



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix F ... segment II

LRB BILL HISTORY RESEARCH APPENDIX

The drafting file for 2015 LRB-4395/P3 (For: DWD)

has been copied/added to the drafting file for

2015 LRB-2020 (For: DWD)

Are These "Companion Bills" ?? ... No



RESEARCH APPENDIX - **PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 01/18/2016 (Per: MED/AJM)

The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the digital drafting file.



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4395 (P) 13
MED&AJM:kjf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

(
FW
DWR - new
Thanks!
)

1 **AN ACT to repeal** 108.09 (2) (cm); **to amend** 108.09 (2) (a), 108.09 (2) (d), 108.09
2 (2r), 108.09 (4) (c), 108.09 (4) (d) 1. and 2., 108.09 (4) (e), 108.09 (4) (f) 1., 108.09
3 (4) (f) 2. (intro.), 108.09 (4) (f) 3., 108.09 (5) (b), 108.09 (5) (d), 108.09 (6) (a),
4 108.09 (6) (b), 108.09 (6) (c), 108.09 (6) (d), 108.095 (2), 108.095 (3), 108.095 (7),
5 108.10 (1), 108.10 (2) and 108.10 (6); and **to repeal and recreate** 108.09 (4) (d)
6 3. and 108.09 (5) (c) of the statutes; **relating to:** determinations, decisions, and
7 orders under the unemployment insurance law.

Analysis by the Legislative Reference Bureau

Administrative review of UI decisions

Under current law, initial determinations regarding UI matters are made by the Department of Workforce Development. Those determinations may be appealed to appeal tribunals (ALJs), and an ALJ's decision may be appealed to the Labor and Industry Review Commission. A decision of the commission may then be appealed to circuit court. This bill makes a number of changes to the processes under current law for issuing and appealing decisions, determinations, and orders under the UI law, including the following:

1. If a party fails to appear at a hearing on the merits of a UI determination, current law provides for a hearing on the issue of whether a party had good cause for failing to appear at the hearing. The bill allows an ALJ to issue, without a hearing,

a decision on the issue of whether a party to a determination had good cause for failing to appear at such a hearing. The bill allows the ALJ to make the decision based upon the party's explanation for failing to appear, as well as any response submitted to that explanation by the opposing party. The bill allows the opposing party seven days to submit such a response to the party's explanation for failing to appear.

2. The bill allows for the electronic delivery of UI determinations and decisions, in addition to or instead of mailing.

3. Under current law, all testimony at UI hearings before ALJs must be taken down by a stenographer, or recorded by a recording machine. The bill instead provides that all such testimony must be recorded by electronic means and allows LIRC to use the electronic recording in a review of an ALJ's decision. As under current law, the bill allows a party, for a fee, to request a transcript of the hearing.

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

1 **SECTION 1.** 108.09 (2) (a) of the statutes is amended to read:

2 108.09 (2) (a) The department shall promptly issue a computation setting forth
3 the employee's potential benefit rights based on reports filed by an employer or
4 employers under s. 108.205, or on the employee's statement and any other
5 information then available. The results of the computation, a recomputation, or
6 pertinent portion of either, shall be delivered electronically to, or mailed to the
7 last-known address of each party. The department may recompute an employee's
8 potential benefit rights at any time on the basis of subsequent information or to
9 correct a mistake, including an error of law, except that a party's failure to make
10 specific written objection, received by the department within 14 days after the ~~above~~
11 electronic delivery or mailing, as to a computation or recomputation is a waiver by
12 such party of any objection thereto. Any objections to a computation ~~which that~~ are
13 not satisfactorily resolved by recomputation shall be resolved by a determination
14 under par. (b).

15 **SECTION 2.** 108.09 (2) (cm) of the statutes is repealed.

1 **SECTION 3.** 108.09 (2) (d) of the statutes is amended to read:

2 108.09 (2) (d) A copy of each determination shall be delivered electronically to,
3 or mailed to the last-known address of, each of the parties party, except that a party's
4 copy of any determination may be given to such party instead of being electronically
5 delivered or mailed.

6 **SECTION 4.** 108.09 (2r) of the statutes is amended to read:

7 108.09 (2r) HEARING REQUEST. Any party to a determination may request a
8 hearing as to any matter in that determination if ~~such~~ the request is made in
9 accordance with the procedure prescribed by the department and is received by ~~the~~
10 ~~department~~ an appeal tribunal or postmarked within 14 days after a copy of the
11 determination was delivered electronically, mailed, or given to ~~such~~ the party,
12 whichever first occurs.

13 **SECTION 5.** 108.09 (4) (c) of the statutes is amended to read:

14 108.09 (4) (c) *Late appeal.* If a party files an appeal ~~which~~ that is not timely,
15 an appeal tribunal shall review the appellant's written reasons for filing the late
16 appeal. If those reasons, when taken as true and construed most favorably to the
17 appellant, do not constitute a reason beyond the appellant's control, the appeal
18 tribunal may dismiss the appeal without a hearing and issue a decision accordingly.
19 Otherwise, the department may schedule a hearing concerning the question of
20 whether the appeal was filed late for a reason that was beyond the appellant's
21 control. The department may also provisionally schedule a hearing concerning any
22 matter in the determination being appealed. After hearing testimony on the late
23 appeal question, the appeal tribunal shall issue a decision ~~which~~ that makes
24 ultimate findings of fact and conclusions of law concerning whether the appellant's
25 appeal was filed late for a reason that was beyond the appellant's control and ~~which~~

1 that, in accordance with those findings and conclusions, either dismisses the appeal
2 or determines that the appeal was filed late for a reason that was beyond the
3 appellant's control. If the appeal is not dismissed, the same or another appeal
4 tribunal established by the department for this purpose, after conducting a hearing,
5 shall then issue a decision under sub. (3) (b) concerning any matter in the
6 determination.

7 **SECTION 6.** 108.09 (4) (d) 1. and 2. of the statutes are amended to read:

8 108.09 (4) (d) 1. If the appellant fails to appear at a hearing held under this
9 section and due notice of the hearing was electronically delivered to the appellant or
10 mailed to the appellant's last-known address, the appeal tribunal shall issue a
11 decision dismissing the request for hearing unless subd. 2. applies.

12 2. If the appellant ~~delivers or transmits~~ submits to the appeal tribunal a
13 written explanation for nonappearance to the department which failing to appear at
14 the hearing that is received before a decision under subd. 1. is electronically
15 delivered or mailed, the department may so notify each party and schedule a hearing
16 concerning whether there was good cause for under subd. 1., an appeal tribunal shall
17 review the appellant's nonappearance. The department may also provisionally
18 schedule a hearing concerning any matter in the determination. If, after hearing
19 testimony, explanation. The appeal tribunal shall electronically deliver or mail to
20 the respondent a copy of the appellant's explanation. The respondent may, within
21 7 days after the appeal tribunal electronically delivers or mails the appellant's
22 explanation to the respondent, submit to the appeal tribunal a written response to
23 the appellant's explanation. If the appeal tribunal finds that the appellant's
24 explanation does not establish good cause for nonappearance failing to appear, the
25 appeal tribunal shall issue a decision containing this finding and dismissing the

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and such a decision may be issued without a hearing. Delete

1 appeal ~~may dismiss the appeal without a hearing~~ If, after hearing testimony, the
 2 appeal tribunal finds that the appellant's explanation establishes good cause for
 3 nonappearance failing to appear, the appeal tribunal shall issue a decision
 4 containing this finding, and such a decision may be issued without a hearing. The
 5 same or another appeal tribunal established by the department for this purpose shall
 6 then issue a decision under sub. (3) (b) after conducting a hearing concerning any
 7 matter in the determination. If such a hearing is held concerning any matter in the
 8 determination, the appeal tribunal shall only consider testimony and other evidence
 9 admitted at that hearing in making a decision.

10 SECTION 7. 108.09 (4) (d) 3. of the statutes is repealed and recreated to read:

11 108.09 (4) (d) 3. If the appellant submits to the appeal tribunal a written
 12 explanation for failing to appear at the hearing that is received within 21 days after
 13 a decision is electronically delivered or mailed under subd. 1., an appeal tribunal
 14 shall review the appellant's explanation. The appeal tribunal shall electronically
 15 deliver or mail to the respondent a copy of the appellant's explanation. The
 16 respondent may, within 7 days after the appeal tribunal electronically delivers or
 17 mails the appellant's explanation to the respondent, submit to the appeal tribunal
 18 a written response to the appellant's explanation. If the appeal tribunal finds that
 19 the appellant's explanation does not establish good cause for failing to appear, the
 20 appeal tribunal shall issue a decision containing this finding, and such a decision
 21 may be issued without a hearing. If the appeal tribunal finds that the appellant's
 22 explanation establishes good cause for failing to appear, the appeal tribunal shall
 23 issue a decision containing this finding, and the decision may be issued without a
 24 hearing. The appeal tribunal shall then set aside the original decision and schedule
 25 a hearing concerning any matter in the determination. The same or another appeal

1 tribunal established by the department for this purpose shall then issue a decision
2 under sub. (3) (b) after conducting a hearing concerning any matter in the
3 determination. If such a hearing is held concerning any matter in the determination,
4 the appeal tribunal shall only consider the testimony and other evidence admitted
5 at that hearing in making a decision.

6 **SECTION 8.** 108.09 (4) (e) of the statutes is amended to read:

7 108.09 (4) (e) *Respondent's failure to appear.* 1. If the respondent fails to appear
8 at a hearing held under this section but the appellant is present, and due notice of
9 the hearing was electronically delivered to the respondent or mailed to the
10 respondent's last-known address, the appeal tribunal shall hold the hearing. The
11 appeal tribunal shall consider records and information already submitted to the
12 department by the appellant and the respondent regarding the determination or the
13 appeal, take the testimony of the appellant and any witnesses, and shall issue a
14 decision under sub. (3) (b) unless subd. 2. applies.

15 2. If the respondent ~~delivers or transmits~~ submits to the appeal tribunal a
16 written explanation for ~~nonappearance to the department which failing to appear at~~
17 the hearing that is received before a decision favorable to the respondent is
18 electronically delivered or mailed under subd. 1., the appeal tribunal shall
19 acknowledge receipt of the explanation in its decision but shall take no further action
20 concerning the explanation at that time. If the respondent ~~delivers or transmits~~
21 submits to the appeal tribunal a written explanation for ~~nonappearance to the~~
22 ~~department which failing to appear that~~ is received before a decision unfavorable to
23 the respondent is electronically delivered or mailed under subd. 1., the department
24 ~~may so notify each party and may schedule a hearing concerning whether there was~~
25 ~~good cause for the respondent's nonappearance. The department may also~~

1 provisionally schedule a hearing for further testimony concerning any matter in the
2 determination. ~~If, after hearing testimony, the appeal tribunal finds that the~~
3 ~~respondent's explanation does not establish good cause for nonappearance, the~~
4 ~~appeal tribunal shall issue a decision containing this finding. The same or another~~
5 ~~appeal tribunal established by the department for this purpose shall also issue a~~
6 ~~decision based on the testimony and other evidence presented at the hearing at~~
7 ~~which the respondent failed to appear. If, after hearing testimony, the appeal~~
8 ~~tribunal finds that the respondent's explanation~~ an appeal tribunal shall review the
9 respondent's explanation. The appeal tribunal shall electronically deliver or mail to
10 the appellant a copy of the respondent's explanation. The appellant may, within 7
11 days after the appeal tribunal electronically delivers or mails the respondent's
12 explanation to the appellant, submit to the appeal tribunal a written response to the
13 respondent's explanation. If the appeal tribunal finds that the respondent's
14 explanation does not establish good cause for failing to appear, the appeal tribunal
15 shall issue a decision containing this finding, and such a decision may be issued
16 without a hearing. If the appeal tribunal finds that the respondent's explanation
17 establishes good cause for nonappearance ~~failing to appear~~, the appeal tribunal shall
18 issue a decision containing this finding, and such a decision may be issued without
19 a hearing. The same or another appeal tribunal established by the department for
20 this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing
21 concerning any matter in the determination. If such a ~~2nd~~ hearing is held concerning
22 any matter in the determination, the appeal tribunal shall only consider testimony
23 and other evidence admitted at that hearing in making a decision.

24 3. If the respondent ~~delivers or transmits~~ submits to the appeal tribunal a
25 written explanation for nonappearance to the department which ~~failing to appear at~~

1 ~~the hearing that~~ is received within 21 days after a decision favorable to the
2 respondent is electronically delivered or mailed under subd. 1., the department
3 appeal tribunal shall notify the respondent of receipt of the explanation and that
4 since the decision was favorable to the respondent no further action concerning the
5 explanation will be taken at that time. If the respondent ~~delivers or transmits~~
6 submits to the appeal tribunal a written explanation for ~~nonappearance to the~~
7 ~~department which~~ failing to appear that is received within 21 days after a decision
8 unfavorable to the respondent is electronically delivered or mailed under subd. 1.,
9 ~~the an~~ an appeal tribunal shall review the respondent's explanation. The appeal
10 tribunal shall electronically deliver or mail to the appellant a copy of the respondent's
11 explanation. The appellant may, within 7 days after the appeal tribunal
12 electronically delivers or mails the respondent's explanation to the appellant, submit
13 to the appeal tribunal a written response to the respondent's explanation. If the
14 appeal tribunal finds that the respondent's explanation does not establish good cause
15 for failing to appear, the appeal tribunal shall issue a decision containing this
16 finding, and such a decision may be issued without a hearing. If the appeal tribunal
17 finds that the respondent's explanation establishes good cause for failing to appear,
18 the appeal tribunal shall issue a decision containing this finding, and such a decision
19 may be issued without a hearing. The appeal tribunal may shall then set aside the
20 original decision and ~~the department may schedule a hearing concerning whether~~
21 ~~there was good cause for the respondent's nonappearance. The department may also~~
22 ~~provisionally schedule a hearing concerning any matter in the determination. If the~~
23 ~~original decision is not set aside, the appeal tribunal may, on its own motion amend~~
24 ~~or set aside that decision within 21 days after the decision concerning whether there~~
25 ~~was good cause for the respondent's nonappearance is mailed under subd. 1. If, after~~

1 ~~hearing testimony, the appeal tribunal finds that the respondent's explanation does~~
2 ~~not establish good cause for nonappearance, the appeal tribunal shall issue a~~
3 ~~decision containing this finding and, if necessary, reinstating the decision which was~~
4 ~~set aside. If, after hearing testimony, the appeal tribunal finds that the respondent's~~
5 ~~explanation establishes good cause for nonappearance, the same or another appeal~~
6 ~~tribunal established by the department for this purpose shall issue a decision~~
7 ~~containing this finding. The same or another appeal tribunal established by the~~
8 ~~department for this purpose shall then issue a decision under sub. (3) (b) after~~
9 ~~conducting a hearing concerning any matter in the determination. If such a 2nd~~
10 ~~hearing is held concerning any matter in the determination, the appeal tribunal~~
11 ~~shall only consider the testimony and other evidence admitted at that hearing in~~
12 ~~making a decision.~~

13 **SECTION 9.** 108.09 (4) (f) 1. of the statutes is amended to read:

14 108.09 (4) (f) 1. ~~Except as provided in par. (e) 3., within~~ Within 21 days after
15 its decision was electronically delivered or mailed to the parties, the appeal tribunal
16 may, on its own motion, amend or set aside its decision and may thereafter make new
17 findings and issue a decision on the basis of evidence previously submitted in such
18 case, or the same or another appeal tribunal may make new findings and issue a
19 decision after taking additional testimony.

20 **SECTION 10.** 108.09 (4) (f) 2. (intro.) of the statutes is amended to read:

21 108.09 (4) (f) 2. (intro.) Unless a party or the department has filed a timely
22 petition for review of the appeal tribunal decision by the commission, the appeal
23 tribunal may set aside or amend an appeal tribunal decision, or portion thereof, at
24 any time if the appeal tribunal finds that:

25 **SECTION 11.** 108.09 (4) (f) 3. of the statutes is amended to read:

1 108.09 (4) (f) 3. Unless a party or the department has filed a timely petition for
2 review of the appeal tribunal decision by the commission, the appeal tribunal may,
3 within 2 years after the date of the decision, reopen its decision if it has reason to
4 believe that a party offered false evidence or a witness gave false testimony on an
5 issue material to its decision. Thereafter, and after receiving additional evidence or
6 taking additional testimony, the same or another appeal tribunal may set aside its
7 original decision, make new findings, and issue a decision.

8 **SECTION 12.** 108.09 (5) (b) of the statutes is amended to read:

9 108.09 (5) (b) All testimony at any hearing under this section shall be ~~taken~~
10 ~~down by a stenographer, or recorded by a recording machine~~ electronic means, but
11 need not be transcribed unless either of the parties requests a transcript ~~prior to~~
12 before expiration of that party's right to further appeal under this section and pays
13 a fee to the commission in advance, the amount of which shall be established by rule
14 of the commission. ~~When the commission provides a transcript is thus furnished to~~
15 one of the parties upon request, the commission shall also provide a copy of the
16 transcript ~~shall be furnished the to all other party parties~~ free of charge. The
17 transcript fee ~~thus~~ collected shall be paid to the administrative account.

18 **SECTION 13.** 108.09 (5) (c) of the statutes is repealed and recreated to read:

19 108.09 (5) (c) The department shall furnish a copy of the electronic recording
20 to the parties upon payment of any fee required by the department by rule.

21 **SECTION 14.** 108.09 (5) (d) of the statutes is amended to read:

22 108.09 (5) (d) In its review of the decision of an appeal tribunal, the commission
23 shall use the electronic recording of the hearing or a written synopsis of the
24 testimony ~~and other evidence taken at a hearing or shall use~~ a transcript of the
25 hearing prepared, under the direction of the department or commission, ~~by an~~

1 ~~employee of the department, an employee of the commission or a contractor. If a~~
2 ~~party shows to the commission that a synopsis is not sufficiently complete and~~
3 ~~accurate to fairly reflect the relevant and material testimony and other evidence~~
4 ~~taken, the commission shall direct the preparation of a transcript. If a transcript is~~
5 ~~prepared, the transcript shall indicate the transcriber's name and whether the~~
6 ~~transcriber is an employee of the department, an employee of the commission, or a~~
7 ~~contractor and shall also use any other evidence taken at the hearing.~~

8 **SECTION 15.** 108.09 (6) (a) of the statutes is amended to read:

9 108.09 (6) (a) The department or any party may petition the commission for
10 review of an appeal tribunal decision, pursuant to ~~commission~~ rules promulgated by
11 the commission, if such ~~the~~ petition is received by the ~~department~~ or commission or
12 postmarked within 21 days after the appeal tribunal decision was electronically
13 delivered to the party or mailed to the party's last-known address. The commission
14 shall dismiss any petition if not timely filed unless the petitioner shows ~~probable~~
15 good cause that the reason for having failed to file the petition timely was beyond the
16 control of the petitioner. If the petition is not dismissed, the commission may take
17 action under par. (d).

18 **SECTION 16.** 108.09 (6) (b) of the statutes is amended to read:

19 108.09 (6) (b) Within 28 days after a decision of the commission is electronically
20 delivered or mailed to the parties, the commission may, on its own motion, set aside
21 the decision for further consideration and take action under par. (d).

22 **SECTION 17.** 108.09 (6) (c) of the statutes is amended to read:

23 108.09 (6) (c) On its own motion, for reasons it deems sufficient, the commission
24 may set aside any final determination of the department or appeal tribunal or
25 commission decision within 2 years ~~from~~ after the date thereof upon grounds of

1 mistake or newly discovered evidence, and take action under par. (d). The
2 commission may set aside any final determination of the department or any decision
3 of an appeal tribunal or of the commission at any time, and take action under par.
4 (d), if the benefits paid or payable to a claimant have been affected by wages earned
5 by the claimant ~~which~~ that have not been paid, and the commission is provided with
6 notice from the appropriate state or federal court or agency that a wage claim for
7 those wages will not be paid in whole or in part.

8 **SECTION 18.** 108.09 (6) (d) of the statutes is amended to read:

9 108.09 (6) (d) In any case before the commission for action under this
10 subsection, the commission may affirm, reverse, modify, or set aside the decision on
11 the basis of the evidence previously submitted, ~~may~~; order the taking of additional
12 evidence as to such matters as it may direct, ~~or it may~~; or remand the matter to the
13 department for further proceedings.

14 **SECTION 19.** 108.095 (2) of the statutes is amended to read:

15 108.095 (2) The department shall investigate whether any person has obtained
16 benefits that were payable to another person by means of any false statement or
17 representation, and may issue an initial determination concerning its findings. The
18 department shall electronically deliver a copy of the determination to, or mail a copy
19 of the determination to the last-known address of, each party affected thereby.
20 Unless designated by a determination under this section, an employing unit is not
21 a party to the determination. The department may set aside or amend the
22 determination at any time prior to a hearing concerning the determination under
23 sub. (5) on the basis of subsequent information or to correct a mistake, including an
24 error of law.

25 **SECTION 20.** 108.095 (3) of the statutes is amended to read:

1 108.095 (3) Any party to a determination may appeal that determination by
2 requesting a hearing concerning any matter in that determination if the request is
3 received by the department or postmarked within 14 days after the electronic
4 delivery or mailing.

5 **SECTION 21.** 108.095 (7) of the statutes is amended to read:

6 108.095 (7) Any party may commence an action for judicial review of a decision
7 of the commission under this section, after exhausting the remedies provided under
8 this section, by commencing the action within 30 days after the decision of the
9 commission is delivered electronically or mailed to the department and is delivered
10 electronically to, or mailed to the last-known address of, each other party. The scope
11 and manner of judicial review is the same as that provided in s. 108.09 (7).

12 **SECTION 22.** 108.10 (1) of the statutes is amended to read:

13 108.10 (1) The department shall investigate the status, and the existence and
14 extent of liability of an employing unit, and may issue an initial determination
15 accordingly. The department may set aside or amend the determination at any time
16 prior to a hearing on the determination on the basis of subsequent information or to
17 correct a mistake, including an error of law. The department shall electronically
18 deliver a copy of each determination to, or mail a copy of each determination to the
19 last-known address of, the employing unit affected thereby. The employing unit may
20 request a hearing as to any matter in that determination if the request is received
21 by the department or postmarked within 21 days after the mailing and in accordance
22 with such procedure as the department prescribes by rule.

23 **SECTION 23.** 108.10 (2) of the statutes is amended to read:

24 108.10 (2) Any hearing duly requested shall be held before an appeal tribunal
25 established as provided by s. 108.09 (3), and s. 108.09 (4) and (5) shall be applicable

1 to the proceedings before such tribunal. The department may be a party in any
2 proceedings before an appeal tribunal. The employing unit or the department may
3 petition the commission for review of the appeal tribunal's decision under s. 108.09
4 (6).

5 **SECTION 24.** 108.10 (6) of the statutes is amended to read:

6 108.10 (6) Any determination by the department or any decision by an appeal
7 tribunal or by the commission is conclusive with respect to an employing unit unless
8 ~~it~~ the department or the employing unit files a timely request for a hearing or petition
9 for review as provided in this section. A determination or decision is binding upon
10 the department only insofar as the relevant facts were included in the record ~~which~~
11 that was before the department at the time the determination was issued, or before
12 the appeal tribunal or commission at the time the decision was issued.

13

(END)



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4395/P3
MED&AJM:kjf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to repeal* 108.09 (2) (cm); *to amend* 108.09 (2) (a), 108.09 (2) (d), 108.09
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4 108.09 (6) (b), 108.09 (6) (c), 108.09 (6) (d), 108.095 (2), 108.095 (3), 108.095 (7),
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6 3. and 108.09 (5) (c) of the statutes; **relating to:** determinations, decisions, and
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Analysis by the Legislative Reference Bureau

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Under current law, initial determinations regarding UI matters are made by the Department of Workforce Development. Those determinations may be appealed to appeal tribunals (ALJs), and an ALJ's decision may be appealed to the Labor and Industry Review Commission. A decision of the commission may then be appealed to circuit court. This bill makes a number of changes to the processes under current law for issuing and appealing decisions, determinations, and orders under the UI law, including the following:

1. If a party fails to appear at a hearing on the merits of a UI determination, current law provides for a hearing on the issue of whether a party had good cause for failing to appear at the hearing. The bill allows an ALJ to issue, without a hearing,

a decision on the issue of whether a party to a determination had good cause for failing to appear at such a hearing. The bill allows the ALJ to make the decision based upon the party's explanation for failing to appear, as well as any response submitted to that explanation by the opposing party. The bill allows the opposing party seven days to submit such a response to the party's explanation for failing to appear.

2. The bill allows for the electronic delivery of UI determinations and decisions, in addition to or instead of mailing.

3. Under current law, all testimony at UI hearings before ALJs must be taken down by a stenographer, or recorded by a recording machine. The bill instead provides that all such testimony must be recorded by electronic means and allows LIRC to use the electronic recording in a review of an ALJ's decision. As under current law, the bill allows a party, for a fee, to request a transcript of the hearing.

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

1 **SECTION 1.** 108.09 (2) (a) of the statutes is amended to read:

2 108.09 (2) (a) The department shall promptly issue a computation setting forth
3 the employee's potential benefit rights based on reports filed by an employer or
4 employers under s. 108.205, or on the employee's statement and any other
5 information then available. The results of the computation, a recomputation, or
6 pertinent portion of either, shall be delivered electronically to, or mailed to the
7 last-known address of, each party. The department may recompute an employee's
8 potential benefit rights at any time on the basis of subsequent information or to
9 correct a mistake, including an error of law, except that a party's failure to make
10 specific written objection, received by the department within 14 days after the above
11 electronic delivery or mailing, as to a computation or recomputation is a waiver by
12 such party of any objection thereto. Any objections to a computation ~~which~~ that are
13 not satisfactorily resolved by recomputation shall be resolved by a determination
14 under par. (b).

15 **SECTION 2.** 108.09 (2) (cm) of the statutes is repealed.

1 **SECTION 3.** 108.09 (2) (d) of the statutes is amended to read:

2 108.09 (2) (d) A copy of each determination shall be delivered electronically to,
3 or mailed to the last-known address of, each of the parties party, except that a party's
4 copy of any determination may be given to such party instead of being electronically
5 delivered or mailed.

6 **SECTION 4.** 108.09 (2r) of the statutes is amended to read:

7 108.09 (2r) HEARING REQUEST. Any party to a determination may request a
8 hearing as to any matter in that determination if ~~such~~ the request is made in
9 accordance with the procedure prescribed by the department and is received by ~~the~~
10 ~~department~~ an appeal tribunal or postmarked within 14 days after a copy of the
11 determination was delivered electronically, mailed, or given to ~~such~~ the party,
12 whichever first occurs.

13 **SECTION 5.** 108.09 (4) (c) of the statutes is amended to read:

14 108.09 (4) (c) *Late appeal.* If a party files an appeal ~~which~~ that is not timely,
15 an appeal tribunal shall review the appellant's written reasons for filing the late
16 appeal. If those reasons, when taken as true and construed most favorably to the
17 appellant, do not constitute a reason beyond the appellant's control, the appeal
18 tribunal may dismiss the appeal without a hearing and issue a decision accordingly.
19 Otherwise, the department may schedule a hearing concerning the question of
20 whether the appeal was filed late for a reason that was beyond the appellant's
21 control. The department may also provisionally schedule a hearing concerning any
22 matter in the determination being appealed. After hearing testimony on the late
23 appeal question, the appeal tribunal shall issue a decision ~~which~~ that makes
24 ultimate findings of fact and conclusions of law concerning whether the appellant's
25 appeal was filed late for a reason that was beyond the appellant's control and ~~which~~

1 that, in accordance with those findings and conclusions, either dismisses the appeal
2 or determines that the appeal was filed late for a reason that was beyond the
3 appellant's control. If the appeal is not dismissed, the same or another appeal
4 tribunal established by the department for this purpose, after conducting a hearing,
5 shall then issue a decision under sub. (3) (b) concerning any matter in the
6 determination.

7 **SECTION 6.** 108.09 (4) (d) 1. and 2. of the statutes are amended to read:

8 108.09 (4) (d) 1. If the appellant fails to appear at a hearing held under this
9 section and due notice of the hearing was electronically delivered to the appellant or
10 mailed to the appellant's last-known address, the appeal tribunal shall issue a
11 decision dismissing the request for hearing unless subd. 2. applies.

12 2. If the appellant ~~delivers or transmits~~ submits to the appeal tribunal a
13 written explanation for nonappearance to the department which failing to appear at
14 the hearing that is received before a decision under subd. 1. is electronically
15 delivered or mailed, the department may so notify each party and schedule a hearing
16 concerning whether there was good cause for under subd. 1., an appeal tribunal shall
17 review the appellant's nonappearance. The department may also provisionally
18 schedule a hearing concerning any matter in the determination. If, after hearing
19 testimony, explanation. The appeal tribunal shall electronically deliver or mail to
20 the respondent a copy of the appellant's explanation. The respondent may, within
21 7 days after the appeal tribunal electronically delivers or mails the appellant's
22 explanation to the respondent, submit to the appeal tribunal a written response to
23 the appellant's explanation. If the appeal tribunal finds that the appellant's
24 explanation does not establish good cause for nonappearance failing to appear, the
25 appeal tribunal shall issue a decision containing this finding and dismissing the

1 ~~appeal such a decision may be issued without a hearing. If, after hearing testimony,~~
2 the appeal tribunal finds that the appellant's explanation establishes good cause for
3 ~~nonappearance failing to appear,~~ the appeal tribunal shall issue a decision
4 containing this finding, and such a decision may be issued without a hearing. The
5 same or another appeal tribunal established by the department for this purpose shall
6 then issue a decision under sub. (3) (b) after conducting a hearing concerning any
7 matter in the determination. If such a hearing is held concerning any matter in the
8 determination, the appeal tribunal shall only consider testimony and other evidence
9 admitted at that hearing in making a decision.

10 **SECTION 7.** 108.09 (4) (d) 3. of the statutes is repealed and recreated to read:

11 108.09 (4) (d) 3. If the appellant submits to the appeal tribunal a written
12 explanation for failing to appear at the hearing that is received within 21 days after
13 a decision is electronically delivered or mailed under subd. 1., an appeal tribunal
14 shall review the appellant's explanation. The appeal tribunal shall electronically
15 deliver or mail to the respondent a copy of the appellant's explanation. The
16 respondent may, within 7 days after the appeal tribunal electronically delivers or
17 mails the appellant's explanation to the respondent, submit to the appeal tribunal
18 a written response to the appellant's explanation. If the appeal tribunal finds that
19 the appellant's explanation does not establish good cause for failing to appear, the
20 appeal tribunal shall issue a decision containing this finding, and such a decision
21 may be issued without a hearing. If the appeal tribunal finds that the appellant's
22 explanation establishes good cause for failing to appear, the appeal tribunal shall
23 issue a decision containing this finding, and the decision may be issued without a
24 hearing. The appeal tribunal shall then set aside the original decision and schedule
25 a hearing concerning any matter in the determination. The same or another appeal

1 tribunal established by the department for this purpose shall then issue a decision
2 under sub. (3) (b) after conducting a hearing concerning any matter in the
3 determination. If such a hearing is held concerning any matter in the determination,
4 the appeal tribunal shall only consider the testimony and other evidence admitted
5 at that hearing in making a decision.

6 **SECTION 8.** 108.09 (4) (e) of the statutes is amended to read:

7 108.09 (4) (e) *Respondent's failure to appear.* 1. If the respondent fails to appear
8 at a hearing held under this section but the appellant is present, and due notice of
9 the hearing was electronically delivered to the respondent or mailed to the
10 respondent's last-known address, the appeal tribunal shall hold the hearing. The
11 appeal tribunal shall consider records and information already submitted to the
12 department by the appellant and the respondent regarding the determination or the
13 appeal, take the testimony of the appellant and any witnesses, and shall issue a
14 decision under sub. (3) (b) unless subd. 2. applies.

15 2. If the respondent ~~delivers or transmits~~ submits to the appeal tribunal a
16 written explanation for nonappearance to the department which failing to appear at
17 the hearing that is received before a decision favorable to the respondent is
18 electronically delivered or mailed under subd. 1., the appeal tribunal shall
19 acknowledge receipt of the explanation in its decision but shall take no further action
20 concerning the explanation at that time. If the respondent ~~delivers or transmits~~
21 submits to the appeal tribunal a written explanation for nonappearance to the
22 department which failing to appear that is received before a decision unfavorable to
23 the respondent is electronically delivered or mailed under subd. 1., ~~the department~~
24 ~~may so notify each party and may schedule a hearing concerning whether there was~~
25 ~~good cause for the respondent's nonappearance. The department may also~~

1 provisionally schedule a hearing for further testimony concerning any matter in the
2 determination. ~~If, after hearing testimony, the appeal tribunal finds that the~~
3 ~~respondent's explanation does not establish good cause for nonappearance, the~~
4 ~~appeal tribunal shall issue a decision containing this finding. The same or another~~
5 ~~appeal tribunal established by the department for this purpose shall also issue a~~
6 ~~decision based on the testimony and other evidence presented at the hearing at~~
7 ~~which the respondent failed to appear. If, after hearing testimony, the appeal~~
8 ~~tribunal finds that the respondent's explanation~~ an appeal tribunal shall review the
9 respondent's explanation. The appeal tribunal shall electronically deliver or mail to
10 the appellant a copy of the respondent's explanation. The appellant may, within 7
11 days after the appeal tribunal electronically delivers or mails the respondent's
12 explanation to the appellant, submit to the appeal tribunal a written response to the
13 respondent's explanation. If the appeal tribunal finds that the respondent's
14 explanation does not establish good cause for failing to appear, the appeal tribunal
15 shall issue a decision containing this finding, and such a decision may be issued
16 without a hearing. If the appeal tribunal finds that the respondent's explanation
17 establishes good cause for nonappearance failing to appear, the appeal tribunal shall
18 issue a decision containing this finding, and such a decision may be issued without
19 a hearing. The same or another appeal tribunal established by the department for
20 this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing
21 concerning any matter in the determination. If such a 2nd hearing is held concerning
22 any matter in the determination, the appeal tribunal shall only consider testimony
23 and other evidence admitted at that hearing in making a decision.

24 3. If the respondent ~~delivers or transmits~~ submits to the appeal tribunal a
25 written explanation for ~~nonappearance to the department which~~ failing to appear at

1 ~~the hearing that~~ is received within 21 days after a decision favorable to the
2 respondent is electronically delivered or mailed under subd. 1., the ~~department~~
3 appeal tribunal shall notify the respondent of receipt of the explanation and that
4 since the decision was favorable to the respondent no further action concerning the
5 explanation will be taken at that time. If the respondent ~~delivers or transmits~~
6 submits to the appeal tribunal a written explanation for ~~nonappearance to the~~
7 ~~department which~~ failing to appear that is received within 21 days after a decision
8 unfavorable to the respondent is electronically delivered or mailed under subd. 1.,
9 ~~the an~~ an appeal tribunal shall review the respondent's explanation. The appeal
10 tribunal shall electronically deliver or mail to the appellant a copy of the respondent's
11 explanation. The appellant may, within 7 days after the appeal tribunal
12 electronically delivers or mails the respondent's explanation to the appellant, submit
13 to the appeal tribunal a written response to the respondent's explanation. If the
14 appeal tribunal finds that the respondent's explanation does not establish good cause
15 for failing to appear, the appeal tribunal shall issue a decision containing this
16 finding, and such a decision may be issued without a hearing. If the appeal tribunal
17 finds that the respondent's explanation establishes good cause for failing to appear,
18 the appeal tribunal shall issue a decision containing this finding, and such a decision
19 may be issued without a hearing. The appeal tribunal may shall then set aside the
20 original decision and ~~the department may schedule a hearing concerning whether~~
21 ~~there was good cause for the respondent's nonappearance. The department may also~~
22 ~~provisionally schedule a hearing concerning any matter in the determination. If the~~
23 ~~original decision is not set aside, the appeal tribunal may, on its own motion amend~~
24 ~~or set aside that decision within 21 days after the decision concerning whether there~~
25 ~~was good cause for the respondent's nonappearance is mailed under subd. 1. If, after~~

1 hearing testimony, the appeal tribunal finds that the respondent's explanation does
2 not establish good cause for nonappearance, the appeal tribunal shall issue a
3 decision containing this finding and, if necessary, reinstating the decision which was
4 set aside. If, after hearing testimony, the appeal tribunal finds that the respondent's
5 explanation establishes good cause for nonappearance, the same or another appeal
6 tribunal established by the department for this purpose shall issue a decision
7 containing this finding. The same or another appeal tribunal established by the
8 department for this purpose shall then issue a decision under sub. (3) (b) after
9 conducting a hearing concerning any matter in the determination. If such a 2nd
10 hearing is held concerning any matter in the determination, the appeal tribunal
11 shall only consider the testimony and other evidence admitted at that hearing in
12 making a decision.

13 **SECTION 9.** 108.09 (4) (f) 1. of the statutes is amended to read:

14 108.09 (4) (f) 1. ~~Except as provided in par. (e) 3., within~~ Within 21 days after
15 its decision was electronically delivered or mailed to the parties, the appeal tribunal
16 may, on its own motion, amend or set aside its decision and may thereafter make new
17 findings and issue a decision on the basis of evidence previously submitted in such
18 case, or the same or another appeal tribunal may make new findings and issue a
19 decision after taking additional testimony.

20 **SECTION 10.** 108.09 (4) (f) 2. (intro.) of the statutes is amended to read:

21 108.09 (4) (f) 2. (intro.) Unless a party or the department has filed a timely
22 petition for review of the appeal tribunal decision by the commission, the appeal
23 tribunal may set aside or amend an appeal tribunal decision, or portion thereof, at
24 any time if the appeal tribunal finds that:

25 **SECTION 11.** 108.09 (4) (f) 3. of the statutes is amended to read:

1 108.09 (4) (f) 3. Unless a party or the department has filed a timely petition for
2 review of the appeal tribunal decision by the commission, the appeal tribunal may,
3 within 2 years after the date of the decision, reopen its decision if it has reason to
4 believe that a party offered false evidence or a witness gave false testimony on an
5 issue material to its decision. Thereafter, and after receiving additional evidence or
6 taking additional testimony, the same or another appeal tribunal may set aside its
7 original decision, make new findings, and issue a decision.

8 **SECTION 12.** 108.09 (5) (b) of the statutes is amended to read:

9 108.09 (5) (b) All testimony at any hearing under this section shall be ~~taken~~
10 ~~down by a stenographer, or recorded by a recording machine~~ electronic means, but
11 need not be transcribed unless either of the parties requests a transcript ~~prior to~~
12 before expiration of that party's right to further appeal under this section and pays
13 a fee to the commission in advance, the amount of which shall be established by rule
14 of the commission. When the commission provides a transcript ~~is thus furnished to~~
15 one of the parties upon request, the commission shall also provide a copy of the
16 transcript ~~shall be furnished the~~ to all other party parties free of charge. The
17 transcript fee ~~thus~~ collected shall be paid to the administrative account.

18 **SECTION 13.** 108.09 (5) (c) of the statutes is repealed and recreated to read:

19 108.09 (5) (c) The department shall furnish a copy of the electronic recording
20 to the parties upon payment of any fee required by the department by rule.

21 **SECTION 14.** 108.09 (5) (d) of the statutes is amended to read:

22 108.09 (5) (d) In its review of the decision of an appeal tribunal, the commission
23 shall use the electronic recording of the hearing or a written synopsis of the
24 testimony ~~and other evidence taken at a hearing or~~ shall use a transcript of the
25 hearing prepared, under the direction of the department or commission, ~~by an~~

1 ~~employee of the department, an employee of the commission or a contractor. If a~~
2 ~~party shows to the commission that a synopsis is not sufficiently complete and~~
3 ~~accurate to fairly reflect the relevant and material testimony and other evidence~~
4 ~~taken, the commission shall direct the preparation of a transcript. If a transcript is~~
5 ~~prepared, the transcript shall indicate the transcriber's name and whether the~~
6 ~~transcriber is an employee of the department, an employee of the commission, or a~~
7 ~~contractor and shall also use any other evidence taken at the hearing.~~

8 **SECTION 15.** 108.09 (6) (a) of the statutes is amended to read:

9 108.09 (6) (a) The department or any party may petition the commission for
10 review of an appeal tribunal decision, pursuant to ~~commission~~ rules promulgated by
11 the commission, if ~~such~~ the petition is received by the ~~department~~ or commission or
12 postmarked within 21 days after the appeal tribunal decision was electronically
13 delivered to the party or mailed to the party's last-known address. The commission
14 shall dismiss any petition if not timely filed unless the petitioner shows ~~probable~~
15 good cause that the reason for having failed to file the petition timely was beyond the
16 control of the petitioner. If the petition is not dismissed, the commission may take
17 action under par. (d).

18 **SECTION 16.** 108.09 (6) (b) of the statutes is amended to read:

19 108.09 (6) (b) Within 28 days after a decision of the commission is electronically
20 delivered or mailed to the parties, the commission may, on its own motion, set aside
21 the decision for further consideration and take action under par. (d).

22 **SECTION 17.** 108.09 (6) (c) of the statutes is amended to read:

23 108.09 (6) (c) On its own motion, for reasons it deems sufficient, the commission
24 may set aside any final determination of the department or appeal tribunal or
25 commission decision within 2 years ~~from~~ after the date thereof upon grounds of

1 mistake or newly discovered evidence, and take action under par. (d). The
2 commission may set aside any final determination of the department or any decision
3 of an appeal tribunal or of the commission at any time, and take action under par.
4 (d), if the benefits paid or payable to a claimant have been affected by wages earned
5 by the claimant ~~which~~ that have not been paid, and the commission is provided with
6 notice from the appropriate state or federal court or agency that a wage claim for
7 those wages will not be paid in whole or in part.

8 **SECTION 18.** 108.09 (6) (d) of the statutes is amended to read:

9 108.09 (6) (d) In any case before the commission for action under this
10 subsection, the commission may affirm, reverse, modify, or set aside the decision on
11 the basis of the evidence previously submitted, ~~may~~ order the taking of additional
12 evidence as to such matters as it may direct, ~~or it may~~ or remand the matter to the
13 department for further proceedings.

14 **SECTION 19.** 108.095 (2) of the statutes is amended to read:

15 108.095 (2) The department shall investigate whether any person has obtained
16 benefits that were payable to another person by means of any false statement or
17 representation, and may issue an initial determination concerning its findings. The
18 department shall electronically deliver a copy of the determination to, or mail a copy
19 of the determination to the last-known address of, each party affected thereby.
20 Unless designated by a determination under this section, an employing unit is not
21 a party to the determination. The department may set aside or amend the
22 determination at any time prior to a hearing concerning the determination under
23 sub. (5) on the basis of subsequent information or to correct a mistake, including an
24 error of law.

25 **SECTION 20.** 108.095 (3) of the statutes is amended to read:

1 108.095 (3) Any party to a determination may appeal that determination by
2 requesting a hearing concerning any matter in that determination if the request is
3 received by the department or postmarked within 14 days after the electronic
4 delivery or mailing.

5 **SECTION 21.** 108.095 (7) of the statutes is amended to read:

6 108.095 (7) Any party may commence an action for judicial review of a decision
7 of the commission under this section, after exhausting the remedies provided under
8 this section, by commencing the action within 30 days after the decision of the
9 commission is delivered electronically or mailed to the department and is delivered
10 electronically to, or mailed to the last-known address of, each other party. The scope
11 and manner of judicial review is the same as that provided in s. 108.09 (7).

12 **SECTION 22.** 108.10 (1) of the statutes is amended to read:

13 108.10 (1) The department shall investigate the status, and the existence and
14 extent of liability of an employing unit, and may issue an initial determination
15 accordingly. The department may set aside or amend the determination at any time
16 prior to a hearing on the determination on the basis of subsequent information or to
17 correct a mistake, including an error of law. The department shall electronically
18 deliver a copy of each determination to, or mail a copy of each determination to the
19 last-known address of, the employing unit affected thereby. The employing unit may
20 request a hearing as to any matter in that determination if the request is received
21 by the department or postmarked within 21 days after the mailing and in accordance
22 with such procedure as the department prescribes by rule.

23 **SECTION 23.** 108.10 (2) of the statutes is amended to read:

24 108.10 (2) Any hearing duly requested shall be held before an appeal tribunal
25 established as provided by s. 108.09 (3), and s. 108.09 (4) and (5) shall be applicable

1 to the proceedings before such tribunal. The department may be a party in any
2 proceedings before an appeal tribunal. The employing unit or the department may
3 petition the commission for review of the appeal tribunal's decision under s. 108.09
4 (6).

5 SECTION 24. 108.10 (6) of the statutes is amended to read:

6 108.10 (6) Any determination by the department or any decision by an appeal
7 tribunal or by the commission is conclusive with respect to an employing unit unless
8 it the department or the employing unit files a timely request for a hearing or petition
9 for review as provided in this section. A determination or decision is binding upon
10 the department only insofar as the relevant facts were included in the record ~~which~~
11 that was before the department at the time the determination was issued, or before
12 the appeal tribunal or commission at the time the decision was issued.

13

(END)