Department of Workforce Development
Secretary's Office
201 E. Washington Avenue
P.O. Box 7946
Madison, WI 53707
Telephone: (608) 266-3131
Fax: (608) 266-1784
Email: sec@dwd.wisconsin.gov

STATE OF WISCONSIN
DWD
Department of Workforce Development

Scott Walker, Governor
Raymond Allen, Secretary

Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse

On June 1, 2016, the Department of Workforce Development submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Wis. Stats.

Analysis

The proposed rule creates Chapter DWD 131 relating to Pre-employment drug testing, substance abuse treatment program and job skills assessment.

A related emergency rule, EmR1617 affecting the same Administrative Code provisions contained in this proposed rule and relating to the same purpose has been published and is in effect.

Statement of Scope

The scope statement for this rule, SS 092-15 was approved by the Governor on September 8, 2015, published in Register No 717A2, on September 14, 2016, and approved by the Secretary on September 25, 2015.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 7, 2016.

Agency Organizational Unit Primarily Responsible for Promulgating Rule

Division of Unemployment Insurance, Bureau of Legal Affairs

Agency Contact Person

Karen Schultz, Administrative Rules Coordinator, (608) 261-6805

Dated this 1st day of June, 2016.

STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE
DEVELOPMENT

Karl Dahlen, Chief Legal Counsel

Rules Clearinghouse No. _____

Proposed Hearing Draft
June 1, 2016

PROPOSED ORDER OF THE WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT CREATING AND ADOPTING RULES

The Wisconsin department of workforce development proposes the following order ***to create*** ch. 131 relating to pre-employment drug testing, substance abuse treatment program and job skills assessment.

Analysis Prepared by the Department of Workforce Development

Statutes Interpreted

Statutes Interpreted: Ch. 108, Stats.

Statutory Authority

Statutory Authority: ss. 108.04 (8) (b), 108.133 (2) (a) and (4), 108.14 (2) and (4), Stats.

Explanation of Statutory Authority

The Department of Workforce Development (DWD) has specific and general authority to establish rules interpreting and clarifying provisions of ch. 108, Stats., unemployment insurance and reserves, and general authority for promulgating rules with respect to ch. 108, Stats., under ss. 108.14 (2) and (4), Stats.

2015 Wisconsin Act 55 (Act 55) created s. 108.133 (4), Stats., which requires DWD to promulgate rules to create procedures for an employing unit to voluntarily submit the positive results of a test for the presence of controlled substances conducted on an individual, or report that an individual declined to submit to a test, as a condition of new employment. Act 55 also created s. 108.04 (8) (b), Stats., which requires DWD to promulgate rules to create a period of ineligibility or a requalification requirement, or both, as it relates to an individual's failure to accept suitable work due to the positive result of a test. Act 55 created s. 108.133 (3) (d), Stats., which permits an individual who fails a pre-employment drug test to remain eligible for benefits if the individual enrolls in and complies with the requirements of a drug treatment program and a skills assessment, which DWD must create under ss. 108.133 (2) (a) 2. and 4., Stats.,

Related Statute or Rules

Chapter 108, Stats. – Unemployment Insurance and Reserves

Plain Language Analysis

This rule implements the requirements specified under Act 55, relating to pre-employment drug testing, substance abuse treatment program and job skills assessment. Act 55 created s. 108.04 (8) (b), Stats., which provides the following:

- There is a rebuttable presumption that an individual failed without good cause to accept suitable work if DWD determines, based on a report submitted by an employing unit, that an employing unit required the individual to submit to a test for the presence of controlled substances as a conditional offer of employment and withdrew the conditional offer after the individual declined to submit to the test, or tested positive for one or more controlled substances without providing evidence of a valid prescription for each controlled substance.
- For an individual that declines to submit to a test, the individual shall be ineligible for benefits until the individual qualifies for benefits in accordance to the rules promulgated by DWD.
- For an individual that tests positive for the presence of controlled substances without providing evidence of a valid prescription, the individual shall be ineligible for benefits until the individual qualifies for benefits in accordance with the rules promulgated by DWD or the individual may maintain eligibility for benefits if the individual enrolls in and complies with the requirements of a substance abuse treatment program and completes a job skills assessment.

In addition, Act 55 provides that DWD shall:

- Create and provide a substance abuse treatment program for individuals who engage in the unlawful use controlled substances.
- Specify criteria that a claimant must satisfy in order to be considered in full compliance with the substance abuse treatment program.
- Create and conduct a job skills assessment for claimants who engage in the unlawful use of controlled substances.
- Identify criteria that an individual must satisfy to be considered in full compliance with the requirements of the job skills assessment.

This rule implements the requirements specified under Act 55 and creates a process for an employing unit to voluntarily submit the positive results of a test conducted on an individual to DWD, if the test was required as a condition of an offer of employment and the individual was informed that the results may be submitted to DWD, the test was conducted or confirmed by a laboratory certified by the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services, and the individual tested positive for one or more controlled substances without evidence of a valid prescription. In addition, the rule identifies the process by which the employing unit can report the positive results of a test to DWD.

An employing unit may voluntarily notify DWD that an individual declined to submit to a test for the presence of controlled substances as a condition of employment and the individual was informed before testing, that the employing unit may notify the department if the individual declined to submit to the test.

If a report is submitted by an employing unit of the positive results of a test conducted on an individual as a condition of an offer of employment, or the employing unit notifies DWD that an individual declined to submit to a test for the presence of controlled substances, DWD shall determine if the individual is receiving unemployment insurance benefits. If DWD determines the individual is receiving unemployment insurance benefits, there is a rebuttable presumption that the individual failed to accept suitable work. This rule provides the individual may overcome the presumption by proving certain facts by a preponderance of the evidence.

Under this rule, an individual that fails a test without presenting evidence of a valid prescription or declines to submit to a test is ineligible for benefits until the individual earns wages at least 6 times the individual's weekly benefit rate beginning after the week in which the individual tests positive or declines to submit to the test.

An individual that tests positive for controlled substances without presenting evidence of a valid prescription may maintain benefit eligibility by enrolling in and complying with a substance abuse treatment program, and completing a job skills assessment.

This rule also identifies the parameters for a substance abuse treatment program for individuals that test positive for the presence of one or more controlled substances (without a valid prescription). In addition, this rule does all of the following:

- Requires an individual to schedule an assessment with a substance abuse treatment provider within 5 working days as directed by the department.
- Requires an individual to comply with all conditions of a treatment plan developed by a substance abuse treatment provider.
- Specifies that the substance abuse treatment provider will determine if an individual is in compliance with the substance abuse treatment program requirements, and inform the department on a weekly basis of the individual's compliance.
- Provides that DWD will pay for reasonable costs associated with the substance abuse treatment plan requirements for each week the individual is otherwise eligible for unemployment insurance benefits under ch. 108, Stats.
- Requires an individual to complete a job skills assessment as directed by the department.

Summary of, and comparison with, existing or proposed federal statutes and regulations

There are no existing or proposed federal regulations relating to pre-employment drug testing.

Comparison with rules in adjacent states

Michigan law previously provided that an individual would be disqualified from receiving unemployment insurance benefits if an employer withdrew a conditional offer of employment after the individual failed or refused to take a pre-employment drug test. Mich. Comp. Laws Ann. § 421.29(1)(e). The failed or refused pre-employment drug test would be considered a failure to accept suitable work. Michigan law did not provide drug treatment as an option for claimants to maintain benefit eligibility. Michigan's law was in effect from October 29, 2013 until October 29, 2014.

DWD is not aware of any unemployment insurance disqualification for a failed pre-employment drug test in Illinois, Minnesota or Iowa.

Summary of factual data and analytical methodologies

DWD consulted with the Unemployment Insurance Advisory Council and the Departments of Health Services, Corrections, and Children and Families to identify the parameters of a substance abuse treatment program for claimants who engage in the unlawful use of controlled substances.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis

The effect on small business was determined by reviewing estimates of costs a business would incur in order to comply with the law.

Effect on small business

This rule does not have an economic impact on small businesses as defined in s. 227.114 (1), Stats. DWD's regulatory review coordinator may be contacted by email at karl.dahlen@dwd.wisconsin.gov, or by calling (608) 266-9427.

Agency contact person

Questions and comments related to this rule may be directed to:

Janell Knutson
Department of Workforce Development
Division of Unemployment Insurance
P.O. Box 8942
Madison, WI 53708-8942
Telephone: (608) 266-1639
E-Mail: janell.knutson@dwd.wi.gov

Place where comments are to be submitted and deadline for submission

Janell Knutson
Department of Workforce Development
Division of Unemployment Insurance
P.O. Box 8942
Madison, WI 53708-8942
Telephone: (608) 266-1639
E-Mail: janell.knutson@dwd.wi.gov

Hearing comments will be accepted until the last scheduled hearing is conducted. DWD will hold a hearing in conjunction with the emergency rule hearing.

SECTION 1. Chapter DWD 131 is created to read:

CHAPTER DWD 131
PRE-EMPLOYMENT DRUG TESTING, SUBSTANCE ABUSE TREATMENT PROGRAM AND JOB SKILLS ASSESSMENT

131.001 Definitions. (1) Except as provided in sub. (2), the definitions in ch. DWD 100 apply to this chapter.

(2) Notwithstanding ch. DWD 100, all of the following definitions apply to this chapter:

(a) "Controlled substances" has the meaning given under s. 108.133 (1) (a), Stats.

Note: Section 108.133 (1) (a), Stats., states "Notwithstanding s. 108.02 (9), 'controlled substances' has the meaning given in 21 USC 802."

(b) "Positive results" means a test that confirms the presence of one or more controlled substances conducted or confirmed by a laboratory certified by the substance abuse and mental health services administration of the United States department of health and human services.

(c) "Substance abuse treatment provider" means an individual or organization that is licensed by a state agency to administer substance abuse treatment services to individuals that use controlled substances.

(d) "Substance abuse treatment program" means the services offered by a substance abuse treatment provider, beginning with an assessment.

DWD 131.10 Pre-employment testing for the presence of controlled substances. (1) POSITIVE RESULTS OF A TEST; APPLICABILITY. An employing unit may report to the department the positive results of a test for the presence of controlled substances conducted on an individual if all of the following apply:

(a) The test for the presence of controlled substances was conducted as a condition of an offer of employment and the employing unit informed the individual, before testing, that the positive results may be submitted to the department.

(b) The test was conducted or confirmed by a laboratory certified by the substance abuse and mental health services administration of the United States department of health and human services.

(c) The individual tested positive for one or more controlled substances without evidence of a valid prescription for each controlled substance.

(d) The employing unit complies with all of the provisions of this chapter.

(2) REPORTING POSITIVE RESULTS OF A TEST TO THE DEPARTMENT. To report positive results to the department, the employing unit shall provide all of the following information, on a form prescribed by the department, within 3 business days from the date on which the employing unit received the positive results:

(a) The name, address, and telephone number of the employing unit, and if applicable, the unemployment insurance account number of the employing unit.

(b) The name, address, telephone number, and social security number of the individual that tests positive for the presence of controlled substances.

(c) The following information related to the conditional offer of employment that the employing unit offered to the individual:

1. Documentation of the conditional offer of employment.

2. The date on which the employing unit extended the conditional offer of employment to the individual.

3. The date on which employment would begin, the rate of pay offered to the individual, the number and arrangement of hours, and the kind of work that would be performed.

4. The date and manner in which the employing unit informed the individual that, as a condition of the offer of employment, the individual must submit to a test for the presence of controlled substances.

(d) The date and manner in which the employing unit informed the individual that positive results may be submitted to the department.

(e) The following information related to the administration of the test and positive results:

1. The name, address and telephone number of the laboratory that conducted the test.

2. The date on which the individual submitted to the test.

3. The controlled substances detected in the test.

4. A copy of the laboratory's report.

(f) The date the employing unit received the results of the test from the laboratory.

(g) The date and manner in which the employing unit withdrew the conditional offer of employment after the employing unit received the positive results.

(h) Any additional information requested by the department.

Note: To obtain a form under this section, contact the Department of Workforce Development, Division of Unemployment Insurance, 201 E. Washington Avenue, P.O. Box 7905, Madison, WI 53707 by telephone at (608) 232-0633 or (414) 438-7705 or access the form online at www.dwd.state.wi.gov.

(3) INDIVIDUAL DECLINING TO SUBMIT TO A TEST FOR THE PRESENCE OF CONTROLLED SUBSTANCES. An employing unit may notify the department that an individual declined to submit to a test for the presence of controlled substances if all of the following apply:

(a) The test for the presence of controlled substances was required as a condition of an offer of employment and the employing unit informed the individual, before testing, that the employing unit may notify the department if the individual declines to submit to the test.

(b) The employing unit complies with all of the provisions of this chapter.

(4) NOTIFICATION TO DEPARTMENT OF INDIVIDUAL DECLINING TEST. To notify the department that an individual declined to submit to a test for the presence of controlled substances, the employing unit shall provide all of the following information, on a form prescribed by the department, within 3 business days from the date on which the individual declined to submit to the test:

(a) The name, address, and telephone number of the employing unit, and if applicable, the unemployment insurance account number of the employing unit.

(b) The name, address, telephone number, and social security number of the individual that declined to submit to a test for the presence of controlled substances.

(c) The following information related to the conditional offer of employment from the employing unit to the individual:

1. Documentation of the conditional offer of employment.

2. The date on which the employing unit extended the conditional offer of employment to the individual.

3. The date on which employment would begin, the individual's pay rate, the number and arrangement of hours, and the kind of work that would be performed.

4. The date and manner in which the employing unit informed the individual that, as a condition of the offer of employment, the individual must submit to a test for the presence of controlled substances.

(d) The date and manner in which the employing unit informed the individual that the employing unit may notify the department if the individual declined to submit to a test for the presence of controlled substances.

(e) The following information related to the individual declining to submit to a test for the presence of controlled substances:

1. The date the individual declined to submit to a test.

2. Documentation that the individual declined to submit to the test.

3. The date the employing unit received notification that the individual declined to submit to the test.

(f) The date and manner the employing unit withdrew the conditional offer of employment after the employing unit received notice that the individual declined to submit to a test for the presence of controlled substances.

(g) Any additional information requested by the department.

Note: To obtain a form under this section, contact the Department of Workforce Development, Division of Unemployment Insurance, 201 E. Washington Avenue, P.O. Box 7905, Madison, WI 53708, by telephone at (608) 232-0633 or (414) 438-7705 or access the form online at www.dwd.state.wi.gov.

(5) DEPARTMENT DETERMINATION OF AN INDIVIDUAL RECEIVING BENEFITS. (a) The department shall determine, after receiving the information submitted by an employing unit under sub. (2) or (4), whether the individual is receiving benefits under ch. 108, Stats.

(b) If the department determines the individual is receiving benefits under par. (a), the department shall use the information reported under sub. (2) or (4) to determine eligibility under s. 108.04 (8) (b), Stats. The department shall provide information regarding the documentation submitted by an employing unit under sub. (2) or (4) to the individual.

(6) REBUTTABLE PRESUMPTION FOR FAILURE TO ACCEPT SUITABLE WORK. (a) If the department determines an individual is receiving benefits under sub. (5) (a), the department shall provide the individual an opportunity to overcome the presumption that the individual failed, without good cause, to accept suitable work when offered under s. 108.04 (8) (b), Stats.

(b) An individual may overcome the presumption that the individual failed, without good cause, to accept suitable work when offered under s. 108.04 (8) (b), Stats., if the individual tested

positive for the presence of one or more controlled substances, and the individual establishes by a preponderance of the evidence, any of the following:

1. The employing unit did not extend an offer of employment contingent on the individual submitting to a test for the presence of controlled substances.

2. The employing unit withdrew the offer of employment before the employing unit received the positive results of the test.

3. The individual held a valid prescription at the time of the test for each controlled substance detected in the test.

4. The test for the presence of controlled substances was not conducted or confirmed by a laboratory certified by the substance abuse and mental health services administration of the United States department of health and human services.

5. The requirements under s. 108.04 (9), Stats., apply to the work offered.

6. Any circumstances which the department determines are beyond the individual's control.

(c) The individual may overcome the presumption that the individual failed, without good cause, to accept suitable work when offered under s. 108.04 (8) (b), Stats., by declining to submit to a test for the presence of controlled substances if the individual establishes by a preponderance of the evidence, any of the following:

1. The employing unit did not extend an offer of employment contingent on the individual submitting to a test for the presence of controlled substances.

2. The individual was unable to complete a test for the presence of controlled substances due to medical reasons.

3. The individual accepted an offer of employment from another employing unit before or at the time the individual declined to submit to the test under sub. (3).

4. The employing unit required the individual to pay for the test.

5. The requirements under s. 108.04 (9), Stats. apply to the work offered.

6. Any circumstances which the department determines are beyond the individual's control.

(7) PERIOD OF INELIGIBILITY AND REQUALIFICATION REQUIREMENTS FOR BENEFITS. (a) An individual under this chapter that has failed, without good cause, to accept suitable work due to the positive results of a test without presenting evidence of a valid prescription, is ineligible to receive benefits until the individual earns wages after the week in which the failure occurs equal to at least 6 times the individual's weekly benefit rate under s. 108.05 (1), Stats., in employment or other work covered by the unemployment insurance law of any state or the federal government.

(b) Notwithstanding par. (a), an individual under this chapter that has failed, without good cause, to accept suitable work due to the positive results of a test without presenting evidence of a valid prescription, may maintain eligibility for benefits under ch. 108, Stats., by enrolling in and complying with a substance abuse treatment program under s. DWD 131.30 and completing a job skills assessment as prescribed under s. DWD 131.40.

(c) An individual under this chapter that has failed, without good cause, to accept suitable work by declining to submit to a test for the presence of controlled substances, is ineligible to receive benefits until the individual earns wages after the week in which the failure occurs equal to at least 6 times the individual's weekly benefit rate under s. 108.05 (1), Stats., in employment or other work covered by the unemployment insurance law of any state or the federal government.

DWD 131.30 Substance abuse treatment program. (1) ELIGIBILITY. (a) An individual that tests positive for the presence of controlled substances under this chapter may enroll in a

substance abuse treatment program if all of the following apply:

1. The individual is otherwise eligible for benefits under ch. 108, Stats.

2. The services offered by a substance abuse treatment program are administered by a substance abuse treatment provider approved by the department.

(b) An individual eligible under par. (a) may enroll in a substance abuse treatment program one time per benefit year.

(2) AUTHORIZATION TO RELEASE RECORDS. An individual that is eligible to enroll in a substance abuse treatment program under sub. (1) shall provide written authorization to the department for the disclosure of the individual's records by the substance abuse treatment provider.

(3) ASSESSMENT. A substance abuse treatment provider shall use an assessment conducted under this chapter in order to determine the extent and severity of the individual's use of controlled substances, and to determine the type of intervention necessary to address the individual's use of controlled substances.

(4) SUBSTANCE ABUSE TREATMENT PLAN. The substance abuse treatment provider shall develop a substance abuse treatment plan that identifies the goals, objectives, resources and dates of treatment for the individual. The substance abuse treatment provider shall provide a copy of the substance abuse treatment plan to the department.

(5) SUBSTANCE ABUSE TREATMENT PROGRAM ENROLLMENT. Within 5 working days of being directed by the department, an individual shall contact an approved substance abuse treatment provider to schedule an assessment. An individual is considered to be enrolled in a substance abuse treatment program if any of the following apply:

(a) The individual schedules an assessment for the earliest date that is available with a substance abuse treatment provider.

(b) The individual requests placement on a waitlist for an assessment if the individual is unable to schedule an assessment with a substance abuse treatment provider. An individual that requests placement on a waitlist shall certify on a weekly basis, in a manner prescribed by the department, that the individual will schedule an assessment when services first become available with a substance abuse treatment program provider.

(6) SUBSTANCE ABUSE TREATMENT PROGRAM COMPLIANCE. (a) An individual shall comply with all requirements of a substance abuse treatment plan as prescribed in sub. (4). Compliance in a substance abuse treatment program shall be satisfied by any of the following:

1. The substance abuse treatment provider informs the department on a weekly basis, in a manner prescribed by the department, of an individual's compliance with the substance abuse treatment plan.

2. The individual certifies to the department on a weekly basis, in a manner prescribed by the department, that the individual is placed on a waitlist for a substance abuse treatment program and will comply with a substance abuse treatment plan when services first become available with a substance abuse treatment provider.

(b) An individual that fails to comply with the substance abuse treatment plan under par. (a) is ineligible to receive benefits until the individual earns wages after the week in which the failure occurs equal to at least 6 times the individual's weekly benefit rate under s. 108.05 (1), Stats., in employment or other work covered by the unemployment insurance law of any state or the federal government.

(7) SUCCESSFUL COMPLETION OF SUBSTANCE ABUSE TREATMENT PROGRAM. A substance abuse treatment provider shall notify the department as directed, when an individual successfully completes the requirements of the substance abuse treatment program.

(8) SUBSTANCE ABUSE TREATMENT PROGRAM COSTS. (a) The department shall pay for reasonable costs of the services provided by the substance abuse treatment provider as set forth in the individual's substance abuse treatment plan for each week the individual is eligible for benefits under ch. 108, Stats.

(b) Notwithstanding par. (a), the department shall pay for reasonable costs of the services provided by the substance abuse treatment provider as set forth in the substance abuse treatment plan if the individual is determined ineligible for benefits under ch. 108, Stats., solely due to the individual complying with the requirements of the individual's substance abuse treatment plan.

DWD 131.40. Jobs skills assessment. (1) An individual that tests positive for the presence of controlled substances under this chapter and that elects to enroll in and comply with a substance abuse treatment plan under this chapter shall complete a job skills assessment as directed by the department.

(2) The department may require an individual to participate in reemployment services under s. DWD 127.07 in order to complete the job skills assessment.

(3) An individual that fails to participate in a job skills assessment under this section as directed by the department is ineligible to receive benefits until the individual earns wages after the week in which the failure occurs equal to at least 6 times the individual's weekly benefit rate under s. 108.05 (1), Stats., in employment or other work covered by the unemployment insurance law of any state or the federal government.

SECTION 2. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin administrative register, as provided under s. 227.22 (2) (intro.).

Dated this _____ day of _____, 2016.

STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE

DEVELOPMENT

By: _____
Raymond Allen, Secretary

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis
☒ Original ☐ Updated ☐ Corrected

2. Administrative Rule Chapter, Title and Number
DWD 131 -- Pre-employment drug testing, substance abuse treatment program and job skills assessment

3. Subject
Pre-employment drug testing, substance abuse treatment program and job skills assessment

4. Fund Sources Affected
☒ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

5. Chapter 20, Stats. Appropriations Affected
20.445 (1) (aL)

6. Fiscal Effect of Implementing the Rule
☐ No Fiscal Effect ☐ Increase Existing Revenues ☒ Increase Costs
☐ Indeterminate ☐ Decrease Existing Revenues ☐ Could Absorb Within Agency's Budget
☐ Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)
☒ State's Economy ☐ Specific Businesses/Sectors
☐ Local Government Units ☐ Public Utility Rate Payers
☐ Small Businesses **(if checked, complete Attachment A)**

8. Would Implementation and Compliance Costs Be Greater Than $20 million?
☐ Yes ☒ No

9. Policy Problem Addressed by the Rule
This rule implements the requirements specified under 2015 Act 55, relating to pre-employment drug testing, substance abuse treatment programs and job skills assessment. Act 55 created s. 108.04 (8) (b), Stats., which provides the following:

- There is a rebuttable presumption that an individual failed without good cause to accept suitable work if the department determines, based on a report submitted by an employing unit, that an employing unit required the individual to submit to a test for the presence of controlled substances as an conditional offer of employment and withdrew the conditional offer after the individual declined to submit to the test, or tested positive for one or more controlled substances without providing evidence of a valid prescription for each controlled substance.
- For an individual that declines to submit to a test, the individual shall be ineligible for benefits until the individual qualifies for benefits in accordance to the rules promulgated by DWD.
- For an individual that tests positive for the presence of controlled substances without providing evidence of a prescription, the individual shall be ineligible for benefits until the individual qualifies for benefits in accordance with the rules promulgated by DWD or the individual may maintain eligibility for benefits if the individual enrolls in and complies with the requirements of a substance abuse treatment program and completes a job skills assessment.

In addition, Act 55 provides that DWD shall:

- Create and provide a substance abuse treatment program for individuals who engage in the unlawful use controlled substances.

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

- Specify criteria that a claimant must satisfy in order to be considered in full compliance with the substance abuse treatment program.
- Create and conduct a job skills assessment for claimants who engage in the unlawful use of controlled substances.
- Identify criteria that an individual must satisfy to be considered in full compliance with the requirements of the job skills assessment.

This rule implements the requirements specified under Act 55 and creates a process for an employing unit to voluntarily submit the positive results of a test conducted on an individual to the department, if the test was required as a condition of an offer of employment and the individual was informed that the results may be submitted to DWD, the test was conducted or confirmed by a laboratory certified by the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services, and the individual tested positive for one or more controlled substances without evidence of a valid prescription. In addition, the rule identifies the process by which the employing unit can report the positive results of a test to DWD.

An employing unit may voluntarily notify DWD that an individual declined to submit to a test for the presence of controlled substances as a condition of employment and the individual was informed before testing, that the employing unit may notify the department if the individual declined to submit to the test.

If a report is submitted by an employing unit of the positive results of a test conducted on an individual as a condition of an offer of employment, or the employing unit notifies DWD that an individual declined to submit to a test for the presence of controlled substances, DWD shall determine if the individual is receiving unemployment insurance benefits. If DWD determines the individual is receiving unemployment insurance benefits, there is a rebuttable presumption that the individual failed to accept suitable work. This rule provides the individual may overcome the presumption by proving certain facts by a preponderance of the evidence.

Under this rule, an individual that fails a test without presenting evidence of a valid prescription or declines to submit to a test is ineligible for benefits until the individual earns wages at least 6 times the individual's weekly benefit rate beginning after the week in which the individual tests positive or declines to submit to the test.

An individual that tests positive for controlled substances without presenting evidence of a valid prescription may maintain benefit eligibility by enrolling in and complying with a substance abuse treatment program, and completing a job skills assessment.

This rule also identifies the parameters for a substance abuse treatment program for individuals that test positive for the presence of one or more controlled substances (without a valid prescription). In addition, this rule does all of the following:

- Requires an individual to schedule an assessment with a substance abuse treatment provider within 5 working days as directed by the department.
- Requires an individual to comply with all conditions of a treatment plan developed by a substance abuse treatment provider.

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

- Specifies that the substance abuse treatment provider will determine if an individual is in compliance with the substance abuse treatment program requirements, and inform the department on a weekly basis of the individual's compliance.
- Provides that DWD will pay for reasonable costs associated with the substance abuse treatment plan requirements for each week the individual is otherwise eligible for unemployment insurance benefits under ch. 108, Stats.
- Requires an individual to complete a job skills assessment as directed by the department.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

The Unemployment Insurance Advisory Council, whose members represent businesses and labor groups, were contacted for comments. The proposed rule was also posted for economic comments for 14 days and none were received.

11. Identify the local governmental units that participated in the development of this EIA.

No local governmental units participated in the development of this EIA.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The rule's economic and fiscal impact on businesses and the state's economy is that it will potentially result in fewer people using controlled substances. The use of controlled substances causes a financial burden on the economy because drug users are unable to work in certain occupations when they fail employers' drug tests.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The benefits of implementing the rule are that people who use controlled substances may receive state-funded drug treatment and a job skills assessment.

The policy alternative is to do nothing. If the department does not promulgate the proposed rule, the department's administrative rules will be inconsistent with statutory requirements.

14. Long Range Implications of Implementing the Rule

Indeterminate.

15. Compare With Approaches Being Used by Federal Government

There are no existing or proposed federal regulations relating to pre-employment drug testing.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Michigan law previously provided that an individual would be disqualified from receiving unemployment insurance benefits if an employer withdrew a conditional offer of employment after the individual failed or refused to take a pre-employment drug test. Mich. Comp. Laws Ann. § 421.29(1)(e). The failed or refused

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

pre-employment drug test would be considered a failure to accept suitable work. Michigan law did not provide drug treatment as an option for claimants to maintain benefit eligibility. Michigan's law was in effect from October 29, 2013 until October 29, 2014.

DWD is not aware of any unemployment insurance disqualification for a failed pre-employment drug test in Illinois, Minnesota or Iowa.

17. Contact Name	18. Contact Phone Number
Janell Knutson	608-266-1639

This document can be made available in alternate formats to individuals with disabilities upon request.