(D NOTE)

State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3069/6 7
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Stays

Wed 10/7 - AM

2009 BILL

SAV

(regenerate)

AN ACT ~~*to repeal* 108.02 (12) (b), 108.02 (18m)~~, 108.02 (25e), 108.161 (3e) and 108.20 (18m); ***to renumber*** 108.02 (12) (bm) 5. and 108.02 (12) (bm) 8. and 9.; ***to renumber and amend*** 108.02 (12) (bm) 3. and 4., 108.02 (12) (bm) 6. and 7., 108.02 (12) (bm) 10., 108.02 (12) (c) 1., 108.22 (8) (b) 1. and 108.24 (3); ***to amend*** 20.445 (1) (n), 20.445 (1) (ne), 108.02 (12) (a), 108.02 (12) (bm) (intro.), 108.02 (12) (c) (intro.), 108.02 (12) (c) 2., 108.02 (15) (f) 3., 108.02 (15) (f) 6., 108.02 (15) (g) 1., 108.02 (15) (k) 19. b., 108.02 (15) (k) 20. b., 108.02 (21e) (intro.), 108.04 (7) (k), 108.04 (7) (o), 108.04 (11) (be) (intro.), 108.05 (3) (b) 1. a., b. and c., 108.05 (7) (c), 108.09 (2) (bm), 108.09 (4s), 108.10 (4), 108.16 (10), 108.161 (3), 108.161 (4) (intro.), 108.18 (7) (d), 108.19 (1m) and 108.20 (3); ***to repeal and recreate*** 108.02 (12) (bm) 1. and 2.; and ***to create*** 108.02 (12) (c) 1. a. to e., 108.02 (15) (k) 21., 108.02 (15s), 108.02 (20m), 108.05 (3) (e), 108.05 (7) (cn), 108.16 (6) (L) and (m), 108.16 (6m) (g), 108.161 (4m), 108.22 (8) (b) 1.

1 c. and d. and 108.24 (3) (a) 4. of the statutes; **relating to:** various changes in
2 the unemployment insurance law and providing a penalty.

Analysis by the Legislative Reference Bureau

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

BENEFIT CHANGES

Disqualification for full-time work

Currently, if a claimant receives wages or certain other amounts treated as wages from an employer who paid at least 80 percent of the claimant's wages in his or her base period (period preceding a claim during which benefit rights accrue) for any week, the claimant is not eligible to receive benefits for that week if the claimant works for at least 35 hours for that employer in that week and receives pay at not less than the rate of pay that the claimant received during the calendar quarter in his or her base period in which the claimant received his or her highest wages, or the claimant receives certain other payments from that employer for that week that alone or in combination with any paid wages equal at least the pay the claimant would have received for 35 hours of work.

This bill provides that a claimant is subject to this disqualifier for any week if the claimant receives wages or certain other amounts treated as wages from such an employer for full-time work for that week. The bill defines "full-time work" as work performed for 32 or more hours per week.

Employee status

Currently, in order to be eligible to claim benefits, an individual must, in addition to other requirements, be an "employee" as defined in the UI law. Generally, an "employee" is an individual who performs services for an employer in employment covered by the UI law, whether or not the individual is paid directly by the employer. However, an individual is not an "employee" if the individual performs services as an independent contractor. Except in the case of a logger or trucker performing services for an employer other than a governmental or nonprofit employer, to be considered an independent contractor, an individual must meet at least seven of ten conditions by contract and in fact concerning the individual's relationship to or direction or control over his or her business or the services that he or she performs.

This bill places an individual who is a logger or trucker performing services for an employer other than a governmental or nonprofit employer under the same test for determining employee status as other individuals. The bill also changes the test for determining employee status so that, instead of meeting at least seven of ten specified conditions by contract and in fact, an excluded individual must, by contract and in fact, perform services free from control or direction and must meet at least six of nine specified conditions. Some of the conditions specified in the bill are the same as those currently provided while others are changed from those currently provided.

Voluntary termination of work

Currently, if an employee voluntarily terminates his or her work with an employer, the employee is generally ineligible to receive benefits until four weeks have elapsed since the end of the week in which the termination occurs and the employee earns wages after the week in which the termination occurs equal to at least four times the employee's weekly benefit rate in employment covered by the unemployment insurance law of any state or the federal government. However, an employee may terminate his or her work and receive benefits without requalifying under this provision if the employee terminates his or her work with good cause attributable to his or her employer. In addition, an employee may voluntarily terminate his or her work and receive benefits without requalifying under this provision if: a) the work is part-time work consisting of not more than 30 hours per week and the employee is otherwise eligible to receive benefits because of the loss of the employee's full-time work and the loss of the full-time work makes it economically unfeasible to continue his or her part-time work; or b) the employee terminates his or her work in one of two or more concurrently held positions at least one of which consists of more than 30 hours per week, if the employee terminates his or her work before receiving notice of termination from a position which consists of more than 30 hours per week.

This bill changes the above exceptions so that an employee may receive benefits without requalifying if, under a), the work from which the employee terminates is part-time work; or, under b), the work from which the employee terminates is full-time work and the termination occurs prior to receiving notice of termination from full-time work. The bill defines "full-time work" as work consisting of 32 or more hours per week and "part-time work" as work consisting of less than 32 hours per week.

Benefit reductions due to certain loan defaults

JWS 3A

Currently, with certain exceptions and limitations, if a claimant receives a pension, retirement, annuity, or other similar payment based on the previous work of the claimant for a given week, DWD must reduce the claimant's UI benefits otherwise payable for that week, but not below zero, by an amount equal to not more than the amount of the payment received for that week. The actual amount of the reduction depends upon the facts of the particular situation.

JWS 3B

This bill provides that DWD shall not reduce a claimant's benefits if the claimant, at least 90 days before a termination of employment, contracts for a loan under a pension plan to which the claimant contributed and the claimant effectively receives payments that result from the claimant's partial or total failure to maintain repayment of the loan according to its terms after the termination of employment.

Treatment of bonus and profit-sharing payments

Currently, with certain exceptions, if a claimant earns wages in a given week in employment covered by the UI law, the first $30 of the wages are disregarded and the claimant's weekly benefit payment is reduced by 67 percent of the remaining amount of wages earned. Whether a bonus or profit-sharing payment is earned in the same week in which it is paid depends upon the particular facts of a given situation.

This bill provides that for purposes of benefits to which a claimant may be entitled for partial unemployment, a bonus or profit-sharing payment is always considered to be earned in the week in which the bonus or payment is paid by the claimant's employer.

TAX CHANGES

OTHER CHANGES

Coverage of personal care services performed for family members

Currently, individuals providing personal care or companionship services to ill or disabled individuals are generally covered under the UI law. This bill eliminates coverage for personal care or companionship services performed by an individual for an ill or disabled family member of the individual who directly employs the individual providing the services. Under the bill, "family member" means a spouse, parent, child, grandparent, or grandchild of an individual, by blood or adoption, or an individual's step parent, step child, or domestic partner. Under the bill, an individual who employs a family member to perform these services is no longer subject to a contribution requirement (a requirement to pay taxes) based upon these services, and a claimant is no longer eligible to claim benefits based upon the performance of these services.

Use of surplus assessment revenues

Currently, when this state obtains a loan from the federal government to maintain the solvency of the unemployment reserve fund, from which benefits are paid, most employers must pay an assessment to cover the cost of any interest payments due on the loan. If the amounts collected from the assessment are more than is needed to pay the interest due, the amounts are retained in the administrative account of the fund, and may be used for a variety of purposes, including administration of the UI program, research relating to the condition of the fund, and the payment of certain benefits.

This bill provides instead that excess revenues shall be credited to the balancing account of the fund, which is used to pay benefits that are not chargeable to any employer's account. The effect is to enhance the balance of the fund, which decreases the need for future borrowing and assessments to maintain the fund's solvency.

Unlawful discrimination and retaliation

Currently, it is unlawful for any person to: a) make a deduction from the wages of an employee to finance an employer's actual or potential UI costs; b) knowingly fail to furnish to an employee any required UI information; c) attempt to induce an employee not to claim UI benefits or to waive any other right under the UI law; or d) maintain a rehiring policy that discriminates against employees who claim benefits. Violators are guilty of a misdemeanor and are subject to a fine of not less than $100 nor more than $500 or imprisoned for not more than 90 days or both for each occurrence.

This bill also makes it unlawful to: a) attempt to induce an employee not to claim benefits or waive any right under the UI law by threatening to terminate the employee; b) attempt to induce an employee from participating in a UI audit or

investigation, or testifying in a UI hearing, or c) discriminate against an individual because of the individual's participation in a UI audit or investigation, or testifying in a UI hearing or exercising any other right under the UI law. The bill also increases the maximum fine for all current and proposed offenses to ~~$2,000~~ $1,000 for each occurrence.

Recovery of UI liabilities by offset and setoff

Currently, if benefits are erroneously paid to an individual, the issue may be adjudicated administratively, subject to appeal through the court system. DWD may then collect the amount of the overpayment set forth in an administrative decision by deducting that amount from benefits otherwise payable to the individual. DWD may also levy against the available assets of any individual or employer who is determined to be liable to DWD for UI purposes. Currently, with certain exceptions, moneys withdrawn from the unemployment reserve fund may only be used for the payment of benefits.

This bill permits DWD to utilize procedures available under state and federal revenue laws to set off adjudicated UI liabilities against refunds or other payments that may be payable to a liable individual under state law or to offset adjudicated UI liabilities for fraudulent practices against refunds that may be payable to a liable individual under federal tax laws. The bill also permits DWD to pay the administrative expenses of the federal offsets from the unemployment reserve fund. The change initially applies to satisfaction of liabilities outstanding on the day the bill becomes law.

Deadline for making voluntary contributions

Currently, an employer may pay contributions (taxes) before they become due. If an employer makes a voluntary contribution by November 30 of any year, it is credited to the employer's account as of June 30 of that year and it may therefore have the effect of lowering the employer's contribution rate for the succeeding year. Currently, a voluntary contribution is timely if it is received by DWD no later than its due date or, if mailed, is either postmarked by that date or is received by DWD no later than three days after that date.

This bill provides that to be considered timely, a voluntary contribution must be received by DWD no later than its due date.

Exclusion of certain tribal employment from coverage

Currently, federal and state law generally provide for UI coverage in employment by Indian tribes. Federal law does not mandate coverage for any of the following types of positions with an Indian tribe: a) members of a legislative body; b) major nontenured policymaking or advisory positions; c) certain part-time policymaking or advisory positions; or d) certain work relief or work training positions.

This bill excludes employment in these positions from coverage under the state UI law unless an employer elects otherwise with DWD's approval. Under the bill, a position as a member of a legislative body is excluded only if the position is elective. Noncoverage means that an employee may not claim benefits based upon this type of employment and the employee's employer is not liable to pay for those benefits.

Penalty for acts of concealment

Current law provides that a claimant who conceals any material fact relating to his or her benefit eligibility or who conceals any of his or her wages earned in or paid or payable for a given week must forfeit a specified amount. The penalty increases for subsequent offenses within a specified period. A claimant who conceals wages is also denied benefits for the week in which wages are concealed.

This bill deletes additional language providing that any claimant who commits an act of concealment is disqualified from receiving benefits for an unspecified period.

Appeals of LIRC decisions

Current law provides that when an employer wishes to appeal a UI decision made by the Labor and Industry Review Commission (LIRC) to circuit court, LIRC and the adverse party must be named as defendants.

This bill clarifies that in addition to any other parties to any particular appeal DWD is always an adverse party for purposes of UI appeals brought by employers to address issues other than benefit claims and DWD must be named as a defendant. This permits DWD to have notice of the appeal and to participate in the court proceedings and avoids any potential dismissal of an employer's appeal for failure to name DWD as a defendant.

Qualification of professional employer organizations

Currently, an employer may transfer its obligations to pay UI contributions or reimbursements to a professional employer organization that meets certain conditions specified by law. Professional employer organizations are separately required to register with the Department of Regulation and Licensing (DRL), pay an annual registration fee, and meet certain financial responsibility requirements.

This bill provides that a professional employer organization does not qualify as such for UI purposes unless it is currently registered with DRL.

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

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

1 **SECTION 1.** 20.445 (1) (n) of the statutes, as affected by 2009 Wisconsin Act 28,
2 section 519a, is amended to read:
3 20.445 **(1)** (n) *Employment assistance and unemployment insurance*
4 *administration; federal moneys.* All federal moneys received, as authorized by the
5 governor under s. 16.54, for the administration of employment assistance and

unemployment insurance programs of the department, for the performance of the department's other functions under subch. I of ch. 106 and ch. 108 and to pay the compensation and expenses of appeal tribunals and of employment councils appointed under s. 108.14, to be used for such purposes, ~~except as provided in s. 108.161 (3e),~~ and, from the moneys received by this state under section 903 (d) of the federal Social Security Act, as amended, to transfer to the appropriation account under par. (nb) an amount determined by the treasurer of the unemployment reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the amounts in the schedule under par. (nb), to transfer to the appropriation account under par. (nd) an amount determined by the treasurer of the unemployment reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the amounts in the schedule under par. (nd), and to transfer to the appropriation account under par. (ne) an amount not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the sum of the amounts in the schedule under par. (ne) and the amount determined by the treasurer of the unemployment reserve fund that is required to pay for the cost of banking services incurred by the unemployment reserve fund.

SECTION 2. 20.445 (1) (ne) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

20.445 **(1)** (ne) *Unemployment insurance administration and bank service costs.* From the moneys received by this state under section 903 (d) of the federal Social Security Act, as amended, all moneys transferred from the appropriation account under par. (n) to be used for the administration of unemployment insurance and for the payment of the cost of banking services incurred by the unemployment reserve fund. No moneys may be expended from this appropriation unless the

treasurer of the unemployment reserve fund determines that such expenditure is currently needed for the purpose specified in this paragraph.

SECTION 3. 108.02 (12) (a) of the statutes is amended to read:

108.02 **(12)** (a) "Employee" means any individual who is or has been performing services for pay for an employing unit, whether or not the individual is paid directly by the employing unit, except as provided in par. ~~(b),~~ (bm), (c), (d), (dm) or (dn).

SECTION 4. 108.02 (12) (b) of the statutes is repealed.

SECTION 5. 108.02 (12) (bm) (intro.) of the statutes is amended to read:

108.02 **(12)** (bm) (intro.) ~~During the period beginning on January 1, 2000, with respect to contribution requirements, and during the period beginning on April 2, 2000, with respect to benefit eligibility, par.~~ Paragraph (a) does not apply to an individual performing services for an employing unit other than a government unit or nonprofit organization ~~in a capacity other than as a logger or trucker~~, if the employing unit satisfies the department that the individual meets ~~7 or more of~~ the ~~following~~ conditions specified in subds. 1. and 2., by contract and ~~in~~ fact:

SECTION 6. 108.02 (12) (bm) 1. and 2. of the statutes are repealed and recreated to read:

108.02 **(12)** (bm) 1. The services of the individual are performed free from control or direction by the employing unit over the performance of his or her services. In determining whether services of an individual are performed free from control or direction, the department may consider the following nonexclusive factors:

a. Whether the individual is required to comply with instructions concerning how to perform the services.

b. Whether the individual receives training from the employing unit with respect to the services performed.

c. Whether the individual is required to personally perform the services.

d. Whether the services of the individual are required to be performed at times or in a particular order or sequence established by the employing unit.

e. Whether the individual is required to make oral or written reports to the employing unit on a regular basis.

2. The individual meets 6 or more of the following conditions:

a. The individual advertises or otherwise affirmatively holds himself or herself out as being in business.

SECTION 7. 108.02 (12) (bm) 3. and 4. of the statutes are renumbered 108.02 (12) (bm) 2. b. and c. and amended to read:

108.02 **(12)** (bm) 2. b. The individual maintains ~~a separate business with~~ his or her own office~~,~~ or performs most of the services in a facility or location chosen by the individual and uses his or her own equipment~~,~~ or materials ~~and other facilities~~ in performing the services.

c. The individual operates under multiple contracts with one or more employing units to perform specific services ~~for specific amounts of money and under which the individual controls the means and methods of performing such services~~.

SECTION 8. 108.02 (12) (bm) 5. of the statutes is renumbered 108.02 (12) (bm) 2. d.

SECTION 9. 108.02 (12) (bm) 6. and 7. of the statutes are renumbered 108.02 (12) (bm) 2. e. and f. and amended to read:

108.02 **(12)** (bm) 2. e. The individual is ~~responsible for the satisfactory completion of the services that he or she contracts to perform and is liable for a failure to satisfactorily complete the services~~ obligated to redo unsatisfactory work for no additional compensation or is subject to a monetary penalty for unsatisfactory work.

1 f. The services performed by the individual ~~receives compensation for services~~
2 ~~performed under a contract on a commission or per-job or competitive-bid basis and~~
3 ~~not on any other basis~~ do not directly relate to the activities conducted by the employing unit retaining the
4 services.

5 **SECTION 10.** 108.02 (12) (bm) 8. and 9. of the statutes are renumbered 108.02
6 (12) (bm) 2. g. and h.

7 **SECTION 11.** 108.02 (12) (bm) 10. of the statutes is renumbered 108.02 (12) (bm)
8 2. i. and amended to read:

9 108.02 **(12)** (bm) 2. i. The ~~success or failure of the individual's business depends~~
10 ~~on the relationship of business receipts to expenditures~~ individual is not
11 economically dependent upon a particular employing unit with respect to the
12 services being performed.

13 **SECTION 12.** 108.02 (12) (c) (intro.) of the statutes is amended to read:

14 108.02 **(12)** (c) (intro.) Paragraph (a) does not apply to an individual performing
15 services for a government unit or nonprofit organization~~, or for any other employing~~
16 ~~unit in a capacity as a logger or trucker~~ if the employing unit satisfies the department
17 that the individual meets the conditions specified in subds. 1. and 2.:

18 **SECTION 13.** 108.02 (12) (c) 1. of the statutes is renumbered 108.02 (12) (c) 1.
19 (intro.) and amended to read:

20 108.02 **(12)** (c) 1. (intro.) ~~That such~~ The services of the individual ~~has been and~~
21 ~~will continue to be~~ are performed free from ~~the employing unit's~~ control or direction
22 by the employing unit over the performance of his or her services both under his or
23 her contract and in fact~~; and~~. In determining whether services of an individual are
24 performed free from control or direction, the department may consider the following
25 nonexclusive factors:

1 **SECTION 14.** 108.02 (12) (c) 1. a. to e. of the statutes are created to read:
2 108.02 **(12)** (c) 1. a. Whether the individual is required to comply with
3 instructions concerning how to perform the services.
4 b. Whether the individual receives training from the employing unit with
5 respect to the services performed.
6 c. Whether the individual is required to personally perform the services.
7 d. Whether the services of the individual are required to be performed at times
8 or in a particular order or sequence established by the employing unit.
9 e. Whether the individual is required to make oral or written reports to the
10 employing unit on a regular basis.
11 **SECTION 15.** 108.02 (12) (c) 2. of the statutes is amended to read:
12 108.02 **(12)** (c) 2. ~~That such~~ The services ~~have been~~ of the individual are
13 performed in an independently established trade, business or profession in which the
14 individual ~~is customarily~~ engaged.
15 **SECTION 16.** 108.02 (15) (f) 3. of the statutes is amended to read:
16 108.02 **(15)** (f) 3. As a member of a legislative body or the judiciary of a state
17 or political subdivision, or as a member of an elective legislative body or the judiciary
18 of an Indian tribe;
19 **SECTION 17.** 108.02 (15) (f) 6. of the statutes is amended to read:
20 108.02 **(15)** (f) 6. In a position which, under or pursuant to the laws of this state,
21 or of an Indian tribe, is designated as a major nontenured policymaking or advisory
22 position, or is designated as a policymaking or advisory position the performance of
23 the duties of which does not ordinarily require more than 8 hours per week.
24 **SECTION 18.** 108.02 (15) (g) 1. of the statutes is amended to read:

108.02 **(15)** (g) 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 by an agency of a state or political subdivision thereof or by an Indian tribe, unless otherwise required as a condition for participation by the unit or organization in such program;

SECTION 19. 108.02 (15) (k) 19. b. of the statutes is amended to read:

108.02 **(15)** (k) 19. b. The individual has been paid or is treated as having been paid wages or other remuneration of $500 or more during his or her base period for services performed for at least one employer other than the seasonal employer that is subject to the unemployment insurance law of any state or the federal government; or

SECTION 20. 108.02 (15) (k) 20. b. of the statutes is amended to read:

108.02 **(15)** (k) 20. b. Respiratory care service for ventilator-dependent individuals authorized under s. 49.46 (2) (b) 6. m., for which medical assistance reimbursement is available as a covered service, provided by an individual who is certified by the department of health services under s. 49.45 (2) (a) 11. as a provider of respiratory care services in independent practice.; or

SECTION 21. 108.02 (15) (k) 21. of the statutes is created to read:

108.02 **(15)** (k) 21. Provided by an individual to an ill or disabled family member who is the employing unit for such service, if the service is personal care or companionship. For purposes of this subdivision, "family member" means a spouse, parent, child, grandparent, or grandchild of an individual, by blood or adoption, or an individual's step parent, step child, or domestic partner. For purposes of this subdivision, "domestic partner" has the meaning given in s. 770.01 (1).

SECTION 22. 108.02 (15s) of the statutes is created to read:

108.02 **(15s)** FULL-TIME WORK. "Full-time work" means work performed for 32 or more hours per week.

~~**SECTION 23.** 108.02 (18m) of the statutes is repealed.~~

SECTION 24. 108.02 (20m) of the statutes is created to read:

108.02 **(20m)** PART-TIME WORK. "Part-time work" means work performed for less than 32 hours per week.

SECTION 25. 108.02 (21e) (intro.) of the statutes is amended to read:

108.02 **(21e)** PROFESSIONAL EMPLOYER ORGANIZATION. (intro.) "Professional employer organization" means any person who is currently registered as a professional employer organization with the department of regulation and licensing in accordance with ch. 461, who contracts to provide the nontemporary, ongoing employee workforce of more than one client under a written leasing contract, the majority of whose clients are not under the same ownership, management, or control as the person other than through the terms of the contract, and who under contract and in fact:

~~**SECTION 26.** 108.02 (25e) of the statutes is repealed.~~

SECTION 27. 108.04 (7) (k) of the statutes is amended to read:

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

SECTION 28. 108.04 (7) (o) of the statutes is amended to read:

108.04 **(7)** (o) Paragraph (a) does not apply to an employee who terminates his or her work in one of 2 or more concurrently held positions, at least one of which

1 ~~consists of more than 30 hours per week~~ is full-time work, if the employee terminates
2 his or her work before receiving notice of termination from a position which ~~consists~~
3 ~~of more than 30 hours per week~~ is full-time work.

4 **SECTION 29.** 108.04 (11) (be) (intro.) of the statutes is amended to read:

5 108.04 **(11)** (be) (intro.) A claimant shall forfeit benefits ~~and be disqualified~~
6 ~~from receiving benefits~~ for acts of concealment described in pars. (a) and (b) as
7 follows:

8 **SECTION 30.** 108.05 (3) (b) 1. a., b. and c. of the statutes are amended to read:

9 108.05 **(3)** (b) 1. a. The claimant works full time for that employer ~~at least 35~~
10 ~~hours~~ in that week at the same or a greater rate of pay, excluding bonuses, incentives,
11 overtime or any other supplement to the earnings, as the claimant was paid by that
12 employer in that quarter of the claimant's base period in which the claimant was paid
13 his or her highest wages;

14 b. The claimant receives from that employer sick pay, holiday pay, vacation pay
15 or termination pay which, by itself or in combination with wages earned for work
16 performed in that week for that employer, is equivalent to pay for ~~at least 35 hours~~
17 ~~of~~ full-time work at that same or a greater rate of pay; or

18 c. The amount that the claimant would have earned within that week from that
19 employer in available work under s. 108.04 (1) (a) which is treated as wages under
20 s. 108.04 (1) (bm), by itself or in combination with the wages earned for work
21 performed in that week for that employer and the pay received under subd. 1. b., is
22 equivalent to pay for ~~at least 35 hours of~~ full-time work at that same or a greater rate
23 of pay.

24 **SECTION 31.** 108.05 (3) (e) of the statutes is created to read:

108.05 **(3)** (e) For purposes of this subsection, a bonus or profit-sharing payment is considered to be earned in the week in which the bonus or payment is paid by the employer. A bonus or profit-sharing payment is considered to be paid on the date of the check if payment is made by check, on the date of direct deposit by the employer at a financial institution if payment is deposited by the employer to an employee's account at a financial institution, or on the date that the bonus or payment is received by the employee if any other method of payment is used.

TWS 15-7

SECTION 32. 108.05 (7) (c) of the statutes is amended to read:

108.05 **(7)** (c) *Required benefit reduction.* Except as provided in ~~par.~~ pars. (cm) and (cn), if a claimant actually or constructively receives a pension payment, the department shall reduce benefits otherwise payable to the claimant for a week of partial or total unemployment, but not below zero, if pars. (d) and (e) or if pars. (d) and (f) apply.

SECTION 33. 108.05 (7) (cn) of the statutes is created to read:

108.05 **(7)** (cn) *Pension plan loans.* The department shall not reduce benefits otherwise payable to a claimant if the claimant, at least 90 days before termination of his or her employment, contracts for a loan from a plan to which the claimant contributed that has entitled or will entitle the claimant to receive pension payments and the claimant receives pension payments that result from the claimant's partial or total failure to maintain repayment of the loan according to its terms after the termination of employment.

SECTION 34. 108.09 (2) (bm) of the statutes is amended to read:

108.09 **(2)** (bm) In determining whether an individual meets the conditions specified in s. 108.02 (12) ~~(b) 2. a. or b., (bm) 3. or 4.,~~ 2. b. or c. or ~~(c) 1.,~~ the department

shall not consider documents granting operating authority or licenses, or any state or federal laws or federal regulations granting such authority or licenses.

SECTION 35. 108.09 (4s) of the statutes is amended to read:

108.09 **(4s)** EMPLOYEE STATUS. In determining whether an individual meets the conditions specified in s. 108.02 (12) ~~(b) 2. a. or b.,~~ (bm) ~~3. or 4.,~~ 2. b. or c. ~~or~~ (c) 1., the appeal tribunal shall not take administrative notice of or admit into evidence documents granting operating authority or licenses, or any state or federal laws or federal regulations granting such authority or licenses.

SECTION 36. 108.10 (4) of the statutes is amended to read:

108.10 **(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). In an action commenced by an employing unit under this section, the department shall be an adverse party under s. 102.23 (1) (a) and shall be named as a party in the complaint commencing the action.

SECTION 37. 108.16 (6) (L) and (m) of the statutes are created to read:

108.16 **(6)** (L) The amount of any overpayments that are recovered by the department by offset pursuant to section 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009, or a similar federal program or by setoff pursuant to s. 71.93 or the amount of any overpayments resulting from fraud that are recovered by the department by setoff pursuant to s. 71.93.

(m) Any amounts collected from assessments levied under s. 108.19 (1m) exceeding the amounts needed to pay interest due on advances from the federal

unemployment account under title XII of the Social Security Act (42 USC 1321 to 1324).

SECTION 38. 108.16 (6m) (g) of the statutes is created to read:

108.16 **(6m)** (g) Any payments of fees or expenses assessed by the U.S. secretary of the treasury under section 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009, or a similar federal program.

SECTION 39. 108.16 (10) of the statutes is amended to read:

108.16 **(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, and for payment of fees and expenses for collection of overpayments resulting from fraud that are ~~assessed~~ by the U.S. secretary of the treasury under section 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009, or a similar federal program.

SECTION 40. 108.161 (3) of the statutes is amended to read:

108.161 **(3)** ~~Consistently with~~ Except as otherwise provided in this chapter and said section 903, such moneys shall be used solely for benefits or employment security administration by the department, including unemployment insurance, employment service, apprenticeship programs, and related statistical operations.

SECTION 41. 108.161 (3e) of the statutes is repealed.

SECTION 42. 108.161 (4) (intro.) of the statutes is amended to read:

108.161 **(4)** (intro.) ~~Such~~ Except as provided in sub. (4m), 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:

SECTION 43. 108.161 (4m) of the statutes is created to read:

108.161 **(4m)** Subsection (4) does not apply to the moneys received by this state under section 903 (g) of the federal Social Security Act.

SECTION 44. 108.18 (7) (d) of the statutes is amended to read:

108.18 **(7)** (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~~.

SECTION 45. 108.19 (1m) of the statutes is amended to read:

108.19 **(1m)** 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), 108.151 (2), or 108.152 (1) 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 employment and wage reports filed by the employer under s. 108.205 (1) 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. If the amounts collected under this subsection are in excess of the amounts needed to pay interest

due, the ~~amounts~~ excess shall be ~~retained in the administrative account and utilized for the purposes specified in s. 108.20 (2m)~~ credited to the balancing account.

SECTION 46. 108.20 (3) of the statutes is amended to read:

108.20 **(3)** (intro.) There shall be included in the moneys governed by sub. (2m) any amounts collected by the department under ss. 108.04 (11) (c) and (cm) and 108.22 (1) (a), (ac), (ad), and (af) as tardy filing fees, forfeitures, interest on delinquent payments, or other penalties ~~and any excess moneys collected under s. 108.19 (1m)~~.

SECTION 47. 108.20 (18m) of the statutes is repealed.

SECTION 48. 108.22 (8) (b) 1. of the statutes is renumbered 108.22 (8) (b) 1. (intro.) and amended to read:

108.22 **(8)** (b) 1. (intro.) To recover any overpayment to an individual which is not otherwise repaid or recovery of which has not been waived, the department may recoup the amount of the overpayment by:

a. Deducting the amount of the overpayment from benefits the individual would otherwise be eligible to receive~~, or file~~;

b. Filing a warrant against the liable individual in the same manner as is provided in this section for collecting delinquent payments from employers~~, or both~~;

SECTION 49. 108.22 (8) (b) 1. c. and d. of the statutes are created to read:

108.22 **(8)** (b) 1. c. Setting off the amount of the overpayment against a refund or disbursement due pursuant to s. 71.93; or

If the overpayment results from fraud, offsetting

d. ~~Offsetting~~ the amount of the overpayment against a federal tax refund as provided in section 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009, or a similar federal program.

1 **SECTION 50.** 108.24 (3) of the statutes is renumbered 108.24 (3) (a) (intro.) and
2 amended to read:

3 108.24 **(3)** (a) (intro.) ~~Any person who makes~~ Whoever does any of the following
4 shall be fined not less than $100 nor more than ~~$2,000~~ $15,000 or imprisoned for not more
5 than 90 days or both:

6 1. Makes a deduction from the wages of an employee because of liability for
7 contributions or payments in lieu of contributions under this chapter or because of
8 the employee's potential right to benefits~~, or who knowingly~~.

9 2. Knowingly refuses or fails to furnish to an employee any notice, report or
10 information duly required under this chapter by the department to be furnished to
11 such employee~~, or who, directly~~.

12 3. Directly or indirectly, by promise of reemployment or by threat not to employ,
13 to terminate, or not to reemploy or by any other means, attempts to induce an
14 employee to ~~refrain:~~

15 a. Refrain from claiming or accepting benefits ~~or to waive~~, participating in an
16 audit or investigation by the department, or testifying in a hearing held under s.
17 108.09 or 108.10.

18 b. Waive any ~~other~~ right under this chapter~~, or whose rehiring policy has~~
19 ~~discriminated against a former employee by reason of their having claimed benefits,~~
20 ~~shall be fined not less than $100 nor more than $500 or imprisoned not more than~~
21 ~~90 days, or both; and each such deduction from wages, every day of such refusal or~~
22 ~~failure, and each such attempt to induce~~.

23 (b) Each violation of this subsection constitutes a separate offense.

24 **SECTION 51.** 108.24 (3) (a) 4. of the statutes is created to read:

108.24 **(3)** (a) 4. Discriminates or retaliates against an individual because the individual claims benefits, participates in an audit or investigation by the department under this chapter, testifies in a hearing under s. 108.09 or 108.10, or exercises any other right under this chapter.

SECTION 52. Nonstatutory provisions.

(1) Within 30 days after the effective date of this subsection, the treasurer of the unemployment reserve fund shall transfer from the administrative account of the fund to the balancing account of the fund any amount of money in the administrative account as of the date of the transfer that is derived from assessments for interest payments made under section 108.19 (1m) of the statutes and is in excess of the amount needed to make those payments.

SECTION 53. Initial applicability.

(1) The treatment of sections 108.02 (12) (bm) (intro.) and 1. to 10. and (c) (intro.) and 2., (18m), and (25e) and 108.09 (2) (bm) and (4s) of the statutes, the renumbering and amendment of section 108.02 (12) (c) 1. of the statutes, and the creation of section 108.02 (12) (c) 1. a. to e. of the statutes, with respect to contribution requirements, first apply with respect to services performed after December 31 of the year in which this subsection takes effect.

(2) The treatment of section 108.02 (12) (bm) (intro.) and 1. to 10. and (c) (intro.) and 2., (18m), and (25e) and 108.09 (2) (bm) and (4s) of the statutes, the renumbering and amendment of section 108.02 (12) (c) 1. of the statutes, and the creation of section 108.02 (12) (c) 1. a. to e. of the statutes, with respect to benefit eligibility, first apply with respect to benefit years beginning on the first Sunday of the year after the year in which this subsection takes effect.

(3) The treatment of sections 108.02 (15) (k) 21. of the statutes first applies with respect to employment after December 31 of the year in which this subsection takes effect.

(4) The treatment of section 108.02 (21) (e) (intro.) of the statutes (with respect to liability for contributions and reimbursements) first applies with respect to determinations issued under section 108.10 of the statutes beginning with the first quarter beginning after the effective date of this subsection or, with respect to determinations that are appealed, to decisions issued under section 108.10 of the statutes beginning with the first quarter beginning after the effective date of this subsection.

(5) The treatment of section 108.02 (21) (e) (intro.) of the statutes (with respect to payment of benefits) first applies with respect to benefit years beginning on the first Sunday after the beginning of the the 3rd quarter beginning after the effective date of this subsection.

(6) The treatment of sections 108.02 (15s) and (20m) (with respect to benefits for partial unemployment) and 108.05 (3) (b) 1. a., b., and c. of the statutes first applies with respect to weeks of unemployment beginning on the effective date of this subsection.

(7) The treatment of section 108.05 (3) (e) of the statutes first applies with respect to weeks of unemployment beginning on the effective date of this subsection.

(8) The treatment of section 108.16 (6) (L) and (m), (6m) (g), and (10) of the statutes, the renumbering and amendment of section 108.22 (8) (b) 1. of the statutes, and the creation of section 108.22 (8) (b) 1. c. and d. of the statutes first apply with respect to satisfaction of liabilities outstanding on the effective date of this subsection.

1. (d) (intro.), a. and b. and 2. (intro.), a. and b.

(9) The treatment of section 108.05 (7) ~~(b) and (c)~~ of the statutes first applies with respect to benefits payable for weeks of unemployment beginning on or after the effective date of this subsection.

(10) The treatment of section 108.18 (7) (d) of the statutes first applies with respect to voluntary contributions made for calendar year 2011.

(11) The treatment of sections 108.02 (15s) and (20m) (with respect to terminations of employment) and 108.04 (7) (k) and (o) of the statutes first applies with respect to voluntary terminations of employment occurring on the effective date of this subsection.

SECTION 54. Effective date.

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

(END)

SA

INS 3A:

NOA With certain exceptions, if a payment is actually or constructively received on other than a periodic basis, DWD allocates the payment to specific weeks for purposes of the required reduction using the claimant's most recent full weekly wage rate or another reasonable basis.

INS 3B:

This bill provides that when a claimant actually or constructively receives a pension, retirement, annuity, or similar payment based on the previous work of the claimant on other than a periodic basis, DWD must allocate the entire payment to the week in which it is received if DWD provides due notice of the proposed allocation to the claimant before the allocation is made. In most cases, the change reduces the amount of the reduction currently required.

in accordance with subd. 2.

INS 15-7:

SECTION 1. 108.05 (7) (d) 1. (intro.) and a. of the statutes are consolidated, renumbered 108.05 (7) (d) 1. and amended to read:

108.05 **(7)** (d) 1. If a pension payment is not paid on a weekly basis, the department shall allocate and attribute the payment to specific weeks if~~: a. The~~ the payment is actually or constructively received on a periodic basis~~; or~~. If a pension payment is actually or constructively received on other than a periodic basis, the department shall allocate the payment to the week in which it is received.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 29; 1979 c. 50; 1981 c. 28, 36; 1983 a. 8, 168, 384; 1985 a. 17, 40; 1987 a. 38 ss. 60 to 66, 136; 1987 a. 255; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15, 56, 185, 186; 2001 a. 35, 43, 105; 2003 a. 197; 2005 a. 86, 142; 2007 a. 20, 59, 97.

SECTION 2. 108.05 (7) (d) 1. b. of the statutes is renumbered 108.05 (7) (d) 1m. and amended to read:

108.05 **(7)** (d) 1m. ~~The~~ For purposes of this paragraph, a payment is actually or constructively received on other than a periodic basis ~~and~~ if it has become definitely allocated and payable to the claimant by the close of ~~each such~~ a given

1.

week, and the department has provided due notice to the claimant that the payment will be allocated in accordance with subd. ~~2. b.~~

plain period

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; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15, 56, 185, 186; 2001 a. 35, 43, 105; 2003 a. 197; 2005 a. 86, 142; 2007 a. 20, 59, 97.

SECTION 3. 108.05 (7) (d) 2. (intro.) and a. of the statutes are consolidated, renumbered 108.05 (7) (d) 2. and amended to read:

108.05 **(7)** (d) 2. The department shall allocate a pension payment ~~as follows:~~ ~~a. If the payment~~ <u>that is</u> is actually or constructively received on a periodic basis~~, the amount allocated~~ <u>by allocating</u> to each week ~~is~~ the fraction of the payment attributable to that week.

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; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15, 56, 185, 186; 2001 a. 35, 43, 105; 2003 a. 197; 2005 a. 86, 142; 2007 a. 20, 59, 97.

SECTION 4. 108.05 (7) (d) 2. b. of the statutes is repealed.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–3069/6~~dn~~ 7dn
JTK:cjs:ph

~~September 30, 2009~~
– date –

Dan LaRocque:

1. This draft incorporates the following items: D09–02, D09–03, D09–04, D09–05, D09–06, D09–09, D09–10, D09–12, D09–13, D09–16, D09–17, ~~DO9–20~~ and DO9–21. ~~Per our discussion, we will attempt to incorporate item DO9–22 as the next redraft.~~

2. I tried to parallel the language in s. 108.02 (12) (bm) (intro.) and 1., stats., with the language in s. 108.02 (12) (c) (intro.) and 1., stats., to the extent that I felt that no substantive differences were intended. If I am not correct, we may need to revise this material.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266–6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3069/7dn
JTK:cjs:md

October 7, 2009

Dan LaRocque:

This draft incorporates the following items: D09-02, D09-03, D09-04, D09-05, D09-06, D09-09, D09-10, D09-12, D09-13, D09-16, D09-17, and DO9-21.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Kuesel, Jeffery

From: LaRocque, Daniel J - DWD [Daniel.LaRocque@dwd.wisconsin.gov]
Sent: Wednesday, October 07, 2009 5:21 PM
To: Kuesel, Jeffery
Cc: Schwalbe, Tracey L - DWD
Subject: Effective date

Jeff:

Our staff have commented on the effective date for the change to the reduction for pension payments. They would like to leave in place the allocations computed prior to the effective date and in the system. That would suggest we do something like this in Section 34 of /7:

> (6) The treatment of section 108.05 (7) (d) 1. (intro.), a., and b. and 2. (intro.), a., and b. of the statutes first applies with respect to pension payments that are received on other than a periodic basis in weeks of unemployment beginning on or after the effective date of this subsection."

Can you please give me a call Thursday before 9:00 a.m.?

Dan