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Janell Knutson
Janell.Knutson@dwd.wisconsin.gov

RE: Comments on proposed changes to DWD 126, 127, and 129

Dear Ms. Knutson:

For your review, here are my comments regarding regarding the above-referenced matters.¹

Job registration and weekly claim certification changes

Weekly claim certifications will now be part of a weekly work registration requirement. And, at some point, claimants will have to complete their weekly claim certifications via an on-line system unless a claimant can show good cause for not being able to use a computer-based system. Good cause is defined as physical, mental, educational, or linguistic limitations. The presumption of work registration when filing weekly claim certifications is eliminated.

There is no indication yet that the Department is providing on-line access for weekly claim filing in multiple languages, that instructions and help are available in multiple languages, and that different browsers and devices are being considered when using this on-line system. Florida implemented similar on-line filing requirements in 2011, and the US Dep't of Labor found that Florida's on-line system was discriminatory (finding enclosed and available at

<http://www.nelp.org/page/-/UI/2013/USDOL-Civil-Rights-Initial-Determination-Florida-Unemployment-Compensation.pdf>).

Nothing in these proposed regulations indicates that Department is addressing the language and disability issues noted by the Dep't of Labor in Florida's implementation of a similar program.

Finally, it appears that the Job Center of Wisconsin website will be the focal point of this work registration requirement. This presumption places a government-controlled program at the heart of claimants' work registration. Just as job sources have changed markedly over the last twenty years, it seems likely that significant changes in how people find jobs will continue. Accordingly, the Department's effort to make the Job Center website the central focus of its work registration requirements seems, at a

¹ These comments are my own and do not reflect an official statement made on behalf of the Unemployment Compensation Appeals Clinic, Inc., or any other organization to which I am connected.

minimum, short-sighted. Instead of making itself the central focus of work registration, the Department would be better served by adapting its requirements to whatever work registration efforts are being used at any one time. As discussed in more detail below, folks in job transition are signing up with numerous resources as part of their job-search efforts that are not even touched upon here by the Department.²

Kind of work search contacts

The Department introduces here numerous changes to what constitutes a work search contact. In part, these changes are intended to provide clarity to claimants about the Department's requirements for maintaining records of work search efforts. For example, new language in DWD 127.01 specifies that the Department "may require a claimant to provide . . . job search log[s]." The Department's proposals here also appear to be an effort to simplify and consolidate work search contact requirements, such as eliminating the responding to classified ads (which can be considered the same as applying for work with employers) and combining registering at a union hiring hall with registration at a public or private placement facility.

But, the new requirements in DWD 127.01(2) regarding work search contacts also eliminate a few still very viable work search avenues and ignore several others that are increasingly important to job seekers. In place of registering with placement services connected to professional organizations, the Department now has visiting a Wisconsin Job Service Center or other state-equivalent. Participation in employment workshops are also eliminated. For many professionals, however, connections through a professional organization are vital parts of any job search because of the services and contacts that become available. For the Department to exclude one-time registration here and prioritize visits to a state job center places undue emphasis on what the Department can most easily administer over what is more effective (unless the Department has somehow encapsulated the efforts of numerous professional organizations within its Job Center operations). Furthermore, rather than eliminating participation in employment workshops, the Department should be expanding this opportunity to include not just the

² This concern would also allow the Department to take advantage of non-computerized-based services. Many folks do not have convenient access to the Internet from desktop or laptop computers. Furthermore, the Job Center website and the Department website is overly complex or graphic-intensive, and so displays poorly on smart phones — devices many foresee as the predominant platform for Internet activity.

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skill-based workshops currently included in DWD 127.01(2) but also the numerous job support groups that currently are not listed here. Numerous studies indicate individuals who regularly attend these groups markedly increase their chances for finding new jobs. For example, a group I work with, Madison Area Job Transition,³ offers a holistic approach to job search efforts that has proven effective to many looking for work. Rather than limiting job search contacts to Department sponsored activities at its Job Centers and the Job Center website, the regulations should be expanded to include the kinds of activities actually being used by successful job searchers.

To begin, individuals need to pursue several kinds of contacts before they attempt an actual application for a specific position. While the Department's proposals correctly deprecate classified ads as a job search contact, the employment model still being used by the Department here is the model of an individual responding to an ad of some kind with an employment application. Today, individuals who simply complete employment applications in response to a position description are rarely successful. Rather, the successful job application usually occurs after several job search contacts have been made to ascertain: (a) the specific needs of the company, (b) the resources and skills that the applicant has which are best-suited for the position, and (c) the circumstances that make for a good fit between applicant and company.

These contacts begin with applicants making themselves available on various networks. LinkedIn has become a major resource for those in transition, and a profile there is almost as essential today as having a well-prepared resume was ten years ago. Furthermore, numerous employers now post jobs only through LinkedIn.⁴ So, without a LinkedIn account, an individual simply has limited to no access whatsoever to the job postings and employer information there. There are also numerous e-lists available for finding jobs that claimants must first subscribe to if they are to have access to the positions

³ The group's website is at <http://madisonareajobtransi.wix.com/majt>. *See also* http://host.madison.com/business/mission-continues-for-madison-area-job-transition-program-even-as/article_807ea648-ed64-11e1-bcaa-0019bb2963f4.html.

⁴ As an indication of how much has changed in job search efforts, please note that there is no mention here of careerbuilder.com and monster.com. While these websites are certainly still useful in some cases, they appear to be going the way of classified ads.

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offered through these e-lists.⁵ If the Department wants to encourage claimants to take actions that will lead to actual jobs rather than simply responding to employer job-postings, then the Department should credit claimants for job search contacts when they subscribe to relevant e-lists or create profiles on LinkedIn.

Claimants should also be credited for joining LinkedIn groups, such as the Madison-based Hi-Tech Happy Hour, that provide key networking opportunities for those looking for jobs both within LinkedIn and through sponsored events. Informational interviews — when individuals meet with employer representatives to discuss an employer, its operational concerns and goals, and the individual's skills but which involve no actual employment application — are vital tools for many in learning about how to present themselves when later completing work applications for that employer. Accordingly, claimants should also be credited for a job search contact for any informational interviews they have.

Individuals in transition also attempt to develop new skills in order to expand their job opportunities by attending training of various kinds. In many cases, this training means enrolling in classes at local colleges and universities. Unfortunately, unless the training is Department-approved (which eliminates the need for any work search), individuals enrolled in classes receive no credit from the Department for these efforts and may even jeopardize their unemployment benefits because school enrollment is considered anathema to being able and available for work.⁶ The Department could reduce the tension between educational efforts and receipt of unemployment benefits by, for example, providing a mechanism to claimants for finding out which training programs are actually approved and by expanding that approval to reach a broader set of educational programs.⁷ When education attainments are

⁵ A Madison-based e-list for these postings, for example, is available at: http://finance.groups.yahoo.com/group/madison_lds_employment/. E-lists like these are only accessible to their members.

⁶ Many claimants enroll in classes knowing that they will drop out of those classes immediately when a job offer arrives. The Department, however, follows the traditional understanding in unemployment law that class enrollment evinces an intention to complete that class, and so can lead to a claimant no longer being able and available for work.

⁷ Indeed, over the past several years I have heard from many claimants who think they are enrolled in Department approved training (or are even told by Department agents that the training is approved) only to find out later from another Department agent that their classes are not approved and that the claimant must subsequently repay unemployment benefits. The Department could accomplish much and end a great deal of confusion on this front by simply making and maintaining a list of

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increasingly important in the labor market, it is imperative that unemployment law in Wisconsin adapt to this new reality and at least reduce the obstacles the unemployment system puts in place for those looking to improve their job prospects through enrollment in education and training programs.⁸

At present, claimants receive no credit for any of these actions, and the Department's proposed regulations do not correct this mistake, even eliminate a few actions that are still quite useful in looking for work, and put a rather hollow priority on completing work applications when conducting a work search. The likely outcome of the Department's proposal is simply to increase the number of job applications that claimants need to complete each week. Employers will subsequently be burdened with even more applications to sift through without any actual improvement in the quality of the individuals filling out the applications. Essentially, the proposed regulations do little more than create busy work for claimants and employers.

Increasing job search requirements

The four job applications now mandated are a minimum. Under the proposed rules (DWD 127.06), after four weeks of unemployment DWD may require claimants to increase their weekly efforts to five job applications a week, comply with the Department's job search requirements (not sure what this compliance requirement actually means since claimants have to comply with these requirements anyway), or develop a work search plan that is approved by the Department.

This last requirement probably links to what the Department has been discussing with the Advisory Council about connecting claimants to employer vacancies at the Job Center of Wisconsin website. It appears that after four weeks of benefits, the Department may begin sending claimants specific employers to which an application must be made in addition to the four applications they already have to make. If so, then the regulations should reflect this actual course of action, At present, the proposed changes leave claimants with little more than guesses about what changes might come next in regards to their work search efforts.

publicly-available (i.e., on-line) approved training programs that claimants could check when exploring educational and training options that would not conflict with unemployment benefits.

⁸ The elimination of Wisconsin from federally-funded extended training benefits in recent legislation is certainly a step back and should be corrected.

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Finally, a window of four weeks before an increase or takeover in job search contacts can occur is much too short. At present, claimants may limit their job search efforts to within their traditional field of employment for up to six weeks. Given all of the kinds of contacts that occur now when looking for work, it frankly seems silly to find a work search deficient and in need of additional planning after only four weeks. Twenty or at least fifteen weeks should be the minimum before any Department declaration that a claimant's work search efforts need to be re-examined and "planned" by Department personnel.

Record-keeping

The proposed changes set out the specific information a claimant should retain regarding his or her job search contacts. This information includes:

- job applications: the date on which the claimant made an employer contact; if available, the name and address of the employer and the name of the employer representative contacted; the type of work applied for; the method used to contact the employer and the results of the contact; or other verifiable information of the application.
- civil service exams: the date on which the claimant took an examination, the location of the examination and the position for which the examination was taken.
- union hiring hall or job placement agencies: the date on which the claimant registered and the name and address of the facility.
- public employment office or reemployment service: the date of the visit, the name and address of the public employment office, training program or similar reemployment office and the name of the person with whom the claimant met.

Under the proposed changes, the Department will also be asking claimants to verify their work search efforts. Verification will need to be done via "computer-based programs," and those verification records need to be kept for 52 weeks now.

Certainly, specificity regarding what information actually must be kept by a claimant is useful. But, this new requirement that claimants are to keep job search records for each week they look for work for 52 weeks rather than the current eight week requirement is astounding and goes well beyond the twenty-six weeks of eligibility for regular unemployment benefits. This change creates an enormous burden on claimants and for employers who will be asked to verify job applications that could be almost a year old. If employers are slow to respond to a Department request to search job application archives, the Department is likely then to invalidate a claimant's work search records and order repayment of unemployment benefits previously paid.

Job search and registration waivers

Waivers will be limited in the following ways under the proposed rules.

- When still working for a customary employer, a claimant now must work at least twenty hours with that customary employer before receiving a waiver for that week. Before, a waiver was available when any work was done for the claimant's customary employer.
- When on layoff, the employer must now verify to DWD that the employer has a reasonable expectation of returning the claimant to work within eight weeks (an extension of an additional four weeks is also possible). Before, this reasonable expectation of returning to work was based on the employer's prior layoff history and any specific reemployment dates that were available.
- When starting a new job, the employer verifies to the Department that the new employer expects the claimant to begin working within the next four weeks.
- When on layoff from a union hiring hall position, the union maintains records of its hiring hall activities, provides to the Department at its request any referrals the union has sent to the claimant (a new requirement), and the claimant maintains his or her union membership. Previously, the only information the Department asked for was whether the claimant was registered with the union hiring hall.

The change in how work search waivers are granted is especially mischievous. In place of objective criteria that an employer has a reasonable expectation of having work for a particular claimant at some future date based on the employer's history of layoffs, information furnished to the employee about reemployment dates, and recall rights available under a collective bargaining agreement, the Department will now rely on an employer's subjective determination of when it thinks it might have future work for a particular claimant. In short, the employer will make the call about whether to grant a waiver or not. Given that kind of control over this issue, an employer who declines to certify that an employee has a reasonable expectation of recall will subsequently subject its employees to having to look for work and accepting reasonable job offers while on layoff. That employer will thereby reduce the amount of unemployment benefits charged to its account.⁹

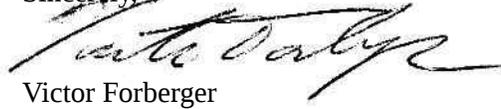
⁹ The Department proposes a similar change for the waiver of work search requirements for new hires. In this situation, the employer here who is being asked to verify future employment is not on the hook for any unemployment benefit charges relating back to the new hire. As a result, this employer is likely to have no qualms about verifying its intent to hire the applicant within the next four weeks. This proposed change simply eliminates the need for someone recently hired but who cannot yet start work immediately from having to continue to apply for jobs during this waiting period.

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Conclusion

Thank you for the opportunity to respond to these proposed regulatory changes. If you have any questions or need additional information, please contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Victor Forberger", written over a light gray background.

Victor Forberger

enc: Case No. 12-FL-048 Initial Determination (56 pp.)