

Chapter ILHR 113

SETTLEMENT OF DISPUTES AND COMPROMISE OF LIABILITIES

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Note: Chapter ILHR 113 was effective on March 1, 1994, except that ss. ILHR 113.03 and 113.04 are also applicable to installment payment agreements entered on or after January 7, 1990.

ILHR 113.001 Definitions. In this chapter, unless a different meaning is expressly provided or the context clearly indicates a different meaning:

(1) "Action" means a circuit court proceeding for judicial review of a commission decision or an appeal to either the court of appeals or the supreme court.

(2) "Commission" means the labor and industry review commission.

(3) "Compromise" means department agreement to accept payment of less than the full amount of contributions, payments in lieu of contributions, interest, penalties and costs, as applicable, owed by an employer, former employer or by an individual liable for corporate liabilities, in complete fulfillment of the outstanding liability.

(4) "Decision" means a written adjudication of a determination by an appeal tribunal, or a written adjudication of a petition for review by the commission or a written adjudication of an action for judicial review by a court of competent jurisdiction.

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

(6) "Determination" means an initial determination issued under s. 108.10 (1), Stats.

(7) "Employer", in addition to the meaning contained in s. 108.02 (13), Stats., includes an employing unit which was formerly an employer under s. 108.02 (13), Stats.

(8) "Penalty" includes any tardy payment fee or late filing fee provided for in ch. 108, Stats., and a forfeiture assessed under s. 108.04 (11) (c), Stats., but does not include any fine or restitution arising under s. 108.24, Stats.

(9) "Same business or operation" means operation under the same unemployment compensation employer account, including any account transferred under s. 108.16 (8), Stats., with no intervening final determination of account termination under s. 108.02 (13) (i), Stats., provided, however, that 'same business or operation' shall not be deemed to extend beyond the date as of which the account would have been terminated under s. 108.02 (13) (i), Stats., and s. ILHR 110.16 but for an unpaid liability, unless the account was reopened under s. ILHR 110.17.

(10) "Settle" means to resolve a pending determination, decision or action by agreement.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94.

ILHR 113.01 Purposes. (1) As required under s. 108.10 (8), Stats., this chapter establishes standards for:

(a) The settlement of disputes between the department and parties to determinations, decisions or actions.

(b) The compromise of liabilities for contributions, reimbursements in lieu of contributions, interest, penalties and costs assessed under ch. 108, Stats.

(2) This chapter does not affect the application of s. 108.10 (1) and (6), Stats.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94.

ILHR 113.02 Settlement. (1) Under s. 108.10 (8), Stats., the department may settle in whole or in part:

(a) Any determination which has been appealed, which has not become final and which has been referred from the bureau of tax and accounting to the bureau of legal affairs; and

(b) Any decision or action which has not become final.

(2) Settlement shall be based upon advice of counsel for the unemployment compensation division, who shall certify that, after having fully investigated the matter, it is his or her opinion that one or more of the following conditions exists:

(a) The department has made an error of law or fact which, if corrected, would negate or change the initial determination issued in the case.

(b) Given the available evidence, there is significant doubt as to the ability of the department to prevail in the dispute with respect to one or more specific issues and there is little or no likelihood of producing sufficient additional evidence in favor of the department regarding the issues prior to or at a hearing under s. 108.10 (2), Stats.

(c) Prior to a hearing under s. 108.10 (2), Stats., the department has discovered additional relevant and material evidence which would negate or change the initial determination in the case.

(d) Given the evidence in the record or the nature of a decision at a lower level, or both, there is significant doubt as to the ability of the department to prevail on appeal with respect to one or more specific issues.

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(e) All or part of any interest liability was incurred as a result of undue delay on the part of the department such that there is valid reason to cancel that liability.

(f) There are valid legal defenses of estoppel or laches against the department as to all or part of the initial determination(s).

(3) A settlement may be implemented by any one or more of the following methods:

(a) Under s. 108.10 (1), Stats., the department may amend any initial determination affected by the settlement prior to a hearing on the determination(s).

(b) Under s. 108.10 (1), Stats., the department may set aside the applicable initial determination(s) prior to a hearing on the determination(s) and issue whatever new initial determination(s) are necessary to reflect the terms of the settlement.

(c) The department and the opposing party may enter into a written stipulation which sets forth the terms of the settlement. The stipulation is subject to the approval of the administrative law judge assigned to the case.

(d) The opposing party may withdraw all or part of the appeal of the department's initial determination(s).

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94.

ILHR 113.03 Compromise of employer liability. (1) Under s. 108.10 (8), Stats., the department may compromise the liability of any employer as established in any final determination, decision or action, together with any subsequent collection costs, if:

(a) The employer makes a sworn application for the compromise of the employer's liability to the department, including a financial statement if requested, in such form as the department prescribes;

(b) The employer is not a government unit;

(c) The employer is not the debtor in a case under the United States bankruptcy code with respect to any liability under ch. 108, Stats, which is not dischargeable in bankruptcy unless:

1. In a case under chapter 7 of the bankruptcy code, there are insufficient assets to pay the liability in full under with the statutory order of distribution; or

2. In a case under chapter 11 or 12 of the bankruptcy code, the confirmed plan of reorganization provides for the sale of or distribution to creditors of all of the property of the employer and there are insufficient assets to pay the liability.

(d) With respect to an employer that is a nonprofit organization and whose liability or any part of whose liability was incurred while subject to reimbursement financing status under s. 108.151 (2), Stats., the employer's assurance of reimbursement has either been applied to the liability or the application for compromise provides for such assurance; and

(e) The department finds that the employer is unable to pay the full amount of the contributions or payments in lieu of contributions, interest, penalties and costs, except, with respect to an employer still in the same business or

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operation as when the liability sought to be compromised was incurred:

1. The employer's application for compromise must offer payment in an amount not less than the unpaid contributions or unpaid payments in lieu of contributions, including any contributions owed as a successor under s. 108.16 (8) (f), Stats.;

2. The required payment of all interest, penalties or costs would pose an immediate threat to the financial viability of the employer; and

3. Current contributions or payments in lieu of contributions are being paid.

(2) If the conditions of sub. (1) are satisfied, the department shall determine the amount that the employer is able to pay and may issue an acceptance of the application for compromise in the determined amount.

(3) Notwithstanding the exception in sub. (1) (e), the department may compromise unpaid contributions on wages for domestic service arising under s. 108.02 (13) (d), Stats., for any time period prior to the effective date of the existence of a fiscal agent or fiscal intermediary under s. 46.27 (5) (i), Stats.

(4) Notwithstanding sub. (1) (e), in determining the amount of the accepted compromise, the department may consider whether:

(a) Any part of any interest liability was incurred as a result of undue delay on the part of the department such that there is valid reason to compromise the interest liability.

(b) In the opinion of counsel for the unemployment compensation division, the employer could have raised valid legal defenses of estoppel or laches against the initial determination(s).

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94.

ILHR 113.04 Compromise of personal liability. (1) The department may compromise the liability of any individual whose liability for the unpaid contributions, interest, penalties and costs of a corporation has been finally established under s. 108.22 (9), Stats., if:

(a) The individual makes a sworn application to the department for the compromise of the individual's liability, including a financial statement if requested, in such form as the department prescribes;

(b) The individual is not the debtor in a case under the United States bankruptcy code with respect to any liability under ch. 108, Stats., which is not dischargeable in bankruptcy unless:

1. In a case under chapter 7 of the bankruptcy code, there are insufficient assets to pay the liability in full under the statutory order of distribution; or

2. In a case under chapter 11 or 12 of the bankruptcy code the confirmed plan of reorganization provides for the sale of or distribution to creditors of all of the property of the individual and there are insufficient assets to pay the liability; and

(c) The department finds that the individual is unable to pay the full amount of the liability.

(2) If the conditions of sub. (1) are satisfied, the department shall determine the amount that the individual is able to pay and may issue an acceptance of the application for compromise in the determined amount.

(3) In making its finding that the individual is unable to pay the full amount of the liability under sub. (1) (c) and its determination of the amount that the individual is able to pay, the department shall consider the individual's present and prospective income.

(4) The department's acceptance of a compromise under this section shall not affect the liability of any other entity against which the department may issue or has issued a determination of liability for the unpaid contributions of the same corporation.

(5) In an application for compromise under this section, an individual liable or potentially liable at the time of application for the liabilities of more than one corporation under s. 108.22 (9), Stats., shall disclose all such liabilities, including any liabilities which are not final. Failure to make such disclosure shall make the individual ineligible for compromise of the undisclosed liability in any later application for compromise under this section.

(6) An individual granted a compromise under this section shall not be eligible for a compromise of any liabilities, of whatever nature, incurred for tax periods subsequent to the acceptance of the compromise.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94.

ILHR 113.05 General procedural provisions. (1) The department may request additional information and may also examine the employer and such other persons as it deems necessary, under oath, regarding the employer's application.

(2) The department shall acknowledge in writing the receipt of an application for compromise within 30 days of such receipt. The department's acceptance of the application for compromise shall be in writing and be issued with the concurrence of the treasurer of the unemployment compensation fund or his or her designee. The acceptance shall be effective only if the amount determined in the acceptance is paid to the department within 30 days from

the date of the acceptance, except as otherwise provided under an installment arrangement under sub. (3). Payment must be in cash or by guaranteed instrument payable only to the department.

(3) The department may allow payment of the determined amount by installment payments upon such conditions as the department shall prescribe. In the event of failure to make any installment payment when due, which failure is not excused in writing by the department, the department may declare its acceptance of the application for compromise to be null and void and may proceed to collect the balance of the original liability using whatever remedies are available to it by law.

(4) The submission of an application for compromise shall not operate to stay collection proceedings. However, the department may defer collection during the pendency of an application if it is satisfied that the interests of the state will not be jeopardized.

(5) Frivolous or incomplete applications and applications submitted for the purpose of delaying collection of the liability shall be immediately rejected.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94.

ILHR 113.06 Disposition of warrants. Upon timely payment of the amount set forth in the department's acceptance of compromise, the department shall issue a release of any outstanding warrant against the employer or individual.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94.

ILHR 113.07 Reopening compromised liability. The department may declare a compromise void at any time if it ascertains that:

(1) The employer or individual submitted a materially false application for compromise; or

(2) Prior to its acceptance of the application for compromise the employer or individual concealed or disposed of income or property which could have been used to pay any part of the original liability.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94.