2007 DRAFTING REQUEST

Bill

Received: **08/15/2007**

Received By: **jkuesel**

Wanted: **As time permits**

Identical to LRB:

For: **Workforce Development**

By/Representing: **Dan LaRocque**

This file may be shown to any legislator: **NO**

Drafter: **jkuesel**

May Contact:

Addl. Drafters:

Subject: **Unemployment Insurance**

Extra Copies:

Submit via email: **YES**

Requester's email: **Daniel.LaRocque@dwd.state.wi.us**

Carbon copy (CC:) to: **Tracey.Schwalbe@dwd.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Unemployment insurance various changes

Instructions:

Per instructions of Council on Unemployment Insurance.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
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Subject: **Unemployment Insurance**

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Submit via email: **YES**

Requester's email: **Daniel.Larocque@dwd.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

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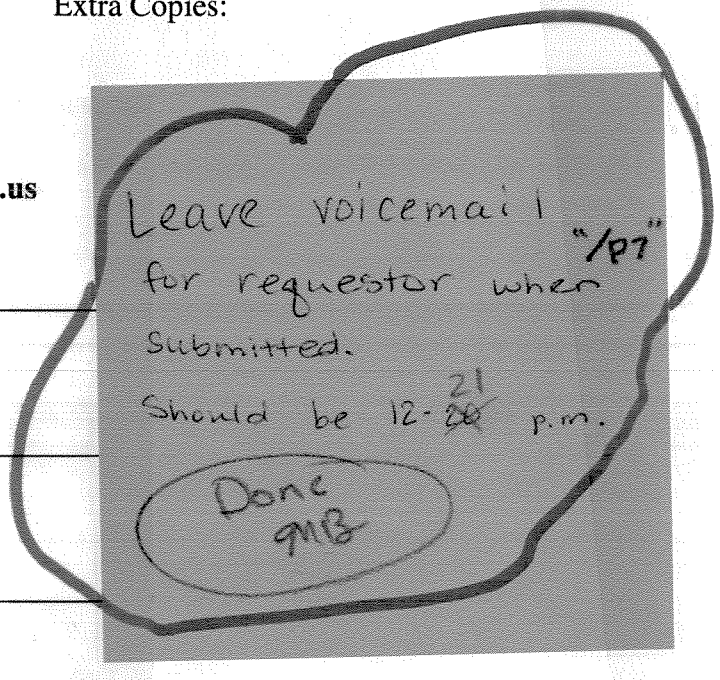

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2007 DRAFTING REQUEST

Bill

Received: **08/15/2007**

Received By: **jkuesel**

Wanted: **As time permits**

Identical to LRB:

For: **Workforce Development**

By/Representing: **Dan LaRocque**

This file may be shown to any legislator: **NO**

Drafter: **jkuesel**

May Contact:

Addl. Drafters:

Subject: **Unemployment Insurance**

Extra Copies:

Submit via email: **YES**

Requester's email: **Daniel.Larocque@dwd.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Unemployment insurance various changes

Instructions:

Per instructions of Council on Unemployment Insurance.

Drafting History:

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10/17 pg

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/P4 gjs 10/17/07

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Per JTK

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2007 DRAFTING REQUEST

Bill

Received: **08/15/2007**

Received By: **jkuesel**

Wanted: **As time permits**

Identical to LRB:

For: **Workforce Development**

By/Representing: **Dan LaRocque**

This file may be shown to any legislator: **NO**

Drafter: **jkuesel**

May Contact:

Addl. Drafters:

Subject: **Unemployment Insurance**

Extra Copies: CJS (chris Siciliano)

Submit via email: **YES**

Requester's email: **Daniel.Larocque@dwd.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

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Instructions:

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2007 DRAFTING REQUEST

Bill

Received: **08/15/2007**

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For: **Workforce Development 7-1406**

By/Representing: **Dan LaRocque**

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D07-01
05/29/07

Summary of Proposal

Consolidate & Streamline Able & Available (A&A) Provisions

Current Law: When a claimant experiences restrictions on his or her ability to work or availability for work or simply misses work, eligibility is determined as follows:

- The able and available test for disqualification is applied when:
  - claimant has a restriction that is not the cause of the claimant's current unemployment.
  - employee quits (and had no reasonable alternative) because unable to work or because of the health of an immediate family member. (7)(c) 04 (8)(e)
  - claimant refuses suitable work with good cause.

- The able and available test is applied for full weeks and the "partial wage formula" is applied to reduce unemployment benefits for partial weeks when: (1)(6)1
  - employment is suspended by employee or employer because employee is unable to do his or her job and the employee does not meet the able and available test.
  - employment is terminated by employer because employee is not able to do his or her job and the employee does not meet the able and available test.

- The partial wage formula is applied to reduce benefits when:
  - employee misses work with current employer while claiming benefits. (1)(a)

- An automatic disqualification is applied to full weeks and the partial wage formula is applied to partial weeks when:
  - employee is on a voluntary leave of absence for a definite period of time. (1)(b)2.
  - employee is on a family or medical leave. (1)(b)3.

Proposal: Consolidate several statutory provisions and more uniformly apply the A&A test:

- Apply a benefit reduction using the partial wage formula for a week in which:
  - employee misses work with a current employer on 2 days or less in a week (including the first week of a leave of absence, family or medical leave, suspension, or termination by an employer because the employee was not able or not available to perform his or her work with that employer.)

- Apply an automatic disqualification for a week in which:
  - employee misses work with a current employer on more than 2 days in a week.

- Apply the able and available test when an employee is:
  - on a leave of absence of any type, including family or medical leave.
  - suspended because he or she is unable to work or unavailable for work.
  - terminated by the employer because unable to work or unavailable for work (except for the first week if work is missed on 2 days or less as mentioned above).

- Continue to apply the "Approved Training" protection to all able and available disqualifications, which will include leaves of absence (that are not related to the training), and family or medical leaves.

Note: The able and available test will continue to apply to the quit exception and job refusals.

Rationale: Simplify various methods and equalize treatment of claimants for determining eligibility when a person is unable or unavailable to perform work with a current employer.

Impact: The proposal will have no net fiscal impact. A small number of individuals now found not able and available will be found able and available, for a net positive effect of $100,000; and vice versa, a small number now able and available will be found not able and available, for a net negative $100,000.

Date: May 25, 2007
Proposed by: Department
Prepared by: Carla Breber

ANALYSIS OF PROPOSED LAW CHANGE

Consolidate & Streamline Able & Available Provisions

1. Description of Proposed Change

The proposed change would consolidate and simplify the various methods for determining eligibility when an employee is unable or unavailable to perform his or her work with a current employer. The employee's eligibility for benefits will be determined by applying the able and available criteria in DWD 128.

2. Proposed Statutory Language

Repeal and recreate section 108.04(1)(a).

Repeal and recreate section 108.04(1)(b).

Change reference from 108.04(1)(b)1 to 108.04(1)(b) in Section 108.04(16), Approved Training.

See attachment.

3. Proposer's Reason for the Change

Reason for Consolidating the Provisions
We think some consolidation of 108.04(1) is necessary because the provisions all address situations where an employee was/is unable or unavailable for his or her work with a current employer. Because they are so similar, it is very difficult to determine which applies to a given case. In spite of their similarities, the current provisions impose a variety of disqualifications, which creates inequity for both claimants and employers.

For example, an employee who is injured and requests off for a definite period of time to recover is disqualified for any full weeks of work that are missed. However the able and available test would have been applied to determine eligibility had the employee not known initially how long it would take to recover.

The piecemeal amendments that have been made to the various provisions over the past 60 years have also made them very difficult to administer.

4. Brief History and Background of Current Provisions

Section 108.04(1)(a)
This provision was part of Wisconsin's early UI legislation in the 1930's. Benefits were denied for a week of unemployment if the employee had due notice of work with a current employer, but missed work during that week. Any amount of missed work resulted in disqualification for the entire week. As of 1968, one exception was applied to the disqualification based on the "Van Wie" Circuit Court Decision. Under the "Van Wie" decision, no disqualification was imposed if the absence was for a valid reason, with notice to and permission of the employer, and the added gross wages that would have been earned wouldn't have affected benefits payable for the week. When the partial wage formula was implemented, the application of "Van Wie" was limited to cases where less than one hour of work was missed, because wages of more than $20 would have affected benefits payable.

In 1992, section 108.04(1)(a) was changed to consider only wages that could have been earned had work not been missed. The amended provision treated wages that could have been earned as wages when

computing benefits payable under the partial wage formula, rather than denying the entire week, regardless of the wages lost.

Section 108.04(1)(b)1 & 2
Prior to 1957, Section 108.04(1)(b) referenced only employment suspensions and terminations "by the employer" due to the employee's inability or unavailability for his work, and the disqualification was based only on the employee's inability or unavailability to do "his/her" work, regardless of the employee's attachment to other work in the general labor market.

In 1957, the provision was broadened to include suspensions "by the employee" and voluntary leaves of absence taken by the employee for a definite period of time. In addition, the employee's attachment to the labor market became the basis for disqualification.

In 1965, two subsections were created, one for suspensions by the employee or employer and terminations by the employer and one for voluntary leaves of absence taken by the employee for a definite period of time.

Until 1985, benefits under 108.04(b) were suspended only from the employer where the separation occurred. Wisconsin Act 17 expanded the disqualification to all liable employers in 1985.

Section 108.04(1)(b)3
This provision was created in 1988 by the same legislation that enacted Wisconsin's Family and Medical Leave Act. It was modified in 1993 to reference the Federal Family and Medical Leave Act (P.L. 103-3).

Section 108.04(1)(c)
This provision is relatively new. It was created in April of 2000 to alleviate the discrepancy between the way the leave of absence provision under by 108.04(1)(b)2 was being applied by the Department and LIRC. LIRC decisions and some ATDs were applying the work available principle to leave of absence for partial weeks. The new provision was patterned after 108.04(1)(a), which applies the partial wage formula to wages that could have been earned when work is missed with a current employer.

As created in 2000, the new provision applied only to leaves of absence under 108.04(1)(b)2. Wisconsin Act 86 expanded the application of 108.04(1)(c) to the other subsections in 108.04(b) in 2005 to provide equitable disqualifications for similar situations.

Note: There are separate provisions that apply when an employee quits a job because (s)he is unable to work or refuses a job because (s)he is unable/unavailable for work. Both of these provisions already apply the able and available test in DWD 128 to determine eligibility.

5. Effect of the Proposed Change

a. Policy
No other law or policies would be affected.

b. Administrative Feasibility
The proposed changes would simplify the law and significantly ease the administrative burden imposed by the current provisions.

c. Equitable
The law change would provide equity for claimants who are unable or unavailable for work with a current employer. The same test would be applied in all cases.

6. Fiscal

There will be no net fiscal impact from applying a consistent test of availability to all leave situations. However, there will be a limited number of situations in which some individuals now found unavailable will be found available and vice versa. Specifically, some individuals who have been placed on family or medical leave for a full week but are available for work on all except two days or less in a week may be found available if able to perform work during the rest of the week. Such individuals would now be found unavailable. The estimated change due to the proposal will be to increase benefits by approximately $100,000. On the other hand, some individuals who are not available for work on three or more days a week will be found unavailable under the proposal rather than having a dollar value assigned to the missed work and having it counted under the partial benefits formula along with any actual earnings for the week. The estimated reduction in benefits due to the latter change is $100,000. As a result of the offsetting nature of these provisions, no net fiscal effect is expected.

7. State and Federal Issues

No state/federal issues.

8. Proposed Effect/Applicability Date

For 108.04(1)(a): Weeks of unemployment as of the effective week.
For 108.04(1)(b)&(c): Separations occurring as of the effective week.

Attachment for Item #3: Proposed Statutory Language

- **Amend 108.04(1)(a).** This provision is currently applied when an employee misses work on a day-to-day basis with a current employer, and applies the partial wage formula to all available wages in a given week to compute benefits due for that week. As amended, it will apply the partial wage formula to available wages only if work is missed in 2 days or less; if work is missed in more than 2 days, benefits will be denied for that week. The amended provision will be applied to the week in which a leave of absence or family medical leave begins and the week that a suspension or termination occurs under (1)(b) if not more than 2 days of work is missed in that week.

108.04(1)(a). When an employee ~~An employee's eligibility for benefits shall be reduced for any week in which the employee~~ is with due notice called on by his or her current employing unit to report for work actually available within a given ~~such~~ week and is unavailable for, or unable to perform such available ~~the~~ work ~~, some or all of such available work.~~

1. on not more than two days of the week, the employee's eligibility for benefits for that week shall be reduced. For purposes of this paragraph, the department shall treat the amount that the employee would have earned as wages for that week in such available work as wages earned by the employee and shall apply the method specified in s. 108.05(3)(a) to compute the benefits payable to the employee. The department shall estimate wages that an employee would have earned if it is not possible to compute the exact amount of wages that would have been earned by the employee.
2. on more than two days of the week, the employee will be ineligible for benefits for that week.

- **Repeal and recreate 108.04(1)(b) as follows:**

Create:

108.04(1)(b)1. Except as provided in **subd.** 2, an employee is ineligible for benefits while the employee is unable to work or unavailable for work, if his or her employment is suspended by an employee or employer or terminated by the employer because the employee is unable to do or unavailable for suitable work otherwise available with the employer, if the employee is on a leave of absence, or if the employee is on family or medical leave.

108.04(1)(b)2. If the employee missed work on not more than 2 days in the first week of a leave taken under **subd.** 1 or in the week a suspension or termination under **subd.** 1 occurs, eligibility for that week shall be determined under s. 108.04(1)(a)**1**.

Repeal 108.04(1)(b)1., which is applied when employment is suspended indefinitely by an employee/employer or when employment is terminated by an employer because the employee is unable or unavailable for his/her work. (It is applied only to full weeks affected by the suspension or termination.)

> 108.04(1)(b). An employee is ineligible for benefits: 1. While the employee is unable to work, or unavailable for work, if his or her employment with an employer was suspended by the employee or by the employer or was terminated by the employer because the employee was unable to do, or unavailable for, suitable work otherwise available with the employer, except as provided in par. (c);

Repeal 108.04(1)(b)2., which is applied when an employee takes a voluntary leave of absence for a definite period of time. (It is applied only to full weeks affected by the leave of absence.)

> 108.04(1)(b). An employee is ineligible for benefits: 2. While the employee is on a voluntary leave of absence granted for a definite period, until the period ends or until the employee returns to work, whichever occurs first, except as provided in par. (c);

Repeal 108.04(1)(b)3., which is applied when an employee is on a family or medical leave. (It is applied only to full weeks affected by the family or medical leave.)

108.04(1)(b). An employee is ineligible for benefits: 3. While the employee is on family or medical leave under the federal family and medical leave act of 1993 (P.L. 103-3) or s. 103.10, and except as provided in par. (c), until whichever of the following occurs first:

a. The leave is exhausted.
b. The employer is required to reinstate the employee under 5 USC 6384 or s. 103.10(8).
c. The employee returns to work."

Repeal 108.04(1)(c), which is applied whenever the employee misses work for only a portion of a week under subsection (b)1, 2 or 3.

"If a leave of absence under par. (b)2. or a family or medical leave under par. (b)3. is granted to an employee for a portion of a week, if an employee is absent for only a portion of the available work in a week due to a suspension under par. (b)1., or if an employee is absent for only a portion of the available work in a week in which a termination under par. (b)1. occurs, the employee's eligibility for benefits for that partial week shall be reduced by the amount of wages that the employee could have earned in his or her work had the leave not been granted or had the suspension or termination not occurred. For purposes of this paragraph, the department shall treat the amount that the employee would have earned as wages in that work for that week as wages earned by the employee and shall apply the method specified in s. 108.05(3)(a) to compute the benefits payable to the employee. The department shall estimate the wages that an employee would have earned for a partial week if it is not possible to compute the exact amount of wages that the employee would have earned for that partial week."

Amend 108.04(16), which protects claimants from disqualifications under some provisions while they are enrolled in approved training.

"(a) The department shall not reduce benefits under sub. (1)(a), or deny benefits under sub. (2)(a) or (d) or (8) or s. 108.141(3g) to any otherwise eligible individual for any week as a result of the individual's enrollment in a course of vocational training or basic education which is a prerequisite to such training, provided the department determines that:

1. The course is expected to increase the individual's opportunities to obtain employment;
2. The training is given by a school established under s. 38.02 or other training institution approved by the department;
3. The individual is enrolled full time as determined by the training institution;
4. The course does not grant substantial credit leading to a bachelor's or higher degree; and
5. The individual is attending regularly and making satisfactory progress in the course. The department may require the training institution to file a certification showing the individual's attendance and progress.

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

(c) If an individual is enrolled in ~~an~~ a program administered by the department for the training of unemployed workers that was in existence on October 1, 2003, other than the Youth Apprenticeship Program under s. 106.13 or a plan for training of youth approved under 29 USC 2822, then notwithstanding any failure of the program to meet the standards specified in par. (a):

1. The department shall not reduce benefits under sub. (1)(a) or deny benefits under sub. (2)(a) or (d) or (8) or s. 108.141(3g) to an otherwise eligible individual as a result of the individual's enrollment in such training; and
2. The department shall not apply benefit disqualifications under sub. **(1)(b)**~~1.~~, (7)(c), or (8)(e) or s. 108.141(3g) that are not the result of the training while the individual is enrolled in the training.

(d) If an individual is enrolled under the plan of any state for training under 19 USC 2296 or a plan for training of dislocated workers approved under 29 USC 2822:

1. The department shall not deny benefits under sub. (7) as a result of the individual's leaving unsuitable work to enter or continue such training; and
2. The requalifying requirements under subs. (7) and (8) do not apply while the individual is enrolled in such training.

(e) The department shall charge to the fund's balancing account the cost of benefits paid to an individual that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 if the individual receives benefits based on the application of par. (b), (c)2, or (d).

Memo

Department of Workforce Development
Division of Unemployment Insurance

Date: May 29, 2007

To: Unemployment Insurance Advisory Council

From: Daniel J. LaRocque

Subject: **Legal Effect of Family Medical Leave on Department "Able & Available" Proposal (D07-01)**

At the April 17, 2007, UIAC meeting, an issue was raised regarding possible impacts of the Family Medical Leave Act on the department's proposal to consolidate and streamline the able and available provisions of the unemployment statute (D07-01).

The employment and benefits protections of the FMLA require that the taking of a leave under the federal statute shall not result in the loss of any employment benefit accrued prior to the date the leave commenced. 29 USC §2614(a)(2). "Employment benefits" means benefits provided or made available *by the employer.* 29 USC §2611(5).

Unemployment benefits are funded by the employer and in that sense might be regarded as having been made available "by the employer" to the employee. While there is no precise legal authority on the point, we think it is more likely the FMLA provision was aimed at privately administered employee benefits programs, particularly privately funded health and disability insurance programs.

However, even assuming the unemployment insurance benefit is one made available by the employer (as opposed to by statute or by the government), in our opinion the limitation on benefits in the form of an eligibility condition in the unemployment statute, does not conflict with the FMLA provisions cited above. As indicated above, the FMLA statute protects benefits accrued prior to the date leave commenced. The accrual of the benefit is dependent on satisfying the conditions of the unemployment insurance law, including, among others, the condition that the employee be able to work and available for work. The unemployment benefit does not accrue until conditions for eligibility have been met.

For the foregoing reasons we believe the proposal to consolidate and streamline the able and available provisions of the unemployment statute does not conflict with the FMLA limitation loss of employer-provided benefits.

D07-02
05/29/07

Summary of Proposal

Standardize Treatment of Full-Time at Thirty-Two Hours

Current Law: As a result of a change in 2005 Act 86, the administrative code, s. DWD 100.02(28), defines "full-time" as "work which is performed for 32 or more hours per week." However, the current statutory treatment of full-time work differs from the rule. Provisions of Chapter 108 vary in how "full-time" is treated for purposes of eligibility:

A claimant is disqualified for any week in which he or she works 40 or more hours or, under certain conditions, works 35 or more hours.

Two exceptions to the quit disqualification employ a standard of 30 hours for "full time" within one of the conditions of the exception.

The variety of standards for "full time" is confusing to employees, employers and Department administrative staff and unduly complicates adjudication of benefit claims.

Proposal: Define "full-time" as work performed for 32 or more hours per week; "part-time" as work performed for less than 32 hours per week. Replace references to 40 hours, 35 hours and 30 hours, in the four provisions with the term "full-time".

Rationale: The number of hours that are regarded as "full-time" work has changed. This proposal recognizes that a significant percentage of the modern workforce does not work 35 to 40 hours per week, often due to child care or other obligations. The same reason supported a change in 2005 to the definition of "full-time" in DWD 100.02(28), which reduced "full-time" from 35 hours to 32 hours. That change allowed a claimant to be considered available for "full-time" work if he or she is available for work at least 32 hours per week. Utilizing the same definition of "full-time" in statutory provisions on disqualification will ensure that benefits are not paid to people who are employed full-time. Also, using one definition for "full-time" will simplify the law for employees, employers and staff.

Impact: Standardizing the definition of full time is expected to have no significant fiscal impact on three of the four statutory provisions affected by the change. Reducing from 40 hours to 32 hours for purposes of disqualifying claimants who work 32 rather than 40 hours a week will decrease expenditures for claimants who continue to work because they will have more income by continuing to work than by relying solely on the weekly UI benefit. That reduction is estimated at $3.7 million. However, the decrease will be offset to some extent by those claimants who decide to stop working because their benefit rates are higher than the wages they earn while laid off: $1.8 million. The net decrease in benefit payments is estimated at $1.9 million.

Date: May 21, 2007
Proposed by: Department
Prepared by: Carla Breber

ANALYSIS OF PROPOSED LAW CHANGE

Standardize Treatment of Full-Time at Thirty-Two Hours

1. Description of Proposed Change

The proposed change would apply the same definition of full-time to all UI provisions.

2. Proposed Statutory Language – See Attached

108.04(7)(k) & DWD 132.03(1)
108.04(7)(o)
108.05(3)(b)
108.05(3)(c) See attachment.

3. Proposer's Reason for the Change

Several UI provisions include a requirement that work performed be full-time or part-time. Some of these provisions simply use the term "full-time" or "part-time" but others state the number of hours that must be worked. As these provisions have been created and/or amended, different definitions for full-time and part-time have been used. As a result, we are currently applying 4 different definitions of full-time within Chapter 108 and the administrative codes. The proposed changes would apply the current definition of full-time found in the administrative code consistently to all UI provisions (32 or more hours per week).

4. Brief History and Background of Current Provisions

Section **108.04(7)(k)**, was created in 1983 to provide an exception to the quit disqualification when it was economically unfeasible to continue working a **"part-time job consisting of no more than 30 hours per week"** after losing his **"full-time"** employment. At the time, there was no definition of full-time or part-time in Chapter 108, nor in the administrative code.

In August of 1987, **DWD 132** was created to clarify what portion of the work that was terminated had to be part-time to apply the quit exception in 108.04(7)(k). And in September of 1987, DWD 132 was amended to clearly define the terms "full-time" and "part-time" for 108.04(7)(k). Since these terms were not defined elsewhere, the **"more than 30 hours per week"** criteria was adopted and applied to other provisions.

Section **108.05(3)(b)** was created in 1989 to prevent claimants working "**nearly full-time"** from receiving benefits when the weekly benefit rate was inflated by other types of payments, overtime, etc. Benefits were not payable for a given week if the claimant worked or could have worked **"38 hours",** or received other payments that alone or in combination with wages earned were the equivalent of 38 hours of pay (excluding supplements such as bonuses, incentives and overtime) at the same or greater rate of pay as the claimant was paid in his highest base period quarter, from an employer who paid at least 80% of the claimant's base period wages. In 1991, the **number of hours was changed to 35.**

Section **108.04(7)(o)** was created in 1991 to provide an exception to the quit disqualification when an employee worked concurrently for multiple employers, worked **"more than 30 hours per week"** for one of them, and quit working for one of the employers before receiving notice of termination from the employer for whom he was working **"more than 30 hours per week"**. No reference was made to DWD 132, but clearly the same definition of "full-time" was adopted for this provision as was used in 108.04(7)(k).

It wasn't until 1994 that the Wisconsin Administrative Code included any definitions for rules related to Unemployment Insurance. The first definitions created in DWD 100 included a definition for the term "full-

time". **DWD 100** defined full-time as **"35 or more hours in a week"**. Initially the definitions in DWD 100 applied specifically to DWD 126-129 but in 1995, the application was expanded to all of the UI rules, DWD 100-150. In 2006 **DWD 100 was amended** to define full-time as **"32 or more hours in a week"**.

Section 108.05(3)(c) was created in 2000 to respond to the federal requirement that a person who is "not unemployed" be disqualified. DOL said that to be unemployed the claimant must have suffered a loss of work and not merely reduced earnings, so use of wages alone was not sufficient. DOL went on to say that the normal test used by states was to determine whether the claimant worked less than a **"full-time week"**. Full-time week was defined as **"the number of hours or days per week currently established by schedule, custom, or otherwise"**. We chose to use **"at least 40 hours per week"** as the definition of a full-time week for this purpose.

Chapter 108 still does not include a definition for full-time.

5. **Effect of the Proposed Change**

   a. **Policy.** No other law or policies would be affected.

   b. **Administrative Feasibility**
   The proposed changes would simplify the law and significantly ease the administrative burden imposed by the current provisions.

   c. **Equitable**
   Applying multiple definitions for the same term is confusing and illogical for claimants and employers. Using a consistent definition would make sense and be more equitable for everyone.

6. **Fiscal:** Six of the thirty-nine weeks allowed in 2005 would have been denied as a result of defining full time as 32 rather than 35 hours under the provision that makes a claimant ineligible to receive benefits when the claimant works full time for an employer from which the claimant received 80% of his or her base period wages. Nine claimants now exempt from disqualification for quitting a job before receiving notice of a lay off from a concurrently held job of more than 30 hours would be disqualified under the proposal to require that at least one of the jobs consist of 32 rather than 30 hours. An average of ten claimants each year are currently exempt from disqualification for quitting part time work that it is economically infeasible to continue when laid off from full time work. Standardizing the definition of full time is not expected to have a significant fiscal impact with respect to any of these three provisions.

   Expenditures will decrease in some cases and increase in others under the proposal to make ineligible claimants because of working 32 rather than 40 hours a week. More specifically, expenditures will decrease when claimants who are laid off subsequently decide to take jobs with 32 but less than 40 hours of work that would, under current law, result in a partial payment for the week. These partial payments will be eliminated. In contrast, expenditures will increase when claimants decide not to take jobs with 32 but less than 40 hours of work and instead rely solely on Unemployment Insurance payments for their income. In these cases the increase in expenditures will be the difference between their weekly benefit rates and the partial payments they receive under current law. An estimated $3.7 million in benefits will be eliminated with respect to approximately 3,400 claimants whose income from working would exceed their weekly benefit rates. This reduction in expenditure will be reduced to $1.9 million after taking into account approximately 600 claimants whose weekly benefit rates exceed the amount they would earn from working while laid off from their usual jobs.

7. **State and Federal Issues**
   No state/federal issues.

8. **Proposed Effect/Applicability Date**
   Separation issues adjudicated as of the effective date. Weeks claimed as of the effective date for nonseparation issues.

Attachment for Item #2: Proposed Statutory Language

108.02 Definitions. As used in this chapter:

(15x) FULL-TIME. "Full-time" means work performed for 32 or more hours per week.

(20x) PART-TIME. "Part-time" means work performed for less than 32 hours per week.

108.05(3)(b)1. A claimant is ineligible to receive any benefits for a week if the claimant is engaged in employment with an employer from which the claimant was paid at least 80% of his or her base period wages and:

a. The claimant works full-time for that employer ~~at least 35 hours~~ in that week at the same or a greater rate of pay, excluding bonuses, incentives, overtime or any other supplement to the earnings, as the claimant was paid by that employer in that quarter of the claimant's base period in which the claimant was paid his or her highest wages;
b. The claimant receives from that employer sick pay, holiday pay, vacation pay or termination pay which, by itself or in combination with wages earned for work performed in that week for that employer, is equivalent to pay for full-time ~~at least 35 hours of~~ work at that same or a greater rate of pay; or
c. The amount that the claimant would have earned within that week from that employer in available work which is treated as wages under s. 108.04(1)(a), by itself or in combination with the wages earned for work performed in that week for that employer and the pay received under subd.12.b., is equivalent to pay for full-time ~~at least 35 hours of~~ work at the same or a great rate of pay."

108.05(3)(c) A claimant is ineligible to receive any benefits for a week in which the claimant works ~~a total of 40 or more hours~~ full-time for one or more employing units.

108.04(7)(k)

Paragraph (a) does not apply to an employee who terminates his or her part–time work ~~consisting of not more than 30 hours per week~~ if the employee is otherwise eligible to receive benefits because of the loss of the employee's full–time employment and the loss of the full–time employment makes it economically unfeasible for the employee to continue the part–time work.

108.04(7)(o)

(o) Paragraph (a) does not apply to an employee who terminates his or her work in one of 2 or more concurrently held positions, at least one of which ~~consists of more than 30 hours per week~~ is full-time work, if the employee terminates his or her work before receiving notice of termination from a position which ~~consists of more than 30 hours per week~~ is full-time work.

DWD 132.03(1) – (to be changed via rule process)

(b) "Full-time" means work which is performed for 32 or more ~~than 30~~ hours per week.

(c) "Part-time" means work which is performed for ~~30 or~~ less than 32 hours per week.

Summary of Proposal

Program Integrity: Simplify Fraud Penalty Formula and Increase Penalties

Current Law: Wisconsin's current penalties are complex to compute, allow claimants to obtain benefits when they have committed fraud, and are more lenient than surrounding states. Other states impose penalties as high as $500 (IL) to $1,000 (OH) per act, or up to 10 (IA) or 20 (MN) years in prison, plus disqualifications up to 52 weeks or until repaid up to 10 years (KY).

Formula: For any fraudulent determination, the Department penalizes a claimant not less than 25% nor more than 4 times the claimant's benefit rate if the overpayment is less than 50% of the claimant's benefit rate, and not less than one time and not more than 4 times the claimant's benefit rate if the overpayment if the overpayment is 50% or more than the claimant's benefit rate. Using the formula, a claimant may be entitled to a partial unemployment benefit for the week in which the fraud occurred.

Proposal: Define "conceal" as intentionally withholding or hiding information or making a false statement or misrepresentation that is intended to mislead or defraud the Department; this can include withholding material facts relating to eligibility for benefits and/or concealing any wages earned in or paid or payable on a weekly benefit claim. This is consistent with LIRC decisions defining concealment.

Increase penalties for those who obtain or aid and abet others in obtaining UI benefits by fraudulent means. Eliminate the ability to obtain a partial payment during any week that a claimant is found to have obtained benefits fraudulently. Increase the penalty for identity theft in obtaining benefits from not more than 50% of the amount of benefits obtained to the full amount.

Replace the formula with a progressive penalty and deter future acts of concealment. Increased deterrence will reduce overpayments from the trust fund.

- Initial Penalty Level: A claimant would forfeit one times his or her weekly benefit rate for each single act of concealment occurring before the first concealment determination.
- Second Penalty Level: A claimant would forfeit 3 times his or her weekly benefit rate for each single act of concealment occurring after the first initial-level determination was issued but before the first second-level determination was issued.
- Final Penalty Level: A claimant would become ineligible for benefits for 6 years for an act or acts of concealment occurring after the date of the first second-level determination. The disqualification would begin with the week the final-level determination is issued. The claimant also would forfeit any unpaid benefits otherwise payable at the date of a third-level determination. This would not preclude an employee from establishing a benefit year during the period in which the employee is ineligible to receive benefits if the employee qualifies to establish a benefit year.

Rationale: The Department makes efforts to ensure that claimants are not penalized for honest mistakes in reporting information to the Department. However, when someone has been found to have intentionally concealed information or made false statements to collect benefits repeatedly, they should not receive a partial check for benefits and penalties should be increased to deter further theft of UI benefits. Fraudulent overpayments detected in 2006 were 5542 of the 318,655 claimants paid, or 1.7% of all claimants. However, 26.5%, or $4,747,804 of the $17,906,999 in total overpayments, were due to fraud, and over one-half of receivables are for fraud.

Impact: There is a $2.3 million dollar fiscal impact with this proposal. There will be an estimated $800,000 increase in uncollected overpayments and $1.5 million in uncollected forfeitures.

Date: May 25, 2007
Proposed by: Department
Prepared by: Carla Breber & Tracey Schwalbe

ANALYSIS OF PROPOSED LAW CHANGE

Program Integrity: Fraud & Forfeitures

1. Description of Proposed Change

The proposed change would improve program integrity and ultimately reduce overpayments from the trust fund by increasing the penalty for individuals who obtain UI benefits by fraudulent means. It is anticipated that the increased penalty will deter claimants from committing future acts of concealment. The proposed change would also simplify calculation of the penalty and benefits payable for the week(s) in question.

2. Proposed Statutory Language

Amend 108.04(11)
Amend 108.05(3)
See attached proposal language.

Plain language summary: This proposal provides for a denial of any week in which the claimant conceals work and/or wages. This is no application of the partial wage formula to that week or weeks; no partial benefits are payable or due for that week or weeks. For the first act of concealment, a forfeiture of 1 times the weekly benefit rate would be assessed. For the second act of concealment (acts occurring after the date of the first determination of concealment), a forfeiture of 3 times the weekly benefit rate would be assessed. For the third act of concealment (acts occurring after the second of such concealment determinations), the claimant would be denied benefits for 6 years from the date of the determination resolving this third act of concealment. This provision also defines the meaning of "conceal" for purposes of this section. Any unpaid benefits otherwise payable for the week in which this third act occurred though the week before the 6 year disqualification begins will be forfeited regardless of the amount payable. All forfeitures will be included on the claimant's Form 1099.

3. Proposer's Reason for the Change

Improving program integrity is an initiative at both the Federal and State levels. The primary purpose of a penalty for concealment is to deter future acts of concealment. The Department believes that current penalties for acts of concealment have not sufficiently deterred claimants from filing later fraudulent claims. The increased progressive penalties proposed are designed to improve deterrence and are consistent with federal requirements and recommendations. Increased deterrence will ultimately reduce overpayments from the trust fund.

In addition to improving program integrity, the changes will simplify the penalty and overpayment calculations associated with acts of concealment. And adding a statutory definition for "conceal" will provide greater clarity and consistency for applying the penalties.

4. Brief History and Background of Current Provisions

The concealment statute was created by Chapter 142 of the Laws of 1949, and provided for a one-week suspension of benefits and a forfeiture of 0-3 weeks of benefits payable in the next 2 years. The statute was amended by Chapter 527 of the Laws of 1955, to provide for repayment of benefits improperly paid rather than the one-week suspension.

A forfeiture range of 1-4 weeks of benefits was created by Act 8 of the Laws of 1983. The forfeiture was reworded to 1-4 times the weekly benefit rate by Act 38 of the Laws of 1987, at which time the future forfeiture period was expanded to 6 years. The wording was created to make sure that the actual forfeited

monetary amount was uniform among claimants. Weeks of partial benefits counted toward the forfeiture previously; under the changes in 1987, the full weekly benefit rate became the measurement, whether the claimant was partially or totally unemployed. The intent was clarified by amendment in Act 255 of the Laws of 1987.

Act 77 of the Laws of 1989 amended the provision to clarify that concealment on the claimant's application for benefits was subject to the same penalties as concealment on the claim cards.

In 1991, by Act 89 of the Laws of 1991, subsection (b) was repealed and recreated to provide for the percentage penalties of not less than 25% of no more than 4 times the weekly benefit rate for any single act of concealment that results in an overpayment of less than 50% of the benefit rate; and not less than 1 of no more than 4 times the weekly benefit rate for any single act of concealment that results in an overpayment of greater than 50% of the benefit rate. Also in 1991, subsection (bm) was created to provide that the forfeiture may be applied against benefits for up to 6 years after an initial determination. Any forfeiture amount less than $1 would be rounded up to the nearest whole dollar.

The reference to employer in subsection (c) was changed to "employing unit" and the enforcement mechanism in 108.09 was corrected to 108.10, in Act 373 of the Laws of 1993. In 1995, subsection (b)1. was amended to include the penalty if no overpayment resulted from the concealment. Act 118 of the Laws of 1995.

Subsection (cm) was created by Act 15 of the Laws of 1999 to provide that the department may require any person who makes a false statement to the department to collect benefits in the name of another person to repay the benefits paid and be assessed an administrative assessment of up to 50% of that amount. Subsection (d) was amended to provide that Chapter 778 does not apply to collection of benefits or assessments under the section.

Act 197 of the Laws of 2003 amended subsection (cm) to provide that any benefits paid to a person who makes a false statement to collect benefits in the name of another person shall be considered an overpayment and may be collected by the department.

5. Effect of the Proposed Change

a. Policy

The proposed change is consistent with state UI policy goals to sustain a sound system of unemployment reserves, contributions and benefits by preventing fraud and overpayments, and punishing those who abuse the unemployment insurance system in a fair and equitable manner.

b. Administrative Feasibility

The proposed changes would simplify the law and significantly ease the administrative burden imposed by the current provisions.

c. Equitable

Increasing the penalty for concealment will provide greater equity by preserving the unemployment reserve fund for those claimants who are entitled to benefits and by preventing the potential for increased UI taxes for employers caused by fraudulent claims and erroneous payments. The proposed progressive penalty criteria and definition for "conceal" also provide greater equity for individuals suspected of and determined to have filed fraudulent claims.

6. Fiscal

In 2005 forfeitures were imposed on approximately 4,600 claimants. Estimated overpayments to these claimants were $3.9 million, of which $1.2 million was recovered through March 2007.

Overpayments under the proposal would rise to $4.7 million as part weeks for which the claimant is overpaid as a result of concealment would be considered a full week overpaid. However, recoveries are not estimated to rise, leaving a net due of $3.5 million in contrast to $2.7 million under current law.

Estimated forfeitures of $7.7 million were set up under current law for this group of claimants, who forfeited $1.6 million in benefits. Under the proposal $8.1 million in forfeitures would be set up for these claimants and expected recovery would be $.6 million. Another $.1 million in payments would have been prevented through March 2007.

7. State and Federal Issues

No state/federal issues.

8. Proposed Effect/Applicability Date

Determinations issued as of the effective date.

Attachment for #3 – Proposed Statutory Language

108.04(11) FRAUDULENT CLAIMS. ~~(a) If a claimant, in filing his or her application for benefits or claim for any week, conceals any part of his or her wages earned in or paid or payable for that week, or conceals his or her refusal within that week of a job offer or any other material fact relating to his or her eligibility for benefits, so much of any benefit payment as was paid because of such concealment shall be recovered by the department as an overpayment.~~

(a) If a claimant, in filing his or her application for benefits or claim for any week, conceals any material fact relating to his or her eligibility for benefits, any benefit payment that was made because of such concealment shall be recovered by the department as an overpayment.

(b) If a claimant, in filing a claim for any week, conceals any or all of his or her wages earned in or paid or payable for that week, benefits shall be denied for that week and any benefits paid erroneously because of such concealment shall be recovered by the department as an overpayment.

(c) A claimant shall forfeit benefits and be disqualified from receiving benefits for acts of concealment described in par. (a) or (b) as follows: ~~(b) The department shall also require any claimant to forfeit for an act of concealment the following amount of benefits:~~

~~1. Not less than 25% of nor more than 4 times the claimant's benefit rate under s. 108.05 (1) for the week for which the claim is made for any single act of concealment which results in no overpayment or in an overpayment of less than 50% of that benefit rate; or~~

~~2. Not less than one nor more than 4 times the claimant's benefit rate under s. 108.05 (1) for the week for which the claim is made for any single act of concealment which results in an overpayment of 50% or more of that benefit rate.~~

1. A claimant shall forfeit one times the claimant's benefit rate under s. 108.05(1) for the week for which the claim is made for each single act of concealment occurring before the first determination of concealment under this paragraph.

2. A claimant shall forfeit three times the claimant's benefit rate under s. 108.05(1) for the week for which the claim is made for each single act of concealment occurring after the date of the first determination in par. 1 but prior to the date of the first determination issued under this paragraph.

3. A claimant shall be ineligible to receive benefits for a period of 6 years beginning with the week a determination is issued under this paragraph for an act or acts of concealment occurring after the date of the first determination in par. 2. The claimant also shall forfeit any unpaid benefits otherwise payable as of the date of any determination issued under this paragraph. This paragraph does not preclude an employee from establishing a benefit year during the period in which the employee is ineligible to receive benefits under this paragraph if the employee qualifies to establish a benefit year under s. 108.06(2)(a).

~~(bm)~~ (d) The forfeiture established under par. ~~(b)~~ (c) may be applied against benefits which would otherwise become payable to the claimant for weeks of unemployment occurring after the week of concealment and within 6 years after the date of an initial determination issued under s. 108.09 finding that a concealment occurred. If no benefit rate applies to the week for which the claim is made, the department shall use the claimant's benefit rate of the claimant's next benefit year beginning after the week of concealment to determine the forfeiture amount. If the benefits forfeited would otherwise be chargeable to an employer's account, the department shall charge the amount of benefits forfeited to the employer's account and shall credit the fund's balancing account for that amount. ~~Any forfeiture amount of less than $1 shall be rounded up to the nearest whole dollar.~~

~~(c)~~ (e) Any employing unit that aids and abets a claimant in committing an act of concealment described in par. (a) or (b) may, by a determination issued under s. 108.10, be required, as to each act of concealment the employing unit aids and abets, to forfeit an amount equal to the amount of the benefits the claimant

improperly received as a result of the concealment. The amount forfeited shall be credited to the administrative account.

~~(cm)~~ (f) If any person makes a false statement or representation in order to obtain benefits in the name of another person, the benefits received by that person constitute a benefit overpayment. Such person may, by a determination or decision issued under s. 108.095, be required to repay the amount of the benefits obtained and be assessed an administrative assessment in an additional amount equal to ~~not more than 50% of~~ the amount of benefits obtained.

~~(d)~~ (g) In addition to other remedies, the department may, by civil action, recover any benefits obtained by means of any false statement or representation or any administrative assessment imposed under ~~(cm)~~ (f). Chapter 778 does not apply to collection of any benefits or assessment under this paragraph.

~~(e)~~ (h) This subsection may be applied even when other provisions, including penalty provisions, of this chapter are applied.

(i) For purposes of this subsection, "conceal" means intentionally withholding or hiding information or making a false statement or misrepresentation that is intended to mislead or defraud the department.

108.05(3) BENEFITS FOR PARTIAL UNEMPLOYMENT. (a) Except as provided in pars. (b), ~~and~~ (c), and (d), if an eligible employee earns wages in a given week, the first $30 of the wages shall be disregarded and the employee's applicable weekly benefit payment shall be reduced by 67% of the remaining amount, except that no such employee is eligible for benefits if the employee's benefit payment would be less than $5 for any week. ...In applying this paragraph, the department shall disregard discrepancies of less than $2 between wages reported by employees and employers.

(d) A claimant is ineligible to receive any benefits for any week in which the claimant conceals wages under 108.04(11).

FRAUD FACTS

Wisconsin By the numbers:

	2006	2005
Decision explanation	Frequency	Frequency
Letter of warning after investigation	**1724**	2025
Investigation but no concealment established	**792**	935
Concealment of work/ wages	**3180**	3136
Concealment of a job refusal	405	532
concealment of material fact	1913	2245
Concealment of work search	20	24
Other (trade)	24	22
Total	**8058**	**8919**

In 2006:

We issued **220,129** NM decisions, of which only **5542** were for fraud, or **2.5%.** (In 2005, issued **222,153** decisions, only **5934** were for fraud. 2.7%)

1724 were letters of direction warning claimants of potential consequences of future acts of fraud, no penalties assessed.

792 were "no concealment determinations". No Fraud. No penalty.

3180 involved concealment of work and wages. This is the big one.

We often issue multiple determinations to the same claimant. Therefore, the actual number of claimants committing fraud is smaller than **5542**, or less than **5542** divided by **318,655** (actual claimants paid) = **.017** (1.7%). This is smaller still when compared to the total number of claimants filing (604,013 ICs and 3,731,413 CCs).

$17,906,999 = total overpayments. $4,747,804 = fraud overpayments, or, 26.5 %.

In **2006**, we tracked **929** determinations establishing employer failure to return forms 16, 23, 19. Employers are also penalized and held responsible for the overpayments.

Employers are held at fault for failing to provide complete and correct information during investigations and are charged for any erroneous benefits.

Aiding and abetting: We pursue it when we discover it. The employer gets a penalty equal to the amount of overpayments.

We passed recent legislation to pursue employers who engage in SUTA dumping.

While we interact with some employers once or twice per year, we interact with more claimants more times during the year. For some claimants, it may be 26 or more times (weeks).

Common penalties region V (IA, IL, IN, MI, MN, MO, NE, OH, WI):

Monetary Assessments: ($500.00 in IL, NE to $1,000.00 per act in OH)
Interest on overpayments: (6% to 18% annual)
Prison terms: (varies, from 6 mo. in IL, OH to 8 yrs. in IN; 10 yrs. for IA, MI, and 20 yrs in MN)
Disqualifications from Benefits:
Reduction in Benefits:
Cancellation of wage credits:

Elsewhere in the Nation:

In 9 states: ID, KY, LA, ME, MD, MI, OH, UT, and VT, there is a **more severe** disqualification when the fraudulent act **results in payment of benefits.**

In California, New Hampshire, Oregon, Pennsylvania and Virginia, it is **more severe** when the worker is **convicted.**

In 17 states, the disqualification is for at least a year; in others, it may last longer.

In 10 states, benefits maybe denied until the **benefits obtained through fraud are repaid in full.**

Cancellation of wage credits or reduction of benefit rights occurs **in 34 states.**

Cancellation of wage credits in many states means the denial of benefits for the current benefit year or longer.

A disqualification for a year means that wage credits will have expired, in whole or in part, depending on the end of the benefit year and the amount of wage credits accumulated for another benefit year before the fraudulent act. Thus, future benefits are reduced as if there had been a provision for cancellation

A recently enacted law to deal with fraud in another state:

Disqualify the claimant from benefits **for any week of fraud,** plus the disqualification must last for **26 weeks.**

As **of January 1, 2008,** increase disqualification **to 52 week** suspension, plus **25% of the total overpayment** as penalty **for a second offense.**

For a third and subsequent offenses, the suspension is increased to **104 weeks, plus a penalty equal to 50% of the total overpayment amount.**

Our proposal:

Simpler, easier for claimants, employers and staff to understand and apply
Not heavy handed
Does not cancel wage credits
Does not disqualify weeks after first or second determination; claimant may offset o/p and FF
Progressive/

Summary of Proposal

Electronic Reporting & Payment Requirements

Current Law: Employers file both wage reports and contribution (tax) reports with the Department quarterly. A large number of these reports are received electronically; however, it is estimated that about 40,000 employers will still file paper wage and contribution reports after the threshold for electronic reporting drops to 50 or more employees in the 3rd quarter 2007. No requirements currently exist for electronic tax payments.

Proposal: The threshold for electronic filing of the wage and contribution reports will continue to lower each year until the third quarter of 2010. At that time, all employers must file wage reports electronically and stop filing separate contribution reports. The Department will calculate the tax due based on the wage reports and provide employers with a notice of the tax due.

By the first quarter 2009, all employer agents and those employers with contributions greater than $10,000 in the previous calendar year will pay electronically.

Wage reporting penalties for paper reports and late or missing reports will increase to encourage compliance as the Department transitions to the new reporting process. Some penalties will be eliminated when the contribution report is eliminated.

Reports and payments received during the grace period after the due date will no longer be considered timely.

Rationale: The expansion of electronic reporting requirements and the creation of electronic payment requirements will accomplish the following goals.

- Reduce the administrative burden of reporting on employers by eliminating the contribution report and automatically calculating the tax due from the wage report, thereby reducing employer overpayments.
- Reduce the program administrative costs ($281,100 annually by 2011).
- Increase Trust Fund interest earnings ($500,000 annually by 2010).
- Improve data accuracy and calculate the tax due correctly.
- Improve security of confidential information.
- Create a more efficient method for making tax payments.
- Streamline administrative processes.

Impact: The following chart illustrates the number of current employers affected at each electronic reporting threshold change, administrative savings associated with the threshold changes, and the Trust Fund earnings from electronic payments and the elimination of the grace period for payments.

Year	Electronic Reporting Threshold	Employers Affected by Threshold Change	Administrative Savings	Trust Fund Earnings
2008	Employer with 10+ employees	7,300	$25,300	$200,000
2009	Employers with 4+ employees	11,500	$65,200	$500,000
2010	All employers	20,700	$281,100	$500,000

Date: 5/17/2007 **D07-07**
Proposed by: Department
Prepared by: Troy Sterr and Brian Bradley

ANALYSIS OF PROPOSED LAW CHANGE
Electronic Reporting and Payment Requirements

1. Description of Proposed Change

Purpose: The expansion of electronic reporting requirements and the creation of electronic payment requirements will accomplish the following goals.

- Reduce the administrative burden of reporting on employers by eliminating the contribution report in 2010 and automatically calculating the tax due from the wage report, thereby reducing employer overpayments.
- Reduce the following program administrative costs ($281,100 annually by 2011).
    - Mailing and printing costs: $116,100 annual savings. Two-thirds of the savings is from postage. Beginning October 2007, the US Department of Labor will no longer reimburse the state for postage costs, which means postage expenses will need to be funded out of the federal UI Grant and will displace other spending needs.
    - Scanning equipment maintenance: $144,000 annual savings.
    - Keying contribution and wage reports: $21,000 annual savings.
- Increase Trust Fund interest earnings ($500,000 annually by 2010).
- Improve data accuracy and calculate the tax due correctly.
- Improve security of confidential information.
- Create a more efficient method for making tax payments.
- Streamline administrative processes.

Expand electronic reporting requirements: Currently, employers with 75 or more employees must file contribution (tax) reports using the Internet, and wage reports using an electronic medium approved by the Department. This threshold will drop to 50 or more employers for contribution and wage reports due for the 3rd quarter 2007.

The proposed change will require all new employers with accounts established as of the 3rd quarter 2008 to file their contribution and wage reports electronically.

For existing employers, the electronic reporting threshold will continue to drop annually. By the 3rd quarter 2010, all wage reports must be filed electronically, and the contribution report will be eliminated. The Department will use the wage report to compute taxes and will notify the employer of the amount due. All physical magnetic media will be eliminated; all reporting must be done by on-line entry of information, attaching and sending a file on-line, IVR, or file transfer protocol.

Currently, agents with less than 25 clients must use the Internet to file contribution reports electronically. Agents with 25 or more clients must use an electronic medium approved by the Department to file contribution reports.

Beginning the 3rd quarter 2008, the proposed change will require agents with less than 10 clients to file contribution reports on the Internet. Agents with 10 or more clients must use an electronic medium approved by the Department. This change will permit agents with 10 – 25 clients to use an electronic medium to file contribution reports instead of being limited to the Internet. These requirements will be eliminated in the 3rd quarter 2010 when the contribution report is eliminated.

Increase electronic reporting penalties for wage reports: Currently, employers and agents who are required to file electronically may be assessed a penalty for filing wage or contribution reports with the incorrect medium. An employer may be assessed $25 for filing a contribution report with the wrong medium; agents may be assessed $25 for each employer whose report is filed with the wrong medium. An employer or agent may be assessed $10 per employee for filing a wage report with the wrong medium.

To encourage compliance with electronic wage reporting before it is mandatory for all employers, this proposed change will increase the penalty for filing wage reports with the wrong medium to $15 and $20 per employee as the threshold for electronic filing decreases. When the contribution report is eliminated, the incorrect media penalties for wage and contribution reports will also be eliminated.

Currently, a penalty may be assessed for late or missing wage reports. The penalty is $25 for employers with 100 or less employees, and $75 for employers with more than 100 employees. This proposed change will establish one penalty of $50 for late or missing wage reports for all employers.

Create electronic payment requirements: Although current law requires electronic contribution reporting, it does not require electronic contribution payments. This proposed change will require all employer agents who pay contributions on behalf of employers to use the electronic funds transfer payment method beginning with contributions due the 1st quarter 2009.

In addition, any employer whose contributions payable to the Fund for the previous calendar year totaled $10,000 or more will be required to pay all subsequent contributions electronically beginning with contributions due the 1st quarter 2009.

Create electronic payment penalties: If an employer or employer agent required to pay electronically fails to do so, the Department will assess a penalty equal to one-half of one percent of the total contributions due for that quarter or $50, whichever is greater, beginning with contributions due the 1st quarter 2009.

Modify the definition of timely reports and payments: Currently, a contribution or wage report, or a contribution payment is timely if it is postmarked no later than the due date, or the Department receives the report or payment no later than 3 business days after the due date. The due date is the last day of the month following the completion of each quarter. If the due date falls on a Saturday, Sunday, or legal holiday under state or federal law, the due date is the next business day.

A late reporting penalty is assessed for late or missing wage reports, and interest accrues on delinquent contribution payments.

With this proposed change, a contribution report, wage report, or contribution payment will be timely if it is received and accepted by the Department on or before the due date.

2. Proposed Statutory Language

Expand electronic reporting requirements: Changes to electronic reporting include the following:

- All new employers with accounts established as of the 3rd quarter 2008 must file their contribution reports using the Internet and wage reports using an electronic medium approved by the Department.
- Existing employers with 10 or more employees who do not use an agent to file their contribution report required under 108.151(8), 108.152(7), and 108.17(2) must file their report using the Internet beginning with the report for the 3rd quarter 2008.

- Existing employers with 4 or more employees who do not use an agent to file their contribution report required under 108.151(8), 108.152(7), and 108.17(2) must file their report using the Internet beginning with the report for the 3rd quarter 2009.

- Existing employers with 10 or more employees must file their wage report required under 108.205(2) using an electronic medium approved by the Department beginning with the report for the 3rd quarter 2008.

- Existing employers with 4 or more employers must file their wage reports required under 108.205(2) using an electronic medium approved by the Department beginning with the report for the 3rd quarter 2009.

- All employers must file their quarterly wage report using an electronic medium approved by the Department beginning with the report for the 3rd quarter 2010.

- Employer agents who prepare quarterly contribution reports for 10 or more employers must submit the reports using an electronic medium approved by the Department beginning with the report for the 3rd quarter 2008.

- Employer agents who prepare quarterly contribution reports for less than 10 employers must submit the reports using the Internet beginning with the report for the 3rd quarter 2008.

- The contribution reports required under sections 108.151(8), 108.152(7) and 108.17(2) will no longer be required beginning with the 3rd quarter 2010.

- Beginning with the 3rd quarter 2010, the Department will compute the employer's quarterly contribution amount from the quarterly wage reports submitted by the employer. In order for the payment to be made by the due date, the wage report must be submitted by the employer or the employer's agent prior to the quarterly due date. This will allow the Department to notify the employer of the computed amount due and for the employer to make the payment by the end of month due date. Beginning with the report for 3rd quarter 2010, any wage report submitted by the employer on paper will be sent back to the employer for electronic filing. If the

subsequent electronic report is not received by the due date, the employer will be assessed both late filing fees and interest in accordance with 108.22.

Increase electronic reporting penalties: The following penalties would be assessed for failure to file the report by the required due date and for failure to file using the correct medium:

- Incorrect media penalties:
  - Existing employers with 10 or more employees who do not file their wage report electronically beginning with the report for 3rd quarter 2008 will be assessed a penalty of $15 per employee.
  - Existing employers with 4 or more employees who do not file their wage report electronically beginning with the report for 3rd quarter 2009 will be assessed a penalty of $20 per employee.
  - All new employers with accounts established as of the 3rd quarter 2008 who do not file their wage report electronically will be assessed a penalty of $15 per employee beginning the 3rd quarter 2008 and $20 per employee beginning the 3rd quarter 2009.
  - Employer agents who do not file all wage reports electronically will be assessed a penalty of $15 per employee beginning with the reports for 3rd quarter 2008. This will increase to $20 per employee beginning with the reports for 3rd quarter 2009.
  - All incorrect media penalties for contribution and wage reports will be eliminated for reports due for the 3rd quarter 2010.
- Late or missing report penalties: Beginning with the report for 3rd quarter 2008, any employer whose wage report is not received and accepted by the due date will be assessed a $50 penalty.

Create electronic payment requirements:

- Any employer whose contributions payable to the Fund for the previous calendar year total $10,000 or more shall be required to pay all subsequent contributions payable using the Electronic Funds Transfer payment method. Contributions payable are based on payroll reported by the employer for the previous calendar year. Electronic funds transfer means any transfer of funds initiated through a terminal, telephone, or computer authorizing a financial institution to debit or credit an account for same day or future day settlement.
- All employer agents who pay contributions on behalf of employers are required to pay using the electronic funds transfer payment method.
- Electronic payment of contributions by employers and employer agents should go into effect beginning no later than contributions due for 1st quarter 2009. Employers required to pay electronically for 1st quarter 2009 would be determined based on

contributions payable for calendar year 2008. If the Department can implement the requirement during calendar year 2008, employers required to pay electronically would be determined based on contributions payable for calendar year 2007. In any case the electronic payment requirement should go into effect for employers and employer agents at the same time.

Create electronic payment penalties: If an employer or employer agent required to pay electronically fails to do so, they shall be assessed a penalty equal to one half of one percent of the total contributions due for that quarter or $50, whichever is greater. This penalty shall be in addition to the 1% per month interest assessed on any late or delinquent payments under 108.22.

Modify the definition of timely reports and payments: Any report or payment is delinquent if it is not received in the form prescribed by law, and accepted by the Department, by the due date.

3. Proposer's Reason for Change

Expand electronic reporting requirements:

- **Reduce administrative burden on employers.** Employers will no longer need to complete a contribution report. In addition, electronic reporting will accomplish the following:
    - Reduce the administrative burden on employers associated with filling out paper reports, calculating taxes due, and mailing reports. Employers will also save on the postage costs of mailing paper contribution and wage reports. Collectively, the postage savings is estimated at more than $90,000 annually assuming $0.58 per envelope for 39,500 employers each quarter.
    - Improve the accuracy of tax calculations and reduce employer tax overpayments. In the past, the balancing of contribution and wage reports revealed that employers more often overpaid, rather than underpaid, taxes because of miscalculating the exclusion amounts.
    - Increase the security of transmitting confidential information. Electronic transmissions are more secure than paper and physical magnetic/electronic media, which can be easily lost or misplaced.

- **Administrative savings and efficiency.** Similar to the reporting changes enacted in 2005, these proposed changes should continue to save significant staff time and reduce mailing and data entry costs.

    - Mailing and printing costs. The average cost for printing and mailing a paper contribution and wage report is $2.94 per employer annually. When the current 39,500 employers who report on paper are required to report electronically, the Department will realize administrative savings of $116,100 annually. Two-thirds of the cost is for postage. Beginning October 2007, the US Department of Labor will no longer reimburse the state for postage costs. This means that postage costs will need to be funded out of the federal UI Grant and will displace other spending needs.

- Keying costs. An outside vendor keys all contribution reports and about 2 percent of all wage reports. When the current 39,500 employers who report on paper are required to report electronically, the Department will realize administrative savings of $21,000 annually in vendor costs.

- Equipment maintenance. The maintenance cost associated with the equipment the Department uses to scan tax and wage reports is $144,000 annually. This equipment will no longer be needed as of October 2010.

- Staff. UI staff currently scans all paper contribution reports, and scans or keys paper wage reports or handles wage reports submitted on physical electronic media, e.g., tapes and disks. These proposed changes will permit the division to reassign this staff to other tasks in the division.

- Volume of phone calls. Electronic reporting will eliminate phone calls related to not receiving the paper reports, and will reduce the number of calls about tax rates and calculation of the exclusion.

- Refund checks. The number of refund checks generated for employer overpayments will decrease if the exclusion is calculated correctly.

- **Other agency experience:**
  - **Minnesota:** As of July 2005, Minnesota eliminated its contribution report and required electronic submission of all wage reports. Minnesota gave its employer community one-year to transition to the new reporting requirements.

    Minnesota provides employers without a computer or Internet access an IVR system to report wage data. Less than 1 percent of Minnesota employers use the IVR to report wages. Table 1 illustrates employer use of the IVR. For the 1st quarter 2007, about 20 percent of 1,195 IVR filings were for zero wage reports.

Table 1: Minnesota IVR Wage Reporting

Quarter/Year	"0" Wage Report	Wages	Total filings
2-05	136	1,444	1,580
3-05	139	1,450	1,589
4-05	154	1,328	1,482
1-06	200	1,086	1,286
2-06	124	1,100	1,224
3-06	66	423	489
4-06	102	957	1,059
1-07	221	974	1,195

Wisconsin DOR: DOR currently has three electronic options for filing sales and use taxes – file transmission, an Internet on-line entry system, and an IVR system. As a part of the 2007-2009 Biennial Budget, DOR has proposed a $5 filing fee on each sales tax return that is filed on paper to increase the number of electronically filed returns.

The DOR threshold for reporting wages electronically or magnetically is 250 or more of any one type of wage statements.

Increase electronic reporting penalties:

- **Reporting compliance:** On average, about 11,000 penalties are assessed each quarter for late and non-filing of wage reports. Most of these are $25 penalties assessed against smaller employers with less than 100 employees. Increasing the penalty from $25 to $50 should increase reporting compliance and reduce the number of penalties assessed.

  Increasing the penalty from $10 to $15 and eventually $20 per employee for filing paper wage reports should further increase compliance before all paper reporting is eliminated in 2010.

Create electronic payment requirements:

- **Impact on the Reserve Fund balance:** Requiring electronic payment of contributions by large employers will reduce the time it takes the paper check to be processed and become available funds for earning interest. It is estimated that an additional $300,000 in annual interest earnings would be realized by requiring electronic payment of contributions. The requirement would affect about 10,000 employers who have an annual tax liability of $10,000 or more. These employers currently pay about $530 million of the $660 million collected annually.
- **Other agency experience:**
  - **Minnesota UI:** Effective July 2005, Minnesota required all employers reporting 500 or more employees in any calendar quarter and any third-party processors paying on behalf of their client companies to pay electronically. In the current legislative session, Minnesota has introduced language to require employers who report 50 or more employees in any calendar quarter to pay electronically.
  - **Wisconsin DOR:** DOR requires electronic payment of (i) income tax withholding when the required deposits were $10,000 or more in the prior calendar year, and (ii) general, county and stadium sales and use tax when the aggregate amount due in the prior calendar year was $10,000 or more.

Create electronic payment penalties:

- **Payment compliance.** The creation of a penalty for employer or agent failure to pay electronically when required to do so will result in a high compliance rate.

Modify the definition of timely reports and payments:

- **Administrative efficiency.** Relying on the postmark to determine the timeliness of a wage or contribution report is administratively burdensome. When an employer calls to dispute a penalty for a late wage report, collection staff must pull the paper envelope that has been saved by the bank. The bank must write the account number on the envelope, and UI staff must sort the envelopes.
- **Other agency experience.** As of July 2005, Minnesota requires a wage report or contribution payment to be submitted and accepted by the due date in order to be timely. The postmark date is no longer applicable.
- **Impact on the Reserve Fund balance.** Eliminating the postmark standard and the three-day grace period for payments will impact the Trust Fund balance. Based on CY 2006 deposits, $360 million was paid during the grace period. It is estimated that an additional $200,000 in annual interest would be earned if employers and agents were required to submit payments that were received and accepted by the Department at the end of the month.
- **Consistency.** Other contributions, such as reimbursements from government units and the uncollectible reimbursements, are timely if they are received by the Department no later than the last day of the month in which it is due.

4. Brief History and Background of Current Provisions

The current electronic filing and penalty provisions were intended to encourage large employers and employer agents to file quarterly contribution and wage reports electronically. This has been accomplished. Almost 90% of the 3.2 million individual wage items submitted quarterly are reported electronically. However, there are still over 40,000 small employers reporting on paper.

The 2005 electronic reporting law changes that went into effect 3rd quarter 2006, significantly increased the number of contribution and wage reports filed electronically. There was an increase of 10,000 electronic contribution reports between the 2nd and 4th quarters of 2006. The number of large employers filing paper contribution reports was significantly reduced. Prior to the change, about 870 employers with 75 or more employees were filing paper reports. The number has decreased to less than 250 for the most recent reported quarter.

Although assessing wage report bad media penalties has been on hold until SUITES is deployed, the number of large employers reporting wage information on paper has also decreased. Paper wage reports from employers with 75 or more employees decreased from 350 to 35. Letters were sent to all large paper reporters informing them of the change.

When the electronic reporting threshold drops in the 3rd quarter 2007, it is estimated that 350 employers will be affected by the change.

108.17 Payment of contributions. Section 108.17(2b), Wis. Stats., relating to filing contribution reports electronically was created in 2005 Wis. Act 86 and applied to employers with 50 or more employees. The requirement in §108.17(2g) that employer agents who file reports for fewer than 25 employers must do so via the internet also was adopted by 2005 Wis. Act 86.

108.205 Quarterly wage reports. The first provision in Wis. Stat. §108.205 that employers file quarterly wage reports on a medium approved by the department was adopted in 1991 Wis. Act 89 and applied to employers with 250 or more employees. The employers required to file electronically was reduced from employers with 250 to 100 employees in 1999 Wis. Act 15. At this time the provision was added to require that once employers become subject to the electronic reporting requirements, they must continue to do so. Section 108.205(1m), Wis. Stats., requiring the department to prescribe the form and methodology for filing reports using the internet and requiring employer agents to file quarterly wage reports electronically was created in 2005 Wis. Act 86. The employers without agents required to file electronically also was reduced from employers with 100 to 50 employees at that time. The proposed change would gradually expand the employers subject to filing quarterly wage reports electronically until all employers are covered by 2010.

108.22 Timely reports, notices and payments. The $10 penalty assessment in Wis. Stat. §108.22(1)(ac) for employers who fail to file quarterly wage reports in the proper format was created in 1999 Wis. Act 15. In 2005 Wis. Act 86, the $10 penalty was extended to employer agents in §108.22(ac).

The $25 penalty in §108.22(ad)2. was created for employers that fail to file contribution reports in 2006 Wis. Act 86. The $25 penalty in §108.22(ad)1. was created for employer agents that fail to file contribution reports in the proper format, in 2001 Wis. Act 35.

The provision in §108.22(1)(c) relating to "Delinquent payments" and that allowed a report or payment to be considered timely if postmarked by the due date or received by the department within 3 days of the due date was created in 1981 Wis. Act 36. Prior to this, the report or payment had to be postmarked by the due date. (The law then provided in §108.02(1s), "The tardy payment or filing fee may be waived by the department if the employer later files the required report and makes the required payment and satisfies the department that such report or payment was tardy due to circumstances beyond the employer's control;") In 1985 Wis. Act 17, §108.22(1)(c) provided that reimbursement payments are considered delinquent if not received on the due date. The title of §108.22 was changed to "Delinquent reports and payments" in 1987 Wis. Act 38. The tardy fee was changed from $15 for all employers to a progressive amount, depending on the number of employees (1-100 employee, $15; 101-200 employees, $40; 201-300 employees, $65; 301-400 employees, $90; more than 400 employees, $115). The title of §108.22 was amended to read "Timely reports, notices and payments in 1989 Wis. Act 77. Wis. Stat. §108.22(1)(c) was amended in 1991 Wis. Act 287 to provide that the report or payment must be received by the department in the proper form prescribed by the department to be considered timely. In 1999 Wis. Act 15, the penalty in Wis. Stat. §108.22(1)(a)1. for employers who file delinquent contribution reports was raised from $15 to $25. At that time the penalty for employers with 400 employees was changed from $115 to $75, but the penalty was expanded to employers with 100 employees or more.

5. Effect of Proposed Change

a. Policy

The definition of electronic media will need to be broad enough to accommodate manual on-line entry of information, attaching and sending a file on-line, IVR, and file transfer protocol. Physical electronic media such as disks and tapes will no longer be accepted as of the 3rd quarter 2010 in order for the Department to calculate the tax amount due timely.

The required wage report data elements will need to be reviewed to determine if any data currently captured on the contribution report, e.g., the number of employees employed on the 12th day of the month for each month in the quarter, will need to be included on the wage report at the time that only the wage report is required.

b. Administrative feasibility

The proposed changes would simplify the law and significantly ease the administrative burden imposed by the current provisions.

The Department is currently working on a redesign of the on-line Quarterly Tax and Wage Reporting System (QTWRS). The revised software will be developed to accommodate the proposed law changes for electronic reporting and payment requirements. Additional changes will be needed to calculate the contribution due based on the wage report and notify the employer or agent of the contribution due.

SUITES will be able to accommodate easily the following system changes:

- Generation of paper contribution and wage reports based on the number of employees,
- Modification to the penalty amount for late or missing wage reports, and
- Increased penalties for filing reports with incorrect media.

A telephone IVR application to report wage data will need to be developed for employers who do not have access to a computer or the Internet.

Based on the Minnesota experience, the amount of communication to employers and agents cannot be underestimated.

c. Equitable

Over time, more employers will be subject to electronic contribution reporting requirements, and all employers will be subject to electronic wage reporting requirements. Table 2 illustrates the number of current employers who are not already filing electronically that will be impacted at each electronic reporting threshold change.

Table 2: Impact of Threshold Reductions on Current Employers

Third Quarter/Year	Number of Employees	Number of Employers Affected
2008	10 - 49	7,300
2009	4-9	11,500
2010	1-3	20,700

Employers will be subject to one penalty for late or missing wage reports.

6. Fiscal

The system changes required to implement the reduced reporting thresholds in 2008, 2009 and 2010 will be minimal. There will be additional administrative costs to make the system changes to eliminate the contribution report beginning in 2010. However, these costs should be offset by the reduced staff time needed to process paper reports and payments.

Additional costs will be incurred to inform and educate employers about the new reporting and payment requirements. However, these additional costs will not be significant.

Additional revenue will be generated by the increases in the penalty amounts. We currently collect about $600,000 in penalties annually.

- With the $25 increase in the late and non-filing penalty amount for employers with less than 100 employees, and the additional penalties assessed as a result of the new reporting requirements, additional revenue is estimated at $400,000 annually through 2010 when the incorrect media penalties are no longer assessed.
- The creation of the electronic payment penalty is estimated to generate additional revenue of $90,000 in the first year and about $30,000 per year starting with the second year. This is based on an assumed noncompliance rate of 4% of employers the first year and 1% beginning in the second year.

Penalties are credited to the Interest and penalty administrative account and can only be appropriated for certain administrative purposes.

7. State and Federal Issues

a. Chapter 108. The proposed change affects several sections of the statutes that deal with methods of filing contribution and wage reports and paying contributions. No other sections are affected by these changes.

b. Rules. The following code provisions will need to be reviewed for changes after adoption of the changes to Ch. 108:

- DWD 100.02(13)
- DWD 110.06
- DWD 110.07
- DWD 110.08
- Ch. DWD 111
- DWD 115.10
- DWD 115.11
- Table DWD 150

c. Conformity. There are no conformity issues.

8. Proposed Effective/Applicability Date

All of the proposed reporting and payment requirements go into effect with the report to be filed or payment to be made for a particular quarter and year. The quarters and year are specified in the text for each individual provision.

PHASED IMPLEMENTATION OF ELECTRONIC REPORTING AND PAYMENT REQUIREMENTS

	Current Law		Proposed Changes				
	October 2006	**October 2007**	**October 2008**	**April 2009**	**October 2009**	**October 2010**	**Total savings/Trust Fund earnings**
Tax and Wage electronic reporting requirements - Employer	75 or more employees **Employers impacted:** 870	50 or more employees **Employers impacted:** 350	Current employers with 10 or more employees. All new employers. **Existing employers impacted:** 7,300 **New employers impacted:** 12,000 **Administrative savings:** $25,300	No change.	Current employers with 4 or more employees. All new employers. **Existing employers impacted:** 11,500 **New employers impacted:** 12,000 **Administrative savings:** $65,200	All employers must file the wage report electronically. Eliminate the tax report. **Existing employers impacted:** 20,700 **Administrative savings:** $281,100 annually	$371,600 over three years. Ongoing annual savings of $281,100
Wage electronic reporting requirements - Agent	All agents must use an electronic medium approved by the department.	No change.	No change.	No change.	No change.	No change.	
Tax electronic reporting requirements - Agent	• Less than 25 clients - electronically using the Internet • 25 or more clients - electronic medium approved by the department	No change.	• Less than 10 clients - electronically using the Internet • 10 or more clients - electronic medium approved by the department	No change.	No change.	Eliminate the tax report.	
Incorrect media penalty - Tax	$25 per employer	No change.	No change.	No change.	No change.	Eliminate the incorrect media penalty for tax reports.	
Incorrect media penalty - Wage	$10 per employee	No change.	$15 per employee.	No change.	$20 per employee.	Eliminate the incorrect media penalty for wage reports.	
Wage late or missing report penalty	• $25 (1 to 100 employees) • $75 (more than 100 employees)	No change.	$50 per report.	No change.	No change.	No change.	

	Current Law		Proposed Changes				
	October 2006	October 2007	October 2008	April 2009	October 2009	October 2010	Total savings/Trust Fund earnings
Timeliness of reports and payments	No change. Reports and payments are timely if postmarked no later than the due date, or the department receives the report or payment no later than 3 business days after the due date.	No change.	Reports and payments are timely if received and accepted by the department on or before the due date. **Trust Fund Impact:** $200,000 annual interest earnings	No change.	No change.	No change.	$600,000 over three years. Ongoing annual earnings of $200,000
Electronic tax payment	None.	None.	None.	All agents must pay electronically. Any employer with a contribution amount $10,000 or more in the previous CY must pay electronically. **Employers impacted:** 10,000 **Trust Fund Impact:** $300,000 annual interest earnings	No change.	No change.	$600,000 over two years. Ongoing annual earnings of $300,000
Electronic tax payment penalty	None.	None.	None.	Assess a penalty equal to one half of one percent of the total contributions due for that quarter or $50, whichever is greater. **Employers impacted:** 400 in the first year, 100 each year beginning in the second year.	No change.	No change.	

Summary of Proposal

Remove Sunset on Employer Fault for Failure to Provide Correct and Complete Information and Strengthen Admissibility of Department Records

2005 Act 86 established that if an employer fails to provide correct and complete information in response to a request by the department during a fact-finding investigation, but later provides the requested information (for a redetermination or on appeal at a hearing), charges to the employer's account and benefits paid until the reversal or redetermination occur are not affected by the reversal or redetermination. In other words, benefits stand as paid until the reversal and the employer remains charged. A "good cause" exception was included.

The provision has proven effective at curbing delay in receiving quality information from employers.

Proposal:

1. Remove sunset: Act 86 provided a sunset of June 28, 2008 for this provision. The primary aspect of this proposal is to remove the June 2008 sunset from the law.

2. Technical corrections: The department also recommends certain technical corrections to the statute to assure that it can continue to adhere to current interpretations of the provision that are consistent with original intent.

3. Strengthen admissibility of records at hearings: The department proposes creation of an specific statutory "hearsay exception" for the purpose of strengthening the legal basis on which administrative law judges rely for admissibility and use of certain department records (in lieu of department employee testimony) at hearings. Some administrative law judges are reluctant to rely on the records alone and such records alone may not be legally sufficient under current law to support a finding. Testimony by staff at hearings on such issues is not practical. The records are essential evidence to establish that the employer failed to respond to inquiries or otherwise failed to provide correct and complete information in response to the adjudicators' investigation efforts.

June 13, 2007
Proposed by: DWD
Prepared by: Dan LaRocque, Tracey Schwalbe and Carla Breber

ANALYSIS OF PROPOSED UI LAW CHANGE

Remove Sunset on Employer Fault for Failure to Provide Correct and Complete Information and Strengthen Admissibility of Department Records

1. Description of Proposed Change

2005 Act 86 established that if an employer fails to provide correct and complete information in response to a request by the department during a fact-finding investigation, but later provides the requested information (for redetermination or on appeal at a hearing), charges to the employer's account and benefits paid until reversal or redetermination are not affected by the reversal or redetermination. A "good cause" exception was included. As explained below, the provision has proven effective at curbing delay in receiving information. Act 86 provided a sunset of June 28, 2008 for this provision.

The primary aspect of this proposal is to remove the June 2008 sunset from the law.

The department also recommends certain technical corrections to the statute to assure that it can continue to adhere to current interpretations of the provision that are consistent with original intent.

Finally, the department proposes creation of a "hearsay exception" for the purpose of strengthening the legal basis on which administrative law judges rely for admissibility and use of certain department records (in lieu of department employee testimony) at hearings. The records are necessary evidence to establish that the employer failed to respond to inquiries or otherwise failed to provide correct and complete information in response to the adjudicators' investigation efforts.

2. Proposed Statutory Language

Amend Wis. Stat. §108.04(13)(c), (e) and (f) and repeal (g).
Create Wis. Stat. §§108.09(4o) and (7)(e)
Amend DWD 140.16(2)
See attached.

3. Proposer's Reason for the Change

a. Removal of sunset: the employer fault provision has had the intended effect of curbing abuses in failure to respond to fact-finding investigations.

Prior to the 2005 law change, the department encountered considerable difficulty with employers who failed to respond to requests for information, especially employers using third party administrators. The response with incorrect or incomplete information or, as in many cases, the employer's total failure to respond, resulted in an overpayment when the employer later elected to provide some or all information at an appeal hearing and obtained a reversal of the adjudicator's benefit award ("reversal

overpayment"). The department then encountered further administrative costs and difficulty collecting the large overpayments. The overpayment recovery worked an unfair hardship on benefit claimants, who had relied on the determination and benefit award. Another consequence of the employers' and agents' practices was that many appeals and hearings occurred that would have been avoided had the employer responded timely with correct and complete information at the adjudication level.

Employer fault for failure to provide correct and complete information (described in 1. above) took effect January 1, 2006. Well before the enactment, the department had intensively discussed with third party agents the need to improve employer responsiveness in investigations. Before and after the law change TALX UCExpress reported efforts to educate its clients on the department's concerns about the timeliness and quality of their responses. The department has observed positive changes in the agent's performance resulting from TALX efforts and the department's ongoing, regular, collaborative engagement with TALX at all levels on a wide variety of issues of agent performance and communications.

While the changes in employer/agent behavior are far from satisfactory or consistent, it seems clear that the law has had a substantial positive impact on those changes. Many employers have made more timely, accurate and complete responses. Just as importantly, some employers have decided that rather than delaying a determination they will timely inform the adjudicator that no further information is forthcoming and that the determination should be made on the best information (claimant's) available.

In 2006, the number of appeal decisions reversing and establishing an overpayment was down 28% from 2005, while the volume of overpayments declined 26% from $2.47 million to $1.83 million. Appeals overall declined 11% in 2006. While these results are not all necessarily traceable to the introduction of the employer fault provision, it is quite clear that the employer fault provision has proven to be an effective incentive to agents and employers to be more responsive to department efforts to complete investigations. For these reasons, the department strongly recommends that the June 30, 2008 sunset be removed from the statute. That language would be deleted from three paragraphs in §108.04(13).

b. Technical change to statute will better assure continued correct interpretation.

The department recommends certain technical corrections to the statute, in §108.04(13)(c), (f) and (g), that will simply assure continuation of the current interpretation of the statute on certain points. That interpretation is entirely consistent with the original intent and has been utilized by both the department and Labor and Industry Review Commission (LIRC) and results in no overpayment where the employer is at fault and the employee is not at fault. The department is concerned that it may be vulnerable to an interpretation that is entirely contrary to both current practice and a primary purpose and intent of this provision. That interpretation would treat the benefits as overpaid notwithstanding that the employer is at fault and charged for benefits and the employee is not at fault.

Specifically, the department is concerned that the language added by Act 86 may not parallel precisely enough the pre-existing provisions of the same subsection (c) regarding delayed objections to claims. Section 108.04(13)(c) provides that an eligibility objection raised after benefits commence "does not affect *benefits paid*" prior to the determination on that objection. In contrast, in the case of an employer's failure to provide correct and complete information in fact-finding, the "*charges to the employer's account* . . . are not affected by the redetermination or (reversal) decision." (Emphasis

added.) The wording difference between the two similar provisions within the same paragraph (c) may raise a doubt about the intent.

The phrase "except as otherwise provided in this paragraph" is necessary to clarify that the intent is the same as in other employer fault situations in subsection (c). The several grounds for employer fault in §108.14(13) are consolidated in paragraph (f), allowing paragraph (g) to be eliminated. Paragraph (c) is changed to refer to paragraph (f).

The intent in Act 86 was that where an employer is at fault under §108.14(13)(g), paragraph (c) would provide that such benefit payments not result in an overpayment. The intention was that such benefits and the related charges to the employer would be treated in the same manner that had applied to benefits paid prior to "late" objections under paragraph (c) prior to Act 86. While an interpretation of the language in Act 86 leading to overpayment in these circumstances may appear remote at this time, the proposed technical changes will eliminate all doubt and assure correct interpretation will continue so that no overpayment may be established if the employer is at fault and the employee is not at fault.

c. **A strengthened basis for admitting department records in hearings is necessary to assure correct and consistent decisions regarding employer failure to provide correct and complete information.**

The department records of the adjudicator's efforts to obtain information from both the claimant and the employer typically contain explicit substantive notations of those efforts, including date and time of phone calls and content of messages left, whether a response is received and the substance of the information provided to the adjudicator by the employer and copies of inbound and outbound correspondence. The records are made in the regular business routine of the claims adjudication processes. The circumstances under which the records are made and kept indicate that the adjudicator's assertions in the records are trustworthy. The records are consistently received prior to or at the hearing by the administrative law judge and available to the parties at and before the hearing.

Practices have varied among administrative law judges as to whether to admit and consider evidence provided by the department in the form of records of its investigations. Some judges routinely admit the department records of fact-finding investigations and, based on such records, conclude that the employer has failed to provide correct and complete information in the fact-finding investigations. Other judges have expressed concern that where there is no testimony concerning the record there is not necessarily an adequate basis in the rules of evidence for admitting such records or for basing decisions on such records.

It is not feasible for department staff to testify in the hundreds of hearings annually in which an issue arises as to whether the employer failed to provide correct and complete information. The department has declined to testify on issues of various sorts for reasons of economy. In stead, the department relies on the records alone to make the case that the employer has failed to provide correct and complete information. As indicated above, the department believes that most administrative law judges find the records alone to be sufficient for this purpose.

The reason that a judge may decline to admit such evidence may vary with the judge and the circumstances of the case, although, the department believes such a decision most commonly rests on the issue of what use may properly be made of the document in view of the fact that it is unquestionably hearsay. Wisconsin rules of evidence, Wis. Stat. ch. 908, which are applied rigorously in Wisconsin judicial proceedings, "are not controlling" in UI hearings. In other words, some evidence that is not admitted in judicial proceedings is admissible in unemployment hearings. "The administrative law judge shall secure the facts in as direct and simple a manner as possible." DWD 140.16(1).

However, the use of hearsay is somewhat limited by department rule. "Hearsay evidence is admissible if it has reasonable probative value but no issue may be decided solely on hearsay evidence unless the hearsay evidence is admissible under ch. 908, Stats." DWD 140.16(1).

The department considers the department records of adjudication of employer fault to be admissible under current law, without need for testimony or other evidence: the specific exception to hearsay for "public records and reports" under Wis. Stat. §908.03(8). While it appears that the UI judges are somewhat split on their application of this rule, the department believes that most have probably relied on this provision (or the general rule that noted above that the rules of evidence are not controlling), to admit the department records, as an exception to hearsay to establish that the employer has failed to provide correct and complete information in response to a fact-finding investigation.

Notably, the administrative law judges that have admitted the department records have done so without testimony of anyone to establish that the record in the file is indeed a record of that particular adjudication. But there would seldom if ever be a genuine issue in dispute about this fact. The records are clearly marked, filed and maintained in such a way that there is no room for doubt. Is a witness needed to just establish that the record in fact what it purports to be? In the department's view, that issue is answered in part by the rule cited above, which provides that "the rules of evidence are not controlling" and by the rules of evidence themselves (to the extent they apply), which provide for "self-authentication" of certain types of documents. Public records and reports are such documents and require no testimony to be admitted. Wis. Stat. §909.015(7).

The department considers the records containing the adjudicator's notes and conversations and correspondence seeking information and the information received, and the rationale and determination to be "public records" under the rules of evidence cited above. Therefore, in the department's view such records should now be freely admitted into evidence and provide the sold basis for decisions. Even assuming that such records are not clearly enough within the intended exceptions to hearsay or within the rule on self-authentication (as at least one administrative law judge has suggested), such records are trustworthy for the particular purpose for which they are offered in the UI hearing. That is, to establish the facts as to what information was requested and what response, if any, was received.

The department proposes that these department records be consistently held to be admissible for the purpose of determining whether the employer failed to provide correct and complete information. The provision is similar to the provision passed in Act 86 to admit department employment data systems ("COED") reports in Wis. Stat. 108.09(4n).

The department also proposes to amend DWD 140 to require administrative law judges to take judicial notice of such department records without need for testimony or other evidence to provide authentication or other foundation for admissibility.

The employer's right to present evidence rebutting the record of the adjudicator will not be diminished by this proposal. However, where the employer offers no evidence on the issue of its failure to provide correct and complete information, the administrative law judge will find against the employer on the issue based solely on the records of the department.

The proposal will assure more consistent decisions on the issue of employer fault. The result will be to give full effect to the substantive law on employer fault in all or substantially all cases of this type. The result will eliminate overpayments that now occur in those cases in which the administrative law judge is reluctant either to admit the records or to make a finding solely based on the records.

4. Brief History and Background of Current Provision

The provision that benefits will "stand as paid" when an employer fails to provide correct and complete information during a department investigation in s. 108.04(13)(c), and the provision that an employer who fails to provide correct and completed information during a department investigation will be charged for erroneous benefits paid from other employer accounts under s. 108.04(13)(e), were enacted in 2005 Wis. Act 86. This change expanded what constituted employer fault in §108.04(13)(c), (d)1 and (e). (Act 86 also provided for suspension of an agent's right to represent an employer under certain conditions.) Section 108.04(13)(g) was created to provide that an employer is at fault if an appeal tribunal, the commission, or a court of competent jurisdiction finds that the employer failed without good cause to provide correct and complete information during an investigation. The employer fault provisions of Act 86 were enacted with a sunset of June 28, 2008.

5. Effects of Proposed Change

a. Policy. No change in department policy.

b. Administrative Impact. The employer fault provision of Act 86 increased the time spent by adjudicators and administrative law judges deciding whether an employer provided correct and complete information. Additionally, time was spent on a regular basis with large third-party agent staff to identify cases where correct and complete information was not provided, to explain the problem, and to educate them about what information should have been provided. However, the amount of time spent on such issues and communications would have been necessary, in even greater amounts, in the absence of enactment of the employer fault provision in Act 86.

The number of appeals and reversal overpayments have declined significantly as a result of the law, although the proportion attributable to the employer fault law is uncertain. A substantial reduction in administrative work can result from having complete and correct information at the initial determination stage as that information can eliminate the need for subsequent administrative hearings, redeterminations of eligibility, and setting up and collecting overpayments when incorrect or incomplete information results in erroneous payments. These positive effects have been observed since enactment. Elimination of the sunset will continue the net positive administrative benefits. Strengthening the basis for admitting and using department records will save staff resources that

might otherwise be required to testify at hearings to assure greater consistency of decisions and assure the policy objectives are realized.

c. Equitable. Continuing to require correct and complete information in the earliest stages of the investigation limits overpayments and hardship to claimants.

d. Fiscal. A study of the fiscal effect at the time the law was adopted with a sunset indicated that overpayment recoveries were sufficiently high in this type of case that there would not be a significant fiscal effect on the Unemployment Reserve Fund.

6. State and Federal Issues

a. Chapter 108. No other provisions of Ch. 108 will need to be amended.

b. Rules. No other rules will need to be promulgated or changed as a result of this proposal.

c. Conformity. None.

7. Proposed Effective/Applicability Date.

The proposal can be effective January 1, 2008. Since the provision was set to expire June 28, 2008, there should be no lapsed application of this law.

Attachment:
Amend Wis. Stat. §108.04(13)(c), (e) and (f) and repeal (g).

108.04(13)

(c) If an employer, after notice of a benefit claim, fails to file an objection to the claim under s. 108.09(1), any benefits allowable under any resulting benefit computation shall, unless the department applies a provision of this chapter to disqualify the claimant, be promptly paid. Except as otherwise provided in this paragraph, any eligibility question in objection to the claim raised by the employer after benefit payments to the claimant are commenced does not affect benefits paid prior to the end of the week in which a determination is issued as to the eligibility question unless the benefits are erroneously paid without fault on the part of the employer. Except as otherwise provided in this paragraph, ~~if, during the period beginning on January 1, 2006, and ending on June 28, 2008,~~ an employer fails to provide correct and complete information requested by the department during a fact-finding investigation, but later provides the requested information, ~~charges to the employer's account for~~ benefits paid prior to the end of the week in which a redetermination is issued regarding the matter or, if no redetermination is issued, prior to the end of the week in which an appeal tribunal decision is issued regarding the matter, are not affected by the redetermination or decision~~,~~ unless the benefits are erroneously paid without fault on the part of the employer as provided in ~~except as provided~~ in par. (~~g~~f). If benefits are erroneously paid because the employer and the employee are at fault, the department shall charge the employer for the benefits and proceed to create an overpayment under s. 108.22 (8)(a). If benefits are erroneously paid without fault on the part of the employer, regardless of whether the employee is at fault, the department shall charge the benefits as provided in par. (d), unless par. (e) applies, and proceed to create an overpayment under s. 108.22 (8)(a). If benefits are erroneously paid because an employer is at fault and the department recovers the benefits

erroneously paid under s. 108.22(8), the recovery does not affect benefit charges made under this paragraph.

* * *

(e) If the department erroneously pays benefits from one employer's account and a 2nd employer is at fault, the department shall credit the benefits paid to the first employer's account and charge the benefits paid to the 2nd employer's account. Filing of a tardy or corrected report or objection does not affect the 2nd employer's liability for benefits paid prior to the end of the week in which the department makes a recomputation of the benefits allowable or prior to the end of the week in which the department issues a determination concerning any eligibility question raised by the report or by the 2nd employer. ~~If, during the period beginning on January 1, 2006, and ending on June 28, 2008,~~ the 2nd employer fails to provide correct and complete information requested by the department during a fact-finding investigation, but later provides the requested information, the department shall charge to the account of the 2nd employer the cost of benefits paid prior to the end of the week in which a redetermination is issued regarding the matter or, if no redetermination is issued, prior to the end of the week in which an appeal tribunal decision is issued regarding the matter, except as provided in par. (~~g~~f). If the department recovers the benefits erroneously paid under s. 108.22 (8), the recovery does not affect benefit charges made under this paragraph.

* * *

(f) If benefits are erroneously paid because the employer fails to file a report required by this chapter, fails to provide correct and complete information on the report, fails to object to the benefit claim under s. 108.09 (1), fails to provide correct and complete information requested by the department during a fact-finding investigation unless an appeal tribunal, commission or court of competent jurisdiction finds that the employer had good cause for failure to provide the information, or aids and abets the claimant in an act of concealment as provided in sub. (11), the employer is at fault. If benefits are erroneously paid because an employee commits an act of concealment as provided in sub. (11) or fails to provide correct and complete information to the department, the employee is at fault.

~~(g) During the period beginning on January 1, 2006, and ending on June 28, 2008, if benefits are erroneously paid because an employer fails to provide correct and complete information requested by the department during a fact-finding investigation, the employer is at fault unless an appeal tribunal, the commission, or a court of competent jurisdiction finds that the employer had good cause for the failure to provide the information.~~

Create 108.09(4o):

(4o) DEPARTMENT RECORDS. The contents of department records shall constitute prima facie evidence as to the matters contained in the records in any proceeding under this chapter if:

(a) the department has provided the record to the parties in attendance at the hearing prior to admission; and

(b) the parties have been given an opportunity to review and object to the admission of the record at or before the hearing.

Create 108.09(7)(e):

(e) A record or report described in subs. (4m), (4n), or (4o) that is admitted or received into evidence by the department constitutes substantial evidence under s. 102.23(6) as to the matter contained in the report or record notwithstanding that such record or report is hearsay and becomes the sole basis upon which an issue is decided.

Amend DWD 140.16

(1) Statutory and common law rules of evidence and rules of procedure applicable to courts of record are not controlling with respect to hearings. The administrative law judge shall secure the facts in as direct and simple a manner as possible. Evidence having reasonable probative value is admissible, but irrelevant, immaterial and repetitious evidence is not admissible. Hearsay evidence is admissible if it has reasonable probative value but no issue may be decided solely on hearsay evidence unless the hearsay evidence is admissible under ch. 908, Stats., or other statute.

(2) The administrative law judge ~~may~~ shall take administrative notice notwithstanding the absence of testimony of any department records, generally recognized fact or established technical or scientific fact having reasonable probative value but the parties shall be given an opportunity to object and to present evidence to the contrary before the administrative law judge issues a decision.

D07-08
Comparison of results before and after law change regarding overpayments for failure to provide complete and correct info

2006				2005		
Initial determinations (ID) – total Wisconsin	220,129			221,211		
Appeals taken – total Wisconsin	19,893	9% of all IDs appealed 11% reduction in appeals from 2005		22,379	10% of all IDs appealed	
Initial determinations in which adjudicator noted failure to provide correct or complete info	19,046	8.6% of all IDs		Data not available		
Appeals of determinations with failure noted by adjudicator	1079	5.7% of IDs with failure noted		Data not available (but greater than 5.7%)		
Overpayments due to reversals – all reasons	$1,832,482	26% reduction from 2005		$2,475,000		
IDs reversed with overpayment (Mar-Dec)	619	28% reduction from 2005		IDs reversed with overpayment (Mar-Dec)	854	

UI Benefit Eligibility for Relatives of Various Business Entities

Corporations (including LLCs treated as corporations)			
Claimant	**Statute**	**Wages Taxed**	**Benefits Paid**
Owner	108.04(1)(g)3.	Yes	Reduced*°#
Child <18	108.04(1)(g)2.	Yes	Reduced*#
Child ≥18	108.04(1)(g)2.	Yes	Full benefits
Parent	**108.04(1)(g)2.**	**Yes**	**Reduced*#**
Spouse	108.04(1)(g)2.	Yes	Reduced*#

*Reduced if ½ or more of ownership interest is or during employment was owned or controlled, directly or indirectly, by the individual, by the individual's spouse or child, or by the individual's parent if under age 18, or by a combination of 2 or more of them. Wis. Stat. §108.04(1)(g)2.

°Also reduced if ¼ or more of ownership interest is or during employment was owned or controlled, directly or indirectly, by the individual alone. Wis. Stat. §108.04(1)(g)3.

#Reduction does not apply if employee of a "family corporation" terminated because of involuntary cessation of the business. Corporation is a family corporation if claimant owns 25%, or if 50% or more is owned or controlled, directly or indirectly, by claimant, claimant's spouse, claimant's child, or claimant's parent if the claimant is under age 18, or a combination of 2 or more of them. Wis. Stat. §108.02(15m).

Partnerships (including LLCs treated as partnerships)			
Claimant	**Statute**	**Wages Taxed**	**Benefits Paid**
Owner	108.02(12)(dn)	No	No
Child <18	108.04(1)(g)1.	Yes	Reduced*
Child ≥18	108.04(1)(g)1.	Yes	Full benefits
Parent	**108.04(1)(g)1.**	**Yes**	**Reduced***
Spouse	108.04(1)(g)1.	Yes	Reduced*

*If not related to all partners, reduction if ½ or more of ownership interest is or during employment was owned or controlled, directly or indirectly, by the individual's spouse, child, or by the individual's parent if under age 18, or by a combination of 2 or more of them. 108.04(1)(g)1.

Sole Proprietors (and Partnerships where Individual is Related to All Partners)			
Claimant	**Statute**	**Wages Taxed**	**Benefits Paid**
Owner	108.02(12)(dm)	No	No
Child <18	108.02(15)(k)11.	No	No
Child ≥18	108.02(15)(k)11.	Yes	Full benefits
Parent	108.02(15)(k)11.	No	No
Spouse	108.02(15)(k)11.	No	No

Federal law excludes from the definition of employment "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. 26 USC §3306(c)(5). If benefit coverage is extended to parents of sole proprietors, this would create new taxes for wages of these workers.

M07-03 **Make Technical Corrections to the Absenteeism Section of Chapter 108 to assure intent that the misconduct standard is not affected by §108.04(5g).**

Possible Statutory Language

(5) DISCHARGE FOR MISCONDUCT. ~~Unless sub. (5g) applies, a~~(a) An employee whose work is terminated by an employing unit for misconduct connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least 14 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be that rate which would have been paid had the discharge not occurred. The wages paid to an employee by an employer which terminates employment of the employee for misconduct connected with the employee's employment shall be excluded from the employee's base period wages under s. 108.06 (1) for purposes of benefit entitlement. This subsection does not preclude an employee who has employment with an employer other than the employer which terminated the employee for misconduct from establishing a benefit year using the base period wages excluded under this subsection if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 from which base period wages are excluded under this subsection.

(b) If subs. (4g) does not result in disqualification, an employee nevertheless may be determined to have been discharged for misconduct notwithstanding any difference between the provisions of subs. (4g). and (5) regarding the consequences of a disqualification. If sub. (4g) results in disqualification, sub. (5) does not disqualify.

(~~5~~4g) DISCHARGE FOR FAILURE TO NOTIFY EMPLOYER OF ABSENTEEISM OR TARDINESS. (a) If an employee is discharged for failing to notify his or her employer of absenteeism or tardiness that becomes excessive, and the employer has complied with the requirements of par. (d) with respect to that employee, the employee is ineligible to receive benefits until 6 weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least 6 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be the rate that would have been paid had the discharge not occurred.

(b) For purposes of this subsection, tardiness becomes excessive if an employee is late for ~~6~~5 or more scheduled workdays in the 12−month period preceding the date of the dscharge without providing adequate notice to his or her employer.

(c) For purposes of this subsection, absenteeism becomes excessive if an employee is absent for ~~5~~3 or more scheduled workdays in the 12−month period preceding the date of the discharge without providing adequate notice to his or her employer.

(d) 1. The requalifying requirements under par. (a) apply only if the employer has a written policy on notification of tardiness or absences that:

a. Defines what constitutes a single occurrence of tardiness or absenteeism;

b. Describes the process for providing adequate notice of tardiness or absence; and

c. Notifies the employee that failure to provide adequate notice of an absence or tardiness may lead to discharge.

2. The employer shall provide a copy of the written policy under subd. 1. to each employee and shall have written evidence that the employee received a copy of that policy.

3. The employer must have given the employee at least one warning concerning the employee's violation of the employer's written policy under subd. 1. within the 12−month period preceding the date of the discharge.

4. The employer must apply the written policy under subd. 1. uniformly to all employees of the employer.

(e) The department shall charge to the fund's balancing account the cost of any benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 if the employee is discharged by that employer and par. (a) applies.

(f) This subsection applies only to discharges occurring during the period beginning on April 2, 2006, and ending on the last day of the 4−year period that begins on that Sunday.