



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2013 Wisconsin Act 36
[2013 Senate Bill 200]

Unemployment Insurance

2013 Wisconsin Act 36 makes various changes to the state's unemployment insurance (UI) law. The major provisions of the Act are summarized below in the following categories: (1) UI administration; (2) claimant eligibility and benefits; (3) delinquent or erroneous payments; and (4) other.

UI ADMINISTRATION

The Act makes the following changes relating to UI administration:

- Creates a general purpose revenue appropriation of \$362,100 in fiscal year 2013-14 for the Department of Workforce Development (DWD) to administer the UI program and perform other functions under UI law.
- Changes the deadlines by which DWD must submit certain reports. For the UI financial outlook report, the deadline is changed from January 15 of each odd-numbered year to April 15 of each odd-numbered year. For the report summarizing the deliberations of the Unemployment Insurance Advisory Council, the deadline is changed from January 15 of each odd-numbered year to May 15 of each odd-numbered year. For the updated UI financial outlook report, which contains the Governor's recommendations, the deadline is changed from February 15 of each odd-numbered year to June 15 of each odd-numbered year. Lastly, for the annual report summarizing the detection and prosecution of UI fraud, the deadline is changed from February 15 to March 15.
- Requires DWD to maintain a portal on the Internet that allows employers to log in and file complaints related to the administration of UI law. In addition, DWD must request funding from the U.S. Department of Labor (DOL) to develop and maintain the portal, so as to have the portal operational on or after January 5, 2014.
- Requires DWD to create and periodically update a handbook that informs employers that are or may be subject to UI law about the provisions and requirements of UI law. In addition, the Act requires DWD to provide information to employers concerning the financing of the

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

UI system, including the computation of reserve percentages and their effect on the contribution and solvency rates of employers, and to post this information on the Internet.

- Creates a financial record matching program for UI in which DWD can identify the assets of persons who have delinquent UI debts by using information from financial institutions.
- Requires DWD to conduct random audits on claimants to assess compliance with work search requirements.
- Requires DWD to request funding from DOL to hire additional employees to perform UI fraud investigations, so as to begin conducting investigations on or after January 5, 2014.
- Requires DWD to conduct an initial training for all administrative law judges. In addition, DWD must require each administrative law judge to satisfy continuing education requirements, as prescribed by DWD.
- Allows the Department of Transportation to disclose Social Security numbers to DWD for the purpose of enforcing or administering collection responsibilities under UI law.
- Requires the Labor and Industry Review Commission (LIRC) to maintain a searchable, electronic database of significant UI decisions made by LIRC.
- Extends the expiration of the Program Integrity Fund to January 1, 2034. [Under prior law, the fund expired on January 1, 2014.]

CLAIMANT ELIGIBILITY AND BENEFITS

The Act makes the following changes relating to claimant eligibility and benefits:

- Increases the maximum weekly UI benefit from \$363 to \$370, beginning January 5, 2014.
- Provides that DWD may do any of the following for the purpose of assisting claimants to find or obtain work: (1) use information or materials provided by a claimant to assess a claimant's efforts, skills, and ability to find or obtain work and to develop a list of potential opportunities for a claimant to obtain suitable work; or (2) require a claimant to participate in a public employment office workshop or training program or in similar reemployment services.
- Provides that if an employee fails, without good cause, to accept suitable work when offered, the employee is ineligible to receive UI benefits until the employee earns wages equal to at least *six times* the employee's weekly benefit rate. [Under prior law, ineligibility continued until *four weeks* had elapsed and the employee earned wages equal to at least *four times* the employee's weekly benefit rate.]
- Provides that an individual who receives Social Security Disability Insurance (SSDI) benefits in a given week is ineligible for UI benefits in that same week. In addition, a claimant must inform DWD whether he or she is receiving SSDI benefits.
- Excludes, from the calculation of wages used to determine benefit eligibility and amounts, any payment made to or on behalf of an employee under a cafeteria plan, if the payment would not be treated as wages without regard to that plan and if federal law would not treat the payment as constructively received.
- Provides that "wages," for purposes of partial benefits, includes wages that the claimant would have earned in certain circumstances, bonus pay, back pay, and certain disability

payments. [Under current law, a claimant is ineligible to receive partial benefits in any week that the claimant receives wages of more than \$500.]

- Provides that service performed by an inmate of a state prison or a federal prison for an employer that is not a government unit, Indian tribe, or nonprofit organization is not covered employment under UI law.
- Provides that a claimant is ineligible for benefits if the claimant conceals hours that he or she worked. [Under current law, a claimant is also ineligible for benefits if the claimant conceals wages that he or she earned.]
- Provides that if an employee qualifies to receive UI benefits for any week using wages that were excluded because the employee's license has been suspended, revoked, or not renewed due to the employee's fault, any UI benefits paid during a benefit year are charged to the UI fund's balancing account.
- Provides that if a claimant fails to initially comply with a request from DWD to provide information but later complies with the request within the two years following a DWD determination about a claimant's eligibility for benefits, the claimant is eligible to receive benefits beginning with the week in which the failure occurred. [Under prior law, if a claimant later complied with a request by DWD *or satisfied DWD that he or she had good cause for failure to comply with the request*, the claimant was eligible to receive benefits beginning with the week in which the failure occurred.]
- Repeals extended training benefits. [Under prior law, a claimant who was otherwise eligible for UI benefits and who was enrolled in a training program was eligible, while enrolled in that training program, for additional UI benefits provided that certain conditions were satisfied.]
- Requires each claimant to create security credentials in order to engage in transactions with DWD, including the filing of an initial or continued claim for UI benefits. The security credentials may consist of a personal identification number, username, and password, or any other means prescribed by DWD. If a claimant's security credentials are used in a transaction, the individual using the security credentials is presumed to have been the claimant or the claimant's authorized agent.

DELINQUENT OR ERRONEOUS PAYMENTS

The Act makes the following changes relating to delinquent or erroneous payments:

- Creates a process by which a license or credential issued by a state licensing department (or the Wisconsin Supreme Court, if it agrees) is denied or revoked based on delinquent UI contributions. As part of such process, DWD must certify to the licensing department or the Supreme Court that the applicant or license holder is liable for delinquent contributions. In addition, DWD must promulgate rules that specify procedures to be used before DWD certifies to the licensing department or the Supreme Court that the applicant or license holder is liable for delinquent contributions or before DWD denies or revokes a license or credential issued by DWD.
- Allows DWD to waive or decrease interest charged on employers' delinquent payments or unpaid contributions in limited circumstances, as prescribed by rule.

- Allows DWD to waive recovery of benefits that were erroneously paid if the overpayment was the result of a departmental error. [Under prior law, DWD could waive recovery of benefits that were erroneously paid if the overpayment was the result of departmental error *and was not the fault of any employer.*] Under the Act, “departmental error” does not include, and recovery is not waived for, an error made by DWD in computing, paying, or crediting benefits to any individual or in crediting contributions or reimbursements to one or more employers that results from any of the following: a computer malfunction or programming error; an error in transmitting data to or from a financial institution; a typographical or keying error; a bookkeeping or other payment processing error; an action by DWD resulting from a false statement or representation by an individual; or an action by DWD resulting from an unauthorized manipulation of an electronic system.
- Provides that if DWD determines that an erroneous payment has been made to an unintended recipient without fault of the intended payee or payee’s authorized agent, DWD may issue the correct payment to the intended payee and recover the amount of the erroneous payment.
- Creates a procedure for the recovery of erroneous payments from the UI fund.

OTHER

The Act makes the following additional changes to the state’s UI law:

- Provides that multiple limited liability companies that consist of the same members are treated as separate employers under UI law.
- Provides that an application from a transferee requesting that it be deemed a successor must be received by DWD on or before the contribution payment due date for the first full quarter following the date of transfer, *unless the transferee satisfies DWD that the application was late as a result of excusable neglect.* [Prior law did not contain an exception for excusable neglect.] DWD may not accept a late application more than 90 days after its due date.
- Increases the tardy filing fee for a delinquent quarterly report from \$50 to \$100 or \$20 per employee, whichever is greater. However, if the report is filed within 30 days of its due date, the tardy filing fee remains \$50.
- Requires DWD to prescribe, by rule, a standard affidavit form that may be used by parties in UI appeals and to make the form available to employers and claimants. The form is admissible evidence in a hearing if the authentication is sufficient and the information set forth by the affiant is admissible, but its use by a party does not eliminate the right of an opposing party to cross examine the affiant concerning the facts asserted in the affidavit.

Effective date: The Act generally took effect on July 7, 2013, but various provisions of the Act first apply on other dates.

Prepared by: Jessica Karls-Ruplinger and Larry Konopacki, Senior Staff Attorneys

July 8, 2013

JKR:LAK:jal:jb