



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2003 Wisconsin Act 197
[2003 Senate Bill 340]

Unemployment Insurance Changes

2003 Acts: www.legis.state.wi.us/2003/data/acts/

Act Memos: www.legis.state.wi.us/lc/act_memo/act_memo.htm

2003 Act 197 makes a number of changes to the unemployment insurance laws:

Search for work. Under current law, in order for a claimant to receive benefits for a week in which he or she earns no wages, the claimant must, among other things, seek work during that week. Act 197 provides for an exemption from this requirement if the claimant is currently laid off and the Department of Workforce Development (DWD) determines that there is a reasonable expectation that the employer will reemploy the claimant.

Language regarding recovery of overpayments. Prior to Act 197, the department was authorized to recover benefit overpayments by offsetting the amount against future payments. The use of the term “offset” posed some problems when a bankruptcy was involved. Act 197 changes “offset” to “recoup” to avoid the problem.

Definition of independent contractor. Under prior law, there were two tests for determining whether a worker was an independent contractor. For years prior to January 1, 2000 and after April 3, 2004, a worker would be considered an independent contractor if the worker satisfied one of two requirements concerning the worker’s federal tax status, and six of eight requirements concerning the worker’s control of his or her business and services that he or she performs. For the period between January 1, 2000 and April 3, 2004, all of the factors are put together and the worker who satisfies 7 of the 10 requirements will be considered an independent contractor. Act 197 makes the 7 of 10 test the permanent test.

Exemption of wages from levy. DWD may levy against the property of a person who is indebted to DWD. Prior to Act 197, if the levy was to collect a benefit overpayment or a forfeiture imposed on an employer, the debtor was entitled to an exemption of the greater of: (1) 75% of the debtor’s earnings; or (2) an amount equal to 30 times the federal minimum wage per week, or a proportionate amount for any partial week. Act 197 limits that exemption to forfeitures imposed on employers. For benefit

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

overpayments, Act 197 allows an exemption of 80% of the debtor's disposable income except that: (1) a debtor's disposable earnings are totally exempt from levy if the debtor's wages are below the federal poverty line, or the levy would cause that result; (2) DWD may allow a greater exemption upon a showing of hardship; and (3) DWD may decrease or eliminate the exemption in certain circumstances where the debtor made a false statement or representation to obtain benefits.

Duration of levy. DWD can impose a levy to collect delinquent unemployment insurance taxes and overpaid benefits. Under prior law, the levy could only be effective for one year. Act 197 removes the one-year limitation.

Treatment of limited liability corporations (LLCs). Prior to Act 197, the law did not specify how LLC members would be treated for benefit purposes. According to DWD, it was their practice to treat members of LLCs as sole proprietors if there was only one member and as partners if there was more than one member. Under Act 197, LLCs are treated for tax and benefit purposes as they have elected to be treated by the IRS.

Treatments of stepchildren. Prior to Act 197, stepchildren were not treated as children for unemployment insurance law. Act 197 expressly includes stepchildren in the definition of "child."

Recovery of fraudulent benefit payments. DWD has a number of powers to recover benefits that were fraudulently paid. Act 197 provides the department with the additional powers to recoup the amount due from other benefits the person would be eligible to receive and to issue an administrative levy against the person's property without a court proceeding.

Successor liability. If a business is transferred from one employer to another, the transferee can request DWD to treat it as a successor for purposes of unemployment insurance. In addition, some transferees are required to be treated as successors. Prior to Act 197, treatment as a successor required that, among other things, 100% of the transferor's business be transferred to a single transferee. Act 197 deletes that limitation.

Late appeals. Prior to Act 197, if a party to an unemployment determination files a late appeal, DWD may hold a hearing to determine whether the failure to file a timely appeal was beyond the party's control. Under Act 197, an appeal tribunal reviews the reasons for the late appeal. If the reasons given, taken as true and construed most favorably to the party, do not constitute a reason beyond the party's control, the tribunal may dismiss the appeal without a hearing. The department may schedule a hearing if the tribunal finds that the late appeal may have been beyond the party's control.

Payment of banking costs. Prior to Act 197, the costs of banking services related to unemployment insurance administration were paid from compensating balances in bank accounts that were used to make daily transactions. Under Act 197, the treasurer of the unemployment reserve fund must estimate, at the end of each quarter, the earnings rate that would be payable on the fund's bank balances, and the earnings rate that would be payable by the federal unemployment reserve fund for the following quarter. Based on these estimates, the treasurer will pay the cost of banking services either by maintaining compensating bank balances, or by transferring the compensating balances to the federal unemployment reserve fund and paying the costs with federal unemployment administration moneys, whichever method would yield the highest net earnings.

Payment of court fees. DWD is authorized to file a warrant with the clerk of courts in cases where an employing unit fails to pay amounts due. Act 197 allows DWD to pay filing fees for voiding, satisfaction, or release of warrants biennially or in an agreed upon manner.

Assessments for information technology systems. Under current law, an administrative assessment is imposed on employers to fund the costs of redesigning and developing the unemployment insurance tax and accounting system. Act 197 extends the authority to impose that administrative assessment through 2007, and allows the funds to be used in general for renovation and modernization of unemployment insurance information technology systems.

Rule making. Act 197 repeals the requirement that DWD propose rules that would: (1) establish a level of repeated absenteeism that constitutes misconduct so that it would be subject to discharge for misconduct; and (2) specify what constitutes an “establishment” for purposes of determining a disqualification from receiving unemployment insurance benefits because of a labor dispute in an establishment in which an individual was employed.

Approved training. Under Act 197, unemployment insurance benefits cannot be denied as a result of an individual leaving unsuitable work to enter or continue training, and the qualifying requirements for voluntary termination of work do not apply to individuals enrolled in training programs under the federal Trade Adjustment Assistance Act and dislocated worker training programs under the Workforce Investment Act. Act 197 provides that benefits that are paid based on employment terminated to participate in training programs provided by DWD or under the federal Trade Adjustment Assistance and Work Reinvestment Acts are charged to the balancing account of the unemployment reserve fund.

Effective Date: The effective date of 2003 Act 197 is April 24, 2004.

Prepared by: Nick Zavos, Staff Attorney

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