

# State of Wisconsin



2015 Assembly Bill 819

Date of enactment: **March 30, 2016**

Date of publication\*: **March 31, 2016**

## 2015 WISCONSIN ACT 334

AN ACT *to repeal* 102.07 (8) (d), 108.02 (24g), 108.04 (8) (e), 108.05 (1) (q), 108.05 (1) (r) (figure), 108.05 (2), 108.05 (2m), 108.09 (2) (cm), 108.14 (27) and 111.327; *to renumber and amend* 108.04 (8) (d), 108.04 (11) (g), 108.04 (12) (f) 1., 108.04 (12) (f) 2., 108.09 (7) (d), 108.151 (3) (b) and 108.19 (1s) (a); *to amend* 108.02 (13) (k), 108.02 (21) (b), 108.04 (1) (bm), 108.04 (2) (h), 108.04 (7) (c), 108.04 (7) (e), 108.04 (7) (h), 108.04 (8) (c), 108.04 (12) (e), 108.04 (13) (d) 3. (intro.) and a., 108.04 (13) (d) 4. (intro.) and a., 108.04 (16) (b), 108.05 (1) (r), 108.09 (2) (a), 108.09 (2) (d), 108.09 (2r), 108.09 (4) (c), 108.09 (4) (d) 1. and 2., 108.09 (4) (e), 108.09 (4) (f) 1., 108.09 (4) (f) 2. (intro.), 108.09 (4) (f) 3., 108.09 (4o), 108.09 (5) (b), 108.09 (5) (d), 108.09 (6) (a), 108.09 (6) (b), 108.09 (6) (c), 108.09 (6) (d), 108.09 (7) (a) and (b), 108.095 (2), 108.095 (3), 108.095 (7), 108.10 (1), 108.10 (2), 108.10 (4), 108.10 (6), 108.14 (8n) (e), 108.141 (3g) (a) 3. (intro.), 108.141 (4), 108.141 (7) (a), 108.151 (4) (b), 108.152 (6) (a) (intro.), 108.16 (6) (g), 108.16 (7m), 108.16 (10), 108.18 (7) (a) 1., 108.18 (7) (h), 108.18 (9c), 108.19 (1m), 108.22 (1) (b), 108.22 (1) (c), 108.22 (1m), 108.22 (9), 108.225 (1) (a) and 108.24 (2m); *to repeal and recreate* 108.04 (1) (b), 108.09 (4) (d) 3., 108.09 (5) (c) and 108.19 (title); *to create* 108.04 (7) (cg), 108.04 (8) (d) 2., 108.04 (8) (dm), 108.04 (8) (em), 108.04 (11) (g) 2. and 3., 108.04 (12) (f) 1m., 108.04 (12) (f) 2m., 108.04 (12) (f) 3. b. to d., 108.04 (13) (d) 4. c., 108.09 (7) (c) to (h), 108.151 (3) (b) 2., 108.155, 108.16 (6m) (i), 108.19 (1f), 108.19 (1s) (a) 2., 108.19 (1s) (a) 3., 108.19 (1s) (a) 4. and 108.221 of the statutes; and *to affect* 2011 Wisconsin Act 198, section 4m, 2011 Wisconsin Act 198, section 6m, 2011 Wisconsin Act 198, section 37m, 2011 Wisconsin Act 198, section 47m (1) and 2013 Wisconsin Act 36, section 236m; **relating to**: various changes to the unemployment insurance law.

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

**SECTION 1.** 102.07 (8) (d) of the statutes is repealed.

**SECTION 2.** 108.02 (13) (k) of the statutes is amended to read:

108.02 (13) (k) "Employer" does not include a county department, an aging unit, or, under s. 46.2785, a private agency that serves as a fiscal agent or contracts with a fiscal intermediary to serve as a fiscal agent under s. 46.27 (5) (i), 46.272 (7) (e), or 47.035 as to any individual performing services for a person receiving long-term support services under s. 46.27 (5) (b), 46.272 (7) (b),

46.275, 46.277, 46.278, 46.2785, 46.286, 46.495, 51.42, or 51.437 or personal assistance services under s. 47.02 (6) (c).

**SECTION 3.** 108.02 (21) (b) of the statutes is amended to read:

108.02 (21) (b) Notwithstanding par. (a), except as provided in ~~s. ss.~~ 108.151 (7) (a) and 108.155 (1) (a), an employer's payroll for calendar years prior to 2009 includes only the first \$10,500 of wages paid by an employer to an individual during each calendar year, for calendar years 2009 and 2010 includes only the first \$12,000 of such wages, for calendar years 2011 and 2012 includes only the first \$13,000 of such wages, and for cal-

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

endar years after 2012 includes only the first \$14,000 of such wages, including any wages paid for any work covered by the unemployment insurance law of any other state, except as authorized in s. 108.17 (5).

**SECTION 4.** 108.02 (24g) of the statutes, as created by 2015 Wisconsin Act 55, is repealed.

**SECTION 5.** 108.04 (1) (b) of the statutes is repealed and recreated to read:

108.04 (1) (b) Except as provided in s. 108.062 (10), if an employee is absent from work for 16 hours or less in the first week of his or her leave of absence or in the week in which his or her employment is suspended or terminated due to the employee's unavailability for work with the employer or inability to perform suitable work otherwise available with the employer, the employee's eligibility for benefits for that week shall be determined under par. (bm).

**SECTION 6.** 108.04 (1) (bm) of the statutes is amended to read:

108.04 (1) (bm) For purposes of ~~par. pars.~~ (a) 1. and (b) 2., the department shall treat the amount that the employee would have earned as wages for a given week in available work as wages earned by the employee and shall apply the method specified in s. 108.05 (3) (a) to compute the benefits payable to the employee. The department shall estimate wages that an employee would have earned if it is not possible to compute the exact amount of wages that would have been earned by the employee.

**SECTION 7.** 108.04 (2) (h) of the statutes is amended to read:

108.04 (2) (h) A claimant shall, when the claimant first files a claim for benefits under this chapter and during each subsequent week the claimant files for benefits under this chapter, inform the department whether he or she is receiving social security disability insurance ~~benefits under 42 USC ch. 7 subch. II payments, as defined in sub. (12) (f) 2m.~~

**SECTION 8.** 108.04 (7) (c) of the statutes is amended to read:

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

**SECTION 9.** 108.04 (7) (cg) of the statutes is created to read:

108.04 (7) (cg) Paragraph (a) does not apply if the department determines that the employee terminated his or her work because of the verified illness or disability of a member of his or her immediate family and the verified illness or disability reasonably necessitates the care of the family member for a period of time that is longer than the employer is willing to grant leave.

**SECTION 10.** 108.04 (7) (e) of the statutes is amended to read:

108.04 (7) (e) Paragraph (a) does not apply if the department determines that the employee accepted work which the employee could have failed to accept ~~with good cause~~ under sub. (8) and terminated such work ~~with the same good cause on the same grounds~~ and within the first 30 calendar days after starting the work, or that the employee accepted work which the employee could have refused under sub. (9) and terminated such work within the first 30 calendar days after starting the work. For purposes of this paragraph, an employee has the same ~~good cause grounds~~ for voluntarily terminating work if the employee could have failed to accept the work under sub. (8) (d) when it was offered, regardless of the reason articulated by the employee for the termination.

**SECTION 11.** 108.04 (7) (h) of the statutes is amended to read:

108.04 (7) (h) The department shall charge to the fund's balancing account benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 if the employee voluntarily terminates employment with that employer and par. (a), (c), ~~(cg)~~, (e), (L), (q), (s), or (t) applies.

**SECTION 12.** 108.04 (8) (c) of the statutes is amended to read:

108.04 (8) (c) If an employee fails, without good cause, to return to work with a former employer that recalls the employee within 52 weeks after the employee last worked for that employer, 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 any 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 return to work with that employer. This paragraph does not apply to an employee who fails to return to work with a former employer if the work offered would not be considered suitable work under par. (d) or (dm), whichever is applicable. If an employee receives actual notice of a recall to work, par. (a) applies in lieu of this paragraph.

**SECTION 13.** 108.04 (8) (d) of the statutes is renumbered 108.04 (8) (d) (intro.) and amended to read:

108.04 (8) (d) (intro.) ~~An employee shall have good cause under par. (a) or (c), regardless of the reason articulated by the employee for the failure, if the department determines that the failure involved work at~~ With respect to the first 6 weeks after the employee became unemployed, "suitable work," for purposes of par. (a), means work to which all of the following apply:

1. The work does not involve a lower grade of skill or significantly lower rate of pay than that which applied to the employee on one or more of his or her most recent jobs, and that the employee had not yet had a reasonable opportunity, in view of labor market conditions and the employee's degree of skill, but not to exceed 6 weeks after the employee became unemployed, to seek a new job substantially in line with the employee's prior job skill and rate of pay.

**SECTION 14.** 108.04 (8) (d) 2. of the statutes is created to read:

108.04 (8) (d) 2. The hourly wage for the work is 75 percent or more of what the employee earned on the highest paying of his or her most recent jobs.

**SECTION 15.** 108.04 (8) (dm) of the statutes is created to read:

108.04 (8) (dm) With respect to the 7th week after the employee became unemployed and any week thereafter, "suitable work," for purposes of par. (a), means any work that the employee is capable of performing, regardless of whether the employee has any relevant experience or training, that pays wages that are above the lowest quartile of wages for similar work in the labor market area in which the work is located, as determined by the department.

**SECTION 16.** 108.04 (8) (e) of the statutes is repealed.

**SECTION 17.** 108.04 (8) (em) of the statutes is created to read:

108.04 (8) (em) An employee shall have good cause under this subsection only if the department determines that the failure related to the employee's personal safety, the employee's sincerely held religious beliefs, or an unreasonable commuting distance, or if the employee had another compelling reason that would have made accepting the offer unreasonable.

**SECTION 18.** 108.04 (11) (g) of the statutes is renumbered 108.04 (11) (g) 1. and amended to read:

108.04 (11) (g) 1. ~~For purposes of In~~ this subsection, "conceal" means to intentionally mislead or defraud the

department by withholding or hiding information or making a false statement or misrepresentation.

**SECTION 19.** 108.04 (11) (g) 2. and 3. of the statutes are created to read:

108.04 (11) (g) 2. A claimant has a duty of care to provide an accurate and complete response to each inquiry made by the department in connection with his or her receipt of benefits. The department shall consider the following factors in determining whether a claimant intended to mislead the department as described in subd. 1.:

a. Whether the claimant failed to read or follow instructions or other communications of the department related to a claim for benefits.

b. Whether the claimant relied on the statements or representations of persons other than an employee of the department who is authorized to provide advice regarding the claimant's claim for benefits.

c. Whether the claimant has a limitation or disability and, if so, whether the claimant provided evidence to the department of that limitation or disability.

d. The claimant's unemployment insurance claims filing experience.

e. Any instructions or previous determinations of concealment issued or provided to the claimant.

f. Any other factor that may provide evidence of the claimant's intent.

3. Nothing in this subsection requires the department, when making a finding of concealment, to determine or prove that a claimant had an intent or design to receive benefits to which the claimant knows he or she was not entitled.

**SECTION 20.** 108.04 (12) (e) of the statutes is amended to read:

108.04 (12) (e) Any individual who receives a temporary total disability payment or a permanent total disability payment for a whole week under ch. 102 or under any federal law which provides for payments on account of a work-related injury or illness analogous to those provided under ch. 102 shall be ineligible for benefits paid or payable for that same week under this chapter unless otherwise provided by federal law. A temporary total disability payment ~~or~~ a temporary partial disability payment, or a permanent total disability payment under those provisions received by an individual for part of a week shall be treated as wages for purposes of eligibility for benefits for partial unemployment under s. 108.05 (3).

**SECTION 21.** 108.04 (12) (f) 1. of the statutes is renumbered 108.04 (12) (f) 3. a. and amended to read:

108.04 (12) (f) 3. a. ~~Any Except as provided in subd. 3. b. to d., an individual who actually receives social security disability insurance benefits under 42 USC ch. 7-subch. II in a given week is ineligible for benefits paid or payable in that same week under this chapter for each~~

week in the entire month in which a social security disability insurance payment is issued to the individual.

**SECTION 22.** 108.04 (12) (f) 1m. of the statutes is created to read:

108.04 (12) (f) 1m. The intent of the legislature in enacting this paragraph is to prevent the payment of duplicative government benefits for the replacement of lost earnings or income, regardless of an individual's ability to work.

**SECTION 23.** 108.04 (12) (f) 2. of the statutes is renumbered 108.04 (12) (f) 4. and amended to read:

108.04 (12) (f) 4. Information that the department receives or acquires from the federal social security administration ~~that an individual is receiving~~ regarding the issuance of social security disability insurance benefits under 42 USC ch. 7 subch. II in a given week payments is considered conclusive, absent clear and convincing evidence that the information was erroneous.

**SECTION 24.** 108.04 (12) (f) 2m. of the statutes is created to read:

108.04 (12) (f) 2m. In this paragraph, "social security disability insurance payment" means a payment of social security disability insurance benefits under 42 USC ch. 7 subch. II.

**SECTION 25.** 108.04 (12) (f) 3. b. to d. of the statutes are created to read:

108.04 (12) (f) 3. b. In the first month a social security disability insurance payment is first issued to an individual, the individual is ineligible for benefits under this chapter for each week beginning with the week the social security disability insurance payment is issued to the individual and all subsequent weeks in that month.

c. Following a cessation of social security disability insurance payments to an individual and upon the individual again being issued a social security disability insurance payment, the individual is ineligible for benefits under this chapter for each week beginning with the week the social security disability insurance payment is issued to the individual and all subsequent weeks in that month.

d. Following cessation of social security disability insurance payments, an individual may be eligible for benefits under this chapter, if otherwise qualified, beginning with the week following the last Saturday of the month in which the individual is issued his or her final social security disability insurance payment.

**SECTION 26.** 108.04 (13) (d) 3. (intro.) and a. of the statutes are amended to read:

108.04 (13) (d) 3. (intro.) To correct any erroneous payment not so adjusted that was charged to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18, the department shall do one of the following:

a. If recovery of an overpayment is permitted under s. 108.22 (8) (c), restore the proper amount to the employer's account and charge that amount to the fund's balanc-

ing account, and shall thereafter reimburse the balancing account by crediting to it benefits which would otherwise be payable to, or cash recovered from, the employee; ~~or,~~

**SECTION 27.** 108.04 (13) (d) 4. (intro.) and a. of the statutes are amended to read:

108.04 (13) (d) 4. (intro.) To correct any erroneous payment not so adjusted from the account of an employer ~~which is a government unit, an Indian tribe, or a nonprofit organization and which has elected that is subject to reimbursement financing, the department shall~~ do one of the following:

a. If recovery of an overpayment is permitted under s. 108.22 (8) (c), credit to the account benefits which would otherwise be payable to, or cash received from, the employee; ~~or,~~ unless subd. 4. c. applies.

**SECTION 28.** 108.04 (13) (d) 4. c. of the statutes is created to read:

108.04 (13) (d) 4. c. If the erroneous payment resulted from a false statement or representation about an individual's identity and the employer was not at fault for the erroneous payment, restore the proper amount to the employer's account and reimburse the balancing account by crediting to it benefits that would otherwise be payable to, or cash recovered from, the individual who caused the erroneous payment.

**SECTION 29.** 108.04 (16) (b) of the statutes is amended to read:

108.04 (16) (b) The department shall not apply any benefit reduction or disqualification under sub. (1) (b), (2) (a), ~~or~~ (7) (c), or ~~(8)-(e)~~ (cg) or s. 108.141 (3g) (d) that is not the result of approved training while an individual is enrolled in approved training.

**SECTION 30.** 108.05 (1) (q) of the statutes is repealed.

**SECTION 31.** 108.05 (1) (r) of the statutes is amended to read:

108.05 (1) (r) Except as provided in s. 108.062 (6) (a), each eligible employee shall be paid benefits for each week of total unemployment that commences on or after January 5, 2014, at the weekly benefit rate specified in this paragraph. Unless sub. (1m) applies, the weekly benefit rate shall equal 4 percent of the employee's base period wages that were paid during that quarter of the employee's base period in which the employee was paid the highest total wages, rounded down to the nearest whole dollar, except that, if that amount is less than the ~~minimum amount shown in the following schedule \$54~~, no benefits are payable to the employee and, if that amount is more than the ~~maximum amount shown in the following schedule \$370~~, the employee's weekly benefit rate shall be the ~~maximum amount shown in the following schedule \$370~~ and except that, if the employee's benefits are exhausted during any week under s. 108.06 (1), the employee shall be paid the remaining amount of benefits payable to the employee ~~in lieu of the amount shown in the following schedule:~~ ~~[See Figure 108.05 (1) (r) following]~~ under s. 108.06 (1). The department shall publish

on its Internet site a weekly benefit rate schedule of quarterly wages and the corresponding weekly benefit rates as calculated in accordance with this paragraph.

**SECTION 32.** 108.05 (1) (r) (figure) of the statutes is repealed.

**SECTION 33.** 108.05 (2) of the statutes is repealed.

**SECTION 34.** 108.05 (2m) of the statutes is repealed.

**SECTION 35.** 108.09 (2) (a) of the statutes is amended to read:

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

**SECTION 36.** 108.09 (2) (cm) of the statutes is repealed.

**SECTION 37.** 108.09 (2) (d) of the statutes is amended to read:

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

**SECTION 38.** 108.09 (2r) of the statutes is amended to read:

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

**SECTION 39.** 108.09 (4) (c) of the statutes is amended to read:

108.09 (4) (c) *Late appeal.* If a party files an appeal ~~which that~~ is not timely, an appeal tribunal shall review the appellant's written reasons for filing the late appeal. If those reasons, when taken as true and construed most favorably to the appellant, do not constitute a reason beyond the appellant's control, the appeal tribunal may dismiss the appeal without a hearing and issue a decision

accordingly. Otherwise, the department may schedule a hearing concerning the question of whether the appeal was filed late for a reason that was beyond the appellant's control. The department may also provisionally schedule a hearing concerning any matter in the determination being appealed. After hearing testimony on the late appeal question, the appeal tribunal shall issue a decision ~~which that~~ makes ultimate findings of fact and conclusions of law concerning whether the appellant's appeal was filed late for a reason that was beyond the appellant's control and ~~which that~~, in accordance with those findings and conclusions, either dismisses the appeal or determines that the appeal was filed late for a reason that was beyond the appellant's control. If the appeal is not dismissed, the same or another appeal tribunal established by the department for this purpose, after conducting a hearing, shall then issue a decision under sub. (3) (b) concerning any matter in the determination.

**SECTION 40.** 108.09 (4) (d) 1. and 2. of the statutes are amended to read:

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

2. If the appellant ~~delivers or transmits~~ submits to the appeal tribunal a written explanation for ~~nonappearance to the department which failing to appear at the hearing that~~ is received before a decision under subd. 1. is electronically delivered or mailed, ~~the department may so notify each party and schedule a hearing concerning whether there was good cause for under subd. 1., an appeal tribunal shall review the appellant's nonappearance. The department may also provisionally schedule a hearing concerning any matter in the determination. If, after hearing testimony, explanation. The appeal tribunal shall electronically deliver or mail to the respondent a copy of the appellant's explanation. The respondent may, within 7 days after the appeal tribunal electronically delivers or mails the appellant's explanation to the respondent, submit to the appeal tribunal a written response to the appellant's explanation. If the appeal tribunal finds that the appellant's explanation does not establish good cause for nonappearance failing to appear, the appeal tribunal shall issue a decision containing this finding and dismissing the appeal such a decision may be issued without a hearing. If, after hearing testimony, the appeal tribunal finds that the appellant's explanation establishes good cause for nonappearance failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination. If such a~~

hearing is held concerning any matter in the determination, the appeal tribunal shall only consider testimony and other evidence admitted at that hearing in making a decision.

**SECTION 41.** 108.09 (4) (d) 3. of the statutes is repealed and recreated to read:

108.09 (4) (d) 3. If the appellant submits to the appeal tribunal a written explanation for failing to appear at the hearing that is received within 21 days after a decision is electronically delivered or mailed under subd. 1., an appeal tribunal shall review the appellant's explanation. The appeal tribunal shall electronically deliver or mail to the respondent a copy of the appellant's explanation. The respondent may, within 7 days after the appeal tribunal electronically delivers or mails the appellant's explanation to the respondent, submit to the appeal tribunal a written response to the appellant's explanation. If the appeal tribunal finds that the appellant's explanation does not establish good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. If the appeal tribunal finds that the appellant's explanation establishes good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and the decision may be issued without a hearing. The appeal tribunal shall then set aside the original decision and schedule a hearing concerning any matter in the determination. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination. If such a hearing is held concerning any matter in the determination, the appeal tribunal shall only consider the testimony and other evidence admitted at that hearing in making a decision.

**SECTION 42.** 108.09 (4) (e) of the statutes is amended to read:

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

2. If the respondent ~~delivers or transmits~~ submits to the appeal tribunal a written explanation for ~~nonappearance to the department which failing to appear at the hearing that~~ is received before a decision favorable to the respondent is electronically delivered or mailed under subd. 1., the appeal tribunal shall acknowledge receipt of the explanation in its decision but shall take no further action concerning the explanation at that time. If the

~~respondent delivers or transmits~~ submits to the appeal tribunal a written explanation for ~~nonappearance to the department which failing to appear that~~ is received before a decision unfavorable to the respondent is electronically delivered or mailed under subd. 1., the department may so notify each party and may schedule a hearing concerning whether there was good cause for the respondent's nonappearance. The department may also provisionally schedule a hearing for further testimony concerning any matter in the determination. If, after hearing testimony, the appeal tribunal finds that the respondent's explanation does not establish good cause for nonappearance, the appeal tribunal shall issue a decision containing this finding. The same or another appeal tribunal established by the department for this purpose shall also issue a decision based on the testimony and other evidence presented at the hearing at which the respondent failed to appear. If, after hearing testimony, the appeal tribunal finds that the respondent's explanation an appeal tribunal shall review the respondent's explanation. The appeal tribunal shall electronically deliver or mail to the appellant a copy of the respondent's explanation. The appellant may, within 7 days after the appeal tribunal electronically delivers or mails the respondent's explanation to the appellant, submit to the appeal tribunal a written response to the respondent's explanation. If the appeal tribunal finds that the respondent's explanation does not establish good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. If the appeal tribunal finds that the respondent's explanation establishes good cause for nonappearance failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination. If such a 2nd hearing is held concerning any matter in the determination, the appeal tribunal shall only consider testimony and other evidence admitted at that hearing in making a decision.

3. If the respondent ~~delivers or transmits~~ submits to the appeal tribunal a written explanation for ~~nonappearance to the department which failing to appear at the hearing that~~ is received within 21 days after a decision favorable to the respondent is electronically delivered or mailed under subd. 1., the department appeal tribunal shall notify the respondent of receipt of the explanation and that since the decision was favorable to the respondent no further action concerning the explanation will be taken at that time. If the respondent delivers or transmits submits to the appeal tribunal a written explanation for ~~nonappearance to the department which failing to appear that~~ is received within 21 days after a decision unfavorable to the respondent is electronically delivered or mailed under subd. 1., the an appeal tribunal shall review

the respondent's explanation. The appeal tribunal shall electronically deliver or mail to the appellant a copy of the respondent's explanation. The appellant may, within 7 days after the appeal tribunal electronically delivers or mails the respondent's explanation to the appellant, submit to the appeal tribunal a written response to the respondent's explanation. If the appeal tribunal finds that the respondent's explanation does not establish good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. If the appeal tribunal finds that the respondent's explanation establishes good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. The appeal tribunal may shall then set aside the original decision and the department may schedule a hearing concerning whether there was good cause for the respondent's nonappearance. The department may also provisionally schedule a hearing concerning any matter in the determination. If the original decision is not set aside, the appeal tribunal may, on its own motion amend or set aside that decision within 21 days after the decision concerning whether there was good cause for the respondent's nonappearance is mailed under subd. 1. If, after hearing testimony, the appeal tribunal finds that the respondent's explanation does not establish good cause for nonappearance, the appeal tribunal shall issue a decision containing this finding and, if necessary, reinstating the decision which was set aside. If, after hearing testimony, the appeal tribunal finds that the respondent's explanation establishes good cause for nonappearance, the same or another appeal tribunal established by the department for this purpose shall issue a decision containing this finding. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination. If such a 2nd hearing is held concerning any matter in the determination, the appeal tribunal shall only consider the testimony and other evidence admitted at that hearing in making a decision.

**SECTION 43.** 108.09 (4) (f) 1. of the statutes is amended to read:

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

**SECTION 44.** 108.09 (4) (f) 2. (intro.) of the statutes is amended to read:

108.09 (4) (f) 2. (intro.) Unless a party or the department has filed a timely petition for review of the appeal

tribunal decision by the commission, the appeal tribunal may set aside or amend an appeal tribunal decision, or portion thereof, at any time if the appeal tribunal finds that:

**SECTION 45.** 108.09 (4) (f) 3. of the statutes is amended to read:

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

**SECTION 46.** 108.09 (4o) of the statutes is amended to read:

108.09 (4o) DEPARTMENTAL RECORDS RELATING TO BENEFIT CLAIMS. In any hearing before an appeal tribunal under this section, a departmental record relating to a claim for benefits, other than a report specified in sub. (4m), constitutes prima facie evidence, and shall be admissible to prove, that an employer provided or failed to provide to the department complete and correct information in a fact-finding investigation of the claim, notwithstanding that the record or a statement contained in the record may be uncorroborated hearsay and may constitute the sole basis upon which issue of the employer's failure is decided, if the parties appearing at the hearing have been given an opportunity to review the record at or before the hearing and to rebut the information contained in the record. A record of the department that is admissible under this subsection shall be regarded as self authenticating and shall require no foundational or other testimony for its admissibility, unless the circumstances affirmatively indicate a lack of trustworthiness in the record. If such a record is admitted and made the basis of a decision, the record may constitute substantial evidence under ~~s. 102.23(6)~~ sub. (7) (f). For purposes of this subsection, "departmental record" means a memorandum, report, record, document, or data compilation that has been made or maintained by employees of the department in the regular course of the department's fact-finding investigation of a benefit claim, is contained in the department's paper or electronic files of the benefit claim, and relates to the department's investigative inquiries to an employer or statements or other matters submitted by the employer or its agent in connection with the fact-finding investigation of a benefit claim. A departmental record may not be admitted into evidence under this subsection or otherwise used under this subsection for any purpose other than to prove whether an employer provided or failed to provide to the department complete

and correct information in a fact-finding investigation of a claim.

**SECTION 47.** 108.09 (5) (b) of the statutes is amended to read:

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

**SECTION 48.** 108.09 (5) (c) of the statutes is repealed and recreated to read:

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

**SECTION 49.** 108.09 (5) (d) of the statutes is amended to read:

108.09 (5) (d) In its review of the decision of an appeal tribunal, the commission shall use the electronic recording of the hearing or a written synopsis of the testimony and other evidence taken at a hearing or shall use a transcript of the hearing prepared, under the direction of the department or commission, by an employee of the department, an employee of the commission or a contractor. ~~If a party shows to the commission that a synopsis is not sufficiently complete and accurate to fairly reflect the relevant and material testimony and other evidence taken, the commission shall direct the preparation of a transcript. If a transcript is prepared, the transcript shall indicate the transcriber's name and whether the transcriber is an employee of the department, an employee of the commission, or a contractor and shall also use any other evidence taken at the hearing.~~

**SECTION 50.** 108.09 (6) (a) of the statutes is amended to read:

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

**SECTION 51.** 108.09 (6) (b) of the statutes is amended to read:

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

**SECTION 52.** 108.09 (6) (c) of the statutes is amended to read:

108.09 (6) (c) On its own motion, for reasons it deems sufficient, the commission may set aside any final determination of the department or appeal tribunal or commission decision within 2 years ~~from~~ after the date thereof upon grounds of mistake or newly discovered evidence, and take action under par. (d). The commission may set aside any final determination of the department or any decision of an appeal tribunal or of the commission at any time, and take action under par. (d), if the benefits paid or payable to a claimant have been affected by wages earned by the claimant ~~which that~~ have not been paid, and the commission is provided with notice from the appropriate state or federal court or agency that a wage claim for those wages will not be paid in whole or in part.

**SECTION 53.** 108.09 (6) (d) of the statutes is amended to read:

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

**SECTION 54.** 108.09 (7) (a) and (b) of the statutes are amended to read:

108.09 (7) (a) ~~The department or either~~ Any party ~~that is not the department~~ may commence an action for the judicial review of a decision of the commission under this chapter after exhausting the remedies provided under this section if the party or the department has commenced such action in accordance with s. 102.23 within 30 days after a decision of the commission is mailed to a party's last-known address. The department may commence an action for the judicial review of a commission decision under this section, but the department is not required to have been a party to the proceedings before the commission or to have exhausted the remedies provided under this section. In an action commenced under this section by a party that is not the department, the department shall be a defendant and shall be named as a party in the complaint commencing the action. If a plaintiff fails to name either the department or the commission as defendants and serve the commission as required by this subsection, the court shall dismiss the action.

(b) Any judicial review under this chapter shall be confined to questions of law, ~~and the provisions of ch.~~



~~102 with respect to judicial review of orders and awards shall likewise apply to any decision of the commission reviewed under this section and shall be in accordance with this subsection.~~ In any such judicial action, the commission may appear by any licensed attorney who is a salaried employee of the commission and has been designated by it for ~~this that~~ purpose, or, at the commission's request, by the department of justice. In any such judicial action, the department may appear by any licensed attorney who is a salaried employee of the department and has been designated by it for that purpose.

**SECTION 55.** 108.09 (7) (c) to (h) of the statutes are created to read:

108.09 (7) (c) 1. The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive. The order of the commission is subject to review only as provided in this subsection and not under ch. 227 or s. 801.02. Within 30 days after the date of an order made by the commission, any party or the department may, by serving a complaint as provided in subd. 3. and filing the summons and complaint with the clerk of the circuit court, commence an action against the commission for judicial review of the order. In an action for judicial review of a commission order, every other party to the proceedings before the commission shall be made a defendant. The department shall also be made a defendant if the department is not the plaintiff. If the circuit court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any order, the circuit court may extend the time in which an action may be commenced by an additional 30 days.

2. Except as provided in this subdivision, the proceedings shall be in the circuit court of the county where the plaintiff resides, except that if the plaintiff is the department, the proceedings shall be in the circuit court of the county where a defendant other than the commission resides. The proceedings may be brought in any circuit court if all parties appearing in the case agree or if the court, after notice and a hearing, so orders. Commencing an action in a county in which no defendant resides does not deprive the court of competency to proceed to judgment on the merits of the case.

3. In such an action, a complaint shall be served with an authenticated copy of the summons. The complaint need not be verified, but shall state the grounds upon which a review is sought. Service upon the commission or an agent authorized by the commission to accept service constitutes complete service on all parties, but there shall be left with the person so served as many copies of the summons and complaint as there are defendants, and the commission shall mail one copy to each other defendant.

4. Each defendant shall serve its answer within 20 days after the service upon the commission under subd. 3., which answer may, by way of counterclaim or cross

complaint, ask for the review of the order referred to in the complaint, with the same effect as if the defendant had commenced a separate action for the review of the order.

5. Within 60 days after appearing in an action for judicial review, the commission shall make return to the court of all documents and materials on file in the matter, all testimony that has been taken, and the commission's order and findings. Such return of the commission, when filed in the office of the clerk of the circuit court, shall constitute a judgment roll in the action, and it shall not be necessary to have a transcript approved. After the commission makes return of the judgment roll to the court, the court shall schedule briefing by the parties. Any party may request oral argument before the court, subject to the provisions of law for a change of the place of trial or the calling in of another judge.

6. The court may confirm or set aside the commission's order, but may set aside the order only upon one or more of the following grounds:

- a. That the commission acted without or in excess of its powers.
- b. That the order was procured by fraud.
- c. That the findings of fact by the commission do not support the order.

(dm) The court shall disregard any irregularity or error of the commission or the department unless it is made to affirmatively appear that a party was damaged by that irregularity or error.

(e) The record in any case shall be transmitted to the commission within 5 days after expiration of the time for appeal from the order or judgment of the court, unless an appeal is taken from the order or judgment.

(f) If the commission's order depends on any fact found by the commission, the court shall not substitute its judgment for that of the commission as to the weight or credibility of the evidence on any finding of fact. The court may, however, set aside the commission's order and remand the case to the commission if the commission's order depends on any material and controverted finding of fact that is not supported by credible and substantial evidence.

(g) Any party aggrieved by a judgment entered upon the review of any circuit court order under this subsection may appeal as provided in ch. 808.

(h) The clerk of any court rendering a decision affecting a decision of the commission shall promptly furnish all parties a copy of the decision without charge.

**SECTION 56.** 108.09 (7) (d) of the statutes is renumbered 108.09 (7) (i) and amended to read:

108.09 (7) (i) ~~Notwithstanding ss. 102.26 (1) and 814.245, upon review of a decision of the commission under this chapter~~ No fees may be charged by the clerk of any circuit court for the performance of any service required by this chapter, except for the entry of judgments and for certified transcripts of judgments. In proceedings to review an order under this section, costs as

between the parties shall be in the discretion of the court, ~~but~~. Notwithstanding s. 814.245, no costs may be taxed against the commission or the department.

**SECTION 57.** 108.095 (2) of the statutes is amended to read:

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

**SECTION 58.** 108.095 (3) of the statutes is amended to read:

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

**SECTION 59.** 108.095 (7) of the statutes is amended to read:

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

**SECTION 60.** 108.10 (1) of the statutes is amended to read:

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

**SECTION 61.** 108.10 (2) of the statutes is amended to read:

108.10 (2) Any hearing duly requested shall be held before an appeal tribunal established as provided by s. 108.09 (3), and s. 108.09 (4) and (5) shall be applicable to the proceedings before such tribunal. The department may be a party in any proceedings before an appeal tribunal. The employing unit or the department may petition the commission for review of the appeal tribunal's decision under s. 108.09 (6).

**SECTION 62.** 108.10 (4) of the statutes is amended to read:

108.10 (4) ~~The department or the employing unit may commence an action for the judicial review of a commission decision under this section, provided the department, or the employing unit, after exhausting has exhausted the remedies provided under this section, has commenced such action within 30 days after such decision was mailed to the employing unit's last-known address. The department may commence an action for the judicial review of a commission decision under this section, but the department is not required to have been a party to the proceedings before the commission or to have exhausted the remedies provided under this section. In an action commenced under this section by a party that is not the department, the department shall be a defendant and shall be named as a party in the complaint commencing the action. If a plaintiff fails to name either the department or the commission as defendants and serve them as required under s. 108.09 (7), the court shall dismiss the action.~~ The scope of judicial review, and the manner thereof insofar as applicable, shall be the same as that provided in s. 108.09 (7). ~~In an action commenced by an employing unit under this section, the department shall be an adverse party under s. 102.23 (1) (a) and shall be named as a party in the complaint commencing the action.~~

**SECTION 63.** 108.10 (6) of the statutes is amended to read:

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

**SECTION 64.** 108.14 (8n) (e) of the statutes, as affected by 2015 Wisconsin Act 55, 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), ~~(cg)~~, (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b), 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) 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 65.** 108.14 (27) of the statutes, as created by 2015 Wisconsin Act 55, is repealed.

**SECTION 66.** 108.141 (3g) (a) 3. (intro.) of the statutes, as affected by 2015 Wisconsin Act 55, is amended to read:

108.141 (3g) (a) 3. (intro.) ~~Notwithstanding s. 108.02 (24g), work Work~~ is suitable within the meaning of subd. 2. if:

**SECTION 67.** 108.141 (4) of the statutes is amended to read:

108.141 (4) WEEKLY EXTENDED BENEFIT RATE. The weekly extended benefit rate payable to an individual for a week of total unemployment is the same as the rate payable to the individual for regular benefits during his or her most recent benefit year as determined under s. 108.05 (1). ~~No adjustment of rates under s. 108.05 (2) applies to benefits payable under this section.~~

**SECTION 68.** 108.141 (7) (a) of the statutes, as affected by 2015 Wisconsin Act 55, 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), ~~(cg)~~, (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b), 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) applies to the fund's balancing account.

**SECTION 69.** 108.151 (3) (b) of the statutes is renumbered 108.151 (3) (b) (intro.) and amended to read:

108.151 (3) (b) (intro.) The department may terminate any election as of the close of any calendar year if the department determines that ~~the~~ any of the following applies:

1. The employer has failed to make the required reimbursement payments ~~or~~.

3. The employer no longer satisfies the requirements of sub. (4), ~~or whenever s.~~

4. Section 108.16 (8) applies with respect to the employer.

**SECTION 70.** 108.151 (3) (b) 2. of the statutes is created to read:

108.151 (3) (b) 2. The employer has failed to pay the required assessments authorized by sub. (7) or s. 108.155.

**SECTION 71.** 108.151 (4) (b) of the statutes is amended to read:

108.151 (4) (b) The fund's treasurer shall issue a receipt to the employer for its deposit of assurance. Any 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 under this paragraph. The employer may at any time substitute assurances of equal or greater value. The treasurer may, with 10 days' notice to the employer, liquidate the assurances deposited to the extent necessary to satisfy any delinquent reimbursements or assessments due under this section ~~or s. 108.155~~ together with any interest and any tardy filing fees due. The treasurer shall hold in escrow any cash remaining from the sale of the assurances, without interest. The fund's treasurer shall require the employer within 30 days following any liquidation of deposited assurances to deposit sufficient additional assurances to make whole the employer's deposit at the prior level. Any income from assurances held in escrow shall inure to and be the property of the employer.

**SECTION 72.** 108.152 (6) (a) (intro.) of the statutes is amended to read:

108.152 (6) (a) (intro.) If an Indian tribe or tribal unit fails to pay required contributions, reimbursements in lieu of contributions, penalties, interest, ~~or~~ fees, or assessments within 90 days of the time that the department transmits to the tribe a final notice of delinquency:

**SECTION 73.** 108.155 of the statutes is created to read:

**108.155 Liability of reimbursable employers for identity theft.** (1) In this section:

(a) "Payroll" has the meaning given in s. 108.02 (21) (a).

(b) "Reimbursable employer" means an employer under s. 108.02 (13) (a) that is subject to reimbursement financing under s. 108.15, 108.151, or 108.152.

(2) (a) On the effective date of this paragraph ... [LRB inserts date], the fund's treasurer shall set aside \$2,000,000 in the balancing account for accounting purposes. On an ongoing basis, the fund's treasurer shall tally the amounts allocated to reimbursable employers' accounts under s. 108.04 (13) (d) 4. c. and deduct those amounts from the amount set aside plus any interest calculated thereon.

(b) On each June 30, beginning with June 30, 2016, the fund's treasurer shall do all of the following:

1. Determine the current result of the calculations described in par. (a).

2. Determine the amount that was allocated to reimbursable employers' accounts under s. 108.04 (13) (d) 4. c. in the preceding calendar year.

(c) Annually, beginning with the first year in which the amount determined under par. (b) 1. is less than \$100,000, the department shall proceed as follows:

1. If the sum of the amount determined under par. (b) 2. in the current year and any amount carried over under subd. 2. or 3. from the preceding year is \$20,000 or more, the department shall, subject to subd. 3., assess reimbursable employers for that sum.

2. If the sum of the amount determined under par. (b) 2. in the current year and any amount carried over under this subdivision or subd. 3. from the preceding year is less than \$20,000 the department shall, subject to subd. 4., postpone the current year's assessment by carrying that sum over to the following year.

3. If the sum of the amount determined under par. (b) 2. in the current year and any amount carried over under this subdivision or subd. 2. from the preceding year is more than \$200,000, the department shall postpone the amount of the assessment that exceeds \$200,000 by carrying that amount over to the following year.

4. If the department postponed assessments under subd. 2. in each of the 4 previous years, the department shall, subject to subd. 3., assess reimbursable employers for the sum of the amount determined under par. (b) 2. in the current year and the amount carried over under subd. 2. from the preceding year.

(d) If the department assesses reimbursable employers under par. (c), the department shall determine the amount of assessments to be levied as provided in sub. (3), and the fund's treasurer shall notify reimbursable employers that the assessment will be imposed. Except as provided in sub. (3) (c), the assessment shall be payable by each reimbursable employer that is subject to this chapter as of the date the assessment is imposed. Assessments imposed under this section shall be credited to the balancing account.

(3) (a) The rate of an assessment imposed under sub. (2) (c) for a given calendar year shall be a rate that, when applied to the payrolls of all reimbursable employers for the preceding calendar year, will generate an amount equal to the total amount to be assessed in that year as determined under sub. (2) (c).

(b) Except as provided in par. (c), the amount of a reimbursable employer's assessment imposed under sub. (2) (c) for a given calendar year is the product of the rate determined under par. (a) and the reimbursable employer's payroll for the preceding calendar year, as reported by the reimbursable employer under s. 108.15 (8), 108.151 (8), 108.152 (7), or 108.205 (1), or, in the absence of reports, as estimated by the department.

(c) If a reimbursable employer would otherwise be assessed an amount less than \$10 for a calendar year, the department shall, in lieu of requiring that reimbursable employer to pay an assessment for that calendar year, apply the amount that the reimbursable employer would have been required to pay to the other reimbursable employers subject to an assessment on a pro rata basis.

(4) The department shall bill assessments under this section to a reimbursable employer at its last known address in the month of September of each year and the assessment shall be due to the department within 20 days after the date such bill is mailed by the department. Any assessment that remains unpaid after its applicable due date is a delinquent payment. If a reimbursable employer is delinquent in paying an assessment under this section, in addition to pursuing action under the provisions of ss. 108.22 and 108.225, the department may do any of the following:

(a) Pursue action authorized under s. 108.15 (6), if the reimbursable employer is subject to reimbursement financing under s. 108.15.

(b) Terminate the reimbursable employer's election of reimbursement financing under s. 108.151 (3) (b) or liquidate the employer's assurance under s. 108.151 (4) (b), if the reimbursable employer elected reimbursement financing under s. 108.151 (2).

(c) Pursue action authorized under s. 108.152 (6), if the reimbursable employer elected reimbursement financing under s. 108.152 (1).

(5) If the payroll of a reimbursable employer for any quarter is adjusted to decrease the amount of the payroll after an employment and wage report for the reimbursable employer is filed under s. 108.205 (1), the department shall refund the amount of any assessment that was overpaid by the reimbursable employer under this section as a result of the adjustment.

(6) The department shall annually report to the council on unemployment insurance the balance remaining of the amount set aside under sub. (2) (a) and the amount of charges restored to reimbursable employers' accounts under s. 108.04 (13) (d) 4. c.

**SECTION 74.** 108.16 (6) (g) of the statutes is amended to read:

108.16 (6) (g) Any payment or other amount received for the balancing account under s. 108.15 ~~or~~ 108.151, 108.152, or 108.155.

**SECTION 75.** 108.16 (6m) (i) of the statutes is created to read:

108.16 (6m) (i) Any amount restored to the account of an employer subject to reimbursement financing under s. 108.04 (13) (d) 4.

**SECTION 76.** 108.16 (7m) of the statutes is amended to read:

108.16 (7m) The fund's treasurer may write off, by charging to the fund's balancing account, any delinquent

contribution, reimbursement in lieu of contribution, assessment, tardy payment or filing fee, or interest for which the employer's liability to the fund was established under s. 108.10, upon receipt of certification by the department that reasonable efforts have been made to recover the delinquency and that the delinquency is uncollectible.

**SECTION 77.** 108.16 (10) of the statutes, as affected by [2015 Wisconsin Act 86](#), is amended to read:

108.16 (10) All money withdrawn from the fund shall be used solely in the payment of benefits, exclusive of expenses of administration, and for refunds of sums erroneously paid into the fund, for refund of a positive net balance in an employer's reimbursement account under ss. 108.15 (4) ~~and~~, 108.151 (5), ~~and 108.152 (4)~~ on request by the employer, for expenditures made pursuant to s. 108.161 and consistently with the federal limitations applicable to s. 108.161, and for payment of fees and expenses for collection of overpayments resulting from fraud or failure to report earnings that are assessed by the U.S. secretary of the treasury and charged to the department under [26 USC 6402 \(f\)](#).

**SECTION 78.** 108.18 (7) (a) 1. of the statutes is amended to read:

108.18 (7) (a) 1. Except as provided in pars. (b) to (i), any employer may make payments to the fund during the month of November in excess of those required by this section and s. 108.19 (1) ~~and~~, (1e), ~~and (1f)~~. Each payment shall be credited to the employer's account for the purpose of computing the employer's reserve percentage as of the immediately preceding computation date.

**SECTION 79.** 108.18 (7) (h) of the statutes is amended to read:

108.18 (7) (h) The department shall establish contributions other than those required by this section and s. 108.19 (1) ~~and~~, (1e), ~~and (1f)~~ and contributions other than those submitted during the month of November or authorized under par. (f) or (i) 2. as a credit, without interest, against future contributions payable by the employer or shall refund the contributions at the employer's option.

**SECTION 80.** 108.18 (9c) of the statutes is amended to read:

108.18 (9c) **REDUCTION OF SOLVENCY RATE.** The department shall reduce the solvency rate payable under sub. (9) by each employer for each year by the rate rates payable by that employer under s. 108.19 (1e) (a) ~~and (1f) (a)~~ for that year.

**SECTION 81.** 108.19 (title) of the statutes is repealed and recreated to read:

**108.19 (title) Contributions to administrative account and unemployment interest payment and program integrity funds.**

**SECTION 82.** 108.19 (1f) of the statutes is created to read:

108.19 (1f) (a) Except as provided in par. (b), each employer, other than an employer that finances benefits

by reimbursement in lieu of contributions under s. 108.15, 108.151, or 108.152 shall, in addition to other contributions payable under s. 108.18 and this section, pay an assessment for each year equal to the lesser of 0.01 percent of its payroll for that year or the solvency contribution that would otherwise be payable by the employer under s. 108.18 (9) for that year. Assessments under this paragraph shall be deposited in the unemployment program integrity fund.

(b) The levy prescribed under par. (a) is not effective for any year unless the department, no later than the November 30 preceding that year, publishes a class 1 notice under ch. 985 giving notice that the levy is in effect for the ensuing year. The department shall consider the balance of the unemployment reserve fund before prescribing the levy under par. (a). The secretary of workforce development shall consult with the council on unemployment insurance before the department prescribes the levy under par. (a).

(c) Notwithstanding par. (a), the department may, if it finds that the full amount of the levy is not required to effect the purposes specified in sub. (1s) (b) for any year, prescribe a reduced levy for that year and in such case shall publish in the notice under par. (b) the rate of the reduced levy.

**SECTION 83.** 108.19 (1m) of the statutes, as affected by [2013 Wisconsin Act 20](#), section [1720q](#), is amended to read:

108.19 (1m) Each employer subject to this chapter as of the date a rate is established under this subsection shall pay an assessment to the unemployment interest payment fund at a rate established by the department sufficient to pay interest due on advances from the federal unemployment account under Title XII of the social security act ([42 USC 1321 to 1324](#)). The rate established by the department for employers who finance benefits under s. 108.15 (2), 108.151 (2), or 108.152 (1) shall be ~~75%~~ 75 percent of the rate established for other employers. The amount of any employer's assessment shall be the product of the rate established for that employer multiplied by the employer's payroll of the previous calendar year as taken from quarterly employment and wage reports filed by the employer under s. 108.205 (1) or, in the absence of the filing of such reports, estimates made by the department. Each assessment made under this subsection is due on the 30th day commencing after the date on which notice of the assessment is mailed by the department. If the amounts collected from employers under this subsection are in excess of the amounts needed to pay interest due, the department shall use any excess to pay interest owed in subsequent years on advances from the federal unemployment account. If the department determines that additional interest obligations are unlikely, the department shall transfer the excess to the balancing account of the fund, the unemployment program integrity fund, or both in amounts determined by the department.

**SECTION 84.** 108.19 (1s) (a) of the statutes, as affected by 2015 Wisconsin Act 55, is renumbered 108.19 (1s) (a) (intro.) and amended to read:

108.19 (1s) (a) (intro.) There is created a separate, nonlapsible trust fund designated as the unemployment program integrity fund consisting of all of the following:

1. All amounts collected under s. 108.04 (11) (bh) other than the amounts required to be deposited in the fund under s. 108.16 (6) (n).

**SECTION 85.** 108.19 (1s) (a) 2. of the statutes is created to read:

108.19 (1s) (a) 2. Assessments levied and deposited into the unemployment program integrity fund under sub. (1f).

**SECTION 86.** 108.19 (1s) (a) 3. of the statutes is created to read:

108.19 (1s) (a) 3. Amounts transferred under sub. (1m).

**SECTION 87.** 108.19 (1s) (a) 4. of the statutes is created to read:

108.19 (1s) (a) 4. Assessments under s. 108.221 (1) and (2).

**SECTION 88.** 108.22 (1) (b) of the statutes is amended to read:

108.22 (1) (b) If the due date of a report or payment under s. 108.15 (5) (b), 108.151 (5) (f) or (7), 108.155, 108.16 (8), 108.17, or 108.205 would otherwise be a Saturday, Sunday, or legal holiday under state or federal law, the due date is the next following day which is not a Saturday, Sunday, or legal holiday under state or federal law.

**SECTION 89.** 108.22 (1) (c) of the statutes is amended to read:

108.22 (1) (c) Any report or payment, except a payment required by s. 108.15 (5) (b) ~~or~~ 108.151 (5) (f) or (7), or 108.155, to which this subsection applies is delinquent, within the meaning of par. (a), unless it is received by the department, in the form prescribed by law or rule of the department, no later than its due date as determined under par. (b). Any payment required by s. 108.15 (5) (b) ~~or~~ 108.151 (5) (f) or (7), or 108.155 is delinquent, within the meaning of par. (a), unless it is received by the department, in the form prescribed by law, no later than the last day of the month in which it is due.

**SECTION 90.** 108.22 (1m) of the statutes is amended to read:

108.22 (1m) If an employer owes any contributions, reimbursements, or assessments under s. 108.15, 108.151, 108.155, or 108.19 (1m), interest, fees, or payments for forfeitures or other penalties to the department under this chapter and fails to pay the amount owed, the department has a perfected lien upon the employer's right, title, and interest in all of its real and personal property located in this state in the amount finally determined to be owed, plus costs. Except where creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective when the department issues a deter-

mination of the amount owed under s. 108.10 (1) and shall continue until the amount owed, plus costs and interest to the date of payment, is paid. If a lien is initially barred or stayed by bankruptcy or other insolvency law, it shall become effective immediately upon expiration or removal of such bar or stay. The perfected lien does not give the department priority over lienholders, mortgagees, purchasers for value, judgment creditors, and pledges whose interests have been recorded before the department's lien is recorded.

**SECTION 91.** 108.22 (9) of the statutes is amended to read:

108.22 (9) An individual who is an officer, employee, member ~~or~~ manager, partner, or other responsible person holding at least ~~20%~~ 20 percent of the ownership interest of a corporation ~~or~~ ~~of a~~ limited liability company, or other business association subject to this chapter, and who has control or supervision of or responsibility for filing any required contribution reports or making payment of contributions, and who willfully fails to file such reports or to make such payments to the department, or to ensure that such reports are filed or that such payments are made, 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 ~~or~~ limited liability company, or other business association is unable to pay such amounts to the department. Ownership interest of a corporation ~~or~~ limited liability company, or other business association includes ownership or control, directly or indirectly, by legally enforceable means or otherwise, by the individual, by the individual's spouse or child, by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them, and such ownership interest of a parent corporation ~~or~~ limited liability company, or other business association of which the corporation ~~or~~ limited liability company, or other business association unable to pay such amounts is a wholly owned subsidiary. The personal liability of such officer, employee, member ~~or~~ manager, partner, or other responsible person 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 ~~or~~ limited liability company, or other business association and shall be set forth in a determination or decision issued under s. 108.10.

**SECTION 92.** 108.221 of the statutes is created to read:

**108.221 Misclassification; administrative assessments.** (1) (a) Any employer described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures who knowingly and intentionally provides false information to the department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as

a nonemployee shall, for each incident, be assessed a penalty by the department in the amount of \$500 for each employee who is misclassified, but not to exceed \$7,500 per incident.

(b) The department shall consider the following non-exclusive factors in determining whether an employer described under par. (a) knowingly and intentionally provided false information to the department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee:

1. Whether the employer was previously found to have misclassified an employee in the same or a substantially similar position.

2. Whether the employer was the subject of litigation or a governmental investigation relating to worker misclassification and the employer, as a result of that litigation or investigation, received an opinion or decision from a federal or state court or agency that the subject position or a substantially similar position should be classified as an employee.

(2) Any employer described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures who, through coercion, requires an individual to adopt the status of a nonemployee shall be assessed a penalty by the department in the amount of \$1,000 for each individual so coerced, but not to exceed \$10,000 per calendar year.

(3) Assessments under subs. (1) and (2) shall be deposited in the unemployment program integrity fund.

**SECTION 93.** 108.225 (1) (a) of the statutes is amended to read:

108.225 (1) (a) "Contribution" includes a reimbursement or assessment under s. 108.15, 108.151, ~~or 108.152, or 108.155,~~ interest for a nontimely payment, fees, and any payment due for a forfeiture imposed upon an employing unit under s. 108.04 (11) (c) or other penalty assessed by the department under this chapter.

**SECTION 94.** 108.24 (2m) of the statutes is amended to read:

108.24 (2m) Any employer described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures who willfully, after having previously been assessed an administrative penalty by the department under s. 108.221 (1), knowingly and intentionally provides false information to the department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee shall be fined \$1,000 for each employee who is misclassified, subject to a maximum fine of \$25,000 for each violation. The department may refer violations of this subsection for prosecution by the department of justice or the district attorney for the county in which the violation occurred.

**SECTION 95.** 111.327 of the statutes is repealed.

**SECTION 96.** 2011 Wisconsin Act 198, section 4m is repealed.

**SECTION 97.** 2011 Wisconsin Act 198, section 6m is repealed.

**SECTION 98.** 2011 Wisconsin Act 198, section 37m is repealed.

**SECTION 99.** 2011 Wisconsin Act 198, section 47m (1), as last affected by 2013 Wisconsin Act 36, is repealed.

**SECTION 100.** 2013 Wisconsin Act 36, section 236m is repealed.

**SECTION 101. Nonstatutory provisions.**

(1) UNEMPLOYMENT INSURANCE; REPEAL OF PROGRAM INTEGRITY FUND SUNSET. The repeal of 2011 Wisconsin Act 198, sections 4m, 6m, 37m, and 47m (1) and 2013 Wisconsin Act 36, section 236m applies notwithstanding section 990.03 of the statutes.

**SECTION 102. Initial applicability.**

(1) CONCEALMENT BY CLAIMANTS. The renumbering and amendment of section 108.04 (11) (g) of the statutes and the creation of section 108.04 (11) (g) 2. and 3. of the statutes first apply to determinations issued under section 108.09 of the statutes on the effective date of this subsection.

(2) CONCURRENT RECEIPT OF SSDI AND UI BENEFITS. The treatment of section 108.04 (2) (h) and (12) (f) 1., 1m., 2., 2m., and 3. b. to d. of the statutes first applies retroactively to determinations issued under section 108.09 of the statutes on the effective date of this subsection.

(3) JUDICIAL REVIEW CHANGES. The treatment of sections 108.09 (4o), (7) (a), (b), and (c) to (h) and 108.10 (4) of the statutes first applies to actions filed on the effective date of this subsection.

(4) ABLE AND AVAILABLE DETERMINATIONS. The treatment of sections 108.04 (1) (b) and (bm), (7) (c), (cg), and (h), (8) (e), and (16) (b), 108.14 (8n) (e), and 108.141 (7) (a) of the statutes first applies to determinations issued under section 108.09 of the statutes on the effective date of this subsection.

(5) PERSONAL LIABILITY OF LLP PARTNERS. The treatment of section 108.22 (9) of the statutes first applies to determinations issued under section 108.10 of the statutes on the effective date of this subsection.

(6) SUITABLE WORK. The treatment of section 108.04 (7) (e) and (8) (c), (dm), and (em) of the statutes, the renumbering and amendment of section 108.04 (8) (d) of the statutes, and the creation of section 108.04 (8) (d) 2. of the statutes first apply to determinations issued under section 108.09 of the statutes on the effective date of this subsection.

(7) RECEIPT OF WORKER'S COMPENSATION. The treatment of section 108.04 (12) (e) of the statutes first applies to determinations issued under section 108.09 of the statutes on the effective date of this subsection.

(8) MISCLASSIFICATION; ASSESSMENTS AND PENALTIES. The treatment of sections 102.07 (8) (d), 108.221, 108.24 (2m), and 111.327 of the statutes first applies to violations committed on the effective date of this subsection.

**SECTION 103. Effective dates.** This act takes effect on the first Sunday after publication, except as follows:

(1) CONCURRENT RECEIPT OF SSDI AND UI BENEFITS. The treatment of section 108.04 (2) (h) and (12) (f) 1., 1m., 2., 2m., and 3. b. to d. of the statutes and SECTION 102 (2) of this act take effect retroactively to January 5, 2014.

(2) REIMBURSABLE EMPLOYER IDENTITY THEFT CHARGING. The treatment of sections 108.02 (21) (b), 108.04 (13) (d) 3. (intro.) and a. and 4. (intro.), a., and c., 108.151 (4) (b), 108.152 (6) (a) (intro.), 108.155, 108.16 (6) (g), (6m) (i), (7m), and (10), 108.22 (1) (b) and (c) and (1m), and 108.225 (1) (a) of the statutes, the renumbering and amendment of section 108.151 (3) (b) of the statutes, and the creation of section 108.151 (3) (b) 2. of the statutes take effect on October 2, 2016.

(3) JUDICIAL REVIEW CHANGES. The treatment of sections 108.09 (4o), (7) (a), (b), and (c) to (h) and 108.10 (4) of the statutes and SECTION 102 (3) of this act take effect on the first day of the 5th month beginning after publication.

(4) SUITABLE WORK. The treatment of section 108.04 (7) (e) and (8) (c), (dm), and (em) of the statutes, the renumbering and amendment of section 108.04 (8) (d) of the statutes, and the creation of section 108.04 (8) (d) 2. of the statutes and SECTION 102 (6) of this act take effect on the 5th Sunday beginning after publication.

(5) RECEIPT OF WORKER'S COMPENSATION. The treatment of section 108.04 (12) (e) of the statutes and SECTION 102 (7) of this act take effect on the 5th Sunday beginning after publication.

(6) MISCLASSIFICATION; ASSESSMENTS AND PENALTIES. The treatment of sections 102.07 (8) (d), 108.19 (1s) (a) 4., 108.221, 108.24 (2m), and 111.327 of the statutes and SECTION 102 (8) of this act take effect on the first Sunday of the 7th month beginning after publication.

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