



Clearinghouse Rule 10-018

State of Wisconsin Department of Workforce Development Unemployment Insurance Division

Unemployment Insurance Benefit Claiming Procedures Chapter DWD 129

The Wisconsin Department of Workforce Development proposes an order to repeal ss. DWD 129.01 (2) (b) 3. and 4., and (3); to amend ss. DWD 129.01 (1), 129.01 (2) (a), and 129.05 (1); and to repeal and recreate s. DWD 129.01 (2) (b) 1. and 2., relating to unemployment benefit claiming procedures.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 108.08 (1), 108.14 (2), and 227.11, Stats.

Statutes interpreted: Sections 108.08 (1), Stats.

Related statutes: Not applicable

Explanation of agency authority. Section 108.08 (1), Stats., provides that to receive unemployment insurance benefits for any given week of unemployment, a claimant shall give notice to the department with respect to such week of unemployment within such time and in such manner as the department may by rule prescribe.

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.

Plain language analysis. Section 108.08 (1), Stats., provides that to receive unemployment insurance benefits for any given week of unemployment, a claimant shall give notice to the department with respect to such week of unemployment within such time and in such manner as the department may by rule prescribe. Chapter DWD 129 was amended recently, with changes effective January 1, 2007. Since that time, appeal tribunal decisions have interpreted the provisions of the rule relating to resuming claims and filing weekly certifications in ways that were not intended by the rule. The proposed changes to the rule are to clarify the intent of the process for resuming claims and the interplay of the different time limits for filing initial/resumed claims and continuing weekly certifications. By simplifying the language of the rule, the department hopes to reduce the risk of further unintended interpretations of the rule.

Initiating a claim. Section DWD 129.01 (1) currently provides that a claimant is eligible only if, as of the first week being claimed, 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. The rule basically provides that all initial claims can be backdated one week.

Continuing a claim. Section DWD 129.01 (2) describes the requirements for continuing a claim by filing timely weekly certifications. The current rule provides that the claimant is eligible for benefits for any week only if the claimant files a weekly certification with the department by telephone, internet, mail, or as otherwise prescribed by the department, within 14 days following the end of the week for which benefits are claimed. The rule basically provides that to be able to continue a claim, a claimant has up to two weeks to file a weekly certification for a week being claimed.

Resuming a claim. The current rule provides that if a weekly certification is not filed for a benefit week as described in s. DWD 129.01 (2) to continue a claim, the claim becomes inactive as of the first week after the last week in which a timely weekly certification could have been filed for the missed week. In order to resume a claim after it has become inactive, a claimant must file a new initial claim. The section on initiating a claim provides that these initial/resumed claims can be backdated one week. The intent of the rule was not to allow claimants to reach back two weeks to file a continued weekly certification once a claim has become inactive, however, appeal tribunals have not consistently read the rule to reach this result and have allowed claimants to reach back two or more weeks to file continued weekly certifications after a claim has become inactive.

The proposed rule will clarify the language of the rule. The proposed rule will combine the repetitive language in DWD 129.01 (2) (b) 1.-4. The proposed rule will clarify that a claimant cannot file a timely weekly certification for any week once the claimant has missed filing a timely weekly certification for a week. The department provides two examples to show how the clarified language should be interpreted.

In addition, DWD 129.05 is amended to authorize payment of benefits by debit cards issued by the department.

Summary of, and comparison with, existing or proposed federal regulations. There are no federal standards or regulations for unemployment insurance benefits regarding filing or notice requirements.

Comparison with rules in adjacent states. Minnesota. Applications for unemployment benefits are effective the Sunday of the calendar week in which the completed application is submitted. Applications and weekly certifications may be submitted by Internet, telephone, or mail. An account that has become inactive may be reactivated effective the Sunday of the calendar week in which the account was reactivated.

Iowa. An initial claim may be filed by telephone, in person, or by other means prescribed by the department. Claims are deemed filed as of Sunday of the week in which the claim is filed. A claimant must generally complete a voice response telephone claim to continue benefits.

Michigan. The Michigan administrative rules provide that a claimant shall file an initial claim, continued claim, or resumed claim as directed by the agency. To be considered a timely filing and effective as of the beginning of the claimant's first week of unemployment, a new claim shall be received by the agency not later than the Friday after the end of the week containing the claimant's last day of work. A continued claim shall be received by the agency not later than the Friday after the end of the last week of the period for which the claimant is instructed to report. A resumed claim is effective as of the beginning of the week in which it is received by the agency. If a claimant does not file a new, continued, or resumed claim pursuant to these deadlines but files the new or resumed claim not later than the 14th day after these time limits, the claim is considered filed on time if the claimant has good cause for the lateness of the filing.

Illinois. An initial claim for benefits must be filed in person at the local office unless a claimant is otherwise instructed by the agency. An initial claim for benefits should be filed no later than the end of the first week in which the claimant is separated from work and the claim shall begin in the week in which it was filed. Filing by mail may be allowed for claimants with special circumstances, such as lack of transportation or physical disabilities. Claimants generally file a certification for continuing benefits by telephone. Claimants are given a certification day in which they call and respond to questions concerning their claims for the prior 2 weeks. If the claimant misses the certification day, a call may be placed on Thursday or Friday of that week, or on the designated certification day or Thursday or Friday of the next week. Filing a certification by mail may be allowed in special circumstances, such as language issues, hearing impairment, or lack of access to a touch tone phone.

Summary of factual data and analytical methodologies. The interpretations of the rule that were not intended were brought to the attention of the department through appeal tribunal decisions and discussions with administrative law judges regarding the interpretation of the rule provisions. The department has analyzed the proposed rule language through examples and by seeking comments on the proposed rule language from administrative law judges.

Analysis used to determine effect on small businesses. The proposed rule will clarify the current process of filing continued weekly certifications and resumed claims. The proposed rule does not add or change any requirements for small businesses.

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.

Agency contact person. Daniel LaRocque, Director, Bureau of Legal Affairs, (608) 267-1406, daniel.larocque@wisconsin.gov.

Place where comments are to be submitted and deadline for submission. Written comments may be submitted to Tracey Schwalbe, Research Attorney, Unemployment Insurance Bureau of Legal Affairs, Department of Workforce Development, P.O. Box 8942, Madison, WI 53708, or tracey.schwalbe@wiscosin.gov. The comment deadline is March 10, 2010.

SECTION 1. DWD 129.01 (2) (b) 3. and 4., (c), and (3) are repealed.

SECTION 2. DWD 129.01(1) is amended to read:

DWD 129.01 Notice of unemployment. (1) INITIATING A CLAIM. A claimant is not eligible under s. 108.08, Stats., for benefits ~~purposes~~ for any week of total or partial unemployment ~~if~~ 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. ~~and weekly filing procedures as directed by the department.~~ ~~Any claimant whose claim has become inactive under sub. (2)(c) must comply with the requirements of this subsection to resume a claim, unless expressly excepted in sub. (3).~~ ~~requirements of this subsection to resume a claim, unless expressly excepted in sub. (3).~~

SECTION 3. DWD 129.01 (2) (a) is amended to read:

(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 ~~only if~~ unless the claimant files a timely weekly certification with the department by telephone, internet, mail, or as otherwise prescribed by the department.

SECTION 4. DWD 129.05 (1) is amended to read:

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, ~~or~~ 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.

SECTION 5. DWD 129.01 (2) (b) 1. and 2. are repealed and recreated to read:

(b) 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 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.

SECTION 6. INITIAL APPLICABILITY. This rule first applies the first full week after the effective date of this rule.

SECTION 7. 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.