

# State of Wisconsin



2009 Assembly Bill 884

Date of enactment: **May 12, 2010**  
Date of publication\*: **May 26, 2010**

## 2009 WISCONSIN ACT 287

AN ACT *to repeal* 108.02 (12) (b), 108.04 (2) (d), 108.04 (16) (c), 108.05 (7) (d) 2. b., 108.06 (7) (b) 5., 108.152 (1) (c) and 108.152 (3); *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., 108.05 (7) (d) 1. b., 108.22 (8) (b) 1. and 108.24 (3); *to consolidate, renumber and amend* 108.05 (7) (d) 1. (intro.) and a. and 108.05 (7) (d) 2. (intro.) and a.; *to amend* 108.02 (12) (a), 108.02 (12) (bm) (intro.), 108.02 (15) (f) 3., 108.02 (15) (f) 6., 108.02 (15) (g) 1., 108.02 (21e) (intro.), 108.04 (1) (g) (intro.), 108.04 (2) (a) (intro.), 108.04 (7) (k), 108.04 (7) (o), 108.04 (11) (be) (intro.), 108.04 (16) (b), 108.04 (16) (d), 108.04 (16) (e), 108.05 (3) (b) 1. a., b. and c., 108.06 (7) (a) 2. and (b) 4., 108.06 (7) (d), 108.06 (7) (h) and (j), 108.09 (2) (bm), 108.09 (4s), 108.10 (4), 108.152 (6) (title), 108.152 (6) (a) (intro.), 108.152 (6) (a) 2., 108.16 (10), 108.18 (7) (a), 108.18 (7) (b), 108.18 (7) (d), 108.18 (7) (h), 108.19 (1m) and 108.20 (3); *to repeal and recreate* 108.02 (12) (bm) 1. and 2. and 108.04 (16) (a); and *to create* 108.02 (15) (km), 108.02 (15s), 108.02 (20m), 108.04 (16) (am), 108.04 (16) (f), 108.05 (3) (e), 108.16 (6) (L) and (m), 108.16 (6m) (g), 108.18 (7) (i), 108.22 (8) (b) 1. c. and d. and 108.24 (3) (a) 4. of the statutes; **relating to**: various changes in the unemployment insurance law and providing a penalty.

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

**SECTION 1.** 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**SECTION 2.** 108.02 (12) (b) of the statutes is repealed.

**SECTION 3.** 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 subs. 1. and 2.~~, by contract and in fact:

**SECTION 4.** 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.

\* Section 991.11, WISCONSIN STATUTES 2007-08 : 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].

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 5.** 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 6.** 108.02 (12) (bm) 5. of the statutes is renumbered 108.02 (12) (bm) 2. d.

**SECTION 7.** 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.

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

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

**SECTION 9.** 108.02 (12) (bm) 10. of the statutes is renumbered 108.02 (12) (bm) 2. i. and amended to read:

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

**SECTION 10.** 108.02 (15) (f) 3. of the statutes is amended to read:

108.02 (15) (f) 3. As a member of a legislative body or the judiciary of a state or political subdivision, or as a

member of an elective legislative body or the judiciary of an Indian tribe;

**SECTION 11.** 108.02 (15) (f) 6. of the statutes is amended to read:

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

**SECTION 12.** 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 13.** 108.02 (15) (km) of the statutes is created to read:

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

1. 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. In this subdivision, "domestic partner" has the meaning given in s. 770.01 (1).

**SECTION 14.** 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 15.** 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 16.** 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 17.** 108.04 (1) (g) (intro.) of the statutes is amended to read:

108.04 (1) (g) (intro.) Except as provided in par. (gm) and s. 108.06 (7) (d), the base period wages utilized to compute total benefits payable to an individual under s. 108.06 (1) as a result of the following employment shall not exceed 10 times the individual's weekly benefit rate based solely on that employment under s. 108.05 (1):

**SECTION 18.** 108.04 (2) (a) (intro.) of the statutes is amended to read:

108.04 (2) (a) (intro.) Except as provided in par. (b) and sub. (16) (am) and (b) and as otherwise expressly provided, a claimant is eligible for benefits as to any given week for which he or she earns no wages only if:

**SECTION 19.** 108.04 (2) (d) of the statutes is repealed.

**SECTION 20.** 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 21.** 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 consists of more than 30 hours per week is full-time work, 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 is full-time work.

**SECTION 22.** 108.04 (11) (be) (intro.) of the statutes is amended to read:

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

**SECTION 23.** 108.04 (16) (a) of the statutes is repealed and recreated to read:

108.04 (16) (a) In this subsection, "approved training" means:

1. A course of vocational training or basic education which is a prerequisite to such training in which an individual is enrolled if:

a. The course is expected to increase the individual's opportunities to obtain employment;

b. The course is given by a school established under s. 38.02 or another training institution approved by the department;

c. The individual is enrolled full time as determined by the training institution;

d. The course does not grant substantial credit leading to a bachelor's or higher degree; and

e. The individual is attending regularly and making satisfactory progress in the course.

2. A program administered by the department for the training of unemployed workers, other than the youth apprenticeship program under s. 106.13;

3. The plan of any state for training under the federal trade act, [19 USC 2296](#); or

4. A plan for training approved under the federal workforce investment act, [29 USC 2822](#).

**SECTION 24.** 108.04 (16) (am) of the statutes is created to read:

108.04 (16) (am) The department shall not apply any benefit reduction or disqualification under sub. (1) (a), (2) (a), or (8), or s. 108.141 (3g) (a) or (c) to any otherwise eligible individual for any week as a result of the individual's enrollment in approved training.

**SECTION 25.** 108.04 (16) (b) of the statutes is amended to read:

108.04 (16) (b) The department shall not apply any benefit reduction or disqualification under sub. (1) (b), (2) (a), (7) (c), or (8) (e) or s. 108.141 (3g) (d) that is not the result of approved training or basic education under par. (a) while an individual is enrolled in a course of training or education that meets the standards specified in par. (a) approved training.

**SECTION 26.** 108.04 (16) (c) of the statutes is repealed.

**SECTION 27.** 108.04 (16) (d) of the statutes is amended to read:

108.04 (16) (d) If an individual is enrolled ~~under the plan of any state for training under 19 USC 2296 or a plan for training of dislocated workers approved under 29 USC 2822~~ in approved training specified in par. (a) 3. or 4.:

1. The department shall not deny benefits under sub. (7) as a result of the individual's leaving unsuitable work to enter or continue such training, as a result of the individual's leaving work that the individual engaged in on a temporary basis during a break in the training or a delay in the commencement of the training, or because the individual left on-the-job training not later than 30 days after commencing that training because the individual did not meet the requirements of the federal trade act under 19 USC 2296 (c) (1) (B); and

2. The requalifying requirements under subs. (7) and (8) do not apply while the individual is enrolled in such approved training specified in par. (a) 3. or 4.

**SECTION 28.** 108.04 (16) (e) of the statutes is amended to read:

108.04 (16) (e) The department shall charge to the fund's balancing account the cost of benefits paid to an

individual that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 if the individual receives benefits based on the application of par. ~~(am)~~, (b), ~~(e) 2.~~, or (d).

**SECTION 29.** 108.04 (16) (f) of the statutes is created to read:

108.04 (16) (f) As a condition to qualification of a course as approved training for an individual under this subsection, the department may require a certification from the training institution showing the individual's attendance and progress in the course.

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

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

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

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

**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.

**SECTION 32.** 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 in accordance with subd. 2. 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.

**SECTION 33.** 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 week, and the department has provided due notice to the claimant that the payment will be allocated in accordance with subd. ~~2. b. 1.~~

**SECTION 34.** 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 that is~~ actually or constructively received on a periodic basis, ~~the amount allocated by allocating~~ to each week is the fraction of the payment attributable to that week.

**SECTION 35.** 108.05 (7) (d) 2. b. of the statutes is repealed.

**SECTION 36.** 108.06 (7) (a) 2. and (b) 4. of the statutes, as created by 2009 Wisconsin Act 11, are amended to read:

108.06 (7) (a) 2. "Training program" means any program of a type specified in s. 108.04 (16) ~~(a)~~.

(b) 4. Is not receiving similar stipends or other training allowances for nontraining costs; ~~and~~

**SECTION 37.** 108.06 (7) (b) 5. of the statutes, as created by 2009 Wisconsin Act 11, is repealed.

**SECTION 38.** 108.06 (7) (d) of the statutes, as created by 2009 Wisconsin Act 11, is amended to read:

108.06 (7) (d) ~~No~~ A claimant may receive total benefits under this subsection ~~greater than~~ of not more than 26 times the claimant's weekly benefit rate that applied to the claimant's applicable benefit year while enrolled in a training program. The benefits authorized under this subsection are in addition to any regular benefits, extended benefits, or additional benefits authorized under federal law to which a claimant may be entitled.

**SECTION 39.** 108.06 (7) (h) and (j) of the statutes, as created by 2009 Wisconsin Act 11, are amended to read:

108.06 (7) (h) The occupations that qualify as ~~declining or high-demand~~ for purposes of this subsection shall be determined by the department.

(j) The department shall charge benefits paid under this subsection in the same manner as benefits are charged under s. 108.04 (16) ~~(e)~~.

**SECTION 40.** 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., (b) 3. or 4., 2. b. or c.~~ or (c) 1., the department shall not consider documents granting operating author-

ity or licenses, or any state or federal laws or federal regulations granting such authority or licenses.

**SECTION 41.** 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 42.** 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 43.** 108.152 (1) (c) of the statutes is repealed.

**SECTION 44.** 108.152 (3) of the statutes is repealed.

**SECTION 45.** 108.152 (6) (title) of the statutes is amended to read:

108.152 (6) (title) FAILURE TO MAKE REQUIRED PAYMENTS OR FILE ASSURANCE OF REIMBURSEMENT.

**SECTION 46.** 108.152 (6) (a) (intro.) of the statutes is amended to read:

108.152 (6) (a) (intro.) If an Indian tribe or tribal unit fails to pay required contributions, reimbursements in lieu of contributions, penalties, interest, or fees within 90 days of the time that the department transmits to the tribe a final notice of delinquency, ~~or fails to file or maintain the required assurance of reimbursement as provided in subs. (1) (c) and (3):~~

**SECTION 47.** 108.152 (6) (a) 2. of the statutes is amended to read:

108.152 (6) (a) 2. Any valid election of reimbursement financing is terminated as of the end of the current calendar year ~~and any pending election that fails to meet the requirement to file an assurance of reimbursement under sub. (1) (c) is terminated immediately.~~

**SECTION 48.** 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 setoff pursuant to s. 71.93 or the amount of any overpayments resulting from fraud 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.

(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 49.** 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 50.** 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 51.** 108.18 (7) (a) of the statutes is amended to read:

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

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

**SECTION 52.** 108.18 (7) (b) of the statutes is amended to read:

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

credit, without interest, against future contributions payable by the employer, at the employer's option.

**SECTION 53.** 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 post-marked no later than that date or is received by the department no later than 3 days after that date.~~

**SECTION 54.** 108.18 (7) (h) of the statutes is amended to read:

108.18 (7) (h) The department shall establish contributions other than those required by this section and s. 108.19 (1) and (1e) and contributions other than those submitted during the month of November or authorized under par. (f) ~~or (i) 2~~, as a credit, without interest, against future contributions payable by the employer or shall refund the contributions at the employer's option.

**SECTION 55.** 108.18 (7) (i) of the statutes is created to read:

108.18 (7) (i) 1. An employer that suffers physical damage to its business caused by a catastrophic event for which the employer is not primarily responsible, and incurs benefit charges to its account for layoffs due to that damage may, by means of a voluntary contribution under par. (a), increase the employer's reserve percentage to no greater than the reserve percentage that would have applied to the employer as of the next computation date had that damage not caused the employer to lay off its employees. An employer that makes a voluntary contribution under this subdivision shall notify the department of its election to have its contribution treated in the manner provided in this paragraph and shall submit proof, in the form and manner prescribed by the department, to establish that its employees were laid off due to the catastrophic event.

2. If an employer makes a payment under subd. 1. after November 30 and before November 1 of the succeeding year, the department shall establish the payment as a credit and apply the payment as a voluntary contribution to the employer's account when the next rate computation occurs. Any amount paid to the department in excess of the amount that may be applied under subd. 1 in any year may continue to be held as a credit, without interest, against future required or voluntary contributions for a calendar year or refunded to the employer, at the employer's option.

**SECTION 56.** 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 57.** 108.20 (3) of the statutes is amended to read:

108.20 (3) 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 58.** 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 59.** 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

d. If the overpayment results from fraud, 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 60.** 108.24 (3) of the statutes is renumbered 108.24 (3) (a) (intro.) and amended to read:

108.24 (3) (a) (intro.) Any person who makes Who-ever does any of the following shall be fined not less than \$100 nor more than \$1,000 or imprisoned for not more than 90 days or both:

1. Makes a deduction from the wages of an employee because of liability for contributions or payments in lieu

of contributions under this chapter or because of the employee's potential right to benefits, ~~or who knowingly,~~

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

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

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

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

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

**SECTION 61.** 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 62. Nonstatutory provisions.**

(1) CERTAIN BENEFIT PAYMENTS VALIDATED. Notwithstanding section 108.04 (16), 2007 stats., if any unemployment insurance claimant who was enrolled in training approved under the federal workforce investment act, [29 USC 2822](#), received benefits concurrently with that enrollment during the period beginning on or after August 23, 2009, and ending on the day before the time that the treatment of section 108.04 (16) of the statutes by this act initially applies, and the claimant was otherwise eligible to receive the benefits, the payment of benefits to the claimant is valid if the claimant would have qualified to receive the benefits under section 108.04 (16) of the statutes, as affected by this act.

(2) ADMINISTRATIVE ACCOUNT TRANSFER. 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 63. Initial applicability.**

(1) The treatment of sections 108.02 (12) (bm) (intro.) and 1. to 10. and 108.09 (2) (bm) and (4s) of the

statutes, with respect to contribution requirements, first applies with respect to services performed after December 31, 2010.

(2) The treatment of sections 108.02 (12) (bm) (intro.) and 1. to 10. and 108.09 (2) (bm) and (4s) of the statutes, with respect to benefit eligibility, first applies with respect to services performed after December 31, 2010.

(3) The treatment of section 108.02 (15) (km) of the statutes, with respect to contribution requirements, first applies with respect to services performed after December 31, 2010.

(4) The treatment of section 108.02 (15) (km) of the statutes, with respect to benefit eligibility, first applies with respect to benefit years beginning on January 2, 2011.

(5) 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.

(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 July 3, 2011.

(7) The treatment of section 108.02 (21e) (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.

(8) The treatment of sections 108.04 (1) (g) (intro.), (2) (a) (intro.) and (d), and (16) (a), (am), (b), (c), (d), and (f) and 108.06 (7) (a) 2., (b) 4. and 5., (d), (h), and (j) of the statutes (with respect to benefit payments) first applies with respect to weeks of unemployment beginning on the effective date of this subsection.

(9) The treatment of section 108.04 (16) (e) of the statutes first applies with respect to weeks of unemployment beginning on October 3, 2010.

(10) 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.

(11) 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.

(12) The treatment of section 108.152 (1) (c), (3), and (6) (title) and (a) (intro.) and 2. of the statutes first applies with respect to Indian tribes and tribal units electing or continuing reimbursement financing of benefits for calendar years beginning after December 31, 2010.

(13) 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 lia-

bilities outstanding on the effective date of this subsection.

**SECTION 64. Effective date.**

(1) This act takes effect on July 4, 2010.

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