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FORM 2

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-108

AN ORDER to create chapter DWD 42, relating to the state directory of new hires.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

- 06-23-00 RECEIVED BY LEGISLATIVE COUNCIL.
- 07-17-00 REPORT SENT TO AGENCY.

RNS:REL;jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES

NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES

NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES

NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached

YES

NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES

NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES

NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES

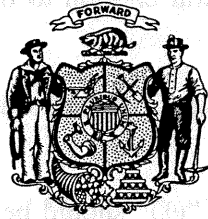
NO

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CLEARINGHOUSE RULE 00-108

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

- a. In s. DWD 42.01 (1), only the U.S. Code citation should be listed instead of including "Federal law" at the beginning of the first sentence. Also, parentheses around the full U.S. Code citation should be deleted.
- b. In s. DWD 42.02, "the" should replace "such" in two places.
- c. In s. DWD 42.02 (3), parentheses around "26 USC 3401 (d)" should be deleted. A similar change should be made in sub. (4).
- d. In s. DWD 42.02 (5), "section 2 (5) of the national labor relations act," and "section 8 (3) of the national labor relations act" should be deleted. Also, parentheses around "29 USC 152 (5)" and "29 USC 159 (f) (3)" should be removed. [See s. 1.07 (3) (a), Manual.]
- e. In s. DWD 42.02 (7) (intro.), "any of the following" should be inserted before the colon.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In s. DWD 42.01 (1) "Sec." should be replaced with "Section" in the third line.

b. It would be helpful to the clarity of the rule if the definition of "employee" in s. DWD 42.02 (2) and the definition of "employer" in s. DWD 42.02 (3) included the Internal Revenue Code definition rather than just the federal citation to the definition. This could be done in a note. Also see sub. (5).

Also, "et seq." should be deleted and replaced with a more specific citation. [See s. 1.01 (1), Manual.]

c. In s. DWD 42.03 (1) (intro.), "(1)" should be inserted between "s. DWD 42.04" and "(b)."

d. Section DWD 42.03 (2) (a) 1. provides that an employer may file new hire reports electronically, "as prescribed by the department." Does this refer to a filing format or procedure? If so, why is a format for filing electronically not included in the rule?

e. In s. DWD 42.03 (2) (a) 4. b., "through" should be deleted and replaced with "to."

f. Section DWD 42.03 (3) (c) provides an extension if the deadline for filing a report falls on a Saturday, Sunday, holiday or any day on which mail is not delivered by the U.S. Postal Service. This implies that the deadline and extension apply to reports filed by paper but it is unclear whether the requirements apply to reports filed electronically as well.

g. Section DWD 42.04 (1) (b) refers to the "electronic filing format"; however, an electronic filing format is not defined in the rule. It is suggested that a definition of the format or a subsection explaining the format be inserted into the rule.

Also, in this paragraph, "all the data elements" should be deleted and replaced with "the information" to maintain consistency with earlier provisions.

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

DWD 42

State Directory of New Hires

The Wisconsin Department of Workforce Development proposes an order to create chapter DWD 42, relating to the state directory of new hires.

Analysis Prepared by the Department of Workforce Development

Statutory authority: ss. 103.05(3), 103.005, and 227.11, Stats.

Statute interpreted by the rule: s. 103.05, Stats.

Relevant federal law: 42 USC 653a(a)(1)(A)

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 directed each state to establish a process by which employers report information about employees shortly after the date of hire for the purpose of assisting child support agencies in locating parents or putative fathers. In response, the State of Wisconsin enacted s. 103.05, Stats., which directed the Department of Workforce Development (DWD) to establish and operate a hiring reporting system that includes a state directory of new hires.

Employers report new hire information to the Department of Workforce Development Unemployment Insurance Division (DWD-UID), which administers the state new hire directory. When employers report new hires to DWD-UID, the names are checked against a list of persons sought to ascertain paternity or who owe child support. Matches are referred to the state Bureau of Child Support. The state directory is also transmitted to a National Directory so that it can be similarly used by each state to locate parents or putative fathers who have moved to other states.

Most employees are considered new hires when they report for work the first time or when they return to work after an unpaid absence of more than 90 days. Poll workers, who generally only work at the polls a few days a year and who tend to do so repeatedly, will be considered newly hired the first time they work for an employer but not each subsequent time they work at the polls for that same employer. Similarly, substitute teachers will be considered newly hired

the first time they work for a particular employer during a school year but not each subsequent time they are provided a substitute teaching assignment by that employer during that school year.

Required information in a new hire report includes the following data elements: (1) employe name, (2) employe address, (3) employe social security number, (4) employer name, (5) employer address, (6) employer's Federal Employer Identification Number (FEIN), (7) date the employe started work, and (8) employe's date of birth. Additional required information of multi-state employers who choose Wisconsin as the sole state to which it reports is the state in which the employe will work, if other than Wisconsin.

An employer may fulfill its reporting requirement for a newly hired employe using the following formats: (1) on paper by submitting a paper report containing all listed elements, (2) on paper by submitting a completed copy of the employe's federal W-4 form, (3) on paper by submitting a copy of the employe's Wisconsin WT-4 form containing all listed elements, or (4) electronically, as prescribed by the department.

An employer who files a new hire report by submitting a federal W-4 form in which the first six elements listed in the rule have been completed has satisfied the reporting requirement.

The department may waive the date of birth reporting requirement if the employer is unable to provide it.

An employer must file new hire reports within 20 days after the newly hired employe starts work.

An employer with employes in more than one state, that is, a multi-state employer, may report all new hires to a single state. Multi-state employers choosing the single-state reporting option must submit written notice of the state to which they choose to report to the federal Department of Health and Human Services.

Any person who violates any provision of this rule may be subject to penalties provided under s. 103.05, Stats.

SECTION 1. Chapter DWD 42 is created to read:

Chapter DWD 42

STATE DIRECTORY OF NEW HIRES

DWD 42.01 Purpose. (1) Federal law (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 employe and requires employers to report this information. Sec. 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 employe.

(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.

DWD 42.02 Definitions. In this chapter:

(1) "Department" means the department of workforce development or its authorized agent.

(2) "Employe" means an individual who is an employe within the meaning of chapter 24 of the internal revenue code of 1986 (26 USC 3401 et seq.) but does not include an individual performing intelligence or counterintelligence functions for a federal or state agency if the head of such agency has determined that reporting pursuant to s. DWD 42.01 with respect to such individual could endanger the individual's safety or compromise an ongoing investigation or intelligence mission.

(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.

(4) "Federal employer identification number" means the identifying number assigned to the employer under s. 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 section 2(5) of the national labor relations act (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 section 8(f)(3) of the national labor relations act (29 USC 159(f)(3)) between the labor organization and the employer.

(6) "Multi-state employer" means an employer that employs individuals in Wisconsin and in at least one other state.

(7) "Newly hired employe" means: ^{any...}

(a) An employe who reports for work for the first time.

(b) An employe, 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 employe.

(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 employe, pursuant to s. 103.05, Stats.

DWD 42.03 Reporting requirements. (1) REPORT CONTENTS. Except as provided in sub. (2)(b) and s. DWD 42.04(b), each employer that has one or more employes who perform services in Wisconsin shall file a report containing the following information with the department:

(a) Newly hired employe's name.

(b) Newly hired employe's address.

(c) Newly hired employe's social security number.

(d) Employer's name.

(e) Employer's payroll address for the newly hired employe.

(f) Employer's federal employer identification number.

(g) Date the newly hired employe started work.

(h) Employe's date of birth.

(2) REPORT FORMAT. (a) An employer may file new hire reports in any of the following ways:

1. Electronically, as prescribed by the department.
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 (a) through (f) of sub. (1), 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 ss. 230.35 (4) (a) and 757.17, 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.

DWD 42.04 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 42.03 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 use the electronic filing format. In addition to containing all the data elements in s. DWD 42.03(1), the electronically filed report for any newly hired employe not working in Wisconsin must also include the state in which the employe will work. Report due dates are the same as those provided in s. DWD 42.03(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.

DWD 42.05 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.

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