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Governor Scott Walker
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Rule Report for Legislative Review

Sanctions in the Wisconsin Works Program

DCF 101/CR 17-066

Basis and Purpose of the Proposed Rules

Sections 49.1515 and 49.151 (1m), Stats., as affected by 2015 Wisconsin Act 55, direct the department to promulgate a rule on determining a refusal to participate. Section 49.153, Stats., directs the department to promulgate a rule on notice before taking certain actions.

Public Hearing Summary

The department held a public hearing in Madison on October 25, 2017. A summary of comments received and the department's response is attached.

Legislative Council Staff Recommendations and Department Response

1. Statutory Authority

Section 49.151 (1m) (f), Stats., authorizes the agency to specify, by rule, what other behavior or action constitutes a refusal to participate in a Wisconsin Works employment position. This could also be cited in the statutory authority section.

Department response: The department accepted this recommendation and updated the statutory authority section of the rule analysis.

2. Form, Style and Placement in Administrative Code

In s. DCF 101.195 (3) (a), the phrase, "For purposes of this subsection" should be rephrased, "In this subsection".

Department response: The department accepted this recommendation and updated s. DCF 101.195 (3) (a).

4. Adequacy of References to Related Statutes, Rules and Forms

Because all of the paragraphs in s. 49.151 (1m) Stats., are being interpreted by the rule, when citing this subsection in both the statutes interpreted and the summary of proposed rules, pars. (a) to (f) do not need to be listed.

Department response: The department accepted this recommendation and updated the statutes interpreted and summary of proposed rules sections.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In SECTION 1, it is unclear what the term “nonparticipation” means. Does it mean a refusal to participate? Does it mean that the person did not show up for work or a scheduled meeting or training? This term should be defined.

Department response: The department accepted this recommendation and created a definition of “nonparticipation” at s. DCF 101.03 (26m).

b. In SECTION 1, it is unclear what it means for a participant’s benefits to be restored. For example, is the restoration of benefits only prospective or does it also include back pay? If it may be either retrospective or prospective, or both, who makes this determination, when is this determination made, and upon what grounds is it made? The agency should specify what it means for benefits to be restored.

Department response: The department accepted this recommendation and amended s. DCF 101.195 (3) (c) to specify what the restoration of benefits means.

c. In s. DCF 101.21 (1), should the sanction for a refusal to participate be specified?

Department response: The department did not make changes in response to this comment. The sanction for a refusal to participate is specified in s. 49.151 (1m) (intro.), Stats., and summarized in s. DCF 101.21 (1) (b) 3.

d. In s. DCF 101.21 (1) (a) 5. (intro.), it appears that in the last sentence the word “all” should be changed to “any”. In subpar. a., both instances of the phrase “specified under” should be revised to “defined in”. Also, consider identifying, either in a Note to the rule or in the plain language analysis for the proposed rule, that the definition for “misconduct” is similar to the definition for that term under the unemployment insurance laws, s. 108.04 (5), Stats.

Department response: The department accepted these recommendations and updated the proposed rules at s. DCF 101.21 (1) (a) 5. (intro.) and in subpar. a. Also, the department added a statement in the plain language analysis for the proposed rule that that the definition for “misconduct” is similar to the determination for that term under the unemployment insurance laws.

e. In s. DCF 101.21 (1) (c) 6., it is unclear what level of employee requirements would disqualify the individual. For example, are reasonable negotiations permitted? Consider inserting the word “unreasonable” before “requirement”. Compare, for example, s. DWD 128.01 (4) (a) 1. and 7.

Department response: The department accepted this recommendation and added the word “unreasonable” before the word “requirement” in s. DCF 101.21 (1) (c) 6.

Changes to Analysis Prepared under Section 227.14 (2), Stats.

None

Final Regulatory Flexibility Analysis

The proposed rules do not affect small businesses as defined in s. 227.114 (1), Stats.

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