



2013 SENATE BILL 28

February 19, 2013 – Introduced by Senators LASSA, TAYLOR, HANSEN, HARRIS and LEHMAN, cosponsored by Representatives PASCH, BERCEAU, ZEPNICK, HULSEY, WRIGHT, SINICKI, BEWLEY, OHNSTAD, KAHL, SHANKLAND and MILROY. Referred to Committee on Workforce Development, Forestry, Mining, and Revenue.

1 **AN ACT to amend** 108.04 (1) (a) (intro.), 108.04 (1) (b) 1., 108.04 (2) (a) 1., 108.04
2 (2) (a) 2., 108.04 (2) (a) 3. (intro.), 108.04 (2) (bm), 108.05 (1) (q) (intro.), 108.05
3 (3) (a), 108.05 (3) (c) (intro.) and 108.05 (3) (dm) (intro.); and **to create** 108.062
4 of the statutes; **relating to:** payment of unemployment insurance benefits
5 under a work-sharing program.

Analysis by the Legislative Reference Bureau

Currently, if a claimant under the unemployment insurance (UI) law receives no wages or certain other amounts that are treated as wages for a given week, the claimant may receive the full benefit for that week to which the claimant is entitled if the claimant meets eligibility requirements. However, with certain exceptions, if a claimant earns wages or certain other amounts treated as wages in a given week, the first \$30 of the wages or other amounts are disregarded and the claimant's weekly benefit payment is reduced by 67 percent of any remaining amount earned, but no claimant is eligible to receive UI benefits for any week if the benefits would be less than \$5, and any wages that the claimant would have earned in any week for work performed for his or her employer had the claimant accepted available work from that employer are treated as wages earned for that week.

This bill permits an employer to create a work-sharing program within a work unit of the employer. Before implementation of any program, an employer must submit a work-share plan to the Department of Workforce Development (DWD) and obtain DWD's approval of the plan. As a part of its submittal, the employer must

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certify that its plan is in compliance with all requirements under the law. Under the bill, a work-share program may be in effect for no longer than six months within a five-year period and must include at least 10 percent of and at least 20 employees in the work unit. Under the program, the working hours of all of the full-time employees in the program are reduced in an equitable manner in lieu of a total layoff of some of the employees and a continuation of full-time employment by the other employees. The bill provides that a claimant who is included in a work-share program may receive UI benefits during his or her continued employment with the work-sharing employer in an amount equal to the claimant's benefit for total unemployment multiplied by the same percentage reduction in normal working hours that the claimant incurs under the program, or the benefit that would be payable to the claimant under the current formula for payment of UI benefits for partial unemployment, whichever is higher. A claimant who begins receiving UI benefits before the effective period of a work-share program and who remains eligible for benefits is eligible to receive work-share benefits up to the total amount of the claimant's benefit entitlement and a claimant who has remaining benefit entitlement after the effective period of a work-share program and who remains eligible for UI benefits may continue to receive benefits until the entitlement is exhausted. The bill does not affect eligibility for supplemental UI benefits such as federal/state extended benefits, Wisconsin supplemental benefits, and special additional federal benefits in the full amounts that would otherwise be payable.

The bill provides that if there is a single representative of the employees who are proposed to be included under a work-share program, the plan is subject to the approval of that representative. Under the bill, a work-share program must exclude participation by employees who are employed on a regular part-time, seasonal, temporary, or intermittent basis and may only apply to employees who have been engaged in employment with the employer for at least three months before the effective period of the program and who have been regularly employed in that employment for an average of at least 32 hours per week during that period. The bill provides that an employer that creates a work-share program must maintain retirement plan and health insurance coverage for employees who are included in the program during the effective period of the program under the same terms and conditions as if the employees were not included under the program. The bill permits DWD to revoke its approval of a work-share plan for specified reasons and also permits an employer to terminate a work-share program before the end of its scheduled effective period.

Currently, with certain exceptions, a claimant is eligible for UI benefits for any week in which the claimant earns no wages only if the claimant is available for work within that week, is registered for work during that week, and conducts a reasonable search for suitable work during that week. This bill provides that a claimant who is receiving UI benefits for any week in which he or she is included in a work-share program need not be available for work in that week other than for the normal hours of work that the employer worked for the work-share employer immediately before the effective period of the work-share program. The bill also provides that the requirements to register for work and conduct a reasonable search for suitable work

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are waived during each week that an employee included in a work–share agreement is receiving benefits, during the effective period of the agreement.

Under recent federal legislation, the federal government participates in the cost of administration of qualifying work–share programs and payment of benefits to participating employees. The bill directs DWD to seek full federal financial participation in the payment of these costs by this state.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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

2 108.04 (1) (a) (intro.) If Except as provided in s. 108.062 (10), if an employee
3 is with due notice called on by his or her current employing unit to report for work
4 actually available within a given week and is unavailable for, or unable to perform:

5 **SECTION 2.** 108.04 (1) (b) 1. of the statutes is amended to read:

6 108.04 (1) (b) 1. Except as provided in subd. 2. and s. 108.062 (10), if an
7 employee’s employment is suspended by the employee or the employee’s employer or
8 an employee is terminated by the employee’s employer, due to the employee’s
9 unavailability for work or inability to perform suitable work otherwise available
10 with the employee’s employer, or if the employee is on a leave of absence, the
11 employee is ineligible for benefits while the employee is unable to work or
12 unavailable for work.

13 **SECTION 3.** 108.04 (2) (a) 1. of the statutes is amended to read:

14 108.04 (2) (a) 1. ~~The~~ Except as provided in s. 108.062 (10), the individual is able
15 to work and available for work during that week;

16 **SECTION 4.** 108.04 (2) (a) 2. of the statutes is amended to read:

17 108.04 (2) (a) 2. ~~As~~ Except as provided in s. 108.062 (10m), as of that week, the
18 individual has registered for work; and

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1 **SECTION 5.** 108.04 (2) (a) 3. (intro.) of the statutes is amended to read:

2 108.04 (2) (a) 3. (intro.) The individual conducts a reasonable search for
3 suitable work during that week, unless the search requirement is waived under par.
4 (b) or s. 108.062 (10m). The search for suitable work must include 2 actions that
5 constitute a reasonable search as prescribed by rule of the department. This
6 subdivision does not apply to an individual if the department determines that the
7 individual is currently laid off from employment with an employer but there is a
8 reasonable expectation of reemployment of the individual by that employer. In
9 determining whether the individual has a reasonable expectation of reemployment
10 by an employer, the department shall request the employer to verify the individual's
11 employment status and shall also consider other factors, including:

12 **SECTION 6.** 108.04 (2) (bm) of the statutes is amended to read:

13 108.04 (2) (bm) A claimant is ineligible to receive benefits for any week for
14 which there is a determination that the claimant failed to conduct a reasonable
15 search for suitable work and the department has not waived the search requirement
16 under par. (b) or s. 108.062 (10m). If the department has paid benefits to a claimant
17 for any such week, the department may recover the overpayment under s. 108.22 (8).

18 **SECTION 7.** 108.05 (1) (q) (intro.) of the statutes is amended to read

19 108.05 (1) (q) (intro.) ~~Each~~ Except as provided in s. 108.062 (6), each eligible
20 employee shall be paid benefits for each week of total unemployment that
21 commences on or after January 4, 2009, at the weekly benefit rate specified in this
22 paragraph. Unless sub. (1m) applies, the weekly benefit rate shall equal 4 percent
23 of the employee's base period wages that were paid during that quarter of the
24 employee's base period in which the employee was paid the highest total wages,
25 rounded down to the nearest whole dollar, except that, if that amount is less than the

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1 minimum amount shown in the following schedule, no benefits are payable to the
2 employee and, if that amount is more than the maximum amount shown in the
3 following schedule, the employee's weekly benefit rate shall be the maximum
4 amount shown in the following schedule and except that, if the employee's benefits
5 are exhausted during any week under s. 108.06 (1), the employee shall be paid the
6 remaining amount of benefits payable to the employee in lieu of the amount shown
7 in the following schedule: [See Figure 108.05 (1) (q) following]

8 **SECTION 8.** 108.05 (3) (a) of the statutes is amended to read:

9 108.05 (3) (a) Except as provided in pars. (c), (d) and (dm) and s. 108.062, if an
10 eligible employee earns wages in a given week, the first \$30 of the wages shall be
11 disregarded and the employee's applicable weekly benefit payment shall be reduced
12 by 67% of the remaining amount, except that no such employee is eligible for benefits
13 if the employee's benefit payment would be less than \$5 for any week. For purposes
14 of this paragraph, "wages" includes any salary reduction amounts earned that are
15 not wages and that are deducted from the salary of a claimant by an employer
16 pursuant to a salary reduction agreement under a cafeteria plan, within the meaning
17 of 26 USC 125, and any amount that a claimant would have earned in available work
18 under s. 108.04 (1) (a) which is treated as wages under s. 108.04 (1) (bm), but excludes
19 any amount that a claimant earns for services performed as a volunteer fire fighter,
20 volunteer emergency medical technician, or volunteer first responder. In applying
21 this paragraph, the department shall disregard discrepancies of less than \$2
22 between wages reported by employees and employers.

23 **SECTION 9.** 108.05 (3) (c) (intro.) of the statutes is amended to read:

24 108.05 (3) (c) (intro.) ~~-A-~~ Except when otherwise authorized in an approved
25 work-share program under s. 108.062, a claimant is ineligible to receive any benefits

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1 for a week in which one or more of the following applies to the claimant for 32 or more
2 hours in that week:

3 **SECTION 10.** 108.05 (3) (dm) (intro.) of the statutes is amended to read:

4 108.05 (3) (dm) (intro.) ~~A~~ Except when otherwise authorized in an approved
5 work–share program under s. 108.062, a claimant is ineligible to receive any benefits
6 for a week if the claimant receives from one or more employers:

7 **SECTION 11.** 108.062 of the statutes is created to read:

8 **108.062 Work–share programs; benefit payments.** (1) DEFINITIONS. In
9 this section:

10 (a) “Regular benefits” means benefits payable to an individual under this
11 chapter or any other state law, including benefits payable to federal civilian
12 employees and to former military personnel pursuant to 5 USC ch. 85, other than
13 Wisconsin supplemental benefits, extended benefits, and additional benefits as
14 defined in P.L. 91–373.

15 (b) “Work–share program” means a program approved by the department
16 under which the hours of work of employees in a work unit are reduced in lieu of a
17 layoff of one or more employees in the work unit.

18 (c) “Work unit” means an operational unit of employees designated by an
19 employer for purposes of a work–share program, which may include more than one
20 work site.

21 **(2) ELEMENTS OF PLAN.** Any employer may create a work–share program. Prior
22 to implementing a work–share program, an employer shall submit a work–share
23 plan for the approval of the department. In its submittal, the employer shall certify
24 that its plan is in compliance with all requirements under this section. Each plan
25 shall:

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1 (a) Specify the work unit in which the plan will be implemented, the affected
2 positions, and the names of the employees filling those positions on the date of
3 submittal.

4 (b) Provide for inclusion of at least 10 percent of the employees in the affected
5 work unit on the date of submittal.

6 (c) Provide for initial coverage under the plan of at least 20 positions that are
7 filled on the effective date of the work–share program.

8 (d) Specify the period when the plan will be in effect, which may not exceed 6
9 months in any 5–year period within the same work unit.

10 (e) Provide for apportionment of reduced working hours equitably among
11 employees in the work–share program.

12 (f) Exclude participation by employees who are employed on a regular
13 part–time, seasonal, temporary, or intermittent basis.

14 (g) Apply only to employees who have been engaged in employment with the
15 employer for a period of at least 3 months on the effective date of the work–share
16 program and who are regularly employed by the employer in that employment for
17 an average of at least 32 hours per week during that period.

18 (h) Specify the normal average hours per week worked by the employees in the
19 work unit and the intended reduction or range of reduction in the average hours of
20 work per week worked by the employees under the plan, which shall be at least 10
21 percent but not more than 50 percent of the normal hours per work of the employees
22 included under the plan.

23 (i) Describe the manner in which requirements for maximum federal financial
24 participation in the plan will be implemented, including a plan for giving notice,
25 where feasible, to participating employees of changes in work schedules.

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1 (j) Provide an estimate of the number of layoffs that would occur without
2 implementation of the plan.

3 (k) Specify the effect on any fringe benefits provided by the employer to the
4 employees who are included in the work–share program other than fringe benefits
5 required by law.

6 (L) Include a statement signed by the authorized agent of any representative
7 of the employees included in the work–share program to the effect that the
8 representative has approved the plan whenever approval is required under sub. (13).

9 (m) Include a statement affirming that the plan is in compliance with all
10 employer obligations under applicable federal and state laws.

11 **(3) APPROVAL OF PLANS.** The department shall approve a plan if the plan
12 includes all of the elements specified in sub. (2). The approval is effective for the
13 effective period of the plan.

14 **(4) EFFECTIVE PERIOD.** A work–share program becomes effective on the later of
15 the Sunday of the 2nd week beginning after approval of a work–share plan under
16 sub. (3) or any Sunday after that day specified in the plan. A work–share program
17 ends on the earlier of the last Sunday that precedes the end of the 6–month period
18 beginning on the effective date of the program or any Sunday before that day
19 specified in the plan unless the program terminates on an earlier date under sub. (5),
20 (14), or (15).

21 **(5) REVOCATION OF APPROVAL.** The department may revoke its approval of a
22 work–share plan for good cause, including conduct that tends to defeat the purpose
23 and effective operation of the plan, failure to comply with the requirements of this
24 section or the work–share plan, or an unreasonable change to the productivity
25 standards of the employees included under the work–share program. Any revocation

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1 is effective on the Sunday of the 2nd week beginning after revocation of approval of
2 the plan under this subsection.

3 (6) BENEFIT AMOUNT. Except as provided in sub. (7), an employee who is
4 included under a work–share program and who qualifies to receive regular benefits
5 for any week during the effective period of the program shall receive a benefit
6 payment for each week that the employee is included under the program in an
7 amount equal to the employee’s regular benefit amount under s. 108.05 (1)
8 multiplied by the employee’s proportionate reduction in hours worked for that week
9 as a result of the work–share program.

10 (7) BENEFITS FOR PARTIAL UNEMPLOYMENT. An employee who would otherwise be
11 paid benefits under s. 108.05 (3) for any week shall receive a benefit payment for that
12 week in the amount payable to the employee under sub. (6) or the amount payable
13 to the employee under s. 108.05 (3), whichever is higher.

14 (8) BENEFIT YEAR. An employee may be paid a benefit under sub. (6) only for
15 weeks beginning in the employee’s benefit year in an amount not exceeding the
16 employee’s total benefit entitlement under s. 108.06 (1). Benefits paid under sub. (6)
17 may begin after the first week of the employee’s benefit year or may terminate earlier
18 than the last week of the employee’s benefit year.

19 (9) OTHER BENEFITS. An employee who receives benefits under sub. (6) remains
20 eligible for any benefits other than regular benefits for which the employee may
21 qualify and the amount of those benefits is not affected by the employee’s receipt of
22 benefits under sub. (6).

23 (10) AVAILABILITY FOR WORK. An employee who is receiving benefits under sub.
24 (6) for any week need not be available for work in that week other than for the normal
25 hours of work that the employee worked for the employer that creates the

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1 work–share program immediately before the week in which the work–share program
2 began.

3 **(10m) REGISTRATION FOR WORK AND WORK SEARCH.** The department shall waive
4 the requirements to register for work under s. 108.04 (2) (a) 2. and to conduct a search
5 for work under s. 108.04 (2) (a) 3. for an employee during each week that the
6 employee is receiving benefits under a work–share agreement under sub. (6).

7 **(11) OTHER EMPLOYMENT.** An employee who is included in a work–share
8 program during a benefit year may be paid wages during the same benefit year by
9 an employer other than the employer who creates the work–share program.

10 **(12) RETIREMENT PLAN AND HEALTH INSURANCE COVERAGE.** An employer that
11 creates a work–share program shall maintain coverage under any defined benefit or
12 defined contribution retirement plan and any health insurance coverage that the
13 employer provides to the employees who are included in a work–share program,
14 including any particulars of coverage and percentages contributed by the employer
15 for the costs of that coverage, during the effective period of the program under the
16 same terms and conditions as if the employees were not included in the program.

17 **(13) APPROVAL BY EMPLOYEE REPRESENTATIVE.** If there is a single representative
18 representing some or all of the employees who are included in a work–share plan, the
19 plan is subject to approval of that representative.

20 **(14) TERMINATION BY EMPLOYER.** An employer that creates a work–share
21 program may terminate the program before the end of the effective period as
22 provided in the work–share plan by filing notice of termination with the department.
23 The program is then terminated on the 2nd Sunday following the date that the notice
24 of termination is filed unless the notice specifies that the program is terminated at

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1 the beginning of a later week in which case the program terminates at the beginning
2 of that week.

3 (15) INVOLUNTARY TERMINATION. If in any week there are fewer than 20
4 employees who are included in a work–share program of any employer, the program
5 terminates on the 2nd Sunday following the end of that week.

6 (16) SUCCESSORSHIP. If all or any part of the business of an employer that
7 creates a work–share program is transferred as provided in s. 108.16 (8), the
8 successor employer may continue the work–share program as provided in the
9 work–share plan or may terminate the program by filing notice of termination under
10 sub. (14). Termination by a successor employer does not affect any employees of the
11 transferring employer who continue their employment with the transferring
12 employer.

13 (17) TERMINATION OF EMPLOYMENT. An employee who is included in a
14 work–share program may be terminated or may voluntarily terminate his or her
15 employment during the effective period of the program and the employee’s eligibility
16 or ineligibility for benefits for any weeks beginning after the date of termination is
17 not affected solely as a result of the employee’s inclusion in the program.

18 (18) FEDERAL FINANCIAL PARTICIPATION. The department shall seek to qualify
19 this state for full federal participation in the cost of administration of this section and
20 financing of benefits to employees participating in work–share programs under this
21 section.

22 (END)