

CHAPTER 108

UNEMPLOYMENT RESERVES AND COMPENSATION

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NOTE: Chapter 108 was affected substantially by 1987 Wisconsin Acts 38 and 255. Section 137 of Act 38, as affected by Act 255, and section 45 of Act 255 concern the initial applicability of a large number of sections affected by these acts. Acts 38 and 255 must be read for an understanding of these changes. See 1987 Laws of Wisconsin, Volumes 1 and 2.

108.01 Public policy declaration. Without intending that this section shall supersede, alter or modify the specific provisions hereinafter contained in this chapter, the public policy of this state is declared as follows:

(1) Unemployment in Wisconsin is recognized as an urgent public problem, gravely affecting the health, morals and welfare of the people of this state. The burdens resulting from irregular employment and reduced annual earnings fall directly on the unemployed worker and his family. The decreased and irregular purchasing power of wage earners in turn vitally affects the livelihood of farmers, merchants and manufacturers, results in a decreased demand for their products, and thus tends partially to paralyze the economic life of the entire state. In good times and in bad times unemployment is a heavy social cost, directly affecting many thousands of wage earners. Each employing unit in Wisconsin should pay at least a part of this social cost, connected with its own irregular operations, by financing compensation for its own unemployed workers. Each employer's contribution rate should vary in accordance with his own unemployment costs, as shown by experience under this chapter. Whether or not a given employing unit can provide steadier work and wages for its own employes, it can reasonably be required to build up a limited reserve for unemployment, out of which benefits shall be paid to its eligible unemployed workers, as a matter of right, based on their respective wages and lengths of service.

(2) The economic burdens resulting from unemployment should not only be shared more fairly, but should also be decreased and prevented as far as possible. A sound system of unemployment reserves, contributions and benefits should induce and reward steady operations by each employer, since he is in a better position than any other agency to share in and to reduce the social costs of his own irregular employment. Employers and employes throughout the state should cooperate, in advisory committees under government supervision, to promote and encourage the steadiest possible employment. A more adequate system of free public employment offices should be provided, at the expense of employers, to place workers more efficiently and to shorten the periods between jobs. Education and retraining of workers during their

unemployment should be encouraged. Governmental construction providing emergency relief through work and wages should be stimulated.

(3) A gradual and constructive solution of the unemployment problem along these lines has become an imperative public need.

Effects of unemployment compensation proceedings on related labor litigation. Mazurak, 64 MLR 133 (1980).

108.02 Definitions. As used in this chapter:

(1) **ADMINISTRATIVE ACCOUNT.** "Administrative account" means the account established in s. 108.20.

(2) **AGRICULTURAL LABOR.** "Agricultural labor" means service performed:

(a) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in s. 15 (g) of the federal agricultural marketing act, as amended (46 Stat. 1550, s. 3; 12 U.S.C. 1141 j) or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(d) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed.

(dm) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in par. (d), but only if such operators produced more than one-half of the commodity with respect to which such service is performed.

(dn) The provisions of pars. (d) and (dm) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(e) As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(3) AVERAGE WEEKLY WAGE. (a) An employe's "average weekly wage" with respect to a given employer and benefit computation is the amount obtained by dividing the employe's number of weeks of employment by such employer, within the employe's base period, into the total gross wages paid for such employment. For purposes of this subsection, "total gross wages" includes all payments described in sub. (29) (b) and (c) which were paid or payable to an employe with respect to a specific week, except that if an employe receives temporary total disability payments under ch. 102, the federal longshoreman's and harbor workers' compensation act (33 USC 901 to 950) or similar federal worker's compensation legislation applicable to a specific week "total gross wages" are the amount the employe would have received in his or her employment in the same week for which the payments are received.

(b) When s. 108.14 (8n) or (8r) is applicable and a determination disqualifying an employe from receiving benefits or suspending an employe's qualification to receive benefits under s. 108.04 (17) or (18) has been issued, the employe's "average weekly wage" shall be determined by excluding the wages and weeks of employment attributable to the employer from which the employe is disqualified from receiving benefits or the employer from which the employe's qualification to receive benefits is suspended.

(c) This subsection does not apply with respect to benefit years which begin during or after the week commencing on April 2, 1989.

NOTE: Sub. (3) is repealed by 1987 Wis. Act 38, eff. 1-1-91.

(4) BASE PERIOD. An employe's "base period" means the period consisting of the first 4 of the 5 most recently completed quarters preceding the employe's benefit year, which is used to compute his or her benefit rights for that year under s. 108.06.

(4m) BASE PERIOD WAGES. "Base period wages" means all payments which are made to an employe during his or her base period for wage-earning services as a result of employment for an employer, and all sick pay which is paid directly by an employer to an employe at the employe's usual rate of pay, all holiday pay, all vacation pay and all termination pay which is received by an employe during his or her base period as a result of employment for an employer. If an employe receives temporary total disability payments under ch. 102, the federal longshoreman's and harbor workers' compensation act (33 USC 901 to 950) or similar federal worker's compensation legislation as a result of employment for an employer, "base period wages" means, in lieu of such payments, all payments the employe would have received in the employment during his or her base period. "Base period wages" also means back pay to which an employe is entitled under federal law, the law of any state or a collective bargaining agreement which the employe would have received as a result of employment during his or her base period and all payments an employer was legally required to make to a claimant with respect to employment in his or her base period, but failed to make due to bankruptcy or insolvency.

(5) BENEFIT YEAR. "Benefit year" means the 52-week period beginning with a valid new claim week for which an employe's benefit rights are computed under s. 108.06, except that the "benefit year" of an employe who files consecutive claims shall be extended to 53 weeks whenever necessary to avoid utilizing the same quarter as a part of the base period for 2 successive benefit years.

(6) BENEFITS. "Benefits" means the money allowance payable to an employe as compensation for his wage losses due to unemployment as provided in this chapter.

(7) COMMISSION. "Commission" means the labor and industry review commission.

(8) COMPUTATION DATE. "Computation date" means that date as of the close of which the department computes reserve percentages and determines contribution rates for the next calendar year. The computation date shall be June 30, starting in 1963.

(10) DEPARTMENT. "Department" means the department of industry, labor and human relations.

(11) ELIGIBILITY. An employe shall be deemed "eligible" for benefits for any given week of his unemployment unless he is disqualified by a specific provision of this chapter from receiving benefits for such week of unemployment, and shall be deemed "ineligible" for any week to which such a disqualification applies.

(12) EMPLOYE. (a) "Employee" means any individual who is or has been performing services for an employing unit, in an employment, whether or not the individual is paid directly by such employing unit; except as provided in par. (b) or (e).

(b) Paragraph (a) shall not apply to an individual performing services for an employing unit if the employing unit satisfies the department as to both the following conditions:

1. That such individual has been and will continue to be free from the employing unit's control or direction over the performance of his services both under his contract and in fact; and

2. That such services have been performed in an independently established trade, business or profession in which the individual is customarily engaged.

(c) This subsection shall be used in determining an employe's liability under the contribution provisions of this chapter, and shall likewise be used in determining the status of claimants under the benefit provisions of this chapter.

(e) Paragraph (a) does not apply to a contractor who, in fulfillment of a contract with an employing unit, employs any individual in employment for which the contractor is subject to the contribution or reimbursement provisions of this chapter.

(12m) EMPLOYE SERVICE COMPANY. "Employee service company" means a leasing company or temporary help service which contracts with clients or customers to supply individuals to perform services for the client or customer and which, both under contract and in fact:

(a) Negotiates with clients or customers for such matters as time, place, type of work, working conditions, quality, and price of the services;

(b) Determines assignments or reassignments of individuals to its clients or customers, even if the individuals retain the right to refuse specific assignments;

(c) Sets the rate of pay of the individuals, whether or not through negotiation;

(d) Pays the individuals from its account or accounts; and

(e) Hires and terminates individuals who perform services for the clients or customers.

(13) EMPLOYER. (a) "Employer" means every government unit and any person, partnership, association, corporation, whether domestic or foreign, or legal representative, debtor in

possession or trustee in bankruptcy or receiver or trustee of a person, partnership, association or corporation, or guardian of the estate of a person, or legal representative of a deceased person, and any fraternal benefit society as defined in s. 614.01 (1) (a), which is subject to this chapter under the statutes of 1975, or which has had employment in this state and becomes subject to this chapter under this subsection and, notwithstanding any other provisions of this section, any service insurance corporation organized or operating under ch. 613.

(b) Any employing unit which is a nonprofit organization shall become an employer as of the beginning of any calendar year if it employed as many as 4 individuals in employment for some portion of a day on at least 20 days, each day being in a different calendar week, whether or not such weeks were consecutive, in either that year or the preceding calendar year.

(c) 1. Any employing unit which employs an individual in agricultural labor shall become an employer as of the beginning of any calendar year if the employing unit paid or incurred a liability to pay cash wages for agricultural labor which totaled \$20,000 or more during any quarter in either that year or the preceding calendar year, or if the employing unit employed as many as 10 individuals in some agricultural labor for some portion of a day on at least 20 days, each day being in a different calendar week, whether or not such weeks were consecutive, in either that year or the preceding calendar year.

2. For the purpose of this paragraph any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be an employe of such crew leader if:

a. Such crew leader holds a valid certificate of registration under the federal farm labor contractor registration act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment which is provided by such crew leader; and

b. If such crew leader is not an employe of such other person under sub. (12).

3. For the purposes of this paragraph, if any individual who is furnished by a crew leader to perform service in agricultural labor is not an employe of the crew leader under subd. 2, such other person, and not the crew leader, is the employer of that individual and the other person shall be considered to have paid or incurred liability to pay cash remuneration to the individual in an amount equal to the amount of cash remuneration paid or payable to the individual by the crew leader, either on behalf of the crew leader or such other person, for the service in agricultural labor performed for such other person.

4. For the purpose of this paragraph, "crew leader" means an individual who furnishes individuals to perform service in agricultural labor for any other person, pays on behalf of himself or herself or on behalf of such other person the individuals so furnished to perform such labor, and has not entered into a written agreement with such other person under which he or she is designated as an employe of such other person.

(d) Any employing unit of an individual or individuals in domestic service shall become an employer as of the beginning of any calendar year if the employer paid or incurred liability to pay cash wages of \$1,000 or more during any quarter in either that year or the preceding calendar year for such domestic service.

(e) Any other employing unit, except a government unit, shall become an employer as of the beginning of any calendar year if the employing unit:

1. Paid or incurred liability to pay wages for employment which totaled \$1,500 or more during any quarter in either that year or the preceding calendar year; or

2. Employed at least one individual in some employment in each of 20 or more calendar weeks in either that year or the preceding calendar year, whether or not the same individual was in employment in each such week and whether or not such weeks were consecutive; except that

3. Wages and employment for agricultural labor which meets the conditions of par. (c) shall be counted under this paragraph, but wages and employment for domestic service shall not be so counted except as par. (i) applies.

(f) Any employing unit which is subject to the federal unemployment tax act for any calendar year, or which, as a condition for approval of this chapter for full tax credit against the tax imposed by the federal unemployment tax act, is required, pursuant to such act, the social security act, or any other federal law, to be an employer, shall become an employer as of the beginning of such calendar year.

(g) Any employing unit which succeeds to the business of any employer shall become an employer as provided in s. 108.16 (8).

(h) Any employing unit which files with the department a written election to become an "employer" for not less than 2 calendar years may become an "employer" if the department approves the election in writing, as of the date and under the conditions stated in the approved election.

1. The department may refuse to approve any such election in the interest of the proper administration of this chapter. The department shall not approve any such election by a nonprofit organization unless the employing unit also elects reimbursement financing in accordance with s. 108.151 (2), and shall terminate such election under this chapter if the election of reimbursement financing is terminated under s. 108.151 (3). The department may at any time by written notice to the employer terminate an election in the interest of the proper administration of this chapter.

2. Notwithstanding par. (i), an electing employer may terminate the election no earlier than 2 calendar years after the election and thereby cease to be an employer at the close of any week which ends after the month in which the employer files a written notice to that effect with the department if the employer is not then subject to this chapter under pars. (b) to (g).

(i) An "employer" shall cease to be subject to this chapter only upon department action terminating coverage of such employer. The department may terminate an "employer's" coverage, on its own motion or on application by the "employer", by mailing a notice of termination to the "employer's" last-known address. An employer's coverage may be terminated whenever the employer ceased to exist, transferred its entire business, or would not otherwise be subject under any one or more of pars. (b) to (g). If any employer of agricultural labor or domestic service work becomes subject to this chapter under par. (c) or (d), with respect to such employment, and such employer is otherwise subject to this chapter with respect to other employment, the employer shall continue to be covered with respect to agricultural labor or domestic service or both while the employer is otherwise subject to this chapter, without regard to the employment or wage requirements under par. (c) or (d). If a termination of coverage is based on an employer's application, it shall be effective as of the close of the quarter in which the application

was filed. Otherwise, it shall be effective as of the date specified in the notice of termination.

(j) "Employer" includes a person who pays wages to an individual on account of sickness or accident disability if the person is classified as an "employer" under rules promulgated by the department. If the person is so classified, no other person is an "employer" by reason of making such payments.

(14) EMPLOYER'S ACCOUNT. "Employer's account" means a separate account in the fund, reflecting the employer's experience with respect to contribution credits and benefit charges under this chapter.

(14m) EMPLOYING UNIT. "Employing unit" means any person who employs one or more individuals.

(15) EMPLOYMENT. (a) "Employment", subject to the other provisions of this subsection means any service, including service in interstate commerce, performed by an individual for pay.

(b) The term "employment" shall include an individual's entire service (performed within, or partly within and partly outside, Wisconsin), if such service is "localized" in Wisconsin; and shall also include such service, if it is not "localized" in any state but is performed partly within Wisconsin, and if:

1. The base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in Wisconsin; or

2. The base of operations or place from which such service is directed or controlled is not in any state in which some part of such service is performed, but the individual's residence is in Wisconsin.

(c) An individual's entire service for an employer, whether performed partly within or entirely outside Wisconsin, shall be deemed "employment" subject to this chapter, provided both the following conditions exist:

1. Such service is deemed "employment" covered by this chapter pursuant to a reciprocal arrangement between the department and each agency administering the unemployment compensation law of a jurisdiction in which part of such service is performed; or no contributions are required with respect to any of such service under any other unemployment compensation law; and

2. The employer so elects with the department's approval and with written notice to the individual.

(d) An individual's entire service shall be deemed "localized" within a state, if such service is performed entirely within such state, or if such service is performed partly within and partly outside such state but the service performed outside such state is incidental to the individual's service within such state (for example, is temporary or transitory in nature or consists of isolated transactions).

(dm) "Employment" includes an individual's service, wherever performed within the United States or Canada, if:

1. Such service is not covered under the unemployment compensation law of any other state or Canada; and

2. The place from which the service is directed or controlled is in Wisconsin.

(dn) "Employment" includes the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada), in the employ of an American employer, other than service which is deemed "employment" under par. (b), (c) or (d) or the parallel provisions of another state's law, if:

1. The employer's principal place of business in the United States is located in Wisconsin; or

2. The employer has no place of business in the United States, but:

a. The employer is an individual who is a resident of Wisconsin; or

b. The employer is a corporation which is organized under the laws of Wisconsin; or

c. The employer is a partnership or a trust and the number of the partners or trustees who are residents of Wisconsin is greater than the number who are residents of any one other state; or

3. None of the criteria of subs. 1 and 2 is met but the employer has elected coverage in Wisconsin or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under this chapter.

(do) 1. An "American employer", for purposes of par. (dn), means a person who is:

a. An individual who is a resident of the United States; or

b. A partnership if two-thirds or more of the partners are residents of the United States; or

c. A trust, if all the trustees are residents of the United States; or

d. A corporation organized under the laws of the United States or of any state.

2. For the purposes of pars. (dm) to (do), the term "United States" includes the states, the District of Columbia, commonwealth of Puerto Rico, and the Virgin Islands.

(e) In determining whether an individual's entire services shall be deemed "employment" subject to this chapter, under pars. (b), (c), (d), (dm) and (dn), the department may determine and redetermine the individual's status hereunder for such reasonable periods as it deems advisable, and may refund (as paid by mistake) any contributions which have been paid hereunder with respect to services duly covered under any other unemployment compensation law.

(f) "Employment" as applied to work for a government unit, except as such unit duly elects otherwise with the department's approval, does not include service:

1. As an official elected by vote of the public;

2. As an official appointed to fill part or all of the unexpired term of a vacant position normally otherwise filled by vote of the public;

3. As a member of a legislative body or the judiciary of a state or political subdivision;

4. As a member of the Wisconsin national guard in a military capacity;

5. As an employe serving solely on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency; or

6. In a position which, under or pursuant to the laws of this state, is designated as a major nontenured policymaking or advisory position, or is designated as a policymaking or advisory position the performance of the duties of which does not ordinarily require more than 8 hours per week.

(g) "Employment" as applied to work for a government unit or a nonprofit organization, except as such unit or organization duly elects otherwise with the department's approval, does not include service:

1. By an individual receiving work relief or work training as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, unless otherwise required as a condition for participation by the unit or organization in such program;

2. In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity

cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

3. By an inmate of a custodial or penal institution.

(h) "Employment" as applied to work for a nonprofit organization, except as such organization duly elects otherwise with the department's approval, does not include service:

1. In the employ of a church or convention or association of churches;

2. In the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

3. By a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

(i) "Employment" as applied to work for an educational institution, except as such institution duly elects otherwise with the department's approval, does not include service:

1. By a student who is enrolled and is regularly attending classes at such institution; or

2. By the spouse of such a student, if given written notice at the start of such service, that the work is under a program to provide financial assistance to the student and that the work will not be covered by any program of unemployment compensation.

(j) "Employment" as applied to work for a given employer, except as such employer duly elects otherwise with the department's approval, does not include service:

1. By an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program and such institution has so certified to the employer, except as to a program established by or on behalf of an employer or group of employers;

2. As a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school;

3. As an intern in the employ of a hospital by an individual who has completed a 4-year course in a medical school;

4. In the employ of a hospital by a patient of such hospital; or

5. In any quarter in the employ of any organization exempt from federal income tax under section 501 (a) of the internal revenue code, other than an organization described in section 401 (a) or 501 (c) (3) of such code, or under section 521 of the internal revenue code, if the remuneration for such service is less than \$50.

(k) "Employment" as applied to work for a given employer other than a government unit or nonprofit organization, except as such employer duly elects otherwise with the department's approval, does not include service:

1. In agricultural labor unless performed for an employer subject to this chapter under sub. (13) (c) or (i);

2. As a domestic in the employ of an individual in such individual's private home, or as a domestic in the employ of a local college club or of a local chapter of a college fraternity or sorority, unless performed for an individual, club or chapter which is an employer subject to this chapter under sub. (13) (d) or (i);

3. As a caddy on a golf course;

4. As an individual selling or distributing newspapers or magazines on the street or from house to house;

5. With respect to which unemployment compensation is payable under the federal railroad unemployment insurance act (52 Stat. 1094);

6. By an individual for a person as an insurance agent or an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commissions;

7. By an individual for a person as a real estate agent or as a real estate salesperson, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

8. As an unpaid officer of a corporation or association;

9. Covered by any other unemployment compensation law pursuant to a reciprocal arrangement made by the department under s. 108.14 (8m);

10. For an employer who would otherwise be subject to this chapter solely because of sub. (13) (f), if and while the employer, with written notice to and approval by the department, duly covers under the unemployment compensation law of another jurisdiction all services for such employer which would otherwise be covered under this chapter;

11. By an individual in the employ of the individual's son, daughter or spouse, and by an individual under the age of 18 for his or her parent;

12. By an individual while regularly attending an educational institution and carrying at least a half-time schedule, in any week in which such individual worked for the given employer not more than 24 hours;

13. By an individual during the customary vacation days or periods of an educational institution attended in the preceding school term on at least a half-time schedule by the individual unless the individual worked full time during the preceding school term or unless the individual has graduated from that institution and does not enter any educational institution or attends an educational institution on less than a half-time schedule in the next succeeding school term after the expiration of such vacation days or period;

14. By an individual in employment by an employer which is engaged in the canning of fresh perishable fruits or vegetables within a given calendar year if the individual has been employed by the employer solely within the active canning season or seasons, as determined by the department, of the establishment in which the individual has been employed by the employer, and the individual's base period wages with that employer are less than 40 times the individual's weekly benefit rate under s. 108.05 (1), unless the individual was paid wages of \$200 or more for services performed in employment or other work covered by the unemployment compensation law of any state or the federal government during the 4 most recently completed quarters preceding the individual's first week of employment by the canning employer within that year;

15. By an individual as a court reporter if the individual receives wages on a per diem basis; or

16. By an individual whose remuneration consists solely of commissions, overrides, bonuses or differentials directly related to sales or other output derived from in-person sales to or solicitation of orders from ultimate consumers, primarily in the home; or

17. In any type of maritime service specifically excluded from coverage under the federal unemployment tax act; or

18. By an individual who leases a motor vehicle used for taxicab purposes or other taxi equipment attached to and becoming a part of the vehicle under a bona fide lease agreement, if:

a. The individual retains the income earned through the use of the leased motor vehicle or equipment during the lease term;

b. The individual receives no direct compensation from the lessor during the lease term; and

c. The amount of the lease payment is not contingent upon the income generated through the use of the motor vehicle or equipment during the lease term.

(L) "Employment" includes an individual's service for an employer organized as a corporation in which the individual is a principal officer, as defined in s. 180.41 (1), and has a direct or indirect ownership interest, except that if an employer having an annual payroll of \$200,000 or less for the calendar year preceding an election files a notice of election, in the manner prescribed by the department, to exclude the service of all of its principal officers who have a direct or indirect substantial ownership interest in the corporation, "employment" does not include the service of those officers. An employer which files an election under this paragraph may reelect coverage of its principal officers under this subsection by filing a notice of reelection with the department. An employer which reelects coverage of its principal officers is not eligible to file a notice of election of noncoverage under this paragraph. To be effective for a calendar year, an employer shall file a notice of election or reelection no later than March 31 of that year. A notice of election or reelection is timely under this subsection if it is received by the department no later than March 31 or, if March 31 falls on a Saturday, Sunday or legal holiday under state or federal law, the next following day which is not a Saturday, Sunday or legal holiday under state or federal law, or if mailed is either postmarked by that date or received by the department no later than 3 days after that date. An election is effective for each calendar year until the employer files a timely notice of reelection. A principal officer has a direct or indirect substantial ownership interest in a corporation under this paragraph if one-fourth or more of the ownership interest, however designated or evidenced, in the corporation is owned or controlled, directly or indirectly, by the officer.

(n) If any employment for a government unit or nonprofit organization excluded under other paragraphs of this subsection is required by the federal unemployment tax act, the social security act, or any other federal law, to be employment covered by this chapter as a condition for approval of this chapter for full tax credit against the tax imposed by the federal unemployment tax act, such exclusion shall not apply under this chapter.

(16) FUND. "Fund" means the unemployment reserve fund established in s. 108.16.

(17) GOVERNMENT UNIT. "Government unit" means:

(a) This state, including all of its constitutional offices, branches of government, agencies, departments, boards, commissions, councils, committees and all other parts and subdivisions of state government, and all public bodies or instrumentalities of this state and one or more other states; and

(b) Any school district, county, city, village, town and any other public corporation or entity, any combination thereof and any agency of any of the foregoing, and any public body or instrumentality of any political subdivision of this state and one or more other states or one or more political subdivisions of one or more other states.

(18) INSTITUTION OF HIGHER EDUCATION. "Institution of higher education" means a nonprofit or public educational institution which provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree

or a program of training to prepare students for gainful employment in a recognized occupation, and admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate.

(19) NONPROFIT ORGANIZATIONS. A "nonprofit organization" is an organization described in s. 501 (c) (3) of the internal revenue code which is exempt from federal income tax under s. 501 (a) of said code.

(20) PARTIAL UNEMPLOYMENT. An employe is "partially unemployed" in any week for which he or she earns some wages and is eligible for some benefits under s. 108.05 (3).

(21) PAYROLL. (a) "Payroll" means all wages paid by an employer within a certain period to individuals for their employment and includes all such wages for work which is excluded under sub. (15) (k) if the wages paid for such work:

1. Are subject to a tax under the federal unemployment tax act or are exempted from that tax only because the federal unemployment tax act (26 USC 3301 to 3311) applies to a lesser amount of wages paid to an individual during a calendar year than the amount specified in par. (b); and

2. Are not subject to contributions under another unemployment compensation law.

(b) Notwithstanding par. (a), an employer's payroll includes only the first \$10,500 of wages paid by the employer during a calendar year to an individual, including any wages paid for any work covered by the unemployment compensation law of any other state.

(c) If the federal unemployment tax is amended to apply to a higher amount of wages (paid to an individual during a calendar year) than the amount specified in par. (b), then such higher amount shall likewise apply under par. (b), as a substitute for the amount there specified, starting with the same period to which such federal amendment first applies.

(d) Notwithstanding par. (a), any nonprofit or government unit's "payroll" does not include remuneration paid to individuals employed in public service employment under the federal comprehensive employment and training act and based on which any resulting benefit payments are not chargeable against the employer's account, but instead are chargeable against the federal government.

(21m) QUARTER. "Quarter" means a 3-month period ending on March 31, June 30, September 30 or December 31.

(22) RESERVE PERCENTAGE. "Reserve percentage" shall for contribution purposes refer to the status of an employer's account, as determined by the department as of the applicable "computation date". In calculating an employer's net reserve as of any computation date, his account shall be charged with benefits paid on or before said date, and shall be credited with contributions, on his payroll through said date, if paid by the close of the month which follows said date or if paid pursuant to s. 108.18 (7) and within the period therein specified. The employer's "reserve percentage" means his account's net reserve as of the computation date, stated as a percentage of his "payroll" in the year ending on such date or in the year applicable under s. 108.18 (6).

(24) STANDARD RATE. As to any calendar year, "standard rate" means the combined rate of contributions from the applicable schedules of s. 108.18 (4) and (9) which is closest to but not less than 5.4%, after making any special adjustment required by s. 108.18 (10).

(25) TOTAL UNEMPLOYMENT. An employe is "totally unemployed" in any week for which he or she earns no wages.

(25m) VALID NEW CLAIM WEEK. "Valid new claim week" means the first week of an employe's benefit year.

(26) WAGES. "Wages" means every form of remuneration payable for a given period (or paid within such period, if this

basis is permitted or prescribed by the department) to an individual for personal services, including salaries, commissions, vacation pay, dismissal wages, bonuses, tips and the reasonable (actual or estimated average) value of board, rent, housing, lodging, payments in kind, and any other similar advantage received from the individual's employing unit or directly with respect to work for it. "Wages" includes the amount of any payment made to an individual, or his or her dependent, under a plan established by an employing unit for providing compensation on account of sickness or accident disability during the first 6 months following the last month in which the individual provided services for the employing unit. "Wages" does not include any required or necessary expenses incurred by an individual on his or her job, any amount paid by an employing unit for insurance or annuities, payments for medical or hospitalization expenses connected to the sickness or accident disability, payments of death benefits or, except for purposes of s. 108.04 (12) (e), payments under a worker's compensation law.

(27) WEEK. "Week" means calendar week, starting Sunday and ending Saturday; but, where an employe starts a working shift on a given Saturday, all his hours and pay for that shift shall be counted in the calendar week which includes that Saturday.

(28) WEEKLY BENEFIT RATE. An employe's "weekly benefit rate" from a given employer means the amount computed in accordance with s. 108.05.

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255.

NOTE: This section is shown as affected by 1987 Wis. Acts 38 and 255. See s. 137 (1) of Act 38 and s. 45 (1) to (4) of Act 255 for the initial applicability of the changes made by these acts.

An employe can at the same time be an employer under 108.02 (3) (a), Stats. 1967, and if he is an employer, he is responsible for unemployment compensation to his employes. (3) (b) may apply to the employe himself but not to his employes. *Price County Telephone Co. v. Lord*, 47 W (2d) 704, 177 NW (2d) 904.

Under (3) the status of employe must be found under (a) before applying the tests under (b). The agency must state the reasons for its conclusions. The agency may apply a "proprietary interest" test in applying (3) (b) 2. *Transport Oil, Inc. v. Cummings*, 54 W (2d) 256, 195 NW (2d) 649.

CETA employes are disqualified for unemployment compensation by (5) (g) 1. *Bliss v. DILHR*, 101 W (2d) 245, 304 NW (2d) 783 (Ct. App. 1981).

Owner-operators of semitrailers who leased services to trucking company were considered employes of trucking company. *Stafford Trucking, Inc. v. DILHR*, 102 W (2d) 256, 306 NW (2d) 79 (Ct. App. 1981).

Corporate owner-operators of trucks were both employers and employes under this section. *Wisconsin Cheese Service, Inc. v. DILHR*, 108 W (2d) 482, 322 NW (2d) 495 (Ct. App. 1982).

Truck-owner operators who leased trucks to trucking company were not company employes despite inclusion of PSC 60.03 (2), Wis. Adm. Code, in lease agreement. *Star Line Trucking Corp. v. DILHR*, 109 W (2d) 266, 325 NW (2d) 872 (1982).

In determining whether (3) (b) 2 has been satisfied, court may apply proprietary - interest test or test of independently established business in which individual is customarily engaged. Coverage under (3) (a) is broad, almost presumptive. *Princess House, Inc. v. DILHR*, 111 W (2d) 46, 330 NW (2d) 169 (1983).

Graduate students preparing dissertations were "regularly attending classes" under (5) (i) 1 even though they attended no class meetings. *Bachrach v. DILHR*, 114 W (2d) 131, 336 NW (2d) 698 (Ct. App. 1983).

"Wages" includes salaries and benefits received while taking compensatory time off. *Transportation Dept. v. LIRC*, 122 W (2d) 358, 361 NW (2d) 722 (Ct. App. 1984).

Status of contractor under (3) (e) [now (12) (e)] discussed. *Robert Hansen Trucking, Inc. v. LIRC*, 126 W (2d) 323, 377 NW (2d) 151 (1985).

Institutions of higher education, including VTAE districts, are included within the unemployment compensation act by reason of 26 U.S.C.A., sec. 3309 (a) and (d). 61 Atty. Gen. 18.

108.03 Payment of benefits. (1) Benefits shall be paid to each unemployed and eligible employe from his employer's account, under the conditions and in the amounts stated in (or approved by the department pursuant to) this chapter, and at such times, at such places, and in such manner as the department may from time to time approve or prescribe.

(2) The benefit liability of each employer's account shall begin to accrue under s. 108.07 in the first week completed on

or after the first day of that calendar year within which his contributions first began to accrue under this chapter.

History: 1971 c. 53; 1975 c. 343; 1985 a. 17; 1987 a. 38 ss. 23, 136.

NOTE: Sub. (3) was renumbered 108.04 (13) (c) and amended by 1987 Wis. Act 38. See s. 137 (2) of Act 38 for initial applicability.

108.04 Eligibility for benefits. (1) GENERAL DISQUALIFICATIONS AND LIMITATIONS. (a) An employe shall be ineligible for benefits for any week in which the employe is with due notice called on by his or her current employing unit to report for work actually available within such week and is unavailable for work or unable to do his or her work.

(b) An employe is ineligible for benefits:

1. While the employe is unable to work, or unavailable for work, if his or her employment with an employer was suspended by the employe or by the employer or was terminated by the employer because the employe was unable to do, or unavailable for, suitable work otherwise available with the employer;

2. While the employe is on a voluntary leave of absence granted for a definite period, until the period ends or until the employe returns to work, whichever occurs first; or

3. While the employe is on medical or family leave under s. 103.10, until whichever of the following occurs first:

a. The leave is exhausted.

b. The employer is required to reinstate the employe under s. 103.10 (8).

c. The employe returns to work.

(e) An individual who is self-employed shall not be eligible for benefits for any week in which he has worked at his self-employment, unless he establishes to the satisfaction of the department that in view of labor market conditions he has made an active and bona fide search for employment. The department shall, by rule, define self-employment for purposes of this paragraph.

(f) If an employe is required by law to have a license issued by a governmental agency to perform his or her customary work for an employer, and the employe's employment is suspended or terminated because the employe's license has been suspended, revoked or not renewed due to the employe's fault, the employe is not eligible to receive benefits until 5 weeks have elapsed since the end of the week in which the suspension or termination occurs or until the license is reinstated or renewed, whichever occurs first. The wages paid by the employer with which an employe's employment is suspended or terminated shall be excluded from the employe's base period wages under s. 108.06 (1) for purposes of benefit entitlement while the suspension, revocation or non-renewal of the license is in effect. This paragraph does not preclude an employe from establishing a benefit year using the wages excluded under this paragraph if the employe qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 from which base period wages are excluded under this paragraph.

(g) The base period wages utilized to compute total benefits payable to an individual under s. 108.06 (1) as a result of the following employment shall not exceed 10 times the individual's weekly benefit rate based solely on that employment under s. 108.05 (1):

1. Employment by a partnership, if a one-half or greater ownership interest in the partnership is or during such employment was owned or controlled, directly or indirectly, by the individual's spouse or child, or by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them.

2. Employment by a corporation, if one-half or more of the ownership interest, however designated or evidenced, in the corporation is or during such employment was owned or controlled, directly or indirectly, by the individual or by the individual's spouse or child, or by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them.

3. Except where subd. 2 applies, employment by a corporation, if one-fourth or more of the ownership interest, however designated or evidenced, in the corporation is or during such employment was owned or controlled, directly or indirectly, by the individual.

(h) Each employer shall inform the department in its report under s. 108.09 (1) whenever an individual claims benefits based on employment described in par. (g). Each employe who claims benefits based on employment described in par. (g) shall so inform the department when claiming benefits.

(hm) The department may require any claimant to appear before it and to answer truthfully, orally or in writing, any questions relating to the claimant's eligibility for benefits and to provide such demographic information as may be necessary to permit the department to conduct a statistically valid sample audit of compliance with this chapter. A claimant is not eligible to receive benefits for any week in which the claimant fails to comply with a request by the department to provide the information required under this paragraph, or any subsequent week, until the claimant complies or satisfies the department that he or she had good cause for failure to comply with a request of the department under this paragraph. If a claimant later complies with a request by the department or satisfies the department that he or she had good cause for failure to comply with a request, the claimant is eligible to receive benefits as of the week in which the failure occurred, if otherwise qualified.

(i) A claimant who does not provide information sufficient for the department to determine whether the claimant has been discharged for misconduct connected with his or her employment, has voluntarily terminated his or her work, has failed without good cause to accept suitable work when offered, or has failed to return to work with a former employer that recalls the employe within 52 weeks after the employe last worked for that employer is not eligible to receive benefits for the week in which the discharge, termination or failure occurs or any subsequent week. If a claimant later provides the information and has good cause for the initial failure to provide the information, he or she is eligible to receive benefits as of the week in which the discharge, termination or failure occurred, if otherwise qualified. If a claimant later provides the information but does not have good cause for the initial failure to provide the information, he or she is eligible to receive benefits as of the week in which the information is provided, if otherwise qualified.

(2) GENERAL QUALIFYING REQUIREMENTS. (a) Except as provided in par. (b) and as otherwise expressly provided, a claimant is eligible for benefits as to any given week for which he or she earns no wages only if:

1. The individual is able to work and available for work and is seeking suitable work during that week; and

2. As of that week, the individual has registered for work at a public employment office.

(b) The requirements for registration for work and search for work shall be prescribed by rule of the department, and the department may by general rule waive these requirements under certain stated conditions.

(c) Each employer shall inform his or her employes of the requirements of this subsection in such reasonable manner as the department may prescribe by rule.

(d) A claimant who earns or receives wages for one or more weeks of unemployment may be required, by rule of the department, to comply with the requirements of this subsection in order to be or remain eligible for benefits for any such week.

(e) Each claimant shall furnish to the department his or her social security number. A social security card or other document on which the number is shown that is accepted by the department may be used as evidence of the social security number. If a claimant fails, without good cause, to provide a social security number, the claimant is not eligible to receive benefits for the week in which the failure occurs or any subsequent week until the week in which he or she provides the social security number. If the claimant has good cause, he or she is eligible to receive benefits as of the week in which the claimant first files a claim for benefits or first requests the department to reactivate an existing benefit claim.

(f) A claimant is ineligible to receive benefits for any week for which benefits are paid or payable because the claimant knowingly provided the department with a false social security number.

(4) QUALIFYING CONDITIONS. (a) A claimant is not eligible to start a benefit year unless the claimant has base period wages equal to at least 40 times the claimant's weekly benefit rate under s. 108.05 (1), including combined wages equal to at least 13 times the claimant's weekly benefit rate under s. 108.05 (1) outside of the quarter within that period in which the claimant has the highest wages.

(b) There shall be counted toward the wages required by par. (a) any federal service, within the relevant period, which is assigned to Wisconsin under an agreement pursuant to 5 USC 8501 to 8525.

(bm) When a claimant is disqualified from receiving benefits under sub. (17) or (18), or a claimant's qualification to receive benefits is suspended under sub. (17) or (18), the wages and weeks of employment attributable to the employer from which the claimant is disqualified from receiving benefits or the employer from which the claimant's qualification to receive benefits is suspended shall not be counted to meet the qualifying conditions under par. (a) while the disqualification or suspension is in effect. This paragraph does not apply with respect to benefit years which begin during or after the week commencing on April 2, 1989.

NOTE: Par. (bm), which was created by 1987 Wis. Act 38, is repealed by the same Act, eff. 1-1-91.

(c) An employe is not eligible to start a new benefit year unless the employe has performed some actual wage-earning services in employment or other work covered by the unemployment compensation law of any state or the federal government subsequent to the start of the most recent benefit year in which benefits were paid to the employe.

(5) DISCHARGE FOR MISCONDUCT. An employe whose work is terminated by an employing unit for misconduct connected with the employe's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the discharge occurs and the employe earns wages after the week in which the discharge occurs equal to at least 14 times the employe's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment compensation law of any state or the federal government. For purposes of requalification, the employe's weekly benefit rate shall be that rate which would have been paid had the discharge not occurred. The wages paid to an employe by an employer which terminates employment of the employe for misconduct connected with the employe's employment shall be excluded from the employe's base period wages under s. 108.06 (1) for purposes of benefit entitlement. This subsection does not preclude an employe which has employment with an em-

ployer other than the employer which terminated the employe for misconduct from establishing a benefit year using the base period wages excluded under this subsection if the employe qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 from which base period wages are excluded under this subsection.

(6) DISCIPLINARY SUSPENSION. An employe whose work is suspended by an employing unit for misconduct or other good cause connected with the employe's work is ineligible to receive benefits until 5 weeks have elapsed since the end of the week in which the suspension occurs or until the suspension is terminated, whichever occurs first. This subsection does not preclude an employe from establishing a benefit year during a period in which the employe is ineligible to receive benefits under this subsection if the employe qualifies to establish a benefit year under s. 108.06 (2) (a).

(7) VOLUNTARY TERMINATION OF EMPLOYMENT. (a) If an employe terminates work with an employing unit, the employe is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the termination occurs and the employe earns wages after the week in which the termination occurs equal to at least 14 times the employe's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment compensation law of any state or the federal government. For purposes of requalification, the employe's weekly benefit rate shall be that rate which would have been paid had the termination not occurred. If an employe terminates employment with an employer prior to establishing a benefit year, the wages based on the employment terminated shall be reduced by 50% when computing the employe's base period wages under s. 108.06 (1) for purposes of benefit entitlement. If an employe terminates employment with an employer during a benefit year, the total amount of benefits to which the employe is entitled based on the employment terminated as of the week of termination shall be reduced by 50% and any wages paid based on the employment terminated shall be reduced by 50% when computing the employe's base period wages under s. 108.06 (1) for purposes of benefit entitlement in a subsequent benefit year if the termination occurs during the base period for that benefit year. This paragraph does not preclude an employe from establishing a benefit year by using the base period wages paid by the employer from which the employe voluntarily terminated, if the employe is qualified to establish a benefit year under s. 108.06 (2) (a).

(am) Paragraph (a) does not apply if the department determines that the suspension or termination of the claimant's work was in lieu of a suspension or termination by the employer of another employe's work. The claimant shall not be deemed unavailable for the claimant's work with the employer by reason of such suspension or termination.

(b) Paragraph (a) does not apply if the department determines that the employe terminated his or her work with good cause attributable to the employing unit. In this paragraph, "good cause" includes, but is not limited to, a request, suggestion or directive by the employing unit that the employe violate federal or Wisconsin law.

(c) Paragraph (a) does not apply if the department determines that the employe terminated his or her work but had no reasonable alternative because the employe was unable to do his or her work or because of the health of a member of his or her immediate family; but if the department determines that the employe is unable to work or unavailable for work, the

employe is ineligible to receive benefits while such inability or unavailability continues.

(d) Paragraph (a) does not apply if the department determines that the employe terminated his or her work to accept a recall to work for a former employer within 52 weeks after having last worked for such employer.

(e) Paragraph (a) does not apply if the department determines that the employe accepted work which the employe could have refused with good cause under sub. (8) and terminated such work with the same good cause and within the first 10 weeks after starting the work, or that the employe accepted work which the employe could have refused under sub. (9) and terminated such work within the first 10 weeks after starting the work.

(f) Paragraph (a) does not apply if the department determines that the employe terminated his or her work because the employe was transferred by his or her employing unit to work paying less than two-thirds of his or her immediately preceding wage rate with the employing unit, except that the employe is ineligible to receive benefits for the week of termination and the 4 next following weeks.

(g) Paragraph (a) does not affect an employe's eligibility to receive benefits if the employe:

1. Maintained a temporary residence near the work terminated; and
2. Maintained a permanent residence in another locality; and
3. Terminated such work and returned to his or her permanent residence because the work available to the employe had been reduced to less than 20 hours per week in at least 2 consecutive weeks.

(h) The department shall charge to the fund's balancing account benefits paid to an employe that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 if the employe voluntarily terminates employment with that employer and par. (a), (c), (d), (e), (k) or (L) applies.

(i) Paragraph (a) does not apply if the department determines that the employe terminated his or her work because the employer made work, compensation, promotion or job assignments contingent upon the employe's consent to sexual contact or sexual intercourse as defined in s. 940.225 (5).

(j) Paragraph (a) does not apply if the department determines that the employe left or lost his or her work because of reaching the compulsory retirement age used by the employe's employing unit.

(k) Paragraph (a) does not apply to an employe who terminates his or her part-time work consisting of not more than 30 hours per week if the employe is otherwise eligible to receive benefits because of the loss of the employe's full-time employment and the loss of the full-time employment makes it economically unfeasible for the employe to continue the part-time work.

(L) Paragraph (a) does not apply if the department determines that the employe terminated work to accept employment or other work covered by the unemployment compensation law of any state or the federal government, and earned wages in the subsequent work equal to at least 8 times the employe's weekly benefit rate under s. 108.05 (1) if the work:

1. Offered average weekly wages at least equal to the average weekly wages the employe earned in the most recently completed quarter in the terminated work;
2. Offered the same or a greater number of hours of work than those performed in the work terminated;
3. Offered the opportunity for significantly longer term work; or

4. Offered the opportunity to accept a position for which the duties were primarily discharged at a location significantly closer to the employee's domicile than the location of the terminated work.

(8) SUITABLE WORK. (a) If an employe fails, without good cause, to accept suitable work when offered, the employe is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the failure occurs and the employe earns wages after the week in which the failure occurs equal to at least 14 times the employe's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment compensation law of any state or the federal government. For purposes of requalification, the employe's weekly benefit rate shall be that rate which would have been paid had the failure not occurred. If an employe fails, without good cause, to accept suitable work when offered prior to establishing a benefit year, the employe's base period wages under s. 108.06 (1) shall be reduced by 50% unless the employe requalifies for benefits under this paragraph after the failure occurs. If an employe fails without good cause to accept suitable work when offered during any benefit year, the total amount of benefits to which the employe is entitled as of the week in which the failure occurs shall be reduced by 50% and any wages based on employment prior to the week in which the failure occurs with the employer which offered the work shall be reduced by 50% when computing the employe's base period wages under s. 108.06 (1) for purposes of benefit entitlement in a subsequent benefit year if the failure occurs during the base period for that benefit year. This paragraph does not preclude an employe from establishing a benefit year during a period in which the employe is ineligible to receive benefits under this paragraph if the employe qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 whenever an employe of that employer fails, without good cause, to accept suitable work offered by that employer.

(b) If an employe fails, without good cause, to apply for suitable work when notified of a job opportunity by a public employment office, the employe is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the failure occurs and the employe earns wages after the week in which the failure occurs equal to at least 14 times the employe's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment compensation law of any state or the federal government. For purposes of requalification, the employe's weekly benefit rate shall be that rate which would have been paid had the failure not occurred. If an employe fails without good cause to apply for suitable work when notified by a public employment office during any benefit year, the total amount of benefits to which the employe is entitled as of the week in which the failure occurs shall be reduced by 50%. This paragraph does not preclude an employe from establishing a benefit year during a period in which the employe is ineligible to receive benefits under this paragraph if the employe qualifies to establish a benefit year under s. 108.06 (2) (a).

(c) If an employe fails, without good cause, to return to work with a former employer that recalls the employe within 52 weeks after the employe last worked for that employer, the employe is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the failure occurs and the employe earns wages after the week in which the failure occurs equal to at least 14 times the employe's weekly benefit rate under s. 108.05 (1) in employment or other work

covered by the unemployment compensation law of any state or the federal government. For purposes of requalification, the employe's weekly benefit rate shall be that rate which would have been paid had the failure not occurred. This paragraph does not preclude an employe from establishing a benefit year during a period in which the employe is ineligible to receive benefits under this paragraph if the employe qualifies to establish a benefit year under s. 108.06 (2) (a). If the employe receives actual notice of the recall to work, par. (a) applies in lieu of this paragraph.

(d) An employe shall have good cause under pars. (a) to (c) if the department determines that the failure related to work at a lower grade of skill or significantly lower rate of pay than applied to the employe on one or more recent jobs, and that the employe had not yet had a reasonable opportunity, in view of labor market conditions and the employe's degree of skill, but not to exceed 6 weeks after the employe became unemployed, to seek a new job substantially in line with the employe's prior job skill and rate of pay.

(e) If the department determines that a failure under this subsection has occurred with good cause, but that the employe is unable to work or unavailable for work, the employe shall be ineligible for the week in which such failure occurred and while such inability or unavailability continues.

(f) This subsection does not apply to an individual claiming extended benefits if the individual fails to provide sufficient evidence that his or her prospects for obtaining work in his or her customary occupation within a period of time not exceeding 4 weeks, beginning with the first week of eligibility for extended benefits, are good.

(9) PROTECTION OF LABOR STANDARDS. Benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If the position offered is vacant due directly to a strike, lockout or other labor dispute;

(b) If the wages, hours (including arrangement and number) or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(10) LABOR DISPUTE. (a) An employe who has left or partially or totally lost his or her work with an employing unit because of a strike or other bona fide labor dispute, other than a lockout, is not eligible to receive benefits based on wages paid for employment prior to commencement of the dispute for any week in which the dispute is in active progress in the establishment in which the employe is or was employed, except as provided in par. (b).

(b) An employe who did not establish a benefit year prior to commencement of a strike or other bona fide labor dispute, other than a lockout, may establish a benefit year after commencement of the dispute if the employe qualifies to establish a benefit year under s. 108.06 (2) (a), but the wages paid to the employe prior to commencement of the dispute shall be excluded from the employe's base period wages under sub. (4) (a) and ss. 108.05 (1) and 108.06 (1) for any week in which the dispute is in active progress in the establishment in which the employe is or was employed.

(c) For purposes of this subsection, if the active progress of a strike or other bona fide labor dispute ends on a Sunday, it is not in "active progress" in the calendar week beginning on that Sunday as to any employe who did not normally work on Sundays in the establishment in which the labor dispute occurs.

(d) In this subsection, "lockout" means the barring of one or more employes from their employment in an establishment by an employer as a part of a labor dispute, which is not directly subsequent to a strike or other job action of a labor union or group of employes of the employer, or which continues or occurs after the termination of a strike or other job action of a labor union or group of employes of the employer.

(11) FRAUDULENT CLAIMS. (a) If a claimant, in filing his or her claim for any week, conceals any part of his or her wages earned in or paid or payable for that week, or conceals his or her refusal within that week of a job offer or any other material fact relating to his or her eligibility for benefits, so much of any benefit payment as was paid because of such concealment shall be recovered by the department as an overpayment.

(b) The department may also require any such claimant to forfeit for each such act of concealment the benefits which would otherwise become payable to the claimant for weeks of unemployment occurring after the week of concealment and within 6 years following the date of an initial determination issued under s. 108.09 finding that a concealment occurred, in an amount not less than one times nor more than 4 times the claimant's weekly benefit rate under s. 108.05 (1) for the week for which the claim is made. If no weekly benefit rate applies to the week for which the claim is made, the claimant's weekly benefit rate for his or her next benefit year beginning after the date of the concealment shall be used to determine the forfeiture amount. If the benefits forfeited would otherwise be chargeable to an employer's account, the department shall charge an amount equal to the benefits to the employer's account and shall credit the fund's balancing account for the amount of benefits forfeited.

(c) Any employer that aids and abets a claimant in committing an act of concealment described in par. (a) may, by a determination issued under s. 108.09, be required, as to each act of concealment the employer aids and abets, to forfeit an amount equal to the amount of the benefits the claimant improperly received as a result of the concealment. The amount forfeited shall be credited to the administrative account.

(d) In addition to other remedies, the department may, by civil action, recover any benefits obtained by means of any false statement or representation.

(e) This subsection may be applied even when other provisions, including penalty provisions, of this chapter are applied.

(12) PREVENTION OF DUPLICATE PAYMENTS. (b) Any individual who receives, through the department, any other type of unemployment benefit or allowance for a given week is ineligible for benefits for that same week under this chapter, except as specifically required for conformity with the federal trade act of 1974 (P.L. 93-618).

(c) Any individual who receives unemployment compensation for a given week under any federal law through any federal agency shall be ineligible for benefits paid or payable for that same week under this chapter.

(d) Any individual who receives unemployment compensation for a given week under the law of any other state (with no use of benefit credits earned under this chapter) shall be ineligible for benefits paid or payable for that same week under this chapter.

(e) Any individual who receives a temporary total disability payment under ch. 102 or the federal longshoreman's and harbor workers' compensation act (33 USC 901 to 950) or a similar federal program unless precluded by federal law for a whole week shall be ineligible for benefits paid or payable for

that same week under this chapter. A temporary total disability payment under those provisions received by an individual for part of a week shall be treated as wages for purposes of eligibility for benefits for partial unemployment under s. 108.05 (3).

(13) NOTIFICATION AS TO INELIGIBILITY. (a) The department shall apply any provision of this chapter which may disqualify a claimant from receiving benefits whether or not the claimant's employing unit questions the claimant's eligibility or files the report required under s. 108.09 (1).

(b) If an employer fails to file the required wage report under s. 108.205 for an employe who has claimed benefits from the employer's account:

1. The department may compute and proceed to pay the benefits thus claimed, based on the claimant's statements and any other information then available.

2. If benefits are thus computed, the employer shall be liable for a tardy filing fee of \$15, to be paid to the department and credited to the administrative account, except where the employer later files the required report and satisfies the department that it was tardy because of circumstances beyond the employer's control.

(c) If an employer, after notice of a benefit claim, fails to file an objection to the claim under s. 108.09 (1), any benefits allowable under any resulting benefit computation shall, unless the department applies a provision of this chapter to disqualify the claimant, be promptly paid. Except as otherwise provided in this paragraph, any eligibility question in objection to the claim raised by the employer after benefit payments to the claimant are commenced does not affect benefits paid prior to the end of the week in which a determination is issued as to the eligibility question unless the benefits are erroneously paid without fault on the part of the employer. If benefits are erroneously paid because the employer and the employe are at fault, the department shall charge the employer for the benefits and proceed to create an overpayment under s. 108.22 (8) (a). If benefits are erroneously paid without fault on the part of the employer, regardless of whether the employe is at fault, the department shall charge the benefits as provided in par. (d), unless par. (e) applies, and proceed to create an overpayment under s. 108.22 (8) (a). If benefits are erroneously paid because an employer is at fault and the department recovers the benefits erroneously paid under s. 108.22 (8), the recovery does not affect benefit charges made under this paragraph.

(d) If the department finds that any benefits charged to an employer's account have been erroneously paid to an employe without fault by the employer, the department shall notify the employe and the employer of the erroneous payment. If benefits are currently payable to the employe from the employer's account, the department may correct the error by adjusting the benefits accordingly. To correct any erroneous payment not so adjusted, except where the employer is a government unit or a nonprofit organization which has elected reimbursement financing, the department shall restore the proper amount to the employer's account and charge that amount to the fund's balancing account, and shall thereafter reimburse the balancing account by crediting to it benefits which would otherwise be payable to, or cash recovered from, the employe. To correct any erroneous payment from the account of an employer which is a government unit or a nonprofit organization which has elected reimbursement financing, the department shall credit to the account benefits which would otherwise be payable to, or cash received from, the employe.

(e) If the department erroneously pays benefits from one employer's account and a 2nd employer is at fault, the

department shall credit the benefits paid to the first employer's account and charge the benefits paid to the 2nd employer's account. Filing of a tardy or corrected report or objection does not affect the 2nd employer's liability for benefits paid prior to the end of the week in which the department makes a recomputation of the benefits allowable or prior to the end of the week in which the department issues a determination concerning any eligibility question raised by the report or by the 2nd employer. If the department recovers the benefits erroneously paid under s. 108.22 (8), the recovery does not affect benefit charges made under this paragraph.

(f) If benefits are erroneously paid because the employer fails to file a report required by this chapter, fails to provide correct and complete information on the report, fails to object to the benefit claim under s. 108.09 (1) or aids and abets the claimant in an act of concealment as provided in sub. (11), the employer is at fault. If benefits are erroneously paid because an employee commits an act of concealment as provided in sub. (11) or fails to provide correct and complete information to the department, the employee is at fault.

(g) Whenever an individual claims benefits and is receiving, is entitled to receive, or has applied for a pension payment as defined in s. 108.05 (7) (b), the individual and any employer by whom the individual was employed in his or her base period shall promptly furnish to the department any information relating to the payment that the department requests. The government or other retirement system shall, on request of the department, report to it the relevant information as to the individual's eligibility for and receipt of payments under that system.

(14) WAR-TIME APPLICATION OF SUBSECTION (7) OR (8). If the department finds that the official war-time manpower policies of the United States are or may be materially hampered, in any clearly definable class of cases, by any application of sub. (7) or (8), so as to interfere with the effective war-time use of civilian manpower in Wisconsin, the department may by general rule, after public hearing, modify or suspend such application accordingly.

(16) APPROVED TRAINING. (a) Benefits shall not be reduced under sub. (8) (a) or (b), nor shall sub. (1) (a), (2) or (8) or s. 108.141 (3g) operate to deny benefits to any otherwise eligible individual for any week because the individual is enrolled in a full-time course of vocational training or basic education which is a prerequisite to such training, provided it is determined that:

1. The individual possesses aptitudes or skills which can be usefully supplemented by training; and
2. The course is expected to increase the individual's opportunities to obtain employment, does not grant substantial credit leading to a bachelor's or higher degree, and is given by a school established under s. 38.02 or other training institution approved by the department; and
3. The individual can reasonably be expected to complete the training course successfully, and to find and accept work; and
4. The individual attended the training course full time during the given training week or had good cause for his failure to do so, and is making satisfactory progress in the course. The department may require the training institution to file a certification showing the individual's attendance and progress.

(b) The requalifying employment requirement and the benefit reduction provisions under subs. (7) and (8) and the general qualifying requirements under sub. (2) do not apply to an individual as a result of the individual's enrollment in, or leaving work that was not suitable to enter, training under 19 USC 2296.

(c) Benefits may not be denied to an otherwise eligible individual under par. (a) who is enrolled in training for dislocated workers authorized under 29 USC 1652 notwithstanding the failure of such training to meet any of the requirements of par. (a) 1 to 4.

(17) EDUCATIONAL EMPLOYEES. (a) An employe of an educational institution or an employe of a government unit or nonprofit organization who provides services to or on behalf of an educational institution and who performs services in an instructional, research or principal administrative capacity is ineligible for benefits based on such services for any week of unemployment which occurs during a period between 2 successive academic years or 2 regular terms, whether or not successive, if such employe performed such services in the first such academic year or term and if there is a contract or a reasonable assurance that such employe will perform such services in the 2nd such academic year or term.

(b) An employe of an educational institution or an employe of a government unit or nonprofit organization who provides services to or on behalf of an educational institution and who performs services other than in an instructional, research or principal administrative capacity, is ineligible for benefits based on such services for any week of unemployment which occurs during a period between 2 successive academic years or terms if such employe performed such services in the first such academic year or term and there is a reasonable assurance that such employe will perform such services in the 2nd such academic year or term.

(c) An employe of an educational institution or an employe of a government unit or nonprofit organization who provides services to or on behalf of an educational institution and who performs services as described in par. (a) or (b) is ineligible for benefits based on such services for any week of unemployment which occurs during an established and customary vacation period or holiday recess if such employe performed such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such employe will perform such services in the period immediately following such vacation period or holiday recess.

(d) An employe of an employer other than a government unit or nonprofit organization who performs services as a bus driver under a contract by the employer with an educational institution and at least 75% of whose base period wages received from the employer are earned for performance of services as a school bus driver is ineligible for benefits based upon those services for any week of unemployment which occurs during a period between 2 successive academic years or terms or during an established customary vacation period or holiday recess if the employe performed the services in the first academic year or term and the employer provides written assurance to the employe prior to the end of the year or term that the employe will perform the services in the 2nd year or term, or if the employe performed the services in the period immediately before the vacation period or holiday recess and the employer provides written assurance to the employe prior to the beginning of the period or recess that the employe will perform the services in the period immediately following the period or recess.

(e) An employe who did not establish a benefit year prior to becoming ineligible to receive benefits under pars. (a) to (d) may establish a benefit year on or after that date if the employe qualifies to establish a benefit year under s. 108.06 (2) (a), but the wages paid the employe for any week during which pars. (a) to (d) apply shall be excluded from the employe's base period wages under sub. (4) (a) and ss. 108.05 (1) and 108.06 (1) for any week during which pars. (a) to (d)

apply. An employee who established a benefit year prior to becoming ineligible to receive benefits under pars. (a) to (d) may receive benefits based on employment with other employers during the benefit year only if the employee has base period wages from such employment sufficient to qualify for benefits under sub. (4) (a) and ss. 108.05 (1) and 108.06 (1) for any week during which pars. (a) to (d) apply.

(f) If benefits are reduced or denied to an employee under par. (b) or (d), and the department later determines that the employee was not offered an opportunity to perform the services specified in par. (b) or (d) for the employer in the 2nd academic year or term or immediately following the vacation period or holiday recess, the department shall recompute the employee's base period wages under sub. (4) (a) and ss. 108.05 (1) and 108.06 (1) and shall make retroactive payment of benefits for each week of such reduction or denial if the employee filed a claim for that week under s. 108.08 and was otherwise eligible to receive benefits.

(18) ILLEGAL ALIENS. (a) The wages paid to an employee who performed services while the employee was an alien shall, if based on such services, be excluded from the employee's base period wages for purposes of sub. (4) (a) and ss. 108.05 (1) and 108.06 (1) unless the employee is an alien who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203 (a) (7) or 212 (d) (5) of the federal immigration and nationality act (8 USC 1153 (a) (7) or 1182 (d) (5)). All claimants shall be uniformly required to provide information as to whether they are citizens and, if they are not, any determination denying benefits under this subsection shall not be made except upon a preponderance of the evidence.

(am) Paragraph (a) does not preclude an employee from establishing a benefit year during a period in which the employee is ineligible to receive benefits under par. (a) if the employee qualifies to establish a benefit year under s. 108.06 (2) (a).

(b) Any amendment of s. 3304 (a) (14) of the federal unemployment tax act specifying conditions other than as stated in par. (a) for denial of benefits based on services performed by aliens, or changing the effective date for required implementation of par. (a) or such other conditions, which is a condition of approval of this chapter for full tax credit against the tax imposed by the federal unemployment tax act, shall be applicable to this subsection.

(19) PROFESSIONAL ATHLETES. An employee who performs services substantially all of which consist of participating in sports or athletic events, or training or preparing to so participate, shall be ineligible for benefits based on any employment for any week of unemployment which occurs during the period between 2 successive sport seasons or similar periods if the employee performed such services in the first such season or period and there is a reasonable assurance that the employee will perform such services in the 2nd such season or period.

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403.

NOTE: This section is shown as affected by 1987 Wis. Acts 38, 255, 287 and 403. See s. 137 of Act 38 and s. 45 of Act 255 for the initial applicability of the changes made by Acts 38 and 255.

Council on Unemployment Compensation Note, 1981: [Sub. (8) (e) rn. (f)] Clarifies eligibility for extended benefits in situations where an employee fails to

apply for and accept suitable work in accordance with s. 108.141 (3g), stats. [Bill 791-S]

Employees at Wisconsin terminals of trucking companies laid off as a result of a strike at the Chicago terminal are eligible for unemployment compensation because the Chicago terminal is a separate establishment. *Liberty Trucking Co. v. ILHR Dept.* 57 W (2d) 331, 204 NW (2d) 457.

In (9) the words "new work" include indefinitely laid off employees who are recalled as well as new job applicants, and applies to both (8) (a) and (8) (af). The department must determine whether a laid-off employee had good cause for refusing work on a different shift with a higher pay scale. *Allen-Bradley Co. v. ILHR Dept.* 58 W (2d) 1, 205 NW (2d) 129.

When a union which had given a notice of contract termination withdrew it before a strike began, there was no labor dispute in progress when the employer later closed the plant. *Kansas City Star Co. v. ILHR Dept.* 60 W (2d) 591, 211 NW (2d) 488.

Sub. (10) discussed in concurring and dissenting opinions on rehearing. *Kansas City Star Co. v. ILHR Dept.* 62 W (2d) 783, 217 NW (2d) 666.

An employee was guilty of misconduct as a matter of law under (5) and (6) because his reaction put a dangerous object in the air and thereby endangered the safety of anyone in its path. *McGraw-Edison Co. v. ILHR Dept.* 64 W (2d) 703, 221 NW (2d) 677.

Where the self-employed claimant was both the employee and the employer he could not disassociate the fault or misfortune of himself as an employer so as to become eligible for unemployment benefits under (7) (b). *Fish v. White Equip. Sales & Service, Inc.* 64 W (2d) 737, 221 NW (2d) 864.

Masons unemployed because their employer locked out masons' laborers were ineligible under (10) for benefits because masons would be working "but for" a bona fide labor dispute. *De Leeuw v. DILHR*, 71 W (2d) 446, 238 NW (2d) 706.

Employer's grooming code may be justified notwithstanding employees' constitutional right to choice of hairstyle. *Consolidated Const. Co., Inc. v. Casey*, 71 W (2d) 811, 238 NW (2d) 758.

The policy of (15) is generally to prevent the overlap of pension and unemployment benefits. *McGraw-Edison Co. v. DILHR*, 72 W (2d) 99, 240 NW (2d) 148.

Where record of a meeting indicated that employees would not be rehired, (10) did not apply and employees were eligible for benefits subsequent to discharge. *Carley Ford, Lincoln, Mercury v. Bosquette*, 72 W (2d) 569, 241 NW (2d) 596.

"Fault" under (1) (f), in context of employee's failure to pass licensing examination, means blameworthy or negligent conduct, not incompetence. *Milwaukee County v. DILHR*, 80 W (2d) 445, 259 NW (2d) 118.

Picketing in violation of collective bargaining agreement was misconduct under (6) (a). *Universal Foundry Co. v. ILHR Dept.* 86 W (2d) 382, 273 NW (2d) 324 (1979).

Indefinite layoff severed employment relationship. *A. O. Smith Corp. v. ILHR Dept.* 88 W (2d) 262, 276 NW (2d) 279 (1979).

Where sole shareholders were also sole employees, their decision as shareholders to file for voluntary bankruptcy disqualified them for unemployment benefits. *Hammer v. ILHR Dept.* 92 W (2d) 90, 284 NW (2d) 587 (1979).

Employee who refused on religious grounds to pay mandatory union dues did not voluntarily terminate employment under (7) (a). *Nottelson v. DILHR*, 94 W (2d) 106, 287 NW (2d) 763 (1980).

Employee who voluntarily terminated parttime employment which, prior to termination, had not affected eligibility, became ineligible under (7) (a). *Ellingson v. DILHR*, 95 W (2d) 710, 291 NW (2d) 649 (Ct. App. 1980).

Employee who was transferred to workplace 25 miles away and who did not receive pay increase to cover increased commuting costs had good cause to quit. *Farmers Mill of Athens, Inc. v. DILHR*, 97 W (2d) 576, 294 NW (2d) 39 (Ct. App. 1980).

Falsification with respect to criminal record on employment application constitutes "misconduct" under (5), regardless of materiality to employee's particular job. *Miller Brewing Co. v. DILHR*, 103 W (2d) 496, 308 NW (2d) 922 (Ct. App. 1981).

Objective test for misconduct discussed. *Wehr Steel Co. v. DILHR*, 106 W (2d) 111, 315 NW (2d) 357 (1982).

Sub. (10) does not deny equal protection to nonstriking workers laid off because of a strike. *Jenks v. DILHR*, 107 W (2d) 714, 321 NW (2d) 347 (Ct. App. 1982).

Under (1) or (7), pregnant employee who could not perform her specific job but could do other work was eligible for benefits. *Rhineland Paper Co., Inc. v. DILHR*, 120 W (2d) 162, 352 NW (2d) 679 (Ct. App. 1984).

Teacher who forgot to accept employment offer under 118.22 (2) and who was consequently terminated did not voluntarily terminate employment under 108.04 (7). *Nelson v. LIRC*, 123 W (2d) 221, 365 NW (2d) 629 (Ct. App. 1985).

Claimant who was physically able to perform less than 15% of jobs in job market was ineligible under (2) (a). *Brooks v. LIRC*, 138 W (2d) 106, 405 NW (2d) 705 (Ct. App. 1987).

See note to Art I, sec. 18, citing *Thomas v. Review Bd. Ind. Empl. Sec. Div.* 450 US 707 (1981).

Voluntary termination not found where there is meritorious excuse for refusal to pay union dues based on religious ground. 64 MLR 203 (1980).

Winning denials of unemployment compensation claims. *Thorne*. WBB June 1983.

Unemployment compensation - An examination of Wisconsin's "active progress" labor dispute disqualification provision. 1982 WLR 907.

108.05 Amount of benefits. (1) WEEKLY BENEFIT RATE FOR TOTAL UNEMPLOYMENT. (a) Each eligible employe shall be paid benefits from his or her employer's account for each week of the employe's total unemployment during a benefit year which commences prior to April 2, 1989, at the weekly benefit rate, based on the employe's "average weekly wage" from the given employer, shown by the following schedule: [See Figure 108.05 (1) (a) following]

108.05 (1)(a) SCHEDULE

Line	Average Weekly Wage Class	Weekly Benefit Rate	Line	Average Weekly Wage Class	Weekly Benefit Rate	Line	Average Weekly Wage Class	Weekly Benefit Rate	
1	Under	\$74.01	\$ 0	56	182.01 to 184.00	92	111	292.01 to 294.00	147
2	74.01 to 76.00	38	57	184.01 to 186.00	93	112	294.01 to 296.00	148	
3	76.01 to 78.00	39	58	186.01 to 188.00	94	113	296.01 to 298.00	149	
4	78.01 to 80.00	40	59	188.01 to 190.00	95	114	298.01 to 300.00	150	
5	80.01 to 82.00	41	60	190.01 to 192.00	96	115	300.01 to 302.00	151	
6	82.01 to 84.00	42	61	192.01 to 194.00	97	116	302.01 to 304.00	152	
7	84.01 to 86.00	43	62	194.01 to 196.00	98	117	304.01 to 306.00	153	
8	86.01 to 88.00	44	63	196.01 to 198.00	99	118	306.01 to 308.00	154	
9	88.01 to 90.00	45	64	198.01 to 200.00	100	119	308.01 to 310.00	155	
10	90.01 to 92.00	46	65	200.01 to 202.00	101	120	310.01 to 312.00	156	
11	92.01 to 94.00	47	66	202.01 to 204.00	102	121	312.01 to 314.00	157	
12	94.01 to 96.00	48	67	204.01 to 206.00	103	122	314.01 to 316.00	158	
13	96.01 to 98.00	49	68	206.01 to 208.00	104	123	316.01 to 318.00	159	
14	98.01 to 100.00	50	69	208.01 to 210.00	105	124	318.01 to 320.00	160	
15	100.01 to 102.00	51	70	210.01 to 212.00	106	125	320.01 to 322.00	161	
16	102.01 to 104.00	52	71	212.01 to 214.00	107	126	322.01 to 324.00	162	
17	104.01 to 106.00	53	72	214.01 to 216.00	108	127	324.01 to 326.00	163	
18	106.01 to 108.00	54	73	216.01 to 218.00	109	128	326.01 to 328.00	164	
19	108.01 to 110.00	55	74	218.01 to 220.00	110	129	328.01 to 330.00	165	
20	110.01 to 112.00	56	75	220.01 to 222.00	111	130	330.01 to 332.00	166	
21	112.01 to 114.00	57	76	222.01 to 224.00	112	131	332.01 to 334.00	167	
22	114.01 to 116.00	58	77	224.01 to 226.00	113	132	334.01 to 336.00	168	
23	116.01 to 118.00	59	78	226.01 to 228.00	114	133	336.01 to 338.00	169	
24	118.01 to 120.00	60	79	228.01 to 230.00	115	134	338.01 to 340.00	170	
25	120.01 to 122.00	61	80	230.01 to 232.00	116	135	340.01 to 342.00	171	
26	122.01 to 124.00	62	81	232.01 to 234.00	117	136	342.01 to 344.00	172	
27	124.01 to 126.00	63	82	234.01 to 236.00	118	137	344.01 to 346.00	173	
28	126.01 to 128.00	64	83	236.01 to 238.00	119	138	346.01 to 348.00	174	
29	128.01 to 130.00	65	84	238.01 to 240.00	120	139	348.01 to 350.00	175	
30	130.01 to 132.00	66	85	240.01 to 242.00	121	140	350.01 to 352.00	176	
31	132.01 to 134.00	67	86	242.01 to 244.00	122	141	352.01 to 354.00	177	
32	134.01 to 136.00	68	87	244.01 to 246.00	123	142	354.01 to 356.00	178	
33	136.01 to 138.00	69	88	246.01 to 248.00	124	143	356.01 to 358.00	179	
34	138.01 to 140.00	70	89	248.01 to 250.00	125	144	358.01 to 360.00	180	
35	140.01 to 142.00	71	90	250.01 to 252.00	126	145	360.01 to 362.00	181	
36	142.01 to 144.00	72	91	252.01 to 254.00	127	146	362.01 to 364.00	182	
37	144.01 to 146.00	73	92	254.01 to 256.00	128	147	364.01 to 366.00	183	
38	146.01 to 148.00	74	93	256.01 to 258.00	129	148	366.01 to 368.00	184	
39	148.01 to 150.00	75	94	258.01 to 260.00	130	149	368.01 to 370.00	185	
40	150.01 to 152.00	76	95	260.01 to 262.00	131	150	370.01 to 372.00	186	
41	152.01 to 154.00	77	96	262.01 to 264.00	132	151	372.01 to 374.00	187	
42	154.01 to 156.00	78	97	264.01 to 266.00	133	152	374.01 to 376.00	188	
43	156.01 to 158.00	79	98	266.01 to 268.00	134	153	376.01 to 378.00	189	
44	158.01 to 160.00	80	99	268.01 to 270.00	135	154	378.01 to 380.00	190	
45	160.01 to 162.00	81	100	270.01 to 272.00	136	155	380.01 to 382.00	191	
46	162.01 to 164.00	82	101	272.01 to 274.00	137	156	382.01 to 384.00	192	
47	164.01 to 166.00	83	102	274.01 to 276.00	138	157	384.01 to 386.00	193	
48	166.01 to 168.00	84	103	276.01 to 278.00	139	158	386.01 to 388.00	194	
49	168.01 to 170.00	85	104	278.01 to 280.00	140	159	388.01 to 390.00	195	
50	170.01 to 172.00	86	105	280.01 to 282.00	141	160	390.01 to 392.00	196	
51	172.01 to 174.00	87	106	282.01 to 284.00	142	161	392.01 to 394.00	197	
52	174.01 to 176.00	88	107	284.01 to 286.00	143	162	394.01 to 396.00	198	
53	176.01 to 178.00	89	108	286.01 to 288.00	144	163	396.01 to 398.00	199	
54	178.01 to 180.00	90	109	288.01 to 290.00	145	164	398.01 or more	200	
55	180.01 to 182.00	91	110	290.01 to 292.00	146				

NOTE: For initial applicability of par. (a) (figure), as renumbered by 1987 Wis. Act 255, s. 26, see 1987 Wis. Act 38, s. 137 (9). Act 255 repeals par. (a) (intro.) and (figure) eff. 1-1-91.

(b) Each eligible employe shall be paid benefits for each week of total unemployment during a benefit year which commences on or after April 2, 1989, at the weekly benefit rate specified in this subsection. The weekly benefit rate shall equal 4% of the employe's base period wages which were paid during that quarter of the employe's base period in which the employe was paid the highest total wages, rounded down to the nearest whole dollar, except that if that amount is less than the minimum amount shown in the following schedule, no benefits are payable to the employe and if that amount is more than the maximum amount shown in the following schedule, the employe's weekly benefit rate shall be the maximum amount shown in the following schedule: [See Figure 108.05 (1) (b) following]

108.05 (1)(b) SCHEDULE

Line	Highest Quarterly Wages Paid	Weekly Benefit Rate	Line	Highest Quarterly Wages Paid	Weekly Benefit Rate	Line	Highest Quarterly Wages Paid	Weekly Benefit Rate
1	Under	\$ 950.00	38			111	3,675.00 to 3,699.99	147
2	950.00 to 974.99	38	56	2,300.00 to 2,324.99	92	112	3,700.00 to 3,724.99	148
3	975.00 to 999.99	39	57	2,325.00 to 2,349.99	93	113	3,725.00 to 3,749.99	149
4	1,000.00 to 1,024.99	40	58	2,350.00 to 2,374.99	94	114	3,750.00 to 3,774.99	150
5	1,025.00 to 1,049.99	41	59	2,375.00 to 2,399.99	95	115	3,775.00 to 3,799.99	151
6	1,050.00 to 1,074.99	42	60	2,400.00 to 2,424.99	96	116	3,800.00 to 3,824.99	152
7	1,075.00 to 1,099.99	43	61	2,425.00 to 2,449.99	97	117	3,825.00 to 3,849.99	153
8	1,100.00 to 1,124.99	44	62	2,450.00 to 2,474.99	98	118	3,850.00 to 3,874.99	154
9	1,125.00 to 1,149.99	45	63	2,475.00 to 2,499.99	99	119	3,875.00 to 3,899.99	155
10	1,150.00 to 1,174.99	46	64	2,500.00 to 2,524.99	100	120	3,900.00 to 3,924.99	156
11	1,175.00 to 1,199.99	47	65	2,525.00 to 2,549.99	101	121	3,925.00 to 3,949.99	157
12	1,200.00 to 1,224.99	48	66	2,550.00 to 2,574.99	102	122	3,950.00 to 3,974.99	158
13	1,225.00 to 1,249.99	49	67	2,575.00 to 2,599.99	103	123	3,975.00 to 3,999.99	159
14	1,250.00 to 1,274.99	50	68	2,600.00 to 2,624.99	104	124	4,000.00 to 4,024.99	160
15	1,275.00 to 1,299.99	51	69	2,625.00 to 2,649.99	105	125	4,025.00 to 4,049.99	161
16	1,300.00 to 1,324.99	52	70	2,650.00 to 2,674.99	106	126	4,050.00 to 4,074.99	162
17	1,325.00 to 1,349.99	53	71	2,675.00 to 2,699.99	107	127	4,075.00 to 4,099.99	163
18	1,350.00 to 1,374.99	54	72	2,700.00 to 2,724.99	108	128	4,100.00 to 4,124.99	164
19	1,375.00 to 1,399.99	55	73	2,725.00 to 2,749.99	109	129	4,125.00 to 4,149.99	165
20	1,400.00 to 1,424.99	56	74	2,750.00 to 2,774.99	110	130	4,150.00 to 4,174.99	166
21	1,425.00 to 1,449.99	57	75	2,775.00 to 2,799.99	111	131	4,175.00 to 4,199.99	167
22	1,450.00 to 1,474.99	58	76	2,800.00 to 2,824.99	112	132	4,200.00 to 4,224.99	168
23	1,475.00 to 1,499.99	59	77	2,825.00 to 2,849.99	113	133	4,225.00 to 4,249.99	169
24	1,500.00 to 1,524.99	60	78	2,850.00 to 2,874.99	114	134	4,250.00 to 4,274.99	170
25	1,525.00 to 1,549.99	61	79	2,875.00 to 2,899.99	115	135	4,275.00 to 4,299.99	171
26	1,550.00 to 1,574.99	62	80	2,900.00 to 2,924.99	116	136	4,300.00 to 4,324.99	172
27	1,575.00 to 1,599.99	63	81	2,925.00 to 2,949.99	117	137	4,325.00 to 4,349.99	173
28	1,600.00 to 1,624.99	64	82	2,950.00 to 2,974.99	118	138	4,350.00 to 4,374.99	174
29	1,625.00 to 1,649.99	65	83	2,975.00 to 2,999.99	119	139	4,375.00 to 4,399.99	175
30	1,650.00 to 1,674.99	66	84	3,000.00 to 3,024.99	120	140	4,400.00 to 4,424.99	176
31	1,675.00 to 1,699.99	67	85	3,025.00 to 3,049.99	121	141	4,425.00 to 4,449.99	177
32	1,700.00 to 1,724.99	68	86	3,050.00 to 3,074.99	122	142	4,450.00 to 4,474.99	178
33	1,725.00 to 1,749.99	69	87	3,075.00 to 3,099.99	123	143	4,475.00 to 4,499.99	179
34	1,750.00 to 1,774.99	70	88	3,100.00 to 3,124.99	124	144	4,500.00 to 4,524.99	180
35	1,775.00 to 1,799.99	71	89	3,125.00 to 3,149.99	125	145	4,525.00 to 4,549.99	181
36	1,800.00 to 1,824.99	72	90	3,150.00 to 3,174.99	126	146	4,550.00 to 4,574.99	182
37	1,825.00 to 1,849.99	73	91	3,175.00 to 3,199.99	127	147	4,575.00 to 4,599.99	183
38	1,850.00 to 1,874.99	74	92	3,200.00 to 3,224.99	128	148	4,600.00 to 4,624.99	184
39	1,875.00 to 1,899.99	75	93	3,225.00 to 3,249.99	129	149	4,625.00 to 4,649.99	185
40	1,900.00 to 1,924.99	76	94	3,250.00 to 3,274.99	130	150	4,650.00 to 4,674.99	186
41	1,925.00 to 1,949.99	77	95	3,275.00 to 3,299.99	131	151	4,675.00 to 4,699.99	187
42	1,950.00 to 1,974.99	78	96	3,300.00 to 3,324.99	132	152	4,700.00 to 4,724.99	188
43	1,975.00 to 1,999.99	79	97	3,325.00 to 3,349.99	133	153	4,725.00 to 4,749.99	189
44	2,000.00 to 2,024.99	80	98	3,350.00 to 3,374.99	134	154	4,750.00 to 4,774.99	190
45	2,025.00 to 2,049.99	81	99	3,375.00 to 3,399.99	135	155	4,775.00 to 4,799.99	191
46	2,050.00 to 2,074.99	82	100	3,400.00 to 3,424.99	136	156	4,800.00 to 4,824.99	192
47	2,075.00 to 2,099.99	83	101	3,425.00 to 3,449.99	137	157	4,825.00 to 4,849.99	193
48	2,100.00 to 2,124.99	84	102	3,450.00 to 3,474.99	138	158	4,850.00 to 4,874.99	194
49	2,125.00 to 2,149.99	85	103	3,475.00 to 3,499.99	139	159	4,875.00 to 4,899.99	195
50	2,150.00 to 2,174.99	86	104	3,500.00 to 3,524.99	140	160	4,900.00 to 4,924.99	196
51	2,175.00 to 2,199.99	87	105	3,525.00 to 3,549.99	141	161	4,925.00 to 4,949.99	197
52	2,200.00 to 2,224.99	88	106	3,550.00 to 3,574.99	142	162	4,950.00 to 4,974.99	198
53	2,225.00 to 2,249.99	89	107	3,575.00 to 3,599.99	143	163	4,975.00 to 4,999.99	199
54	2,250.00 to 2,274.99	90	108	3,600.00 to 3,624.99	144	164	5,000.00 and over	200
55	2,275.00 to 2,299.99	91	109	3,625.00 to 3,649.99	145			
			110	3,650.00 to 3,674.99	146			

NOTE: For initial applicability of par. (b) (figure), as renumbered by 1987 Wis. Act 255, s. 27, see 1987 Wis. Act 38, s. 137 (1). Paragraph (b) (intro) and (figure) are renumbered sub. (1) (intro) and (figure), eff. 1-1-91, by 1987 Wis. Act 255. Act 255 also amends sub (1), as renumbered, eff. 1-1-91, by deleting "during a benefit year which commences on or after April 2, 1989,".

(1m) FINAL PAYMENTS IN CERTAIN CASES. Whenever, as of the beginning of any week, the maximum amount of benefits potentially payable to an employee, as computed under this section and s. 108.06 (1), is less than the total amount of benefits payable for 2 weeks of unemployment at the employee's applicable weekly benefit rate under sub. (1), the benefits payable to the employee for that week shall be that maximum amount.

(2) SEMIANNUAL ADJUSTMENT OF MAXIMUM AND MINIMUM BENEFIT RATES. (a) This chapter's maximum weekly benefit rate, as to weeks of unemployment in a given half year starting January 1 or July 1 shall be based on the "average wages per average week" of the preceding "base year", ended 6 months before the starting date of the given half year, pursuant to this subsection.

(b) The department shall determine by each December 1 and June 1 for the last completed base year, ended June 30 or December 31 respectively, from reports to the department submitted by employers other than government units financing benefits under s. 108.15 covering their employees in employment and any corrections thereof filed by September 30 or March 31 for that base year:

1. The gross wages thus reported by all such employers as paid in that year for such employment; and
2. The average of the 12 mid-month totals of all such employees in employment thus reported for that year; and
3. The quotient obtained by dividing said gross wages by said average; and
4. The amount, called "average wages per average week" in this section, obtained by dividing such quotient by 52.

(c) This chapter's maximum weekly benefit rate, as to weeks of unemployment in the ensuing half year, shall equal the result obtained by rounding 66-2/3% of the "average wages per average week" to the nearest multiple of one dollar, and the minimum weekly benefit rate shall be an amount which is 19% of the maximum rate and adjusted, if not a multiple of one dollar, to the next lower multiple of one dollar.

(d) Whenever, for any half year ending on June 30 or December 31, the new maximum and minimum weekly benefit rates are higher or lower than the rate for the previous half year in the current benefit rate schedule, the department shall amend the starting lines and wage classes so that the first line shows the quarterly wages below the least amount necessary to qualify for the minimum weekly benefit rate and the 2nd line shows the new minimum weekly benefit rate and the highest quarterly wage class to which it applies. The department shall amend the closing lines so that the next to last line shows a weekly benefit rate which is \$1 less than the new maximum weekly benefit rate and the quarterly wage class to which it applies and the last line shows the new maximum weekly benefit rate and a quarterly wage class which starts one cent above the higher wage figure of the next to last line and ranges upward without limit. The department shall consecutively number the intervening lines of the schedule with a separate line for each \$1 change in weekly benefit rate and the applicable quarterly wage class for each weekly benefit rate.

(e) The department shall publish as a class 1 notice under ch. 985 the "average wages per average week", the corresponding maximum and minimum weekly benefit rates, and the resulting schedule of quarterly wage classes and weekly benefit rates within 10 days after each determination. The schedule shall then apply to all weeks of unemployment in the ensuing half year.

(f) The department shall certify such schedule to the revisor of statutes, who shall when publishing the statutes include the latest such schedule then available.

(g) Any change in the minimum benefit rate does not affect benefits payable to a claimant for a benefit year that begins prior to the effective date of a new rate schedule.

(h) Whenever January 1 or July 1 does not fall on Saturday, Sunday or Monday, any change in weekly benefit rates under this subsection shall apply after the first ensuing Sunday.

(2m) SUSPENSION OF ADJUSTMENTS. Notwithstanding sub. (2), no adjustment may be made by the department in any benefit rate under that subsection. This subsection applies only for purposes of benefit payments.

(3) BENEFITS FOR PARTIAL UNEMPLOYMENT. If an eligible employee earns wages in a given week, the first \$20 of the wages shall be disregarded and the employee's applicable weekly benefit payment shall be reduced by 67% of the remaining amount, except that no such employee is eligible for benefits if the employee's benefit payment would be less than \$5 for any week. In applying this paragraph, the department shall disregard discrepancies of less than \$2 between wages reported by employees and employers unless a violation of s. 108.04 (11) occurs.

(4) HOLIDAY OR VACATION PAY. (a) 1. Except as provided in subd. 2, the department shall treat as wages an employee's holiday pay for purposes of eligibility for benefits for partial unemployment under sub. (3) for a given week only if it has become definitely payable to the employee within 4 days after the close of that week.

2. The department shall treat as wages an employee's holiday pay for purposes of eligibility for benefits for partial unemployment under sub. (3) for the week that includes December 25 only if it has become definitely payable to the employee within 9 days after the close of that week.

(b) An employee's vacation pay shall, for purposes of eligibility for benefits for partial unemployment under sub. (3), be treated as wages for a given week only if it has by the close of that week become definitely allocated and payable to the employee for that week and the employee has had due notice thereof, and only if such pay until fully assigned is allocated:

1. At not less than the employee's approximate full weekly wage rate; or
2. Pursuant to any other reasonable basis of allocation, including any basis commonly used in computing the vacation rights of employees.

(5) TERMINATION PAY. An employee's dismissal or termination pay shall, for purposes of eligibility for benefits for partial unemployment under sub. (3), be treated as wages for a given week only if it has by the close of that week become definitely allocated and payable to the employee for that week, and the employee has had due notice thereof, and only if such pay, until fully assigned, is allocated:

- (a) At not less than the employee's approximate full weekly wage rate; or
- (b) Pursuant to any other reasonable basis of allocation, including any basis commonly used in computing the termination pay of employees.

(5m) SICK PAY. For purposes of eligibility for benefits for partial unemployment under sub. (3), "wages" includes sick pay only when paid or payable directly by an employer at the employee's usual rate of pay.

(6) BACK PAY. A payment to an individual by an employing unit, which is in the nature of back pay (or in lieu of pay for personal services) for certain past weeks, whether made under a back-pay award or similar decision or otherwise, shall be

wages for benefit purposes but only when paid within 104 weeks after the start of the earliest such week.

(7) PENSION PAYMENTS. (a) Benefits otherwise payable to a claimant for a week of partial or total unemployment, in a period of time with respect to which the claimant actually or constructively receives a pension payment, shall be reduced, but not below zero, by an amount equal to the proportion of the pension payment reasonably attributable to that week.

(b) In this subsection, "pension payment" means a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment, based on the previous work of a claimant, from a governmental or other retirement system maintained or contributed to by one or more employing units.

(c) This subsection applies only to the portion of a pension payment financed by other than the claimant's own contributions to the retirement system calculated as follows:

1. One-half of any pension payment under the social security act or railroad retirement act of 1974; and

2. One-half, or a separately calculated fraction if acceptable evidence thereof is furnished to the department, of any pension payment under any other retirement system, but only if the retirement system was contributed to by an employing unit for which the claimant has worked since the start of the claimant's applicable base period and that such work or the remuneration for that work affirmatively affected the claimant's eligibility for or increased the amount of the pension payment.

(d) A claimant constructively receives a pension payment under par. (a) only as to weeks occurring after the effective date of the commencement of eligibility for such payments and after the claimant has had due notice from the retirement system of his or her eligibility.

(8) SELF-EMPLOYMENT INCOME. If a claimant earns income in a given week from his or her self-employment, the income shall be treated as wages for purposes of determining the individual's benefit rate and the benefit rate for that week shall be determined in the manner provided in sub. (3). The department shall, by rule, define self-employment and income for purposes of the application of this subsection.

(9) ROUNDING OF BENEFIT AMOUNTS. Notwithstanding sub. (1), benefits payable for a week of unemployment as a result of applying sub. (1m), (3) or (7) or s. 108.04 (11) or (12) or 108.13 (4) shall be rounded down to the next lowest dollar.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 29; 1979 c. 52; 1981 c. 28, 36; 1983 a. 8, 168, 384; 1985 a. 17, 40; 1987 a. 38 ss. 60 to 66, 136; 1987 a. 255.

NOTE: This section is shown as affected by 1987 Wis. Acts 38 and 255. See s. 137 (1) and (9) of Act 38 and ss. 43 and 45 (8) of Act 255 for initial applicability of the changes made by these acts.

Where claimant did not yet apply for pension benefits, document from pension fund describing claimant's annuity alternatives and estimating monthly payments did not satisfy "due notice of eligibility" requirement under (7) (d); claimant was entitled to receive both pension and unemployment benefits for limited period. *Calumet County v. LIRC*, 120 W (2d) 297, 354 NW (2d) 216 (Ct. App. 1984).

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

(2) (a) An employe may establish a benefit year by written request to the department whenever the employe qualifies to start a benefit year under s. 108.04 (4) (a) and:

1. The employe is eligible to receive benefits;

2. The employe has experienced a reduction in hours of employment of at least 25% in one week as compared to his or her average number of hours of employment for the preceding 13 weeks; or

3. The employe reasonably expects to be eligible to receive benefits during the next 13 weeks.

(b) No employe is eligible to receive benefits before the employe establishes a benefit year.

(bm) An employe's benefit year begins on the Sunday of the week in which the employe files a valid request to establish a benefit year with the department, except that the department may permit an employe to begin a benefit year prior to that time under circumstances prescribed by rule of the department.

(c) No benefits are payable to a claimant for any week of unemployment not occurring during the claimant's benefit year except under s. 108.141.

(d) A claimant may, in writing, request the department to set aside a benefit year. If the request is voluntary, if no benefits have been paid to the claimant in that benefit year at the time the department acts upon the request and if the claimant's benefit eligibility is not suspended at the time the department acts upon the request, the department shall grant the request and cancel the claimant's benefit year. If the request is not voluntary, if benefits have been paid to the claimant in that benefit year at the time the department acts upon the request or if the claimant's benefit eligibility is suspended at the time the department acts upon the request, the department shall deny the request unless the department defines by rule exceptional circumstances in which a claimant shall be permitted to set aside a request to establish a benefit year and the claimant qualifies to make such a request under the circumstances described in the rule.

(2m) Wisconsin supplemental benefits are only available to claimants during a Wisconsin supplemental benefit period. If an extended benefit period ends prior to the end of a claimant's previously established benefit year, any remaining Wisconsin supplemental benefit entitlement, reduced by the amount of extended benefits paid to him or her, shall again be available to the claimant within the remainder of the benefit year only if there is a Wisconsin supplemental benefit period in effect. In this subsection, "extended benefits", "extended benefit period", "Wisconsin supplemental benefits" and "Wisconsin supplemental benefit period" have the meanings given in ss. 108.141 and 108.142.

(3) (a) There shall be payable to an employe, for weeks ending within the employe's benefit year, only those benefits computed for that benefit year based on the wages paid to the employe in the immediately preceding base period. Wages used in a given benefit computation are not available for use in any subsequent benefit computation except under s. 108.141.

NOTE: Sub. (3) (a) is renumbered (3) by 1987 Wis. Act 38, s. 73, eff. 1-1-91.

(c) Credit weeks based upon employment attributable to an employer from which an employe is disqualified from receiving benefits under s. 108.04 (17) or (18) or from which an employe's qualification to receive benefits is suspended under s. 108.04 (17) or (18) shall not be used to establish benefit eligibility while the disqualification or suspension is in effect. This paragraph does not apply with respect to benefit years which begin during or after the week commencing on April 2, 1989.

NOTE: Par. (c) as created by 1987 Wis. Act 38, is repealed by the same act, eff. 1-1-91.

108.06 UNEMPLOYMENT COMPENSATION

(5) An employe has a valid new claim week starting a new benefit year if all the following conditions are met:

(a) The week is not within an unexpired benefit year.

(b) The employe has claimed benefits for that week under s. 108.08 (1).

(c) The employe has met the general qualifying requirements provided in s. 108.04 (2) applicable to the employe for that week.

(d) As of the start of that week, the employe has base period wages under s. 108.04 (4) which have not been canceled under s. 108.04 (5) or excluded under s. 108.04 (10), (17) or (18).

History: 1971 c. 53; 1975 c. 343; 1981 c. 36; 1983 a. 8 ss. 23 to 27, 53, 55 (3), (4), (12), (13) and (14) and 56; 1983 a. 27 s. 1807m; 1983 a. 337; 1985 a. 17; 1987 a. 38, 255.

NOTE: This section is shown as affected by 1987 Wis. Acts 38 and 255. See s. 137 (1) of Act 38 and s. 45 (8) of Act 255 for initial applicability of changes made by these acts.

108.065 Determination of employer. An employe service company is the employer of an individual who is engaged in employment performing services for a client or customer of the employe service company if the employe service company is taxed under the federal unemployment tax act (26 USC 3301 to 3311) on the basis of that employment.

History: 1987 a. 255.

NOTE: This section was created by 1987 Wis. Act 255, eff. 4-21-88. See s. 45 (1) of Act 255 for initial applicability.

108.07 Liability of employers. (1) Except as otherwise provided in subs. (4) and (5) and s. 108.04 (13), the department shall charge benefits payable to a claimant who was paid base period wages by one employer only to the account of that employer.

(2) Except as provided in subs. (3) to (5), if a claimant has base period wages with more than one employer, the department shall charge the account of each employer for all benefits paid to the claimant for weeks ending within the employe's benefit year in the same proportion that the base period wages paid to the claimant by that employer bear to the total base period wages paid to the claimant.

(3) Except as provided in sub. (7), if a claimant earns wages during his or her benefit year for work performed for an employer from which the claimant has base period wages, the department shall charge benefits otherwise chargeable to the account of that employer to the fund's balancing account for each week in which the claimant earns wages for work performed for that employer equal to at least 7.3% of the highest wages paid by that employer to the claimant during any quarter in the claimant's base period.

(4) If benefits based on any employment are chargeable to the fund's balancing account, the department shall not charge the account of the employer who engaged the employe in that employment for those benefits.

(5) Except as provided in sub. (7), whenever benefits which would otherwise be chargeable to the fund's balancing account under sub. (3) or s. 108.04 (1) (f) or (5) or 108.14 (8n) (e) are paid based on wages paid by an employer that is not subject to the contribution requirements of ss. 108.17 and 108.18, the department shall charge the benefits as follows:

(a) If no employer from which the claimant has base period wages is subject to the contribution requirements of ss. 108.17 and 108.18, the benefits shall be charged to the administrative account and paid from the appropriation under s. 20.445 (1) (gd).

(b) If one employer from which the claimant has base period wages is not subject to the contribution requirements of ss. 108.17 and 108.18, and one or more employers from which the claimant has base period wages is subject to the

contribution requirements of ss. 108.17 and 108.18, the benefits shall be charged to the fund's balancing account.

(c) If 2 or more employers from which the claimant has base period wages are not subject to the contribution requirements of ss. 108.17 and 108.18, and one or more employers from which the claimant has base period wages are subject to the contribution requirements of ss. 108.17 and 108.18, that percentage of the employe's base period wages which would otherwise be chargeable to the fund's balancing account under sub. (3) or s. 108.04 (1) (f) or (5) shall be charged to the administrative account and paid from the appropriation under s. 20.445 (1) (gd).

(6) The department may initially charge benefits otherwise chargeable to the administrative account under this section to the fund's balancing account, and periodically reimburse the charges to the balancing account from the administrative account.

(7) Whenever benefits are chargeable under sub. (1) or (2) based on federal employment, the department shall charge the benefits to the federal government.

History: 1971 c. 53; 1975 c. 343; 1979 c. 110 s. 60 (11); 1983 a. 17; 1987 a. 38, 255.

NOTE: This section is shown as affected by 1987 Wis. Acts 38 and 255. See s. 137 (13) of Act 38 and s. 45 (12) of Act 255 for initial applicability of the changes made by these acts.

108.08 Notification. (1) To receive benefits for any given week of unemployment, a claimant shall give notice to the department with respect to such week of unemployment within such time and in such manner as the department may by rule prescribe.

(2) The department may require from any or each employer notification of the partial or total unemployment of his employes, within such time, in such form, and in accordance with such rules as the department may prescribe.

History: 1985 a. 17.

108.09 Settlement of benefit claims. (1) FILING. Claims for benefits shall be filed pursuant to department rules. Each employer that is notified of a benefit claim shall promptly inform the department in writing as to any eligibility question in objection to such claim together with the reasons for the objection. The department may also obtain information from the employe concerning the employe's eligibility, employment or wages.

(2) **COMPUTATION AND DETERMINATION. (a)** The department shall promptly issue a computation setting forth the employe's potential benefit rights based on reports filed by an employer or employers under s. 108.205, or on the employe's statement and any other information then available. The results of the computation, a recomputation, or pertinent portion of either, shall be mailed to the last-known address of each party. The department may recompute an employe's potential benefit rights at any time on the basis of subsequent information or to correct a technical or clerical mistake, except that a party's failure to make specific written objection, received by the department within 14 days after the above mailing, as to a computation or recomputation is a waiver by such party of any objection thereto. Any objections to a computation which are not satisfactorily resolved by recomputation shall be resolved by a determination under par. (b).

(am) When s. 108.14 (8n) or (8r) is applicable, the department shall compute benefit rights based on all credit weeks and wages in the employe's base period. Whenever a determination is issued disqualifying an employe from receiving benefits under s. 108.04 (17) or (18) or suspending an employe's qualification to receive benefits under s. 108.04 (17) or (18), the department shall compute benefit rights excluding

credit weeks and wages based on employment to which the disqualification or suspension applies during the disqualification or suspension period. The department shall recompute the employee's benefit rights to reinstate the weeks and wages based on employment to which a suspension applies whenever the suspension ceases to apply and the claimant continues to claim benefits. This paragraph does not apply with respect to benefit years which begin during or after the week commencing on April 2, 1989.

NOTE: Par. (am) is repealed by 1987 Wis. Act 38, eff. 1-1-91.

(b) The department shall issue determinations whenever necessary to resolve any matters which may bar, suspend, terminate or otherwise affect the employee's eligibility for benefits.

(c) The department may set aside or amend a determination at any time on the basis of subsequent information or to correct a technical or clerical mistake, unless a party has filed a timely request for hearing as to the determination.

(d) A copy of each determination shall be mailed to the last-known address of each of the parties, except that a party's copy of any determination may be given to such party instead of being mailed.

(2r) HEARING REQUEST. Any party to a determination may request a hearing as to any matter in that determination if such request is made in accordance with procedure prescribed by the department and is received by the department within 14 days after a copy of the determination was mailed or given to such party, whichever first occurs.

(3) APPEAL TRIBUNALS. (a) To hear and decide disputed claims, the department shall establish appeal tribunals, each of which shall consist of an individual who is a permanent employe of the department. Upon request of a party to an appeal or upon its own motion, the department may appoint an individual who is not a permanent employe of the department to hear an appeal in which the department or an employe or former employe of the department is an interested party. No individual may hear any appeal in which the individual is a directly interested party.

(b) The appeal tribunal may affirm, reverse or modify the initial determination of the department or set aside the determination and remand the matter to the department for further proceedings.

(4) APPEALS. (a) Unless the request for a hearing is withdrawn, each of the parties shall be afforded reasonable opportunity to be heard, and the claim thus disputed shall be promptly decided by such appeal tribunal as the department designates or establishes for this purpose.

(b) At the discretion of the department or the appeal tribunal the hearing may be held in more than one location and may be continued, adjourned or postponed from time to time.

(c) If the party requesting a hearing fails to appear at the hearing, the appeal tribunal may issue its decision dismissing the request for hearing, provided that due notice of the hearing was mailed to the party's last-known address.

(d) If the other party fails to appear at the hearing, the appeal tribunal shall proceed with the hearing, provided that due notice of the hearing was mailed to said party's last-known address, and may issue its decision without further hearing.

(e) If a party, having failed to appear at a hearing, shows probable good cause for such failure to the appeal tribunal within 21 days after the decision was mailed to such party's last-known address the appeal tribunal may set aside its decision and afford further opportunity to be heard, either before the same or another appeal tribunal.

(f) The appeal tribunal shall dismiss any request for hearing which has not been timely filed unless the party filing such request shows probable good cause that the reason for having failed to file the request timely was beyond the control of such party.

(g) Within 21 days after its decision was mailed to the parties the appeal tribunal may on its own motion amend or set aside its decision and may thereafter make new findings and decision on the basis of evidence previously submitted in such case, or the same or another appeal tribunal may make new findings and a decision after taking additional testimony.

(h) The appeal tribunal may set aside or amend an appeal tribunal decision, or portion thereof, at any time to correct a technical or clerical mistake unless a party has filed a timely petition for review of the appeal tribunal decision by the commission.

(i) The appeal tribunal may take testimony with regard to whether a party had good cause for failing to appear at a hearing or whether a party's failure to file a timely request for hearing was for a reason beyond the control of such party and may dispose of the case on that ground if it finds that such good cause or reason is not established.

(4m) REPORTS BY EXPERTS. The contents of verified or certified reports by qualified experts presented by a party or the department constitute prima facie evidence as to the matter contained in the reports in any proceeding under this section, insofar as the reports are otherwise competent and relevant, subject to such rules and limitations as the department prescribes.

(5) PROCEDURE. (a) The manner in which claims shall be presented, the reports thereon required from the employe and from employers, and the conduct of hearings and appeals shall be governed by general department rules (whether or not they conform to common law or statutory rules of evidence and other technical rules of procedure) for determining the rights of the parties.

(b) All testimony at any hearing under this section shall be taken down by a stenographer, or recorded by a recording machine, but need not be transcribed unless either of the parties requests a transcript prior to expiration of that party's right to further appeal under this section and pays a fee to the commission in advance, the amount of which shall be established by rule of the commission. When a transcript is thus furnished one of the parties upon request, a copy of the transcript shall be furnished the other party free of charge. The transcript fee thus collected shall be paid to the administrative account.

(c) If the testimony at a hearing was recorded by a recording machine the department may furnish a copy of the tape recording in lieu of a transcript. The fee for obtaining a copy of a tape recording shall be established by rule of the department.

(d) A written synopsis of the testimony and other evidence taken at a hearing, prepared by the appeal tribunal or by an attorney employed by the department, shall be used by the commission in its review of an appeal tribunal decision unless a satisfactory showing is made by any party that the synopsis is not sufficiently complete and accurate to fairly reflect the relevant and material testimony and other evidence taken, except that the commission may direct the preparation of a transcript in any case.

(6) COMMISSION REVIEW. (a) The department or any party may petition the commission for review of an appeal tribunal decision, pursuant to commission rules, if such petition is received by the department or commission within 21 days after the appeal tribunal decision was mailed to the party's last-known address. The commission shall dismiss any

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petition if not timely filed unless the petitioner shows probable good cause that the reason for having failed to file the petition timely was beyond the control of the petitioner. If the petition is not dismissed the commission may take action under par. (d).

(b) Within 28 days after a decision of the commission is mailed to the parties, the commission may, on its own motion, set aside the decision for further consideration and take action under par. (d).

(c) On its own motion, for reasons it deems sufficient, the commission may set aside any final determination of the department or appeal tribunal or commission decision within one year from the date thereof upon grounds of mistake or newly discovered evidence, and take action under par. (d).

(d) In any case before the commission for action under this subsection, the commission may affirm, reverse, modify or set aside the decision on the basis of the evidence previously submitted, may order the taking of additional evidence as to such matters as it may direct, or it may remand the matter to the department for further proceedings.

(7) JUDICIAL REVIEW. (a) The department or either party may commence action for the judicial review of a decision of the commission under this chapter after exhausting the remedies provided under this section if the party or the department has commenced such action in accordance with s. 102.23 within 30 days after a decision of the commission is mailed to a party's last-known address.

(b) Any judicial review under this chapter shall be confined to questions of law, and the provisions of ch. 102 with respect to judicial review of orders and awards shall likewise apply to any decision of the commission reviewed under this section. In any such judicial action, the commission may appear by any licensed attorney who is a salaried employe of the commission and has been designated by it for this purpose, or at the commission's request by the department of justice.

(c) If, as a result of judicial review of a commission decision denying an employe's eligibility for benefits, it is finally determined that benefits are payable, they shall be calculated as of the date of the commission's decision.

(8) REPRESENTATION AND LIMITATION OF FEES. No employe may be charged fees of any kind by the department or its representatives in any proceeding under this chapter. Any party in any administrative proceeding under this section may be represented by counsel or other agent; but no such counsel or agent may together charge or receive from an employe for such services more than 10% of the maximum benefits at issue in the proceeding unless the department has first approved a specified higher fee.

(9) PAYMENT OF BENEFITS. (a) Benefits shall be paid promptly in accordance with the department's determination or the decision of an appeal tribunal, the commission or a reviewing court, notwithstanding the pendency of the period to request a hearing, to file a petition for commission review or to commence judicial action or the pendency of any such hearing, review or action.

(b) Where such determination or decision is subsequently amended, modified or reversed by a more recently issued determination or decision, benefits shall be paid or denied in accordance with the most recently issued determination or decision.

(c) If any determination or decision awarding benefits is finally amended, modified or reversed, any benefits paid to the claimant which would not have been paid under such final determination or decision shall be deemed an erroneous payment. Sections 108.04 (13) (c) and (d), 108.16 (3) and

108.22 (8) shall apply to the charging and recovery of such erroneous payment.

History: 1971 c. 147; 1973 c. 247; 1975 c. 343; 1977 c. 29, 418; 1979 c. 52, 221; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38 ss. 81 to 86, 136.

NOTE: This section is shown as affected by 1987 Wis. Act 38. See s. 137 (1) and (16) of that act for initial applicability of changes made by Act 38.

See note to 102.23, citing *Lees v. ILHR Dept.* 49 W (2d) 491, 182 NW (2d) 245.

The findings of the appeal tribunal were conclusive, and could not be enlarged upon by the circuit court. *McGraw-Edison Co. v. ILHR Dept.* 64 W (2d) 703, 221 NW (2d) 677.

See note to 102.23, citing *Cornwell Personnel Associates v. ILHR Dept.* 92 W (2d) 53, 284 NW (2d) 706 (Ct. App. 1979).

Failure to disclose credibility memorandum from tribunal to commission did not deny due process. *Rucker v. DILHR*, 101 W (2d) 285, 304 NW (2d) 169 (Ct. App. 1981).

Judicial review procedures under this section are exclusive. *Schiller v. DILHR*, 103 W (2d) 353, 309 NW (2d) 5 (Ct. App. 1981).

The department may not reopen and reconsider a decision after the time under (6). 67 Atty. Gen. 226.

108.10 Settlement of issues other than benefit claims. In connection with any issue arising under this chapter as to the status or liability of an employing unit in this state, for which no review is provided under s. 108.09 and whether or not a penalty is provided in s. 108.24, the following procedure shall apply:

(1) The department shall investigate the status, and the existence and extent of liability of an employing unit, and may issue an initial determination accordingly. The department may set aside or amend the determination at any time prior to a hearing on the determination on the basis of subsequent information or to correct a mistake, including an error of law. The department shall mail a copy of each determination to the last-known address of the employing unit affected thereby. The employing unit may request a hearing as to any matter in that determination if the request is received by the department within 21 days after the mailing and in accordance with such procedure as the department prescribes by rule.

(2) Any hearing duly requested shall be held before an appeal tribunal established as provided by s. 108.09 (3), and s. 108.09 (4) and (5) shall be applicable to the proceedings before such tribunal. The employing unit or the department may petition the commission for review of the appeal tribunal's decision under s. 108.09 (6).

(3) The commission's authority to take action as to any issue or proceeding under this section is the same as that specified in s. 108.09 (6).

(4) The department or the employing unit may commence action for the judicial review of a commission decision under this section, provided the department, or the employing unit, after exhausting the remedies provided under this section, has commenced such action within 30 days after such decision was mailed to the employing unit's last-known address. The scope of judicial review, and the manner thereof insofar as applicable, shall be the same as that provided in s. 108.09 (7).

(5) The mailing of determinations and decisions provided in subs. (1) to (4) shall be first class, and may include the use of services performed by the postal department requiring the payment of extra fees.

(6) Any determination by the department or any decision by an appeal tribunal or by the commission is conclusive with respect to an employing unit unless it files a timely request for a hearing or petition for review as provided in this section. A determination or decision is binding upon the department only insofar as the relevant facts were included in the record which was before the department at the time the determination was issued, or before the appeal tribunal or commission at the time the decision was issued.

(7) The decision of the commission shall become final and shall be binding upon the employer and upon the department

for that case as provided in sub. (6) unless the employer or the department petitions for judicial review under sub. (4). If the commission construes a statute adversely to the department:

(a) Except as provided in par. (b), the department is deemed to acquiesce in the construction so adopted unless the department seeks review of the decision of the commission construing the statute. The construction so acquiesced in shall thereafter be followed by the department.

(b) The department may choose not to appeal and to nonacquiesce in the decision by sending a notice of nonacquiescence to the commission, to the revisor of statutes for publication in the Wisconsin administrative register and to the employer before the time expires for seeking a judicial review of the decision under sub. (4). The effect of this action is that, although the decision is binding on the parties to the case, the commission's conclusions of law, the rationale and construction of statutes in the case are not binding on the department in other cases.

History: 1973 c. 247; 1975 c. 343; 1977 c. 29; 1981 c. 36; 1985 a. 17 s. 66; 1987 a. 38 ss. 87, 88, 134.

NOTE: This section is shown as affected by 1987 Wis. Act 38. See s. 137 (10) and (11) for initial applicability of changes made by Act 38.

108.105 Suspension of agents. The department may suspend the privilege of any agent to appear before the department at hearings under this chapter for a specified period if the department finds that the agent has engaged in an act of fraud or misrepresentation or repeatedly failed to comply with departmental rules, or has engaged in the solicitation of a claimant solely for the purpose of appearing at a hearing as the claimant's representative for pay. Prior to imposing a suspension under this section, the secretary or the secretary's designee shall conduct a hearing concerning the proposed suspension. The hearing shall be conducted under ch. 227 and the decision of the department may be appealed under s. 227.52.

History: 1985 a. 17; 1985 a. 182 s. 57; 1987 a. 38.

108.11 Agreement to contribute by employes void. (1) No agreement by an employe or by employes to pay any portion of the contributions or payments in lieu of contributions required under this chapter from employers shall be valid. No employer shall make a deduction for such purpose from wages. Any employe claiming a violation of this provision may, to recover wage deductions wrongfully made, have recourse to the method set up in s. 108.09 for settling disputed benefit claims.

(2) But nothing in this chapter shall affect the validity of voluntary arrangements whereby employes freely agree to make contributions to a fund for the purpose of securing unemployment compensation additional to the benefits provided in this chapter.

History: 1973 c. 247.

108.12 Waiver of benefit void. No agreement by an employe to waive his right to benefits or any other rights under this chapter shall be valid. No employe shall, in any proceeding involving benefits under this chapter, be prevented from asserting all facts relevant to his eligibility, regardless of any prior erroneous representation with respect to such facts.

108.13 Assignment. (1) Except as provided in sub. (4), no claim for benefits under this chapter nor any interest in the fund is assignable before payment. This subsection does not affect the survival of such a claim or interest.

(2) Except as provided in sub. (4), no claim for benefits awarded, adjudged or paid or any interest in the fund may be taken on account of any liability incurred by the party entitled thereto. This subsection does not apply to liability

incurred as the result of an overpayment of unemployment compensation benefits under the law of any state or the federal government.

(3) In case an employe dies after the close of a week of unemployment in which he was eligible and for which benefits are payable under this chapter, the department may designate any person who might in its judgment properly receive such benefits, and a receipt or an indorsement from the person so designated shall fully discharge the fund from liability for such benefits.

(4) **DEDUCTIONS FOR CHILD SUPPORT OBLIGATIONS.** (a) As used in this subsection:

1. "Child support obligations" includes only those obligations which are being enforced pursuant to a plan described in 42 USC 654 which has been approved by the U.S. secretary of health and human services under part D of title IV of the social security act or which is otherwise authorized by federal law.

2. "Legal process" has the meaning given under 42 USC 662 (e).

3. "State or local child support enforcement agency" means any agency of a state or political subdivision of a state operating pursuant to a plan described in subd. 1.

4. "Unemployment compensation" means any compensation payable under this chapter, including amounts payable by the department pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment.

(b) A claimant filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether or not he or she owes child support obligations. If any such claimant discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the department of industry, labor and human relations shall, upon request of the department of health and social services, notify the state or local child support enforcement agency enforcing the obligations that the claimant has been determined to be eligible for unemployment compensation.

(c) The department shall deduct and withhold from any unemployment compensation payable to a claimant who owes child support obligations:

1. Any amount determined pursuant to an agreement under 42 USC 654 (19) (B) (i) between the claimant and the state or local child support enforcement agency which is submitted to the department by the state or local child support enforcement agency;

2. Any amount required to be so deducted and withheld pursuant to legal process brought by the state or local child support enforcement agency; or

3. Any amount directed by the claimant to be deducted and withheld under this paragraph.

(d) Any amount deducted and withheld under par. (c) shall be paid by the department to the appropriate state or local child support enforcement agency.

(e) Any amount deducted and withheld under par. (c) shall, for all purposes, be treated as if it were paid to the claimant as unemployment compensation and paid by the claimant to the state or local child support enforcement agency in satisfaction of his or her child support obligations.

(f) This subsection applies only if appropriate arrangements are made for the state or local child support enforcement agency to reimburse the department for administrative costs incurred by the department that are attributable to the interception of unemployment compensation for child support obligations.

History: 1981 c. 20, 36, 315; 1983 a. 27, 384; 1987 a. 38, 255.

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108.14 Administration. (1) This chapter shall be administered by the department.

(2) The department may adopt and enforce all rules which it finds necessary or suitable to carry out this chapter. The department shall make a copy of such rules available to any person upon request. The department may require from any employing unit which employs one or more individuals to perform work in this state any reports on employment, wages, hours and related matters which it deems necessary to carry out this chapter.

(2m) In the discharge of their duties under this chapter an appeal tribunal, commissioner or other authorized representative of the department or commission may administer oaths to persons appearing before them, take depositions, certify to official acts, and by subpoenas, served in the manner in which circuit court subpoenas are served, compel attendance of witnesses and the production of books, papers, documents and records necessary or convenient to be used by them in connection with any investigation, hearing or other proceeding under this chapter. However, in any investigation, hearing or other proceeding involving the administration of oaths or the use of subpoenas under this subsection due notice shall be given to any interested party involved, who shall be given an opportunity to appear and be heard at any such proceeding and to examine witnesses and otherwise participate therein. Witness fees and other expenses involved in proceedings under this chapter, including a party's traveling expenses, may be allowed by the appeal tribunal or representative of the department at rates specified by department rules, and shall be paid from the administrative account.

(3) The department may appoint, employ and pay as many persons as it deems necessary to administer and to carry out the purposes of this chapter, and may make all other expenditures of any kind and take any other action consistent herewith which it deems necessary or suitable to this end.

(3m) In any court action to enforce this chapter the department, the commission and the state may be represented by any licensed attorney who is an employe of the department or the commission and is designated by either of them for this purpose or at the request of either of them by the department of justice. If the governor designates special counsel to defend, in behalf of the state, the validity of this chapter or of any provision of Title IX of the social security act, the expenses and compensation of the special counsel and of any experts employed by the department in connection with that proceeding may be charged to the administrative account.

(4) The department may create as many employment districts and district appeal boards and may establish and maintain as many free public employment offices as it deems necessary to carry out the provisions of this chapter. The department shall have power to finance either partly or completely such public employment offices as it deems necessary under this chapter, from the funds appropriated to the department for its expenses under this chapter, whether or not the political subdivision in which such office is located agrees to pay or does pay any part of the expenses of such office.

(5) (a) The council on unemployment compensation shall advise the department in carrying out the purposes of this chapter. The council shall submit its recommendations with respect to amendments of this chapter to each regular session of the legislature, and shall report its views on any pending bill relating to this chapter to the proper legislative committee.

(ag) The vote of 7 of the voting members of the council on unemployment compensation is required for the council to act on a matter before it.

(ar) The department shall present to the council on unemployment compensation every proposal initiated by the department for changes in this chapter and shall seek the council's concurrence with the proposal. The department shall give careful consideration to every proposal submitted by the council for legislative or administrative action and shall review each legislative proposal for possible incorporation into departmental recommendations.

(b) Under its authority in s. 15.04 (1) (c), the department may appoint employment councils for industries and local districts. Each such council shall be subject to the membership requirements of s. 15.227 (3).

(6) It shall be one of the purposes of this chapter to promote the regularization of employment in enterprises, localities, industries and the state. The department, with the advice and aid of any employment councils appointed under sub. (5) (b) and the council on unemployment compensation, shall take all appropriate steps within its means to reduce and prevent unemployment. The department shall also conduct continuing research relating to the current and anticipated condition of the fund to ensure the continued availability of benefits to unemployed individuals under this chapter. To these ends the department may employ experts, and may carry on and publish the results of any investigations and research which it deems relevant, whether or not directly related to the other purposes and specific provisions of this chapter. At least once a year the department shall compile and publish a summary report stating the experience of employer accounts (without naming any employer) and covering such other material as it deems significant in connection with the operations and purposes of this chapter.

(7) (a) The records made or maintained by the department or commission in connection with the administration of this chapter are confidential and shall be open to public inspection or disclosure only to the extent that the department or commission permits in the interest of the unemployment compensation program.

(b) The department may provide records made or maintained by the department in connection with the administration of this chapter to any government unit, corresponding unit in the government of another state or any unit of the federal government. No such unit may permit inspection or disclosure of any record provided to it by the department unless the department authorizes the inspection or disclosure.

(c) The department may provide for the printing and distribution of such number of copies of any forms, records, decisions, regulations, rules, pamphlets or reports, related to the operation of this chapter, as it deems advisable for the effective operation thereof.

(8) (a) The department may enter into administrative arrangements with any agency similarly charged with the administration of any other unemployment compensation law, for the purpose of assisting the department and such agencies in paying benefits under the several laws to employes while outside their territorial jurisdictions. Such arrangements may provide that the respective agencies shall, for and on behalf of each other, act as agents in effecting registration for work, notices of unemployment, and any other certifications or statements relating to an employe's claim for benefits, in making investigations, taking depositions, holding hearings, or otherwise securing information relating to coverage or contribution liability or benefit eligibility and payments; and in such other matters as the department may

consider suitable in effecting the purpose of these administrative arrangements.

(b) An employe's eligibility to receive benefits based on wages earned in employment in this state may be established through arrangements authorized in this subsection, and the employe shall then be paid the benefits due him or her under this chapter.

(c) Any person who wilfully makes a false statement or misrepresentation regarding a benefit claim, to the employment security agency of another state acting under any administrative arrangement authorized in this subsection, shall be punished in the manner provided in s. 108.24.

(8m) (a) The department may enter into reciprocal arrangements, with any agency administering another unemployment compensation law, whereby all the services performed by an individual for a single employing unit, which services are customarily performed in more than one state or jurisdiction, shall be deemed to be employment covered by the law of a specified state or jurisdiction (a) in which a part of such services are performed, or (b) in which such individual has his residence, or (c) in which such employing unit maintains a place of business; provided there is in effect, as to such services, an election by such employing unit, approved by the agency administering the specified law, pursuant to which all the services performed by such individual for such employing unit are deemed to be employment covered by such law.

(b) If the federal unemployment tax act is so amended as to make subject thereto remuneration paid for any maritime employment excluded under s. 108.02 (15) (k) 17, such exclusion under this chapter shall cease if the department enters into a reciprocal arrangement with respect to such employment pursuant to this paragraph, as of the effective date of such arrangement. The department may enter into reciprocal arrangements with the appropriate agencies of other states with respect to such maritime services, whereby all such services by an individual for a single employer, wherever performed, shall be deemed performed wholly within this state or within any such other state. Any such services thus deemed performed in Wisconsin shall also be deemed "employment" covered by this chapter, and the election requirement of s. 108.02 (15) (c) 2 shall not apply.

(8n) (a) The department shall enter into a reciprocal arrangement which is approved by the U.S. secretary of labor pursuant to s. 3304 (a) (9) (B) of the federal internal revenue code, to provide more equitable benefit coverage for individuals whose recent work has been covered by the unemployment compensation laws of 2 or more jurisdictions.

(b) Such arrangements may provide, as to any individual whose employment has been covered by this chapter and by the unemployment compensation law of one or more other participating jurisdictions, for transfer by the department to another agency of relevant records or information, and the acceptance and use thereof, in combination with similar data from other jurisdictions, by such other agency, as a basis for computing and paying benefits under the law administered by such other agency. Reciprocally, such arrangements may provide for similar acceptance, combination and use by the department of data received from other jurisdictions to compute and pay benefits under this chapter.

(c) Such arrangements shall provide for mutual acceptance by the participating agencies of data thus supplied, including reasonable estimates of relevant data not otherwise available in the transferring agency.

(d) Such arrangements shall specify an equitable basis for reimbursing the unemployment fund of each participating jurisdiction for any benefits paid therefrom on the basis of

covered employment in (and data supplied by the agency of) another such jurisdiction, out of the unemployment fund of such other jurisdiction.

(e) The department shall charge this state's share of any benefits paid under this subsection to the account of each employer by which the employe claiming benefits was employed in the applicable base period, in proportion to the total amount of wages he or she earned from each employer in the base period, except that if s. 108.04 (1) (f), (5), (7) (a), (c), (d), (e), (k) or (L) or (8) (a) or 108.07 (3) or (5) (b) would have applied to employment by such an employer who is subject to the contribution requirements of ss. 108.17 and 108.18, the department shall charge the share of benefits based on employment with that employer to the fund's balancing account, or, if s. 108.04 (1) (f) or (5) or 108.07 (3) would have applied to an employer that is not subject to the contribution requirements of ss. 108.17 and 108.18, the department shall charge the share of benefits based on that employment in accordance with s. 108.07 (5) (a) and (b). The department shall also charge the fund's balancing account with any other state's share of such benefits pending reimbursement by that state.

(f) To facilitate the application of such arrangements to this chapter, the department may, from data received by it under such arrangements, make reasonable estimates of quarterly wages and may compute and pay benefits accordingly.

(8s) Notwithstanding s. 108.16 (10), the department may enter into or cooperate in arrangements or reciprocal agreements with authorized agencies of other states or the U.S. secretary of labor, or both, whereby:

(a) Overpayments of unemployment compensation benefits as determined under this chapter may be recovered by offset from unemployment compensation benefits otherwise payable under the unemployment compensation law of another state, and overpayments of unemployment compensation benefits as determined under the unemployment compensation law of that other state may be recovered by offset from unemployment compensation benefits otherwise payable under this chapter; and

(b) Overpayments of unemployment compensation benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this state under an agreement with the U.S. secretary of labor, may be recovered by offset from unemployment compensation benefits otherwise payable under that program, or under the unemployment compensation law of this state or of another state or any such federal unemployment benefit or allowance program administered by the other state under an agreement with the U.S. secretary of labor if the other state has in effect a reciprocal agreement with the U.S. secretary of labor as authorized by 42 USC 503 (g) (2), if the United States agrees, as provided in the reciprocal agreement with this state entered into under 42 USC 503 (g) (2), that overpayments of unemployment compensation benefits as determined under this chapter, and overpayments as determined under the unemployment compensation law of another state which has in effect a reciprocal agreement with the U.S. secretary of labor as authorized by 42 USC 503 (g) (2), may be recovered by offset from benefits or allowances for unemployment otherwise payable under a federal program administered by this state or the other state under an agreement with the U.S. secretary of labor.

(8t) If the agency administering another unemployment compensation law has overpaid benefits to an individual located in Wisconsin, and certifies to the department the facts involved and that the individual is liable, under such law, to

repay such benefits, and requests the department to recover such overpayment, and agrees to reimburse the department for any court costs incurred by it in such recovery efforts, the department may in its own name, but acting as agent for such other agency, collect such overpayment by civil action, and shall pay the net amount recovered to such other agency.

(9) The department may make its records relating to the administration of this chapter available to the Railroad Retirement Board, and may furnish the Railroad Retirement Board, at the expense of said board, such copies thereof as said board deems necessary for its purposes. The department may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment compensation law. The department may make arrangements or agreements with the Railroad Retirement Board, or any other agency of the United States charged with the administration of an unemployment compensation law, with respect to the establishment, maintenance and use of free employment service facilities, the taking and certifying of claims, the making of investigations, and the supplying of other information or services related to unemployment compensation, but the department may not make or renew any such arrangement or agreement unless it finds that its resulting administrative costs are approximately covered or offset by the facilities, services and payments to be made available thereunder by such federal agency. Any moneys received by the department under this subsection shall be paid into the federal administrative financing account under s. 108.161.

(9m) The department may afford reasonable cooperation with any government agency charged with war-effort or post-war planning responsibilities or with the administration of any system of unemployment allowances or unemployment assistance or of any other program designed to prevent or relieve unemployment. All moneys payable to or received by this state for any program of allowances pursuant to an agreement with any government or nonprofit agency, whereby moneys are made available to the state solely for that purpose, shall be paid to the state and shall promptly be deposited by the department to the credit of a separate account therefor, with such custodians as the state may from time to time select, who shall hold, release and transfer the cash in any such account in a manner approved by the department of administration. Payments from any such account shall be made upon vouchers or drafts authorized by the department, in such manner as the department of administration may from time to time approve or prescribe. The treasurer of the unemployment reserve fund shall serve as treasurer of any account under this subsection. The bond of the treasurer, as required under ss. 19.01 (2) and 108.16 (4), shall likewise be conditioned upon the faithful performance of the duties under this subsection by the treasurer and his subordinates, in such additional amount as may be fixed by the department. The treasurer shall report annually to the department of administration regarding receipts and disbursements under this subsection.

(10) The department shall comply with requirements of the U.S. secretary of labor to determine the degree of accuracy and timeliness in the administration of this chapter with respect to benefit payments, benefit determinations and revenue collections.

(11) The department may require any employing unit which employs one or more individuals to perform work in this state to make such arrangements as will reasonably assure the department that the employing unit will keep such records, make such reports, and pay such contributions as are required under this chapter. Any employing unit which the department has notified, through notice served on it or sent

by registered mail to its last-known address or served on it through the secretary of state under s. 180.825 (2), that it is required to make such arrangements and which fails to do so within 20 days after such notification may, through proceedings instituted by the department in the circuit court for Dane county, be restrained from doing business in this state until it has made such arrangements.

(12) (a) Consistently with the provisions of pars. (8) and (9) of section 303 (a) of Title III of the federal social security act, all moneys received in the federal administrative financing account from any federal agency under said Title III shall be expended solely for the purposes and in the amounts found necessary by said agency for the proper and efficient administration of this chapter.

(b) Consistently with said provisions of said Title III, any such moneys, received prior to July 1, 1941, and remaining unencumbered on said date or received on or after said date, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by said agency for the proper administration of this chapter, shall be replaced within a reasonable time. This paragraph is the declared policy of this state, as enunciated by the 1941 legislature, and shall be implemented as further provided in this subsection.

(c) If it is believed that any amount of money thus received has been thus lost or improperly expended, the department on its own motion or on notice from said agency shall promptly investigate and determine the matter and shall, depending on the nature of its determination, take such steps as it may deem necessary to protect the interests of the state.

(d) If it is finally determined that moneys thus received have been thus lost or improperly expended, then the department shall either make the necessary replacement from those moneys in the administrative account specified in s. 108.20 (2m) or shall submit, at the next budget hearings conducted by the governor and at the budget hearings conducted by the next legislature convened in regular session, a request that the necessary replacement be made by an appropriation from the general fund.

(e) This subsection shall not be construed to relieve this state of any obligation existing prior to its enactment with respect to moneys received prior to July 1, 1941, pursuant to said Title III.

(13) The department may, with the advice of the council on unemployment compensation, by general rule modify or suspend any provision of this chapter if and to the extent necessary to permit continued certification of this chapter for grants to this state under Title III of the federal social security act and for maximum credit allowances to employers under the federal unemployment tax act.

(14) The department shall fully cooperate with the agencies of other states, and shall make every proper effort within its means, to oppose and prevent any further action which would in its judgment tend to effect complete or substantial federalization of state unemployment compensation funds or state employment security programs.

(15) The department may make, and may cooperate with other appropriate agencies in making, studies as to the practicality and probable cost of possible new state-administered social security programs, and the relative desirability of state (rather than national) action in any such field.

(16) The department shall have duplicated or printed, and shall distribute without charge, such employment security reports, studies and other materials, including the text of this chapter and instructional or explanatory pamphlets for employers or workers, as it deems necessary for public informa-

tion or for the proper administration of this chapter; but the department may collect a reasonable charge, which shall be credited to the administrative account, for any such item the cost of which is not fully covered by federal administrative grants.

(17) To help provide suitable quarters for the administration of this chapter at the lowest practicable long-run cost, the department may, with the governor's approval and subject to all relevant statutory requirements, use part of the moneys available for such administration under s. 20.445 (1) (n) to buy suitable real property, or to help construct suitable quarters on any state-owned land, or for the long-term rental or rental-purchase of suitable land and quarters. In each such case full and proper use shall be made of any federal grants available for the administration of this chapter.

History: 1971 c. 53; 1973 c. 90 s. 559; 1973 c. 247; 1975 c. 343; 1977 c. 29, 133; 1977 c. 196 s. 131; 1977 c. 272 s. 98; 1979 c. 34 s. 2102 (25) (a); 1979 c. 110 s. 60 (11); 1979 c. 221; 1981 c. 36 ss. 18, 45; 1983 a. 8 s. 54; 1983 a. 189 s. 329 (28); 1983 a. 388; 1985 a. 17; 1985 a. 29 ss. 1664 to 1668, 3202 (29); 1985 a. 332; 1987 a. 38, 255.

NOTE: This section is shown as affected by 1987 Wis. Acts 38 and 255. See s. 137 (1) and (13) of Act 38, as affected by Act 255 and s. 45 (12) of Act 255 for initial applicability of changes made by these acts.

Provisions for aggregation of multi-jurisdictional employment and wages do not affect eligibility except where state's disqualification of claimant is based on change in jurisdiction. Fox Valley Ed. Dist. v. LIRC, 125 W (2d) 285, 371 NW (2d) 811 (Ct. App. 1985).

108.141 Extended benefits. (1) DEFINITIONS. As used in this section, unless the context clearly requires otherwise:

(a) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(b) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

1. Has received, prior to such week, all of the regular benefits that were available to him under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employes and ex-servicemen under 5 U.S.C. ch. 85, in his current benefit year that includes such week or is precluded from receiving regular benefits by reason of the law of another state which meets the requirement of sec. 3304 (a) (7) of the internal revenue code of 1954 or is precluded from receiving regular benefits by reason of a seasonal limitation in the law of another state. An individual shall be deemed to have received all of the regular benefits that were available to him although as a result of a pending appeal under s. 108.09 or 108.10 he may subsequently be determined to be entitled to added regular benefits; or

2. His or her benefit year having expired in the extended benefit period and prior to such week, lacks base period wages on the basis of which he or she could establish a benefit year under s. 108.06; and

3. Has no right to unemployment benefits or allowances, as the case may be, under the railroad unemployment insurance act or such other federal laws as are specified in regulations issued by the U.S. secretary of labor, and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if the individual is seeking such benefits and the appropriate agency finally determines that he or she is not entitled to benefits under such law he or she is an exhaustee.

(c) "Extended benefit period" means a period which:

1. Begins with the 3rd week after whichever of the following weeks occurs first:

a. A week for which there is a national "on" indicator; or

b. A week for which there is a Wisconsin "on" indicator, provided that no extended benefit period may begin by reason of a Wisconsin "on" indicator before the 14th week

following the end of a prior extended benefit period which was in effect with respect to Wisconsin; and

2. Ends with either of the following weeks, whichever occurs later:

a. The 3rd week after the first week for which there is both a national "off" indicator and a Wisconsin "off" indicator; or

b. The 13th consecutive week of such period.

(d) "Extended benefits" means benefits (including benefits payable to federal civilian employes and to ex-servicemen pursuant to 5 U.S.C. ch. 85) payable to an individual under this section for weeks of unemployment in his eligibility period.

(e) There is a Wisconsin "off" indicator for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that, for the period consisting of such week and the immediately preceding 12 weeks, the Wisconsin rate of insured unemployment (not seasonally adjusted):

1. Was less than 6% and less than 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; and

2. Was less than 5%.

(f) There is a Wisconsin "on" indicator for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that, for the period consisting of such week and the immediately preceding 12 weeks, the Wisconsin rate of insured unemployment (not seasonally adjusted):

1. Equaled or exceeded 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years, and equaled or exceeded 5%; or

2. Equaled or exceeded 6%.

(g) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employes and to ex-servicemen pursuant to 5 U.S.C. ch. 85, other than extended benefits and additional benefits as defined in P.L. 91-373.

(h) "State law" means the unemployment compensation law of any state, approved by the U.S. secretary of labor under s. 3304 of the internal revenue code of 1954.

(i) "Wisconsin rate of insured unemployment" means the percentage determined by the department on the basis of its reports to the U.S. secretary of labor and according to the method or methods prescribed by applicable federal law or regulation.

(2) **EFFECT OF OTHER PROVISIONS OF THIS CHAPTER.** Except when the result would be inconsistent with the other provisions of this section, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(3) **ELIGIBILITY REQUIREMENTS FOR EXTENDED BENEFITS.** An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period only if:

(a) The individual had base period wages equaling at least 40 times the individual's most recent weekly benefit rate;

(b) The individual is an "exhaustee"; and

(c) The individual is not disqualified and has satisfied those other requirements of this chapter for the payment of regular benefits that apply to individuals claiming extended benefits.

(3g) **ADDITIONAL REQUIREMENTS FOR EXTENDED BENEFITS.**

(a) 1. If an individual fails to provide sufficient evidence that his or her prospects for obtaining work in his or her customary occupation within a period of time not exceeding 4 weeks, beginning with the first week of eligibility for extended

benefits, are good, this paragraph, rather than s. 108.04 (8), applies.

2. An individual who fails either to apply for suitable work when notified by a public employment office or to accept suitable work when offered is ineligible for extended benefits for the week in which the failure occurs and for the weeks following thereafter until the individual has again worked within at least 4 subsequent weeks and earned wages equal to at least 4 times his or her extended weekly benefit rate.

3. Work is suitable within the meaning of subd. 2 if:

a. It is any work within the individual's capabilities;

b. The gross average weekly remuneration for the work exceeds the individual's weekly benefit rate plus any supplemental unemployment benefits, as defined in section 501 (c) (17) (D) of the internal revenue code, then payable to the individual;

c. Wages for the work equal or exceed the higher of either the minimum wage provided by 29 USC 206, without regard to any exemption, or any state or local minimum wage; and

d. The offer of work to the individual was in writing or the position was listed with a public employment office.

(b) The department's public employment offices shall refer extended benefit claimants to suitable work meeting the conditions prescribed in par. (a).

(c) A systematic and sustained effort to obtain work shall be made and tangible evidence thereof provided to the department in each week by a claimant for each week for which the claimant files a claim for extended benefits. If a claimant fails to make the required effort to obtain work or to provide tangible evidence thereof, he or she is ineligible for extended benefits for the week in which the failure occurs and thereafter until he or she has again worked within at least 4 subsequent weeks and has earned wages equal to at least 4 times his or her weekly extended benefit rate.

(d) Notwithstanding s. 108.04 (6) and (7), an individual who was disqualified from receipt of benefits because of voluntarily terminating employment or incurring a disciplinary suspension for misconduct or other good cause is ineligible to receive extended benefits unless the individual has, since the date of that disqualification, been employed during at least 4 subsequent weeks and earned wages equal to at least 4 times his or her weekly extended benefit rate.

(e) Extended benefits shall not be denied under par. (a) 2 to an individual for any week if the failure would not result in a denial of benefits under the law of the state governing eligibility for such benefits to the extent that the law is not inconsistent with this subsection.

(3r) LIMITATION ON INTERSTATE EXTENDED BENEFITS. (a) Extended benefits shall not be paid to any individual for a given week if the claim for such benefits is filed outside this state, under interstate claiming arrangements under s. 108.14 (8), unless an extended benefit period is in effect during that week in the state where the claim is filed.

(b) Paragraph (a) does not apply with respect to the first 2 weeks for which extended benefits would be payable except for that paragraph.

(4) WEEKLY EXTENDED BENEFIT RATE. The weekly extended benefit rate payable to an individual for a week of total unemployment is the same as the rate payable to the individual for regular benefits during his or her most recent benefit year as determined under s. 108.05 (1). No adjustment of rates under s. 108.05 (2) applies to benefits payable under this section.

(5) DURATION OF EXTENDED BENEFITS. (a) Extended benefits are payable to an individual for weeks of unemployment for not more than the least of the amounts determined by the following:

1. One-half the amount of regular benefits which were payable, including benefits canceled pursuant to s. 108.04 (5), in the individual's most recent benefit year rounded down to the nearest dollar; or

2. Thirteen times the extended benefit rate; or

3. Thirty-nine times the extended benefit rate, reduced by the amount of regular benefits paid or deemed paid to the individual under this chapter in his or her most recent benefit year. Benefits withheld due to the application of s. 108.04 (11) are deemed paid for this purpose.

(b) The result obtained under par. (a), which remains unpaid at the expiration of the claimant's benefit year, shall be reduced as required under section 233 (d) of the federal trade act of 1974 as amended.

(6) PUBLISH INDICATORS. (a) Whenever an extended benefit period is to become effective as a result of a Wisconsin "on" indicator, or an extended benefit period is to be terminated as a result of a Wisconsin "off" indicator, the secretary shall publish it as a class I notice under ch. 985.

(b) Computations required by sub. (1) (i) shall be made in accordance with regulations prescribed by the U.S. secretary of labor.

(7) CHARGES OF BENEFITS. (a) The department shall charge the state's share of each week of extended benefits to each employer's account in proportion to the employer's share of the total wages of the employe receiving the benefits in the employe's base period, except that if the employer is subject to the contribution requirements of ss. 108.17 and 108.18 the department shall charge the share of extended benefits to which s. 108.04 (1) (f), (5), (7) (a), (c), (d), (e), (k) or (L) or (8) (a) or 108.07 (3) or (5) (b) applies to the fund's balancing account.

(b) The department shall charge the full amount of extended benefits based on employment for a government unit to the account of the government unit, except that if s. 108.04 (5) or (7) applies and the government unit has elected contribution financing the department shall charge one-half of the government unit's share of the benefits to the fund's balancing account.

History: 1971 c. 53; 1973 c. 247; 1975 c. 1, 343; 1977 c. 29, 133, 418; 1979 c. 52; 1981 c. 36 ss. 19 to 32, 45; 1981 c. 315, 390; 1983 a. 8 ss. 28 to 33, 53, 55 (3), (14) and (15) and 56; 1983 a. 27 ss. 1400g and 1807m; 1983 a. 189 ss. 162, 329 (28); 1985 a. 17; 1987 a. 38.

NOTE: This section is shown as affected by 1987 Wis. Act 38. See s. 137 (1) and (13) of Act 38 for initial applicability of changes made by Act 38.

Council on Unemployment Compensation Note, 1981: The amendment of (3) (a) conforms to a federal requirement necessary for an individual to be eligible for extended benefits. Under P.L. 97-35, an individual must earn wages in his or her benefit base period (recent work experience) which equal at least 40 times the individual's most recent benefit rate.

The amendment of s. 108.141 (3g) (d), stats., specifies that an individual who is disqualified from receipt of benefits because of a disciplinary suspension must requalify by satisfying the weeks of work and earnings requirements provided in P.L. 96-499 in order to be eligible for extended benefits. [Bill 791-S]

108.142 Wisconsin supplemental benefits. (1) DEFINITIONS. As used in this section, unless the context clearly requires otherwise:

(a) "Wisconsin supplemental benefit period" means a period which:

1. Begins with the 3rd week after which there is a Wisconsin "on" indicator under this section, except that no Wisconsin supplemental benefit period may begin with any week during which there is an extended benefit period under s. 108.141 in effect, and that no Wisconsin supplemental benefit period may begin before the 14th week following the end of a prior Wisconsin supplemental benefit period; and

2. Ends with the week before any extended benefit period begins under s. 108.141, or with either of the following weeks, whichever occurs later:

a. The 3rd week after the first week for which there is a Wisconsin "off" indicator under this section; or

b. The 13th consecutive week of any period during which extended benefits under s. 108.141 or Wisconsin supplemental benefits in any combination have been payable.

(b) There is a Wisconsin "on" indicator under this section for a week if the department determines that, for the period consisting of that week and the immediately preceding 12 weeks, the Wisconsin rate of insured unemployment (not seasonally adjusted):

1. Equaled or exceeded 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years, and equaled or exceeded one percentage point below the percentage specified in s. 108.141 (1) (f) 1; or

2. Equaled or exceeded one percentage point below the percentage specified in s. 108.141 (1) (f) 2.

(c) There is a Wisconsin "off" indicator under this section for a week if the department determines that, for the period consisting of that week and the immediately preceding 12 weeks, the Wisconsin rate of insured unemployment (not seasonally adjusted):

1. Was less than one percentage point below the percentage specified in s. 108.141 (1) (f) 1 and less than 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; and

2. Was less than one percentage point below the percentage specified in s. 108.141 (1) (f) 2.

(d) "Wisconsin rate of insured unemployment" means the percentage of unemployment determined by the department on the basis of its reports to the U.S. secretary of labor and according to the method or methods prescribed by applicable federal law or regulation.

(e) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 USC ch. 85, other than extended benefits under s. 108.141 and federal supplemental compensation.

(f) "Wisconsin supplemental benefits" means benefits payable to an individual under this section for weeks of unemployment in his or her eligibility period.

(g) "Eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in a Wisconsin supplemental benefit period and, if the individual's benefit year ends within that Wisconsin supplemental benefit period, any weeks thereafter which begin in that period.

(h) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

1. Has received, prior to that week, all of the regular benefits that were available to the individual under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 USC ch. 85, in his or her current benefit year that includes that week or is precluded from receiving regular benefits by reason of the law of another state which meets the requirement of section 3304 (a) (7) of the internal revenue code of 1954 or is precluded from receiving regular benefits by reason of a seasonal limitation in the law of another state. An individual is deemed to have received all of the regular benefits that were available to the individual although as a result of a pending appeal under s. 108.09 or 108.10 the individual may subsequently be determined to be entitled to added regular benefits; or

2. His or her benefit year having expired in the Wisconsin supplemental benefit period and prior to that week, lacks

base period wages on the basis of which he or she could establish a benefit year under s. 108.06; and

3. Has no right to unemployment benefits or allowances under the railroad unemployment insurance act or such other federal laws as are specified in regulations issued by the U.S. secretary of labor, and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if the individual is seeking such benefits and the appropriate agency finally determines that he or she is not entitled to benefits under that law, the individual is an "exhaustee".

(i) "State law" means the unemployment compensation law of any state, approved by the U.S. secretary of labor under section 3304 of the internal revenue code of 1954.

(2) EFFECT OF OTHER PROVISIONS OF THIS CHAPTER. Except when the result would be inconsistent with the other provisions of this section, the provisions of this chapter which apply to claims for, or the payment of, regular benefits apply to claims for, and the payment of, Wisconsin supplemental benefits.

(3) WEEKLY WISCONSIN SUPPLEMENTAL BENEFIT RATE. The weekly Wisconsin supplemental benefit rate payable to an individual for a week of total unemployment is an amount equal to the amount determined under s. 108.05 (1).

(4) DURATION OF WISCONSIN SUPPLEMENTAL BENEFITS. During a Wisconsin supplemental benefit period, no claimant may receive total benefits based on employment in a base period greater than 34 times the claimant's weekly benefit rate under s. 108.05 (1) or 40% of wages paid or payable to the claimant in his or her base period under s. 108.04 (4) (a), whichever is lower.

(5) PUBLISH INDICATORS. Whenever a Wisconsin supplemental benefit period is to become effective as a result of a Wisconsin "on" indicator under this section, or a Wisconsin supplemental benefit period is to be terminated as a result of a Wisconsin "off" indicator under this section, the secretary shall publish it as a class 1 notice under ch. 985.

(6) CHARGES OF BENEFITS. Wisconsin supplemental benefits shall be charged in the same manner as provided for charging of regular benefits under s. 108.16 (2).

History: 1983 a. 8, 27; 1983 a. 189 s. 329 (28); 1983 a. 384; 1987 a. 38.

NOTE: This section is shown as affected by 1987 Wis. Act 38. See s. 137 (1) of Act 38 for initial applicability of changes made by Act 38.

108.15 Benefits for public employees. (1) BENEFIT PAYMENTS. Benefits shall be payable from the fund to any public employee, if unemployed and otherwise eligible, based on "employment" by any government unit which is an "employer" covered by this chapter.

(2) REIMBURSEMENT FINANCING. The state and every other government unit which is an employer subject to this chapter shall be subject to all its provisions except that, in lieu of contributions under ss. 108.17 and 108.18, it shall reimburse the fund for benefits charged to its account.

(3) ELECTION OF CONTRIBUTION FINANCING. Any government unit other than the state may, in lieu of the reimbursement requirement of sub. (2), elect contribution financing under ss. 108.17 and 108.18 as of the beginning of any calendar year, subject to the following requirements:

(a) It shall file a written notice to that effect with the department before the beginning of such year except that if the government unit became newly subject to this chapter as of the beginning of such year, it shall file the notice within 30 days after the date of mailing to it a written notification by the department that it is subject to this chapter. Such election shall remain in effect for not less than 2 calendar years.

(b) A government unit may thereafter terminate its election of contribution financing effective at the end of any calendar

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year by filing a written notice to that effect with the department before the close of such year.

(c) No election or termination of election of contribution financing is effective if the government unit, at the time of filing notice of such election or termination of election, is delinquent under s. 108.22.

(d) If a government unit elects contribution financing for any calendar year after the first calendar year it becomes newly subject to this chapter, it shall be liable to reimburse the fund for any benefits based on prior employment. If a government unit terminates its election of contribution financing, ss. 108.17 and 108.18 shall apply to employment in the prior calendar year, but after all benefits based on such prior employment have been charged to its contribution account any balance remaining in such account shall be transferred to the balancing account.

(e) Each time a government unit elects or reelects contribution financing its initial contribution rate shall be 2.7% on its payroll for each of the first 2 calendar years in which such election or reelection is in effect, plus any contributions payable under s. 108.18 (2) (b). If a government unit terminates its election of contribution financing it may not reelect contribution financing within a period of 2 calendar years thereafter.

(4) REIMBURSEMENT ACCOUNTS FOR GOVERNMENT UNITS. (a) For each government unit covered by this chapter which is liable for reimbursement to the fund, the fund's treasurer shall maintain a reimbursement "employer account", as a subaccount of the fund's balancing account.

(b) Each government unit's reimbursement account shall be duly charged with any benefits based on work for such unit, and shall be duly credited with any reimbursement paid by or for it to the fund, and with any benefit overpayment from the account recovered by the department. Whenever the account of a government unit is credited with an overpayment under this paragraph, the department shall, at the close of any month, refund that amount to the government unit upon request, after deducting the amount of any reimbursements to the account of such government unit which have been billed but not paid.

(c) Any government unit may at any time make payments into its reimbursement account in the fund.

(d) Whenever a government unit's reimbursement account has a positive net balance, no reimbursement of the benefits charged to that account is required under this section.

(e) Whenever a government unit's reimbursement account has a negative balance, any benefits chargeable to such account shall be duly paid and charged thereto; and reimbursements covering the total negative balance thus resulting shall become due pursuant to this section.

(f) The write-off provisions of s. 108.16 (7) (c) do not apply to the reimbursement account of any government unit.

(g) If any government unit covered by this chapter requests the department to maintain separate accounts for parts of such unit which are separately operated or financed, the department may do so for such periods and under such conditions as it may from time to time determine.

(5) REIMBURSEMENTS AND CONTRIBUTIONS. (a) Each government unit which is an "employer" shall include in its budget for each budgetary period an estimated amount for payment of the contributions required by ss. 108.17 and 108.18 or reimbursements required by this section, including in each case any contribution or reimbursement remaining unpaid for the current or any prior period.

(b) The department shall monthly bill each government unit for any reimbursements required under this section, and any reimbursement thus billed shall be due and shall be paid

by such government unit within 20 days after the date such bill is mailed to it by the department.

(c) Reimbursements due hereunder from budget subdivisions of the state shall be paid pursuant to sub. (7).

(d) Reimbursements due under this section or contributions due under ss. 108.17 and 108.18 from government units shall, if they remain unpaid after their due date, be collected under sub. (6) or under any other applicable provision of law.

(6) DELINQUENT PAYMENTS. (a) Any reimbursement duly billed under this section, or contribution payable under s. 108.17 or 108.18, which remains unpaid after its applicable due date is a "delinquent payment" under s. 108.22 (1) (a).

(b) Whenever a government unit's "delinquent payments", including interest and penalties thereon, total more than the benefits charged to such unit's reimbursement account for the 6 most recent months, or contributions, including interest and penalties thereon, are delinquent for at least 2 quarters, the department shall so determine under s. 108.10.

(c) If such delinquency is finally established under s. 108.10, the fund's treasurer shall, in case such unit receives a share of any state tax or any type of state aid, certify to the state treasurer the existence and amount of such delinquency.

(d) Upon receipt of such certification, the state treasurer shall withhold, from each sum of any such tax or aid thereafter payable to the government unit, until the delinquency is satisfied, the lesser of the following amounts:

1. The delinquent amount thus certified; or
2. One-half the sum otherwise payable to such government unit.

(e) Any amount withheld by the state treasurer under par. (d) shall be paid by him to the fund's treasurer, who shall duly credit such payment toward satisfying the delinquency.

(7) STATE COMPLIANCE AND APPROPRIATIONS. (a) "State", as used in this section, includes all state constitutional offices, all branches of state government, all agencies, departments, boards, commissions, councils, committees, and all other parts or subdivisions of state government however organized or designated.

(b) Each reimbursement payable by the state under this section shall be duly paid to the fund, upon filing by the fund's treasurer of a certificate to the department of administration specifying the amount of reimbursement due and the appropriation apparently chargeable.

(c) Each of the state's budget subdivisions shall have each such reimbursement amount charged to and deducted from its proper appropriation, unless payment is authorized under ss. 20.865 and 20.928.

(8) NOTICE AND REPORTS. Each government unit which is an employer shall give such suitable benefit notices to its employes as the department may direct, and shall make employment and wage reports to the department under the same conditions as apply to other employers.

(9) GROUP REIMBURSEMENT ACCOUNTS. If any group of government units which have not elected contribution financing file a joint request, they shall be treated as one employer for the purposes of this chapter under the conditions of this subsection.

(a) The group will be treated as one employer for at least 2 calendar years and the group may be discontinued or dissolved at the beginning of any subsequent calendar year by filing advance written notice thereof with the department before the beginning of such subsequent calendar year.

(b) The members of the group are jointly and severally liable for any required reimbursements together with any interest thereon and any tardy filing fees.

(c) The group shall be dissolved at the beginning of any calendar year after the required 2 calendar years of participa-

tion if any member of the group files written notice with the department in advance of such calendar year of its intended withdrawal from the group.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1981 c. 36 s. 45; 1983 a. 8, 27; 1985 a. 17; 1987 a. 38.

NOTE: This section is shown as affected by 1987 Wis. Act 38. See s. 137 (12) and (16) of Act 38 for initial applicability of changes made by Act 38.

108.151 Financing benefits for employes of nonprofit organizations. (1) **EMPLOYER'S CONTRIBUTION RATE.** Each nonprofit organization which is or becomes an employer subject to this chapter shall be subject to all its provisions except as it may elect reimbursement financing in accordance with sub. (2). If such an approved election is terminated, the employer's contribution rate shall be 2.7% on its payroll for each of the next 2 calendar years, plus any contributions payable under s. 108.18 (2) (b).

(2) **ELECTION OF REIMBURSEMENT FINANCING.** Any nonprofit organization may, in lieu of the contribution requirements of ss. 108.17 and 108.18, elect reimbursement financing, as of the beginning of any calendar year, subject to the following requirements:

(a) It shall file a written notice to that effect with the department before the beginning of such year except that if the employer became newly subject to this section as of the beginning of such year, it shall file the notice within 30 days after the date of the determination that it is subject to this chapter.

(b) An employer whose prior election of reimbursement financing has been terminated pursuant to sub. (3) may not thereafter reelect reimbursement financing unless it has been subject to the contribution requirements of ss. 108.17 and 108.18 for at least 2 calendar years thereafter and is not, at the time of filing such reelection, delinquent under s. 108.22.

(c) No election of reimbursement financing shall be valid unless the employer has satisfied the requirements of sub. (4) within 60 days after it filed the notice of election.

(d) Sections 108.17 and 108.18 shall apply to all prior employment, but after all benefits based on prior employment have been charged to any account it has had under s. 108.16 (2) any balance remaining therein shall be transferred to the balancing account as if s. 108.16 (6) (c) or (6m) (d) applied.

(3) **TERMINATION OF ELECTION.** (a) An employer who elected reimbursement financing may terminate its election as of the close of the 2nd calendar year to which such election applies, or at the close of any subsequent calendar year, by filing a written notice to that effect with the department before the close of such calendar year;

(b) The department may terminate any election as of the close of any calendar year if the department determines that the employer has failed to make the required reimbursement payments or no longer satisfies the requirements of sub. (4), or whenever s. 108.16 (8) applies.

(4) **ASSURANCE OF REIMBURSEMENT.** (a) An employer electing reimbursement financing shall file an assurance of reimbursement with the fund's treasurer, payable to the unemployment reserve fund, guaranteeing payment of the required reimbursement together with any interest and any tardy filing fees. The assurance shall be a surety bond, letter of credit, certificate of deposit or any other nonnegotiable instrument of fixed value.

1. The amount of assurance shall be equal to 4% of the employer's payroll for the calendar year immediately preceding the effective date of the election, or the employer's anticipated payroll for the current year, whichever is greater as determined by the department, but the assurance may be in a greater amount at the option of the employer. The amount

of the assurance shall be similarly redetermined at the close of each of the succeeding 2 years and at the close of each 2 years thereafter.

2. Any assurance shall be in force for 2 calendar years, and shall remain in force until the liability is released by the fund's treasurer.

3. No assurance may be approved unless the fund's treasurer finds that it gives reasonable assurances that it guarantees payment of reimbursements.

4. Failure of any employer covered by the assurance to pay the full amount of its reimbursement payments when due together with any interest and any tardy filing fees shall render the assurance liable on said assurance to the extent of the assurance, as though the assurance was the employer.

(b) The fund's treasurer shall issue a receipt to the employer for its deposit of assurance. Any assurances shall be retained by the fund's treasurer in escrow, for the fund, until the employer's liability under its election is terminated, at which time they shall be returned to the employer, less any deductions made under this paragraph. The employer may at any time substitute assurances of equal or greater value. The treasurer may, with 10 days' notice to the employer, liquidate the assurances deposited to the extent necessary to satisfy any delinquent reimbursements together with any interest and any tardy filing fees due. The treasurer shall hold in escrow any cash remaining from the sale of the assurances, without interest. The fund's treasurer shall require the employer within 30 days following any liquidation of deposited assurances to deposit sufficient additional assurances to make whole the employer's deposit at the prior level. Any income from assurances held in escrow shall inure to and be the property of the employer.

(5) **REIMBURSEMENT ACCOUNT.** (a) For each nonprofit organization which has elected reimbursement financing, pursuant to sub. (2), the fund's treasurer shall maintain a reimbursement account, as a subaccount of the fund's balancing account.

(b) The department shall charge the employer's reimbursement account with all regular benefits, and with its share of any extended benefits under s. 108.141, based on wages paid within each quarter ended while its election is in effect.

(c) The employer's reimbursement account shall be credited with any reimbursement paid by or for it to the fund, and with any benefit overpayment from the account recovered by the department.

(d) The employer may at any time make other payments to be credited into its reimbursement account, in anticipation of future benefit charges.

(e) Whenever the employer's reimbursement account has a positive net balance no reimbursement of the benefits charged thereto shall be required.

(f) Whenever an employer's reimbursement account has a negative balance as of the close of any calendar month, the fund's treasurer shall promptly bill such employer, at its last-known address, for that portion of its negative balance which has resulted from the net benefits charged to such account within such month. Reimbursement payment shall be due within 20 days thereafter. Any required payment which remains unpaid after its applicable due date is a delinquent payment. Section 108.22 shall apply for collecting delinquent payments.

(6) **GROUP REIMBURSEMENT ACCOUNTS.** If any group of nonprofit organizations who have elected reimbursement financing file a joint request, they shall be treated as if they were one employer for the purposes of this chapter, provided that:

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(a) They shall be so treated for at least the 2 calendar years following their request, unless their election of reimbursement financing is terminated under sub. (3), but they may discontinue their group arrangement as of the beginning of any subsequent calendar year by filing advance notice with the department. A member of such a group may discontinue its participation in the group and the group shall be dissolved at the beginning of any calendar year after the 2nd year.

(b) They shall be jointly and severally liable for any required reimbursements together with any interest thereon and any tardy filing fees.

(c) They shall designate one or more individuals as agent for all members of the group for all fiscal and reporting purposes under this chapter.

(d) If such a group is discontinued, par. (a) shall apply to each of its members.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1979 c. 52; 1983 a. 8; 1985 a. 17; 1987 a. 38.

NOTE: This section is shown as affected by 1987 Wis. Act 38. See s. 137 (12) and (13) of that act for initial applicability of changes made by Act 38.

108.16 Unemployment reserve fund. (1) For the purpose of carrying out the provisions of this chapter there is established a fund to be known as the "Unemployment Reserve Fund," to be administered by the department without liability on the part of the state beyond the amount of the fund. This fund shall consist of all contributions and moneys paid into and received by the fund pursuant to this chapter and of properties and securities acquired by and through the use of moneys belonging to the fund.

(2) (a) A separate employer's account shall be maintained by the department as to each employer contributing to said fund.

(b) Each employer's account shall be credited with all its contributions paid into the fund, and shall be charged with all benefits duly paid from the fund to its employes based on their past employment by it, except as otherwise specified in this chapter.

(c) Any reference in this chapter to eligibility for, or to payment of, benefits "from an employer's account", or any similar reference, shall mean benefits payable or paid from the fund based on past employment by the employer in question.

(d) The fund shall be mingled and undivided, and nothing in this chapter shall be construed to grant to any employer or employe any prior claim or right to any part of the fund.

(e) Except as provided in par. (em), benefits to be charged against a given employer's account shall be so charged as of the date shown by the check covering such benefits. Each such check shall be promptly mailed and shall, in determining the experience or status of such account for contribution purposes, be deemed paid on the date shown on the check.

(em) Benefits improperly charged or credited to an employer's account shall, when so identified, be credited or debited from that account and, where appropriate, recharged to the correct account as of the date of correction. This paragraph shall be used solely in determining the experience or status of accounts for contribution purposes.

(f) The department shall promptly advise the employer as to benefits charged to its account.

(3) The fund's treasurer shall write off any overpayment for which the claimant's liability to reimburse the fund was established under s. 108.22 (8) upon receipt of certification by the department that reasonable efforts have been made to recover it and that it is uncollectible.

(4) Consistently with sub. (5), all contributions payable to the unemployment reserve fund shall be paid to the department, and shall promptly be deposited by the department to

the credit of the unemployment reserve fund, with such custodians as the department may from time to time select, who shall hold, release and transfer the fund's cash in a manner approved by the department. Payments from said fund shall be made upon vouchers or drafts authorized by the department, in such manner as the department may from time to time approve or prescribe. Any procedure thus approved or prescribed shall be deemed to satisfy (and shall be in lieu of) any and all statutory requirements (for specific appropriation or other formal release by state officers of state moneys prior to their expenditure) which might otherwise be applicable to withdrawals from the fund. The department shall designate a treasurer of the unemployment reserve fund, who shall be either a regular salaried employe of the department or the state treasurer and shall serve as treasurer of the fund until a successor designated by the department has assumed the duties of this office. He shall give a separate bond conditioned upon his faithful performance of these duties pursuant to s. 19.01 (2), which bond shall be deemed likewise conditioned upon the faithful performance by his subordinates of their duties, in such amount as may be fixed by the department. All premiums upon the bond required pursuant to this section when furnished by an authorized surety company or by a duly constituted governmental bonding fund shall (except as otherwise provided in this section) be paid from the interest earnings of the unemployment reserve fund, but shall not exceed one-fourth of one per cent, per year, of the amount of said bond.

(5) (a) All money received for the fund shall promptly upon such receipt be deposited to its credit in the "Unemployment Trust Fund" of the United States, in such manner as the secretary of the treasury of the United States (or other authorized custodian of said trust fund) may approve, so long as said trust fund exists and maintains for this state a separate book account (for the purposes of this chapter) from which no other state or agency can make withdrawals, any other statutory provision to the contrary notwithstanding.

(b) The department shall requisition from this state's account in the "Unemployment Trust Fund" necessary amounts from time to time, shall hold such amounts consistently with any applicable federal regulations, and shall make withdrawals therefrom solely for benefits and for such other unemployment compensation payments or employment security expenditures as are expressly authorized by this chapter and consistent with any relevant federal requirements.

(c) While the state has an account in the "Unemployment Trust Fund", public deposit insurance charges on the fund's balances held in banks, savings and loan associations and credit unions in this state, the premiums on surety bonds required of the fund's treasurer under this section, and any other expense of administration otherwise payable from the fund's interest earnings, shall be paid from the administrative account.

(6) The department shall maintain within the fund a "balancing account," to which shall be credited:

(a) All interest earnings, on moneys belonging to the fund, received by (or duly apportioned to) the fund, as of the close of the quarter in which such interest accrued.

(b) Any reimbursement made pursuant to s. 108.04 (13) (d);

(c) Any balance credited to an employer's account, if and when he ceases to be subject to this chapter, except as provided in sub. (8);

(d) Any reimbursement made under s. 108.07 (6).

(e) The amount of any benefit check duly issued and delivered or mailed to an employe, if such check has not been presented for payment within one year after its date of issue;

provided that a substitute check may be issued and charged to the balancing account, at any time within the next following year;

(f) Any amount available for such crediting under s. 108.04 (11) (b), 108.14 (8n) (e) or 108.141.

(g) Any payment received for the balancing account under s. 108.15.

(h) Any amount of solvency contribution or special contribution received for or transferred to the balancing account pursuant to s. 108.18 (8) to (10).

(i) Any federal reimbursement of benefits paid under any federal unemployment benefit program administered by the department.

(j) Any federal reimbursement of benefits paid under this chapter, except as this chapter or a federal agreement requires otherwise.

(k) All payments to the fund from the administrative account as authorized under s. 108.20 (2m).

(6m) There shall be charged against the fund's balancing account:

(a) The benefits thus chargeable under s. 108.04 (1) (f), (5), (7) (h), (8) (a) or (13) (c) or (d), 108.07 (3), (5) (b) or (6), 108.14 (8n) (e), 108.141 or 108.151 or sub. (6) (e) or (7) (a) and (b).

(b) Any benefits paid under any federal unemployment benefit program administered by the department, pending their reimbursement.

(c) The overdraft write-offs thus chargeable under subs. (7) (c) and (7m).

(d) Any negative balance of a closed employer account, except as provided in sub. (8).

(7) (a) All benefits shall be paid from the fund. Benefits chargeable to an employer's account shall be so charged, whether or not such account is overdrawn. All other benefits shall be charged to the fund's balancing account.

(b) Benefit payments made with respect to an employer's account shall be charged directly against the fund's balancing account only when such payments cannot under this chapter be or remain charged against the account of any employer.

(c) Whenever, as of any computation date, the net overdrafts then charged against an employer's account would, even if reduced by any contributions known or subsequently discovered to be then payable but unpaid to the account, exceed 10% of the employer's annual payroll amount used in determining the employer's reserve percentage as of that computation date, the department shall write off, by charging directly to the fund's balancing account, the amount by which such overdrafts would if thus reduced exceed 10% of the employer's payroll.

(7m) The fund's treasurer may write off, by charging to the fund's balancing account, any delinquent unemployment compensation contribution, reimbursement in lieu of contribution, tardy payment or filing fee, or interest for which the employer's liability to the fund was established under s. 108.10, upon receipt of certification by the department that reasonable efforts have been made to recover the delinquency and that the delinquency is uncollectible.

(8) (a) For purposes of this subsection a business is deemed transferred if any asset or any activity of an employer, whether organized or carried on for profit, nonprofit or governmental purposes, is transferred in whole or in part by any means, other than in the ordinary course of business.

(b) If the business of any employer is transferred, the transferee is deemed a successor for purposes of this chapter, if the department determines that all of the following conditions have been satisfied:

1. The transferee has continued or resumed the business of the transferor, in the same establishment or elsewhere; or the

transferee has employed substantially the same employes as those employed by the transferor in connection with the business transferred.

2. The transfer included at least 25% of the transferor's total business as measured by comparing the payroll experience assignable to the portion of the business transferred with the transferor's total payroll experience for the last 4 completed quarters immediately preceding the date of transfer.

3. The same financing provisions under s. 108.15, 108.151 or 108.18 apply to the transferee as applied to the transferor on the date of the transfer.

4. The department has received a written application from the transferee requesting that it be deemed a successor. Such application must be received by the department on or before the contribution report and payment due date for the first full quarter following the date of transfer.

(c) Notwithstanding par. (b), if the business of an employer is transferred, the transferee is deemed a successor for purposes of this chapter if the department determines that all of the following conditions have been satisfied:

1. The transferee is a legal representative, debtor in possession or trustee in bankruptcy or receiver or trustee of a person, partnership, association or corporation, or guardian of the estate of a person, or legal representative of a deceased person.

2. The transferee has continued or resumed the business of the transferor, either in the same establishment or elsewhere, or the transferee has employed substantially the same employes as those the transferor had employed in connection with the business transferred.

3. The same financing provisions under s. 108.15, 108.151 or 108.18 apply to the transferee as applied to the transferor on the date of transfer.

(d) Notwithstanding par. (b), if the business of an employer of a kind specified in par. (c) 1 is transferred, the transferee is deemed a successor for purposes of this chapter if the transferee would have been a successor under par. (e) but for the intervening existence of the successor employer under par. (c).

(e) Notwithstanding par. (b), a transferee is deemed a successor for purposes of this chapter, if the department determines that all of the following conditions are satisfied:

1. At the time of business transfer, the transferor and the transferee are owned or controlled in whole or in substantial part, either directly or indirectly by legally enforceable means or otherwise, by the same interest or interests. Without limitation by reason of enumeration, it is presumed unless shown to the contrary that the "same interest or interests" includes the spouse, child or parent of the individual who owned or controlled the business, or any combination of more than one of them.

2. The transferee has continued or resumed the business of the transferor, either in the same establishment or elsewhere; or the transferee has employed substantially the same employes as those the transferor had employed in connection with the business transferred.

3. The same financing provisions under s. 108.15, 108.151 or 108.18 apply to the transferee as applied to the transferor on the date of the transfer.

(f) The successor shall take over and continue the transferor's account, including its plus or minus balance and all other aspects of its experience under this chapter, in proportion to the payroll assignable to the transferred business. The transferor and the successor shall be jointly and severally liable for any amounts owed by the transferor to the fund and to the administrative account at the time of the transfer.

However, the liability of the successor shall be proportioned to the extent of the transferred business.

(g) If not already subject to this chapter, a successor shall become an employer subject to this chapter on the date of the transfer and shall become liable for contributions or payments in lieu of contributions, whichever is applicable, from and after that date, using the contribution rate assigned or assignable to the transferor on the date of transfer.

(h) The contribution rate for a successor subject to this chapter immediately prior to the date of the transfer shall be redetermined, as of the applicable computation date, to apply to the calendar year following the date of transfer and thereafter be redetermined whenever required by s. 108.18. For the purposes of s. 108.18, the department shall determine the experience under this chapter of the successor's account by allocating to the successor's account for each period in question the respective proportions of the transferor's payroll and benefits which the department determines to be properly assignable to the business transferred.

(i) The account taken over by the successor shall remain liable with respect to accrued benefit and related rights based on employment in the transferred business, and all such employment is deemed employment performed for the successor.

(j) If not already subject to this chapter, a transferee that is not a successor shall become an employer subject to this chapter on the date of the transfer and shall become liable for contributions or payments in lieu of contributions, whichever is applicable, from and after that date.

(k) Any time a business is transferred, as provided in par. (a), both the transferor and the transferee shall notify the department in writing of the transfer, within 30 days after the date of transfer; and both shall promptly submit to the department in writing such information as the department may request relating to the transfer.

(9) (a) Consistently with s. 3305 of the federal internal revenue code, relating to federal instrumentalities which are neither wholly nor partially owned by the United States nor otherwise specifically exempt from the tax imposed by s. 3301 of said code:

1. Any contributions required and paid under this chapter for 1939 or any subsequent year by any such instrumentality, including any national bank, shall be refunded to such instrumentality in case this chapter is not certified with respect to such year under s. 3304 of said code.

2. No national banking association which is subject to this chapter shall be required to comply with any of its provisions or requirements to the extent that such compliance would be contrary to s. 3305 of said code.

(10) All money withdrawn from the fund shall be used solely in the payment of benefits, exclusive of expenses of administration, and for refunds of sums erroneously paid into the fund, for refund of a positive net balance in an employer's reimbursement account under ss. 108.15 (4) and 108.151 (5) on request by the employer, and for expenditures made pursuant to s. 108.161 and consistently with the federal limitations applicable to s. 108.161.

(10m) The department shall not pay any interest on any benefit payment or any refund, or collect any interest on any benefit overpayment.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255.

NOTE: This section is shown as affected by 1987 Wis. Acts 38 and 255. See s. 137 (2), as affected by 1987 Wis. Act 403, (13) and (14) of Act 38 and s. 45 (8) of Act 255 for initial applicability of changes made by these acts.

Whether employe is potentially eligible for unemployment compensation benefits is immaterial in determining contribution or tax liability based on that employe's services. *Hanmer v. ILHR Dept. 92 W (2d) 90, 284 NW (2d) 587 (1979).*

108.161 Federal administrative financing account. (1) The fund's treasurer shall maintain within the fund an employment security "federal administrative financing account", and shall credit thereto all amounts credited to the fund pursuant to the federal employment security administrative financing act (of 1954) and section 903 of the federal social security act, as amended.

(1m) He shall also credit to said account all federal moneys credited to the fund pursuant to sub. (8).

(2) The requirements of said section 903 shall control any appropriation, withdrawal and use of any moneys in said account.

(3) Consistently with this chapter and said section 903, such moneys shall be used solely for benefits or employment security administration, including unemployment compensation, employment service and related statistical operations.

(3m) The fund's treasurer shall request restoration from the U.S. secretary of labor of amounts credited to the account under this section which have been used to pay benefits, unless these amounts do not exceed the balance in the account, and unless the state does not have a balance of advances outstanding from the federal unemployment account under title XII of the social security act.

(4) Such moneys shall be encumbered and spent for employment security administrative purposes only pursuant to (and after the effective date of) a specific legislative appropriation enactment:

(a) Stating for which such purposes and in what amounts the appropriation is being made to the administrative account created by s. 108.20.

(b) Directing the fund's treasurer to transfer the appropriated amounts to the administrative account only as and to the extent that they are currently needed for such expenditures, and directing that there shall be restored to the account created by sub. (1) any amount thus transferred which has ceased to be needed or available for such expenditures.

(c) Specifying that the appropriated amounts are available for obligation solely within the 2 years beginning on the appropriation law's date of enactment.

(d) Limiting the total amount which may be obligated during any fiscal year to the aggregate of all amounts credited under sub. (1), including amounts credited pursuant to sub. (8), within that year and the 34 preceding fiscal years, reduced by the sum of any moneys obligated and charged against any of the amounts credited within those 35 years.

(5) The total of the amounts thus appropriated for use in any fiscal year shall in no event exceed the moneys available for such use hereunder, considering the timing of credits hereunder and the sums already spent or appropriated or transferred or otherwise encumbered hereunder.

(6) The fund's treasurer shall keep a record of all such times and amounts; shall charge each sum against the earliest credits duly available therefor; shall include any sum thus appropriated but not yet spent hereunder in computing the fund's net balance as of the close of any month, in line with the federal requirement that any such sum shall (until spent) be deemed part of the fund; and shall certify the relevant facts whenever necessary hereunder.

(7) If any moneys appropriated hereunder are used to buy and hold suitable land, with a view to the future construction of an employment security building thereon, and if such land is later sold or transferred to other use, the proceeds of such sale (or the value of such land when transferred) shall be credited to the account created by sub. (1).

(8) If any sums are appropriated and spent hereunder to buy land and to build a suitable employment security building thereon, then any federal moneys thereafter credited to

the fund or paid to the department by way of gradual reimbursement of such employment security capital expenditures, or in lieu of the estimated periodic amounts which would otherwise (in the absence of such expenditures) be federally granted for the rental of substantially equivalent quarters, shall be credited to the account created by sub. (1), consistently with any federal requirements applicable to the handling and crediting of such moneys.

(8m) To the extent that employment security moneys finance the capital cost of acquiring office quarters, either in a separate employment security building project or in a larger state building, no rental for the quarters thus financed (or for equivalent substitute quarters) shall be charged the department or its employment security functions at any time. The department shall so certify, in applying for the federal moneys specified in sub. (8).

(9) Any land and building or office quarters acquired under this section shall continue to be used for employment security purposes. Realty or quarters may not be sold or transferred to other use without the governor's approval. The proceeds from the sale, or the value of realty or quarters upon transfer, shall be credited to the account established in sub. (1) or credited to the fund established in s. 108.20, or both in accordance with federal requirements. Equivalent substitute rent-free quarters may be provided, as federally approved. Amounts credited under this subsection shall be used solely to finance employment security quarters according to federal requirements.

History: 1971 c. 259; 1983 a. 8, 27; 1985 a. 29.

108.162 Employment security buildings and equipment.

(1) The amounts appropriated under s. 20.445 (1) (na) shall be used for employment security administration, including unemployment compensation, employment service and related statistical operations; for capital outlay to buy suitable parcels of land for buildings designed for employment security operations; and to finance the designing and construction of such buildings, and for such equipment, facilities, paving, landscaping and other improvements as are required for the proper use and operation of buildings occupied by the department for employment security administration.

(2) The treasurer of the fund shall transfer the amounts appropriated under s. 20.445 (1) (na) from the federal administrative financing account under s. 20.445 (1) (n) only as and to the extent that they are currently needed for expenditures under this section. Any amount thus transferred which has ceased to be needed or available for such expenditures shall be restored to that account.

(3) The amount obligated under this section during any fiscal year may not exceed the aggregate of all amounts credited under s. 108.161 (1), including amounts credited under s. 108.161 (8), within that fiscal year and the 34 preceding fiscal years, reduced by the sum of any moneys obligated and charged against any of the amounts thus credited within those 35 years.

(4) As to any building project to be financed under this section, the department shall secure advance assurance that the federal bureau of employment security will apply to that project, after its completion and occupancy, the bureau's policy of gradually reimbursing the fund for the necessary capital costs of any suitable employment security building project thus financed by federal grants covering the amounts which would otherwise be payable during the reimbursement or amortization period for the rental of substantially equivalent office quarters.

(5) The governor, before approving any land purchase or transfer or building project to be financed under this section,

shall consult with the building commission as to those cities and sites where early construction of a combined state office building is under active consideration with a view to determining where employment security building projects thus financed would be desirable.

(6) If the building commission with the approval of the governor determines as to any city or site that employment security offices should be part of a combined state office building project, or should be built on state-owned land or on land owned by a Wisconsin state public building corporation, the amounts appropriated under s. 20.445 (1) (na) shall be available to finance such offices or a proper employment security share of such combined project.

(7) Any amount appropriated under s. 20.445 (1) (na) which has not been obligated shall be available for employment security local office building projects, consistent with this section and ss. 108.161 and 108.20.

History: 1985 a. 29 ss. 490, 1674.

108.17 Payment of contributions. **(1)** Contributions shall accrue and become payable by each employer then subject to this chapter on the first day of July, 1934, and shall be paid thenceforth in accordance with this chapter. Thereafter contributions shall accrue and become payable by any employer on and after the date on which he becomes newly subject to this chapter.

(1m) In the case of an employer who becomes newly subject to this chapter based on employment during a given year, contributions based on payrolls through the quarter which includes the date the employer became subject to this chapter shall not be considered as payable for the purposes of s. 108.22 until the close of the month next following the first full quarter occurring after the quarter during which the liability was incurred. In no case may such due date be later than January 31 of the succeeding year.

(2) Every employer that is subject to a contribution requirement shall file reports of contributions required under this chapter with the department, and pay contributions to the department, for such periods and in such manner as the department prescribes. Each contribution report and payment is due at the close of the month next following the end of the applicable reporting period, except as the department may assign a later due date pursuant to sub. (1m) or general department rules.

(2m) When a written statement of account is issued to an employer by the department, showing as duly credited a specified amount received from him under this chapter, no other form of state receipt therefor is required.

(3) If an employing unit makes application to the department to adjust an alleged overpayment by the employer of contributions or interest under this chapter, and files such an application within 3 years after the close of the calendar year in which such payment was made, the department shall make a determination under s. 108.10 as to the existence and extent of any such overpayment, and said section shall apply to such determination. As to any amount determined under s. 108.10 to have been erroneously paid by the employer, the department shall allow the employer a corresponding credit, without interest, against its future contribution payments; or, if the department finds it impracticable to allow the given employer such a credit, it shall refund such overpayment to the employer, without interest, from the fund or the administrative account, as the case may be.

(4) If an employer's contribution rate for any year has been incorrectly determined, it shall be corrected and contributions shall be adjusted or become payable accordingly only if

due notice of such error is given during, or within 6 months after the close of, the calendar year to which such rate applies.

History: 1973 c. 247; 1981 c. 36; 1985 a. 29; 1987 a. 38 ss. 112, 134.

108.18 Contributions to the fund. (1) TOTAL RATE. (a) Each employer shall pay contributions to the fund for each calendar year at whatever rate on his payroll for that year duly applies to him pursuant to this section.

(b) An employer's contributions shall be credited to the employer's account in the fund, but only after any solvency contribution or special contribution paid or payable by the employer under subs. (8) to (10) has been credited to the fund's balancing account.

(2) INITIAL RATES. (a) Except as provided in pars. (c) and (d), an employer's contribution rate shall be 2.7% on its payroll for each of the first 2 calendar years with respect to which contributions are credited to its account, except as additional contributions apply under this section.

(b) As to each of those first 2 calendar years, if the employer's payroll for any such year was \$20,000 or more, it shall be required to pay an additional contribution at the rate of 1.3% on that calendar year's payroll, within 60 days after notice from the department that such additional contribution is payable, if its account:

1. As of January 31 of the following calendar year was overdrawn on a cash basis, with the benefits paid and charged to the account exceeding the contributions paid and credited thereto, through the close of January 31; or

2. As of the next June 30 computation date was overdrawn (with a negative reserve percentage).

(c) An employer engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects shall pay contributions for each of the first 2 calendar years at the average rate for construction industry employers as determined by the department on each computation date, rounded up to the next highest rate, except as additional contributions apply under par. (b). This rate may in no case be more than the maximum rate specified in the schedule in effect for the year of the computation under sub. (4).

(d) No later than 90 days after the department issues an initial determination that a person is an employer, any employer other than an employer specified in par. (c), having a payroll exceeding \$10,000,000 in a calendar year may elect that its contribution rate shall be one percent on its payroll for the first 2 calendar years with respect to which contributions are credited to its account. In such case, the department shall credit the amount collected in excess of this amount against liability of the employer for future contributions after the close of each calendar year in which an election applies. If an employer qualifies for and makes an election under this paragraph, the employer shall, upon notification by the department, make a special contribution after the close of each quarter equivalent to the amount by which its account is overdrawn, if any, for the preceding quarter. The department shall credit any timely payment of contributions to the employer's account before making a determination of liability for a special contribution under this paragraph. An employer does not qualify for an alternate contribution rate under this paragraph at any time during which the employer's special contribution payment is delinquent.

(3) REQUIREMENTS FOR REDUCED RATE. As to any calendar year, an employer shall be permitted to pay contributions to the fund at a rate lower than the standard rate on its payroll for that year only when, as of the applicable computation date:

(a) Benefits have been chargeable to the employer's account during the 18 months preceding such date; and

(b) Such lower rate applies under this section; and

(c) Permitting him to pay such lower rate is consistent with the relevant conditions then applicable to additional credit allowance for such year under section 3303 (a) of the federal unemployment tax act, any other provision to the contrary notwithstanding.

(4) EXPERIENCE RATES. Except as otherwise specified in this section, an employer's contribution rate on his payroll for a given calendar year shall be based on the reserve percentage of his account as of the applicable computation date, as follows: [See Figure 108.18 (4) following]

Figure: 108.18 (4):

Line	Reserve Percentage	Contribution Rate
1.	10.0% or more	0.27%
2.	At least 9.5% but under 10.0%	0.45%
3.	At least 9.0% but under 9.5%	0.53%
4.	At least 8.5% but under 9.0%	0.72%
5.	At least 8.0% but under 8.5%	0.79%
6.	At least 7.5% but under 8.0%	0.86%
7.	At least 7.0% but under 7.5%	0.97%
8.	At least 6.5% but under 7.0%	1.23%
9.	At least 6.0% but under 6.5%	1.48%
10.	At least 5.5% but under 6.0%	1.82%
11.	At least 5.0% but under 5.5%	2.16%
12.	At least 4.5% but under 5.0%	2.50%
13.	At least 4.0% but under 4.5%	2.84%
14.	At least 3.5% but under 4.0%	3.18%
15.	At least 0 but under 3.5%	3.57%
16.	Overdrawn by less than 1.0%	5.71%
17.	Overdrawn by at least 1.0% but under 2.0%	6.20%
18.	Overdrawn by at least 2.0% but under 3.0%	6.70%
19.	Overdrawn by at least 3.0% but under 4.0%	7.20%
20.	Overdrawn by at least 4.0% but under 5.0%	7.70%
21.	Overdrawn by at least 5.0% but under 6.0%	8.20%
22.	Overdrawn by 6.0% or more	8.90%

(4m) INCREASED CONTRIBUTION RATE FOR CERTAIN EMPLOYERS. Notwithstanding sub. (4), if on June 30, 1989, the fund has a cash balance of less than \$250,000,000, the contribution rate for the 1990 calendar year and each calendar year thereafter of each employer which is required to pay contributions at the maximum rate for that calendar year under sub. (4) and which has paid contributions at the maximum rate for each of the 4 calendar years preceding that calendar year is 9.9%.

(5) LIMITATION. Except as provided in subs. (2) and (8), the contribution rate for any calendar year of an employer whose reserve percentage equals or exceeds zero may in no case exceed by more than one percent on the employer's payroll the rate which applied to the employer at the close of the preceding calendar year, and the contribution rate for any calendar year of an employer whose reserve percentage is less than zero may in no case exceed by more than 2% on the employer's payroll the rate which applied to the employer at the close of the preceding calendar year.

(5m) LIMITATION, COMPUTATION. The limitation of sub. (5) shall be computed from the employer's experience rate assigned to it under subs. (4), (5) and (6), rounded to the next highest rate.

(6) COMPUTATION IN SPECIAL CASES. If during the year ending on a computation date an employer has been liable for contributions but has had no payroll, his reserve percentage as of that computation date shall be computed on the basis of his most recent year (ending on a computation date which applied to him) of some payroll; but his contribution rate for the calendar year following the computation date shall in no case be less than one per cent.

(7) VOLUNTARY CONTRIBUTIONS. (a) 1. Except as provided in pars. (b) to (h), any employer may make payments to the fund during the month of November in excess of those required by this section and s. 108.19 (1). Each payment shall be credited to the employer's account for the purpose of computing the employer's reserve percentage as of the immediately preceding computation date.

2. Each payment shall be treated as a contribution required and irrevocably paid under this chapter with respect to payrolls preceding the date it is credited except as a refund or credit is authorized under par. (b), (c) or (h).

(b) No employer may, by means of a voluntary contribution under par. (a), reduce the employer's contribution rate to a rate lower than the next lower rate which would have applied to the employer for the following calendar year. Any contributions in excess of the amount required to reduce an employer's rate to the extent permitted under this paragraph shall be applied against any outstanding liability of the employer, or if there is no such liability shall be refunded to the employer or established as a credit against future contributions payable by the employer, at the employer's option.

(c) No employer whose overdrafts have been charged to the fund's balancing account under s. 108.16 (7) (c) may make a voluntary contribution under par. (a) prior to the 5th calendar year commencing after the date of the most recent such charge. Any voluntary contribution made prior to that year shall be treated as an excess contribution under par. (b).

(d) A payment under this subsection is timely if it is received by the department no later than November 30 following the computation date for the calendar year to which it applies, or if mailed is either postmarked no later than that date or is received by the department no later than 3 days after that date.

(e) The department may refund a voluntary contribution made under par. (a) if, due to an error of the department or an employer, the department makes an adjustment after the computation date or the November voluntary contribution period to the employer's account or payroll used to calculate the employer's reserve percentage that nullifies the rate reduction obtained by the voluntary payment. No refund may be authorized after the close of the calendar year for which the rate changed by the voluntary contribution applied.

(f) Notwithstanding par. (a), the department shall authorize an employer to make a voluntary contribution for the purpose of computing the employer's reserve percentage as of the immediately preceding computation date after the month of November, but in no case later than 120 days after the beginning of the calendar year to which the reserve percentage applies, in an amount sufficient to obtain a contribution rate that was:

1. Nullified by an erroneous charge or credit to the employer's account made by the department; or
2. Increased to a higher contribution rate by an erroneous charge or credit to the employer's account made by the department.

(g) Any payment under par. (f) must be received by the department within 30 days after the date of notice of the rate

change caused by the adjustment and within 120 days after the beginning of the year to which the rate applies.

(h) The department shall establish contributions other than those required by this section and s. 108.19 (1) and contributions other than those submitted during the month of November or authorized under par. (f) as a credit against future contributions payable by the employer or shall refund the contributions at the employer's option.

(8) SOLVENCY CONTRIBUTIONS. Each employer's solvency contribution for each period of a calendar year shall be figured by applying the solvency rate determined for that year under sub. (9) to the employer's payroll for that period, and shall be payable to the fund's balancing account by the due-date of its contribution report.

(9) SOLVENCY RATES. An employer's solvency rate on its payroll for a given calendar year shall be based solely on the contribution rate of its account for the calendar year under this section. For purposes of rate determination under this subsection, an employer's payroll shall be calculated for the 12-month period ending with the computation date preceding the calendar year for which the rate applies. [See Figure 108.18 (9) following]

Figure: 108.18 (9):

Line	Contribution Rate	Solvency Rate	
		Employers having a payroll of less than \$200,000	Employers having a payroll of \$200,000 or more
1	0.27%	0.00%	0.43%
2	0.45%	0.00%	0.60%
3	0.53%	0.00%	0.70%
4	0.72%	0.20%	0.70%
5	0.79%	0.30%	0.80%
6	0.86%	0.40%	0.90%
7	0.97%	0.50%	1.00%
8	1.23%	0.60%	1.00%
9	1.48%	0.70%	1.10%
10	1.82%	0.80%	1.20%
11	2.16%	0.90%	1.30%
12	2.50%	0.90%	1.40%
13	2.70%	0.90%	1.40%
14	2.84%	1.00%	1.50%
15	3.18%	1.10%	1.60%
16	3.57%	1.20%	1.70%
17	5.71%	0.90%	0.90%
18	6.20%	0.90%	0.90%
19	6.70%	0.90%	0.90%
20	7.20%	0.90%	0.90%
21	7.70%	0.90%	0.90%
22	8.20%	0.90%	0.90%
23	8.90%	0.90%	0.90%

(9m) SOLVENCY CONTRIBUTION EXEMPTION. No solvency contribution is required of any employer which qualifies for and elects an alternate contribution rate under sub. (2) (d).

(9s) SPECIAL SOLVENCY RATE DETERMINATION. Notwithstanding sub. (9), an employer which has a payroll of less than \$200,000 for the 12-month period ending on June 30, 1987, shall have no higher solvency rate for the 1989 calendar year as applied to it for the 1988 calendar year.

(9t) SOLVENCY RATE FOR CERTAIN EMPLOYERS. If an employer is assessed a higher contribution rate under sub. (4m)

for any calendar year, the solvency rate for that employer for that calendar year is 0.9%

History: 1971 c. 42, 53, 211; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 12, 52; 1983 a. 8, 27, 99; 1983 a. 189 s. 329 (28); 1983 a. 384; 1985 a. 17, 40, 332; 1987 a. 38 ss. 113 to 121, 134.

NOTE: This section is shown as affected by 1987 Wis. Act 38. See s. 137 (15) of Act 38 for initial applicability of changes made by Act 38.

108.19 Contributions to the administrative account. (1)

Each employer subject to this chapter shall regularly contribute to the administrative account at the rate of two-tenths of one per cent per year on its payroll, except that the department may prescribe at the close of any fiscal year such lower rates of contribution under this section, to apply to classes of employers throughout the ensuing fiscal year, as will in the department's judgment adequately finance the administration of this chapter, and as will in the department's judgment fairly represent the relative cost of the services rendered by the department to each such class.

(1m) Except as provided in sub. (1q) (b), each employer subject to this chapter as of the date a rate is established under this subsection shall pay an assessment to the administrative account at a rate established by the department sufficient to pay interest due on advances from the federal unemployment account under title XII of the social security act (42 USC 1321 to 1324). The rate established by the department for employers who finance benefits under s. 108.15 (2) or 108.151 (2) shall be 75% of the rate established for other employers. The amount of any employer's assessment shall be the product of the rate established for that employer multiplied by the employer's payroll of the previous calendar year as taken from quarterly contribution reports filed by the employer or, in the absence of the filing of such reports, estimates made by the department. Each assessment made under this subsection is due on the 30th day commencing after the date on which notice of the assessment is mailed by the department. Except for amounts deposited under sub. (1q) (b), if the amounts collected under this subsection are in excess of the amounts needed to pay interest due, the amounts shall be retained in the administrative account and utilized for the purposes specified in s. 108.20 (2m).

(1n) The department shall publish as a class 1 notice under ch. 985 any rate established under sub. (1m) within 10 days of the date that the rate is established.

(1p) Notwithstanding sub. (1m), an employer having a payroll of \$25,000 or less for the preceding calendar year is exempt from any assessment under sub. (1m).

(1q) (a) There is created an unemployment interest repayment fund consisting of all amounts assessed under sub. (1m) for the 1987 and 1988 calendar years and all amounts transferred into the fund under 1987 Wisconsin Act 38, section 133.

(b) The department shall deposit all amounts collected under sub. (1m) for the calendar years 1987 and 1988 in the unemployment interest repayment fund. In calendar year 1988, the department may assess a sufficient amount to pay all interest due for calendar years 1988 and 1989 due the federal government on advances from the federal unemployment account under title XII of the social security act (42 USC 1321 to 1324) for calendar years 1988 and 1989.

(c) On September 30, 1989, the department shall transfer the balance in the unemployment interest repayment fund to the unemployment reserve fund.

(d) This subsection does not apply after September 30, 1989.

(2) If the department finds, at any time within a fiscal year for which it has prescribed lower contribution rates to the administrative account than the maximum rate permitted

under sub. (1), that such lower rates will not adequately finance the administration of this chapter or are excessive for that purpose, the department may by general rule prescribe a new schedule of rates in no case exceeding the specified maximum to apply under this section for the balance of the fiscal year.

(2m) Within the limit specified by sub. (1), the department may by rule prescribe at any time as to any period any such rate or rates or schedule as it deems necessary and proper hereunder. Unless thus prescribed, no such rate or rates or schedule shall apply under sub. (1) or (2).

(3) If the federal unemployment tax act is amended to permit a maximum rate of credit against the federal tax higher than the 90% maximum rate of credit permitted under s. 3302 (c) (1) of the internal revenue code on May 23, 1943, to an employer with respect to any state unemployment compensation law whose standard contribution rate on payroll under that law is more than 2.7%, then the standard contribution rate as to all employers under this chapter shall, by a rule of the department, be increased from 2.7% of payroll to that percentage of payroll which corresponds to the higher maximum rate of credit thus permitted against the federal unemployment tax; and such increase shall become effective on the same date as such higher maximum rate of credit becomes permissible under the federal amendment.

(4) If s. 303 (a) (5) of title III of the social security act and s. 3302 (a) (4) of the internal revenue code are amended to permit a state agency to use, in financing administrative expenditures incurred in carrying out its employment security functions, some part of the moneys collected or to be collected under the state unemployment compensation law, in partial or complete substitution for grants under title III, then this chapter shall, by rule of the department, be modified in the manner and to the extent and within the limits necessary to permit such use by the department under this chapter; and the modifications shall become effective on the same date as such use becomes permissible under the federal amendments.

History: 1979 c. 34; 1979 c. 110 s. 60 (13); 1981 c. 315; 1983 a. 8, 27, 384; 1985 a. 29, 332; 1987 a. 27, 38, 403.

Council on Unemployment Compensation Note, 1981: Sub. (1m) allows the department of industry, labor and human relations, in the event that interest comes due on federal advances made to the state's unemployment reserve fund, to levy an assessment on all employers subject to the unemployment compensation act, including those paying unemployment compensation contributions, nonprofit organizations, and government units, for payment of that interest. [Bill 791-S]

108.20 Administrative account. (1) To finance the administration of this chapter and to carry out its provisions and purposes there is established the "administrative account". This account shall consist of all contributions and moneys not otherwise appropriated paid to or transferred by the department for the account under s. 108.19, and of all moneys received for the account by the state or by the department from any source, including all federal moneys allotted or apportioned to the state or the department for the employment service or for administration of this chapter, or for services, facilities or records supplied to any federal agency from the appropriation under s. 20.445 (1) (n). The department shall make to federal agencies such reports as are necessary in connection with or because of such federal aid.

(2) All amounts received by the department for the administrative account shall be paid over to the state treasurer and credited to that account for the administration of this chapter and the employment service, for the payment of benefits chargeable to the account under s. 108.07 (5) and for the purposes specified in sub. (2m).

(2m) From the moneys not appropriated under s. 20.445 (1) (ge) and (gf) which are received by the administrative account as interest and penalties under this chapter, the

department shall pay the benefits chargeable to the account under s. 108.07 (5) and may pay interest due on advances to the unemployment reserve fund from the federal unemployment account under title XII of the social security act, 42 USC 1321 to 1324, may make payments to satisfy a federal audit exception concerning a payment from the fund or any federal aid disallowance involving the unemployment compensation program, or may make payments to the fund if such action is necessary to obtain a lower interest rate or deferral of interest payments on advances from the federal unemployment account under title XII of the social security act, except that any interest earned pending disbursement of federal employment security grants under s. 20.445 (1) (n) shall be credited to the general fund. Any moneys reverting to the administrative account from the appropriations under s. 20.445 (1) (ge) and (gf) shall be utilized as provided in this subsection.

(3) There shall be included in the moneys governed by sub. (2m) any amounts collected by the department under s. 108.04 (11) (c), 108.19 (1) or (2) or 108.22 (1) (a) as tardy filing fees, forfeitures or interest on delinquent payments and any excess moneys collected under s. 108.19 (1m).

(4) Any moneys transferred to the administrative account from the federal administrative financing account pursuant to s. 108.161 shall be expended or restored to that account in accordance with s. 108.161.

(5) If and to the extent that moneys transferred under sub. (4) are unavailable to finance some or all of the capital costs involved in any employment security building project or in constructing office space for use by the department in connection with its employment security operations, the moneys available under sub. (2m) may be used for such financing.

(6) To the extent that moneys available under sub. (2m) are used to finance some or all of the capital costs involved in acquiring employment security office space, there shall be applied to the moneys thus used (the same as if they were moneys credited under s. 108.161) the provisions of s. 108.161 (7), (8), (8m) and (9), except that any resulting credits attributable to the moneys thus used shall be credited under this section.

(7) To the extent that federal grants hereunder, or moneys available under sub. (2m), or both, are used to amortize the capital costs of employment security office quarters in a state office building, s. 108.161 (9) shall apply to the costs and quarters thus amortized, except that any resulting credits shall be allocated according to the funds thus used. When such grants or moneys or both have fully amortized such costs, s. 108.161 (8m) shall apply to such quarters.

(8) As to office space used for employment security purposes in a state building, if and while federal grants for employment security administration do not fully cover the current costs (either gross rent, or operating costs) properly payable by the department to the state with respect to such space, the department may reserve and use the moneys available under sub. (2m) to assure the required payments to the state.

(9) There shall be charged to any moneys available under s. 108.161, until the moneys currently available are fully obligated, any amounts obligated for employment security local office building projects, with any remaining costs of such projects charged to the employment security moneys available under sub. (2m), pursuant to sub. (5).

History: 1973 c. 90 s. 559; 1981 c. 36 ss. 38, 39, 45; 1983 a. 8, 388; 1985 a. 17, 29, 40; 1987 a. 27, 38, 403.

NOTE: This section is shown as affected by 1987 Wis. Acts 27, 38 and 403. See s. 137 (13) of Act 38 for initial applicability of changes in that act.

108.205 Quarterly wage reports. Each employer shall file with the department, in such form as the department by rule requires, a quarterly report showing the name, social security number and wages paid to each employee who is employed by the employer in employment with the employer during the quarter. The employer shall file the report no later than the last day of the month following the completion of each quarter.

History: 1987 a. 38.

NOTE: This section was created by 1987 Wis. Act 38. See s. 137 (16) of Act 38 for initial applicability.

108.21 Record and audit of payrolls. (1) Every employing unit which employs one or more individuals to perform work in this state shall keep a true and accurate work record for each individual employed by it, including full name, address and social security number, that will permit determination of the weekly wages earned by each such individual from it and the wages paid within each quarter to each such individual, and shall furnish to the department upon demand a sworn statement of the information contained in the record. Such record and any other records which may show any wages paid by the employing unit shall be open to inspection by any authorized department representative at any reasonable time.

(2) The findings of any such authorized representative of the department, based on examination of the records of any such employing unit and embodied in an audit report mailed to the employing unit, shall constitute a determination within the meaning of s. 108.10.

(3) If any such employing unit fails to keep adequate work records under this section or fails to file the reports required by this chapter or required by the department under this chapter, the employing unit's contribution liability with respect to the period for which such records are lacking or deficient or for which such reports have not been filed may be estimated by the department in a determination made under s. 108.10.

History: 1987 a. 38.

108.22 Delinquent reports and payments. (1) (a) If any employer, other than an employer which has ceased business and has not paid or incurred a liability to pay wages in any quarter following the cessation of business, is delinquent in making by the assigned due date any contribution report, or other report or payment to the department required of it under this chapter except a wage report or a voluntary contribution, the employer shall pay interest on any delinquent payment at the rate of one percent per month or fraction thereof from the date such payment became due and shall pay a tardy payment fee or filing fee of \$15 for each such delinquent report or payment. If any such employer is delinquent in making any wage report by the assigned due date, the employer shall pay a tardy filing fee for each delinquent wage report as follows:

1. For 1 to 100 employees, \$15.
2. For 101 to 200 employees, \$40.
3. For 201 to 300 employees, \$65.
4. For 301 to 400 employees, \$90.
5. For more than 400 employees, \$115.

(am) The interest and the tardy payment fees and filing fees levied under par. (a) shall be paid to the department and credited to the administrative account.

(b) If the due date of a report or payment under s. 108.16 (8), 108.17 (2) or 108.205 would otherwise be a Saturday, Sunday or legal holiday under state or federal law, the due date is the next following day which is not a Saturday, Sunday or legal holiday under state or federal law.

(c) Any report or payment, except a payment required by s. 108.15 (5) (b) or 108.151 (5) (f), to which this subsection applies is delinquent, within the meaning of par. (a), unless it is received by the department no later than its due date as determined under par. (b), or if mailed is either postmarked no later than that due date or is received by the department no later than 3 days after that due date. Any payment required by s. 108.15 (5) (b) or 108.151 (5) (f) is delinquent, within the meaning of par. (a), unless it is received by the department no later than its due date.

(d) The tardy payment fee or filing fee may be waived by the department if the employer later files the required report or makes the required payment and satisfies the department that the report or payment was tardy due to circumstances beyond the employer's control.

(2) (a) If any employer fails to pay to the department any amount found to be due it in proceedings pursuant to s. 108.10, provided that no appeal or review permitted by said section is pending and that the time for taking an appeal or review has expired, the department or any duly authorized representative may issue a warrant directed to the sheriff of any county of the state, commanding him to levy upon and sell sufficient of the real and personal property which may be found within his county of the employer who has defaulted in the payment of any amount thus found to be due to pay such amount, together with interest and costs and other fees, and to proceed upon the same in all respects and in the same manner as upon an execution against property issued out of a court of record, and to return such warrant to the department and pay to it the money collected by virtue thereof within 60 days after the receipt of such warrant. The sheriff shall, within 5 days after the receipt of the warrant, file with the clerk of the circuit court of his county a copy thereof, unless the employer shall make satisfactory arrangements for the payment thereof with the department, in which case the sheriff shall at the direction of the department return such warrant to it. The clerk shall enter in the judgment docket the name of the employer mentioned in the warrant and the amount of the contributions, interest, costs and other fees for which the warrant is issued and the date when such copy is filed. Thereupon the warrant so docketed shall be considered in all respects as a final judgment creating a perfected lien upon the employer's right, title and interest in all of his real and personal property located in the county wherein the warrant is docketed.

(b) The clerk of circuit court shall accept, file and docket the warrant without prepayment of any fee, but the clerk shall submit a statement of the proper fee semiannually to the department covering the periods from January 1 to June 30 and July 1 to December 31 unless a different billing period is agreed to between the clerk and the department. The fees shall then be paid by the department, but the fees provided by s. 814.61 (5) for filing and docketing the warrants shall be added to the amount of the warrant and collected from the employer when satisfaction or release is presented for entry.

(3) In the discretion of the department, a warrant of like terms, force and effect may be issued and directed to any employe or other agent of the department, who may file a copy of such warrant with the clerk of circuit court of any county in the state, and thereupon such clerk shall docket the warrant and it shall become a lien in the same manner, and with the same force and effect as provided in sub. (2) with respect to a warrant issued and directed to and filed by a sheriff. In the execution thereof the employe or other agent shall have all the powers conferred by law upon a sheriff, but shall not be entitled to collect from the employer any fee or

charge for the execution of such warrant in excess of the actual expenses paid in the performance of his or her duty.

(4) If a warrant be returned not satisfied in full, the department shall have the same remedies to enforce the amount due for contributions, interest, and costs and other fees as if the department had recovered judgment against the employer for the same and an execution returned wholly or partially not satisfied.

(5) When the contributions set forth in a warrant together with interest and other fees to date of payment and all costs due the department have been paid to it, the department shall issue a satisfaction of the warrant and file it with the clerk of circuit court. The clerk shall immediately make a record on the judgment docket of the satisfaction of the judgment. The department shall send a copy of the satisfaction to the employer.

(6) The department, if it finds that the interests of the state will not thereby be jeopardized, and upon such conditions as it may exact, may issue a release of any warrant with respect to any real or personal property upon which the warrant is a lien or cloud upon title, and such release shall be entered of record by the clerk upon presentation to the clerk and payment of the fee for filing said release and the same shall be held conclusive that the lien or cloud upon the title of the property covered by the release is extinguished.

(7) At any time after the filing of a warrant, the department may commence and maintain a garnishee action as provided by ch. 812 or may use the remedy of attachment as provided by ch. 811 for actions to enforce a judgment. The place of trial of such an action may be either in Dane county or the county where the debtor resides and shall not be changed from the county in which such action is commenced, except upon consent of the parties.

(8) (a) In case benefits have been erroneously paid to an individual, the individual's liability to reimburse the fund for such overpayment may be set forth in a determination or decision issued under s. 108.09.

(b) To recover any overpayment which is not otherwise repaid or recovery of which has not been waived, the department may offset the amount of the overpayment against benefits the individual would otherwise be eligible to receive, or file a warrant against the liable individual in the same manner as is provided in this section for collecting delinquent payments from employers, or both, but only to the extent of recovering the actual amount of the overpayment and any costs and disbursements, without interest.

(8m) If the department issues an erroneous warrant, the department shall issue a notice of withdrawal of the warrant to the clerk of circuit court for the county in which the warrant is filed. The clerk shall void the warrant and any liens attached by it.

(9) Any officer or any employe holding at least 20% of the ownership interest of a corporation subject to this chapter, who has control or supervision of or responsibility for filing contribution reports or making payment of contributions, and who wilfully fails to file such reports or to make such payments to the department, may be found personally liable for such amounts, including interest, tardy payment or filing fees, costs and other fees, in the event that after proper proceedings for the collection of such amounts, as provided in this chapter, the corporation is unable to pay such amounts to the department. The personal liability of such officer or employe as provided in this subsection survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the corporation and

shall be set forth in a determination or decision issued under s. 108.10.

History: 1973 c. 247; Sup. Ct. Order, 67 W (2d) 774; 1975 c. 343; 1979 c. 52; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38.

NOTE: This section is shown as affected by 1987 Wis. Act 38. See s. 137 (16) of that act for initial applicability of changes made by Act 38.

Only department may waive collection of overpayment. *Topp v. LIRC*, 133 W (2d) 422, 395 NW (2d) 815 (Ct. App. 1986).

Unemployment compensation warrants may be docketed by clerk of circuit court prior to issuance of sheriff for levy purposes. 61 Atty. Gen. 148.

Department has discretion whether to seek recovery of overpayments due to department's error. 67 Atty. Gen. 228.

108.23 Preference of required payments. In the event of an employer's dissolution, reorganization, bankruptcy, receivership, assignment for benefit of creditors, judicially confirmed extension proposal or composition, or any analogous situation including the administration of estates in circuit courts, the payments required of the employer under this chapter shall have preference over all claims of general creditors and shall be paid next after the payment of preferred claims for wages. If the employer is indebted to the federal government for taxes due under the federal unemployment tax act and a claim for the taxes has been duly filed, the amount of contributions which should be paid to allow the employer the maximum offset against the taxes shall have preference over preferred claims for wages and shall be on a par with debts due the United States, if by establishing the preference the offset against the federal tax can be secured under s. 3302 (a) (3) of the federal unemployment tax act.

History: 1977 c. 449.

108.24 Penalties. (1) Any person who knowingly makes a false statement or representation to obtain any benefit payment under this chapter, either for himself or herself or for any other person, shall be fined not less than \$100 nor more than \$500 or imprisoned not more than 90 days, or both; and each such false statement or representation constitutes a separate offense.

(2) Any person who knowingly makes a false statement or representation in connection with any report or as to any information duly required by the department under this chapter, or who knowingly refuses or fails to keep any records or to furnish any reports or information duly required by the department under this chapter, shall be fined not less than \$100 nor more than \$500, or imprisoned not more than 90 days or both; and each such false statement or representation and every day of such refusal or failure constitutes a separate offense.

(3) Any person who makes a deduction from the wages of an employe because of liability for contributions or payments in lieu of contributions under this chapter or because of the employe's potential right to benefits, or who knowingly refuses or fails to furnish to an employe any notice, report or information duly required under this chapter by the department to be furnished to such employe, or who, directly or indirectly by promise of reemployment or by threat not to employ or not to reemploy or by any other means, attempts to induce an employe to refrain from claiming or accepting benefits or to waive any other right under this chapter, or whose rehiring policy has discriminated against a former employe by reason of their having claimed benefits, shall be fined not less than \$100 nor more than \$500 or imprisoned not more than 90 days, or both; and each such deduction from wages, every day of such refusal or failure, and each such attempt to induce constitutes a separate offense.

History: 1973 c. 247; 1983 a. 8.

108.26 Saving clause. The legislature reserves the right to amend or repeal all or any part of this chapter at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.