



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-0958/P5
MED:cjs:jf

DOA:.....Kirschbaum, BB0308 – Drug Testing for UI

FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

EMPLOYMENT

Under federal law, a state may require a claimant to submit to a test for the unlawful use of controlled substances (drug test) as a condition of receiving unemployment insurance (UI) benefits if the claimant: 1) was terminated from employment with his or her most recent employer because of the unlawful use of controlled substances; or 2) is an individual for whom suitable work, as defined under a state's UI law, is only available in an occupation that regularly conducts drug testing, as determined in regulations issued by the United States Secretary of Labor (federal regulations). As of January 27, 2015, final federal regulations have not been issued.

This bill requires DWD to establish a program to require claimants who apply for regular UI benefits to submit to drug tests. The bill requires DWD to determine, when a claimant applies for regular UI benefits, whether the claimant is an individual for whom suitable work is only available in an occupation described in the federal regulations. If DWD determines that the claimant is such an individual, DWD must conduct a screening on the claimant to determine whether the claimant should be required to submit to a drug test. If the screening indicates that the claimant should be required to submit to a drug test, DWD must require the claimant to submit to such a test.

The bill provides that, if the claimant declines to submit to such a test, the claimant is ineligible for UI benefits for 52 weeks or until a subsequent claim for

benefits, whichever is later. If the claimant submits to the drug test, but does not test positive for any controlled substance without a valid prescription, the claimant may receive UI benefits if otherwise eligible and may not be required to submit to any further drug test until a subsequent claim for benefits. If the claimant submits to the drug test and tests positive for one or more controlled substances without a valid prescription, the bill provides that the claimant is ineligible for UI benefits for 52 weeks or until a subsequent claim for benefits, whichever is later, except that following the positive test, the claimant may maintain his or her eligibility for UI benefits by enrolling in a state-sponsored substance abuse treatment program and undergoing a state-sponsored job skills assessment. The claimant remains eligible for benefits for each week the claimant is in full compliance with any requirements of the substance abuse treatment program and job skills assessment.

The bill also requires DWD to promulgate rules to identify occupations for which drug testing is regularly conducted in this state and to apply the above provisions for claimants for whom suitable work is only available in one of the occupations identified by DWD.

In addition, the bill allows an employing unit to voluntarily submit to DWD the results of a drug test that was conducted on an individual as preemployment screening or that an individual declined to submit to such a test. If the results of the test indicate that the individual has tested positive for one or more controlled substances without a valid prescription, or if the individual declined to submit to such a test, the bill provides that there is a presumption, rebuttable as provided in rules promulgated by DWD, that the claimant has failed to accept suitable work when offered. If the presumption is not rebutted, the claimant is ineligible for UI benefits as if the claimant had tested positive in or declined to submit to a drug test conducted by DWD, beginning with the week in which DWD receives the report.

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

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

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

20.445 (1) (ak) *Unemployment insurance administration; substance abuse treatment.* Biennially, the amounts in the schedule to provide substance abuse treatment to claimants for unemployment insurance under s. 108.133 (2) (c).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 2. 20.445 (1) (aL) of the statutes is created to read:

20.445 (1) (aL) *Unemployment insurance administration; controlled substances testing.* Biennially, the amounts in the schedule to conduct testing for controlled substances and for related expenses under s. 108.133, other than providing substance abuse treatment under s. 108.133 (2) (c).

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

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

108.04 (8) (a) If Except as provided in par. (b), if an employee fails, without good cause, to accept suitable work when offered, the employee is ineligible to receive benefits until the employee earns wages after the week in which the failure 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 that rate which would have been paid had the failure not occurred. This paragraph does not preclude an employee from establishing a benefit year during a period in which the employee is ineligible to receive benefits under this paragraph 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 whenever an employee of that employer fails, without good cause, to accept suitable work offered by that employer.

SECTION 4. 108.04 (8) (b) of the statutes is created to read:

108.04 (8) (b) There is a rebuttable presumption that an employee has failed, without good cause, to accept suitable work when offered if the employee declines to submit to a test for the presence of controlled substances in a test conducted on the

employee as preemployment screening or the employee tests positive for one or more controlled substances in such a test without evidence of a valid prescription, as evidenced by a report submitted to the department by an employing unit in accordance with s. 108.133 (4). If the employee declines to submit to such a test, the employee shall be ineligible for benefits as if the employee had declined to submit to a test under s. 108.133 (3) (a), beginning with the week in which the department receives the report. If the employee tests positive in such a test without evidence of a valid prescription, the employee shall be ineligible for benefits as if the employee had tested positive under s. 108.133 (3) (c), beginning with the week in which the department receives the report, except as provided under s. 108.133 (3) (d). The department shall promulgate rules specifying how a claimant may overcome the presumption in this paragraph. 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 whenever an employee of that employer fails, without good cause, to accept suitable work offered by that employer.

SECTION 5. 108.133 of the statutes is created to read:

108.133 Testing for controlled substances. (1) DEFINITIONS. In this section:

(a) Notwithstanding s. 108.02 (9), “controlled substance” has the meaning given in [21 USC 802](#).

(b) “Job skills assessment” means an assessment conducted by the department under sub. (2) (d).

(c) “Occupation that regularly conducts drug testing” means an occupation identified in the regulations issued by the federal secretary of labor under [42 USC 503](#) (l) (1) (A) (ii).

(d) “Screening” means the screening process created by the department under sub. (2) (a) 3.

(e) “Substance abuse treatment program” means the program provided by the department under sub. (2) (c).

(f) “Valid prescription” means a prescription, as defined in s. 450.01 (19), for a controlled substance for which the supply of the controlled substance indicated by the prescription has not run out.

(2) DRUG TESTING PROGRAM. The department shall establish a program to test claimants who apply for regular benefits under this chapter for the presence of controlled substances in accordance with this section and shall, under the program, do all of the following:

(a) Promulgate rules to establish the program. The department shall do all of the following in the rules promulgated under this paragraph:

1. Establish a process to test claimants for the presence of controlled substances. In establishing the process, the department shall adhere to any applicable federal requirements regarding drug testing.

2. Identify the parameters for a substance abuse treatment program for claimants who misuse controlled substances and specify criteria that a claimant must satisfy in order to be considered in full compliance with requirements of the substance abuse treatment program.

3. Create a screening process for determining whether a claimant should be required to submit to a test for the presence of controlled substances.

4. Identify the parameters for a job skills assessment for claimants who misuse controlled substances and specify criteria that a claimant must satisfy in order to be considered in full compliance with the requirements of the job skills assessment.

(am) Promulgate rules identifying occupations for which drug testing is regularly conducted in this state.

(b) When a claimant applies for regular benefits under this chapter, do all of the following:

1. Determine whether the claimant is an individual for whom suitable work is only available in an occupation that regularly conducts drug testing.

2. Determine whether the claimant is an individual for whom suitable work is only available in an occupation identified in the rules promulgated under par. (am).

3. If the claimant is determined by the department under subd. 1. to be an individual for whom suitable work is only available in an occupation that regularly conducts drug testing, conduct a screening on the claimant.

4. If the claimant is determined by the department under subd. 2. to be an individual for whom suitable work is only available in an occupation identified in the rules promulgated under par. (am), conduct a screening on the claimant if a screening is not already required under subd. 3.

5. If a screening conducted as required under subd. 3. or 4. indicates that the claimant should be required to submit to a test for the presence of controlled substances, require that the claimant submit to such a test.

(c) Create and provide a substance abuse treatment program in accordance with the rules promulgated under par. (a) 2.

(d) Create and conduct job skills assessments in accordance with the rules promulgated under par. (a) 4.

(3) DRUG TESTING. (a) If a claimant is required under sub. (2) (b) 5. to submit to a test for the presence of controlled substances and the claimant declines to submit to such a test, the claimant is ineligible for benefits under this chapter until 52 weeks after the date of the declining or until the claimant qualifies for benefits in a subsequent benefit year, whichever occurs later.

(b) If a claimant who is required under sub. (2) (b) 5. to submit to a test for the presence of controlled substances submits to the test and does not test positive for any controlled substance or the claimant presents evidence satisfactory to the department that the claimant possesses a valid prescription for each controlled substance for which the claimant tests positive, the claimant may receive benefits under this chapter if otherwise eligible and may not be required to submit to any further test for the presence of controlled substances until a subsequent benefit year.

(c) If a claimant who is required under sub. (2) (b) 5. to submit to a test for the presence of controlled substances submits to the test and tests positive for one or more controlled substances without presenting evidence satisfactory to the department that the claimant possesses a valid prescription for each controlled substance for which the claimant tested positive, the claimant is ineligible for benefits under this chapter until 52 weeks after the date of the test or until the claimant qualifies for benefits in a subsequent benefit year, whichever occurs later, except as provided in par. (d).

(d) A claimant who tests positive for one or more controlled substances without presenting evidence of a valid prescription as described in par. (c) may maintain his or her eligibility for benefits under this chapter by enrolling in the substance abuse treatment program and undergoing a job skills assessment. Such a claimant remains eligible for benefits under this chapter, if otherwise eligible, for each week

the claimant is in full compliance with any requirements of the substance abuse treatment program and job skills assessment, as determined by the department in accordance with the rules promulgated under sub. (2) (a) 2. and 4.

(4) PREEMPLOYMENT DRUG TESTING. (a) An employing unit may, in accordance with the rules promulgated by the department under par. (b), voluntarily submit to the department the results of a test for the presence of controlled substances that was conducted on an individual as preemployment screening or notify the department that an individual declined to submit to such a test as a condition of employment, along with information necessary to identify the individual. Upon receipt of any such results of a test conducted and certified in a manner approved by the department or notification that an individual declined to submit to such a test, the department shall determine whether the individual is a claimant receiving benefits. If the individual is a claimant receiving benefits, the department shall, in accordance with rules promulgated by the department under par. (b), use that information for purposes of determining eligibility for benefits under s. 108.04 (8) (b).

(b) The department shall promulgate rules necessary to implement par. (a).

(5) APPLICATION OF THIS SECTION. (a) Notwithstanding subs. (2) (b) 1., 3., and 5., (c), and (d) and (3), subs. (2) (b) 1., 3., and 5., (c), and (d) and (3) do not apply until the rules required under sub. (2) (a) take effect. The department shall submit to the legislative reference bureau for publication in the Wisconsin administrative register a notice identifying the date on which subs. (2) (b) 1., 3., and 5., (c), and (d) and (3) will be implemented.

(b) Notwithstanding sub. (2) (b) 2. and 4., sub. (2) (b) 2. and 4. do not apply until the rules required under sub. (2) (am) take effect. The department shall submit to the legislative reference bureau for publication in the Wisconsin administrative

register a notice identifying the date on which sub. (2) (b) 2. and 4. will be implemented.

(c) Notwithstanding sub. (4) (a) and s. 108.04 (8) (b), sub. (4) (a) and s. 108.04 (8) (b) do not apply until the rules required under sub. (4) (b) take effect. The department shall submit to the legislative reference bureau for publication in the Wisconsin administrative register a notice identifying the date on which sub. (4) (a) and s. 108.04 (8) (b) will be implemented.

(d) The secretary may waive compliance with any provision under this section and s. 108.04 (8) (b) if the secretary determines that waiver of the provision is necessary to permit continued certification of this chapter for grants to this state under Title III of the federal Social Security Act or for maximum credit allowances to employers under the federal Unemployment Tax Act.

SECTION 6. 108.14 (8n) (e) of the statutes is amended to read:

108.14 (8n) (e) The department shall charge this state's share of any benefits paid under this subsection to the account of each employer by which the employee claiming benefits was employed in the applicable base period, in proportion to the total amount of wages he or she earned from each employer in the base period, except that if s. 108.04 (1) (f), (5), (7) (a), (c), (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b) or 108.07 (3), (3r), or (5) (b) would have applied to employment by such an employer who is subject to the contribution requirements of ss. 108.17 and 108.18, the department shall charge the share of benefits based on employment with that employer to the fund's balancing account, or, if s. 108.04 (1) (f) or (5) or 108.07 (3) would have applied to an employer that is not subject to the contribution requirements of ss. 108.17 and 108.18, the department shall charge the share of benefits based on that employment in accordance with s. 108.07 (5) (a) and (b). The department shall also charge the

fund's balancing account with any other state's share of such benefits pending reimbursement by that state.

SECTION 7. 108.141 (7) (a) of the statutes is amended to read:

108.141 (7) (a) The department shall charge the state's share of each week of extended benefits to each employer's account in proportion to the employer's share of the total wages of the employee receiving the benefits in the employee's base period, except that if the employer is subject to the contribution requirements of ss. 108.17 and 108.18 the department shall charge the share of extended benefits to which s. 108.04 (1) (f), (5), (7) (a), (c), (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b) or 108.07 (3), (3r), or (5) (b) applies to the fund's balancing account.

SECTION 8. 108.16 (6m) (a) of the statutes is amended to read:

108.16 (6m) (a) The benefits thus chargeable under s. 108.04 (1) (f), (5), (5g), (7) (h), (8) (a) or (b), (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) (b), (5m), or (6), 108.14 (8n) (e), 108.141, 108.151, or 108.152 or sub. (6) (e) or (7) (a) and (b).

SECTION 9151. Nonstatutory provisions; Workforce Development.

(1) UNEMPLOYMENT INSURANCE; DRUG TESTING.

(a) *Scope statements for rules.* The department of workforce development shall present the statements of scope of the rules required under sections 108.04 (8) (b) and 108.133 (2) (a) and (am) and (4) (b) of the statutes, as created by this act, to the governor for approval under section 227.135 (2) of the statutes no later than the 180th day after the effective date of this paragraph.

(b) *Emergency rule authority.* Using the procedure under section 227.24 of the statutes, the department of workforce development may promulgate any rules required under sections 108.04 (8) (b) and 108.133 (2) (a) and (am) and (4) (b) of the statutes, as created by this act, for the period before the effective date of any

corresponding permanent rules, but not to exceed the period authorized under section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.

(END)