

Date: September 21, 2012
Proposed by: DWD
Prepared By: Mike Mathis

ANALYSIS OF PROPOSED UI LAW CHANGE

Law Change to Allow Late Successorship Applications To Be Treated As If Timely Filed Under Certain Circumstances

1. Description of Proposed Change

The business transfer and successorship provisions in Ch. 108 are found at Sec. 108.16(8)(a) – (o). The provisions state that business transfers may be, depending on the factual circumstances, optional or mandatory.

In order for a transferee to become a successor in an optional transfer situation four statutory requirements must be satisfied. One of the requirements is that the transferee has filed a timely successorship application. Sec. 108.08(b)4.

Per the above statute a successorship application is timely if received by the department not later than the contribution payment due date for the first full quarter following the date of transfer. Thus, for example, based on a transfer which took place on March 1, 2011, a successorship application would be considered timely if received by the department not later than July 31, 2011.

DWD 115.07(2)(b) provides that if a due date for an application would fall on a Saturday, Sunday or federal or state legal holiday the due date would be the next day that is not a Saturday, Sunday or federal or state holiday.

The amendment would provide that if there is a reason or reasons submitted by the transferee why the successorship application was late for a reason or reasons beyond the control of the transferee the requirement with respect to timely filing of a successorship application shall be deemed satisfied. If a transferee fails, after request by the department, to submit a written reason or reasons for the late filing of a successorship application, or if the department finds that the written reason or reasons submitted by a transferee do not establish the successorship application was late for a reason or reasons beyond the control of the transferee, the department shall issue an initial determination finding that the transferee is not a successor. Such an initial determination is appealable as provided in Sec.108.10(1).

Based on the above a transferee that has filed a late successorship application would be given the opportunity to explain why the application was late. If it was determined that the transferee's explanation established that the application was filed late for a reason or reasons beyond the control of the transferee the application would be regarded as received timely. If a transferee provided either no explanation or an explanation that was found to be insufficient the subsequent "no successorship" ID could be appealed by the transferee.

2. Proposed Statutory Language

Amend 108.16 (8) (b) 4 to read:

(b) If the business of any employer is transferred, the transferee is deemed a successor for purposes of this chapter if the department determines that all of the following conditions have been satisfied:

4. The department has received a written application from the transferee requesting that it be deemed a successor. Unless the transferee satisfies the department that the successorship application was late for a reason or reasons beyond the control of the transferee, such Such application must be received by the department on or before the contribution payment due date for the first full quarter following the date of transfer.

3. Proposer's Reason for the Change

There have been many cases that employers have been unable to be treated as a successor due to inadvertent mistakes of the employer. This provision will enable some wiggle room to allow the department to grant the successorship if the employer can satisfy the department that the successorship application was late for a reason or reasons beyond the control of the transferee.

4. Effects of Proposed Change

- a. Policy. Allows for the department to have discretion to enable related employers to not inadvertently lose the positive unemployment experience of their predecessors.
- b. Administrative Impact. Will likely create some minor additional work as a result of the department having to make determinations as to whether or not there was a reason beyond the transferee's control for the late application.
- c. Equitable. It sometimes results in equitable outcomes when an employer is hurt by rigid application of the deadline. The proposal provides the department a method to address situations where applying the application deadline in a rigid manner results in inequitable outcomes.
- d. Fiscal. No measurable effect on the Trust Fund is anticipated. Since the point of successorships is to maintain the correct employment history for a firm the impact on the level of the Trust Fund will be small but will help to improve the tax system. However the number of firms that will be affected by such a change will be very small hence there will not be a measurable effect of the Trust Fund.

5. State and Federal Issues

- a. Chapter 108. Will need amendments to 108.16 (8) (b).
- b. Rules. DWD § 115.07 (2) will need to be amended to reflect the new statutory provisions.

D12-04

- c. **Conformity.** There is no federal statute that prevents the Department from amending its procedures with respect to the process for granting successorship applications.

6. Proposed Effective/Applicability Date

The law change should be operative as of the effective date of the legislation.