

Chapter DWD 113

SETTLEMENT OF DISPUTES AND COMPROMISE OF LIABILITIES

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Note: Chapter ILHR 113 was effective on March 1, 1994, except that ss. ILHR 113.03 and 113.04 are also applicable to installment payment agreements entered on or after January 7, 1990. Chapter ILHR 113 was renumbered Chapter DWD 113 under s. 13.93 (2m) (b) 1., Stats. and corrections made under s. 13.93 (2m) (b) 6. and 7. Stats., Register, June, 1997, No. 498.

DWD 113.001 Definitions. (1) Except as provided in sub. (2), unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

(2) In this chapter:

(a) “Action” means a circuit court proceeding for judicial review of a commission decision or an appeal to either the court of appeals or the supreme court.

(ar) “Bureau of legal affairs” means legal counsel in the unemployment insurance division within the department.

(bm) “Compromise” means department agreement to accept payment of less than the full amount of contributions, payments in lieu of contributions, interest, penalties and costs, as applicable, owed by an employer, former employer, or a person liable for an employing unit’s liabilities, in complete fulfillment of the outstanding liability.

(c) “Determination” means an initial determination issued under s. 108.10 (1), Stats.

(d) “Employer”, in addition to the meaning specified in s. 108.02 (13), Stats., includes an employing unit which was formerly an employer under s. 108.02 (13), Stats.

(e) “Same business or operation” means operation under the same unemployment insurance employer account, including any account transferred under s. 108.16 (8), Stats., with no intervening final determination of account termination under s. 108.02 (13) (i), Stats., provided that “same business or operation” shall not be deemed to extend beyond the date the account would have been terminated under s. 108.02 (13) (i), Stats., and s. DWD 110.09 but for an unpaid liability, unless the account was reopened under s. DWD 110.10.

(f) “Settle” means to resolve a pending determination, decision or action by agreement.

History: Cr. Register, February, 1994, No. 458, eff. 3–1–94, r. (intro.), (5), renum. (1), (4), (6) and (7) to be (2) (a), (b), (c) and (d), renum. (2), (3), (8), (9) and (10) to be 110.02 (9), (10), (44), (51) and (52), cr. (1), (2), Register, September, 1995, No. 477, eff. 10–1–95; CR 18–033: am. (1), (2) (intro.), renum. (2) (b) to DWD 100.02 (15m) and am., cr. (2) (ar), (2) (bm) renum. from DWD 100.02 (10) and am., am. (2) (d), (2) (e) renum. from DWD 100.02 (51) and am., (2) (f) renum. from DWD 100.02 (52) Register May 2019 No. 761, eff. 6–1–19; correction in (2) (bm) made under s. 35.17, Stats., Register May 2019 No. 761.

DWD 113.01 Purposes. (1) This chapter establishes standards for the following circumstances:

(a) The settlement of disputes between the department and parties to determinations, decisions or actions.

(b) The compromise of liabilities for contributions, reimbursements in lieu of contributions, interest, penalties and costs assessed under ch. 108, Stats.

(c) In limited circumstances, waiving or decreasing the interest charged under s. 108.22 (1) (a) or 108.17 (2c) (c), Stats.

(2) This chapter does not affect the application of s. 108.10 (1) and (6), Stats.

History: Cr. Register, February, 1994, No. 458, eff. 3–1–94; CR 13–106: am. (1) (intro.), cr. (1) (c) Register July 2014 No. 703, eff. 8–1–14.

DWD 113.02 Settlement. (1) Under s. 108.10 (8), Stats., the department may settle in whole or in part:

(a) Any determination that has been appealed, has not become final and has been referred from the bureau of tax and accounting to the bureau of legal affairs.

(b) Any decision or action that has not become final.

(2) Settlement shall be based upon advice of the bureau of legal affairs, who shall certify that, after having fully investigated the matter, it is the opinion of the bureau of legal affairs that one or more of the following conditions exists:

(a) The department has made an error of law or fact which, if corrected, would negate or change the determination issued in the case.

(b) Given the available evidence, there is significant doubt that the department will prevail in the dispute on specific issues and there is little or no likelihood of producing sufficient additional evidence in favor of the department regarding the issues before or at a hearing under s. 108.10 (2), Stats.

(c) Before a hearing under s. 108.10 (2), Stats., the department has discovered additional relevant and material evidence that would negate or change the determination in the case.

(d) Given the evidence in the record or the nature of a decision at a lower level, or both, there is significant doubt that the department will prevail on appeal on one or more specific issues.

(e) All or part of any interest liability was incurred as a result of undue delay on the part of the department such that there is valid reason to cancel that liability.

(f) There are valid legal defenses of estoppel or laches against the department as to all or part of the determination.

(3) A settlement may be implemented by any of the following methods:

(a) Under s. 108.10 (1), Stats., the department may amend any determination affected by the settlement before a hearing on the determination.

(b) Under s. 108.10 (1), Stats., the department may set aside the applicable determination before a hearing on the determination and issue a new determination as necessary to reflect the terms of the settlement.

(c) The department and the appellant may enter into a written stipulation which sets forth the terms of the settlement. The stipulation is subject to the requirements of s. DWD 140.12 (1).

(d) The appellant may withdraw all or part of the appeal of the determination.

History: Cr. Register, February, 1994, No. 458, eff. 3–1–94; CR 18–033: am. (1) (a), (b), (2) (intro.), (a) to (d), (f), (3) Register May 2019 No. 761, eff. 6–1–19.

DWD 113.025 Waiver of interest. (1) Except as provided in s. DWD 113.02 or 113.03, the department may grant a

waiver or decrease of interest owed by an employer if the employer satisfies all of the following conditions:

(a) The employer pays the full payment of any taxes and assessments due within 30 days following resolution of all issues. Until the employer pays all of the correct amount of taxes and assessments due, the department may not waive or decrease any of the interest owed by the employer.

(b) The employer files any wage or tax report due within 30 days following resolution of all issues. Until the employer files all of the wage or tax reports that are due, the department may not waive or decrease any of the interest owed by the employer.

(c) The employer has no other outstanding reports, contributions, interest, penalties, or other fees due.

(d) The employer was determined within the last year to be subject to ch. 108, Stats., or has a history of timely filing required reports, including wage and contribution reports, and of making payments in a timely manner.

(e) The employer or a business for which the employer is a successor, under the requirements of s. 108.16 (8), Stats., has never received a waiver or decrease in interest charged under s. 108.22 (1) (a) or 108.17 (2c) (c), Stats.

(f) There has not been a hearing on an appeal under s. 108.10, Stats., regarding the tax liability associated with the interest.

(2) If all of the conditions of sub. (1) are satisfied, the department may waive or decrease the interest charged under s. 108.22 (1) (a) or 108.17 (2c) (c), Stats., if the interest charged resulted from any of the following circumstances:

(a) The employer failed to pay taxes or underpaid taxes by the required due date established by the department as a result of excusable neglect. An erroneous contention regarding the unemployment insurance law or misunderstanding of the obligations under the law shall not constitute excusable neglect.

Note: The following are examples of excusable neglect:

Embezzlement by an accountant or an employee who is not related to the employer such that the embezzlement caused the interest to be due.

Inaccurate written communication given to the employer by the Wisconsin Division of Unemployment Insurance that affirmatively misled the employer as to its duties and obligations such that the inaccurate written communication caused the interest to be due.

(b) An inadvertent mathematical miscalculation by the employer of the amount of tax due resulting in a de minimis underpayment of taxes.

(3) A denial of a request for a waiver or decrease of interest under sub. (2) and s. 108.22 (1) (cm), Stats., is not an appealable decision.

History: CR 13-106: cr. Register July 2014 No. 703, eff. 8-1-14; CR 18-033: am. (1) (c) to (f) Register May 2019 No. 761, eff. 6-1-19.

DWD 113.03 Compromise of employer liability.

(1) Under s. 108.10 (8), Stats., the department may compromise the liability of any employer as established in any final determination, decision or action, together with any subsequent collection costs, if all of the following apply:

(a) The employer makes a sworn application for the compromise of the employer's liability to the department, including a financial statement if requested, in a form prescribed by the department.

(b) The employer is not a government unit.

(c) The employer is not a debtor in a case under title 11 of the United States Code with respect to any liability under ch. 108, Stats., which is not dischargeable in bankruptcy unless any of the following apply:

1. In a case under chapter 7 of title 11 of the United States Code, there are insufficient assets to pay the liability in full under the statutory order of distribution.

2. In a case under chapter 11 or 12 of title 11 of the United States Code, the confirmed plan of reorganization provides for the sale of or distribution to creditors of all of the property of the employer and there are insufficient assets to pay the liability.

(d) If the employer is a nonprofit organization that incurred all or part of its liability when it was subject to reimbursement financing status under s. 108.151 (2), Stats., the employer's assurance of reimbursement has either been applied to the liability or the application for compromise provides for such assurance.

(e) The department finds that the employer is unable to pay the full amount of the contributions or payments in lieu of contributions, interest, penalties and costs. If the employer is still in the same business or operation as when the liability sought to be compromised was incurred, and all of the following apply:

1. The employer's application for compromise offers payment in an amount not less than the unpaid contributions or unpaid payments in lieu of contributions, including any contributions owed as a successor under s. 108.16 (8) (f), Stats.

2. The required payment of all interest, penalties or costs would pose an immediate threat to the financial viability of the employer.

3. The employer is paying all current contributions or payments in lieu of contributions.

(2) If the conditions of sub. (1) are satisfied, the department shall determine the amount that the employer is able to pay and may issue an acceptance of the application for compromise in the determined amount.

(3) Notwithstanding sub. (1) (e), the department may compromise unpaid contributions on wages for domestic service arising under s. 108.02 (13) (d), Stats., for any time period before the effective date of the existence of a fiscal agent or fiscal intermediary under s. 46.27 (5) (i), 46.272 (7) (e), or 47.035, Stats.

(4) Notwithstanding sub. (1) (e), in determining the amount of the accepted compromise, the department may consider the following:

(a) A portion of any interest liability was incurred as a result of undue delay on the part of the department such that there is valid reason to compromise the interest liability.

(b) In the opinion of the bureau of legal affairs, the employer could have raised valid legal defenses of estoppel or laches against the department.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; CR 18-033: am. (1), (3), (4) (intro.), (a), (b) Register May 2019 No. 761, eff. 6-1-19.

DWD 113.04 Compromise of personal liability.

(1) The department may compromise the personal liability of a person whose liability for the unpaid contributions, interest, penalties and costs of an employer has been finally established under s. 108.22 (9), Stats., if all of the following apply:

(a) The person submits a sworn application to the department for the compromise of the person's liability, including a financial statement if requested, in a form prescribed by the department.

(b) The person is not the debtor in a case under title 11 of the United States Code with respect to any liability under ch. 108, Stats., which is not dischargeable in bankruptcy unless any of the following apply:

1. In a case under chapter 7 of title 11 of the United States Code, there are insufficient assets to pay the liability in full under the statutory order of distribution.

2. In a case under chapter 11 or 12 of title 11 of the United States Code, the confirmed plan of reorganization provides for the sale of or distribution to creditors of all of the property of the person and there are insufficient assets to pay the liability.

(c) The department finds that the person is unable to pay the full amount of the liability.

(2) If the conditions of sub. (1) are satisfied, the department shall determine the amount that the person is able to pay and may issue an acceptance of the application for compromise in the determined amount.

(3) In making its finding that the person is unable to pay the full amount of the liability under sub. (1) (c) and its determination

of the amount that the person is able to pay, the department shall consider the person's present and prospective income.

(4) The department's acceptance of a compromise under this section shall not affect the liability of any other person against which the department may issue or has issued a determination of liability for the unpaid contributions of the same employer.

(5) In an application for compromise under this section, a person liable or potentially liable at the time of application for the liabilities of more than one employer under s. 108.22 (9), Stats., shall disclose all such liabilities, including any liabilities which are not final. Failure to make such disclosure shall make the person ineligible for compromise of the undisclosed liability in any later application for compromise under this section.

(6) A person granted a compromise under this section shall not be eligible for a compromise of any liabilities incurred for tax periods after the acceptance of the compromise.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; CR 18-033: am. (1) to (6) Register May 2019 No. 761, eff. 6-1-19; correction in (1) (b) 2. made under s. 35.17, Stats., Register May 2019 No. 761.

DWD 113.05 General procedural provisions.

(1) The department may request additional information and may also examine the employer and any other person as it deems necessary, under oath, regarding the employer's or person's application.

(2) The department shall acknowledge in writing the receipt of an application for compromise within 30 days of such receipt. The department's acceptance of the application for compromise shall be in writing and be issued with the concurrence of the treasurer of the unemployment insurance fund or the treasurer's designee. The acceptance shall be effective only if the amount determined in the acceptance is paid to the department within 30 days from the date of the acceptance, except as otherwise provided under an installment arrangement under sub. (3). The department shall prescribe the payment form.

(3) The department may allow payment of the determined amount by installment payments upon such conditions as the department shall prescribe. In the event of failure to make any installment payment when due, which failure is not excused in writing by the department, the department may declare its acceptance of the application for compromise to be null and void and may proceed to collect the balance of the original liability using whatever remedies are available to it by law.

(4) The submission of an application for compromise shall not operate to stay collection proceedings. The department may defer collection during the pendency of an application if it is satisfied that the interests of the state will not be jeopardized.

(5) Frivolous or incomplete applications and applications submitted for the purpose of delaying collection of the liability shall be immediately rejected.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; CR 18-033: am. (1), (2), (4) Register May 2019 No. 761, eff. 6-1-19.

DWD 113.06 Disposition of warrants. Upon timely payment of the amount set forth in the department's acceptance of compromise, the department shall issue a release of any outstanding warrant against the employer or person.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; CR 18-033: am. Register May 2019 No. 761, eff. 6-1-19.

DWD 113.07 Reopening compromised liability. The department may declare a compromise void at any time if any of the following apply:

(1) The employer or person submitted a materially false application for compromise.

(2) Before the department accepted the application for compromise, the employer or person concealed or disposed of income or property which could have been used to pay any part of the original liability.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; CR 18-033: am. Register May 2019 No. 761, eff. 6-1-19.