



## 2013 ASSEMBLY BILL 15

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.

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*Analysis by the Legislative Reference Bureau*

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

6           **SECTION 1.** 108.04 (1) (a) (intro.) of the statutes is amended to read:  
7           108.04 (1) (a) (intro.) If Except as provided in s. 108.062 (10), if an employee  
8           is with due notice called on by his or her current employing unit to report for work  
9           actually available within a given week and is unavailable for, or unable to perform:  
10          **SECTION 2.** 108.04 (1) (b) 1. of the statutes is amended to read:

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

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

9           108.04 (2) (a) 1. ~~The Except as provided in s. 108.062 (10), the individual is able~~  
10 to work and available for work during that week;

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

12           108.04 (2) (a) 2. ~~As Except as provided in s. 108.062 (10m), as~~ of that week, the  
13 individual has registered for work; and

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

15           108.04 (2) (a) 3. (intro.) The individual conducts a reasonable search for  
16 suitable work during that week, unless the search requirement is waived under par.  
17 (b) or s. 108.062 (10m). The search for suitable work must include 2 actions that  
18 constitute a reasonable search as prescribed by rule of the department. This  
19 subdivision does not apply to an individual if the department determines that the  
20 individual is currently laid off from employment with an employer but there is a  
21 reasonable expectation of reemployment of the individual by that employer. In  
22 determining whether the individual has a reasonable expectation of reemployment  
23 by an employer, the department shall request the employer to verify the individual's  
24 employment status and shall also consider other factors, including:

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

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1           108.04 (2) (bm) A claimant is ineligible to receive benefits for any week for  
2           which there is a determination that the claimant failed to conduct a reasonable  
3           search for suitable work and the department has not waived the search requirement  
4           under par. (b) or s. 108.062 (10m). If the department has paid benefits to a claimant  
5           for any such week, the department may recover the overpayment under s. 108.22 (8).

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

7           108.05 (1) (q) (intro.) ~~Each~~ Except as provided in s. 108.062 (6) (a), each eligible  
8           employee shall be paid benefits for each week of total unemployment that  
9           commences on or after January 4, 2009, at the weekly benefit rate specified in this  
10          paragraph. Unless sub. (1m) applies, the weekly benefit rate shall equal 4 percent  
11          of the employee's base period wages that were paid during that quarter of the  
12          employee's base period in which the employee was paid the highest total wages,  
13          rounded down to the nearest whole dollar, except that, if that amount is less than the  
14          minimum amount shown in the following schedule, no benefits are payable to the  
15          employee and, if that amount is more than the maximum amount shown in the  
16          following schedule, the employee's weekly benefit rate shall be the maximum  
17          amount shown in the following schedule and except that, if the employee's benefits  
18          are exhausted during any week under s. 108.06 (1), the employee shall be paid the  
19          remaining amount of benefits payable to the employee in lieu of the amount shown  
20          in the following schedule: [See Figure 108.05 (1) (q) following]

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

22          108.05 (3) (a) Except as provided in pars. (c), (d) and (dm) and s. 108.062, if an  
23          eligible employee earns wages in a given week, the first \$30 of the wages shall be  
24          disregarded and the employee's applicable weekly benefit payment shall be reduced  
25          by 67% of the remaining amount, except that no such employee is eligible for benefits

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1 if the employee's benefit payment would be less than \$5 for any week. For purposes  
2 of this paragraph, "wages" includes any salary reduction amounts earned that are  
3 not wages and that are deducted from the salary of a claimant by an employer  
4 pursuant to a salary reduction agreement under a cafeteria plan, within the meaning  
5 of 26 USC 125, and any amount that a claimant would have earned in available work  
6 under s. 108.04 (1) (a) which is treated as wages under s. 108.04 (1) (bm), but excludes  
7 any amount that a claimant earns for services performed as a volunteer fire fighter,  
8 volunteer emergency medical technician, or volunteer first responder. In applying  
9 this paragraph, the department shall disregard discrepancies of less than \$2  
10 between wages reported by employees and employers.

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

12 108.05 (3) (c) (intro.) ~~A~~ Except when otherwise authorized in an approved  
13 work-share program under s. 108.062, a claimant is ineligible to receive any benefits  
14 for a week in which one or more of the following applies to the claimant for 32 or more  
15 hours in that week:

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

17 108.05 (3) (dm) (intro.) ~~A~~ Except when otherwise authorized in an approved  
18 work-share program under s. 108.062, a claimant is ineligible to receive any benefits  
19 for a week if the claimant receives from one or more employers:

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

21 **108.062 Work-share programs; benefit payments.** (1) DEFINITIONS. In  
22 this section:

23 (a) "Regular benefits" means benefits payable to an individual under this  
24 chapter or any other state law, including benefits payable to federal civilian  
25 employees and to former military personnel pursuant to 5 USC ch. 85, other than

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1 Wisconsin supplemental benefits, extended benefits, and additional benefits as  
2 defined in P.L. 91-373.

3 (b) “Work-share program” means a program approved by the department  
4 under which the hours of work of employees in a work unit are reduced in lieu of the  
5 layoffs of 2 or more employees in the work unit.

6 (c) “Work unit” means an operational unit of employees designated by an  
7 employer for purposes of a work-share program, which may include more than one  
8 work site.

9 **(2) ELEMENTS OF PLAN.** Any employer may create a work-share program. Prior  
10 to implementing a work-share program, an employer shall submit a work-share  
11 plan for the approval of the department. In its submittal, the employer shall certify  
12 that its plan is in compliance with all requirements under this section. Each plan  
13 shall:

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

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

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

21 (d) Specify the period or periods when the plan will be in effect, which may not  
22 exceed a total of 6 months in any 5-year period within the same work unit.

23 (e) Provide for apportionment of reduced working hours equitably among  
24 employees in the work-share program.

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1 (f) Exclude participation by employees who are employed on a seasonal,  
2 temporary, or intermittent basis.

3 (g) Apply only to employees who have been engaged in employment with the  
4 employer for a period of at least 3 months on the effective date of the work–share  
5 program and who are regularly employed by the employer in that employment.

6 (h) Specify the normal average hours per week worked by each employee in the  
7 work unit and the percentage reduction in the average hours of work per week  
8 worked by that employee, exclusive of overtime hours, which shall be applied in a  
9 uniform manner and which shall be at least 10 percent but not more than 50 percent  
10 of the normal hours per work of that employee.

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

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

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

19 (L) Include a statement affirming that the plan is in compliance with all  
20 employer obligations under applicable federal and state laws.

21 (m) Indicate whether the plan will include training to enhance job skills  
22 sponsored by the employer and acknowledge that, pursuant to federal law, the  
23 employees in the work unit may participate in training funded under the federal  
24 Workforce Investment Act of 1998 without affecting availability for work, subject to  
25 the approval of the department.

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1           **(3) APPROVAL OF PLANS.** The department shall approve a plan if the plan  
2 includes all of the elements specified in sub. (2). The approval is effective for the  
3 effective period of the plan unless modified under sub. (3m).

4           **(3m) MODIFICATION OF PLANS.** Upon application of an employer that created a  
5 plan, the department may approve a modification to the plan. An approved  
6 modification is effective beginning on the date that the modification is approved by  
7 the department and is effective for the remaining effective period of the plan.

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

15           **(5) REVOCATION OF APPROVAL.** The department may revoke its approval of a  
16 work–share plan for good cause, including conduct that tends to defeat the purpose  
17 and effective operation of the plan, failure to comply with the requirements of this  
18 section or the work–share plan, or an unreasonable change to the productivity  
19 standards of the employees included under the work–share program. Any revocation  
20 is effective on the Sunday of the 2nd week beginning after revocation of approval of  
21 the plan under this subsection.

22           **(6) BENEFIT AMOUNT.** (a) Except as provided in par. (b) and sub. (7), an employee  
23 who is included under a work–share program and who qualifies to receive regular  
24 benefits for any week during the effective period of the program shall receive a  
25 benefit payment for each week that the employee is included under the program in

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1 an amount equal to the employee's regular benefit amount under s. 108.05 (1)  
2 multiplied by the employee's proportionate reduction in hours worked for that week  
3 as a result of the work-share program.

4 (b) No employee who is included in a work unit is eligible to receive any benefits  
5 for a week in which the plan is in effect in which the employee is engaged in work for  
6 the employer that sponsors the plan which, when combined with work performed by  
7 the employee for any other employer for the same week, exceed 90 percent of the  
8 employee's average hours of work per week for the employer that creates the plan,  
9 as identified in the plan.

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) (a) 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) (a) only  
15 for 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 (a) may begin after the first week of the employee's benefit year or may terminate  
18 earlier than the last week of the employee's benefit year.

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

23 (10) AVAILABILITY FOR WORK. An employee who is receiving benefits under sub.  
24 (6) (a) for any week need not be available for work in that week other than for the  
25 normal 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 and any additional hours in which the employee is engaged in training to  
3 enhance job skills sponsored by the employer that creates the plan or training funded  
4 under the federal Workforce Investment Act of 1998 that is approved by the  
5 department.

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

10 **(11) OTHER EMPLOYMENT.** An employee who is included in a work-share  
11 program during a benefit year may be paid wages during the same benefit year by  
12 an employer other than the employer who creates the work-share program. An  
13 employee's benefit eligibility for such work is subject to the limitation under sub. (6)  
14 (b).

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

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

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1 of termination is filed unless the notice specifies that the program is terminated at  
2 the beginning of a later week in which case the program terminates at the beginning  
3 of that week.

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

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

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

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

23 (19) SECRETARY MAY WAIVE COMPLIANCE. The secretary may waive compliance  
24 with any requirement under this section if the secretary determines that waiver of  
25 the requirement is necessary to permit continued certification of this chapter for

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1 grants to this state under Title III of the federal Social Security Act, for maximum  
2 credit allowances to employers under the federal Employment Tax Act, or for this  
3 state to qualify for full federal financial participation in the cost of administration  
4 of this section and financing of benefits to employees participating in work-share  
5 programs under this section.

6 **SECTION 12. Nonstatutory provisions.**

7 (1) Notwithstanding the effective date of this act, the department of workforce  
8 development may request approval of the joint committee on finance to delay  
9 implementation of this act until a date no later than December 31, 2013, by  
10 submitting a request to the cochairpersons of the committee. If the cochairpersons  
11 notify the department and the legislative reference bureau that the committee has  
12 approved a delay in implementation of this act until a date specified by the  
13 committee, the department may delay implementation of this act until the date  
14 specified by the committee.

15 **SECTION 13. Effective date.**

16 (1) This act takes effect on June 30, 2013.

17 (END)