State of Wisconsin
Department of Workforce Development

NOTICE OF PUBLIC HEARING

Rule Relating to Quarterly Wage Reporting, Settlement of Disputes and Compromise of Liabilities, License Revocation and Financial Record Matching, Business Transfers, Determining Eligibility of Benefits and Unemployment Insurance Appeals

Chs. DWD 111, 113, 114, 115, 132 and 140, Wis. Admin. Code

The Wisconsin Department of Workforce Development (DWD) announces that it will hold a public hearing on a permanent rule relating to quarterly wage reporting, settlement of disputes and compromise of liabilities, license revocation and financial record matching, business transfers, determining eligibility of benefits and unemployment insurance appeals.

DWD will hold a public hearing on January 21, 2014 from 11:00 a.m. to 2:00 p.m. Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing. Written comments will be accepted until Friday, January 31, 2014. Comments may be sent to the Division of Unemployment Insurance at the address below, or to janell.knutson@dwd.wi.gov, or to http://adminrules.wisconsin.gov.

You can obtain a free copy of the hearing draft rule and related documents including the economic impact analysis by contacting the Wisconsin Department of Workforce Development, Division of Unemployment Insurance, Bureau of Legal Affairs, 201 E. Washington Avenue, Madison, WI 53708. You can also obtain a copy by calling (608) 266-1639 or by emailing janell.knutson@dwd.wi.gov. Copies will also be available at the hearings. To view the hearing draft rule online, go to: http://adminrules.wisconsin.gov.

Comments or concerns relating to small business may also be addressed to DWD's small business regulatory coordinator Howard Bernstein at the address above, or by email to howard.bernstein@dwd.wi.gov, or by telephone at (608) 266-1756.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 261-6805 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Hearing Date and Location:

Tuesday, January 21, 2014
11:00 a.m. – 2:00 p.m.
Department of Workforce Development
Division of Unemployment Insurance
201 East Washington Avenue, Room H304
Madison, WI 53703

Analysis Prepared by the Department of Workforce Development

Statutes Interpreted

Statutes Interpreted: Ch. 108, Stats.

Statutory Authority

Statutory Authority: ss. 108.14 (2) and (26), 108.22 (1) (cm), and 108.227 (1m), Stats.

Explanation of Statutory Authority

The Department of Workforce Development (DWD) has specific and general authority to establish rules interpreting and clarifying provisions of ch. 108, Stats., unemployment insurance (UI) and reserves. Under s. 108.14 (2), Stats., DWD may adopt and enforce all rules necessary or suitable to carry out ch. 108, Stats. 2013 Wisconsin Act 20 (Act 20) and 2013 Wisconsin Act 36 (Act 36) granted additional statutory authority for the promulgation of rules including:

- Section 108.14 (26), Stats., instructs DWD to prescribe by rule a standard affidavit form that may be used by parties involved in UI administrative appeals.

- Section 108.22 (1) (cm), Stats., allows DWD to waive or decrease the interest charged to employers due to delinquent payment of UI taxes in limited circumstances as prescribed by administrative rule.

- Section 108.227 (1m), Stats., instructs DWD to promulgate rules regarding certification of a person delinquent for UI contributions whose license or credential is to be denied, not renewed, discontinued, suspended or revoked.

Related Statutes or Rules

Chapter 108, Stats., governs the state's unemployment insurance system and the related rules are chs. DWD 100, 111, 113, 115, 132, and 140.

Plain Language Analysis

DWD is proposing to amend chs. DWD 111, 113, 115, 132, and 140 and create ch. DWD 114. Amendments to these chapters, and the creation of ch. DWD 114 are necessary to align DWD's administrative rules to the changes under ch. 108, Stats., enacted under Act 20 and Act 36.

DWD is proposing amendments to the following:

Quarterly Wage Reporting

- Under ch. 108, Stats., employers are required to file a quarterly wage report with DWD. If an employer files a late quarterly wage report, s. DWD 111.07 details the process used in assessing a penalty against the employer and the amount of the penalty. The provisions with respect to the amount and process of assessing a penalty against the employer who files a tardy quarterly wage report are now set forth in s. 108.22, Stats., as a result of Act 36. Section DWD 111.07 should be repealed.

Settlement of Disputes and Compromise of Liabilities

- Chapter DWD 113 establishes standards for the settlement of disputes between the department and parties to determinations, decisions or actions and the compromises of liabilities for contributions, reimbursements in lieu of contribution, interest penalties and costs assessed under ch. 108, Stats. Act 36 permits DWD to waive or decrease the interest charged to an employer in limited circumstances as prescribed by administrative rule.

Business Transfers

- Successorship occurs when all or a portion of the former owner's UI account is transferred to the new owner due to a transfer of all, or a portion of the business. There are both mandatory and optional provisions for successorship. Act 36 provides that DWD may accept an optional successorship application that is filed late as a result of excusable neglect. DWD shall not accept a late application for successorship more than 90 days after the due date, regardless of whether there is excusable neglect for the application being late. The amendments to ch. DWD 115, which regulates business transfers, make the rule consistent with the provisions of Act 36.

Determining Eligibility for Benefits

- The law provides that under certain circumstances, employees may be eligible for benefits even though they voluntarily quit their job. One circumstance involves an employee who terminates part-time employment because loss of the employee's full-time employment makes it economically unfeasible for the employee to continue the part-time employment. Act 20 repealed this exception. Section DWD 132.02 clarified the provisions of s. 108.04 (7) (k), Stats., and should be repealed.

Unemployment Insurance Appeals

- Act 36 instructs the department to create a standard affidavit form that may be used by both claimants and employers during UI administrative appeals. Procedures regarding appeals are contained in ch. DWD 140 and DWD will prescribe the standard affidavit form within this chapter.

DWD is proposing the creation of the following:

License Revocation and Financial Record Matching

- Act 36 requires various state agencies and boards (licensing departments) that issue various licenses and other credentials (licenses) to revoke a license or deny an application for a license if DWD certifies that the license holder or applicant owes DWD delinquent UI taxes. The creation of ch. DWD 114 provides procedures for persons whose license or credential is to be denied, not renewed, discontinued, suspended or revoked based on being certified delinquent in paying UI contributions. Act 36 requires DWD to promulgate rules for the process to deny or revoke a license based on delinquent UI taxes.

- Act 36 authorized DWD to operate a financial record matching program. The creation of ch. DWD 114 creates proposed rules that are consistent with the requirements used by other state agencies operating a similar financial record matching program.

Summary of, and comparison with, existing or proposed federal statutes and regulations

Unemployment insurance was initiated on a national basis in the United States as Title III and Title IX of the Social Security Act of 1935 and is a Federal-State coordinated program. Each state administers its own program within national guidelines promulgated under federal law. As a condition of a state receiving its unemployment compensation administrative grant, 42 USC 503 (a) provides that the Secretary of the Department of Labor must find that the law of the state includes certain requirements. With respect to these rules, 42 USC 503 (a) (3) provides that state laws grant an opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment insurance are denied.

Comparison with rules in adjacent states

Waiving or Decreasing Interest Charged to Employers Delinquent in Paying UI Tax

Illinois	The Director of Employment Security is authorized to waive the payment of all or part of any interest and penalty upon proper application and showing of good cause. (Sections 1401 and 1402)

Good cause has been defined by Department rule to consist of any or all of the following:

(a) Where the delay was caused by the death or serious illness of the employer or a member of his immediate family, or by the death, or serious illness of the person in the employer's organization responsible for the preparation and filing of the report or for making the payment.

(b) Where the delay was caused by the destruction of the employer's business records by fire or other casualty without fault.

(c) Where the Department, in its written communication or through a specifically identified employee in oral communication directed to a specific employer account, affirmatively misled the employer as to its duties and obligations such that the charging of interest to the employer would violate the principle of equitable estoppel.

(d) For the purposes of waiver of interest only: Where the employer relied to its detriment on a certificate issued by the Director pursuant to Section 2600 of the Act and the Director agrees, at a later date, that the certificate was issued in error, such waiver shall be granted from the date the erroneous certificate was issued to a date 30 days after notice that the original certificate was in error.

Interest can also be waived according to Department rule whenever the employer can demonstrate extreme financial hardship and files with the Director a repayment agreement. However, the waiver in this instance only applies to additional interest that would have accrued during the period of the repayment agreement. (56 Ill. Adm. Code Section 2765.65)

The Director will waive interest for a nonprofit organization or for a local governmental entity, if:

(a) The organization or entity had never filed any of the reports or forms required of it under the Act; and

(b) It had not been determined to be the "chargeable employer" as result of the filing of an unemployment insurance claim; and

(c) Its chief operating officer files an affidavit with the Director in which he states that, upon learning of the organization or entity's liability under the Act, he took immediate action to bring the organization or entity into compliance. (56 Ill. Adm. Code 2765.70)

Indiana	Indiana's Unemployment Insurance employer handbook states that "Delinquent employers should either pay the amount due, or contact the Indiana Department of Workforce Development as soon as possible to discuss payment options. Payment agreements are available to any employer that needs to arrange for payment over-time that has not previously defaulted on a payment agreement." There is no discussion of waiving or decreasing the interest owed by employers who are delinquent in paying unemployment insurance taxes.
Iowa	Chapter 96 of the Iowa Code does not include provisions for the waiver or forgiveness of interest charged to an employer who is delinquent in paying unemployment insurance taxes.
Michigan	Section 15 (b) of the Michigan Employment Security Act requires the Unemployment Insurance Agency to bill an employer for delinquent unemployment insurance taxes and to charge interest. The law does not include provisions to enable the agency to waive or decrease this interest once it is charged.
Minnesota	Minnesota statutes at 268.067 states: (a) The commissioner of employment and economic development may compromise in whole or in part any action, determination, or decision that affects only an employer and not an applicant. This paragraph applies if it is determined by a court of law, or a confession of judgment, that an applicant, while employed, wrongfully took from the employer $500 or more in money or property. (b) The commissioner may at any time compromise any unemployment insurance tax or reimbursement due from an employer under this chapter or Minnesota's Special Assessment for Interest owed to the federal government. (c) Any compromise involving an amount over $10,000 must be authorized by an attorney licensed to practice law in Minnesota who is an employee of the department designated by the commissioner for that purpose. (d) Any compromise must be in the best interest of the state of Minnesota.

Revoke or Deny an Application for Licenses Based on Delinquent UI Contributions

Illinois	Illinois' unemployment insurance administrative code does not authorize the Illinois unemployment insurance agency to revoke or deny an application for an employer's license based on delinquent UI contributions.
Indiana	Indiana's unemployment insurance law does not authorize the Indiana unemployment insurance agency to revoke or deny an application for an employer's license based on delinquent UI contributions.

Iowa	Iowa's unemployment insurance law does not authorize the Iowa unemployment insurance agency to revoke or deny an application for an employer's license based on delinquent UI contributions.
Michigan	Michigan's unemployment insurance law does not authorize the Michigan unemployment insurance agency to revoke or deny an application for an employer's license based on delinquent UI contributions.
Minnesota	The state of Minnesota or a political subdivision may not issue, transfer, or renew, and must revoke a license for the conduct of any profession, trade, or business, if the commissioner notifies the licensing authority that the licensee, applicant, or employer owes unemployment insurance contributions of $500 or more. A licensing authority that has received a notice may issue, transfer, renew, or not revoke the license only if the licensing authority has received a copy of the debt clearance certificate. (M.S.A. § 268.0625 (Subdivision 1))

Creation of Standard Affidavit for UI Administrative Appeal Hearings

Illinois	Illinois does not direct its unemployment insurance agency to create a standard affidavit for unemployment insurance administrative appeal hearings. A review of Illinois' unemployment insurance agencies document entitled Preparing for your Appeal Hearing only references affidavits by stating "Any document submitted in evidence must be supported by testimony from a person at the hearing who has direct knowledge of the document's contents. For example, third party affidavits or test results without someone who can testify as to their meaning or validity cannot overcome direct testimony from the opposing party. Likewise, business records must be supported by testimony during the hearing."
Indiana	Indiana does not provide parties with a standard affidavit to be used in UI appeals heard before administrative law judges. Indiana Code 22-4-17-6 (a) provides "Sec. 6. (a) The manner in which disputed claims shall be presented and the conduct of hearings and appeals, including the conduct of administrative law judges, review board members, and other individuals who adjudicate claims during a hearing or other adjudicative process, shall be in accordance with rules adopted by the department for determining the rights of the parties, whether or not the rules conform to common law or statutory rules of evidence and other technical rules of procedure." Indiana Code 22-4-17-7 provides "Sec. 7. In the discharge of the duties imposed by this article, any member of the board, the department, the review board, or an administrative law judge, or any duly authorized representative of any of them, shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue and serve subpoenas to compel the attendance of witnesses and the

	production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the disputed claim or the administration of this article."
Iowa	Iowa does not use a standard affidavit for UI appeals.
Michigan	Michigan does not utilize a standard affidavit for UI appeals. Referees conducting hearings shall accept competent, relevant, and material evidence.
Minnesota	268.105 (b) of the Minnesota statutes provides that affidavits may be used in unemployment insurance appeals as competent evidence of the facts contained in it, but does not provide that the Minnesota unemployment insurance agency shall create a standard affidavit to be used in the hearings.

Summary of factual data and analytical methodologies

This rule does not depend on any complex analysis of data. Instead, the changes to the rules are required by recent legislative enactments and represent common sense amendments that will assist employers in their dealings with the UI system.

Analysis and supporting document used to determine effect on small business or in preparation of an economic impact analysis

This rule will have a positive impact on employers by allowing DWD flexibility with problems encountered by employers within the UI system due to inadvertent mistakes.

Effect on small business

The rule modifications impacting small businesses will ease program requirements and likely reduce costs for small businesses. The small businesses that may be affected by this rule include the following:

- **Small Businesses that are Delinquent in Paying UI Taxes:**

  1. DWD charges interest if an employer is delinquent in paying UI taxes. In limited circumstances, Act 36 grants DWD the authority to waive or decrease the interest charged to employers who are late in paying their UI taxes, but provides that DWD shall prescribe rules to exercise this authority. Thus, the rules will specify when all businesses, including small businesses, may be eligible for a waiver or reduction in interest charged to them as a result of their being delinquent in paying UI taxes.

2. Act 36 requires various state agencies and boards (licensing departments) that issue various licenses and other credentials (licenses) to revoke a license or deny an application for a license if DWD certifies the license holder or applicant owes UI contributions. Act 36 provides that this collection tool may be used to collect UI contributions when the employer has exhausted all legal rights to challenge the employer's liability. Act 36 also requires DWD to promulgate rules with respect to the process DWD will follow when it uses this collection tool.

- **Small Businesses involved in UI Administrative Appeals:**

Act 36 directs DWD to prescribe by rule a standard affidavit form that may be used by parties, including small businesses, to UI administrative appeals. Employers and claimants will have discretion in whether or not to use these forms when involved in a UI administrative appeal. The standard affidavit form may be used by small business owners to reduce staff time and other resources associated with UI appeals.

Agency contact person

Questions and comments related to this rule may be directed to:

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Dated this 12th day of December, 2013.

STATE OF WISCONSIN,
DEPARTMENT OF WORKFORCE
DEVELOPMENT

By _____
REGINALD NEWSON, Secretary
Signed by Howard Bernstein, Chief Legal Counsel
(Authorized Designee)