

Chapter ILHR 131

SELF-EMPLOYMENT AND INCOME

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Note: Chapter ILHR 131 was created by emergency rule effective April 16, 1984.

**ILHR 131.001 Definitions.** In this chapter:

- (1) "Benefit year" has the meaning designated in s. 108.02 (24), Stats.
- (2) "Claim form" means the weekly form provided by the department or the employment security office of an agent state to a claimant on which the claimant submits information regarding the claimant's employment status and availability for work and which serves as a basis for the payment of unemployment benefits.
- (3) "Department" means the department of industry, labor and human relations.
- (4) "Week" has the meaning designated in s. 108.02 (12), Stats.
- (5) "Gross income", "gross profits" and "total income" have the meaning designated on the appropriate federal income tax forms relating to sole proprietorships, partnerships and farms.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

**ILHR 131.01 Legislative directive; department policy.** Under s. 108.04 (1) (e), Stats., a claimant who is self-employed is ineligible for unemployment benefits for any week in which the claimant has worked at self-employment unless the claimant establishes to the satisfaction of the department that he or she has made an active and bona fide search for employment. Under s. 108.05 (8), Stats., any income earned by a claimant in a given week from his or her self-employment is to be treated as wages for purposes of determining the claimant's weekly benefit amount for the week or weeks at issue. The legislature has directed the department to define, by rule, the terms "self-employment" and "income" for purposes of administering the aforementioned statutes. The purpose of this chapter is to implement this legislative directive.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

**ILHR 131.02 Self-employment.** (1) For purposes of ss. 108.04 (1) (e) and 108.05 (8), Stats., "self-employed" means engaged, not in the employ of another, in the formation, development or operation of a trade, business, enterprise, profession or any other activity undertaken for the purpose of producing income and which is in the form of a sole proprietorship, partnership, joint venture or other similar legal entity.

(2) A claimant is not self-employed within the meaning of sub. (1) if the income from his or her activity is principally in the nature of a return on investment including, but not limited to, income from rent, royalties,

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estates, trusts, interest and dividends, unless the claimant performs services for 17.5 hours or more in any week in connection with the production or acquisition of such income.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

**ILHR 131.03 Income and allowable deductions.** For purposes of s. 108.05 (8), Stats., "income" from self-employment means the amount of gross income, gross profits or total income earned from the self-employment activity for a given period of time minus total allowable deductions. Allowable deductions are those which are attributable to the self-employment activity and which are legally reportable on the claimant's federal income tax return and accompanying schedules.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

**ILHR 131.04 Partnership or joint venture.** In the case of a claimant whose self-employment income is derived from a partnership, joint venture or other similar legal entity, the department shall consider that all partners or joint participants share equally unless the claimant shows evidence of an agreement to the contrary.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

**131.05 Determination of self-employment income.** (1) **REPORTING OF SELF-EMPLOYMENT INCOME.** Any claimant who is self-employed within the meaning of s. ILHR 131.02 shall report his or her weekly self-employment income on the claim form which the claimant submits to the department for a given week. The income to be reported is the amount which the department authorizes the claimant to report as actual or estimated weekly self-employment income under this section.

(2) **PROCEDURE FOR REPORTING OF ACTUAL AMOUNTS.** A claimant may, with the department's approval, report the amount of actual self-employment income earned for a given week. The department may require the claimant to establish to the satisfaction of the department that the amount of actual self-employment income so reported is accurate and that the method used to make that calculation is reasonable. If the department finds that the amount of actual self-employment income reported is inaccurate or that the method used to make that calculation is not reasonable, the department shall make an estimate of the claimant's self-employment income.

(3) **PROCEDURE FOR REPORTING OF ESTIMATED AMOUNTS.** (a) To assist the department in making an estimate of self-employment income, the department may require the claimant to furnish a copy of his or her federal income tax returns and accompanying schedules filed with the internal revenue service within the 2-year period prior to the date on which the request for such returns and schedules is made. The department may also require the claimant to provide, on a form furnished by the department, the amount of expected gross income, gross profits or total income together with allowable deductions that would be reportable for federal income tax purposes for the self-employment activity during the benefit year.

(b) The department shall make an estimate of the claimant's prospective self-employment income during the benefit year taking into consideration the available tax returns and schedules, departmental forms and any other evidence submitted to or available to the department. The de-

partment shall divide the figure representing the claimant's prospective self-employment income during the benefit year by the number of weeks in which the department determines that the claimant is expected to be engaged in self-employment during that benefit year. The quotient obtained represents the estimated prospective weekly self-employment income which is to be treated as wages in determining the claimant's benefit amount for a given week.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

**ILHR 131.06 Departmental adjustments. (1) ADJUSTMENTS FOR WEEKS NOT YET PAID.** The department may, on its own initiative or at the claimant's request, make an adjustment to the estimated prospective weekly self-employment income figure for weeks for which benefits have not yet been paid. The department may not make an adjustment more frequently than once every 4 weeks.

**(2) ADJUSTMENTS FOR WEEKS PREVIOUSLY PAID. (a)** The department may, on its own initiative or at the claimant's request, make an adjustment to the weekly self-employment income figure previously reported by a claimant for weeks for which benefits have already been paid. The department shall only make adjustments under this subsection if the adjustment increases or decreases the figure which represents the amount of total benefits paid during the current benefit year by more than \$15.00.

**(b)** If an adjustment results in an overpayment of benefits, the claimant shall repay the benefits that the claimant was not entitled to receive. If an adjustment results in an underpayment of benefits, the department shall pay the claimant the additional benefits that the claimant is entitled to receive.

**(c)** The department may refuse to make an adjustment to benefits previously paid for weeks within a benefit year if the claimant's request for adjustment is received after May 30 following the year in which the benefit year ended. The request may be received on the next succeeding business day if May 30 falls on Saturday, Sunday, the last Monday in May or if mail is not delivered by the postal authorities on that day.

**(d)** The department may not make an adjustment to any case in which a claimant received benefits on or before June 9, 1984, for weeks 1 through 22 of 1984, or any combination thereof, if the application of this chapter to a case would result in an overpayment of benefits. The department may make an adjustment if s. 108.04 (11), Stats., applies or if benefits were improperly paid because of a technical or clerical mistake.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

**ILHR 131.07 Department verification.** The department may verify the amounts reported by a claimant as self-employment income. In order to make the verification, the department may require the claimant to produce any books, papers, documents or other records relating to the self-employment.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.