may use unlined 8 $^1/_2$″ by 11″ white paper.

History: Cr. Register, February, 1989, No. 398, eff. 3−1−89.

DWD 111.04 Types of wage reports. (1) EMPLOYERS WITH FEWER THAN 10 EMPLOYEES. An employer with fewer than 10 employees to report for the quarter may submit its contribution data and wage record data on the Combined Quarterly Contribution Report and Wage Report (Form UC−101A), or file its contribution data on the Quarterly Contribution Report (Form UCT−101), and submit its wage record date on a medium approved by the department.

(2) EMPLOYERS WITH 10 OR MORE EMPLOYEES. An employer with 10 or more employees to report for the quarter shall submit its contribution data on the Quarterly Contribution Report (Form UCT−101). The employer may submit its wage record data on the Quarterly Wage Report for use in a typewriter (Form UC−7823), or on the Quarterly Wage Report for use in computer printers (Form UC−7827), or use another medium approved by the department.

History: Cr. Register, February, 1989, No. 398, eff. 3−1−89.

DWD 111.05 Original reports required; mailing of reports and magnetic media. Each employer shall file original forms with the department for all printed, typed and computer−generated contribution reports and wage reports. Each employer shall mail the wage report and contribution report according to the instructions furnished on the contribution report which the department mails to each employer.

History: Cr. Register, February, 1989, No. 398, eff. 3−1−89.

DWD 111.06 Correcting prior wage reports. (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 the departmental booklet, Unemployment Insurance Handbook for Employers.

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

(3) The department shall accept replacement data to correct wage information previously reported on magnetic file. The employer should contact the magnetic media coordinator for additional information on the procedure to follow in providing the correct wage information.

History: Cr. Register, February, 1989, No. 398, eff. 3−1−89; am. (1) and (2), Register, September, 2000, No. 537, eff. 10−1−00.

Chapter DWD 113

SETTLEMENT OF DISPUTES AND COMPROMISE OF LIABILITIES

DWD 113.001 Definitions.
DWD 113.01 Purposes.
DWD 113.02 Settlement.
DWD 113.025 Waiver of interest.
DWD 113.03 Compromise of employer liability.
DWD 113.04 Compromise of personal liability.
DWD 113.05 General procedural provisions.
DWD 113.06 Disposition of warrants.
DWD 113.07 Reopening compromised liability.

Note: Chapter ILHR 113 was effective on March 1, 1994, except that ss. ILHR 113.03 and 113.04 are also applicable to installment payment agreements entered on or after January 7, 1990. Chapter ILHR 113 was renumbered Chapter DWD 113 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 113.001 Definitions. (1) IN GENERAL. Except as provided in sub. (2), unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

(2) IN THIS CHAPTER. Notwithstanding ch. DWD 100, the following words and phrases have the designated meanings unless the context clearly indicates a different meaning:

(a) "Action" means a circuit court proceeding for judicial review of a commission decision or an appeal to either the court of appeals or the supreme court.

(b) "Decision" means a written resolution by an administrative law judge of an appeal from a determination or a written resolution of a petition for review by the commission or a written resolution of an action for judicial review by a court of competent jurisdiction.

(c) "Determination" means an initial determination issued under s. 108.10 (1), Stats.

(d) "Employer", in addition to the meaning contained in s. 108.02 (13), Stats., includes an employing unit which was formerly an employer under s. 108.02 (13), Stats.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94, r. (intro.), (5), renum. (1), (4), (6) and (7) to be (2) (a), (b), (c) and (d), renum. (2), (3), (8), (9) and (10) to be 110.02 (9), (10), (44), (51) and (52), cr. (1), (2), Register, September, 1995, No. 477, eff. 10−1−95.

DWD 113.01 Purposes. (1) This chapter establishes standards for the following circumstances:

(a) The settlement of disputes between the department and parties to determinations, decisions or actions.

(b) The compromise of liabilities for contributions, reimbursements in lieu of contributions, interest, penalties and costs assessed under ch. 108, Stats.

(c) In limited circumstances, waiving or decreasing the interest charged under s. 108.22 (1) (a) or 108.17 (2c) (c), Stats.

(2) This chapter does not affect the application of s. 108.10 (1) and (6), Stats.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; **CR 13−106: am. (1) (intro.), cr. (1) (c) Register July 2014 No. 703, eff. 8−1−14.**

DWD 113.02 Settlement. (1) Under s. 108.10 (8), Stats., the department may settle in whole or in part:

(a) Any determination which has been appealed, which has not become final and which has been referred from the bureau of tax and accounting to the bureau of legal affairs; and

(b) Any decision or action which has not become final.

(2) Settlement shall be based upon advice of counsel for the unemployment compensation division, who shall certify that, after having fully investigated the matter, it is his or her opinion that one or more of the following conditions exists:

(a) The department has made an error of law or fact which, if corrected, would negate or change the initial determination issued in the case.

(b) Given the available evidence, there is significant doubt as to the ability of the department to prevail in the dispute with respect to one or more specific issues and there is little or no likelihood of producing sufficient additional evidence in favor of the department regarding the issues prior to or at a hearing under s. 108.10 (2), Stats.

(c) Prior to a hearing under s. 108.10 (2), Stats., the department has discovered additional relevant and material evidence which would negate or change the initial determination in the case.

(d) Given the evidence in the record or the nature of a decision at a lower level, or both, there is significant doubt as to the ability of the department to prevail on appeal with respect to one or more specific issues.

(e) All or part of any interest liability was incurred as a result of undue delay on the part of the department such that there is valid reason to cancel that liability.

(f) There are valid legal defenses of estoppel or laches against the department as to all or part of the initial determination(s).

(3) A settlement may be implemented by any one or more of the following methods:

(a) Under s. 108.10 (1), Stats., the department may amend any initial determination affected by the settlement prior to a hearing on the determination(s).

(b) Under s. 108.10 (1), Stats., the department may set aside the applicable initial determination(s) prior to a hearing on the determination(s) and issue whatever new initial determination(s) are necessary to reflect the terms of the settlement.

(c) The department and the opposing party may enter into a written stipulation which sets forth the terms of the settlement. The stipulation is subject to the approval of the administrative law judge assigned to the case.

(d) The opposing party may withdraw all or part of the appeal of the department's initial determination(s).

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

DWD 113.025 Waiver of interest. (1) Except as provided in s. DWD 113.02 or 113.03, the department may grant a waiver or decrease of interest owed by an employer if the employer satisfies all of the following conditions:

(a) The employer pays the full payment of any taxes and assessments due within 30 days following resolution of all issues. Until the employer pays all of the correct amount of taxes and assessments due, the department may not waive or decrease any of the interest owed by the employer.

(b) The employer files any wage or tax report due within 30 days following resolution of all issues. Until the employer files all of the wage or tax reports that are due, the department may not waive or decrease any of the interest owed by the employer.

(c) The employer has no other outstanding reports, contributions, interest, penalty, or other fees due.

(d) The employer was determined within the last year to be subject to Wisconsin unemployment insurance law or has a history of timely filing required reports, including wage and tax reports, and of making payments in a timely manner.

(e) The employer or a business for which the employer is a successor, pursuant to the requirements of s. 108.16 (8), Stats., has never previously received a waiver or decrease in interest charged under s. 108.22 (1) (a) or 108.17 (2c) (c), Stats.

(f) There has not been a hearing before an administrative law judge on an appeal under s. 108.10, Stats., regarding the tax liability associated with the interest.

(2) If all of the conditions of sub. (1) are satisfied, the department may waive or decrease the interest charged under s. 108.22 (1) (a) or 108.17 (2c) (c), Stats., if the interest charged resulted from any of the following circumstances:

(a) The employer failed to pay taxes or underpaid taxes by the required due date established by the department as a result of excusable neglect. An erroneous contention regarding the unemployment insurance law or misunderstanding of the obligations under the law shall not constitute excusable neglect.

Note: The following are examples of excusable neglect:

Embezzlement by an accountant or an employee who is not related to the employer such that the embezzlement caused the interest to be due.

Inaccurate written communication given to the employer by the Wisconsin Division of Unemployment Insurance that affirmatively misled the employer as to its duties and obligations such that the inaccurate written communication caused the interest to be due.

(b) An inadvertent mathematical miscalculation by the employer of the amount of tax due resulting in a de minimis underpayment of taxes.

(3) A denial of a request for a waiver or decrease of interest under sub. (2) and s. 108.22 (1) (cm), Stats., is not an appealable decision.

History: **CR 13−106: cr. Register July 2014 No. 703, eff. 8−1−14.**

DWD 113.03 Compromise of employer liability. **(1)** Under s. 108.10 (8), Stats., the department may compromise the liability of any employer as established in any final determination, decision or action, together with any subsequent collection costs, if:

(a) The employer makes a sworn application for the compromise of the employer's liability to the department, including a financial statement if requested, in such form as the department prescribes;

(b) The employer is not a government unit;

(c) The employer is not the debtor in a case under the United States bankruptcy code with respect to any liability under ch. 108, Stats., which is not dischargeable in bankruptcy unless:

1. In a case under chapter 7 of the bankruptcy code, there are insufficient assets to pay the liability in full under with the statutory order of distribution; or

2. In a case under chapter 11 or 12 of the bankruptcy code, the confirmed plan of reorganization provides for the sale of or distribution to creditors of all of the property of the employer and there are insufficient assets to pay the liability.

(d) With respect to an employer that is a nonprofit organization and whose liability or any part of whose liability was incurred while subject to reimbursement financing status under s. 108.151 (2), Stats., the employer's assurance of reimbursement has either been applied to the liability or the application for compromise provides for such assurance; and

(e) The department finds that the employer is unable to pay the full amount of the contributions or payments in lieu of contributions, interest, penalties and costs, except, with respect to an employer still in the same business or operation as when the liability sought to be compromised was incurred:

1. The employer's application for compromise must offer payment in an amount not less than the unpaid contributions or unpaid payments in lieu of contributions, including any contributions owed as a successor under s. 108.16 (8) (f), Stats.;

2. The required payment of all interest, penalties or costs would pose an immediate threat to the financial viability of the employer; and

3. Current contributions or payments in lieu of contributions are being paid.

(2) If the conditions of sub. (1) are satisfied, the department shall determine the amount that the employer is able to pay and may issue an acceptance of the application for compromise in the determined amount.

(3) Notwithstanding the exception in sub. (1) (e), the department may compromise unpaid contributions on wages for domestic service arising under s. 108.02 (13) (d), Stats., for any time period prior to the effective date of the existence of a fiscal agent or fiscal intermediary under s. 46.27 (5) (i), Stats.

(4) Notwithstanding sub. (1) (e), in determining the amount of the accepted compromise, the department may consider whether:

(a) Any part of any interest liability was incurred as a result of undue delay on the part of the department such that there is valid reason to compromise the interest liability.

(b) In the opinion of counsel for the unemployment compensation division, the employer could have raised valid legal defenses of estoppel or laches against the initial determination(s).

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

DWD 113.04 Compromise of personal liability. **(1)** The department may compromise the liability of any individual whose liability for the unpaid contributions, interest, penalties and costs of a corporation has been finally established under s. 108.22 (9), Stats., if:

(a) The individual makes a sworn application to the department for the compromise of the individual's liability, including a financial statement if requested, in such form as the department prescribes;

(b) The individual is not the debtor in a case under the United States bankruptcy code with respect to any liability under ch. 108, Stats., which is not dischargeable in bankruptcy unless:

1. In a case under chapter 7 of the bankruptcy code, there are insufficient assets to pay the liability in full under the statutory order of distribution; or

2. In a case under chapter 11 or 12 of the bankruptcy code the confirmed plan of reorganization provides for the sale of or distribution to creditors of all of the property of the individual and there are insufficient assets to pay the liability; and

(c) The department finds that the individual is unable to pay the full amount of the liability.

(2) If the conditions of sub. (1) are satisfied, the department shall determine the amount that the individual is able to pay and may issue an acceptance of the application for compromise in the determined amount.

(3) In making its finding that the individual is unable to pay the full amount of the liability under sub. (1) (c) and its determination of the amount that the individual is able to pay, the department shall consider the individual's present and prospective income.

(4) The department's acceptance of a compromise under this section shall not affect the liability of any other entity against which the department may issue or has issued a determination of liability for the unpaid contributions of the same corporation.

(5) In an application for compromise under this section, an individual liable or potentially liable at the time of application for the liabilities of more than one corporation under s. 108.22 (9), Stats., shall disclose all such liabilities, including any liabilities which are not final. Failure to make such disclosure shall make the individual ineligible for compromise of the undisclosed liability in any later application for compromise under this section.

(6) An individual granted a compromise under this section shall not be eligible for a compromise of any liabilities, of whatever nature, incurred for tax periods subsequent to the acceptance of the compromise.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

DWD 113.05 General procedural provisions. **(1)** The department may request additional information and may also examine the employer and such other persons as it deems necessary, under oath, regarding the employer's application.

(2) The department shall acknowledge in writing the receipt of an application for compromise within 30 days of such receipt. The department's acceptance of the application for compromise shall be in writing and be issued with the concurrence of the treasurer of the unemployment compensation fund or his or her designee. The acceptance shall be effective only if the amount determined in the acceptance is paid to the department within 30 days from the date of the acceptance, except as otherwise provided under an installment arrangement under sub. (3). Payment must be in cash or by guaranteed instrument payable only to the department.

(3) The department may allow payment of the determined amount by installment payments upon such conditions as the department shall prescribe. In the event of failure to make any installment payment when due, which failure is not excused in writing by the department, the department may declare its acceptance of the application for compromise to be null and void and may proceed to collect the balance of the original liability using whatever remedies are available to it by law.

(4) The submission of an application for compromise shall not operate to stay collection proceedings. However, the department may defer collection during the pendency of an application if it is satisfied that the interests of the state will not be jeopardized.

(5) Frivolous or incomplete applications and applications submitted for the purpose of delaying collection of the liability shall be immediately rejected.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

DWD 113.06 Disposition of warrants. Upon timely payment of the amount set forth in the department's acceptance of compromise, the department shall issue a release of any outstanding warrant against the employer or individual.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

DWD 113.07 Reopening compromised liability. The department may declare a compromise void at any time if it ascertains that:

(1) The employer or individual submitted a materially false application for compromise; or

(2) Prior to its acceptance of the application for compromise the employer or individual concealed or disposed of income or property which could have been used to pay any part of the original liability.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

Chapter DWD 114

LICENSE REVOCATION AND FINANCIAL RECORD MATCHING PROGRAM

DWD 114.01 Definitions.
DWD 114.10 Purpose.
DWD 114.20 Certification of delinquency.
DWD 114.30 Installment payment plans.
DWD 114.40 Other enforcement actions not prohibited.
DWD 114.50 Financial record matching program.

DWD 114.01 Definitions. (1) Except as provided in sub. (2), the definitions in ch. DWD 100 apply to this chapter.

(2) Notwithstanding ch. DWD 100, in this chapter:

(a) "Applicant for a license" means an employer as defined in s. 108.02 (13), Stats., or any individual who is found personally liable under s. 108.22 (2) and (9), Stats., and applies for a license as defined in s. 108.227 (1) (e), Stats.

(b) "Contribution" has the meaning given in s. 108.227 (1) (a), Stats.

(c) "Delinquent" means a license holder or applicant for a license who is liable for any contributions or assessments which remain unpaid after the applicable due date.

(d) "Liable for delinquent contributions" has the meaning given in s. 108.227 (1) (d), Stats.

(e) "Licensing department" has the meaning given in s. 108.227 (1) (f), Stats.

(f) "License holder" means an employer as defined in s. 108.02 (13), Stats., or any individual who is found personally liable under s. 108.22 (2) and (9), Stats., and possesses a license as defined in s. 108.227 (1) (e), Stats.

(g) "Nondelinquency certificate" has the meaning given in s. 108.227 (1) (g), Stats.

History: CR 13−106: cr. Register July 2014 No. 703, eff. 8−1−14.

DWD 114.10 Purpose. This chapter specifies all of the following:

(1) Procedures to be used before taking action under ss. 102.17 (1) (ct), 103.275 (2) (bt), 103.34 (10) (d), 103.91 (4) (d), 103.92 (8), 104.07 (7), 105.13 (4), or 108.227 (3) (b), Stats., with respect to a person whose license or credential is to be denied, not renewed, discontinued, suspended, or revoked based on delinquent unemployment insurance tax contributions.

(2) Procedures under which the department shall enter into agreements with financial institutions doing business in this state to operate the financial record matching program under s. 108.223, Stats.

History: CR 13−106: cr. Register July 2014 No. 703, eff. 8−1−14.

DWD 114.20 Certification of delinquency. (1) After the department has issued an initial determination as specified under s. 108.10, Stats., finding a license holder or applicant for a license delinquent in making contributions as specified under s. 108.227 (1) (d), Stats., and after all potential appeals by the license holder or applicant for a license are exhausted, the department shall do any of the following:

(a) Issue a warrant as specified under s. 108.22 (2) and (3), Stats.

(b) Issue and provide by personally serving or mailing by certified mail to the last known address of the license holder or applicant for a license, a certified notice of liability that includes all of the following information:

1. The mailing date of the notice.

2. The payment amount demanded.

3. A statement that the department may issue a certificate of delinquency to a licensing department that may result in the license or credential being denied, not renewed, discontinued, suspended, or revoked.

4. A statement that the license holder or applicant for a license has 14 calendar days from the date of mailing of the notice to submit the full payment identified under subd. 2. or to enter into an installment payment plan schedule that is established by the department under s. DWD 114.30.

(2) Upon request of any license holder or applicant for a license who has paid the full amount demanded, has entered into and complied with an installment payment plan, or is otherwise not liable for delinquent contributions, the department shall issue a nondelinquency certificate to the license holder or applicant for a license and any licensing department that received a certificate of delinquency.

(3) The department shall issue a certificate of delinquency to a licensing department if all of the following apply:

(a) The department complied with the requirements under sub. (1) (a) and (b).

(b) The department received a request for a certification from a licensing department as to whether a license holder or an applicant for a license is liable for delinquent contributions.

(c) The license holder or applicant for a license has not paid the full payment demanded or entered into and complied with an installment payment plan.

History: CR 13−106: cr. Register July 2014 No. 703, eff. 8−1−14.

DWD 114.30 Installment payment plans. (1) Any license holder or applicant for a license who is unable to pay the full amount of the delinquent unemployment insurance contributions, costs, penalties, and interest may negotiate with the department to pay such contributions, costs, penalties, and interest in installments through a payment plan. The license holder or applicant for a license shall provide a statement of the reasons such contributions, costs, penalties, and interest cannot be paid in full and shall set forth the plan of installment payments proposed by the license holder or applicant for a license. Upon approval of such plan by the department and the timely payment of installments set forth in the plan, collection proceedings with respect to such contributions, costs, penalties, and interest shall be withheld. If the license holder or applicant for a license fails to make any installment payment as scheduled, the department may cancel the installment payment plan and proceed to collect the unpaid portion of such contributions, costs, penalties, and interest in the manner provided by law, and after providing 7 days notice to the license holder or applicant for a license, issue a certificate of delinquency. The department may require license holders or applicants for a license who make installment payments under this paragraph to do so by electronic funds transfer.

(2) A delinquent license holder or applicant for a license may enter into an installment payment plan that will allow the delinquent license holder or applicant for a license to make full payment of all delinquencies. The installment payment plan shall provide sufficient time and payment terms of the license holder or applicant for a license to be able to pay all delinquencies and shall consider the ability of the license holder or applicant for a license to be able to pay all delinquencies.

(3) A license holder or applicant for a license in an active installment payment plan shall pay current and subsequent quarterly contributions in full and on the date specified by the department.

History: CR 13−106: cr. Register July 2014 No. 703, eff. 8−1−14.

DWD 114.40 Other enforcement actions not prohibited. Certifying a license holder or applicant for a license liable for delinquent contributions does not limit the department from taking other actions required or permitted by law to collect contributions from the license holder or applicant for a license.

History: CR 13−106: cr. Register July 2014 No. 703, eff. 8−1−14.

DWD 114.50 Financial record matching program. A financial institution doing business in this state shall enter into an agreement with the department to participate in the exchange of data on a quarterly basis. To the extent feasible, the information required under this agreement shall be submitted by electronic means as prescribed by the department. The financial institution shall sign the agreement and return the agreement to the department within 20 business days of receipt of the agreement. The department shall review the agreement and, if all conditions under s. 108.223, Stats., have been met, shall sign the agreement and provide the financial institution with a copy of the signed agreement. Any changes to the conditions of the agreement shall be submitted by the financial institution or the department at least 60 days prior to the effective date of the change.

History: CR 13−106: cr. Register July 2014 No. 703, eff. 8−1−14.

Chapter DWD 115

BUSINESS TRANSFERS

DWD 115.001 Definitions.
DWD 115.01 Business transfer; methods used in business transfers and in the ordinary course of business; transfer of an asset; transfer of a business activity; total or partial transfer.
DWD 115.02 Determining date of transfer.
DWD 115.03 Notice to the department of a business transfer; required information to submit; department's investigative powers; resolution of issues.
DWD 115.04 Transferee as successor; non−successor transferee.
DWD 115.05 Mandatory successor.
DWD 115.06 Transfers involving fiduciaries.
DWD 115.07 Optional successor.
DWD 115.08 Owned or controlled in substantial part; the same interest or interests; employed substantially the same employees.
DWD 115.09 Determining transfer percentage; minimum transfer percentage; estimating transfer percentage; applying transfer percentage.
DWD 115.10 Effects of successorship.
DWD 115.11 Non−successor transferee.

Note: Chapter Ind−UC 115 was renumbered to be chapter ILHR 115 under s. 13.93 (2m) (b) 1. and 2., Register, August, 1987, No. 380; chapter ILHR 115 as it existed on January 31, 1992 was repealed and a new chapter ILHR 115 was created effective February 1, 1992. Chapter ILHR 115 was renumbered Chapter DWD 115 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 115.001 Definitions. (1) IN GENERAL. Except as provided in sub. (2), unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

(2) Notwithstanding ch. DWD 100 and unless the context clearly indicates a different meaning, in this chapter "employer" means any person who is or becomes subject to the reimbursement financing or contribution requirements of ch. 108, Stats.

History: Cr. Register, January, 1992, No. 433, eff. 2−1−92, r. (intro.), (3), (5) to (7), renum. (1), (2), (8), (11) and (12) to be 100.02 (4), (7), (43), (64) and (65), renum. (9) and (10) to be 100.02 (60) and (63) and am., renum. (4) to be (2) and am., cr. (1), Register, September, 1995, No. 477, eff. 10−1−95.

DWD 115.01 Business transfer; methods used in business transfers and in the ordinary course of business; transfer of an asset; transfer of a business activity; total or partial transfer. (1) BUSINESS TRANSFER. Under s. 108.16 (8) (a), Stats., a transfer of business occurs when any asset or business activity is transferred in whole or in part by a transferor to a transferee by any method other than in the ordinary course of business.

(2) METHODS USED IN BUSINESS TRANSFERS. Methods of transferring assets or business activities include gift, sale, lease, inheritance, foreclosure, termination or cancellation of lease, bankruptcy sale, reorganization, merger or consolidation and receivership.

(3) EVENTS WHICH ARE NOT BUSINESS TRANSFERS. Corporate name changes, the election or cancellation of subchapter S status under section 1362 of the internal revenue code by a corporation, the transfer of payroll function only and the transfer of employees between an employee service company and its clients or customers are not transfers of a business. The transfer of shares of corporate stock by a stockholder is not a transfer of business for the corporation which issued the shares. Sale of used equipment or furniture and fixtures which are being replaced or no longer being used are considered transfers in the ordinary course of business rather than business transfers under ch. 108, Stats.

(4) TRANSFER OF AN ASSET. An asset is transferred if ownership, possession or use changes from the transferor to the transferee.

(5) TRANSFER OF A BUSINESS ACTIVITY. For a transfer of a business activity to be a business transfer under this section and s. 108.16 (8) (a), Stats., the business activity after the transfer shall be similar to the business activity before the transfer. In determining whether a business activity has been transferred, continued or resumed, the department shall consider factors which suggest a similarity in business activity including the following:

(a) The existence of the same customers or the same type of customer after the transfer;

(b) The closeness of the transferee's business location to that of the transferor when location is important to the business;

(c) The continued use of the transferor's trade name by the transferee;

(d) A lapse in operation of 6 months or less unless extensive remodeling is involved or the business is seasonal in nature but in no event shall the lapse be considered if greater than 2 years;

(e) Few if any changes in the product or in brand names after the transfer;

(f) The similarity in days and hours of the business under both the transferor and transferee;

(g) The transfer of inventory, expensive plant machinery, heavy equipment or unique assets as opposed to general office furniture and fixtures;

(h) The transfer of key employees or employees with highly technical professional skills;

(i) The transfer of goodwill;

(j) The existence of a noncompetition clause in the contract prohibiting the transferor from engaging in the same kind of business activity in the area; and

(k) The transfer of a license or a franchise.

(6) TOTAL OR PARTIAL TRANSFER. The transfer of a business may be a total transfer or a partial transfer. If only a portion of a business is transferred, the department shall compute and apply the transfer percentage under s. DWD 115.08.

History: Cr. Register, January, 1992, No. 433, eff. 2−1−92.

DWD 115.02 Determining date of transfer. The effective date of a transfer of business shall be the date on which the transferee first has actual operating control over business assets and business activities. In determining the effective date of a transfer of business, the department shall consider:

(1) Legal documents related to the transfer;

(2) Any statements or documents tending to show that actual operating control was transferred on a date earlier than that reflected in legal documents related to the transfer; and

(3) Any other relevant evidence.

History: Cr. Register, January, 1992, No. 433, eff. 2−1−92.

DWD 115.03 Notice to the department of a business transfer; required information to submit; department's investigative powers; resolution of issues. (1) Any time a business is transferred under s. DWD 115.01, the transferor and transferee shall notify the department in writing within 30 days after the date of transfer under s. 108.16 (8) (k), Stats.

(2) The transferor and transferee shall submit in writing any information which the department may request relating to the transfer, or to any transaction which the department has reason to believe may be a transfer, to permit the department to determine

if the transaction is a transfer of business and whether the transaction is a total or partial transfer under this chapter and ch. 108, Stats.

(3) The department may use any other relevant information, however obtained, in order to make a determination regarding a business transfer under this section. Under ss. 108.14 (2) and (2m) and 108.21, Stats., the department may, at any reasonable time, inspect the work records and any other records of an employing unit, or of any entity which the department has reason to believe may be an employing unit, which may show payments for personal services so that the department may determine the status and contribution liability of the employing unit or entity under ch. 108, Stats.

(4) The department may issue determinations, computations, re−computations and appeal tribunal decisions as necessary under ss. 108.09 and 108.10, Stats., in connection with any issue arising under this chapter.

History: Cr. Register, January, 1992, No. 433, eff. 2−1−92.

DWD 115.04 Transferee as successor; non−successor transferee. (1) STANDARD FOR SUCCESSOR. The transferee becomes a successor under s. 108.16 (8), Stats., if:

(a) A transfer of business has occurred under s. DWD 115.01; and

(b) The department finds successorship status under s. DWD 115.05 or 115.06, or the transferee requests successorship status under s. DWD 115.07.

(2) NON−SUCCESSOR TRANSFEREE. If the transferee is not a successor under sub. (1), s. DWD 115.11 applies.

History: Cr. Register, January, 1992, No. 433, eff. 2−1−92.

DWD 115.05 Mandatory successor. The department shall find that a transferee is a mandatory successor under s. 108.16 (8) (e), Stats., if the business transfer satisfies s. DWD 115.01 and if:

(1) At the time of business transfer, the transferor and the transferee are owned or controlled in whole or in substantial part under s. DWD 115.08, either directly or indirectly by legally enforceable means or otherwise, by the same interest or interests under s. DWD 115.08;

(2) The transferee has continued or resumed the business of the transferor either in the same establishment or elsewhere, or the transferee has employed substantially the same employees under s. DWD 115.08 as those the transferor had employed in connection with the business transferred; and

(3) The same financing provisions under s. 108.15, 108.151 or 108.18, Stats., apply to the transferee as applied to the transferor on the date of the transfer.

History: Cr. Register, January, 1992, No. 433, eff. 2−1−92.

DWD 115.06 Transfers involving fiduciaries. (1) TRANSFER TO A FIDUCIARY. The department shall find that a transferee is a mandatory successor under s. 108.16 (8) (c), Stats., if:

(a) The transferee is a legal representative, trustee in bankruptcy or a receiver or trustee of a person, partnership, association or corporation, or a guardian of the estate of a person, or legal representative of a deceased person;

(b) The transferee has continued or resumed the business of the transferor, either in the same establishment or elsewhere, or the transferee has employed substantially the same employees under s. DWD 115.08 as those the transferor had employed in connection with the business transferred; and

(c) The same financing provisions under s. 108.15, 108.151 or 108.18, Stats., apply to the transferee as applied to the transferor on the date of the transfer.

(2) TRANSFER FROM A FIDUCIARY. If the business of a successor employer specified in sub. (1) is transferred, the transferee is deemed a successor under s. 108.16 (8) (d), Stats., if the transferee would have been a successor under s. DWD 115.04 except for the intervening existence of the successor employer under sub. (1).

History: Cr. Register, January, 1992, No. 433, eff. 2−1−92.

DWD 115.07 Optional successor. (1) STANDARD. A transferee may elect to become a successor under s. 108.16 (8) (b), Stats., if the business transfer satisfies s. DWD 115.01 and if:

(a) The transfer included at least a transfer percentage of 25% of the transferor's total business as determined under s. DWD 115.09;

(b) The same financing provisions under s. 108.15, 108.151 or 108.18, Stats., apply to the transferee as applied to the transferor on the date of the transfer;

(c) The transferee has continued or resumed the business of the transferor either in the same establishment or elsewhere, or the transferee has employed substantially the same employees under s. DWD 115.08 as those the transferor had employed in connection with the business transferred; and

(d) The department has received a timely written application from the transferee requesting successorship status.

(2) WRITTEN APPLICATION; TIMELY RECEIPT; WITHDRAWAL. (a) The department shall consider as timely under sub. (1) (d) any written application from the transferee or its representative which is received by the department on or before: July 31 of the year in which the transfer date is January 1 to March 31; October 31 of the year in which the transfer date is April 1 to June 30; January 31 of the year following the year in which the transfer date is July 1 to September 30; and April 30 of the year following the year in which the transfer date is October 1 to December 31, unless par. (b) applies. The department shall accept a late application received no more than 90 days after its due date if the transferee satisfies the department that the application was late as a result of excusable neglect.

(b) If the due date of the written application would otherwise be a Saturday, Sunday or legal holiday under state or federal law, the due date is the next following day which is not a Saturday, Sunday or legal holiday under state or federal law. The department shall also consider as timely any application which if mailed is either postmarked no later than the applicable due date or received by the department no later than 3 days after that due date.

(c) The transferee may withdraw its application requesting successorship status if a written withdrawal is received by the department before the issuance of an initial determination regarding its application or within 21 days after issuance.

History: Cr. Register, January, 1992, No. 433, eff. 2−1−92; **CR 13−106: am. (2) (a) Register July 2014 No. 703, eff. 8−1−14.**

DWD 115.08 Owned or controlled in substantial part; the same interest or interests; employed substantially the same employees. (1) OWNED OR CONTROLLED IN SUBSTANTIAL PART. The conditions of s. DWD 115.04 (1) are satisfied if 50% or more of both entities are owned or controlled, either directly or indirectly, by the same interest or interests.

(2) THE SAME INTEREST OR INTERESTS. The department shall presume, unless shown to the contrary, that the same interest or interests includes the spouse, child or parent of the individual who owned or controlled the business, or any combination of more than one of them. To overcome the presumption that these are the same interest or interests, it must be established that:

(a) Usual and customary sales procedures were followed;

(b) All transactions were at fair market value and similar to those available to unrelated parties under similar circumstances;

(c) The spouse, child or parent of the individual who owned or controlled the business was not employed by the business in the 12−month period prior to the transfer in a position in which he or she was able to make management decisions;

(d) The individual who owned or controlled the business prior to the transfer has no ownership interest, either directly or indirectly, in the transferee; and

(e) The individual who owned or controlled the business prior to the transfer is not employed by the transferee in a position in which he or she is able to make management decisions.

(3) EMPLOYED SUBSTANTIALLY THE SAME EMPLOYEES. The conditions of s. DWD 115.05 (2), 115.06 (1) (b) or 115.07 (1) (c) that the transferee has employed substantially the same employees as those the transferor had employed are met if 50% or more of the employees employed by the transferor in connection with the business transferred work for the transferee.

History: Cr. Register, January, 1992, No. 433, eff. 2−1−92.

DWD 115.09 Determining transfer percentage; minimum transfer percentage; estimating transfer percentage; applying transfer percentage. (1) DETERMINING TRANSFER PERCENTAGE. The transfer percentage is computed by dividing the payroll in the transferred portion of the transferor's business prior to the transfer date by the transferor's total payroll. The transfer percentage is not based on the number of employees taken over by the transferee, but rather on the payroll incurred in the transferred portion prior to the transfer date. The payroll for overhead and combined positions shall be allocated in the same proportion as the direct payrolls involved, or on such other reasonable basis as may better correspond with and reflect the facts of the transfer.

(2) MINIMUM TRANSFER PERCENTAGE. Optional successorship requires a minimum transfer percentage of 25%. Mandatory successorship does not require any minimum transfer percentage.

(3) ESTIMATING THE TRANSFER PERCENTAGE. When the transferor does not provide information at the department's request or the information provided is not sufficiently specific or accurate, the department shall estimate the transfer percentage based on the best available information.

(4) APPLYING THE TRANSFER PERCENTAGE. For any partial transfer, whether optional or mandatory, the department shall:

(a) Apply the transfer percentage to the positive or negative balance in the employer's account of the transferor as of the transfer date and to the appropriate June 30 balances of the transferor;

(b) Apply the transfer percentage to the transferor's payroll prior to the transfer date as needed to correctly calculate the transferee's contribution rates; and

(c) Transfer the amounts so calculated to the employer's account of the transferee.

History: Cr. Register, January, 1992, No. 433, eff. 2−1−92.

DWD 115.10 Effects of successorship. (1) EMPLOYER STATUS. (a) A transferor which is no longer an employer after a transfer of business has occurred shall submit contribution reports and payments which may be outstanding on the date of transfer or which become due subsequent to that date for a quarter including the transfer date.

(b) If not already an employer, a successor becomes an employer subject to ch. 108, Stats., on the date of transfer and is liable for contributions or payments in lieu of contributions, whichever is applicable, from that date.

(2) TRANSFER OF EMPLOYER'S ACCOUNT BALANCE. (a) *Total successorship.* When a transfer of business results in a total successorship, the successor shall take over and continue the transferor's account, including its positive or negative balance under s. 108.16 (8) (f), Stats.

(b) *Partial successorship.* When a transfer of business results in a partial successorship, the successor shall take over and continue the transferor's account, including its positive or negative balance, in an amount determined by the transfer percentage under s. 108.16 (8) (f), Stats.

(3) TRANSFER OF RATE EXPERIENCE. (a) *Successor not an employer at time of transfer.* If the successor was not an employer at the time of transfer under ch. 108, Stats., the department shall assign to the successor, as of the date of transfer, the basic contribution rate assigned or assignable to the transferor on the date of transfer under s. 108.16 (8) (g), Stats. If there are several transfers of business on the same date of transfer to a single successor, the basic rate which will be assigned to the successor may not be higher than the highest basic rate which applied to any of the transferors of which the transferee is a successor for the year in which the transfer occurred.

(b) *Successor an employer at time of transfer.* If the successor was an employer at the time of transfer under ch. 108, Stats., the successor shall retain the assigned rate for the calendar year of the transfer. For subsequent years as required by s. 108.18, Stats., the department shall assign a rate which reflects the combined experience of the transferor and successor. For the purposes of s. 108.18, Stats., the department shall determine the experience of the successor's account by allocating to that account the respective proportions of the transferor's payroll and benefits properly assignable to the business transferred.

(4) PAYROLL BASE. For the calendar year of the transfer, employment in the transferred business becomes employment performed for the successor under s. 108.16 (8) (i), Stats. The successor shall compute exclusions in excess of the payroll base as though only one employer existed for that entire year.

(5) TRANSFER OF LIABILITY FOR CONTRIBUTIONS OR PAYMENTS IN LIEU OF CONTRIBUTIONS. The transferor and successor shall be jointly and severally liable for any of the transferor's liability for contributions or payments in lieu of contributions at the time of the transfer under s. 108.16 (8) (f), Stats. The liability of the successor shall be proportioned to the extent of the transferred business as determined by the transfer percentage.

(6) TRANSFER OF BENEFIT LIABILITY. (a) *Total successorship.* When a transfer of business results in a total successorship, all benefits paid after the transfer date shall be charged to the employer's account of the successor, even though based on prior services for the transferor in the transferred business under s. 108.16 (8) (i), Stats.

(b) *Partial successorship.* When a transfer of business results in a partial successorship, any benefits charged to the transferor after the transfer date for employees of the transferred business shall be credited to the employer's account of the transferor and recharged to the employer's account of the successor.

History: Cr. Register, January, 1992, No. 433, eff. 2−1−92.

DWD 115.11 Non−successor transferee. (1) STANDARD. A transferee which is not a successor under ch. 108, Stats., and this chapter becomes an employer as of the date of transfer under s. 108.16 (8) (j), Stats., when the following conditions are met:

(a) A transfer of business has occurred under s. DWD 115.01; and

(b) The transferee is not currently an employer subject to ch. 108, Stats.

(2) EFFECTS OF A TRANSFER WITHOUT SUCCESSORSHIP. (a) The transferee becomes subject to ch. 108, Stats., on the date of transfer and is liable for contributions or payments in lieu of contributions, whichever is applicable, from that date.

(b) The transferee shall be assigned an initial or new employer rate for the first 2 years under s. 108.18 (2), Stats.

(c) The first contribution report shall be due from the transferee on the due date specified in s. DWD 110.06 (3), (4) and (5) for the quarter following the quarter in which the transfer occurred or January 31 for those becoming liable in the fourth quarter of the preceding year.

History: Cr. Register, January, 1992, No. 433, eff. 2−1−92.

Chapter DWD 120

NOTICES AS TO BENEFITS

DWD 120.001 Definitions.
DWD 120.01 Notice−posters as to claiming unemployment benefits.
DWD 120.03 Special notices for certain seasonal employees.

Note: Chapter Ind−UC 120 was renumbered to be chapter ILHR 120 under s. 13.93 (2m) (b) 1. and 2., Register, August, 1987, No. 380. Chapter ILHR 120 was renumbered Chapter DWD 120 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 120.001 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 120.01 Notice−posters as to claiming unemployment benefits. Each covered employer shall keep employees informed about unemployment insurance under ch.108, Stats., by posting appropriate notice−posters supplied by the unemployment insurance division. The notices shall be permanently posted by each such employer at suitable points in each of the employer's work−places and establishments in Wisconsin. Suitable points for posting the notices include: on bulletin boards, near time clocks, and other places where all employees will readily see them.

History: 1−2−56; am. Register, September, 1968, No. 153, eff. 10−1−68; corrections made under s. 13.93 (2m) (b) 5., Stats., Register, October, 1994, No. 466; am. Register, November, 1999, No. 527, eff. 12−1−99.

DWD 120.02 Special notices, for certain fresh perishable fruit or vegetable processing employees. History: 1−2−56; renum. from ILHR 120.07 to be ILHR 120.02 and am. Register, September, 1968, No. 153, eff. 10−1−68; corrections made under s. 13.93 (2m) (b) 5., Stats., Register, October, 1994, No. 466; am. Register, November, 1999, No. 527, eff. 12−1−99; **CR 07−009: r. Register June 2007 No. 618, eff. 7−1−07.**

DWD 120.03 Special notices for certain seasonal employees. (1) Under s. 108.02 (15) (k) 19., Stats., if an individual has received special written notice from an employer which has been designated by the department as a seasonal employer, work for that employer is excluded employment unless the individual is employed by the seasonal employer for at least 90 days in a season that includes any portion of the individual's base period or the individual has earned at least $500 from another employer during the applicable base period. Failure to provide the special notice negates the exclusion and the employment is included in covered employment for unemployment insurance purposes.

(2) The special written notice shall be provided by the seasonal employer, on either the division's form UCB−9381−P or an equivalent, prior to the individual's performance of services. The special notice shall inform the employee of the possibility that wages earned in seasonal employment will be excluded from consideration when determining his or her eligibility for unemployment insurance benefits.

History: Cr. Register, November, 1999, No. 527, eff. 12−1−99.

Chapter DWD 123

BENEFIT REPORTS FILED BY EMPLOYERS

DWD 123.001 Definitions.
DWD 123.01 Purpose.
DWD 123.02 Filing a benefit report.
DWD 123.03 Types of benefit reports.

Note: Chapter Ind−UC 123 was renumbered to be chapter ILHR 123 under s. 13.93 (2m) (b) 1. and 2., Register, August, 1987, No. 380. Chapter ILHR 123 was renumbered Chapter DWD 123 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 123.001 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 123.01 Purpose. Pursuant to ss. 108.04 (13), 108.09 (1), and 108.14 (2), Stats., in order to determine benefit claims, the department requires employers to provide information about claimants' employment separations, dates of work, wages and other payments, and other issues that may be disqualifying. This chapter specifies the benefit reports that must be filed by employers and the filing requirements for those reports.

History: 1−2−56; r. (4) (b), Register, August, 1957, No. 20, eff. 9−1−57; am. (1), (2), (3) (a), (4), (5) and (6), Register, September, 1968, No. 153, eff. 10−1−68; am. Register, January, 1975, No. 229, eff. 2−1−75; corrections made under s. 13.93 (2m) (b) 5., Stats., Register, October, 1994, No. 466; correction in (6) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 2000, No. 537; **CR 07−038: r. and recr. Register October 2007 No. 622, eff. 11−1−07.**

DWD 123.02 Filing a benefit report. (1) IN GENERAL. The department shall consider a benefit report to be filed by an employer when it is completed and returned to the department as set forth in this chapter. Returning an incomplete report, even if it is received within the time limit, constitutes a failure to file the required report within the meaning of s. 108.04 (13) (c) or (f), Stats. Failure to file a required report as set forth in this chapter shall be considered an admission by the employer that no eligibility question exists regarding that claimant. Eligibility issues raised after the due date of a required report will be resolved in accordance with ss. 108.09 (2) (b) and 108.04 (13), Stats.

(2) TIME AND PLACE OF FILING. An employer shall file each benefit report requested by the department within the time limit and at the department location specified on the report.

History: **CR 07−038: cr. Register October 2007 No. 622, eff. 11−1−07.**

DWD 123.03 Types of benefit reports. (1) SEPARATION NOTICE. The department shall send the separation notice to an employer when a new benefit claim is initiated and the employer is identified as having employed the claimant in the base or lag period of the claim, or when a benefit claim is resumed and the employer is identified as having employed the claimant after the last claimed week. The employer shall complete and return the separation notice to the department if any of the following apply:

(a) Any information on the notice is incorrect.

(b) There is vacation, dismissal, or holiday pay assigned to any period beyond the claimant's last day of work.

(c) There is an eligibility issue that applies to the claimant that is not already identified on the separation notice.

(d) The claimant did not work for the employer.

(2) WAGE VERIFICATION/ELIGIBILITY REPORT. The department shall send the wage verification/eligibility report to an employer while a benefit claim is in progress to verify partial wages earned from the employer as reported by the claimant on weekly claim certifications and to verify the claimant's continuing eligibility for benefits. The employer shall complete and return the wage verification/eligibility report to the department if any of the following apply:

(a) Information on the form report is missing or incorrect.

(b) An eligibility issue applies to the claim.

(c) The claimant did not work for the employer.

(3) URGENT REQUEST FOR WAGES. The department shall send the urgent request for wages to an employer when the claimant reports having been paid wages by the employer during the base period or an alternate base period, and the department has no record of such wages. The employer shall complete and return the urgent request for wages to the department.

History: 1−2−56; r. and recr. Register, September, 1968, No. 153, eff. 10−1−68; am. Register, January, 1975, No. 229, eff. 2−1−75; corrections made under s. 13.93 (2m) (b) 5., Stats., Register, October, 1994, No. 466; **CR 07−038: r. and recr. Register October 2007 No. 622, eff. 11−1−07.**

Chapter DWD 126

WORK REGISTRATION

DWD 126.001 Definitions.
DWD 126.01 Eligibility.
DWD 126.02 Registration.
DWD 126.03 Waiver of work registration requirement.

Note: Chapter ILHR 126 was created by emergency rule effective 1−8−84; Chapter ILHR 126 as it existed on July 31, 1984 was repealed and a new Chapter ILHR 126 was created effective 8−1−84. Chapter ILHR 126 as it existed on October 31, 1994 was repealed and new Chapter ILHR 126 was created effective November 1, 1994. Chapter ILHR 126 was renumbered chapter DWD 126 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 126.001 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 126.01 Eligibility. Except as waived by the department under this chapter, a claimant who is unemployed is eligible for unemployment benefits for any given week only if the claimant has registered for work.

History: Cr. Register, October, 1994, No. 466, eff. 11−1−94; **EmR1316: emerg. am. eff. 9−29−13; CR 13−081: am. Register April 2014 No. 700, eff. 5−1−14.**

DWD 126.02 Registration. A claimant shall be considered registered for work with respect to any given week if the claimant has filed an application to establish a benefit year pursuant to s. DWD 129.02, and has completed and submitted, by computer−based programs or other methods approved by the department, all information for registration for work as prescribed by the department and within a time−frame specified by the department. The department shall consider alternate forms of submittal of completed information by a claimant on an individual basis when there is good cause for the claimant's inability to use a computer−based program. Good cause for failure to use a computer−based program as prescribed by the department shall include any of the following:

(1m) The claimant possesses physical, mental, educational, or linguistic limitations.

(2m) The claimant has unusual or unavoidable circumstances beyond the claimant's control.

Note: The department shall notify claimants that it will consider alternate methods for work registration if there is good cause for the claimant's inability to use a computer−based program. In addition, the department shall provide claimants with information about how to request work registration assistance.

History: Cr. Register, October, 1994, No. 466, eff. 11−1−94; am. (3), Register, March, 1995, No. 471, eff. 4−1−95; am. (3), Register, September, 2000, No. 537, eff. 10−1−00; **EmR1316: emerg. renum. (1) to 126.02 and am., r. (2) to (4) eff. 9−29−13; CR 13−081: renum. (1) to (intro.) and am., cr. (1m), (2m), r. (2) to (4) Register April 2014 No. 700, eff. 5−1−14.**

DWD 126.03 Waiver of work registration requirement. The department shall waive a claimant's work registration requirement for any given week if any of the following apply:

(2) The claimant is currently laid off from employment with an employer but the employer has verified with the department there is a reasonable expectation that the claimant will be returning to employment within a period of 8 weeks, which may be extended an additional 4 weeks but may not exceed a total of 12 weeks. If the employer does not verify the claimant's employment status, the department may consider any of the following:

(am) The history of layoffs and reemployments by the employer.

(bm) Any information that the employer furnished to the individual concerning the claimant's anticipated reemployment date.

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

(3) The claimant has a reasonable expectation of starting employment with a new employer within 4 weeks and the employer has verified the anticipated starting date with the department. The waiver shall not exceed 4 weeks.

(4) The claimant has been laid off from work and routinely obtains work through a union referral and all of the following apply:

(a) The union is the primary method used by workers to obtain employment 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 the department, any information regarding a claimant's registration with the union or any referrals for employment it has made to the claimant.

(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 a union and satisfies the requirements of the union relating to job referral procedures, and maintains membership in good standing with the union.

(f) The union enters into an agreement with the department regarding the requirements of this subsection.

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

(6) The claimant is enrolled in and satisfactorily participating in a course of approved training under s. 108.04 (16), Stats., in a work share program under s. 108.062 (10m), Stats., in a self−employment assistance program, or another program enacted by the Wisconsin or federal legislature and the program includes that claimants who participate in the program shall be waived by the department from work registration requirements.

(7) The claimant is unable to complete registration due to circumstances which the department determines are beyond the claimant's control.

Note: This section is shown as affected by CR 13−081 effective June 1, 2015, in accordance with the requirements of section 47 of CR 13−081, which provides:

With respect to changes to ss. DWD 126.03 and 127.02, the rule will take effect when the Secretary determines the department has the technological ability to implement the changes. as determined by the secretary of the department determines the department has the technological ability to implement the changes.

Note: The department published the following notice in Register May 26, 2015 No. 713B:

Effective June 1, 2015, Secretary Reginald Newson of the Wisconsin Department of Workforce Development (DWD), determined that DWD has the technological ability to implement the changes made by Clearinghouse Rule No. 13−081 to ss. DWD 126.03 and 127.02 (intro.), and (2) to (11), Wis. Adm. Code.

The requirements of these provisions will be enforced beginning June 14, 2015.

History: Cr. Register, October, 1994, No. 466, eff. 11−1−94; am. (intro.), (2) (b), (c), Register, March, 1995, No. 471, eff. 4−1−95; am. (2) (b) and (c), Register, September, 2000, No. 537, eff. 10−1−00; **EmR1316: emerg. am. (intro.), r. (1), am. (2) (intro.), r. (2) (a) to (c), cr. (3) to (7) eff. as noted above; CR 13−081: am. (intro.), r. (1), am. (2) (intro.), r. (2) (a) to (c), cr. (2) (am) to (cm), (3) to (7) Register April 2014 No. 700, eff. as noted above.**

Chapter DWD 127

WORK SEARCH AND REEMPLOYMENT SERVICES

DWD 127.001 Definitions.
DWD 127.01 Work search; policy; requirements.
DWD 127.02 Waiver of work search requirements.
DWD 127.04 Claimants to present verification of work search actions.
DWD 127.05 Certification as to work search.
DWD 127.06 Added efforts to secure work.
DWD 127.07 Reemployment services.

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)** A claimant shall be eligible for unemployment benefits for any given week when the department finds that the claimant has completed at least 4 actions to search for suitable work within that week. Upon request of the department, a claimant shall provide verification of conducting at least 4 work search actions that are reasonably designed to secure work. 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 suitable work. 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 claimants to conduct themselves as would a prudent person who is out of work and seeking work.

(2) Any of the following actions by a claimant shall constitute a reasonable work search action:

(a) Applying for work with employers who may reasonably be expected to have openings for suitable work, except that applications submitted to the same employer more than once in a 4−week period are not credited as a work search action unless a new job is posted by the employer or available, or the employer's customary practices or circumstances encourage the submission of additional applications or the provisions under s. 108.04 (2) (i), Stats., apply.

(c) Making applications for suitable work.

(cm) Taking examinations for suitable work in the civil service of a governmental unit.

(d) Registering for suitable work with a public or private placement facility, including a union.

(em) Following the recommendations of a public employment office or similar reemployment services, including participation in reemployment services.

(j) Other actions the department may determine as constituting a reasonable work search action.

Note: The department shall include in the UCB−10 Handbook for Claimants examples of reasonable work search actions. In addition, the department shall include information on how claimants can contact the department with questions related to work search actions.

(3) Except if the work search requirement has been waived by the department, a claimant shall be ineligible for unemployment benefits in any given week in which the department determines the claimant did not conduct at least 4 actions to search for suitable work within that week.

History: Cr. Register, July, 1984, No. 343, eff. 8−1−84; CR 06−072: am. (1) and (2) (b), r. and recr. (2) (intro.) Register December 2006 No. 612, eff. 1−1−07; **EmR1316: emerg. am. (1), (2) (intro.), (a), r. (2) (b), am. (2) (c) to (d), cr. (2) (em), r. (2) (f) to (i),r. and recr. (2) (j), am. (3) eff. 9−29−13; CR 13−081: am. (1), (2) (intro.), (a), r. (2) (b), am. (2) (c) to (d), r. (2) (e) to (i), cr. (2) (em), r. and recr. (2) (j), am. (3) Register April 2014 No. 700, eff. 5−1−14.**

DWD 127.02 Waiver of work search requirements. The department shall waive a claimant's requirement to conduct at least 4 actions to search for suitable work if any of the following apply:

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

Note: Sub. (1) is amended by CR 13−081 effective when the secretary of the department determines the department has the technological ability to implement the changes made by CR 13−081 to read:

(1) The claimant performs at least 20 hours of work for any employer in that week.

(2) The claimant is currently laid off from employment with an employer but there is a reasonable expectation that the claimant will be returning to employment within a period of 8 weeks, which may be extended an additional 4 weeks but may not exceed a total of 12 weeks. In determining whether the claimant has a reasonable expectation of reemployment by the employer, the department shall request the employer to verify the claimant's employment status. If the employer does not verify the claimant's employment status, the department may consider any of the following:

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

(b) Any information that the employer furnished to the individual concerning the claimant's anticipated reemployment date.

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

(3) The claimant has a reasonable expectation of starting employment with a new employer within 4 weeks and the employer has verified the anticipated starting date with the department. The waiver shall not exceed 4 weeks.

(4) The claimant has been laid off from work and routinely obtains work through a union referral and all of the following apply:

(a) The union is the primary method used by workers to obtain employment 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 the department, any information regarding a claimant's registration with the union or any referrals for employment it has made to the claimant.

(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 a union and satisfies the requirements of the union relating to job referral proce-

dures, and maintains membership in good standing with the union.

(f) The union enters into an agreement with the department regarding the requirements of this subsection.

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

(7) The claimant is enrolled in and satisfactorily participating in a course of approved training under s. 108.04 (16), Stats., in a work share program under s. 108.062 (10m), Stats., or in a self−employment assistance program or another program that has been enacted by the Wisconsin or federal legislature and the program includes that claimants who participate in the program shall be waived by the department from work search requirements.

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

(9) The claimant's most recent employer failed to post appropriate notice posters as to claiming unemployment benefits as required under s. DWD 120.01 and the claimant was not aware of the work search requirement.

(11) The claimant has been referred for reemployment services, is participating in such services, or is not participating in such services, but has justifiable cause for failure to participate. Justifiable cause includes that the claimant is unable to participate due to any of the following:

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

(b) The claimant is enrolled and satisfactorily participating in a course of training approved by the department, in a work share program under s. 108.062 (10m), Stats., or in a self−employment assistance program or another program that has been enacted by the Wisconsin or federal legislature and the program includes that claimants who participate in the program shall be waived by the department from work search requirements.

(c) The claimant is employed.

(d) The claimant is attending a job interview.

(e) Circumstances which the department determines are beyond the claimant's control.

Note: This section, except sub. (1) as noted above, is shown as affected by CR 13−081 effective June 1, 2015, in accordance with the requirements of section 47 of CR 13−081, which provides:

With respect to changes to ss. DWD 126.03 and 127.02, the rule will take effect when the Secretary determines the department has the technological ability to implement the changes. as determined by the secretary of the department determines the department has the technological ability to implement the changes.

Note: The department published the following notice in Register May 26, 2015 No. 713B:

Effective June 1, 2015, Secretary Reginald Newson of the Wisconsin Department of Workforce Development (DWD), determined that DWD has the technological ability to implement the changes made by Clearinghouse Rule No. 13−081 to ss. DWD 126.03 and 127.02 (intro.), and (2) to (11), Wis. Adm. Code.

The requirements of these provisions will be enforced beginning June 14, 2015.

History: Cr. Register, July, 1984, No. 343, eff. 8−1−84; CR 06−072: (6) to (11) renum. from DWD 127.03 (1) to (6) and am. (9), am. (intro.) and (3) (intro.), r. and recr. (2), Register December 2006 No. 612, eff. 1−1−07; **EmR1316: emerg. am. (intro.), (1), renum. (2) (intro.) to (2) and am., r. (2) (a) to (c), renum. (3) (intro.) to (3) and am., r. (3) (a) to (c), am. (4), r. (5), am. (7), (9), r. (10), am. (11), cr. (12) eff. 9−29−13; CR 13−081: am. (intro.), (1), (2) (intro.), (b), renum. (3) (intro.) to (3) and am., r. (3) (a) to (c), am. (4), r. (5), am. (7), (9), r. (10), cons. and renum. (11) (intro.) and (d) to (11) and am., r. (11) (a), (b) Register April 2014 No. 700, eff. 4−1−15, except (1), as noted above.**

DWD 127.04 Claimants to present verification of work search actions. (1) Upon request, a claimant shall provide verification of conducting at least 4 work search actions to the department by computer−based programs or other methods approved by the department. The department shall consider alternate forms of submittal of completed information by a claimant on an individual basis when there is good cause for the claimant's inability to use a computer−based program. Good cause for failure to use a computer−based program as prescribed by the department shall include any of the following:

(am) The claimant possesses physical, mental, educational, or linguistic limitations.

(bm) The claimant has unusual or unavoidable circumstances beyond the claimant's control.

Note: The department shall notify claimants that it will consider alternate methods to verify a claimant's work search actions if there is good cause for the claimant's inability to use a computer−based program. In addition, the department shall provide claimants with information about how to request assistance with providing work search verification.

(1m) A claimant shall retain verification of all work search actions for 52 weeks following the week in which the work search actions occurred. Items used for verification shall include any of the following:

(a) Applications for work including the date on which the claimant made an employer contact; if available, the name and address of the employer and the name of the employer representative contacted; the type of work applied for; the method used to contact the employer and the results of the contact; or other verifiable information of the application.

(b) Civil service examinations: the date on which the claimant took an examination, the location of the examination, and the position for which the examination was taken.

(c) Registration with a union and placement facilities: the date on which the claimant registered and the name and address of the facility.

(d) Any reemployment services used at a public employment office: the date of the visit, the name and address of the public employment office, training program, or similar reemployment office, and the name of the person with whom the claimant met.

(e) If approved by the department, any other type of work search activity reasonably expected to result in the claimant becoming employed.

(2) A claimant may be ineligible for unemployment benefits in any given week in which the claimant fails to provide satisfactory verification of work search actions when requested by the department.

History: Cr. Register, July, 1984, No. 343, eff. 8−1−84; CR 06−072: am. (1) (intro.) Register December 2006 No. 612, eff. 1−1−07; **EmR1316: emerg. am. (title), rn. (1) (intro.) to (1) and (1m) (intro.) and am., renum. (1) (a) to (d) to (1m) (a) to (d) and am., cr. (1m) (e), am. (2) eff. 9−29−13; CR 13−081: am. (title), (1) (intro.), cr. (1) (am), (bm), renum. (1) (a) to (d) to (1m) (a) to (d) and am., cr. (1m) (intro.), (e), am. (2) Register April 2014 No. 700, eff. 5−1−14.**

DWD 127.05 Certification as to work search. The department may require a claimant to certify that work search actions were made each week as part of the claim filing procedure under ch. DWD 129.

History: Cr. Register, July, 1984, No. 343, eff. 8−1−84; CR 06−072: r. (2) and (3) Register December 2006 No. 612, eff. 1−1−07; **EmR1316: emerg. am. eff. 9−29−13; CR 13−081: am. Register April 2014 No. 700, eff. 5−1−14.**

DWD 127.06 Added efforts to secure work. (1) In addition to the requirements under s. DWD 127.01 (2), if a claimant has been unemployed for 7 or more consecutive weeks, a claimant may be required to perform any of the following:

(a) Conduct 5 work search actions within any given week when the department determines a claimant's employment history or conduct indicates that the claimant is placing unreasonable limitations as to salary, hours, or conditions of work in accepting new work or is not engaging in work search efforts as would a prudent person who is out of work and is seeking work.

(b) Develop a work search plan for approval by the department. The plan may include a requirement to complete 5 work search actions per week. The plan shall consider the number of job opportunities available in the labor market area where the claimant usually works.

(2) A claimant shall be ineligible for benefits in any given week in which the department determines that the claimant failed, without justifiable cause, to comply with the requirements under sub. (1).

(3) A claimant who is claiming extended benefits under s. 108.141, Stats., shall comply with any requirements imposed by the department under sub. (1). 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 the claimant's 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; **EmR1316: emerg. renum. (1) to (1) (intro.), (a), (b) and am., cr. (1) (c), am. (2), (3), eff. 9−29−13; CR 13−081: renum. (1) to (1) (intro.), (a) and am., cr. (1) (b), am. (2), (3) Register April 2014 No. 700, eff. 5−1−14.**

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

(2) The department may find that a claimant has justifiable cause for failure to participate in reemployment services in any given week. Justifiable cause for failure to participate in reemployment services includes that the claimant is unable to participate due to any of the following:

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

(b) The claimant is enrolled and satisfactorily participating in a course of training approved by the department, in a work share program under s. 108.062 (10m), Stats., in a self−employment assistance program, or another program designed to assist individuals to become employed that has been enacted by the Wisconsin or federal legislature.

(c) The claimant is employed.

(d) The claimant is attending a job interview.

(e) Circumstances which the department determines are beyond the claimant's control.

History: Cr. Register, July, 1984, No. 343, eff. 8−1−84; **EmR1316: emerg. am., (title), (1), r. and recr. (2) eff. 9−29−13; CR 13−081: am. (title), (1), r. and recr. (2) Register April 2014 No. 700, eff. 5−1−14.**

Chapter DWD 128

ABILITY TO WORK AND AVAILABILITY FOR WORK

DWD 128.001 Definitions.
DWD 128.01 Able to work and available for work.
DWD 128.03 Eligibility review.

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 to work and available for work. **(1)** APPLICABILITY. 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 perform suitable work and available for suitable work. Under s. 108.04 (1) (b), (7) (c), and (8) (e), Stats., a claimant shall be eligible for unemployment benefits only if the claimant is able to perform suitable work and available for suitable work. The department may determine the claimant's ability to perform suitable work and availability for suitable work at any time through questioning of the claimant and other procedures.

(2) PRESUMPTION. Unless evidence is obtained that in the relevant week the claimant was not able to work or available for work, a claimant is presumed able to work and available for work for any week that all of the following conditions are met:

(a) The claimant has registered for work and has complied with s. DWD 126.02, or registration is waived under s. DWD 126.03.

(b) The claimant has complied with the work search requirements of s. 108.04 (2) (a) 3., Stats., and ch. DWD 127, or a work search is waived or excused under ch. DWD 127.

(3) ABLE TO WORK. (a) Able to work means that the claimant maintains an attachment to the labor market and has the physical and psychological ability to engage in some substantial gainful employment in suitable work. During any week, a claimant is not able to work if the claimant is unable to perform suitable work due to a physical or psychological condition. In determining whether the claimant is attached to the labor market and able to perform suitable work, the department shall consider all factors relevant to the circumstances of the case, which may include the following:

1. The claimant's usual or customary occupation.

2. The nature of the restrictions caused by the claimant's physical or psychological condition.

3. Whether the claimant is qualified to perform other work within the claimant's restrictions considering the claimant's education, training, and experience.

4. Occupational information and employment conditions data and reports available to the department showing whether and to what extent the claimant is able, within his or her restrictions, to perform suitable work in his or her labor market area.

(4) AVAILABLE FOR WORK. (a) *Withdrawal from labor market.* Available for work means that the claimant maintains an attachment to the labor market and is ready to perform full−time suitable work in the claimant's labor market area. An individual who has a physical or psychological restriction and is found able to work under sub. (3) shall not be considered unavailable for work solely because of inability to work, provided the individual is available for suitable work for the number of hours the individual is able to work. During any week, a claimant is not available for suitable work if he or she has withdrawn from the labor market due to restrictions on his or her availability for work. In determining whether a claimant has withdrawn from the labor market, the department shall consider one or more of the following factors:

Example 1: A claimant has a number of physical restrictions due to recent surgery, including a restriction to work no more than 20 hours per week for 2 months. With the restrictions, the claimant cannot perform the duties of his or her usual occupation but is able to perform a number of jobs for which he or she has prior training and experience. The claimant is willing to do these jobs and is willing to work 20 hours per week. The claimant has no other restrictions to availability. Benefits will not be denied solely because of the inability to work full−time.

Example 2: A claimant is restricted to working 30 hours per week due to medical problems. The claimant is still able to perform the duties of his or her usual occupation. However, the claimant is unwilling to work more than 20 hours per week because the claimant is receiving Social Security benefits and more than 20 hours of work would reduce those benefits. Benefits will be denied until the claimant is available for 30 hours of work per week.

1. 'Salary or wages.' A claimant is considered to have withdrawn from the labor market if he or she is not available for full−time suitable work at a wage reasonably comparable to the usual wage that was paid to the claimant while working in the claimant's usual occupation. The claimant's usual wage is determined by evaluating the wage rates that were paid to the claimant in one or more previous jobs since the start of the claimant's base period. The claimant's usual occupation is determined by considering the claimant's training and experience as evidenced by the claimant's employment since the start of the claimant's base period.

2. 'Shift and time restrictions.' A claimant is considered to have withdrawn from the labor market if he or she is not available for full−time suitable work during the standard hours in which work is performed in the occupations in which the claimant usually works or has prior training or experience. In determining the standard hours in which work is performed in the occupations, the department shall include the hours and the shift that the claimant worked in an occupation in one or more previous jobs since the start of the claimant's base period. For purposes of this subdivision, a claimant whose availability is restricted by an immediate family member's medical or health condition or other infirmity requiring care that is provided by the claimant is not considered to have withdrawn from the labor market, provided that the claimant remains available for full−time suitable work, regardless of the shift or hours.

3. 'Travel and transportation.' A claimant is considered to have withdrawn from the labor market if he or she is either not willing or not able to travel a reasonable distance and time to and from work. In making this determination, the department may consider the wage sought, the modes of available transportation, commuting costs, and the claimant's commuting history.

4. 'Incarceration.' A claimant who is incarcerated for more than 48 hours during any week is considered to have withdrawn from the labor market for that week unless the claimant has work release privileges that allow the claimant to meet all requirements related to availability for work.

5. 'Absence from the labor market.' A claimant who is absent from his or her labor market area for more than 48 hours during any week is considered to have withdrawn from the labor market for that week, unless the claimant shows that he or she remains continuously attached to the labor market during the absence or that the primary purpose of the absence was to seek suitable work. A claimant may show continuous attachment to the labor market by the claimant's availability to timely receive and respond to offers of work by phone or other means of communication and

willingness and ability to return to the labor market within 24 hours.

6. 'Types of work sought.' A claimant is considered to have withdrawn from the labor market if the claimant does not broaden his or her availability for work to additional types of suitable work as the period of his or her unemployment lengthens.

7. 'Other unreasonable restrictions on working conditions.' A claimant is considered to have withdrawn from the labor market if he or she places other unreasonable restrictions on working conditions.

8. 'Occupational information and employment conditions data.' Occupational information and employment conditions data and reports available to the department showing the extent to which full−time suitable jobs exist in the claimant's labor market area within his or her restrictions.

(b) *Standards for suitable work distinguished.* Nothing in par. (a) may prevent the department from denying benefits to a claimant who fails, without good cause, to accept suitable work when offered, as provided in s. 108.04 (8) (a), Stats., or to a claimant who fails, without good cause, to return to suitable work with a former employer that recalls the claimant within 52 weeks after the claimant last worked for the employer, as provided in s. 108.04 (8) (c), Stats. The standards for determining a claimant's availability for suitable work and a claimant's failure, without good cause, to accept suitable work are different standards.

(5) LAWFUL RESIDENT. To be considered available for suitable work for a week, an alien must be legally authorized to work that week in the United States by the appropriate agency of the federal government. In determining whether an alien is legally authorized to work in the United States, the department will follow the requirements of 42 USC 1320b−7 (d) (2), which relates to verification of and determination of an alien's status.

Note: 42 USC 1320b−7 (d) (2) is Section 1137 (d) of the Social Security Act.

(6) JURY DUTY. The department shall consider a claimant to be available for suitable work during the time that the claimant responds to and remains under a summons for jury service, whether or not impaneled on a jury. Jury duty shall be good cause for not reporting for an eligibility review under s. DWD 128.03.

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; CR 07−054: r. and recr. Register March 2008 No. 627, eff. 4−1−08; CR 10−017: am. (3), (4) (a) (intro.) and 2., r. (7) Register September 2010 No. 657, eff. 10−1−10; **EmR1316: emerg. am. (2) (a) eff. 9−29−13; CR 13−081: am. (2) (a) Register April 2014 No. 700, eff. 5−1−14.**

DWD 128.03 Eligibility review. (1) The department may periodically review the records of any individual claiming unemployment benefits to determine whether the claimant meets the continuing eligibility requirements of chs. DWD 126 to 128 and s. 108.04, Stats. A claimant shall respond as required when notified by the department of a review of the claimant's continuing eligibility for benefits.

(2) The eligibility review may include any of the following:

(a) An interview with the claimant conducted by a representative of the department.

(b) A review of the appropriateness of the claimant's registration or waiver of registration under ch. DWD 126.

(c) A determination as to whether the claimant is able to perform suitable work and available for suitable work under this chapter.

(d) An assessment of the claimant's work search efforts under ch. DWD 127.

(e) A determination as to whether the claimant is making satisfactory progress under s. 108.04 (16), Stats., if the claimant is participating in approved training.

(f) A review of any reemployment services the claimant has received.

(g) Preparation of a reemployment plan as reasonably necessary to assist the claimant in his or her efforts to obtain work.

(3) If the claimant fails to participate in an eligibility review interview under sub. (2) (a) without good cause, the claimant shall be ineligible for benefits for the week in which the interview was scheduled.

History: Cr. Register, July, 1984, No. 343, eff. 8−1−84; CR 07−054: r. and recr. Register March 2008 No. 627, eff. 4−1−08.

Chapter DWD 129

BENEFIT CLAIMING PROCEDURES

DWD 129.001 Definitions.
DWD 129.01 Notice of unemployment.
DWD 129.02 Establishment of benefit year.
DWD 129.03 Backdating of benefit year; circumstances.
DWD 129.04 Department set aside of benefit year.
DWD 129.05 Payment of benefits.

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 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. If the department provides for a single method for initiating a claim and a claimant has good cause for the claimant's inability to use that method, the department shall provide reasonable accommodations for the claimant to be able to complete the claim. Good cause for failure to initiate a claim as prescribed by the department shall include, if it prevents the claimant from using the method prescribed by the department, any of the following:

(a) The claimant possesses physical, mental, educational, or linguistic limitations.

(b) The claimant has unusual or unavoidable circumstances beyond the claimant's control.

Note: The department shall notify claimants that it will consider alternate methods for initiating a claim if there is good cause for the claimant's inability to use a computer−based program. In addition, the department shall provide claimants with information about how to request assistance with initiating a claim.

(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. If the department provides for a single method for a claimant to continue a claim by filing a weekly certification and a claimant has good cause for the claimant's inability to use that method, the department shall provide a reasonable accommodation for the claimant to be able to complete the claim. Good cause for failure to file a weekly certification as prescribed by the department shall include, if it prevents the claimant from using the method prescribed by the department, any of the following:

1. The claimant possesses physical, mental, educational, or linguistic limitations.

2. The claimant has unusual or unavoidable circumstances beyond the claimant's control.

Note: The department shall notify claimants that it will consider alternate methods to file the weekly certification if there is good cause for the claimant's inability to use a computer−based program. In addition, the department shall provide claimants with information about how to request assistance with weekly claim certification.

(b) The department shall consider a weekly certification to be filed when the certification is complete and submitted in compliance with the applicable requirements for the methods authorized by the department:

1. A claimant may continue a claim only by filing timely weekly certifications no later than 14 days following the end of the week for which benefits are claimed. If the method prescribed by the department for notification for the claimant to use is the internet or telephone, 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 weekly certification for the immediately preceding week was timely filed or an initial claim was timely 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; **EmR1316: emerg. renum. (1) to (1) (intro.) and am., cr. (1) (a), (b), renum. (2) (a) to (2) (a) (intro.) and am., cr. (2) (a) 1., 2., am. (2) (b) eff. 9−29−13; CR 13−081: renum. (1) to (1) (intro.) and am., cr. (1) (a), (b), renum. (2) (a) to (2) (a) (intro.) and am., cr. (2) (a) 1., 2., am. (2) (b) Register April 2014 No. 700, eff. 5−1−14.**

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 eligible 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.

Chapter DWD 130

WAGES FOR BENEFIT PURPOSES

DWD 130.001 Definitions.
DWD 130.01 Purpose.
DWD 130.05 Value of room or meals.
DWD 130.07 Internal revenue code requirements.

Note: Chapter Ind−UC 130 was renumbered to be chapter ILHR 130 under s. 13.93 (2m) (b) 1. and 2., Register, August, 1987, No. 380; Chapter ILHR 130 was revised under s. 13.93 (2m) (b) 5., Stats., Register, November, 1989, No. 407. Chapter ILHR 130 was renumbered Chapter DWD 130 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 130.001 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 130.01 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., for benefit purposes. This chapter also specifies changes to the definition of wages in s. 108.02 (26), Stats., and provides interpretations that may be inconsistent with those applied to 26 USC 3306 (b), under the authority granted in s. 108.015, Stats.

History: **CR 07−039: cr. Register October 2007, No. 622, eff. 11−1−07.**

DWD 130.03 Treatment of "tips". **History:** 1−2−56; am. (2) (intro.) and (a), r. and recr. (3), Register, September, 1968, No. 153, eff. 10−1−68; **CR 07−039: r. Register October 2007, No. 622, eff. 11−1−07.**

DWD 130.05 Value of room or meals. The provisions of s. DWD 101.05, relating to the value of room or meals for contribution purposes, shall also apply for benefit purposes.

History: Cr. Register, September, 1957, No. 21, eff. 10−1−57; **CR 07−039: am. Register October 2007, No. 622, eff. 11−1−07.**

DWD 130.07 Internal revenue code requirements. When s. 108.02 (26), Stats., or FUTA require that a payment meet the requirements of a particular section of the internal revenue code to not be considered wages, the employer shall demonstrate to the satisfaction of the department that the payment meets such requirements.

History: Cr. Register, September, 1957, No. 21, eff. 10−1−57; **CR 07−039: r. and recr. Register October 2007, No. 622, eff. 11−1−07.**

Chapter DWD 132

DETERMINING ELIGIBILITY FOR BENEFITS

DWD 132.001 Definitions.
DWD 132.01 Purpose.
DWD 132.04 Educational employees: reasonably similar terms and conditions.
DWD 132.05 Misconduct: abuse of a patient of a health care facility.

Note: Chapter Ind 132 as it existed on August 31, 1987 was repealed and a new chapter ILHR 132 was created effective September 1, 1987. Chapter ILHR 132 was renumbered Chapter DWD 130 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 132.001 Definitions. Except as provided in this chapter, unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

History: Cr. Register, August, 1987, No. 380, eff. 9−1−87; renum. (6) to (8) to be (9) to (11), cr. (6) to (8), Register, January, 1989, No. 397, eff. 2−1−89, r. (intro.), (2) to (4), (10) and (11), renum. (1) to be (2) and am., renum. (5), (6) and (9) to be 100.02 (23), (31) and (55), renum. (7) and (8) to be 100.02 (53) and (54) and am., cr. (1), Register, September, 1995, No. 477, eff. 10−1−95; renum. (1) to be DWD 132.001, r. (2), Register, May, 1997, No. 497, eff. 6−1−97.

DWD 132.01 Purpose. The purpose of this chapter is to provide standards for determining a claimant's eligibility for benefits under certain provisions of s. 108.04, Stats.

History: Cr. Register, August, 1987, No. 380, eff. 9−1−87.

DWD 132.04 Educational employees: reasonably similar terms and conditions. (1) SCOPE. Under s. 108.04 (17) (a), (b) and (c), Stats., a claimant is ineligible for benefits based upon services provided to or on behalf of an educational institution for weeks of unemployment which occur between academic years or terms or during an established and customary vacation period or holiday recess if the claimant performed the services in the first such year or term or in the year or term immediately before the vacation period or holiday recess and if there is reasonable assurance that the claimant will perform such services for any educational institution in the year or term immediately following the academic year, term, vacation period or holiday recess. The Wisconsin supreme court has ruled that reasonable assurance exists if the terms and conditions of the employment in the academic year or term immediately following the weeks of unemployment which occurred between academic years or terms or during an established and customary vacation period or holiday recess are reasonably similar to those terms and conditions of employment which existed in the year or term before such weeks.

(2) STANDARD. Except as provided under sub. (3), the terms and conditions of the employment for which the claimant receives assurance from an educational institution under s. 108.04 (17) (a), (b) and (c), Stats., for the academic year or term immediately following the weeks of unemployment which occurred between academic years or terms or during an established and customary vacation period or holiday recess are reasonably similar if:

(a) The gross weekly wage is more than 80% of the gross weekly wage earned in the academic year or term which preceded the weeks of unemployment;

(b) The number of hours per week is more than 80% of the average number of hours worked per week in the academic year or term which preceded the weeks of unemployment; and

(c) The employment involves substantially the same skill level and knowledge as the employment in the academic year or term which preceded the weeks of unemployment.

(3) EFFECT ON ELIGIBILITY. (a) If the employment for which the claimant receives assurance is not reasonably similar under sub. (2), the claimant is eligible for benefits based on services provided to or on behalf of an educational institution between academic years or terms or during established and customary vacation periods or holiday recesses under s. 108.04 (17) (a), (b), and (c), Stats., if otherwise qualified.

(b) If the employment for which the claimant receives assurance is reasonably similar under sub. (2), the claimant is not eligible for benefits based on services to or on behalf of an educational institution between academic years or terms or during established and customary vacation periods or holiday recesses under s. 108.04 (17) (a), (b), and (c), Stats.

History: Cr. Register, August, 1987, No. 380, eff. 9−1−87; r. (3); renum. (3) to be (4) and am., Register, July, 1993, No. 451, eff. 8−1−93.

DWD 132.05 Misconduct: abuse of a patient of a health care facility. (1) SCOPE. (a) After an employee 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 insurance purposes to mean *"conduct evincing such willful 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] employee, 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 employee'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.

(b) This section provides a standard by which to determine if misconduct exists under s. 108.04 (5), Stats., when an employee is discharged for alleged abuse of a patient of a health care facility. This standard also applies to disciplinary suspensions for misconduct under s. 108.04 (6), Stats.

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

(2) STANDARD. Discharge of an employee by an employing unit for misconduct connected with his or her employment under s. 108.04 (5), Stats., may include the discharge of an employee by a health care facility for abuse of a patient. Abuse of a patient includes, but is not limited to:

(a) Except when required for treatment, care or safety, any single or repeated intentional act or threat through contact or communication involving force, violence, harassment, deprivation, withholding care, sexual contact, sexual intercourse, or mental pressure, which causes physical pain or injury, or which reasonably could cause physical pain or injury, fear or severe emotional distress;

(b) Any gross or repeated failure to provide treatment or care without good cause which reasonably could adversely affect a patient's health, comfort or well−being;

(c) Any intentional act which subjects a patient to gross insult, ridicule or humiliation, or repeated failure to treat a patient with dignity and respect; and

(d) Knowingly permitting another person to do any of the acts in par. (a), (b) or (c) or knowingly failing to take reasonable steps

to prevent another person from doing any of the acts in par. (a), (b) or (c).

(3) EFFECT ON ELIGIBILITY. (a) If a claimant was discharged for conduct which the health care facility alleges was abuse of a patient and that conduct is determined not to be misconduct under this section, the claimant is eligible to receive benefits, if otherwise qualified.

(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 employee earns wages after the week in which the discharge occurs equal to at least 14 times the employee's weekly benefit rate in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be that rate which would have been paid had the discharge not occurred. The wages paid to the employee by the health care facility shall be excluded from the employee's base period wages for purposes of benefit entitlement, as provided in s. 108.04 (5), Stats.

History: Cr. Register, January, 1989, No. 397, eff. 2−1−89; am. (1) (a) and (c), r. (3) (b), renum. (3) (c) to be (3) (b) and am., Register, September, 2000, No. 537, eff. 10−1−00; correction in (1) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 2000, No. 537.

Chapter DWD 133

TEMPORARY HELP EMPLOYERS

DWD 133.001 Definitions.
DWD 133.01 Purpose.
DWD 133.02 Employment relationship.
DWD 133.03 Treatment of time between assignments.
DWD 133.04 Relationship following termination.

DWD 133.001 Definitions. (1) Except as provided in sub. (2) and unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

(2) Notwithstanding ch. DWD 100 and unless the context clearly indicates a different meaning, in this chapter:

(a) "Assignment" means work assigned by an employer to an employee to be performed for a client company of the employer. An assignment ends when it is completed or when the employee is removed from the assignment.

(b) "Client company" means an entity that contracts with an employer for the employer to provide labor for a determinate or indeterminate time.

(c) "Employer" has the same meaning given "temporary help company," in s. 108.02 (24m), Stats., and does not include a "professional employer organization" as defined in s. 108.02 (21e), Stats.

Note: Section 108.02 (24m), Stats., provides that "temporary help company" means "an entity which contracts with a client to supply individuals to perform services for the client on a temporary basis to support or supplement the workforce of the client in situations such as personnel absences, temporary personnel shortages, and workload changes resulting from seasonal demands or special assignments or projects, and which, both under contract and in fact:

(a) Negotiates with clients for such matters as time, place, type of work, working conditions, quality, and price of the services;

(b) Determines assignments or reassignments of individuals to its clients, even if the individuals retain the right to refuse specific assignments;

(c) Sets the rate of pay of the individuals, whether or not through negotiation;

(d) Pays the individuals from its account or accounts; and

(e) Hires and terminates individuals who perform services for the clients."

History: CR 06−032: cr. Register July 2007 No. 619, eff. 8−1−07.

DWD 133.01 Purpose. The purpose of this chapter is to recognize that the employment relationship between a temporary help employer and an employee is, in limited circumstances, unlike that of other employment relationships. An employee of a temporary help employer commonly performs multiple assignments for one or more client companies. An assignment may end with little or no advance notice. While the employer and employee may intend to continue the employment relationship, the employer may not immediately be able to provide a new assignment to the employee. This chapter establishes standards for determining whether the employment relationship continues or is terminated for the purpose of unemployment insurance benefit eligibility.

History: CR 06−032: cr. Register July 2007 No. 619, eff. 8−1−07.

DWD 133.02 Employment relationship. (1) CONTINUATION OF EMPLOYMENT RELATIONSHIP. When an assignment ends, the employment relationship between an employer and an employee shall be considered a continuing relationship if all of the following conditions are met:

(a) Prior to the end of the second full business day after the end of the assignment, the employee contacts the employer, or the employer contacts the employee, and informs the other that the assignment has ended or will end on a certain date. The department may waive the requirement for the deadline or notice, or both, if it determines that the employee's failure to so contact the employer was for good cause and the employer and employee have otherwise acted in a manner consistent with the continuation of the employment relationship.

(b) Prior to the end of the second full business day after the end of the assignment, or prior to the end of the first full business day after the date notice was given under par. (a) if the deadline for the notice was waived, the employer informs the employee that the employer will provide a new assignment that will begin within 7 days and any of the following occur:

1. The employer provides a new assignment that begins within 7 days of the date of the notice.

2. A new assignment does not begin within the 7−day period specified in par. (b) (intro.), but within that same 7−day period, the employer notifies the employee that the start of the assignment will be delayed for a period not to exceed an additional 7 days. The delayed assignment begins within 7 days of the date that the employer notified the employee of the delay.

3. A new assignment does not begin within the 7−day period specified in par. (b) (intro.), but within that same 7−day period, the employer notifies the employee that the employer will provide another assignment that will begin within 7 days. This assignment begins within 7 days of the date that the employer notified the employee of the assignment.

(c) The assignment offered by the employer meets the conditions under which the individual offered to work, including the type of work, rate of pay, days and hours of availability, distance willing to travel to work, and available modes of transportation, as set forth in the individual's written application for employment with the employer submitted prior to the first assignment, or as subsequently amended by mutual agreement. The employer shall have the burden of proof to show that the assignment meets the requirements of this paragraph. If the employer offers an assignment that does not conform to the requirements of this paragraph, the employment relationship ends under sub. (2).

(2) SEPARATION OF EMPLOYMENT BY EMPLOYER. If the employment relationship does not continue under sub. (1), the employment shall be considered separated by the employer unless the employee has voluntarily separated from the employment under sub. (3).

(3) SEPARATION OF EMPLOYMENT BY EMPLOYEE. (a) An employee voluntarily separates from the employment when any of the following occur:

1. The employee fails to notify the employer that an assignment has ended if the employer's policy requires the notification prescribed by sub. (1) (a) and the employee had notice of this policy prior to the end of the assignment, provided that the employer is not aware that the assignment has ended, and provided that the notice requirement was not waived under sub. (1) (a).

2. The employee refuses an assignment while the employment relationship continues.

3. The employee fails to respond to an offer of work by the employer within a reasonable time period, while the employment relationship continues.

4. The employer is unable to communicate an offer of work to the employee because of the employee's failure to provide the employer with his or her correct address, telephone number, or other contact information while the employment relationship continues.

(b) Nothing in this chapter shall preclude the application of other provisions of ch. 108, Stats., to determine whether the employee separated from the employment.

History: **CR 06−032: cr. Register July 2007 No. 619, eff. 8−1−07.**

DWD 133.03 Treatment of time between assignments. An employee shall be eligible for unemployment insurance benefits while the employment relationship continues between assignments pursuant to s. DWD 133.02 (1), if the employee is otherwise qualified for those benefits.

History: **CR 06−032: cr. Register July 2007 No. 619, eff. 8−1−07.**

DWD 133.04 Relationship following termination. When an employee's employment relationship with an employer terminates, his or her application for employment with that employer shall expire. If the employee returns to work for the employer, a new written application for employment shall be required for this chapter to be applicable. If the employee agrees in writing, the original application may be treated as a new application for employment.

History: **CR 06−032: cr. Register July 2007 No. 619, eff. 8−1−07.**

Chapter DWD 135

WAIVER OF RECOVERY OF TRA AND OTHER TAA OVERPAYMENTS

DWD 135.001 Definitions.
DWD 135.01 Purpose.
DWD 135.02 Waiver of recovery of overpayments.
DWD 135.03 Departmental notice of waiver.
DWD 135.04 Application for waiver; procedure.

Note: Chapter ILHR 135 was created as an emergency rule effective December 7, 1990. Chapter ILHR 135 was renumbered Chapter DWD 135 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 135.001 Definitions. (1) IN GENERAL. Except as provided in sub. (2), unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

(2) IN THIS CHAPTER. Notwithstanding ch. DWD 100, the following words and phrases have the designated meanings unless the context clearly indicates a different meaning:

(a) "Benefits" means any payment made under the trade adjustment assistance for workers program under 19 USC 2271 to 2319, including Trade Readjustment Allowances and other forms of Trade Adjustment Assistance.

(b) "Overpayment" means a payment of benefits to which a claimant was not entitled under the trade adjustment assistance for workers program under 19 USC 2271 to 2319 and federal regulations promulgated thereunder at 20 CFR part 617.

History: Cr. Register, June, 1991, No. 426, eff. 7−1−91, r. (intro.), renum. (1) and (3) to be (2) (a) and (b), cr. (1), r. and recr. (2), Register, September, 1995, No. 477, eff. 10−1−95.

DWD 135.01 Purpose. (1) The department administers the trade adjustment assistance for workers program as an agent for the U. S. department of labor. In administering this program, the department is required to apply the applicable federal laws and regulations specified at 19 USC 2271 to 2319 and 20 CFR part 617. Section 106.19, Stats., requires the department to establish a policy for waiving recovery of overpayments of benefits made under the trade adjustment assistance for workers program under 19 USC 2271 to 2319. This chapter implements this statutory directive and specifies the conditions under which the department may grant such waivers.

History: Cr. Register, June, 1991, No. 426, eff. 7−1−91; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 2000, No. 537.

DWD 135.02 Waiver of recovery of overpayments. (1) If the department determines that a claimant received an overpayment of benefits, he or she shall be liable to reimburse the department for the amount of the overpayment.

(2) Under 19 USC 2315 and s. 106.19, Stats., the department shall waive recovery of the overpayment if:

(a) The overpayment was made without fault on the part of the claimant who received the overpayment; and

(b) Recovery of the overpayment would be contrary to equity and good conscience.

(3) In determining whether an overpayment was made without fault on the part of the claimant and whether recovery of the overpayment would be contrary to equity and good conscience, the department shall incorporate and adhere to the federal regulations promulgated by the U. S. department of labor at 20 CFR 617.55. The department shall furnish a claimant who so requests with a copy of the federal regulations.

History: Cr. Register, June, 1991, No. 426, eff. 7−1−91; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 2000, No. 537.

DWD 135.03 Departmental notice of waiver. The department shall issue a written notice to any claimant to whom benefits have been overpaid of the claimant's right to request a waiver of the recovery of an overpayment.

History: Cr. Register, June, 1991, No. 426, eff. 7−1−91.

DWD 135.04 Application for waiver; procedure. (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 Insurance Division, TRA Unit, P. O. Box 7965, Madison, Wisconsin, 53707.

(2) The department shall issue a determination after receiving an application with complete financial information. The department may not waive recovery of any part of an overpayment which has been recovered prior to the date of the determination.

(3) The department shall issue a determination within 15 days after receiving a completed application. The department's determination is appealable under s. 108.09, Stats.

(4) After an application is filed, the department may not initiate any new collection activity until a determination is issued on the application, except that the department shall recover the overpayment by direct offset against any unemployment benefits payable under a state or federal law.

History: Cr. Register, June, 1991, No. 426, eff. 7−1−91; am. (1), Register, September, 2000, No. 537, eff. 10−1−00.

Chapter DWD 136

WAGES EXEMPT FROM LEVY

DWD 136.001 Definitions.
DWD 136.01 Purpose.
DWD 136.02 Levy to recover forfeitures.
DWD 136.03 Levy to recover benefit overpayments.
DWD 136.04 Pay periods other than weekly.

DWD 136.001 Definitions. (1) Unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

(2) In this chapter:

(a) "Disposable earnings" means that part of the earnings of any individual after the deduction from those earnings of any amounts required by law to be withheld; any life, health, dental or similar type of insurance premiums; union dues; any amount necessary to comply with a court order to contribute to the support of minor children; and any levy, wage assignment or garnishment executed prior to a levy issued under s. 108.225, Stats.

(b) "Federal minimum hourly wage" means that wage prescribed by 29 USC 206 (a) (1) in effect at the time an exemption is calculated.

(c) "Federal poverty guidelines" means the poverty guidelines updated periodically in the Federal Register by the U.S. department of health and human services under the authority of 42 USC 9902 (2) and in effect at the time an exemption is calculated.

(d) "Gross earnings" includes, but is not limited to, wages, tips, salary, commissions, bonuses, value of room and board, and periodic payments such as longevity pay or proceeds from a pension or retirement plan.

(e) "Household" means all people who reside together and share income and expenses, but does not include all members of cooperative housing, group homes, or similar group housing or care arrangements.

(f) "Levy" means a procedure through which earnings of an individual are required to be withheld for payment of a debt, except a court order to contribute to the support of minor children.

History: CR 08−059: cr. Register November 2008 No. 635, eff. 12−1−08.

DWD 136.01 Purpose. The purpose of this chapter is to prescribe a methodology for computing wages exempt from department levy under ss. 108.225 (16) (a) and (am), Stats., and as required by 15 USC 1673.

History: CR 08−059: cr. Register November 2008 No. 635, eff. 12−1−08.

DWD 136.02 Levy to recover forfeitures. In the case of an individual responsible for forfeitures imposed on an employing unit under s. 108.04 (11) (c), Stats., the individual is entitled to an exemption from department levy of 75% of the individual's disposable earnings pursuant to s. 108.225 (16) (a), Stats. For purposes of computing the amount of the exemption, the department shall provide the third party employer with a worksheet to assist in computing the amount of the exemption that is based on earnings per pay period and provides as follows:

(1) The department may levy 25% of the individual's disposable earnings unless any of the following apply:

(a) The total aggregate of all levies against an individual for the pay period will exceed 25% of the total of the individual's disposable earnings plus prior levies for the pay period.

(b) The total aggregate of all levies against an individual for the pay period will exceed the amount by which the individual's weekly disposable earnings exceed 30 times the federal minimum hourly wage. If the pay period is other than weekly, the department levy shall be calculated using the amount exempt for pay periods other than weekly under s. DWD 136.04.

(2) If the department may not levy 25% of the individual's disposable earnings under sub. (1), the department may levy the lesser of the following:

(a) The difference between 25% of the total of the individual's disposable earnings plus prior levies for the pay period, and the amount of prior levies in effect for the pay period.

(b) The difference between the individual's weekly disposable earnings and 30 times the federal minimum hourly wage. If the pay period is other than weekly, the department levy shall be calculated using the amount exempt for pay periods other than weekly under s. DWD 136.04.

Note: Form UCT−8306−2−E is used to calculate the exemption. This form is available from the Unemployment Insurance Division, Department of Workforce Development, 201 East Washington Avenue, P.O. Box 7942, Madison, Wisconsin 53708−7942.

History: CR 08−059: cr. Register November 2008 No. 635, eff. 12−1−08.

DWD 136.03 Levy to recover benefit overpayments. (1) Except as provided in sub. (2), in the case of benefit overpayments, an individual is entitled to an exemption from department levy of 80% of the individual's disposable earnings pursuant to s. 108.225 (16) (am) 1., Stats. For purposes of computing the amount of the exemption, the department shall provide the third party employer with a schedule of the federal poverty guidelines and a worksheet to assist the third party in computing the amount of the exemption that is based on earnings per pay period and that provides as follows:

(a) If the individual's gross earnings for the pay period are below the federal poverty guidelines based on the individual's household size, the individual's wages are totally exempt from department levy. If the individual's gross earnings are not below the federal poverty guidelines based on the individual's household size, the individual's disposable earnings shall be computed and the individual is entitled to an exemption from department levy of 80% of the individual's disposable earnings.

(b) The department may levy 20% of the individual's disposable earnings unless any of the following apply:

1. The individual's gross earnings for the pay period minus the 20% department levy amount equal an amount less than the federal poverty guidelines for the individual's household size.

2. The total aggregate of all levies against the individual for the pay period will exceed 25% of the total of the individual's disposable earnings plus prior levies for the pay period.

3. The total aggregate of all levies against an individual for the pay period will exceed the amount by which the individual's weekly disposable earnings exceed 30 times the federal minimum hourly wage. If the pay period is other than weekly, the department levy shall be calculated using the amount exempt for pay periods other than weekly under s. DWD 136.04.

(c) If the department may not levy 20% of the individual's disposable earnings under par. (b), the department may levy the lesser of the following:

1. The difference between the individual's gross earnings for the pay period and the federal poverty guidelines for the individual's household size.

2. The difference between 25% of the total of the individual's disposable earnings plus prior levies for the pay period, and the amount of prior levies in effect for the pay period.

3. The difference between the individual's weekly disposable earnings and 30 times the federal minimum hourly wage. If the pay period is other than weekly, the department levy shall be calculated using the amount exempt for pay periods other than weekly under s. DWD 136.04.

Note: Form UCT−8306−3−E is used to calculate the exemption. This form is available from the Unemployment Insurance Division, Department of Workforce Development, 201 East Washington Avenue, P.O. Box 7942, Madison, Wisconsin 53708−7942.

(2) If a final determination has been issued under s. 108.09, Stats., or a judgment has been entered under s. 108.24 (1), Stats., in which the individual has been found guilty of making a false statement or representation to obtain benefits, the department shall calculate the exemption from levy as provided in sub. (1).

(3) The department shall use the federal poverty guidelines schedule for earnings exempt from garnishment adopted by the judicial conference annually under s. 812.34 (3), Stats., covering earnings commencing each July 1 to the following June 30. If the schedule under s. 812.34, Stats., is unavailable, the department shall prepare a comparable schedule using the federal poverty guidelines as published in the Federal Register.

History: **CR 08−059: cr. Register November 2008 No. 635, eff. 12−1−08.**

DWD 136.04 Pay periods other than weekly. In the case of earnings for a period paid other than weekly, the amount exempt from levy shall be computed so that it is equivalent to 30 times the federal minimum hourly wage for a week by using one of the following:

(1) An amount equal to 60 times the federal minimum hourly wage for a two−week pay period.

(2) An amount equal to 65 times the federal minimum hourly wage for a semi−monthly pay period.

(3) An amount equal to 130 times the federal minimum hourly wage for a monthly pay period.

History: **CR 08−059: cr. Register November 2008 No. 635, eff. 12−1−08.**

Chapter DWD 140

UNEMPLOYMENT INSURANCE APPEALS

DWD 140.001 Definitions.
DWD 140.01 Hearings and appeals.
DWD 140.02 Representation of parties.
DWD 140.03 Notice of pending appeal.
DWD 140.04 Failure to file a timely appeal.
DWD 140.05 Withdrawal of appeal and retraction.
DWD 140.06 Notice of hearing; contents; to whom sent; issues not on notice of hearing; consolidation of issues.
DWD 140.07 Prehearing conference.
DWD 140.08 Postponement of hearings.
DWD 140.09 Access to hearing files; limited discovery; inspection of records.
DWD 140.10 Subpoenas; issuance and service; modification.
DWD 140.11 Telephone hearings.
DWD 140.12 Stipulations.
DWD 140.13 Parties who fail to appear; general provisions.
DWD 140.15 Hearing procedure; order of witnesses; public hearing and exclusion of certain persons; oral decisions.
DWD 140.16 Admissibility of evidence; administrative notice.
DWD 140.17 Form of decision.
DWD 140.18 Fees for representation of parties.
DWD 140.19 Departmental assistance for persons with disabilities and hearing impairments.
DWD 140.20 Witness and interpreter fees; travel expenses.
DWD 140.21 Transcripts and recordings.
DWD 140.22 Standard affidavit form.

Note: Chapter Ind−UC 140 as it existed on November 30, 1985 was repealed and a new chapter ILHR 140 was created effective December 1, 1985. Chapter ILHR 140 was renumbered Chapter DWD 140 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 140.001 Definitions. (1) IN GENERAL. Except as provided in sub. (2), the definitions in ch. DWD 100 apply to this chapter.

(2) IN THIS CHAPTER. Notwithstanding ch. DWD 100, the following words and phrases have the designated meanings:

(ag) "Affiant" means a person who swears to an affidavit.

(am) "Affidavit" means a written statement sworn under oath before a notary public or other person authorized by law to verify sworn statements and must be based upon personal knowledge or upon information and belief.

(ar) "Division" means the unemployment insurance division of the department of workforce development.

(b) "Representative" means any attorney or agent who the department has notice is authorized to represent any party.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; r. and recr. (7), r. (8), Register, May, 1993, No. 449, eff. 6−1−93, r. (intro.), (2), (3) and (6), renum. (1) and (5) to 100.02 (1) and (32) and am., renum. (4) and (7) to (2) (a) and (b) and am. (b), cr. (1), (2) (title) and (intro.), Register, September, 1995, No. 477, eff. 10−1−95; am. (2) (a), Register, June, 1997, No. 498, eff. 7−1−97; **CR 13−106: am. (1), (2) (intro.), renum. (2) (a) to (ar), cr. (2) (ag), (am) Register July 2014 No. 703, eff. 8−1−14.**

DWD 140.01 Hearings and appeals. (1) APPEAL RIGHTS. Any party to a determination issued under ss. 108.09 or 108.10, Stats., has the right to an appeal. An appeal as to any matter in a determination is a request for hearing and shall be filed with the department by the appellant or its representative. Each determination issued under ss. 108.09 or 108.10, Stats., shall specify the time limit within which any appeal is required to be filed with the department under ch. 108, Stats.

(2) TIME LIMIT FOR FILING. (a) An appeal shall be filed after a copy of the determination is mailed or given to a party, whichever first occurs, as specified under ss. 108.09 or 108.10, Stats. If a party first receives a determination after the statutory appeal period has expired and through no fault of that party, the statutory appeal period as specified under ss. 108.09 or 108.10, Stats., shall extend from the date the party receives the determination. An appeal received within these time limits is timely filed. If the deadline for filing an appeal falls on a Saturday, Sunday, 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, then the deadline shall be extended to include the next business day.

(b) An appeal shall be filed with any of the following:

1. An unemployment insurance office.

2. A hearing office.

3. The central administrative office of the bureau of legal affairs, unemployment insurance division, department of workforce development.

4. An appeal by an interstate claimant may also be filed at a public employment office in the agent state under s. 108.14 (8), Stats., in the manner prescribed for timely filing with the department under this section.

(c) An appeal shall be considered filed on the earliest of the following dates:

1. The date on which the department actually receives the written appeal.

2. If the appeal was mailed and bears only a United States postal service postmark, on the date of that postmark.

3. If the appeal was mailed and bears both a United States postal service postmark and a private meter mark, on the date of the United States postal service postmark.

4. If the appeal was mailed and bears only a private meter mark, on the date of the of the private meter mark.

5. If the appeal was mailed and bears no United States postal service postmark, no private meter mark, or an illegible mark, 2 business days prior to the date the appeal was actually received by the department.

6. If the appeal was sent using a delivery service other than the United States postal service, on the date the department actually receives the appeal.

7. If the appeal was faxed, the date of transmission recorded on the faxed appeal. If the fax is received without a date of transmission recording, the date actually received by the department is presumed to be the date of transmission.

Note: The address for the central administrative office of the bureau of legal affairs, unemployment insurance division, department of workforce development, is 201 E. Washington, room 331X, P.O. Box 8942, Madison, Wisconsin 53708−8942.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; r. and recr., Register, June, 1997, No. 498, eff. 7−1−97**;** correction in (2) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 2000, No. 537; correction in (2) (a) made under s. 13.93 (2m) (b) 7., Stats., Register June 2007 No. 618.

DWD 140.02 Representation of parties. Any party may appear on the party's own behalf at any hearing under this chapter or appear with or by a representative. The representative shall be presumed to have full authority to act on behalf of the party, including the authority to file or withdraw an appeal. The representative shall have authority to act on behalf of the party until the party or the representative terminates the representative's authorization and notifies the department that such representation has ended. No attorney whose license is suspended or who has been otherwise disbarred and prohibited from practicing law by

the courts or bar association of any state may be allowed to act as a representative at any hearing under this chapter.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; am. (3) (intro.), (b) and (n), Register, November, 1988, No. 395, eff. 12−1−88; r. and recr., Register, June, 1997, No. 498, eff. 7−1−97.

DWD 140.03 Notice of pending appeal. The department shall promptly notify the parties in writing of the appeal after an appeal is received. The notice may also contain any information concerning the hearing which the department considers relevant.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; am. Register, June, 1997, No. 498, eff. 7−1−97.

DWD 140.04 Failure to file a timely appeal. (1) The hearing office may schedule a hearing on the question of whether a late appeal was for a reason beyond the appellant's control. The hearing office may also schedule a provisional hearing on any matter in the determination at the same time as the hearing on the appellant's late appeal.

(2) The administrative law judge shall issue a decision which makes ultimate findings of fact and conclusions of law as to whether or not the appellant's late appeal was for a reason beyond the appellant's control. If the administrative law judge decides this question in favor of the appellant, the same or another administrative law judge shall then make ultimate findings of fact and conclusions of law on the merits of the case. If the administrative law judge decides that the late appeal was late for a reason within the appellant's control, the administrative law judge shall dismiss the appeal.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; am. (3), Register, November, 1988, No. 395, eff. 12−1−88; r. and recr. Register, June, 1997, No. 498, eff. 7−1−97.

DWD 140.05 Withdrawal of appeal and retraction. (1) An appellant may withdraw its appeal at any time before the issuance of a decision on the merits by notifying the hearing office or by choosing not to continue to participate in a hearing. The administrative law judge shall issue a withdrawal decision after determining that an appeal has been withdrawn.

(2) An appellant may submit a request to retract its withdrawal and reinstate its appeal. The retraction request shall be in writing and state a reason for the request. The administrative law judge may not grant a request to retract a withdrawal unless the request establishes good cause for the retraction and is received within 21 days after the withdrawal decision was mailed to the appellant.

(3) If the hearing office receives a timely retraction request before the issuance of a withdrawal decision and the request establishes good cause for the retraction, the administrative law judge shall acknowledge the request by letter to the appellant. If a timely retraction request is received by the hearing office after issuance of the withdrawal decision and the request establishes good cause for the retraction, the administrative law judge shall issue a decision setting aside the withdrawal decision and the hearing office shall schedule another hearing.

(4) If the hearing office receives a retraction request before or after the issuance of a withdrawal decision and the request does not establish good cause for the retraction, the administrative law judge shall deny the request by letter to the appellant.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; am. (1) to (3), cr. (4), Register, June, 1997, No. 498, eff. 7−1−97.

DWD 140.06 Notice of hearing; contents; to whom sent; issues not on notice of hearing; consolidation of issues. (1) The department shall schedule a hearing at the earliest feasible time after the appeal is received. The hearing office shall mail a notice of hearing to each party.

(2) The notice of hearing shall state the time and place of the hearing, the department's statutory authority for convening the hearing and the issues to be heard. The hearing office shall mail the notice of hearing to the last−known address of each party not less than 6 days before the hearing, unless all parties waive the notice requirement.

(3) The administrative law judge may receive evidence and render a decision on issues not listed on the notice of hearing if each party is so notified at the hearing and does not object.

(4) The hearing office may consolidate, for hearing or decision, issues involving the same parties or issues involving more than one appellant or respondent and arising out of the same or similar circumstances.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; am. (1) to (3), r. and recr. (4), Register, June, 1997, No. 498, eff. 7−1−97.

DWD 140.07 Prehearing conference. (1) After an appeal is filed, an administrative law judge may direct the parties to appear before the administrative law judge for a prehearing conference. In determining whether a prehearing conference is necessary, the administrative law judge may consider the following criteria:

(a) The complexity of issues.

(b) The number of possible witnesses.

(c) Documentary evidence.

(d) The number of parties involved.

(e) Other facts which would tend to prolong the hearing.

(2) Prehearing conferences may be conducted in person or by telephone. The date and time for the prehearing conference shall be set by the hearing office. Parties shall have at least 10 days notice of the prehearing conference. The administrative law judge may adjourn the conference or order additional prehearing conferences.

(3) Following the prehearing conference, the administrative law judge shall issue an order with respect to the course of the conference on any or all of the following matters:

(a) Definition and simplification of the issues of fact and law.

(b) Stipulations of fact and agreements concerning the identity of or authenticity of documents.

(c) Limitation of the number of witnesses and the exchange of the names of witnesses.

(d) Stipulations relating to alternative methods of evidence submission and acceptance.

(e) Such other matters as may aid in the disposition of the appeal.

(4) If a party fails to appear or is unprepared to participate in a prehearing conference, the administrative law judge may conduct a conference and enter the prehearing order without participation by the party.

History: Cr. Register, June, 1997, No. 498, eff. 7−1−97.

DWD 140.08 Postponement of hearings. (1) A party who requests a postponement of a hearing shall make the request known to the hearing office as soon as the party becomes aware that a postponement is necessary. Unreasonable delay in requesting a postponement may be the basis for denial of the request.

(2) No postponements may be granted for the mere convenience of a party. All parties are expected to arrange time off from their everyday affairs, including management duties, work and school, to attend hearings. The hearing office or the administrative law judge scheduled to conduct the hearing may grant a postponement only for an exceptional reason. An exceptional reason may include circumstances such as the following:

(a) Serious illness of a party or necessary witness;

(b) Death of an immediate family member of a party or necessary witness;

(c) Weather conditions on the day of the hearing which make it hazardous for a party or a necessary witness to travel to the hearing location;

(d) Transportation difficulties arising suddenly which prevent a party or necessary witness from traveling to the hearing location;

(e) A business meeting of a necessary witness which was scheduled prior to receipt of the hearing notice and which cannot be re−scheduled;

(f) Commitment of a representative which was scheduled prior to his or her being retained and which cannot be re−scheduled, if the party contacted the representative within a reasonable time after receipt of the hearing notice; or

(g) An unavoidable delay on the day of the hearing which prevents the administrative law judge from conducting the hearing as scheduled.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; renum. from ILHR 140.07 and am., Register, June, 1997, No. 498, eff. 7−1−97.

DWD 140.09 Access to hearing files; limited discovery; inspection of records. (1) PRE−HEARING STAGE. (a) The hearing office shall compile a hearing file for every case in which a request for hearing has been received which shall contain the papers, documents and departmental records relating to the issue of the hearing. Prior to the scheduled date of the hearing, a party to a hearing may inspect the hearing file and procure copies of file contents during regular hearing office hours at the hearing office or other convenient location as determined by the hearing office. If requested, the hearing office may mail copies of file contents to a party. The department may allow such inspection or release of file contents to a party's representative, union agent or legislator only if that individual indicates by a written or verbal statement that the individual has authorization from the party.

(b) Unless the administrative law judge orders otherwise, the sole means of discovery available to a party or representative prior to a hearing is inspection of the hearing file and procurement of copies of file contents. The administrative law judge may also order a prehearing conference under s. DWD 140.07. The provisions of ch. 804, Stats., do not apply to hearings under ss. 108.09 and 108.10, Stats.

(c) The administrative law judge may deny a request to inspect the hearing file or procure copies of file contents on the day of the hearing if such inspection or procurement would delay or otherwise interfere with the hearing.

(2) HEARING STAGE. At the hearing, evidence and exhibits are open to inspection by any party or representative except that the administrative law judge may conduct a closed inspection of evidence and exhibits if the interests of justice so require. The judge may sequester from the hearing room any person, party or representative as part of the closed inspection. The judge may also issue a protective order to prohibit the parties and their representatives from disclosing any evidence and exhibits listed as confidential in the protective order if the interests of justice so require.

(3) POST HEARING STAGE. After the hearing is concluded, a party or representative may inspect any hearing file contents that the party or representative may inspect under subs. (1) and (2), and also the hearing recording, written synopsis of testimony, and any transcript that is prepared at the department's direction. Any person who is not a party or representative at the hearing may inspect only the following and only if social security numbers have been redacted from the documents:

(a) The initial determination.

(b) The exhibits submitted and marked as exhibits at the hearing, whether or not received by the administrative law judge.

(c) The appeal tribunal decision issued for the hearing.

(d) The hearing recording.

(e) The written synopsis of testimony.

(f) The transcript of the testimony, if one is prepared at the department's direction.

(4) CONFIDENTIALITY OF CERTAIN RECORDS AT ALL STAGES OF HEARING. (a) Notwithstanding subs. (1) to (3), neither an employing unit which is a party to a hearing nor its representative may inspect:

1. The worker's unemployment insurance record as that record relates to work for another employing unit unless an administrative law judge approves a request.

2. Department memoranda concerning unemployment tax litigation strategy.

3. The investigation reports of department auditors concerning the status and liability of employing units under ch. 108, Stats.

(b) Notwithstanding subs. (1) to (3), the administrative law judge may declare all or parts of documents or other material which contains records or preserves information and which the administrative law judge examined in a closed inspection under sub. (2) to be, in whole or in part, confidential and closed to inspection by one or more parties, representatives or other persons.

(c) Notwithstanding subs. (1) to (3), evidence and exhibits declared to be confidential under a protective order issued by the administrative law judge under sub. (2) are closed to inspection as stated in the order.

(d) Notwithstanding subs. (1) to (3), no party, representative or other person, except a statutory reviewing body, as specified under ss. 108.09 and 108.10, Stats. may inspect the handwritten notes made by the administrative law judge at the hearing.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; r. and recr. Register, May, 1993, No. 449, eff. 6−1−93; renum. from ILHR 140.08 and am., Register, June, 1997, No. 498, eff. 7−1−97; CR 08−019: am. (3) (intro.) and (d) Register July 2008 No. 631, eff. 8−1−08.

DWD 140.10 Subpoenas; issuance and service; modification. (1) Only the department, an administrative law judge or a party's attorney of record may issue a subpoena to compel the attendance of any witness or the production of any books, papers, documents or other tangible things. A party who desires that the department issue a subpoena shall make the request known to the hearing office as soon as possible. Subpoenas issued by the department or an administrative law judge shall be issued on department forms and may not be issued blank.

(2) Subpoenas shall only be issued when necessary to ensure fair adjudication of the issue or issues of the hearing. The department or administrative law judge may refuse to issue any subpoena if any of the following occur:

(a) The evidence sought is not relevant or material.

(b) The evidence sought is hearsay.

(c) The evidence sought is unduly cumulative or repetitive of other evidence to be presented by the party.

(d) The evidence requested discloses business secrets.

(3) A party whose request for a subpoena has been denied may at the hearing request the administrative law judge who conducts the hearing to issue the subpoena. If the administrative law judge grants the request for a subpoena, the judge may adjourn the hearing to allow sufficient time for service of and compliance with the subpoena.

(4) The administrative law judge scheduled to conduct a hearing for which a subpoena has been issued may quash or modify the subpoena if the administrative law judge determines that the witness or tangible things subpoenaed are not necessary to a fair adjudication of the issues of the hearing or that the subpoena has not been served in the proper manner.

(5) The party at whose request a subpoena is issued shall serve the subpoena as provided under ch. 885 and s. 805.07 (5), Stats., and pay the witness fees and travel expenses specified under s. DWD 140.20 to the subpoenaed witness at or before the time of service. An attorney issuing a subpoena shall comply with the requirements of s. 108.14 (2m), Stats.

(6) The department may subpoena a witness for a party if the party is unable to prepay the witness fees and travel expenses. The department shall pay a witness as provided under s. DWD 140.20.

(7) If any witness fails to comply with a subpoena issued under this section, the department may petition a judge or court commissioner for a writ of attachment under s. 885.12, Stats.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; am. (1), renum. (6) to be (7), cr. (6), Register, November, 1988, No. 395, eff. 12−1−88; renum. from ILHR 140.09 and am., Register, June, 1997, No. 498, eff. 7−1−97.

DWD 140.11 Telephone hearings. (1) The department may conduct hearings in whole or in part by telephone when it is impractical for the department to conduct an in−person hearing, when necessary to ensure a prompt hearing or when one or more of the parties would be required to travel an unreasonable distance to the hearing location. When 2 or more parties are involved, the evidence shall be presented during the same hearing unless the department determines that it is impractical to do so. A party scheduled to appear by telephone may appear in person at the administrative law judge's location. The department may postpone or adjourn a hearing initially scheduled as a telephone hearing and reschedule the hearing for an in−person appearance if circumstances make it impractical to conduct a telephone hearing.

(2) If the appellant is scheduled to testify by telephone and fails to provide the hearing office with the appellant's telephone number or the name and telephone number of the appellant's authorized representative within a reasonable time prior to the hearing and if the administrative law judge has made reasonable attempts to contact the appellant, the administrative law judge may dismiss the appeal. If the respondent fails to provide the hearing office with the telephone number or the name and telephone number of the respondent's authorized representative prior to the hearing and if the administrative law judge has made reasonable attempts to contact the respondent, the administrative law judge may proceed with the hearing.

(3) If the appellant is scheduled to appear by telephone, the administrative law judge shall, within 15 minutes after the starting time for the hearing, attempt to place at least two calls to the appellant's telephone number of record or the telephone number furnished to the hearing office. One of the calls shall be attempted at or near the end of the 15 minute period unless the administrative law judge determines after reasonable efforts that the appellant cannot be reached at that number. If, within 15 minutes after the starting time for the hearing, neither the appellant nor the appellant's authorized representative can be reached at the telephone number of record or the telephone number furnished to the hearing office, then the administrative law judge may dismiss the appeal.

(4) If the respondent is scheduled to appear by telephone, the administrative law judge may proceed with the hearing if, within 5 minutes after the starting time for the hearing, neither the respondent nor the respondent's authorized representative can be reached at the respondent's telephone number of record or the telephone number furnished to the hearing office. The administrative law judge may refuse to allow a respondent to testify if the administrative law judge is unable to reach the respondent or the respondent's authorized representative and neither the respondent nor the respondent's authorized representative have contacted the hearing office within 15 minutes after the starting time for the hearing. The respondent shall be considered to have failed to appear for the hearing if the administrative law judge so refuses. The respondent may appeal such a finding under this chapter.

(5) All parties shall remain available for the hearing up to one hour after the scheduled starting time in the event the administrative law judge is unable to timely place a telephone call due to a delay in the prior hearings or other unforeseen circumstances. If the respondent cannot be contacted by telephone within one hour of the scheduled starting time of the hearing, the administrative law judge may proceed with the hearing if the appellant has appeared. If the appellant cannot be contacted within one hour of the scheduled starting time of the hearing, the administrative law judge may dismiss the appeal.

(6) The hearing office shall mark and mail the potential exhibits for a telephone hearing from the hearing file to both parties as soon as possible prior to the date of the telephone hearing. A party may submit additional documents as potential exhibits by simultaneously mailing those documents to the hearing office and copies to the other party. A party may submit potential exhibits which are not documents in the manner designated by the hearing office to which the case is assigned. The administrative law judge conducting the hearing may refuse to consider any documents not received by the hearing office or the other party within at least 3 days prior to the hearing.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; r. and recr., Register, June, 1997, No. 498, eff. 7−1−97.

DWD 140.12 Stipulations. (1) After an appeal is filed, the parties may stipulate to relevant facts and request that the stipulation be used in lieu of a hearing. The administrative law judge may accept the stipulation in lieu of a hearing only if all of the following occur:

(a) The parties entered into the stipulation voluntarily;

(b) The stipulation contains all the relevant and necessary facts as determined by the administrative law judge.

(c) The stipulation is in writing and signed by the parties.

(2) If the administrative law judge does not accept the stipulation of the parties, a hearing shall be held unless the administrative law judge provides the parties with additional opportunities to submit an acceptable stipulation.

(3) At the hearing, the administrative law judge may accept a partial stipulation of relevant facts not in dispute if the stipulation is entered into the hearing record and is agreed to on the record by the parties.

History: Cr. Register, November, 1988, No. 395, eff. 12−1−88; renum. from ILHR 140.125 and am., Register, June, 1997, No. 498, eff. 7−1−97.

DWD 140.13 Parties who fail to appear; general provisions. All parties who are required to appear in person shall appear at the hearing location no later than the starting time listed on the notice of hearing. If the appellant does not appear within 15 minutes after the scheduled starting time of the hearing, the administrative law judge may dismiss the appeal. If the respondent does not appear within 5 minutes after the scheduled starting time of the hearing and the appellant is present, the administrative law judge may commence the hearing. The provisions of s. 108.09 (4), Stats., apply as to the rights of the parties and procedures to be followed with regard to the failure of either party to appear at a hearing under this chapter.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; renum. from ILHR 140.14 and am., Register, June, 1997, No. 498, eff. 7−1−97.

DWD 140.15 Hearing procedure; order of witnesses; public hearing and exclusion of certain persons; oral decisions. (1) All testimony shall be given under oath or affirmation. The administrative law judge shall administer the oath or affirmation to each witness. No person who refuses to swear or affirm the veracity of his or her testimony may testify. Each party shall be given an opportunity to examine and cross−examine witnesses. The administrative law judge may limit the cross−examination of witnesses so as not to unduly burden the record.

(2) The administrative law judge has the responsibility to develop the facts and may call and examine any witness that he or she deems necessary and may also determine the order in which witnesses are called and the order of examination of each witness. The administrative law judge may deny the request of any party to examine a witness adversely. The administrative law judge may hear closing arguments from the parties but may limit the time of such arguments. The administrative law judge may

adjourn and continue a hearing to a future date when the hearing cannot be completed in the time scheduled.

(3) The administrative law judge may, upon motion of a party or upon the judge's own motion, exclude witnesses from the hearing room until called to testify and may instruct the excluded witnesses not to discuss the matter being heard until the hearing has been concluded. The administrative law judge may close the hearing to any person to the extent necessary to protect the interests and rights of either party to a fair hearing. This subsection does not authorize exclusion of a party who is a natural person; one officer or employee of a party which is not a natural person; or a person whose presence is shown by a party to be essential to the presentation of the party's case.

(4) The administrative law judge may exclude any person who disrupts the hearing. The administrative law judge may recess or adjourn the hearing if any person disrupts the hearing. The administrative law judge may prohibit any excluded representative from representing a party at that hearing or any continuance. The administrative law judge shall offer a party whose representative has been excluded or refused admittance an opportunity to secure another representative.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85**;** renum. from ILHR 140.10 and am. (1) and (4), Register, June, 1997, No. 498, eff. 7−1−97.

DWD 140.16 Admissibility of evidence; administrative notice. (1) Statutory and common law rules of evidence and rules of procedure applicable to courts of record are not controlling with respect to hearings. The administrative law judge shall secure the facts in as direct and simple a manner as possible. Evidence having reasonable probative value is admissible, but irrelevant, immaterial and repetitious evidence is not admissible. Hearsay evidence is admissible if it has reasonable probative value but no issue may be decided solely on hearsay evidence unless the hearsay evidence is admissible under ch. 908, Stats.

(2) The administrative law judge may take administrative notice of any department records, generally recognized fact or established technical or scientific fact having reasonable probative value but the parties shall be given an opportunity to object and to present evidence to the contrary before the administrative law judge issues a decision.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85**;** renum. from ILHR 140.12 and am., Register, June, 1997, No. 498, eff. 7−1−97.

DWD 140.17 Form of decision. (1) The administrative law judge may issue an oral decision at the hearing on the matters at issue but the judge shall confirm the oral decision with a written decision. The only decision which is appealable is the written decision.

(2) The written decision of the administrative law judge shall contain ultimate findings of fact and conclusions of law. The findings of fact shall consist of concise and separate findings necessary to support the conclusions of law. The decision shall contain the reasons and rationale which follow from the findings of fact to the conclusions of law.

(3) The decision of the administrative law judge shall specify the time limit within which any petition for commission review is required to be filed with the department or the commission under ch. 108, Stats., and ss. LIRC 1.02 and 2.01.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85**;** renum. from ILHR 140.13, am. (2) and cr. (3), Register, June, 1997, No. 498, eff. 7−1−97.

DWD 140.18 Fees for representation of parties. No representative attorney may charge or receive from a claimant for representation in a dispute concerning benefit eligibility or liability for overpayment of benefits, or in any administrative proceeding under ch. 108, Stats., concerning such a dispute, a fee which, in the aggregate, is more than 10% of the maximum benefits at issue unless the department has approved a specified higher fee before the claimant is charged. When a request for waiver of the 10% limitation is received, the department shall consider whether extended benefits or any other state or federal unemployment benefits are at issue. Any request for waiver of the 10% limitation on fees shall be submitted in writing to the central administrative office of the bureau of legal affairs, unemployment insurance division, department of workforce development. The department is not authorized under s. 108.13, Stats., to assign any past or future benefits for the collection of attorney fees.

Note: The address of the central administrative office of the bureau of legal affairs, unemployment insurance division, department of workforce development is; 201 E. Washington Avenue, P.O. Box 8942, Madison, Wisconsin 53708−8942.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; renum. and am. from ILHR 140.17, Register, June, 1997, No. 498, eff. 7−1−97.

DWD 140.19 Departmental assistance for persons with disabilities and hearing impairments. (1) The department may, at its own expense, provide a person to assist a person with a hearing impairment in communicating at a hearing, if the person with a hearing impairment notifies the department within a reasonable time prior to the date of the hearing and the department determines that the impairment is of a type which may hinder or prevent the person from communicating.

(2) If the person with a hearing impairment makes arrangements on his or her own behalf to have a person assist him or her in communicating, the department may reimburse such person for fees and travel expenses at the rate specified for interpreters under s. DWD 140.20, if the department determines that such person is necessary to assist the person with the hearing impairment in communicating.

(3) The department shall attempt to schedule hearings in buildings which have ease of access for any person with a temporary or permanent incapacity or disability. The administrative law judge may reschedule any hearing in which such a person who is a party or a necessary witness to the hearing does not have ease of access into the building in which the hearing is scheduled.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85, r. (1) (intro.), renum. (1) (a) and (b) to 100.02 (30) and (17), renum. (2), (3) and (4) to (1), (2) and (3), Register, September, 1995, No. 477, eff. 10−1−95**;** am. Register, June, 1997, No. 498, eff. 7−1−97; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 2000, No. 537.

DWD 140.20 Witness and interpreter fees; travel expenses. (1) The administrative law judge may authorize reimbursement to any witness subpoenaed by a party or any party who has already made reimbursement to such a witness for witness fees and travel expenses. The administrative law judge may also require reimbursement for an interpreter who is necessary to interpret testimony of a witness offered at the hearing.

(2) The department may refuse to reimburse a witness subpoenaed on behalf of a party other than the department for witness fees or travel expenses if the administrative law judge determines that the testimony was not relevant or material to the issue of the hearing.

(3) No witness subpoenaed on behalf of or requested to appear by the department is entitled to prepayment of witness fees or travel expenses but any such witness who appears at the hearing shall be paid the fees and travel expenses provided under sub. (4).

(4) The fees of witnesses and interpreters are:

(a) For witnesses, $16.00 per day.

(b) For expert witnesses, the rate set under s. 814.04 (2), Stats., plus the fees under pars. (a) and (d).

(c) For interpreters, $35.00 per half day.

(d) For travel expenses, 20 cents per mile from the witness' or interpreter's residence in this state to the hearing site and back or, if without the state, from the point at which the witness passes the state boundary to the hearing site, and back or, if without the state, from the point at which the witness passes the state boundary to the hearing site, and back.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85**;** am. (1), (2), (4) (c) and (d), Register, June, 1997, No. 498, eff. 7−1−97.

DWD 140.21 Transcripts and recordings. (1) Copies of hearing transcripts may be obtained from the labor and industry review commission under s. LIRC 1.045.

(2) Under s. 108.09 (5), Stats., if testimony at a hearing is recorded, the department may furnish a person with a copy of the hearing recording in lieu of a transcript. The fee is $7.00 per compact disk. The department may waive this fee if the department is satisfied that the person is unable to pay.

Note: Requests for hearing recordings and waivers of fees may be made to the Bureau of Legal Affairs, Unemployment Insurance Division, Department of Workforce Development, 201 E. Washington Avenue, P.O. Box 8942, Madison, Wisconsin 53708−8942.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; am. (2) and (3) and r. (4), Register, June, 1997, No. 498, eff. 7−1−97; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register June 2007 No. 618; CR 08−019: am. (title) and (2), r. (3) Register July 2008 No. 631, eff. 8−1−08.

DWD 140.22 Standard affidavit form. (1) IN GENERAL. (a) Personal knowledge is the recognition of facts through firsthand observation or experience.

(b) Information and belief is not based on firsthand observation or experience but is based on secondhand information that is sworn as true.

(c) The department's standard affidavit form for appeals under ss. 108.09 and 108.10, Stats., is available at the department's website or by requesting a copy from the hearing office.

Note: The standard affidavit form can be found at the department's website: http://www.dwd.wisconsin.gov or by contacting any of the following hearing offices:

Eau Claire Hearing Office
715 S. Barstow Street, Suite #1
Eau Claire, WI 54701

Fox Valley Hearing Office
54 Park Place, Suite 800
Appleton, WI 54914

Madison Hearing Office
3319 W. Beltline Hwy., Room E308
P.O. Box 7975
Madison, WI 53707−7975

Milwaukee Hearing Office
819 N. 6th Street, Room 382
Milwaukee, WI 53203

(2) AFFIDAVIT REQUIREMENTS. (a) An affidavit must contain all of the following information:

1. The name and address of the affiant.
2. The signature or mark of the affiant.
3. The date the statement was sworn.
4. The signature or mark of the notary public or other person authorized by law to verify sworn statements.
5. The county and state where the statement was sworn.

(b) An affidavit based upon information and belief must state the source of the information and the grounds for the belief.

(3) PROCEDURE. (a) A party may submit an affidavit as a potential exhibit by simultaneously delivering the affidavit to the hearing office and a copy to the other party. The administrative law judge conducting the hearing may refuse to consider an affidavit not received by the hearing office and the other party at least 3 days prior to the hearing.

(b) At the hearing, the administrative law judge may accept the affidavit as evidence as provided under s. DWD 140.16.

History: CR 13−106: cr. Register July 2014 No. 703, eff. 8−1−14.

Chapter DWD 142

STATE DIRECTORY OF NEW HIRES

DWD 142.01 Purpose.
DWD 142.02 Definitions.
DWD 142.03 Reporting requirements.
DWD 142.04 Multi−state employers.
DWD 142.05 Penalties.

Note: Chapter DWD 42 was renumbered to chapter DWD 142 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DWD 142.01 Purpose. (1) 42 USC 653a(a)(1)(A) requires each state to establish a state directory of new hires that contains information reported by employers about each newly hired employee and requires employers to report this information. Section 103.05, Stats., implemented the federal new hire reporting requirements by creating a state directory of new hires and requiring employers to report information to the department about each newly hired employee.

(2) This chapter specifies the information that employers must provide, the procedures by which employers may comply with the new hire reporting requirements, and the penalties for violating this rule.

History: Cr. Register, April, 2001, No. 544, eff. 5−1−01.

DWD 142.02 Definitions. In this chapter:

(1) "Department" means the department of workforce development or its authorized agent.

(2) "Employee" means an individual who is an employee within the meaning of chapter 24 of the internal revenue code of 1986 (26 USC 3401) but does not include an individual performing intelligence or counterintelligence functions for a federal or state agency if the head of the agency has determined that reporting pursuant to s. DWD 142.01 with respect to the individual could endanger the individual's safety or compromise an ongoing investigation or intelligence mission.

Note: Under 26 USC 3401(c), an "employee" includes "an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term 'employee' also includes an officer of a corporation."

(3) "Employer" means a person who is an employer within the meaning of chapter 24 of the internal revenue code of 1986 26 USC 3401(d) and includes any governmental entity and any labor organization.

Note: Under 26 USC 3401(d), an "employer" means "the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:

(1) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term 'employer' (except for purposes of subsection (a)) means the person having control of the payment of such wages, and

(2) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term 'employer' (except for purposes of subsection (a)) means such person."

(4) "Federal employer identification number" means the identifying number assigned to the employer under section 6109 of the internal revenue service code of 1986 26 USC 6109.

(5) "Labor organization" means an organization that is a labor organization within the meaning of 29 USC 152(5) and includes any hiring hall or other organization that is used by the labor organization and an employer to carry out requirements of an agreement described in 29 USC 159(f)(3) between the labor organization and the employer.

Note: Under 29 USC 152(5), the term "labor organization" means "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

(6) "Multi−state employer" means an employer that employs individuals in Wisconsin and in at least one other state.

(7) "Newly hired employee" means any of the following:

(a) An employee who reports for work for the first time.

(b) An employee, other than a poll worker or a substitute teacher, who is rehired, recalled, or returns to work after an unpaid absence of more than 90 days.

(c) A poll worker who the employer has never reported to the state directory of new hires as a newly hired employee.

(d) A substitute teacher who performs services for the employer but who the employer has not reported to the state directory of new hires as newly hired during the current school year.

(8) "Poll worker" means a person who staffs a polling place on election day to assist in holding the election.

(9) "State directory of new hires" means an automated directory containing information supplied by employers about each newly hired employee, pursuant to s. 103.05, Stats.

History: Cr. Register, April, 2001, No. 544, eff. 5−1−01.

DWD 142.03 Reporting requirements. (1) REPORT CONTENTS. Except as provided in sub. (2) (b) and s. DWD 142.04 (1) (b), each employer that has one or more employees who perform services in Wisconsin shall file a report containing the following information with the department:

(a) Newly hired employee's name.

(b) Newly hired employee's address.

(c) Newly hired employee's social security number.

(d) Employer's name.

(e) Employer's payroll address for the newly hired employee.

(f) Employer's federal employer identification number.

(g) Date the newly hired employee started work.

(h) Employee's date of birth.

(2) REPORT FORMAT. (a) An employer may file new hire reports in any of the following ways:

1. Electronically as authorized by the department.

Note: For further information on electronic reporting, see the "New Hire Reporting" section of the DWD web site at http://www.dwd.state.wi.us or call the toll free inquiry line at 1−888−300−HIRE (4473). Specialists are available to take calls Monday through Friday, 8:00 a.m. to 4:00 p.m. (CST).

2. On paper by submitting a copy of the newly hired employee's completed WT−4 form (Employee's Wisconsin Withholding Exemption Certificate/New Hire Reporting).

3. On paper by submitting a paper report containing all of the information required under sub. (1).

4. On paper by submitting a copy of the newly hired employee's completed federal W−4 form (Employee's Withholding Allowance Certificate).

(b) If an employer files a new hire report by submitting a copy of the newly hired employee's W−4 that contains completed reporting requirements under sub. (1) (a) to (f), then the employer has satisfied the reporting requirement.

(3) REPORT DUE DATES. (a) Except as provided in par. (b), a report must be filed within 20 days after the newly hired employee starts work.

(b) If an employer is filing new hire reports electronically, reports must be filed twice monthly, not less than 12 days nor more than 16 days apart.

(c) If the deadline for filing a report falls on a Saturday, Sunday, any of the holidays enumerated under s. 230.35 (4) (a), Stats., or any other day on which mail is not delivered by the United States postal service, then the deadline shall be extended to include the next business day.

(4) The department may waive the requirement to report the date of birth of the newly hired employee if the employer is unable to provide it.

History: Cr. Register, April, 2001, No. 544, eff. 5−1−01; **correction in (3) (c) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DWD 142.04 Multi−state employers. (1) REPORTING OPTIONS. Multi−state employers may choose to do either of the following:

(a) Report only the newly hired employees working in the state of Wisconsin as described in s. DWD 142.03 and report employees not working in Wisconsin to the respective states in which they work.

(b) Report all newly hired employees to a single state in which the multi−state employer has at least one employee working, regardless of where the other employees work. If the multi−state employer chooses Wisconsin as the single state to which it reports, that employer must file new hire reports electronically as provided in s. DWD 142.03 (2) (a) 1. In addition to containing all the information in s. DWD 142.03 (1), the electronically filed report for any newly hired employee not working in Wisconsin must also include the state in which the employee will work. Report due dates are the same as those provided in s. DWD 142.03 (3).

(2) FEDERAL NOTICE. Employers reporting under the option in sub. (1) (b) must submit a written notice to the secretary of the federal department of health and human services informing him or her of which state has been selected for new hire reporting.

(3) REPORT FORMATS. The information to be supplied and the format used by multi−state employers to file new hire reports may vary according to the requirements of the state to which the new hire reports are being filed.

History: Cr. Register, April, 2001, No. 544, eff. 5−1−01.

DWD 142.05 Penalties. (1) Any person who violates any provision of this rule may be subject to the penalties provided under s. 103.05, Stats. No penalty may be imposed unless the person has been notified of the violation and has been provided with an opportunity to correct the violation.

(2) Pursuant to s. 103.005 (10), Stats., if a penalty is imposed it shall be subject to review in the manner provided in ch. 227, Stats.

History: Cr. Register, April, 2001, No. 544, eff. 5−1−01.

Chapter DWD 147

SEASONAL AGRICULTURAL EMPLOYERS

DWD 147.001 Definitions.
DWD 147.01 Purpose.
DWD 147.02 Affected employers.

Note: Chapter ILHR 147 was renumbered Chapter DWD 147 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 147.001 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 147.01 Purpose. (1) Under s. 108.066, Stats., an employer engaged in agricultural activities may apply to the department by May 31 for designation as a seasonal employer. In response to such application the department shall issue an appealable determination by June 30. The department shall grant seasonal employer designation if it determines that:

(a) The employer is primarily engaged in agricultural production, agricultural services, forestry, or commercial fishing, hunting, or trapping;

(b) The employer customarily operates primarily during 2 calendar quarters within a year;

(bm) At least 75% of the wages paid by the employer during the preceding year were paid for work performed during those 2 calendar quarters; and

(c) The employer is not delinquent in making any contribution report or payment.

(2) This chapter enumerates which employers the department shall consider to be primarily engaged in agricultural production, agricultural services, forestry, or commercial fishing, hunting, or trapping.

History: Cr. Register, October, 1994, No. 466, eff. 11−1−94; correction in (1) made under s. 13.93 (2m) (b) 1., Stats., Register, November 1999, No. 527.

DWD 147.02 Affected employers. An employer shall be considered to be primarily engaged in agricultural production, agricultural services, forestry, or commercial fishing, hunting, or trapping if the department determines that the employer's primary type of business activity is one of those specified in figure DWD 147.02 and assigns the employer one of the Standard Industrial Classification (SIC) codes listed in that figure. [see Figure 147.02 following]

History: Cr. Register, October, 1994, No. 466, eff. 11−1−94.

Figure DWD 147.02:

Major Group 01. − Agricultural Production − Crops

This major group includes establishments (e. g. farms, orchards, greenhouses, nurseries) primarily engaged in the production of crops, plants, vines, and trees (excluding forestry operations). Also includes establishments primarily engaged in the operation of sod farms, and cranberry bogs; in the production of mushrooms, bulbs, flower seeds, and vegetable seeds; and in the growing of hydroponic crops. Seeds of field crops are classified in the same industry as crops grown for other purposes.

Industry Group No.	Industry No.	
011		**CASH GRAINS**
	0111	**Wheat** Establishments primarily engaged in the production of wheat − Wheat farms.
	0112	**Rice** Establishments primarily engaged in the production of rice − Rice farms.
	0115	**Corn** Establishments primarily engaged in the production of field corn for grain or seed. Those primarily engaged in the production of sweet corn are in 0161, and those producing popcorn are in 0119. Corn farms, except sweet corn or popcorn
	0116	**Soybeans** Establishments primarily engaged in the production of soybeans − Soybean farms.

0119 Cash Grains, Not Elsewhere Classified

Establishments primarily engaged in the production of cash grains, not elsewhere classified. Included are: dry field and seed peas and beans, safflowers, sunflowers, or popcorn.

Barley farms
Bean farms, dry field and seed
Buckwheat farms
Cowpea farms
Flaxseed farms
Grain farms: except wheat, rice, corn, and soybeans
Lentil farms
Milo farms
Mustard seed farms
Oat farms
Pea farms, dry field and seed
Popcorn farms
Rye farms
Safflower farms
Sorghum farms, except for syrup
Sunflower farms

013 FIELD CROPS, EXCEPT CASH GRAINS

0131 Cotton

Establishments primarily engaged in the production of cotton and cottonseed.

Cotton farms
Cottonseed farms

0132 Tobacco

Establishments primarily engaged in the production of tobacco − Tobacco farms

0133 Sugarcane and Sugar Beets

Establishments primarily engaged in the production of sugarcane and sugar beets.

Beet farms, sugar
Cane farms, sugar
Sugar beet farms
Sugar cane farms

0134 Irish Potatoes

Establishments primarily engaged in the production of potatoes, except sweet potatoes. Those primarily engaged in the production of sweet potatoes and yams are 0139.

Potato farms, Irish
Potato farms, except sweet potato and yam

0139 Field Crops, Except Cash Grains, Not Elsewhere Classified

Establishments primarily engaged in the production of field crops, except cash grains, not elsewhere classified.

Alfalfa farms
Broomcorn farms
Clover farms
Grass seed farms
Hay farms
Hop farms
Mint farms
Peanut farms
Potato farms, sweet
Sweet potato farms
Timothy farms
Yam farms

016 VEGETABLES AND MELONS

0161 Vegetables and Melons

Establishments primarily engaged in the production of vegetables and melons in the open. Those primarily engaged in growing vegetables under glass or other protection are in 0182; those producing dry field and seed beans and peas are in 0119; those producing Irish potatoes are in 0134, and those producing sweet potatoes and yams are in 0139.

Asparagus farms
Bean farms, except dry beans
Beet farms, except sugar beet
Bok choy farms
Broccoli farms
Cabbage farms
Cantaloupe farms
Cauliflower farms
Celery farms
Corn farms, sweet
Cucumber farms
English pea farms
Green lima bean farms
Green pea farms
Lettuce farms
Market gardens
Melon farms
Onion farms
Pea farms, except dry peas
Pepper farms, sweet and hot (vegetables)
Romaine farms
Snap bean farms (bush and pole)
Squash farms
Tomato farms
Truck farms
Vegetable farms
Watermelon farms

017 FRUITS AND TREE NUTS

0171 Berry Crops

Establishments primarily engaged in the production of cranberries, bush berries, and strawberries.

Berry farms
Blackberry farms
Blueberry farms
Cranberry bogs
Currant farms
Dewberry farms
Loganberry farms
Raspberry farms
Strawberry farms

0172 Grapes

Establishments primarily engaged in the production of grapes.

Grape farms
Vineyards

0173 Tree Nuts

Establishments primarily engaged in the production of tree nuts.

Almond groves and farms
Filbert groves and farms
Macadamia groves and farms
Pecan groves and farms
Pistachio groves and farms
Walnut groves and farms

0174 Citrus Fruits

Establishments primarily engaged in the production of citrus fruits.

Citrus groves and farms
Grapefruit groves and farms
Lemon groves and farms
Lime groves and farms
Orange groves and farms
Tangerine groves and farms

0175 Deciduous Tree Fruits

Establishments primarily engaged in the production of deciduous tree fruits. Those primarily growing citrus fruits are in 0174, and those growing tropical fruits are in 0179.

Apple orchards and farms
Apricot orchards and farms
Cherry orchards and farms
Nectarine orchards and farms
Peach orchards and farms
Pear orchards and farms
Persimmon orchards and farms
Plum orchards and farms
Pomegranate orchards and farms
Prune orchards and farms
Quince orchards and farms

0179 Fruits and Tree Nuts, Not Elsewhere Classified

Establishments primarily engaged in the production of fruits and nuts, not elsewhere classified.

Avocado orchards and farms
Banana farms
Coffee farms
Date orchards and farms
Fig orchards and farms
Kiwi fruit farms
Olive groves and farms
Pineapple farms
Plantain farms
Tropical fruit farms

018 HORTICULTURAL SPECIALTIES

0181 Ornamental Floriculture and Nursery Products

Establishments primarily engaged in the production of ornamental plants and other nursery products, such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds and plants, and sod. These products may be grown under cover (greenhouse, frame, cloth house, lath house) or outdoors.

Bedding plants, growing of
Bulbs, growing of
Field nurseries: growing of flowers and shrubbery, except forest shrubbery
Florists' greens, cultivated: growing of
Flowers, growing of
Foliage, growing of
Fruit stocks, growing of
Greenhouses for floral products
Mats, preseeded: soil erosion − growing of
Nursery stock, growing of
Plants, ornamental: growing of
Plants, potted: growing of
Rose growers
Seeds, flower and vegetable: growing of
Shrubberies, except forest shrubbery: growing of
Sod farms
Vegetable bedding plants, growing of

0182 Food Crops Grown Under Cover

Establishments primarily engaged in the production of mushrooms or of fruits and vegetables grown under cover.

Bean sprouts grown under cover
Fruits grown under cover
Greenhouses for food crops
Hydroponic crops, grown under cover
Mushroom spawn, production of
Mushrooms, growing of
Rhubarb grown under cover
Seaweed grown under cover
Tomatoes grown under cover
Truffles grown under cover
Vegetables grown under cover

019 **GENERAL FARMS, PRIMARILY CROP**

0191 **General Farms, Primarily Crop**

Establishments deriving a majority of their total value of sales of agricultural products from crops, including horticultural specialties, but not from products of any single three−digit industry group.

Crop farms, general

Major Group 02. − Agricultural Production − Livestock and Animal Specialties

This major group includes establishments (e. g. farms, ranches, dairies, feedlots, egg production facilities, broiler facilities, poultry hatcheries, apiaries) primarily engaged in the keeping, grazing, or feeding of livestock for the sale of livestock or livestock products (including serums), for livestock increase, or for value increase. Livestock, as used here, includes cattle, hogs, sheep, goats, and poultry of all kinds; also included in this major group are animal specialties, such as horses, rabbits, bees, fish in captivity, and fur−bearing animals in captivity.

Industry Group No.	Industry No.	
021		**LIVESTOCK, EXCEPT DAIRY AND POULTRY**
	0211	**Beef Cattle Feedlots**

Establishments primarily engaged in the fattening of beef cattle in a confined area for a period of at least 30 days, on their own account or on a contract or fee basis. Feedlot operations that are an integral part of the breeding, raising, or grazing of beef cattle are in 0212. Establishments which feed beef cattle for periods of less than 30 days, generally in connection with their transport, are not included.

Cattle feeding farms
Cattle feedlot operations
Feedlots, cattle
Stockyards, exclusively for fattening cattle

0212 **Beef Cattle, Except Feedlots**

Establishments primarily engaged in the production or feeding of beef cattle, except feedlots. Those primarily raising dairy cattle are in 0241.

Beef cattle farms, except feedlots
Cattle raising farms
Cattle ranches

0213 **Hogs**

Establishments primarily engaged in the production or feeding of hogs on their own account or on a contract or fee basis.

Feedlots, hog
Hog farms

0214 **Sheep and Goats**

Establishments primarily engaged in the production of sheep, lambs, goats, goats' milk, wool, and mohair, including the operation of lamb feedlots, on their own account or on a contract or fee basis.

Feedlots, lamb
Goat farms
Goats' milk production
Mohair
Sheep feeding farms and ranches
Sheep raising farms and ranches
Wool production

0219 **General Livestock, Except Dairy and Poultry**

Establishments deriving a majority of their total value of sales of agricultural products from livestock and livestock products but not from products of any single industry.

024 **DAIRY FARMS**

0241 **Dairy Farms**

Establishments primarily engaged in the production of cows' milk and other dairy products and in raising dairy heifer replacements. Such farms may process and bottle milk on the farm and sell at wholesale or retail. However, the processing and/or distribution of milk from a separate establishment not on the farm is in manufacturing or trade. Those primarily producing goats' milk are in 0214.

Dairy farms
Milk production, dairy cattle farm
Dairy heifer replacement farms

025 POULTRY AND EGGS

0251 Broiler, Fryer, and Roaster Chickens

Establishments primarily engaged in the production of chickens for slaughter, including those grown under contract.

Broiler chickens, raising of
Chicken farms or ranches, raising for slaughter
Cornish hen farms
Frying chickens, raising of
Roasting chickens, raising of

0252 Chicken Eggs

Establishments primarily engaged in the production of chicken eggs, including table eggs and hatching eggs, and in the sale of cull hens.

Chicken egg farms
Started pullet farms

0253 Turkeys and Turkey Eggs

Establishments primarily engaged in the production of turkeys and turkey eggs.

Turkey egg farms and ranches
Turkey farms and ranches

0254 Poultry Hatcheries

Establishments primarily engaged in operating poultry hatcheries on their own account or on a contract or fee basis.

Chicken hatcheries
Poultry hatcheries
Egg hatcheries, poultry

0259 Poultry and Eggs, Not Elsewhere Classified

Establishments primarily engaged in the production of poultry and eggs, not elsewhere classified.

Duck farms
Egg farms, poultry: except chicken and turkey
Geese farms
Pheasant farms
Pigeon farms
Quail farms
Squab farms

027 ANIMAL SPECIALTIES

0271 Fur−Bearing Animals and Rabbits

Establishments primarily engaged in the production of fur and fur−bearing animals and rabbits.

Chinchilla farms
Fox farms
Fur farms
Game farms (fur−bearing animals)
Mink farms
Rabbit Farms

0272 Horses and Other Equines

Establishments primarily engaged in the production of horses and other equines.

Burrow farms
Donkey farms
Horse farms
Mules farms
Pony farms

0273 Animal Aquaculture

Establishments primarily engaged in the production of finfish and shellfish, such as crustaceans and mollusks, within a confined space and under controlled feeding, sanitation, and harvesting procedures. Those primarily engaged in hatching fish and in operating fishing preserves are in 0921.

Catfish farms
Crustacean farms
Finfish farms
Fish farms, except hatcheries
Goldfish farms
Minnow farms
Mollusk farms
Tropical aquarium fish farms
Trout farms

0279 Animal Specialties, Not Elsewhere Classified

Establishments primarily engaged in the production of animal specialties, not elsewhere classified, such as pets, bees, worms, and laboratory animals.

Alligator farms
Apiaries
Aviaries (e.g., parakeet, canary, love birds)
Bee farms
Cat farms
Dog farms
Earthworm hatcheries
Frog farms
Honey production
Kennels, breeding and raising own stock
Laboratory animal farms (e.g. rats, mice, guinea pigs)
Rattlesnake farms
Silk (raw) production and silkworm farms
Worm farms

029 **GENERAL FARMS, PRIMARILY LIVESTOCK AND ANIMAL SPECIALTIES**

0291 **General Farms, Primarily Livestock and Animal Specialties**

Establishments deriving a majority of their total value of sales of agricultural products from livestock and animal specialties and their products, but not from products of any single three−digit industry group.

Animal specialty and livestock farms, general
Livestock and animal speciality farms

Major Group 07. − Agricultural Services

This major group includes establishments primarily engaged in performing soil preparation services, crop services, veterinary services, other animal services, farm labor and management services, and landscape and horticultural services, for others on a contract or fee basis.

Industry Group No.	Industry No.	
071		**SOIL PREPARATION SERVICES**
	0711	**Soil Preparation Services**

Establishments primarily engaged in land breaking, plowing, application of fertilizer, seed bed preparation, and other services for improving the soil for crop planting. Those primarily engaged in land clearing and earth moving for terracing and pond and irrigation construction are not included.

Cattle treatment of soil for crops
Fertilizer application for crops
Lime spreading for crops
Plowing
Seed bed preparation
Weed control, crop: before planting

072 **CROP SERVICES**

0721 **Crop Planting, Cultivating, and Protecting**

Establishments primarily engaged in performing crop planting, cultivating, and protecting services. Those primarily engaged in complete maintenance of citrus groves, orchards, and vineyards are in 0762. Those providing water for irrigation, or providing both water and irrigation services, are not included.

Aerial dusting and spraying
Bracing of orchard trees and vines
Citrus grove cultivation services
Cultivation services, mechanical and flame
Detasseling of corn
Disease control for crops, with or without fertilizing
Dusting crops, with or without fertilizing
Entomological service, agricultural
Hoeing
Insect control for crops, with or without fertilizing
Irrigation system operation services (not providing water)
Orchard cultivation services
Planting crops, with or without fertilizing
Pollinating
Pruning of orchard trees and vines
Seeding crops, with or without fertilizing
Seeding of sprouts with twigs
Spraying crops, with or without fertilizing
Surgery on orchard trees and vines
Thinning of crops, mechanical and chemical
Trees, orchard: cultivation of
Trees, orchard: planting, pruning, bracing, spraying, removal, and surgery
Vineyard cultivation services
Weed control, crop: after planting.

0722 **Crop Harvesting, Primarily by Machine**

Establishments primarily engaged in mechanical harvesting, picking, and combining of crops, and related activities, using machinery provided by the service firm. Farm labor contractors providing personnel for manual harvesting are in 0761.

Berries, machine harvesting of
Chopping and silo filling
Combining, agricultural
Cotton, machine harvesting of
Fruits, machine harvesting of
Grain, machine harvesting of
Hay mowing, raking, baling, and chopping
Nuts, machine harvesting of
Peanuts, machine harvesting of
Sugar beets, machine harvesting of
Sugarcane, machine harvesting of
Threshing service
Vegetables, machine harvesting of

0723 Crop Preparation Services for Market, Except Cotton Ginning

Establishments primarily engaged in performing services on crops, subsequent to their harvest, with the intent of preparing them for market or further processing. Not included are those primarily engaged in buying farm products for resale to other than the general public for household consumption and which also prepare them for market or further processing or those primarily engaged in stemming and redrying tobacco.

Bean Cleaning
Corn shelling
Cotton seed delinting
Drying of corn, rice, hay, fruits, and vegetables
Flax decorticating and retting
Fruit precooling, not in connection with transportation
Fruit vacuum cooling
Grain cleaning
Grain fumigation
Grain grinding, custom
Moss ginning
Nut hulling and shelling
Packaging fresh or farm−dried fruits and vegetables
Peanut shelling, custom
Potato curing
Seed cleaning
Sorting, grading, and packing of fruits and vegetables
Sweet potato curing
Tobacco grading
Vegetable precooling, not in connection with transportation
Vegetable vacuum cooling

0724 Cotton Ginning

Establishments primarily engaged in ginning cotton.

Cotton ginning
Gins, cotton: operation of
Cotton pickery

074 VETERINARY SERVICES

0741 Veterinary Services for Livestock

Establishments of licensed practitioners primarily engaged in the practice of veterinary medicine, dentistry, or surgery, for cattle, hogs, sheep, goats, and poultry. Establishments of licensed practitioners primarily engaged in treating all other animals are in 0742.

Animal hospitals for livestock
Veterinary services for livestock
Veterinarians for livestock

0742 Veterinary Services for Animal Specialties

Establishments of licensed practitioners primarily engaged in the practice of veterinary medicine, dentistry, or surgery, for animal specialties. Animal specialties include horses, bees, fish, fur−bearing animals, rabbits, dogs, cats and other pets and birds, except poultry. Establishments of licensed practitioners primarily engaged in veterinary medicine for cattle, hogs, sheep, goats, and poultry are in 0741.

Animal hospitals for pets and other animal specialties
Pet hospitals
Veterinarians for pets and other animal specialties
Veterinary services for pets and other animal specialties

075 ANIMAL SERVICES, EXCEPT VETERINARY

0751 Livestock Services, Except Veterinary

Establishments primarily engaged in performing services, except veterinary, for cattle, hogs, sheep, goats, and poultry. Dairy herd improvement associations are also included. Those primarily engaged in the fattening of cattle are in 0211. Those engaged in incidental feeding of livestock as a part of holding them in stockyards for period of less than 30 days (generally in the course of transportation) are not included. Those primarily engaged in performing services, except veterinary, for animals, except cattle, hogs, sheep, goats and poultry are in 0752.

Artificial insemination services: livestock
Breeding of livestock
Cattle spraying
Cleaning poultry coops
Dairy herd improvement associations
Livestock breeding services
Milk testing for butterfat
Pedigree record services for cattle, hogs, sheep, goats, and poultry
Slaughtering, custom: for individuals
Vaccinating livestock, except by veterinarians

0752 Animal Specialty Services, Except Veterinary

Establishments primarily engaged in performing services, except veterinary, for pets, equines, and other animal specialties. Those primarily engaged in performing services other than veterinary for cattle, hogs, sheep, goats, and poultry are in 0751. Those primarily engaged in training racehorses are not included.

Animal shelters
Artificial insemination services: animal specialties
Boarding horses
Boarding kennels
Breeding of animals, other than cattle, hogs, sheep, goats, and poultry
Dog grooming
Dog pounds
Honey straining on the farm
Pedigree record services for pets and other animal specialties
Showing of pets and other animal specialties
Training horses, except racing
Training of pets and other animal specialties
Vaccinating pets and other animal specialties, except by veterinarians

076 **FARM LABOR AND MANAGEMENT SERVICES**

0761 **Farm Labor Contractors and Crew Leaders**

Establishments primarily engaged in supplying labor for agricultural production or harvesting. Those primarily engaged in machine harvesting are in 0722.

Crew leaders, farm labor: contract
Farm labor contractors

0762 **Farm Management Services**

Establishments primarily engaged in providing farm management services, including management or complete maintenance of citrus groves, orchards, and vineyards. Such activities may include cultivating, harvesting, or other specialized activities, but those primarily engaged in performing such services without farm management services are in the appropriate specific industry within Industry Group 072.

Citrus grove management and maintenance, with or without crop services
Farm management services
Orchard management and maintenance, with or without crop services
Vineyard management and maintenance, with or without crop services

078 **LANDSCAPE AND HORTICULTURAL SERVICES**

0781 **Landscape Counseling and Planning**

Establishments primarily engaged in landscape planning and in performing landscape architectural and counseling services.

Garden planning
Horticultural advisory or counseling services
Landscape architects
Landscape counseling
Landscape planning

0782 **Lawn and Garden Services**

Establishments primarily engaged in performing a variety of lawn and garden services. Those primarily engaged in the installation of artificial turf are not included.

Bermuda sprigging services
Cemetery upkeep, independent
Garden maintenance
Garden planting
Lawn care
Lawn fertilizing services
Lawn mowing services
Lawn mulching services
Lawn seeding services
Lawn sprigging services
Mowing highway center strips and edges
Seeding highway strips
Sod laying
Turf installation, except artificial

0783 **Ornamental Shrub and Tree Services**

Establishments primarily engaged in performing a variety of ornamental shrub and tree services. Those primarily engaged in forestry services are not included. Those primarily engaged in general lawn and garden planting and maintenance are in 0782, and those primarily engaged in performing shrub and tree services for farm crops are in 0721.

Arborist services
Ornamental bush planting, pruning, bracing, spraying, removal, and surgery
Ornamental tree planting, pruning, bracing, spraying, removal, and surgery
Tree trimming for public utility line
Tree, ornamental: planting, pruning, bracing, spraying, removal, and surgery
Utility line tree trimming services

Major Group 08. − Forestry

This major group includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation services and the gathering of gums, barks, balsam needles, maple sap, Spanish moss, and other forest products.

Industry Group No.	Industry No.	
081		**TIMBER TRACTS**
	0811	**Timber Tracts**

Establishments primarily engaged in the operation of timber tracts or tree farms for the purpose of selling standing timber. Not included are logging establishments, and those holding timber tracts as real property (not for sale of timber).

Christmas tree growing
Tree farms
Timber tracts

083 **FOREST INDUSTRIES AND GATHERING OF FOREST PRODUCTS**

0831 **Forest Nurseries and Gathering of Forest Products**

Establishments primarily engaged in growing trees for purposes of reforestation or in gathering forest products. The concentration or distillation of these products, when carried on in the forest, is included in this industry.

Balsam needles, gathering of
Distillation of gums if carried on at the gum farm
Distillation of turpentine and rosin if carried on at the gum farm
Forest nurseries
Gathering of forest products: (e. g., gums, barks, seeds)
Ginseng, gathering of
Huckleberry greens, gathering of
Lac production
Maple sap, gathering of
Moss, gathering of
Pine gum, extraction of
Rubber plantations
Spanish moss, gathering of
Sphagnum moss, gathering of
Teaberries, gathering of
Tree seed gathering, extracting, and selling

085 **FORESTRY SERVICES**

0851 **Forestry Services**

Establishments primarily engaged in performing, on a contract or fee basis, services related to timber production, wood technology, forestry economics and marketing, and other forestry services, not elsewhere classified, such as cruising timber, firefighting, and reforestation.

Cruising timber
Estimating timber
Fire prevention, forest
Firefighting, forest
Forest management plans, preparation of
Forestry services
Pest control, forest
Reforestation
Timber valuation

Major Group 09. − Fishing, Hunting, and Trapping

This major group includes establishments primarily engaged in commercial fishing (including crabbing, lobstering, clamming, oystering, and the gathering of sponges and seaweed), and the operation of fish hatcheries and fish and game preserves, in commercial hunting and trapping, and in game propagation.

Industry Group No.	Industry No.	
091		**COMMERCIAL FISHING**

0912 **Finfish**

Establishments primarily engaged in the catching or taking of finfish.

Bluefish, catching of
Cod, catching of
Eels, catching of
Finfish, catching of
Fisheries, finfish
Haddock, catching of
Mackerel, catching of
Menhaden, catching of
Pilchard, catching of
Pollack, catching of
Rays, catching of
Salmon, catching of
Sea herring, catching of
Sharks, catching of
Tuna, catching of
Whiting, catching of

0913 **Shellfish**

Establishments primarily engaged in the catching or taking of shellfish.

Clams, digging of
Crabs, catching of
Crayfish, catching of
Fisheries, shellfish
Lobsters, catching of
Mussels, taking of
Oyster beds
Oysters, dredging or tonging of
Shellfish, catching of
Shrimp, catching of
Squid, catching of

0919 **Miscellaneous Marine Products**

Establishments primarily engaged in miscellaneous fishing activities, such as catching or taking of sea urchins, terrapins, turtles, and frogs. The gathering of seaweed and sponges is also included in this industry.

Cultured pearl production
Frogs, catching of
Sea urchins, catching of
Seaweed, gathering of
Sponges, gathering of
Terrapins, catching of
Turtles, catching of

092 **FISH HATCHERIES AND PRESERVES**

0921 **Fish Hatcheries and Preserves**

Establishments primarily engaged in operating fish hatcheries or preserves. Those primarily engaged in the production of fish or frogs under controlled feeding, sanitation, and harvesting procedures are in 027.

Fish hatcheries
Fishing preserves

097 **HUNTING AND TRAPPING, AND GAME PROPAGATION**

0971 **Hunting and Trapping, and Game Propagation**

Establishments primarily engaged in commercial hunting and trapping, or in the operation of game preserves.

Animal trapping, commercial
Game management
Game preserves
Game propagation
Game retreats, operations of
Hunting carried on as a business enterprise
Hunting preserves, operation of
Trapping carried on as a business enterprise
Wildlife management

Chapter DWD 149

DISCLOSURE OF UNEMPLOYMENT INSURANCE RECORDS

DWD 149.001 Definitions.
DWD 149.01 Purpose.
DWD 149.02 Confidentiality of records.
DWD 149.03 Disclosure of records to individuals, employing units, their agents, and authorized third parties.
DWD 149.04 Mandatory disclosure of unemployment insurance records.
DWD 149.05 Permissive disclosure of unemployment insurance records.
DWD 149.06 Confidentiality safeguard requirements and disclosure of records to third parties.
DWD 149.07 Record disclosure agreements.
DWD 149.08 Fee for disclosing unemployment insurance records.
DWD 149.09 Penalties.

Note: Chapter ILHR 149 was renumbered Chapter DWD 149 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 149.001 Definitions. (1) IN GENERAL. Except as provided in sub. (2), unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

(2) IN THIS CHAPTER. Notwithstanding ch. DWD 100 and unless the context clearly indicates a different meaning, in this chapter:

(a) "Claim information" means information about all of the following:

1. Whether an individual is receiving, has received, or has applied for unemployment insurance.

2. The amount of unemployment insurance the individual is receiving or is entitled to receive.

3. The individual's current or most recent home address.

4. For purposes of s. DWD 149.04 (2) (h) to (m), "claim information" also includes all of the following:

a. Whether the individual has refused an offer of work and, if so, a description of the job offered including the terms, conditions, and rate of pay.

b. Any other information contained in the department's unemployment insurance records that is needed by the requesting agency to verify eligibility for, and the amount of, benefits.

(b) "Government unit" has the meaning designated in s. 108.02 (17), Stats., and also includes any unit of the federal government and the governing body of a federally recognized American Indian tribe or band in this state.

(c) "Public domain information" means all of the following:

1. Information about the organization of the department's unemployment insurance division and the labor and industrial review commission.

2. Federal and state unemployment insurance statutes, rules, regulations, statements of general policy, and interpretations of general applicability.

3. Interstate agreements and agreements with the department of labor relating to administration of the unemployment insurance program.

4. Decisions of the labor and industry review commission.

(d) "Public official" means an official, agency, or public entity within the executive branch of the federal, state, tribal, or local government with responsibility for administering or enforcing a law, or an elected official in federal, state, tribal, or local government.

(e) "Wage information" means information in the department's unemployment insurance records about wages paid to an individual; the individual's social security number; and name, address, state, and federal employer identification number of the employing unit that paid the wages to the individual.

History: Cr. Register, May, 1993, No. 449, eff. 6−1−93, r. (intro.), (1), (2), (3) and (4), cr. (1), renum. (5) to (2) and am., renum. (6) and (7) to 100.02 (47) and (67), Register, September, 1995, No. 477, eff. 10−1−95; **CR 08−019: r. and recr. (2) Register July 2008 No. 631, eff. 8−1−08**.

DWD 149.01 Purpose. The purpose of this chapter is to implement s. 108.14 (7), Stats., and to comply with 20 CFR Part 603. Under s. 108.14 (7), Stats., the unemployment insurance records made or maintained by the department are confidential and shall be open to public inspection or disclosure only to the extent that the department permits in the interest of the unemployment insurance program. This chapter specifies the conditions and circumstances under which the department may permit unemployment insurance records to be disclosed. This chapter shall be interpreted and applied consistently with the requirements of 20 CFR Part 603.

History: Cr. Register, May, 1993, No. 449, eff. 6−1−93; **CR 08−019: am. Register July 2008 No. 631, eff. 8−1−08.**

DWD 149.02 Confidentiality of records. (1) Unemployment insurance records made or maintained by the department are confidential and not open to public inspection or disclosure, except as provided in subs. (2) and (3).

(2) The department may disclose the following unemployment insurance records if the disclosure is in the interest of the unemployment insurance program and does not interfere with the efficient administration of the program:

(a) Public domain information.

(b) Appeals records and decisions with social security numbers redacted as provided in s. DWD 140.09.

(c) Any unemployment insurance record that has been screened to prevent identification of the individual or employing unit that is the subject of the record or which could foreseeably be combined with other publicly available information to reveal any identifying particulars of an individual or employing unit.

(d) Unemployment insurance records as provided in ss. DWD 149.03 and 149.05.

(3) The department shall disclose unemployment records as provided in s. DWD 149.04.

(4) The department shall notify every claimant at the time of application and periodically thereafter that confidential unemployment insurance information pertaining to the claimant may be requested and used for other governmental purposes, including verification of eligibility for other government programs.

(5) The department shall notify every employer subject to ch. 108, Stats., annually that wage information and other confidential unemployment insurance information may be requested and used for other governmental purposes, including verification of an individual's eligibility for other government programs.

History: Cr. Register, May, 1993, No. 449, eff. 6−1−93; **CR 08−019: r. and recr. Register July 2008 No. 631, eff. 8−1−08.**

DWD 149.03 Disclosure of records to individuals, employing units, their agents, and authorized third parties. (1) CLAIMANTS AND EMPLOYING UNITS. Except as otherwise provided under s. DWD 140.09, the department shall make the following records available to the following persons upon request:

(a) An unemployment insurance record concerning an individual is available to that individual.

(b) An unemployment insurance record concerning an individual's work for an employing unit is available to that employing unit.

(c) An unemployment insurance record concerning a determination to which an employing unit is identified as a party of interest under s. 108.09, Stats., is available to that employing unit.

(d) An unemployment insurance record concerning an employing unit's status or liability under ch. 108, Stats., is available to that employing unit.

(2) AGENTS AND ATTORNEYS. (a) The department may disclose an unemployment insurance record to an attorney or agent of an individual or employing unit under sub. (1), only if the attorney or agent furnishes a written statement from the individual or employing unit authorizing release of the record or if the department verifies that the attorney or agent represents the individual or employing unit.

(b) An elected official or the elected official's staff assistant is an agent when acting in response to a constituent's inquiry about an unemployment insurance issue. The department may release only that portion of the records relating solely to the requesting constituent's case.

(c) A union representative is an agent when acting for a claimant.

(3) AUTHORIZED THIRD PARTIES. (a) The department may disclose an unemployment insurance record to an authorized third party that is not an agent of an individual or employing unit if the third party provides a written release signed by the individual or employing unit to whom the information pertains. The release shall contain the following information:

1. The specific information sought.

2. The purpose for which the information is sought.

3. All parties who may receive the information.

4. A statement that the information obtained under the release will be used only for the purpose provided under subd. 2.

5. A statement that the department's unemployment insurance files will be accessed to obtain the information.

(b) The department may disclose an unemployment insurance record under this subsection only if the purpose specified under par. (a) 2. is limited to one or more of the following:

1. Providing a service to the individual such that the individual expects to receive a benefit as a result of signing the release.

2. Carrying out administration or evaluation of a public program to which the release pertains.

History: Cr. Register, May, 1993, No. 449, eff. 6−1−93; am. (1) (intro.) and (2), Register, September, 2000, No. 537, eff. 10−1−00; **CR 08−019: am. (title), (1) (a) to (d) and (2), cr. (2) (b) and (c), r. and recr. (3) Register July 2008 No. 631, eff. 8−1−08.**

DWD 149.04 Mandatory disclosure of unemployment insurance records. (1) DISCLOSURE REQUIRED BY LAW. The department shall disclose unemployment insurance records to any person or agency as required by state or federal law.

(2) FEDERALLY−MANDATED DISCLOSURES TO CERTAIN AGENCIES. The department shall disclose unemployment insurance records to the following:

(a) The internal revenue service for purposes of unemployment insurance tax administration.

(b) The U.S. citizenship and immigration services for purposes of verifying an individual's immigration status.

(c) A federal official for purposes of unemployment insurance program oversight and audits.

(d) Wage and claim information to the U.S. department of health and human services for purposes of the National Directory of New Hires under 42 USC 653a.

(e) Any other state to properly administer its unemployment insurance program.

(f) The name, address, ordinary occupation, and employment status of each recipient of unemployment insurance and a statement of the recipient's rights to further insurance under ch. 108, Stats., to any governmental unit for purposes of administering a program of public works or public assistance through public employment.

(g) The railroad retirement board.

(h) Wage and claim information to any government unit in the administration of a food stamp program under 7 USC 2011 to 2029 for purposes of determining an individual's eligibility for and amount of benefits.

(i) Wage and claim information to any state or local child support enforcement agency for purposes of locating individuals owing child support obligations and establishing and collecting child support.

(j) Wage and claim information to the U. S. department of housing and urban development or representatives of a public housing agency for purposes of determining an individual's eligibility for benefits or amount of benefits under a housing assistance program of the department of housing and urban development, provided the individual has signed a consent form.

(k) Wage and claim information to a government unit in the administration of a program funded under Temporary Assistance for Needy Families under 42 USC 601 to 619.

(L) Wage and claim information to any governmental unit administering the provisions of a Medicaid state plan approved under Title XIX of the Social Security Act.

(m) Wage and claim information to any governmental unit in the administration of Federal Old–Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled.

(3) OTHER REQUIRED DISCLOSURES. (a) The department shall disclose to the lottery board, upon request, information regarding any delinquency in the payment of contributions under ch. 108, Stats., by any person who desires to contract with the lottery board for the retail sale of lottery tickets as provided under s. 565.10 (3) (b), Stats.

(b) The department shall disclose wage and claim information to any government unit in the administration of a program of general relief or general assistance.

(c) The department shall disclose unemployment insurance records to the labor and industry review commission to perform its review functions.

History: Cr. Register, May, 1993, No. 449, eff. 6−1−93; am. (2) (intro.) and (a), Register, September, 2000, No. 537, eff. 10−1−00; **CR 08−019: am. (title) and (1), r. and recr. (2) and (3) Register July 2008 No. 631, eff. 8−1−08.**

DWD 149.05 Permissive disclosure of unemployment insurance records. (1) The department may disclose unemployment insurance records to the following persons or government units if the department approves the purposes for which the records are requested:

(a) The U. S. department of labor, including for purposes of the Workforce Investment Act, and the bureau of labor statistics.

(b) The Unemployment Insurance Advisory Council when reasonably necessary in the course of its duties under s. 108.14 (5), Stats.

(c) A local, state, tribal, or federal government official, other than a clerk of court on behalf of a litigant, with authority to obtain the information pursuant to a subpoena or court order.

(d) A public official or its agent or contractor for use in the performance of official duties, including the following:

1. Any division of the department or corresponding unit in another state agency, the government of another state, or the federal government.

2. Any legislative service agency listed under ch. 13, Stats.

3. Any taxing authority of the United States or of this state or any of its political subdivisions.

4. Colleges, universities, government units, or other organizations or persons for research projects of a public nature that benefit the unemployment insurance program, only if on behalf of a public official.

5. Any federal law enforcement agency or law enforcement agency of the state or any of its political subdivisions, if the worker or employing unit whose record is being sought is the subject of a criminal investigation.

6. Any person whom the department authorizes to use, print, or otherwise reproduce unemployment insurance records for purposes of demonstrating services or equipment in connection with the administration of the unemployment insurance program.

(2) The department may make any other disclosure as provided in this chapter.

(3) The department may disclose only that portion of the records and information as is necessary to complete the request.

History: Cr. Register, May, 1993, No. 449, eff. 6−1−93; **CR 08−019: r. and recr. Register July 2008 No. 631, eff. 8−1−08.**

DWD 149.06 Confidentiality safeguard requirements and disclosure of records to third parties. **(1)** Third party recipients of unemployment insurance records shall comply with all of the following confidentiality safeguard requirements:

(a) Safeguard disclosed information against unauthorized access or redisclosure.

(b) Use the disclosed information only for the purposes authorized by law and consistent with any applicable record disclosure agreement under s. DWD 149.07.

(c) Store disclosed information in a safe place physically secure from unauthorized access.

(d) Store and process information in electronic format in a way that unauthorized persons cannot obtain the information by any means.

(e) Ensure that only authorized persons are given access to disclosed information stored in a computer system.

(f) For third parties authorized to receive information by an individual or employing unit under s. DWD 149.03 (3), maintain a copy of the written release authorizing each access and ensure that access to disclosed information will be only to those authorized under the release.

(g) Instruct all persons having access to disclosed information of the confidentiality requirements and the penalties for unauthorized disclosure, and have these persons sign an acknowledgement that they have been so instructed and agree to report any infraction promptly.

(h) Dispose of all disclosed records and copies after the purpose for which the information was disclosed has been served or when the department considers appropriate, except for disclosed information possessed by any court.

(i) Allow the department to conduct on−site inspections of the disclosed records and to audit for compliance with this section.

(2) No information provided to a public official under this chapter may be used for solicitation of contributions or expenditures to or on behalf of a candidate for public or political office or a political party.

(3) No person, government unit, or other entity to which the department discloses an unemployment insurance record under s. DWD 149.03 (2) or (3), 149.04, or 149.05 may redisclose information obtained from that record without the prior written approval of the department. Any redisclosure is subject to the requirements in sub. (1).

(4) This section does not apply to disclosures of unemployment insurance records to a unit of the federal government that has safeguards in place that meet the confidentiality requirements of 42 USC 303(a)(1), as determined by the department of labor with notice published in the Federal Register.

(5) This section does not apply to disclosures of the following:

(a) Public domain information.

(b) Disclosures exclusively for statistical purposes under a cooperative agreement with the bureau of labor statistics.

(c) Disclosures to the internal revenue service for purposes of unemployment insurance tax administration.

(d) Disclosures to the U.S. citizenship and immigration services for purposes of verifying a claimant's immigration status.

(e) Disclosures to the U.S. department of labor for the purpose of oversight and audits of the unemployment insurance program.

(f) Disclosures of unemployment insurance appeal records under s. DWD 149.02 (2) (b) and disclosures to individuals and employing units under s. DWD 149.03 (1).

History: Cr. Register, May, 1993, No. 449, eff. 6−1−93; **CR 08−019: r. and recr. Register July 2008 No. 631, eff. 8−1−08.**

DWD 149.07 Record disclosure agreements. **(1)** The department shall require a record disclosure agreement to be in effect before disclosing unemployment insurance records under ss. DWD 149.03 (3), 149.04 (2) (e) to (m) and (3), and 149.05 (1) (d).

(2) The department may require a record disclosure agreement to be in effect before disclosing unemployment insurance records to any person, government unit, or entity not listed in sub. (1).

(3) Any record disclosure agreement with an agent of a public official for disclosure must be made with the public official and hold the public official responsible for ensuring the agent complies with the confidentiality requirements in s. DWD 149.06 (1).

(4) A record disclosure agreement shall be in writing for a prescribed period of time and include all of the following provisions:

(a) A statement of the purpose for which the record is sought, description of the specific information to be furnished, the methods and timing of requests and responses for information, and the format to be used.

(b) A requirement that the person, government unit, or entity that is a party to the agreement comply with all of the following:

1. Use the information only for purposes authorized by law and as stated in the agreement and limit access to the information to those with a need to access it for the stated purpose.

2. Pay all of the department's costs in providing information from unemployment insurance records, unless the agreement provides for the reciprocal sharing of costs.

3. Comply with the confidentiality safeguards requirements of s. DWD 149.06 and not release information obtained from any unemployment insurance record to a third party without prior written approval of the department.

4. Verify the information in an unemployment insurance record released by the department if the person, government unit, or entity may take any action detrimental to the interests of the employee or employing unit that is the subject of the record.

5. Maintain a system of security that includes a procedure for the destruction of confidential information and report any infraction of the confidentiality safeguard requirements under s. DWD 149.06 or the agreement under this section fully and promptly.

6. Allow for on−site inspections by the department to ensure the confidentiality safeguard requirements of the agreement are met.

(c) For authorized third parties under s. DWD 149.03 (3), the information may be accessed only by those persons with authorization under the release, and the purpose for the release of information shall be limited to providing a service to benefit the individual.

(5) If the person, government unit, or entity fails to comply with the agreement, including failure to pay or reimburse the

department for costs, the agreement shall be suspended. If no corrective action is taken and completed promptly following a suspension, the department shall cancel the agreement and all confidential information shall be surrendered to the department. The department may seek damages, penalties, and restitution as allowed by law.

(6) The requirements of this section do not apply to disclosures of unemployment insurance records to a federal agency that has in place safeguards adequate to satisfy the confidentiality requirements of 42 USC 303(a)(1), as determined by the department of labor and published in the Federal Register.

History: Cr. Register, May, 1993, No. 449, eff. 6−1−93; **CR 08−019: r. and recr. Register July 2008 No. 631, eff. 8−1−08.**

DWD 149.08 Fee for disclosing unemployment insurance records. (1) (a) The department shall charge a fee for disclosing an unemployment insurance record when the disclosure is for a third party, government unit, or entity that requests the record and disclosure is not necessary for the proper administration of the unemployment insurance program, unless only incidental staff time and nominal processing costs are involved in making the disclosure.

(b) The department may charge a fee for disclosure in the following circumstances:

1. Disclosure of public domain information.
2. Disclosure to an individual, employing unit, or agent.
3. The purpose of the disclosure is program oversight or audit.
4. The disclosure is pursuant to a court order or is to officials with subpoena authority.

(c) The fee for disclosure may not exceed the actual, necessary, and direct costs of location and disclosure of the record, including photocopy, postage, computer reprogramming, and labor costs, except a record location fee may be charged if the costs of location exceed $50. The department shall require the fee for disclosure to be paid in advance except for good reason.

(2) The department may permit an individual who is entitled to an unemployment insurance record to photograph the record or the department may photograph the record for the individual, if the form of the record does not permit copying.

(3) The department may impose reasonable restrictions on the manner of access to an original unemployment insurance record if the record is irreplaceable or easily damaged.

(4) Payment of the fee for disclosure on a one−time or an ongoing basis may be arranged under a record disclosure agreement under s. DWD. 149.07.

History: Cr. Register, May, 1993, No. 449, eff. 6−1−93; **CR 08−019: r. and recr. Register July 2008 No. 631, eff. 8−1−08.**

DWD 149.09 Penalties. Any person who permits inspection or disclosure of an unemployment insurance record provided to that person by the department without authorization of the department shall be subject to the penalties provided under s. 108.24 (4), Stats.

History: Cr. Register, May, 1993, No. 449, eff. 6−1−93; **CR 08−019: am. Register July 2008 No. 631, eff. 8−1−08.**

Chapter DWD 150

MISCELLANEOUS

DWD 150.001 Definitions.
DWD 150.03 Rates of contribution to administration fund.
DWD 150.05 Forms.

Note: Chapter Ind−UC 150 was renumbered to be chapter ILHR 150 under s. 13.93 (2m) (b) 1. and 2., Register, August, 1987, No. 380. Chapter ILHR 150 was renumbered Chapter DWD 150 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., June, 1997, No. 498.

DWD 150.001 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 150.03 Rates of contribution to administration fund. Starting July 1, 1938, the following provisions of this section shall apply in relation to contributions to the administration fund under s. 108.19, Stats. The department hereby prescribes the following rates of contribution to the unemployment administration fund, to apply to the following classes of employers, with respect to their"defined payroll" for the several months from July 1938 on, until further notice:

(1) No contribution to the unemployment administration fund shall be required in the case of any employer who has an account in the unemployment reserve fund created by s. 108.16, Stats.

DWD 150.05 Forms. Copies of forms used by the Unemployment Insurance Division may be obtained by writing the Unemployment Insurance Division, P. O. Box 7905, Madison, Wisconsin 53707.

TABLE DWD 150

Form Number			Title or Similar Description
(1) Coverage.			**Wisconsin Employer's Report**
(a)	UCT−1	—	Employer's Report as to Wis. U.I. Coverage
(b)	RC−1	—	Election to Cover Multi−state Workers
(c)	UCT−115	—	Report of Business Transfer
(d)	UCT−117	—	Computation of Partial Transfer Percentage
(e)	UCT−119	—	Benefit Payment Allocation Report
(2) Contributions.			
(a)	UCT−101	—	Employer's Quarterly Contribution Report
(b)	UC−101a	—	Instructions for Completing Form UC−101
(c)	UC−100B	—	Notice of Employer's Contribution Rate
(3) Benefit notices and reports, required of employers.			
(a)	UCB−201−P	—	Handbook for Employers
(b)	UCB−7−P	—	Notice Poster, How to Claim Unemployment Benefits
(d)	RC−2	—	Special Notice, for Multi−State Employees
(e)	UCB−16	—	Separation Notice
(f)	UCB−23	—	Wage Verification Eligibility Report
(g)	UCB−23Q35	—	Wage Verification Eligibility Report
(h)	UCB−9381−P	—	Seasonal Employment Notice
(4) Benefit claims and payments.			
(a)	UCB−10−P	—	Claiming Wisconsin Unemployment Benefits
(b)	UCB−17	—	Claim Card
(5) Settlement of contested benefit claims.			
(a)	UCB−18	—	Fact Finding Interview Notice
(b)	UCB−474	—	Physician's Report, for Determining Eligibility

History: 1−2−56, am. intro. par., Register, March, 1967, No. 135, eff. 4−1−67; r. and recr. Register, September, 1968, No. 153, eff. 10−1−68; am. (2) (d) and (e), (3) (j) and (4) (g), cr. (2) (f), Register, January, 1975, No. 229, eff. 2−1−75; correction in (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466; r. and recr. (intro.), Register, November, 1999, No. 527, eff. 12−1−99.

Chapter LIRC 1

GENERAL

LIRC 1.01 General.
LIRC 1.015 Definitions.
LIRC 1.02 Petitions for review; appeal period.
LIRC 1.025 Petitions for review; filing.
LIRC 1.026 Cross−petitions.
LIRC 1.027 Answers.
LIRC 1.03 Withdrawals.
LIRC 1.04 Record used for review.
LIRC 1.045 Obtaining copy of record.
LIRC 1.05 Hearings.
LIRC 1.06 Oral argument.
LIRC 1.07 Briefs.

LIRC 1.01 General. The labor and industry review commission has jurisdiction for review of cases arising under ss. 40.65 (2), 66.191, 1981 Stats., ss. 102.18 (3) and (4), 106.52 (4), 106.56 (4), 108.09 (6), 108.10 (2) and (3), 111.39 (5) (a), 303.07 (7) and 303.21, Stats.

History: Cr. Register, March, 1981, No. 303, eff. 4−1−81; am. Register, August, 1982, No. 320, eff. 9−1−82; am. Register, January, 1985, No. 349, eff. 2−1−85; am. Register, May, 1997, No. 497, eff. 6−1−97; correction made under s. 13.93 (2m) (b) 7., Stats., Register September 2001 No. 549; CR 05−092: am. Register July 2006 No. 607, eff. 8−1−06.

LIRC 1.015 Definitions. (1) In chs. LIRC 1 to 4, "commission" means the Wisconsin labor and industry review commission.

(2) In chs. LIRC 1 to 4, "department" means the Wisconsin department of workforce development.

History: CR 05−092: cr. Register July 2006 No. 607, eff. 8−1−06.

LIRC 1.02 Petitions for review; appeal period. All petitions for commission review shall be filed within 21 days from the date of mailing of the findings and decision or order, except that the petition may be filed on the next business day if the 21st day falls on any of the following:

(1) January 1.

(1m) The third Monday in January.

(1r) The third Monday in February.

(3) The last Monday in May.

(4) July 4.

(5) The first Monday in September.

(5m) The second Monday in October.

(5r) November 11.

(6) The fourth Thursday in November.

(7) December 24, 25 or 31.

(8) The Monday following if January 1, July 4 or December 25 falls on Sunday.

(9) Any other day on which mail is not delivered by the postal authorities.

History: Cr. Register, March, 1981, No. 303, eff. 4−1−81; am. Register, August, 1982, No. 320, eff. 9−1−82; am. (intro.), (3), (5), (6) and (8), cr. (1m), (1r), (5m) and (5r), Register, January, 1985, No. 349, eff. 2−1−85; am. (intro.) and (1m), Register, May, 1988, No. 389, eff. 6−1−88; am. Register, May, 1997, No. 497, eff. 6−1−97; CR 05−092: am. (intro.) Register July 2006 No. 607, eff. 8−1−06.

LIRC 1.025 Petitions for review; filing. (1) Petitions for review may be filed by mail or personal delivery. A petition for review filed by mail or personal delivery is deemed filed only when it is actually received by the commission or by the division of the department to which the petition is mailed, except that petitions for review in unemployment insurance cases under s. 108.09 or 108.10, Stats., which are filed by mail or personal delivery are deemed filed when received or postmarked as provided for in s. LIRC 2.015.

(2) Except as provided for in subs. (3) and (4), petitions for review may not be filed by e−mail or by any other method of electronic data transmission.

(3) Petitions for review may be filed by facsimile transmission. A petition for review transmitted by facsimile is not deemed filed unless and until the petition is received and printed at the recipient facsimile machine of the commission or of the division of the department to which the petition is being transmitted. The party transmitting a petition by facsimile is solely responsible for ensuring its timely receipt. The commission is not responsible for errors or failures in transmission. Except in the case of a petition for review in fair employment and public accommodations cases under s. 106.52 or 111.39 (5), Stats., where a facsimile transmission filed after the regular business hours of the equal rights division shall be considered filed on the next business day, a petition for review transmitted by facsimile is deemed filed on the date of transmission recorded and printed by the facsimile machine on the petition. If the commission's or department's records indicate receipt of the facsimile at a date later than that shown, then the later date shall control.

(4) Except in the case of petitions for review in fair employment and public accommodations cases under s. 106.52 or 111.39 (5), Stats., petitions for review may be filed electronically through the internet website of the commission, at the page found at http://dwd.wisconsin.gov/lirc/petition.htm. Successful filing of a petition for review electronically through the internet website of the commission will result in a display on the petitioner's internet browser of a message confirming that the petition has been successfully filed. A petition for review transmitted electronically through the website of the commission is not deemed filed unless and until the confirmation message is displayed. The commission is not responsible for errors in transmission that result in failure of a petition to be successfully filed electronically through the website of the commission. A petition for review filed electronically through the internet website of the commission is deemed filed on the date of filing stated on the commission's electronic record of the filing.

(5) Petitions for review may not be filed by telephone.

History: Cr. Register, May, 1997, No. 497, eff. 6−1−97; CR 05−092: r. and recr. Register July 2006 No. 607, eff. 8−1−06; **CR 09−014: am. (3) and (4) Register September 2009 No. 645, eff. 10−1−09**.

LIRC 1.026 Cross−petitions. Any party may file a petition for review, whether or not any other party has already filed a petition for review. The filing of a petition for review by one party does not extend the time within which any other party may file a petition for review. All petitions for review, including cross−petitions, are subject to the requirements of s. LIRC 1.02 concerning timeliness.

History: Cr. Register, May, 1997, No. 497, eff. 6−1−97.

LIRC 1.027 Answers. A party opposing a petition for commission review may file an answer with the commission within 21 days from the party's receipt of a copy of the petition. A party filing an answer with the commission shall furnish a copy to the opposing party.

History: Cr. Register, May, 1997, No. 497, eff. 6−1−97.

LIRC 1.03 Withdrawals. Requests to withdraw petitions shall be in writing. The commission may deny a request by any party to withdraw a petition if the commission has already reviewed and decided the case, but not yet issued its decision, or if the commission considers that withdrawal is not in the best interests of proper administration of the program involved. Denials of withdrawals shall be in writing, but may be included in the findings and decision of the commission.

History: Cr. Register, January, 1985, No. 349, eff. 2−1−85; am. Register, May, 1988, No. 389, eff. 6−1−88.

LIRC 1.04 Record used for review. Review by the commission shall be based on the record of the case including the evidence previously submitted at hearing before the department. The record of the hearing may be in the form of a written synopsis or a transcript, and may include an audio recording of the hearing. The form of the record of the hearing which the commission uses in its review shall be determined as follows:

(1) Except as provided in subs. (2) through (5), the commission shall base its review on a written synopsis of the testimony taken at the hearing. The synopsis shall be prepared by the department, by the commission, or by an outside contractor, from an audio recording of the hearing or from notes taken at the hearing by the administrative law judge. In those cases any party may obtain a copy of the synopsis as provided for in s. LIRC 1.045.

(2) The commission shall base its review on a transcript of the hearing rather than a synopsis if a transcript was prepared and was used by the administrative law judge in deciding the case. In such cases any party may obtain a copy of the transcript as provided for in s. LIRC 1.045.

(3) Except in unemployment insurance cases, the commission shall base its review on a transcript of the hearing rather than a synopsis if a party timely requests the commission in writing to conduct its review on the basis of a transcript, the party certifies in such request that it has ordered preparation of a transcript at the party's own expense, and the party thereafter files a copy of the transcript with the commission and serves a copy of the transcript on all other parties. To be timely under this subsection, a request must be made no later than 14 days after the requesting party's receipt from the commission of written confirmation that a petition for commission review has been filed.

(4) The commission shall base its review on a transcript of the hearing rather than a synopsis if a party shows to the commission that the synopsis is not sufficiently complete and accurate to fairly reflect the relevant and material testimony and other evidence taken. In those cases the commission shall direct the preparation of a transcript at its own expense and provide a copy of the transcript to each party without charge.

(5) On its own motion, the commission may base its review on a transcript of the hearing in addition to a synopsis. In those cases the commission shall direct the preparation of a transcript at its own expense and provide a copy of the transcript to each party without charge.

(6) A transcript used pursuant to subs. (2) to (5) shall be prepared by an independent court reporter or transcriptionist and shall include a certification by the court reporter or transcriptionist that the transcript is an original, verbatim transcript of the proceedings.

(7) On its own motion, the commission may base its review on an audio recording of the hearing in addition to a synopsis or transcript.

History: Cr. Register, March, 1981, No. 303, eff. 4−1−81; renum. from LIRC 1.03 and am., Register, January, 1982, No. 349, eff. 2−1−85; am. Register, May, 1988, No. 389, No. 6−1−88; r. and recr. Register, May, 1997, No. 497, eff. 6−1−97; CR 05−092: r. and recr. Register July 2006 No. 607, eff. 8−1−06.

LIRC 1.045 Obtaining copy of record. A party in a case before the commission may request the commission to provide a copy of the synopsis or transcript of the testimony, exhibits received at the hearing, or other documents in the administrative record. The commission shall furnish the copies upon request but may charge a fee for photocopying of 20 cents per page. Upon proper showing of financial inability to pay for photocopying, the commission may waive the fee.

History: Cr. Register, May, 1997, No. 497, eff. 6−1−97; CR 05−092: am. Register July 2006 No. 607, eff. 8−1−06.

LIRC 1.05 Hearings. If the record in a case is inadequate for the commission to arrive at a decision, the commission shall remand the case to the department of workforce development to take additional evidence on behalf of the commission.

Note: The commission does not conduct hearings as part of its review.

History: Cr. Register, March, 1981, No. 303, eff. 4−1−81; renum. from LIRC 1.04, Register, January, 1985, No. 349, eff. 2−1−85; r. and recr. Register, May, 1997, No. 497, eff. 6−1−97.

LIRC 1.06 Oral argument. The commission may grant a written request for oral argument if it determines that an issue would be more clearly presented by oral argument.

Note: The commission does not consider oral argument to be necessary because review is on the basis of the record, the parties have the right to file briefs, and oral argument delays disposition of the petition.

History: Cr. Register, March, 1981, No. 303, eff. 4−1−81; renum. from LIRC 1.05, Register, January, 1985, No. 349, eff. 2−1−85; r. and recr. Register, May, 1997, No. 497, eff. 6−1−97.

LIRC 1.07 Briefs. Either party may request the commission to establish a briefing schedule. Requests to file briefs may be made in the petition for review, in an answer, or in writing after the petition and answer. The commission may deny a request to file a brief which is not made in a petition or answer if the commission has already reviewed the case but not yet issued its decision at the time the request is made. Each party may file with the commission briefs or memoranda within the time limits of the briefing schedule established by the commission. Requests for extensions of time for filing briefs shall be made in writing. Extensions may be approved in writing upon good cause shown. A party filing a brief or memorandum with the commission shall furnish a copy to the opposing party.

History: Cr. Register, January, 1985, No. 349, eff. 2−1−85; am. Register, May, 1997, No. 497, eff. 6−1−97.

Chapter LIRC 2

UNEMPLOYMENT COMPENSATION

LIRC 2.01 Petitions for review; where filed.
LIRC 2.015 Timeliness of petitions.
LIRC 2.05 Actions for judicial review.

LIRC 2.01 Petitions for review; where filed. (1) Except as provided in subs. (2) and (3), a petition for commission review of an appeal tribunal decision under s. 108.09 or 108.10, Stats., shall be filed with any of the following:

(a) The division of unemployment insurance of the department, at any of the following locations:

1. The Madison hearing office, at 1801 Aberg Ave., Suite A, P.O. Box 7975, Madison, Wisconsin 53707−7975 (FAX: 608−242−4813).

2. The Milwaukee hearing office, at 819 N. 6th St., Rm. 382, Milwaukee, Wisconsin 53203−1606 (FAX: 414−227−4264).

3. The Eau Claire hearing office, at 715 S. Barstow St., Suite 1, Eau Claire, Wisconsin 54701−3880 (FAX: 715−836−1360).

4. The Fox Valley hearing office, at 926 Westhill Blvd., Appleton, Wisconsin 54914 (FAX: 920−832−5434).

5. The central administrative office of the division's bureau of legal affairs, at P.O. Box 8942, Madison, Wisconsin 53708 (FAX: 608−266−8221).

(b) The commission, at its office at 3319 West Beltline Highway, P.O. Box 8126, Madison, Wisconsin 53708 (FAX: 608−267−4409).

(2) A petition filed by an interstate claimant may be filed at one of the locations in sub. (1) or with a qualified employee of the agent state in which the interstate claimant files his or her claim.

(3) A petition by the department shall be filed only at the office of the commission.

History: Cr. Register, March, 1981, No. 303, eff. 4−1−81; am. (1) (intro.) and (c), cr. (1) (d) and (e), r. and recr. (2), r. (3), Register, August, 1982, No. 320, eff. 9−1−82; am. (1) (intro.), (a) to (d), Register, January, 1985, No. 349, eff. 2−1−85; am. (1) (intro.) and (a), Register, May, 1988, No. 389, eff. 6−1−88; r. and recr. Register, May, 1997, No. 497, eff. 6−1−97; CR 05−092: r. and recr. Register July 2006 No. 607, eff. 8−1−06.

LIRC 2.015 Timeliness of petitions. For purposes of s. 108.09 (6) (a), Stats., the words "received" and "postmarked" have the following meanings:

(1) If the petition is personally delivered, the petition is "received" when the division of unemployment insurance of the department or the commission physically receives the petition.

(2) If the petition is mailed and bears only a United States postal service postmark, the petition is "postmarked" on the date of that postmark.

(3) If the petition is mailed and bears both a United States postal service postmark and a private meter mark, the petition is "postmarked" on the date of the United States postal service postmark.

(4) If the petition is mailed and bears only a private meter mark, the petition is "postmarked" on the date of that mark.

(5) If the petition is mailed and bears no mark, or bears an illegible mark, the petition is "postmarked" 2 business days prior to the date the petition was physically received by the division of unemployment insurance of the department or the commission.

(6) If the petition is sent using a delivery service other than the United States postal service, and bears a delivery service mark which is the equivalent of a United States postal service postmark, the petition is "postmarked" on the date of that delivery service mark.

(7) If the petition is sent using a delivery service other than the United States postal service, and does not bear a delivery service mark which is the equivalent of a United States postal service postmark, or bears an illegible delivery service mark, the petition is "postmarked" 2 business days prior to the date the petition was physically received by the division of unemployment insurance of the department or the commission.

History: Cr. Register, May, 1997, No. 497, eff. 6−1−97; CR 05−092: am. Register July 2006 No. 607, eff. 8−1−06.

LIRC 2.05 Actions for judicial review. Judicial review of any commission decision under s. 108.09 or 108.10, Stats., shall be commenced in the manner and upon the grounds specified in ss. 108.09 (7) and 102.23, Stats., and not under ch. 227 or s. 801.02, Stats. Either party may commence a legal action for review of the commission decision in circuit court within 30 days from the date the decision was mailed to the party's last known address. Such action is commenced only by filing a summons and complaint with the circuit court and serving an authenticated copy of the summons and the complaint upon the commission, all within 30 days. Service must be made upon a commissioner of the labor and industry review commission or an agent authorized by the commission to accept service only at the commission's office in Madison. Such service shall be deemed complete service on all parties but there shall be left with the person so served as many copies of the summons and complaint as there are defendants. Service by mail is effective only if the pleadings are actually received by the commission within the appeal period. The complaint shall state the grounds upon which review is sought. The action shall be commenced against the commission, and the party in whose favor the decision was made shall also be made a defendant. The proceedings shall be in the circuit court of the county where the plaintiff resides except that, if the plaintiff is a state agency, the proceedings shall be in the circuit court of the county where the defendant resides. If the plaintiff is a non−resident of Wisconsin, the proceedings shall be in the circuit court for the county where the claim arose. The proceedings may be brought in any circuit court if all parties stipulate and that court agrees. The appealing party shall arrange for preparation of the necessary legal documents.

History: Cr. Register, March, 1981, No. 303, eff. 4−1−81; renum. from LIRC 2.06 and am., Register, January, 1985, No. 349, eff. 2−1−85; r. and recr. Register, May, 1988, No. 389, eff. 6−1−88; **CR 09−014: am. Register September 2009 No. 645, eff. 10−1−09.**

STATE OF WISCONSIN	)	
	)	SS
DEPARTMENT OF WORKFORCE	)	
DEVELOPMENT	)	

TO THE PEOPLE OF THE STATE OF WISCONSIN:

I, Raymond Allen, Secretary of the Wisconsin Department of Workforce Development and custodian of the department's official records, certify all of the following:

(1) The department adopted the attached emergency rule on April 29th, 2016. The emergency rule relates to pre-employment drug testing, substance abuse treatment program and job skills assessment.

(2) The emergency rule takes effect upon publication in the official state newspaper.

(3) I have compared the attached copy of the emergency rule with the original kept by the department. The attached copy is a complete and accurate copy of the original.

Signed and sealed this 29th of April, 2016, at the department offices in Madison, Wisconsin.

Raymond Allen, Secretary

ORDER OF THE WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT EMERGENCY RULE

The Wisconsin department of workforce development hereby adopts the following emergency rule ***to create*** ch. 131 relating to pre-employment drug testing, substance abuse treatment program and job skills assessment.

Analysis Prepared by the Department of Workforce Development

Statutes Interpreted

Statutes Interpreted: Ch. 108, Stats.

Statutory Authority

Statutory Authority: ss. 108.04 (8) (b), 108.133 (2) (a) and (4), 108.14 (2) and (4), Stats.

Explanation of Statutory Authority

The Department of Workforce Development (DWD) has specific and general authority to establish rules interpreting and clarifying provisions of ch. 108, Stats., unemployment insurance and reserves, and general authority for promulgating rules with respect to ch. 108, Stats., under ss. 108.14 (2) and (4), Stats.

2015 Wisconsin Act 55 (Act 55) created s. 108.133 (4), Stats., which requires DWD to promulgate rules to create procedures for an employing unit to voluntarily submit the positive results of a test for the presence of controlled substances conducted on an individual, or report that an individual declined to submit to a test, as a condition of new employment. Act 55 also created s. 108.04 (8) (b), Stats., which requires DWD to promulgate rules to create a period of ineligibility or a requalification requirement, or both, as it relates to an individual's failure to accept suitable work due to the positive result of a test. Act 55 created s. 108.133 (3) (d), Stats., which permits an individual who fails a pre-employment drug test to remain eligible for benefits if the individual enrolls in and complies with the requirements of a drug treatment program and a skills assessment, which DWD must create under ss. 108.133 (2) (a) 2. and 4., Stats.,

Related Statute or Rules

Chapter 108, Stats. – Unemployment Insurance and Reserves

Plain Language Analysis

This emergency rule implements the requirements specified under Act 55, relating to pre-employment drug testing, substance abuse treatment program and job skills assessment. Act 55 created s. 108.04 (8) (b), Stats., which provides the following:

- There is a rebuttable presumption that an individual failed without good cause to accept suitable work if DWD determines, based on a report submitted by an employing unit, that an employing unit required the individual to submit to a test for the presence of controlled substances as a conditional offer of employment and withdrew the conditional offer after the individual declined to submit to the test, or tested positive for one or more controlled substances without providing evidence of a valid prescription for each controlled substance.
- For an individual that declines to submit to a test, the individual shall be ineligible for benefits until the individual qualifies for benefits in accordance to the rules promulgated by DWD.
- For an individual that tests positive for the presence of controlled substances without providing evidence of a valid prescription, the individual shall be ineligible for benefits until the individual qualifies for benefits in accordance with the rules promulgated by DWD or the individual may maintain eligibility for benefits if the individual enrolls in and complies with the requirements of a substance abuse treatment program and completes a job skills assessment.

In addition, Act 55 provides that DWD shall:

- Create and provide a substance abuse treatment program for individuals who engage in the unlawful use controlled substances.
- Specify criteria that a claimant must satisfy in order to be considered in full compliance with the substance abuse treatment program.
- Create and conduct a job skills assessment for claimants who engage in the unlawful use of controlled substances.
- Identify criteria that an individual must satisfy to be considered in full compliance with the requirements of the job skills assessment.

This emergency rule implements the requirements specified under Act 55 and creates a process for an employing unit to voluntarily submit the positive results of a test conducted on an individual to DWD, if the test was required as a condition of an offer of employment and the individual was informed that the results may be submitted to DWD, the test was conducted or confirmed by a laboratory certified by the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services, and the individual tested positive for one or more controlled substances without evidence of a valid prescription. In addition, the emergency rule identifies the process by which the employing unit can report the positive results of a test to DWD.

An employing unit may voluntarily notify DWD that an individual declined to submit to a test for the presence of controlled substances as a condition of employment and the individual was

informed before testing, that the employing unit may notify the department if the individual declined to submit to the test.

If a report is submitted by an employing unit of the positive results of a test conducted on an individual as a condition of an offer of employment, or the employing unit notifies DWD that an individual declined to submit to a test for the presence of controlled substances, DWD shall determine if the individual is receiving unemployment insurance benefits. If DWD determines the individual is receiving unemployment insurance benefits, there is a rebuttable presumption that the individual failed to accept suitable work. This emergency rule provides the individual may overcome the presumption by proving certain facts by a preponderance of the evidence.

Under this emergency rule, an individual that fails a test without presenting evidence of a valid prescription or declines to submit to a test is ineligible for benefits until the individual earns wages at least 6 times the individual's weekly benefit rate beginning after the week in which the individual tests positive or declines to submit to the test.

An individual that tests positive for controlled substances without presenting evidence of a valid prescription may maintain benefit eligibility by enrolling in and complying with a substance abuse treatment program, and completing a job skills assessment.

This emergency rule also identifies the parameters for a substance abuse treatment program for individuals that test positive for the presence of one or more controlled substances (without a valid prescription). In addition, this emergency rule does all of the following:

- Requires an individual to schedule an assessment with a substance abuse treatment provider within 5 working days as directed by the department.
- Requires an individual to comply with all conditions of a treatment plan developed by a substance abuse treatment provider.
- Specifies that the substance abuse treatment provider will determine if an individual is in compliance with the substance abuse treatment program requirements, and inform the department on a weekly basis of the individual's compliance.
- Provides that DWD will pay for reasonable costs associated with the substance abuse treatment plan requirements for each week the individual is otherwise eligible for unemployment insurance benefits under ch. 108, Stats.
- Requires an individual to complete a job skills assessment as directed by the department.

Summary of, and comparison with, existing or proposed federal statutes and regulations

There are no existing or proposed federal regulations relating to pre-employment drug testing.

Comparison with rules in adjacent states

Michigan law previously provided that an individual would be disqualified from receiving unemployment insurance benefits if an employer withdrew a conditional offer of employment after the individual failed or refused to take a pre-employment drug test. Mich. Comp. Laws Ann. § 421.29(1)(e). The failed or refused pre-employment drug test would be considered a failure to accept suitable work. Michigan law did not provide drug treatment as an option for claimants to maintain benefit eligibility. Michigan's law was in effect from October 29, 2013 until October 29, 2014.

DWD is not aware of any unemployment insurance disqualification for a failed pre-employment drug test in Illinois, Minnesota or Iowa.

Summary of factual data and analytical methodologies

DWD consulted with the Unemployment Insurance Advisory Council and the Departments of Health Services, Corrections, and Children and Families to identify the parameters of a substance abuse treatment program for claimants who engage in the unlawful use of controlled substances.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis

The effect on small business was determined by reviewing estimates of costs a business would incur in order to comply with the law.

Fiscal Estimate

A complete fiscal estimate is attached.

Effect on small business

This emergency rule does not have an economic impact on small businesses as defined in s. 227.114 (1), Stats. DWD's regulatory review coordinator may be contacted by email at karl.dahlen@dwd.wisconsin.gov, or by calling (608) 266-9427.

Agency contact person

Questions and comments related to this rule may be directed to:

Janell Knutson
Department of Workforce Development
Division of Unemployment Insurance
P.O. Box 8942
Madison, WI 53708-8942
Telephone: (608) 266-1639
E-Mail: janell.knutson@dwd.wi.gov

Place where comments are to be submitted and deadline for submission

Janell Knutson
Department of Workforce Development
Division of Unemployment Insurance
P.O. Box 8942
Madison, WI 53708-8942
Telephone: (608) 266-1639
E-Mail: janell.knutson@dwd.wi.gov

Hearing comments will be accepted until the last scheduled hearing is conducted. DWD will hold a hearing in conjunction with the permanent rule hearing.

EXEMPTION FROM FINDING OF EMERGENCY

The Legislature, by Section 9151 (5) (b) in 2015 Wisconsin Act 55, provides an exemption from a finding of emergency rule for the adoption of the rule.

SECTION 1. Chapter DWD 131 is created to read:

CHAPTER DWD 131
PRE-EMPLOYMENT DRUG TESTING, SUBSTANCE ABUSE TREATMENT PROGRAM AND JOB SKILLS ASSESSMENT

131.001 Definitions. (1) Except as provided in sub. (2), the definitions in ch. DWD 100 apply to this chapter.

(2) Notwithstanding ch. DWD 100, all of the following definitions apply to this chapter:

(a) "Controlled substances" has the meaning given under s. 108.133 (1) (a), Stats.

Note: Section 108.133 (1) (a), Stats., states "Notwithstanding s. 108.02 (9), 'controlled substances' has the meaning given in 21 USC 802."

(b) "Positive results" means a test that confirms the presence of one or more controlled substances conducted or confirmed by a laboratory certified by the substance abuse and mental health services administration of the United States department of health and human services.

(c) "Substance abuse treatment provider" means an individual or organization that is licensed by a state agency to administer substance abuse treatment services to individuals that use controlled substances.

(d) "Substance abuse treatment program" means the services offered by a substance abuse treatment provider, beginning with an assessment.

DWD 131.10 Pre-employment testing for the presence of controlled substances. (1) POSITIVE RESULTS OF A TEST; APPLICABILITY. An employing unit may report to the department the positive results of a test for the presence of controlled substances conducted on an individual if all of the following apply:

(a) The test for the presence of controlled substances was conducted as a condition of an offer of employment and the employing unit informed the individual, before testing, that the positive results may be submitted to the department.

(b) The test was conducted or confirmed by a laboratory certified by the substance abuse and mental health services administration of the United States department of health and human services.

(c) The individual tested positive for one or more controlled substances without evidence of a valid prescription for each controlled substance.

(d) The employing unit complies with all of the provisions of this chapter.

(2) REPORTING POSITIVE RESULTS OF A TEST TO THE DEPARTMENT. To report positive results to the department, the employing unit shall provide all of the following information, on a form prescribed by the department, within 3 business days from the date on which the employing unit received the positive results:

(a) The name, address, and telephone number of the employing unit, and if applicable, the unemployment insurance account number of the employing unit.

(b) The name, address, telephone number, and social security number of the individual that tests positive for the presence of controlled substances.

(c) The following information related to the conditional offer of employment that the employing unit offered to the individual:

1. Documentation of the conditional offer of employment.

2. The date on which the employing unit extended the conditional offer of employment to the individual.

3. The date on which employment would begin, the rate of pay offered to the individual, the number and arrangement of hours, and the kind of work that would be performed.

4. The date and manner in which the employing unit informed the individual that, as a condition of the offer of employment, the individual must submit to a test for the presence of controlled substances.

(d) The date and manner in which the employing unit informed the individual that positive results may be submitted to the department.

(e) The following information related to the administration of the test and positive results:

1. The name, address and telephone number of the laboratory that conducted the test.

2. The date on which the individual submitted to the test.

3. The controlled substances detected in the test.

4. A copy of the laboratory's report.

(f) The date the employing unit received the results of the test from the laboratory.

(g) The date and manner in which the employing unit withdrew the conditional offer of employment after the employing unit received the positive results.

(h) Any additional information requested by the department.

Note: To obtain a form under this section, contact the Department of Workforce Development, Division of Unemployment Insurance, 201 E. Washington Avenue, P.O. Box 7905, Madison, WI 53707 by telephone at (608) 232-0633 or (414) 438-7705 or access the form online at www.dwd.state.wi.gov.

(3) INDIVIDUAL DECLINING TO SUBMIT TO A TEST FOR THE PRESENCE OF CONTROLLED SUBSTANCES. An employing unit may notify the department that an individual declined to submit to a test for the presence of controlled substances if all of the following apply:

(a) The test for the presence of controlled substances was required as a condition of an offer of employment and the employing unit informed the individual, before testing, that the employing unit may notify the department if the individual declines to submit to the test.

(b) The employing unit complies with all of the provisions of this chapter.

(4) NOTIFICATION TO DEPARTMENT OF INDIVIDUAL DECLINING TEST. To notify the department that an individual declined to submit to a test for the presence of controlled substances, the employing unit shall provide all of the following information, on a form prescribed by the department, within 3 business days from the date on which the individual declined to submit to the test:

(a) The name, address, and telephone number of the employing unit, and if applicable, the unemployment insurance account number of the employing unit.

(b) The name, address, telephone number, and social security number of the individual that declined to submit to a test for the presence of controlled substances.

(c) The following information related to the conditional offer of employment from the employing unit to the individual:

1. Documentation of the conditional offer of employment.

2. The date on which the employing unit extended the conditional offer of employment to the individual.

3. The date on which employment would begin, the individual's pay rate, the number and arrangement of hours, and the kind of work that would be performed.

4. The date and manner in which the employing unit informed the individual that, as a condition of the offer of employment, the individual must submit to a test for the presence of controlled substances.

(d) The date and manner in which the employing unit informed the individual that the employing unit may notify the department if the individual declined to submit to a test for the presence of controlled substances.

(e) The following information related to the individual declining to submit to a test for the presence of controlled substances:

1. The date the individual declined to submit to a test.

2. Documentation that the individual declined to submit to the test.

3. The date the employing unit received notification that the individual declined to submit to the test.

(f) The date and manner the employing unit withdrew the conditional offer of employment after the employing unit received notice that the individual declined to submit to a test for the presence of controlled substances.

(g) Any additional information requested by the department.

Note: To obtain a form under this section, contact the Department of Workforce Development, Division of Unemployment Insurance, 201 E. Washington Avenue, P.O. Box 7905, Madison, WI 53708, by telephone at (608) 232-0633 or (414) 438-7705 or access the form online at www.dwd.state.wi.gov.

(5) DEPARTMENT DETERMINATION OF AN INDIVIDUAL RECEIVING BENEFITS. (a) The department shall determine, after receiving the information submitted by an employing unit under sub. (2) or (4), whether the individual is receiving benefits under ch. 108, Stats.

(b) If the department determines the individual is receiving benefits under par. (a), the department shall use the information reported under sub. (2) or (4) to determine eligibility under s. 108.04 (8) (b), Stats. The department shall provide information regarding the documentation submitted by an employing unit under sub. (2) or (4) to the individual.

(6) REBUTTABLE PRESUMPTION FOR FAILURE TO ACCEPT SUITABLE WORK. (a) If the department determines an individual is receiving benefits under sub. (5) (a), the department shall provide the individual an opportunity to overcome the presumption that the individual failed, without good cause, to accept suitable work when offered under s. 108.04 (8) (b), Stats.

(b) An individual may overcome the presumption that the individual failed, without good cause, to accept suitable work when offered under s. 108.04 (8) (b), Stats., if the individual tested positive for the presence of one or more controlled substances, and the individual establishes by a preponderance of the evidence, any of the following:

1. The employing unit did not extend an offer of employment contingent on the individual submitting to a test for the presence of controlled substances.

2. The employing unit withdrew the offer of employment before the employing unit received the positive results of the test.

3. The individual held a valid prescription at the time of the test for each controlled substance detected in the test.

4. The test for the presence of controlled substances was not conducted or confirmed by a laboratory certified by the substance abuse and mental health services administration of the United States department of health and human services.

5. The requirements under s. 108.04 (9), Stats., apply to the work offered.

6. Any circumstances which the department determines are beyond the individual's control.

(c) The individual may overcome the presumption that the individual failed, without good cause, to accept suitable work when offered under s. 108.04 (8) (b), Stats., by declining to submit to a test for the presence of controlled substances if the individual establishes by a preponderance of the evidence, any of the following:

1. The employing unit did not extend an offer of employment contingent on the individual submitting to a test for the presence of controlled substances.

2. The individual was unable to complete a test for the presence of controlled substances due to medical reasons.

3. The individual accepted an offer of employment from another employing unit before or at the time the individual declined to submit to the test under sub. (3).

4. The employing unit required the individual to pay for the test.

5. The requirements under s. 108.04 (9), Stats. apply to the work offered.

6. Any circumstances which the department determines are beyond the individual's control.

(7) PERIOD OF INELIGIBILITY AND REQUALIFICATION REQUIREMENTS FOR BENEFITS. (a) An individual under this chapter that has failed, without good cause, to accept suitable work due to the positive results of a test without presenting evidence of a valid prescription, is ineligible to

receive benefits until the individual earns wages after the week in which the failure occurs equal to at least 6 times the individual's weekly benefit rate under s. 108.05 (1), Stats., in employment or other work covered by the unemployment insurance law of any state or the federal government.

(b) Notwithstanding par. (a), an individual under this chapter that has failed, without good cause, to accept suitable work due to the positive results of a test without presenting evidence of a valid prescription, may maintain eligibility for benefits under ch. 108, Stats., by enrolling in and complying with a substance abuse treatment program under s. DWD 131.30 and completing a job skills assessment as prescribed under s. DWD 131.40.

(c) An individual under this chapter that has failed, without good cause, to accept suitable work by declining to submit to a test for the presence of controlled substances, is ineligible to receive benefits until the individual earns wages after the week in which the failure occurs equal to at least 6 times the individual's weekly benefit rate under s. 108.05 (1), Stats., in employment or other work covered by the unemployment insurance law of any state or the federal government.

DWD 131.30 Substance abuse treatment program. (1) ELIGIBILITY. (a) An individual that tests positive for the presence of controlled substances under this chapter may enroll in a substance abuse treatment program if all of the following apply:

1. The individual is otherwise eligible for benefits under ch. 108, Stats.

2. The services offered by a substance abuse treatment program are administered by a substance abuse treatment provider approved by the department.

(b) An individual eligible under par. (a) may enroll in a substance abuse treatment program one time per benefit year.

(2) AUTHORIZATION TO RELEASE RECORDS. An individual that is eligible to enroll in a substance abuse treatment program under sub. (1) shall provide written authorization to the department for the disclosure of the individual's records by the substance abuse treatment provider.

(3) ASSESSMENT. A substance abuse treatment provider shall use an assessment conducted under this chapter in order to determine the extent and severity of the individual's use of controlled substances, and to determine the type of intervention necessary to address the individual's use of controlled substances.

(4) SUBSTANCE ABUSE TREATMENT PLAN. The substance abuse treatment provider shall develop a substance abuse treatment plan that identifies the goals, objectives, resources and dates of treatment for the individual. The substance abuse treatment provider shall provide a copy of the substance abuse treatment plan to the department.

(5) SUBSTANCE ABUSE TREATMENT PROGRAM ENROLLMENT. Within 5 working days of being directed by the department, an individual shall contact an approved substance abuse treatment provider to schedule an assessment. An individual is considered to be enrolled in a substance abuse treatment program if any of the following apply:

(a) The individual schedules an assessment for the earliest date that is available with a substance abuse treatment provider.

(b) The individual requests placement on a waitlist for an assessment if the individual is unable to schedule an assessment with a substance abuse treatment provider. An individual that requests placement on a waitlist shall certify on a weekly basis, in a manner prescribed by the department, that the individual will schedule an assessment when services first become available with a substance abuse treatment program provider.

(6) SUBSTANCE ABUSE TREATMENT PROGRAM COMPLIANCE. (a) An individual shall comply with all requirements of a substance abuse treatment plan as prescribed in sub. (4). Compliance in a substance abuse treatment program shall be satisfied by any of the following:

1. The substance abuse treatment provider informs the department on a weekly basis, in a manner prescribed by the department, of an individual's compliance with the substance abuse treatment plan.

2. The individual certifies to the department on a weekly basis, in a manner prescribed by the department, that the individual is placed on a waitlist for a substance abuse treatment program and will comply with a substance abuse treatment plan when services first become available with a substance abuse treatment provider.

(b) An individual that fails to comply with the substance abuse treatment plan under par. (a) is ineligible to receive benefits until the individual earns wages after the week in which the failure occurs equal to at least 6 times the individual's weekly benefit rate under s. 108.05 (1), Stats., in employment or other work covered by the unemployment insurance law of any state or the federal government.

(7) SUCCESSFUL COMPLETION OF SUBSTANCE ABUSE TREATMENT PROGRAM. A substance abuse treatment provider shall notify the department as directed, when an individual successfully completes the requirements of the substance abuse treatment program.

(8) SUBSTANCE ABUSE TREATMENT PROGRAM COSTS. (a) The department shall pay for reasonable costs of the services provided by the substance abuse treatment provider as set forth in the individual's substance abuse treatment plan for each week the individual is eligible for benefits under ch. 108, Stats.

(b) Notwithstanding par. (a), the department shall pay for reasonable costs of the services provided by the substance abuse treatment provider as set forth in the substance abuse treatment plan if the individual is determined ineligible for benefits under ch. 108, Stats., solely due to the individual complying with the requirements of the individual's substance abuse treatment plan.

DWD 131.40. Jobs skills assessment. (1) An individual that tests positive for the presence of controlled substances under this chapter and that elects to enroll in and comply with a substance abuse treatment plan under this chapter shall complete a job skills assessment as directed by the department.

(2) The department may require an individual to participate in reemployment services under s. DWD 127.07 in order to complete the job skills assessment.

(3) An individual that fails to participate in a job skills assessment under this section as directed by the department is ineligible to receive benefits until the individual earns wages after the week in which the failure occurs equal to at least 6 times the individual's weekly benefit rate under s. 108.05 (1), Stats., in employment or other work covered by the unemployment insurance law of any state or the federal government.

SECTION 2. EFFECTIVE DATE. This rule shall take effect upon publication and remains in effect for 150 days. The department may seek to extend this emergency rule as provided in s. 227.24, Stats.

Dated this 29th day of April, 2016.

STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE
DEVELOPMENT

By: _____
Raymond Allen, Secretary

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
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ADMINISTRATIVE RULES
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1. Type of Estimate and Analysis
☒ Original ☐ Updated ☐ Corrected

2. Administrative Rule Chapter, Title and Number
DWD 131

3. Subject
Pre-employment controlled substances testing, substance abuse treatment and job skills assessment

4. Fund Sources Affected
☒ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

5. Chapter 20, Stats. Appropriations Affected
20.445 (1) (aL)

6. Fiscal Effect of Implementing the Rule
☐ No Fiscal Effect ☐ Increase Existing Revenues ☒ Increase Costs
☐ Indeterminate ☐ Decrease Existing Revenues ☐ Could Absorb Within Agency's Budget
☐ Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)
☒ State's Economy ☐ Specific Businesses/Sectors
☐ Local Government Units ☐ Public Utility Rate Payers
☐ Small Businesses **(if checked, complete Attachment A)**

8. Would Implementation and Compliance Costs Be Greater Than $20 million?
☐ Yes ☒ No

9. Policy Problem Addressed by the Rule
This emergency rule implements the requirements specified under 2015 Act 55, relating to pre-employment drug testing, substance abuse treatment programs and job skills assessment. Act 55 created s. 108.04 (8) (b), Stats., which provides the following:

- There is a rebuttable presumption that an individual failed without good cause to accept suitable work if the department determines, based on a report submitted by an employing unit, that an employing unit required the individual to submit to a test for the presence of controlled substances as an conditional offer of employment and withdrew the conditional offer after the individual declined to submit to the test, or tested positive for one or more controlled substances without providing evidence of a valid prescription for each controlled substance.
- For an individual that declines to submit to a test, the individual shall be ineligible for benefits until the individual qualifies for benefits in accordance to the rules promulgated by DWD.
- For an individual that tests positive for the presence of controlled substances without providing evidence of a prescription, the individual shall be ineligible for benefits until the individual qualifies for benefits in accordance with the rules promulgated by DWD or the individual may maintain eligibility for benefits if the individual enrolls in and complies with the requirements of a substance abuse treatment program and completes a job skills assessment.

In addition, Act 55 provides that DWD shall:

- Create and provide a substance abuse treatment program for individuals who engage in the unlawful use controlled substances.

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- Specify criteria that a claimant must satisfy in order to be considered in full compliance with the substance abuse treatment program.
- Create and conduct a job skills assessment for claimants who engage in the unlawful use of controlled substances.
- Identify criteria that an individual must satisfy to be considered in full compliance with the requirements of the job skills assessment.

This emergency rule implements the requirements specified under Act 55 and creates a process for an employing unit to voluntarily submit the positive results of a test conducted on an individual to the department, if the test was required as a condition of an offer of employment and the individual was informed that the results may be submitted to DWD, the test was conducted or confirmed by a laboratory certified by the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services, and the individual tested positive for one or more controlled substances without evidence of a valid prescription. In addition, the emergency rule identifies the process by which the employing unit can report the positive results of a test to DWD.

An employing unit may voluntarily notify DWD that an individual declined to submit to a test for the presence of controlled substances as a condition of employment and the individual was informed before testing, that the employing unit may notify the department if the individual declined to submit to the test.

If a report is submitted by an employing unit of the positive results of a test conducted on an individual as a condition of an offer of employment, or the employing unit notifies DWD that an individual declined to submit to a test for the presence of controlled substances, DWD shall determine if the individual is receiving unemployment insurance benefits. If DWD determines the individual is receiving unemployment insurance benefits, there is a rebuttable presumption that the individual failed to accept suitable work. This emergency rule provides the individual may overcome the presumption by proving certain facts by a preponderance of the evidence.

Under this emergency rule, an individual that fails a test without presenting evidence of a valid prescription or declines to submit to a test is ineligible for benefits until the individual earns wages at least 6 times the individual's weekly benefit rate beginning after the week in which the individual tests positive or declines to submit to the test.

An individual that tests positive for controlled substances without presenting evidence of a valid prescription may maintain benefit eligibility by enrolling in and complying with a substance abuse treatment program, and completing a job skills assessment.

This emergency rule also identifies the parameters for a substance abuse treatment program for individuals that test positive for the presence of one or more controlled substances (without a valid prescription). In addition, this emergency rule does all of the following:

- Requires an individual to schedule an assessment with a substance abuse treatment provider within 5 working days as directed by the department.

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- Requires an individual to comply with all conditions of a treatment plan developed by a substance abuse treatment provider.
- Specifies that the substance abuse treatment provider will determine if an individual is in compliance with the substance abuse treatment program requirements, and inform the department on a weekly basis of the individual's compliance.
- Provides that DWD will pay for reasonable costs associated with the substance abuse treatment plan requirements for each week the individual is otherwise eligible for unemployment insurance benefits under ch. 108, Stats.
- Requires an individual to complete a job skills assessment as directed by the department.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

Pursuant to s. 227.137 (5), Stats., the information required under this section does not apply to emergency rules.

11. Identify the local governmental units that participated in the development of this EIA.

Pursuant to s. 227.137 (5), Stats., the information required under this section does not apply to emergency rules.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Pursuant to s. 227.137 (5), Stats., the information required under this section does not apply to emergency rules.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Section 108.133, Stats., as created by 2015 Act 55, directed the department to implement a process for an employing unit to voluntarily submit the results of a drug test conducted on an individual as a condition of an offer of employment or notify the department that an individual declined to submit to a test for controlled substances as prescribed under ss. 108.04 (8) (b) and 108.133 (4), Stats., and implement the parameters of a substance abuse treatment program and job skills assessment.

The policy alternative is to do nothing. If the department does not promulgate the proposed permanent and emergency rules, the department's administrative rules will be inconsistent with statutory requirements.

14. Long Range Implications of Implementing the Rule

Indeterminate.

15. Compare With Approaches Being Used by Federal Government

Pursuant to s. 227.137 (5), Stats., the information required under this section does not apply to emergency rules.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Pursuant to s. 227.137 (5), Stats., the information required under this section does not apply to emergency rules.

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17. Contact Name	18. Contact Phone Number
Janell Knutson	608-266-1639

This document can be made available in alternate formats to individuals with disabilities upon request.

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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

☐ Less Stringent Compliance or Reporting Requirements
☐ Less Stringent Schedules or Deadlines for Compliance or Reporting
☐ Consolidation or Simplification of Reporting Requirements
☐ Establishment of performance standards in lieu of Design or Operational Standards
☐ Exemption of Small Businesses from some or all requirements
☐ Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes ☐ No