



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 RULE 02-057

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. The analysis to the rule should include a statement of the statutes interpreted by the rule.

b. Each presentation of text within a SECTION should begin with a citation of the rule provision preceding the text. For example, in SECTION 2, the presentation of text should begin with “ETF 50.48 (3) (b).” The entire rule should be reviewed for this problem.

c. The rule repeals s. ETF 50.50 (5) (b) 2. and 3. Consequently, the amendment to s. ETF 50.50 (5) (b) (intro.) and 1. should strike the colon and the number “1.” A unit of text should be subdivided only into two or more subunits.

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

a. The reference to s. ETF 50 in the analysis to Clearinghouse Rule 02-057 should be replaced with a reference to “ch. ETF 50.” [See s. 1.07 (2), Manual.] This comment is also applicable to ss. ETF 50.48 (3) (b) 5. and 50.50 (5) (b) 1. In addition, the reference to “s. ETF chapter 50” in s. ETF 50.48 (4) (b) 3. should read “ch. ETF 50.” The citation in the second sentence of the analysis should read “ss. ETF 50.48 (3) and 50.50 (5).” Finally, the citation of the statutory authority for the rule should read “Section 40.03 (6), Stats.”

b. In the introductory clause to Clearinghouse Rule 02-057, the term “(intro.)” should be placed after the reference to s. ETF 50.50 (5) (a) and also after par. (b). [See s. 1.03 (8), Manual.] In addition, “(b)” should be placed after both occurrences of the reference to s. ETF 50.48 (3) in the introductory clause. This comment is also applicable to the citations in the notice of hearing section to Clearinghouse Rule 02-057.

c. The reference to “ETF 50.48 (3) 5. and 6.” in the treatment clause of SEC. 2 of Clearinghouse Rule 02-057 should be replaced with a reference to s. ETF 50.48 (3) (b) 5. and 6. In addition, the reference to “ETF 50.48 (3) 7., 8., 9., and 10.” in the treatment clause of SEC. 3 of Clearinghouse Rule 02-057 should be replaced with a reference to s. ETF 50.48 (3) (b) 7., 8., 9., and 10.

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

a. In the second paragraph of the analysis, the phrase “they have” should be replaced by the phrase “there is.”

b. In s. ETF 50.48 (3) (a), the use of the word “certify” appears inappropriate in view of the department’s intent to avoid the use of a certification statement.

c. Section ETF 50.48 (3) (b) 5. requires an employer to state if “they wish” to contest the employee’s application for disability benefits as provided in “s. ETF 50.” It is suggested that the phrase “they wish” be replaced with the phrase “it intends.” In addition, it is unclear how, upon what grounds or to what body an employer may contest an employee’s application for disability benefits. Section ETF 50.48 (3) (b) 5., states that the employer may contest the employee’s application for disability benefits “as provided in s. ETF 50.” However, ch. ETF 50 does not appear to contain any provisions relating to an employer contesting an application for disability benefits. It is suggested that the department revise Clearinghouse Rule 02-057 to remedy these deficiencies. This comment is also applicable to s. ETF 50.48 (4) (b) 3. and 50.50 (5) (b) 1.

d. Section ETF 50.50 (5) (b) 1. states that the requirement of s. ETF 50.50 (5) (a) (which is a condition for entitlement to long-term disability insurance (LTDI) benefits), is “not met” if the employer contests the employee’s application for disability benefits under ch. ETF 50. Read literally, this would mean that an employee is not entitled to LTDI benefits at any time that an employer objects to the employee’s application. The department should clarify the procedure to be used to determine whether an employee is entitled to LTDI benefits when an employer contests the employee’s application for disability benefits.