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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

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

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Rule Report for Legislative Review

Wisconsin Works Sanctions Good Cause Exceptions

Chapter DCF 101 CR 08-004

Basis and Purpose of the Proposed Rules

The proposed rules create additional circumstances that are considered good cause for failing to comply with W-2 participation requirements.

Changes to Analysis Prepared under Section 227.14 (2), Stats.

As noticed for the public hearing, this rulemaking order included the Department's proposed rules on notice before taking any action against a W-2 participant that would result in a 20% or more reduction in that participant's benefits or in termination of the participant's W-2 eligibility, as required by s. 49.153 (1), Stats. Section 49.153, Stats., was amended by 2009 Wisconsin Act 28 and the proposed rules on notice before taking any action need to be rewritten. The notice rules have been withdrawn from this rulemaking order.

Public Hearing Summary

A public hearing was held on May 15, 2008. A summary of the hearing comments relating only to good cause is in the attached hearing summary.

Response to Legislative Council Staff Recommendations

All comments were accepted.

Final Regulatory Flexibility Analysis

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

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State of Wisconsin
Department of Children and Families
W-2 Sanction Good Cause Exceptions
Chapter DCF 101

The Wisconsin Department of Children and Families proposes an order to repeal and recreate s. DCF 101.20, relating to Wisconsin Works sanction good cause exceptions and affecting small businesses.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 49.148 and 227.11 (2), Stats.

Statutes interpreted: Section 49.148 Stats.

Related statute or rule: 45 CFR 261.14, 261.15, and 261.60

Explanation of agency authority. Section 49.148, Stats., provides that for every hour that a W-2 participant in a community service job or transitional placement fails to participate in an assigned activity without good cause, the participant's grant amount shall be reduced by \$5.15. Good cause is to be determined by the W-2 financial and employment planner (FEP) in accordance with rules promulgated by the department. Good cause shall include required court appearances for a victim of domestic abuse.

This rulemaking order was begun when the Wisconsin Works program was administered by the Department of Workforce Development and the rule was DWD 12. The program was transferred to the Department of Children and Families July 1, 2008.

Summary of the proposed rules. The Department proposes to amend the rule on good cause for failing to comply with W-2 participation requirements. The current rule provides that good cause for failing to comply with the W-2 participation requirements includes a required court appearance including a required court appearance for a victim of domestic abuse, unavailability of child care that is necessary to participate in required activities, and other circumstances beyond the control of the participant as determined by the FEP. The W-2 participant must provide timely notification of the good cause reason to the FEP.

The proposed rule adds the following circumstances as good cause for not complying with W-2 participation requirements:

- Lack of transportation with no reasonable alternative, as determined by the FEP. In determining the reasonableness of transportation alternatives, the FEP shall consider the length of the participant's commute, participant safety, the cost of the transportation relative to the participant's income, and other relevant factors.
- Participant or W-2 group member's illness, injury, disability, or incapacity.

- Accommodations that have been determined necessary in a formal assessment are not available to allow the participant to complete the assigned activity.
- Conflict with another assigned W-2 activity or job search attempts.
- Inclement weather that impedes transportation or travel.
- School emergency.
- Domestic violence issues.
- Observance of a religious holiday.
- Routine medical or school appointments that cannot be scheduled at times other than during assigned activities.
- Child's school holiday, excluding summer break.
- Any day that the worksite or training site is closed due to a site-specific holiday.
- Death in the participant's immediate family. Immediate family means a participant's spouse, nonmarital co-parent, step-parents, grandparents, foster parents, children, step-children, grandchildren, foster children, brothers and their spouses, sisters and their spouses, aunts, uncles, sons-in-law, daughters-in-law, cousins, nieces and nephews of the participant or the participant's spouse or nonmarital co-parent, and other relatives of the participant or the participant's spouse or nonmarital co-parent if these other relatives reside in the same household as the participant. A participant may be granted good cause for no more than 3 business days if only local travel is necessary to attend the funeral services. A participant may be granted good cause for no more than 7 business days if long-distance travel is required to attend the funeral services. In general, the good cause period may not exceed the week following the death of a member of the participant's immediate family, but the FEP may lengthen the timeframe for good cause depending upon individual circumstances.
- Other circumstances beyond the control of the participant, but only as determined by the FEP. The FEP shall consider what a reasonable employer may allow under its absence policy and hardships that make completing activities and notifying the agency of missed activities more difficult for W-2 participants.

The participant shall notify the FEP of the good cause reason within 7 business days after an absence from a required activity to prevent a payment reduction. A FEP may request written documentation before accepting a good cause reason for a participant's absence from required activities if the participant has a pattern of absences of more than 3 consecutive days or more than 5 days in a rolling 30-day period and the FEP has reason to believe that the participant is misusing the good cause policy. An absence means being absent from any one required activity. A pattern of absences may include past absences for which a good cause reason was accepted.

Summary of factual data and analytical methodologies. The proposed good cause amendments are based on the recommendations in the *W-2 Sanctions Study* released by the Department in December 2004 and the Temporary Assistance to Needy Families (TANF) rules issued February 5, 2008. The purpose of the *W-2 Sanctions Study* was to provide information to support the Department's commitment to ensure that W-2 sanctions are not applied due to factors such as an individual's race, ethnicity, geographic location, employment barriers, or other issues that have not been adequately identified or addressed by the participant's FEP. The *W-2 Sanctions Study* incorporated the findings of

a steering committee that consisted of W-2 agency administrators, state administrators, representatives of client advocacy groups, and academics.

Comparison with federal regulations. If an individual refuses to engage in required work, the state must reduce or terminate the amount of assistance payable to the family, subject to any good cause or other exceptions the state may establish. The state must, at a minimum, reduce the amount of assistance otherwise payable to the family pro rata with respect to any period during the month in which the individual refuses to work. The state may impose a greater reduction, including terminating assistance. A state may not reduce or terminate assistance for a single custodial parent caring for a child under age six if appropriate and affordable child care is unavailable within a reasonable distance from the parent's home or worksite.

The TANF rules issued February 5, 2008, provide that a state may count a participant's excused absences for holidays and a maximum of 10 additional days of excused absences in any 12-month period in the federal participation rate. The rule commentary explains that this policy takes into consideration varying worksite and educational practices as well as unexpected events that cause a worksite to close or an individual to miss scheduled hours. A state's flexibility to excuse other absences is not limited. The required federal participation rate is 50 percent to allow the state to balance the goals of the program, the needs of the family, and obligations under the Americans with Disabilities Act.

Comparison with rules in adjacent states. Minnesota. Good cause for failure to comply with program requirements exists when:

- Appropriate child care is not available.
- The job does not meet the definition of suitable employment.
- The participant is ill or injured.
- A member of the assistance unit, a relative in the household, or a foster child in the household is ill and needs care by the participant that prevents the participant from complying with the employment plan.
- The participant is unable to secure necessary transportation.
- The participant is in an emergency situation that prevents compliance with the employment plan.
- The schedule of compliance with the employment plan conflicts with judicial proceedings.
- A mandatory MFIP meeting is scheduled during a time that conflicts with a judicial proceeding or a meeting related to a juvenile court matter or a participant's work schedule.
- The participant is already participating in acceptable work activities.
- The employment plan requires an educational program for a caregiver under age 20, but the educational program is not available.
- Activities identified in the employment plan are not available.
- The participant is willing to accept suitable employment, but suitable employment is not available.
- The participant documents other verifiable impediments to compliance with the employment plan beyond the participant's control.

Illinois. Examples of good cause include but are not limited to:

- Temporary illness for its duration.
- Court required appearance or temporary incarceration.
- Death in the family.
- Extreme inclement weather.
- Lack of any supportive service, even though the necessary service is not specifically provided under TANF, to the extent the lack of the needed service presents a significant barrier to TANF participation.
- If an individual is engaged in employment and/or training that is consistent with the employment related goals of the program, if such employment and training is later approved by TANF staff.
- Failure of department staff or contractor to correctly forward the information to TANF staff.
- Failure of the participant to cooperate because of attendance at a test or a mandatory class or function at an educational program, when an education/training program is officially approved by TANF.
- Failure of the participant due to his or her illiteracy.
- Failure of the participant because it is determined that he or she should be in a different TANF activity.
- Non-receipt by the participant of a notice advising him or her of a participation requirement. If the non-receipt of mail occurs frequently, the department shall explore an alternative means of providing notices of participation requests to participants.
- Non-comprehension of written and/or oral English.
- Child care (or day care for an incapacitated individual living in the same home as a child) is necessary for the participation or employment and such care is not available for a child under age 13.
- Failure to participate in a TANF activity due to a verified scheduled job interview, medical appointment for the participant or a household member, or a school appointment for the participant or his or her children.
- The individual is homeless. Homeless individuals have no current residence and no expectation of acquiring one in the next 30 days. This includes individuals residing in overnight and temporary shelters. This does not include individuals who are sharing a residence with friends or relatives on a continuing basis.
- Documented circumstances beyond the control of the participant which prevent the participant from completing program requirements.
- Failure to participate in a TANF work activity because of violations of workplace rights due TANF recipients as determined by the U.S. Department of Labor.

Iowa. Acceptable instances when a person is excused from participation.

- Illness. When a participant is ill more than three consecutive days or if illness is habitual, staff may require medical documentation of the illness.

- Required in the home due to illness of another family member. Staff may require medical documentation for the same reasons as when a participant is ill.
- Family emergency, using reasonable standards of an employer.
- Bad weather, using reasonable standards of an employer.
- Absent or late due to participant's or spouse's job interview.
- Leave due to the birth of a child.

Michigan. Good cause is one or more of the following:

- The applicant or recipient suffers from a temporary debilitating illness or injury or an immediate family member has a debilitating illness or injury and the applicant or recipient is needed in the home to care for the family member.
- The applicant or employee lacks child care.
- Either employment or training commuting time is more than 2 hours per day or is more than 3 hours per day when there are unique and compelling circumstances, such as a salary at least twice the applicable minimum wage or the job is the only available job placement within a 3 hour commute per day, not including the time necessary to transport a child to child care facilities.
- Transportation is not available to the participant at reasonable cost.
- The employment or participation involves illegal activities.
- The applicant or recipient is physically or mentally unfit to perform the job, as documented by medical evidence or by reliable information from other sources.
- The applicant or recipient is illegally discriminated against on the basis of age, race, disability, gender, color, national origin, or religious beliefs.
- Credible information or evidence establishes one or more unplanned or unexpected events or factors that reasonably could be expected to prevent, or significantly interfere with, the individual's compliance with employment and training requirements, such as domestic violence, health or safety risk, religion, or homelessness.
- The applicant or recipient quit employment to obtain comparable employment.

Effect on small businesses. The proposed rules affect private W-2 agencies but do not have significant economic impact on these agencies.

Agency contacts. Margaret McMahon, Bureau of Working Families, margaret.mcmahon@wisconsin.gov, (608) 266-5899.

SECTION 1. DCF 101.20 is repealed and recreated to read:

DCF 101.20 Determination of good cause. (1) GOOD CAUSE

CIRCUMSTANCES. The FEP shall determine if a W-2 employment participant had good cause for not complying with the W-2 participation requirements. No good cause shall exist unless the participant provides timely notification of the good cause reason to the FEP. Good cause for failing to comply with the W-2 participation requirements shall be any of the following circumstances:

(a) A required court appearance, including a required court appearance for a victim of domestic abuse.

(b) Necessary child care is unavailable and the W-2 agency is unable to provide child care or refer the participant to alternate child care arrangements.

(c) Lack of transportation with no reasonable alternative, as determined by the FEP. In determining the reasonableness of transportation alternatives, the FEP shall consider the length of the participant's commute, participant safety, the cost of the transportation relative to the participant's income, and other relevant factors.

(d) Participant or W-2 group member's illness, injury, disability, or incapacity.

(e) Accommodations that have been determined necessary in a formal assessment are not available to allow the participant to complete the assigned activity.

(f) Conflict with another assigned W-2 activity or job search attempts.

(g) Inclement weather that impedes transportation or travel.

(h) School emergency.

(i) Domestic violence issues.

(j) Observance of a religious holiday.

(k) Routine medical or school appointments that cannot be scheduled at times other than during assigned activities.

(L) Child's school holiday, excluding summer break.

(m) Any day that the worksite or training site is closed due to a site-specific holiday.

(n) Death in the participant's immediate family. For purposes of this paragraph:

1. "Immediate family" means a participant's spouse, nonmarital co-parent, step-parent, grandparent, foster parent, child, step-child, grandchild, foster child, brother and his spouse, sister and her spouse, aunt, uncle, son-in-law, daughter-in-law, cousin, niece and nephew of the participant or the participant's spouse or nonmarital co-parent, and other relatives of the participant or the participant's spouse or nonmarital co-parent if these other relatives reside in the same household as the participant.

2. A participant may be granted good cause for no more than 3 business days if only local travel is necessary to attend the funeral services. A participant may be granted good cause for no more than 7 business days if long-distance travel is required to attend the funeral services. In general, the good cause period may not exceed the week following the death of a member of the participant's immediate family, but the FEP may lengthen the timeframe for good cause depending upon individual circumstances.

(o) Other circumstances beyond the control of the participant, but only as determined by the FEP. The FEP shall consider what a reasonable employer may allow under its absence policy and hardships that make completing activities and notifying the agency of missed activities more difficult for W-2 participants.

(2) TIMELY NOTIFICATION. The participant shall notify the FEP of the good cause reason within 7 business days after an absence from a required activity to prevent a payment reduction under s. 49.148 (1) (b) 1., (b) 3., or (c), Stats.

(3) WRITTEN DOCUMENTATION. In making a good cause determination, the FEP may require that the W-2 employment position participant provide written documentation that good cause existed before accepting a good cause reason for a participant's absence from required activities if both of the following apply:

(a) The participant has a pattern of absences of more than 3 consecutive days or more than 5 days in a rolling 30-day period. An absence means being absent from any one required activity. A pattern of absences may include past absences for which a good cause reason was accepted.

(b) The FEP has reason to believe that the participant is misusing the good cause policy.

SECTION 2. 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.

**Department of Children and Families
Public Hearing Summary**

**Proposed Rules Relating to W-2 Sanctions
Good Cause Exceptions**

**Chapter DCF 101
CR 08-004**

A public hearing was held in Madison on May 15, 2008. The following commented on the proposed rules:

- | | |
|--|---|
| 1. Pat DeLessio, Attorney at Law
Legal Action of Wisconsin (LAW)
Milwaukee | 2. John Wilberding, Project Director
Maximus
West Allis |
|--|---|

Comment Summary and Department Response

Pat DeLessio, Legal Action of Wisconsin (LAW)

1. The list of good cause reasons includes the failure to provide needed accommodations, but does not include the failure to conduct a formal assessment where the barrier screening tool, medical information, or participant's statements or actions indicate the need for a formal assessment.

Department response: The Department agrees with the intent but believes this is covered in the existing good cause reasons. The good cause list represents circumstances within a participant's life, but outside of his or her control that might prevent participation. Failure to conduct a formal assessment is a failure on the part of the W-2 agency and therefore is not an appropriate good cause reason. While agencies must be held accountable for these types of failures, the Department does not agree with the recommendation to create a new good cause reason. The proposed rule DCF 101.20 (1) (d) provides good cause for an individual having an illness, injury, disability, or incapacity. It seems likely that an individual would raise one of these issues rather than presenting the failure to conduct a formal assessment as a good cause reason.

John Wilberding, Maximus

1. This proposed rule includes additional good cause criteria that were recommended in the *Wisconsin Works Sanction Study*, Department of Workforce Development, December 2004, <http://dcf.wisconsin.gov/w2/pdf/sanctionsfinalreport.pdf>. This may be an appropriate time to

expand the rule to also include the following recommendation from the study:

Establish a definition of what activities can be sanctioned. Only work activities should be sanctionable. Activities related to health needs would not be sanctionable. Train staff to assist customers on compliance.

W-2 policy allows agencies to sanction participants for not participating in a wide variety of activities, including those that relate to health and care for a family member. The recommendation is to restrict those activities that are sanctionable to include only those related to work. In addition, this recommendation is to provide FEPs additional training to assist participants in complying with program requirements.

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Department response: While this is outside of the scope of this particular rule update, this recommendation may be considered under future Bureau of Working Families' projects. It would not be appropriate to add it to the administrative rules at this time as there is concern that adding such prescriptive language would limit future decision-making.

LRB or Bill No./Adm. Rule No. DCF 101
Amendment No. if Applicable

FISCAL ESTIMATE
DOA-2048 N(R03/97)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject
Wisconsin Works Sanction Good Cause Exceptions

Fiscal Effect
 State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
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Local: No local government costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts

Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Ch. 20 Appropriations
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Assumptions Used in Arriving at Fiscal Estimate

There is no significant increase in the cost of administering the W-2 program due to the good cause amendments.

Long-Range Fiscal Implications
None

Agency/Prepared by: (Name & Phone No.) DCF/Elaine Pridgen 267-9403	Authorized Signature/Telephone No. Kimmie Collins 266-8692	Date
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