

Date: February 15, 2013
Proposed by: DWD
Prepared by: Janell Knutson and Scott Sussman

ANALYSIS OF PROPOSED UI LAW AND ADMINISTRATIVE RULE CHANGE

Department Proposal to Revise Statute and Rules for Work Search

1. Description of Proposed Change:

As part of UI modernization, the Department will provide additional services to claimants. This proposal facilitates the Department's ability to assist claimants to become more quickly employed. The amendments accomplish this by:

- (a) Creating Wis. Stat. § 108.04 (2) (a) 4. to clarify that the Department has the authority to require claimants to provide certain information. The Department already possesses this authority, but these amendments simply clarify that it may request this information or require a claimant to participate in reemployment services.
- (b) Amending Wisconsin Chapter DWD 127 to expand the training services that the Department may provide to claimants or require a claimant to attend in order to enhance his or her job prospects.
- (c) Amending Wisconsin Chapter DWD 129 to give the Department the flexibility to implement the claims filing procedures envisioned under UI modernization.

2. Proposed Statutory and Administrative Rule Language:

Create Wis. Stat. §108.04 (2) (a) 4. to read as follows:

(2) GENERAL QUALIFYING REQUIREMENTS.

(a) Except as provided in par. (b) and sub. (16) (am) and (b) and as otherwise expressly provided, a claimant is eligible for benefits as to any given week only if:

4. To make continued claims for benefits, the claimant provides requested information or job application material as directed by the Department in order that the Department may:

a. Assess a claimant's efforts, skills, and ability to find or obtain employment;

b. Require a claimant to participate in a public employment office workshop, a similar training program, or similar reemployment services which offers instruction to improve the claimant's skills for finding and obtaining employment. A claimant may not be disqualified from benefits if the claimant is required to pay a participation fee of any kind for the workshop, training program, or reemployment service.; or,

c. Develop a list of employment opportunities for that claimant to apply for suitable employment. There shall be no requirement that a claimant provided a list of job opportunities by the Department shall be required to apply to the job opportunities on the list in order to comply with the work search requirements contained in s. 108.04 (2)

(a) 3.

d. The provisions of this subsection shall be inapplicable if the claimant is exempt from either the work registration or work search requirement pursuant to s. 108.04(2)(b).

Amend Wis. Admin. Code, chapter DWD 127 to read as follows:

**Chapter DWD 127
WORK SEARCH**

DWD 127.07 ~~Employment workshops~~ **Reemployment Services.**

DWD 127.07 ~~Employment workshops~~ Reemployment Services.

~~(1) Under s. 108.04(2)(a) 4. the department may require a claimant to provide any requested information that the department may use to assess the claimant's skills and ability for finding or obtaining employment, develop employment opportunities, or enhance the claimant's employment prospects.~~

~~(1) (2) (a)~~ The department may require a claimant to participate in a public employment office workshop, training program, or similar reemployment services which offers instruction in improving the claimant's skills for finding and obtaining employment. The claimant shall be ineligible for benefits for any week for which the department determines that the claimant failed, without good cause, to participate in such a workshop, training program, or reemployment service.

~~(2) (b)~~ A claimant may not be disqualified from benefits under this section if:

~~(a) The the claimant is required to pay a participation fee of any kind for the workshop, training program, or reemployment service.; or~~

~~(b) The workshop is more than 5 days in duration.~~

Amend Wis. Admin. Code, chapter DWD 129 to read as follows:

Chapter DWD 129

BENEFIT CLAIMING PROCEDURES

DWD 129.001 Definitions.

DWD 129.01 Notice of unemployment.

DWD 129.02 Establishment of benefit year.

DWD 129.03 Backdating of benefit year; circumstances.

DWD 129.04 Department set aside of benefit year.

DWD 129.05 Payment of benefits.

Note: Chapter ILHR 129 was created by emergency rule effective 1-8-84. Chapter ILHR 129 was renumbered Chapter DWD 129 under s. 13.93 (2m) (b) 1., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1998, No. 498.

DWD 129.001 Definitions. Unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

History: Cr. Register, September, 1995, No. 477, eff. 10-1-95.

DWD 129.01 Notice of unemployment. (1) INITIATING A CLAIM. A claimant is not eligible under s. 108.08, Stats., for benefits for any week of total or partial unemployment unless the claimant notifies the department ~~by telephone, internet, or as otherwise prescribed by the department,~~ during that week or within 7 days after the close of that week, of the claimant's intent to initiate the claim and the claimant complies with the department's procedures for initiating and continuing claims. The department shall prescribe the method or methods by which the claimant shall notify the department of the claimant's intent to initiate the claim. If the department provides for a single method for initiating a claim and a claimant has good cause for not being able to use that method, the department shall provide reasonable accommodations for the claimant to be able to complete his or her claim. Good cause shall include, but not be limited to, the claimant:

1. Possesses physical, mental, educational, or linguistic limitations that prevent him or her from using the method prescribed by the department; or,
2. Has unusual or unavoidable circumstances that prevent him or her from providing notice by the method prescribed by the department.

(2) CONTINUING A CLAIM BY FILING A WEEKLY CERTIFICATION.

(a) A claimant is not eligible for benefits for any week of total or partial unemployment unless the claimant files a timely weekly certification with the department ~~by telephone, internet, mail, or as otherwise prescribed by the department.~~ The department shall prescribe the method or methods by which the claimant shall notify the department that the claimant is continuing a claim by filing a weekly certification. If the department provides for a single method for a claimant to continue a claim by filing a weekly certification and a claimant has good cause for not being able to use that method, the department shall provide reasonable accommodations for the claimant to be able to complete his or her claim. Good cause shall include, but not be limited to, the claimant:

1. Possesses physical, mental, educational, or linguistic limitations that prevent him or her from using the method prescribed by the department; or,

2. Has unusual or unavoidable circumstances that prevent him or her from providing notice by the method prescribed by the department.

(b) The department shall consider a weekly certification to be filed when the certification is complete and submitted in compliance with the applicable requirements for the method or methods authorized by the department of one of the following methods:

1. A claimant may continue a claim only by filing timely weekly certifications by telephone, internet, mail, or as otherwise prescribed by the department, no later than 14 days following the end of the week for which benefits are claimed. A weekly certification submitted by mail must be received by the department within 14 days following the end of the week for which benefits are claimed or within 14 days following the date the department mailed the weekly certification to the claimant, whichever occurs later. If a claimant submits a timely but incomplete weekly certification by mail, the department shall send the claimant a duplicate weekly certification that must be received by the department within 14 days following the date the department mailed the duplicate weekly certification to the claimant. If the last day for filing a mailed weekly certification falls on Saturday, Sunday, or any of the holidays enumerated under ss. 230.35 (4) (a) and 995.20, Stats., or any other day on which mail is not delivered by the United States postal service, a weekly certification must be received by the department on the next business day. If the method prescribed by the department for notification for the claimant to use is the internet or telephone, claimant attempts to submit a weekly certification by telephone or the internet, the department shall notify the claimant for which weeks the claimant may file a weekly certification and at the end of the transaction whether the weekly certification has been accepted. The department shall consider a weekly certification to be filed when the certification is complete, timely submitted, and accepted by the department.

2. A claimant may not file a weekly certification for any week unless a timely weekly certification for the immediately preceding week was filed or a timely initial claim was filed for the week.

Note: Example 1:

Week 1 Weekly certification filed timely

Week 2 No weekly claim filed

Week 3 No weekly claim filed

Week 4 Weekly certification for week 2 can still be filed. However, a weekly certification for week 3 cannot be filed until a weekly certification for week 2 is filed. If the claimant wants to file a weekly certification for week 3, but not for week 2, an initial claim must be filed for week 3 by the close of week 4.

Example 2:

Week 1 Weekly certification filed timely

Week 2 No weekly claim filed

Week 3 No weekly claim filed

Week 4 No weekly claim filed

Week 5 Weekly certification for week 2 can no longer be filed because the 14-day period has expired. Weekly certification for week 3 cannot be filed because a weekly certification for the immediately preceding week has not been filed and a timely initial claim can no longer be filed for week 3. Weekly claim for week 4 can be filed if an initial claim is filed by the close of week 5.

(4) WAIVER; EXCEPTIONAL CIRCUMSTANCES. The department shall waive the requirements of this section if exceptional circumstances exist. Exceptional circumstances include all of the following:

(a) An error made by an employee of the department relating to the giving of notice by the claimant or a reasonable misunderstanding by the claimant based on information given to the claimant by the department.

(b) Action by an employer, in any manner, directly or indirectly, instructing, warning, or persuading the claimant not to file a benefit claim.

(c) The claimant did not comply because the claimant was not aware of the duty to notify the department, and the claimant's most recent employer failed to post and maintain the notice on claiming unemployment benefits that was supplied to the employer under s. DWD 120.01.

(d) The claimant performed services as a school year employee in other than an instructional, research, or principal administrative capacity and had reasonable assurance of performing services for the employer in a similar capacity in the 2nd academic year or term but was subsequently not offered the opportunity to perform such services.

*(e) The claimant made an unsuccessful attempt to access the telephone initial claims system during a week when the system was inoperable or was unavailable for more than 40% of the time the system is scheduled to be staffed by claimstakers during that week. The times during which the system is inoperable or unavailable will be measured as follows:

1. Each day during the week will be divided into half-hour time periods, beginning with the time when the system is first scheduled to be staffed by claimstakers and ending with the time when the system is scheduled to no longer be staffed by claimstakers.

2. The system will be considered to be inoperable or unavailable for any such half-hour time period during which a busy signal occurs or during which the system is not operating.

(f) Other exceptional circumstances over which the claimant has no control.

History: Cr. Register, July, 1984, No. 343, eff. 8-1-84; emerg. am. (1), eff.

2-2-93; am. (1), Register, July, 1993, No. 451, eff. 8-1-93; correction in (3) (e) made under s. 13.93 (am) (b) 7., Stats., Register, July, 1993, No. 451; am. (1) and (2) (a), cr.

(2) (a) 1. and 2., r. and recr. (2) (b), (3) (a) and (b), r. (2) (c), (3) (g) and (4), renun. (2) (d), (3) (intro.), (c) to (f) to be (2) (c), (4) (intro.) to (d) and am. (4) (intro.), (a), (c) and

(d), Register, December, 1995, No. 480, eff. 1-1-96; cr. (4) (e), Register, November, 1999, No. 527, eff. 12-1-99; correction in (2) (b) 2. made under s. 13.93 (2m) (b) 7.,

Stats., Register, September, 2000, No. 537; am. (2) (a) (intro.), Register, September, 2000, No. 537, eff. 10-1-00; emerg. am. (1), eff. 4-14-02; CR 02-088: am. (1)

Register November 2002 No. 563, eff. 12-1-02; CR 06-073: am. (1), (4) (intro.), (a) (b), (c), (d) and (e), r. and recr. (2) (a), (b) and (c), and (3), r. (a) 1. and 2., cr. (4) (f),

Register December 2006 No. 612, eff. 1-1-07; correction in (2) (b) 3. made under s. 13.93 (2m) (b) 7., Stats., Register June 2007 No. 618; **CR 10-018: am. (1) and (2) (a),**

r. and recr. (2) (b) 1. and 2., r. (2) (b) 3., 4., (c) and (3) Register September 2010 No. 657, eff. 10-1-10.

* Department Proposal D12-20 eliminates DWD 129.01(3)(e).

DWD 129.02 Establishment of benefit year. (1) In order to establish a benefit year under s. 108.06 (2) (a), Stats., a claimant shall:

- (a) Comply with the notification and filing requirements under s. DWD 129.01; and
- (b) Have the minimum amount of wages in the claimant's base period as required under s. 108.04 (4) (a), Stats.

(2) A claimant establishing a second or subsequent benefit year shall, in addition to the requirements of sub. (1), comply with the earnings requirement of s. 108.04 (4) (c), Stats.

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; emerg. am. (1) (a), eff. 2-2-93; am. (1) (a), Register, July, 1993, No. 451, eff. 8-1-93; r. and recr. (1) (a), am. (1) (b), r. (2) and (3), cr. (2), Register, December, 1995, No. 480, eff. 1-1-96.

DWD 129.03 Backdating of benefit year; circumstances.

Under s. 108.06 (2) (bm), Stats., a claimant's benefit year begins on the Sunday of the week in which the claimant meets the requirements to establish a benefit year under s. DWD 129.02, except that the department may, by rule, permit a claimant to begin a benefit year prior to that time. The department shall permit the backdating of a benefit year if an exceptional circumstance exists.

Exceptional circumstances include, but are not limited to, those listed in s. DWD 129.01 (4).

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; renum. (1) to be 129.03 and am., r. (2), Register, December, 1995, No. 480, eff. 1-1-96; CR 06-073: am. Register December 2006 No. 612, eff. 1-1-07.

DWD 129.04 Department set aside of benefit year.

(1) REQUEST TO SET ASIDE A BENEFIT YEAR. Under s. 108.06 (2) (d), Stats., a claimant may request the department to set aside a benefit year.

(2) GRANTING A REQUEST TO SET ASIDE A BENEFIT YEAR. Under s. 108.06 (2) (d), Stats., the department shall grant the claimant's request and cancel the benefit year if the request is voluntary, benefits have not been paid to the claimant, and at the time the department acts upon the request for that benefit year the claimant's benefits eligibility is not suspended. If the claimant does not meet all of the requirements under s. 108.06 (2) (d), Stats., the department may set aside the benefit year if the conditions in both pars. (a) and (b) are met:

(a) The department has recovered, or has waived the recovery of, all benefits paid to the claimant for that benefit year or offsets this amount against benefits the claimant would otherwise be eligible to receive at the time the request to set aside a benefit year is made.

(b) Any of the following exceptional circumstances apply to the claim:

1. The department terminates coverage of an employer previously subject to ch. 108, Stats., for whom the claimant performed services in the base period and the claimant could not have foreseen this termination of coverage.
2. The department makes an error relating to the establishment of the claimant's benefit year.
3. The wage data used by the department to establish the benefit year is erroneous.

4. The claimant established a benefit year in the two weeks immediately preceding the first full week of a new calendar quarter, but a benefit year established as of the first full week of the new calendar quarter would give the claimant a higher weekly benefit rate or a higher maximum benefit amount.
5. The claimant's first payment in the benefit year was made after an additional initial claim was filed.
6. The claimant is eligible to start a benefit year in another state.
7. The cancellation of wage credits under s. 108.04 (5), Stats., reduces the claimant's maximum benefit amount to less than 5 times the weekly benefit rate.
8. Other exceptional circumstances exist over which the claimant has no control that are related to establishing a benefit year.

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; am. (1) (intro.), (2) (a) (intro.), 2., 3. and (b) 1., r. (1) (a) to (c), cr. (2) (a) 4., Register, December, 1995, No. 480, eff. 1-1-96; CR 06-073: am. (1), r. and recr. (2), Register December 2006 No. 612, eff. 1-1-07.

DWD 129.05 Payment of benefits. (1) METHOD OF PAYMENT. The department shall pay benefits by checks mailed to the claimant's address of record with the department, by electronic deposit to a claimant's designated bank account, or by debit card issued by the department or its designee, unless the benefits are applied by the department for overpayments, forfeitures, child support payments under s. 108.13, Stats., or other assignments permitted under state or federal law.

(2) CHARGING OF PAYMENT. The department shall charge each benefit payment against an account in the unemployment reserve fund or the administrative account and shall periodically send each employer a record of each payment charged against its account in the fund.

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; am. Register, December, 1995, No. 480, eff. 1-1-96; **CR 10-018: am. (1) Register September 2010 No. 657, eff. 10-1-10.**

3. Proposer's Reason for the Change

As the Department of Labor's Comparison of State UI Laws finds: "[i]n addition to registration for work at a local employment office, all states... , whether by law or practice, require that a worker be actively seeking work or making a reasonable effort to obtain work." Actively seeking work should be the main job of those individuals who are unemployed and collecting benefits. This proposal will facilitate the ability of the Department to assist claimants in finding employment. This proposal will also strengthen the unemployment insurance safety net by helping to alleviate the concern of the employer community and general public that the unemployment insurance program is being abused by some unemployment insurance recipients.

4. Effects of Proposed Change

- a. Policy. Proposal clarifies that the Department has the authority to request information from claimants and thereby assist claimants in finding employment. Proposal would also accomplish objective of department of ensuring that those receiving unemployment insurance are engaging in activities that an unemployed person who wants to work would normally do.
- b. Administrative Impact. Will require greater interaction between the Division of Unemployment and Division of Economic Training within the Department.
- c. Equitable. Unemployment benefits are meant to act as a temporary safety net for employees who are out of work through no fault of their own -- to tide them over until they can find a new job. These proposals will facilitate the goal of the unemployment insurance program that it is meant to only be a temporary safety net for those who truly cannot find work after losing a job.
- d. Fiscal. TBD. Will likely decrease charges to the trust fund by disqualifying some individuals who are not actively seeking work and lessen the amount of time that some individuals remain on the unemployment insurance program and thereby decrease unemployment claims. Yet, without a verification component to this increased requirements placed on recipients, the impact will be minimized.

5. State and Federal Issues

- a. Chapter 108. Besides the creation of Wisconsin Statute § 108.04 (2) (a) 4., there are no additional changes to other sections of Chapter 108.
- b. Rules. Besides the amendments to DWD Chapter 127 and 129, there are no required amendments to other sections of the administrative rules.
- c. Conformity. There should be no conformity issues with this proposal. It is modeled after other states that do a much better job of requiring claimants to provide information related to their job search efforts and thereby are able to provide greater services to these claimants. Proposed amendments, along with those contained in Department Proposal D12-02, will be sent to the Department of Labor for its review prior to final adoption by the Legislature to ensure that there are no inadvertent conformity issues.

6. Proposed Effective/Applicability Date

The law change should be operative as of the effective date of the legislation. The administrative code provision changes should be done as quickly as possible under the statutory framework to amend the administrative code.