INS 3A:

Availability for work and ability to perform work

Currently, with certain exceptions, a claimant is eligible for benefits for any week in which the claimant earns no wages only if the claimant is able to work and available for work during that week. If a claimant earns some wages (or certain amounts treated as wages) for a given week, and the claimant's work is suspended by the claimant or by his or her employer or the claimant is terminated by his or her employer, the claimant may be eligible for some benefits for that week under a statutory benefit reduction formula. The formula is also applied to potentially reduce the benefits payable to a claimant for a given week if the claimant is absent from work while claiming benefits. If a claimant is on a leave of absence for a definite period of time or on family or medical leave, the claimant is ineligible for benefits except that if the claimant receives some wages (or certain amounts treated as wages) for a given week, the claimant may be eligible for some benefits for that week under the benefit reduction formula. Currently, a claimant remains eligible for benefits while the claimant is enrolled in certain employment-related training.

This bill provides that if a claimant is absent from work with a current employer for two days or less in a given week (including the first week of a leave of absence, family or medical leave, or suspension or termination), because the claimant was unable to work or unavailable for work, the claimant may be eligible for some benefits for that week under the benefit reduction formula. However, if a claimant is absent from work with a current employer for more than two days in a given week, the claimant is ineligible for any benefits for that week. Under the bill, if a claimant's employment is suspended by the claimant or by his or her employer or is terminated by his or her employer due to claimant's unavailability for work or inability to perform suitable work, if a claimant is on a leave of absence for a definite period of time, or if a claimant is on family or medical leave for a given week (other than the first week of a leave), the claimant is ineligible for benefits for that week. A claimant remains eligible for benefits while the claimant is enrolled in certain employment-related training.

INS 4A:

Employment of certain parents by family-owned businesses

Currently, with certain exceptions, the wages accruing to an individual that are used to compute the total benefits payable to the individual may not exceed 10 times the individual's weekly benefit rate based solely on employment by a corporation, partnership, or limited liability company that is treated as a corporation or partnership for UI purposes in which the individual or a family member owns or controls a significant interest. Under current law, a "family member" includes a

child. Currently, if a claimant is employed by a family business and terminates his or her employment because of cessation of business activity by the claimant's employer, the claimant is excluded from requirements to requalify before claiming benefits. This bill excludes a child from the benefit eligibility limitation, thereby potentially making the parent of a child who, with other family members, owns a significant interest in the business by which the parent is employed eligible for benefits on the same basis as other employees of other employers. The bill also excludes a child from the requalification exemption, thereby potentially making the parent of a child who, with other family members, owns a significant interest in a business from which the parent terminates his or her employment on the same basis as claimants who terminate their employment with other employers.

Unemployment insurance administration funding

Currently, the federal government provides regular grants to this state for the purpose of financing the cost of administration of the UI program. In addition,the federal government provides special grants to this state that may be used for the purpose of administration of UI, for the payment of UI benefits, or for certain other purposes. Currently, only the first $3,289,107 of the moneys in a special grant for federal fiscal year 2002 may be used for UI administration. This bill permits all of the moneys received in the special grant for federal fiscal year 2002 to be used for UI administration. The bill also permits the first $1,000,000 of the moneys received by this state in a special federal grant for federal fiscal year 2008 and the first $1,000,000 of the moneys received in a special federal grant for federal fiscal year 2009 to be expended for the same purpose. Under the bill, none of the moneys may be encumbered or expended after September 30, 2009. The expenditure authorizations potentially increase the liability of employers to finance UI benefits through contributions (taxes).

INS 4-1:

SECTION 1. 20.445 (1) (nc) of the statutes is amended to read:

20.445 **(1)** (nc) *Unemployment insurance administration; special federal moneys.* All moneys received from the federal government under section 903 of the federal Social Security Act, as amended, for federal fiscal ~~years 2000 and 2001 and the first $3,289,107 of the moneys received from the federal government under that act for federal fiscal~~ year 2002, the first $1,000,000 of the moneys received from the federal government under section 903 of that act for federal fiscal year 2008, and the first $1,000,000 of the moneys received from the federal government under section 903 of that act for

federal fiscal year 2009, as authorized by the governor under s. 16.54, to be used for administration of unemployment insurance. No moneys may be encumbered or expended from this appropriation after September 30, ~~2007~~ 2009.

History: 1971 c. 125 ss. 156, 522 (1); 1971 c. 211, 215; 1971 c. 228 s. 44; 1971 c. 259; 1973 c. 90, 180, 243, 333; 1975 c. 39, 147, 224, 274, 344; 1975 c. 404 ss. 3, 10 (1); 1975 c. 405 ss. 3, 11 (1); 1977 c. 29, 48, 203, 418; 1979 c. 34 ss. 512 to 522, 2102 (25) (a); 1979 c. 189, 221, 309; 1979 c. 329 s. 25 (1); 1979 c. 350 ss. 3, 27 (6); 1979 c. 353, 355; 1981 c. 20, 36, 92, 93, 317, 325, 364; 1983 a. 8; 1983 a. 27 ss. 411 to 425; 1983 a. 98 ss. 1, 31; 1983 a. 192, 384, 388, 410; 1985 a. 17, 29, 153, 313, 332; 1987 a. 27; 1987 a. 38 ss. 2 to 4, 136; 1987 a. 399, 403; 1989 a. 31, 44, 64, 77, 254, 284, 359; 1991 a. 39 ss. 372c, 545r, 545t, 545v, 547, 548, 548g, 548m, 549, 549b, 549g, 549p; 1991 a. 85, 89, 269, 315; 1993 a. 16, 126, 243, 437, 491; 1995 a. 27 ss. 772mm, 772mn, 776p to 778b, 778L, 778n, 778q, 778v, 778z to 780m, 781m to 782p, 782u, 841, 842, 849, 850, 854, 855, 858c, 873 to 876, 878, 880, 890 to 896, 962 to 1014c, 9126 (19), 9130 (4); 1995 a. 113 s. 2t; 1995 a. 117, 201, 216, 225, 289; 1995 a. 404 ss. 4, 6 to 8, 10 to 17; 1997 a. 3; 1997 a. 27 ss. 610 to 642m, 722; 1997 a. 35, 38, 39, 105, 112, 191, 235, 236, 237, 252; 1999 a. 9 ss. 270, 458 to 478; 1999 a. 15, 32; 2001 a. 16, 35, 43, 104, 109; 2003 a. 33, 197; 2005 a. 25, 86, 172; 2005 a. 443 s. 265.

SECTION 2. 108.02 (12) (bm) (intro.) of the statutes is amended to read:

108.02 **(12)** (bm) (intro.) ~~During the period beginning on January 1, 2000, with respect to contribution requirements, and during the period beginning on April 2, 2000, with respect to benefit eligibility, par.~~ Paragraph (a) does not apply to an individual performing services for an employing unit other than a government unit or nonprofit organization in a capacity other than as a logger or trucker, if the employing unit satisfies the department that the individual meets ~~7~~ 6 or more of the following conditions by contract and in fact:

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83; 2001 a. 35, 103, 105; 2003 a. 197; 2005 a. 25, 86, 149, 441.

SECTION 3. 108.02 (12) (bm) 1. of the statutes is repealed.

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83; 2001 a. 35, 103, 105; 2003 a. 197; 2005 a. 25, 86, 149, 441.

SECTION 4. 108.02 (15m) (a) of the statutes is amended to read:

108.02 **(15m)** (a) A corporation or a limited liability company that is treated as a corporation under this chapter in which 50% or more of the ownership interest, however designated or evidenced, is or during a claimant's employment was owned or controlled, directly or indirectly, by the claimant or by the claimant's spouse ~~or child~~, or by the claimant's parent if the claimant is under the age of 18, or by a combination of 2 or more of them; or

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989

a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83; 2001 a. 35, 103, 105; 2003 a. 197; 2005 a. 25, 86, 149, 441.

INS 4-12:

SECTION 5. 108.04 (1) (a) of the statutes is renumbered 108.04 (1) (a) (intro.) and amended to read:

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

(bm) ~~(am)~~ For purposes of ~~this paragraph~~ par. (a) 1., the department shall treat the amount that the employee would have earned as wages for ~~that~~ a given 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.

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86.

SECTION 6. 108.04 (1) (a) 1. and 2. of the statutes are created to read:

108.04 **(1)** (a) 1. On not more than 2 days of the week, the employe's eligibility for benefits for that week shall be reduced under par. (bm) ~~(am)~~.

2. On more than 2 days of the week, the employee is ineligible for benefits for that week.

SECTION 7. 108.04 (1) (b) of the statutes is repealed and recreated to read:

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 because the

employee's employment is suspended by the employee or the employee's employer or is terminated by the employee's employer due to the employee's unavailability for work or inability to perform suitable work otherwise available with the employee's employer, because the employee is on a leave of absence, or because the employee is on family or medical leave.

2. If an employee is absent from work on not more than 2 days in the first week of a leave taken under subd. 1. or in the week in which a suspension or termination under subd. 1. occurs, the employee's eligibility for benefits for that week shall be determined under par. (am).

SECTION 8. 108.04 (1) (c) of the statutes is repealed.

SECTION 9. 108.04 (1) (g) 1. and 2. of the statutes are amended to read:

108.04 **(1)** (g) 1. Employment by a partnership or limited liability company that is treated as a partnership under this chapter, if a one-half or greater ownership interest in the partnership or limited liability company is or during such employment was owned or controlled, directly or indirectly, by the individual's spouse ~~or child~~, or by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them.

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86.

2. Employment by a corporation or limited liability company that is treated as a corporation under this chapter, if one-half or more of the ownership interest, however designated or evidenced, in the corporation or limited liability company is or during such employment was owned or controlled, directly or indirectly, by the individual or by the individual's spouse ~~or child~~, or by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them.

SECTION 10. 108.04 (1) (gm) 4. c. of the statutes is amended to read:

108.04 **(1)** (gm) 4. c. Sale, due to economic inviability, if the sale does not result in ownership or control by substantially the same interests that owned or controlled the family corporation. It is presumed unless shown to the contrary that a sale, in whole or in part, to a spouse, ~~(~~ or parent ~~or child~~ of an individual who owned or controlled the family corporation, or to any combination of 2 or more of them, is a sale to substantially the same interests that owned or controlled the family corporation.

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History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86.
History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86.

INS 10-4:

FNS A

SECTION 11. 108.04 (16) (b) and (c) 2. of the statutes are amended to read:

108.04 **(16)** (b) The department shall not apply any benefit disqualification under sub. (1) (a) or (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).

FNS B

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86.

108.04(16)(b)

(c) 2. The department shall not apply benefit disqualifications under sub. (1) (a) or (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.

B

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86.

INS 16-23:

SECTION 12. 108.19 (1e) (a) of the statutes is amended to read:

108.19 **(1e)** (a) Except as provided in par. (b), each employer, other than an employer that finances benefits by reimbursement in lieu of contributions under s.

108.15, 108.151, or 108.152 shall, in addition to other contributions payable under s. 108.18 and this section, pay an assessment to the administrative account for each year prior to the year ~~2008~~ 2012 equal to the lesser of 0.01% of its payroll for that year or the solvency contribution that would otherwise be payable by the employer under s. 108.18 (9) for that year.

History: 1979 c. 34; 1979 c. 110 s. 60 (13); 1981 c. 315; 1983 a. 8, 27, 384; 1985 a. 29, 332; 1987 a. 27, 38, 403; 1991 a. 315; 1993 a. 490; 1997 a. 39; 1999 a. 15; 2001 a. 35; 2003 a. 197.

INS 24-5:

( ) The treatment of section 108.02 (12) (bm) (intro.) and 1. of the statutes first applies with respect to employment after December 31, 2007.

INS 24-21:

( ) The treatment of section 108.04 (1) (a) of the statutes and the creation of section 108.04 (1) (a) 1. and 2. of the statutes first apply with respect to weeks of unemployment beginning on the effective date of this subsection.

( ) The treatment of sections 108.04 (1) (b) and (c) and (16) (b) and (c) 2. of the statutes first applies with respect to terminations and suspensions of employment occurring on the effective date of this subsection.

( ) The treatment of sections 108.02 (15m) (a) and 108.04 (1) (g) 1. and 2. and (gm) 4. c. of the statutes first applies with respect to benefit years that begin on the effective date of this subsection.

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treatment of section 108.04(16)(a)(intro.) and (c)1. of the statutes, the

108.15, 108.151, or 108.152 shall, in addition to other contributions payable under s. 108.18 and this section, pay an assessment to the administrative account for each year prior to the year ~~2008~~ 2012 equal to the lesser of 0.01% of its payroll for that year or the solvency contribution that would otherwise be payable by the employer under s. 108.18 (9) for that year.

History: 1979 c. 34; 1979 c. 110 s. 60 (13); 1981 c. 315; 1983 a. 8, 27, 384; 1985 a. 29, 332; 1987 a. 27, 38, 403; 1991 a. 315; 1993 a. 490; 1997 a. 39; 1999 a. 15; 2001 a. 35; 2003 a. 197.

and, with respect to the reference to section 108.04(1)(a) of the statutes, as affected by this act, the treatment of section 108.04(16)(b) and (c)2. of the statutes

INS 24-5:

( ) The treatment of section 108.02 (12) (bm) (intro.) and 1. of the statutes first applies with respect to employment after December 31, 2007.

and, with respect to the reference to section 108.04(1)(bm) of the statutes, as affected by this act, the treatment of section 108.05(3)(a) and (b)1.c. of the statutes

INS 24-21:

renumbering and amendment

( ) The treatment of section 108.04 (1) (a) of the statutes, and the creation of section 108.04 (1) (a) 1. and 2. of the statutes, first apply with respect to weeks of unemployment beginning on the effective date of this subsection.

( ) The treatment of sections 108.04 (1) (b) and (c) and (16) (b) and (c) 2. of the statutes first applies, apply with respect to terminations of employment occurring and suspensions of employment and leaves of absence beginning occurring on the effective date of this subsection.

( ) The treatment of sections 108.02 (15m) (a) and 108.04 (1) (g) 1. and 2. and (gm) 4. c. of the statutes first applies with respect to benefit years that begin on the effective date of this subsection.

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of the statutes and, with respect to the reference to section 108.04(1)(b) of the statutes, as affected by this act, the treatment of section 108.04

INS A to INS 10-4

Section #. 108.04 (16) (a) (intro.) of the statutes is amended to read:

strike (bm)

108.04 **(16)** (a) (intro.) 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:

History: ~~1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418;~~ 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 ~~s. 329 (28); 1983 a. 337, 384, 468, 538;~~ 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; ~~1993 a. 112, 122, 373, 492;~~ 1995 a. 118, 417, ~~448; 1997 a. 35, 39; 1999 a. 9, 15, 83;~~ 2001 a. 35; 2003 a. 197; 2005 a. 86.

Ins 8 to Ins 10-4

Section #. 108.04 (16) (c) 1. of the statutes is amended to read:

strike (bm)

108.04 **(16)** (c) 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

History: 1971 c. 40, ~~42, 53, 211; 1973~~ c. ~~247;~~ 1975 ~~c. 24, 343;~~ 1977 c. ~~127, 133, 286, 418;~~ 1979 c. 52, 176; 1981 c. ~~28, 36,~~ 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 ~~s. 329 (28); 1983 a. 337, 384, 468, 538;~~ 1985 a. 17, 29, 40; 1987 a. ~~38 ss. 23 to 59, 107, 136;~~ 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86.

(9) SECTION # AM; 108.04(16)(c)2.

and (c); ***to create*** 20.445 (1) (ne), 108.02 (6m), 108.02 (12) (dm) and (dn), 108.02 (20r), 108.02 (25s), 108.025 (1) (b), 108.04 (2) (a) 3. a. to c., 108.04 (16) (a) 5., 108.04 (16) (d) and (e), 108.05 (7) (cm), 108.068, 108.16 (12) and 108.225 (16) (am) of the statutes; and ***to affect*** 2001 Wisconsin Act 35, section 72 (2) (a) 2. and 3.; **relating to:** various changes in the unemployment insurance law, granting rule–making authority, and making appropriations.

Analysis by the Legislative Reference Bureau

This bill makes various changes in the unemployment insurance law. Significant provisions include:

BENEFIT CHANGES

Employee status

Currently, in order to be eligible to claim unemployment insurance benefits, an individual must, in addition to other requirements, be an "employee" as defined in the unemployment insurance law. Generally, an "employee" is an individual who performs services for an employer in employment covered under the unemployment insurance law, whether or not the individual is directly paid by the employer. However, an individual is not an "employee" if the individual performs services as an independent contractor.

~~Prior to the year 2000, in order to qualify as an independent contractor, an individual, other than a logger or trucker performing services for an employer other than a governmental or nonprofit employer, was required to meet at least one of two conditions (having a federal employer identification number or having filed federal business or self–employment tax returns based on services performed as an independent contractor), plus at least six of eight other conditions relating to the individual's relationship to or control over his or her business or the services that he or she performs. During the four–year period beginning in the year 2000 (the specific date varies in different situations),~~ an individual, other than a logger or trucker performing services for an employer other than a governmental or nonprofit employer, must meet at least seven of ~~these~~ ten conditions in order to qualify as an independent contractor.

~~This bill eliminates the expiration date for the test that is in effect prior to 2004 to determine "employee" status of individuals other than loggers and truckers performing services for an employer other than a governmental or nonprofit employer, thus making that test permanent.~~

Approved training

~~Currently, benefits may not be denied to an otherwise eligible claimant because the claimant is enrolled in a vocational training course or a basic education course that is a prerequisite to such training ("approved training") under certain conditions.~~

enforcing collection of the debt. If the levy is to collect a benefit overpayment or a forfeiture (civil penalty) imposed upon an employer, an individual debtor is entitled to an exemption of the greater of: 1) 75 percent of the debtor's earnings (excluding amounts withheld by law, insurance premiums, union dues, child support payments, and prior garnishments) then due and owing; or 2) an amount equal to 30 times the federal minimum wage per week or a proportionate amount for any partial week of earnings received.

This bill applies the current exemption only to forfeitures imposed upon an employer. The bill also provides that if the levy is to collect a benefit overpayment, an individual debtor is entitled to an exemption of 80% of the debtor's disposable earnings, except that: 1) a debtor's disposable earnings are totally exempt from levy if the debtor's wages are below the federal poverty line for a household of the debtor's size or the levy would cause that result; 2) DWD may allow a greater exemption upon a showing of hardship; and 3) DWD may decrease or eliminate the exemption under certain conditions if there is an outstanding adjudication that the debtor made a false statement or representation in order to obtain benefits.

Recovery of benefit overpayments

Currently, DWD may offset any benefits that are overpaid to a claimant against benefits that the claimant would otherwise be eligible to receive. This bill provides for DWD to recoup any overpayment instead of offsetting it. The change facilitates collection of overpayments during bankruptcy proceedings.

TAX CHANGES

Special assessments for information technology systems

Currently, each employer that is subject to a contribution requirement must pay an annual special assessment for each year prior to 2004 in an amount that may not exceed the lesser of 0.01% of the employer's annual taxable payroll for unemployment insurance purposes or the employer's solvency contribution for that year for the purpose of financing the renovation and modernization of the unemployment insurance tax and accounting system. DWD must reduce the solvency rate that an employer must pay in each year prior to 2004 by the special assessment rate applicable to that employer for that year. (The solvency rate is the portion of an employer's contribution rate that is used to maintain the solvency of the unemployment reserve fund.) This bill makes the special assessment requirement and solvency rate offset applicable to calendar years 2004 through 2007. The bill also permits DWD to use the revenue generated by the assessments to upgrade unemployment insurance information technology systems.

Duration of levies

Currently, an administrative levy does not apply for more than one year after the date of service. This bill removes that limitation. Under the bill, a levy is effective until the debt is satisfied or until DWD releases the levy, whichever occurs first.

Enforcement of assessments against imposters

Currently, if any person makes a false statement or representation in order to obtain benefits in the name of another person, DWD may, by administrative action or by decision in an administrative proceeding, require the person to repay the

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3070/P3dn
JTK:.../...
gjs

Dan LaRocque:

1. In s. 20.445 (1) (nc), stats., relating to funding for UI administration, I have changed the sunset date for encumbrances from October 1, 2007 to October 1, 2009. Please let me know if this is not in accord with your intent.

2. It seems we can now repeal s. 108.02 (12) (b), stats., which is the former law relating to determination of independent contractor status. Please let me know if you want to include this repeal in a subsequent draft.

3. I have modified your language submitted for the repeal and recreation of s. 108.04 (1) (b) 1., stats. relating to ability to perform work and availability for work, because I thought the language was unclear as to whether there are 4 independent conditions or one condition modified by three subservient conditions. Please review.

4. In proposed s. 108.04 (1) (b) 2., relating to ability to perform work and availability for work, do you want to clarify what happens when an employee cures his or her inability or unavailability during the middle of a week?

5. Concerning the benefit eligibility of the parents of children by whom they are employed in a family-owned business, I have treated in this draft those businesses that are organized as corporations or partnerships, or limited liability companies that are treated as corporations or partnerships for UI purposes, but have not treated sole proprietorships because the logic for extending the treatment to sole proprietorships is less compelling. I have also amended ss. 108.02 (15m) (a), stats. [which has the effect of amending s. 108.04 (1) (gm) and 108.04 (7) (r), stats.] and 108.04 (1) (gm) 4. c., stats. to exclude parents who are employed by businesses that are owned in whole or in part by their children from the exclusion to the family business benefit eligibility limitation where a family business ceases business activity and from the exception to the quit requalification requirement after termination of employment in a family-owned business that ceases business activity because it did not make sense to me to include parents in the exclusions if parents are not included in the benefit eligibility limitation in the first place. I have not treated ss. 108.15 (8) (e) 1., stats. [successorship] and 108.22 (9), stats. [personal liability for certain violations] because these provisions, while they currently parallel the family business benefit limitation in their treatment of parents, so not seem to me to logically require treatment as a part of this item.

do

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3070/P3dn
JTK:cjs:pg

September 25, 2007

Dan LaRocque:

1. In s. 20.445 (1) (nc), stats., relating to funding for UI administration, I have changed the sunset date for encumbrances from October 1, 2007 to October 1, 2009. Please let me know if this is not in accord with your intent.

2. It seems we can now repeal s. 108.02 (12) (b), stats., which is the former law relating to determination of independent contractor status. Please let me know if you want to include this repeal in a subsequent draft.

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Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Kuesel, Jeffery

To: LaRocque, Daniel J - DWD
Subject: RE: UI law changes: Dept proposals D07-05, D07-09 and D07-10

Dan,

Thanks. I should have also mentioned that since, due to my vacation, I was not at my desk to answer questions from our editor before you received the /P1 draft, I have now answered the questions, resulting in the production of a /P2 draft which should reach you in the next day or so. The /P2 draft also has a note addressing some minor issues. I suspect that you will not need to address some of them, but am just checking to be sure. The /P2 draft does not address any complete, new items.

Jeff

From: LaRocque, Daniel J - DWD
Sent: Tuesday, September 11, 2007 3:28 PM
To: Kuesel, Jeffery
Cc: Schwalbe, Tracey L - DWD
Subject: FW: UI law changes: Dept proposals D07-05, D07-09 and D07-10

Jeff:
Attached are copies of analyses of three department UI law change proposals presented to the UI Advisory Council at the meeting yesterday:

D07-05 Amend Sunset for Administrative Assessment -- approved by Council but with a June 30, 2010 sunset
D07-09 Amend "employee" -- no vote yesterday but may yet pass
D07-10 Appropriate Reed Act funds for Administration -- no vote; expect it will pass later

<< File: D07-10 v3 Appropriate Reed Act Monies 082907.doc >> << File: D07-09 v4 Revise EE Definition 082907.doc >> << File: D07-05 v 3 Analysis Continue Assessment w notice 090507.doc >>
In addition, the department will draft and provide you with a proposal (probably a "D07-11") that the department presented to the Council yesterday to appropriate $1.5 million Reed Act funds for reemployment services. Not sure what time limit is intended.

Also, as we discussed today:

Tracey and I will try to account for your drafting and comments to date on all proposals, including those already passed -- and, in the next several days, particularly those that:
-- the dept will redraft and present again at the October 2 meeting of the Council: D07-08 (employer fault / admissibility); D07-02 ("full-time"); and
-- are likely to be further discussed at the October 2 meeting and further negotiated: D07-07 (e-reporting and payments); D07-03 (fraud penalties)

We will study the federal statutory requirements for Reed Act appropriations language.

Dan

September 5, 2007
Proposed by: DWD
Prepared by: Dan LaRocque and Tracey Schwalbe

ANALYSIS OF PROPOSED UI LAW CHANGE

Extend Sunset on Administrative Assessment

1. Description of Proposed Change

Amend Wis. Stat. §108.19(1e)(a) to provide ongoing funding for information technology systems.

2. Proposed Statutory Language

108.19
(1e) (a) Except as provided in par. (b), each employer, other than an employer that finances benefits by reimbursement in lieu of contributions under s. 108.15, 108.151, or 108.152 shall, in addition to other contributions payable under s. 108.18 and this section, pay an assessment to the administrative account for each year prior to the year 2012, equal to the lesser of 0.01% of its payroll for that year or the solvency contribution that would otherwise be payable by the employer under s. 108.18 (9) for that year.

Deleted: 08

(b) The levy prescribed under par. (a) is not effective for any year unless the department, no later than the November 30 preceding that year, publishes a class 1 notice under ch. 985 giving notice that the levy is in effect for the ensuing year.
(c) Notwithstanding par. (a), the department may, if it finds that the full amount of the levy is not required to effect the purposes specified in par. (d) for any year, prescribe a reduced levy for that year and in such case shall publish in the notice under par. (b) the rate of the reduced levy.
(d) The department may expend the moneys received from assessments levied under this subsection in the amounts authorized under s. 20.445 (1) (gh) for the renovation and modernization of unemployment insurance information technology systems, specifically including development and implementation of a new system and reengineering of automated processes and manual business functions.

3. Proposer's Reason for the Change

This proposal would extend the sunset on the department's authorization to make this assessment.

4. Brief History and Background of Current Provision

Section 108.19(1e) was enacted in 1997 Wis. Act. 39 to supersede a department rule (DWD 150.03) that suspended the operation of §108.19 as of July 31, 1938. Rather than resurrect the assessment by repealing the rule, the statutory provision was created. The provision initially was to sunset prior to 2000. The assessment was extended to sunset prior to 2002 by 1999 Wis. Act 15, prior to 2004 by 2001 Wis. Act 35, and prior to 2008 by 2003 Wis. Act 197.

5. Effects of Proposed Change

a. Policy. Continue current policy. This change will not increase or decrease the amount of benefits an individual can receive. Rather, the change will fund a major redesign of computer systems used to administer the UI program efficiently and enhance the way it operates in the future.

b. Administrative Impact. Continuation of the administrative assessment will enable more adequate funding of the department's needs for ongoing improvement of its information technology systems.

Such improvements will range from infrastructure enhancements and changes to interface and other direct support for customer transactions.

c. Equitable. None.

d. Fiscal. For fiscal year (FY) 2003, the department received $2.2 million dollars from this assessment; for FY 2004, $2.2 million; for FY 2005, $2.3 million; for FY 2006, $2.4 million; and the estimate for FY 2007 is $2.2-2.3 million projected using historical averages.

6. State and Federal Issues

a. Chapter 108. None.

b. Rules. None.

c. Conformity. None.

7. Proposed Effective/Applicability Date.

January 1, 2008.

August 29, 2007
Proposed by: BOLA
Prepared by: Tracey Schwalbe

ANALYSIS OF PROPOSED UI LAW CHANGE

Revise Employee (Independent Contractor) Definition

1. Description of Proposed Change

The department proposes to amend the definition of employee, and specifically, to amend what conditions must be met to be considered an independent contractor by deleting one of the ten requirements. With the number of factors reduced, the number of factors required to meet the test is correspondingly reduced to 6.

2. Proposed Statutory Language

108.02(12)
(bm) During the period beginning on January 1, 2000, with respect to contribution requirements, and during the period beginning on April 2, 2000, with respect to benefit eligibility, par. (a) does not apply to an individual performing services for an employing unit other than a government unit or nonprofit organization in a capacity other than as a logger or trucker, if the employing unit satisfies the department that the individual meets 6 or more of the following conditions by contract and in fact:

Deleted: 7

Deleted: 1. The individual holds or has applied for an identification number with the federal internal revenue service.

2. The individual has filed business or self-employment income tax returns with the federal internal revenue service based on such services in the previous year or, in the case of a new business, in the year in which such services were first performed.
3. The individual maintains a separate business with his or her own office, equipment, materials and other facilities.
4. The individual operates under contracts to perform specific services for specific amounts of money and under which the individual controls the means and methods of performing such services.
5. The individual incurs the main expenses related to the services that he or she performs under contract.
6. The individual is responsible for the satisfactory completion of the services that he or she contracts to perform and is liable for a failure to satisfactorily complete the services.
7. The individual receives compensation for services performed under a contract on a commission or per-job or competitive-bid basis and not on any other basis.
8. The individual may realize a profit or suffer a loss under contracts to perform such services.
9. The individual has recurring business liabilities or obligations.
10. The success or failure of the individual's business depends on the relationship of business receipts to expenditures.

3. Proposer's Reason for the Change

The condition that an individual hold or applied for a federal employer identification number is not required for many businesses and is not a realistic indicator of whether an individual may be operating a business. Therefore, it should be removed from the employee/independent contractor test. Anyone can apply for a federal employer identification number (FEIN). Only those persons or businesses that will have employees will be given FEINs. The fact that someone has an FEIN or has applied for an FEIN therefore is not a reasonable indicator of whether the person is operating an independent business as an independent contractor. Legitimate businesses may operate without FEINs if they have no employees, and persons who are not independent contractors may have FEINs or have applied for FEINs with no intent of operating an independent business. Also, someone may have an FEIN for a reason unrelated to the work the person now is doing, which would satisfy the condition, but also would not be relevant to whether the person currently is operating an independent business. Further, the condition is subject to manipulation by employers who may require potential employees to file for FEINs as a condition of employment to satisfy the condition, even though the person has no intent to operate an independent business. For these reasons, the department proposes to remove this condition from the test for employee/independent contractor.

4. Brief History and Background of Current Provision

This independent contractor test was adopted by 1999 Wis. Act 15. The law provided that it applied with respect to contributions beginning on January 1, 2000, and with respect to benefit eligibility beginning on April 2, 2000, and ending on April 3, 2004. The sunset provision for this independent contractor test for benefit eligibility was removed by 2003 Wis. Act 197, effective April 25, 2004.

5. Effects of Proposed Change

a. Policy. The department recognizes that in some instances the fact that someone has an FEIN may show the intent of the person to operate an independent business. This still may be considered under condition 3. as to whether the person maintains a separate business even though it will not be considered a separate condition for independent contractor status. The policy is changed only to reflect that the fact of having or having applied for an FEIN is not independent evidence of operating a business.

b. Administrative Impact. Since removal of the FEIN factor is only one of the conditions for the employee/independent contractor test, it is not likely to have a significant administrative impact.

c. Equitable. The law removes a condition that is not relevant to the determination of whether someone is an employee or independent contractor, which ensures that both employers and employees/independent contractors are dealing with a test that more realistically and reasonably characterizes their relationship under the law.

d. Fiscal. No significant fiscal effect is expected.

6. State and Federal Issues

a. Chapter 108. No other provisions of Chapter 108 need to be amended as a result of this proposal.

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

c. Conformity. None.

7. Proposed Effective/Applicability Date.

Effective January 1, 2008.

August 29, 2007
Proposed by: BOLA
Prepared by: Tracey Schwalbe and John Zwickey

ANALYSIS OF PROPOSED UI LAW CHANGE
Appropriate Reed Act Funds for UI Administration

1. Description of Proposed Change

The department proposes to have the legislature authorize department expenditures of 2002 Reed Act monies for federal fiscal years 2008 and 2009 to fund UI administration. The department will consult with the Advisory Council before any encumbrance or expenditure of funds.

2. Proposed Statutory Language

20.445(1)
(nc) *Unemployment insurance administration; special federal moneys.* All moneys received from the federal government under section 903 of the federal Social Security Act, as amended, for federal fiscal year 2002, as authorized by the governor under s. 16.54, to be used for administration of unemployment insurance in the amount of $1,000,000 for the federal fiscal year 2008, and in the amount of $1,000,000 for the federal fiscal year 2009.

Deleted: s 2000 and 2001 and the first $3,289,107 of the moneys received from the federal government under that act for federal fiscal year

Deleted: .

Deleted: No moneys may be encumbered or expended from this appropriation after September 30, 2007

3. Proposer's Reason for the Change

The department proposes legislative authorization to spend $1,000,000 in each federal fiscal year 2008 and 2009 from the federal Reed Act monies received in 2002 to meet administrative expenses of the UI program administration.

4. Brief History and Background of Current Provision

The term "Reed Act" refers to a part of the Employment Security Financing Act of 1954 that amended Titles IX and XII of the Social Security Act (SSA) and established the basic structure of the Unemployment Trust Fund (UTF). Section 903 of the SSA governs how the Reed Act funds are to be used by the states.

In 1997, the federal government required states to amend their laws to contain provisions that provided for Reed Act funds to be used exclusively for UI administration in federal fiscal years 2000, 2001 and 2002. This section was created in 1999 Wis. Act 15. The section was amended in 2001 Wis. Act 43 to provide a limitation on expenditure of the first $2,389,107 of the monies received from the federal government. This amount was increased in 2005 Wis. Act 86 to $3,289,107. The September 30, 2007, deadline for expenditures also was added in 2005 Wis. Act 86.

5. Effects of Proposed Change

a. Policy. No policy changes required.
b. Administrative Impact. No system changes required.
c. Equitable. No issues created by the proposed change
d. Fiscal. The fiscal effect would be $1,000,000 per year for federal fiscal years 2008 and 2009, or $2,000,000.00 in total.

6. State and Federal Issues

a. Chapter 108. No other provisions of Chapter 108 need to be amended as a result of this proposal.
b. Rules. No administrative rules will need to be promulgated or changed as a result of this proposal.
c. Conformity. None.

7. **Proposed Effective/Applicability Date.** Effective date of the bill.

Responses to Drafter's Notes
September 24, 2007

August 30, 2007 Letter

1. D07-05 is extending the sunset on the administrative assessment. Passed by UIAC on 9/10, sent to Jeff by email on 9/11/07. Also sent via email were D07-09 (definition of EE) and D07-10 (appropriate Reed Act funds for UI administration). Not yet sent is D07-11 (placeholder for appropriating Reed Act funds for reemployment services).

2. The new definition of "full time work" is acceptable. We disagree with the proposed language change in 108.04(7)(k). Our goal was to eliminate any reference to number of weeks in the statute. This should refer to "full time work" and not 32 hours per week.

3. We agree that the section on "correct and complete" does not need an effective date because the bill will become law before the current law expires. The proposal to eliminate the language "charges to an employer's account for" is necessary to comply with LIRC's interpretation of this section. This is not an expansion of the practice of how this section is being interpreted and the intent is to make the language consistent with the prior sentence. LIRC interprets the language in the preceding sentence, "does not affect benefits paid," to mean that no overpayment is created if an employer is at fault and an employee is not at fault. This was the intent with the third sentence, but because the language "charges to the employer's account for" was included, LIRC has concerns that this section may only apply to charges to an employer's account that are not affected, i.e., that an overpayment *may* be created if an employer is at fault but an employee is not at fault. That was not the intent. The intent was that no overpayment would be created if there was employer fault and no employee fault. Currently, the department and LIRC are interpreting the third sentence to be similar to the second sentence, though it should be clarified. No initial applicability date is needed because this is how it is being applied now.

4. Staff in the Bureau of Tax & Accounting (BTA) is reviewing the timing of the notification of tax liability and payment of contributions. Tentatively, they are discussing having the law require employers to file wage reports by the third business day prior to the end of the month and continue to have contributions due at the end of the month. This will be reviewed with the UIAC's change to apply electronic reporting to employers with 25 or more employees.

5. We have revised the language for 108.09(4)(o). The proposed language in 108.09(7)(e) is necessary and is similar to language in 102.17(1)(d)4. for worker's compensation medical records. Like the language in the worker's compensation statute, our intent is to have the department records from fact-finding investigations used without additional testimony at hearings, and that they can be the sole basis for a decision on the issue of correct and complete information from employers, despite being hearsay. The language in ch. 102 was adopted in response to the holding in *Gehin v. Wisconsin Group Ins. Bd.,* 2005 WI 16, that uncorroborated hearsay, even if admissible under a statutory exception, may not be substantial and credible evidence sufficient to support a finding made by an administrative agency. LIRC held that this language in ch. 102 resolved the *Gehin* issue prospectively. *Bendickson v. Customized Transportation Inc.,* 2006 WI Wrk. Comp. LEXIS 234 (Dec. 26, 2006). In order for the records in (4)(o) to be the sole basis for the determination as to whether an employer provided correct and complete information, the provision in (7)(e) must be adopted to make such records "substantial evidence." This needs to be clarified for subs. (4m) and (4n) in light of the recent case law.

6. The BTA staff agrees that the electronic transfer of funds proposal would need to be implemented in the first quarter of 2009. The reference to "credit" in the proposed definition was not in reference to the department crediting employer accounts. It was meant to describe banking situations where the bank has authority to debit or credit an employer account. BTA will review banking regulations for definitions of electronic funds transfer to compare the LRB proposed language.

7. The proposal to increase penalties for failing to use the proper medium was based on the policy decision to encourage on line filing. It is the intent to have the penalty higher regarding the proper medium than for someone who makes no payment (and is then penalized with interest) for the time being.

September 17, 2007 Letter

1. No response is necessary.

2. The new definition of "full time work" is fine, and is consistent with the current interpretation of 108.04(7)(cm).

3. The definition of conceal is acceptable. Would the language be more clear if it stating "intentionally withhold*ing* or hid*ing* or mak*ing* a false statement…"?

4. The change from 108.04(13)(g) to 108.04(13)(f) is not intended to and we think does not provide that the department will waive recovery if an employer fails without good cause to provide information. Section 108.22(8)(c)1.a. says the department will waive recovery if due to department error and *not* the fault of any employer under 108.04(13)(f). Thus, recovery will only be waived if the employer was not at fault. [Subs. (13)(g) was left out of 108.22(8)(c)1.a. Had subs. (g) not been eliminated, this oversight would have been corrected and subs. (g) added.]

5. BTA will look at this more closely in light of the UIAC approval of electronic reporting for employers with 25 or more employees. The anomaly you identify appears to come from the language in section 108.205(2), "An employer that becomes subject to the reporting requirement under this subsection shall file its initial report under this subsection for the 4th quarter beginning after the quarter in which the employer becomes subject to the reporting requirement." BTA interprets this and in practice provides that once an employer becomes subject, they will file electronically in the next 4th quarter, not four quarters later. BTA will review this language, but tentatively suggests that this sentence be eliminated or amended for clarity. What is the purpose of the "wage and employment" language in section 108.19(1m)? Employers will still file contributions reports, but electronically. What is the intent of the language beginning "Each employer that becomes subject...." In section 108.205(2)?

6. The department wants the applicability for the penalty provisions to be "determinations issued." If we use acts of concealment, we will have decisions with different criteria for the weeks involved and it will be hard to assess the progressive penalties. The Bureau of Benefits (BOB) is reviewing the applicability proposals for the "full time work" provisions.

Analysis: The analysis will need to be revised to reflect the proposals actually passed by the UIAC and the law as developed. Also note that under Benefit Eligibility, the reference to current law should state "more than 30 hours" not "at least 30 hours" per week.

Summary

Electronic Reporting & Payment Requirements

Accepted proposals:

- Employers with 25 or more employees must file tax and wage reports electronically beginning with reports due for the third quarter 2008. The threshold will not change in 2009.
- As of the third quarter 2008, all new employers must file the tax and wage report electronically regardless of the number of employees.
- As of the third quarter 2008, a tax report is no longer required for employers who file the wage report electronically using the Department's internet wage and tax reporting application or an electronic file transmission. The Department will determine the tax due based on the wage report submitted.
- Agents with 10 to 24 employers who are currently required to file tax reports using the Department's internet wage and tax reporting application are required to continue filing electronically but may use the Department's application or an electronic medium approved by the Department.
- The penalty for filing a paper wage report instead of the required electronic report will increase from $10 per employee to $15 per employee in the 3rd quarter 2008 and $20 per employee in the 3rd quarter 2009.
- The penalty amount for a late or missing wage report will no longer be based on the employer's size ($25 for 1-100 employees, $75 for more than 100 employees). All employers with late or missing reports will be assessed $50 per report.
- Reports and payments are timely if they are received by the Department by the due date. The grace period after the due date is eliminated.
- For contributions due for the first quarter 2009, all employer agents and those employers with contributions greater than $10,000 in the previous calendar year must pay electronically.
- A penalty is created for employers and agents who fail to pay electronically when required to do so. The penalty is equal to ½ of 1% of the total contributions due for a given quarter or $50, whichever is greater.

Rejected proposals:

- The threshold for electronic tax and wage reporting will drop to 10 or more employees in the 3rd quarter 2008 and 4 or more employees in the 3rd quarter 2009.
- All employers will be required to file the wage report electronically in the 3rd quarter 2010.
- The tax report will be eliminated for all employers in the 3rd quarter 2010.
- The incorrect media penalty for tax and wage reports will be eliminated in the 3rd quarter 2010.

Kuesel, Jeffery

From: LaRocque, Daniel J - DWD
Sent: Tuesday, October 02, 2007 4:35 PM
To: Kuesel, Jeffery
Cc: Schwalbe, Tracey L - DWD; Reid, Andrea - DWD; Bradley, Brian E - DWD; Sterr, Troy - DWD; Shahrani, Lutfi M - DWD; Hium, JoAnn C - DWD; Breber, Carla R - DWD
Subject: UI Advisory Council - UI bill

Attachments: D07-08B Analysis for 108 04(13)(c) - rev 100107.doc; D07-07 v3 Summary passed by Council 100207.doc; D07-07 - Law change chart for reporting v5 - passed by Council 100207.doc; D07-03A v3 Concealment Penalty with 135 and ER penalties 092507.doc

Jeff:
Here is an update on Council activities. I will check in with you later this week, if I have not heard from you, as to when we might meet or confer by phone with UI staff.

As we discussed earlier this afternoon:

1. D07-08B (admissibility) - was approved by the Council today is attached here. The Council previously passed the portion of this proposal that lifted the sunset and made technical corrections to the employer fault provisions.

D07-08B Analysis for 108 04(13...

2. A one-page summary of D07-07 (tax reporting and payment) and chart, which the Council intends as a statement of its intent in passing D07-07 on September 10 is attached. This should be clarify what parts of D07-07 has passed and what parts have not passed.

D07-07 v3 nmary passed by C

D07-07 - Law change chart for ...

3. D07-03A, an alternative to D07-03 (penalties for concealment), is attached and is likely to pass at the Council's next meeting.

D07-03A v3 oncealment Penalty.

4. D07-10 (Reed Act funds for administration) passed today in the form you have seen it.

5. D07-02A, an alternative to D07-02, was presented today. The alternative was drafted just to delete the change to s.108.05(3)(c). One or the other will probably pass.

6. D07-09 ("employee") may yet pass.

7. D07-11, Appropriate Reed Act funds for reemployment services may pass. The proposal is to appropriate $1 million for certain services to unemployed persons by DWD. Not sure what time limit but assume for state fiscal years 2008 and 2009. Not sure what else to tell you. We have no other write up that is likely to assist you. You may want to draft something we can discuss.

8. Though there have been caucuses, no action has been taken on any Management or Labor proposals. As I have told you, M07-02 (parent benefits) and M07-03 (technical corrections to misconduct provision) are rather likely to pass.

Thanks for your attention to the UI bill.

Dan

October 1, 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.

This 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)
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 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 an employer fails to provide correct and complete information requested by the department during a fact-finding investigation, but later provides the requested information, 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 jn par. (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.

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(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 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. (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.

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(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.

Deleted: (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

Deleted: 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) ADMISSIBILITY OF CERTAIN DEPARTMENT RECORDS; EXCEPTION TO HEARSAY. In a hearing before an appeal tribunal under this section a department record relating to a claim for benefits shall be admissible to prove and constitute prima facie evidence that an employer provided or failed to provide to the department correct and complete information in a fact-finding investigation of the claim, notwithstanding that such record or a statement contained in such record is uncorroborated hearsay and is the sole basis upon which the issue of the employer's failure is decided, provided that the parties appearing at the hearing have been given an opportunity to review the record at or before the hearing and rebut the evidence contained in the record. A department record admissible pursuant to this section shall be regarded as self-authenticating and require no foundational or other testimony for its admissibility, unless the circumstances affirmatively indicate a lack of trustworthiness. Such a record, where admitted and made the basis of decision, may constitute substantial evidence under s. 102.23(6). For purposes of this paragraph, "department record" means a memorandum, report, record, document or data compilation, in any form, that purports to be made or maintained by department employees in the regular course of the department's fact-finding investigation of the benefit claim, is contained in the department's paper or electronic files of the benefit claim, and relates to the department's investigative inquiries to the employer or statements or other matter submitted by the employer or its agent in connection with the fact-finding investigation of the benefit claim. "Department record" does not include statements or matter submitted by or obtained from the claimant.

Compare §102.17(1)(d)4. for medical records and reports in worker's compensation cases:

4. A report or record described in subd. 1., 2., or 3. 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.

Wis. Stat. §102.17(1)(d)4 was adopted in response to *Gehin v. Wisconsin Group Ins. Bd.,* 2005 WI 16, which held that uncorroborated hearsay, even if admissible under a statutory exception, may not be substantial and credible evidence sufficient to support a finding made by an administrative agency. LIRC held that this language resolved the *Gehin* issue prospectively. *Bendickson v. Customized Transportation Inc.,* 2006 WI Wrk. Comp. LEXIS 234 (Dec. 26, 2006).

D07-07
09/28/07

Summary

Electronic Reporting & Payment Requirements

Accepted proposals:

- Employers with 25 or more employees must file tax and wage reports electronically beginning with reports due for the third quarter 2008. The threshold will not change in 2009.
- As of the third quarter 2008, all new employers must file the tax and wage report electronically regardless of the number of employees.
- As of the third quarter 2008, a tax report is no longer required for employers who file the wage report electronically using the Department's internet wage and tax reporting application or an electronic file transmission. The Department will determine the tax due based on the wage report submitted.
- Agents with 10 to 24 employers who are currently required to file tax reports using the Department's internet wage and tax reporting application are required to continue filing electronically but may use the Department's application or an electronic medium approved by the Department.
- The penalty for filing a paper wage report instead of the required electronic report will increase from $10 per employee to $15 per employee in the 3rd quarter 2008 and $20 per employee in the 3rd quarter 2009.
- The penalty amount for a late or missing wage report will no longer be based on the employer's size ($25 for 1-100 employees, $75 for more than 100 employees). All employers with late or missing reports will be assessed $50 per report.
- Reports and payments are timely if they are received by the Department by the due date. The grace period after the due date is eliminated.
- For contributions due for the first quarter 2009, all employer agents and those employers with contributions greater than $10,000 in the previous calendar year must pay electronically.
- A penalty is created for employers and agents who fail to pay electronically when required to do so. The penalty is equal to ½ of 1% of the total contributions due for a given quarter or $50, whichever is greater.

Rejected proposals:

- The threshold for electronic tax and wage reporting will drop to 10 or more employees in the 3rd quarter 2008 and 4 or more employees in the 3rd quarter 2009.
- All employers will be required to file the wage report electronically in the 3rd quarter 2010.
- The tax report will be eliminated for all employers in the 3rd quarter 2010.
- The incorrect media penalty for tax and wage reports will be eliminated in the 3rd quarter 2010.

ELECTRONIC REPORTING AND PAYMENT REQUIREMENTS

	Current Law			Changes	
	October 2006	October 2007	October 2008	April 2009	October 2009
Tax and Wage electronic reporting requirements - Employer	75 or more employees	50 or more employees	Current employers with 25 or more employees. All new employers. Eliminate the tax report for employers who file the wage report electronically using the Department's tax and wage reporting application or an electronic file transmission.	No change.	No change.
Wage electronic reporting requirements - Agent	All agents must use an electronic medium approved by the department.	No change.	No change.	No change.	No change.
Tax electronic reporting requirements - Agent	• Less than 25 clients - electronically using the Department's tax and wage reporting application • 25 or more clients - electronic medium approved by the department	No change.	• Less than 10 clients - electronically using the Department's tax and wage reporting application • 10 or more clients - electronic medium approved by the department	No change.	No change.
Incorrect media penalty - Tax	$25 per employer	No change.	No change.	No change.	No change.
Incorrect media penalty - Wage	$10 per employee	No change.	$15 per employee.	No change.	$20 per employee.
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.
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.	No change.	No change.
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.	No change.
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.	No change.

Date: September 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 penalties for individuals who obtain UI benefits by fraudulent means and employers who aid and abet claimants in committing acts of concealment. It is anticipated that the increased penalty will deter claimants and employers 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), a forfeiture of 5 times the weekly benefit rate would be assessed. This provision also defines the meaning of "conceal" for purposes of this section. All forfeitures will be included on the claimant's Form 1099. Employers who aid and abet claimants in committing an act of concealment are required to forfeit an amount equal to the amount of benefits the claimants improperly received. This proposal provides for additional, progressive forfeitures for employers who aid and abet claimants in committing acts of concealment.

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 penalties 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 penalties 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 – Modification 1

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: ~~The department shall also require any claimant to forfeit for an act of concealment the following amount of benefits:~~

Deleted: (b)

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 forfeit five 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. 2 but prior to the date of the first determination issued under this paragraph.

Deleted: 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.

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~~(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 or attempts to aid and abet 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. In addition, the employing unit shall be penalized as follows:

1. An employing unit shall be penalized $500 for each single act the employing unit aids and abets or attempts to aid and abet a claimant in committing an act of concealment prior to a first determination against the employing unit under this section.
2. An employing unit shall be penalized $1,000 for each single act the employing unit aids and abets or attempts to aid and abet a claimant in committing an act of concealment after a first determination and prior to a second determination against the employing unit under this section.
3. An employing unit shall be penalized $1,500 for each single act the employing unit aid and abets or attempts to aid and abet a claimant in committing an act of concealment after a second determination against the employing unit under this section.

~~(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).

Notes to LRB Preliminary Draft P3

Section 1. Note that the funds are from a 2002 disbursement and the authorization is not to spend the "first" $1 million of those funds in each year (some 2002 appropriation has been expended). The $1 million will lapse on 9/30 each year. [D07-10]

Section 2. This will be fine if the department's proposal is approved. [D07-09]

Section 3. This will be fine if the department's proposal is approved. [D07-09]

Section 4. Delete. This section will not be changing. If the UIAC approves the change to benefits for family members, it is only not to reduce benefits for parents not to change the definition of a family corporation. [M07-02]

Section 5. This section will be fine if either D07-02 or D07-02A is approved. [D07-02/D07-02A]

Section 6. This section will be fine if either D07-02 or D07-02A is approved. [D07-02/D07-02A]

Section 7. This section is ok. [D07-07]

Section 8. This section is ok. [D07-01]

Section 9. This section is ok. [D07-01]

Section 10. This section is ok. [D07-01]

Section 11. This section is ok. [D07-01]

Section 12. This section will be fine if approved. [M07-02]

Section 13. Delete. The intent is not to change who may be involved in a sale, only the fact that parents' benefits will not be reduced. [M07-02]

Section 14. As per prior discussion, this section should not reference any number of hours. [D07-02/D07-02A] If approved, we suggest the following language:

108.04(7)(k) of the statutes is amended to read:

108.04(7)(k) Paragraph (a) does not apply to an employee who terminates his or her part-time work if the employee is otherwise eligible to receive benefits because of the loss of the employee's full-time work and the loss of the full-time work makes it economically unfeasible for the employee to continue the part-time work.

Deleted: consisting of not more than 30 hours per week

Deleted: employment

Deleted: employment

Section 15. This section will be fine if either D07-02 or D07-02A is approved. [D07-02/D07-02A]

Section 16. This section will be fine if either D07-03 or D07-03A is approved. [D07-03/D07-03A]

Section 17. This section will be fine if either D07-03 or D07-03A is approved. [D07-03/D07-03A]

Section 18. As previously discussed, note that the penalty for subs. 108.04(11)(be)3. has changed to 5 times the weekly benefit rate (rather than ineligible for 6 years) and should be changed if D07-03A is approved. Also note, if D07-03A is approved, employer penalties will need to be drafted as well. [D07-03/D07-03AA]

Section 19. This section will be fine if approved. [D07-03/D07-03A]

Section 20. This section will be fine if approved. [D07-03/ D07-03A]

Section 21. This section will be fine if approved. [D07-03/ D07-03A]

Section 22. This section will be fine if approved. [D07-03/ D07-03A]

Section 23. As previously discussed, note that "charges to the employer's account for" (at lines 12-13 of page 13) should be deleted. [D07-08B – need to add admissibility provision]

Section 24. This section is ok. [D07-08B]

Section 25. This section is ok. [D07-08B]

Section 26. This section is ok. [D07-08B]

Section 27. Note that the references to the subsections where benefits are reduced or denied should be corrected. [D07-01] We suggest the following language:

108.04(16)(a)(intro.) of the statutes is amended to read:

108.04(16)(a)(intro.) The department shall not reduce benefits under sub. (1)(a)1., or deny benefits under sub. (1)(a)2., (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:

Section 28. [D07-01] We propose the following language:

108.04(16)(b) of the statutes is amended to read:

108.04(16)(b). The department shall not apply any benefit reduction or disqualification under sub (1)(b), (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).

Deleted: s

Deleted: 1.

Section 29. [D07-01] We suggest the following language:

108.04(16)(c)1. of the statutes is amended to read:

108.04(16)(c)1. The department shall not reduce benefits under sub. (1)(a)1. or deny benefits under sub. (1)(a)2., (2)(a) or (d), or (8), or s. 108.141(3g) to any otherwise eligible individual as a result of the individual's enrollment in such training; and

Section 30. [D07-01] We suggest the following language:

108.04(16)(c)2. of the statutes is amended to read:

108.04(16)(c)2. The department shall not apply any benefit reduction or disqualification under sub. (1)(b), (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.

Deleted: 1.

Section 31. The reference to 108.04(1)(bm) is ok. The reference to 108.05(3)(d) will be fine if either D07-03 or D07-03A is approved. [D07-01, D07-03/D07-03A]

Section 32. This section will be fine if either D07-02 or D07-02A is approved. [D07-02/D07-02A]

Section 33. This section will be fine if D07-02 is approved, but should be deleted if D07-02A is approved. [D07-02/D07-02A]

Section 34. This section will be fine if either D07-03 or D07-03A approved. [D07-03/D07-03A]

Section 35. This section is ok. [D07-07; see one-page summary of accepted and rejected proposals dated 9/28/07]

Section 36. This section is ok. Effective date should be 3rd quarter of 2008. [D07-07]

Section 37. This section is ok. Effective date should be 3rd quarter of 2008. [D07-07]

Section 38. This section of the statutes deals with reimbursable employers who file contribution reports but do not pay contributions on payroll. [D07-07] We suggest the following language:

108.151(7)(h) of the statutes is amended to read:

108.151(7)(h) If the payroll of an employer for any quarter is adjusted to decrease the amount of the payroll after the wage report for the employer is filed under 108.205(1), the department shall refund any assessment that is overpaid by the employer under this subsection as a result of the adjustment.

Deleted: a contribution

Deleted: 108.17(2)

Section 39. This section will be fine if either D07-03 or D07-03A is approved. [D07-03/D07-03A]

Section 40. Effective date should be 3rd quarter of 2008. [D07-07]

Section 41. 108.17(2) should remain as it is without the changes proposed in this section because some employers will continue to file contribution reports. [D07-07] However, we propose to create a new section as follows:

108.17(xx) An employer or employer agent filing its quarterly wage reports required under s. 108.205 electronically in the manner and form prescribed by the department for purposes of this subsection may have the department compute the amount of contribution due for payment under 108.18 from the quarterly wage reports in lieu of filing a contribution report required under 108.17(2), 108.17(2b), or 108.17(2g).

Section 42. The approved change is for employers of 25 or more employees. We want to allow flexibility in types of electronic reporting. [D07-07]

108.17 (2b) of the statutes is amended to read:

108.17(2b) The department shall prescribe a form and methodology for filing contribution reports under sub. (2) electronically in the manner and form prescribed by the department. Each employer of 25 or more employees, as determined under s. 108.205(4), that does not use an employer agent to file its contribution reports under this section shall file its reports electronically in the manner and form prescribed by the department. Each employer who the department determines is subject to the reporting requirements under this section after June 30, 2008, and who does not use an employer agent to prepare its reports, shall file its contribution reports electronically in the manner and form prescribed by the department beginning with the report for the second quarter of 2008. Once an employer becomes subject to the reporting requirements under this subsection, it shall continue to file its reports under this subsection unless that requirement is waived by the department.

Deleted: using the Internet

Deleted: 50

Deleted: 108.22(1)(ac)

Deleted: contribution

Deleted: using the Internet on

Section 43. Delete. [D07-07]

Section 44. Delete. [D07-07]

Section 45. We want to make sure that the type of electronic reporting is done in the manner prescribed by the department. We need to eliminate the sentence referring to when the employer files reports upon becoming subject to the reporting requirement because it is in conflict with when the application is supposed to be. [D07-07] We propose the following language:

108.17(2g) of the statutes is amended to read:

108.17(2g) An employer agent that prepares reports under sub. (2) on behalf of less than 10 employers shall file those reports electronically in the manner and form prescribed by the department under sub. (2b). An employer agent that prepares reports under sub. (2) on behalf of 10 or more employers shall file those reports using an electronic medium and format approved by the department. Once an employer agent becomes subject to the reporting requirement under this subsection, the employer agent shall continue to file its reports under this subsection unless that requirement is waived by the department.

Deleted: 25

Deleted: using the Internet on

Deleted: 25

Deleted: An employer agent that becomes subject to the reporting requirement under this subsection shall file its initial reports under this subsection for the 4th quarter beginning after the quarter in which the employer agent becomes subject to the reporting requirement.

Section 46. Delete. [D07-07]

Section 47. Delete. [D07-07]

Section 48. This section is ok. [D07-07]

Section 49. The effective date for this change should be January 1, 2009. Sections 108.17(7)(a) and (c) and fine. [D07-07] For subs. (b), we propose the following language:

108.17(7) of the statutes is created to read:

(b) Each employer whose net total contributions paid under this section between July 1 and June 30 of the previous year are at least $10,000 shall make all contributions under this section by means of electronic funds transfer. Once an employer becomes subject to the electronic payment requirement under this subsection, the employer shall continue to make electronic payments unless that requirement is waived by the department.

Section 50. Effective date should be 3rd quarter of 2008. [D07-07]

Section 51. Sunset extension should be to 2010. [D07-05]

Section 52. Effective date should be 3rd quarter of 2008. [D07-07]

Section 53. This section is ok. [D07-07]

Section 54. Delete. We are not eliminating these penalties is 2010. [D07-07]

Section 55. [D07-07] 108.205(2) of the statutes is amended to read:

108.205(2) All employers of 25 or more employees, as determined under sub. (4) that do not use an employer agent to file their reports under this section shall file the quarterly report under sub. (1) electronically in the manner and form prescribed by the department. Each employer that is determined by the department to be subject to the reporting requirements under this section after June 30, 2008, shall file its wage report under this section electronically in the manner and form prescribed by the department beginning with the report for the second quarter 2008. Once an employer becomes subject to the reporting requirement under this subsection, the employer shall continue to file its quarterly reports under this subsection unless that requirement is waived by the department.

Deleted: 50
Deleted: s. 108.22(1)(ac)
Deleted: using an electronic medium approved
Deleted: for such employers
Deleted: An employer that becomes subject to the reporting requirement under this subsection shall file its initial report under this subsection for the 4th quarter beginning after the quarter in which the employer becomes subject to the reporting requirement.

Section 56. Delete. [D07-07]

Section 57. Delete. [D07-07]

Section 58. Delete. [D07-07]

Section 59. Combine with Section 60. [D07-07]

Section 60. Effective date should be 3rd quarter of 2008. This section deals with charging interest on delinquent payments, not charging interest based on late reports. The reference to reports should be deleted. [D07-07] We propose the following language:

108.22(1)(a)(intro.) of the statutes is renumbered 108.22(1)(a) and amended to read:

108.22(1)(a) If any employer, other than an employer which has ceased business and has not paid or incurred a liability to pay wages in any quarter following the cessation of business, is delinquent in making by the assigned due date any payment to the department required of it under this chapter, the employer shall pay interest on any delinquent payment at the rate of one percent per month or fraction thereof from the date such payment became due. If any such employer is delinquent in making any quarterly report under 108.205 by the assigned due date, the employer shall pay a tardy filing fee of $50 for each delinquent quarterly report.

Deleted: contribution report, or other report or
Deleted: except a quarterly report under s. 108.205 or a voluntary contribution
Deleted: as follows:

Section 61. This section is ok. [D07-07]

Section 62. Effective 3rd quarter 2008, this section should provide for a $15 penalty. Effective 3rd quarter 2009, this section should provide for a $20 penalty.

This may need to be set up with two sections with the $15 penalty in section 62 for 2008 and a new section with the $20 penalty for 2009. [D07-07]

Section 63. Delete. The penalty will not be repealed in 2010. [D07-07]

Section 64. This section should only deal with wage reports and the penalty should be $25 for each employee. [D07-07] We suggest the following language:

108.22(1)(ac)2. of the statutes is created to read:

108.22(1)(ac)2. In addition to any fee assessed under par. (a), the department may assess any employer that becomes subject to a reporting requirement under 108.205(2) after June 30, 2008, or any employer agent that fails to file its report in a format prescribed under 108.205(1m)(b) or (2) a penalty of $25 for each employee.

Section 65. Delete. See note to Section 64. [D07-07]

Section 66. Delete. This penalty should not be repealed. [D07-07]

Section 67. This section is ok. [D07-07]

Section 68. This section is ok. [D07-07]

Section 69. This section is ok. [D07-07]

Section 70. This section should be deleted because the penalties will not be repealed. [D07-07]

Section 71. This section is ok. [D07-07]

Section 72. Do we want to delete this section? [D07-07]

Section 73. Initial applicability.

(1) This will be fine if the department's proposal is approved. [D07-09]

(2) If approved, the references to sections 108.04(7)(k) and (o) [quit exceptions] should not be included in this provision that pertains to payment of benefit claims. We do want the calculation of partial benefits tied to weeks of unemployment. [D07-02/D07-02A] See language below:

(2) The treatment of sections 108.02 (15s) and (20m), and 108.05 (3) (b) 1. a. and b. and (c) of the statutes, as they pertain to payment of benefit claims, and the treatment of section 108.05 (3) (b) 1. c. of the statutes, as it pertains to the treatment of wages and pay, first apply with respect to weeks of unemployment beginning on the effective date of this subsection.

Deleted: 108.04 (7) (k) and (o),

(3) The references to section 108.05(3)(b)1.a. to c. and (c) [partial benefits] should not be included in this provision that pertains to adjudication of benefits. [D07-02/D07-02A] See language below:

(3) The treatment of sections 108.02 (15s) and (20m), and 108.04 (7) (k) and (o) of the statutes, as they pertain to adjudication of benefit claims, first applies with respect to determinations issued under section 108.09 of the statutes on the effective date of this subsection or, with respect to determinations that are appealed, to decisions issued under section 108.09 of the statutes on the effective date of this subsection.

Deleted: , and108.05 (3) (b) 1. a. to c. and (c)

(4) The changes to the tax electronic reporting requirements should be effective the 3rd quarter of 2008. The sections that repeal penalties and the contribution reports in 2010 will be deleted. [D07-07]

(5) The change to the A&A provisions should be for an effective date the first Sunday after April 1, 2008, so our systems can change for this. See note to (6) below. [D07-01]

(6) The change to the A&A provisions should be for an effective date the first Sunday after April 1, 2008, to coincide with DWD 128. [D07-01] We suggest the following language:

The treatment of section s 108.04(1)(b) and (c) of the statutes and, with respect to the reference to section 108.04(1)(b) of the statutes, as affected by this act, the treatment of section 108.04(16)(b) and (c)2. of the statutes first apply with respect to determinations issued as of the first Sunday after April 1, 2008.

(7) If approved, eliminate reference to 108.02(15m)(a) and 108.04(gm)4.c. [M07-02]

(8) If approved, this effective date for the change to the fraud penalties should be the same as the effective date for the A&A provisions. [D07-03/D07-03A]

(9) This section is ok. [D07-07]

(10) Delete. [D07-07]

(11) This section is ok. [D07-07]

(12) Delete. [D07-07]

(13) This section is ok. [D07-07]

(14) This section is ok. [D07-07]

(15) Delete. [D07-07]

Section 74. Except as otherwise noted, the effective date is ok.

Other Notes: We can repeal 108.02(12)(b). We need to insert the provision with the hearsay exception. [D07-08B]