

CR 94-170

# RULES CERTIFICATE

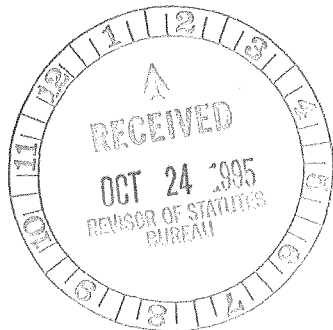
STATE OF WISCONSIN )  
 ) SS  
DEPT. OF INDUSTRY, )  
LABOR & HUMAN RELATIONS )

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 Benefit Claiming Procedures  
(Subject)

were duly approved and adopted by this department on October 20, 1995  
(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 4:00 p.m. in the city of Madison, this 20th day of Oct. A.D. 19 95.

[Signature]  
Secretary

# ORDER OF ADOPTION

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

ss. 101.02(1), 108.14(2), and 227.11(2), Stats., \_\_\_\_\_

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

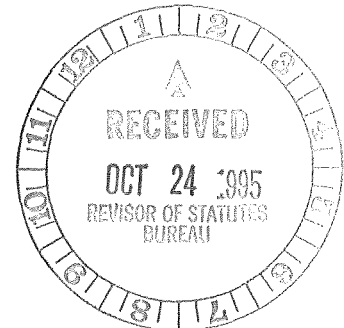
repeals and recreates;     repeals and adopts rules of Wisconsin Administrative Code chapter(s):

Chapter ILHR 129  
(Number)

Benefit Claiming Procedures  
(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: October 20, 1995

DEPARTMENT OF INDUSTRY, LABOR AND  
HUMAN RELATIONS

  
Secretary



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

# RULES in FINAL DRAFT FORM

**Rule No.:** Chapter ILHR 129

**Relating to:** Benefit Claiming Procedures

Clearinghouse Number: 94-170

The Wisconsin Department of Industry, Labor and Human Relations proposes an order to repeal ILHR 129.01(2)(c), 129.01(3)(g) and (4), 129.02(2) and (3), 129.03(2), and 129.04(1)(a) to (c); to renumber ILHR 129.01(2)(d) and 129.01(3)(d); to renumber and amend ILHR 129.01(3)(intro.), (c), (e) and (f), and 129.03(1); to amend ILHR 129.01(title), 129.01(1), 129.01(2)(a), 129.02(1)(b), ILHR 129.04(title), 129.04(1), 129.04(2)(a)(intro.), 129.04(2)(a)2 and 3, 129.04(2)(b)1, 129.05(1) and (2); to repeal and recreate ILHR 129.01(2)(b), 129.01(3)(a) and (b), and 129.02(1)(a); and to create ILHR 129.01(1)(title), 129.01(2)(title), 129.01(2)(a)1 and 2, 129.01(3)(title), 129.02(2), 129.04(2)(title), 129.04(2)(a)4, 129.05(1)(title) and ILHR 129.05(2)(title); relating to benefit claiming procedures.

STATUTORY AUTHORITY: ss. 101.02(1), 108.06(2), 108.08(1), 108.14(2), and 227.11(2)

STATUTES INTERPRETED: ss. 108.06(2), 108.08(1)

ANALYSIS OF PROPOSED RULES PREPARED BY THE DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS.

Wisconsin is redesigning its unemployment insurance program to provide greater service to its customers at the lowest possible cost. Taking advantage of state-of the art technology, the department plans to allow unemployment compensation (UC) claimants to file initial, continued, transitional and re-activated claims by telephone, mail or in-person. The expansion of filing methods requires change in the administrative rules.

Section 108.08(1), Stats., provides that the department shall prescribe by rule the time and manner in which an individual will give notice of unemployment to the department for the purposes of establishing eligibility for unemployment compensation benefits. Section 108.06(2) discusses the requirements for establishing a benefit year. Chapter ILHR 129, Benefit Claiming Procedures, discuss the methods by which a claimant shall establish a benefit year. The chapter also includes the means by which a claimant may file a claim for initial, continued or transitional UC benefits. The rule also provides the authority for the department to mail checks for the payment of benefits to a claimant's address. Under current administrative rules, a claimant must report in-person to establish a benefit year. An initial claim must be filed in the manner prescribed by the department, that is, in-person reporting. Continued claims may be filed either in-person, by mail or by telephone. However, once there is a break in an individual's claim, he or she must again report in-

person. Transitional claims are handled automatically by computer or an individual may report in-person.

ILHR 129.01 is amended to allow a claimant to file an initial, continued, resumed, or transitional claim either in-person, by telephone or by a method prescribed by the department. The rule is left open to allow for transition to technologies other than telephones when they become available.

ILHR 129.01(2) addresses the time period and methods of filing weekly certifications for continued claims for either total or partial unemployment. Specific instructions are given regarding weekly certifications submitted via telephone or mail in the creation of ILHR 129.01(2)(a)1 and 2. ILHR 129.01(2)(b) discusses how the department will handle weekly certifications which are submitted timely but incomplete. This subsection also details the rules on what a claimant should do if he or she does not receive a benefit check or explanation of why payment is not being made after the claimant as submitted a complete, timely weekly certification.

ILHR 129.01(3) addresses resumed claims, that is the procedure to follow if a claimant stops filing claims for one or more weeks or submits an untimely weekly certification.

ILHR 129.01(4) has been amended to update the types of exceptional circumstances recognized by the department for all types of claims. One amendment places more responsibility on a claimant who is familiar with the claiming procedures but whose employer fails to post the required notice concerning UC eligibility. The department's position is that a claimant who admits knowledge of the benefit claiming procedures should not be exempted from following those procedures only because the employer has not posted a notice. Finally, in accordance with changes made to Chapter 108 by SB-669, the rule specifically addresses as an exceptional circumstance the situation where a school year employe in a non-professional capacity does not file a timely claim for benefits because the claimant has been given reasonable assurance of employment in the next year or term and subsequently that assurance is withdrawn.

ILHR 129.02(1) is amended to permit all claimants to establish a benefit year in accordance with the notification rules of ILHR 129.01 rather than requiring strictly in-person reporting.

ILHR 129.02(2) and (3), and ILHR 129.03(2) are repealed as unnecessary and duplicative since the information contained in these sections is provided for in the statutes or other provisions of ILHR 129.

ILHR 129.03(1) is renumbered and amended to reflect that the same exceptional circumstances which apply to giving notice or unemployment apply to the backdating of benefit years.

ILHR 129.04 is amended to eliminate language which is repetitive of that which is in the statute and to reflect current practices regarding the setting aside of benefit years.

ILHR 129.05 is amended to allow for direct deposit of benefit checks in a bank account and to recognize the offsets to benefit checks which are provided for in state and federal law.

Chapter ILHR 129

**BENEFIT CLAIMING PROCEDURES**

- |             |  |             |                      |
|-------------|--|-------------|----------------------|
| ILHR 129.01 | Notice of unemployment                       | ILHR 129.04 | Department set aside |
| ILHR 129.02 | Establishment of benefit<br>year             |             | of benefit year      |
| ILHR 129.03 | Backdating of benefit year;<br>circumstances | ILHR 129.05 | Payment of benefits  |

SECTION 1. ILHR 129.01 (title) is amended to read:

ILHR 129.01 (title) NOTICE OF UNEMPLOYMENT.

SECTION 2. ILHR 129.01(1) is amended to read:

ILHR 129.01(1) (title) INITIATING A CLAIM. (1) A claimant ~~shall be~~ is eligible under s. 108.08, Stats., for benefit purposes ~~as of the first~~ for any week of total or partial unemployment ~~in which~~ only if, as of the first week being claimed, the claimant ~~initiates the benefit claim in the manner directed by the department, and, thereafter, gives due notice of unemployment by filing a claim certification as provided in this section~~ notifies the department in person, by telephone if authorized by the department, or as otherwise prescribed by the department, during that week of the claimant's intent to initiate the claim and complies with the initial and weekly filing procedures as directed by the department. Any claimant who stops filing ~~claim~~ weekly certifications for one or more weeks ~~shall again report in person to a public employment office to initiate an additional~~ or who files a late weekly certification must comply with the requirements of this subsection to resume a claim. ~~Benefits are only payable beginning with the week in which the claimant files an additional claim. After the claimant has initiated the additional claim, he or she shall again give due notice of unemployment as required in this section.~~

SECTION 3. ILHR 129.01(2)(title) is created to read:

ILHR 129.01(2)(title) CONTINUED CLAIMS.

SECTION 4. ILHR 129.01(2)(a) is amended to read:

ILHR 129.01(2)(a) ~~For a~~ A claimant is eligible for benefits for any week of total or partial unemployment, the claimant shall submit the claim form to only if the claimant files a weekly certification with the department in the manner prescribed by the department, within 14 days following the date the department mailed the claim form to the claimant, or within 14 days following the end of the week for which benefits are claimed, whichever occurs later. A claimant filing either the weekly certification by telephone or mail shall comply with the procedures in subd. (a)(1) or (a)(2).

SECTION 5. ILHR 129.01(2)(a)1. and 2. are created to read:

ILHR 129.01(2)(a)1. If the claimant files a weekly certification by telephone, the department shall notify the claimant during the telephone transaction for which weeks the claimant may file a weekly certification. The department shall notify the claimant at the end of the telephone transaction if the weekly certification has been accepted. If the claimant does not receive a check for the weeks claimed, or an explanation as to why benefits were not paid, within 7 days from the date the claimant entered the telephone weekly certification, the claimant shall contact the department to receive directions on how to proceed with the claim no later than 14 days following the end of the week in which the telephone weekly certification was entered.

2. If the claimant files a weekly certification by mail, the department must receive the weekly certification within 14 days following the end of the week for which benefits are claimed or 14 days following the date the department mailed the weekly certification to the claimant, whichever occurs later. If the claimant does not receive a check, or an explanation as to why benefits were not paid, within 7 days from the date the weekly certification was mailed by the claimant, the claimant shall contact the department. The claimant shall contact



the department to receive directions on how to proceed with the claim within 14 days following the end of the week in which the claimant mailed the weekly certification.

SECTION 6. ILHR 129.01(2)(b) is repealed and recreated to read:

ILHR 129.01(2)(b). A claimant files a weekly certification when the department receives a completed, timely weekly certification. The department receives a certification by telephone or mail when one of the following is met:

1. The department receives a weekly certification submitted by telephone when the claimant is notified at the end of the telephone transaction that the weekly certification has been accepted. An incomplete telephone weekly certification shall not be accepted. If the claimant is not notified at the end of the telephone transaction that the weekly certification has been accepted, that certification is not filed.
2. The department receives a mailed weekly certification within the timeframe established in subd.(a)2. A mailed weekly certification postmarked on or prior to the last day specified under subd.(a)2., but received by the department on a subsequent day, is not filed. A claimant files a mailed weekly certification if the department receives the certification on the next succeeding business day if the last day for filing falls on Saturday, Sunday, any of the holidays enumerated under ss. 230.35(4) (a) and 757.17, Stats., or any other day on which mail is not delivered by the postal authorities. If a claimant submits a timely but incomplete mailed weekly certification, the department shall send the claimant a duplicate weekly certification, and that claimant shall file the duplicate weekly certification within 14 days following the date the department mailed the duplicate weekly certification to the claimant.

SECTION 7. ILHR 129.01(2)(c) is repealed.

SECTION 8. ILHR 129.01(2)(d) is renumbered ILHR 129.01(2)(c).

SECTION 9. ILHR 129.01(3) (title) is created to read:

ILHR 129.01(3) (title) RESUMED CLAIMS.

SECTION 10. ILHR 129.01(3) is renumbered ILHR 129.01(4) and amended to read:

ILHR 129.01(4)(title) WAIVER; EXCEPTIONAL CIRCUMSTANCES. (4) The department shall waive the requirements of this ~~section~~ chapter if exceptional circumstances exist. Exceptional circumstances include, but are not limited to, the following:

SECTION 11. ILHR 129.01(3)(a) and (b) are repealed and recreated to read:

ILHR 129.01(3)(a). A claimant who stops filing weekly certifications for one or more weeks or who files a late weekly certification for any week may resume a claim only by complying with the notice provisions of sub. (1).

(b) A claimant who submits an untimely weekly certification has stopped filing weekly certifications. A claimant is eligible for benefits for any week falling between the week for which the untimely weekly certification was submitted and the week in which the claimant notifies the department as prescribed in sub. (1) only if the day on which the notification occurs is within 14 days after the close of the week falling between the week for which the untimely weekly certification was submitted and the week in which the claimant notifies the department.

SECTION 12. ILHR 129.01(3)(c) is renumbered ILHR 129.01(4)(a) and amended to read:

ILHR 129.01(4)(a). An error relating to the claimant's giving of notice made by personnel of the department, or a reasonable misunderstanding by the claimant based on information given to the claimant by the department.

SECTION 13. ILHR 129.01(3)(d) is renumbered ILHR 129.01(4)(b).

SECTION 14. ILHR 129.01(3)(e) and (f) are renumbered ILHR 129.01(4)(c) and (d) and amended to read:

ILHR 129.01(4)(c) ~~The failure of the claimant did not comply because the claimant was not aware of the duty to notify the department and the claimant's most recent employer failed to post or maintain any notice as to claiming unemployment benefits as required under s. ILHR 120.01.~~

~~(d) The claimant reasonably expected to perform work during the week but did not receive timely notice from the employer that work would not be available so as to allow the claimant sufficient time to appear at the public employment office to initiate or reactivate the benefit claim in that week performed services as a school year employe in other than an instructional, research or principal administrative capacity and had reasonable assurance of performing services for the employer in a similar capacity in the 2nd academic year or term but was subsequently not offered the opportunity to perform such services.~~

SECTION 15. ILHR 129.01(3)(g) and (4) are repealed.

SECTION 16. ILHR 129.02(1)(a) is repealed and recreated to read:

ILHR 129.02(1)(a) Comply with the notification and filing requirements under s. ILHR 129.01; and

SECTION 17. ILHR 129.02(1)(b) is amended to read:

ILHR 129.02(1)(b) Have the minimum amount of wages in ~~his or her~~ the claimant's base period as required under s. 108.04(4)(a), Stats.

SECTION 18. ILHR 129.02(2) is created to read:

A claimant establishing a second or subsequent benefit year shall, in addition to the requirements of sub. (1), comply with the earnings requirement of s. 108.04(4)(c), Stats.

SECTION 19. ILHR 129.02(2) and (3) are repealed.

SECTION 20. ILHR 129.03(1) is renumbered ILHR 129.03 and amended to read:

ILHR 129.03 BACKDATING OF BENEFIT YEAR; CIRCUMSTANCES. 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~~ The department shall permit the backdating of a benefit year if an exceptional circumstances exists. Exceptional circumstances include, but are not limited to, those listed in s. ILHR 129.01(4).

SECTION 21. ILHR 129.03(2) is repealed.

SECTION 22. ILHR 129.04(title) is amended to read:

ILHR 129.04 (title) DEPARTMENT SET ASIDE OF BENEFIT YEAR.

SECTION 23. ILHR 129.04(1) is amended to read:

ILHR 129.04(1)(title) 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: the requirements of s. 108.06(2)(d), Stats., are met.

SECTION 24. ILHR 129.04(1)(a) to (c) are repealed.

SECTION 25. ILHR 129.04(2)(title) is created to read:

ILHR 129.04(2)(title) OTHER CONDITIONS.

SECTION 26. ILHR 129.04(2)(a) is amended to read:

ILHR 129.04(2)(a) If the claimant does not meet all of the requirements under sub. (1), the department may set aside the benefit year ~~if: under other conditions.~~ Other conditions include, but are not limited to, the following:

SECTION 27. ILHR 129.04(2)(a)2. and 3. are amended to read:

ILHR 129.04(2)(a)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; ~~or~~

SECTION 28. ILHR 129.04(2)(a)4. is created to read:

ILHR 129.04(2)(a)4. The claimant elects alternative filing because the claimant's benefit year was established in the last month of a calendar quarter and benefits were paid to the claimant prior to the department advising the claimant of the choice of alternative filing.

SECTION 29. ILHR 129.04(2)(b)1. is amended to read:

ILHR 129.04(2)(b)1. Has recovered, or has waived the recovery of, all benefits paid to the claimant for that benefit year; or

SECTION 30. ILHR 129.05(1) is amended to read:

ILHR 129.05(1)(title) METHOD OF PAYMENT. (1) The department shall pay benefits ~~through local offices~~ by checks mailed to the claimant's address of record with the department or by electronic deposit to a claimant's designated bank account unless the benefits are applied by the department for overpayments, forfeitures, child support payments under s. 108.13, or other assignments permitted under state or federal law.

SECTION 31. ILHR 129.05(2)(title) is amended to read:

ILHR 129.05(2)(title) CHARGING OF PAYMENT. (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 32 . Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s.227.22(2)(intro), Stats.

Tommy G. Thompson  
Governor  
Carol Skornicka  
Secretary



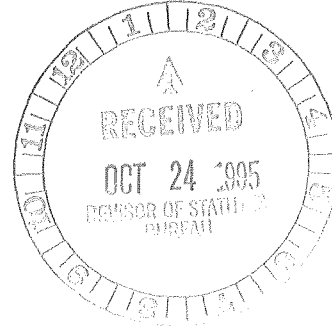
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## State of Wisconsin Department of Industry, Labor and Human Relations

October 20, 1995

Gary Poulson  
Assistant Revisor of Statutes  
Suite 800  
131 W. Wilson St.  
Madison, Wisconsin 53703-3233

Douglas LaFollette  
Secretary of State  
10th Floor  
30 West Mifflin Street  
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Dear Messrs. Poulson and LaFollette:

### TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO.: 94-170

RULE NO.: Chapter ILHR 129

RELATING TO: Benefit Claiming Procedures

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