

## Chapter DWD 149

### DISCLOSURE OF UNEMPLOYMENT INSURANCE RECORDS

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**Note:** Chapter ILHR 149 was renumbered Chapter DWD 149 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1997, No. 498.

**DWD 149.001 Definitions. (1)** IN GENERAL. Except as provided in sub. (2), unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

**(2)** IN THIS CHAPTER. Notwithstanding ch. DWD 100 and unless the context clearly indicates a different meaning, in this chapter:

(a) “Claim information” means information about all of the following:

1. Whether an individual is receiving, has received, or has applied for unemployment insurance.
2. The amount of unemployment insurance the individual is receiving or is entitled to receive.
3. The individual’s current or most recent home address.
4. For purposes of s. DWD 149.04 (2) (h) to (m), “claim information” also includes all of the following:

a. Whether the individual has refused an offer of work and, if so, a description of the job offered including the terms, conditions, and rate of pay.

b. Any other information contained in the department’s unemployment insurance records that is needed by the requesting agency to verify eligibility for, and the amount of, benefits.

(b) “Government unit” has the meaning designated in s. 108.02 (17), Stats., and also includes any unit of the federal government and the governing body of a federally recognized American Indian tribe or band in this state.

(c) “Public domain information” means all of the following:

1. Information about the organization of the department’s unemployment insurance division and the labor and industrial review commission.
2. Federal and state unemployment insurance statutes, rules, regulations, statements of general policy, and interpretations of general applicability.
3. Interstate agreements and agreements with the department of labor relating to administration of the unemployment insurance program.
4. Decisions of the labor and industry review commission.

(d) “Public official” means an official, agency, or public entity within the executive branch of the federal, state, Indian tribal, or local government with responsibility for administering or enforcing a law, or an elected official in federal, state, Indian tribal, or local government and includes the meaning specified in 20 CFR 603.2 (d) (2) to (5).

**Note:** Under “20 CFR 603.2 (d) (2) to (5)” ‘public official’ means:

(2) Public postsecondary educational institutions established and governed under the laws of the State. These include the following:

(i) Institutions that are part of the State’s executive branch. This means the head of the institution must derive his or her authority from the Governor, either directly or through a State WDB (Workforce Development Board), commission, or similar entity established in the executive branch under the laws of the State.

(ii) Institutions which are independent of the executive branch. This means the head of the institution derives his or her authority from the State’s chief executive

officer for the State education authority or agency when such officer is elected or appointed independently of the Governor.

(iii) Publicly governed, publicly funded community and technical colleges.

(3) Performance accountability and customer information agencies designated by the Governor of a State to be responsible for coordinating the assessment of State and local education or workforce training program performance and/or evaluating education or workforce training provider performance.

(4) The chief elected official of a local area as defined in WIOA (Workforce Innovation and Opportunity Act) sec. 3(9).

(5) A State educational authority, agency, or institution as those terms are used in the Family Educational Rights and Privacy Act, to the extent they are public entities.

(e) “Wage information” means information in the department’s unemployment insurance records about wages paid to an individual; the individual’s social security number; and name, address, state, and federal employer identification number of the employing unit that paid the wages to the individual.

**History:** Cr. Register, May, 1993, No. 449, eff. 6-1-93, r. (intro.), (1), (2), (3) and (4), cr. (1), renum. (5) to (2) and am., renum. (6) and (7) to 100.02 (47) and (67), Register, September, 1995, No. 477, eff. 10-1-95; CR 08-019: r. and recr. (2) Register July 2008 No. 631, eff. 8-1-08; **CR 18-033: am. (2) (d) Register May 2019 No. 761, eff. 6-1-19.**

**DWD 149.01 Purpose.** The purpose of this chapter is to implement s. 108.14 (7), Stats., and to comply with 20 CFR Part 603. Under s. 108.14 (7), Stats., the unemployment insurance 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 insurance program. This chapter specifies the conditions and circumstances under which the department may permit unemployment insurance records to be disclosed. This chapter shall be interpreted and applied consistently with the requirements of 20 CFR Part 603.

**History:** Cr. Register, May, 1993, No. 449, eff. 6-1-93; CR 08-019: am. Register July 2008 No. 631, eff. 8-1-08.

**DWD 149.02 Confidentiality of records. (1)** Unemployment insurance records made or maintained by the department are confidential and not open to public inspection or disclosure, except as provided in subs. (2) and (3).

**(2)** The department may disclose the following unemployment insurance records if the disclosure is in the interest of the unemployment insurance program and does not interfere with the efficient administration of the program:

(a) Public domain information.

(b) Appeals records and decisions with personally identifiable information, as defined in s. 19.62 (5), Stats., redacted as provided in s. DWD 140.09.

(c) Any unemployment insurance record that has been screened to prevent identification of the individual or employing unit that is the subject of the record or which could foreseeably be combined with other publicly available information to reveal any identifying particulars of an individual or employing unit.

(d) Unemployment insurance records as provided in ss. DWD 149.03 and 149.05.

**(3)** The department shall disclose unemployment records as provided in s. DWD 149.04.

(4) The department shall notify every claimant at the time of application and periodically thereafter that confidential unemployment insurance information pertaining to the claimant may be requested and used for other governmental purposes, including verification of eligibility for other government programs.

(5) The department shall notify every employer subject to ch. 108, Stats., annually that wage information and other confidential unemployment insurance information may be requested and used for other governmental purposes, including verification of an individual's eligibility for other government programs.

**History:** Cr. Register, May, 1993, No. 449, eff. 6-1-93; CR 08-019: r. and recr. Register July 2008 No. 631, eff. 8-1-08; CR 18-033: am. (2) (b) Register May 2019 No. 761, eff. 6-1-19.

**DWD 149.03 Disclosure of records to individuals, employing units, their agents, and authorized third parties.** (1) CLAIMANTS AND EMPLOYING UNITS. Except as otherwise provided under s. DWD 140.09, the department shall make the following records available to the following persons upon request:

(a) An unemployment insurance record concerning an individual is available to that individual.

(b) An unemployment insurance record concerning an individual's work for an employing unit is available to that employing unit.

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

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

(2) AGENTS AND ATTORNEYS. (a) The department may disclose an unemployment insurance record to an attorney or agent of an individual or employing unit under sub. (1), only if the attorney or agent furnishes a written statement from the individual or employing unit authorizing release of the record or if the department verifies that the attorney or agent represents the individual or employing unit.

(b) An elected official or the elected official's staff assistant is an agent when acting in response to a constituent's inquiry about an unemployment insurance issue. The department may release only that portion of the records relating solely to the requesting constituent's case.

(c) A union representative is an agent when acting for a claimant.

(3) AUTHORIZED THIRD PARTIES. (a) The department may disclose an unemployment insurance record to an authorized third party that is not an agent of an individual or employing unit if the third party provides a written release signed by the individual or employing unit to whom the information pertains. The release shall contain the following information:

1. The specific information sought.
2. The purpose for which the information is sought.
3. All parties who may receive the information.
4. A statement that the information obtained under the release will be used only for the purpose provided under subd. 2.
5. A statement that the department's unemployment insurance files will be accessed to obtain the information.

(b) The department may disclose an unemployment insurance record under this subsection only if the purpose specified under par. (a) 2. is limited to one or more of the following:

1. Providing a service to the individual such that the individual expects to receive a benefit as a result of signing the release.
2. Carrying out administration or evaluation of a public program to which the release pertains.

**History:** Cr. Register, May, 1993, No. 449, eff. 6-1-93; am. (1) (intro.) and (2), Register, September, 2000, No. 537, eff. 10-1-00; CR 08-019: am. (title), (1) (a) to (d) and (2), cr. (2) (b) and (c), r. and recr. (3) Register July 2008 No. 631, eff. 8-1-08.

**DWD 149.04 Mandatory disclosure of unemployment insurance records.** (1) DISCLOSURE REQUIRED BY LAW. The department shall disclose unemployment insurance records to any person or agency as required by state or federal law.

(2) FEDERALLY-MANDATED DISCLOSURES TO CERTAIN AGENCIES. The department shall disclose unemployment insurance records to the following:

(a) The internal revenue service for purposes of unemployment insurance tax administration.

(b) The U.S. citizenship and immigration services for purposes of verifying an individual's immigration status.

(c) A federal official for purposes of unemployment insurance program oversight and audits.

(d) Wage and claim information to the U.S. department of health and human services for purposes of the National Directory of New Hires under 42 USC 653a.

(e) Any other state to properly administer its unemployment insurance program.

(f) The name, address, ordinary occupation, and employment status of each recipient of unemployment insurance and a statement of the recipient's rights to further insurance under ch. 108, Stats., to any governmental unit for purposes of administering a program of public works or public assistance through public employment.

(g) The railroad retirement board.

(h) Wage and claim information to any government unit in the administration of a food stamp program under 7 USC 2011 to 2029 for purposes of determining an individual's eligibility for and amount of benefits.

(i) Wage and claim information to any state or local child support enforcement agency for purposes of locating individuals owing child support obligations and establishing and collecting child support.

(j) Wage and claim information to the U. S. department of housing and urban development or representatives of a public housing agency for purposes of determining an individual's eligibility for benefits or amount of benefits under a housing assistance program of the department of housing and urban development, provided the individual has signed a consent form.

(k) Wage and claim information to a government unit in the administration of a program funded under Temporary Assistance for Needy Families under 42 USC 601 to 619.

(L) Wage and claim information to any governmental unit administering the provisions of a Medicaid state plan approved under Title XIX of the Social Security Act.

(m) Wage and claim information to any governmental unit in the administration of Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled.

(3) OTHER REQUIRED DISCLOSURES. (a) 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.

(b) The department shall disclose wage and claim information to any government unit in the administration of a program of general relief or general assistance.

(c) The department shall disclose unemployment insurance records to the labor and industry review commission to perform its review functions.

**History:** Cr. Register, May, 1993, No. 449, eff. 6-1-93; am. (2) (intro.) and (a), Register, September, 2000, No. 537, eff. 10-1-00; CR 08-019: am. (title) and (1), r. and recr. (2) and (3) Register July 2008 No. 631, eff. 8-1-08.

**DWD 149.05 Permissive disclosure of unemployment insurance records.** (1) The department may disclose unemployment insurance records to any of the following persons

or government units if the department approves the purposes for which the records are requested:

(a) The United States department of labor, including for purposes of the federal workforce innovation and opportunity act, and the bureau of labor statistics.

(b) The Unemployment Insurance Advisory Council when reasonably necessary in the course of its duties under s. 108.14 (5), Stats.

(c) A local, state, Indian tribal, or federal government official, other than a clerk of court on behalf of a litigant, with authority to obtain the information pursuant to a subpoena or court order.

(d) A public official or its agent or contractor for use in the performance of official duties, including any of the following:

1. Any division of the department or corresponding unit in another state agency, the government of another state, or the federal government.

2. Any legislative service agency listed under ch. 13, Stats.

3. Any taxing authority of the United States or of this state or any of its political subdivisions.

4. Colleges, universities, government units, or other organizations or persons for research projects of a public nature that benefit the unemployment insurance program, only if on behalf of a public official.

5. Any federal law enforcement agency or law enforcement agency of the state or any of its political subdivisions, if the individual or employing unit whose record is being sought is the subject of a criminal investigation.

6. Any person whom the department authorizes to use, print, or otherwise reproduce unemployment insurance records for purposes of demonstrating services or equipment in connection with the administration of the unemployment insurance program.

(2) The department may make any other disclosure as provided in this chapter.

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

**History:** Cr. Register, May, 1993, No. 449, eff. 6-1-93; CR 08-019: r. and recr. Register July 2008 No. 631, eff. 8-1-08; CR 18-033: am. (1) (intro.), (a), (c), (d) (intro.), 5. Register May 2019 No. 761, eff. 6-1-19.

#### **DWD 149.06 Confidentiality safeguard requirements and disclosure of records to third parties.**

(1) Third party recipients of unemployment insurance records shall comply with all of the following confidentiality safeguard requirements:

(a) Safeguard disclosed information against unauthorized access or redisclosure.

(b) Use the disclosed information only for the purposes authorized by law and consistent with any applicable record disclosure agreement under s. DWD 149.07.

(c) Store disclosed information in a safe place physically secure from unauthorized access.

(d) Store and process information in electronic format in a way that unauthorized persons cannot obtain the information by any means.

(e) Ensure that only authorized persons are given access to disclosed information stored in a computer system.

(f) For third parties authorized to receive information by an individual or employing unit under s. DWD 149.03 (3), maintain a copy of the written release authorizing each access and ensure that access to disclosed information will be only to those authorized under the release.

(g) Instruct all persons having access to disclosed information of the confidentiality requirements and the penalties for unauthorized disclosure, and have these persons sign an acknowledgment that they have been so instructed and agree to report any infraction promptly.

(h) Dispose of all disclosed records and copies after the purpose for which the information was disclosed has been served or when the department considers appropriate, except for disclosed information possessed by any court.

(i) Allow the department to conduct on-site inspections of the disclosed records and to audit for compliance with this section.

(2) No information provided to a public official under this chapter may be used for solicitation of contributions or expenditures to or on behalf of a candidate for public or political office or a political party.

(3) No person, government unit, or other entity to which the department discloses an unemployment insurance record under s. DWD 149.03 (2) or (3), 149.04, or 149.05 may redisclose information obtained from that record without the prior written approval of the department. Any redisclosure is subject to the requirements in sub. (1).

(4) This section does not apply to disclosures of unemployment insurance records to a unit of the federal government that has safeguards in place that meet the confidentiality requirements of 42 USC 503 (a) (1), as determined by the department of labor with notice published in the Federal Register.

(5) This section does not apply to disclosures of the following:

(a) Public domain information.

(b) Disclosures exclusively for statistical purposes under a cooperative agreement with the bureau of labor statistics.

(c) Disclosures to the internal revenue service for purposes of unemployment insurance tax administration.

(d) Disclosures to the U.S. citizenship and immigration services for purposes of verifying a claimant's immigration status.

(e) Disclosures to the U.S. department of labor for the purpose of oversight and audits of the unemployment insurance program.

(f) Disclosures of unemployment insurance appeal records under s. DWD 149.02 (2) (b) and disclosures to individuals and employing units under s. DWD 149.03 (1).

**History:** Cr. Register, May, 1993, No. 449, eff. 6-1-93; CR 08-019: r. and recr. Register July 2008 No. 631, eff. 8-1-08; CR 18-033: am. (4) Register May 2019 No. 761, eff. 6-1-19.

#### **DWD 149.07 Record disclosure agreements.**

(1) The department shall require a record disclosure agreement to be in effect before disclosing unemployment insurance records under ss. DWD 149.03 (3), 149.04 (2) (e) to (m) and (3), and 149.05 (1) (d).

(2) The department may require a record disclosure agreement to be in effect before disclosing unemployment insurance records to any person, government unit, or entity not listed in sub. (1).

(3) Any record disclosure agreement with an agent of a public official for disclosure must be made with the public official and hold the public official responsible for ensuring the agent complies with the confidentiality requirements in s. DWD 149.06 (1).

(4) A record disclosure agreement shall be in writing for a prescribed period of time and include all of the following provisions:

(a) A statement of the purpose for which the record is sought, description of the specific information to be furnished, the methods and timing of requests and responses for information, and the format to be used.

(b) A requirement that the person, government unit, or entity that is a party to the agreement comply with all of the following:

1. Use the information only for purposes authorized by law and as stated in the agreement and limit access to the information to those with a need to access it for the stated purpose.

2. Pay all of the department's costs in providing information from unemployment insurance records, unless the agreement provides for the reciprocal sharing of costs.

3. Comply with the confidentiality safeguards requirements of s. DWD 149.06 and not release information obtained from any

unemployment insurance record to a third party without prior written approval of the department.

4. Verify the information in an unemployment insurance record released by the department if the person, government unit, or entity may take any action detrimental to the interests of the employee or employing unit that is the subject of the record.

5. Maintain a system of security that includes a procedure for the destruction of confidential information and report any infraction of the confidentiality safeguard requirements under s. DWD 149.06 or the agreement under this section fully and promptly.

6. Allow for on-site inspections by the department to ensure the confidentiality safeguard requirements of the agreement are met.

(c) For authorized third parties under s. DWD 149.03 (3), the information may be accessed only by those persons with authorization under the release, and the purpose for the release of information shall be limited to providing a service to benefit the individual.

(5) If the person, government unit, or entity fails to comply with the agreement, including failure to pay or reimburse the department for costs, the agreement shall be suspended. If no corrective action is taken and completed promptly following a suspension, the department shall cancel the agreement and all confidential information shall be surrendered to the department. The department may seek damages, penalties, and restitution as allowed by law.

(6) The requirements of this section do not apply to disclosures of unemployment insurance records to a federal agency that has in place safeguards adequate to satisfy the confidentiality requirements of 42 USC 503 (a) (1), as determined by the department of labor and published in the Federal Register.

**History:** Cr. Register, May, 1993, No. 449, eff. 6-1-93; CR 08-019: r. and recr. Register July 2008 No. 631, eff. 8-1-08; **CR 18-033: am. (6) Register May 2019 No. 761, eff. 6-1-19.**

**DWD 149.08 Fee for disclosing unemployment insurance records.** (1) (a) The department shall charge a fee for disclosing an unemployment insurance record when the dis-

closure is for a third party, government unit, or entity that requests the record and disclosure is not necessary for the proper administration of the unemployment insurance program, unless only incidental staff time and nominal processing costs are involved in making the disclosure.

(b) The department may charge a fee for disclosure in the following circumstances:

1. Disclosure of public domain information.
2. Disclosure to an individual, employing unit, or agent.
3. The purpose of the disclosure is program oversight or audit.
4. The disclosure is pursuant to a court order or is to officials with subpoena authority.

(c) The fee for disclosure may not exceed the actual, necessary, and direct costs of location and disclosure of the record, including photocopy, postage, computer reprogramming, and labor costs, except a record location fee may be charged if the costs of location exceed \$50. The department shall require the fee for disclosure to be paid in advance except for good reason.

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

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

(4) Payment of the fee for disclosure on a one-time or an ongoing basis may be arranged under a record disclosure agreement under s. DWD 149.07.

**History:** Cr. Register, May, 1993, No. 449, eff. 6-1-93; CR 08-019: r. and recr. Register July 2008 No. 631, eff. 8-1-08.

**DWD 149.09 Penalties.** Any person who permits inspection or disclosure of an unemployment insurance record 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.

**History:** Cr. Register, May, 1993, No. 449, eff. 6-1-93; CR 08-019: am. Register July 2008 No. 631, eff. 8-1-08.