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WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
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- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

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**State of Wisconsin
Department of Workforce Development**

Rule Analysis for Legislative Review

**Proposed Rules Relating to Disclosure of Unemployment Insurance Records
Chapters DWD 100, 140, and 149
CR 08-019**

Basis and Purpose of the Proposed Rules

The proposed rules update the Department's existing rules on confidentiality and disclosure of unemployment insurance records to comply with a new federal rule. States must amend their laws, rules, procedures, and existing agreements to comply with the federal rule by October 27, 2008.

Public Hearing Summary

A public hearing was held on April 8, 2008. There were no comments.

Response to Legislative Council Staff Recommendations

All comments were accepted, except as noted in the attached "Department Response to Legislative Council Comments."

Final Regulatory Flexibility Analysis

The proposed rule affects small businesses but does not have a significant economic impact on a substantial number of small businesses as defined in s. 227.114 (1), Stats.

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

Disclosure of Unemployment Insurance Records

DWD 100, 140, and 149

The Wisconsin Department of Workforce Development proposes an order to repeal DWD 140.21(3); to amend DWD 100.02(67)(intro.), 140.09(3)(intro.) and (d), 140.21(title), (2), and (note), 149.01, 149.03(title), (1)(a), (b), (c), (d), and (2), 149.04(title) and (1), and 149.09; to repeal and recreate 149.001(2), 149.02, 149.03(3), 149.04(2) and (3), 149.05, 149.06, 149.07, and 149.08; and to create DWD 149.03(2)(b) and (c), relating to disclosure of unemployment insurance records and affecting small businesses.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 108.14 (2) and 227.11, Stats.

Statutes interpreted: Sections 108.14 (7) and 108.24, Stats.

Related statutes and rules: Title III of the Social Security Act; Federal Unemployment Tax Act (26 USC 3302); 20 CFR Part 603

Explanation of agency authority. Section 108.14 (7), Stats., provides that the records made or maintained by the department in connection with the administration of the unemployment insurance program are confidential and shall be open to public inspection or disclosure only to the extent that the department permits in the interest of the program. No person may permit inspection or disclosure of any record provided to it by the department unless the department authorizes the inspection or disclosure.

The department may provide records made or maintained by the department in connection with the administration of the unemployment insurance program 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.

Section 108.24 (4), Stats., provides that any person who, without authorization of the department, permits inspection or disclosure of any unemployment insurance record 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.

Section 108.14 (2), Stats., provides that the department may adopt and enforce all rules which it finds necessary or suitable to carry out Chapter 108, Stats.

Summary of the proposed rule. Federal requirement. The U.S. Department of Labor issued its final rule *Federal-State Unemployment Compensation (UC) Program; Confidentiality and Disclosure Requirements of State UC Information* on September 27, 2006. (71 Fed. Reg. 56830; codified at 20 CFR Part 603) States must amend their laws, rules, procedures, and existing agreements to comply with the federal rule by October 27, 2008.

The first federal Notice of Proposed Rulemaking concerning confidentiality and disclosure of state unemployment insurance information was issued in 1992. (57 Fed. Reg. 10064) In 1993, the Department of Workforce Development promulgated Chapter DWD 149, regarding disclosure of unemployment insurance records, based on the 1992 proposed federal rule. Chapter DWD 149 is being updated and reorganized to reflect the requirements of the final federal rule issued September 2006.

Records confidential. The proposed rules provide that unemployment insurance records made or maintained by the department are confidential and not open to public inspection or disclosure, except as specified. 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: (1) public domain information; (2) appeals records and decisions with social security numbers redacted; (3) 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; (4) unemployment insurance records to claimants, employing units, their agents, and authorized third parties and the permissive disclosure of records. The department shall disclose unemployment records required by federal and state law.

Notice to claimants and employers. 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. 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.

Disclosure to individuals, employing units, their agents, and authorized third parties. An unemployment insurance record concerning an individual is available to that individual. A record concerning an individual's work for an employing unit, an identification of the employing unit as a party of interest, or status or liability under Chapter 108, Stats., is available to an employing unit.

The department may disclose a record to an attorney or agent of an individual or employing unit only if the attorney or agent furnishes a written statement authorizing release or if the department verifies that the attorney or agent represents the individual or employing unit. An elected official is an agent when acting in response to a constituent's inquiry about an unemployment insurance issue. A union representative is an agent when acting for a claimant.

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 containing specified information and signed by the individual or employing unit to whom the information pertains. The department may disclose an unemployment insurance record if the purpose specified either provides a service to the individual such that the individual expects to

receive a benefit as a result of signing the release or carries out administration or evaluation of a public program to which the release pertains.

Mandatory disclosure of records. The proposed rules list federally-mandated disclosures. These federal mandates include information necessary for the proper administration of the unemployment insurance program, such as the Internal Revenue Service for purposes of unemployment tax administration, the U.S. Citizen and Immigration Services for purposes of verifying an individual's immigration status, federal officials for purposes of oversight of the unemployment insurance program, and any other state to properly administer its unemployment insurance program. Some of the federal-mandated disclosures are included in a system of required information sharing primarily among state and local agencies administering federally-assisted programs.

Other required disclosures include disclosure to the state lottery board, upon request, of 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 and information to any government unit in the administration of a program of general relief or general assistance.

Permissive disclosure of records. If the department approves the purposes for which unemployment insurance records are requested, the records may be disclosed to the U. S. Department of Labor, the Unemployment Insurance Advisory Council, a government official with authority to obtain the information pursuant to a subpoena or court order, and a public official or its agent or contractor for use in the performance of official duties.

Confidentiality safeguard requirements. Third party recipients of unemployment insurance records must comply with all of the following confidentiality safeguard requirements:

- Safeguard disclosed information against unauthorized access or redisclosure.
- Use the disclosed information only for the purposes authorized by law and consistent with any applicable record disclosure agreement.
- Store disclosed information in a safe place physically secure from unauthorized access.
- Store and process information in electronic format in a way that unauthorized persons cannot obtain the information by any means.
- Ensure that only authorized persons are given access to disclosed information stored in a computer system.
- For third parties authorized to receive information by an individual or employing unit, 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.
- 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.
- Dispose of all disclosed records and copies after the purpose for which the information disclosed has been served or when the department considers appropriate, except for disclosed information possessed by any court.
- Allow the department to conduct on-site inspections of the disclosed records and to audit for compliance with this section.

No person, government unit, or other entity to which the department discloses an unemployment insurance record may redisclose information obtained from that record without the prior written approval of the department.

Record disclosure agreement. The proposed rules include provisions from the federal regulation regarding when a record disclosure agreement shall be in effect before disclosure of unemployment insurance records, other circumstances when a record disclosure agreement may be required, and what must be in the agreement.

Fee for disclosing unemployment insurance records. The federal regulation requires and the proposed rules provide that 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. The department may charge a fee for disclosures in certain other circumstances. The fee may not exceed the actual, necessary, and direct costs of location and disclosure.

Summary of, and comparison with, existing or proposed federal regulations. The proposed rules are being updated to comply with the federal regulation regarding state disclosure of unemployment insurance records.

Comparison with rules in adjacent states. The adjacent states either have or will be updating their statutes and rules on disclosure of unemployment insurance records to comply with the federal regulation by October 27, 2008.

Summary of factual data and analytical methodologies. The proposed rules update the department's rules on disclosure of unemployment insurance records to comply with 20 CFR Part 603.

Effect of rule on small businesses. The rule will affect small businesses but will not have a significant economic impact on a substantial number of small businesses.

Analysis used to determine effect on small businesses. The proposed rules may affect small business as employing units who may request records, but the rules have no financial impact on these businesses and does not change the types of records they may access. There are no reporting, bookkeeping, or other procedures required for compliance with the proposed rule and no professional skills are required of small businesses.

Fiscal effect. The proposed rules have no fiscal effect because most disclosures of unemployment insurance records involve only incidental staff time and nominal processing costs.

Agency contact person. Daniel LaRocque, Director, Bureau of Legal Affairs, (608) 267-1406, daniel.larocque@dwd.state.wi.us.

Place where comments are to be submitted and deadline for submission. Comments may be submitted to Elaine Pridgen, Office of Legal Counsel, Dept. of Workforce Development, P.O. Box 7946, 201 E. Washington Avenue, Madison, WI 53707-7946, or elaine.pridgen@dwd.state.wi.us. The comment deadline is April 9, 2008.

SECTION 1. DWD 100.02 (67) (intro.) is amended to read:

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

SECTION 2. DWD 140.09 (3) (intro.) and (d) are amended to read:

DWD 140.09 (3) (intro.) 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), ~~including~~ and also the hearing ~~tapes~~ recording, written synopsis of testimony, and any transcript ~~which~~ that is prepared at the department’s direction. Any person who is not a party or representative at the hearing may ~~only~~ inspect only the following and only if social security numbers have been redacted from the documents:

(d) The hearing ~~tapes~~ recording.

SECTION 3. DWD 140.21 (title) and (2) are amended to read:

DWD 140.21 Transcripts and ~~tapes~~ recordings.

DWD 140.21 (2) Under s. 108.09 (5), Stats., if testimony at a hearing is recorded ~~on a recording machine~~, the department may furnish a person with a copy of the hearing ~~tape~~ recording in lieu of a transcript. The fee is \$7.00 per ~~cassette~~ compact disk. The department may waive this fee if the department is satisfied that the person is unable to pay ~~the fee~~.

SECTION 4. DWD 140.21 (3) is repealed.

SECTION 5. DWD 140.21 (note) is amended to read:

DWD 140.21 Note: Requests for hearing ~~tapes, transcripts~~ 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.

SECTION 6. DWD 149.001 (2) is repealed and recreated to read:

DWD 149.001 (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.

(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.

SECTION 7. DWD 149.01 is amended to read:

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 ~~compensation~~ 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 ~~compensation~~ insurance program. This chapter specifies the conditions and circumstances under which the department ~~shall~~ may permit such unemployment insurance records to be ~~open to public inspection or disclosure~~ disclosed. ~~This chapter also specifies conditions for the sharing of information from unemployment compensation records between the department and other government units or persons. This chapter also specifies the conditions under which unemployment compensation records may be disclosed to claimants, employing units, their agents and other individuals.~~ This chapter shall be interpreted and applied consistently with the requirements of 20 CFR Part 603.

SECTION 8. DWD 149.02 is repealed and recreated to read:

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.

SECTION 9. DWD 149.03 (title), (1)(a), (b), (c), and (d), and (2), are amended to read:

**DWD 149.03 (title) DWD 149.03 Disclosure of records to ~~claimants~~ individuals,
employing units, their agents, and ~~other individuals~~ authorized third parties.**

DWD 149.03 (1) (a) An unemployment ~~compensation~~ insurance record concerning a ~~claimant~~ an individual is available to that ~~claimant~~ individual;

DWD 149.03 (1) (b) An unemployment ~~compensation~~ insurance record concerning a ~~claimant's~~ an individual's work for an employing unit is available to that employing unit;

DWD 149.03 (1) (c) An unemployment ~~compensation~~ 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; ~~and~~.

DWD 149.03 (1) (d) An unemployment ~~compensation~~ insurance record concerning an employing unit's status or liability under ch. 108, Stats., is available to that employing unit.

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

SECTION 10. DWD 149.03 (2) (b) and (c) are created to read:

DWD 149.03 (2) (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.

SECTION 11. DWD 149.03 (3) is repealed and recreated to read:

DWD 149.03 (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.

SECTION 12. DWD 149.04 (title) and (1) are amended to read:

DWD 149.04 (title) Mandatory disclosure of unemployment insurance records and other information. (1) ~~UNEMPLOYMENT COMPENSATION RECORDS; DISCLOSURE REQUIRED BY LAW.~~ The department shall disclose unemployment ~~compensation~~ insurance records to any person or agency as required by state or federal law.

SECTION 13. DWD 149.04 (2) and (3) are repealed and recreated to read:

DWD 149.04 (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.

SECTION 14. DWD 149.05 is repealed and recreated to read:

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.

SECTION 15. DWD 149.06 is repealed and recreated to read:

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).

SECTION 16. DWD 149.07 is repealed and recreated to read:

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.

SECTION 17. DWD 149.08 is repealed and recreated to read:

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.

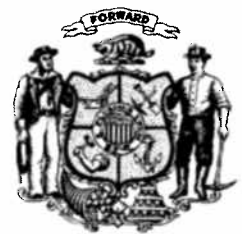
SECTION 18. DWD 149.09 is amended to read:

DWD 149.09 Penalties. Any person who permits inspection or disclosure of an unemployment ~~compensation~~ insurance record that is 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.

SECTION 19 . EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro.), Stats.



WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

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 08-019

AN ORDER to repeal DWD 140.21 (3); to amend DWD 100.02 (67) (intro.), 140.09 (3) (intro.) and (d), 140.21 (title), (2), and (note), 149.01, 149.03 (title), (1) (a), (b), (c), and (d), and (2), 149.04 (title) and (1), and 149.09; to repeal and recreate 149.001 (2), 149.02, 149.03 (3), 149.04 (2) and (3), 149.05, 149.06, 149.07, and 149.08; and to create DWD 149.03 (2) (b) and (c), relating to disclosure of unemployment insurance records and affecting small businesses.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

03-03-2008 RECEIVED BY LEGISLATIVE COUNCIL.

03-28-2008 REPORT SENT TO AGENCY.

RS:JK

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



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 08-019

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 January 2005.]

2. Form, Style and Placement in Administrative Code

a. In the rule summary, the first use of an acronym should include the phrase that the acronym represents, followed by the acronym in parentheses (e.g., “unemployment insurance (UI)” or “unemployment compensation (UC)”). All subsequent references to the phrase in the rule summary should refer to the acronym only. [s. 1.01 (8), Manual.]

b. The misnumbering of sections should be corrected; the proposed rule uses SECTION 15 twice.

c. Section DWD 149.001 (2) should contain a title. [s. 1.05 (1), Manual.]

d. In s. DWD 149.01, “and intent” should be removed from the title; that language is not in current s. DWD 149.01. Or, the phrase should be added to the title by an amendment.

e. In s. DWD 149.02 (1), “subs. (2) and (3)” should replace “sub. (2) and (3).” [s. 1.07 (2), Manual.]

f. Section DWD 149.03 (3) (a) should contain a title. [s. 1.05 (1), Manual.]

g. In SECTION 12, “are” should be inserted between “(1)” and “amended” in the SECTION title.

h. In s. DWD 149.06 (3), the notation “ss.” should be replaced by the notation “s.” [s. 1.07 (2), Manual.]

i. In s. DWD 149.07 (1), "ss. DWD 149.03 (3), 149.04 (2) (e) to (m) and (3), and 149.05 (1) (d)" should replace "ss. DWD 149.03 (3), DWD 149.04 (2) (e) to (m) and (3), and s. DWD 149.05 (1) (d)." [s. 1.07 (2), Manual.]

j. The misnumbering of subsections in s. DWD 149.07 caused by two subsections numbered "(4)" should be corrected.

k. In s. DWD 149.07 (4) (b) (intro.), the phrase "all of" should be inserted before the phrase "the following."

4. Adequacy of References to Related Statutes, Rules and Forms

In ss. DWD 149.06 (4) and 149.07 (5), the references to 42 U.S.C. 303 (a) (1) appear to be incorrect.

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

a. In the explanation of agency authority, "the" should be inserted after "of" on line 4 of paragraph 1.

b. In the summary of the proposed rule, "a record concerning" on line 4 of paragraph 5 on page 2 should be removed.

c. In the summary of the proposed rule, "of" should be inserted after "request," on line 1 of the second full paragraph on page 3.

d. In the summary of the proposed rule, a comma should be inserted after "employer" in bulletpoint 6 on page 3.

e. Throughout the rule, "employing unit" and "employer" are used interchangeably and "claimant," "individual," and "worker" are used interchangeably. The agency should select one word and use it consistently.

f. In ss. DWD 149.04 (2) (b) and 149.06 (5) (d), "citizenship" should replace "citizen."

g. In s. DWD 149.04 (2) (m), commas should be inserted after "Old-Age" and "Survivors."

h. In s. DWD 149.04 (2) (m), "Insurance and Supplemental Security Income for the Aged, Blind, and Disabled" should replace "Insurance; Supplemental Security Income; Assistance for the Aged; Aid for the Blind; Aid For the Permanently and Totally Disabled; or Aid for the Aged, Blind or Disabled" to be consistent with federal regulations.

i. In s. DWD 149.05 (1) (a), a comma should be inserted after "Act."

j. Section DWD 149.05 (1) (e) does not follow grammatically from the introduction. Is par. (e) necessary? If so, it should be placed in a separate subsection.

k. In s. DWD 149.06 (1) (h), "was" should be inserted after "information" on line 1.

l. In s. DWD 149.06 (3), "is" should replace "will."

m. In s. DWD 149.06 (5) (c) and (f), "Disclosures" should replace "Disclosure."

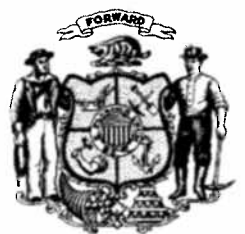
n. In s. DWD 149.07 (2), should the phrase "not listed in sub. (1)" be moved so that it is inserted following the phrase "unemployment insurance records?"

o. In s. DWD 149.07 (4) (a), "sought, description" should replace "sought and a description."

p. In s. DWD 149.07 (4) (b) 6., "being" should be removed.



WISCONSIN STATE LEGISLATURE



Department Response to Legislative Council Comments

Proposed Rules Relating to Disclosure of Unemployment Insurance Records Chapters DWD 100, 140, and 149 CR 08-019

Comment 4. In ss. DWD 149.06 (4) and 149.07 (6), the references to 42 USC 303 (a) (1) appear to be incorrect.

Department response: The references are directly from 20 CFR 603.9 (b)(1)(viii)(d) and 20 CFR 603.10 (d). The statutory provision at 42 USC 303 (a) (1) gives the Department of Labor the authority to create the confidentiality rule based on an interpretation of the provision allowing the “methods of administration” needed to ensure that benefits are paid when due.

Comment 5.e. Throughout the rule, “employing unit” and “employer” are used interchangeably and “claimant,” “individual,” and “worker” are used interchangeably. The agency should select one word and use it consistently.

Department response: These terms are not used interchangeably. “Employing unit” as defined in s. DWD 100.02 (21) is broader than “employer” as defined in s. DWD 100.02 (19). “Individual” is broader than “claimant” and the use of the term “worker” was removed. The Department reviewed the rule to ensure the terms were used appropriately.

Comment 5.n. In s. DWD 149.07 (2), should the phrase “not listed in sub. (1)” be moved so that it is inserted following the phrase “unemployment insurance records?”

Department response: The phrase “not listed in sub. (1)” should not be moved. This reference is to the people, agencies, and others to whom records may be released, not to various types of UI records.

LRB or Bill No./Adm. Rule No.
DWD 149

Amendment No. if Applicable

FISCAL ESTIMATE
DOA-2048 N(R03/97)

- ORIGINAL
- UPDATED
- CORRECTED
- SUPPLEMENTAL

Subject

Disclosure of unemployment insurance records

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 - Permissive
 - Mandatory
- 2. Decrease Costs
 - Permissive
 - Mandatory

- 3. Increase Revenues
 - Permissive
 - Mandatory
- 4. Decrease Revenues
 - Permissive
 - Mandatory

5. Types of Local Governmental Units Affected:
- Towns
 - Villages
 - Cities
 - Counties
 - Others _____
 - School Districts
 - WTCS Districts

Fund Sources Affected

- GPR
- FED
- PRO
- PRS
- SEG
- SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Most disclosures of unemployment insurance records involve only incidental staff time and nominal processing costs.

Long-Range Fiscal Implications

none

Agency/Prepared by: (Name & Phone No.)
Elaine Pridgen 608/267-9403

Authorized Signature/Telephone No.

Handwritten Signature
266-9427

Date

3/3/08