

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3070/P1dn

JTK:cjs:rs

August 30, 2007

Dan LaRocque:

1. This draft contains items 07-02, 07-03, 07-07, and 07-08. My book does not contain any materials for item 07-05. If this item is still active and pending, please forward these materials.
2. Concerning the definitions of "full time" and "part time," because there are unrelated references in ch. 108, stats., to these terms, I determined that it was best to create definitions of "full-time work" and "part-time work", for which there are no unrelated references. This necessitated some language adjustments. In s. 108.04 (7) (k), stats., I changed the current law to avoid using the term "full-time employment" because that term does not accord with the defined term "full-time work" as used in the draft.
3. Concerning the treatment of benefits paid after an employer fails to provide correct and complete information to the department, I have not included any initial applicability or effective date on the assumption that the bill resulting from this draft will become law before the current law expires. There was a proposed language change in s. 108.04 (13) (c), stats., that appears to broaden the application of that paragraph beyond benefit charging so that it will cover all benefit determinations. I want to discuss this further, but, if this is intended, it appears to be a substantive change that would necessitate an initial applicability similar to the one we used in 2005. I also wondered whether this language is actually intended to be as broad as it seems, potentially trumping all provisions of ch. 108, stats., notwithstanding any fraud or error that may have occurred.
4. Concerning the discontinuance of contribution reports and the billing of contributions from information extracted from wage reports, the instructions were not specific as to the precise timing sequence you envisioned. So that this draft would work mechanically, the draft provides in amended s. 108.17 (2), stats., for the department to notify employers of the amount of their quarterly contributions due for each quarter no later than the 15th of the month following the end of that quarter. Under the draft, an employer then has 15 or 16 days to pay the amount billed before the due date, depending on the number of days in the month concerned. You may wish to adjust the timing of the billing and the payment due date if this is not enough time for the department or the employer to carry out its responsibilities.

5. Concerning the treatment of records and reports, I have not included proposed s. 108.09 (4) (o) and (7) (e) in this draft because I would like to discuss the language first. Proposed sub. (4) (o) sweeps so broadly it seems to subsume s. 108.09 (4n), stats. as well as s. 108.09 (4m), stats., in part. I wondered whether it was necessary to make this paragraph broader than s. 108.09 (4n), stats. In particular, it seems that the proposed language is broad enough that any record can be placed in front of a party at or shortly before a hearing and it can become prima facie evidence even if it would be impossible to reasonably react to the contents of the record within that time frame. This would seem to raise a due process issue. Proposed sub. (7) (e), which proposes to make reports and records “substantial evidence” even if they consist solely of hearsay seems to be worded in such a way as in effect to make a judicial finding. It seems to me that the courts will likely retain for themselves the role of determining whether there is sufficient credible evidence to sustain a determination or decision, given the particular facts and governing law in each case. Therefore, I’m wondering whether more narrowly crafted language might be more effective in achieving your intent.

6. Concerning electronic funds transfer requirements under proposed s. 108.17 (7), the instructions indicate that this change might be implemented in 2008 if the department is able to advance the timeline for implementation. This draft does not provide for this contingency; under the draft this change is implemented in 2009. If you decide to advance the timeline for implementation, we will need to revise the draft. Also, the definition of “electronic funds transfer” in proposed s. 108.17 (7) (a) does not include reference to crediting of an employer’s account since any crediting would presumably not be initiated by an employer and any provision for it would need to be located in another part of the chapter.

7. Proposed s. 108.22 (1) (af), which imposes an increased penalty upon employers and employer agents to which proposed s. 108.17 (7) applies that make contribution payments by means other than an electronic funds transfer, seems to create an anomalous situation in which an employer or employer agent that makes no payment is subject to a lesser penalty than an employer or employer agent that makes a timely payment using the wrong methodology. Does this reflect your intent?

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