

2009 DRAFTING REQUEST

Bill

Received: **01/29/2010**

Received By: **jkuesel**

Wanted: **As time permits**

Companion to LRB:

For: **Workforce Development**

By/Representing: **Dan LaRocque**

May Contact:

Drafter: **jkuesel**

Subject: **Unemployment Insurance**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Daniel.LaRocque@dwd.wisconsin.gov**

Carbon copy (CC:) to: **Tracey.Schwalbe@dwd.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Unemployment insurance - various changes

Instructions:

Per instructions of Council on Unemployment Insurance. Other segments to follow.

Drafting History:

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/?	jkuesel 03/09/2010	csicilia 03/09/2010		_____			
/1			mduchek 03/09/2010	_____	lparisi 03/09/2010		
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/10	jkuesel 03/19/2010	csicilia 03/22/2010	phenry 03/22/2010	_____	mbarman 03/22/2010		

mbarman
03/22/2010

See attached

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18 jkuesel
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16 jjs 3/15
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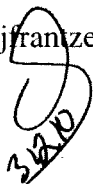
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14 jkuesel 3/11/10 14 cjs 3/12/10 ()
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Extra Copies: **Tracey Schwalbe - DWD - 1**

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/?	jkuesel 03/09/2010	csicilia 03/09/2010		_____			
/1			mduchek 03/09/2010	_____	lparisi 03/09/2010		

FE Sent For:

<END>

DNOTE

2009 DRAFTING REQUEST

Bill

Received: **01/29/2010**

Received By: **jkuesel**

Wanted: **As time permits**

Identical to LRB:

For: **Workforce Development 7-1406**

By/Representing: **Dan LaRocque**

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

Drafter: **jkuesel**

May Contact:

Addl. Drafters:

Subject: **Unemployment Insurance**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Unemployment insurance - various changes

Instructions:

Per instructions of Council on Unemployment Insurance. Other segments to follow.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel	1 cjs 3/9 10	M 3/9	Rob 3/9			

FE Sent For:

<END>

Kuesel, Jeffery

From: LaRocque, Daniel J - DWD [Daniel.LaRocque@dwd.wisconsin.gov]
Sent: Thursday, March 04, 2010 3:22 PM
To: Kuesel, Jeffery
Cc: Schwalbe, Tracey L - DWD; Bergan, Hal - DWD
Subject: UI bill - Final action today by UI Advisory Council

Importance: High

Attachments: Draft Language v5 for Voluntary Contributions Exception 030210 rev.doc; UI Advisory Council Committee recommendation draft language re personal care draft 091009.doc

Jeff:

1. Attached is a draft of the department's proposal, approved today by the UI Advisory Council, to modify the limitations on voluntary UI contributions.



Draft Language v5
for Voluntar...

2. The Council also approved the changes to the ten-point definition of "employee" found in s108.02(12)(bm). The language was provided to you previously. Be careful that we do not delete references to trucker and logger, which are to remain as exceptions to (12)(bm), as noted below. I believe the bill draft did (or should) include repeal of Paragraph (b) of Section 108.02 (12) (clean up).

3. The Council approved the exclusion from "employment" of personal care and companionship services performed by individuals for a member of the individual's family. Here is the language provided to the Council previous to today's meeting:



UI Advisory Council
Committee ...

The Council did **not** approve the proposed exclusion from "employment" of services performed as mystery shoppers.

Note that the Council did **not** change paragraph (c) of Section 108.02 (12). Amendment of s.108.02 (12)(c) was proposed in connection with repeal the rules for truckers and loggers Wis Admin Code chapters DWD 105 and DWD 107. The Council did not approve repeal of those rules. The Council will continue to review those rules and the proposed exclusion of services performed as mystery shoppers.

4. The Council approved the repeal of the statutory provisions requiring an Indian tribe to provide financial security ("assurance") for its obligation to reimburse the reserve fund for benefits paid on its employer account. That repeal will have to be drafted. I will ask Tracey to provide suggested language. The change here is to be limited to repeal. We are not substituting other collection measures, although that had been suggested.

5. The foregoing provisions and the Harmonize Approved Training and Extended Training will need to be incorporated in a **new bill**. The new bill should also contain the provisions of AB 487 and SB 366, as amended re first applicability of one provision. We do **not** intend to seek passage of AB 487 and SB 366.

Our staff (Tracey and others) will develop and provide you with suggested language for dates and triggers for first applicability of items 1 - 4 above and dates and triggers for first applicability of the Approved Training and Extended Training and related changes to employer charging for AT/ET. If you have suggestions for first applicability language in the meantime, feel free to include them in the bill draft.

Today's meeting is the last meeting of the UI Advisory Council, provided that the draft bill does not necessitate Council discussion.

As you can imagine, the Council, Department and Labor Chairs are anxious to see the bill as soon as possible and conduct hearings.

Lets discuss as soon as you are available. Thanks.

Dan

Date: August 20, 2009
Proposed By: Department
Prepared By: Jason Schunk

ANALYSIS OF PROPOSED LAW CHANGE
Approved Training and Extended Training

1. Description of Proposed Change

The proposed change would conform the approved training law to the requirements for protections of claimants in approved training, including the new requirements for protections of claimants in Trade Act approved training provided in the American Reinvestment and Recovery Act (ARRA), correct technical errors and simplify the language of the law, and synchronize the requirements for approved training and extended training.

2. Proposed Statutory Language

Amend 108.04 (16) Approved Training
Amend 108.06 (7) Extended Training
Amend 108.04 (2) General Qualifying Requirements
See attached proposal language.

Plain language summary:

Changes needed in the approved training statute due to conformity issues:

- Add the new protections for Trade Act programs to the approved training statute.
 - Protect claimants from benefit denials when a claimant quits work that the person engaged in on a temporary basis during a break in training or a delay in starting training; and when a claimant quits on-the-job training not later than 30 days after commencing training because the training did not meet the requirements of the Trade Act
- Restore statutory language protections afforded to claimants who are enrolled in training funded by TAA and/or WIA Title 1 for Dislocated Workers. The language was inadvertently left out when the last revisions were made to the approved training statute in 2003. The department has applied the provisions correctly because this was a legislative drafting error and the protections are required for conformity. This proposal restores the protections in the language of the statute.

Changes needed to clarify Extended Training (ET) benefits under UI Modernization:

- Clarify that all WIA funded training is considered approved training for ET purposes.
- Clarify that claimants may be eligible for up to 26 weeks of ET benefits while enrolled in approved training.

Changes proposed to expand and harmonize the approved training statute and the extended training statute:

- Eliminate the cutoff date of October 1, 2003, for Department-administered training; allow all Department-administered training to be considered approved training.
- Replace the language in the regular approved training provision that states that a vocational or basic education training course is expected "to increase the individual's

opportunity to obtain employment" with the language used in the ET provision, that the course is for training in a "high demand occupation."

- Provide that all training programs funded under the WIA are approved training for regular approved training benefits, not just dislocated worker programs.
- Remove the ET requirement that the claimant must be separated from employment in a declining occupation or involuntarily separated from employment as a result of a permanent reduction in operations.

Changes proposed to improve the investigation process:

- Provide that the department determines approved training status prior to conducting the investigation to determine if the claimant is able to work and available for work.

3. Proposer's Reason for the Change

The workforce of Wisconsin is changing. Many workers in the current economy have lost jobs and are not trained for the more technical and skilled jobs that are needed in the changing economy. Workers remain on unemployment for longer periods of time when they do not have the skills needed to find reemployment in the workplace. The federal government recently has intensified its focus on the retraining of unemployed workers and has encouraged the unemployed to seek training, and Congress provided significant funding to states to retrain workers in the ARRA. Wisconsin is actively engaged in providing training opportunities to workers to train its workers for 21st Century jobs.

The unemployment law recognizes the value of having workers retrained when they are unemployed to enhance their reemployment opportunities and so they are better situated to return to the jobs available in the economy. The retrained workers often receive higher wages and are then less likely to become unemployed in the future because of their new skills.

The federal law requires that state laws provide that UI benefits shall not be denied to an individual for any week that the individual is in training with the approval of the state agency, or because of the application, to any week in approved training, of state law provisions related to availability for work, active search for work, or refusal to accept work. All state laws must provide that UI benefits shall not be denied to an otherwise eligible individual for any week during which the individual is in training with the approval of the state agency. 25 USC s. 3304(a)(8).

Other than these federal requirements, federal law generally does not specify the criteria states must use in approved training. Each state is free to determine what training is appropriate and what criteria are established for approved training. However, states are required to apply reasonable criteria established for approved training. The Department of Labor (DOL) provides some guidance as to what it considers to be reasonable criteria, such as the claimant's skills are obsolete or the employment opportunities for the claimant in the labor market are minimal and not likely to improve, the claimant possesses the aptitude for the training, and the training must be for an occupation for which there is a substantial and recurring demand. Unemployment Insurance Program Letter (UIPL) 2-96. In Wisconsin, schools and training programs generally determine a claimant's skills and aptitude for a particular training program. The unemployment insurance approved training law historically has focused on the type of training and requiring that the training increase the individual's opportunities to obtain employment.

a. Changes needed for conformity:

As noted above, the federal law requires that states not deny benefits to claimants for certain reasons while in approved training: benefits shall not be denied to an individual for any week that the individual is in training with the approval of the state agency, or because of the application, to any week in approved training, of state law provisions related to availability for work, active search for work, or refusal to accept work. These protections are currently stated in s. 108.04(16) (a) and (b) for vocational training and in par. (c) for department-approved training. However, the language was inadvertently left out of the protections for Trade Act and WIA training in par. (d). The protections must apply to these claimants, and the department has continued to apply the provisions correctly. The proposal seeks to reinsert these protections in the statutory language.

In addition, under the ARRA, two new protections are required for claimants in training under the Trade Act. The Trade and Globalization Adjustment Assistance Act of 2009 (Division B, Title I, Subtitle I of the ARRA, s. 1832, amended Sec. 236(d) of the 2002 Trade Act, and provides:

s. 236(d) ELIGIBILITY.—An adversely affected worker may not be determined to be ineligible or disqualified for unemployment insurance or program benefits under this subchapter—

(1) because the worker—

(A) is enrolled in training approved under subsection (a);

(B) left work—

(i) that was not suitable employment in order to enroll in such training; or

(ii) that the worker engaged in on a temporary basis during a break in such training or a delay in the commencement of such training; or

(C) left on-the-job training not later than 30 days after commencing such training because the training did not meet the requirements of subsection (c)(1)(B); or

(2) because of the application to any such week in training of the provisions of State law or Federal unemployment insurance law relating to availability for work, active search for work, or refusal to accept work.

States must amend their laws to include these two requirements. The proposal includes these protections for workers in training under the Trade Act.

b. Changes needed to clarify ET benefits:

The Extended Training (ET) benefits provision was adopted to provide unemployment benefits to claimants in approved training when that training exceeds the period of time the claimant is eligible for UI benefits. Under the ET benefits, a claimant is eligible for up to 26 additional weeks of benefits while in approved training. This program of benefits was adopted in 2009 Wis. Act 11, and was a part of the legislation that qualified Wisconsin for \$89 million in UI modernization incentive funds from the federal government.

After the legislation was drafted, DOL indicated that this should be clarified to ensure that the department is providing the ET benefits to claimants in any training programs under the Workforce Investment Act (WIA). The ARRA requires that states provide ET benefits to claimants in state-approved training programs or in a job training program authorized under the WIA. The current Wisconsin approved training law provides that approved training includes WIA dislocated worker programs, WIA programs that are administered by the department, and

any other WIA programs for vocational training that meet the requirements of par. (a). The department anticipated that this would cover all WIA programs, and the intent of the ET law was to provide benefits to claimants in all WIA program. However, DOL was concerned that some program might not be covered and therefore suggested that this should be clarified in the ET law. As a result, the department has proposed to insert a sentence in the ET law that states clearly that a training program includes any job training program authorized under the WIA.

In the process of developing the programming required to implement ET, the department identified a potential problem with an interpretation of the ET law. The current ET law states that no claimant may receive more than 26 times the weekly benefit rate and that except when the result would be inconsistent with ET law, the approved training provisions apply to the payment of benefits. Claimants may receive up to 26 weeks of ET benefits if needed for the training as required by the ARRA, however, it is not clear that this provision is "inconsistent" with the provisions for regular approved training. The department is concerned that the ET law could be interpreted to limit a claimant to fewer weeks of benefits if the claimant was so limited for regular approved training benefits. The department proposes to clarify this in s. 108.06 (7) (d) to state that a claimant may receive up to 26 weeks of ET benefits while enrolled in the approved training.

c. Changes proposed to expand and harmonize regular Approved Training and ET benefits:

The DOL has strongly encouraged states to expand their approved training provisions. Training and Employment Guidance Letter (TEGL) 21-08 states:

Since the 1970's, many states have not updated their training approval requirements even though the labor market has significantly changed. Many states place strict limits on approved training, such as limiting approvals to occupational training (that is, training designed to lead to a specific occupation) and to situations where there is no demand for an individual's most recent job. Thus, for example, an individual laid-off from a fast-food restaurant will be denied training since fast-food jobs continue to exist. Such approaches limit an individual's ability to obtain skills that might lead to more secure employment and higher wages.

In this time of recession, states are strongly encouraged to reconsider their laws and regulations, and any applicable administrative requirements, to determine if their approved training requirements are appropriate to the current economy. Post-secondary education and training are increasingly important for success in the job market. Periods of unemployment, particularly in the current economic climate, provide opportunities for laid off workers to develop new skills, so that employers will benefit from a skilled workforce when the economy recovers. In particular, states are asked to consider approval of programs at community colleges with job skills components, courses leading to general equivalency degrees, courses in adult basic education, language courses, or other courses of study, including degree and certificate programs, that are likely to increase the individual's long-term employability. (States are reminded, however, that Pell Grants are only available for individuals enrolled at least half-time in an undergraduate degree or certificate program.)

The department first proposes to expand approved training by removing the cut off date of October 1, 2003, in s. 108.04(16)(c). This section states that job training programs

administered by the department as of "October 1, 2003," are approved training. Removal of this date would allow approved training to expand to any department-administered job training program. The date was inserted in the statute when changes were made to approved training in 2003. The concern at the time was to limit approved training to only those programs the Council was aware of in 2003. The department proposes that any job training program administered by the department would meet the needs of providing skills to workers to improve their reemployment opportunities in the economy and should be approved training. The date provides an artificial cutoff for programs and can serve to stifle participation in new and innovative job training programs.

Second, the department proposes to expand approval of WIA programs as approved training for regular approved training benefits. All WIA programs are approved training for ET benefit purposes. As noted above, practically all WIA programs are currently approved under regular approved training. However, the department needs to make separate determinations for those non-dislocated worker programs and non-department administered programs. The department proposes to provide that all WIA programs are automatically approved training for regular benefits as well to harmonize these provisions and ease administration.

Additionally, the department proposes to expand approved training opportunities by eliminating the requirement from ET benefits that the claimant had to have been separated from employment in a declining occupation or involuntarily separated from employment as a result of a permanent reduction in operations. This will provide some additional benefits to those claimants in longer term training and allow them to complete training, regardless of the type of employment they separated. This will harmonize the regular approved training provisions and the ET provisions.

This will allow claimants to understand clearly how school attendance affects the unemployment insurance claim and allow the department to provide better customer service. Currently, due to the different criteria a claimant may enroll in training and be told the training is approved training but when they exhaust benefits they will not be eligible for extended training benefits. The harmonized provisions will allow claimants enrolled in approved training to complete their training and not have to worry about the interruption of unemployment benefits or to find a different means to provide for living expenses after regular benefits are exhausted. The proposal will allow both criteria essentially to be the same and provide for greater ease in understanding for both the claimant and staff. It will also prevent a second investigation and delayed payments before paying extended training benefits.

The proposed language would provide that the cost of all benefits paid to an individual as a result of the approved training protections would be charged to the balancing account. Currently some benefits are still charged to employer accounts, including if a claimant missed work available with an employer or if the employee refused suitable work while in training. As a fairness issue, these should not be charged to the employer but are part of the pooled risk for benefits covered in the balancing account.

d. Changes proposed to improve the approved training investigation process:

Currently, the law provides that the department may not deny or reduce benefits under the able and available provisions if the claimant is in approved training. This language has been interpreted to require the department to conduct the investigation to determine if the claimant is able and available for work first. Only after the department determines that the claimant is not

able and available for work does the department then determine whether the claimant who is not able and available for work is in approved training.

The department proposes to make explicit in the able and available provision of s. 108.04 (2) (d) that the able and available provision does not apply to someone in approved training under s. 108.04(16). This is consistent with the federal requirements for approved training and allows the department to forego an investigation to determine if a claimant is able and available for work if the claimant is in approved training. This will expedite approved training investigations and provide benefits quicker to claimants in approved training. The current language in par. (a) refers to claimants who are totally unemployed and par. (d) refers to claimants who are partially unemployed; both provisions require that the claimants be able and available to work. The proposed language combines the two into the requirement in par. (a) that claimants be able and available to work and replaces the language in par. (d) with the exception from the able and available requirement for those claimants in approved training.

4. Brief History and Background of Current Provisions

The approved training statute was created in 1971 to comply with a new federal conformity requirement. The statute became effective as of January 1, 1972. The statute has been modified several times over the years to correct conformity issues and to reflect interpretations by the court.

In 1973, a circuit court case, *Thilmany Pulp & Paper Company*, held that the approved training statute did not afford protection to a student at a four-year university. In May of 1973 the Advisory Council adopted a policy that required the training to be vocational in nature. The statute was amended later that year to reflect the policy.

In 1983 the statute was amended to apply to extended benefits.

In 1985 the statute was amended to remove the duration of how long a person could be in approved training.

In 1989 and 1991 the benefit reduction provisions under the quit and suitable work statutes were repealed. The approved training statute was amended to delete the references to these benefit reductions in 1991. There were several minor changes to the statute in 1993, 1999, and 2001.

In 1994, an appeals court decision, *Murphy v. LIRC*, ruled that the statute required relief for an individual enrolled in JTPA training (currently WIA), regardless of whether the individual left work for that reason. The Department applied the protections after the circuit court decision and the statute was modified in 1998.

In 2003, the statute was expanded to include programs approved by the Department as of October 1, 2003, and codified the procedures previously in place to delay and temporarily lift suspensions while an individual is enrolled in approved training and provided non-charges for employers in these situations.

The extended training statute section is new as of 2009. 2009 Wis. Act 11. The benefits are provided for claimant's whose training will prepare them for entry into a high-demand occupation.

5. Effect of the Proposed Change

- a. **Policy:** The department proposal will bring the statutory language into conformity for approved training under Trade Act and WIA programs. These proposals will not change department policy. The proposal also will expand regular approved training, consistent with the DOL's suggestions in TEGL 21-08, to encourage retraining of workers. The proposed language is consistent with the department's ongoing efforts to clarify and simplify the statutory language and administration of the law.
- b. **Administrative Feasibility:** The proposed changes would simplify administration of the laws by harmonizing the requirements for approved training and extended training. The changes would also streamline the process for determining approved training and eligibility for extended training benefits and allow for easier investigations and less confusion for UI staff. Benefits will be paid more quickly for ET if additional investigations for those benefits are not necessary.
- c. **Equitable:** The changes would provide greater equity for claimants by making the requirements consistent. The changes would allow claimants to sharpen job skills and prepare for high demand occupations. The employers would reap the benefit of having a highly skilled workforce to choose from in order to fill high demand occupations. The employers should also see a more stable workforce and lower periods of high unemployment. Individual employers will not have their accounts charged for benefits paid to claimants who are training to seek other employment.

6. Fiscal

To be provided

7. State and Federal Issues

The proposed changes do not conflict with any current state or federal laws.

8. Proposed Effect/Applicability Date

Determinations issued as of the effective date. The change to s. 108.06(7) (a)2. should be effective August 23, 2009.

D09-22 Draft Language for Approved Training Provisions

Repeal and recreate s. 108.04(16) [shown with tracked changes below]:

(16) APPROVED TRAINING. (a) The following training will be considered approved training:

1. Vocational or basic education that is a prerequisite to such training, provided:
 - a. The training is for a high demand occupation as determined by the department;
 - b. The training is given by a school established under s. 38.02 or other training institution approved by the department;
 - c. The individual is enrolled full time as determined by the training institution;
 - d. The course does not grant substantial credit leading to a bachelor's or higher degree; and
 - e. The individual is attending regularly and making satisfactory progress in the course. The department may require the training institution to file a certification showing the individual's attendance and progress.
2. Programs administered by the department for the training of unemployed workers, other than the Youth Apprenticeship Program under s. 106.13.
3. Training under 19USC 2296 (Trade Act).
4. Training approved under 29 USC 2822 (Workforce Investment Act).

(b) The department shall not apply any benefit reduction or disqualification under sub. (1) (a) [missed work available because the employee was not able and available to work], or (8) [refused suitable work] or s. 108.141 (3g) (a) or (c) [refused suitable work and work search while on extended benefits] to any otherwise eligible individual for any week as a result of the individual's enrollment in a course of approved training under par. (a).

(c) The department shall not apply any benefit reduction or disqualification under sub. (1) (b) [work is suspended because employee is not able and available to work or is on leave of absence], (7) (c) [meets quit exception for health reasons but the employee is not able and available to work], or (8) (e) [refused suitable work with good cause but the employee is not able and available to work] or s. 108.141 (3g) (d) [employee quits or incurs a disciplinary suspension for good cause while on extended benefits] that is not the result of approved training under par. (a) while an individual is enrolled in the approved training under par. (a). [These benefit reductions and disqualifications are delayed and will apply to weeks when the employee is no longer enrolled in approved training under par. (a).]

- (d) 1. If an individual is enrolled in approved training under par. (a) 3. or 4., the department also shall not deny benefits under sub. (7) as a result of the individual's leaving unsuitable work to enter or continue such training, as a result of the individual's leaving work that the individual engaged in on a temporary basis during a break in the training or a delay in the commencement of the training, or because the individual left on-the-job training not later than 30 days after commencing the training because the training did not meet the requirements of sec. 236(c)(1)(B) of the Trade Act of 1974 as amended.
2. The requalifying requirements under subs. (7) and (8) do not apply while the individual is enrolled in approved training under par. (a) 3. or 4.

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

Amend s. 108.06(7):

108.06(7) (a) In this subsection:

1. "Applicable benefit year" means, with respect to a claimant, the claimant's current benefit year if at the time an initial claim for benefits under this subsection is filed the claimant has an unexpired benefit year or, in any other case, the claimant's most recent benefit year.
2. "Training program" means any program of a type specified in s. 108.04 (16), and any job training program authorized under the Workforce Investment Act of 1998 (WIA).

(b) Except as provided in pars. (f) and (g), a claimant who is otherwise eligible for benefits and who is currently enrolled in a training program is eligible, while enrolled in that training program, for additional benefits under this subsection provided that the claimant:

1. Has exhausted all rights to regular benefits, Wisconsin supplemental benefits, federal emergency compensation benefits under P.L. 110-252 and P.L. 110-449, as amended, extended benefits under s. 108.141, and the federal trade act of 1974 (P.L. 93-618), or any other similar state or federal program of additional benefits;
2. If not in a current benefit year, has a benefit year that ended no earlier than 52 weeks prior to the week for which the claimant first claims benefits under this subsection;
3. Except as provided in par. (e), is first enrolled in a training program within the claimant's applicable benefit year;
4. Is not receiving similar stipends or other training allowances for nontraining costs;

(c) The weekly benefit rate payable to a claimant under this subsection for a week of total unemployment is an amount equal to the most recent weekly benefit rate in the claimant's applicable benefit year as determined under s. 108.05 (1).

(d) Notwithstanding the benefit entitlement calculation provisions of ss. 108.04 (1) (g) and 108.06 (1), a claimant may receive total benefits under this subsection of up to 26 times the claimant's weekly benefit rate that applied to the claimant's applicable benefit year while enrolled in the training program.

(e) A claimant who is otherwise eligible for benefits under par. (b) and whose applicable benefit year ends in a week in which benefits are payable in this state under s. 108.141 or 108.142, or P.L. 110-252 or P.L. 110-449, as amended, or another similar state or federal program of additional benefits, is also eligible for benefits under this subsection if the claimant is first enrolled in a training program within 52 weeks after the end of the claimant's applicable benefit year.

(f) No benefits may be paid to a claimant under this subsection for weeks beginning more than 52 weeks after the first week for which the claimant received benefits under this subsection.

(g) Except when the result would be inconsistent with the other provisions of this subsection, the provisions of this chapter that apply to claims for, or the payment of, regular benefits apply to claims for, and the payment of, benefits under this subsection.

- Deleted: 5.**
- Deleted:** Was separated from employment in a declining occupation
- Deleted:** or involuntarily separated from employment as a result of a permanent
- Deleted:** reduction in operations by his or her employing unit, if the
- Deleted:** separation occurred no earlier than the beginning of the base
- Deleted:** period for the claimant's applicable benefit year; and¶ 6.
- Deleted:** Is being trained for entry into a high demand occupation.
- Deleted:** greater than

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

(h) The restrictions on benefit reductions and disqualifications in s. 108.04 (16) apply to a claimant in a training program who is entitled to receive benefits under this subsection; the restrictions on benefit reductions and disqualifications in s. 108.04(16)(d) apply to any job training program authorized under the Workforce Investment Act of 1998 (WIA).

Deleted: (i)

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

Deleted: (j)

Amend s. 108.04(2)(a) and (d):

(2) GENERAL QUALIFYING REQUIREMENTS. (a) Except as provided in par. (b) and as otherwise expressly provided, a claimant is eligible for benefits as to any given week, only if:

Deleted: for which he or she

Deleted: earns no wages

1. The individual is able to work and available for work during that week;
2. As of that week, the individual has registered for work; and
3. The individual conducts a reasonable search for suitable work during that week. The search for suitable work must include 2 actions that constitute a reasonable search as prescribed by rule of the department. This subdivision does not apply to an individual if the department determines that the individual is currently laid off from employment with an employer but there is a reasonable expectation of reemployment of the individual by that employer. In determining whether the individual has a reasonable expectation of reemployment by an employer, the department shall request the employer to verify the individual's employment status and shall also consider other factors, including:
 - a. The history of layoffs and reemployments by the employer;
 - b. Any information that the employer furnished to the individual or the department concerning the individual's anticipated reemployment date; and
 - c. Whether the individual has recall rights with the employer under the terms of any applicable collective bargaining agreement.

Deleted: A claimant who earns or receives wages for one or more

Deleted: weeks of unemployment may be required, by rule of the department,

Deleted: to comply with the requirements of this subsection in order

Deleted: to be or remain eligible for benefits for any such week.

Deleted:

Deleted: The department shall not

Deleted: reduce benefits under sub. (1) (a) 1., or deny benefits under sub.

Deleted: (1) (a) 2., (2) (a) or (d), or (8) or s. 108.141 (3g) to any otherwise

Deleted: eligible individual for any week as a result of the individual's

Deleted: enrollment in a course of vocational training or basic education

Deleted: which is a prerequisite to such training, provided the department

Deleted: determines that:

Deleted: 1. The course is expected to increase the individual's opportunities

Deleted: to obtain employment;

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(d) Paragraph (a) does not apply to individuals enrolled in a course of approved training under 108.04(16).

Proposed Changes to s. 108.04(16) [showing tracked changes]:

(16) APPROVED TRAINING. (a) The following training will be considered approved training:

1. Vocational or basic education that is a prerequisite to such training, provided:

a. The training is for a high demand occupation as determined by the department; b. The training is given by a school established under s. 38.02 or other training institution approved by the department;

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

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

e. The individual is attending regularly and making satisfactory progress in the course. The department may require the training institution to file a certification showing the individual's attendance and progress.

2. Programs administered by the department for the training of unemployed workers, other than the Youth Apprenticeship Program under s. 106.13.

- 3. Training under 19USC 2296 (Trade Act).
- 4. Training approved under 29 USC 2822 (Workforce Investment Act).

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

(c) The department shall not apply any benefit reduction or disqualification under sub. (1) (b), (7) (c), or (8) (e) or s. 108.141 (3g) (d) that is not the result of approved training under par. (a) while an individual is enrolled in the approved training under par. (a). The benefit reduction or disqualification will apply to weeks when the employee is not enrolled in approved training under par. (a).

(d) 1. If an individual is enrolled in approved training under par. (a) 3. or 4., the department also shall not deny benefits under sub. (7) as a result of the individual's leaving unsuitable work to enter or continue such training, as a result of the individual's leaving work that the individual engaged in on a temporary basis during a break in the training or a delay in the commencement of the training, or because the individual left on-the-job training not later than 30 days after commencing the training because the training did not meet the requirements of sec. 236(c)(1)(B) of the Trade Act of 1974 as amended.
2. The requalifying requirements under subs. (7) and (8) do not apply while the individual is enrolled in approved training under par. (a) 3. or 4.

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

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Kuesel, Jeffery

From: Schwalbe, Tracey L - DWD [Tracey.Schwalbe@dwd.wisconsin.gov]
Sent: Thursday, January 28, 2010 4:24 PM
To: Kuesel, Jeffery
Subject: UI - approved training update

Attachments: D09-22 Update to Proposal 011910.doc; D09-22 draft language (updated) 011410.doc

Hi Jeff,

As we discussed, attached is the updated proposal and language for approved training presented to the Advisory Council on January 27. If you have any questions, please let me know. I will let you know if we work something out on the amendment for the voluntary contribution language. Thanks.

Tracey



D09-22 Update to Proposal 0119... D09-22 draft language (updated..

D09-22 Harmonize Approved Training and Extended Training Update to Proposal

Original proposal: Limit regular approved training (AT) benefits to “[training for] a high demand occupation,” replacing current standard: “[training] to increase the individual’s opportunity to obtain employment.”

- Labor had a concern about this aspect of the proposal which limited benefits for AT. The department also has concerns regarding the administrative practicality of using the list of “high demand” jobs.

Update to proposal: Do not import the “high demand” concept into regular AT; require that training be for a “high demand” occupation for extended training (ET) benefits only. The initial definition of “high demand” for ET will not use the list of greater than average growth in jobs from the 2006-2016 projections, but will consider if the training is being provided by an approved institution for AT purposes as evidence that there is demand for the jobs. The department will report back to the Council on the experience with using this definition for ET purposes and can make adjustments as needed.

Fiscal effect of update: An updated table summarizing currently estimated cost and the estimated cost of the updated proposal appears below. This is an update from the table provided in the full proposal D09-22. All amounts in the table are in millions of dollars. Though including the provision in the original proposal was projected to decrease benefit costs by \$1.0 million for AT and \$.5 million for ET, adopting the revised proposal still would reduce budgeted cost for AT and ET by \$2.0 million.

	Regular Approved Training	Extended Training	Total
Budgeted Base	\$10.2	\$6.2	\$16.4
Adjustment: follow federal law, not regulations	----	-3.2	-3.2
Add all WIA programs	+ .6	+ .2	+ .8
Add all departmentally approved programs	+ .3	+ .1	+ .4
Proposed Cost	\$11.1	\$3.3	\$14.4

Overview of D09-22 Proposal [as Updated]

Conformity Requirements:

- ✓ • Add the new protections for Trade Act programs to the approved training statute.
 - Protect claimants from benefit denials when a claimant quits work that the person engaged in on a temporary basis during a break in training or a delay in starting training; and when a claimant quits on-the-job training not later than 30 days after commencing training because the training did not meet the requirements of the Trade Act
- ✓ • Restore statutory language protections afforded to claimants who are enrolled in training funded by TAA and/or WIA Title 1 for Dislocated Workers. The language was inadvertently left out when the last revisions were made to the approved training statute in 2003. The department has applied the provisions correctly because this was a legislative drafting error and the protections are required for conformity. This proposal restores the protections in the language of the statute.

Clarify Extended Training (ET) Benefits under UI Modernization for DOL:

- ✓ • Clarify that all WIA funded training is considered approved training for ET purposes.
- ✓ • Clarify that claimants may be eligible for up to 26 weeks of ET benefits while enrolled in approved training. 1080677(1)

Expand and Harmonize AT and ET:

- ✓ • Eliminate the cutoff date of October 1, 2003, for Department-administered training; allow all Department-administered training to be considered approved training. [Increase benefit expense approximately \$.4 million.]
- ✓ • Remove the ET requirement that the claimant must be separated from employment in a declining occupation or involuntarily separated from employment as a result of a permanent reduction in operations. [No significant fiscal effect is anticipated.]
- ✓ • Provide that all training programs funded under the WIA are approved training for regular approved training benefits, not just dislocated worker programs. [Increase benefit expense \$.8 million.]
- ✓ • Noncharge benefits paid to claimants in approved training. [Currently \$1.1 million is charged to the balancing account; the proposal would transfer \$14.4 in charges from employer accounts to the balancing account.] ? retro to pay? 10804116(e) Dept's training

Speed Investigations:

- ✓ • Provide that the department determines approved training status prior to conducting the investigation to determine if the claimant is able to work and available for work to speed processing of claims.

Kuesel, Jeffery

From: Schwalbe, Tracey L - DWD [Tracey.Schwalbe@dwd.wisconsin.gov]
Sent: Monday, March 01, 2010 10:58 AM
To: Kuesel, Jeffery
Cc: LaRocque, Daniel J - DWD
Subject: RE: Back on UI

Hi Jeff,
I wanted to follow up on a few UI items from our conference call.

1. I agree that the reference to 108.04(2)(a) should be in the new (16)(b). Though the idea is covered with the proposed change to 108.04(1)(d), keeping that reference in (16)(b) is consistent with the list in the law as it is now and is needed for the charging of benefits under that provision.
2. The Bureau of Benefits has indicated that they can do the programming for the charging provision of (16)(e) by July 1, so that should be the effective date of that provision.
3. We do need the reference to 108.04(8)(e) in new (16)(c); it is not subsumed in the reference to (8) in (16)(b). Sections (16)(b) and (c) deal with different circumstances. Par (b) says we can never deny or reduce benefits under certain circumstances *because of the person's enrollment in approved training*. If the person is not available for work because they are in training, we cannot deny them benefits. Par (c) says we cannot deny or reduce benefits under certain circumstances when the person is not able and available for work but their inability or unavailability is *not a result of the person's enrollment in approved training* and this is limited to *while the person is in approved training*. For example, if the person is not available for work because the person does not have transportation, the person is not unavailable *because of the approved training*. We will suspend the denial of benefits for being unavailable for work while the person is in approved training, but as soon as the person is done with training, we will lift that suspension and again deny the person benefits for being unavailable because the unavailability is not a result of the training. The reference to (8) in (16)(b) means we cannot deny someone for refusing work because the person is enrolled in training. The reference to (8)(e) in (16)(b) means we will suspend a denial of benefits while the person is in training if the person refused work but is not A&A.

If you have further questions, please let me know.
Tracey

From: Kuesel, Jeffery [mailto:Jeffery.Kuesel@legis.wisconsin.gov]
Sent: Sunday, February 28, 2010 7:22 PM
To: LaRocque, Daniel J - DWD; Schwalbe, Tracey L - DWD
Subject: Back on UI

Dan and Tracey:

I am now back working on AT and ET again. This will be a busy week but I hope to finish with this before the week is out. Thanks for your patience.

Jeffery Kuesel

*Managing Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison WI 53701-2037
(608) 266-6778
jeffery.kuesel@legis.state.wi.us*

(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. 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.

(d) 1. If the department finds that any benefits charged to an employer's account have been erroneously paid to an employee without fault by the employer, the department shall notify the employee and the employer of the erroneous payment.

2. If recovery of an overpayment is permitted under s. 108.22 (8) (c) and benefits are currently payable to the employee from the employer's account, the department may correct the error by adjusting the benefits accordingly.

3. To correct any erroneous payment not so adjusted that was charged to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18, the department shall:

a. If recovery of an overpayment is permitted under s. 108.22 (8) (c), restore the proper amount to the employer's account and charge that amount to the fund's balancing account, and shall thereafter reimburse the balancing account by crediting to it benefits which would otherwise be payable to, or cash recovered from, the employee or;

b. If recovery of an overpayment is not permitted under s. 108.22 (8) (c), restore the proper amount to the employer's account and charge that amount to the fund's balancing account unless s. 108.07 (5) (c) applies.

4. To correct any erroneous payment not so adjusted from the account of an employer which is a government unit, an Indian tribe, or a nonprofit organization and which has elected reimbursement financing, the department shall:

a. If recovery of an overpayment is permitted under s. 108.22 (8) (c), credit to the account benefits which would otherwise be payable to, or cash received from, the employee; or

b. If recovery of an overpayment is not permitted under s. 108.22 (8) (c), restore the proper amount to the employer's account and charge that amount in accordance with s. 108.07 (5).

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

(f) If benefits are erroneously paid because the employer fails to file a report required by this chapter, fails to provide correct and complete information on the report, fails to object to the benefit

claim under s. 108.09 (1) 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.

Cross Reference: See also ch. DWD 123, Wis. adm. code.

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

(16) APPROVED TRAINING. (a) Benefits shall not be reduced under sub. (1) (a), or denied under sub. (2) or (8) or s. 108.141 (3g) to any otherwise eligible individual for any week because the individual is enrolled in a full-time course of vocational training or basic education which is a prerequisite to such training, provided it is determined that:

1. The individual possesses aptitudes or skills which can be usefully supplemented by training; and

2. The course is expected to increase the individual's opportunities to obtain employment, does not grant substantial credit leading to a bachelor's or higher degree, and is given by a school established under s. 38.02 or other training institution approved by the department; and

3. The individual can reasonably be expected to complete the training course successfully, and to find and accept work; and

4. The individual attended the training course full time during the given training week or had good cause for failing to do so, and is making satisfactory progress in the course. The department may require the training institution to file a certification showing the individual's attendance and progress.

(b) The requalifying employment requirement under subs. (7) and (8) and the general qualifying requirements under sub. (2) do not apply to an individual as a result of the individual's enrollment in training or leaving unsuitable work to enter or continue training under 19 USC 2296 or a plan approved under 29 USC 2822. now (d)

(c) Benefits may not be denied to an otherwise eligible individual under par. (a) who is enrolled in a program under the plan of any state for training for dislocated workers under 29 USC 2822, notwithstanding the failure of such training to meet any of the requirements of par. (a) 1. to 4.

(17) EDUCATIONAL EMPLOYEES. (a) A school year employee of an educational institution who performs services in an instructional, research or principal administrative capacity is ineligible for benefits based on such services for any week of unemployment which occurs:

1. During the period between 2 successive academic years or terms, if the school year employee performed such services for an educational institution in the first such year or term and if there is reasonable assurance that he or she will perform such services for an educational institution in the 2nd such year or term; or

2. During the period between 2 regular but not successive academic terms, when an agreement between an employer and a school year employee provides for such a period, if the school year employee performed such services for an educational institution in the first such term and if there is reasonable assurance that he or she will perform such services for an educational institution in the 2nd such term.

(b) A school year employee of a government unit, Indian tribe, or nonprofit organization which provides services to or on behalf of an educational institution who performs services in an instructional, research, or principal administrative capacity is ineligible for benefits based on such services for any week of unemployment which occurs:

analogous applicable laws of the jurisdiction in which the corporation is incorporated or organized;

2. Filing ~~for corporate of a petition in~~ bankruptcy by the family corporation;

3. Filing ~~for personal of a petition in~~ bankruptcy by all owners who are personally liable for any of the debts of the family corporation; or

4. (intro.) Disposition of a total of 75% or more of the assets of the family corporation using one or more of the following methods:

SECTION 23. 108.04 (2) (a) 3. of the statutes is renumbered 108.04 (2) (a) 3. (intro.) and amended to read:

108.04 (2) (a) 3. (intro.) The individual ~~is seeking suitable work during that week or, during the 156-week period beginning on January 2, 2000, the individual conducts a reasonable search for suitable work during that week. The reasonable search required during the period specified in this subdivision for suitable work~~ must include 2 actions that constitute a reasonable search as prescribed by rule of the department. ~~The department shall, by rule, require claimants to conduct a reasonable search for suitable work during the period beginning after the 156-week period specified in this subdivision and shall, by rule, prescribe standards for the search to be considered reasonable. This subdivision does not apply to an individual if the department determines that the individual is currently laid off from employment with an employer but there is a reasonable expectation of reemployment of the individual by that employer. In determining whether the individual has a reasonable expectation of reemployment by an employer, the department shall request the employer to verify the individual's employment status and shall also consider other factors, including:~~

SECTION 24. 108.04 (2) (a) 3. a. to c. of the statutes are created to read:

108.04 (2) (a) 3. a. The history of layoffs and reemployments by the employer;

b. Any information that the employer furnished to the individual or the department concerning the individual's anticipated reemployment date; and

c. Whether the individual has recall rights with the employer under the terms of any applicable collective bargaining agreement.

SECTION 25. 108.04 (7) (h) of the statutes is amended to read:

108.04 (7) (h) The department shall charge to the fund's balancing account benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 if the employee voluntarily terminates employment with that employer and par. (a), (c), (d), (e), (k), (L), (o), (p), (q), or (s) ~~or sub. (16) (b)~~ applies.

SECTION 26. 108.04 (7) (r) of the statutes is amended to read:

108.04 (7) (r) Paragraph (a) does not apply if the department determines that the employee owns or controls, directly or indirectly, an ownership interest, however designated or evidenced, in a family corporation and the employee's employment was terminated by the employer because of an involuntary cessation of the business of the corporation under one or more of the conditions specified in sub. (1) (gm). In this paragraph, "family corporation" has the meaning given in s. 108.02 (15m) and also includes 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 is or was owned or controlled, directly or indirectly, by one or more brothers or sisters of a claimant, or by a combination of one or more brothers or sisters and one or more of the persons specified in s. 108.02 (15m) (a).

SECTION 27. 108.04 (11) (cm) of the statutes is amended to read:

108.04 (11) (cm) ~~Any~~ If any person who 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.

SECTION 28. 108.04 (16) (a) (intro.) of the statutes is amended to read:

108.04 (16) (a) (intro.) ~~Benefits~~ The department shall not be reduced reduce benefits under sub. (1) (a), or denied deny benefits under sub. (2) (a) or (d) or (8) or s. 108.141 (3g) to any otherwise eligible individual for any week because the individual is enrolled in a full-time 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 it is determined the department determines that:

SECTION 29. 108.04 (16) (a) 1. to 4. of the statutes are repealed and recreated to read:

108.04 (16) (a) 1. The course is expected to increase the individual's opportunities to obtain employment;

2. The training is given by a school established under s. 38.02 or other training institution approved by the department;

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

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

SECTION 30. 108.04 (16) (a) 5. of the statutes is created to read:

108.04 (16) (a) 5. The individual is attending regularly and making satisfactory progress in the course. The department may require the training institution to file a

certification showing the individual's attendance and progress.

SECTION 31. 108.04 (16) (b) and (c) of the statutes are repealed and recreated to read:

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

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

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

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

SECTION 32c. 108.04 (16) (d) of the statutes is created to read:

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

1. The department shall not deny benefits under sub. (7) as a result of the individual's leaving unsuitable work to enter or continue such training; and

2. The requalifying requirements under subs. (7) and (8) do not apply while the individual is enrolled in such training.

SECTION 32g. 108.04 (16) (e) of the statutes is created to read:

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

SECTION 32r. 108.04 (16) (e) of the statutes, as affected by 2003 Wisconsin Act (this act), is amended to read:

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

SECTION 33. 108.04 (17) (a) 1. and 2., (b) 1. and 2., (c) 1. and 2., (d), (e), (f), (g), (h), (i) and (k) (intro.) of the statutes are amended to read:

108.04 (17) (a) 1. During the period between 2 successive academic years or terms, if the school year employee performed such services for ~~an~~ any educational institution in the first such year or term and if there is reasonable assurance that he or she will perform such services for ~~an~~ any educational institution in the 2nd such year or term; or

2. During the period between 2 regular but not successive academic terms, when an agreement between an employer and a school year employee provides for such a period, if the school year employee performed such services for ~~an~~ any educational institution in the first such term and if there is reasonable assurance that he or she will perform such services for ~~an~~ any educational institution in the 2nd such term.

(b) 1. During the period between 2 successive academic years or terms, if the school year employee performed such services for any such ~~a~~ government unit, Indian tribe, or nonprofit organization in the first such year or term and if there is reasonable assurance that he or she will perform such services for any such ~~a~~ government unit, Indian tribe, or nonprofit organization in the 2nd such year or term; or

2. During the period between 2 regular but not successive academic terms, when an agreement between an employer and a school year employee provides for such a period, if the school year employee performed such services for any such ~~a~~ government unit, Indian tribe, or nonprofit organization in the first such term and if there is reasonable assurance that he or she will perform such services for any such ~~a~~ government unit, Indian tribe, or nonprofit organization in the 2nd such term.

(c) 1. During the period between 2 successive academic years or terms, if the school year employee performed such services for ~~an~~ any educational service agency in the first such year or term and if there is reasonable assurance that he or she will perform such services for ~~an~~ any educational service agency in the 2nd such year or term; or

2. During the period between 2 regular but not successive academic terms, when an agreement between an employer and a school year employee provides for such a period, if the school year employee performed such services for ~~an~~ any educational service agency in the first such term and if there is reasonable assurance that he or she will perform such services for ~~an~~ any educational service agency in the 2nd such term.

(d) A school year employee of an educational institution who performs services other than in an instructional, research or principal administrative capacity is ineligible for benefits based on such services for any week of unemployment which occurs during a period between 2

Date: September 9, 2003
Proposed by: Administration
Prepared by: Melissa Montey
Proposal #2

ANALYSIS OF PROPOSED LAW CHANGE

1. Description of Proposed Change

This proposal makes several changes to the approved training provision under §108.04(16) and significantly reorganizes this statute. The new language will:

- Specify when suspensions under §108.04(1) and (2) do not apply to an individual who is enrolled in approved training;
- Expand the approved training programs for which additional protection is provided to include state-approved programs administered by the Department and job-readiness training;
- Clarify that the entire requalification requirement under §108.04(7) and (8) is not applied when the individual is enrolled in specific types of approved training;
- Include provisions to delay and temporarily lift suspensions while an individual is enrolled in approved training; and
- Provide additional relief of charges for employers.

2. Proposed Statutory Language

- Change §108.04(16)(a), (b) and (c) as shown on attachment.
- Remove reference to ss. 108.04(16) in §108.04(7)(h).

3. Proposer's Reason for the Change

The language of §108.04(16) and the language in the provisions specified in §108.04(16) have been modified in recent years and these changes have the potential to result in interpretations that are contrary to its original intent. The proposed changes would prevent these misinterpretations.

A non-charge was also added as a matter of equity to those situations where employment is temporarily or permanently severed due to the approved training. The law currently provides for a noncharge only when the individual quits unsuitable work to enter or continue TAA or Dislocated Worker training.

It was necessary to rewrite and reorganize §108.04(16) to incorporate applications required by a 1994 Court of Appeals case that have been in place since 1996. These applications include delaying and temporarily removing suspensions that are not the result of the claimant's enrollment and providing identical protection for individuals enrolled in TAA and Dislocated Worker training.

The types of training that can be approved was expanded to include job-readiness training. The intent of this provision is to allow an unemployed worker the opportunity to attend training that will increase his opportunities to return to the labor force within a short period of time. Job-readiness training meets this intent and will return the individual to the labor force more quickly than someone who is enrolled in a two-year technical course, which is currently

approved. However, attending school to obtain a GED would still not be approved training unless it is a prerequisite to other approved training.

The types of training that will always be considered approved was also expanded to include State-approved programs administered by the Department for training unemployed workers, rather than limiting this automatic approval to TAA and Dislocated Worker training. The Department administers a variety of state-approved training programs that are used to help unemployed workers return to meaningful work. In this capacity the Department assess the training need, creates employability plans, and often suggests and sometimes requires training participation. It seems illogical that another Division within the same Department would disqualify these individuals from receiving UI benefits as a result of this training.

4. Brief History and Background of Current Provisions

As a matter of federal conformity protection must be given to workers who are enrolled in an approved course of study.

§108.04(16)(a) & (b) prevent the denial of benefits under subsection (2), which prior to 1987, only included a protection under the able and available, work search and work registration provisions. When subsections (e) & (f) were added to §108.04(2), it was not intended to allow a person in approved training to be relieved of the disqualification under those subsections for failing to provide the department with a social security number or knowingly supplying a false social security number. So the language in §108.04(16)(a) & (b) was changed to specify that protection is provided only under subsections (a)–(d) of §108.04(2).

The original language of §108.04(16)(c)4, previously §108.04(16)(b), said that “the requalifying *employment* requirement under subs. (7) and (8) do not apply...”. At the time of its writing, the entire requalification requirement under subs. (7) and (8) was based on subsequent employment. When the requalification requirement of subsections (7) and (8) was modified in 1989 to require elapsed weeks rather than weeks of work, the approved training statute was not updated accordingly. Clearly the intent was that the claimant be relieved of the entire requalification requirement, so the word “employment” was removed.

Likewise when “a plan approved under 29 USC 2822” was added in the last bill cycle to §108.04(16)(c), previously §108.04(16)(b), we failed to specify that this referred only to plans for dislocated workers. 29 USC 2822 also includes training plans for youth and adult workers who are not “dislocated,” and it was not our intent to provide protection for individuals approved for funding under those plans. So the language was changed to specify that this subsection was referring to “a plan for *dislocated workers* under 29 USC 2822.”

§108.04(16)(c) was also rewritten to clarify that that the protection in subsection (a) applies to persons enrolled in TAA training as well as to dislocated workers even if they fail to meet the requirements specified in par. (a) 1. to 4.

5. Effect of the Proposed Change

Policy

The relief of charges for employers under §108.04(16)(e) will have little impact on department policy. However, the new criteria for determining that the training is approved and the expansion of approved training programs will significantly change current policy.

Administrative Feasibility

The addition of §108.04(16)(e) will not impact workload. The expansion of approved training programs will impact workload as some investigations may take longer, but overall will reduce workload as we will consider the nature of the training rather than enrollment than verifying the transferability of credits. Training is required and an Unemployment Insurance Directive will be needed. Additional resolution codes and lid formats may be added, but no additional programming should be required.

Equitable

As stated in the proposer's reason for the change, the proposed changes make this provision more equitable by increasing the relief of charges for employers in §108.04(16)(e).

However, automatically considering all State-approved programs administered by the department as approved training may increase the number of individuals eligible for benefits for which the employer would not be charged for benefits.

6. Fiscal

A fiscal report is necessary for §108.04(16)(e) and the expansion of approved training programs and is to be provided by BOLA.

7. State and Federal Issues

There are no State conformity issues, but we are reviewing Federal TAA regulations to determine if there are any Federal conformity issues.

8. Proposed Effect/Applicability Date

Applies to weeks beginning with the first Sunday after publication.

Final Approved Training Language

§108.04(16) APPROVED TRAINING. (a) Benefits shall not be reduced under subs. (1)(a) or denied under subs. (2)(a)-(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, that meets the following conditions. Vocational training includes technical, skill-based or job readiness training intended to pursue a career.

1. The course is expected to increase the individual's opportunities to obtain employment; and
 2. The training is given by a school established under s. 38.02 or other training institution approved by the department; and
 3. The individual is enrolled full-time as determined by the institution; and
 4. The course does not grant substantial credit leading to a bachelor's or higher degree; and
 5. The individual is attending regularly and making satisfactory progress in the course. The department may require the training institution to file a certification showing the individual's attendance and progress.
- (b) Benefit disqualifications under subs. (2)(a)-(d), (7)(c), (8)(e) or 108.141(3g), and benefit disqualifications under sub. (1)(b)1 that are not a result of the training, shall not be imposed while the individual is enrolled in a course of vocational training, or basic education which is a prerequisite to such training, that meets the conditions under sub. (a) 1. - 4.
- (c) With regard to an individual who is enrolled in a state-approved program administered by the Department for training unemployed workers in existence as of 10/01/03, with the exception of training under the Youth Apprenticeship Program and training for youth under 29, USC 2822, notwithstanding the failure of such training to meet any of the requirements under par. (a) 1. to 4.:
1. Benefits shall not be reduced under subs. (1)(a) or denied under subs. (2)(a)-(d), (8) or 108.141(3g) to an otherwise eligible individual as a result of the individual's enrollment in such training; and
 2. Benefit disqualifications under subs. (2)(a)-(d), (7)(c), (8)(e) or 108.141(3g), and benefit disqualifications under sub. (1)(b)1 that are not a result of the training, shall not be imposed while the individual is enrolled in such training.
- (d) With regard to an individual who is enrolled in training under 19 USC 2296 or a plan approved under 29 USC 2822 for dislocated workers:
1. Benefits shall not be denied under sub. (7) as a result of the individual's leaving unsuitable work to enter or continue such training; and
 2. The requalifying requirement under subs. (7) and (8) shall not be imposed while the individual is enrolled in such training.
- (e) The department shall charge to the fund's balancing account benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 if ss. 108.04(16)(b), (c)(2), or (d) apply.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4227/1dn

JTK:::....

-date-

JL
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Dan LaRocque:

1. It appears that the language concerning benefit reductions and disqualifications affecting claimants enrolled in certain training programs that was included in s. 108.04 (16) (b) and (c), 2001 stats, was partially omitted in a complete revision of s. 108.04 (16), stats, that was proposed by the department in an issue paper dated 9/9/03. The revised language was then reflected in 2003 Wisconsin Act 197.
2. The initial applicability shown in this draft is a placeholder. I know you are still evaluating alternatives.

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