

CR 92-94

RULES CERTIFICATE

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


TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Carol Skornicka, 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 Disclosure of Unemployment Compensation Records

(Subject)
were duly approved and adopted by this department on April 7, 1993
(Date)

I further certify that said copy has been compared by me with the original on file in the 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 1:00 p.m.
in the city of Madison, this 7th
day of April A.D. 19 93.


Secretary

RECEIVED

APR 7 1993
2:45 pm
Revisor of Statutes
Bureau

ORDER OF ADOPTION

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s)

101.02(1), 108.14(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):
Chapter ILHR 149 **Disclosure of Unemployment Compensation Records**

(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: April 7, 1993

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN
RELATIONS


Secretary

RECEIVED

APR 7 1993

Revisor of Statutes
Bureau



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

RULES in FINAL DRAFT FORM

Rule No.: _____ CHAPTER ILHR 149

Relating to: _____ DISCLOSURE OF UNEMPLOYMENT
COMPENSATION RECORDS

The Wisconsin Department of Industry, Labor and Human Relations proposes an order to repeal ILHR 140.001(8) and 150.01; to repeal and recreate ILHR 140.001(7) and 140.08; and to create chapter ILHR 149 relating to disclosure of unemployment compensation records

* * * * *

Statutory authority: ss. 101.02(1) and 108.14(2), Stats.

Statutes interpreted: s. 108.14(2), Stats.

Analysis of proposed rule prepared by the Department of Industry, Labor and

Human Relations:

Under s. 108.14(7), Stats., the unemployment compensation records made or maintained by the department are confidential and shall be open to public inspection or disclosure only to the extent that the department permits in the interest of the unemployment compensation program. This rule specifies the conditions and circumstances under which the department shall permit such records to be open to public inspection or disclosure. This rule also specifies conditions for the sharing of information from unemployment compensation records between the department and other government units or persons. This rule also specifies the conditions under which unemployment compensation records may be disclosed to claimants, employing units, their agents and other individuals.

Section ILHR 149.02 authorizes the department to disclose those unemployment compensation records which have been so screened as to prevent identification of the worker or employing unit which is the subject of the record. The department may also disclose the name, address, standard industrial classification and employment size group of any employing unit.

Under section ILHR 149.03, the department must allow a claimant to inspect his or her own unemployment compensation record and also allow an employing unit to inspect that portion of an unemployment compensation record which concerns the claimant's work for that employing

unit. An employing unit may also inspect records in which it is identified as a party of interest and records relating to its employer status or tax liability. Unemployment compensation records may only be released to an attorney or agent if the department verifies that the attorney or agent actually represents a claimant or employing unit. Records may be released to other individuals as required by state or Federal law.

Section ILHR 149.04 requires the department to disclose unemployment compensation records to any person or agency as required by State or Federal law. This section also mandates disclosure of unemployment compensation records to specified agencies and limits the types of information which are released to other designated agencies.

Section ILHR 149.05 allows the department the option of disclosing unemployment compensation records to other persons and agencies. Even under this optional disclosure, the department must be satisfied that the person or agency has a need for the record. Furthermore, the department may only disclose that portion of the record necessary to complete the disclosure request.

Section ILHR 149.06 prohibits any person or government unit or agency to which the department has disclosed a record from disclosing information in that record to a third party without the prior written approval of the department.

Section ILHR 149.07 requires a record sharing agreement between the department and certain agencies before unemployment compensation records may be shared and also authorizes the department to require such agreements in the case of certain other designated agencies. Every record sharing agreement must be in writing and for a fixed period of time. Each record sharing agreement must contain certain provisions including a provision stating the purpose for which the agreement is made and a statement of the specific information needed.

Section ILHR 149.08 authorizes the department to charge a fee for copying

unemployment compensation records which may not exceed the actual, necessary and direct cost of reproduction of the record. The department may impose reasonable restrictions on the manner of access to an original record if it is irreplaceable or easily damaged.

Section ILHR 149.09 provides a penalty for anyone who, after receiving a record from the department, permits inspection or disclosure of the record without the department's authorization.

Section ILHR 140.08 specifies the requirements for release and viewing of unemployment compensation records in the administrative hearing process. This section provides for the private inspection of records if the interests of justice so require. An administrative law judge may also issue a protective order to prohibit the parties and their representatives from disclosing any evidence and exhibits listed as confidential in the protective order if the interests of justice so require.

Section ILHR 150.01 is repealed since these provisions are preserved in section ILHR 149.04.

SECTION 1. ILHR 140.001(7) is repealed and recreated to read:

140.001(7) "Representative" means any attorney or agent authorized to represent any party of which the department has notice.

SECTION 2. ILHR 140.001(8) is repealed.

SECTION 3. ILHR 140.08 is repealed and recreated to read:

140.08 MAINTENANCE OF HEARING FILES; LIMITED DISCOVERY; INSPECTION OF RECORDS. (1) PRE-HEARING STAGE. (a) The hearing office shall compile a hearing file for every case in which a request for hearing has been received which shall contain the papers, documents and departmental records relating to the issue of the hearing. Prior to the scheduled date of the hearing, a party to a hearing may inspect the hearing file and procure copies of file contents during regular hearing office hours at the hearing office or other convenient location as determined by the hearing office. If requested, the hearing office may mail copies of file contents to a party. The department may allow such inspection or release of file contents to a party's representative, union agent or legislator only if that individual indicates by a written or verbal statement that the individual has authorization from the party.

(b) Unless the administrative law judge orders otherwise, the sole means of discovery available to a party or representative prior to a hearing is inspection of the hearing file and procurement of copies of file contents. The provisions of ch. 804, Stats., do not apply to hearings under ss. 108.09 and 108.10, Stats.

(c) The administrative law judge may deny a request to inspect the hearing file or

procure copies of file contents on the day of the hearing if such inspection or procurement would delay or otherwise interfere with the hearing.

(2) HEARING STAGE. At the hearing, evidence and exhibits are open to inspection by any party or representative except that the administrative law judge may conduct a closed inspection of evidence and exhibits if the interests of justice so require. The judge may sequester from the hearing room any person, party or representative as part of the closed inspection. The judge may also issue a protective order to prohibit the parties and their representatives from disclosing any evidence and exhibits listed as confidential in the protective order if the interests of justice so require.

(3) POST HEARING STAGE. After the hearing is concluded, a party or representative may inspect any hearing file contents that the party or representative may inspect under subs. (1) and (2), including the hearing tapes, written synopsis of testimony, and any transcript which is prepared at the department's direction. Any person who is not a party or representative at the hearing may only inspect the following:

(a) The initial determination.

(b) The exhibits submitted and marked as exhibits at the hearing, whether or not received by the administrative law judge.

(c) The appeal tribunal decision issued for the hearing.

(d) The hearing tapes.

(e) The written synopsis of testimony.

(f) The transcript of the testimony, if one is prepared at the department's direction.

(4) CONFIDENTIALITY OF CERTAIN RECORDS AT ALL STAGES OF HEARING. (a) Notwithstanding subs. (1) to (3), neither an employing unit which is a party to a hearing nor its representative may inspect the worker's unemployment compensation record as that record

relates to work for another employing unit unless an administrative law judge approves a request.

(b) Notwithstanding subs. (1) to (3), no party, representative or other person may inspect the following:

1. The investigation report containing the summation of interviews and the rationale used by the department in issuing the initial determination.

2. Department memoranda concerning unemployment tax litigation strategy.

3. The investigation reports of department auditors concerning the status and liability of employing units under ch. 108, Stats.

4. Evidence and exhibits examined by the administrative law judge in a closed inspection under sub. (2).

5. Evidence and exhibits declared confidential under a protective order issued by the administrative law judge.

6. The handwritten notes made by the administrative law judge at the hearing.

SECTION 4. Chapter ILHR 149 is created to read:

CHAPTER ILHR 149

DISCLOSURE OF UNEMPLOYMENT COMPENSATION RECORDS

ILHR 149.001 DEFINITIONS. In this chapter:

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

(2) "Employee" has the meaning designated in s. 108.02(12), Stats.

(3) "Employer" has the meaning designated in s. 108.02(13), Stats.

(4) "Employing Unit" has the meaning designated in s. 108.02(14m), Stats.

(5) "Government unit" has the meaning designated in s. 108.02(17), Stats., and also includes any agency, instrumentality, corporate or otherwise, of the United States of America, and the governing body of a federally recognized American Indian tribe or band in this state.

(6) "Public housing agency" means any state, county, municipality, or other governmental entity or public body, or agency or instrumentality thereof, which is authorized by the U.S. department of housing and urban development to engage in or assist in the development or operation of low-income housing.

(7) "Unemployment compensation record" means any material which contains, records or preserves written, drawn, printed, spoken, visual or electromagnetic information, regardless of physical form or characteristics:

(a) Relating to the wages earned by a worker from one or more employing units including supporting data, and which has been created or is being kept by the department in connection with the administration of ch. 108, Stats., or as required by Federal law, and also includes the record on which an employer makes a quarterly report of total employment or wages or both to the department;

(b) Relating to records kept by the department in connection with the processing of a claim for benefits under ch. 108, Stats., or for other benefits or allowances under similar programs administered by the department pursuant to federal law; and

(c) Relating to records kept by the department concerning employers and employing units including but not limited to audit records, coverage records, successorship records, rating records, collection records, and related correspondence.

ILHR 149.01 PURPOSE. Under s. 108.14(7), Stats., the unemployment compensation records

made or maintained by the department are confidential and shall be open to public inspection or disclosure only to the extent that the department permits in the interest of the unemployment compensation program. This chapter specifies the conditions and circumstances under which the department shall permit such records to be open to public inspection or disclosure. This chapter also specifies conditions for the sharing of information from unemployment compensation records between the department and other government units or persons. This chapter also specifies the conditions under which unemployment compensation records may be disclosed to claimants, employing units, their agents and other individuals.

149.02 CONFIDENTIALITY OF RECORDS. Under s. 108.14(7), Stats., the unemployment compensation records made or maintained by the department are confidential and not open to public inspection or disclosure except as otherwise provided in this chapter and chapter ILHR 140. In the interest of the unemployment compensation program, the department may disclose the following:

(1) Any unemployment compensation record which has been screened to prevent identification of the worker or employing unit which is the subject of the record.

(2) The name, address, standard industrial classification and employment size group of any employing unit.

149.03 DISCLOSURE OF RECORDS TO CLAIMANTS, EMPLOYING UNITS, THEIR AGENTS AND OTHER INDIVIDUALS. (1) CLAIMANTS AND EMPLOYING UNITS. Except as otherwise provided under s. ILHR 140.08, the department shall make the following records available to the following persons upon request:

(a) An unemployment compensation record concerning a claimant available to that

claimant;

(b) An unemployment compensation record concerning a claimant's work for an employing unit available to that employing unit;

(c) An unemployment compensation record concerning a determination to which an employing unit is identified as a party of interest under s. 108.09, Stats., available to that employing unit; and

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

(2) AGENTS AND ATTORNEYS. Except as provided under s. ILHR 140.08, the department may release an unemployment compensation record to an attorney or agent of a claimant or employing unit under sub. (1), only if the attorney or agent furnishes a written statement from the claimant or employing unit authorizing release of the record or if the department verifies that this attorney or agent represents the claimant or employing unit.

(3) OTHER INDIVIDUALS. The department shall release an unemployment compensation record to other individuals if such disclosure is required by law.

149.04 MANDATORY DISCLOSURE OF UNEMPLOYMENT COMPENSATION RECORDS AND

OTHER INFORMATION. (1) UNEMPLOYMENT COMPENSATION RECORDS; DISCLOSURE REQUIRED BY LAW. The department shall disclose unemployment compensation records to any person or agency as required by state or federal law.

(2) UNEMPLOYMENT COMPENSATION RECORDS; DISCLOSURE TO CERTAIN AGENCIES. The department shall disclose unemployment compensation records to the following:

(a) Any government unit in its administration of a program of general relief or general assistance; aid to families with dependent children; medicaid; food stamps; assistance for the

aged; aid for the blind; aid for the permanently and totally disabled; aid for the aged, blind or disabled; supplemental security income; federal old-age survivors and disability benefits; and child support, including the federal parent locator service.

(b) The U. S. department of housing and urban development in its administration of the housing assistance program.

(c) The railroad retirement board.

(d) Any other agency of the United States charged with the administration of an unemployment compensation law.

(e) Any other state to properly administer its unemployment compensation law.

(f) A representative of a public housing agency.

(g) The labor and industry review commission.

(3) DISCLOSURE OF OTHER INFORMATION. (a) Public works agency. The department shall disclose, upon request, to any agency of the United States charged with the administration of public works or public assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of the recipient's rights to further compensation under ch. 108, Stats.

(b) Lottery board. The department shall disclose to the lottery board, upon request, information regarding any delinquency in the payment of contributions under ch. 108, Stats., by any person who desires to contract with the lottery board for the retail sale of lottery tickets as provided under s. 565.10(3)(b), Stats.

149.05 OPTIONAL DISCLOSURE OF UNEMPLOYMENT COMPENSATION RECORDS. (1)

Pursuant to s. 108.14(7), Stats., the department may disclose unemployment compensation records to the following persons or government units if the department approves the purposes

for which the records are requested:

- (a) The internal revenue service.
- (b) The social security administration.
- (c) The U. S. department of labor.
- (d) The bureau of labor statistics.
- (e) The state department of revenue.
- (f) The division of vocational rehabilitation of the state department of health and social services.
- (g) Any legislative service agency listed under ch. 13, Stats.
- (h) Any division of the department or corresponding unit in another state agency, in the government of another state, or in the federal government.
- (i) Any taxing authority of the United States or of this state or any of its political subdivisions.
- (j) A member of the state legislature or of the U. S. Congress or his or her staff assistant, in connection with that individual's official duties but only that portion of the records relating solely to the requesting constituent's case.
- (k) A union representative when acting as an agent for a claimant.
- (l) Colleges, universities, government units, or other organizations or persons for research projects of a public nature which benefit the unemployment compensation program.
- (m) Any federal law enforcement agency or law enforcement agency of the state or any of its political subdivisions, if the worker or employing unit whose record is being sought is the subject of a criminal investigation.
- (n) Any person whom the department authorizes to use, print or otherwise reproduce unemployment compensation records for purposes of demonstrating services or equipment in connection with the administration of this chapter.

(2) The department may disclose only that portion of the records and information as is necessary to complete the request.

149.06 RELEASE OF RECORDS TO THIRD PARTIES. No person, government unit or other agency to which the department discloses an unemployment compensation record under ss. ILHR 149.04 and 149.05 may disclose information obtained from that record to a third party without the prior written approval of the department.

149.07 RECORD SHARING AGREEMENTS. (1) The department shall require a record sharing agreement to be in effect before sharing unemployment compensation records between the department and any person, government unit or agency enumerated under s. ILHR 149.04 (2)(a), (b), (c) and (f).

(2) The department may require a record sharing agreement to be in effect before sharing unemployment compensation records between the department and any person, government unit or agency enumerated under s. ILHR 149.04(2)(d), (e) and (g), (3) and s. ILHR 149.05.

(3) Any record sharing agreement shall be in writing for a prescribed period of time and shall contain a provision:

(a) Stating the purpose for which the record sharing agreement is made and a statement of the specific information needed.

(b) That the person, government unit or agency may not use the information for any other purpose than as stated under par. (a).

(c) That all of the department's costs in providing information from its unemployment compensation records shall be paid by the person, government unit or agency which is party to the agreement unless the agreement provides for the reciprocal sharing of costs.

(d) That the person, government unit or agency may not release information obtained from any unemployment compensation record to a third party without the prior written approval of the department.

(e) That the person, government unit or agency verify the information in an unemployment compensation record released by the department if the person, government unit or agency may take any action detrimental to the interests of the worker or employing unit which is the subject of the record.

(f) That the person, government unit or agency maintain a system of security including a procedure for the destruction of confidential information.

149.08 COPYING OF UNEMPLOYMENT COMPENSATION RECORDS. (1) The department may charge a fee for copying an unemployment compensation record for an individual who is entitled to a copy. The fee may not exceed the actual, necessary and direct cost of reproduction of the record.

(2) The department may permit an individual who is entitled to an unemployment compensation record, the form of which does not permit copying, to photograph the record or the department may photograph the record for the individual.

(3) The department may impose reasonable restrictions on the manner of access to an original unemployment compensation record if the record is irreplaceable or easily damaged.

149.09 PENALTIES. Any person who permits inspection or disclosure of an unemployment compensation record that is provided to that person by the department without authorization of the department shall be subject to the penalties provided under s. 108.24(4), Stats.

SECTION 5. ILHR 150.01 is repealed.

SECTION 6. 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.

RECEIVED
APR 7 1993
Revisor of Statutes
Bureau

ILHR 149.amk

Tommy G. Thompson
Governor
Carol Skornicka
Secretary



Mailing Address:
201 E. Washington Avenue
Post Office Box 7946
Madison, WI 53707-7946
Telephone (608) 266-7552

State of Wisconsin
Department of Industry, Labor and Human Relations

April 7, 1993

Gary Poulson
Assistant Revisor of Statutes
2nd Floor
119 Martin Luther King Blvd.
Madison, Wisconsin 53703

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

RECEIVED

APR 7 1993

Revisor of Statutes
Bureau

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 92 - 94

RULE NO. Chapter ILHR 149

RELATING TO: DISCLOSURE OF UNEMPLOYMENT COMPENSATION RECORDS

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 included for permanent rules. A fiscal estimate and fiscal estimate worksheet is included with an emergency rule.

Respectfully submitted,

Carol Skornicka
Secretary