

State of Wisconsin



2013 Assembly Bill 15

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2013 WISCONSIN ACT 11

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

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

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

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

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

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

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

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

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

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

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

108.04 (2) (a) 3. (intro.) The individual conducts a reasonable search for suitable work during that week, unless the search requirement is waived under par. (b) or s. 108.062 (10m). 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:

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

108.04 (2) (bm) A claimant is ineligible to receive benefits for any week for which there is a determination

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

that the claimant failed to conduct a reasonable search for suitable work and the department has not waived the search requirement under par. (b) or s. 108.062 (10m). If the department has paid benefits to a claimant for any such week, the department may recover the overpayment under s. 108.22 (8).

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

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

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

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

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

108.05 (3) (c) (intro.) ~~A~~ Except when otherwise authorized in an approved work-share program under s.

108.062, 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) Apply only to employees who have been engaged in employment with the employer for a period of at least 3 months on the effective date of the work-share program

and who are regularly employed by the employer in that employment.

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

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

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

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

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

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

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

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

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

(5) REVOCATION OF APPROVAL. The department may revoke its approval of a work-share plan for good cause, including conduct that tends to defeat the purpose and effective operation of the plan, failure to comply with the requirements of this section or the work-share plan, or an

unreasonable change to the productivity standards of the employees included under the work-share program. Any revocation is effective on the Sunday of the 2nd week beginning after revocation of approval of the plan under this subsection.

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

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

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

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

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

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

(10m) REGISTRATION FOR WORK AND WORK SEARCH. The department shall waive the requirements to register for work under s. 108.04 (2) (a) 2. and to conduct a search

for work under s. 108.04 (2) (a) 3. for an employee during each week that the employee is receiving benefits under a work-share agreement under sub. (6) (a).

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

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

(14) TERMINATION BY EMPLOYER. An employer that creates a work-share program may terminate the program before the end of the effective period as provided in the work-share plan by filing notice of termination with the department. The program is then terminated on the 2nd Sunday following the date that the notice of termination is filed unless the notice specifies that the program is terminated at the beginning of a later week in which case the program terminates at the beginning of that week.

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

(16) SUCCESSIONSHIP. If all or any part of the business of an employer that creates a work-share program is transferred as provided in s. 108.16 (8), the successor employer may continue the work-share program as provided in the work-share plan or may terminate the program by filing notice of termination under sub. (14). Termination by a successor employer does not affect any

employees of the transferring employer who continue their employment with the transferring employer.

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

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

(19) SECRETARY MAY WAIVE COMPLIANCE. The secretary may waive compliance with any requirement under this section if the secretary determines that waiver of the requirement is necessary to permit continued certification of this chapter for grants to this state under Title III of the federal Social Security Act, for maximum credit allowances to employers under the federal Employment Tax Act, or for this state to qualify for full federal financial participation in the cost of administration of this section and financing of benefits to employees participating in work-share programs under this section.

SECTION 12. Nonstatutory provisions.

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

SECTION 13. Effective date.

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