

# RULES CERTIFICATE

CR 89-70

STATE OF WISCONSIN )  
 ) SS  
DEPT. OF INDUSTRY, )  
LABOR & HUMAN RELATIONS)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Gerald Whitburn, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to Wage reporting, availability for work requirements, establishment of benefit years, and voluntary termination of part-time employment, were duly approved and adopted by this department on October 10, 1989.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 10:00 a.m. in the city of Madison, this 9th day of Oct A.D. 1989.

*Gerald Whitburn*

Secretary

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12-1-89

# ORDER OF ADOPTION

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 108.06(2), 108.14(2), 108.205 and 108.22, Stats., ss. 101.02(1), 108.02, 108.04(2), (7)(k) and (13)(b),

Stats., the Department of Industry, Labor and Human Relations  creates;

amends;  repeals and recreates;  repeals and adopts rules of Wisconsin

Administrative Code chapter (s):

Chapter ILHR 111.07(4), 126.001(1g), Wage reporting, availability for work requirement  
(1r), (7q) and (7r), 128.02(2), establishment of benefit years, and voluntary  
129(title), (Number) 129.01(title) termination of (Title) part-time employment.  
129.02 to 129.05 and 132.03

The attached rules shall take effect on the first day of the month following  
publication in the Wisconsin Administrative Register. pursuant to section  
227.22, Stats.

Adopted at Madison, Wisconsin, this

date: 10-9-89

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN  
RELATIONS

*David Johnson*

Secretary

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# RULES in FINAL DRAFT FORM

**Rule:** Chapter ILHR 111.07(4), 126.001(1g), (1r), (7g) and (7r), 128.02(2), 129(title), 129.01(title), 129.02 to 129.05 and 132.03

**Relating to:** Wage reporting, availability for work requirements, establishment of benefit years, and voluntary termination of part-time employment.

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The Wisconsin Department of Industry, Labor and Human Relations proposes an order to amend ILHR 111.07(4), 128.02(2), 129(title) and 129.01(title); to repeal and recreate ILHR 132.03; and to create ILHR 126.001(1g), (1r), (7g) and (7r) and 129.02 to 129.05 relating to wage reporting, availability for work requirements, establishment of benefit years and voluntary termination of part-time employment.

\* \* \* \* \*

Statutory authority: ss. 101.02(1), 108.02, 108.04(2), (7)(k) and (13)(b),  
108.06(2), 108.14(2), 108.205 and 108.22, Stats.

Statutes interpreted: ss. 108.04(2), (7)(k) and (13)(b), 108.06(2), 108.205  
and 108.22

Section ILHR 111.07 implements the provisions of section 108.04(13)(b), Stats., and requires an employer to complete a separate wage report whenever an employe claims unemployment benefits based on services performed for the employer of which the department has no record. Employers which are tardy in filing these reports are liable for a \$15 tardy filing fee. This rule amends section ILHR 111.07 and states that this report is tardy if it is received by the department more than 7 days after its initial mailing to the employer.

Under section ILHR 128.02, the department considers a claimant to have satisfied the availability for work requirement for certain specified grace periods if the claimant is available for work under the same conditions which applied to his or her most recent period of employment. This rule amends section ILHR 128.02(2)(a) to provide a grace period of 6 weeks if at least two-thirds of all of the wages paid in the 26-week period before claiming benefits were earned under substantially the same conditions that applied to the most recent employment. The rule makes a similar change to section ILHR 128.02(2)(b).

Section ILHR 129.02 implements section 108.06(2)(a), Stats., regarding the establishment of a benefit year. To establish a benefit year, a claimant must file a written claim at the local office and have the required minimum amount of wages during the base period. In addition, a claimant must:

1. Be eligible to receive benefits or expect to be eligible during the next 13 weeks; or
2. Have experienced at least a 25% reduction in the hours of employment in one week as compared to the average number of hours of employment for the preceding 13 weeks.

The rule specifies the circumstances under which a claimant may reasonably expect to be eligible to receive benefits within the 13-week period.

Section 108.06(2)(bm), Stats., states that a claimant's benefit year begins on Sunday of the week in which the claimant files a valid request to establish the benefit year but authorizes the department to backdate a benefit year under circumstances prescribed by rule. Section ILHR 129.03 implements this statutory provision and indicates that the department must backdate a benefit year in cases of department error, employer action which prevents a claimant from timely filing a benefit claim, or other circumstances beyond the control of the claimant.

Section 108.06(2)(d), Stats., authorizes a claimant to request the department to set aside a benefit year. The department must set aside the benefit year if: the claimant's request is voluntary, no benefits have been paid to the claimant in that benefit year, and the claimant's benefit eligibility is not suspended. This section also grants the department discretion to set aside benefit years in circumstances defined by rule. Section ILHR 129.04 permits the department to set aside a benefit year if:

1. Department error occurs in the establishing of the benefit year; or
2. The wage data used by the department to establish the benefit year is erroneous; or
3. The department terminates tax coverage of an employer for whom the claimant performed services and the claimant could not have foreseen this termination of coverage.

Section ILHR 129.05 reaffirms current department practice and specifies that the department must pay benefits by checks mailed to the claimant. Each benefit payment must be charged against an account in the unemployment reserve fund or against the administrative account.

Under section 108.04(7)(k), Stats., a claimant who loses his or her full-time job and who quits a part-time job may be eligible for benefits based on such quitting if the loss of the full-time job makes it economically unfeasible to continue the part-time work. Section ILHR 132.03 implements the provision of this statute and specifies that a claimant who quits the part-time job may be eligible for benefits if in at least 65% of the most recent 26 weeks of work with the part-time employer, the claimant worked 30 or less hours per week. The rule also establishes criteria to consider in determining whether it is economically unfeasible for the claimant to continue the part-time job.

SECTION 1. ILHR 111.07(4) is amended to read:

111.07(4) URGENT REQUEST WAGE REPORTS; SPECIAL CIRCUMSTANCES. Under s. 108.04(13)(b), Stats., the department may require an employer to complete an Urgent Request for Wages (Form UCB-719), in any instance where an employe claims unemployment benefits based on services performed for the employer of which and the department has no record from the employer showing the performance of these services. An employer which is tardy in filing this wage report or which does not file such a report shall pay a \$15.00 tardy filing fee. A report which is received by the department more than 7 days after mailing to the employer is tardy.

SECTION 2. ILHR 126.001(1g), (1r), (7g) and (7r) are created to read:

ILHR 126.001(1g) "Base period" has the meaning specified in s. 108.02(4), Stats.

(1r) "Benefit year" has the meaning specified in s. 108.02(5), Stats.

(7g) "Lag period" means the period between the end of the base period and the valid new claim week under s. 108.02(25m), Stats.

(7r) "Liable state" means any state which has potential liability for the payment of unemployment benefits arising from a claim filed in this state.

SECTION 3. ILHR 128.02(2) is amended to read:

128.02(2) (a) If ~~not less than~~ at least two-thirds of all of the ~~credit weeks wages paid~~ in the ~~claimant's base~~ 26-week period immediately preceding the week in which the claimant initiates the benefit claim were earned under substantially the same conditions as applied to his or her most recent employment, the department shall grant the claimant a grace period of 6 weeks beginning with the week ~~of~~ after the week in which the claimant's layoff occurred.

(b) If at least one-third but less than two-thirds of all of the ~~credit weeks wages paid~~ in the ~~claimant's base~~ 26-week period immediately preceding the week in which the claimant initiates the benefit claim were earned under substantially the same conditions as applied to his or her most recent employment, the department shall grant the claimant a grace period of 3 weeks beginning with the week ~~of~~ after the week in which the claimant's layoff occurred.

SECTION 4. Chapter ILHR 129 (title) is amended to read:

Chapter ILHR 129 (title) BENEFIT CLAIMING PROCEDURES



SECTION 5. ILHR 129.01(title) is amended to read:

ILHR 129.01 (title) IN PERSON REPORTING AND NOTICE OF UNEMPLOYMENT.

SECTION 6. ILHR 129.02, 129.03, 129.04 and 129.05 are created to read:

ILHR 129.02 ESTABLISHMENT OF BENEFIT YEAR. (1) In order to establish a benefit year under s. 108.06(2)(a), Stats., a claimant shall:

(a) Report in person to the local office to complete and sign a claim for benefits on forms furnished by the department; and

(b) Have the minimum amount of wages in his or her base period required under s. 108.04(4)(a), Stats.

(2) In addition to meeting the requirements under sub. (1), the claimant shall:

(a) Be eligible to receive benefits;

(b) Have experienced at least a 25% reduction in hours of employment in one week as compared to the average number of hours of employment for the preceding 13 weeks; or

(c) Reasonably expect to be eligible to receive benefits during the next 13 weeks.

(3) A claimant may reasonably expect to be eligible to receive benefits under sub. (2)(c), if:

(a) The employer for whom he or she is employed has given notice of an impending layoff to occur within 13 weeks after the week in which the claimant complies with the requirements of sub. (1); or

(b) The claimant provides satisfactory evidence to the department that he or she expects to be partially or totally unemployed under a condition of benefit eligibility within 13 weeks after the week in which the claimant complies with the requirements of sub. (1).

ILHR 129.03 BACKDATING OF BENEFIT YEAR; CIRCUMSTANCES. (1) Under s. 108.06(2)(bm), Stats., a claimant's benefit year begins on the Sunday of the week in which the claimant meets the requirements to establish a benefit year under s. ILHR 129.02, except that the department may, by rule, permit a claimant to begin a benefit year prior to that time. This section specifies those circumstances under which the department shall permit the backdating of a benefit year.

(2) The department shall backdate a benefit year if any one of the following circumstances exist:

(a) An error relating to the establishing of the claimant's benefit year is made by personnel of the department or of an agent state.

(b) Action is taken by an employer, in any manner, directly or indirectly, instructing, warning or persuading the claimant not to file or to delay filing a benefit claim.

(c) The claimant's most recent employer fails to post or maintain any notice as to claiming unemployment benefits which has been supplied to the employer under s. ILHR 120.01.

(d) The department determines that a circumstance beyond the control of the claimant exists.

ILHR 129.04 DEPARTMENT SET ASIDE OF BENEFIT YEAR; EXCEPTIONAL CIRCUMSTANCES. (1) Under s. 108.06(2)(d), Stats., a claimant may, in writing, request the department to set aside a benefit year. The department shall set aside the benefit year if:

(a) The claimant's request is voluntary;

(b) No benefits have been paid to the claimant in that benefit year at the time the department acts upon the request; and

(c) The claimant's benefit eligibility is not suspended at the time the department acts upon the request.

(2) (a) If the claimant does not meet all of the requirements under sub. (1), the department may set aside the benefit year if:

1. The department terminates coverage of an employer previously subject to ch. 108, Stats., for whom the claimant performed services in the base period and the claimant could not have foreseen this termination of coverage;

2. The department makes an error relating to the claimant's establishing of a benefit year; or

3. The wage data used by the department to establish the benefit year is erroneous.

(b) The department may not set aside a benefit year under this subsection unless the department:

1. Has recovered all benefits paid to the claimant for that benefit year; or
2. Offsets this amount against benefits the claimant would otherwise be eligible to receive at the time the request to set aside a benefit year is made.

ILHR 129.05 PAYMENT OF BENEFITS. (1) The department shall pay benefits through local offices by checks mailed to the claimant's address of record with the department.

(2) The department shall charge each benefit payment against an account in the unemployment reserve fund or the administrative account and shall periodically send each employer a record of each payment charged against its account in the fund unless the proration provisions under s. 108.07, Stats., apply.

SECTION 7. ILHR 132.03 is repealed and recreated to read:

ILHR 132.03 VOLUNTARY TERMINATION OF PART-TIME EMPLOYMENT. (1)

DEFINITIONS. In this section:

(a) "Expenses" mean the expenses incurred by the claimant to maintain part-time work and includes travel expenses, child care expenses and any other reasonable work-related expenses.

(b) "Full-time" means work which is performed for more than 30 hours per week.

(c) "Loss of the full-time work" means loss of full-time work which is expected to be for at least 4 consecutive weeks.

(d) "Part-time" means work which is performed for 30 or less hours per week.

(2) SCOPE. Under s. 108.04(7)(k), Stats., a claimant who terminates part-time work is not disqualified from receiving benefits under s. 108.04(7)(a), Stats., if the claimant is otherwise eligible to receive benefits because of the loss of the full-time work and this loss makes it economically unfeasible to continue the part-time work. This section specifies the circumstances under which a claimant may meet the requirements under s. 108.04(7)(k), Stats.

(3) STANDARD. (a) A claimant's employment is qualifying part-time work under s. 108.04(7)(k), Stats., if:

1. In at least 65% of the most recent 26 weeks of work with the part-time employer, the claimant worked only part-time; and

2. The loss of the full-time work makes it economically unfeasible for the claimant to continue the part-time work.

(b) To determine whether the loss of the full-time work makes it economically unfeasible for the claimant to continue the part-time work, the department shall add the amount of the claimant's gross wages from the part-time work for the week preceding the week in which the claimant terminates the part-time work to the amount of unemployment benefits payable for that week and subtract from this sum the expenses incurred by the claimant in that week for the part-time work. If the remainder is less than the claimant's full weekly benefit rate for that week, the department shall

consider it economically unfeasible for the claimant to continue the part-time work.

(4) EFFECT ON ELIGIBILITY. (a) If a claimant meets the requirements of this section and is otherwise eligible, the claimant shall be entitled to benefits.

(b) If a claimant does not meet the requirements of this section, the claimant shall be subject to a reduction in the benefits payable under s. 108.04(7)(a), Stats., and shall be ineligible for benefits until he or she has again been employed under s. 108.04(7)(a), Stats., unless another exception contained in s. 108.04(7), Stats., applies.

SECTION 8. INITIAL APPLICABILITY. The treatment of section ILHR 132.03 applies to benefit years which begin during or after the week commencing on April 2, 1989.

SECTION 9. EFFECTIVE DATE. Pursuant to s. 227.22(2), Stats., this rule shall take effect on the first day of the month following the date of publication in the Wisconsin administrative register.

Tommy G. Thompson  
Governor  
Gerald Whitburn  
Secretary



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## State of Wisconsin Department of Industry, Labor and Human Relations

October 10, 1989

✓ Gary Poulson  
Assistant Revisor of Statutes  
Suite 702  
30 West Mifflin Street  
Madison, Wisconsin 53703

Douglas LaFollette  
Secretary of State  
10th Floor  
30 West Mifflin Street  
Madison, Wisconsin 53703

Dear Messrs. Poulson and LaFollette:

### TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 89-70  
Chapter ILHR 111.07(4), 126.001(1g), (1r), (7g) and (7r), 128.02(2),  
RULE NO. 129(title), 129.01(title), 129.02 to 129.05 and 132.03

RELATING TO: Wage reporting, availability for work requirements, establishment of benefit years, and voluntary termination of part-time employment.


Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is also included.

Respectfully submitted,

  
Gerald Whitburn  
Secretary

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