



**State of Wisconsin
Department of Workforce Development**

**W-2 Sanction
Good Cause Exceptions and Notice of Payment Reductions
Chapter DWD 12**

The Wisconsin Department of Workforce Development proposes an order to repeal and recreate DWD 12.20 and to create DWD 12.195, relating to Wisconsin Works sanction good cause exceptions and notice of payment reductions and affecting small businesses.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 49.148, 49.153 (2), 103.005 (17), and 227.11 (2), Stats.

Statutes interpreted: Sections 49.148, 49.151, and 49.153, Stats.

Related statute or rule: 45 CFR 261.14, 261.15, and 261.60

Explanation of agency authority. Section 49.153 (1), Stats., as created by 2005 Wisconsin Act 25, provides that before taking any action against a Wisconsin Works (W-2) participant that would result in a 20 percent or more reduction in the participant's benefits or in termination of the participant's W-2 eligibility, a W-2 agency must provide the W-2 participant with written notice of the proposed action and the reasons for the proposed action; make reasonable attempts to explain to the W-2 participant orally in person or by phone the reasons for the proposed action; and allow the participant a reasonable time to rectify the deficiency, failure, or other behavior to avoid the proposed action. Section 49.153 (2), Stats., provides that the Department shall promulgate rules that establish the procedures for the notice and explanation and that define "reasonable attempts" and "reasonable time" as used in s. 49.153 (1), Stats.

Section 49.148, Stats., provides that for every hour that a W-2 participant in a community service job or transitional placement fails to participate in an assigned activity without good cause, the participant's grant amount shall be reduced by \$5.15. Good cause is to be determined by the W-2 financial and employment planner (FEP) in accordance with rules promulgated by the department. Good cause shall include required court appearances for a victim of domestic abuse.

Section 49.151, Stats., provides that a participant who refuses to participate 3 times in any W-2 employment position component is ineligible to participate in that component. Among other ways, a participant demonstrates a refusal to participate by failing to appear

for an interview or an assigned activity without good cause as determined by the W-2 agency or voluntarily leaves appropriate employment or training without good cause as determined by the W-2 agency.

Summary of the proposed rules. The proposed rule on notice of W-2 payment reductions provides that before taking any action against a participant that would result in a 20 percent or more reduction in the participant's benefits or in termination of the participant's eligibility to participate in Wisconsin Works due to noncooperation with W-2 program requirements, a W-2 agency shall provide to the participant written notice of the proposed action and of the reasons for the proposed action. The written notice of a 20 percent or more reduction in the participant's benefits shall be issued by the W-2 agency no later than the first business day following notification to the W-2 agency of participants subject to a potential 20 percent or more payment reduction. The notice of termination of W-2 eligibility shall be issued no later than 10 days prior to the end of eligibility.

Within 5 business days after providing written notice, the W-2 agency shall explain to the participant orally in person or by phone, or make reasonable attempts to explain to the participant orally in person or by phone, the proposed action and the reasons for the proposed action. Reasonable attempts means at least 2 attempts to contact the participant orally in person or by phone. The explanation by the W-2 agency will inform the participant which requirements were not met or which activities were missed that resulted in a 20 percent or more reduction or termination of eligibility; discuss the participant's reasons for not complying with participation requirements or not cooperating with other program requirements; explain the opportunity to present good cause for failing to participate or cooperate; and inform the participant of the right to appeal the agency decision, if necessary.

After providing the notice and the explanation or attempting to provide an explanation, the W-2 agency shall allow the participant a reasonable time to rectify the deficiency, failure, or other behavior to avoid the proposed action. For purposes of this paragraph, "reasonable time" means 7 business days after the oral notification or after the last attempt to make oral notification.

In addition, the Department proposes to amend the rule on good cause for failing to comply with W-2 participation requirements. The current rule provides that good cause for failing to comply with the W-2 participation requirements includes a required court appearance including a required court appearance for a victim of domestic abuse, unavailability of child care that is necessary to participate in required activities, and other circumstances beyond the control of the participant as determined by the FEP. The W-2 participant must provide timely notification of the good cause reason to the FEP.

The proposed rule adds the following circumstances as good cause for not complying with W-2 participation requirements:

- Lack of transportation with no reasonable alternative, as determined by the FEP. In determining the reasonableness of transportation alternatives, the FEP shall consider the length of the participant's commute, participant safety, the cost of the transportation relative to the participant's income, and other relevant factors.
- Participant or W-2 group member's illness, injury, disability, or incapacity.

- Accommodations that have been determined necessary in a formal assessment are not available to allow the participant to complete the assigned activity.
- Conflict with another assigned W-2 activity or job search attempts.
- Inclement weather that impedes transportation or travel.
- School emergency.
- Domestic violence issues.
- Observance of a religious holiday.
- Routine medical or school appointments that cannot be scheduled at times other than during assigned activities.
- Child's school holiday, excluding summer break.
- Any day that the worksite or training site is closed due to a site-specific holiday.
- Death in the participant's immediate family. Immediate family means a participant's spouse, nonmarital co-parent, step-parents, grandparents, foster parents, children, step-children, grandchildren, foster children, brothers and their spouses, sisters and their spouses, aunts, uncles, sons-in-law, daughters-in-law, cousins, nieces and nephews of the participant or the participant's spouse or nonmarital co-parent, and other relatives of the participant or the participant's spouse or nonmarital co-parent if these other relatives reside in the same household as the participant. A participant may be granted good cause for no more than 3 business days if only local travel is necessary to attend the funeral services. A participant may be granted good cause for no more than 7 business days if long-distance travel is required to attend the funeral services. In general, the good cause period may not exceed the week following the death of a member of the participant's immediate family, but the FEP may lengthen the timeframe for good cause depending upon individual circumstances.
- Other circumstances beyond the control of the participant, but only as determined by the FEP. The FEP shall consider what a reasonable employer may allow under its absence policy and hardships that make completing activities and notifying the agency of missed activities more difficult for W-2 participants.

The participant shall notify the FEP of the good cause reason within 7 business days after an absence from a required activity to prevent a payment reduction. A FEP may request written documentation before accepting a good cause reason for a participant's absence from required activities if the participant has a pattern of absences of more than 3 consecutive days or more than 5 days in a rolling 30-day period and the FEP has reason to believe that the participant is misusing the good cause policy. An absence means being absent from any one required activity. A pattern of absences may include past absences for which a good cause reason was accepted.

Summary of factual data and analytical methodologies. The proposed rule on notice of W-2 payment reductions or loss of eligibility is based on requirements in s. 49.153, Stats., as created by 2005 Wisconsin Act 25. In order to meet the statutory requirement that written and oral notification be made prior to taking action regarding sanctions or case closures, the Department had to implement stringent timeframes to ensure that these notifications occur before the action is finalized in the Client Assistance for Re-employment and Economic Support (CARES) automation system. Prior to this

statutory change, participant notifications took place after the action had already been taken.

The proposed good cause amendments are based on the recommendations in the *W-2 Sanctions Study* released by the Department in December 2004 and the Temporary Assistance to Needy Families (TANF) rules issued February 5, 2008. The purpose of the *W-2 Sanctions Study* was to provide information to support the Department's commitment to ensure that W-2 sanctions are not applied due to factors such as an individual's race, ethnicity, geographic location, employment barriers, or other issues that have not been adequately identified or addressed by the participant's FEP. The *W-2 Sanctions Study* incorporated the findings of a steering committee that consisted of W-2 agency administrators, state administrators, representatives of client advocacy groups, and academics.

Comparison with federal regulations. If an individual refuses to engage in required work, the state must reduce or terminate the amount of assistance payable to the family, subject to any good cause or other exceptions the state may establish. The state must, at a minimum, reduce the amount of assistance otherwise payable to the family pro rata with respect to any period during the month in which the individual refuses to work. The state may impose a greater reduction, including terminating assistance. A state may not reduce or terminate assistance for a single custodial parent caring for a child under age six if appropriate and affordable child care is unavailable within a reasonable distance from the parent's home or worksite.

The TANF rules issued February 5, 2008, provide that a state may count a participant's excused absences for holidays and a maximum of 10 additional days of excused absences in any 12-month period in the federal participation rate. The rule commentary explains that this policy takes into consideration varying worksite and educational practices as well as unexpected events that cause a worksite to close or an individual to miss scheduled hours. A state's flexibility to excuse other absences is not limited. The required federal participation rate is 50 percent to allow the state to balance the goals of the program, the needs of the family, and obligations under the Americans with Disabilities Act.

Comparison with rules in adjacent states. Minnesota. When a participant fails without good cause to comply with program requirements, a notice of intent to sanction is sent to the participant specifying the requirements that were not complied with, informing the participant that the county agency will impose the sanctions if the participant does not come into compliance within a minimum of 10 days, specifying what must be done to come into compliance, and informing the participant of the opportunity to request a fair hearing or conciliation conference. Within the 10 days, the participant may prevent a sanction by complying with program requirements, demonstrating that she is already in compliance, showing good cause for not complying with the requirements, or requesting a fair hearing or conciliation conference. If the participant does not do any of these within 10 calendar days of the mailing of the notice of intent to sanction, the job counselor must notify the county agency that the assistance payment should be reduced. The county must send a notice of adverse action to the participant at least 10 days before a sanction is imposed. The notice must inform the participant of the sanction that will be imposed, the

reasons for the sanction, the effective date of the sanction, and the participant's right to have a fair hearing. If the participant requests a fair hearing or a conciliation conference, sanctions will not be imposed until there is a determination of noncompliance.

Good cause for failure to comply with program requirements exists when:

- (1) appropriate child care is not available;
- (2) the job does not meet the definition of suitable employment;
- (3) the participant is ill or injured;
- (4) a member of the assistance unit, a relative in the household, or a foster child in the household is ill and needs care by the participant that prevents the participant from complying with the employment plan;
- (5) the participant is unable to secure necessary transportation;
- (6) the participant is in an emergency situation that prevents compliance with the employment plan;
- (7) the schedule of compliance with the employment plan conflicts with judicial proceedings;
- (8) a mandatory MFIP meeting is scheduled during a time that conflicts with a judicial proceeding or a meeting related to a juvenile court matter, or a participant's work schedule;
- (9) the participant is already participating in acceptable work activities;
- (10) the employment plan requires an educational program for a caregiver under age 20, but the educational program is not available;
- (11) activities identified in the employment plan are not available;
- (12) the participant is willing to accept suitable employment, but suitable employment is not available; or
- (13) the participant documents other verifiable impediments to compliance with the employment plan beyond the participant's control.

Illinois. No sanction will be imposed the participant is sent a written notice scheduling a good cause determination/reconciliation meeting to determine whether the participant had good cause for his or her failure to comply with requirements and the participant has either failed to attend the meeting or failed to show good cause. If the participant failed to show good cause, the reconciliation process will continue to enable resolving disputes related to participation. The written notice shall explain the purpose of the appointment and the consequences for failure to attend or failure to show good cause. A sanction against participants may be rescinded at any level of the sanction process up through and until the final agency decision, including any appeal hearing, if the participant establishes good cause. The notice issued for a sanction shall include a description of the acts of noncooperation, including dates where applicable and a statement that the participant's acts were without good cause.

Examples of good cause include but are not limited to:

- 1) temporary illness for its duration;
- 2) court required appearance or temporary incarceration;
- 3) death in the family;
- 4) extreme inclement weather;
- 5) lack of any supportive service, even though the necessary service is not specifically provided under TANF, to the extent the lack of the needed service presents a significant barrier to TANF participation;

6) if an individual is engaged in employment and/or training that is consistent with the employment related goals of the program, if such employment and training is later approved by TANF staff;

7) failure of department staff or contractor to correctly forward the information to TANF staff;

8) failure of the participant to cooperate because of attendance at a test or a mandatory class or function at an educational program, when an education/training program is officially approved by TANF;

9) failure of the participant due to his or her illiteracy;

10) failure of the participant because it is determined that he or she should be in a different TANF activity;

11) non-receipt by the participant of a notice advising him or her of a participation requirement. If the non-receipt of mail occurs frequently, the department shall explore an alternative means of providing notices of participation requests to participants;

12) non-comprehension of written and/or oral English;

13) child care (or day care for an incapacitated individual living in the same home as a child) is necessary for the participation or employment and such care is not available for a child under age 13;

14) failure to participate in a TANF activity due to a verified scheduled job interview, medical appointment for the participant or a household member, or a school appointment for the participant or his or her children;

15) the individual is homeless. Homeless individuals have no current residence and no expectation of acquiring one in the next 30 days. This includes individuals residing in overnight and temporary shelters. This does not include individuals who are sharing a residence with friends or relatives on a continuing basis;

16) documented circumstances beyond the control of the participant which prevent the participant from completing program requirements; or

17) failure to participate in a TANF work activity because of violations of workplace rights due TANF recipients as determined by the U.S. Department of Labor.

Iowa. The department must send a reminder, request, or other notification when there is a potential participation issue. The reminder or request shall identify the participation issue, clarify expectations, attempt to identify barriers to participation, explain the consequences of the limited benefit plan, and offer supervisory intervention. If the department proposes to cancel, reduce, or suspend assistance, it shall give at written notice at least ten calendar days before the date the action would become effective. The notice must include a statement of what action is being taken, the reasons for the intended action, the manual chapter number and subheading supporting the action and the corresponding rule reference, an explanation of the appellant's right to appeal, and notice that assistance shall not be suspended, reduced, restricted, or canceled, or other proposed adverse action be taken pending a final decision on a timely appeal

(1) Acceptable instances when a person is excused from participation.

a. Illness. When a participant is ill more than three consecutive days or if illness is habitual, staff may require medical documentation of the illness.

b. Required in the home due to illness of another family member. Staff may require medical documentation for the same reasons as when a participant is ill.

c. Family emergency, using reasonable standards of an employer.

- d. Bad weather, using reasonable standards of an employer.
- e. Absent or late due to participant's or spouse's job interview.
- f. Leave due to the birth of a child.

(2) Acceptable instances when a person is excused from participation or for refusing or quitting a job or limiting or reducing hours or for discharge from employment due to misconduct.

a. Required travel time from home to the job or available work experience or unpaid community service site exceeds one hour each way. This includes additional travel time necessary to take a child to a child care provider.

b. Work offered is at a site subject to a strike or lockout, unless the strike has been enjoined or unless an injunction has been issued.

c. Violates applicable state or federal health and safety standards or workers' compensation insurance is not provided.

d. Job is contrary to the participant's religious or ethical beliefs.

e. The participant is required to join, resign from or refrain from joining a legitimate labor organization.

f. Work requirements are beyond the mental or physical capabilities as documented by medical evidence or other reliable sources.

g. Discrimination by an employer based on age, race, sex, color, handicap, religion, national origin or political beliefs.

h. Work demands or conditions render continued employment unreasonable, such as working without being paid on schedule.

i. Circumstances beyond the control of the participant, such as disruption of regular mail delivery.

(3) Jobs that participants have the choice of refusing or quitting or limiting or reducing, or instances when participants are excused for discharge from the job due to misconduct.

a. Employment change or termination is part of the family investment agreement.

b. Job does not pay at least the minimum amount customary for the same work in the community.

c. Employment is terminated in order to take a better-paying job, even though hours of employment may be less than current.

d. The employment would result in the family of the participant experiencing a net loss of cash income. Net loss of cash income results if the family's gross income less necessary work-related expenses is less than the cash assistance the person was receiving at the time the offer of employment is made.

e. The employment changes substantially from the terms of hire, such as a change in work hours, work shift, or decrease in pay rate.

(4) Instances when problems of participation could negatively impact the client's achievement of self-sufficiency. There may be instances where staff determine that a participant's problems of participation are not described, but may be circumstances which could negatively impact the participant's achievement of self-sufficiency.

Michigan. For the first instance that a worker determines a recipient to be noncompliant the department shall notify the recipient in writing within 3 business days of determining that the recipient is noncompliant. The notification shall include the reason the recipient has been determined to be noncompliant, the penalty that will be

imposed for the noncompliance an opportunity for the recipient to meet in person with a caseworker within 10 business days of the determination. If the recipient meets with a caseworker within 10 business days, the caseworker and the recipient shall review and modify the family self-sufficiency plan as determined necessary. The caseworker shall discuss and provide an official warning regarding penalties that shall be imposed if the recipient continues to be noncompliant. The caseworker shall inform the recipient that he or she must verify compliance with his or her family self-sufficiency plan within 10 business days.

For any instance of noncompliance, the recipient shall receive not less than 12 days' notice before penalties are imposed. If the recipient demonstrates good cause for the noncompliance during this period, a penalty shall not be imposed. Good cause is one or more of the following:

- The applicant or recipient suffers from a temporary debilitating illness or injury or an immediate family member has a debilitating illness or injury and the applicant or recipient is needed in the home to care for the family member.
- The applicant or employee lacks child care.
- Either employment or training commuting time is more than 2 hours per day or is more than 3 hours per day when there are unique and compelling circumstances, such as a salary at least twice the applicable minimum wage or the job is the only available job placement within a 3 hour commute per day, not including the time necessary to transport a child to child care facilities.
- Transportation is not available to the participant at reasonable cost.
- The employment or participation involves illegal activities.
- The applicant or recipient is physically or mentally unfit to perform the job, as documented by medical evidence or by reliable information from other sources.
- The applicant or recipient is illegally discriminated against on the basis of age, race, disability, gender, color, national origin, or religious beliefs.
- Credible information or evidence establishes one or more unplanned or unexpected events or factors that reasonably could be expected to prevent, or significantly interfere with, the individual's compliance with employment and training requirements, such as domestic violence, health or safety risk, religion, or homelessness.
- The applicant or recipient quit employment to obtain comparable employment.

Effect on small businesses. The proposed rules affect private W-2 agencies but do not have substantial economic effect on these agencies.

Analysis used to determine effect on small businesses. The notice of W-2 payment reductions or case closures does increase the workload of W-2 agency financial and employment planners (FEPs), but there is no significant increase in the cost of administering the W-2 program due to either the notice of payment reductions or good cause amendments.

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

Comments may be submitted to Elaine Pridgen, Office of Legal Counsel, Department of Workforce Development, P.O. Box 7946, Madison, WI 53707-7946, or elaine.pridgen@dwd.state.wi.us. The comment deadline is May 16, 2008.

SECTION 1. DWD 12.195 is created to read:

DWD 12.195 Notice before taking certain actions. Before taking any action against a participant that would result in a 20 percent or more reduction in the participant's benefits or in termination of the participant's eligibility to participate in Wisconsin Works due to noncooperation with W-2 program requirements, a W-2 agency shall do all of the following:

(1) The W-2 agency shall provide to the participant written notice of the proposed action and of the reasons for the proposed action. The written notice shall be issued on or before the following dates:

(a) The written notice of a 20 percent or more reduction in the participant's benefits shall be issued by the W-2 agency no later than the first business day following notification to the W-2 agency of participants subject to a potential 20 percent or more payment reduction.

(b) The notice of termination of W-2 eligibility shall be issued no later than 10 days prior to the end of eligibility.

(2) Within 5 business days after providing written notice, the W-2 agency shall explain to the participant orally in person or by phone, or make reasonable attempts to explain to the participant orally in person or by phone, the proposed action and the reasons for the proposed action.

(a) For purposes of this paragraph, "reasonable attempts" means at least 2 attempts to contact the participant orally in person or by phone.

(b) The explanation by the W-2 agency shall do all of the following:

1. Inform the participant which requirements were not met or which activities were missed that resulted in a 20 percent or more reduction or termination of eligibility.

2. Discuss the participant's reasons for not complying with participation requirements under s. DWD 12.16 or not cooperating with other program requirements under Chapter DWD 12.

3. Explain the opportunity to present good cause for failing to participate or cooperate.

4. Inform the participant of the right to appeal the agency decision, if necessary.

(3) After providing the notice under sub. (1) and the explanation or the attempts to provide an explanation under sub. (2), the W-2 agency shall allow the participant a reasonable time to rectify the deficiency, failure, or other behavior to avoid the proposed action. For purposes of this subsection, "reasonable time" means 7 business days after the oral notification or after the last attempt to make oral notification.

SECTION 2. DWD 12.20 is repealed and recreated to read:

DWD 12.20 Determination of good cause. (1) GOOD CAUSE

CIRCUMSTANCES. The FEP shall determine if a W-2 employment participant had good cause for not complying with the W-2 participation requirements. No good cause shall exist unless the participant provides timely notification of the good cause reason to the FEP. Good cause for failing to comply with the W-2 participation requirements shall be any of the following circumstances:

(a) A required court appearance, including a required court appearance for a victim of domestic abuse.

(b) Necessary child care is unavailable and the W-2 agency is unable to provide child care or refer the participant to alternate child care arrangements.

(c) Lack of transportation with no reasonable alternative, as determined by the FEP. In determining the reasonableness of transportation alternatives, the FEP shall consider the length of the participant's commute, participant safety, the cost of the transportation relative to the participant's income, and other relevant factors.

(d) Participant or W-2 group member's illness, injury, disability, or incapacity.

(e) Accommodations that have been determined necessary in a formal assessment are not available to allow the participant to complete the assigned activity.

(f) Conflict with another assigned W-2 activity or job search attempts.

(g) Inclement weather that impedes transportation or travel.

(h) School emergency.

(i) Domestic violence issues.

(j) Observance of a religious holiday.

(k) Routine medical or school appointments that cannot be scheduled at times other than during assigned activities.

(L) Child's school holiday, excluding summer break.

(m) Any day that the worksite or training site is closed due to a site-specific holiday.

(n) Death in the participant's immediate family. For purposes of this paragraph:

1. "Immediate family" means a participant's spouse, nonmarital co-parent, step-parents, grandparents, foster parents, children, step-children, grandchildren, foster children, brothers and their spouses, sisters and their spouses, aunts, uncles, sons-in-law, daughters-in-law, cousins, nieces and nephews of the participant or the participant's

spouse or nonmarital co-parent, and other relatives of the participant or the participant's spouse or nonmarital co-parent if these other relatives reside in the same household as the participant.

2. A participant may be granted good cause for no more than 3 business days if only local travel is necessary to attend the funeral services. A participant may be granted good cause for no more than 7 business days if long-distance travel is required to attend the funeral services. In general, the good cause period may not exceed the week following the death of a member of the participant's immediate family, but the FEP may lengthen the timeframe for good cause depending upon individual circumstances.

(o) Other circumstances beyond the control of the participant, but only as determined by the FEP. The FEP shall consider what a reasonable employer may allow under its absence policy and hardships that make completing activities and notifying the agency of missed activities more difficult for W-2 participants.

(2) TIMELY NOTIFICATION. The participant shall notify the FEP of the good cause reason within 7 business days after an absence from a required activity to prevent a payment reduction under s. 49.148 (1) (b) 1., (b) 3., or (c), Stats.

(3) WRITTEN DOCUMENTATION. (a) In making a good cause determination, the FEP may require that the W-2 employment position participant provide written documentation that good cause existed before accepting a good cause reason for a participant's absence from required activities if both of the following apply:

1. The participant has a pattern of absences of more than 3 consecutive days or more than 5 days in a rolling 30-day period. An absence means being absent from any one

required activity. A pattern of absences may include past absences for which a good cause reason was accepted.

2. The FEP has reason to believe that the participant is misusing the good cause policy.

SECTION 3. 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.