

## 2011 DRAFTING REQUEST

### Bill

Received: 10/21/2011

Received By: **jkuesel**

Wanted: **As time permits**

Companion to LRB:

For: **Joan Ballweg (608) 266-8077**

By/Representing: **Vince Williams**

May Contact:

Drafter: **jkuesel**

Subject: **Unemployment Insurance**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Ballweg@legis.wisconsin.gov**

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Unemployment insurance - various changes

---

### Instructions:

Per attached E mail, 10/20/11.

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 10/21/2011	csicilia 10/21/2011		_____			S&L
/1			jfrantze 10/21/2011	_____	sbasford 10/21/2011		S&L
/2	jkuesel 11/15/2011	csicilia 11/17/2011	jfrantze 11/17/2011	_____	mbarman 11/17/2011	ggodwin 01/03/2012	

FE Sent For:

*AT 11/17/2011*

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/?	jkuesel 10/21/2011	csicilia 10/21/2011		_____			S&L
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/1	jkuesel 11/15/11	2 j's	11/16	jfrantze 10/21/2011	_____	sbasford 10/21/2011	
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FE Sent For:

Handwritten notes and signatures: jkuesel 11/15/11, 2 j's, 11/16, jfrantze 10/21/2011, sbasford 10/21/2011, 11/17, <END>

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1? / 1	jkuesel 10/21/11	1 js 10/21/11	[Signature] 10/21	[Signature]			

FE Sent For:

<END>

## Kuesel, Jeffery

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**From:** Rep. Ballweg  
**Sent:** Thursday, October 20, 2011 4:45 PM  
**To:** Kuesel, Jeffery  
**Subject:** Rep. Ballweg Drafting Request-- Separate bill related to UI

**Attachments:** UI Summary 9-21-11.doc; DECISIONS CONFORM TO LAW 091311.doc; spouse exception repeal 090911.doc; 11-29771.pdf

Jeff,

Rep. Ballweg would like to draft a separate bill based on proposed amendments that were drafted to AB 310. We would like to include some of the provision that were in LRB 2977/1.

I will detail below the item numbers to include in Rep. Ballweg's bill draft. I'm working off the memo to the Unemployment Insurance Advisory Council from Rep. Kapenga, Rep. Wynn and Sen. Lasee. (the original memo is attached below "UI Summary 9-21-11")



UI Summary  
-21-11.doc (79 KB)

2. **Issue:** Currently, Administrative Law Judges have significant leeway in making decisions in UI cases.

**Solution:** Amend the statutory language to include the clause "Consistent with applicable state and federal law", which will restrict the ability to stray from statute.



DECISIONS  
FORM TO LAW 09

4. **Issue:** AB 255 / 2009 Act 11 created a provision in the statutes that states: "The bill also provides that requalification is not required if an employee's spouse changed his or her place of employment to a place to which it is impractical to commute and the employee terminated his or her work to accompany the spouse to that place."

**Solution:** Repeal this unnecessary provision as it is a voluntary decision that adds an estimated \$5 million in claims per year.



spouse exception  
repeal 090911...

6. **Issue:** Training benefits were extended in the last biennium from 26 to 52 weeks. There is no evidence that this has had a positive impact on the unemployed.

**Solution:** Eliminate "extended training benefits" that allowed an additional 26 weeks of training on top of the 26 week regular program. There is no accountability if training is being completed, classes attended or exams taken. This is management proposal #4.

The original memo said to eliminate the "extended training benefits", Rep. Ballweg would instead prefer to sunset the "extended training benefits" when the statewide unemployment rate drops below 6.5% for the most recent quarter.

8. **Issue:** Certain employers opt for payment plans to spread out the cost of their UI, as it may be front loaded in the year due to their business cycle. There is an interest rate of 1% per month on the unpaid balance.

**Solution:** For all employers, lower the interest rate from 1% to .5% per month for those participating in payment plans. This will reduce the burden on already struggling employers, and it would still exceed the federal annual interest rate of 4% on monies borrowed.

On #8, change the interest rate to the Wall Street Journal Prime Rate + 2, as reported on September 30th of the current year, for the next calendar year beginning on January 1.

9. **Issue:** There are prisoners who have been known to collect unemployment benefits while incarcerated.

**Solution:** Amend the statutes so that prisoners incarcerated in Wisconsin do not receive unemployment benefits. The language can exclude benefits upon incarceration, and conviction can be considered willful misconduct under the statutes. This is a common practice in other states as well.

**Payment of benefits during incarceration--**Currently, with certain exceptions, an employee is eligible to receive benefits for any week in which the employee receives no wages only if the employee is able to work and available for work during that week. If an employee is incarcerated for an offense that constitutes misconduct connected with his or her employment, the employee is ineligible to receive benefits until the employee requalifies, and any wages earned with the discharging employer are discounted in determining the employee's benefit amount. This bill provides, in addition, that an employee's weekly benefit amount is reduced by one-fifth for each day of any week in which the employee is incarcerated for up to 5 days in a week. (on item 9, mirror the language in LRB 11-2977/1)



11-29771.pdf (66  
KB)



State of Wisconsin  
2011 - 2012 LEGISLATURE

Fn: 10/21

-3304/1



LRB-29777-1

JTK:cjs:jf

Stays

2011 BILL

5/1

(recreate)

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

**Analysis by the Legislative Reference Bureau**

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

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

~~Currently, if an employee is discharged for misconduct connected with his or her employment (interpreted by the courts to include only misconduct that evinces willful or wanton disregard of the employer's interests or carelessness or negligence in the performance of duties to such degree or recurrence as to manifest culpability or wrongful intent or exhibiting such behavior as to endanger the physical safety of persons on the work site) the employee is ineligible to receive benefits until seven weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages, or certain other amounts treated as wages, after the week in~~

**BILL**

which the discharge occurs equal to at least 14 times the employee's weekly benefit rate in employment covered by the unemployment insurance law of any state or the federal government. In addition, all wages earned with the employer that discharges the employee are excluded in determining the amount of any future benefits to which the employee is entitled. However, if an employee is discharged for failing to notify an employer of tardiness or absenteeism that becomes excessive under certain conditions, the employee is ineligible to receive benefits until six weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages, or certain other amounts treated as wages, after the week in which the discharge occurs equal to at least six times the the employee's weekly benefit rate in work covered by the unemployment insurance law of any state or the federal government. In addition, if an employee's work is suspended by an employer for good cause connected with the employee's work, the employee is ineligible to receive benefits until three weeks have elapsed since the end of the week in which the suspension occurs or until the suspension ends, whichever occurs first.

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

***Extended training***

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

unemployment insurance

**BILL**

by all employers who pay contributions to the fund), and the costs for those employers who are not subject to a contribution requirement are billed directly to the employers.

This bill provides that extended training benefits are only available to a claimant who is enrolled in a single training program, while enrolled in that program only. The bill also requires a claimant who receives extended training benefits to file written documentation of completion of the program that is certified by the person conducting the program with DWD. In addition, the bill provides that if the average rate of total unemployment in this state, as determined by the U.S. secretary of labor, is equal to or lower than 6 percent for any calendar quarter, DWD must publish a notice to that effect in the Wisconsin Administrative Register. Under the bill, no claimant may qualify to begin receiving extended training benefits in any week that begins after publication of the notice.

***Voluntary termination of employment***

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

***Search for suitable work***

Currently, in order to remain eligible to receive benefits for a week in which a claimant earns no wages, a claimant is required, among other things, with limited exceptions, to conduct a reasonable search for suitable work within that week, which must include at least two actions that constitute a reasonable search as prescribed by rule by DWD. This bill increases the minimum number of actions that a claimant must undertake to be eligible to receive benefits for a week to three actions. The bill requires a claimant to verify each action by submitting work search information to DWD in the manner and form prescribed by DWD. The bill also provides that an individual does not conduct a reasonable search for suitable work if DWD determines that the individual applied for and was offered suitable work that the individual is required to accept in order to maintain eligibility but the individual did not accept the offer. In addition, the bill provides that if an individual provides false contact information to an employer, no action by the individual to seek work with that employer may be considered in determining compliance with work search requirements.

***Failure to accept suitable work or recall to work***

Currently, with certain exceptions, if an employee fails, without good cause, to accept suitable work when offered or to return to work when recalled by his or her employer, the employee is ineligible to receive benefits for the next four weeks and

6.5

**BILL**

until the employee ~~requalifies~~ by earning a specified amount of wages in certain employment. This bill provides, in addition, that if an employee provides false contact information to an employer that prevents the employer from extending an offer of suitable work or recall to work, the action constitutes a failure to accept suitable work or to return to work when recalled. The bill also provides that in determining whether an employee had good cause, DWD shall take into account whether the employee applied for the work that is offered.

***Interest on delinquent payments***

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

***Payment of benefits during incarceration***

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

***Authority of appeal tribunals***

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

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

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

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

LPS - delete ~~all~~ all material on pages 5 through 8

**BILL**

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

4 **SECTION 6.** 108.04 (7) (h) of the statutes is amended to read:

5 108.04 (7) (h) The department shall charge to the fund's balancing account  
6 benefits paid to an employee that are otherwise chargeable to the account of an  
7 employer that is subject to the contribution requirements of ss. 108.17 and 108.18  
8 if the employee voluntarily terminates employment with that employer and par. (a),  
9 (c), (d), (e), (k), (L), (o), (p), (q), or (s), ~~or~~ (t) applies.

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

11 ~~**SECTION 8.** 108.04 (8) (em) of the statutes is created to read:~~

12 108.04 (8) (em) In determining whether an employee had good cause under this  
13 subsection, the department shall take into account whether the employee applied for  
14 for the work that is offered.

15 ~~**SECTION 9.** 108.04 (8) (g) of the statutes is created to read.~~

16 108.04 (8) (g) If an employee provides false contact information to an employer  
17 that prevents the employer from extending an offer of suitable work or recall to work,  
18 the action constitutes a failure to accept suitable work or recall to work when  
19 recalled.

20 **SECTION 10.** 108.06 (1) of the statutes is amended to read:

21 108.06 (1) Except as provided in subs. (6) and (7) and ss. 108.141 and 108.142,  
22 no claimant may receive total benefits based on employment in a base period greater  
23 than 26 times the claimant's weekly benefit rate under s. 108.05 (1) or 40% of the  
24 claimant's base period wages, whichever is lower. Except as provided in subs. (6) and  
25 (7) and ss. 108.141 and 108.142, if a claimant's base period wages are reduced or

**BILL**

**SECTION 10**

1 canceled under s. 108.04 (1) (j) or (5) or (18), or suspended under s. 108.04 (1) (f), (10)  
 2 (a), or (17), the claimant may not receive total benefits based on employment in a base  
 3 period greater than 26 times the claimant's weekly benefit rate under s. 108.05 (1)  
 4 or 40% of the base period wages not reduced, canceled or suspended which were paid  
 5 or payable to the claimant, whichever is lower.

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

7 108.06 (7) (b) (intro.) Except as provided in pars. (f) and (g) and (k), a claimant  
 8 who is otherwise eligible for benefits and who is currently enrolled in a single  
 9 training program is eligible, while enrolled in that training program only for  
 10 additional benefits under this subsection provided that the claimant:

single  
 only for  
 plain comma  
 stays

11 ~~SECTION 12. 108.06 (7) (em) of the statutes is created to read:~~

12 ~~108.06 (7) (em) Upon completion of a training program under par. (b), a~~  
 13 ~~claimant shall file written documentation of completion of the program that is~~  
 14 ~~certified by the person conducting the program with the department. The~~  
 15 ~~documentation shall specify the week in which the program is completed.~~

16 ~~SECTION 13. 108.06 (7) (f) of the statutes is amended to read:~~

17 ~~108.06 (7) (f) No benefits may be paid to a claimant under this subsection for~~  
 18 ~~weeks beginning more than 52 weeks after the first week for which the claimant~~  
 19 ~~received benefits under this subsection. No benefits may be paid to a claimant under~~  
 20 ~~this subsection for any week after the week in which the claimant completes a~~  
 21 ~~training program under par. (b).~~

22 **SECTION 14.** 108.06 (7) (k) of the statutes is created to read:

23 108.06 (7) (k) If the average rate of total unemployment in this state, seasonally  
 24 adjusted, as determined by the U.S. secretary of labor, for any calendar quarter, is  
 25 equal to or lower than 6.5 percent, the department shall publish a notice to that effect

**BILL**

1 in the Wisconsin administrative register. No claimant may qualify to begin receiving  
2 benefits under par. (b) in any week beginning after the department publishes a notice  
3 under this paragraph.

4 **SECTION 15.** 108.09 (3) (b) of the statutes is amended to read:

5 108.09 (3) (b) The Consistently with applicable state and federal law, the  
6 appeal tribunal may affirm, reverse or modify the initial determination of the  
7 department or set aside the determination and remand the matter to the department  
8 for further proceedings, or may remand to the department for consideration of any  
9 issue not previously investigated by the department.

10 **SECTION 16.** 108.14 (8n) (e) of the statutes is amended to read:

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

25 ~~**SECTION 17.** 108.141 (3g) (d) of the statutes is amended to read:~~

## BILL

## SECTION 17

1 ~~108.141 (3g) (d) Notwithstanding s. 108.04 (6) and (7), a claimant who was~~  
2 ~~disqualified from receipt of benefits because of voluntarily terminating employment~~  
3 ~~or incurring a disciplinary suspension for good cause being discharged for or~~  
4 ~~incurring a disciplinary suspension for intentional conduct or for a knowing violation~~  
5 ~~of a work rule or policy under s. 108.04 (6) (a) is ineligible to receive extended benefits~~  
6 ~~for the week in which the termination occurs or the suspension begins and for each~~  
7 ~~week thereafter until he or she has again been employed during at least 4 subsequent~~  
8 ~~weeks in employment or other work covered by the unemployment insurance law of~~  
9 ~~any state or the federal government and earned wages for such work equal to at least~~  
10 ~~4 times his or her weekly extended benefit rate.~~

11 SECTION 18. 108.141 (7) (a) of the statutes is amended to read:

12 108.141 (7) (a) The department shall charge the state's share of each week of  
13 extended benefits to each employer's account in proportion to the employer's share  
14 of the total wages of the employee receiving the benefits in the employee's base  
15 period, except that if the employer is subject to the contribution requirements of ss.  
16 108.17 and 108.18 the department shall charge the share of extended benefits to  
17 which s. 108.04 (1) (f), (5), (7) (a), (c), (d), (e), (k), (L), (o), (p), (q), or (s), ~~or~~ (t), (7m) or  
18 (8) (a) or 108.07 (3), (3r), (5) (b) or (8) applies to the fund's balancing account.

19 SECTION 19. ~~108.16 (6m) (a) of the statutes is amended to read:~~

20 ~~108.16 (6m) (a) The benefits thus chargeable under s. 108.04 (1) (f), (5), (5g),~~  
21 ~~(7) (h), (8) (a), (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) (b), (5m), (6), or (8), 108.14~~  
22 ~~(8n) (e), 108.141, 108.151, or 108.152 or sub. (6) (e) or (7) (a) and (b).~~

23 SECTION 20. 108.22 (1) (a) of the statutes is amended to read:

24 108.22 (1) (a) If any employer, other than an employer which has ceased  
25 business and has not paid or incurred a liability to pay wages in any quarter

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1 following the cessation of business, is delinquent in making by the assigned due date  
2 any payment to the department required of it under this chapter, the employer shall  
3 pay interest on the delinquent payment at ~~the rate of one percent per~~ that monthly  
4 rate that annualized is equal to 2 percent more than the prime rate as published in  
5 the Wall Street Journal as of September 30 of the preceding year for each month or  
6 fraction thereof that the employer is delinquent from the date such payment became  
7 due. If any such employer is delinquent in making any quarterly report under s.  
8 108.205 (1) by the assigned due date, the employer shall pay a tardy filing fee of \$50  
9 for each delinquent quarterly report.

**SECTION 21. Initial applicability.**

10  
11 (1) The treatment of sections 108.06 (7) (b) (intro.) ~~(em) (n)~~ and (k) of the  
12 statutes first applies with respect to weeks of unemployment beginning on the  
13 effective date of this subsection.

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

17 (3) The treatment of section 108.04 (2) (a) 3. (intro.) of the statutes first applies  
18 with respect to weeks of unemployment beginning on or after the effective date of this  
19 subsection.

20 (4) The treatment of sections 108.04 (5), (5g), and (6), 108.141 (3g) (d), and  
21 108.16 (6m) (a) of the statutes first applies with respect to discharges and  
22 suspensions occurring on the first Sunday that follows the 90th day beginning after  
23 the effective date of this subsection.



## Kuesel, Jeffery

---

**To:** Williams, Vincent  
**Subject:** RE: LRB 11a1758 Topic: Discharge for violations of reasonable work rules or policies

Vince,  
I will take care of your request.

Jeff Kuesel

---

**From:** Williams, Vincent  
**Sent:** Tuesday, November 15, 2011 1:17 PM  
**To:** Kuesel, Jeffery  
**Subject:** FW: LRB 11a1758 Topic: Discharge for violations of reasonable work rules or policies

<< File: 11-33041.pdf >>

Jeff,

Can you redraft LRB 3304 to include the violationsof work rules amendment below?

Thanks,

Vince  
Rep. Ballweg's Office

---

**From:** LRB.Legal  
**Sent:** Tuesday, October 25, 2011 11:08 AM  
**To:** Rep.Ballweg  
**Subject:** LRB 11a1758 Topic: Discharge for violations of reasonable work rules or policies

The attached proposal has been jacketed for introduction.

A copy has also been sent to:

<< File: LRB a1758\_1 >>



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-3304/1

JTK:cjs:jf

THU 11/17

2011 BILL

stays

SAV

Gen Cat  
(Regenent)

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

*Analysis by the Legislative Reference Bureau*

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

**Extended training**

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

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**BILL**

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

***Voluntary termination of employment***

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

***Interest on delinquent payments***

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

***Payment of benefits during incarceration***

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

***Authority of appeal tribunals***

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

**BILL**

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

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

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

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

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5           **SECTION 2.** 108.04 (7) (h) of the statutes is amended to read:

6           108.04 (7) (h) The department shall charge to the fund's balancing account  
7 benefits paid to an employee that are otherwise chargeable to the account of an  
8 employer that is subject to the contribution requirements of ss. 108.17 and 108.18  
9 if the employee voluntarily terminates employment with that employer and par. (a),  
10 (c), (d), (e), (k), (L), (o), (p), (q), or (s), ~~or~~ (t) applies.

11           **SECTION 3.** 108.04 (7) (t) of the statutes is repealed.

12           **SECTION 4.** 108.06 (1) of the statutes is amended to read:

13           108.06 (1) Except as provided in subs. (6) and (7) and ss. 108.141 and 108.142,  
14 no claimant may receive total benefits based on employment in a base period greater  
15 than 26 times the claimant's weekly benefit rate under s. 108.05 (1) or 40% of the  
16 claimant's base period wages, whichever is lower. Except as provided in subs. (6) and  
17 (7) and ss. 108.141 and 108.142, if a claimant's base period wages are reduced or  
18 canceled under s. 108.04 (1) (j) or (5) or (18), or suspended under s. 108.04 (1) (f), (10)  
19 (a), or (17), the claimant may not receive total benefits based on employment in a base  
20 period greater than 26 times the claimant's weekly benefit rate under s. 108.05 (1)

**BILL****SECTION 4**

1 or 40% of the base period wages not reduced, canceled or suspended which were paid  
2 or payable to the claimant, whichever is lower.

3 **SECTION 5.** 108.06 (7) (b) (intro.) of the statutes is amended to read:

4 108.06 (7) (b) (intro.) Except as provided in pars. (f) ~~and~~, (g), and (k), a claimant  
5 who is otherwise eligible for benefits and who is currently enrolled in a training  
6 program is eligible, while enrolled in that training program, for additional benefits  
7 under this subsection provided that the claimant:

8 **SECTION 6.** 108.06 (7) (k) of the statutes is created to read:

9 108.06 (7) (k) If the average rate of total unemployment in this state, seasonally  
10 adjusted, as determined by the U.S. secretary of labor, for any calendar quarter, is  
11 equal to or lower than 6.5 percent, the department shall publish a notice to that effect  
12 in the Wisconsin administrative register. No claimant may qualify to begin receiving  
13 benefits under par. (b) in any week beginning after the department publishes a notice  
14 under this paragraph.

15 **SECTION 7.** 108.09 (3) (b) of the statutes is amended to read:

16 108.09 (3) (b) The Consistently with applicable state and federal law, the  
17 appeal tribunal may affirm, reverse or modify the initial determination of the  
18 department or set aside the determination and remand the matter to the department  
19 for further proceedings, or may remand to the department for consideration of any  
20 issue not previously investigated by the department.

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

22 108.14 (8n) (e) The department shall charge this state's share of any benefits  
23 paid under this subsection to the account of each employer by which the employee  
24 claiming benefits was employed in the applicable base period, in proportion to the  
25 total amount of wages he or she earned from each employer in the base period, except

**BILL**

1 that if s. 108.04 (1) (f), (5), (7) (a), (c), (d), (e), (k), (L), (o), (p), (q), or (s), ~~or (t)~~, (7m) or  
2 (8) (a) or 108.07 (3), (3r), (5) (b) or (8) would have applied to employment by such an  
3 employer who is subject to the contribution requirements of ss. 108.17 and 108.18,  
4 the department shall charge the share of benefits based on employment with that  
5 employer to the fund's balancing account, or, if s. 108.04 (1) (f) or (5) or 108.07 (3)  
6 would have applied to an employer that is not subject to the contribution  
7 requirements of ss. 108.17 and 108.18, the department shall charge the share of  
8 benefits based on that employment in accordance with s. 108.07 (5) (a) and (b). The  
9 department shall also charge the fund's balancing account with any other state's  
10 share of such benefits pending reimbursement by that state.

11 **SECTION 9.** 108.141 (7) (a) of the statutes is amended to read:

12 108.141 (7) (a) The department shall charge the state's share of each week of  
13 extended benefits to each employer's account in proportion to the employer's share  
14 of the total wages of the employee receiving the benefits in the employee's base  
15 period, except that if the employer is subject to the contribution requirements of ss.  
16 108.17 and 108.18 the department shall charge the share of extended benefits to  
17 which s. 108.04 (1) (f), (5), (7) (a), (c), (d), (e), (k), (L), (o), (p), (q), or (s), ~~or (t)~~, (7m) or  
18 (8) (a) or 108.07 (3), (3r), (5) (b) or (8) applies to the fund's balancing account.

19 **SECTION 10.** 108.22 (1) (a) of the statutes is amended to read:

20 108.22 (1) (a) If any employer, other than an employer which has ceased  
21 business and has not paid or incurred a liability to pay wages in any quarter  
22 following the cessation of business, is delinquent in making by the assigned due date  
23 any payment to the department required of it under this chapter, the employer shall  
24 pay interest on the delinquent payment at the rate of one percent per that monthly  
25 rate that annualized is equal to 2 percent more than the prime rate as published in



JWSA

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

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

*bill* This ~~substitute amendment~~ deletes the current disqualifiers for discharges resulting from absenteeism or tardiness and for disciplinary suspensions but retains the disqualifier for misconduct. The ~~substitute amendment~~ also creates a new disqualifier that applies to certain discharges or suspensions that do not result from misconduct, as currently defined. Under the ~~substitute amendment~~, an employee who is discharged for intentional conduct connected with his or her employment that a reasonable person would not engage in, if the conduct is documented by the employee's employer and the employee knew or should have known that the conduct would not be considered reasonable by the employer, or for a knowing violation of a reasonable and uniformly enforced rule or policy of his or her employer, when

reasonably applied, is ineligible to receive benefits until six weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages, or certain other amounts treated as wages, after the week in which the discharge occurs equal to at least six times the employee's weekly benefit rate in employment covered by the unemployment insurance law of any state or the federal government. An employee who is suspended rather than discharged for such a violation is ineligible to receive benefits until at least three weeks have elapsed since the end of the week in which the suspension occurs or the suspension ends, whichever occurs first.



ASSEMBLY AMENDMENT,  
TO 2011 SENATE BILL 219

SAW

LPS:  
Thaw  
Bill Section  
Numbers

1 At the locations indicated, amend the bill as follows:

2 1. Page 7, line 18: after that line insert:

3 ~~SECTION 8c.~~ SECTION ~~8c.~~ 108.04 (5) of the statutes is amended to read:

4 108.04 (5) DISCHARGE FOR MISCONDUCT. ~~Unless sub. (5g) results in~~  
5 ~~disqualification, an~~ An employee whose work is terminated by an employing unit for  
6 misconduct connected with the employee's work is ineligible to receive benefits until  
7 7 weeks have elapsed since the end of the week in which the discharge occurs and  
8 the employee earns wages after the week in which the discharge occurs equal to at  
9 least 14 times the employee's weekly benefit rate under s. 108.05 (1) in employment  
10 or other work covered by the unemployment insurance law of any state or the federal  
11 government. For purposes of requalification, the employee's weekly benefit rate  
12 shall be that rate which would have been paid had the discharge not occurred. The  
13 wages paid to an employee by an employer which terminates employment of the

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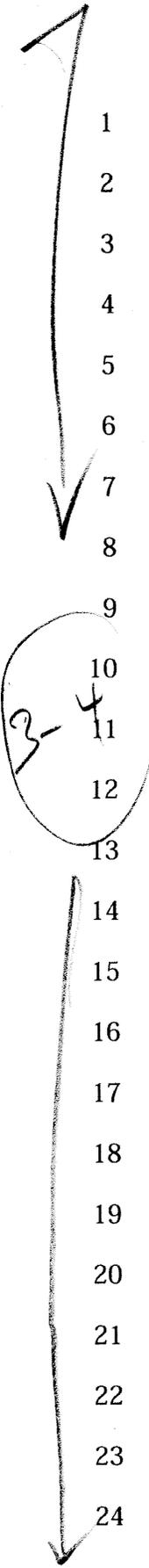


1 employee for misconduct connected with the employee's employment shall be  
 2 excluded from the employee's base period wages under s. 108.06 (1) for purposes of  
 3 benefit entitlement. This subsection does not preclude an employee who has  
 4 employment with an employer other than the employer which terminated the  
 5 employee for misconduct from establishing a benefit year using the base period  
 6 wages excluded under this subsection if the employee qualifies to establish a benefit  
 7 year under s. 108.06 (2) (a). The department shall charge to the fund's balancing  
 8 account any benefits otherwise chargeable to the account of an employer that is  
 9 subject to the contribution requirements under ss. 108.17 and 108.18 from which  
 10 base period wages are excluded under this subsection.

11 ~~SECTION 8f.~~ 108.04 (5g) of the statutes is repealed.

12 ~~SECTION 8g.~~ 108.04 (6) of the statutes is repealed and recreated to read:

13 108.04 (6) DISCHARGE OR SUSPENSION FOR CERTAIN CONDUCT OR VIOLATION OF  
 14 CERTAIN WORK RULES OR POLICIES. (a) Unless sub. (5) results in disqualification, an  
 15 employee who is discharged for intentional conduct connected with his or her  
 16 employment that a reasonable person would not engage in, if the conduct is  
 17 documented by the employee's employer and the employee knew or should have  
 18 known that the conduct would not be considered reasonable by the employer, or for  
 19 a knowing violation of a reasonable and uniformly enforced rule or policy of the  
 20 employer, when reasonably applied, is ineligible to receive benefits until 6 weeks  
 21 have elapsed since the end of the week in which the discharge occurs and the  
 22 employee earns wages after the week in which the discharge occurs equal to at least  
 23 6 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other  
 24 work covered by the unemployment insurance law of any state or the federal





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1 government. For purposes of requalification, the employee's weekly benefit rate is  
2 the rate that would have been paid had the discharge not occurred.

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

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

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

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

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

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

22 (e) To find that a rule or policy instituted by an employer is reasonable, the  
23 department must find that the rule or policy furthers the employer's lawful business  
24 interest. The department may find that a rule or policy is reasonable on its face. If



1 evidence is offered to demonstrate that a rule or policy is unreasonable, the  
2 department may consider whether:

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

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

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

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

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

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

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

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

23 2. Page 13, line 13: after that line insert:

24  SECTION 27n. 108.141 (3g) (d) of the statutes is amended to read:

Handwritten annotations on the left margin: a large bracket from line 1 to 22, a circle around lines 3-4, and a double underline under line 22.

Handwritten note in a circle: "FWS 5-10"

Handwritten arrow pointing to the right.

1 108.141 (3g) (d) Notwithstanding s. 108.04 (6) and (7), a claimant who was  
 2 disqualified from receipt of benefits because of voluntarily terminating employment  
 3 or ~~incurring a disciplinary suspension for good cause~~ being discharged for or  
 4 incurring a disciplinary suspension for intentional conduct or for a knowing violation  
 5 of a work rule or policy under s. 108.04 (6) (a) is ineligible to receive extended benefits  
 6 for the week in which the termination occurs or the suspension begins and for each  
 7 week thereafter until he or she has again been employed during at least 4 subsequent  
 8 weeks in employment or other work covered by the unemployment insurance law of  
 9 any state or the federal government and earned wages for such work equal to at least  
 10 4 times his or her weekly extended benefit rate.

Handwritten notes: A large '7' with a downward arrow pointing to line 10. A circle containing '5-10' with a downward arrow pointing to line 10.

11 ~~3. Page 14, line 3. after that line insert.~~

12 ~~SECTION 30m.~~ SECTION 30m. 108.16 (6m) (a) of the statutes is amended to read:  
 13 108.16 (6m) (a) The benefits thus chargeable under s. 108.04 (1) (f), (5), (5g),  
 14 (7) (h), (8) (a), (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) (b), (5m), (6), or (8), 108.14  
 15 (8n) (e), 108.141, 108.151, or 108.152 or sub. (6) (e) or (7) (a) and (b).

Handwritten notes: 'RWS' and '5-14' written vertically on the left margin.

16 ~~4. Page 19, line 11. after that line insert.~~

17 (2g) The treatment of sections 108.04 (5), (5g), and (6), 108.141 (3g) (d), and  
 18 108.16 (6m) (a) of the statutes first applies with respect to discharges and  
 19 suspensions occurring on the first Sunday that follows the 90th day beginning after  
 20 the effective date of this subsection.

Handwritten notes: 'RWS' and '6-6' written vertically on the left margin.

~~(END)~~

replace hard number  
with auto number

**Barman, Mike**

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**From:** Williams, Vincent  
**Sent:** Friday, December 30, 2011 9:54 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 11-3304/2 Topic: Unemployment insurance - various changes

Please Jacket LRB 11-3304/2 for the ASSEMBLY.