

Clearinghouse Rule 06-072

State of Wisconsin

Department of Workforce Development
Unemployment Insurance Division

Unemployment Insurance Work Search
Chapter DWD 127

The Wisconsin Department of Workforce Development proposes an order to repeal ss. DWD 127.03(title), 127.03(intro.), 127.035, 127.05(2), 127.05(3), and 127.09; to renumber s. DWD 127.03(1), (2), (3), (5), and (6); to renumber and amend ss. DWD 127.03(4) and 127.05(1); to amend ss. DWD 127.01(11), 127.03(4), 127.05(1), 127.02(3)(intro.), 127.04(1)(intro.), and 127.05(title); to repeal and recreate ss. DWD 127.01(2)(intro.) and 127.02(2), relating to an unemployment insurance work search.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 108.04 (2), 108.14 (2) and 227.11, Stats.

Statutes interpreted: Sections 108.04 (2), Stats.

Explanation of agency authority. Section 108.04 (2) (a) 3., Stats., provides that a claimant is eligible for unemployment benefits as to any given week for which he or she earns no wages if, among other things, the individual conducts a reasonable search for suitable work during that week. The search for suitable work must include 2 actions that constitute a reasonable search as prescribed by rule of the department. Section 108.04 (2) (b), Stats., provides that the requirements for registration for work and search for work shall be prescribed by rule of the department, and the department may by general rule waive these requirements under certain stated conditions. Section 108.14 (2), Stats., provides that the department may adopt and enforce all rules which it finds necessary or suitable to carry out Chapter 108, Stats., regarding unemployment insurance.

Summary of proposed rule. Section 108.04 (2), Stats., provides that an unemployment insurance claimant must conduct a reasonable search for suitable work. The department may waive this requirement under certain stated conditions. Chapter DWD 127 currently provides that the department *shall* waive the work search requirement for a given week if certain specified circumstances apply to a unemployment insurance claimant and *may* waive the work search requirement for a given week when others apply. The proposed rule will make all waivers of the work search requirement mandatory if any of the specified circumstances apply.

The proposed rule will also modify two of the waiver criteria. Currently, the department may waive a claimant's work search requirement if the claimant has a

reasonable expectation of starting work with a new employer within 4 weeks after the week in which he or she initiates a claim or in which an eligibility review is conducted. Under the proposed rule, the department will waive the work search requirement if the claimant has an offer of work that begins within 4 weeks regardless of when this occurs. In addition, currently the department waives a claimant's work search requirement if the claimant's most recent employer failed to post or maintain any notice as to claiming unemployment benefits. Under the proposed rule, this provision will be modified to clarify that this waiver criteria does not apply if the claimant was aware of the work search requirement.

The proposed rule will also make various technical corrections. Section 108.04 (1) (e), Stats., as affected by 2005 Wisconsin Act 86, repeals the provision that self-employed individuals shall not be eligible for benefits for any week in which the individual worked at self-employment, unless the individual establishes that he or she has made an active and bona fide search for employment. Self-employed claimants are now subject to the same work search requirements and waivers as non-self-employed claimants. The proposed rule will repeal s. DWD 127.09 relating to the definition of self-employment.

Section 108.04 (2) (a) 3. (intro.), Stats., as affected by 2003 Wisconsin Act 197, provides that the work search requirement does not apply to an individual if the department determines that the individual is currently laid off from employment with an employer but there is a reasonable expectation of reemployment of the individual by that employer. The proposed rules will repeal an obsolete provision at s. DWD 127.02 (2) that limited the work search waiver based on a reasonable expectation of reemployment to 12 weeks after the claimant initiated the claim or 6 weeks after an eligibility review is conducted. The proposed rule will also repeal an obsolete provision at s. DWD 127.035 that limited the work search waiver to 18 months under certain conditions when the layoff was due to a disaster or the temporary closing of the employer's worksite for refurbishing or relocation of the worksite and the department believed that a customary work search would impose a hardship on employers in the labor market and would not be likely to result in suitable employment for a substantial number of the affected employees.

In addition, the proposed rule will update certain rule provisions to reflect changes in 1999 Wisconsin Act 15. Section 108.04 (2) (a) 3., Stats., as affected by 1999 Wisconsin Act 15, provides that the requirement that the individual conduct a reasonable search for work during the week must include 2 actions that constitute a reasonable search. The current s. DWD 127.01 does not specify 2 actions. The proposed rule will also repeal an obsolete statutory reference to s. 108.04 (7) (i), Stats., in s. DWD 127.01 (2) (b). This rule provision allows a claimant to refuse to apply for work with an employer if the claimant previously terminated employment with the same employer with good cause attributable to the employer under s. 108.04 (7) (b), Stats., or because the employer made employment, compensation, promotion or job assignments contingent upon the employee's consent to sexual contact or sexual intercourse under s. 108.04 (7) (i), Stats. 1999 Wisconsin Act 15 repealed s. 108.04 (7) (i), Stats., and amended s. 108.04 (7) (b) to include sexual harassment.

The proposed amendment to s. DWD 127.04 (1) clarifies that the department may notify a claimant that evidence of his or her work search will be required for a future week, as well as past weeks. Sections DWD 127.05 (2) and (3) on the requirement to report work search efforts are repealed because they duplicate requirements found in other sections of Chapter DWD 127.

Summary of factual data and analytical methodologies. The criteria for a mandatory waiver of the work search requirement in s. DWD 127.03 and the permissive waiver criteria in s. DWD 127.02 are combined into one section of mandatory criteria to better reflect current department informal practice to always grant a waiver when any of the specified conditions are met.

The requirement to grant a waiver of the work search requirement when the claimant's last employer failed to post the required notice on claiming insurance is amended to clarify that the claimant must have been unaware of the work search requirement. This amendment is in response to a decision by the Labor and Industry Review Commission that found that the current language requires a waiver even after the department notifies a claimant of the work search requirement.

Other changes are primarily statutory updates and clarifications of rule language.

Comparison with federal law. There is a federal requirement that UI claimants search for work, but there is no federal law on the specific issues addressed in the proposed rule.

Comparison with rules in adjacent states. Iowa. The work search requirement shall be waived if a claimant is temporarily unemployed from the claimant's regular job in which the claimant worked full-time and will again work full-time, for a period not to exceed 4 weeks due to a plant shut-down, vacation, inventory, lack of work, or emergency.

Michigan. The work search requirement shall be waived if the layoff is temporary and work is expected to be available within 45 calendar days following the last day the individual worked and the employer notifies the agency in writing or by electronic data exchange that the layoff is temporary before the claimant is certified for his or her first compensable week following the layoff. The work search requirement may be waived if the return-to-work date is not later than 15 days following the layoff and the work search requirement is not waived under the previous provision. The work search requirement may also be waived if the state unemployment rate equals or exceeds 8.5%.

Illinois. The Illinois work search requirement provide that a claimant must register in person at the Employment Service Office unless otherwise instructed by the local office for one of 10 listed reasons. Many of the reasons are similar to Wisconsin's work search waiver.

Minnesota. The department was unable to locate any Minnesota statutes or rules on the work search waiver.

Effect on small business. The proposed rules do not add or change any requirements for small businesses. There are no reporting, bookkeeping, or other procedures required

for compliance with the proposed rule and no professional skills are required. The DWD Small Business Regulatory Coordinator is Jennifer Jirschele, (608) 266-1023, jennifer.jirschele@dwd.state.wi.us.

Agency contact person. Carla Breber, UI Disputed Benefits Claims, (608) 266-7564, carla.breber@dwd.state.wi.us.

Place where comments are to be submitted and deadline for submission.

Comments may be submitted to Elaine Pridgen, Office of Legal Counsel, Dept. of Workforce Development, P.O. Box 7946, Madison, WI 53707-7946; fax (608) 266-1784, or elaine.pridgen@dwd.state.wi.us. The comment deadline is July 26, 2006.

SECTION 1. DWD 127.01 (1) is amended to read:

DWD 127.01 Work search; policy; requirements. (1) Under s. 108.04 (2), Stats., a claimant shall be eligible for unemployment benefits for any week only when the department finds, among other things, that the claimant has within that week made a reasonable search for suitable work. The search for suitable work must include at least 2 actions by the claimant each week that are reasonably designed to secure work. Mere registration for work under ch. DWD 126 does not establish that the claimant is making a reasonable search for suitable work. It is essential that the claimant personally and diligently search for work on his or her own behalf. The reasonableness of a search for work will, in part, depend on the employment opportunities in the claimant's labor market area. A work search which may be appropriate in a labor market area with limited opportunities may be totally unacceptable in an area with greater opportunities. Unreasonable limitations by a claimant as to salary, hours or conditions of work indicate that a claimant is not making a reasonable search for suitable work. The department expects each claimant to conduct himself or herself as would a prudent person who is out of work and seeking work.

SECTION 2. DWD 127.01 (2) (intro.) is repealed and recreated to read:

DWD 127.01 (2) The department shall consider the following actions to constitute a reasonable search for suitable work under the facts and circumstances of each claimant's situation:

SECTION 3. DWD 127.01 (2) (b) is amended to read:

DWD 127.01 (2) (b) Applying for work with former employers; however, a claimant may refuse to apply for work with an employer if the claimant previously terminated employment with the same employer with good cause attributable to the employer under s. 108.04 (7) (b), Stats., ~~or because the employer made employment, compensation, promotion or job assignments contingent upon the employee's consent to sexual contact or sexual intercourse under s. 108.04 (7) (i), Stats.;~~

Note: ~~1999 Wis. Act 15 repealed s. 108.04 (7) (i), Stats., and amended s. 108.04 (7) (b), Stats., to include sexual harassment.~~

SECTION 4. DWD 127.02 (intro.) is amended to read:

DWD 127.02 (intro.) Waiver of work search requirements; ~~personal circumstances.~~ The department ~~may~~ shall waive a claimant's search for suitable work requirement under s. DWD 127.01 for any week under any of the following circumstances:

SECTION 5. DWD 127.02 (2) is repealed and recreated to read:

DWD 127.02 (2) The claimant is currently laid off from employment with an employer but there is a reasonable expectation of reemployment of the claimant by that employer. In determining whether the claimant has a reasonable expectation of reemployment by the employer, the department shall request the employer to verify the claimant's employment status and shall also consider other factors, including the following:

- a. The history of layoffs and reemployments by the employer.
- b. Any information that the employer furnished to the individual or the department concerning the claimant's anticipated reemployment date.
- c. Whether the claimant has recall rights with the employer under the terms of any applicable collective bargaining agreement.

SECTION 6. DWD 127.02 (3) (intro.) is amended to read:

DWD 127.02 (3) (intro.) The claimant has a reasonable expectation of starting work with a new employer within 4 weeks ~~after the week in which he or she appears at the public employment office to initiate the benefit claim or within 4 weeks after the week in which an eligibility review is conducted under s. DWD 128.03.~~ In determining whether a claimant has a reasonable expectation of starting work with a new employer, the department shall consider factors including, but not limited to, the following:

SECTION 7. DWD 127.03 (title) and (intro) are repealed.

SECTION 8. DWD 127.03 (1), (2), (3), (4), (5), and (6) are renumbered DWD 127.02 (6), (7), (8), (9), (10), and (11), respectively, and, as renumbered, DWD 127.02 (9) is amended to read:

DWD 127.02 (9) The claimant was not aware of the work search requirement and failure of the claimant's most recent employer failed to post or and maintain any the notice as to on claiming unemployment benefits which has been that was supplied to the employer under s. DWD 120.01.

SECTION 9. DWD 127.035 is repealed.

SECTION 10. DWD 127.04 (1) (intro.) is amended to read:

DWD 127.04 Claimants to present evidence of work search efforts. (1) The department may require a claimant to present evidence of his or her work search efforts to the department for any time period up to and including the 8-week period prior to the date that the department makes the request. The department may also notify the claimant that evidence will be required for a future week. The department may verify the evidence submitted. Evidence which a claimant customarily would be expected to submit includes the following:

SECTION 11. DWD 127.05 (title) is amended to read:

DWD 127.05 (title) Certification as to work search; ~~submission to public employment office.~~

SECTION 12. DWD 127.05 (1) is renumbered DWD 127.05 and, as renumbered, is amended to read:

DWD 127.05 Certification as to work search. The department may require any claimant to certify that a work search was made each week as part of the claim filing procedure under ch. DWD 129 ~~that a work search was made.~~

SECTION 13. DWD 127.05 (2) and (3) are repealed.

SECTION 14. DWD 127.09 is repealed.

SECTION 15. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22(2)(intro), Stats.