



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBa1623/1
JTK:cjs:ph

**ASSEMBLY AMENDMENT 1,
TO 2011 ASSEMBLY BILL 310**

October 18, 2011 – Offered by Representative BALLWEG.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 7, line 18: after that line insert:

3 “**SECTION 8e.** 108.04 (5) of the statutes is amended to read:

4 108.04 (5) DISCHARGE FOR MISCONDUCT. ~~Unless sub. (5g) results in~~

5 ~~disqualification,~~ An employee whose work is terminated by an employing unit for

6 misconduct connected with the employee’s work is ineligible to receive benefits until

7 7 weeks have elapsed since the end of the week in which the discharge occurs and

8 the employee earns wages after the week in which the discharge occurs equal to at

9 least 14 times the employee’s weekly benefit rate under s. 108.05 (1) in employment

10 or other work covered by the unemployment insurance law of any state or the federal

11 government. For purposes of requalification, the employee’s weekly benefit rate

12 shall be that rate which would have been paid had the discharge not occurred. The

13 wages paid to an employee by an employer which terminates employment of the

1 employee for misconduct connected with the employee's employment shall be
2 excluded from the employee's base period wages under s. 108.06 (1) for purposes of
3 benefit entitlement. This subsection does not preclude an employee who has
4 employment with an employer other than the employer which terminated the
5 employee for misconduct from establishing a benefit year using the base period
6 wages excluded under this subsection if the employee qualifies to establish a benefit
7 year under s. 108.06 (2) (a). The department shall charge to the fund's balancing
8 account any benefits otherwise chargeable to the account of an employer that is
9 subject to the contribution requirements under ss. 108.17 and 108.18 from which
10 base period wages are excluded under this subsection.

11 **SECTION 8f.** 108.04 (5g) of the statutes is repealed.

12 **SECTION 8g.** 108.04 (6) of the statutes is repealed and recreated to read:

13 **108.04 (6) DISCHARGE OR SUSPENSION FOR KNOWING VIOLATION OF CERTAIN WORK**
14 **RULES OR POLICIES.** (a) Unless sub. (5) results in disqualification, an employee who
15 is discharged for a knowing violation of a reasonable and uniformly enforced rule or
16 policy of the employer, when reasonably applied, is ineligible to receive benefits until
17 6 weeks have elapsed since the end of the week in which the discharge occurs and
18 the employee earns wages after the week in which the discharge occurs equal to at
19 least 6 times the employee's weekly benefit rate under s. 108.05 (1) in employment
20 or other work covered by the unemployment insurance law of any state or the federal
21 government. For purposes of requalification, the employee's weekly benefit rate is
22 the rate that would have been paid had the discharge not occurred.

23 (b) To find that an employee engaged in a single, knowing violation of a rule or
24 policy of the employer, the department must find that:

1 1. The employee knew or should have known of the rule or policy because it was
2 effectively communicated to the employee;

3 2. The employee's conduct violated the rule or policy; and

4 3. The employee was aware that he or she was engaged in such conduct.

5 (c) In determining whether a rule or policy was effectively communicated to the
6 employee under par. (b) 1. the department may consider the manner in which the rule
7 or policy was communicated. If the department considers the manner in which the
8 rule or policy was communicated, the department shall consider evidence of the
9 employer's actions, including posting of the rule or policy within the employer's
10 premises at a place likely to be observed by employees, explanation of the rule or
11 policy at a training or orientation session, verbal explanation of the rule or policy to
12 the employee, a warning or other disciplinary action in relation to the rule or policy,
13 distribution of a document to the employee containing a statement of the rule or
14 policy and evidence of the employee's receipt of such a document.

15 (d) If a violation of a rule or policy under par. (a) requires an intentional act,
16 the department shall determine whether the employee intended to violate the rule
17 or policy.

18 (e) To find that a rule or policy instituted by an employer is reasonable, the
19 department must find that the rule or policy furthers the employer's lawful business
20 interest. The department may find that a rule or policy is reasonable on its face. If
21 evidence is offered to demonstrate that a rule or policy is unreasonable, the
22 department may consider whether:

23 1. The rule or policy is reasonable in light of the employer's lawful business
24 interest; or

1 2. There is a clear relationship between the rule or policy, the conduct
2 regulated, and the employer's lawful business interest.

3 (f) To find that a rule or policy of an employer is uniformly enforced, the
4 department must find that similarly situated employees who are subject to the rule
5 or policy are treated in a similar manner when a rule or policy is violated.

6 (g) To find that a rule or policy of an employer is reasonably applied, the
7 department must find that:

8 1. The adverse personnel action taken by the employer is appropriate in light
9 of the violation of the rule or policy and the employer's lawful business interest; and

10 2. There were no compelling circumstances that would have prevented the
11 employee from adhering to the rule or policy.

12 (h) An employee who is suspended rather than discharged for a violation under
13 par. (a) is ineligible to receive benefits until 3 weeks have elapsed since the end of the
14 week in which the suspension occurs or until the suspension is terminated,
15 whichever occurs first.

16 (i) This subsection does not preclude an employee from establishing a benefit
17 year during a period in which the employee is ineligible to receive benefits if the
18 employee qualifies to establish a benefit year under s. 108.06 (2) (a).”.

19 **2.** Page 13, line 13: after that line insert:

20 “**SECTION 27n.** 108.141 (3g) (d) of the statutes is amended to read:

21 108.141 (**3g**) (d) Notwithstanding s. 108.04 (6) and (7), a claimant who was
22 disqualified from receipt of benefits because of voluntarily terminating employment
23 or ~~incurring a disciplinary suspension for good cause~~ being discharged for or
24 incurring a disciplinary suspension for a knowing violation of a work rule or policy

1 is ineligible to receive extended benefits for the week in which the termination occurs
2 or the suspension begins and for each week thereafter until he or she has again been
3 employed during at least 4 subsequent weeks in employment or other work covered
4 by the unemployment insurance law of any state or the federal government and
5 earned wages for such work equal to at least 4 times his or her weekly extended
6 benefit rate.”.

7 **3.** Page 14, line 3: after that line insert:

8 “**SECTION 30m.** 108.16 (6m) (a) of the statutes is amended to read:

9 108.16 (**6m**) (a) The benefits thus chargeable under s. 108.04 (1) (f), (5), (~~5g~~),
10 (7) (h), (8) (a), (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) (b), (5m), (6), or (8), 108.14
11 (8n) (e), 108.141, 108.151, or 108.152 or sub. (6) (e) or (7) (a) and (b).”.

12 **4.** Page 19, line 11: after that line insert:

13 “(2g) The treatment of sections 108.04 (5), (5g), and (6), 108.141 (3g) (d), and
14 108.16 (6m) (a) of the statutes first applies with respect to discharges and
15 suspensions occurring on the first Sunday that follows the 90th day beginning after
16 the effective date of this subsection.”.

17 (END)