

Clearinghouse Rule 00-108

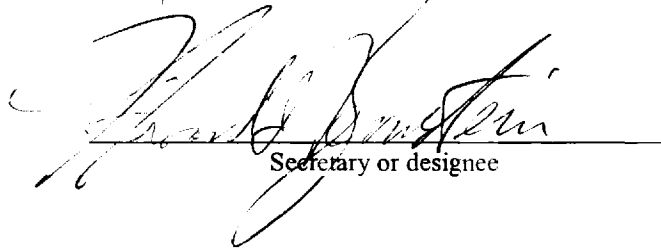
Rules Certificate

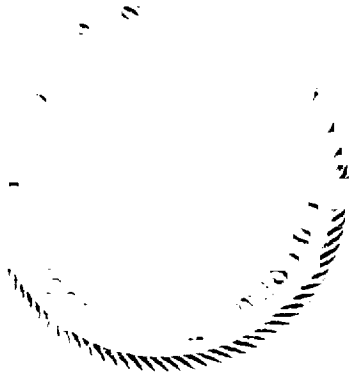
STATE OF WISCONSIN)
) SS
DEPARTMENT OF WORKFORCE DEVELOPMENT)

I, Jennifer Reinert, Secretary of the Department of Workforce Development, and custodian of the official records, certify that the annexed rules relating to the state directory of new hires were duly approved and adopted by this department on March 9, 2001.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the of the Department of Workforce Development at 201 E. Washington Avenue in the city of Madison, this 9th day of March 2001.


Secretary or designee



Order Adopting Rules

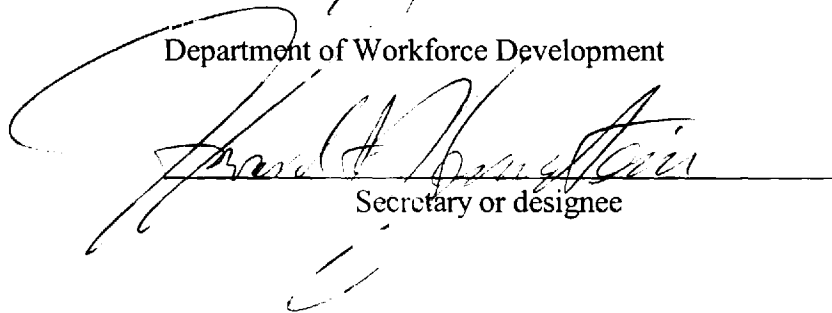
Pursuant to authority vested in the Department of Workforce Development by ss.103.05(3), 103.005, and 227.11, Stats., the Department of Workforce Development creates rules of Wisconsin Administrative Code chapter DWD 42, relating to the state directory of new hires.

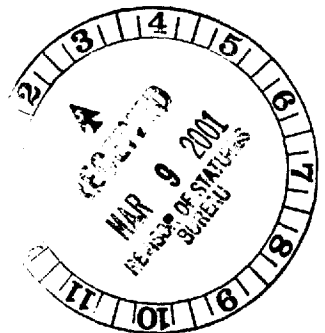
The attached rules shall take effect on May 1, 2001, pursuant to s. 227.22, Stats.

Adopted at Madison, Wisconsin this

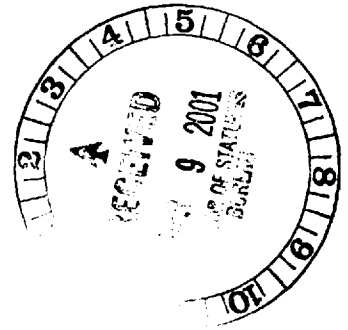
Date: 3/9/01

Department of Workforce Development


Secretary or designee



State of Wisconsin
Department of Workforce Development
Unemployment Insurance Division



DWD 42

State Directory of New Hires

The Wisconsin Department of Workforce Development proposes an order to create chapter DWD 42, relating to the state directory of new hires.

Analysis Prepared by the Department of Workforce Development

Statutory authority: ss. 103.05(3), 103.005, and 227.11, Stats.

Statute interpreted by the rule: s. 103.05, Stats.

Relevant federal law: 42 USC 653a(a)(1)(A)

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 directed each state to establish a process by which employers report information about employees shortly after the date of hire for the purpose of assisting child support agencies in locating parents or alleged fathers. In response, the State of Wisconsin enacted s. 103.05, Stats., which directed the Department of Workforce Development (DWD) to establish and operate a hiring reporting system that includes a state directory of new hires.

Employers report new hire information to the Department of Workforce Development Unemployment Insurance Division (DWD-UID), which administers the state new hire directory. When employers report new hires to DWD-UID, the names are checked against a list of persons sought to ascertain paternity or who owe child support. Matches are referred to the state Bureau of Child Support. The state directory is also transmitted to a national directory so that it can be similarly used by each state to locate parents or alleged fathers who have moved to other states.

Most employees are considered new hires when they report for work the first time or when they return to work after an unpaid absence of more than 90 days. Poll workers, who generally only work at the polls a few days a year and who tend to do so repeatedly, will be considered newly hired the first time they work for an employer but not each subsequent time they work at the polls for that same employer. Similarly, substitute teachers will be considered newly hired the first time they work for a particular employer during a school year but not each subsequent time they are provided a substitute teaching assignment by that employer during that school year.

Required information in a new hire report include the following: (1) employee name, (2) employee address, (3) employee social security number, (4) employer name, (5) employer address, (6) employer's Federal Employer Identification Number (FEIN), (7) date the employee started work, and (8) employee's date of birth. Multi-state employers that choose Wisconsin as

the sole state to which they report must also report the state in which the employee will work, if other than Wisconsin.

An employer may fulfill its reporting requirement for a newly hired employee using the following formats: (1) on paper by submitting a paper report containing all listed elements, (2) on paper by submitting a completed copy of the employee's federal W-4 form, (3) on paper by submitting a copy of the employee's Wisconsin WT-4 form containing all listed elements, or (4) electronically, as authorized by the department.

An employer who files a new hire report by submitting a federal W-4 form in which the first six elements listed in the rule have been completed has satisfied the reporting requirement.

The department may waive the date of birth reporting requirement if the employer is unable to provide it.

An employer must file new hire reports within 20 days after the newly hired employee starts work.

An employer with employees in more than one state, that is, a multi-state employer, may report all new hires to a single state. Multi-state employers choosing the single-state reporting option must submit written notice of the state to which they choose to report to the federal Department of Health and Human Services.

Any person who violates any provision of this rule may be subject to penalties provided under s. 103.05, Stats.

SECTION 1. Chapter DWD 42 is created to read:

Chapter DWD 42

STATE DIRECTORY OF NEW HIRES

DWD 42.01 Purpose. (1) 42 USC 653a(a)(1)(A) requires each state to establish a state directory of new hires that contains information reported by employers about each newly hired employee and requires employers to report this information. Section 103.05, Stats., implemented the federal new hire reporting requirements by creating a state directory of new hires and requiring employers to report information to the department about each newly hired employee.

(2) This chapter specifies the information that employers must provide, the procedures by which employers may comply with the new hire reporting requirements, and the penalties for violating this rule.

DWD 42.02 Definitions. In this chapter:

(1) “Department” means the department of workforce development or its authorized agent.

(2) “Employee” means an individual who is an employee within the meaning of chapter 24 of the internal revenue code of 1986 (26 USC 3401) but does not include an individual performing intelligence or counterintelligence functions for a federal or state agency if the head of the agency has determined that reporting pursuant to s. DWD 42.01 with respect to the individual could endanger the individual’s safety or compromise an ongoing investigation or intelligence mission.

Note: Under 26 USC 3401(c), an “employee” includes “an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term ‘employee’ also includes an officer of a corporation.”

(3) “Employer” means a person who is an employer within the meaning of chapter 24 of the internal revenue code of 1986 26 USC 3401(d) and includes any governmental entity and any labor organization.

Note: Under 26 USC 3401(d), an “employer” means “the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that -

(1) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term ‘employer’(except for purposes of subsection (a)) means the person having control of the payment of such wages, and

(2) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term ‘employer’ (except for purposes of subsection (a)) means such person.”

(4) “Federal employer identification number” means the identifying number assigned to the employer under s. 6109 of the internal revenue service code of 1986 26 USC 6109.

(5) “Labor organization” means an organization that is a labor organization within the meaning of 29 USC 152(5) and includes any hiring hall or other organization that is used by the labor organization and an employer to carry out requirements of an agreement described in 29 USC 159(f)(3) between the labor organization and the employer.

Note: Under 29 USC 152(5), the term “labor organization” means “any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.”

(6) “Multi-state employer” means an employer that employs individuals in Wisconsin and in at least one other state.

(7) “Newly hired employee” means any of the following:

(a) An employee who reports for work for the first time.

(b) An employee, other than a poll worker or a substitute teacher, who is rehired, recalled, or returns to work after an unpaid absence of more than 90 days.

(c) A poll worker who the employer has never reported to the state directory of new hires as a newly hired employee.

(d) A substitute teacher who performs services for the employer but who the employer has not reported to the state directory of new hires as newly hired during the current school year.

(8) “Poll worker” means a person who staffs a polling place on election day to assist in holding the election.

(9) “State directory of new hires” means an automated directory containing information supplied by employers about each newly hired employee, pursuant to s. 103.05, Stats.

DWD 42.03 Reporting requirements. (1) REPORT CONTENTS. Except as provided in sub. (2)(b) and s. DWD 42.04(1)(b), each employer that has one or more employees who perform services in Wisconsin shall file a report containing the following information with the department:

(a) Newly hired employee’s name.

(b) Newly hired employee’s address.

- (c) Newly hired employee's social security number.
- (d) Employer's name.
- (e) Employer's payroll address for the newly hired employee.
- (f) Employer's federal employer identification number.
- (g) Date the newly hired employee started work.
- (h) Employee's date of birth.

(2) REPORT FORMAT. (a) An employer may file new hire reports in any of the following ways:

1. Electronically as authorized by the department.

Note: For further information on electronic reporting, see the "New Hire Reporting" section of the DWD web site at <http://www.dwd.state.wi.us> or call the toll free inquiry line at 1-888-300-HIRE (4473). Specialists are available to take calls Monday through Friday, 8:00am to 4:00pm (CST).

2. On paper by submitting a copy of the newly hired employee's completed WT-4 form (Employee's Wisconsin Withholding Exemption Certificate/New Hire Reporting).

3. On paper by submitting a paper report containing all of the information required under sub. (1).

4. On paper by submitting a copy of the newly hired employee's completed federal W-4 form (Employee's Withholding Allowance Certificate).

(b) If an employer files a new hire report by submitting a copy of the newly hired employee's W-4 that contains completed reporting requirements under par. (a) to (f) of sub. (1), then the employer has satisfied the reporting requirement.

(3) REPORT DUE DATES. (a) Except as provided in par. (b), a report must be filed within 20 days after the newly hired employee starts work.

(b) If an employer is filing new hire reports electronically, reports must be filed twice monthly, not less than 12 days nor more than 16 days apart.

(c) If the deadline for filing a report falls on a 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 United States postal service, then the deadline shall be extended to include the next business day.

(4) The department may waive the requirement to report the date of birth of the newly hired employee if the employer is unable to provide it.

DWD 42.04 Multi-state employers. (1) REPORTING OPTIONS. Multi-state employers may choose to do either of the following:

(a) Report only the newly hired employees working in the state of Wisconsin as described in s. DWD 42.03 and report employees not working in Wisconsin to the respective states in which they work.

(b) Report all newly hired employees to a single state in which the multi-state employer has at least one employee working, regardless of where the other employees work. If the multi-state employer chooses Wisconsin as the single state to which it reports, that employer must file new hire reports electronically as provided in s. DWD 42.03(2)(a)1. In addition to containing all the information in s. DWD 42.03(1), the electronically filed report for any newly hired employee not working in Wisconsin must also include the state in which the employee will work. Report due dates are the same as those provided in s. DWD 42.03(3).

(2) FEDERAL NOTICE. Employers reporting under the option in sub. (1)(b) must submit a written notice to the secretary of the federal department of health and human services informing him or her of which state has been selected for new hire reporting.

(3) REPORT FORMATS. The information to be supplied and the format used by multi-state employers to file new hire reports may vary according to the requirements of the state to which the new hire reports are being filed.

DWD 42.05 Penalties. (1) Any person who violates any provision of this rule may be subject to the penalties provided under s. 103.05, Stats. No penalty may be imposed unless the person has been notified of the violation and has been provided with an opportunity to correct the violation.

(2) Pursuant to s. 103.005(10), Stats., if a penalty is imposed it shall be subject to review in the manner provided in ch. 227, Stats.

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.