

1979 Senate Bill 258

Date published: November 8, 1979

CHAPTER 52, Laws of 1979

AN ACT to repeal 108.04 (3) and (3m); to renumber 108.04 (15); to amend 108.02 (5) (j) 5 and (k) (intro.), 108.04 (13) (b) and (e), 108.09 (3m) and (8), 108.141 (9), 108.151 (4), 108.16 (7) (c) and 108.18 (4) (figure); to repeal and recreate 108.16 (8) and 108.18 (9); and to create 108.02 (8) (d), 108.04 (15) (b) and (c), 108.05 (3) (c), 108.22 (1m), (1s) and (9) of the statutes, relating to unemployment compensation and the unemployment reserve fund.

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

SECTION 1. 108.02 (5) (j) 5 and (k) (intro.) of the statutes are amended to read:

108.02 (5) (j) 5. In any calendar quarter in the employ of any organization exempt from federal income tax under section 501 (a) of the internal revenue code, other than an organization described in section 401 (a) or 501 (c) (3) of such code, or under section 521 of the internal revenue code, if the remuneration for such service is less than \$50 \$200.

(k) (intro.) "Employment" as applied to work for a given employer other than a government unit or nonprofit organization, except as such employer duly elects otherwise with the department's approval, does not include service:

NOTE: Changes the dollar level of certain excluded nonprofit employment in accordance with recent changes in the internal revenue code. Also, limitations on the types of employment excluded from coverage under the unemployment compensation act are extended to apply to nonprofit as well as government units. This change is required to conform to federal law (P.L. 94-566).

SECTION 2. 108.02 (8) (d) of the statutes is created to read:

108.02 (8) (d) Notwithstanding par. (a), any nonprofit or government unit's "payroll" does not include remuneration paid to individuals employed in public service employment under the federal comprehensive employment and training act and based on which any resulting benefit payments are not chargeable against the employer's account, but instead are chargeable against the federal government.

NOTE: Payrolls for C.E.T.A. public service employes of nonprofit or government units are excluded for contribution purposes. Benefits for these employes are charged to the federal government as provided by the comprehensive employment and training act.

SECTION 3. 108.04 (3) and (3m) of the statutes are repealed.

NOTE: This SECTION deletes obsolete provisions relating to the "waiting period" for benefits. The waiting period was discontinued by chapter 343, laws of 1975.

SECTION 4. 108.04 (13) (b) and (e) of the statutes are amended to read:

108.04 (13) (b) Unless an employer has duly notified the department ~~(, in such manner and within such time limit as the department's rules and regulations may prescribe), that he it~~ believes a designated provision of this section or of the "employment" definition of s. 108.02 (5) should operate to deny benefits from ~~his its~~ account to the given employe for the week or weeks in question, or unless the department applies par. (a) ~~of this subsection~~, no provision of this section or of ~~such definition shall operate s. 108.02 (5) operates to deny such benefits to such employe; provided, however, that this. This subsection shall does not affect the application of subs. (2), (3), (4) (a), (8) and (11), even though the department has not been thus notified; and provided, further, that said sub. Subsection (2) shall does not apply to a case for which the employer in question expressly waives its application by written notice to and with the approval of the department.~~

(e) Whenever an individual claims benefits based on his or her employment by a government unit, ~~it the individual's employer~~ shall, if it believes that sub. (15) as to retirement payments may apply, so notify the department. In any such case the Wisconsin retirement fund and the state teachers retirement system shall, on request from the department, report to it the relevant facts, and the department shall apply sub. (15) accordingly.

NOTE: Removes a cross-reference to a provision repealed by this bill and clarifies language.

SECTION 5. 108.04 (15) of the statutes is renumbered 108.04 (15) (a).

SECTION 6. 108.04 (15) (b) and (c) of the statutes are created to read:

108.04 (15) (b) Benefits otherwise payable to a claimant for a week of unemployment which begins after March 31, 1980, in a period with respect to which that claimant is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of the claimant shall be reduced, but not below zero, by an amount equal to the amount of that pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to that week. In the event this paragraph applies, s. 108.05 (3) does not apply.

(c) Paragraph (a) applies unless the application of par. (b) is required by s. 3304 or 3309 of the federal unemployment tax act as a condition for approval of this chapter for full tax credit against the tax imposed thereby, in which event par. (b) applies.

NOTE: Renumbered for consistency; provides dollar-for-dollar deductions for pension pay for benefit purposes, to conform to P.L. 94-566 provisions effective March 31, 1980.

SECTION 7. 108.05 (3) (c) of the statutes is created to read:

108.05 (3) (c) This subsection does not apply to payment of benefits in cases where an employe receives retirement payments and s. 108.04 (15) (b) and (c) applies to benefits paid to that employe.

SECTION 8. 108.09 (3m) and (8) of the statutes are amended to read:

108.09 (3m) REPORTS BY EXPERTS. The contents of verified or certified reports by qualified experts presented by ~~claimants for compensation, shall~~ a party constitute prima facie evidence as to the matter contained in ~~such~~ the reports in any proceeding under this section, insofar as ~~such~~ the reports are otherwise competent and relevant, subject to such rules and limitations as the department prescribes.

(8) (title) REPRESENTATION AND LIMITATION OF FEES. No employe ~~shall~~ may be charged fees of any kind by the department or its representatives, in any proceeding under this chapter. Any ~~employe claiming benefits~~ party in any ~~department administrative proceeding under this section~~ department administrative proceeding may be represented by counsel or other ~~duly authorized~~ agent; but no such counsel or agent ~~shall~~ may together charge or receive from ~~the an~~ an employe for such services more than 10% of the maximum benefits at issue in ~~such proceedings~~ the proceeding unless the department has first approved a specified higher fee.

NOTE: Permits the use of reports of qualified experts on behalf of employers as well as claimants in benefit claims proceedings. Also, clarifies long-standing practice of permitting employers as well as employes to be represented by agents.

SECTION 9. 108.141 (9) of the statutes is amended to read:

108.141 (9) INDICATOR MODIFICATIONS. A Wisconsin "on" or "off" indicator shall be determined without regard to sub. (1) (d) 1 ~~or (e)~~ if for any period specified under sub. (1) (d) ~~or (e)~~ the Wisconsin rate of insured unemployment equaled or exceeded 5%.

NOTE: Corrects statutory error to conform to P.L. 94-566.

SECTION 10. 108.151 (4) of the statutes is amended to read:

108.151 (4) ASSURANCE OF REIMBURSEMENT. (a) ~~If an An~~ An employer ~~elects~~ electing reimbursement financing it shall file ~~a surety bond~~ an assurance of reimbursement with the fund's treasurer, payable to the unemployment reserve fund, ~~to guarantee the~~ guaranteeing payment of ~~the required reimbursements~~ reimbursement together with any interest ~~thereon~~ thereon and any tardy filing fees. The assurance shall be a surety bond, letter of credit, certificate of deposit or any other nonnegotiable instrument of fixed value.

1. The amount of ~~the bond~~ assurance shall be equal to 4% of the employer's payroll for the calendar year immediately preceding the effective date of the election, or the employer's anticipated payroll for the current year, whichever is greater as determined by the department, but ~~such bond~~ the assurance may be in a greater amount at the option of the employer. The amount of the ~~bond~~ assurance shall be similarly redetermined at the close of each of the succeeding 3 years and at the close of each 3 years thereafter.

2. Any ~~such bond~~ assurance shall be in force for 3 calendar years, and shall remain in force ~~thereafter~~ until the liability thereunder is released by the fund's treasurer.

3. No ~~bond~~ assurance shall be approved unless the fund's treasurer finds that it gives reasonable ~~assurances~~ assurances that it guarantees such payment of reimbursements.

4. Failure of any employer covered by ~~such bond~~ the assurance to pay the full amount of its reimbursement payments when due together with any interest ~~thereon~~ thereon and any tardy filing fees shall render the ~~surety~~ assurance liable on said ~~bond~~ assurance to the extent of the ~~bond~~ assurance, as though the ~~surety~~ assurance was the employer.

(b) ~~Any employer required to file a surety bond under par. (a) may, in lieu of such requirement, deposit with the fund's treasurer securities which the treasurer finds are readily marketable and which have a value (annually redetermined) equal to at least the~~

~~face value of the bond that would otherwise be required.~~ The fund's treasurer shall issue a receipt to the employer for its deposit of assurance. Any ~~such securities~~ assurances shall be retained by the fund's treasurer in escrow, for the fund, until the employer's liability under its election is terminated, at which time they shall be returned to the employer, less any deductions made ~~pursuant to~~ under this paragraph. The employer may at any time substitute ~~securities~~ assurances of equal or greater value. The treasurer may, with 10 days' notice to the employer, ~~sell~~ liquidate the ~~securities~~ assurances deposited to the extent necessary to satisfy any delinquent reimbursements together with any interest and any tardy filing fees due ~~thereon~~. The treasurer shall hold in escrow any cash remaining from the sale of ~~such securities~~ the assurances, without interest. The fund's treasurer shall require the employer within 30 days following ~~any sale~~ any liquidation of deposited ~~securities~~ assurances to deposit sufficient additional ~~securities~~ assurances to make whole the employer's deposit at the prior level. Any income from ~~securities~~ assurances held in escrow shall inure to and be the property of the employer.

NOTE: This provision defines assurance for reimbursement as any nonnegotiable instrument. Employers who elect to finance benefits on a reimbursement basis must file a surety to guarantee payment.

SECTION 11. 108.16 (7) (c) of the statutes is amended to read:

108.16 (7) (c) Whenever, as of any computation date, the net overdrafts then charged against an employer's account would, even if reduced by any contributions known or subsequently discovered to be then payable but unpaid to ~~such the~~ account, exceed 10 ~~per cent~~ % of ~~his the~~ employer's annual payroll ~~(namely, the payroll amount used in determining his the employer's reserve percentage as of that computation date),~~ the fund's ~~treasurer department~~ shall, ~~solely for the purpose of computing future reserve percentages, write off~~ {, by charging directly to the fund's balancing account}, the amount by which such overdrafts would ~~(if thus reduced)~~ exceed 10 ~~per cent~~ % of ~~said the~~ employer's payroll.

NOTE: Clarifies and shifts the responsibility for the function of writing off overdrafts from the fund's treasurer to the department to reflect actual practice.

SECTION 12. 108.16 (8) of the statutes is repealed and recreated to read:

108.16 (8) (a) For purposes of this subsection a business is deemed transferred if any asset or any activity of an employer, whether organized or carried on for profit, nonprofit or governmental purposes, is transferred in whole or in part by any means, other than in the ordinary course of business.

(b) If the business of any employer is transferred, the transferee is deemed a successor for purposes of this chapter, if the department determines that all of the following conditions have been satisfied:

1. The transferee has continued or resumed the business of the transferor, in the same establishment or elsewhere; or the transferee has employed substantially the same employees as those employed by the transferor in connection with the business transferred.

2. The transfer included at least 25 % of the transferor's total business as measured by comparing the payroll experience assignable to the portion of the business transferred with the transferor's total payroll experience for the last 4 completed calendar quarters immediately preceding the date of transfer.

3. On the date of the transfer, if already subject to this chapter, the transferee must be subject to either the contribution provisions or the reimbursement financing provisions of this chapter, whichever is applicable to the transferor.

4. The department has received a written application from the transferee requesting that it be deemed a successor. Such application must be received by the department on or before the contribution report and payment due date for the first full calendar quarter following the date of transfer.

(c) If not already subject to this chapter, a successor shall become an employer subject to this chapter on the date of the transfer and shall become liable for contributions or payments in lieu of contributions, whichever is applicable, from and after that date, using the contribution rate assigned or assignable to the transferor on the date of transfer.

(d) If not already subject to this chapter, a transferee that is not a successor shall become an employer subject to this chapter on the date of the transfer and shall become liable for contributions or payments in lieu of contributions, whichever is applicable, from and after that date.

(e) The contribution rate for a successor subject to this chapter immediately prior to the date of the transfer shall be redetermined, as of the applicable computation date, to apply to the calendar year following the date of transfer and thereafter be redetermined whenever required by s. 108.18. For the purposes of s. 108.18, the department shall determine the experience under this chapter of the successor's account by allocating to the successor's account for each period in question the respective proportions of the transferor's payroll and benefits which the department determines to be properly assignable to the business transferred.

(f) The successor shall take over and continue the transferor's account, including its plus or minus balance and all other aspects of its experience under this chapter, in proportion to the payroll assignable to the transferred business. The transferor and the successor shall be jointly and severally liable for any amounts owed by the transferor to the fund and to the administration fund at the time of the transfer. However, the liability of the successor shall be proportioned to the extent of the transferred business.

(g) The account taken over by the successor shall remain liable with respect to accrued benefit and related rights based on employment in the transferred business, and all such employment is deemed employment performed for the successor.

(h) Notwithstanding par. (b), a transferee is deemed a successor for purposes of this chapter, if the department determines that both of the following conditions have been satisfied:

1. At the time of business transfer, the transferor and the transferee are owned or controlled in whole or in substantial part, either directly or indirectly by legally enforceable means or otherwise, by the same interest or interests.

2. The transferee has continued or resumed the business of the transferor, either in the same establishment or elsewhere; or the transferee has employed substantially the same employes as those the transferor had employed in connection with the business transferred.

(i) Any time a business is transferred, as provided in par. (a), both the transferor and the transferee shall notify the department in writing of the transfer, within 30 days after the date of transfer; and both shall promptly submit to the department in writing such information as the department may request relating to the transfer.

NOTE: Limits successorships to those transferees fulfilling 4 prerequisites. A transferee that is not a successor is subject to the initial contribution rates of a new employer if not already subject to the law prior to the time of transfer.

SECTION 13. 108.18 (4) (figure) of the statutes is amended to read:

Figure: 108.18 (4)

Line Rate	Reserve Percentage	SCHEDULE	Contribution
1.	8.5% or more		0.0%
2.	8.0% but under 8.5%		0.5%
3.	7.0% but under 8.0%		1.0%
4.	6.0% but under 7.0%		1.5%
5.	5.0% but under 6.0%		2.0%
6.	3.5% but under 5.0%		2.5%

7.	2.0% but under 3.5%	3.0%
8.	0.0% but under 2.0%	3.5%
9.	Overdrawn by less than minus 2.0%	4.0%
10.	Overdrawn by minus 2.0% but under minus 4.0%	4.5%
11.	Overdrawn by minus 4.0% or more but under minus 6.0%	5.0%
12.	<u>Overdrawn by minus 6.0% or more</u>	<u>5.5%</u>

NOTE: Adds 5.5% contribution rate to contribution schedule for employers overdrawn by minus 6.0% or more.

SECTION 14. 108.18 (9) of the statutes, as affected by chapter (Assembly Bill 181), laws of 1979, is repealed and recreated to read:

108.18 (9) SOLVENCY RATES. An employer's solvency rate on its payroll for a given calendar year shall be based solely on the contribution rate of its account for the calendar year under this section, as follows: [See Figure 108.18 (9) following]

Figure: 108.18 (9)

Line	SCHEDULE Contribution Rate	Solvency Rate
1.	0.0%	0.0%
2.	0.5%	0.2%
3.	1.0%	0.4%
4.	1.5%	0.6%
5.	2.0%	0.8%
6.	2.5%	0.9%
7.	2.7%	0.9%
8.	3.0%	1.0%
9.	3.5%	1.0%
10.	3.7%	1.6%
11.	4.0%	1.7%
12.	4.5%	1.8%
13.	4.7%	1.8%
14.	5.0%	1.9%
15.	5.5%	1.9%

NOTE: Creates a revised solvency rate schedule based on the employer's contribution rate.

SECTION 15. 108.22 (1m), (1s) and (9) of the statutes are created to read:

108.22 (1m) Any report or payment required under this section is delinquent, within the meaning of sub. (1), unless it is postmarked no later than its due date.

(1s) The tardy payment or filing fee may be waived by the department if the employer later files the required report and makes the required payment and satisfies the department that such report or payment was tardy due to circumstances beyond the employer's control.

(9) Any officer or any employe holding at least 20% of the ownership interest of a corporation subject to this chapter, who has control or supervision of or responsibility for filing contribution reports or making payment of contributions, and who wilfully fails to file such reports or to make such payments to the department, may be found personally liable for such amounts, including interest, tardy payment or filing fees, costs and other fees, in the event that after proper proceedings for the collection of such amounts, as provided in this chapter, the corporation is unable to pay such amounts to the department. The personal liability of such officer or employe as provided in this subsection survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the corporation and shall be set forth in a determination or decision issued under s. 108.10.

NOTE: Eliminates confusion on due dates for reports or payments for contribution purposes. Supersedes section Ind-UC 110.04 (2) of the Wisconsin Administrative Code. Allows waiver of late filing fee for required employer reports and

payments if the tardiness was beyond the employer's control. Imposes personal liability for delinquent contributions on corporate officers or employes with at least 20% of the ownership interest in the corporation.

SECTION 16. Payment of voluntary contributions in 1979. Notwithstanding section 108.18 (7) of the statutes, any employer which makes a payment to the unemployment reserve fund during the period from July 1, 1979, to December 31, 1979, shall have that payment credited to its account as of June 30, 1979, for the purpose of computing its reserve percentage in 1979.

SECTION 17. Effective date; application. (1) This act shall take effect on the day after publication, except as provided in this section.

(2) The changes effected in section 108.02 (5) (j) 5 and the creation of section 108.02 (8) (d) of the statutes by this act shall apply with respect to employment on and after January 1, 1980.

(3) The changes effected in section 108.16 (8) of the statutes by this act shall apply with respect to business transfers occurring after January 1, 1980.

(4) The changes effected in sections 108.18 (4) and (9) of the statutes by this act shall apply with respect to payrolls beginning January 1, 1980.

(5) The creation of section 108.22 (9) of the statutes by this act shall apply with respect to determinations, other than amended determinations, issued during and after the 3rd calendar week commencing after the week in which this act is published.
