

## CHAPTER 108.

## UNEMPLOYMENT RESERVES AND COMPENSATION.

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**108.01 Public policy declaration.** Without intending that this section shall supersede, alter or modify the specific provisions hereinafter contained in this chapter, the public policy of this state is declared as follows:

(1) Unemployment in Wisconsin is recognized as an urgent public problem, gravely affecting the health, morals and welfare of the people of this state. The burdens resulting from irregular employment and reduced annual earnings fall directly on the unemployed worker and his family. The decreased and irregular purchasing power of wage earners in turn vitally affects the livelihood of farmers, merchants and manufacturers, results in a decreased demand for their products, and thus tends partially to paralyze the economic life of the entire state. In good times and in bad times unemployment is a heavy social cost, directly affecting many thousands of wage earners. Each employing unit in Wisconsin should pay at least a part of this social cost, connected with its own irregular operations, by financing compensation for its own unemployed workers. Each employer's contribution rate should vary in accordance with his own unemployment costs, as shown by experience under this chapter. Whether or not a given employing unit can provide steadier work and wages for its own employees, it can reasonably be required to build up a limited reserve for unemployment, out of which benefits shall be paid to its eligible unemployed workers, as a matter of right, based on their respective wages and lengths of service.

(2) The economic burdens resulting from unemployment should not only be shared more fairly, but should also be decreased and prevented as far as possible. A sound system of unemployment reserves, contributions and benefits should induce and reward steady operations by each employer, since he is in a better position than any other agency to share in and to reduce the social costs of his own irregular employment. Employers and employees throughout the state should co-operate, in advisory committees under government supervision, to promote and encourage the steadiest possible employment. A more adequate system of free public employment offices should be provided, at the expense of employers, to place workers more efficiently and to shorten the periods between jobs. Education and retraining of workers during their unemployment should be encouraged. Governmental construction providing emergency relief through work and wages should be stimulated.

(3) A gradual and constructive solution of the unemployment problem along these lines has become an imperative public need.

**108.02 Definitions.** As used in this chapter:

(1) "Benefits" means the money allowance payable to an employe as compensation for his wage losses due to unemployment as provided in this chapter.

(2) "Commission" means the industrial commission.

(3) EMPLOYEE. (a) "Employee" means any individual who is or has been performing services for an employing unit, in an employment, whether or not he is paid directly by such employing unit; except as provided in par. (b). If a contractor performing services for an employing unit is an employe under this subsection and not an employer subject to the contribution provisions of this chapter, a person employed by the contractor in fulfillment of his contract with the employing unit shall be considered the employe of the employing unit.

(b) Paragraph (a) shall not apply to an individual performing services for an employing unit if the employing unit satisfies the commission as to both the following conditions:

1. That such individual has been and will continue to be free from the employing unit's control or direction over the performance of his services both under his contract and in fact; and

2. That such services have been performed in an independently established trade, business or profession in which the individual is customarily engaged.

(c) This subsection shall be used in determining an employing unit's liability under the contribution provisions of this chapter, and shall likewise be used in determining the status of claimants under the benefit provisions of this chapter.

(d) Any individual who is, under this subsection, an "employee" of a given employing unit shall be deemed "employed" by that employing unit for the purposes of this chapter.

(4) EMPLOYER. (a) "Employer", except where the term by its context may apply to any unit employing one or more individuals, means any person, partnership, association, corporation, whether domestic or foreign (or legal representative or trustee in bankruptcy or receiver or trustee of a person, partnership, association or corporation, or legal representative of a deceased person), including this state and any city of the first class (but excluding any other political subdivision) and any fraternal benefit society as defined in s. 208.01, who is subject to this chapter under the statutes of 1955, or who has had employment in Wisconsin and becomes subject to this chapter under the provisions of this subsection.

(b) Any other employer who is subject to the federal unemployment tax act for any calendar year shall become an "employer" subject hereto as of the beginning of such calendar year.

(c) Any other employer shall become an "employer" subject hereto in case the wages paid or payable by him for employment occurring in any calendar quarter exceed \$10,000 (counting for this purpose not more than \$1,000 of such wages per individual employed), as of the beginning of that calendar year in which such quarter occurs.

(d) Any other employer, who has employed as many as 4 individuals in "employment" on each of some 20 days during the taxable year, each day being in a different calendar week, counting the total number of individuals who were employed by him in employment for some portion of the day (whether or not at the same moment of time), effective after December 31, 1955, shall become an "employer" subject hereto as of the start of that calendar year in which such employment occurred. If an employer's records for a given calendar year do not permit accurate determination of his status on the foregoing basis, and the aggregate "wages" paid or payable for "employment" by him equalled or exceeded \$6,000 for such year, he shall become an "employer" subject hereto as of the start of such year.

(e) Any other employer, who succeeds to the business of any "employer" hereunder, shall thereby become an "employer" subject to this chapter, as provided in subsection (8) of section 108.16.

(f) Any employer, including any political subdivision of the state, not otherwise subject to this chapter, who files with the commission his written election to become an "employer" subject hereto for not less than 3 calendar years, shall, with the written approval of such election by the commission, become an "employer" fully subject to this chapter, as of the date and under the conditions stated in such approved election. Any political subdivision may limit its election to one or more of its operating units.

1. The commission may refuse to approve any such election, in the interests of the proper administration of this chapter. Any election approved by the commission shall be void, in case the electing party was himself "employed" in the same enterprise as the individuals to whom such election applied. The commission may at any time by written notice to the employer terminate any election in the interests of proper administration of this chapter.

2. An electing employer may, after 3 such years, terminate his election and thereby cease to be an "employer" subject hereto, despite par. (g), at the close of any week which ends after the month in which he has filed a written notice to that effect with the commission, provided he is not then subject to this chapter under par. (b), (c), (d), or (e).

(g) An employer shall cease to be subject to this chapter only upon commission action terminating his coverage. The commission may terminate an employer's coverage, on its own motion or on application by the employer, by mailing a notice of termination to the employer's last known address. If a termination of coverage is based on an employer's application, it shall be effective as of the close of the calendar month in which the application was filed. Otherwise, it shall be effective as of the close of the calendar month in which the notice of termination is mailed, subject to appeal by the employer under section 108.10 by the close of the following month. The commission shall terminate an employ-

er's coverage only if the employer would not otherwise be subject under subsection (4) (b), and only if the employer:

1. Has ceased to exist; or
2. Has transferred his entire business to another person or persons; or
3. Has been covered by this chapter throughout each of the 2 most recently completed calendar years, but has, in each such year, had less than 20 weeks (lying wholly within that year) within which he employed 3 or more employes.

(h) The commission shall not terminate an employer's coverage under par. (g) 3, if during any calendar year (or year ending on a computation date) of his coverage his payroll for such year was \$20,000 or more or if on any computation date his employer's account was overdrawn, until 6 years have elapsed since the close of the last such year or since the most recent such computation date (next following a calendar year of some payroll).

(5) EMPLOYMENT. (a) "Employment", subject to the other provisions of this subsection means any service, including service in interstate commerce, performed by an individual for pay.

(b) The term "employment" shall include an individual's entire service (performed within, or partly within and partly outside, Wisconsin), if such service is "localized" in Wisconsin; and shall also include such service, if it is not "localized" in any state but is performed partly within Wisconsin, and if:

1. The base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in Wisconsin; or

2. The base of operations or place from which such service is directed or controlled is not in any state in which some part of such service is performed, but the individual's residence is in Wisconsin.

(c) An individual's entire service for an employer, whether performed partly within or entirely outside Wisconsin, shall be deemed "employment" subject to this chapter, provided both the following conditions exist:

1. Such service is deemed "employment" covered by this chapter pursuant to a reciprocal arrangement between the commission and each agency administering the unemployment compensation law of a jurisdiction in which part of such service is performed; or no contributions are required with respect to any of such service under any other unemployment compensation law; and

2. The employer so elects with the commission's approval and with written notice to the individual.

(d) An individual's entire service shall be deemed "localized" within a state, if such service is performed entirely within such state, or if such service is performed partly within and partly outside such state but the service performed outside such state is incidental to the individual's service within such state (for example, is temporary or transitory in nature or consists of isolated transactions).

(e) In determining whether an individual's entire services shall be deemed "employment" subject to this chapter, under paragraphs (b), (c) and (d) of this subsection, the commission may determine and redetermine the individual's status hereunder for such reasonable periods as it deems advisable, and may refund (as paid by mistake) any contributions which have been paid hereunder with respect to services duly covered under any other unemployment compensation law.

(f) The term "employment", as applied to work for a governmental unit, except as such unit duly elects otherwise with the commission's approval, shall not include:

1. Employment as an elected or appointed public officer;
2. Employment, of a professional or consulting nature, paid on a per diem or retainer basis;
3. Employment by a governmental unit on an unemployment work relief project, recognized as such by the commission;
4. Employment, by an educational institution supported wholly or substantially from public funds, of any student enrolled in such institution and carrying at least half its full-time schedule in the most recent school term, or of any person as a teacher in such institution;
5. Employment directly by the state fair during its active duration (including the week before and the week after the fair); or employment by the Wisconsin National Guard directly and solely in connection with its summer training camps or for emergencies; or employment directly by the conservation commission for emergency fire fighting;
6. Employment by a governmental unit in a given week, for the removal of snow or ice or for work connected with floods, of an individual who has worked for such governmental unit in six or less of the fifty-two weeks preceding the given week.
7. Service solely as a school crossing guard.

8. Part-time or occasional service in recreational activities.
  9. Past service in a regular annual school-year position (other than teaching) by an individual who still (when claiming benefits) has status therein as a school-year employe.
  11. Part-time or occasional service or work by visually handicapped persons performed in the workshop for the blind.
- (g) The term "employment," except as a given employer elects otherwise with the commission's approval, shall not include:
1. Employment in agricultural labor;
  2. Domestic service in the employ of an individual in his private home, or domestic service in the employ of a local college club or of a local chapter of a college fraternity or sorority;
  3. Employment as a caddy on a golf course;
  4. Employment as a newsboy, selling or distributing newspapers or magazines on the street or from house to house;
  5. Service performed after June 30, 1939, with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act (52 Stat. 1094).
  6. Any type of maritime service specifically excluded from the coverage of the federal unemployment tax act.
  7. Service performed in the employ of a religious, charitable, educational, or other organization described in s. 501 (c) (3) of the internal revenue code which is exempt from federal income tax under s. 501 (a) of said code.
  8. Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commissions.
  9. Service performed by an individual for a person as a real estate agent or as a real estate salesman, if all such service performed by such individual for such person is performed for remuneration solely by way of commissions.
  11. Service as an unpaid officer of a corporation or association.
  13. Service covered by any other unemployment compensation law pursuant to a reciprocal arrangement made by the commission under subsection (8m) of section 108.14.
  14. Service for an employer who would otherwise be subject to this chapter solely because of subsection (4) (b), if and while the employer, with written notice to and approval by the commission, duly covers, under the unemployment compensation law of another jurisdiction, all services for him which would otherwise be covered under this chapter.
  15. Service performed in any calendar quarter in the employ of any organization exempt from federal income tax under s. 501 (a) of the internal revenue code (other than an organization described in s. 401 (a) of said code) or under s. 521 of the internal revenue code, if the remuneration for such service is less than \$50.
  16. Service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of 21 in the employ of his father or mother.
  17. Service as an enrollee or other beneficiary of any program under the federal Economic Opportunity Act of 1964 (P. L. 88-452).

(h) If the federal unemployment tax act is so amended after 1944 as to make subject thereto remuneration paid for any employment excluded under paragraph (g), such exclusion under this chapter shall cease as of the date when said federal act first applies to such remuneration, except as provided in section 108.14 (8m) (b).

(6) WAGES. "Wages" means every form of remuneration payable for a given period (or paid within such period, if this basis is permitted or prescribed by the commission) to an individual for personal services, including salaries, commissions, vacation pay, dismissal wages, bonuses and the reasonable (actual or estimated average) value of board, rent, housing, lodging, payments in kind, and any other similar advantage received from the individual's employing unit or directly with respect to work for it; but there shall not be treated as "wages" the actual (or reasonably estimated average) amount of any required or necessary expenses incurred by an individual on his job. Tips shall be counted as "wages" solely for benefit purposes.

(7) AVERAGE WEEKLY WAGE. (a) An employe's "average weekly wage" with respect to a given employer and benefit determination means the average weekly amount determined by dividing the employe's number of weeks of employment by such employer, within the period specified by s. 108.06 (1) (a), which have not been used in a previous benefit determination into the total gross wages paid for such employment.

(b) In lieu of the foregoing standard procedure for determining an employe's average weekly wage, the commission may, on application of an employe or his employer or on its own motion, prescribe reasonable substitute procedure for determining or redetermining the average weekly wage of any employe if it finds, after consulting the employe and the

given employer, that application of the standard procedure would be inequitable in such case.

(8) **PAYROLL.** (a) An employer's "payroll" for a period shall include all wages paid within that period to the employer's employes for their "employment" by him.

(b) But an employer's "payroll" for any calendar year after 1965 shall not include more than the first \$3,600 of wages paid by him during such year to an individual with respect to "employment" (including any employment covered by the unemployment compensation law of any other state).

(c) If the federal unemployment tax is amended to apply to a higher amount than the first \$3,600 of wages (paid to an individual during a calendar year), then such higher amount shall likewise apply under par. (b), as a substitute for the \$3,600 there specified, starting with the same period to which such federal amendment first applies.

(d) If \$4,000 or a higher amount is applied pursuant to par. (c), the employer contribution rates (on payroll) determined under s. 108.18 (4), (5), (6) and (10) for the first 3 calendar years to which that higher amount applies shall be reduced by one-tenth of one per cent (on payroll), except where an experience rate of zero per cent applies.

(9) "Fund" means the unemployment reserve fund established in section 108.16.

(10) "Employer's account" means a separate account in the fund, reflecting the employer's experience with respect to contribution credits and benefit charges under this chapter.

(11) "Reserve percentage" shall for contribution purposes refer to the status of an employer's account, as determined by the commission as of the applicable "computation date". In calculating an employer's net reserve as of any computation date, his account shall be charged with benefits paid on or before said date, and shall be credited with contributions, on his payroll through said date, if paid by the close of the month which follows said date or if paid pursuant to s. 108.18 (7) and within the period therein specified. The employer's "reserve percentage" means his account's net reserve as of the computation date, stated as a percentage of his "payroll" in the year ending on such date or in the year applicable under s. 108.18 (6).

(11m) "Computation date" means that date as of the close of which the commission computes reserve percentages and determines contribution rates for the next calendar year. The computation date shall be June 30, starting in 1963.

(12) "Week" means calendar week, starting Sunday and ending Saturday; but, where an employe starts a working shift on a given Saturday, all his hours and pay for that shift shall be counted in the calendar week which includes that Saturday.

(12m) "52 weeks" means 52 consecutive weeks, or 53 consecutive weeks if they include the fifty-third week ending in a calendar year, for the purposes of any determination issued under this chapter as to an employe's base period or benefit year.

(13) An employe's "weeks of employment" by an employer means all those weeks within each of which the employe has performed any wage-earning services for the employer in employment subject to this chapter.

(14) "Credit week" means a week of employment (of an employe by an employer) counted in computing benefits under section 108.06.

(15) **WEEKLY BENEFIT RATE.** An employe's "weekly benefit rate" from a given employer means the amount determined in accordance with s. 108.05.

(16) **PARTIAL UNEMPLOYMENT.** An employe is "partially unemployed" in any week for which he receives some wages but less than his weekly benefit rate.

(17) **TOTAL UNEMPLOYMENT.** An employe shall be deemed "totally unemployed" in any week for which he receives no wages.

(18) **ELIGIBILITY.** An employe shall be deemed "eligible" for benefits for any given week of his unemployment unless he is disqualified by a specific provision of this chapter from receiving benefits for such week of unemployment, and shall be deemed "ineligible" for any week to which such a disqualification applies.

(19) An employe's "waiting period" means any period of time (for which no benefits are payable) required of the employe pursuant to section 108.04 (3), as a condition precedent to his receipt of benefits.

(20) "Administration fund" means the fund established in section 108.20.

(21) **UNDEFINED TERMS.** Any word or phrase used in this chapter and not specifically defined herein shall be interpreted in accordance with the common and approved usage thereof and in accordance with other accepted rules of statutory construction. No legislative enactment shall control the meaning or interpretation of any such word or phrase,

unless such enactment specifically refers to this chapter or is specifically referred to in this chapter.

(22) **SELF-EMPLOYMENT.** An individual shall be deemed to be "self-employed" if he is engaged (not in the employ of another) in a business or enterprise which he has undertaken for the purpose of producing a substantial part of his gross income.

(23) **AGRICULTURAL LABOR:** "Agricultural labor" means service performed:

(a) On a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of live stock, bees, poultry, and fur-bearing animals and wildlife.

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(c) In connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the federal Agricultural Marketing Act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(d) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(e) As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(24) **BENEFIT YEAR.** An employe's "benefit year" means the period for which his benefit rights are determined under ss. 108.06 and 108.061.

(25) **BASE PERIOD.** An employe's "base period" means the period, immediately preceding his benefit year, which is used to determine his benefit rights for that year pursuant to ss. 108.06 and 108.061.

**History:** 1961 c. 12, 336; 1963 c. 145, 459; 1965 c. 10, 512, 530.

A general agent of an insurance company is also an employe of the company. *Napany who is employed on contract but who is not an employe of the company. National G.L. Ins. Co. v. Industrial Comm.* 26 W (2d) 198, 131 NW (2d) 896.

**108.03 Payment of benefits.** (1) Benefits shall be paid to each unemployed and eligible employe from his employer's account, under the conditions and in the amounts stated in (or approved by the commission pursuant to) this chapter, and at such times, at such places, and in such manner as the commission may from time to time approve or prescribe.

(2) (a) The benefit liability of each employer's account shall begin to accrue under section 108.06 in the first week completed on or after the first day of that calendar year within which his contributions first began to accrue under this chapter.

(b) Benefits shall become payable from each employer's account beginning with the first week completed 6 months after the first day of that calendar year within which his contributions first began to accrue under this chapter.

(3) When an employer, after due notice of a benefit claim against his account, has conceded liability thereunder, or has failed to file the required report thereon or has failed to raise any eligibility issue thereunder, any benefits allowed under any resulting benefit determination shall be promptly paid; and any issue thereafter raised by the employer shall not affect benefits already paid.

**108.04 Eligibility for benefits.** (1) **AVAILABILITY FOR WORK:** (a) An employe shall be ineligible for benefits for any week in which he is with due notice called on by his current employing unit to report for work actually available within such week and is unavailable for work or physically unable to do his work.

(b) An employe shall be ineligible for benefits from an employer's account:

1. While he is physically unable to work, or substantially unavailable for work, if his employment with such employer was suspended by the employe or by the employer or was terminated by such employer because the employe was physically unable to do, or unavailable for, his work; or

2. While he is on a voluntary leave of absence granted for a definite period, until such period has ended or until the employe has returned to work, whichever occurs first.

(c) A pregnant woman shall be deemed unavailable for work and ineligible for benefits for the period which begins 10 weeks before the week which includes the expected date of childbirth and which ends 4 weeks after the week which includes the date of childbirth. The commission may require any such claimant to submit a doctor's certificate to establish such dates.

(d) 1. A woman whose eligibility is suspended under par. (c) shall continue to be ineligible, after the 4 weeks specified in par. (c), until the week in which she has notified her most recent employer that she is physically able to work and available for work.

2. Thereafter, until she has had 30 hours of employment in a week, she shall not be eligible for benefits for any week unless she establishes to the satisfaction of the commission that during such week she has made an active and bona fide search for employment.

(e) An individual who is self-employed shall not be eligible for benefits for any week in which he has worked at his self-employment, unless he establishes to the satisfaction of the commission that during such week he made an active and bona fide search for employment.

(f) If an employe is required by law to have a license, issued by a governmental agency, to perform his customary work for an employer, the employe shall not be eligible for benefits from the employer's account where the employe's employment was suspended or terminated because his license has been suspended, revoked or not renewed due to his own fault, until he has a valid license to perform such work.

(g) In case an individual claims benefits based on his employment by a corporation, if he and the members of his immediate family together own 51 per cent or more of its voting stock, or if he and his spouse together own 20 per cent or more of its voting stock and one of them was during such employment an officer or director of the corporation, then:

1. The corporate employer shall so inform the commission on its reports (as to such individual) for benefit purposes; and

2. The individual shall so report, when claiming benefits; and

3. The individual shall not be eligible for benefits based on such employment for any week of his unemployment, unless he establishes to the satisfaction of the commission that during such week he made an active and bona fide search for employment.

(2) REGISTRATION FOR WORK. (a) An employe shall be deemed eligible, for waiting period or benefit purposes, as to any given week for which he receives no wages, only if he has within such week registered for work in such manner as may then be prescribed by commission rules; provided that, if the commission finds that there are conditions under which an employe cannot reasonably be required to comply with the foregoing registration requirement, the commission may by general rule waive this requirement under such stated conditions. Each employer shall inform his employes of the foregoing registration requirement, in such reasonable manner as the commission may from time to time prescribe.

(b) Any claimant, thus registered, may also be required at any time to make such other efforts to secure work as the commission may reasonably direct under the circumstances, and to supply proper evidence thereof; and shall, if he fails without good cause to do so, be ineligible for each week such failure continues.

(c) A claimant who earns or receives wages for one or more weeks of unemployment may be required, pursuant to commission rules, to register and be available for work in order to be or remain eligible for benefits for any such week.

(3) WAITING PERIOD. The first week of an employe's benefit year shall be his "waiting period" for that year.

(4) QUALIFYING CONDITIONS. (a) An employe shall not be eligible to start a benefit year with any given week of unemployment unless he has had a total of 18 or more "weeks of employment" from one or more employers within the 52 weeks preceding that week or within those 52 weeks plus the number of any weeks over 7 (occurring within those 52 weeks) for which he received dismissal or termination pay, or temporary total disability payments under ch. 102.

(af) There shall be counted toward the "weeks of employment" required by par. (a)

any federal service, within the relevant period, which is assigned to Wisconsin under an agreement pursuant to title XV of the social security act.

(al) Paragraph (a) shall not disqualify an employe who has had 14 or more but less than 18 weeks of employment, within the 52 weeks specified by par. (a), if he has totaled 55 or more weeks of employment, including weeks under par. (af), within those 52 weeks plus any base period which ended not more than 10 weeks before the start of those 52 weeks.

(b) An employe shall be ineligible for benefits, based on his past employment by a given employer, while his applicable "average weekly wage" as to such employer is under \$16, unless s. 108.07 (2) is applied to that employment.

(c) An employe shall not be eligible to receive benefits from the account of an employer who is engaged in the canning of fresh perishable fruits or vegetables, based on his weeks of employment by such employer ending within a given calendar year, if during such year he has been employed by such employer within fewer than 18 weeks and solely within the active canning season or seasons (as determined by the commission) of the establishment in which he has been employed by such employer, unless he had earned wages (for services performed for one or more other covered employers, and submits adequate evidence of such wages) of \$200 or more during the 52 weeks preceding his first week of employment by such canning employer ending within such year.

(e) In no case shall any employe employed by any bowling alley as a pin boy be eligible to receive any benefits, based on such employment, for unemployment during May, June, July or August.

(f) If a student, while he is regularly attending an educational institution and carrying at least a half-time schedule, is employed in a given week, it shall not be counted as a credit week for benefit purposes if in such week he has worked for the given employer:

1. Not more than 24 hours; or
2. As a formal and accredited part of the regular curriculum of his school; or
3. Solely within the customary vacation days or periods of his school.

(g) Similarly, if an individual who was such a student throughout his school's most recently completed term works for an employer within the ensuing vacation weeks, such weeks shall not be counted as credit weeks for benefit purposes, unless the student had graduated from his school.

(5) DISCHARGE FOR MISCONDUCT. An employe's eligibility, for benefits based on those credit weeks then accrued with respect to an employing unit, shall be barred for any week of unemployment completed after he has been discharged by the employing unit for misconduct connected with his employment; provided, moreover, that such employe shall be deemed ineligible for benefits (from other previous employer accounts) for the week in which such discharge occurred and for the 3 next following weeks.

(6) DISCIPLINARY SUSPENSION. As to an employe's weeks of unemployment by reason of a disciplinary suspension by a given employer, the employe shall be ineligible for benefits as follows:

(a) If the suspension was for misconduct connected with his employment, he shall be ineligible from the given employer's account for each such week and ineligible from other previous employer accounts for the first 3 such weeks.

(b) If the suspension was for other good cause connected with his employment, he shall be ineligible for the first 3 such weeks.

(7) VOLUNTARY TERMINATION OF EMPLOYMENT. (a) If an employe terminates his employment with an employing unit, he shall be ineligible for any benefits based on such employment, and ineligible for benefits based on other previous employment for the week of termination and the 4 next following weeks, except as hereinafter provided.

(b) Paragraph (a) shall not apply if the commission determines that the employe terminated his employment with good cause attributable to the employing unit.

(c) Paragraph (a) shall not apply if the commission determines that the employe terminated his employment because he was physically unable to do his work or because the health of a member of his immediate family left him no reasonable alternative; provided that if the commission determines that he is physically unable to work or substantially unavailable for work, he shall be ineligible while such inability or unavailability continues.

(d) Paragraph (a) shall not apply if the commission determines that the employe terminated his employment to take another job; provided, that he shall be ineligible, for benefits based on the employment terminated, until he has been employed within at least 7 subsequent weeks.

(f) Paragraph (a) shall not apply if the commission determines that the employe terminated his employment because he was transferred by his employing unit to work



paying less than two-thirds of his immediately preceding wage rate with the employing unit; provided that he shall be ineligible for benefits for the week of termination and the 4 next following weeks.

(8) **SUITABLE WORK.** (a) If an employe fails either to apply for work when notified by a public employment office or to accept work when offered to him, and such failure was without good cause as determined by the commission, he shall be ineligible for the week in which such failure occurs and thereafter until he has again been employed within at least 4 weeks and has earned wages equalling at least 4 times his weekly benefit rate.

(af) If an employe fails to return to work with a former employer who has duly recalled him, and such failure was without good cause as determined by the commission, he shall be ineligible for benefits from that employer's account for the week in which such failure occurs and thereafter until he has again been employed within at least 4 weeks and has earned wages equalling at least 4 times his weekly benefit rate.

(b) If the commission determines that such a failure has occurred with good cause, but that the employe is physically unable to work or substantially unavailable for work, he shall be ineligible for the week in which such failure occurred and while such inability or unavailability continues.

(c) When a claimant accepts work which he could have refused with good cause, and then terminates such employment with the same good cause and within the first 10 weeks after starting work, his eligibility for benefits based on other previous employment shall not be suspended, under sub. (7), by reason of such termination.

(d) A claimant shall be deemed to have good cause under par. (a) if the commission determines that his failure related to work at a lower grade of skill or significantly lower rate of pay than applied to him on one or more recent jobs, and that he had not yet had a reasonable opportunity (in view of labor market conditions and his degree of skill, but not to exceed 6 weeks after he became unemployed) to seek a new job substantially in line with his job skill and prior rate of pay.

(9) **PROTECTION OF LABOR STANDARDS.** Benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If the position offered is vacant due directly to a strike, lockout or other labor dispute;

(b) If the wages, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(10) **LABOR DISPUTE.** An employe who has left (or partially or totally lost) his employment with an employing unit because of a strike or other bona fide labor dispute shall not be eligible for benefits from such (or any previous) employer's account for any week in which such strike or other bona fide labor dispute is in active progress in the establishment in which he is or was employed.

(10m) **LABOR DISPUTE PROGRESS.** If the active progress of such a strike or other bona fide labor dispute ends on a Sunday, it shall not be deemed under sub. (10) to be in active progress in the calendar week beginning on that Sunday as to any employe who did not normally work on Sundays in such establishment.

(11) **FRAUDULENT CLAIMS.** In addition to any other provisions, including penalties, which may apply under this chapter:

(a) If a claimant, in filing his claim for any week, conceals any part of his wages earned in or paid or payable for that week, or conceals his refusal (within that week) of a job offer or any other material fact relating to his eligibility for benefits, so much of any benefit payment as was paid because of such concealment shall be recovered as an overpayment.

(b) Any such claimant may also, by a determination issued under section 108.09, be required, as to each such act of concealment, to forfeit such benefits as would otherwise become payable to him for not more than 3 weeks of compensable unemployment completed not later than 2 years following the date of such determination. The benefits thus forfeited by a claimant shall be duly charged against his benefit credits and against the proper employer's account and shall be credited to the fund's balancing account.

(12) **PREVENTION OF DUPLICATE PAYMENTS.** (a) Any individual who is entitled to federal readjustment allowances under the Servicemen's Readjustment Act of 1944 may nevertheless claim benefits based on his available credit weeks under this chapter, and may receive such benefits if otherwise eligible; but any individual who receives a federal readjustment allowance for a given week shall be ineligible for benefits paid or payable for that same week under this chapter.

(b) Similarly, any individual who receives, through the commission, any other type

of unemployment benefit or allowance for a given week shall be ineligible for benefits paid or payable for that same week under this chapter.

(c) Any individual who receives unemployment compensation for a given week under any federal law through any federal agency shall be ineligible for benefits paid or payable for that same week under this chapter.

(d) Any individual who receives unemployment compensation for a given week under the law of any other state (with no use of benefit credits earned under this chapter) shall be ineligible for benefits paid or payable for that same week under this chapter.

(e) Any individual who receives a temporary total disability payment under ch. 102 for a given week shall be ineligible for benefits paid or payable for that same week under this chapter.

(f) The provisions of this subsection, denying an individual's eligibility for benefits under this chapter as to any week for which he receives any type of benefit or allowance (or supplementary payment) for unemployment under any federal law, shall not prevent benefits under this chapter from being paid to an otherwise eligible individual who may later be (but has not yet been) held to have been "adversely affected" and therefore eligible for a "trade readjustment allowance" under the federal Trade Expansion Act of 1962 (P.L. 87-794). As to any such individual, and any week for which such benefits have been paid to him and for which such a federal allowance later becomes payable to him, those benefits, if federally reimbursed to the commission and the fund, shall be treated as a (partial) federal allowance payment to him for such week, and the commission may, pursuant to an agreement under said act, pay him any additional federal allowance due him for such week. In any such case, the individual's benefit credits under this chapter shall be restored accordingly, and the relevant amount of federal reimbursement shall be credited by the commission to the proper employer's account in the fund.

(13) NOTIFICATION AS TO INELIGIBILITY. (a) The commission may take administrative notice of any fact indicating an employee's ineligibility, whether or not the employing unit has reported such fact or asserted the employee's ineligibility under this chapter.

(b) Unless an employer has duly notified the commission (in such manner and within such time limit as the commission's rules and regulations may prescribe) that he believes a designated provision of this section or of the "employment" definition of section 108.02 should operate to deny benefits from his account to the given employee for the week or weeks in question, or unless the commission applies the provisions of paragraph (a) of this subsection, no provision of this section or of such definition shall operate to deny such benefits to such employee; provided, however, that this subsection shall not affect the application of subsections (2), (3), (4) (a) and (b), (8) and (11), even though the commission has not been thus notified; and provided, further, that said subsection (2) shall not apply to a case for which the employer in question expressly waives its application by written notice to and with the approval of the commission.

(c) In case an employer, after a request therefor has been duly mailed to him, fails to file the required report on the eligibility, weekly benefit rate and credit weeks of an employee who has claimed benefits from the employer's account, or if such report is received more than 7 days after such mailing:

1. The commission may determine and proceed to pay the benefits thus claimed, based on the claimant's statements.

2. If benefits are thus determined, the employer shall be liable for a tardy filing fee of \$5, to be paid to the commission and credited to the administration fund, except where the employer later files the required report and satisfies the commission that it was tardy because of circumstances beyond his control.

(d) As to any benefits paid from one employer's account by reason of another employer's failure to file duly a report requested from him by the commission, the first week's benefits thus paid shall not be recovered from the employee but shall be credited to the one employer's account and charged to the employer's account.

(e) Whenever an individual claims benefits based on his employment by a government unit, it shall, if it believes that sub. (15) as to retirement payments may apply, so notify the commission. In any such case the Wisconsin retirement fund and the state teachers retirement system shall, on request from the commission, report to it the relevant facts, and the commission shall apply sub. (15) accordingly.

(14) WAR-TIME APPLICATION OF SUBSECTION (7) OR (8). If the commission finds that the official war-time manpower policies of the United States are or may be materially hampered, in any clearly definable class of cases, by any application of subsection (7) or (8), so as to interfere with the effective war-time use of civilian manpower in Wisconsin, the commission may by general rule, after public hearing, modify or suspend such application accordingly.

(15) **RETIREMENT PAYMENTS.** If an employe claims benefits based on his past work for a covered employer, but such employer duly notifies the commission pursuant to sub. (13), and the commission determines, that the employe is receiving or has claimed and will receive, or has been retired at such employer's compulsory retirement age and could claim and receive, retirement payments, as to any week covered by his benefit claim, under a group retirement system to whose financing any employing unit has substantially contributed or under a government retirement (or old-age insurance) system or under both, then the benefits thus claimed:

(a) Shall be denied for any such week, from the account of such employer, if the employe left his employment with that employer to retire before he reached the compulsory retirement age used by that employer.

(b) Shall not be denied for any such week, from the account of such employer, if the employe is otherwise eligible and left or lost his employment with that (or any other) employing unit because he had reached the compulsory retirement age used by the employing unit in question.

(c) Shall, if payable, be determined for any such week by treating as if it were wages:

1. That amount of the employe's weekly rate of retirement payments which has been financed by his employer or others (and not by the employe's own contributions), under any retirement system where such amount is separately calculated or can be estimated with reasonable accuracy, provided acceptable evidence as to such amount is furnished the commission.

2. All but \$5 of the employe's weekly rate of retirement payments under one or more other retirement systems.

**History:** 1961 c. 12; 1963 c. 145; 1965 c. 10.

In (10) the word "establishment" does not include a plant 80 miles from the plant where the strike was in process, which operated independently, although under the same ownership and control and although most of its output went to the struck plant. (*Spielman v. Ind. Comm.* 238 W 240, distinguished.) *Schaeffer v. Industrial Comm.* 11 W (2d) 358, 105 NW (2d) 762.

In order for the violation of a rule laid down by the employer to constitute "misconduct" under (5) such rule must be a reasonable one; when such a rule relates to conduct of the employe during off-duty hours, it must bear a reasonable relationship to the employer's interests in order to be reasonable; and the reasonableness of such a rule, constituting a part of the contract of employment, must be tested as of the time of its adoption, so that, thus tested, it is a reasonable rule if a violation thereof is reasonably likely to harm the employer's business interests. *Gregory v. Anderson*, 14 W (2d) 130, 109 NW (2d) 675.

Replacing striking employes with permanent employes during the progress of a strike is not in and of itself, as a matter of law, a termination of the employment status or a discharge of the striking employes, within the meaning of this section. *Rice Lake Creamery Co. v. Industrial Comm.* 15 W (2d) 177, 112 NW (2d) 202.

Where a collective-bargaining contract does not prohibit strikes or lockouts, an arbitration clause does not necessarily prohibit them. Where contracts with 6 employes in a city are the same, and the union strikes only one, the others can lock out their employes and all 6 are considered to be bona fide labor disputes under (10). *A. J. Sweet, Inc. v. Industrial Comm.* 16 W (2d) 98, 114 NW (2d) 141, 853.

Where employe was absent due to illness,

failure to call in as frequently as required by company rules was not misconduct under (5), nor did this amount to a voluntary termination of employment under (7). *Milwaukee Transformer Co. v. Industrial Comm.* 22 W (2d) 502, 126 NW (2d) 6.

An employe who stayed away from work for 5 days without notice in violation of rules and the employer's contract with the union can be found to have voluntarily quit under (7). *Tate v. Briggs & Stratton Corp.* 23 W (2d) 1, 126 NW (2d) 513.

The commission rule prescribing that if the employe registers for work at a designated employment office he shall be presumed willing and able to accept suitable work offered to him, although the commission may test the presumption by an investigation, is a reasonable and valid implementation of both 108.04 (2) and 108.02 (18). *Neff v. Industrial Comm.* 24 W (2d) 207, 128 NW (2d) 465.

(10) does not disqualify employes laid off because of a shortage of construction material resulting from a strike with which neither the employes nor the employer had any connection. *Kenneth F. Sullivan Co. v. Industrial Comm.* 25 W (2d) 84, 130 NW (2d) 194.

An employe's voluntary termination of his employment for good cause attributable to his employer under (7) (b) must be occasioned by some act or omission by the employer constituting a cause which justifies the quitting, and good cause for quitting as distinguished from discharge must involve some fault on the employer's part and must be real and substantial. *Kessler v. Industrial Comm.* 27 W (2d) 398, 134 NW (2d) 412.

Violation of off-duty regulation as grounds for denial of compensation. 1962 WLR 392.

**108.05 Amount of benefits.** (1) **WEEKLY BENEFIT RATE, FOR TOTAL UNEMPLOYMENT.** Each eligible employe shall be paid benefits from his employer's account for each week of his total unemployment at the weekly benefit rate, based on the employe's "average weekly wage" from the given employer, shown by the following schedule:

SCHEDULE

Line	Average Weekly Wage Class	Weekly Benefit Rate
1.	Under \$16.00	\$None
2.	\$16.00 to 19.00	11

3.	19.01 to 22.00	12
4.	22.01 to 24.50	13
5.	24.51 to 27.00	14
6.	27.01 to 29.50	15
7.	29.51 to 32.00	16
8.	32.01 to 34.00	17
9.	34.01 to 36.00	18
10.	36.01 to 38.00	19
11.	38.01 to 40.00	20
12.	40.01 to 42.00	21
13.	42.01 to 44.00	22
14.	44.01 to 46.00	23
15.	46.01 to 48.00	24
16.	48.01 to 50.00	25
17.	50.01 to 52.00	26
18.	52.01 to 54.00	27
19.	54.01 to 56.00	28
20.	56.01 to 58.00	29
21.	58.01 to 60.00	30
22.	60.01 to 62.00	31
23.	62.01 to 64.00	32
24.	64.01 to 66.00	33
25.	66.01 to 68.00	34
26.	68.01 to 70.00	35
27.	70.01 to 72.00	36
28.	72.01 to 74.00	37
29.	74.01 to 76.00	38
30.	76.01 to 78.00	39
31.	78.01 to 80.00	40
32.	80.01 to 82.00	41
33.	82.01 to 84.00	42
34.	84.01 to 86.00	43
35.	86.01 to 88.00	44
36.	88.01 to 90.00	45
37.	90.01 to 92.00	46
38.	92.01 to 94.00	47
39.	94.01 to 96.00	48
40.	96.01 to 98.00	49
41.	98.01 to 100.00	50
42.	100.01 to 102.00	51
43.	102.01 to 104.00	52
44.	104.01 to 106.00	53
45.	106.01 to 108.00	54
46.	108.01 to 110.00	55
47.	110.01 to 112.00	56
48.	112.01 or more	57

**Note:** The Industrial Commission is authorized to amend the above schedule semi-annually by 108.05 (2) (b). The schedule printed above applies to benefit determinations issued in the half year starting January 1, 1966.

(1m) FINAL PAYMENTS IN CERTAIN CASES. Whenever an employe's benefit credits under a given determination are nearly exhausted, so that paying the benefits normally due him for a given week of unemployment would reduce such credits below his applicable weekly benefit rate, his actual benefits for such week shall equal all benefit credits remaining under said determination.

(2) SEMIANNUAL ADJUSTMENT OF MAXIMUM BENEFIT RATE. (a) This chapter's maximum weekly benefit rate, as to benefit determinations whose first benefit check is issued in a given half year (starting January 1 or July 1), shall be based on the "average wages per average week" of the preceding "base year" (ended 6 months before the starting date of the given half year) pursuant to this subsection.

(b) The commission shall determine semiannually, by December 1 and by June 1, for the last completed "base year" (ended June 30 or December 31), from reports to the commission (including corrections thereof) filed within 3 months after the close of that year by employers (except government units) covered by this chapter as to their employes in employment covered by this chapter:

1. The gross wages thus reported by all such employers as paid in that year for such employment; and

2. The average of the 12 mid-month totals of all such employes in employment thus reported for that year; and

3. The quotient obtained by dividing said gross wages by said average; and

4. The amount (herein called "average wages per average week") obtained by dividing said quotient by 52.

(c) Based on the amount of "average wages per average week" thus determined, this chapter's maximum weekly benefit rate, as to benefit determinations whose first benefit check is issued in the ensuing half year (starting January 1 or July 1), shall equal the result obtained by rounding 52.5 per cent of said "average wages per average week" to the nearest multiple of one dollar.

(d) Whenever said result is higher or lower than the current half year's maximum weekly benefit rate, under the schedule which currently applies under this section, the commission shall change the closing lines of that schedule, for benefit determinations whose first benefit check is issued in the next half year, so that each such line will show an "average weekly wage class" two dollars higher and a "weekly benefit rate" one dollar higher than the preceding line, except that the new last line, showing the new maximum weekly benefit rate determined under par. (c), shall specify that "average weekly wage class" which ranges upward without limit and starts one cent above the higher wage figure of the next preceding line.

(e) The commission shall promptly record in its minutes, and shall have officially published within 10 days, the "average wages per average week" and the corresponding maximum weekly benefit rate thus determined by it, and the resulting schedule of average weekly wage classes and weekly benefit rates, which shall then apply to all benefit determinations whose first benefit check is issued in the ensuing half year.

(f) The commission shall certify such schedule to the revisor of statutes, who shall when publishing the statutes include the latest such schedule then available.

(g) Whenever the result obtained under par. (c) is \$1 or more higher (or lower) than the current half year's maximum weekly benefit rate, then the weekly benefit rate of any outstanding benefit determination whose weekly benefit rate in the current half year is at the maximum of that current half year shall be increased (or lowered) by \$1 as to any checks issued thereunder after that current half year.

(h) Whenever January 1 or July 1 does not fall on Saturday, Sunday or Monday, any change in weekly benefit rates under this subsection shall apply to checks issued after the first Sunday thereafter.

(3) **BENEFITS FOR PARTIAL UNEMPLOYMENT.** (a) If an eligible employe's total wages for a given week are less than his applicable weekly benefit rate, but are at least one half of said rate, he shall be paid one half of his weekly benefit rate for such week.

(b) If an eligible employe's total wages for a given week are less than one-half of his applicable weekly benefit rate, he shall be paid his full weekly benefit rate for such week.

(4) **HOLIDAY OR VACATION PAY.** (a) An employe's holiday pay for a given week shall, for benefit purposes, be treated as wages for that week only if it has become definitely payable to the employe within 4 days after the close of that week.

(b) An employe's vacation pay shall, for benefit purposes, be treated as wages for a given week only if it has by the close of that week become definitely allocated and payable to the employe for that week and he has had due notice thereof, and only if such pay (until fully assigned) is allocated:

1. At not less than the employe's approximate full weekly wage rate; or

2. Pursuant to any other reasonable basis of allocation, including any basis commonly used in computing the vacation rights of employes.

(5) **TERMINATION PAY.** An employe's dismissal or termination pay shall, for benefit purposes, be treated as wages for a given week only if it has by the close of that week become definitely allocated and payable to the employe for that week, and he has had due notice thereof, and only if such pay (until fully assigned) is allocated:

(a) At not less than the employe's approximate full weekly wage rate; or

(b) Pursuant to any other reasonable basis of allocation, including any basis commonly used in computing the termination pay of employes.

(6) **BACK PAY.** A payment to an individual by an employing unit, which is in the nature of back pay (or in lieu of pay for personal services) for certain past weeks, whether made under a back-pay award or similar decision or otherwise, shall be wages for benefit purposes but only when paid within 104 weeks after the start of the earliest such week.

Where following an employer's sale of its business it terminated contractual relationship with its employes pursuant to their collective-bargaining agreement, and nothing survived except to compensate each employe for severance and vacation payments—ascertainable by computation according to the contractual formulae—a notice allocating the entire amount to each employe under the agreement among an unbroken number of weeks without separating the amounts into their components (which was in excess of the weekly benefit rates for the specific weeks involved) was sufficient to meet the requirements of (4) (b) and (5). *Brink v. Industrial Comm.* 27 W (2d) 531, 135 NW (2d) 326.

**108.06 Benefit liability of employer's account.** (1) **BENEFIT CREDIT WEEKS.** (a) Except as this section or section 108.04 provides otherwise, there shall be counted as a credit week for benefit purposes each week of employment, of a given employe by a given employer, which is or has been completed:

1. After the benefit liability of the employer's account has begun to accrue; and
2. Within the employe's base period, for the benefit year in question, determined pursuant to s. 108.061.

(b) In case an employe has had more than 45 weeks of employment by an employer within the period specified in par. (a) 2, only 45 of such weeks shall be counted and available as "credit weeks" with respect to such employer under any one benefit determination.

(2) **DURATION OF BENEFITS, BASED ON CREDIT WEEKS.** (a) Each benefit determination issued under s. 108.09 shall allow benefits to an employe, if otherwise eligible, based on the number of his credit weeks then available with respect to an employer.

(c) Each such credit week shall, in determining the employe's total benefit credits, be valued at eight-tenths of his weekly benefit rate as to that employer.

(d) The total benefit credits thus resulting under any benefit determination, based on its credit weeks and weekly benefit rate, shall be adjusted to the nearest multiple of one-half of said weekly benefit rate.

(e) No such determination shall allow benefits totaling more than 34 times its weekly benefit rate.

(2m) **MAXIMUM DURATION OF BENEFITS.** If the credit weeks available in an employe's base period would permit 2 or more benefit determinations allowing him a total of more than 34 weeks of benefits for total unemployment in his benefit year, such total shall be reduced to 34 weeks of such benefits by eliminating the last benefit credits available to be charged.

(3) **DURATION OF LIABILITY.** (a) In no case shall the fund remain or be liable to pay benefits to an employe, based on credit weeks in his base period, for any week of unemployment occurring after the close of the employe's ensuing benefit year, determined pursuant to s. 108.061.

(b) Once a determination has been made under section 108.09 as to the amount of benefits potentially payable to an employe based on his available credit weeks with respect to a given employer, all benefits thereafter payable to the employe based on credit weeks from that employer shall be paid in accordance with that determination, until it ceases to apply.

(c) A given determination shall cease to apply only when all benefit credits available thereunder have been charged or canceled, or as to unemployment occurring after the close of the benefit year to which such determination applies.

(d) Credit weeks included in a given benefit determination shall not be available for use in any subsequent benefit determination.

(e) To determine qualifying employment under section 108.04 (4) (a), and any other subsequently determined benefit rights, the commission shall count all weeks of employment covered by an employer's report and all credit weeks included in any benefit determination as if they had all occurred consecutively during the most recent part of the period covered by the given report or determination.

**History:** 1961 c. 12; 1963 c. 145; 1965 c. 10.

**108.061 Base period and benefit year.** (1) There shall be payable to an employe, for weeks ending within his benefit year, only those benefits determined for that benefit year based on his credit weeks in his immediately preceding base period.

(2) Except as this section provides otherwise, an employe's "base period" shall be the 52 weeks which immediately precede a "valid new claim week," and his "benefit year" shall be the 52 weeks which begin with a "valid new claim week."

(3) An employe shall have a "valid new claim week" (starting a new benefit year) if all the following conditions are met:

- (a) The week is not within an unexpired benefit year.
- (b) He is totally or partially unemployed in that week, and has claimed as to that week pursuant to s. 108.08 (1).

- (c) He has registered for work pursuant to s. 108.04 (2), if it applies to that week.  
 (d) As of the start of that week, he has qualifying employment pursuant to s. 108.04 (4) (a), (af), (a1) and (b).  
 (e) As of the start of that week, he has some uncanceled and uncharged credit weeks in the preceding 52 weeks, or in any longer base period which would apply under sub. (4).  
 (f) He is otherwise eligible as to that week.

(4) If an employe receives dismissal or termination pay, or temporary total disability payments under ch. 102:

(a) For more than 7 of the 52 weeks preceding a valid new claim week, his base period shall be lengthened by the number of weeks over 7 (occurring within those 52 weeks) for which he received such payments.

(b) For more than 17 of the 52 weeks of a benefit year, that benefit year shall be lengthened by the number of weeks over 17 (occurring within those 52 weeks) for which he received such payments.

**History:** 1963 c. 145; 1965 c. 10.

**108.07 Liability of several employers.** (1) (a) In case an employe is unemployed and eligible as to 2 or more employers in the same week, and has claimed benefits, he shall, for the purposes of this subsection and s. 108.04 (13), be deemed to have claimed benefits from the account of each such employer; but his benefits for such unemployment in such week shall be paid only from the account of that one of such employers by whom he was most recently employed within his base period, except as provided in this section.

(b) After an employe has become eligible for a benefit check under a given benefit determination, he shall, while it remains valid under section 108.06 (3), be eligible for benefits solely under that determination, except while it is suspended under section 108.04.

(2) In case an employe has usually performed services in the same week for 2 or more employers, under an arrangement between such employers, the commission may combine his wages and his employment from such employers to determine his benefit rights under sections 108.05 and 108.06 as if such wages and employment had been from a single employer, and may pay benefits accordingly, and may prorate the resulting benefit charges between the accounts of such employers, by such methods as it deems fair and reasonable. The commission may temporarily charge such benefit payments to the fund's balancing account, pending their pro rata allocation to the accounts of such employers.

(3) In case an employe, to whom no benefit determination then applies, becomes unemployed and eligible as to 2 or more employers, the commission may, if it finds that applying subsection (1) (a) would be grossly inequitable to the employe, determine and use first his most fairly representative benefit rights.

(4) Once a benefit determination has been issued to an employe based on his work for a former employer, benefit payments and charges thereunder shall not be affected by any later determination that a subsequent employing unit was also a covered employer.

**History:** 1963 c. 145.

**108.08 Notification.** (1) To receive benefits for any given week of his unemployment an employe shall give notice to the commission with respect to such week of unemployment, through a public employment office, within such time limit and in such manner as the commission may by rule prescribe.

(2) The commission may require from any or each employer notification of the partial or total unemployment of his employes, within such time, in such form, and in accordance with such rules as the commission may prescribe.

**108.09 Settlement of benefit claims.** (1) **FILING.** Claims for benefits shall be filed pursuant to general commission rules, either at the public employment office for the district or as the commission's rules may otherwise direct; provided that the commission may waive the filing of a claim directly by the employe himself, for benefits from a given employer's account, where due notice of the employe's unemployment is given the employer by the commission or is given the commission by the employer, which notice shall in either of such cases serve as a claim for benefits. The employer from whose account benefits are claimed (whether directly by the employe or through the commission) shall promptly inform the commission in writing of his acceptance or rejection of such claim, together with his reasons therefor.

(2) **INITIAL DETERMINATION.** A deputy designated by the commission shall promptly determine whether or not the claim is valid and the amount of benefits apparently payable

thereunder, and shall also determine whenever necessary whether or not the employe's eligibility for benefits has been suspended or terminated; provided, however, that the deputy may set aside or amend a determination at any time on the basis of subsequent information or to correct a clerical mistake. A copy of each determination shall be mailed to the last known address of each of the parties. Either party to the determination may request a hearing as to any matter therein, by filing such request within 10 days after such mailing and in accordance with procedure prescribed by the commission; except that the employer may not request a hearing with respect to benefits already paid in accordance with his concession of liability.

(2m) DETERMINATION ON EMPLOYEE'S STATEMENT. In any case in which an employe has filed a claim for benefits from an employer's account, the employe's statement may be taken as to his eligibility, weekly benefit rate, and credit weeks. In any such case a commission deputy may issue a determination as to the employe's benefit rights, based on the employe's statement and on any other information then available. In accordance with subsection (2) of this section, such determination shall be mailed to the last known address of each of the parties, and either party to the determination may request a hearing as to any matter therein, by filing such request within 10 days after such mailing and in accordance with procedure prescribed by the commission; but the employer's request shall be valid only if his report (as to the eligibility, weekly benefit rate, and credit weeks of the employe) is included in (or, if filed earlier, incorporated by specific reference in) such request.

(2r) The employe's copy of any benefit determination may be given to him, instead of being mailed to him; and he may in that event request a hearing as to any matter therein by duly filing such request within 10 days after such delivery.

(3) APPEALS. Unless such request for a hearing is withdrawn, each of the parties shall be afforded reasonable opportunity to be heard, and the claim thus disputed shall be promptly decided by such appeal tribunal as the commission may designate or establish for this purpose, or by the commission as provided in subsection (6). If the party requesting a hearing fails to appear at the hearing, a commission examiner designated for this purpose may dismiss the appeal, provided that due notice of the hearing was mailed to the party's last known address and good cause for his failure to appear has not been shown said examiner within 10 days after the hearing date. If the other party fails to appear at the hearing, the appeal tribunal shall proceed with the hearing, provided that due notice of the hearing was mailed to said party's last known address, and may issue its decision without further hearing, provided that good cause for his failure to appear has not been shown said examiner within 10 days after the hearing date.

(3m) REPORTS BY EXPERTS. The contents of verified or certified reports by qualified experts shall be received in evidence in any proceeding under this section, in the same manner and subject to the same conditions as would apply to such reports under s. 102.17 (1) (as).

(4) APPEAL TRIBUNALS. To hear and decide a disputed claim, the commission shall establish an appeal tribunal. Any such tribunal may consist of one or three full-time salaried examiners; or it may consist of an appeal board composed of one full-time salaried examiner who shall serve as chairman, and of two other members appointed by the commission, namely an employer or representative of employers and an employe or representative of employes, who shall each be paid a fee of not more than ten dollars per day of active service on such tribunal (plus necessary expenses). No person shall hear any case in which he is a directly interested party. The chairman of such an appeal board shall act for it at any session in the absence of one or both other members, provided they have had due notice of such session.

(5) PROCEDURE. (a) The manner in which claims shall be presented, the reports thereon required from the employe and from employers, and the conduct of hearings and appeals shall be governed by general commission rules (whether or not they conform to common law or statutory rules of evidence and other technical rules of procedure) for determining the rights of the parties.

(b) All testimony at any hearing under this section shall be taken down by a stenographer, or by a recording machine, but need not be transcribed unless either of the parties requests a transcript prior to expiration of his right to further appeal hereunder and pays to the commission in advance a fee of \$5 therefor, plus 25 cents for each page by which the transcript exceeds 20 pages. When a transcript is thus furnished one of the parties at his request, a copy of the transcript shall be furnished the other party free of charge. The transcript fee thus collected shall be paid to the administration fund.

(6) COMMISSION REVIEW. (a) At any time before a deputy's determination or an appeal tribunal's decision on a claim is mailed to the parties, the commission may transfer the proceedings on the claim from such deputy or appeal tribunal to itself.



(b) Either party may petition the commission for review of an appeal tribunal decision, pursuant to general commission rules, within 10 days after it was mailed to his last known address. Promptly after the filing of such a petition, the commission may either dismiss it as not timely at any level or may affirm, reverse, change, or set aside such decision, on the basis of the evidence previously submitted in such case, or direct the taking of additional testimony.

(c) Within 10 days after expiration of the right of the parties to request a hearing by an appeal tribunal or to petition for review by the commission, or within 30 days after a decision of the commission was mailed to the parties, the commission may on its own motion reverse, change, or set aside the determination or decision, on the basis of evidence previously submitted in such case, or direct the taking of additional testimony.

(d) After an employe's eligibility for benefits has been established by a commission decision or affirmance of the appeal tribunal decision, benefits then due the employe shall be payable to him on the eleventh day after such commission decision or affirmance, unless the commission finds, by resolution duly entered in its minutes, that the case involves an issue of precedencing importance or a labor dispute issue or the actual or potential eligibility of a substantial number or percentage of the employer's employes, in which event such benefits shall become payable only if judicial review has not been duly commenced under sub. (7) or has finally allowed benefits. In case final adjudication determines that benefits paid under this subsection were improperly charged against the employer's account, s. 108.16 (2m) shall apply to the charging and recovery of such payments.

(e) Where benefits are not paid to an employe on the eleventh day specified by par. (d), but are subsequently determined to be payable, they shall be calculated as of that eleventh day.

(6m) MAILED APPEALS. If an appeal under sub. (2) or (2m) or (2r) or (6) (b) is received after the 10 days time limit therein specified, the commission shall nevertheless, if such appeal is mailed and postmarked within that time limit, accept it as timely as to any benefit checks not yet issued on the day when such appeal is received.

(7) (a) Either party may commence judicial action for the review of a decision of the commission hereunder, provided said party (after exhausting the remedies provided hereunder) has commenced such judicial action within 30 days after a decision of the commission was mailed to his last known address.

(b) Any judicial review hereunder shall be confined to questions of law, and the other provisions of ch. 102 of the 1959 statutes with respect to judicial review of orders and awards shall likewise apply to any decision of the commission reviewed under this section. Any such judicial action may be defended, in behalf of the commission, by any qualified attorney who is a regular salaried employe of the commission and has been designated by it for this purpose, or at the commission's request by the attorney general.

(8) LIMITATION OF FEES. No employe shall be charged fees of any kind by the commission or its representatives, in any proceeding under this chapter. Any employe claiming benefits in any commission proceeding may be represented by counsel or other duly authorized agent; but no such counsel or agent shall together charge or receive from the employe for such services more than 10 per cent of the maximum benefits at issue in such proceedings unless the commission has first approved a specified higher fee.

**History:** 1961 c. 12, 621; 1963 c. 145.

See note to 102.26, citing Rice Lake Creamery Co. v. Industrial Comm. 17 W. (2d) 177, 115 NW (2d) 756.

**108.10 Settlement of issues other than benefit claims.** (1) In connection with any issue arising under this chapter as to any liability, of an employer of one or more persons in Wisconsin, for which no review is provided under section 108.09 and with respect to which no penalty is provided in section 108.24, the following procedure shall apply:

(2) A deputy designated by the commission for the purpose shall investigate the existence and extent of any such liability, and may issue an initial determination accordingly; provided, however, that such a deputy may set aside or amend any such determination at any time on the basis of subsequent information or to correct a clerical mistake. A copy of each determination shall be mailed to the last known address of the employer affected thereby. The employer may request a hearing as to any matter therein, by filing such request with the deputy within 20 days after such mailing and in accordance with such procedure as the commission may by rule prescribe.

(3) Any hearing duly requested shall be held before an appeal tribunal established in the manner provided by section 108.09 (4), and section 108.09 (5) shall be applicable to the proceedings before such tribunal. Within 20 days after the appeal tribunal's decision has been mailed to the employer's last known address, he may petition the commission for review thereof pursuant to general commission rules, or the commission on recommen-

datation of counsel may on its own motion transfer the proceedings to itself and reverse, change, or set aside the decision of the appeal tribunal on the basis of evidence previously submitted in such case, or direct the taking of additional testimony.

(4) The commission's authority to take action as to any issue or proceeding under this section shall be the same as that specified in s. 108.09 (6) (a), (b) and (c).

(5) The employer may commence action for the judicial review of a commission decision hereunder, provided said employer, after exhausting the remedies provided hereunder, has commenced such action within 30 days after such decision was mailed to his 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).

(6) The mailing of determinations and decisions provided in subsections (2), (3), (4) and (5) shall be first class, and may include the use of services performed by the postal department requiring the payment of extra fees.

(7) Any determination by a deputy or any decision by an appeal tribunal or by the commission shall become conclusive with respect to the employer unless he has acted to secure a hearing or review as hereinbefore provided, but shall be binding on the commission only in so far as the relevant facts were included in the record which was before the deputy, appeal tribunal or commission at the time the determination or decision was issued.

**History:** 1961 c. 12.

**108.11 Agreement to contribute by employes void.** (1) No agreement by an employe or by employes to pay any portion of the contributions required under this chapter from employers shall be valid. No employer shall make a deduction for such purpose from wages. Any employe claiming a violation of this provision may, to recover wage deductions wrongfully made, have recourse to the method set up in s. 108.09 for settling disputed benefit claims.

(2) But nothing in this chapter shall affect the validity of voluntary arrangements whereby employes freely agree to make contributions to a fund for the purpose of securing unemployment compensation additional to the benefits provided in this chapter.

**108.12 Waiver of benefit void.** No agreement by an employe to waive his right to benefits or any other rights under this chapter shall be valid. No employe shall, in any proceeding involving benefits under this chapter, be prevented from asserting all facts relevant to his eligibility, regardless of any prior erroneous representation with respect to such facts.

**108.13 Assignment.** (1) No claim for benefit under this chapter nor any interest in any unemployment benefit fund or reserve maintained under this chapter shall be assignable before payment, but this provision shall not affect the survival thereof; nor shall any claim for benefit awarded, adjudged or paid, nor any interest in any such unemployment benefit fund or reserve, be subject to be taken for the debts of the party entitled thereto.

(2) In case an employe dies after the close of a week of unemployment in which he was eligible and for which benefits are payable under this chapter, the commission may designate any person who might in its judgment properly receive such benefits, and a receipt or an indorsement from the person so designated shall fully discharge the fund from liability for such benefits.

**108.14 Administration.** (1) This chapter shall be administered by the industrial commission.

(2) The commission shall have power and authority to adopt and enforce all rules and regulations which it finds necessary or suitable to carry out the provisions of this chapter. A copy of such rules and regulations shall be delivered to every person making application therefor. The commission may require from employers, whether subject to this chapter or not, any reports on employment, wages, hours and related matters which it deems necessary to carry out the provisions of this chapter.

(2m) In the discharge of their duties under this chapter any member of an appeal tribunal, and any deputy, examiner, commissioner or other duly authorized representative of the commission shall have power to administer oaths to persons appearing before them, take depositions, certify to official acts, and by subpoenas (served in the manner in which circuit court subpoenas are served) to compel attendance of witnesses and the production of books, papers, documents and records necessary or convenient to be used by them in connection with any investigation, hearing or other proceeding under this chapter. Provided, that in any investigation, hearing or other proceeding involving the administration of oaths or the use of subpoenas under this subsection due notice shall be given

to any interested party involved, who shall be given an opportunity to appear and be heard at any such proceeding and to examine witnesses and otherwise participate therein. Witness fees and other expenses involved in proceedings under this chapter, including a party's traveling expenses, may be allowed by the appeal tribunal or representative of the commission at rates specified by general commission rules, and shall be paid from the unemployment administration fund.

(3) The commission may appoint, employ and pay as many persons as it deems necessary to administer and to carry out the purposes of this chapter, and may make all other expenditures of any kind and take any other action consistent herewith which it deems necessary or suitable to this end.

(3m) In any court action to enforce the provisions of this chapter the commission and the state may be represented by any qualified attorney who is a regularly salaried employe of the commission and is designated by it for this purpose, and/or at the commission's request by the attorney-general. In case the governor designates special counsel to defend, in behalf of the state, the validity of this chapter or of any provision of Title IX of the federal Social Security Act, the expenses and compensation of such special counsel and of any experts employed by the commission in connection with such proceeding may be charged to the administration fund.

(4) The commission may create as many employment districts and district appeal boards and may establish and maintain as many free public employment offices as it deems necessary to carry out the provisions of this chapter. The commission shall have power to finance either partly or completely such public employment offices as it deems necessary under this chapter, from the funds appropriated to the commission for its expenses under this chapter, whether or not the political subdivision in which such office is located agrees to pay or does pay any part of the expenses of such office.

(5) The commission shall appoint a state advisory committee on this chapter, and may appoint additional committees for industries or local districts. Each such committee shall consist of a salaried commission employe, who shall serve as chairman, and of one or more representatives of employers, and an equal number of representatives of employes, who shall receive for each day of active service such reasonable compensation as the commission may determine and reimbursement of necessary expenses, and shall assist the commission in administering and carrying out the purposes of this chapter.

(5m) The state advisory committee appointed by the commission under subsection (5) of this section shall submit its recommendations with respect to amendments of this chapter to each regular session of the legislature, and shall report its views on any pending bill relating to this chapter to the proper legislative committee.

(6) It shall be one of the purposes of this chapter to promote the regularization of employment in enterprises, localities, industries and the state. The commission, with the advice and aid of its advisory employment committees, shall take all appropriate steps within its means to reduce and prevent unemployment. To this end the commission may employ experts, and may carry on and publish the results of any investigations and research which it deems relevant, whether or not directly related to the other purposes and specific provisions of this chapter. At least once a year the commission shall compile and publish a summary report stating the experience of employer accounts (without naming any employer) and covering such other material as it deems significant in connection with the operations and purposes of this chapter.

(7) The reports, records, files, accounts, papers and memoranda, of any nature whatsoever, received or made or maintained by the commission in connection with the administration of this chapter shall be open to public inspection only when and to the extent that the commission may allow such inspection as it deems advisable in the interests of effective administration. The commission may provide for the printing and distribution of such number of copies of any forms, records, decisions, regulations, rules, pamphlets or reports, related to the operation of this chapter, as it deems advisable for the effective operation thereof.

(8) (a) The commission may enter into administrative arrangements with any agency similarly charged with the administration of any other unemployment compensation law, for the purpose of assisting the commission and such agencies in paying benefits under the several laws to employes while outside their territorial jurisdictions. Such arrangements may provide that the respective agencies shall, for and on behalf of each other, act as agents in effecting registration for work, notices of unemployment, and any other certifications or statements relating to an employe's claim for benefits, in making investigations, taking depositions, holding hearings, or otherwise securing information relating to coverage or contribution liability or benefit eligibility and payments; and in such other matters as the commission may consider suitable in effecting the purpose of these administrative arrangements.

(b) The eligibility of an employe with respect to a benefit claim (based on past credit weeks under this chapter) may be established through arrangements authorized in this subsection, and he shall then be paid the benefits due him under this chapter.

(c) Any person who wilfully makes a false statement or misrepresentation regarding a benefit claim, to the commission (or its representative) acting under any administrative arrangement authorized herein, shall on conviction be deemed guilty of a misdemeanor and be punished in the manner provided in section 108.24.

(8m) (a) The commission may enter into reciprocal arrangements, with any agency administering another unemployment compensation law, whereby all the services performed by an individual for a single employing unit, which services are customarily performed in more than one state or jurisdiction, shall be deemed to be employment covered by the law of a specified state or jurisdiction (a) in which a part of such services are performed, or (b) in which such individual has his residence, or (c) in which such employing unit maintains a place of business; provided there is in effect, as to such services, an election by such employing unit, approved by the agency administering the specified law, pursuant to which all the services performed by such individual for such employing unit are deemed to be employment covered by such law.

(b) If the federal unemployment tax act is so amended as to make subject thereto remuneration paid for any maritime employment excluded under section 108.02 (5) (g) 6, such exclusion under this chapter shall cease if the commission enters into a reciprocal arrangement with respect to such employment pursuant to this paragraph, as of the effective date of such arrangement. The commission may enter into reciprocal arrangements with the appropriate agencies of other states with respect to such maritime services, whereby all such services by an individual for a single employer, wherever performed, shall be deemed performed wholly within this state or within any such other state. Any such services thus deemed performed in Wisconsin shall also be deemed "employment" covered by this chapter, and the election requirement of section 108.02 (5) (c) 2 shall not apply.

(8n) (a) The commission may enter into reciprocal arrangements, with any agency administering an unemployment compensation law, to provide more equitable benefit coverage for individuals whose recent work has been covered by the unemployment compensation laws of two or more jurisdictions.

(b) Such arrangements may provide, as to any individual whose employment has been covered by this chapter and by the unemployment compensation law of one or more other participating jurisdictions, for transfer by the commission to another agency of relevant records or information, and the acceptance and use thereof (in combination with similar data from other jurisdictions) by such other agency, as a basis for determining and paying benefits under the law administered by such other agency. Reciprocally, such arrangements may provide for similar acceptance, combination and use by the commission of data received from other jurisdictions to determine and pay benefits under this chapter.

(c) Such arrangements shall provide for mutual acceptance by the participating agencies of data thus supplied, including reasonable estimates of relevant data not otherwise available in the transferring agency.

(d) Such arrangements shall specify an equitable basis for reimbursing the unemployment fund of each participating jurisdiction for any benefits paid therefrom on the basis of covered employment in (and data supplied by the agency of) another such jurisdiction, out of the unemployment fund of such other jurisdiction.

(e) Any reimbursement under this subsection shall if paid from the fund be charged to its balancing account and if paid to the fund be credited to that account. Benefits paid under this subsection directly from the fund shall also be charged to its balancing account, except that any benefits thus paid shall be charged to the proper employer account to the extent that they would be paid and thus charged if this subsection were not being applied.

(f) To facilitate the application of such arrangements to this chapter, the commission may make reasonable estimates to convert into weekly benefit rates and credit weeks the data received by it under such arrangements, and may determine and pay benefits accordingly.

(8s) If the agency administering another unemployment compensation law has overpaid benefits to an individual located in Wisconsin, and certifies to the commission the facts involved and that the individual is liable, under such law, to repay such benefits, and requests the commission to recover such overpayment, and agrees to reimburse the commission for any court costs incurred by it in such recovery efforts, the commission may in its own name, but acting as agent for such other agency, collect such overpayment by civil action, and shall pay the net amount recovered to such other agency. If benefits are currently payable under this chapter to such individual, the

commission may, with notice to the individual, pay as much of such benefits to such agency as are necessary to satisfy the individual's indebtedness to such agency.

(9) The commission may make its records relating to the administration of this chapter available to the Railroad Retirement Board, and may furnish the Railroad Retirement Board, at the expense of said board, such copies thereof as said board deems necessary for its purposes. The commission may afford reasonable co-operation with every agency of the United States charged with the administration of any unemployment compensation law. The commission may make arrangements or agreements with the Railroad Retirement Board, or any other agency of the United States charged with the administration of an unemployment compensation law, with respect to the establishment, maintenance and use of free employment service facilities, the taking and certifying of claims, the making of investigations, and the supplying of other information or services related to unemployment compensation. But the commission shall not make or renew any such arrangement or agreement unless it finds that its resulting administrative costs are approximately covered or offset by the facilities, services and payments to be made available thereunder by such federal agency. Any moneys received by the commission under this subsection shall be paid into the administration fund under section 108.20.

(9m) The commission may afford reasonable co-operation with any government agency charged with war-effort or post-war planning responsibilities or with the administration of any system of unemployment allowances or unemployment assistance or of any other program designed to prevent or relieve unemployment.

(9r) The commission may continue to pay training allowances and related payments to trainees pursuant to an agreement under the federal Manpower Development and Training Act of 1962 (P. L. 87-415) from federal moneys made available to the commission for that purpose; and may also use pursuant to such an agreement any state matching money made available to the commission for that purpose, but only if and when such matching is required by said act, including any amendment thereof.

(10) For the purposes of s. 108.15 the commission's functions financed from the unemployment administration fund shall be treated as a separate budget subdivision, and any election made by the commission pursuant to s. 108.02 (5) (f) may be limited to individuals engaged in such functions.

(11) The commission may require any employer of one or more individuals in Wisconsin to make such arrangements as will reasonably assure the commission that the employer will keep such records, make such reports, and pay such contributions as are required under this chapter. Any employer whom the commission has notified, through notice served on him or sent by registered mail to his last known address or served on him through the secretary of state pursuant to section 180.825(2), that he is required to make such arrangements, if he fails to do so within 20 days after such notification, may, through proceedings instituted by the commission in the circuit court of Dane county, be restrained from doing business in Wisconsin until he has made such arrangements.

(12) (a) Consistently with the provisions of pars. (8) and (9) of s. 303 (a) of Title III of the federal social security act, all moneys received in the administration fund from any federal agency under said Title III shall be expended solely for the purposes and in the amounts found necessary by said agency for the proper and efficient administration of this chapter.

(b) Consistently with said provisions of said Title III, any such moneys, received prior to July 1, 1941, and remaining unencumbered on said date or received on or after said date, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by said agency for the proper administration of this chapter, shall be replaced within a reasonable time. This paragraph is the declared policy of this state, as enunciated by the 1941 legislature, and shall be implemented as further provided in this subsection.

(c) If it is believed that any amount of money thus received has been thus lost or improperly expended, the commission on its own motion or on notice from said agency shall promptly investigate and determine the matter and shall, depending on the nature of its determination, take such steps as it may deem necessary to protect the interests of the state.

(d) If it be finally determined that moneys thus received have been thus lost or improperly expended, then the commission shall either make the necessary replacement from those administration fund moneys specified in s. 20.440 (1) (v) or shall submit, at the next budget hearings conducted by the governor and at the budget hearings conducted by the next legislature convened in regular session, a request that the necessary replacement be made by an appropriation from the general fund.

(e) This subsection shall not be construed to relieve this state of any obligation existing prior to its enactment with respect to moneys received prior to July 1, 1941, pursuant to said Title III.

(13) The commission may, with the advice of its state advisory committee on this chapter, by general rule modify or suspend any provision of this chapter if and to the extent necessary to permit continued certification of this chapter under Title III of the federal social security act and under ss. 3303 and 3304 of the federal unemployment tax act.

(14) The commission shall fully co-operate with the agencies of other states, and shall make every proper effort within its means, to oppose and prevent any further action which would in its judgment tend to effect complete or substantial federalization of state unemployment compensation funds or state employment security programs.

(15) The commission may make, and may co-operate with other appropriate agencies in making, studies as to the practicality and probable cost of possible new state-administered social security programs, and the relative desirability of state (rather than national) action in any such field.

(16) The commission shall have duplicated or printed, and shall distribute without charge, such employment security reports, studies and other materials (including the text of this chapter and instructional or explanatory pamphlets for employers or workers) as it deems necessary for public information or for the proper administration of this chapter; but the commission may collect a reasonable charge, which shall be credited to the unemployment administration fund, for any such item the cost of which is not fully covered by federal administrative grants.

(17) To help provide suitable quarters for the administration of this chapter at the lowest practicable long-run cost, the commission may, with the governor's approval and subject to all relevant statutory requirements, use part of the moneys available for such administration under s. 20.440 (1) (u) and (v) to buy suitable real property, or to help construct suitable quarters on any state-owned land, or for the long-term rental or rental-purchase of suitable land and quarters. In each such case full and proper use shall be made of any federal grants available for the administration of this chapter.

**History:** 1963 c. 145; 1965 c. 433 s. 121.

**108.141 Extended benefits.** (1) If a federal enactment provides for complete federal financing of added weeks of benefits to be paid (after regular benefits) by the commission, for weeks within a period (of heavier unemployment) specified by or to be determined pursuant to such enactment, to unemployed individuals qualifying and eligible for such extended benefits, subject to an agreement between the commission and the secretary of labor as to such benefits, the commission shall execute such an agreement and shall pay such benefits accordingly.

(2) If a federal enactment provides for joint federal-state financing of such a program of extended benefits, with at least half the cost to be federally financed, in any state which accepts the program and finances its share of the cost, the commission shall execute an agreement to pay such benefits, from the fund's balancing account, and shall charge to said account the state's share of said cost.

(3) If such enactment provides, subject to such an agreement, for reimbursing the fund for certain benefits paid under this chapter, the commission shall agree to and accept such reimbursements and credit them to the fund's balancing account.

(4) To apply such enactment fully the commission may join in amending any existing agreement as to its payment of regular benefits under a normal federal unemployment compensation program.

(5) Any agreement executed by the commission under sub. (2) shall pay extended benefits for those weeks for which partial federal financing is available, but not for any week ending after 1967.

**History:** 1961 c. 12; 1963 c. 145; 1965 c. 10.

**108.15 Financing benefits for public employes.** (1) **BENEFIT PAYMENTS.** (a) Benefits shall be payable to any public employe, if unemployed and otherwise eligible, based on his "employment" by any government unit which is an "employer" covered by this chapter. Section 108.03 (2) shall not apply.

(ah) Section 108.02 (5) (g) 7 shall not apply to any government unit covered by this section.

(b) The fund including its balancing account is hereby made available to finance such benefits, on a revolving basis, pending reimbursement thereof pursuant to this section.

(2) **EXEMPTION OF GOVERNMENT UNITS FROM ADVANCE CONTRIBUTIONS.** Government units are hereby exempted from the contribution requirements of ss. 108.17 and 108.18.

(3) **SUBSTITUTE REQUIREMENT.** In lieu of such contributions, each government unit shall reimburse the fund for benefits duly charged to its account, at such times and by such due dates as the commission shall by rule prescribe.

(4) EMPLOYER ACCOUNTS FOR GOVERNMENT UNITS. (a) For each government unit covered by this chapter, the fund's treasurer shall maintain an "employer account", as a subaccount of the fund's balancing account.

(b) Each government unit's account shall be duly charged with any benefits based on work for such unit, and shall be duly credited with any reimbursement paid by or for it to the fund.

(c) Any government unit other than a state agency may at any time make payments into its account in the fund pursuant to s. 108.18 (7).

(d) Whenever a government unit's account has a positive net balance no reimbursement of the benefits charged thereto shall be required hereunder.

(e) Whenever a government unit's account has a negative balance, any benefits chargeable to such account shall be duly paid and charged thereto; and reimbursements covering the total negative balance thus resulting shall become due pursuant to this section.

(f) The write-off provisions of s. 108.16 (7) (c) shall not apply to the account of any government unit. In lieu thereof, any such unit may, if the benefits charged to its account hereunder in any calendar year exceed 2 per cent of its "payroll" for that year, request the write-off of such excess at any time within the following calendar year. The fund's treasurer shall in that event determine and write off the amount of such excess, and no reimbursement thereof shall be required hereunder.

(fm) As applied to any government unit which has limited its election by excluding one or more of its operating units, the "2 per cent" limit of par. (f) shall be figured on the "pay roll" of all its operating units, as if all were covered by its election.

(fr) As to the account of any state government unit, a 4 per cent limit shall apply in lieu of the "2 per cent" limit of par. (f).

(g) If any government unit covered by this chapter requests the commission to maintain separate accounts for parts of such unit which are separately operated or financed, the commission may do so for such periods and under such conditions as it may from time to time determine.

(5) REIMBURSEMENTS. (a) Each government unit which is an "employer" shall include in its budget for each budgetary period an estimated amount for payment of the reimbursements required by this section, including in each case any reimbursement remaining unpaid for the current or any prior period.

(b) The fund's treasurer shall, pursuant to commission rules, bill each such government unit for the reimbursements required under this section, and any reimbursement thus billed shall be promptly paid by such government unit.

(c) Reimbursements due hereunder from budget subdivisions of the state shall be paid pursuant to sub. (7).

(d) Reimbursements due hereunder from other government units shall, if they remain unpaid after their due date, be collected pursuant to sub. (6) or pursuant to any other applicable provision of law.

(6) DELINQUENT PAYMENTS. (a) Any reimbursement, duly billed hereunder, which remains unpaid after its applicable due date is a "delinquent payment" under s. 108.22 (1).

(b) Whenever a government unit's "delinquent payments" (including interest and penalties thereon) total more than the benefits duly charged to such unit's account for the 6 most recent months, a commission deputy shall so determine under s. 108.10.

(c) If such delinquency is finally established pursuant to s. 108.10, the fund's treasurer shall promptly notify such government unit accordingly, and shall also, in case such unit receives a share of any state tax or any type of state aid, certify to the state treasurer the existence and amount of such delinquency.

(d) Upon receipt of such certification, the state treasurer shall withhold, from each sum of any such tax or aid thereafter payable to the government unit, until the delinquency is satisfied, the lesser of the following amounts:

1. The delinquent amount thus certified; or
2. One-half the sum otherwise payable to such government unit.

(e) Any amount withheld by the state treasurer under par. (d) shall be paid by him to the fund's treasurer, who shall duly credit such payment toward satisfying the delinquency.

(7) STATE COMPLIANCE AND APPROPRIATIONS. (a) Each of the state's budget subdivisions is a "government unit" under this section, and shall be and remain a covered "employer" with a separate employer account for all purposes under this chapter.

(b) Each such subdivision's reimbursements payable under this section shall be duly paid to the fund, upon filing by the fund's treasurer, through such subdivision, of a certificate to the department of administration specifying the amount of reimbursement due and the appropriation apparently chargeable.

(c) Each such subdivision shall have each such reimbursement amount charged to and deducted from its proper fund or appropriation, unless the commissioner of administration certifies that a stated amount thereof cannot be thus charged, in which event that amount shall be charged to the general fund under such certification.

(8) REPORTING. (a) Each government unit which is an "employer" shall give such suitable benefit notices to its employees as the commission may direct, and shall make benefit reports to the commission under the same conditions as apply to other employers.

(b) Each government unit shall designate one or more officers or employees who shall be responsible for filing the required benefit reports, and shall inform the commission as to the name and address of each person so designated. If it designates more than one such person, it shall specify for what groups or classes of employees each will report. Section 108.24 (2) applies to each person so designated.

(9) TERMINATION. (a) Any government unit which is subject to this chapter solely by its own election may terminate such coverage and election by written notice to the commission, pursuant to s. 108.02 (4) (f).

(b) In that event, any benefits payable to the employees of such government unit for any week of unemployment completed before the termination date shall be paid; but no other benefits shall become payable to such employees, based on their previous covered work, after any positive net balance then remaining in such unit's account has been used up by a benefit check which equals or exceeds such balance.

(10) ALLOCATING SALARY. In case a government unit, under its salary system, continues and pays a public employe's salary for any day on which he does no work for such unit, the amount of salary he thus receives for any such day shall be considered in determining whether he is unemployed for benefit purposes.

History: 1963 c. 145.

**108.16 Unemployment reserve fund.** (1) For the purpose of carrying out the provisions of this chapter there is established a fund to be known as the "Unemployment Reserve Fund," to be administered by the commission without liability on the part of the state beyond the amount of the fund. This fund shall consist of all contributions and moneys paid into and received by the fund pursuant to this chapter and of properties and securities acquired by and through the use of moneys belonging to the fund.

(2) (a) A separate employer's account shall be maintained by the commission as to each employer contributing to said fund.

(b) Each employer's account shall be credited with all his contributions paid into the fund, and shall be charged with all benefits duly paid from the fund to his employees based on their past employment by him, except as otherwise specified in this chapter.

(c) Any reference in this chapter to eligibility for, or to payment of, benefits "from an employer's account", or any similar reference, shall mean benefits payable or paid from the fund based on past employment by the employer in question.

(d) The fund shall be mingled and undivided, and nothing in this chapter shall be construed to grant to any employer or employe any prior claim or right to any part of the fund.

(e) Benefits to be "charged" against a given employer's account shall be so charged as of the date shown by the check covering such benefits; and such check shall be promptly mailed and shall, in determining the experience or status of such account for contribution purposes, be deemed "paid" on said date.

(f) The commission shall promptly advise the employer as to each benefit check thus charged to his account.

(2m) If a commission deputy finds that any benefits charged to an employer's account have been erroneously paid to an individual without fault by the employer, such individual and such employer and the fund's treasurer shall be notified as to such erroneous payment. In case benefits are currently payable to such individual from such employer's account, the deputy may correct the error by adjusting such benefits accordingly. To correct any error not thus adjusted, the fund's treasurer shall correct the fund's records by restoring the proper amount to the employer's account and by charging such amount to the fund's balancing account, and may at any time thereafter reimburse the balancing account by crediting to it benefits which would otherwise be payable to the individual in question or cash recovered from such individual.

(3) (a) As to any benefit overpayment still outstanding more than 6 years after the claimant's liability to reimburse the fund was duly established under section 108.22 (8), the fund's treasurer shall write off and waive recovery of such overpayment, upon receipt of a certification by a commission deputy that reasonable efforts have been made to recover such overpayment.

(b) Any such waiver shall be recorded as satisfying any warrant then outstanding



under section 108.22 (8) as to such overpayment.

(4) Consistently with sub. (5), all contributions payable to the unemployment reserve fund shall be paid to the industrial commission, and shall promptly be deposited by the commission to the credit of the unemployment reserve fund, with such custodians as the commission may from time to time select, who shall hold, release and transfer the fund's cash in a manner approved by the commission. Payments from said fund shall be made upon vouchers or drafts authorized by the industrial commission, in such manner as the commission may from time to time approve or prescribe. Any procedure thus approved or prescribed shall be deemed to satisfy (and shall be in lieu of) any and all statutory requirements (for specific appropriation or other formal release by state officers of state moneys prior to their expenditure) which might otherwise be applicable to withdrawals from the fund. The commission shall designate a treasurer of the unemployment reserve fund, who shall be either a regular salaried employe of the commission or the state treasurer and shall serve as treasurer of the fund until a successor designated by the commission has assumed the duties of this office. He shall give a separate bond conditioned upon his faithful performance of these duties pursuant to s. 19.01 (2), which bond shall be deemed likewise conditioned upon the faithful performance by his subordinates of their duties, in such amount as may be fixed by the industrial commission. All premiums upon the bond required pursuant to this section when furnished by an authorized surety company or by a duly constituted governmental bonding fund shall (except as otherwise provided in this section) be paid from the interest earnings of the unemployment reserve fund, but shall not exceed one-fourth of one per cent, per annum, of the amount of said bond.

(5) (a) All money received for the fund shall promptly upon such receipt be deposited to its credit in the "Unemployment Trust Fund" of the United States, in such manner as the secretary of the treasury of the United States (or other authorized custodian of said trust fund) may approve, so long as said trust fund exists and maintains for this state a separate book account (for the purposes of this chapter) from which no other state or agency can make withdrawals, any other statutory provision to the contrary notwithstanding.

(b) The commission shall requisition from this state's account in the "Unemployment Trust Fund" necessary amounts from time to time, shall hold such amounts consistently with any applicable federal regulations, and shall make withdrawals therefrom solely for benefits and for such other unemployment compensation payments or employment security expenditures as are expressly authorized by this chapter and consistent with any relevant federal requirements.

(c) While the state has an account in the "Unemployment Trust Fund," public deposit insurance charges on the fund's balances held in Wisconsin banks, the premiums on surety bonds required of the fund's treasurer under this section, and any other expense of administration otherwise payable from the fund's interest earnings, shall be paid from the administration fund.

(6) The commission shall maintain within the fund a "balancing account," to which shall be credited:

(a) All interest earnings, on moneys belonging to the fund, received by (or duly apportioned to) the fund, as of the close of the calendar quarter in which such interest accrued.

(b) Any reimbursement made pursuant to subsection (2m) of this section;

(c) Any balance credited to an employer's account, if and when he ceases to be subject to this chapter, except as provided in subsection (8);

(d) All amounts transferred from employer accounts pursuant to sub. (11);

(e) The amount of any benefit check duly issued and delivered or mailed to an employe, if such check has not been presented for payment within one year after its date of issue; provided that a substitute check may be issued and charged to the balancing account, at any time within the next following year;

(f) Any amount available for such crediting under s. 108.04 (11) or 108.07 (2) or 108.14 (8n) (e).

(g) Any payment received for the balancing account under s. 108.15.

(h) Any amount of solvency contribution received for or transferred to the balancing account pursuant to s. 108.18.

(i) Any federal reimbursement of benefits paid under any federal unemployment benefit program administered by the commission.

(j) Any federal reimbursement of benefits paid under this chapter, except as this chapter or a federal agreement requires otherwise.

(6m) There shall be charged against the fund's balancing account:

(a) The benefits thus chargeable under (and pursuant to) ss. 108.04 (7) (e) (Stats. 1963); 108.07 (2); 108.14 (8n) (e); 108.15 (1) (b); or subs. (2m), (6) (e), (7) (a) and (b).

(b) Any benefits paid under any federal unemployment benefit program administered by the commission, pending their reimbursement.

(c) The overdraft write-offs thus chargeable under (and pursuant to) s. 108.15 (4) (f) or sub. (7) (c).

(d) Any negative balance of a closed employer account, except as provided in sub. (8).

(7) (a) All benefits shall be paid from the fund. All benefits duly chargeable to an employer's account shall be so charged, whether or not such account is overdrawn. All other benefits shall be charged to the fund's balancing account.

(b) Benefit payments made with respect to an employer's account shall be charged directly against the fund's balancing account only when such payments cannot under this chapter be or remain charged against the account of any employer.

(c) Whenever, as of any computation date, the net overdrafts then charged against an employer's account would, even if reduced by any contributions known or subsequently discovered to be then payable but unpaid to such account, exceed 10 per cent of his annual payroll (namely, the payroll amount used in determining his reserve percentage as of that computation date), the fund's treasurer shall, solely for the purpose of computing future reserve percentages, write off (by charging directly to the fund's balancing account) the amount by which such overdrafts would (if thus reduced) exceed 10 per cent of said payroll.

(8) (a) If the business of any "employer" is transferred in whole or in part, the transferee shall be deemed a successor for the purposes of this chapter. An employing unit shall not be deemed a successor, however, if the commission finds that there were less than 20 weeks lying wholly within the calendar year in which the transfer occurred (and also less than 20 weeks lying wholly within the preceding calendar year) within which the transferring "employer" employed as many as 3 persons in employment subject to this chapter in connection with the business or portion thereof transferred. In case of the transfer of any of the assets of a covered employer's business by any means whatever, otherwise than in the ordinary course of trade, such transfer shall be deemed a transfer of business and shall constitute the transferee a successor hereunder, unless the commission, on its own motion or on application of an interested party, finds that all the following conditions exist:

1. The transferee has not continued or resumed the business of the transferor, either in the same establishment or elsewhere; and

2. The transferee has not employed substantially the same employes as those the transferor had employed in connection with the assets transferred.

(b) The successor, if not already subject to this chapter, shall become an "employer" subject hereto on the date of such transfer, and shall accordingly become liable for contributions hereunder from and after said date.

(c) The successor shall take over and continue the employer's account, including its plus or minus balance and all other aspects of its experience under this chapter, in proportion to the pay roll or employes assignable to the transferred business as determined for the purposes of this chapter by the commission. The successor shall be secondarily liable for any amounts owed by the employer to the fund (and to the administration fund) at the time of such transfer; but such liability shall be proportioned to the extent of the transfer of business and shall not exceed the value of the assets transferred.

(d) The benefit liability of a successor's account under section 108.06, if it has not accrued before the transfer date, shall begin to accrue on the transfer date, in case the transferor's benefit liability was then accruing; or shall begin to accrue on the date otherwise applicable to the successor, or on the date otherwise applicable to the transferor, whichever is earlier, in case the transferor's benefit liability was not accruing on the transfer date. Similarly, benefits from a successor's account, if not payable before the transfer date, shall become payable on the transfer date, in case the transferor was then liable for benefit payments; or shall become payable on the date otherwise applicable to the successor, or on the date otherwise applicable to the transferor, whichever is earlier, in case the transferor was not liable for benefit payments on the transfer date.

(e) The account taken over by the successor employer shall remain liable with respect to accrued benefit and related rights based on employment in the transferred business, and all such employment shall be deemed employment performed for such employer.

(f) The contribution rates applicable with respect to the accounts of the successor employer and the transferring employer shall be respectively determined or redetermined as of the applicable computation date, to apply from the date of transfer of business until the close of the current calendar year, and shall thereafter be redetermined whenever required by s. 108.18, as follows: For the purposes of s. 108.18, the commission shall determine the "experience under this chapter" of the successor employer's

account and of the transferring employer's account by allocating to the successor employer's account for each period in question the respective proportions of the transferring employer's pay roll and benefits which the commission determines to be properly assignable to the business transferred.

(9) (a) Consistently with s. 3305 of the federal internal revenue code, relating to federal instrumentalities which are neither wholly nor partially owned by the United States nor otherwise specifically exempt from the tax imposed by s. 3301 of said code:

1. Any contributions required and paid under this chapter for 1939 or any subsequent year by any such instrumentality, including any national bank, shall be refunded to such instrumentality in case this chapter is not certified with respect to such year under s. 3304 of said code.

2. No national banking association which is subject to this chapter shall be required to comply with any of its provisions or requirements to the extent that such compliance would be contrary to s. 3305 of said code.

(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 and for refunds payable under sub. (9), and for expenditures made pursuant to s. 108.161 and consistently with the federal limitations applicable thereto.

(10m) The commission shall not pay any interest on any benefit payment or collect any interest on any benefit overpayment.

(11) If and when the fund's balancing account, as of the close of any month, has a net balance (after deducting the debit balances of any employer accounts then overdrawn and any positive balances of covered government units, and after crediting any benefit payments reimbursable by covered government units or by the federal government) of less than \$10,000,000, the fund's treasurer shall promptly make a finding to that effect, which shall be published forthwith in the official state paper. As of the start of the first business day (hereinafter called "transfer date") which follows the close-of-month to which such a finding applies, the fund's treasurer shall transfer from employer accounts to the fund's balancing account such amounts as he determines pursuant to this subsection. The fund's treasurer shall compute a "transfer percentage", namely the lowest multiple of one-tenth of one per cent which would, if applied to the fund's entire net balance as of the start of the transfer date, produce a result of at least \$5,000,000, and shall apply such transfer percentage to the net balance (as of the start of the transfer date) of each employer's account (other than government unit accounts) whose net balance is then positive, and shall transfer the amount resulting in each such case from the given employer's account to the fund's balancing account, as of the start of the transfer date, and shall promptly notify each such employer accordingly.

(12) Subsection (11) shall not be applied at any time after 1964 and before July 1, 1969, and no transfer shall be made thereunder by reason of the level of the fund's balancing account at any time within that period.

**History:** 1961 c. 12; 1963 c. 145; 1965 c. 1, 10, 218.

**108.161 Administrative financing account.** (1) The fund's treasurer shall maintain within the fund an employment security "administrative financing account", and shall credit thereto all amounts credited to the fund pursuant to the federal employment security administrative financing act (of 1954) and section 903 of the federal social security act, as amended.

(1m) He shall also credit to said account all federal moneys credited to the fund pursuant to sub. (8).

(2) The requirements of said section 903 shall control any appropriation, withdrawal and use of any moneys in said account.

(3) Consistently with this chapter and said section 903, such moneys shall be used solely for benefits or employment security administration, including unemployment compensation, employment service and related statistical operations.

(4) Such moneys shall be encumbered and spent for employment security administrative purposes only pursuant to (and after the effective date of) a specific legislative appropriation enactment:

(a) Stating for which such purposes and in what amounts the appropriation is being made to the administration fund created by s. 108.20.

(b) Directing the fund's treasurer to transfer the appropriated amounts to the administration fund only as and to the extent that they are currently needed for such expenditures, and directing that there shall be restored to the account created by sub. (1) any amount thus transferred which has ceased to be needed or available for such expenditures.

(c) Specifying that the appropriated amounts are available for obligation solely within the 2 years beginning on the appropriation law's date of enactment.

(d) Limiting the total amount which may be so obligated during any fiscal year to the aggregate of all amounts credited under sub. (1), including amounts credited pursuant to sub. (8), within that year and the 9 preceding fiscal years, reduced by the sum of any moneys obligated and charged against any of the amounts thus credited within those 10 years.

(5) The total of the amounts thus appropriated for use in any fiscal year shall in no event exceed the moneys available for such use hereunder, considering the timing of credits hereunder and the sums already spent or appropriated or transferred or otherwise encumbered hereunder.

(6) The fund's treasurer shall keep a record of all such times and amounts; shall charge each sum against the earliest credits duly available therefor; shall include any sum thus appropriated but not yet spent hereunder in computing the fund's net balance as of the close of any month, in line with the federal requirement that any such sum shall (until spent) be deemed part of the fund; and shall certify the relevant facts whenever necessary hereunder.

(7) If any moneys appropriated hereunder are used to buy and hold suitable land, with a view to the future construction of an employment security building thereon, and if such land is later sold or transferred to other use, the proceeds of such sale (or the value of such land when transferred) shall be credited to the account created by sub. (1).

(8) If any sums are appropriated and spent hereunder to buy land and to build a suitable employment security building thereon, then any federal moneys thereafter credited to the fund or paid to the commission by way of gradual reimbursement of such employment security capital expenditures, or in lieu of the estimated periodic amounts which would otherwise (in the absence of such expenditures) be federally granted for the rental of substantially equivalent quarters, shall be credited to the account created by sub. (1), consistently with any federal requirements applicable to the handling and crediting of such moneys.

(8m) To the extent that employment security moneys finance the capital cost of acquiring office quarters, either in a separate employment security building project or in a larger state building, no rental for the quarters thus financed (or for equivalent substitute quarters) shall be charged the commission or its employment security functions at any time. The commission shall so certify, in applying for the federal moneys specified in sub. (8).

(9) Any land and building or office quarters acquired hereunder shall continue to be used for employment security purposes. Such realty or quarters shall not be sold or transferred to other use without the governor's approval. If thus sold or transferred, the proceeds of such sale, or the value of such realty or quarters when transferred, shall, except as federally approved equivalent substitute rent-free quarters are provided, be allocated and credited to the account created by sub. (1) and/or to the fund created by s. 108.20, in accordance with any then applicable federal requirements; and shall, to the extent said requirements permit, be used to finance employment security quarters.

(10) Any realty acquired hereunder shall be excluded from the 2 per cent building fund computation specified in s. 13.351 (3).

**History:** 1963 c. 145; 1965 c. 10, 231.

**108.17 Payment of contributions.** (1) Contributions shall accrue and become payable by each employer then subject to this chapter on the first day of July, 1934, and shall be paid thenceforth in accordance with this chapter. Thereafter contributions shall accrue and become payable by any employer on and after the date on which he becomes newly subject to this chapter.

(1m) In the case of an employer who becomes, as of the beginning of 1937 or of any subsequent calendar year, newly subject to this chapter based on his employment during the given year, his contributions based on payrolls prior to the date on which his employment made him subject hereto shall not be considered as payable for the purposes of section 108.22 until such subsequent date (occurring within sixty days) as the commission may determine.

(2) All contributions required under this chapter from employers shall be reported and paid to the industrial commission, for such periods and in such manner as the commission may prescribe. Each contribution report and payment shall be due at the close of the month next following the end of the applicable reporting period, except as the commission may assign a later due date pursuant to sub. (1m) or general commission rules.

(2m) When a written statement of account is issued to an employer by the commission's unemployment compensation department, showing as duly credited a specified amount received from him under this chapter, no other form of state receipt therefor shall be required.

(3) If an employer (of any person) makes application to the commission to adjust an alleged overpayment by him of contributions or interest under this chapter, and files such application within 3 years after the close of the calendar year in which such payment was made, a commission deputy shall make a determination under section 108.10 as to the existence and extent of any such overpayment, and the provisions of said section shall apply to such determination. As to any amount determined under said section to have been erroneously paid by the employer, the commission shall allow him a corresponding credit, without interest, against his future contribution payments; or, if the commission finds it impracticable to allow the given employer such a credit, it shall refund such overpayment to him, without interest, from the fund or the administration fund, as the case may be.

(4) However, in case an employer's contribution rate for any year has been incorrectly determined, it shall be corrected (and contributions shall be adjusted or become payable accordingly) only if due notice of such error is given during, or within 6 months after the close of, the calendar year to which such rate applies.

**History:** 1965 c. 389.

**108.18 Contributions to the fund.** (1) **TOTAL RATE.** (a) Each employer shall pay contributions to the fund for each calendar year at whatever rate on his payroll for that year duly applies to him pursuant to this section and s. 108.02 (8) (d).

(b) An employer's contributions shall be credited to his account in the fund, but only after any solvency contribution paid or payable by him or deducted from his account under subs. (8) and (9) has been credited to the fund's balancing account (currently, as of the date when paid or deducted).

(2) **INITIAL RATES.** (a) An employer's contribution rate shall be 2.7% on his payroll for each of the first 3 calendar years with respect to which contributions are credited to his account, except as additional contributions apply under this section.

(b) As to each of those first 3 calendar years, if the employer's payroll for any such year was \$20,000 or more, he shall be required to pay an additional contribution at the rate of 1.3 per cent on that calendar year's payroll, within 60 days after notice from the commission that such additional contribution is payable, if his account:

1. At the close of that calendar year was overdrawn (on a cash basis, with the benefits paid and charged to the account exceeding the contributions paid and credited thereto, through said close of year); or

2. As of the next June 30 computation date was overdrawn (with a negative reserve percentage).

(3) **REQUIREMENTS FOR REDUCED RATE.** As to any calendar year, an employer shall be permitted to pay contributions to the fund at a rate lower than the standard rate of 2.7% on his payroll for that year only when, as of the applicable computation date:

(a) Benefits have been chargeable to the employer's account during the 18 months preceding such date; and

(b) Such lower rate applies under this section; and

(c) Permitting him to pay such lower rate is consistent with the relevant conditions then applicable to additional credit allowance for such year under section 3303 (a) of the federal unemployment tax act, any other provision to the contrary notwithstanding.

(4) **EXPERIENCE RATES.** Except as otherwise specified in this section, an employer's contribution rate on his pay roll for a given calendar year shall be based on the reserve percentage of his account as of the applicable computation date, as follows:

(a) If such reserve percentage is less than zero (because his account is overdrawn), such rate shall be:

1. 4 percent, unless a higher rate applies under this paragraph.

2. For 1965 or any subsequent calendar year, 4.2 per cent, if such reserve percentage is minus 2 per cent or lower, unless a higher rate applies under this paragraph.

3. For 1966 or any subsequent calendar year, 4.4 per cent, if such reserve percentage is minus 4 per cent or lower, unless a higher rate applies under this paragraph.

(b) If such reserve percentage is zero or more, but less than 2 per cent, such rate shall be 3.5 per cent.

(c) If such reserve percentage is 2 per cent or more, but less than 4 per cent, such rate shall be 3 per cent.

(d) If such reserve percentage is 4 per cent or more, but less than 6 per cent, such rate shall be 2.5 per cent.

(e) If such reserve percentage is 6 per cent or more, but less than 7 per cent, such rate shall be 2 per cent.

(f) If such reserve percentage is 7 per cent or more, but less than 8 per cent, such rate shall be 1.5 per cent.

(g) If such reserve percentage is 8 per cent or more, but less than 9 per cent, such rate shall be one per cent.

(h) If such reserve percentage is 9 per cent or more, but less than 10 per cent, such rate shall be one-half of one per cent.

(i) If such reserve percentage is 10 per cent or more, such rate shall be zero per cent.

(5) LIMITATION. To prevent undue sharp increases in contribution rates during bad years, an employer's contribution rate for any calendar year shall in no case exceed by more than one per cent (on payroll) the rate which applied to him at the close of the preceding calendar year, except under sub. (2).

(5m) LIMITATION, COMPUTATION. The one per cent limit of sub. (5) shall be computed from the employer's experience rate assigned to him under subs. (4), (5) and (6) before applying sub. (10) or s. 108.02 (8) (d).

(6) COMPUTATION IN SPECIAL CASES. If during the year ending on a computation date an employer has been liable for contributions but has had no pay roll, his reserve percentage as of that computation date shall be computed on the basis of his most recent year (ending on a computation date which applied to him) of some payroll; but his contribution rate for the calendar year following the computation date shall in no case be less than one per cent.

(7) VOLUNTARY CONTRIBUTIONS. Any employer may at any time make payments to the fund, in excess of the other requirements of this section. Each such payment shall be credited to the employer's account as of the date when paid, except that any such payment made during the period July 1 through November 30 shall, for the purpose of computing his reserve percentage, be credited thereto as of the immediately preceding computation date; and each such payment shall be treated as a contribution required and irrevocably paid under this chapter with respect to pay rolls preceding the date as of which it is thus credited.

(8) SOLVENCY CONTRIBUTIONS. Each employer's solvency contribution for each period of a calendar year shall be figured by applying the solvency rate determined for that year under sub. (9) to his payroll for that period, and shall be payable to the fund's balancing account by the due-date of his contribution report, as follows:

(a) If the employer's regular contribution rate for that year under this section is less than 3.7%, the commission shall deduct his solvency contribution (figured at the solvency rate, on his relevant payroll) from his current contributions and/or (if necessary) from his account, except to the extent that he elects otherwise by paying some or all of his solvency contribution in addition to his other contributions by the due-date of his contribution report.

(b) If the employer's regular contribution rate for that year under this section is 3.7% or more, his solvency contribution (figured at the solvency rate, on his relevant payroll) shall, without limitation by sub. (5), be added to and payable with his other contributions.

(c) As used in this subsection, an employer's "regular contribution rate" means the initial rate assigned to him under sub. (2) (a), or the experience rate assigned to him under subs. (4), (5) and (6) before applying sub. (10) or s. 108.02 (8) (d).

(9) SOLVENCY RATES. (a) The solvency rate for 1965 shall be 0.25%.

(b) The solvency rate required for each subsequent calendar year shall depend on the extent to which the net balance of the fund's balancing account at the close of the preceding July falls short of the adequacy level then required, and shall be determined by the fund's treasurer pursuant to this subsection.

(c) The adequacy level required for the fund's balancing account shall be:

1. \$15 million at the close of July 1965.

2. \$18 million at the close of July 1966.

3. At the close of each subsequent July, the amount which equals 0.4% of the gross wages paid by all employers in the immediately preceding calendar year, as determined pursuant to par. (h).

(d) The fund's treasurer shall determine the net balance of the fund's balancing account, at the close of each July, after deducting the debit balances of any employer accounts then overdrawn and any positive balance of any government unit, and after crediting any benefit payments reimbursable by any government unit.

(e) He shall subtract that net balance from the relevant adequacy level required by par. (c), to determine the "deficiency amount" for the balancing account at the close of July.

(f) He shall then compare that deficiency amount with the aggregate payrolls (for the preceding calendar year) determined under par. (h), to figure the lowest multiple of one-tenth per cent which would, if applied to those payrolls, yield the "deficiency amount."

(g) The multiple of one-tenth per cent thus computed shall be the solvency rate for the calendar year which follows that close of July.

(h) The commission shall determine for each calendar year, by the following June 1, from reports to the commission (including corrections thereof) filed within 3 months after the close of that year by employers (except government units) covered by this chapter as to their employes in employment covered by this chapter:

1. The gross wages thus reported by such employers as paid in that year for such employment; and

2. The aggregate "payrolls" thus reported by such employers as paid in that year for such employment.

(i) The fund's treasurer shall promptly make the calculations required by this subsection, and shall publish the resulting findings in the official state paper by October 15, and shall notify each employer by November 15 as to what solvency rate will apply to the ensuing calendar year.

(10) ADJUSTMENTS FOR 1966, 1967, 1968. In view of the higher "payroll" base which will apply after 1965 under s. 108.02 (8) (b), each experience rate of one-half per cent or more, as determined under subs. (4), (5) and (6), shall be reduced by one-tenth per cent (on payroll) as to 1966 payrolls and by two-tenths per cent (on payroll) as to 1967 and 1968 payrolls.

**History:** 1961 c. 12; 1963 c. 145; 1965 c. 10.

**108.19 Contributions to the administration fund.** (1) Each employer subject to this chapter shall regularly contribute to the unemployment administration fund created in section 108.20 at the rate of two-tenths of one per cent per annum on his pay roll as defined in section 108.02. But the commission may prescribe at the close of any fiscal year such lower rates of contribution under this section, to apply to classes of employers throughout the ensuing fiscal year, as will in the commission's judgment adequately finance the administration of this chapter, and as will in the commission's judgment fairly represent the relative cost of the services rendered by the commission to each such class.

(2) If the commission finds, at any time within a fiscal year for which it has prescribed lower contribution rates to the administration fund than the maximum rate permitted hereunder, that such lower rates will not adequately finance the administration of this chapter or are excessive for that purpose, the commission may by general rule prescribe a new schedule of rates (in no case exceeding the specified maximum) to apply under this section for the balance of the fiscal year.

(2m) Within the limit specified by sub. (1), the commission may by rule prescribe at any time as to any period any such rate or rates or schedule as it deems necessary and proper hereunder. Unless thus prescribed, no such rate or rates or schedule shall apply under sub. (1) or (2).

(3) If the Federal Unemployment Tax Act is amended to permit a maximum rate of credit against said federal tax higher than the 90 per cent maximum rate of credit now permitted under s. 3302 (c) (1) of the Internal Revenue Code, to an employer with respect to any state unemployment compensation law whose standard contribution rate on pay roll under said law is more than 2.7 per cent, in that event the standard contribution rate as to all employers under this chapter shall, by a commission rule to be issued with the governor's approval, be increased from 2.7 per cent on pay roll to that percentage on pay roll which corresponds to the higher maximum rate of credit thus permitted against the federal unemployment tax; and such increase shall become effective on the same date as such higher maximum rate of credit becomes permissible under such federal amendment.

(4) If s. 303 (a) (5) of Title III of the Social Security Act and s. 3304 (a) (4) of the Internal Revenue Code are amended to permit a state agency to use, in financing administrative expenditures incurred in carrying out its employment security functions, some part of the moneys collected or to be collected under the state unemployment compensation law, in partial or complete substitution for grants under said Title III, in that event this chapter shall, by a commission rule to be issued with the governor's approval, be modified in the manner and to the extent and within the limits necessary to permit such use by the commission under this chapter; and such modifications shall become effective on the same date as such use becomes permissible under such federal amendments.

**History:** 1961 c. 12.

**108.20 Unemployment administration fund and appropriation.** (1) To finance the administration of this chapter and to carry out its provisions and purposes there is estab-

lished the "Unemployment Administration Fund." This fund shall consist of all contributions and moneys paid to or transferred by the industrial commission for the administration fund as provided in s. 108.19, and of all moneys received for this fund by the state or by the commission from any source, including all federal moneys allotted or apportioned to the state or the commission for the Wisconsin state employment service or for administration of this chapter, or for services, facilities or records supplied to any federal agency; and the commission is hereby directed to make to federal agencies such reports as are necessary in connection with or because of such federal aid.

(2) All amounts received by the commission for such fund shall be paid over to the state treasurer and credited to the unemployment administration fund for the administration of this chapter and the Wisconsin state employment service.

(3) There shall be included in the moneys governed by s. 20.440 (1) (v) any amounts collected by the commission under s. 108.19 (1) or (2), or under s. 108.04 (13) (c) or s. 108.22 (1) as tardy filing fees or as interest or delinquent payments.

(4) Any moneys transferred to the unemployment administration fund from the administrative financing account pursuant to s. 108.161 shall be expended (or restored to that account) in accordance with that section.

(5) If and to the extent that moneys transferred under sub. (4) are unavailable to finance some or all of the capital costs involved in any employment security building project or in constructing office space for use by the commission in connection with its employment security operations, the moneys available under s. 20.440 (1) (v) may be used for such financing.

(6) To the extent that moneys available under s. 20.440 (1) (v) are used to finance some or all of the capital costs involved in acquiring employment security office space, there shall be applied to the moneys thus used (the same as if they were moneys credited under s. 108.161) the provisions of s. 108.161 (7), (8), (8m) and (9), except that any resulting credits attributable to the moneys thus used shall be credited under ss. 20.440 (1) (v) and 108.20.

(7) To the extent that federal grants hereunder, or moneys available under s. 20.440 (1) (v), or both, are used to amortize the capital costs of employment security office quarters in a state office building, s. 108.161 (9) shall apply to the costs and quarters thus amortized, except that any resulting credits shall be allocated according to the funds thus used. When such grants or moneys or both have fully amortized such costs, s. 108.161 (8m) shall apply to such quarters.

(8) As to office space used for employment security purposes in a state building, if and while federal grants for employment security administration do not fully cover the current costs (either gross rent, or operating costs) properly payable by the commission to the state with respect to such space, the commission may reserve and use the moneys available under s. 20.440 (1) (v) to assure the required payments to the state.

(9) There shall be charged to any moneys available under s. 108.161, until the moneys currently available are fully obligated, any amounts obligated for employment security local office building projects, with any remaining costs of such projects charged to the employment security moneys available under s. 20.440 (1) (v), pursuant to sub. (5).

**History:** 1961 c. 12; 1963 c. 145; 1965 c. 231, 433 ss. 99, 121.

**108.21 Record and audit of pay rolls.** (1) Every employer of one or more persons in Wisconsin shall keep such a true and accurate employment record for each individual employed by him, including full name, address and social security number, as will permit determination of the weekly wages earned by each such individual from him, and shall furnish to the commission upon demand a sworn statement of the same. Such record and any other records which may show any wages paid by the employer shall be opened to inspection by any authorized commission representative at any reasonable time.

(2) The findings of any such authorized representative of the commission, based on examination of the records of any such employer and embodied in an audit report mailed to the employer, shall constitute a determination within the meaning of section 108.10 and the provisions of said section shall apply accordingly.

(3) In the event that any such employer fails to keep adequate employment and pay roll records under this section or fails to file such reports as the commission may require under this chapter, the employer's contribution liability with respect to the period for which such records are lacking or deficient or for which such reports have not been filed may be estimated by a commission deputy in a determination made pursuant to section 108.10, and the provisions of said section shall apply to any such determination.

**108.22 Delinquent payments.** (1) If any employer is delinquent in making by the assigned due-date any contribution report or payment to the commission required of him under this chapter, he shall be liable for a tardy filing fee of one dollar for each such



delinquency and shall become additionally liable for interest on such delinquent payment at the rate of one-half per cent per month (or fraction thereof) from the date such payment became due, except that said fee shall apply in lieu of such interest in any case where such interest (accrued up to the date on which such delinquent contribution and said fee are paid) is less than one dollar. Such tardy filing fees and interest shall be paid to the commission and credited to the unemployment administration fund.

(2) If any employer fails to pay to the commission any amount found to be due it in proceedings pursuant to section 108.10, provided that no appeal or review permitted by said section is pending and that the time for taking an appeal or review has expired, the commission or any duly authorized representative may issue a warrant directed to the sheriff of any county of the state, commanding him to levy upon and sell sufficient of the real and personal property which may be found within his county of the employer who has defaulted in the payment of any amount thus found to be due to pay such amount, together with interest and costs and other fees, and to proceed upon the same in all respects and in the same manner as upon an execution against property issued out of a court of record, and to return such warrant to the commission and pay to it the money collected by virtue thereof within 60 days after the receipt of such warrant. The sheriff shall, within 5 days after the receipt of the warrant, file with the clerk of the circuit court of his county a copy thereof, unless the employer shall make satisfactory arrangements for the payment thereof with the commission, in which case the sheriff shall at the direction of the commission return such warrant to it. The clerk shall enter in the judgment docket the name of the employer mentioned in the warrant and the amount of the contributions, interest, costs and other fees for which the warrant is issued and the date when such copy is filed. Thereupon the warrant so docketed shall be considered in all respects as a final judgment creating a perfected lien upon the employer's right, title and interest in all of his real and personal property located in the county wherein the warrant is docketed.

(3) In the discretion of the commission, a warrant of like terms, force and effect may be issued and directed to any employe or agent of the commission duly authorized by it as a deputy, who may file a copy of such warrant with the clerk of circuit court of any county in the state, and thereupon such clerk shall docket the same and it shall become a lien in the same manner, and with the same force and effect as hereinbefore provided with respect to a warrant issued and directed to and filed by a sheriff. In the execution thereof such employe or agent shall have all the powers conferred by law upon a sheriff, but shall not be entitled to collect from the employer any fee or charge for the execution of such warrant in excess of the actual expenses paid in the performance of his duty.

(4) If a warrant be returned not satisfied in full, the commission shall have the same remedies to enforce the amount due for contributions, interest, and costs and other fees as if the commission had recovered judgment against the employer for the same and an execution returned wholly or partially not satisfied.

(5) When the contributions set forth in a warrant together with interest and other fees to date of payment and all costs due the commission have been paid to it, the commission shall issue a satisfaction of the warrant and deliver or mail it to the employer, and the warrant shall be satisfied of record by the clerk upon presentation to him of such satisfaction and payment by the employer of the fees due such clerk.

(6) The commission, if it finds that the interests of the state will not thereby be jeopardized, and upon such conditions as it may exact, may issue a release of any warrant with respect to any real property upon which said warrant is a lien or cloud upon title, and such release shall be entered of record by the clerk upon presentation to him and payment of the fee for filing said release and the same shall be held conclusive that the lien or cloud upon the title of the property covered by the release is extinguished.

(7) As an alternative to any other remedy provided in this section the commission may in its own name collect any delinquent payments due it, together with interest and costs and other fees. A statement of the amount of such delinquent payments certified by the commission shall be prima facie evidence of the employer's liability for such amount. At any time before judgment in an action for the collection of such delinquent payments, the commission may commence and maintain a garnishee action as provided by chapter 267 for actions founded on contract, or may use the remedy of attachment as provided by chapter 266 for actions founded on contract. The place of trial of an action for the collection of such delinquent payments shall not be changed from the county in which such action is commenced, except upon consent of the parties.

(8) (a) In case benefits have been overpaid or improperly paid to an individual, an initial determination may be issued setting forth the individual's liability to reimburse the fund for such overpayment. In that event the individual may appeal therefrom,

within 10 days after a copy thereof was mailed to his last known address; and the procedures and limitations prescribed in s. 108.09 shall apply to any such appeal.

(b) To recover any overpayment for which liability has been thus established, the commission may file a warrant against the liable individual in the same manner as is provided in this section for collecting delinquent payments from employers.

**108.23 Preference of required payments.** In the event of an employer's dissolution, reorganization, bankruptcy, receivership, assignment for benefit of creditors, judicially confirmed extension proposal or composition, or any analogous situation including the administration of estates in courts of probate, the payments required of the employer under this chapter shall have preference over all claims of general creditors and shall be paid next after the payment of preferred claims for wages. Provided, however, that if the employer is indebted to the federal government for taxes due under the federal unemployment tax act and a claim for such taxes has been duly filed, the amount of contributions which should be paid to allow the employer the maximum offset against such taxes shall have preference over preferred claims for wages and shall be on a par with debts due the United States, if by establishing such preference the offset against the federal tax can be secured under s. 3302 (a) (3) of the federal unemployment tax act.

**108.24 Penalties.** (1) Any person who knowingly makes a false statement or representation to obtain any benefit payment under this chapter, either for himself or for any other person, shall upon conviction be deemed guilty of a misdemeanor and be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment in the county jail not longer than 30 days, or by both such fine and imprisonment; and each such false statement or representation shall constitute a separate and distinct offense. The commission may by civil action recover any benefits obtained by means of any statement or representation which is untrue.

(2) Any person who knowingly makes a false statement or representation in connection with any report or as to any information duly required by the commission hereunder, or who knowingly refuses or fails to keep any records or to furnish any reports or information duly required by the commission hereunder, shall upon conviction be deemed guilty of a misdemeanor and be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment in the county jail not longer than 30 days, or by both such fine and imprisonment; and each such false statement or representation and every day of such refusal or failure shall constitute a separate and distinct offense.

(3) Any person who makes any deduction from the wages of any employe because of liability for contributions hereunder or because of the employe's potential right to benefits, or who knowingly refuses or fails to furnish to an employe any notice, report or information duly required hereunder by the commission to be furnished to such employe, or who, directly or indirectly by promise of reemployment or by threat not to employ or not to reemploy or by any other means, attempts to induce any employe to refrain from claiming or accepting benefits or to waive any other right hereunder, or whose rehiring policy has discriminated against former employes by reason of their having claimed benefits, shall upon conviction be deemed guilty of a misdemeanor and be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not longer than thirty days, or by both such fine and imprisonment; and each such deduction from wages, and every day of such refusal or failure, and each such attempt to induce shall constitute a separate and distinct offense.

**108.26 Saving clause.** The legislature reserves the right to amend or repeal all or any part of this chapter at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.