

# State of Wisconsin



2011 Senate Bill 219

Date of enactment: April 2, 2012  
Date of publication\*: April 16, 2012

## 2011 WISCONSIN ACT 198

AN ACT *to repeal* 20.445 (1) (v), 25.17 (1) (xf), 108.04 (8) (b), 108.04 (13) (cm), 108.05 (3) (b), 108.09 (4r) and 108.19 (1s); *to renumber* 108.065 (1) and 108.065 (1m) and (2); *to renumber and amend* 108.05 (3) (c); *to amend* 20.445 (1) (gd), 20.445 (1) (gg), 108.04 (2) (a) 3. (intro.), 108.04 (11) (a) and (b), 108.04 (11) (bm), 108.05 (3) (a), 108.16 (6) (f), 108.16 (6) (L), 108.16 (6) (m), 108.16 (6m) (g), 108.16 (8) (h), 108.16 (10), 108.19 (title), 108.19 (1m), 108.22 (1m), 108.22 (8) (b) 1. d. and 108.225 (1) (b); *to repeal and recreate* 108.04 (11) (be); and *to create* 20.445 (1) (u), 20.445 (1) (v), 25.17 (1) (xe), 25.17 (1) (xf), 108.04 (2) (bm), 108.05 (3) (c) 1. to 3., 108.05 (3) (dm), 108.065 (1e), 108.065 (3), 108.19 (1q) and 108.19 (1s) of the statutes; **relating to:** various changes in the unemployment insurance law, providing a penalty, and making appropriations.

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

**SECTION 1.** 20.445 (1) (gd) of the statutes is amended to read:

20.445 (1) (gd) *Unemployment interest and penalty payments.* All moneys received as interest and penalties collected under ss. 108.04 (11) (c) and (cm) and (13) (c) and 108.22, ~~assessments under s. 108.19 (1m)~~ except interest and penalties deposited under s. 108.19 (1q), and forfeitures under s. 103.05 (5), all moneys not appropriated under par. (gg) and all moneys transferred to this appropriation account from the appropriation account under par. (gh) for the payment of benefits specified in s. 108.07 (5) and 1987 Wisconsin Act 38, section 132 (1) (c), for the payment of interest to employers under s. 108.17 (3m), for research relating to the condition of the unemployment reserve fund under s. 108.14 (6), for administration of the unemployment insurance program and federal or state unemployment insurance programs authorized by the governor under s. 16.54, for satisfaction of any federal audit exception concerning a payment

from the unemployment reserve fund or any federal aid disallowance concerning the unemployment insurance program, for assistance to the department of justice in the enforcement of ch. 108, for the payment of interest due on advances from the federal unemployment account under title XII of the social security act to the unemployment reserve fund, and for payments made to the unemployment reserve fund to obtain a lower interest rate or deferral of interest payments on these advances, except as otherwise provided in s. 108.20.

**SECTION 2.** 20.445 (1) (gg) of the statutes is amended to read:

20.445 (1) (gg) *Unemployment information technology systems; interest and penalties.* From the moneys received as interest and penalties collected under ss. 108.04 (11) (c) and (cm) and (13) (c) and 108.22 except interest and penalties deposited under s. 108.19 (1q), as a continuing appropriation, the amounts in the schedule for the purpose specified in s. 108.19 (1e) (d).

**SECTION 3.** 20.445 (1) (u) of the statutes is created to read:

\* Section 991.11, WISCONSIN STATUTES 2009-10: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

20.445 (1) (u) *Unemployment interest payments and transfers.* From the unemployment interest payment fund, a sum sufficient to make the payments and transfers authorized under s. 108.19 (1m).

**SECTION 4.** 20.445 (1) (v) of the statutes is created to read:

20.445 (1) (v) *Unemployment program integrity.* From the unemployment program integrity fund, a sum sufficient to make the payments authorized under s. 108.19 (1s).

**SECTION 4m.** 20.445 (1) (v) of the statutes, as created by 2011 Wisconsin Act ... (this act), is repealed.

**SECTION 5.** 25.17 (1) (xe) of the statutes is created to read:

25.17 (1) (xe) Unemployment interest payment fund (s. 108.19 (1q));

**SECTION 6.** 25.17 (1) (xf) of the statutes is created to read:

25.17 (1) (xf) Unemployment program integrity fund (s. 108.19 (1s));

**SECTION 6m.** 25.17 (1) (xf) of the statutes, as created by 2011 Wisconsin Act... (this act), is repealed.

**SECTION 7.** 108.04 (2) (a) 3. (intro.) of the statutes is amended to read:

108.04 (2) (a) 3. (intro.) The individual conducts a reasonable search for suitable work during that week, unless the search requirement is waived under par. (b). The search for suitable work must include 2 actions that constitute a reasonable search as prescribed by rule of the department. This subdivision does not apply to an individual if the department determines that the individual is currently laid off from employment with an employer but there is a reasonable expectation of reemployment of the individual by that employer. In determining whether the individual has a reasonable expectation of reemployment by an employer, the department shall request the employer to verify the individual's employment status and shall also consider other factors, including:

**SECTION 8.** 108.04 (2) (bm) of the statutes is created to read:

108.04 (2) (bm) A claimant is ineligible to receive benefits for any week for which there is a determination that the claimant failed to conduct a reasonable search for suitable work and the department has not waived the search requirement under par. (b). If the department has paid benefits to a claimant for any such week, the department may recover the overpayment under s. 108.22 (8).

**SECTION 9.** 108.04 (8) (b) of the statutes, as created by 2011 Wisconsin Act 32, is repealed.

**SECTION 10.** 108.04 (11) (a) and (b) of the statutes are amended to read:

108.04 (11) (a) If a claimant, in filing his or her application for benefits or claim for any week, conceals any material fact relating to his or her eligibility for benefits, the claimant ~~shall forfeit benefits in accordance with~~ is ineligible for benefits as provided in par. (be).

(b) If a claimant, in filing a claim for any week, conceals any of his or her wages earned in or paid or payable for that week, the claimant ~~shall forfeit benefits in accordance with par. (be).~~ In addition, the claimant shall be denied benefits for that week is ineligible for benefits as provided in par. (be).

**SECTION 11.** 108.04 (11) (be) of the statutes is repealed and recreated to read:

108.04 (11) (be) A claimant is ineligible for benefits for acts of concealment described in pars. (a) and (b) as follows:

1. For each single act of concealment occurring before the date of the first determination of concealment under par. (a) or (b), the claimant is ineligible for benefits for which he or she would otherwise be eligible in an amount equivalent to 2 times the claimant's weekly benefit rate under s. 108.05 (1) for the week in which the claim is made.

2. For each single act of concealment occurring after the date of the first determination of concealment under par. (a) or (b), the claimant is ineligible for benefits for which he or she would otherwise be eligible in an amount equivalent to 4 times the claimant's weekly benefit rate under s. 108.05 (1) for the week in which the claim is made.

3. For each single act of concealment occurring after the date of a 2nd or subsequent determination of concealment under par. (a) or (b), the claimant is ineligible for benefits for which he or she would otherwise be eligible in an amount equivalent to 8 times the claimant's weekly benefit rate under s. 108.05 (1) for the week in which the claim is made.

**SECTION 13.** 108.04 (11) (bm) of the statutes is amended to read:

108.04 (11) (bm) ~~The forfeiture established~~ The department shall apply any ineligibility under par. (be) ~~may be applied against benefits and weeks of eligibility for which the claimant would otherwise become payable to the claimant for weeks of unemployment occurring be eligible~~ after the week of concealment and within 6 years after the date of an initial determination issued under s. 108.09 finding that a concealment occurred. The claimant shall not receive waiting period credit under s. 108.04 (3) for the period of ineligibility applied under par. (be). If no benefit rate applies to the week for which the claim is made, the department shall use the claimant's benefit rate for the claimant's next benefit year beginning after the week of concealment to determine the forfeiture amount. ~~If the benefits forfeited would otherwise be chargeable to an employer's account, the department shall charge the amount of benefits forfeited to the employer's account and shall credit the fund's balancing account for that amount of the benefit reduction.~~

**SECTION 14.** 108.04 (13) (cm) of the statutes, as created by 2011 Wisconsin Act 32, is repealed.

**SECTION 15.** 108.05 (3) (a) of the statutes is amended to read:

108.05 (3) (a) Except as provided in pars. (b), (c), and (d), and (dm) if an eligible employee earns wages in a given week, the first \$30 of the wages shall be disregarded and the employee's applicable weekly benefit payment shall be reduced by 67% of the remaining amount, except that no such employee is eligible for benefits if the employee's benefit payment would be less than \$5 for any week. For purposes of this paragraph, "wages" includes any salary reduction amounts earned that are not wages and that are deducted from the salary of a claimant by an employer pursuant to a salary reduction agreement under a cafeteria plan, within the meaning of 26 USC 125, and any amount that a claimant would have earned in available work under s. 108.04 (1) (a) which is treated as wages under s. 108.04 (1) (bm), but excludes any amount that a claimant earns for services performed as a volunteer fire fighter, volunteer emergency medical technician, or volunteer first responder. In applying this paragraph, the department shall disregard discrepancies of less than \$2 between wages reported by employees and employers.

**SECTION 16.** 108.05 (3) (b) of the statutes is repealed.

**SECTION 17.** 108.05 (3) (c) of the statutes is renumbered 108.05 (3) (c) (intro.) and amended to read:

108.05 (3) (c) (intro.) A claimant is ineligible to receive any benefits for a week in which ~~the claimant works a total of 40 or more hours for one or more employing units. one or more of the following applies to the claimant for 32 or more hours in that week:~~

**SECTION 18.** 108.05 (3) (c) 1. to 3. of the statutes are created to read:

- 108.05 (3) (c) 1. The claimant performs works; or
2. The claimant has wages ascribed under s. 108.04 (1) (bm); or
3. The claimant receives holiday pay, vacation pay, termination pay, or sick pay under circumstances satisfying the requirements of subs. (4), (5), or (5m) for treatment as wages in that week.

**SECTION 19.** 108.05 (3) (dm) of the statutes is created to read:

108.05 (3) (dm) A claimant is ineligible to receive any benefits for a week if the claimant receives from one or more employers:

1. Wages earned for work performed in that week of more than \$500; or
2. Sick pay, holiday pay, vacation pay, or termination pay which, by itself or in combination with wages earned for work performed in that week, is equivalent to more than \$500.

**SECTION 20.** 108.065 (1) of the statutes is renumbered 108.065 (2) (a) 1.

**SECTION 21.** 108.065 (1e) of the statutes is created to read:

108.065 (1e) Except as provided in subs. (2) and (3), if there is more than one employing unit that has a relationship to an employee, the department shall determine which of the employing units is the employer of the employee by considering the following:

(a) An employing unit's right by contract and in fact to:

1. Determine a prospective employee's qualifications to perform the services in question and to hire or discharge the employee.
2. Determine the details of the employee's pay including the amount of, method of, and frequency of changes in that pay.
3. Train the employee and exercise direction and control over the performance of services by the employee and when and how they are to be performed.
4. Impose discipline upon the employee for rule or policy infractions or unsatisfactory performance.
5. Remove the employee from one job or assign the employee to a different job.
6. Require oral or written reports from the employee.
7. Evaluate the quantity and quality of the services provided by the employee.
8. Assign a substitute employee to perform the services of an employee if the employee is unavailable for work or is terminated from work.
9. Assign alternative work to the employee if the employee is removed from a particular job.

(b) Which employing unit:

1. Benefits directly or indirectly from the services performed by the employee.
2. Maintains a pool of workers who are available to perform the services in question.
3. Is responsible for employee compliance with applicable regulatory laws and for enforcement of such compliance.

**SECTION 22.** 108.065 (1m) and (2) of the statutes are renumbered 108.065 (2) (b) and (c).

**SECTION 23.** 108.065 (3) of the statutes is created to read:

108.065 (3) A provider of home health care and personal care services for medical assistance recipients under ch. 49 may elect to be the employer of one or more employees providing those services. As a condition of eligibility for election to be the employer of one or more employees providing those services, the provider shall notify in writing the recipient of any such services of its election, for purposes of the unemployment insurance law, to be the employer of any worker providing such services to the recipient, and must be treated as the employer by the federal internal revenue service for purposes of federal unemployment taxes on the worker's services.

**SECTION 26.** 108.09 (4r) of the statutes, as created by 2011 Wisconsin Act 32, is repealed.

**SECTION 28.** 108.16 (6) (f) of the statutes is amended to read:

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

**SECTION 29.** 108.16 (6) (L) of the statutes is amended to read:

108.16 (6) (L) The amount of any overpayments that are recovered by the department by setoff pursuant to s. 71.93 or the amount of any overpayments resulting from fraud or failure to report earnings 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.~~

**SECTION 30.** 108.16 (6) (m) of the statutes is amended to read:

108.16 (6) (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) transferred to the balancing account from the unemployment interest payment fund.~~

**SECTION 31.** 108.16 (6m) (g) of the statutes is amended 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 32.** 108.16 (8) (h) of the statutes is amended to read:

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

**SECTION 33.** 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, 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 or failure to report earnings 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 34.** 108.19 (title) of the statutes is amended to read:

**108.19 (title) Contributions to the administrative account and the unemployment interest payment fund.**

**SECTION 35.** 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~~ unemployment interest payment fund 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 department shall use any excess shall be credited to pay interest owed in subsequent years on advances from the federal unemployment account. If the department determines that additional interest obligations are unlikely, the department shall transfer the excess to the balancing account of the fund.~~

**SECTION 36.** 108.19 (1q) of the statutes is created to read:

108.19 (1q) There is created a separate, nonlapsible trust fund designated as the unemployment interest payment fund consisting of all amounts collected under sub. (1m) and all interest and penalties on those amounts collected under s. 108.22.

**SECTION 37.** 108.19 (1s) of the statutes is created to read:

108.19 (1s) (a) There is created a separate, nonlapsible trust fund designated as the unemployment program integrity fund consisting of all amounts collected under s. 108.04 (11) (bh).

(b) The department shall use the moneys in the unemployment program integrity fund for payment of costs associated with program integrity activities.

**SECTION 37m.** 108.19 (1s) of the statutes, as created by 2011 Wisconsin Act ... (this act), is repealed.

**SECTION 38.** 108.22 (1m) of the statutes is amended to read:

108.22 (1m) If an employer owes any contributions, reimbursements or assessments under s. 108.15 or 108.151, or 108.19 (1m), interest, fees, or payments for forfeitures or other penalties to the department under this chapter and fails to pay the amount owed, the department has a perfected lien upon the employer's right, title, and interest in all of its real and personal property located in this state in the amount finally determined to be owed, plus costs. Except where creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective when the department issues a determination of the amount owed under s. 108.10 (1) and shall continue until the amount owed, plus costs and interest to the date of payment, is paid. If a lien is initially barred or stayed by bankruptcy or other insolvency law, it shall become effective immediately upon expiration or removal of such bar or stay. The perfected lien does not give the department priority over lienholders, mortgagees, purchasers for value, judgment creditors, and pledges whose interests have been recorded before the department's lien is recorded.

**SECTION 39.** 108.22 (8) (b) 1. d. of the statutes is amended to read:

108.22 (8) (b) 1. d. If the overpayment results from fraud or failure to report earnings, 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.

**SECTION 41.** 108.225 (1) (b) of the statutes is amended to read:

108.225 (1) (b) "Debt" means a delinquent contribution or repayment of a benefit overpayment, an delinquent assessment under s. 108.04 (11) (cm) or 108.19 (1m), or any liability of a 3rd party for failure to surrender to the department property or rights to property subject to levy after proceedings under sub. (4) (b) and s. 108.10 to determine that liability.

**SECTION 45. Fiscal changes.**

(1) There is transferred from the appropriation under section 20.445 (1) (gd) of the statutes, as affected by this act, to the unemployment interest payment fund, as created by this act, all unencumbered moneys paid to the department of workforce development under section 108.19 (1m) of the statutes for assessments made prior to the effective date of this subsection and all interest and penalties on those moneys collected under section 108.22 of the statutes.

(2) Notwithstanding section 20.445 (1) (gd) of the statutes, as affected by this act, there shall be deposited into the unemployment interest payment fund, as created

by this act, all moneys payable to the department of workforce development under section 108.19 (1m) of the statutes for assessments made prior to the effective date of this subsection and all interest and penalties on those moneys collected under section 108.22 of the statutes.

**SECTION 46. Initial applicability.**

(1) The treatment of sections 20.445 (1) (v) (by SECTION 4), 25.17 (1) (xf) (by SECTION 6), 108.04 (11) (a), (b), (be), and (bm), 108.16 (6) (f), and 108.19 (1s) (by SECTION 37) of the statutes first applies with respect to weeks of employment beginning with the first Sunday that follows the 180th day beginning after the effective date of this subsection.

(1g) The creation of sections 20.445 (1) (v), 25.17 (1) (xf), and 108.19 (1s) of the statutes first applies with respect to overpayments established by the department of workforce development after the effective date of this subsection.

(1r) The repeal of sections 20.445 (1) (v), 25.17 (1) (xf), and 108.19 (1s) of the statutes first applies with respect to overpayments established by the department of workforce development after October 21, 2013.

(2) The treatment of section 108.04 (2) (a) 3. (intro.) and (bm) of the statutes first applies with respect to determinations issued under section 108.09 of the statutes in the first week beginning after the effective date of this subsection or, in relation to determinations that are appealed, to decisions issued under section 108.09 of the statutes in the first week beginning after the effective date of this subsection.

(3) The treatment of sections 108.04 (8) (b) and (13) (cm) and 108.09 (4r) of the statutes first applies with respect to weeks of unemployment beginning after the effective date of this subsection.

(4) The treatment of section 108.05 (3) (a) (with respect to the reference to section 108.05 (3) (b) of the statutes) and (b) of the statutes, the renumbering and amendment of section 108.05 (3) (c) of the statutes, and the creation of section 108.05 (3) (c) 1. to 3. of the statutes first apply with respect to weeks of unemployment beginning on the first Sunday that follows the 180th day beginning after the effective date of this subsection.

(5) The treatment of section 108.05 (3) (a) (with respect to the reference to section 108.05 (3) (dm) of the statutes) and (dm) of the statutes first applies with respect to weeks of unemployment beginning on the first Sunday that follows the 180th day beginning after the effective date of this subsection.

(6) The treatment of section 108.065 (1), (1e), (1m), (2), and (3) of the statutes first applies with respect to services performed after December 31, 2011.

(7) The treatment of sections 108.16 (6) (L), (6m) (g), and (10) and 108.22 (8) (b) 1. d. of the statutes first applies with respect to satisfaction of liabilities outstanding on the effective date of this subsection.

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(8) The treatment of section 108.16 (8) (h) of the statutes first applies with respect to transfers of business occurring after December 31, 2011.

(9) The treatment of sections 108.22 (1m) and 108.225 (1) (b) of the statutes first applies with respect to liabilities on assessments under section 108.19 (1m) of

the statutes made on and after January 1, 2011.

**SECTION 47m. Effective dates.** This act takes effect on the first Sunday after publication, except as follows:

(1) The repeal of sections 20.445 (1) (v), 25.17 (1) (xf), and 108.19 (1s) of the statutes takes effect on January 1, 2014.

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