



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3304/2
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2011 ASSEMBLY BILL 457

January 4, 2012 - Introduced by Representatives BALLWEG, BROOKS, HONADEL, LITJENS, MARKLEIN, A. OTT, RIVARD, TAUCHEN and WYNN. Referred to Committee on Labor and Workforce Development.

1 **AN ACT** *to repeal* 108.04 (5g) and 108.04 (7) (t); *to amend* 108.04 (5), 108.04 (7)
2 (h), 108.06 (1), 108.06 (7) (b) (intro.), 108.09 (3) (b), 108.14 (8n) (e), 108.141 (3g)
3 (d), 108.141 (7) (a), 108.16 (6m) (a) and 108.22 (1) (a); *to repeal and recreate*
4 108.04 (6); and *to create* 108.04 (1) (j) and 108.06 (7) (k) of the statutes;
5 **relating to:** various changes in the unemployment insurance law.

Analysis by the Legislative Reference Bureau

This bill makes various changes in the unemployment insurance (UI) law. Significant provisions include:

Discharges for certain conduct or violations of certain work rules or policies

Currently, if an employee is discharged for misconduct connected with his or her employment (interpreted by the courts to include only misconduct that evinces willful or wanton disregard of the employer's interests or carelessness or negligence in the performance of duties to such degree or recurrence as to manifest culpability or wrongful intent or exhibiting such behavior as to endanger the physical safety of persons on the work site) the employee is ineligible to receive benefits until seven weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages, or certain other amounts treated as wages, after the week in which the discharge occurs equal to at least 14 times the employee's weekly benefit rate in employment covered by the unemployment insurance law of any state or the federal government. In addition, all wages earned with the employer that discharges

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the employee are excluded in determining the amount of any future benefits to which the employee is entitled. However, if an employee is discharged for failing to notify an employer of tardiness or absenteeism that becomes excessive under certain conditions, the employee is ineligible to receive benefits until six weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages, or certain other amounts treated as wages, after the week in which the discharge occurs equal to at least six times the the employee's weekly benefit rate in work covered by the unemployment insurance law of any state or the federal government. In addition, if an employee's work is suspended by an employer for good cause connected with the employee's work, the employee is ineligible to receive benefits until three weeks have elapsed since the end of the week in which the suspension occurs or until the suspension ends, whichever occurs first.

This bill deletes the current disqualifiers for discharges resulting from absenteeism or tardiness and for disciplinary suspensions but retains the disqualifier for misconduct. The bill also creates a new disqualifier that applies to certain discharges or suspensions that do not result from misconduct, as currently defined. Under the bill, an employee who is discharged for intentional conduct connected with his or her employment that a reasonable person would not engage in, if the conduct is documented by the employee's employer and the employee knew or should have known that the conduct would not be considered reasonable by the employer, or for a knowing violation of a reasonable and uniformly enforced rule or policy of his or her employer, when reasonably applied, is ineligible to receive benefits until six weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages, or certain other amounts treated as wages, after the week in which the discharge occurs equal to at least six times the employee's weekly benefit rate in employment covered by the unemployment insurance law of any state or the federal government. An employee who is suspended rather than discharged for such a violation is ineligible to receive benefits until at least three weeks have elapsed since the end of the week in which the suspension occurs or the suspension ends, whichever occurs first.

Extended training

Currently, a claimant is generally required to be able to work and available for work in order to remain eligible for unemployment insurance benefits. However, benefits may not be denied to an otherwise eligible claimant because the claimant is enrolled in a vocational training course or basic education course that is a prerequisite to such training that is approved by DWD ("approved training") under certain conditions. Current law also permits a claimant who has exhausted all rights to benefits and is enrolled in an approved training course and who meets certain other qualifications to potentially qualify to receive up to 26 weeks of additional benefits while enrolled in that training ("extended training"). The costs of extended training benefits for those employers who are subject to a requirement to pay contributions (taxes) are charged to the balancing account of the unemployment reserve fund (a pooled account funded by all employers who pay contributions to the fund), and the costs for those employers who are not subject to a contribution requirement are billed directly to the employers.

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This bill provides that if the average rate of total unemployment in this state, as determined by the U.S. secretary of labor, is equal to or lower than 6.5 percent for any calendar quarter, DWD must publish a notice to that effect in the Wisconsin Administrative Register. Under the bill, no claimant may qualify to begin receiving extended training benefits in any week that begins after publication of the notice.

Voluntary termination of employment

Currently, if an employee voluntarily terminates his or her work for an employer, the employee is generally ineligible to receive benefits until four weeks have elapsed since the end of the week in which the termination occurs and the employee earns wages after the week in which the termination occurs equal to at least four times the employee's weekly benefit rate in employment covered by the unemployment insurance law of any state or the federal government. However, an employee may terminate his or her work and receive benefits without requalifying under this provision, among other reasons, if an employee's spouse changed his or her place of employment to a place to which it is impractical to commute and the employee terminated his or her work to accompany the spouse to that place. This bill deletes this exception to the requalification requirement.

Interest on delinquent payments

Currently, if an employer does not make a payment required under the UI law to DWD by the due date, the employer must pay interest on the amount owed equal to one percent per month or fraction thereof from the date that the payment became due. This bill changes the interest rate on delinquent payments to that monthly rate that annualized is equal to 2 percent more than the prime rate as published in the Wall Street Journal as of September 30 of the preceding year for each month or fraction thereof that the employer is delinquent.

Payment of benefits during incarceration

Currently, with certain exceptions, an employee is eligible to receive benefits for any week in which the employee receives no wages only if the employee is able to work and available for work during that week. If an employee is incarcerated for an offense that constitutes misconduct connected with his or her employment, the employee is ineligible to receive benefits until the employee requalifies, and any wages earned with the discharging employer are discounted in determining the employee's benefit amount. This bill provides, in addition, that an employee's weekly benefit amount is reduced by one-fifth for each day of any week in which the employee is incarcerated for up to 5 days in a week.

Authority of appeal tribunals

Currently, DWD is directed by law to appoint appeal tribunals to administratively hear and decide disputed UI claims and other matters arising under the UI law. This bill provides that the actions of appeal tribunals must be consistent with applicable state and federal law.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 108.04 (1) (j) of the statutes is created to read:

2 108.04 (1) (j) The department shall reduce an employee's weekly benefit
3 amount by one-fifth for each day of any week in which that the employee is
4 incarcerated for up to 5 days in a week.

5 **SECTION 2.** 108.04 (5) of the statutes is amended to read:

6 108.04 (5) DISCHARGE FOR MISCONDUCT. ~~Unless sub. (5g) results in~~
7 ~~disqualification, an~~ An employee whose work is terminated by an employing unit for
8 misconduct connected with the employee's work is ineligible to receive benefits until
9 7 weeks have elapsed since the end of the week in which the discharge occurs and
10 the employee earns wages after the week in which the discharge occurs equal to at
11 least 14 times the employee's weekly benefit rate under s. 108.05 (1) in employment
12 or other work covered by the unemployment insurance law of any state or the federal
13 government. For purposes of requalification, the employee's weekly benefit rate
14 shall be that rate which would have been paid had the discharge not occurred. The
15 wages paid to an employee by an employer which terminates employment of the
16 employee for misconduct connected with the employee's employment shall be
17 excluded from the employee's base period wages under s. 108.06 (1) for purposes of
18 benefit entitlement. This subsection does not preclude an employee who has
19 employment with an employer other than the employer which terminated the
20 employee for misconduct from establishing a benefit year using the base period
21 wages excluded under this subsection if the employee qualifies to establish a benefit

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1 year under s. 108.06 (2) (a). The department shall charge to the fund's balancing
2 account any benefits otherwise chargeable to the account of an employer that is
3 subject to the contribution requirements under ss. 108.17 and 108.18 from which
4 base period wages are excluded under this subsection.

5 **SECTION 3.** 108.04 (5g) of the statutes is repealed.

6 **SECTION 4.** 108.04 (6) of the statutes is repealed and recreated to read:

7 108.04 (6) DISCHARGE OR SUSPENSION FOR CERTAIN CONDUCT OR VIOLATION OF
8 CERTAIN WORK RULES OR POLICIES. (a) Unless sub. (5) results in disqualification, an
9 employee who is discharged for intentional conduct connected with his or her
10 employment that a reasonable person would not engage in, if the conduct is
11 documented by the employee's employer and the employee knew or should have
12 known that the conduct would not be considered reasonable by the employer, or for
13 a knowing violation of a reasonable and uniformly enforced rule or policy of the
14 employer, when reasonably applied, is ineligible to receive benefits until 6 weeks
15 have elapsed since the end of the week in which the discharge occurs and the
16 employee earns wages after the week in which the discharge occurs equal to at least
17 6 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other
18 work covered by the unemployment insurance law of any state or the federal
19 government. For purposes of requalification, the employee's weekly benefit rate is
20 the rate that would have been paid had the discharge not occurred.

21 (b) To find that an employee engaged in a single, knowing violation of a rule or
22 policy of the employer, the department must find that:

23 1. The employee knew or should have known of the rule or policy because it was
24 effectively communicated to the employee;

25 2. The employee's conduct violated the rule or policy; and

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1 3. The employee was aware that he or she was engaged in such conduct.

2 (c) In determining whether a rule or policy was effectively communicated to the
3 employee under par. (b) 1. the department may consider the manner in which the rule
4 or policy was communicated. If the department considers the manner in which the
5 rule or policy was communicated, the department shall consider evidence of the
6 employer's actions, including posting of the rule or policy within the employer's
7 premises at a place likely to be observed by employees, explanation of the rule or
8 policy at a training or orientation session, verbal explanation of the rule or policy to
9 the employee, a warning or other disciplinary action in relation to the rule or policy,
10 distribution of a document to the employee containing a statement of the rule or
11 policy and evidence of the employee's receipt of such a document.

12 (d) If a violation of a rule or policy under par. (a) requires an intentional act,
13 the department shall determine whether the employee intended to violate the rule
14 or policy.

15 (e) To find that a rule or policy instituted by an employer is reasonable, the
16 department must find that the rule or policy furthers the employer's lawful business
17 interest. The department may find that a rule or policy is reasonable on its face. If
18 evidence is offered to demonstrate that a rule or policy is unreasonable, the
19 department may consider whether:

20 1. The rule or policy is reasonable in light of the employer's lawful business
21 interest; or

22 2. There is a clear relationship between the rule or policy, the conduct
23 regulated, and the employer's lawful business interest.

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1 (f) To find that a rule or policy of an employer is uniformly enforced, the
2 department must find that similarly situated employees who are subject to the rule
3 or policy are treated in a similar manner when a rule or policy is violated.

4 (g) To find that a rule or policy of an employer is reasonably applied, the
5 department must find that:

6 1. The adverse personnel action taken by the employer is appropriate in light
7 of the violation of the rule or policy and the employer's lawful business interest; and

8 2. There were no compelling circumstances that would have prevented the
9 employee from adhering to the rule or policy.

10 (h) An employee who is suspended rather than discharged for intentional
11 conduct or any violation under par. (a) is ineligible to receive benefits until 3 weeks
12 have elapsed since the end of the week in which the suspension occurs or until the
13 suspension is terminated, whichever occurs first.

14 (i) This subsection does not preclude an employee from establishing a benefit
15 year during a period in which the employee is ineligible to receive benefits if the
16 employee qualifies to establish a benefit year under s. 108.06 (2) (a).

17 **SECTION 5.** 108.04 (7) (h) of the statutes is amended to read:

18 108.04 (7) (h) The department shall charge to the fund's balancing account
19 benefits paid to an employee that are otherwise chargeable to the account of an
20 employer that is subject to the contribution requirements of ss. 108.17 and 108.18
21 if the employee voluntarily terminates employment with that employer and par. (a),
22 (c), (d), (e), (k), (L), (o), (p), (q), or (s), ~~or (t)~~ applies.

23 **SECTION 6.** 108.04 (7) (t) of the statutes is repealed.

24 **SECTION 7.** 108.06 (1) of the statutes is amended to read:

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1 108.06 (1) Except as provided in subs. (6) and (7) and ss. 108.141 and 108.142,
2 no claimant may receive total benefits based on employment in a base period greater
3 than 26 times the claimant's weekly benefit rate under s. 108.05 (1) or 40% of the
4 claimant's base period wages, whichever is lower. Except as provided in subs. (6) and
5 (7) and ss. 108.141 and 108.142, if a claimant's base period wages are reduced or
6 canceled under s. 108.04 (1) (j) or (5) or (18), or suspended under s. 108.04 (1) (f), (10)
7 (a), or (17), the claimant may not receive total benefits based on employment in a base
8 period greater than 26 times the claimant's weekly benefit rate under s. 108.05 (1)
9 or 40% of the base period wages not reduced, canceled or suspended which were paid
10 or payable to the claimant, whichever is lower.

11 **SECTION 8.** 108.06 (7) (b) (intro.) of the statutes is amended to read:

12 108.06 (7) (b) (intro.) Except as provided in pars. (f) ~~and~~, (g), and (k), a claimant
13 who is otherwise eligible for benefits and who is currently enrolled in a training
14 program is eligible, while enrolled in that training program, for additional benefits
15 under this subsection provided that the claimant:

16 **SECTION 9.** 108.06 (7) (k) of the statutes is created to read:

17 108.06 (7) (k) If the average rate of total unemployment in this state, seasonally
18 adjusted, as determined by the U.S. secretary of labor, for any calendar quarter, is
19 equal to or lower than 6.5 percent, the department shall publish a notice to that effect
20 in the Wisconsin administrative register. No claimant may qualify to begin receiving
21 benefits under par. (b) in any week beginning after the department publishes a notice
22 under this paragraph.

23 **SECTION 10.** 108.09 (3) (b) of the statutes is amended to read:

24 108.09 (3) (b) The Consistently with applicable state and federal law, the
25 appeal tribunal may affirm, reverse or modify the initial determination of the

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1 department or set aside the determination and remand the matter to the department
2 for further proceedings, or may remand to the department for consideration of any
3 issue not previously investigated by the department.

4 **SECTION 11.** 108.14 (8n) (e) of the statutes is amended to read:

5 108.14 **(8n)** (e) The department shall charge this state's share of any benefits
6 paid under this subsection to the account of each employer by which the employee
7 claiming benefits was employed in the applicable base period, in proportion to the
8 total amount of wages he or she earned from each employer in the base period, except
9 that if s. 108.04 (1) (f), (5), (7) (a), (c), (d), (e), (k), (L), (o), (p), (q), or (s), or (t), (7m) or
10 (8) (a) or 108.07 (3), (3r), (5) (b) or (8) would have applied to employment by such an
11 employer who is subject to the contribution requirements of ss. 108.17 and 108.18,
12 the department shall charge the share of benefits based on employment with that
13 employer to the fund's balancing account, or, if s. 108.04 (1) (f) or (5) or 108.07 (3)
14 would have applied to an employer that is not subject to the contribution
15 requirements of ss. 108.17 and 108.18, the department shall charge the share of
16 benefits based on that employment in accordance with s. 108.07 (5) (a) and (b). The
17 department shall also charge the fund's balancing account with any other state's
18 share of such benefits pending reimbursement by that state.

19 **SECTION 12.** 108.141 (3g) (d) of the statutes is amended to read:

20 108.141 **(3g)** (d) Notwithstanding s. 108.04 (6) and (7), a claimant who was
21 disqualified from receipt of benefits because of voluntarily terminating employment
22 or ~~incurring a disciplinary suspension for good cause~~ being discharged for or
23 incurring a disciplinary suspension for intentional conduct or for a knowing violation
24 of a work rule or policy under s. 108.04 (6) (a) is ineligible to receive extended benefits
25 for the week in which the termination occurs or the suspension begins and for each

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1 week thereafter until he or she has again been employed during at least 4 subsequent
2 weeks in employment or other work covered by the unemployment insurance law of
3 any state or the federal government and earned wages for such work equal to at least
4 4 times his or her weekly extended benefit rate.

5 **SECTION 13.** 108.141 (7) (a) of the statutes is amended to read:

6 108.141 (7) (a) The department shall charge the state's share of each week of
7 extended benefits to each employer's account in proportion to the employer's share
8 of the total wages of the employee receiving the benefits in the employee's base
9 period, except that if the employer is subject to the contribution requirements of ss.
10 108.17 and 108.18 the department shall charge the share of extended benefits to
11 which s. 108.04 (1) (f), (5), (7) (a), (c), (d), (e), (k), (L), (o), (p), (q), or (s), ~~or (t)~~, (7m) or
12 (8) (a) or 108.07 (3), (3r), (5) (b) or (8) applies to the fund's balancing account.

13 **SECTION 14.** 108.16 (6m) (a) of the statutes is amended to read:

14 108.16 (6m) (a) The benefits thus chargeable under s. 108.04 (1) (f), (5), ~~(5g)~~,
15 (7) (h), (8) (a), (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) (b), (5m), (6), or (8), 108.14
16 (8n) (e), 108.141, 108.151, or 108.152 or sub. (6) (e) or (7) (a) and (b).

17 **SECTION 15.** 108.22 (1) (a) of the statutes is amended to read:

18 108.22 (1) (a) If any employer, other than an employer which has ceased
19 business and has not paid or incurred a liability to pay wages in any quarter
20 following the cessation of business, is delinquent in making by the assigned due date
21 any payment to the department required of it under this chapter, the employer shall
22 pay interest on the delinquent payment at ~~the rate of one percent per~~ that monthly
23 rate that annualized is equal to 2 percent more than the prime rate as published in
24 the Wall Street Journal as of September 30 of the preceding year for each month or
25 fraction thereof that the employer is delinquent from the date such payment became

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1 due. If any such employer is delinquent in making any quarterly report under s.
2 108.205 (1) by the assigned due date, the employer shall pay a tardy filing fee of \$50
3 for each delinquent quarterly report.

SECTION 16. Initial applicability.

4
5 (1) The treatment of sections 108.04 (5), (5g), and (6), 108.141 (3g) (d), and
6 108.16 (6m) (a) of the statutes first applies with respect to discharges and
7 suspensions occurring on the first Sunday that follows the 90th day beginning after
8 the effective date of this subsection.

9 (2) The treatment of sections 108.06 (7) (b) (intro.) and (k) of the statutes first
10 applies with respect to weeks of unemployment beginning on the effective date of this
11 subsection.

12 (3) The treatment of sections 108.04 (1) (j) and 108.06 (1) of the statutes first
13 applies with respect to weeks of unemployment beginning after the effective date of
14 this subsection.

15 (4) The treatment of sections 108.04 (7) (h) and (t), 108.14 (8n) (e), and 108.141
16 (7) (a) of the statutes first applies with respect to terminations of employment
17 occurring after the effective date of this subsection.

18 (5) The treatment of section 108.22 (1) (a) of the statutes first applies with
19 respect to liabilities incurred for the first quarter beginning in 2012.

SECTION 17. Effective date.

20 (1) This act takes effect on the first Sunday after publication.
21

22 (END)