State of Wisconsin
2013 - 2014 LEGISLATURE

LRB-2096/1
JTK:cjs:jf

2013 BILL

AN ACT ***to repeal*** 20.445 (1) (fx); ***to amend*** 108.19 (1m) and 108.19 (1m); ~~and~~ ***to create*** 20.445 (1) (fx) of the statutes; **relating to:** payment of interest on advances made by the federal government to the unemployment reserve fund and making an appropriation.

Analysis by the Legislative Reference Bureau

Currently, if in any year the balance in the unemployment reserve fund is insufficient to make full payment of unemployment insurance benefits that become payable to claimants for that year, the Department of Workforce Development (DWD) secures an advance from the federal unemployment account to enable this state to make full payment of all benefits that become payable. Whenever the balance in the unemployment reserve fund is sufficient to repay the federal government for its advances and to continue to make payment of the benefits that become payable, DWD repays the federal government for its outstanding advances. Annually, the federal government assesses interest to this state on this state's outstanding advances that have not been repaid. Currently, if in any year DWD is unable to make full payment of the interest that becomes due from certain other limited sources, each employer must pay an assessment to the state unemployment interest payment fund in an amount specified by law sufficient to enable DWD to make full payment of the interest due for that year.

This bill appropriates a sum sufficient not exceeding $30,000,000 from general purpose revenues to pay any interest that becomes due to the federal government prior to July 1, 2015, on outstanding advances made to the unemployment reserve

fund. Under the bill, DWD must first use any available moneys from this appropriation to make payment of the interest due for any year. If the amount appropriated, together with other available sources, is insufficient to make full payment of the interest that becomes due for any year, each employer must pay an assessment in the amount determined by DWD sufficient to cover the deficiency. If the moneys appropriated under the bill are not fully expended at the end of the 2013–15 fiscal biennium, the balance is retained in the general fund.

For further information see the ***state and local*** 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:

SECTION 1. 20.445 (1) (fx) of the statutes is created to read:

20.445 **(1)** (fx) *Interest on federal advances.* A sum sufficient, not exceeding $30,000,000, to pay interest on advances made by the federal government to the unemployment reserve fund under s. 108.19 (1m).

SECTION 2. 20.445 (1) (fx) of the statutes, as created by 2013 Wisconsin Act .... (this act), is repealed.

SECTION 3. 108.19 (1m) of the statutes is amended to read:

108.19 **(1m)** ~~Each~~ The department shall pay any interest due on advances from the federal unemployment account to the unemployment reserve fund under Title XII of the federal social security act (42 USC 1321 to 1324) by first applying any amount available for that purpose from the appropriation under s. 20.445 (1) (fx). If the amount appropriated under s. 20.445 (1) (fx) is insufficient to make full payment of the amount due for any year, the department shall then apply any unencumbered balance in the unemployment interest payment fund and any amounts paid under s. 108.20 (2m). If those amounts are insufficient to make full payment of the amount due for any year, the department shall require each employer subject to this chapter as of the date a rate is established under this subsection ~~shall~~

to pay an assessment to the unemployment interest payment fund at a rate established by the department sufficient to pay interest due on those advances ~~from the federal unemployment account under title XII of the social security act (42 USC 1321 to 1324)~~. The rate established by the department for employers who finance benefits under s. 108.15 (2), 108.151 (2), or 108.152 (1) shall be 75% of the rate established for other employers. The amount of any employer's assessment shall be the product of the rate established for that employer multiplied by the employer's payroll of the previous calendar year as taken from quarterly employment and wage reports filed by the employer under s. 108.205 (1) or, in the absence of the filing of such reports, estimates made by the department. Each assessment made under this subsection is due on the 30th day commencing after the date on which notice of the assessment is mailed by the department. If the amounts collected from employers under this subsection are in excess of the amounts needed to pay interest due, the department shall use any excess to pay interest owed in subsequent years on advances from the federal unemployment account. If the department determines that additional interest obligations are unlikely, the department shall transfer the excess to the balancing account of the fund.

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SECTION 4. 108.19 (1m) of the statutes, as affected by 2013 Wisconsin Act .... (this act), is amended to read:

108.19 **(1m)** ~~The department shall pay any interest due on advances from the federal unemployment account to the unemployment reserve fund under Title XII of the federal social security act (42 USC 1321 to 1324) by first applying any amount available for that purpose from the appropriation under s. 20.445 (1) (fx). If the amount appropriated under s. 20.445 (1) (fx) is insufficient to make full payment of the amount due for any year, the department shall then apply any unencumbered~~

~~balance in the unemployment interest payment fund and any amounts paid under s. 108.20 (2m). If those amounts are insufficient to make full payment of the amount due for any year, the department shall require each~~ Each employer subject to this chapter as of the date a rate is established under this subsection ~~to~~ shall pay an assessment to the unemployment interest payment fund at a rate established by the department sufficient to pay interest due on ~~those~~ advances from the federal unemployment account under Title XII of the social security act (42 USC 1321 to 1324). The rate established by the department for employers who finance benefits under s. 108.15 (2), 108.151 (2), or 108.152 (1) shall be 75% of the rate established for other employers. The amount of any employer's assessment shall be the product of the rate established for that employer multiplied by the employer's payroll of the previous calendar year as taken from quarterly employment and wage reports filed by the employer under s. 108.205 (1) or, in the absence of the filing of such reports, estimates made by the department. Each assessment made under this subsection is due on the 30th day commencing after the date on which notice of the assessment is mailed by the department. If the amounts collected from employers under this subsection are in excess of the amounts needed to pay interest due, the department shall use any excess to pay interest owed in subsequent years on advances from the federal unemployment account. If the department determines that additional interest obligations are unlikely, the department shall transfer the excess to the balancing account of the fund.

SECTION 5. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of section 108.19 (1m) (by SECTION 4) of the statutes and the repeal of section 20.445 (1) (fx) of the statutes take effect on July 1, 2015.

(END)

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INS 4A:

Failure of claimants to provide requested information

Currently, DWD may require a claimant to answer questions relating to his or her UI benefit eligibility and to provide certain demographic information for auditing purposes. A claimant is not eligible to receive benefits for any week in which the claimant fails to comply with a request by DWD for information and for any subsequent week until the claimant provides the information or satisfies DWD that he or she has good cause for failure to provide the requested information. If a claimant later complies with a request or satisfies DWD that he or she has good cause for failure to comply, the claimant is eligible to receive benefits beginning with the week in which the failure occurred, if otherwise qualified. Under this bill, if a claimant later complies with a request, the claimant is not eligible to receive benefits until the claimant complies with the request *and* satisfies DWD that he or she has good cause for failure to comply with the request. The bill also provides that if a claimant later complies with a request and does not have good cause for his or her initial failure to comply with the request, the claimant is eligible only to receive benefits beginning with the week in which the claimant complies with the request, if otherwise qualified.

INS 27–5:

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

108.04 **(1)** (g) (intro.) Except as provided in par. (gm) ~~and s. 108.06 (7) (d)~~, the base period wages utilized to compute total benefits payable to an individual under s. 108.06 (1) as a result of the following employment shall not exceed 10 times the individual's weekly benefit rate based solely on that employment under s. 108.05 (1):

1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86; 2007 a. 59; 2009 a. 11, 287; 2011 a. 32, 123, 198, 236.

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

108.04 **(1)** (hm) The department may require any claimant to appear before it and to answer truthfully, orally or in writing, any questions relating to the claimant's eligibility for benefits ~~and~~ or to provide such demographic information as may be necessary to permit the department to conduct a statistically valid sample audit of

compliance with this chapter. A claimant is not eligible to receive benefits for any week in which the claimant fails to comply with a request by the department to provide the information required under this paragraph, or any subsequent week, until the claimant complies or satisfies the department that he or she ~~had~~ has good cause for failure to comply with a request of the department under this paragraph. If a claimant later complies with a request by the department ~~or~~ and satisfies the department that he or she ~~had~~ has good cause for failure to comply with ~~a~~ the request, the claimant is eligible to receive benefits ~~as of~~ beginning with the week in which the failure occurred, if otherwise qualified. If a claimant later complies with a request by the department but does not have good cause for the initial failure to comply with the request, the claimant is eligible only to receive benefits beginning with the week in which the claimant complies with the request, if otherwise qualified.

1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86; 2007 a. 59; 2009 a. 11, 287; 2011 a. 32, 123, 198, 236.

INS 29–8:

SECTION 3. 108.06 (1) of the statutes is amended to read:

108.06 **(1)** Except as provided in ~~subs.~~ sub. (6) ~~and (7)~~ and ss. 108.141 and 108.142, no claimant may receive total benefits based on employment in a base period greater than 26 times the claimant's weekly benefit rate under s. 108.05 (1) or 40% of the claimant's base period wages, whichever is lower. Except as provided in ~~subs.~~ sub. (6) ~~and (7)~~ and ss. 108.141 and 108.142, if a claimant's base period wages are reduced or canceled under s. 108.04 (5) or (18), or suspended under s. 108.04 (1) (f), (10) (a), or (17), the claimant may not receive total benefits based on employment in a base period greater than 26 times the claimant's weekly benefit rate under s.

108.05 (1) or 40% of the base period wages not reduced, canceled or suspended which were paid or payable to the claimant, whichever is lower.

1971 c. 53; 1975 c. 343; 1981 c. 36; 1983 a. 8 ss. 23 to 27, 53, 55 (3), (4), (12), (13) and (14) and 56; 1983 a. 27 s. 1807m; 1983 a. 337; 1985 a. 17; 1987 a. 38, 255; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15; 2001 a. 43; 2009 a. 11, 287.

SECTION 4. 108.06 (2) (c) of the statutes is amended to read:

108.06 **(2)** (c) No benefits are payable to a claimant for any week of unemployment not occurring during the claimant's benefit year except under ~~sub. (7) and~~ ss. 108.141 and 108.142.

1971 c. 53; 1975 c. 343; 1981 c. 36; 1983 a. 8 ss. 23 to 27, 53, 55 (3), (4), (12), (13) and (14) and 56; 1983 a. 27 s. 1807m; 1983 a. 337; 1985 a. 17; 1987 a. 38, 255; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15; 2001 a. 43; 2009 a. 11, 287.

SECTION 5. 108.06 (2) (cm) of the statutes is amended to read:

108.06 **(2)** (cm) If an employee qualifies to receive benefits using the base period described in s. 108.02 (4) (b), the wages used to compute the employee's benefit entitlement are not available for use in any subsequent benefit computation for the same employee, except under ~~sub. (7) and~~ s. 108.141 or 108.142.

1971 c. 53; 1975 c. 343; 1981 c. 36; 1983 a. 8 ss. 23 to 27, 53, 55 (3), (4), (12), (13) and (14) and 56; 1983 a. 27 s. 1807m; 1983 a. 337; 1985 a. 17; 1987 a. 38, 255; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15; 2001 a. 43; 2009 a. 11, 287.

SECTION 6. 108.06 (3) of the statutes is amended to read:

108.06 **(3)** There shall be payable to an employee, for weeks ending within the employee's benefit year, only those benefits computed for that benefit year based on the wages paid to the employee in the immediately preceding base period. Wages used in a given benefit computation are not available for use in any subsequent benefit computation except under ~~sub. (7) and~~ s. 108.141.

1971 c. 53; 1975 c. 343; 1981 c. 36; 1983 a. 8 ss. 23 to 27, 53, 55 (3), (4), (12), (13) and (14) and 56; 1983 a. 27 s. 1807m; 1983 a. 337; 1985 a. 17; 1987 a. 38, 255; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15; 2001 a. 43; 2009 a. 11, 287.

SECTION 7. 108.06 (6) (intro.) of the statutes is amended to read:

108.06 **(6)** (intro.) If a claimant has established a benefit year prior to the effective date of any increase in the maximum weekly benefit rate provided under s. 108.05 (1), the claimant has not exhausted his or her total benefit entitlement under sub. (1) for that benefit year on that effective date, and the claimant was

entitled to receive the maximum weekly benefit rate under s. 108.05 (1) that was in effect prior to that effective date, the limitation on the total benefits authorized to be paid to a claimant under sub. (1) does not apply to that claimant in that benefit year. Unless ~~sub. (7) or~~ s. 108.141 or 108.142 applies, the claimant's remaining benefit entitlement in that benefit year for the period beginning on that effective date shall be computed by:

1971 c. 53; 1975 c. 343; 1981 c. 36; 1983 a. 8 ss. 23 to 27, 53, 55 (3), (4), (12), (13) and (14) and 56; 1983 a. 27 s. 1807m; 1983 a. 337; 1985 a. 17; 1987 a. 38, 255; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15; 2001 a. 43; 2009 a. 11, 287.

SECTION 8. 108.06 (7) of the statutes is repealed.

INS 79–19:

(#) The treatment of sections 108.04 (1) ~~(gm)~~ (g) (intro.) and 108.06 (1), (2) (c) and (cm), (3), (6) (intro.) and (7) of the statutes first applies with respect to weeks of unemployment beginning on the effective date of this subsection.

(#) The treatment of section 108.04 (1) (hm) of the statutes first applies with respect to weeks of unemployment beginning on the effective date of this subsection.

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consisting of the same members

Treatment of multimember limited liability companies

Currently, for purposes of the UI law, multiple limited liability companies (LLCs) that consist of the same members are treated as a single employer unless, subject to certain provisions, each of those LLCs files a written request with DWD to be treated as a separate employer and DWD approves the request. Under the bill, consistent with the Federal Unemployment Tax Act (FUTA), multiple LLCs that consist of the same members are always treated as separate employers, for purposes of the UI law.

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SECTION 1. 108.02 (13) (a) of the statutes is amended to read:

108.02 **(13)** (a) "Employer" means every government unit and Indian tribe, and any person, association, corporation, whether domestic or foreign, or legal representative, debtor in possession or trustee in bankruptcy or receiver or trustee of a person, partnership, association, or corporation, or guardian of the estate of a person, or legal representative of a deceased person, any partnership or partnerships consisting of the same partners, except as provided in par. (L), any limited liability company ~~or limited liability companies consisting of the same members, except as provided in par. (kL)~~, and any fraternal benefit society as defined in s. 614.01 (1) (a), which is subject to this chapter under the statutes of 1975, or which has had employment in this state and becomes subject to this chapter under this subsection and, notwithstanding any other provisions of this section, any service insurance corporation organized or operating under ch. 613, except as provided in s. 108.152 (6) (a) 3.

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83; 2001 a. 35, 103, 105; 2003 a. 197; 2005 a. 25, 86, 149, 441; 2007 a. 20 s. 9121 (6) (a); 2007 a. 59; 2009 a. 180, 287; 2011 a. 32, 123.

SECTION 2. 108.02 (13) (kL) of the statutes is repealed.

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SECTION 3. 108.16 (2) (g) and (h) of the statutes are amended to read:

108.16 **(2)** (g) Whenever the department receives a request of 2 or more partnerships ~~or limited liability companies~~ consisting of the same partners ~~or members~~ to be treated as separate employers prior to October 1 of any year, the department shall apportion the balance in any existing account of the partnerships ~~or limited liability companies~~ among the separate employers on January 1 following the date of receipt of the request in proportion to the payrolls incurred in the businesses operated by each of the employers in the 4 completed calendar quarters ending on the computation date preceding the date of receipt of the request and shall calculate the reserve percentage of each separate employer in accordance with the proportion of the payroll attributable to that employer. Section 108.18 (2) is not made applicable to the separate employers by reason of such treatment. For purposes of s. 108.18 (7), the department shall treat the partnerships ~~or limited liability companies~~ as separate employers on November 1 preceding that January 1. For purposes of s. 108.18 (7) (b) and (c), the department shall treat the separate employers as existing employers on that January 1.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86, 253; 2007 a. 59; 2009 a. 287; 2011 a. 198, 236.

(h) Whenever, prior to October 1 of any year, the department receives a written request by all partnerships ~~or limited liability companies~~ consisting of the same partners ~~or members~~ which have elected to be treated as separate employers for the partnerships ~~or limited liability companies~~ to be treated as a single employer, the department shall combine the balances in the existing accounts of the separate employers into a new account on January 1 following the date of receipt of the request and shall calculate the reserve percentage of the single employer in accordance with the combined payroll attributable to each of the separate employers in the 4

completed calendar quarters ending on the computation date preceding that January 1. Section 108.18 (2) is not made applicable to the single employer by reason of such treatment. For purposes of s. 108.18 (7), the department shall treat the partnerships ~~or limited liability companies~~ as a single employer on November 1 preceding that January 1. For purposes of s. 108.18 (7) (b) and (c), the department shall treat the single employer as an existing employer on that January 1.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86, 253; 2007 a. 59; 2009 a. 287; 2011 a. 198, 236.

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SECTION 4. Nonstatutory provisions.

(1) The treatment of sections 108.02 (13) (a) and (kL) and 108.16 (2) (g) and (h) of the statutes first applies to [to be inserted later].

(4) limited liability companies ~~XXXX~~ NOTE: Initial applicability for treatment of multimember consisting of the same members is needed.

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have elapsed since the end of the week in which the termination occurs and the employee earns wages after the week in which the termination occurs equal to at least four times the employee's weekly benefit rate in employment covered by the unemployment insurance law of any state or the federal government. However, an employee may terminate his or her work and receive benefits without requalifying under this provision, among other reasons, if the employee: 1) terminates his or her work due to domestic abuse or concerns about the personal safety or harassment of the employee's family or household members; or 2) was unable to work due to the health of a family member. This bill expands the domestic abuse exception to include abuse or threat of abuse by an unrelated individual with whom the employee had a personal relationship, includes an adopted relative in the definition of family member, and permits the domestic abuse or concerns to be verified either by a protective order, by a report of a law enforcement agency, or evidence provided by a licensed health care professional or an employee of a domestic violence shelter. The bill broadens the exception concerning the health of a family member to apply to any verified illness or disability that necessitates the care of a family member for a period of time that is longer than the employee's employer is willing to grant leave. The bill also provides that requalification is not required if an employee's spouse changed his or her place of employment to a place to which it is impractical to commute and the employee terminated his or her work to accompany the spouse to that place.

Approved training in high–demand occupations

Currently, benefits may not be denied to an otherwise eligible claimant because the claimant is enrolled in a vocational training course or a basic education course that is a prerequisite to such training ("approved training") under certain conditions. Currently, unless a claimant qualifies for federal/state extended benefits, Wisconsin supplemental benefits, or federal emergency compensation and unless certain other exceptions apply, no claimant may receive total benefits based on employment in a base period (period preceding a claim during which benefit rights accrue) greater than 26 times the claimant's weekly benefit rate or 40 percent of the claimant's base period wages, whichever is lower. This bill provides additional benefits to certain claimants. The bill provides, with certain exceptions, that if a claimant has exhausted all other rights to benefits, is currently enrolled in an approved training program under current law and was so enrolled prior to the end of the claimant's benefit year (period during which benefits are payable) that qualified the claimant for benefits, if not in a current benefit year, has a benefit year that ended no earlier than 52 weeks prior to the week for which the claimant first claims additional benefits, and is not receiving any similar stipends or other training allowances for nontraining costs, is entitled to additional benefits of up to 26 times the same benefit rate that applied to the claimant during his or her most recent benefit year if the claimant: 1) has been separated from employment in a declining occupation or involuntarily separated from employment as a result of a permanent reduction in operations by his or her employer; and 2) is being trained for entry into a high–demand occupation. In addition, the bill provides that if the benefit year of such a claimant expires in a week in which extended or other additional federal or state benefits are payable generally (see below), the claimant is also eligible for the

~~additional~~ benefits while enrolled in a training program ~~as provided under the bill~~ if the claimant first enrolled in the program within 52 weeks after the end of the claimant's benefit year that qualified the claimant for benefits.

PAYMENT OF EXTENDED BENEFITS

Currently, the maximum number of weeks of benefits that an eligible claimant may qualify to receive is normally 26 weeks. However, during certain periods of high unemployment in this state, as defined by law, claimants who have exhausted all their rights to receive benefits in a given benefit year may potentially qualify to receive up to an additional 13 weeks of "extended benefits," the costs of which, with certain exceptions, are shared between the federal government and employers in this state. Under recent federal legislation, the employer share is also paid in most cases by the federal government beginning with weeks of unemployment that begin on or after February 17, 2009, and ending with the last week beginning in 2009, and, for claimants who begin an extended benefit claim before that date, ending with the last week ending before June 1, 2010. In addition, under the federal legislation, during periods of exceptionally high unemployment in this state, claimants who qualify for extended benefits may qualify to receive an additional seven weeks of extended benefits that are financed in the same manner. This bill changes state law to conform with the recent federal legislation so as to enable claimants in this state to qualify for these additional extended benefits and to enable full participation by this state in federal cost sharing for these benefits.

For further information see the ***state and local*** 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:

SECTION 1. 108.04 (7) (c) of the statutes is amended to read:

108.04 **(7)** (c) Paragraph (a) does not apply if the department determines that the employee terminated his or her work but had no reasonable alternative because the employee was unable to do his or her work, or that the employee terminated his or her work because of the ~~health~~ verified illness or disability of a member of his or her immediate family and the verified illness or disability reasonably necessitates the care of the family member for a period of time that is longer than the employer is willing to grant leave; but if the department determines that the employee is

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1975/~~P1dn~~ P2dn
JTK&MED:cjs:jm

~~March 27, 2013~~

Representative Knodl:

This draft is the initial draft of your items 4, 9, 14, 15 (12–15 and 12–27), and 16. We are working on other items at this time and will be reviewing them with the DWD legal staff. The other items will be added in successive redrafts when we have all the information we need to reduce them to draft format.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266–6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1975/P2dn
JTK&MED:cjs:ph

April 9, 2013

Representative Knodl:

This draft is the initial draft of your items 4, 8, 9, 11, 14, 15 (12–15, 12–27 and 12–28), 16, 19, 22, 24, 25, 28, and 34. We are working on other items at this time and will be reviewing them with the DWD legal staff. The other items will be added in successive redrafts when we have all the information we need to reduce them to draft format.

Regarding item 11, which corresponds to proposal D12–30, we drafted this item based on the original proposal, not what was ultimately approved by the council, which is different. Also, proposal D12–30 only indicated changes to be made to s. 108.04 (8) (a), stats. I also, however, made corresponding changes to s. 108.04 (8) (c), stats., which addresses recalls by former employers. Also, I used an initial applicability provision for this item based on 1991 Wisconsin Act 89, which appears to be the last act to have substantively amended these provisions. Please review it carefully and let us know if you would like any changes to this item.

The 3 GPR positions for UI fraud detection are included in this version using figures provided by DWD, to become authorized on the day after the general effective date of the biennial budget bill. However, to ensure that the positions are authorized as intended, you may instead wish to seek inclusion of the funding for these positions in the biennial budget bill.

Finally, regarding the temporary help agency provisions, you may wish to consider any implementation issues with this item, such as how it would work for claimants who left employment with multiple employers at the same time.

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Date: October 24, 2012
Proposed by: DWD
Prepared by: Scott Sussman

ANALYSIS OF PROPOSED UI LAW CHANGE

DISCHARGE OR SUSPENSION FOR EMPLOYEE'S SUBSTANTIAL FAULT

1. Description of Proposed Change

Proposed change would create a two-tier standard for disqualifying claimants from receiving unemployment insurance benefits. The change would narrow the current misconduct standard by enumerating eight employee actions that would rise to the level of satisfying the misconduct standard. If the employee's conduct did not rise to this threshold, the employee's conduct may still make the employee ineligible for benefits. The employee's conduct would still disqualify the employee if it is found that he or she was discharged as a result of his or her substantial fault. However, the proposed amendment then further restricts what actions may disqualify a claimant by defining substantial fault to not include:

1. Minor violations of rules unless employee repeats the violation after receiving a warning,
2. Unintentional mistakes made by the employee, nor
3. Not performing work because employee lacks skill, ability, or was not supplied equipment.

The amendment additionally:

a. Removes the current statutory language regarding disqualification for absenteeism or tardiness; and,
b. Makes both the discharge for misconduct and discharge for substantial fault have the same ten by ten frame work for requalification for benefits.

2. Proposed Statutory Language

Section 108.04(1)(i) is amended to read:

(i) A claimant who does not provide information sufficient for the department to determine whether the claimant has been discharged for misconduct connected with his or her employment, discharged for a substantial fault connected with his or her employment, has voluntarily terminated his or her work, has failed without good cause to accept suitable work when offered, or has failed to return to work with a former employer that recalls the employee within 52 weeks after the employee last worked for that employer is not eligible to receive benefits for the week in which the discharge, termination or failure occurs or any subsequent week. If a claimant later provides the information and has good cause for the

initial failure to provide the information, he or she is eligible to receive benefits as of the week in which the discharge, termination or failure occurred, if otherwise qualified. If a claimant later provides the information but does not have good cause for the initial failure to provide the information, he or she is eligible to receive benefits as of the week in which the information is provided, if otherwise qualified.

Section 108.04(5) is amended to read:

108.04 (5) **DISCHARGE FOR MISCONDUCT.** ~~Unless sub. (5g) results in disqualification, an~~ An employee whose work is terminated by an employing unit for misconduct connected with the employee's work is ineligible to receive benefits until ~~7~~ 10 weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least ~~14~~ 10 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be that rate which would have been paid had the discharge not occurred. The wages paid to an employee by an employer which terminates employment of the employee for misconduct connected with the employee's employment shall be excluded from the employee's base period wages under s. 108.06 (1) for purposes of benefit entitlement. This subsection does not preclude an employee who has employment with an employer other than the employer which terminated the employee for misconduct from establishing a benefit year using the base period wages excluded under this subsection if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 from which base period wages are excluded under this subsection. If an employee is not disqualified under this subsection, the employee may nevertheless be subject to the disqualification under sub. (5g). Misconduct is defined to mean actions or conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has a right to expect of his or her employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer. Actions or conduct that constitutes misconduct shall solely include:

(a) A violation of the employer's written policy about the use of drugs or alcohol and the employee must have:
1. Had knowledge of the employer's drug policy; and,

2. Admitted to the use of drugs or alcohol or tested positive for the use of drugs or alcohol and the drug testing method used by the employer must be one accepted as valid by the Department;
(b) Larceny of property or services or theft of currency of any value, or felonious conduct connected with the employee's employment with the employer or intentional or negligent substantial damage to an employer's property;
(c) Except if covered by s. 108.04 (1) (f), the conviction of a crime or other action subject to civil forfeiture, whether while on or off duty, if the conviction makes it impossible for the employee to perform the duties for which the employee works for the employer;
(d) Threats or acts of harassment, assault, or physical violence at the workplace committed by the employee;
(e) Excessive absenteeism or tardiness in violation of a known company policy and the individual does not provide to the employer both notice and a valid reason or reasons for the absences or tardiness;
(f) Unless directed by the employer, falsifying business records;
(g) Unless directed by the employer, a willful and deliberate violation of a standard or regulation of a tribal, state or federal government by an employee of an employer licensed or certified by a government agency, which violation would cause the employer to be sanctioned or have its license or certification suspended by the government agency; or,
(h) Insubordination.

Section 108.04(5g) is repealed and recreated to read:

~~**(5g)** DISCHARGE FOR FAILURE TO NOTIFY EMPLOYER OF ABSENTEEISM OR TARDINESS. (a) If an employee is discharged for failing to notify his or her employer of absenteeism or tardiness that becomes excessive, and the employer has complied with the requirements of par. (d) with respect to that employee, the employee is ineligible to receive benefits until 6 weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least 6 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be the rate that would have been paid had the discharge not occurred.
(b) For purposes of this subsection, tardiness becomes excessive if an employee is late for 6 or more scheduled workdays in the 12-month period preceding the date of the discharge without providing adequate notice to his or her employer.
(c) For purposes of this subsection, absenteeism becomes excessive if an employee is absent for 5 or more scheduled workdays in the 12-month period preceding the date of the discharge without providing adequate notice to his or her employer.
(d) 1. The requalifying requirements under par. (a) apply only if the employer has a written policy on notification of tardiness or absences that:
a. Defines what constitutes a single occurrence of tardiness or absenteeism;~

~~b. Describes the process for providing adequate notice of tardiness or absence; and~~
~~c. Notifies the employee that failure to provide adequate notice of an absence or tardiness may lead to discharge.~~
~~2. The employer shall provide a copy of the written policy under subd. 1. to each employee and shall have written evidence that the employee received a copy of that policy.~~
~~3. The employer must have given the employee at least one warning concerning the employee's violation of the employer's written policy under subd. 1. within the 12-month period preceding the date of the discharge.~~
~~4. The employer must apply the written policy under subd. 1. uniformly to all employees of the employer. (e) The department shall charge to the fund's balancing account the cost of any benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 if the employee is discharged by that employer and par. (a) applies. (em) If an employee is not disqualified under this subsection, the employee may nevertheless be subject to the disqualification under sub. (5).~~

108.04 (5g) **DISCHARGE FOR SUBSTANTIAL FAULT.** (a) An employee whose work is terminated by an employing unit for substantial fault on the employee's part connected with the employee's work not rising to the level of misconduct is ineligible to receive benefits until 10 weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least 10 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be that rate which would have been paid had the discharge not occurred. Substantial fault is defined to include those acts or omissions of an employee over which the employee exercised reasonable control and which violate reasonable requirements of the job but shall not include:
1. Minor infractions of rules unless such infractions are repeated after a warning was received by the employee,
2. Inadvertent mistakes made by the employee, nor
3. Failures to perform work because of insufficient skill, ability, or equipment.
(b) If an employee is not disqualified under this subsection, the employee may nevertheless be subject to the disqualification under sub. (5).
(c) The department shall charge to the fund's balancing account the cost of any benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 if the employee is discharged by that employer if paragraph (a) applies.

3. Proposer's Reason for the Change

Concerns are consistently being raised by the employer community that the current misconduct standard within Wisconsin law is too generous in providing benefits to employees who should not qualify for benefits. This proposal creates a lower standard for disqualifying a claimant but then places some restrictions on the applicability of the lower standard. The proposal also provides further clarification regarding what constitutes misconduct. It is hoped that this strikes the right balance over the concerns of the employer community and claimants who seek benefits. It also eliminates the provisions of s. 108.04(5g) of the statutes that has proven unworkable.

4. Brief History and Background of Current Provision

Proposals to create a lower threshold than the misconduct standard have consistently been brought forward by the employer community. Moreover, a constant complaint is raised over the lack of clarity with respect to the misconduct standard.

5. Effects of Proposed Change

a. Policy. Creates a lower threshold, with protections for employees, in which a claimant is disqualified from benefits.

b. Administrative Impact. Likely to be significant administrative impact.

c. Equitable. Law addresses concern of employer community that current system is not equitable in that it overly favors the giving of benefits to former employees.

d. Fiscal. TBD. May have a substantial impact by lowering the number of recipients of unemployment insurance.

6. State and Federal Issues

a. Chapter 108. Applicable provisions that need to be amended are covered above.

b. Rules. DWD § 132.05 provides further clarification with respect to what misconduct is by an employee who is discharged by a health care facility for abuse of a patient. There may be some consideration given to whether or not this section of the administrative code should be revised if this proposal were adopted by the Legislature. It also creates a seven by 14 framework for a health care employee to qualify again for benefits.

c. Conformity. There should be no conformity issues with this proposal. Other states have disqualifications for a claimant based on the

claimant's actions that do not rise to the level of Wisconsin's misconduct standard.

7. Proposed Effective/Applicability Date

Due to substantial administrative changes that will likely be necessary, the law change should be effective for the calendar year following enactment.

Date: October 25, 2012
Proposed by: DWD
Prepared by: Janell Knutson and Scott Sussman

ANALYSIS OF PROPOSED UI LAW AND ADMINISTRATIVE RULE CHANGE

Department Proposal to Revise Statute and Rules for Registration for Work and Work Search

1. Description of Proposed Change:

Increases the number of work search actions an unemployment insurance claimant must do each week from two to at least four. The amendments to the administrative code simplify and clarify the intent of the administrative code provisions surrounding registration and work search requirements for an unemployment insurance claimant. Also enables the Department to be able to modify work registration and work search requirements as advances in technology make changes possible and necessary.

2. Proposed Statutory and Administrative Rule Language:

Amend Wis. Stat. §108.04(2) to read as follows:

(2) GENERAL QUALIFYING REQUIREMENTS.
(a) Except as provided in par. (b) and sub. (16) (am) and (b) and as otherwise expressly provided, a claimant is eligible for benefits as to any given week only if:
1. The individual is able to work and available for work during that week;
2. As of that week, the individual has registered for work as directed by the department; and
3. The individual conducts a reasonable search for suitable work during that week. The search for suitable work must include ~~2~~ at least 4 actions per week 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:
a. The history of layoffs and reemployments by the employer;
b. Any information that the employer furnished to the individual or the department concerning the individual's anticipated reemployment date; and
c. Whether the individual has recall rights with the employer under the terms of any applicable collective bargaining agreement.

(ae) A claimant is not available for work under par. (a) 1. in any week in which he or she is located in a country other than the United States, as defined in s. 108.02 (15) (do) 2., or Canada for more than 48 hours unless the claimant has authorization to work in that other country and there is a reciprocal agreement concerning the payment of unemployment insurance benefits between that other country and the United States.
(b) The requirements for registration for work and search for work shall be prescribed by rule of the department, and the department may by general rule waive these requirements under certain stated conditions
(c) Each employer shall inform his or her employees of the requirements of this subsection in such reasonable manner as the department may prescribe by rule.
(e) Each claimant shall furnish to the department his or her social security number. If a claimant fails, without good cause, to provide his or her social security number, the claimant is not eligible to receive benefits for the week in which the failure occurs or any subsequent week until the week in which he or she provides the social security number. If the claimant has good cause, he or she is eligible to receive benefits as of the week in which the claimant first files a claim for benefits or first requests the department to reactivate an existing benefit claim.
(f) A claimant is ineligible to receive benefits for any week for which benefits are paid or payable because the claimant knowingly provided the department with a false social security number.

3. Proposer's Reason for the Change

As the Department of Labor's Comparison of State UI Laws finds: "[i]n addition to registration for work at a local employment office, all states... , whether by law or practice, require that a worker be actively seeking work or making a reasonable effort to obtain work." Actively seeking work should be the main job of those individuals who are unemployed and collecting benefits. This proposal will provide an incentive for individuals who are unemployed to more actively seek out employment and thereby improve their employment prospects. This proposal will also strengthen the unemployment insurance safety net by helping to alleviate the concern of the employer community and general public that the unemployment insurance program is being abused by some unemployment insurance recipients.

4. Brief History and Background of Current Provision

Prior to January 2, 2000 the law simply said the claimants were required to for work. The number of efforts or contacts was not specified so the Department required "at least one". Legislation was passed requiring 2 contacts beginning January 2, 2000 with a sunset of December 28, 2002 at which time the Department reverted back to the prior requirement of "at least one" job search.

Subsequently, in 2003 a compromise was agreed between the labor and management side that resulted in placing back the requirement that claimants perform two search actions for suitable work each week.

5. Effects of Proposed Change

a. Policy. Proposals would streamline ability of department to ensure that individuals receiving unemployment insurance benefits are actively seeking work to become reemployed. Proposal would also accomplish objective of department of ensuring that those receiving unemployment insurance are engaging in activities that an unemployed person who wants to work would normally do.

b. Administrative Impact.

c. Equitable. Unemployment benefits are meant to act as a temporary safety net for employees who are out of work through no fault of their own -- to tide them over until they can find a new job. Increasing the work registration and work search requirements that an unemployment insurance recipient must do will facilitate the goal of the unemployment insurance program that it is meant to only be a temporary safety net for those who truly cannot find work after losing a job.

d. Fiscal. TBD. Will likely decrease charges to the trust fund by disqualifying some individuals who are not actively seeking work and lessen the amount of time that some individuals remain on the unemployment insurance program and thereby decrease unemployment claims. Yet, without a verification component to this increased requirements placed on recipients, the impact will be minimized.

6. State and Federal Issues

a. Chapter 108. Besides the amendments to Wisconsin Statute § 108.04, there are no required amendments to other sections of Chapter 108.

b. Rules. Besides the amendments to DWD Chapter 126 and 127, there are no required amendments to other sections of the administrative rules.

c. Conformity. In addition to registration for work at a local employment office, all states, whether by law or practice, require that an individual be actively seeking work or making a reasonable effort to obtain work. The *Middle Class Tax Relief and Job Creation Act of 2012* (Pub. L. 112-96) added an explicit statutory requirement to Federal law that individuals

must be able to work, available for work, and actively seeking work to be eligible for regular unemployment compensation. These amendments by increasing the number of required work search activities and strengthening the ability of the department to monitor claimants' efforts to obtain employment strengthens the ability of Wisconsin to conform to these federal requirements.

7. Proposed Effective/Applicability Date

The law change should be operative as of the effective date of the legislation. The administrative code provision changes should be done as quickly as possible under the statutory framework to amend the administrative code.

Date: June 29, 2011
Proposed by: BTA
Prepared by: Daniel LaRocque, Robert Junceau, William M. Witter

ANALYSIS OF AMENDMENT TO UI LAW

Provide Statutory Authority to Correct Misdirected Payments and Payment Processing Errors, Treat Such Payments as Departmental Error and Authorize Action to Recover Erroneous Payments of Reserve Funds.

1. Description of Amendment

The amendment codifies the methodology the department uses for processing and correcting payments made to unintended payees or made to the correct payee in an incorrect amount. The definition of departmental error is amended to clarify what errors are not included and the amendment creates a statutory cause of action to recover erroneous payment of reserve funds.

2. Proposed Statutory Language

Amend §108.02(10e):

(10e) DEPARTMENTAL ERROR. (a) "Departmental error" means an error made by the department in computing or paying benefits which results exclusively from:
~~(a)~~ 1. A mathematical mistake, miscalculation, misapplication or misinterpretation of the law or mistake of evidentiary fact, whether by commission or omission; or
~~(b)~~ 2. Misinformation provided to a claimant by the department, on which the claimant relied.

(b) "Departmental error" does not include an error made by the department in computing, paying or crediting benefits to any individual, whether or not a benefit claimant, or in crediting contributions to one or more employers which results from:
1. Computer malfunctions;
2. Data transmission errors with financial institutions;
3. Typographical or keying errors;
4. Computer programming errors;
5. Bookkeeping or other payment processing errors;
6. A false statement or misrepresentation by any individual, including but not limited to identity of the person; or
7. Unauthorized manipulation of electronic systems from within or outside the department.

Amend §108.22 (8) (c) 1. a. :

(c) 1. The department shall waive recovery of benefits that were erroneously paid if:
a. The overpayment was the result of a departmental error, as defined in s. 108.02(10e); and ~~was not the fault of any employer under s. 108.04 (13) (f);~~.

Create §108.16 (3) (c):
(3) The fund's treasurer shall write off:
(c) Any unrecoverable payments made without fault on the part of the intended payee under s. 108.16 (13).

Create §108.16 (6) (o):

(6) The department shall maintain within the fund a "balancing account," to which shall be credited:
(o) Any erroneous payment recovered under s. 108.16 (13).

Create §108.16 (6m) (h) & (i):

(6m) There shall be charged against the fund's balancing account:
(h) Any amount paid to correct a payment pursuant to sub. (13).
(i) Any amount written off under sub. (3)(c).

Create §108.16 (13):
When the department determines that a payment has been made erroneously, and the payment was made without fault on the part of the intended payee, the department may issue the correct payment to the intended payee if necessary, and recover the amount of any erroneous payment from the recipient as provided in ss. 108.22, 108.225, or 108.245.

Create § 108.245: Statutory Cause of Action.

(1) The department may commence action in circuit court to preserve and recover the proceeds of any payment of funds from the unemployment reserve fund including but not limited to any payments to which an individual or an entity is not entitled, including any transferee or other individual or entity that receives, possesses or retains such payments and any fund or account, including but not limited to an account of a bank or any other financial institution, resulting from such transfer, use or disbursement.

(2) Upon motion of the department establishing that an individual, entity or transferee received a payment to which that individual, entity or transferee was not entitled, the circuit court shall enjoin the payee, transferee or any individual, entity or depository institution in possession of the funds at the time of commencement of this action to preserve the funds and prevent their transfer and/or use prior to the final order disposing of the action; and, upon final order, all such payments shall be repaid and or remitted to the department.

(3) The absence of an administrative or other legal remedy for recovery of such funds or failure of the department to exhaust such remedies shall not be a defense to such an action. A judgment for damages entered by a court pursuant to this section may be recovered and satisfied pursuant to s. 108.225.

3. Reason for the Amendments

Misdirected Payments and Payment Errors: The department currently has few cases involving payments made erroneously as a result of computer malfunctions, data transmission errors, keying errors, computer programming errors or bookkeeping errors. In the past when these cases have arisen, the department has issued a correct payment from the balancing account if necessary and credited the balancing account when payments were received although there was not clear statutory authority for the department to do so. The amendment will provide that express statutory authority and show the accountability for the payments.

Overpayments may be waived when an erroneous payment is solely due to "departmental error." This definition of "departmental error" was adopted in 1993 to provide claimants with relief from collections of overpayments when the department has affirmatively taken an action in computing or paying benefits and made a mathematical mistake or miscalculation, applied the

law incorrectly or made a mistake of evidentiary fact, or provided incorrect information to a claimant on which the claimant relied. The law was not intended to allow claimants to be unjustly enriched by trust funds if the payments were made inadvertently, such as through computer malfunctions and data transmission errors. As more payments are made electronically, the risk of more frequent processing errors will increase. The department seeks to ensure that the law is clear in the future as to those errors that are not departmental errors for purposes of waiving overpayments.

The following are examples of the types of situations for which the department anticipates applying the law provisions:

- Example 1. Some UI payments are done manually to correct claims or issue replacement checks. Due to a keying error, a $99 payment is keyed as $999 and sent to the claimant. The department will seek to recover the erroneous overpayment made to the recipient.
- Example 2. In 2006 Medicare erroneously issued $50 million in refunds to 230,000 beneficiaries due to a computer glitch. If a similar situation happened at UI, the department would seek to recover the erroneous payment made to the unintended recipients.
- Example 3. Claimant sends in money to repay an overpayment, but it is incorrectly applied to another person's overpayment creating a credit balance. The money is then refunded to the incorrect person. The department will credit the payment to the correct recipient who is still entitled to the credit, and seek to recover the erroneous payment made to the unintended recipient.

Clarify Departmental Error: The amendment clarifies that departmental error does not include situations where false statements, misrepresentations or employee or employer fault result in computing, payment or crediting of benefits or in crediting contributions to one or more employers. This change limits equitable application of the waiver requirement and reflects the correct application of the law in appeal tribunal decisions and decisions of the Labor and Industry Review Commission. The clarification also includes language to provide statutory authority to correct misdirected payments.

Statutory Cause of Action: The department has statutory authority, §108.22(8), to recover reserve fund monies erroneously paid to benefit claimants. If a person who is a UI claimant receives monies to which they were not entitled, the department may employ the administrative mechanisms of §108.09 to issue an initial determination establishing an overpayment. For approximately 25 years, overpayments have been waived if the erroneous payment was caused by department error and there was no employer fault or claimant fault as a result of a false statement or misrepresentation. §108.22(8)(c). If the overpayment was not caused by department error, the department may use warrants as provided in §108.22 and a levy for delinquent contributions or benefit overpayments as provided in §108.225 to enforce collection of overpayment determinations.

The department has the authority to debit the accounts of employers registered with the Unemployment Insurance Division where necessary to recover overpaid amounts such as refunds of contributions erroneously made.

The administrative process in chapter 108 for recovery of such amounts from claimants and employers is not suited to the department's potential need for recovery from persons with whom the department has no unemployment insurance account relationship. Nor is the administrative

process necessarily adequate, even for an employer with a UI account, in the event the department erroneously pays a particularly large sum to the employer (beyond the amount of the ordinary refund).

Currently, recovery from persons who are not claimants or employers in the Wisconsin UI system receiving reserve fund payments erroneously made to them generally would depend on common law principles and remedies for unjust enrichment. The department could bring a cause of action to recover funds paid erroneously to any person under the common law theory of unjust enrichment. However, there are common law elements and defenses to this cause of action that the department would seek to neutralize by creating a statutory cause of action. For instance, under the common law unjust enrichment claim, the plaintiff must prove that the defendant had knowledge or appreciation of the benefit and accepted the benefit under such circumstances that it would be inequitable for the individual to keep it. A defendant may raise a defense that it would be equitable for them to keep the money. The statutory cause of action would allow the department to bring the cause of action against a defendant if an erroneous payment was made, and collect restitution of the erroneously paid monies without needing to prove that the defendant had knowledge of the payment or prove that it would be inequitable for the individual to retain the funds. In addition, the department proposal would provide that banks or other transferees that have received the funds would be required to preserve the funds and prevent transfer of the funds until the action is resolved and the funds turned over to the department.

4. Brief History and Background of Current Provision

The definition of department error was adopted in 1993 Wis. Act 373. The other added statutory provisions would be new, including section 108.245.

5. Effects of Proposed Change

a. Policy. The intent of the misdirected payments amendment is to codify the methodology the department uses for processing and correcting payments made to unintended payees or made to the correct payee in an incorrect amount and to clarify the various types of errors that are not "departmental errors" for purposes of waiver of overpayment recovery. This will provide governmental accountability for the processing of payments. The amendment also clarifies the definition of departmental error which should lead to more consistent interpretation of the law. The department does not anticipate that there will be a significant number of cases involving misdirected payments. However, the amendment provides an option for the department in the event such a recovery would be necessary.

b. Administrative Impact. The amendment is consistent with the current accounting process for handling misdirected checks. No significant administrative impact is anticipated.

c. Equitable. The amendment will prevent unjust enrichment to claimants for mechanical-type errors in processing payments and recovers erroneous payments for the reserve fund. The amendment result in a more uniform and consistent interpretation of departmental error. The statutory cause of action will not generally affect claimants or employers but would primarily involve recovery actions against persons not already in the UI system.

d. Fiscal. To be provided.

6. State and Federal Issues

a. Chapter 108. No other provisions of Chapter 108 are anticipated to need to be amended as a result of this proposal.

b. Rules. No administrative rules need to be promulgated or changed as a result of this proposal.

c. Conformity. None.

7. Proposed Effective/Applicability Date

The provisions should be effective as of the effective date of the legislation.