

Scope of Proposed Rule

Employee Trust Funds

The Department of Employee Trust Funds (DETF) hereby gives notice pursuant to Wis. Stat. § 227.135 that it proposes to modify an existing administrative rule, specifically Wis. Admin. Code §§ ETF 10.30 (5) (b) and (8), 10.75 (2) (a), and 10.82 (2), and create or amend other provisions of the administrative code as necessary concerning the receipt of documents by facsimile (fax).

SUBJECT

This proposed rule change is concerned with the Department's acceptance of documents, including benefit application forms and similar documents, by fax without requiring the filing of the original document.

DESCRIPTION OF POLICY ISSUES

Objectives of the Rule

The proposed rule change is to codify a general policy that receipt of a document via fax is functionally identical to receipt of that document by other available means, such as mail delivery or delivery by hand, for purposes of administering benefits under ch. 40 of the Wisconsin Statutes.

Policy Analysis

In 1995 the DETF promulgated Wis. Admin. Code § ETF 10.82 for the purpose of clarifying when documents were received by, and filed with, the Department. Eligibility for benefit and other determinations related to benefits administered by the Department are often affected by the date the document is received. The rule also allowed for documents to be filed via fax transmission, in order to preserve the earliest possible date of receipt, and it included several additional requirements, including that the original of the document be provided to DETF within 14 days so that it could be added to the participant's file for future reference. The rule expressly applied only to forms listed in the rule.

The purpose of the 1995 rule was to allow a person to "lock in" an earlier date of receipt by DETF than might be possible if the applicant relied only on mail or other delivery methods that are less immediate than electronic transmission.

Since then, an occasional question has arisen about whether the rule prohibited receiving documents by fax if the document was not specifically listed in the rule or whether DETF had technically "received" a document at all if it arrived by fax but some criteria of the rule had not been fully satisfied.

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Some administrative rules written since 1995 have included specific authorization to receive a particular document by fax. See Wis. Admin. Code § ETF 10.30 (5) (b) and (8) and 10.75 (2) (a) for examples. The Secretary has determined that a general policy, rather than a piecemeal approach, can and should now be codified.

Beginning in 1997, DETF has optically imaged participant files to computer instead of retaining paper copies of documents. Since then, for DETF record keeping purposes, a fax is functionally identical to the original document.

The Secretary of DETF has decided to propose a rule expressly acknowledging that DETF may receive almost any document by fax. If, during the course of the rule-making process, any document is identified for which this general policy is inadvisable, the rule will identify that document as an exception to the general rule. For example, one exception to this policy will be a document, such as some powers-of-attorney, which expressly state that a copy may not be relied upon to the same extent as the original. Court orders may be another exception, unless received directly from the signing judge.

Policy Alternatives to the Proposed Rule

(1) Take no action.

DETF could allow the present administrative rule to remain in effect as is, but considers this undesirable. The existing rule has the potential for creating confusion about whether DETF has ever technically "received" a document listed in the rule if, for example, it is faxed to a different DETF fax machine than listed in the rule, or if the original of the document is not supplied within 14 days, or if some other criteria in the rule is not fully satisfied. The documents listed in the rule do not include every possible document DETF might be offered, so questions have arisen about the rule's impact, if any, on non-listed documents.

(2) Impose greater restrictions on use of fax documents.

DETF considers it undesirable to unnecessarily or unreasonably limit use of technology or available means of transmitting documents and information between DETF and persons having an interest in benefits administered by this Department. While legitimate concerns about privacy, security and accuracy must be addressed, these concerns do not outweigh the purpose of improving DETF responsiveness to its clients by allowing for more rapid forms of communication.

STATUTORY AUTHORITY

Wis. Stat. §§ 40.03 (2) (i) and 227.10 (1)

STAFF TIME REQUIRED

The Department estimates that state employees will spend 20 hours developing this rule.

DESCRIPTION TO ALL ENTITIES AFFECTED BY THE RULE.

The rule is not regulatory. Its anticipated effect is mainly upon the Department, but any person or entity who might voluntarily choose to communicate with DETF by using a fax machine may take advantage of the proposed rule. It is anticipated that these persons will mainly be participants in the Wisconsin Retirement System or their authorized representatives or beneficiaries.

SUMMARY & PRELIMINARY COMPARISON OF ANY EXISTING OR PROPOSED FEDERAL REGULATIONS INTENDED TO ADDRESS THE ACTIVITIES TO BE REGULATED.

There appear to be no existing or proposed federal regulations directly affecting the submission of documents to DETF by fax, or DETF's ability to accept fax documents.

This Statement Of Scope Of Proposed Rules is hereby approved this 12th day of May 2004

Eric O. Stanchfield, Secretary
Department of Employee Trust Funds