

CR 89-184

RULES CERTIFICATE

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

RECEIVED


MAY 9 1990
1:00 p.m.
Revisor of Statutes
Bureau

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 Contributions, taxable wages and reports were duly (Subject) approved and adopted by this department on May 8, 1990.
(Date)

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 4:00 p.m. in the city of Madison, this 8th day of May A.D. 1990.



Secretary

ORDER OF ADOPTION

RECEIVED

MAY 9 1990

Revisor of Statutes
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Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 101.02(1), 108.02(13)(j), 108.14(2) and 108.17(2), Stats., the Department of Industry, Labor and Human Relations creates; amends; repeals and recreates; repeals and adopts rules of Wisconsin Administrative Code chapter (s):

<u>ILHR 101 and 110</u>	<u>Contributions, taxable wages and reports</u>
(Number)	(Title)

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: 5-8-90

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN
RELATIONS



Secretary



RULES in FINAL DRAFT FORM

Rule: _____ Chapter ILHR 110

Relating to: Contributions, taxable wages and reports

The Wisconsin Department of Industry, Labor and Human Relations proposes an order to repeal chapter ILHR 101; and to create chapter ILHR 110 relating to contributions, taxable wages, and reports.

* * * * *

Statutory Authority: ss. 101.02(1), 108.02(13)(j), 108.14(2) and 108.17(2).

Statutes Interpreted: ss. 108.02(13)(j) and (26), 108.14, 108.18(2)(c) and 108.21.

Analysis of Proposed Rules Prepared by the Department of Industry, Labor and Human Relations:

Chapter ILHR 101 is repealed since the provisions treated in that chapter are contained in the newly created chapter ILHR 110.

Section 108.21, Stats., requires all employing units to maintain work records for individuals who perform services for them. The records must be open to inspection by the department. Section ILHR 110.02 implements this statute and specifies what information these records must contain. Each employing unit must preserve these records for six years from the date on which the individual last performed services for the employing unit.

Section 108.14, Stats., authorizes the department to require employing units to submit any reports on employment, wages, hours, and related matters which the department considers necessary to carry out its responsibilities under Wisconsin's Unemployment Compensation Law. Section ILHR 110.03 implements the aforementioned provisions of law. Section ILHR 110.04 requires employing units which are not subject to the contribution provisions or

reimbursement financing provisions of chapter 108, Stats., to notify the department within 30 days after meeting the coverage requirements of this chapter.

Section ILHR 110.05 specifies the dates on which the department will treat various employing units as nonprofit organizations and therefore eligible for reimbursement financing.

Section ILHR 110.06 specifies various dates by which certain reports and notices must be filed with the department (i.e., contribution reports and payments; notices of election of reimbursement financing; assurances of reimbursement; and submission of reimbursement payments for employers on reimbursement financing). The rule further provides that contributions and payments must be submitted to the department in the form of a check, draft, or money order.

Section 108.02(26), Stats., defines the types of remuneration which constitute "wages" under chapter 108, Stats. Sections ILHR 110.07-110.14 more specifically list certain forms of remuneration and indicate whether or not the department will treat these forms of remuneration as wages for purposes of assessing employer contributions to the unemployment reserve fund.

Section ILHR 110.07 requires each employer to report all wages paid or constructively paid to its workers on the employer's contribution report. The employer may subtract the exclusions from wages enumerated under s. 108.02, Stats., and under the Federal Unemployment Tax Act (FUTA).

Section ILHR 110.08 provides that the value of lodging or meals furnished by an employer to an employe for personal services performed directly for employment for the employer and not for required or necessary expenses incurred in the work for the employer are wages for contribution purposes.

The employer shall value the lodging and meals at their actual value or make a reasonable estimate if the actual value is not available. If neither the actual value nor reasonable estimate is available, the department must use the specific monetary amounts enumerated in the rule.

Under section ILHR 110.09, the department will treat employer contributions to finance a supplemental unemployment benefits plan for employes (commonly known as "sub-pay") as wages if the contributions are credited to individual employe accounts and are treated as wages under FUTA. The department will not treat such payments as wages if the contributions are credited to a fund rather than to individual employe accounts and the contributions are not treated as wages under FUTA or if the supplemental unemployment benefits plan is part of an employer profit sharing plan and the contributions are not treated as wages under FUTA.

Section ILHR 110.10 provides that the value of any special discount or markdown from the retail price which an employer gives to an employe on goods and services purchased from, or supplied by, the employer for an employe's personal use is to be treated as wages with certain exceptions.

Section ILHR 110.11 provides that the department shall treat any sickness or accident disability payments made to an employe by the employer, third party payor, or multiemployer benefit plan as wages for contribution purposes. These payments must be reported on the contribution report for the quarter in which the payments are made. The rule establishes various criteria to determine whether the employer, third party payor, or multiemployer benefit plan is the taxable employer.

Section ILHR 110.12 provides that the department will treat as wages

payments made by a subchapter S corporation to an officer for services performed for the corporation. The rule further indicates certain types of payments which are not to be considered wages for contribution purposes.

Section ILHR 110.13 indicates that certain payments made under cafeteria plans are not to be treated as wages for contribution purposes. The section conforms to the provision concerning cafeteria plans under FUTA.

Section ILHR 110.14 lists various forms of deferred compensation and retirement and salary reduction arrangements which are to be treated as wages. The section conforms to the same provisions under FUTA.

Section 108.18(2)(c), Stats.; provides that an employer engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects will pay contributions for the first two calendar years at the average rate for construction industry employers. Under section ILHR 110.15 the department spells out the various factors that it will consider in determining whether an employer is engaged in such construction.

Sections ILHR 110.16 and 110.17 specify the circumstances under which the department will terminate coverage of an employer or reactivate an employer's account under chapter 108, Stats.

SECTION 1. Chapter ILHR 101 is repealed.

SECTION 2. Chapter ILHR 110 is repealed and recreated to read:

CHAPTER ILHR 110.

CONTRIBUTIONS, TAXABLE WAGES AND REPORTS

- | | |
|--|---|
| ILHR 110.001 Definitions | ILHR 110.09 Supplemental unemployment benefits |
| ILHR 110.01 Purpose | ILHR 110.10 Value of discounts |
| ILHR 110.02 Required records to retain; retention periods; department's investigative powers | ILHR 110.11 Sickness or accident disability payments |
| ILHR 110.03 Required records and reports to submit | ILHR 110.12 Subchapter S corporation payments |
| ILHR 110.04 Conditions for coverage and liability; reporting requirements | ILHR 110.13 Cafeteria plans |
| ILHR 110.05 Conditions for status as a nonprofit organization; reporting requirements | ILHR 110.14 Certain deferred compensation, retirement and salary reduction arrangements |
| ILHR 110.06 Due dates for certain reports; contribution reports; reimbursement financing | ILHR 110.15 New construction industry employers; initial contribution rates |
| ILHR 110.07 General provisions relating to reporting wages on the employer's contribution report | ILHR 110.16 Termination of coverage |
| ILHR 110.08 Value of room and meals | ILHR 110.17 Reactivating employer accounts |

ILHR 110.001 DEFINITIONS. In this chapter:

(1) "Constructively paid" means wages paid by an employer which are credited to the employe or set apart for the employe without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and which are available to the employe so that the wages may be drawn upon at any time, and their payment brought within the employe's own control and disposition.

(2) "Covered wages" means wages less the exclusion under s. 108.02(15)(L), Stats., and any applicable exclusions under s. 108.02(15)(f) to (k), Stats., unless the wages attributed to an exclusion are subject to a tax under the Federal Unemployment Tax Act and are not subject to a tax under any other unemployment compensation law.

(3) "Department" means the department of industry, labor and human relations.

(4) "Employee" has the meaning specified in s. 108.02(12), Stats.

(5) "Employer" means any person who is or becomes subject to the reimbursement financing or contribution requirements of ch. 108, Stats., including multiemployer benefit plans and other third party payors.

(5m) "Employer's account" has the meaning specified in s. 108.02(14), Stats.

(6) "Employer's contribution report" or "contribution report" means the written document in which an employer makes a quarterly report of total employment or wages or both to the department.

(7) "Employing unit" means any employer and any other person who engages one or more individuals to perform services, whether or not that person is subject to the reimbursement financing or contribution requirements of ch. 108, Stats.

- (8) "Employment" has the meaning specified in s. 108.02(15), Stats.
- (9) "FUTA" means the federal unemployment tax act, subtitle C, ch. 23 of the internal revenue code, 26 U.S.C. ss. 3301 to 3311.
- (10) "Government unit" has the meaning specified in s. 108.02(17), Stats.
- (11) "Multiemployer benefit plan" means a benefit plan maintained pursuant to one or more collective bargaining agreements between 2 or more employers and one or more employe organizations under which each employer makes contributions to provide sickness or accident disability payments through the plan to eligible employes or their dependents.
- (12) "Nonprofit organization" has the meaning specified in s. 108.02(19), Stats.
- (13) "Payroll" has the meaning specified in s. 108.02(21), Stats.
- (14) "Sickness or accident disability payment" means any payment to an employe or his or her dependents under a plan established by an employing unit to provide compensation on account of sickness or accident disability during the first 6 months following the last month in which the employe provided services for the employing unit, but does not include:
- (a) Any amount paid by an employing unit for insurance or annuities;
 - (b) A payment made for medical or hospitalization expenses connected to the sickness or accident disability;
 - (c) A payment made under a workers' compensation law; or
 - (d) A payment made on account of death.
- (15) "Supplemental unemployment benefits plan" means a plan under which an employer makes a payment to supplement any unemployment benefits which may be paid to its employes who become partially or totally unemployed.
- (16) "Wages" has the meaning specified in s. 108.02(26), Stats.
- (17) "Week" has the meaning specified in s. 108.02(27), Stats.

ILHR 110.01 PURPOSE. (1) This chapter requires employing units to maintain work records for individuals who perform services for them and to submit such records for the department's inspection and submit and file other reports requested by the department to determine the employing unit's status and contribution liability under ch. 108, Stats. The chapter specifies the department's investigative powers and enumerates the dates by which certain records and reports are to be submitted to the department.

(2) Section 108.02(26), Stats., and FUTA enumerate certain forms of remuneration which constitute wages under ch. 108, Stats. This chapter more specifically lists some forms of remuneration which the department shall treat as wages to assess employer contributions to the unemployment reserve fund. The chapter considers such items as the value of room and board and the value of certain discounts or markdowns given employees from the retail price on goods and services; employer contributions to supplemental unemployment benefits plans; sickness or accident disability payments made by employers, third party payors, or multiemployer benefit plans; payments made by subchapter S corporations; and payments made under deferred compensation and salary reduction arrangements.

ILHR 110.02 REQUIRED RECORDS TO RETAIN; RETENTION PERIODS; DEPARTMENT'S INVESTIGATIVE POWERS. (1) Pursuant to s. 108.21, Stats., each employing unit shall maintain a true and accurate work record for every individual who performs services for that employing unit so that the department may determine the employing unit's status and contribution liability under ch. 108, Stats.

- (2) The work record shall include:
- (a) The full name, address and social security number of each individual who performs services for the employing unit;
 - (b) The dates on which each individual performed services;
 - (c) The weekly wages earned by each individual who performed services; and
 - (d) The dates on which the wages were paid to each individual.
- (3) Pursuant to s. 108.21, Stats., the department may, at any reasonable time, inspect the work records and any other records of an employing unit, or of any entity which the department has reason to believe may be an employing unit, which may show payments for personal services.
- (4) Each employing unit shall preserve the work records and any other records which may show payments for personal services for 6 years from the date on which each individual last performed services for the employing unit.

ILHR 110.03 REQUIRED RECORDS AND REPORTS TO SUBMIT. Pursuant to ss. 108.14 and 108.21, Stats., each employing unit shall submit any work records and any other records and reports concerning the services performed by individuals for the employing unit which the department may request. The department may require the employing unit to make either verbal or written reports or both.

ILHR 110.04 CONDITIONS FOR COVERAGE AND LIABILITY; REPORTING REQUIREMENTS.
Any employing unit which is not subject to the reimbursement financing or

contribution provisions under ch. 108, Stats., becomes subject if the employing unit meets the coverage requirements under ch. 108, Stats. Any employing unit which meets the coverage requirements under ch. 108, Stats., shall notify the department and accurately and completely report its employment and wages so that the department may determine the employing unit's status and contribution liability. The employing unit shall submit this report to the department within 30 days after meeting the coverage requirements under ch. 108, Stats.

ILHR 110.05 CONDITIONS FOR STATUS AS A NONPROFIT ORGANIZATION; REPORTING REQUIREMENTS.

Except as further provided in this section, no employing unit may be considered to be a nonprofit organization eligible to apply for reimbursement financing until the date on which the department receives a copy of the letter issued by the internal revenue service determining that the employing unit is exempt from taxation under section 501(c)(3) of the internal revenue code. If an employing unit receives such a letter from the internal revenue service after the employing unit becomes an employer under s. 108.02(13)(d) or (e), Stats., the department shall consider the employing unit to be a nonprofit organization beginning on January 1 of the year after the year in which the internal revenue service issues the letter. The department shall consider the employing unit to be a nonprofit organization as of the date specified by the internal revenue service if:

(1) The employing unit has filed a written notice with the department electing reimbursement financing under s. 108.151(2), Stats.;

(2) The employing unit acted diligently in requesting such a determination from the internal revenue service;

(3) Any delays concerning such a determination are attributable solely to the internal revenue service; and

(4) There is no overpayment of benefits to any claimant due to the department's adopting the date specified by the internal revenue service.

110.06 DUE DATES FOR CERTAIN REPORTS; CONTRIBUTION REPORTS; REIMBURSEMENT

FINANCING. (1) NEWLY SUBJECT EMPLOYERS; PAYMENT OF CONTRIBUTIONS. Under s. 108.17(1m), Stats., an employer which becomes newly subject to the contribution provisions of ch.108, Stats., based on employment during any year shall pay contributions based on payroll for all quarters beginning with the first quarter in the year in which the employer became subject to ch. 108, Stats. The employer shall pay such contributions by the close of the month next following the first full quarter occurring after the quarter during which the liability was incurred except that the due date may not be later than January 31 of the succeeding year.

(2) ELECTION OF REIMBURSEMENT FINANCING; NOTICES AND ASSURANCES. (a) Any notice of election of reimbursement financing by an employer other than a newly subject employer under sub. (1) and any assurance of reimbursement are delinquent unless the department receives the notice or assurance by its due date. If the due date of the notice or assurance would otherwise be a Saturday, Sunday or legal holiday under state or federal law, the due date is the next following day which is not a Saturday, Sunday or legal holiday under state or federal law.

(b) A nonprofit organization which discontinues participation in a group reimbursement account under s. 108.151(6), Stats., may elect reimbursement financing in its own name by filing a notice of election of reimbursement financing with the department on or before December 31 of the year in which the group reimbursement account is terminated.

(3) FILING OF CONTRIBUTION REPORTS; GENERAL DUE DATES. (a) Each employer, including a nonprofit organization which has elected reimbursement financing or a government unit on reimbursement financing, shall file an employer's contribution report with the department whether or not any contributions or reimbursement payments are currently due. Each employer shall pay any required contributions to the department concurrent with the filing of the report, except that each government unit and nonprofit organization which has elected reimbursement financing shall submit reimbursement payments when billed by the department. The department may exempt any employer whose account the department has placed on inactive status with a view toward termination of the account from the filing requirements of this subsection. The department may also exempt any employer whose business reflects a seasonal pattern from the filing requirements of this subsection for quarters in which the employer customarily has no payroll.

(b) Except as otherwise provided in this section, under s. 108.17(2), Stats., the due dates for each contribution report are as follows:

1. The first quarterly report covering the months of January, February and March is due on the following April 30th;
2. The second quarterly report covering the months of April, May and June is due on the following July 31st;

3. The third quarterly report covering the months of July, August and September is due on the following October 31st;

4. The fourth quarterly report covering the months of October, November and December is due on the following January 31st.

(4) DUE DATES FALLING ON WEEKENDS AND HOLIDAYS. Under s. 108.22(1)(b) and (c), any contribution report or payment is delinquent unless the department receives the report or payment by its due date except as further provided under sub. (5). If the due date of the report or payment would otherwise be a Saturday, Sunday or legal holiday under state or federal law, the due date is the next following day which is not a Saturday, Sunday or legal holiday under state or federal law.

(5) DUE DATES FOR MAILED REPORTS AND REIMBURSEMENTS. Under s. 108.22(1)(c), Stats., the department shall consider as timely any contribution report or payment which is either postmarked no later than the applicable due date or received by the department no later than 3 days after that due date, except that the department shall only consider a payment required under s. 108.15(5)(b) or 108.151(5)(f), Stats., as timely if it is received by the department no later than the due date specified on the bill.

(6) MONTHLY REPORTING IN CERTAIN CASES. The department may require an employer which is delinquent in submitting a contribution report or payment required under this chapter or under ch. 108, Stats., to submit succeeding contribution reports on a monthly basis until the department again approves a return to quarterly reporting. The employer shall submit the payments by the close of the month next following the end of each month.

(7) OTHER DUE DATES. For other applicable due dates and dates beyond which various reports and notices are considered to be delinquent, see ss. 108.15(3), (5), (6), (7), (8) and (9), 108.151(2) to (5), 108.16(8), 108.17(1m) and (2), 108.18(2) and (7), 108.19(1m), 108.205 and 108.22(1), Stats.

(8) PAYMENTS. The employer shall remit contributions and any other payments due under this chapter to the address specified by the department in its correspondence with the employer in the form of a check, draft or money order payable to the department of industry, labor and human relations.

ILHR 110.07 GENERAL PROVISIONS RELATING TO REPORTING WAGES ON THE EMPLOYER'S CONTRIBUTION REPORT. (1) WISCONSIN TOTAL WAGES. Each employer shall report all covered wages paid or constructively paid during the applicable quarter on the employer's contribution report.

(2) CLAIMING EXCLUSIONS. Each employer shall total the amount of wages paid to its employees which are in excess of \$10,500 per employee for the calendar year. This sum shall be subtracted from the amount of covered wages and the remainder shall be reported on the employer's contribution report as "defined taxable payroll".

ILHR 110.08 VALUE OF ROOM AND MEALS. The department shall treat the value of any lodging or meals furnished by an employer to an employee as wages for contribution purposes under ch. 108, Stats., if the value of the lodging or

meals is for personal services performed directly for the employer and not for required or necessary expenses incurred in the work for the employer. The employer shall value the lodging and meals at the actual value or, if the actual value is not available, the employer shall make a reasonable estimate of the value. If the actual value or reasonable estimate is not available, the department shall value the lodging and meals as follows:

- (1) Lodging - \$70.00 per week or \$10.00 per day; and
- (2) Meals - \$57.00 per week or \$2.75 per meal.

ILHR 110.09 SUPPLEMENTAL UNEMPLOYMENT BENEFITS. (1) The department shall treat as wages for contribution purposes under ch. 108, Stats., employer contributions to finance a supplemental unemployment benefits plan for employes if the contributions are credited to individual employe accounts and are treated as wages under FUTA.

(2) The department may not treat as wages for contribution purposes under ch. 108, Stats., employer contributions to finance a supplemental unemployment benefits plan for employes if:

(a) The contributions are credited to a fund rather than to individual employe accounts and the employer's contributions are not treated as wages under FUTA; or

(b) The supplemental unemployment benefits plan is part of an employer profit-sharing plan and the employer's contributions are not treated as wages under FUTA.

ILHR 110.10 VALUE OF DISCOUNTS. The department shall treat as wages for contribution purposes under ch. 108, Stats., the value of any special discount or markdown from the retail price which an employer gives to an employe on goods or services purchased from, or supplied by, the employer for an employe's personal use unless:

(1) The goods purchased are equipment which the employe uses on the job and which is necessary to the employe's performance of services for the employer; or

(2) The discount for goods which are purchased but not necessary to the employe's performance of services for the employer does not constitute regular or systematic remuneration from the employer.

110.11 SICKNESS OR ACCIDENT DISABILITY PAYMENTS. (1) POLICY. Under s. 108.02(13)(j), Stats., an employer includes a person who pays wages to an individual on account of sickness or accident disability if the person is classified as an employer under rules promulgated by the department. This section specifies the circumstances under which persons who make sickness or accident disability payments are to be considered employers for contribution purposes under ch. 108, Stats. This section also specifies the procedures such employers shall follow in reporting payments and making contributions.

(2) AMOUNTS INCLUDED AS TAXABLE WAGES. The department shall treat as wages for contribution purposes under ch. 108, Stats., any sickness or accident disability payments whether made by an employer, a third party payor, or a multiemployer benefit plan. Whichever employer, third party payor or

multiemployer benefit plan is liable for payment of contributions under this section shall report these payments as wages on the contribution report for the quarter in which the payments are made.

(3) PAYMENTS MADE DIRECTLY BY EMPLOYERS. An employer which makes sickness or accident disability payments directly to an employe or his or her dependents shall be treated as the employer for contribution purposes under ch. 108, Stats., with respect to these payments.

(4) PAYMENTS BY THIRD PARTY PAYORS AND MULTIEMPLOYER BENEFIT PLANS. (a) General rule for third party payors. Except as provided in pars. (b) to (f), a third party payor which makes sickness or accident disability payments shall be treated as the employer for contribution purposes under ch. 108, Stats., with respect to these payments.

(b) Notice by third party payors to shift tax. If a third party payor timely notifies the employer for which services are normally performed of the amount of the sickness or accident disability payments made during any quarter, the employer shall be treated as the employer for contribution purposes under ch. 108, Stats. The third party payor shall notify the employer, in writing, by the 15th day of the month after the end of the quarter in which the payments are made. In this paragraph, the employer for which services are normally performed is the last employer which made contributions on behalf of the employe to the plan or system under which the sickness or accident disability payments are being made and for which the employe worked prior to the sickness or disability.

(c) Third party payors as agents or insurers. A third party payor which makes sickness or accident disability payments as an agent for the

employer or directly to the employer may not be treated as the employer for contribution purposes under ch. 108, Stats., unless the agency agreement so provides. The determining factor as to whether a third party payor is an agent of the employer is whether the third party payor bears any insurance risk and is reimbursed on a cost plus fee basis. If the third party payor bears no insurance risk and is reimbursed on a cost plus fee basis, the third party payor is an agent of the employer even if the third party payor is responsible for determining eligibility of the employee or dependent for sickness or accident disability payments. If the third party payor is paid an insurance premium and is not reimbursed on a cost plus fee basis, the third party payor is not an agent of the employer but rather a third party insurer and shall be treated as the employer for contribution purposes under ch. 108, Stats., unless the third party insurer complies with par. (b).

(d) Relationship among third party insurers, multiemployer benefit plans and employers. A third party insurer under a contract of insurance with a multiemployer benefit plan which is required to make sickness or accident disability payments pursuant to a collective bargaining agreement shall be treated as the employer for contribution purposes under ch. 108, Stats., with respect to these payments unless the third party insurer notifies the multiemployer benefit plan of the amount of these payments, in writing, by the 15th day of the month after the end of the quarter in which the payments are made. If such timely notice is given, the multiemployer benefit plan shall be treated as the employer unless, within 6 business days after receipt of the notice, the multiemployer benefit plan notifies the employer for which services are normally performed of the amount of the sickness or accident

disability payments made during the quarter. If the multiemployer benefit plan gives such timely notice, the employer for which services are normally performed shall be treated as the employer for contribution purposes under ch. 108, Stats. In this paragraph, the employer for which services are normally performed is the last employer which made contributions on behalf of the employe to the plan or system under which the sickness or accident disability payments are being made and for which the employe worked prior to the sickness or disability.

(e) Multiemployer benefit plans as insurers. If the multiemployer benefit plan is the insurer under par. (d), the multiemployer benefit plan shall be treated as the employer for contribution purposes under ch. 108, Stats., unless the plan notifies the employer of the amount of the sickness or accident disability payments, in writing, by the 15th day of the month after the end of the quarter in which the payments are made.

(f) Third party administrators for multiemployer benefit plans. A third party administrator which makes sickness or accident disability payments as an agent for a multiemployer benefit plan may not be treated as the employer for contribution purposes under ch. 108, Stats.

(5) REQUIRED RECORDS TO RETAIN; DEPARTMENT'S POWERS. (a) Pursuant to s. 108.21, Stats., each payor of sickness or accident disability payments shall maintain a true and accurate payment record for every individual who receives such payments so that the department may determine the payor's status and contribution liability under ch. 108, Stats.

(b) The payment record shall include:

1. The full name, address and social security number of each

individual who receives a sickness or accident disability payment ;

2. The date on which the payment was made; and
3. The amount of the payment.

(c) Pursuant to s. 108.21, Stats., the department may, at any reasonable time, inspect the records of a payor, or of any entity which the department has reason to believe may be a payor, which may show sickness or accident disability payments so that the department may determine the payor's status and contribution liability under ch. 108, Stats.

(d) Each payor shall preserve the sickness or accident disability payment records for 6 years from the date on which the last payment was made.

(6) REQUIRED RECORDS AND REPORTS TO SUBMIT. Pursuant to ss. 108.14 and 108.21, Stats., each payor of sickness or accident disability payments shall submit any records and reports concerning these payments which the department may request so that the department may determine the payor's status and contribution liability under ch. 108, Stats. The department may require the payor to make verbal or written reports or both.

(7) APPLICABLE PROVISIONS. The provisions of ss. ILHR 110.04 to 110.07 as these provisions relate to employers and employing units shall also apply to payors of sickness or accident disability payments.

(8) CONTRIBUTION RATES. An employer not previously subject to the contribution provisions under ch. 108, Stats., which becomes subject because of payment of sickness or accident disability payments under this section shall be subject to the initial contribution rate under s. 108.18, Stats.

ILHR 110.12 SUBCHAPTER S CORPORATION PAYMENTS. (1) DEFINITIONS. In this section:

(a) "Officer" means the person in a subchapter S corporation who holds the office of president, vice president, secretary, treasurer and includes such other officers, assistant officers and agents elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the articles of incorporation or bylaws.

(b) "Subchapter S corporation" means a corporation which has elected, for Federal income tax purposes, to be treated under subchapter S of chapter 1 of the internal revenue code, 26 U.S.C. ss. 1361 to 1379.

(2) AMOUNTS INCLUDED AS WAGES. Except as provided under sub. (3), the department shall treat as wages for contribution purposes under ch. 108, Stats., any payment made by a subchapter S corporation to an officer which is reasonable compensation for services performed for the corporation. If an officer performs services for a subchapter S corporation but receives no payment as wages, the department shall treat as wages the reasonable value of the services performed.

(3) AMOUNTS NOT INCLUDED AS WAGES. The department may not treat as wages for contribution purposes under ch. 108, Stats., any of the following payments:

(a) A distribution of earnings and profits which is in excess of any payment treated as wages under sub. (2).

(b) A loan to an officer evidenced by a promissory note signed by the officer prior to the payment of the loan proceeds and recorded on the books and records of the corporation as a loan to an officer.

(c) A repayment of a loan or payment of interest on a loan made by the officer to the corporation and recorded on the books and records of the corporation as a liability of the corporation.

(d) A reimbursement of reasonable corporation expenses incurred by an officer and documented by a written expense voucher and recorded on the books and records of the corporation as corporate expenses.

(e) A reasonable lease or rental payment to an officer who owns property which is leased or rented to the corporation.

ILHR 110.13 CAFETERIA PLANS. The department may not treat as wages for contribution purposes under ch. 108, Stats., any payment made to, or on behalf of, an employe or the employe's beneficiary under a cafeteria plan as specified under section 125 of the internal revenue code if the payment would not be treated as wages without regard to such plan and it is reasonable to believe that if section 125 applied for purposes of this section, section 125 would not treat any wages as constructively received.

ILHR 110.14 CERTAIN DEFERRED COMPENSATION, RETIREMENT AND SALARY REDUCTION ARRANGEMENTS. (1) AMOUNTS INCLUDED AS WAGES. The department shall treat as wages for contribution purposes under ch. 108, Stats., the following amounts:

(a) Any employer contribution under a qualified cash or deferred arrangement as defined in section 401(k) of the internal revenue code to the extent that the contribution is not included in gross income under section 402(a)(8) of the internal revenue code.

(b) Any amount treated as an employer contribution under section 414(h)(2) of the internal revenue code if the pickup referred to in that section is pursuant to a salary reduction agreement, whether or not evidenced by a written instrument.

(c) Any amount deferred under a nonqualified deferred compensation plan. In this paragraph, "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in sub. (2). The department shall treat any amount deferred under a nonqualified deferred compensation plan as wages either on the date when the services are performed or on the date when there is no substantial risk of forfeiture of the rights to such amount, whichever occurs later.

(2) AMOUNTS NOT INCLUDED AS WAGES. The department may not treat as wages for contribution purposes under ch. 108, Stats., the following amounts:

(a) Any payment made to, or on behalf of, an employe or the employe's beneficiary from or to a trust described in section 401(a) of the internal revenue code which is exempt from tax under section 501(a) of the internal revenue code at the time of the payment, unless the payment is made to the employe of the trust as remuneration for services performed as an employe and not as a beneficiary of the trust.

(b) Any payment made to, or on behalf of, an employe or the employe's beneficiary under or to an annuity plan which, at the time of the payment, is a plan described in section 403(a) of the internal revenue code.

(c) Any payment made to, or on behalf of, an employe or the employe's beneficiary under a simplified employe pension as defined in section 408(k)(1) of the internal revenue code, other than any contributions described in section 408(k)(6) of the internal revenue code.

(d) Any payment made to, or on behalf of, an employee or the employee's beneficiary under or to an annuity contract described in section 403(b) of the internal revenue code, other than a payment for the purchase of such contract made because of a salary reduction agreement, whether or not evidenced by a written instrument.

(e) Any payment made to, or on behalf of, an employee or the employee's beneficiary under or to an exempt governmental deferred compensation plan as defined in section 3121(v)(3) of the internal revenue code.

(f) Any payment made to, or on behalf of, an employee or the employee's beneficiary to supplement pension benefits under any plan or trust described in pars. (a) to (e) to take into account some portion or all of the increase in the cost of living, as determined by the U. S. secretary of labor, since retirement, but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the employee retirement income security act of 1974, P.L. 93-406, as amended.

ILHR 110.15 NEW CONSTRUCTION INDUSTRY EMPLOYERS; INITIAL CONTRIBUTION RATES.

(1) Under section 108.18(2)(c), Stats., an employer engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects shall pay contributions for each of the first 2 calendar years at the average rate for construction industry employers as determined by the department.

(2) The department shall examine the factors enumerated in this section to determine whether an employer is "engaged in the construction of roads,

bridges, highways, sewers, water mains, utilities, public buildings, factories, housing or similar construction projects" within the meaning of s. 108.18(2)(c), Stats. The department shall first determine whether the employer's primary type of business activity is one of the activities specified in Figure ILHR 110.15(2), which enumerates certain business activities listed in Major Group 17 - Construction - Special Trade Contractors in the Standard Industrial Classification (SIC) Manual furnished by the Federal government. [See Figure ILHR 110.15(2) following]

Figure ILHR 110.15(2):

Industry No.

1711 PLUMBING, HEATING AND AIR CONDITIONING

Air system balancing and testing-contractors	Heating equipment installation-contractors
Air conditioning, with or without sheet metal work-contractors	Heating, with or without sheet metal work-contractors
Boiler erection and installation-contractors	Lawn sprinkler system installation-contractors
Fuel oil burner installation and servicing-contractors	Plumbing repair-contractors
Furnace repair-contractors	Refrigeration and freezer work-contractors
Gasoline hookup-contractors	Water system balancing and testing-contractors

1721 PAINTING AND PAPER HANGING

Electrostatic painting on site (including of lockers and fixtures)-contractors	Paper hanging-contractors
	Ship painting-contractors
	Whitewashing-contractors

1731 ELECTRICAL WORK

Burglar alarm installation-contractors	Fire alarm installation-contractors
Cable splicing, electrical-contractors	Intercommunications equipment installation-contractors
Cable television hookup-contractors	Sound equipment installation-contractors
Communications equipment installation-contractors	Telecommunications equipment installation-contractors
Electronic control system installation-contractors	Telephone and telephone equipment installation-contractors

1742 PLASTERING, DRYWALL, ACOUSTICAL, AND INSULATION WORK

Solar reflecting insulation film-contractors

Figure ILHR 110.15(2)

Industry No.

1743	TERRAZZO, TILE, MARBLE, AND MOSAIC WORK	
	Tile installation, ceramic- contractors	Tile setting, ceramic- contractors
1751	CARPENTRY WORK	
	Joinery, ship-contractors Ship joinery-contractors	Store fixture installation- contractors
1752	FLOOR LAYING AND OTHER FLOOR WORK, NOT ELSEWHERE CLASSIFIED	
	Linoleum installation- contractors Parquet flooring-contractors	Resilient floor laying-contractors Vinyl floor tile and sheet installation-contractors
1771	CONCRETE WORK	
	Grouting work-contractors	
1781	WATER WELL DRILLING	
	Servicing water wells-contractors	
1796	INSTALLATION OR ERECTION OF BUILDING EQUIPMENT, NOT ELSEWHERE CLASSIFIED	
	Dismantling of machinery and other industrial equipment- contractors Dust collecting equipment installation-contractors Installation of machinery and other industrial equipment- contractors	Machine rigging-contractors Millwrights Power generating equipment installation-contractors

Figure ILHR 110.15(2)

1799 SPECIAL TRADE CONTRACTORS, NOT ELSEWHERE CLASSIFIED

Antenna installation, except household type-contractors	House moving-contractors
Artificial turf installation-contractors	Insulation of pipes and boilers-contractors
Awning installation-contractors	Lead burning-contractors
Bath tub refinishing-contractors	Lightning conductor erection-contractors
Boring for building construction-contractors	Mobile home site setup and tie down-contractors
Cable splicing service, non-electrical-contractors	Ornamental metalwork-contractors
Caulking (construction)-contractors	Paint and wallpaper stripping-contractors
Cleaning building exteriors-contractors	Plastics wall tile installation-contractors
Cleaning new buildings after construction-contractors	Posthole digging-contractors
Coating of concrete structures with plastics-contractors	Sandblasting of building exteriors-contractors
Core drilling for building construction-contractors	Scaffolding construction-contractors
Counter top installation-contractors	Service and repair of broadcasting stations-contractors
Dampproofing buildings-contractors	Service station equipment installation, maintenance, and repair-contractors
Dewatering-contractors	Steam cleaning of building exteriors-contractors
Diamond drilling for building construction-contractors	Television and radio stations, service and repair of-contractors
Epoxy application-contractors	Test boring for construction-contractors
Fence construction-contractors	Tile installation, wall plastics-contractors
Fireproofing buildings-contractors	Tinting glass-contractors
Gas leakage detection-contractors	Wallpaper removal-contractors
Gasoline pump installation-contractors	Waterproofing-contractors
Glazing of concrete surfaces-contractors	Weather stripping-contractors
Grave excavation-contractors	Window shade installation-contractors

(3) (a) If the employer's primary type of business activity is specified in Figure ILHR 110.15(2), the department may not consider the employer as being within the provisions of s. 108.18(2)(c), Stats. If the employer's primary type of business activity in this state is listed in Major Group 15 - Building Construction - General Contractors and Operative Builders or in Major Group 16 - Heavy Construction Other Than Building Construction - Contractors in the Standard Industrial Classification (SIC) Manual or is listed in Major Group 17 but not in Figure ILHR 110.15(2), the department shall consider the following factors to determine whether the employer is an employer to which the provisions of s. 108.18(2)(c), Stats., apply:

1. Whether the primary business activity of the employer in this state involves the improvement of real property rather than improvement or refurbishing of personal property; and

2. Whether employers within the same listing in the Standard Industrial Classification (SIC) Manual as the employer customarily suspend or significantly curtail business operations in this state for regularly recurring periods because of climatic conditions or because of the seasonal nature of the employment.

(b) If the department determines that either of the factors under sub. (3)(a) 1 or 2 is present, the employer shall be deemed to be an employer to which the provisions of s. 108.18(2)(c), Stats., apply.

110.16 TERMINATION OF COVERAGE. (1) PROCEDURE. Under the provisions of s. 108.02(13)(i), Stats., the department may terminate an employer's coverage on

its own motion or on application by the employer. The department may terminate coverage and close the employer's account if the employer:

(a) Ceases to exist;

(b) Transfers its entire business; or

(c) Has not met the minimum payroll or employment requirements or is not otherwise subject under s. 108.02(13)(b) to (g), Stats., for a calendar year.

(2) EFFECTIVE DATES OF TERMINATION. If the termination of coverage is based on an employer's application, the department shall terminate coverage and close the employer's account at the close of the quarter in which the department received the application. If the department terminates an employer's coverage on its own motion, the department shall close the account as of the date specified in the notice of termination.

(3) EMPLOYERS OF AGRICULTURAL LABOR OR DOMESTIC SERVICE. (a) The department may make a refund of any contributions paid on employment excluded under s. 108.02(15)(k) 1 or 2, Stats., by an employer of agricultural labor or domestic service whose coverage has been terminated, unless the department paid benefits based on this excluded employment.

(b) An employer of agricultural labor or domestic service which no longer meets the minimum payroll or employment requirements under s. 108.02(13)(c) or (d), Stats., shall continue to report all payroll to the department as long as the employer is subject under another provision of s. 108.02(13), Stats.

ILHR 110.17 REACTIVATING EMPLOYER ACCOUNTS. (1) If the balance in the employer's account is to be or has been credited to the balancing account under s. 108.16(6)(c), Stats., the department may reactivate the employer's account, on its own motion or at the employer's request, as of the date of coverage if:

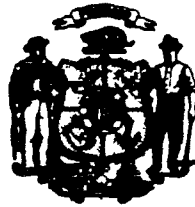
(a) The employer had payroll within 6 months of the effective date of an initial determination terminating coverage under s. 108.02(13)(i), Stats.;

or

(b) The account was closed because the employer failed to report any payroll.

SECTION 3. 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

May 8, 1990

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MAY 9 1990

Revisor of Statutes
Bureau

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 89-184

RULE NO. Chapter ILHR 110

RELATING TO: Contributions, taxable wages and reports.

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