



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2011 Wisconsin Act 198**  
[2011 Senate Bill 219]

**Unemployment Insurance**

2011 Wisconsin Act 198 relates to various changes in the unemployment insurance (UI) law. The Act contains changes to the UI law that were recommended by the UI Advisory Council.

### **Concealment of Material Facts or Wages**

*Current law* provides that 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 or any of his or her wages earned in or paid or payable for that week, the claimant must forfeit benefits as follows:

- A claimant must forfeit an amount equal to the claimant's weekly benefit rate for the week for which the claim is made for each single act of concealment occurring before the date of the first determination of concealment.
- A claimant must forfeit three times the claimant's weekly benefit rate for the week in which the claim is made for each single act of concealment occurring after the date of the first determination of concealment in which a penalty is applied under the first bulletpoint, above, but on or before the date of the first determination of concealment in which a penalty is applied under this provision.
- A claimant must forfeit five times the claimant's weekly benefit rate for the week in which the claim is made for each single act of concealment occurring after the date of the first determination of concealment in which a penalty is applied under the second bulletpoint, above.

In addition, current law provides that if a claimant conceals wages for a given week, the claimant is denied benefits for that week.

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

The *Act*, instead, provides that a claimant who conceals any material fact or any wages is ineligible for benefits as follows:

- For each single act of concealment occurring before the date of the first determination of concealment, the claimant is ineligible for benefits for which he or she would otherwise be eligible in an amount equivalent to two times the claimant's weekly benefit rate for the week in which the claim is made.
- For each single act of concealment occurring after the date of the first determination of concealment, the claimant is ineligible for benefits for which he or she would otherwise be eligible in an amount equivalent to four times the claimant's weekly benefit rate for the week in which the claim is made.
- For each single act of concealment occurring after the date of a second or subsequent determination of concealment, the claimant is ineligible for benefits for which he or she would otherwise be eligible in an amount equivalent to eight times the claimant's weekly benefit rate for the week in which the claim is made.

Further, the *Act* requires that DWD apply any ineligibility against benefits and weeks of eligibility for which the claimant would otherwise be eligible after the week of concealment and within six years after the date of an initial determination finding that a concealment occurred. In addition, under the Act, a claimant may not receive a waiting period credit for the period of ineligibility.

### **Unemployment Program Integrity Fund**

The *Act* creates the Unemployment Program Integrity Fund that consists of amounts collected as penalties assessed against claimants for acts of concealment. [See the Act Memo for 2011 Wisconsin Act 236 for a description of the 15% penalty assessed against claimants for acts of concealment.] Under the Act, the fund is repealed on January 1, 2014, and the deposit of penalties in the fund applies with respect to overpayments established by DWD prior to October 21, 2013. For overpayments established by DWD after October 21, 2013, penalties are deposited in the unemployment reserve fund.

The *Act* requires DWD to use the Unemployment Program Integrity Fund for payment of costs associated with program integrity activities. In addition, the Act provides that the State of Wisconsin Investment Board (SWIB) has exclusive control of the investment and collection of the principal and interest of all moneys loaned or invested from the Unemployment Program Integrity Fund.

### **Benefits for Partial Unemployment and Full-Time Work**

Under *current law*, if a claimant earns wages in a given week, the first \$30 of the wages are disregarded and the claimant's applicable weekly benefit payment is reduced by 67% of the remaining amount, except that no claimant is eligible for benefits if the benefit payment would be less than \$5 for any week.

**Current law** provides exceptions to benefits for partial unemployment. One exception provides that a claimant is ineligible to receive any benefits for a week if the claimant is engaged in employment with an employer from which the claimant was paid at least 80% of his or her base period wages and one of the following applies:

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

Another exception provides that a claimant is ineligible to receive any benefits for a week in which the claimant works a total of 40 or more hours for one or more employing units.

The **Act** replaces the above exceptions with the exceptions described in this paragraph. First, the Act provides that a claimant is ineligible to receive any benefits for a week in which one or more of the following applies to the claimant for 32 or more hours in that week:

- The claimant performs work.
- The claimant has wages ascribed under s. 108.04 (1) (bm), Stats.
- The claimant receives holiday pay, vacation pay, termination pay, or sick pay under circumstances that satisfy certain requirements for treatment as wages in that week.

Second, the **Act** provides that a claimant is ineligible to receive any benefits for a week if the claimant receives from one or more employers: (1) wages earned for work performed in that week of more than \$500; or (2) sick pay, holiday pay, vacation pay, or termination pay which, by itself or in combination with wages earned for work performed in that week, is equivalent to more than \$500.

### **Tests for Illegal Drugs**

**Current law** provides that if a claimant fails to accept suitable work, without good cause, the claimant is ineligible to receive benefits for a specified period of time. A claimant's failure to accept an offer of work includes: (1) the claimant's refusal, without good cause, to take a test for illegal drugs given on behalf of the employer as a condition of employment; or (2) the employer's withdrawal of or failure to extend an offer of work due to a positive test result. A drug test may not be found to be positive for illegal drugs unless the test was conducted and certified in a manner approved by DWD. An employer must report to DWD a claimant's positive drug test or refusal to take a drug test, as DWD requires or approves. DWD must retain drug test information obtained from employers for the purpose of determining eligibility for benefits.

The *Act* repeals the provisions relating to tests for illegal drugs.

### **Work Search Requirements**

Under *current law*, a claimant is generally required to conduct a reasonable search for suitable work in order to be eligible for UI benefits during a given week. The search for suitable work must include two actions that constitute a reasonable search. DWD may waive work search requirements under certain conditions.

The *Act* specifies that the work search requirement applies, unless the search requirement is waived by DWD. Further, the Act provides that a claimant is ineligible to receive benefits for any week for which there is a determination that the claimant failed to conduct a reasonable search for suitable work and DWD has not waived the work search requirement. If DWD has paid benefits to a claimant for any such week, DWD may recover the overpayment.

### **Overpayments Resulting From Failure to Report Earnings**

*Current law* provides that if an overpayment of UI benefits results from fraud, DWD may recoup the amount of the overpayment by offsetting the amount of the overpayment against a federal tax refund.

The *Act* provides that an overpayment resulting from a failure to report earnings may also be recouped by an offset against a federal tax refund.

### **Unemployment Interest Payment Fund and Employer Assessments**

Under *current law*, an employer subject to the UI law must pay an assessment to the UI administrative account at a rate established by DWD sufficient to pay interest due on advances from the federal unemployment account. If the amounts collected under this provision exceed the amounts needed to pay interest, the excess is credited to the balancing account of the UI fund.

The *Act* creates the Unemployment Interest Payment Fund and provides that employer assessments to pay interest on advances from the federal unemployment account are paid to the Unemployment Interest Payment Fund, not the UI administrative account. In addition, the Act requires that DWD use any excess to pay interest owed in subsequent years on advances from the federal unemployment account and that if DWD determines that additional interest obligations are unlikely, DWD must transfer the excess to the balancing account of the UI fund.

In addition, the *Act* provides that SWIB has exclusive control of the investment and collection of the principal and interest of all moneys loaned or invested from the Unemployment Interest Payment Fund.

Lastly, the *Act* provides that if an employer owes an assessment to the Unemployment Interest Payment Fund and fails to pay the amount owed, DWD has a perfected lien upon the employer's right, title, and interest in all of its real and personal property located in this state in the amount finally determined to be owed, plus costs. The Act also provides that DWD may levy upon any property belonging to the employer for a delinquent assessment.

### **Determination of Employer**

The *Act* generally provides that if there is more than one employing unit that has a relationship to an employee, DWD must determine which of the employing units is the employer of the employee for purposes of UI law by considering the following:

- An employing unit's right by contract and in fact to: (1) determine a prospective employee's qualifications to perform the services in question and to hire or discharge the employee; (2) determine the details of the employee's pay, including the amount of, method of, and frequency of changes in that pay; (3) train the employee and exercise direction and control over the performance of services by the employee and when and how the services are to be performed; (4) impose discipline upon the employee for rule or policy infractions or unsatisfactory performance; (5) remove the employee from one job or assign the employee to a different job; (6) require oral or written reports from the employee; (7) evaluate the quantity and quality of the services provided by the employee; (8) assign a substitute employee to perform the services of an employee if the employee is unavailable for work or is terminated from work; and (9) assign alternative work to the employee if the employee is removed from a particular job.
- Which employing unit: (1) benefits directly or indirectly from the services performed by the employee; (2) maintains a pool of workers who are available to perform the services in question; and (3) is responsible for employee compliance with applicable regulatory laws and for enforcement of such compliance.

In addition, the *Act* provides that a provider of home health care and personal care services for Medical Assistance recipients may elect to be the employer of one or more employees providing those services. As a condition of eligibility for election to be the employer under this provision, the provider must notify, in writing, the recipient of the services of its election, for purposes of UI law, to be the employer of any worker providing services to the recipient, and must be treated as the employer by the federal Internal Revenue Service for purposes of federal UI taxes on the worker's services.

### **Contribution Rate of Successor Employers**

Under *current law*, when the business of an employer is transferred, the transferee is deemed a successor employer for purposes of the UI law if DWD determines that certain conditions have been satisfied. DWD must determine or redetermine the contribution rate for a successor employer effective as of the beginning of the first quarter following the date of the transfer of the business.

The *Act* provides that DWD must redetermine the contribution rate of a successor employer that is subject to the UI law immediately prior to the effective date of a transfer as of the applicable computation date effective for contributions payable beginning in the first calendar year following the date of the transfer of the business.

***Effective date:*** The Act generally takes effect on April 22, 2012, but various provisions of the Act first apply on other dates.

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