

Chapter DWD 132

DETERMINING ELIGIBILITY FOR BENEFITS

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Note: Chapter Ind 132 as it existed on August 31, 1987 was repealed and a new chapter ILHR 132 was created effective September 1, 1987. Chapter ILHR 132 was renumbered Chapter DWD 130 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 132.001 Definitions. Except as provided in this chapter, unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

History: Cr. Register, August, 1987, No. 380, eff. 9-1-87; renum. (6) to (8) to be (9) to (11), cr. (6) to (8), Register, January, 1989, No. 397, eff. 2-1-89, r. (intro.), (2) to (4), (10) and (11), renum. (1) to be (2) and am., renum. (5), (6) and (9) to be 100.02 (23), (31) and (55), renum. (7) and (8) to be 100.02 (53) and (54) and am., cr. (1), Register, September, 1995, No. 477, eff. 10-1-95; renum. (1) to be DWD 132.001, r. (2), Register, May, 1997, No. 497, eff. 6-1-97.

DWD 132.01 Purpose. The purpose of this chapter is to provide standards for determining a claimant's eligibility for benefits under certain provisions of s. 108.04, Stats.

History: Cr. Register, August, 1987, No. 380, eff. 9-1-87.

DWD 132.04 Educational employees: reasonably similar terms and conditions. (1) SCOPE. Under s. 108.04 (17) (a), (b) and (c), Stats., a claimant is ineligible for benefits based upon services provided to or on behalf of an educational institution for weeks of unemployment which occur between academic years or terms or during an established and customary vacation period or holiday recess if the claimant performed the services in the first such year or term or in the year or term immediately before the vacation period or holiday recess and if there is reasonable assurance that the claimant will perform such services for any educational institution in the year or term immediately following the academic year, term, vacation period or holiday recess. The Wisconsin supreme court has ruled that reasonable assurance exists if the terms and conditions of the employment in the academic year or term immediately following the weeks of unemployment which occurred between academic years or terms or during an established and customary vacation period or holiday recess are reasonably similar to those terms and conditions of employment which existed in the year or term before such weeks.

(2) STANDARD. Except as provided under sub. (3), the terms and conditions of the employment for which the claimant receives assurance from an educational institution under s. 108.04 (17) (a), (b) and (c), Stats., for the academic year or term immediately following the weeks of unemployment which occurred between academic years or terms or during an established and customary vacation period or holiday recess are reasonably similar if:

(a) The gross weekly wage is more than 80% of the gross weekly wage earned in the academic year or term which preceded the weeks of unemployment;

(b) The number of hours per week is more than 80% of the average number of hours worked per week in the academic year or term which preceded the weeks of unemployment; and

(c) The employment involves substantially the same skill level and knowledge as the employment in the academic year or term which preceded the weeks of unemployment.

(3) EFFECT ON ELIGIBILITY. (a) If the employment for which the claimant receives assurance is not reasonably similar under sub. (2), the claimant is eligible for benefits based on services provided to or on behalf of an educational institution between academic years or terms or during established and customary vaca-

tion periods or holiday recesses under s. 108.04 (17) (a), (b), and (c), Stats., if otherwise qualified.

(b) If the employment for which the claimant receives assurance is reasonably similar under sub. (2), the claimant is not eligible for benefits based on services to or on behalf of an educational institution between academic years or terms or during established and customary vacation periods or holiday recesses under s. 108.04 (17) (a), (b), and (c), Stats.

History: Cr. Register, August, 1987, No. 380, eff. 9-1-87; r. (3); renum. (3) to be (4) and am., Register, July, 1993, No. 451, eff. 8-1-93.

DWD 132.05 Misconduct: abuse of a patient of a health care facility. (1) SCOPE. (a) After an employee has been discharged by an employing unit for misconduct connected with his or her employment, he or she is not eligible to receive unemployment benefits under s. 108.04 (5), Stats. The Wisconsin supreme court has defined misconduct for unemployment insurance purposes to mean "*conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has a right to expect of his [or her] employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his [or her] employer.*" The intent of this section is to ensure that the statutory provision and the court decision are consistently interpreted and applied in cases involving alleged abuse of a patient in a health care facility.

(b) This section provides a standard by which to determine if misconduct exists under s. 108.04 (5), Stats., when an employee is discharged for alleged abuse of a patient of a health care facility. This standard also applies to disciplinary suspensions for misconduct under s. 108.04 (6), Stats.

(c) At any hearing involving this section, the health care facility shall prove by competent evidence that the alleged conduct for which the employee was discharged actually occurred. Section DWD 140.16 regarding the admissibility of evidence applies in all hearings involving alleged abuse of a patient.

(2) STANDARD. Discharge of an employee by an employing unit for misconduct connected with his or her employment under s. 108.04 (5), Stats., may include the discharge of an employee by a health care facility for abuse of a patient. Abuse of a patient includes, but is not limited to:

(a) Except when required for treatment, care or safety, any single or repeated intentional act or threat through contact or communication involving force, violence, harassment, deprivation, withholding care, sexual contact, sexual intercourse, or mental pressure, which causes physical pain or injury, or which reasonably could cause physical pain or injury, fear or severe emotional distress;

(b) Any gross or repeated failure to provide treatment or care without good cause which reasonably could adversely affect a patient's health, comfort or well-being;

(c) Any intentional act which subjects a patient to gross insult, ridicule or humiliation, or repeated failure to treat a patient with dignity and respect; and

(d) Knowingly permitting another person to do any of the acts in par. (a), (b) or (c) or knowingly failing to take reasonable steps

to prevent another person from doing any of the acts in par. (a), (b) or (c).

(3) EFFECT ON ELIGIBILITY. (a) If a claimant was discharged for conduct which the health care facility alleges was abuse of a patient and that conduct is determined not to be misconduct under this section, the claimant is eligible to receive benefits, if otherwise qualified.

(b) If a claimant was discharged for conduct which the health care facility alleges was abuse of a patient and that conduct is determined to be misconduct under this section, the claimant is not eligible to receive benefits until 7 weeks have elapsed since the end of the week in which the discharge occurs and the employee

earns wages after the week in which the discharge occurs equal to at least 14 times the employee's weekly benefit rate in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be that rate which would have been paid had the discharge not occurred. The wages paid to the employee by the health care facility shall be excluded from the employee's base period wages for purposes of benefit entitlement, as provided in s. 108.04 (5), Stats.

History: Cr. Register, January, 1989, No. 397, eff. 2-1-89; am. (1) (a) and (c), r. (3) (b), renum. (3) (c) to be (3) (b) and am., Register, September, 2000, No. 537, eff. 10-1-00; correction in (1) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 2000, No. 537.