

## CHAPTER 108.

### UNEMPLOYMENT RESERVES AND COMPENSATION.

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**108.01 Public policy declaration.** Without intending that this section shall supersede, alter or modify the specific provisions hereinafter contained in this chapter, the public policy of this state is declared as follows:

(1) Unemployment in Wisconsin is recognized as an urgent public problem, gravely affecting the health, morals and welfare of the people of this state. The burdens resulting from irregular employment and reduced annual earnings fall directly on the unemployed worker and his family. The decreased and irregular purchasing power of wage earners in turn vitally affects the livelihood of farmers, merchants and manufacturers, results in a decreased demand for their products, and thus tends partially to paralyze the economic life of the entire state. In good times and in bad times unemployment is a heavy social cost, directly affecting many thousands of wage earners. Each employing unit in Wisconsin should pay at least a part of this social cost, connected with its own irregular operations, by financing compensation for its own unemployed workers. Each employer's contribution rate should vary in accordance with his own unemployment costs, as shown by experience under this chapter. Whether or not a given employing unit can provide steadier work and wages for its own employes, it can reasonably be required to build up a limited reserve for unemployment, out of which benefits shall be paid to its eligible unemployed workers, as a matter of right, based on their respective wages and lengths of service.

(2) The economic burdens resulting from unemployment should not only be shared more fairly, but should also be decreased and prevented as far as possible. A sound system of unemployment reserves, contributions and benefits should induce and reward steady operations by each employer, since he is in a better position than any other agency to share in and to reduce the social costs of his own irregular employment. Employers and employes throughout the state should co-operate, in advisory committees under government supervision, to promote and encourage the steadiest possible employment. A more adequate system of free public employment offices should be provided, at the expense of employers, to place workers more efficiently and to shorten the periods between jobs. Education and retraining of workers during their unemployment should be encouraged. Governmental construction providing emergency relief through work and wages should be stimulated.

(3) A gradual and constructive solution of the unemployment problem along these lines has become an imperative public need. [Spl. S. 1931 c. 20 s. 2; 1939 c. 186, 372; 1943 c. 181]

**Note:** Where a dance-hall operator arranged with the leader of some one of several orchestras to furnish the music and a specified number of musicians for a dance at some specified date, and agreed on a lump-sum payment to be made to the leader, and had no contact with the individual musicians, and did not fix their compensation, which ordinarily was the union wage, nor have any-

thing to say as to selecting or discharging them nor have any control over them, they were "employes" of their leader rather than of the dance-hall operator, under the unemployment compensation act, so that the operator was not liable to contribute to the unemployment fund on their account. *Maloney v. Industrial Comm.*, 242 W 165, 7 NW (2d) 580.

**108.02 Definitions.** As used in this chapter:

(1) "Benefits" means the money allowance payable to an employe as compensation for his wage losses due to unemployment as provided in this chapter.

(2) "Commission" means the industrial commission.

(3) EMPLOYEE. (a) "Employee" means any individual who is or has been performing services for an employer, in an employment, whether or not he is paid directly by such employer; except as provided in paragraph (b). If a contractor performing services for an employer is an employee under this subsection and not an employer subject to the contribution provisions of this chapter, a person employed by the contractor in fulfillment of his contract with the employer shall be considered the employee of the employer.

(b) Paragraph (a) shall not apply to an individual performing services for an employer if the employer satisfies the commission as to both the following conditions:

1. That such individual has been and will continue to be free from the employer's control or direction over the performance of his services both under his contract and in fact; and

2. That such services have been performed in an independently established trade, business or profession in which the individual is customarily engaged.

(c) This subsection shall be used in determining an employer's liability under the contribution provisions of this chapter, and shall likewise be used in determining the status of claimants under the benefit provisions of this chapter.

(4) EMPLOYER. (a) "Employer," except where the term by its context clearly applies to each employer of one or more individuals in Wisconsin, means any person, partnership, association, corporation, whether domestic or foreign (or legal representative or trustee in bankruptcy or receiver or trustee of a person, partnership, association or corporation, or legal representative of a deceased person), including this state and any city of the first class (but excluding any other political subdivision) and any fraternal benefit society as defined in section 208.01, who is subject to this chapter under the statutes of 1937, or who becomes subject hereto under the provisions of this section.

(b) Any other employer, who has employed as many as eight individuals in "employment" within each of eighteen or more weeks lying wholly within the year 1937 or any subsequent calendar year, shall become an "employer" subject hereto as of the beginning of that calendar year in which such employment occurs.

(c) Any other employer shall become an "employer" subject hereto in case the "wages" paid or payable by him for "employment" exceed \$10,000 in any calendar quarter (starting after June 1943), as of the beginning of that calendar year in which such quarter occurs.

(d) Any other employer, who has employed as many as six individuals in "employment" within each of eighteen or more weeks lying wholly within the year 1938 or any subsequent calendar year, shall become an "employer" subject hereto as of the close of that calendar year in which such employment occurred. If an employer's records for a given calendar year do not permit accurate determination of his status on the foregoing basis, and the aggregate "wages" paid or payable for "employment" by him equalled or exceeded six thousand dollars for such year, he shall become an "employer" subject hereto as of the close of such year.

(e) Any other employer, who succeeds to the business of any "employer" hereunder, shall thereby become an "employer" subject to this chapter, as provided in subsection (8) of section 108.16.

(f) Any employer, including any political subdivision of the state, not otherwise subject to this chapter, who files with the commission its written election to become an "employer" subject hereto for not less than 3 calendar years, shall, with the written approval of such election by the commission, become an "employer" fully subject to this chapter, as of the date and under the conditions stated in such approved election. The commission may refuse to approve any such election, in the interests of the proper administration of this chapter. Any election approved by the commission shall be void, in case the electing party was himself "employed" in the same enterprise as the individuals to whom such election applied. The commission may at any time by written notice to the employer terminate any election in the interests of efficient administration of this chapter. An electing employer may terminate his election and thereby cease to be an "employer" subject hereto, despite the provisions of paragraph (g), at the close of the third such year or of any subsequent year, only if he has filed a written notice to that effect with the commission at least 30 days prior to the close of the year in question and is not then subject to this chapter under paragraph (b), (c), (d) or (e) of this subsection.

(g) An employer shall cease to be subject to this chapter upon a written application by him, and upon a finding by the commission that the employer has failed, for each of the 2 most recently completed calendar years, to employ at least 4 persons in employment subject hereto within at least 18 weeks per year. In any such case the employer's coverage shall cease as of the close of that calendar month in which such application was filed. In the case of any employer who has ceased to exist or has transferred his entire business to another person or persons, he shall cease to be subject to this chapter upon a

commission finding to that effect, as of the close of that calendar month in which a copy of such finding was mailed to his last known address.

(5) **EMPLOYMENT.** (a) "Employment", subject to the other provisions of this subsection means any service, including service in interstate commerce, performed by an individual for pay.

(b) The term "employment" shall include an individual's entire service (performed within, or partly within and partly outside, Wisconsin), if such service is "localized" in Wisconsin; and shall also include such service, if it is not "localized" in any state but is performed partly within Wisconsin, and if:

1. The base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in Wisconsin; or

2. The base of operations or place from which such service is directed or controlled is not in any state in which some part of such service is performed, but the individual's residence is in Wisconsin.

(c) An individual's entire service for an employer, whether performed partly within or entirely outside Wisconsin, shall be deemed "employment" subject to this chapter, provided both the following conditions exist:

1. Such service is deemed "employment" covered by this chapter pursuant to a reciprocal arrangement between the commission and each agency administering the unemployment compensation law of a jurisdiction in which part of such service is performed; or no contributions are required with respect to any of such service under any other unemployment compensation law; and

2. The employer so elects with the commission's approval and with written notice to the individual.

(d) An individual's entire service shall be deemed "localized" within a state, if such service is performed entirely within such state, or if such service is performed partly within and partly outside such state but the service performed outside such state is incidental to the individual's service within such state (for example, is temporary or transitory in nature or consists of isolated transactions).

(e) In determining whether an individual's entire services shall be deemed "employment" subject to this chapter, under paragraphs (b), (c) and (d) of this subsection, the commission may determine and redetermine the individual's status hereunder for such reasonable periods as it deems advisable, and may refund (as paid by mistake) any contributions which have been paid hereunder with respect to services duly covered under any other unemployment compensation law.

(f) The term "employment", as applied to work for a governmental unit, except as such unit duly elects otherwise with the commission's approval, shall not include:

1. Employment as an elected or appointed public officer;

2. Employment by a governmental unit on an annual salary basis;

3. Employment by a governmental unit on an unemployment work relief project, recognized as such by the commission;

4. Employment, by an educational institution supported wholly or substantially from public funds, of any student enrolled in such institution and carrying at least half its full-time schedule in the most recent school term, or of any person as a teacher in such institution;

5. Employment directly by the state fair during its active duration (including the week before and the week after the fair); or employment by the Wisconsin National Guard directly and solely in connection with its summer training camps or for emergencies; or employment directly by the conservation commission for emergency fire fighting;

6. Employment by a governmental unit in a given week, for the removal of snow or ice or for work connected with floods, of an individual who has worked for such governmental unit in six or less of the fifty-two weeks preceding the given week.

(g) The term "employment," except as a given employer elects otherwise with the commission's approval, shall not include:

1. Employment in agricultural labor;

2. Domestic service in the employ of an individual in his private home, or domestic service in the employ of a local college club or of a local chapter of a college fraternity or sorority;

3. Employment as a caddy on a golf course;

4. Employment as a newsboy, selling or distributing newspapers or magazines on the street or from house to house;

5. Service performed after June 30, 1939, with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act (52 Stat. 1094).

6. Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States, and service with respect to which unemployment benefits are

payable under an unemployment compensation system for maritime workers established by an act of congress.

7. Employment of any person by a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.

8. Employment in logging operations.

9. Service in the employ of any fraternal beneficiary society, order or association (exempt from federal income tax under section 101 of the internal revenue code), if such service is in connection with its collection of dues or premiums and is performed away from its home office, or is ritualistic service.

10. Service in the employ of an agricultural or horticultural organization exempt from federal income tax under section 101 (1) of the internal revenue code.

11. Service as an unpaid officer of a corporation or association.

12. Employment as an athlete by an employer who has submitted written evidence satisfying the commission that the enterprise in question was not subject to the federal unemployment tax act in the preceding calendar year.

13. Service covered by any other unemployment compensation law pursuant to a reciprocal arrangement made by the commission under subsection (8m) of section 108.14.

(6) "Wages" means every form of remuneration payable for a given period (or paid within such period, if this basis is permitted or prescribed by the commission) to an individual for personal services, including salaries, commissions, vacation pay, dismissal wages, bonuses and the reasonable (actual or estimated average) value of board, rent, housing, lodging, payments in kind, tips, and any other similar advantage received from the individual's employer or directly with respect to work for him; but there shall not be treated as "wages" the actual (or reasonably estimated average) amount of any required or necessary expenses incurred by an individual on his job.

(7) AVERAGE WEEKLY WAGE. (a) An employee's "average weekly wage" with respect to a given employer means the average weekly amount determined by dividing the employee's total wages (paid or payable with respect to his services performed for the employer in the calendar year, or other one-year period prescribed by the commission, which precedes a given determination date) by the total number of those weeks (completed in such year) within which the employee performed some wage-earning services for the employer or for which he received from the employer vacation pay or dismissal wages at least equal to his weekly benefit rate (or, in case no such rate applied, equal to fifteen dollars).

(b) In lieu of the foregoing standard procedure for determining an employee's average weekly wage, the commission may by general rule prescribe reasonable substitute procedure to apply to those employees (or to some class of those employees) for whom such total wages were less than one hundred dollars, or for whom the total number of such weeks was less than ten, or who had no such wages or weeks in such year; provided, moreover, that the commission may, on application of an employee or his employer or on its own motion, prescribe reasonable substitute procedure for determining or redetermining the average weekly wage of any employee if it finds, after consulting the employee and the given employer, that application of the standard procedure would be inequitable in such case.

(c) In applying the provision of paragraph (b), the commission may prescribe that those weeks shall be ignored for which the employee's wages were less than \$5, in any case where he earned \$10 or more from the employer in each of 12 or more weeks within the year in question.

(d) Each employer shall, for the purpose of computing the weekly benefit rates applicable to his employees, determine and redetermine the average weekly wage of some or all of his employees at such times and in accordance with such procedure as the commission may prescribe.

(8) An employer's "pay roll" shall include all wages payable for a given period (or paid within such period, if this basis is permitted or prescribed by the commission) to the employer's employees for their "employment" by him. But an employer's "pay roll" for any calendar year after 1939 shall not (except while he is duly required to contribute at more than the standard rate) include more than the first three thousand dollars of wages paid by him to an "employee" with respect to "employment" during such year.

(9) "Fund" means the unemployment reserve fund established in section 108.16.

(10) "Employer's account" means the separate unemployment reserve account of an employer in the above fund, from which account, unless such account is exhausted, shall be paid all and only benefits payable on the basis of "employment" performed for such employer.

(11) "Reserve percentage" shall for contribution purposes refer to the status of an employer's account, as determined finally by the commission as of the close of the most recent "computation date". In calculating an employer's net reserve as of any 1943 or later computation date, his account shall be charged with benefits for weeks ending on or before said date, if paid by the close of the month which follows said date, and shall be credited with contributions, on his pay roll through said date, if paid by the close of said month, consistently with section 108.16. The employer's "reserve percentage" shall mean his net reserve as of the computation date, stated as a percentage of the highest one of the following amounts: (a) his "pay roll" for the year ending on such date, or (b) his average annual pay roll for the 3 years ending on such date, or (c) 60 per cent of his largest pay roll for any one of those 3 years.

(11m) "Computation date" means that date as of the close of which the commission computes reserve percentages and determines contribution rates for the next calendar year; and the "year" preceding the computation date means the period of 12 consecutive calendar months ending on that date. The computation date shall be December 31, except as the commission may by general rule prescribe any other date (occurring at least once in each calendar year and within 27 weeks prior to the effective date of new rates of contributions) as of which such rates shall be computed.

(12) "Week" means calendar week (starting Sunday and ending Saturday), except as the commission may by special order prescribe (with respect to an employer whose operations are continuous) a seven-day period starting within twelve hours of midnight on Saturday.

(13) An employe's "weeks of employment" by an employer means all those weeks within each of which the employe has performed any wage-earning services for the employer in employment subject to this chapter.

(14) "Credit week" means a week of employment (of an employe by an employer) charged or chargeable for benefit purposes pursuant to section 108.06.

(15) WEEKLY BENEFIT RATE. An employe's "weekly benefit rate" from a given employer means the amount determined in accordance with subsection (1) of section 108.05.

(16) PARTIAL UNEMPLOYMENT. An employe shall be deemed "partially unemployed", with reference to any given employer, in any week for which he receives some wages from such employer but for which his total wages (from any and all employers) are less than his weekly benefit rate from the given employer.

(16m) PART-TOTAL UNEMPLOYMENT. An employe shall be deemed "part-totally unemployed" with respect to a past employer in any week for which he receives no wages from such employer but does receive other wages, if his weekly benefit rate as to such employer exceeds not only his wages for such week but also any weekly benefit rate then applicable as to a current employer.

(17) TOTAL UNEMPLOYMENT. An employe shall be deemed "totally unemployed" in any week for which he receives no wages.

(18) ELIGIBILITY. An employe shall be deemed "eligible" for benefits for any given week of his unemployment unless he is disqualified by a specific provision of this chapter from receiving benefits for such week of unemployment, and shall be deemed "ineligible" for any week to which such a disqualification applies.

(19) An employe's "waiting period" means any period of time (for which no total or part-total benefits are payable) required of the employe pursuant to section 108.04 (3), as a condition precedent to his receipt of such benefits.

(20) "Administration fund" means the fund established in section 108.20.

(21) UNDEFINED TERMS. Any word or phrase used in this chapter and not specifically defined herein shall be interpreted in accordance with the common and approved usage thereof and in accordance with other accepted rules of statutory construction. No legislative enactment shall control the meaning or interpretation of any such word or phrase, unless such enactment specifically refers to this chapter or is specifically referred to in this chapter.

(22) SELF-EMPLOYMENT. An individual shall be deemed to be "self-employed" if he is engaged (not in the employ of another) in a business or enterprise which he has undertaken for the purpose of producing a substantial part of his gross income.

(23) AGRICULTURAL LABOR. "Agricultural labor" means service performed:

(a) On a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of live stock, bees, poultry, and fur-bearing animals and wildlife.

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(c) In connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the federal Agricultural Marketing Act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(d) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(e) As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. [Spl. S. 1931 c. 20 s. 2; 1933 c. 383 s. 1, 5; 1935 c. 192, 272, 446; 1937 c. 95 s. 4; 1937 c. 162, 343; 1939 c. 186, 245, 372; 1941 c. 288; 1943 c. 181]

**Note:** Cemetery corporations, even if non-profit in character, are not exempted from the operation of the unemployment compensation act, cemetery corporations not being charitable corporations or corporations organized and operated exclusively for charitable purposes within the contemplation of the cited exemption provision, particularly in view of its legislative history. Industrial Comm. v. Woodlawn Cemetery Ass'n, 232 W 527, 287 NW 750.

Under the unemployment compensation act, Stats. 1937, a person, employing ten or more persons for eighteen or more weeks in the calendar year in the performance of work for a contractor, was himself an "employer" subject to the act, if he was an independent subcontractor, and in such case his employes were not employees of the contractor and they would not be entitled to unemployment compensation from the contractor's fund. A person could not be an "independent subcontractor" in relation to a contractor and at the same time be an "employee" subject to the contractor's control within the act. Many of the definitions in 108.02 are explained. Wisconsin B. & I. Co. v. Industrial Comm. 233 W 467, 290 NW 193.

Under 108.02 (18) and 108.09 (1) it was intended that an unemployed worker, otherwise eligible for benefits, shall be deemed eligible unless the employer in rejecting his claim asserts some valid reason because of which the employee must be considered disqualified. Boynton Cab Co. v. Giese, 237 W 237, 296 NW 630.

If an unemployment compensation proceeding involving a salesman selling stock food for a manufacturer under a contract whereby he had specific territory to work in when and as he pleased, used his own automobile and paid his own expenses, and was paid a commission on his sales, the industrial commission properly determined that the claimant was not "customarily engaged in an independently established trade or business" within 108.02 (5) (a), Stats. 1937, and that he was an "employee" of the manufacturer under the act, hence entitled to unemployment compensation, although he may have been an "independent contractor" under common-law concepts. The legislature cannot by a later act establish or affect the construction of a former act, and the interpretation to be given to the unemployment compensation act of 1937 cannot be determined by amendments made by the legislatures of 1939 and 1941. Moorman Mfg. Co. v. Industrial Comm., 241 W 200, 5 NW (2d) 743.

Employes on plaintiff's fox farm were

not "farm laborers," within the meaning of that term as used in 108.02 (e) 1, from 1933 and until amendments of 1939, and hence such employes were not exempted from the unemployment compensation act during the period prior to such amendments. Cedarburg Fox Farms, Inc., v. Industrial Comm., 241 W 604, 6 NW (2d) 604.

The provision in 108.02 (3m), Stats. 1939, that any individual performing services for pay shall be presumed to be "employed" unless the employer has satisfied the industrial commission of the existence of certain specified conditions, is not a conclusive presumption, and must yield to facts proved that establish the contrary. Maloney v. Industrial Comm., 242 W 165, 7 NW (2d) 580.

Employees of refrigerator car company whose stock is owned indirectly by railroad are not in employ of railroad engaged in interstate transportation so as to be exempt from provisions of unemployment reserve and compensation act. (Stats. 1933). 23 Atty. Gen. 564.

Subsidiary company of railroad companies organized to handle express business of railroads is not subject to unemployment compensation act. (Stats. 1933). 23 Atty. Gen. 566.

Employment of persons by county to construct fire lanes, plant trees, etc., on county-owned forest crop lands is subject to chapter 108, Stats. 1935, where such employes are not hired on annual salary basis. 25 Atty. Gen. 255.

Students regularly attending university and employed by it are not eligible for unemployment compensation benefits and are not included in pay roll on which contributions are made under chapter 108, Stats. 1935. 25 Atty. Gen. 591.

Where member of county board has been illegally employed as quarry foreman by county highway committee, he is not eligible for unemployment compensation. 26 Atty. Gen. 55.

Legislative employees of sergeant-at-arms are covered by unemployment compensation act. 26 Atty. Gen. 118.

Firms engaged in construction of dams, locks, etc., in Mississippi valley within state under contract with federal government in pursuance of flood control are subject to chapter 108, Stats. 1937. 26 Atty. Gen. 476.

Special deputy banking commissioners in charge of liquidation of state banks and their assistants are employes of commission and not of bank under provisions of 220.08 (4) and (7) and 108.02 (3), (4) and (5), Stats. 1937. 27 Atty. Gen. 769.

#### 108.021 [Repealed by 1937 c. 343]

**108.03 Payment of benefits.** (1) Benefits shall be paid to each unemployed and eligible employee from his employer's account, under the conditions and in the amounts

stated in (or approved by the commission pursuant to) this chapter, and at such times, at such places, and in such manner as the commission may from time to time approve or prescribe.

(2) (a) The benefit liability of each employer's account shall begin to accrue under section 108.06 in the first week completed on or after the first day of that calendar year within which his contributions first began to accrue under this chapter.

(b) Benefits shall become payable from each employer's account beginning with the first week completed 12 months after the first day of that calendar year within which his contributions first began to accrue under this chapter.

(3) Benefits for an eligible employe's weeks of partial unemployment with respect to a given employer shall become due for payment under this chapter only when the aggregate amount of such benefits equals or exceeds the employe's weekly benefit rate with respect to such employer, except as the commission may in its discretion pay such partial benefits at an earlier date. [Spl. S. 1931 c. 20 s. 2; 1933 c. 383 s. 1; 1935 c. 192, 446; 1937 c. 343; 1939 c. 186; 1943 c. 181]

**108.04 Eligibility for benefits.** (1) **AVAILABILITY FOR WORK.** (a) An employe shall be ineligible for benefits for any week in which he is with due notice called on by his current employer to report for work actually available within such week and is unavailable for work or physically unable to do his work.

(b) An employe shall be ineligible for benefits from an employer's account for any given week if his employment with such employer was suspended or terminated by such employer because the employe was unavailable for work or physically unable to do his work, in case such unavailability or inability continues during the week in question.

(2) **REGISTRATION FOR WORK.** An employe shall be deemed eligible, for waiting period or benefit purposes with respect to a given employer's account, as to any given week for which he receives no wages from such employer, only if he has within such week registered for work in such manner as may then be prescribed by commission rules; provided that, if the commission finds that there are conditions under which an employe cannot reasonably be required to comply with the foregoing registration requirement, the commission may by general rule waive this requirement under such stated conditions. Each employer shall inform his employes of the foregoing registration requirement, in such reasonable manner as the commission may from time to time prescribe.

(3) **WAITING PERIOD FOR TOTAL AND PART-TOTAL UNEMPLOYMENT BENEFITS.** An employe shall become eligible to receive benefits for total or part-total unemployment only after a waiting period, consisting of the first 2 weeks of such unemployment next following the close of the most recent week for which wages are payable or have been paid to the employe by (or with respect to) an employer, subject to the following conditions:

(a) Not more than 2 of the weeks ending within a given calendar year shall be required of an employe under this subsection as his waiting period for such benefits under this chapter.

(b) An employe shall not, within the last 5 weeks ending within one calendar year and the first 5 weeks ending within the next calendar year, be required to serve more than 2 waiting period weeks under this subsection.

(c) After an employe has become eligible to receive benefits under a given determination for a week of total or part-total unemployment an additional waiting period shall thereafter be required under this subsection only when he has had one or more additional credit weeks requiring a new determination allowing benefits.

(d) There shall be counted as waiting period weeks under this subsection only those weeks of the employe's unemployment for which he would otherwise be eligible to receive benefits.

(4) **BENEFITS BARRED.** An employe's eligibility, for benefits based on those credit weeks then accrued with respect to an employer, shall be barred for any week of unemployment completed after:

(a) He has been discharged by the employer for misconduct connected with his employment; provided, moreover, that such employe shall be deemed ineligible for benefits (from other previous employer accounts) for the week in which such discharge occurred and for the three next following weeks.

(b) He has left his employment voluntarily without good cause attributable to the employer, except where the employe has, with the employer's acquiescence and within fifteen days of a known or reasonably anticipated layoff, left to take another job; provided, moreover, that such employe shall be deemed ineligible for benefits from other previous employer accounts for the week in which such leaving occurred and (except where the employe shows that he worked at the employment which he left in twelve weeks or less and that it would not have been held "suitable" if refused) for the four next following weeks.

(c) She has left or lost her employment by reason of the employer's policy not to employ married women, unless the employe demonstrates to the satisfaction of the commission that her work registration in connection with her benefit claim was made in good faith and that accordingly she is available for work and able and willing to work; and in making this determination the commission may consider the financial circumstances of the employee.

(4m) BENEFITS REDUCED. (a) In case it is determined, under section 108.09, that a claimant has concealed any part of his wages earned for a given week, he shall be ineligible as to such week; and any benefits for such week or for a subsequent week paid to him, because of such concealment, prior to the date of such determination shall be recovered as provided in this chapter. Under each such determination, moreover, he shall forfeit such benefits as would otherwise become payable to him for one week of otherwise compensable unemployment completed within the 2 years following such determination date; and such benefits shall be duly charged against the claimant's credit weeks and against the proper employer's account and shall be credited to the fund's balancing account.

(b) In case it is determined, under section 108.09, that a claimant has concealed his refusal (within any week covered by his claim) of a job offer, he shall be ineligible as to such week; and any benefits for such week or for a subsequent week paid to him by mistake (because such ineligibility had not yet been established) prior to the date of such determination shall be recovered as provided in this chapter. Under each such determination, moreover, he shall forfeit such benefits as would otherwise become payable to him for 2 weeks of otherwise compensable unemployment completed within the 2 years following such determination date. The benefits thus forfeited by a claimant shall be duly charged against his credit weeks and against the proper employer's account and shall be credited to the fund's balancing account. This paragraph shall not affect the application of subsection (6) of this section, in case said subsection applies.

(5) BENEFITS SUSPENDED. (a) An employe who has left (or partially or totally lost) his employment with an employer because of a strike or other bona fide labor dispute shall not be eligible for benefits from such (or any previous) employer's account for any week in which such strike or other bona fide labor dispute is in active progress in the establishment in which he is or was employed.

(b) An employe shall not be eligible to receive benefits for any given week of unemployment unless he has had a total of 14 or more "weeks of employment" from one or more employers within the 52 weeks preceding the close of his most recent week of employment.

(c) An employe shall not be eligible to receive benefits from the account of an employer who is engaged in the canning of fresh perishable fruits or vegetables, based on his weeks of employment by such employer ending within a given calendar year, if during such year he has been employed by such employer solely within the active canning season or seasons (as determined by the commission) of the establishment in which he has been employed by such employer, unless he had earned wages (for services other than those performed for such employer) of one hundred dollars or more during the fifty-two weeks preceding his first week of employment by such employer ending within such year.

(d) An employe shall not be eligible for benefits from a given employer's account for any given week, if he is customarily self-employed, and there have been not more than twenty weeks in which he worked as much as fifteen hours per week for such employer, and he has worked at his self-employment thirty or more weeks, out of the fifty-two weeks preceding termination of his employment by such employer, and can at such termination reasonably return to his customary (or other similar) self-employment.

(e) As to an employe's weeks of unemployment by reason of a disciplinary suspension by a given employer, the employe shall be ineligible for benefits from such employer's account as follows:

1. If the suspension was for misconduct connected with his employment, he shall be ineligible for each such week.

2. If the suspension was for other good cause connected with his employment, he shall be ineligible for the first three such weeks ending within any calendar year.

(f) An employe shall not be eligible for benefits from a given employer's account for any given week, nor shall such week be counted as a credit week for benefit purposes, if such employe is or was a student (regularly attending an established educational institution in the most recent school term) and his employment in such week occurred:

1. Solely within the customary vacation days or periods of schools, colleges and universities;

2. Outside of school hours for not more than four hours on any full school day;

3. By such educational institution;

4. By a separate employer as a formal and accredited part of the regular curriculum of such educational institution.

(g) In no case shall any employe employed by any bowling alley proprietor as a pin boy be eligible to receive any benefits for unemployment during the months of May, June, July and August of any calendar year.

(6) BENEFITS TERMINATED. (a) A claimant shall no longer be eligible for total or part-total unemployment benefits based on his past employment, and the liability of his past employers to pay him such benefits shall cease, for any period after he has without good cause refused to accept suitable employment when offered to him, or has without good cause failed to apply for suitable employment when notified by a public employment office. Suitable employment shall mean either employment in his usual employment or other employment for which he is reasonably fitted, regardless of whether it is subject to this chapter; provided such employment is in the vicinity of his residence or last employment, and would yield him weekly wages at least equal to his weekly benefit for total unemployment; and provided, further, that whenever in any specific case the commission finds that it is impracticable to apply any of the foregoing standards, the commission may apply any standard reasonably calculated to determine what is suitable employment.

(b) In case a claimant, because of his physical inability to work or unavailability for work, has with good cause refused suitable employment when offered to him, or has with good cause failed to apply for suitable employment when notified by a public employment office, his eligibility for benefits (from past employers) shall be suspended for the week in which such offer or notice was given and while such inability or unavailability continues.

(7) PROTECTION OF LABOR STANDARDS. Benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If the position offered is vacant due directly to a strike, lockout or other labor dispute;

(b) If the wages, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(8) NOTIFICATION AS TO INELIGIBILITY. (a) The commission may take administrative notice of any fact indicating an employe's ineligibility, whether or not the employer has reported such fact or asserted the employe's ineligibility under this chapter, except where the employer is contributing at less than the standard rate under section 108.18.

(b) Unless an employer has duly notified the commission (in such manner and within such time limit as the commission's rules and regulations may prescribe) that he believes a designated provision of this section or of the "employment" definition of section 108.02 should operate to deny benefits from his account to the given employe for the week or weeks in question, or unless the commission applies the provisions of paragraph (a) of this subsection, no provision of this section or of such definition shall operate to deny such benefits to such employe; provided, however, that this subsection shall not affect the application of subsections (2), (3), (4m) and (6) and paragraph (b) of subsection (5) of this section, even though the commission has not been thus notified; and provided, further, that said subsection (2) shall not apply to a case for which the employer in question expressly waives its application by written notice to and with the approval of the commission.

(c) In case an employer after due notice fails to file the required report on the eligibility, weekly benefit rate and credit weeks of an employe who has claimed benefits from the employer's account, and such report has not been received within four days after the employe has completed claim as to a week for which benefits are apparently payable, there shall be added to the employe's next benefit check from such account, without affecting in any way the application of section 108.24, an extra benefit amount of one dollar (to be charged against the employer's account, but not against the employe's credit weeks). This paragraph shall not apply in any case with respect to which the employer establishes (within said four days) that the delay in filing such report could not reasonably have been avoided.

(9) If the commission finds that the official wartime manpower policies of the United States are or may be materially hampered, in any clearly definable class of cases, by any application of subsection (4) (b) or (6), so as to interfere with the effective wartime use of civilian manpower in Wisconsin, the commission may by general rule, after public hearing, modify or suspend such application accordingly. [Spl. S. 1931 c. 20 s. 2; 1933 c. 383 s. 2, 6; 1935 c. 192, 446; 1937 c. 343; 1939 c. 186; 1941 c. 134, 142, 288; 1943 c. 181]

**Note:** In determining an employe's eligibility for unemployment compensation benefits the motive or cause of the employer discontinuing the work is immaterial. Rhea Mfg. Co. v. Industrial Commission, 231 W 643, 285 NW 749.

As used in the unemployment compensation act, the provision that an employe who has lost his employment because of a labor dispute shall not be eligible for benefits from such employer's account for any week in which such labor dispute is in active progress in the "establishment in which he is or was employed," the meaning of the word "establishment" is to be drawn from the whole act, and the whole act indicates that the word "establishment" was not used in the restricted sense of a definite place. The evidence warranted findings and conclusions of the industrial commission that, by reason of functional integrality, general unity and physical proximity, a body plant and a chassis and assembly plant of an automobile manufacturer, located forty miles apart in different cities, constituted a single "establishment," and that the two assembly plants of an automobile manufacturer, located ten miles apart in different cities, constituted a single "establishment," within the meaning of (5) (a). Spielmann v. Industrial Comm. 236 W 240, 295 NW 1.

Picketing of one of the employer's assembly plants, ordered by the local union, and based on a contention of the union and the employees that the employer should not cease the operation of such plant or remove the machinery to its other assembly plant, although technically not constituting a "strike," nevertheless constituted a "labor dispute," within the meaning of the unemployment compensation act, 108.04 (5) (a). Spielmann v. Industrial Comm., 236 W 240, 295 NW 1.

Where an employer had agreed with ineligible employees that they should receive benefits under the unemployment compensation act for loss of employment, but the requirements of (8) (a) for an employer's waiver of restrictions in the act were not fully complied with, and there were no equitable considerations in favor of the ineligible employees, in that the proposed payments to such employees would have to be made initially from the general balancing account of the unemployment reserve fund to the possible prejudice of many other workers throughout the state, the industrial commission properly refused to approve the waiver offered by such employer. Spielmann v. Industrial Comm. 236 W 240, 295 NW 1.

**108.05 Amount of benefits.** (1) WEEKLY BENEFIT RATE, FOR TOTAL UNEMPLOYMENT. Each eligible employe shall be paid benefits from his employer's account for each week of his total unemployment at the weekly benefit rate, based on the employe's "average weekly wage" from the given employer, shown by the following schedule:

Line	Average Weekly Wage Class	SCHEDULE	Weekly Benefit Rate
1.	Up to \$ 3.00.....		\$ 2
2.	\$ 3.01 to 4.50.....		3
3.	4.51 to 6.00.....		4
4.	6.01 to 7.50.....		5
5.	7.51 to 9.00.....		6
6.	9.01 to 11.00.....		7
7.	11.01 to 13.00.....		8
8.	13.01 to 15.00.....		9
9.	15.01 to 17.00.....		10
10.	17.01 to 19.50.....		11
11.	19.51 to 22.00.....		12
12.	22.01 to 24.50.....		13
13.	24.51 to 27.00.....		14
14.	27.01 to 29.50.....		15
15.	29.51 to 32.00.....		16
16.	32.01 to 34.50.....		17
17.	34.51 to 37.00.....		18
18.	37.01 to 40.00.....		19
19.	40.01 or more.....		20

The meaning of the term "misconduct," as used in (4) (a), barring an employe's eligibility for unemployment benefits where he has been discharged by the employer for "misconduct" connected with his employment, is limited to conduct evincing such wilful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employe, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employe's duties and obligations to his employer. Conversely, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed "misconduct." Boynton Cab Co. v. Neubeck, 237 W 249, 296 NW 636.

A finding in an unemployment compensation proceeding that a taxicab driver's violation of company rules with respect to "checking in short" did not constitute "misconduct" was correct, where the tribunal found, on sufficient evidence, that the practice of "checking in short" had been tolerated by the employer notwithstanding its regulations and bulletins to the contrary, without any specific warnings to the employe to stop the practice, and that the employe's conduct in "checking in short" did not amount to improper conduct constituting a lack of regard for his duties and obligations to his employer. A finding in an unemployment compensation proceeding that a taxicab driver's failure to conform to the standard of earnings set by the employer did not constitute "misconduct" was correct, where the tribunal found, on sufficient evidence, that the employe's failure to attain the standard set by the employer was due at most to inefficiency. Boynton Cab Co. v. Schroeder, 237 W 264, 296 NW 642.

The evidence in an unemployment compensation proceeding required the conclusion that a cabdriver, guilty of a number of violations of company rules, and involved in 6 accidents within a period of 6 months, although not discharged until after the sixth accident and not to blame for that accident, had been discharged for "misconduct" connected with his employment, within the meaning of (4) (a), hence was ineligible for unemployment benefits. Checker Cab Co. v. Industrial Comm., 242 W 429, 8 NW (2d) 286.

(1m) PAYMENTS ABOVE WEEKLY BENEFIT RATE IN CERTAIN CASES. (a) An eligible employee whose weekly benefit rate from a given employer is less than \$8 shall (despite the provisions of subsection (1)) be paid benefits from that employer's account for his weeks of total or part-total unemployment as if his weekly benefit rate with respect to such employer were \$8 or (in case that minimum weekly payment will not permit the charging of full credit weeks) the next higher minimum weekly payment which will permit such charging, as specified by commission rule. The minimum payment thus applicable shall be used in determining whether the employee is part-totally unemployed as to such employer. The benefits thus paid shall be charged against the employee's credit weeks under section 108.06 as if they had been paid at the weekly benefit rate applicable under subsection (1).

(b) Whenever an eligible employee, at the time when benefits are payable to him from a given employer's account for a given week of total or part-total unemployment, has uncharged credit weeks (with respect to such account) entitling him to less than twice the weekly amount payable to him under this section for total unemployment, he shall be paid for such week sufficient benefits to charge all such credit weeks, except where the application of this paragraph would result in paying more than twenty dollars for such week.

(2) DETERMINATION AND NOTICE OF BENEFIT RATES. Weekly benefit rates, based on average weekly wages, shall be determined for employees generally once each year, except as the commission's rules may prescribe otherwise. The commission shall by general rules prescribe at what times and under what conditions weekly benefit rates shall be determined and redetermined by each employer for some or all of his employees, and for what periods such rates shall apply to benefits from such employer's account, and by what date each employer shall notify his employees of their weekly benefit rates on forms supplied by the commission. The commission may by general rules or by special order require any employer to retain a copy or record of each such notice form, bearing the employee's signed and dated acknowledgment that he received the notice, and to submit such copy or record to the commission upon request. Each employer shall determine weekly benefit rates and notify his employees thereof in accordance with such rules and any applicable order.

(2m) DEFERRED NOTICE AND ELIGIBILITY. In the case of a new employee, namely an employee who has not yet had more than 4 weeks of employment from a given employer since the start of the preceding calendar year, no benefits for partial unemployment shall be or become payable to such new employee from such employer's account for any one of such first 4 weeks of employment, and the calculation of his weekly benefit rate from such employer may be deferred accordingly.

(3) BENEFITS FOR PARTIAL UNEMPLOYMENT. Each employee who is partially unemployed and eligible with respect to a given employer shall be paid from the employer's account, for each week of such unemployment, sufficient benefits so that such benefits, plus his total wages for that week, will equal his weekly benefit rate from the employer, or will exceed such rate whenever (and so far as) necessary to permit the full charging of one or more credit weeks under section 108.06. But an employee shall not be eligible for benefits from a given employer's account for any week of his partial unemployment if his then applicable weekly benefit rate with respect to the employer is five dollars or less.

(4) BENEFITS FOR PART-TOTAL UNEMPLOYMENT. Each employee who is part-totally unemployed and eligible with respect to a given employer shall be paid from the employer's account, for each week of such unemployment, sufficient benefits so that such benefits, plus his total wages for that week, will equal his weekly benefit rate from the employer, or will exceed such rate whenever (and so far as) necessary to permit the full charging of one or more credit weeks under section 108.06. In case the employee is partially unemployed in that week with respect to a current employer, his weekly benefit rate as to the current employer shall be used (in lieu of his total wages for that week) in determining what benefits are payable under this subsection. [Spl. S. 1931 c. 20 s. 2; 1935 c. 192; 1937 c. 95 s. 2; 1937 c. 343; 1939 c. 186, 372; 1941 c. 288; 1943 c. 181]

**108.06 Benefit liability of employer's account.** (1) BENEFIT CREDIT WEEKS. (a) Except as this subsection or section 108.04 provides otherwise, there shall be counted as a credit week for benefit purposes each week of employment, of a given employee by a given employer, which is or has been completed:

1. After the benefit liability of the employer's account has begun to accrue; and
2. Within the 52 weeks preceding the close of the employee's most recent week of employment by the employer; or within any 53 such weeks which include the fifty-third week ending within a single calendar year.

(b) In case an employe has had more than 40 weeks of employment by an employer within the period specified in subdivision 2 of paragraph (a) of this subsection, only the most recent 40 of such weeks shall be counted as "credit weeks" with respect to such employer.

(2) CHARGING OF BENEFITS, AGAINST CREDIT WEEKS. (a) Benefits payable to an employe from a given employer's account shall in each case be charged against the earliest credit weeks (of that employe with respect to that employer) against which benefits have not previously been charged hereunder.

(b) Based on each uncharged credit week of an employe with respect to a given employer, the employer's account shall be liable to pay benefits to the employe (if otherwise eligible) in an amount equal to one-half of that weekly benefit rate which was applicable to him with respect to the employer at the close of his most recent week of employment by the employer.

(c) Consistently with the foregoing provisions, benefits shall be "charged" against a given employer's account as of the date shown by the check covering such benefits; and such check shall be promptly mailed and shall, in determining the experience or status of such account for contribution purposes, be deemed "paid" on said date.

(3) DURATION OF EMPLOYER'S LIABILITY. In no case shall an employer's account remain or be liable to pay benefits to an employe for any unemployment occurring more than 52 weeks after the close of the employe's most recent week of employment by such employer.

(4) BENEFIT RIGHTS OF MILITARY "TRAIINEES". (a) As used in this subsection, the term "military service" means active service in the armed forces of the United States; and the term "trainee" means an individual who has entered or been inducted into military service either for a period of less than 3 years or for the duration of the war emergency, whose entry or induction occurred between September 1940 and the close of hostilities, and whose military service has terminated.

(b) To prevent the lapsing of benefit credits acquired under this chapter by trainees prior to their military service, and to preserve such credits for their use in the event of their unemployment following such service, no part of a trainee's military service shall be counted as a "week" in determining his subsequent benefit rights under this chapter.

(c) As to any trainee who claims benefits for unemployment following his military service, his benefit rights shall be determined upon receipt of his claim under the provisions of this chapter which are then applicable to benefit claimants generally, except as hereinafter provided in this subsection.

(d) No individual who voluntarily left his employment to enlist and did enlist for military service shall be denied benefits under paragraph (b) of subsection (4) of section 108.04 because of such voluntary leaving and enlistment.

(e) If an act of congress provides for cash allowances to individuals who have completed a period of military service, to be payable to them by the United States in case of (and with respect to) their subsequent unemployment, any such individual shall be ineligible for benefits under this chapter with respect to any week for which he is eligible to receive any such unemployment allowances from the United States.

(f) In determining what benefits are payable under this subsection to a trainee from an employer's account, the commission's deputy shall apply the schedule of weekly benefit rates which is then in effect under section 108.05 (1), to the trainee's most recent "average weekly wage" with that employer. If the trainee's most recent credit week with the employer ended before December 27, 1942, the deputy shall use, as such "average weekly wage", the highest amount which could yield the weekly benefit rate which formerly applied to the trainee as to such credit week with the employer. Where such former rate was the maximum rate then applicable, the trainee's new weekly benefit rate shall be \$2 more than such maximum rate, in view of the higher maximum rate applicable when the trainee's benefit rights are determined. [Spl. S. 1931 c. 20 s. 2; 1933 c. 383 s. 3; 1935 c. 192; 1937 c. 95 s. 2; 1937 c. 343; 1939 c. 186; 1941 c. 288; 1943 c. 181]

**108.07 Liability of several employers.** (1) (a) In case an employe is totally or part-totally unemployed and eligible (and has uncharged credit weeks) with respect to 2 or more employers in the same week, and has claimed benefits, he shall, for the purposes of this subsection and section 108.04 (8), be deemed to have claimed benefits from the account of each such employer; but his benefits for such unemployment in such week shall be paid only from the account of that one of such employers by whom he was most recently employed, except as provided in paragraph (b).

(b) After an employe has become eligible to receive benefits from a given employer's account under a given determination for a week of total or part-total unemployment, his benefits for subsequent weeks of such unemployment shall be paid from such account unless and until:

1. All of his credit weeks with that employer have been fully charged under section 108.06; or

2. The duration of that employer's liability has expired, under section 108.06 (3); or

3. Ten or more weeks have elapsed since the close of the last week for which total or part-total unemployment benefits were or are payable to the employee.

(2) In case an employe is partially unemployed and eligible with respect to an employer in a given week, he shall be paid benefits for such week from such employer's account without regard to any benefits payable or paid to him for such week from any other employer's account. [Spl. S. 1931 c. 20 s. 2; 1935 c. 196; 1937 c. 343; 1939 c. 186; 1941 c. 288; 1943 c. 181]

**108.08 Notification.** (1) To receive benefits for any given week of his unemployment an employe shall give notice to the commission with respect to such week of unemployment, through a public employment office, within such time limit and in such manner as the commission may by rule prescribe.

(2) The commission may require from any or each employer notification of the partial or total unemployment of his employes, within such time, in such form, and in accordance with such rules as the commission may prescribe. [Spl. S. 1931 c. 20 s. 2; 1935 c. 192; 1937 c. 343; 1939 c. 186]

**108.09 Settlement of benefit claims.** (1) **FILING.** Claims for benefits shall be filed pursuant to general commission rules, either at the public employment office for the district or as the commission's rules may otherwise direct; provided that the commission may waive the filing of a claim directly by the employe himself, for benefits from a given employer's account, where due notice of the employe's unemployment is given the employer by the commission or is given the commission by the employer, which notice shall in either of such cases serve as a claim for benefits. The employer from whose account benefits are claimed (whether directly by the employe or through the commission) shall promptly inform the commission in writing of his acceptance or rejection of such claim, together with his reasons therefor.

(2) **INITIAL DETERMINATION.** A deputy designated by the commission shall promptly determine whether or not the claim is valid and the amount of benefits apparently payable thereunder, and shall also determine whenever necessary whether or not the employe's eligibility for benefits has been suspended or terminated; provided, however, that the deputy may set aside or amend a determination at any time on the basis of subsequent information or to correct a clerical mistake. A copy of each determination shall be mailed to the last known address of each of the parties. Either party to the determination may request a hearing as to any matter therein, by filing such request within seven days after such mailing and in accordance with procedure prescribed by the commission; except that the employer may not request a hearing with respect to benefits already paid in accordance with his concession of liability.

(2m) **DETERMINATION ON EMPLOYE'S STATEMENT.** In any case in which an employe has filed a claim for benefits from an employer's account, the employe's statement may be taken as to his eligibility, weekly benefit rate, and credit weeks. In any such case a commission deputy may issue a determination as to the employe's benefit rights, based on the employe's statement and on any other information then available. In accordance with subsection (2) of this section, such determination shall be mailed to the last known address of each of the parties, and either party to the determination may request a hearing as to any matter therein, by filing such request within seven days after such mailing and in accordance with procedure prescribed by the commission; but the employer's request shall be valid only if his report (as to the eligibility, weekly benefit rate, and credit weeks of the employe) is included in (or, if filed earlier, incorporated by specific reference in) such request.

(3) **APPEALS.** Unless such request for a hearing is withdrawn, each of the parties shall be afforded reasonable opportunity to be heard, and the claim thus disputed shall be promptly decided by such appeal tribunal as the commission may designate or establish for this purpose, or by the commission as provided in subsection (6). If the party requesting a hearing fails to appear at the hearing, a commission examiner designated for this purpose may dismiss the appeal, provided that due notice of the hearing was mailed to the party's last known address and good cause for his failure to appear has not been shown said examiner within 10 days after the hearing date. If the other party fails to appear at the hearing, the appeal tribunal shall proceed with the hearing, provided that due notice of the hearing was mailed to said party's last known address, and may issue its decision without further hearing, provided that good cause for his failure to appear has not been shown said examiner within 10 days after the hearing date.

(4) **APPEAL TRIBUNALS.** To hear and decide a disputed claim, the commission shall establish an appeal tribunal. Any such tribunal may consist of one or three full-time

salaried examiners; or it may consist of an appeal board composed of one full-time salaried examiner who shall serve as chairman, and of two other members appointed by the commission, namely an employer or representative of employers and an employe or representative of employes, who shall each be paid a fee of not more than ten dollars per day of active service on such tribunal (plus necessary expenses). No person shall hear any case in which he is a directly interested party. The chairman of such an appeal board shall act for it at any session in the absence of one or both other members, provided they have had due notice of such session.

(5) PROCEDURE. The manner in which claims shall be presented, the reports thereon required from the employe and from employers, and the conduct of hearings and appeals shall be governed by general commission rules (whether or not they conform to common law or statutory rules of evidence and other technical rules of procedure) for determining the rights of the parties. All testimony at any hearing under this section shall be taken down by a stenographer, but need not be transcribed unless either of the parties requests a transcript prior to expiration of his right to further appeal hereunder and pays to the commission in advance a fee of five dollars therefor, plus ten cents for each page by which the transcript exceeds fifty pages. When a transcript is thus furnished one of the parties at his request, a copy of the transcript shall be furnished the other party free of charge. The transcript fee thus collected shall be paid to the administration fund.

(6) COMMISSION REVIEW. (a) At any time before a deputy's determination or an appeal tribunal's decision on a claim is mailed to the parties, the commission may transfer the proceedings on the claim from such deputy or appeal tribunal to itself.

(b) Either party may petition the commission for review of an appeal tribunal decision, pursuant to general commission rules, within ten days after it was mailed to his last known address. Within ten days after the filing of such a petition, the commission may affirm, reverse, change, or set aside such decision, on the basis of the evidence previously submitted in such case, or direct the taking of additional testimony. The failure of the commission to act on such a petition within such ten days shall constitute an affirmation of the appeal tribunal decision.

(c) Within ten days after expiration of the right of the parties to request a hearing by an appeal tribunal or to petition for review by the commission, or within ten days after a decision of the commission was mailed to the parties, the commission may on its own motion reverse, change, or set aside the determination or decision, on the basis of evidence previously submitted in such case, or direct the taking of additional testimony.

(d) After an employe's eligibility for benefits has been established by a commission decision or affirmation of the appeal tribunal decision, benefits then due the employe shall be payable to him on the eleventh day after such commission decision or affirmation, except where judicial review has been commenced prior to said day and where the commission finds, by resolution duly entered in its minutes, that such judicial review involves an issue of precedential importance or a labor dispute issue or the actual or potential eligibility of a substantial number or percentage of the employer's employes. In case final adjudication determines that benefits paid under this subsection were improperly charged against the employer's account, subsection (2m) of section 108.16 shall apply to the charging and recovery of such payments.

(7) JUDICIAL REVIEW. Either party may commence judicial action for the review of a decision of the commission hereunder, provided said party (after exhausting the remedies provided hereunder) has commenced such judicial action within ten days after a decision of the commission was mailed to his last known address (or within ten days after the appeal tribunal decision has been affirmed by the commission through its failure to act). Any judicial review hereunder shall be confined to questions of law, and the other provisions of chapter 102 [Stats. 1935; see 1943 c. 181 s. 22] with respect to judicial review of orders and awards shall likewise apply to any decision of the commission reviewed under this section. Any such judicial action may be defended, in behalf of the commission, by any qualified attorney who is a regular salaried employe of the commission and has been designated by it for this purpose, or at the commission's request by the attorney-general.

(8) OATHS AND WITNESSES. In the discharge of their duties under this chapter any member of an appeal tribunal, and any deputy, examiner, commissioner or other duly authorized representative of the commission shall have power to administer oaths to persons appearing before them, take depositions, certify to official acts, and by subpoenas (served in the manner in which circuit court subpoenas are served) to compel attendance of witnesses and the production of books, papers, documents and records necessary or convenient to be used by them in connection with any disputed claim or other hearing under this chapter. Witness fees and other expenses involved in disputed claim proceed-

ings under this section, including a party's traveling expenses, may be allowed by the appeal tribunal or representative of the commission at rates specified by general commission rules, and shall be paid from the unemployment administration fund.

(9) **LIMITATION OF FEES.** No employe shall be charged fees of any kind by the commission or its representatives, in any proceeding under this act. Any employe claiming benefits in any proceeding or court action may be represented by counsel or other duly authorized agent; but no such counsel or agents shall together charge or receive from the employe for such services more than ten per centum of the maximum benefits at issue in such proceedings or court action, unless the commission has first approved a specified higher fee. [1935 c. 192; 1937 c. 343; 1939 c. 186; 1941 c. 288; 1943 c. 181]

**Note:** Under the unemployment compensation act, a finding of fact by the industrial commission that the picketing of one of the employer's assembly plants prevented the removal of necessary automobile parts and materials to its other assembly plant and caused the latter plant to shut down, supported by credible evidence, is conclusive. *Spielmann v. Industrial Comm.*, 236 W 240, 295 NW 1.

Under 108.02 (18) and 108.09 (1) where an employer rejected a discharged employe's claim for unemployment compensation on the ground that the employe had been discharged for dishonesty, and the stipulated sole question on the hearing before the

appeal tribunal was whether the employe had been discharged for dishonesty, the burden of proof was on the employer to establish the matters so asserted in its rejection of the claim, in order to render the employe ineligible for benefits and defeat the claim. *Boynton Cab Co. v. Giese*, 237 W 237, 296 NW 630.

Under the unemployment compensation act with respect to judicial review of orders and awards of the commission the findings of fact made in an unemployment compensation proceeding must be considered conclusive if there is any credible evidence to support them. *Boynton Cab Co. v. Giese*, 237 W 237, 296 NW 630.

#### 108.10 [Repealed by 1937 c. 343]

#### 108.10 [Renumbered 108.09 (9) by 1941 c. 288]

**108.10 Settlement of issues other than benefit claims.** (1) In connection with any issue arising under this chapter as to any liability, of an employer of one or more persons in Wisconsin, for which no review is provided under section 108.09 and with respect to which no penalty is provided in section 108.24, the following procedure shall apply:

(2) A deputy designated by the commission for the purpose shall investigate the existence and extent of any such liability, and may issue an initial determination accordingly; provided, however, that such a deputy may set aside or amend any such determination at any time on the basis of subsequent information or to correct a clerical mistake. A copy of each determination shall be mailed to the last known address of the employer affected thereby. The employer may request a hearing as to any matter therein, by filing such request with the deputy within 30 days after such mailing and in accordance with such procedure as the commission may by rule prescribe.

(3) Any hearing duly requested shall be held before an appeal tribunal established in the manner provided by subsection (4) of section 108.09, and subsection (5) of section 108.09 shall be applicable to the proceedings before such tribunal. If aggrieved by the appeal tribunal's decision, the employer may, within 20 days after such decision has been mailed to his last known address, petition the commission for review thereof pursuant to general commission rules.

(4) The commission's authority to take action as to any issue or proceeding under this section shall be the same as that specified in paragraphs (a), (b) and (c) of subsection (6) of section 108.09, except that the commission may take action in the manner provided in paragraph (c) of said subsection (6) at any time within 20 days after the mailing of a commission decision under this section to the employer affected thereby.

(5) The employer may commence action for the judicial review of a commission decision hereunder, provided said employer, after exhausting the remedies provided hereunder, has commenced such action within 20 days after such decision was mailed to his last known address or within 20 days after the appeal tribunal decision has been affirmed by the commission through its failure to act. The scope of judicial review, and the manner thereof in so far as applicable shall be the same as that provided in subsection (7) of section 108.09.

(6) The mailing of determinations and decisions provided in subsections (2), (3), (4) and (5) shall be first class, and may include the use of services performed by the postal department requiring the payment of extra fees.

(7) Any determination by a deputy or any decision by an appeal tribunal or by the commission shall become conclusive with respect to the employer unless he has acted to secure a hearing or review as hereinbefore provided, but shall be binding on the commission only in so far as the relevant facts were included in the record which was before the deputy, appeal tribunal or commission at the time the determination or decision was issued. [1941 c. 288]

#### 108.101 [Renumbered section 108.10 by 1937 c. 343]

**108.11 Agreement to contribute by employees void.** (1) No agreement by an employe or by employees to pay any portion of the contributions required under this chapter

from employers shall be valid. No employer shall make a deduction for such purpose from wages. Any employe claiming a violation of this provision may, to recover wage deductions wrongfully made, have recourse to the method set up in section 108.10 [108.09] for settling disputed claims.

(2) But nothing in this chapter shall affect the validity of voluntary arrangements whereby employes freely agree to make contributions to a fund for the purpose of securing unemployment compensation additional to the benefits provided in this chapter. [*Spl. S. 1931 c. 20 s. 2*]

**108.12 Waiver of benefit void.** No agreement by an employe to waive his right to benefits or any other rights under this chapter shall be valid. No employe shall, in any proceeding involving benefits under this chapter, be prevented from asserting all facts relevant to his eligibility, regardless of any prior erroneous representation with respect to such facts. [*1941 c. 288*]

**108.13 Assignment.** (1) No claim for benefit under this chapter nor any interest in any unemployment benefit fund or reserve maintained under this chapter shall be assignable before payment, but this provision shall not affect the survival thereof; nor shall any claim for benefit awarded, adjudged or paid, nor any interest in any such unemployment benefit fund or reserve, be subject to be taken for the debts of the party entitled thereto.

(2) In case an employe dies after the close of a week of unemployment in which he was eligible and for which benefits are payable under this chapter, the commission may designate any person who might in its judgment properly receive such benefits, and a receipt or an indorsement from the person so designated shall fully discharge the fund from liability for such benefits. [*Spl. S. 1931 c. 20 s. 2; 1933 c. 383 s. 3; 1937 c. 343*].

**108.14 Administration.** (1) This chapter shall be administered by the industrial commission.

(2) The commission shall have power and authority to adopt and enforce all rules and regulations which it finds necessary or suitable to carry out the provisions of this chapter. All such general rules shall be published in the state's official newspaper and shall take effect ten days after such publication, and shall be filed by the commission with the secretary of state. A copy of such rules and regulations shall be delivered to every person making application therefor. The commission may require from employers, whether subject to this chapter or not, any reports on employment, wages, hours and related matters which it deems necessary to carry out the provisions of this chapter.

(3) The commission may appoint, employ and pay as many persons as it deems necessary to administer and to carry out the purposes of this chapter, and may make all other expenditures of any kind and take any other action consistent herewith which it deems necessary or suitable to this end.

(3m) In any court action to enforce the provisions of this chapter the commission and the state may be represented by any qualified attorney who is a regularly salaried employe of the commission and is designated by it for this purpose, and/or at the commission's request by the attorney-general. In case the governor designates special counsel to defend, in behalf of the state, the validity of this chapter or of any provision of Title IX of the federal Social Security Act, the expenses and compensation of such special counsel and of any experts employed by the commission in connection with such proceeding may be charged to the administration fund.

(4) The commission may create as many employment districts and district appeal boards and may establish and maintain as many free public employment offices as it deems necessary to carry out the provisions of this chapter. The commission shall have power to finance either partly or completely such public employment offices as it deems necessary under this chapter, from the funds appropriated to the commission for its expenses under this chapter, whether or not the political subdivision in which such office is located agrees to pay or does pay any part of the expenses of such office.

(5) The commission shall appoint a state advisory committee on this chapter, and may appoint additional committees for industries or local districts. Each such committee shall consist of a salaried commission employe, who shall serve as chairman, and of one or more representatives of employers, and an equal number of representatives of employes, who shall receive for each day of active service such reasonable compensation as the commission may determine and reimbursement of necessary expenses, and shall assist the commission in administering and carrying out the purposes of this chapter.

(5m) The state advisory committee appointed by the commission under subsection (5) of this section shall submit its recommendations with respect to amendments of this chapter to each regular session of the legislature, and shall report its views on any pending bill relating to this chapter to the proper legislative committee.

(6) It shall be one of the purposes of this chapter to promote the regularization of em-

ployment in enterprises, localities, industries and the state. The commission, with the advice and aid of its advisory employment committees, shall take all appropriate steps within its means to reduce and prevent unemployment. To this end the commission may employ experts, and may carry on and publish the results of any investigations and research which it deems relevant, whether or not directly related to the other purposes and specific provisions of this chapter. At least once a year the commission shall compile and publish a summary report stating the experience of employer accounts (without naming any employer) and covering such other material as it deems significant in connection with the operations and purposes of this chapter.

(7) The reports, records, files, accounts, papers and memoranda, of any nature whatsoever, received or made or maintained by the commission in connection with the administration of this chapter shall be open to public inspection only when and to the extent that the commission may allow such inspection as it deems advisable in the interests of effective administration. The commission may provide for the printing and distribution of such number of copies of any forms, records, decisions, regulations, rules, pamphlets or reports, related to the operation of this chapter, as it deems advisable for the effective operation thereof.

(7m) The commission may at any time destroy or dispose of any reports or records with respect to individual employees which it deems no longer necessary for the proper administration of this chapter. If any moneys are received from such disposition, they shall be deposited to the credit of the administration fund.

(8) (a) The commission may enter into administrative arrangements with any agency similarly charged with the administration of any other unemployment compensation law, for the purpose of assisting the commission and such agencies in paying benefits under the several laws to employes while outside their territorial jurisdictions. Such arrangements may provide that the respective agencies shall, for and on behalf of each other, act as agents in effecting registrations for work, notices of unemployment, and any other certifications or statements relating to an employe's claim for benefits, in making investigations, taking depositions, holding hearings, or otherwise securing information relating to coverage or contribution liability or benefit eligibility and payments; and in such other matters as the commission may consider suitable in effectuating the purpose of these administrative arrangements.

(b) The eligibility of an employe with respect to a benefit claim (based on past credit weeks under this chapter) may be established through arrangements authorized in this subsection, and he shall then be paid the benefits due him under this chapter.

(c) Any person who wilfully makes a false statement or misrepresentation regarding a benefit claim, to the commission (or its representative) acting under any administrative arrangement authorized herein, shall on conviction be deemed guilty of a misdemeanor and be punished in the manner provided in section 108.24.

(8m) The commission may enter into reciprocal arrangements, with any agency administering another unemployment compensation law, whereby all the services performed by an individual for a single employing unit, which services are customarily performed in more than one state or jurisdiction, shall be deemed to be employment covered by the law of a specified state or jurisdiction (a) in which a part of such services are performed, or (b) in which such individual has his residence, or (c) in which such employing unit maintains a place of business; provided there is in effect, as to such services, an election by such employing unit, approved by the agency administering the specified law, pursuant to which all the services performed by such individual for such employing unit are deemed to be employment covered by such law.

(8n) (a) The commission may enter into reciprocal arrangements, with any agency administering an unemployment compensation law, to provide more equitable benefit coverage for individuals whose recent work has been covered by the unemployment compensation laws of two or more jurisdictions.

(b) Such arrangements may provide, as to any individual whose employment has been covered by this chapter and by the unemployment compensation law of one or more other participating jurisdictions, for transfer by the commission to another agency of relevant records or information, and the acceptance and use thereof (in combination with similar data from other jurisdictions) by such other agency, as a basis for determining and paying benefits under the law administered by such other agency. Reciprocally, such arrangements may provide for similar acceptance, combination and use by the commission of data received from other jurisdictions to determine and pay benefits under this chapter.

(c) Such arrangements shall provide for mutual acceptance by the participating agencies of data thus supplied, including reasonable estimates of relevant data not otherwise available in the transferring agency.

(d) Such arrangements shall provide for full recognition, when transferring or using

any such data, of the provisions of section 108.04 which cancel benefit credits under certain circumstances.

(e) Such arrangements shall specify an equitable basis for reimbursing the unemployment fund of each participating jurisdiction for any benefits paid therefrom on the basis of covered employment in (and data supplied by the agency of) another such jurisdiction, out of the unemployment fund of such other jurisdiction.

(f) To facilitate the application of such arrangements to this chapter, the commission may make reasonable estimates to convert into weekly benefit rates and credit weeks the data received by it under such arrangements, and may determine and pay benefits accordingly.

(g) The commission, in each case where it transfers data to another agency under this subsection, shall determine the potential liability for benefits of each employer involved in such data, as if the individual had qualified for and would receive such potential benefits under this chapter. So much of the benefits paid to the individual by another agency as are reimbursable from the fund shall be charged to the accounts of such employers, in the same order as if paid under this chapter; but no employer's account shall be thus charged beyond the potential liability determined under this paragraph. Any reimbursable amount remaining after such charging shall be charged directly to the "balancing account" under section 108.16.

(9) The commission may make its records relating to the administration of this chapter available to the Railroad Retirement Board, and may furnish the Railroad Retirement Board, at the expense of said board, such copies thereof as said board deems necessary for its purposes. The commission may afford reasonable co-operation with every agency of the United States charged with the administration of any unemployment compensation law. The commission may make arrangements or agreements with the Railroad Retirement Board, or any other agency of the United States charged with the administration of an unemployment compensation law, with respect to the establishment, maintenance and use of free employment service facilities, the taking and certifying of claims, the making of investigations, and the supplying of other information or services related to unemployment compensation. But the commission shall not make or renew any such arrangement or agreement unless it finds that its resulting administrative costs are approximately covered or offset by the facilities, services and payments to be made available thereunder by such federal agency. Any moneys received by the commission under this subsection shall be paid into the administration fund under section 108.20.

(9m) The commission may afford reasonable co-operation with any government agency charged with war-effort or post-war planning responsibilities or with the administration of any system of unemployment allowances or unemployment assistance or of any other program designed to prevent or relieve unemployment.

(10) For the purposes of section 108.161 the commission's functions financed from the unemployment administration fund shall be treated as a separate budget subdivision, and any election made by the commission pursuant to paragraph (f) of subsection (5) of section 108.02 may be limited to individuals engaged in such functions.

(11) The commission may require any employer of one or more individuals in Wisconsin to make such arrangements as will reasonably assure the commission that the employer will keep such records, make such reports, and pay such contributions as are required under this chapter. Any employer whom the commission has notified, through notice served on him or sent by registered mail to his last known address or served on him through the secretary of state pursuant to subsection (7) of section 226.02, that he is required to make such arrangements, if he fails to do so within 20 days after such notification, may, through proceedings instituted by the commission in the circuit court of Dane county, be restrained from doing business in Wisconsin until he has made such arrangements.

(12) (a) Consistently with the provisions of paragraphs (8) and (9) of section 303 (a) of Title III of the federal social security act, all moneys received in the administration fund from the federal social security board under section 302 of said Title III or under the Wagner-Peyser Act, and all moneys made available by this state or its political subdivisions which are provided and necessary to match federal grants under the Wagner-Peyser Act, shall be expended solely for the purposes and in the amounts found necessary by said board for the proper and efficient administration of this chapter.

(b) Consistently with said provisions of said Title III, any such moneys, received prior to July 1, 1941, and remaining unincumbered on said date or received on or after said date, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by said board for the proper administration of this chapter, shall be replaced within a reasonable time. This paragraph is the declared policy of this state, as enunciated by the 1941 legislature, and shall be implemented as further provided in this subsection.

(c) If it is believed that any amount of money thus received has been thus lost or improperly expended, the commission on its own motion or on notice from said board shall promptly investigate and determine the matter and shall, depending on the nature of its determination, take such steps as it may deem necessary to protect the interests of the state.

(d) If it be finally determined that moneys thus received have been thus lost or improperly expended, then the commission shall either make the necessary replacement from those administration fund moneys specified in subsection (2) of section 20.573 or shall submit, at the next budget hearings conducted by the governor and at the budget hearings conducted by the next legislature convened in regular session, a request that the necessary replacement be made by an appropriation from the general fund.

(e) This subsection shall not be construed to relieve this state of any obligation existing prior to its enactment with respect to moneys received prior to July 1, 1941, pursuant to said Title III.

(13) The commission may, with the advice of its state advisory committee on this chapter, by general rule modify or suspend any provision of this chapter if and to the extent necessary to permit continued certification of this chapter under Title III of the federal social security act and under sections 1602 and 1603 of the federal unemployment tax act.

(14) The commission shall fully co-operate with the agencies of other states, and shall make every proper effort within its means, to oppose and prevent any further action which would in its judgment tend to effect complete or substantial federalization of state unemployment compensation funds or state employment security programs.

(15) The commission may make, and may co-operate with other appropriate agencies in making, studies as to the practicality and probable cost of possible new state-administered social security programs, and the relative desirability of state (rather than national) action in any such field. [Spl. S. 1931 c. 20 s. 2; 1935 c. 192, 446; 1937 c. 95 s. 2, 3; 1937 c. 343; 1939 c. 186; 1941 c. 288; 1943 c. 181]

**108.15 Benefit payments for employees of certain government units.** (1) The fund's balancing account is made available for the payment of benefits under this section to individuals employed by certain government units, within the limits and subject to the conditions set forth in this section.

(2) Solely for the purpose of paying benefits under this section, each "government unit" (as defined in this section) shall be deemed an "employer" subject to this chapter on and after July 1, 1941, and each individual employed by it in "employment" on or after said date shall be deemed an "employee" and shall accrue benefit credits and may become eligible for benefits accordingly, except as otherwise provided in this section.

(3) The provisions of subsection (2), authorizing benefit payments under this section, shall cease to apply to a government unit, and no benefit credits hereunder shall remain with respect to employment by such unit:

(a) If and when the "payment limit" has been reached as to such unit; or

(b) If and when the commission, after giving such unit 20 days' notice and opportunity to be heard, terminates the application to such unit of subsection (2) by reason of the failure of such unit:

1. To file or distribute promptly such reports or notices as the commission may duly require it to file or distribute for benefit purposes under this section, or

2. To pay to the commission promptly after notice from it any amount due from such unit under subsection (4); or

(c) If and when such unit files with the commission, pursuant to subsection (5), a valid contrary election as to subsection (2), unless such election has been duly withdrawn by such unit within 60 days after such filing; or

(d) If and when subsection (11) applies to such unit.

(4) In case the "special account" maintained as to any government unit shows that the benefits based on employment by such unit paid under this section through the last day of any calendar month have exceeded such unit's "balance" plus its "contributions paid" through such day, the commission shall bill such unit for the amount of such excess; and such unit shall promptly pay such amount to the commission, to reimburse the fund's balancing account, unless and until its "contributions payable" have been fully paid.

(5) Any government unit may at any time file with the commission a contrary election as to subsection (2). The commission shall accept as valid any such election which it finds has been executed on behalf of such unit by an appropriate officer thereof and has either been authorized in advance by such unit's governing board or has been ratified by such board within 160 days after its filing.

(6) Any liability of a government unit to pay any interest which would otherwise

be or become payable by it under section 108.22, by reason of its tardy payment of "contributions paid" or "contributions payable" to the fund, is hereby abated.

(7) Any "contributions payable" by a government unit as of the date on which subsection (2) ceases to apply to it, under subsection (3) or subsection (8), are hereby abated as of such date.

(8) This section shall be inoperative if and to the extent that the commission finds that its application would prevent the continued certification of this chapter under section 1602(b) or section 1603(c) of the federal unemployment tax act.

(9) No provision of this section shall prevent any government unit from voluntarily electing at any time to become an employer fully subject to this chapter, pursuant to paragraph (f) of subsection (4) of section 108.02; but each such approved election shall duly provide for maintaining and continuing any then current benefit credit accruals and benefit payments. In any such case, the commission shall close any "special account" as to such unit then maintained under this section; and the commission, subject to subsection (8) of this section, may abate any "contributions payable" by such electing unit for past periods, and may credit to the account of such unit the amount by which all its past contributions received for the fund under section 108.18 have exceeded all the past benefits duly paid from the fund based on employment by such unit.

(10) As used in this section:

(a) "Government unit" means any such unit which ceased in 1939 to be an "employer" subject to this chapter, because of the enactment of chapter 245 or chapter 372, laws of 1939, which has not elected to remain or become an "employer" subject hereto and whose "balance" plus its "contributions paid" and its "contributions payable" to the funds have not been fully utilized for the payment from the fund of benefits based on employment by such government unit.

(b) A government unit's "balance" means its net cash balance in the fund as of that 1939 termination date on which it ceased to be an "employer" subject hereto, less any benefits based on employment by it paid from the fund after such termination date and before July 1, 1941.

(c) A government unit's "contributions payable" means the contributions under section 108.18 due from it to the commission for the fund on or after such termination date, including the amount payable to the fund by such unit under subsection (7) of section 108.15 of the 1937 statutes, to the extent that such contributions have not yet been paid.

(d) The "contributions paid" by a government unit means so much of its contributions payable on or after such termination date as have been paid to the commission for the fund at any given time after such termination date.

(e) A "special account" as to a government unit means a sub-account within the fund's balancing account, to be set up by the fund's treasurer as of July 1, 1941, in view of the closing out of the employer's account previously maintained for such unit, to indicate the "payment limit" within which benefits based on employment by such unit may be financed under this section by the fund's balancing account.

(f) The "payment limit" shall be that point at which such benefits, thus financed, have equalled the government unit's balance plus its contributions paid and its contributions payable.

(11) In case the federal unemployment tax act is so amended that the refunding of contributions received by the fund from a government unit will not prevent the continued certification of this chapter under section 1603(c) of said act, the fund's treasurer shall refund to each government unit the amount by which all its past contributions received for the fund under section 108.18 have exceeded all past benefits duly paid from the fund based on employment by such unit. [1941 c. 288]

**108.16 Unemployment reserve fund.** (1) For the purpose of carrying out the provisions of this chapter there is established a fund to be known as the "Unemployment Reserve Fund," to be administered by the commission without liability on the part of the state beyond the amount of the fund. This fund shall consist of all contributions and moneys paid into and received by the fund pursuant to this chapter and of properties and securities acquired by and through the use of moneys belonging to the fund.

(2) A separate account shall be kept by the industrial commission with each employer contributing to said fund, and this separate employer's account shall never be merged with any other account except as provided in this section. Each employer's account shall be credited with all his contributions paid into the fund, and shall be charged with all benefits duly paid from the fund to his employees based on their past employment by him. All benefits payable to an employer's employees based on past employment by him shall be paid in full and charged to the employer's account, including overdrafts, consistently with subsection (7) of this section; but no employer shall, because of overdrafts charged against

his account, be required to make any payment to the fund other than the contributions duly required of him pursuant to section 108.18.

(2m) If a commission deputy finds that any benefits charged to an employer's account have been erroneously paid to an individual without fault by the employer, such individual and such employer and the fund's treasurer shall be notified as to such erroneous payment. In case benefits are currently payable to such individual from such employer's account, the deputy may correct the error by adjusting such benefits accordingly. To correct any error not thus adjusted, the fund's treasurer shall correct the fund's records by restoring the proper amount to the employer's account and by charging such amount to the fund's balancing account, and may at any time within 2 years thereafter reimburse the balancing account by crediting to it benefits which would otherwise be payable to the individual in question or cash recovered from such individual.

(4) Consistently with subsection (10) of this section, all contributions payable to the unemployment reserve fund shall be paid to the industrial commission, and shall promptly be deposited by the commission to the credit of the unemployment reserve fund, with such custodians as the commission may from time to time select, who shall hold, release and transfer the fund's cash in a manner approved by the commission. Payments from said fund shall be made upon vouchers or drafts authorized by the industrial commission, in such manner as the commission may from time to time approve or prescribe. Any procedure thus approved or prescribed shall be deemed to satisfy (and shall be in lieu of) any and all statutory requirements (for specific appropriation or other formal release by state officers of state moneys prior to their expenditure) which might otherwise be applicable to withdrawals from the fund. The commission shall designate a treasurer of the unemployment reserve fund, who shall be either a regular salaried employee of the commission or the state treasurer and shall serve as treasurer of the fund until a successor designated by the commission has assumed the duties of this office. He shall give a separate bond conditioned upon his faithful performance of these duties pursuant to subsection (2) of section 19.01, which bond shall be deemed likewise conditioned upon the faithful performance by his subordinates of their duties, in such amount as may be fixed by the industrial commission. All premiums upon the bond required pursuant to this section when furnished by an authorized surety company or by a duly constituted governmental bonding fund shall (except as otherwise provided in this section) be paid from the interest earnings of the unemployment reserve fund, but shall not exceed one-fourth of one per cent, per annum, of the amount of said bond.

(4m) In the event that the "Unemployment Trust Fund" ceases to be available for the purposes of this section, the fund shall thenceforth be invested in accordance with subsection (5) of this section, except that approximately twenty per cent, as determined from time to time by the commission, shall be deposited with federal reserve banks, if authorized to receive such deposits, and the fund's current cash balances shall be deposited by the commission pursuant to subsection (4) of this section.

(5) The unemployment reserve fund shall be invested by the annuity and investment board in the following readily marketable classes of securities: (a) bonds or other interest-bearing obligations of the United States of America; (b) bonds which are the direct obligations of this state, or of any Wisconsin city, county or other governmental subdivision of this state, which has not defaulted in the payment of any of its bonded indebtedness during the twenty years preceding such investment, provided that such bonds shall mature within five years from the date of purchase except where the board acquires for the fund an entire new issue of such bonds maturing in serial instalments and within twenty years from their date of issue. The investments of the fund shall be so made that all the assets of the fund shall always be readily convertible into cash when needed. When so directed by the industrial commission, the board shall dispose of securities belonging to the fund to secure cash needed for the payment of benefits. All expenses of the annuity and investment board in the investment of the unemployment reserve fund shall be paid from the interest earnings of said fund, as provided in subsection (1) of section 20.725.

(6) The commission shall maintain within the fund a "balancing account," to which shall be credited:

(a) All net earnings, on moneys belonging to the fund, accruing and received by (or duly apportioned to) the fund after March 31, 1937;

(b) All interest on delinquent payments under this chapter, and any tardy filing fees on delinquent payments or reports, hereafter received;

(c) Any reimbursement made pursuant to subsection (2m) of this section;

(d) Any balance remaining in the account of an employer who has for any reason ceased (on or after January 2, 1936) to be subject to this chapter, one year after the date on which he ceased to be subject hereto, except as the commission has apportioned all or part of the assets and liabilities of such account to a successor employer's account in the fund pursuant to subsection (8) of this section;

(e) All amounts transferred from employer accounts pursuant to subsection (12) of this section;

(f) The amount of any benefit check duly issued and delivered or mailed to an employe, if such check has not been presented for payment within one year after its date of issue; provided that a substitute check may be issued and charged to the balancing account, at any time within the next following year.

(g) Any amount available for such crediting under subsection (4m) of section 108.04.

(h) All amounts transferred from the "post-war reserves" maintained under subsection (13).

(7) (a) All benefits duly payable shall be paid from the fund and shall be charged against the proper employer's account, whether or not such account is overdrawn. But no benefit payment which would be chargeable against an overdrawn account shall be made if and when the fund's treasurer finds that such payment and charging would cause the total debit balances of all overdrawn accounts to exceed the amount then standing to the credit of the fund's balancing account.

(b) In determining the status of the fund's balancing account as of any date, the fund's treasurer shall take account of the total of such debit balances as of such date, consisting of overdraft charges, duly made to employer accounts while such accounts were exhausted, which have neither been offset by employer contributions credited to such accounts (with corresponding reimbursement of the balancing account) nor written off. Benefit payments made with respect to an employer's account shall be charged directly against the fund's balancing account only when such payments cannot under this chapter be or remain charged against the account of any employer.

(c) Whenever, as of any computation date, the net overdrafts then charged against an employer's account would, even if reduced by any contributions known or subsequently discovered to be then payable but unpaid to such account, exceed two per cent of his annual pay roll (namely, the pay roll amount used in determining his reserve percentage as of that computation date), the fund's treasurer shall, solely for the purpose of computing future reserve percentages, write off (by charging directly to the fund's balancing account) the amount by which such overdrafts would (if thus reduced) exceed 2 per cent of said pay roll; provided, however, that any employer whose account is affected thereby may at any time elect to cancel such write-off, by reimbursing the balancing account in such manner as the commission may prescribe.

(8) (a) If the business of any "employer" is transferred in whole or in part, the transferee shall be deemed a successor for the purposes of this chapter. An employing unit shall not be deemed a successor, however, if the commission finds that there were less than eighteen weeks ending within the calendar year in which the transfer occurred (and also less than eighteen weeks ending within the preceding calendar year) within which the transferring "employer" employed as many as four persons in employment subject to this chapter in connection with the business or portion thereof transferred. In case of the transfer of any of the assets of a covered employer's business by any means whatever, otherwise than in the ordinary course of trade, such transfer shall be deemed a transfer of business and shall constitute the transferee a successor hereunder, unless the commission, on its own motion or on application of an interested party, finds that all the following conditions exist:

1. The transferee has not assumed any of the transferor's obligations; and
2. The transferee has not acquired any of the transferor's good will; and
3. The transferee has not continued or resumed the business of the transferor, either in the same establishment or elsewhere; and
4. The transferee has not employed substantially the same employees as those the transferor had employed in connection with the assets transferred.

(b) The successor, if not already subject to this chapter, shall become an "employer" subject hereto on the date of such transfer, and shall accordingly become liable for contributions hereunder from and after said date.

(c) The successor shall take over and continue the employer's account, including its plus or minus balance and all other aspects of its experience under this chapter, in proportion to the pay roll or employees assignable to the transferred business as determined for the purposes of this chapter by the commission. The successor shall be secondarily liable for any amounts owed by the employer to the fund (and to the administration fund) at the time of such transfer; but such liability shall be proportioned to the extent of the transfer of business and shall not exceed the value of the assets transferred.

(d) The benefit liability of a successor's account under section 108.06, if it has not accrued before the transfer date, shall begin to accrue on the transfer date, in case the transferor's benefit liability was then accruing; or shall begin to accrue on the date

otherwise applicable to the successor, or on the date otherwise applicable to the transferor, whichever is earlier, in case the transferor's benefit liability was not accruing on the transfer date. Similarly, benefits from a successor's account, if not payable before the transfer date, shall become payable on the transfer date, in case the transferor was then liable for benefit payments; or shall become payable on the date otherwise applicable to the successor, or on the date otherwise applicable to the transferor, whichever is earlier, in case the transferor was not liable for benefit payments on the transfer date.

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

(f) The contribution rates applicable with respect to the accounts of the successor employer and the transferring employer shall be respectively determined or redetermined as of the computation date specified below, to apply from the date of transfer of business until the close of the current calendar year, and shall thereafter be redetermined whenever required by section 108.18, as follows: For the purposes of section 108.18, the commission shall determine the "actual contribution and benefit experience" of the successor employer's account and of the transferring employer's account by allocating to the successor employer's account for each period in question the respective proportions of the transferring employer's pay roll and benefits which the commission determines to be properly assignable to the business transferred. In determining contribution rates under this paragraph, to apply from the transfer date until the close of the current calendar year, such experience shall be determined as of a computation date which shall be the preceding June 30 or December 31, whichever more recently precedes the transfer date, any other provision of this chapter to the contrary notwithstanding.

(9) (a) Consistently with section 1606 of the federal internal revenue code, relating to federal instrumentalities which are neither wholly owned by the United States nor otherwise exempt from the tax imposed by section 1600 of said code:

1. Any contributions required and paid under this chapter for 1939 or any subsequent year by any such instrumentality, including any national bank, shall be refunded to such instrumentality in case this chapter is not certified with respect to such year under section 1603 of said code.

2. No national banking association which is subject to this chapter shall be required to comply with any of its provisions or requirements to the extent that such compliance would be contrary to section 1606 of said code.

(b) Nothing in this subsection shall be construed as limiting or restricting in any way the authority of this state to apply the provisions of this chapter (pursuant to its regulatory and police powers) to national banks for any period preceding the enactment of this subsection.

(10) All money received in the fund shall promptly upon such receipt be deposited in (or invested in the obligations of) the "Unemployment Trust Fund" of the United States, in such manner as the secretary of the treasury of the United States (or other authorized custodian of said trust fund) may approve, so long as said trust fund exists and maintains for this state a separate book account (for contribution and benefit purposes) from which no other state or agency can make withdrawals, any other statutory provision to the contrary notwithstanding. The commission shall requisition from this state's account in the "Unemployment Trust Fund" necessary amounts from time to time, shall hold such amounts consistently with any applicable federal regulations, and shall make withdrawals therefrom solely for benefits and other unemployment compensation payments under this chapter. While the state has an account in the "Unemployment Trust Fund," public deposit insurance charges on the fund's balances held in Wisconsin banks, the premiums on surety bonds required of the fund's treasurer under this section, and any other expense of administration otherwise payable from the fund's interest earnings, shall be paid from the administration fund.

(11) 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 and for refunds payable under subsection (9) of this section, and for transfers consistently with section 5 of chapter 186, laws of 1939.

(12) If and when the fund's balancing account, as of the close of any month, has a net balance (after allowing for the debit balances of any employer accounts then overdrawn) of less than \$2,000,000, the fund's treasurer shall promptly make a finding to that effect, which shall be published forthwith in the official state paper. As of the start of the first business day (hereinafter called "transfer date") which follows the close-of-month to which such a finding applies, the fund's treasurer shall transfer from employer accounts to the fund's balancing account such amounts as he determines pursuant to this subsection.

The fund's treasurer shall compute a "transfer percentage," namely the lowest multiple of one per cent which would, if applied to the fund's net balance as of the start of the transfer date, produce a result of at least \$1,000,000, and shall apply such transfer percentage to the net balance (as of the start of the transfer date) of each employer's account whose net balance is then positive, and shall transfer the amount resulting in each such case from the given employer's account to the fund's balancing account, as of the start of the transfer date, and shall promptly notify each such employer accordingly.

(13) (a) There is hereby created in each employer's account a special "post-war reserve", to which the fund's treasurer shall credit the contributions paid by the employer under section 108.18 (8). Said reserve shall be taken into account, when calculating the employer's reserve percentage as of any computation date, only as hereinafter specified.

(b) Whenever an employer's account would otherwise be overdrawn, on any computation date or at any close-of-month as of which a transfer from post-war reserves will apparently be required under paragraph (c), his then available post-war reserve shall be used up, prior to any other adjustment or transfer affecting his account or the balancing account under this section, by including in his account, for all the purposes of this chapter, the entire amount then standing to his credit in said reserve.

(c) If and when the fund's balancing account, as of the close of any month, prior to the application of this paragraph, has a "net balance" of less than \$5,000,000, the fund's treasurer, after making a finding to that effect under this paragraph, to be published forthwith in the official state paper, shall, as of said close-of-month, transfer to the balancing account from each employer's post-war reserve one-half of the amount then standing to the credit of said reserve, unless such transfers would total less than \$2,000,000, in which event he shall transfer to the balancing account all amounts then standing to the credit of post-war reserves. No finding or transfer shall be made under subsection (12), unless and until all post-war reserves have been transferred under this subsection.

(d) Any amounts still credited to an employer's post-war reserve after the initial period of post-war readjustment shall remain within the fund, subject to such disposition (permitting the post-war use of such reserves to avoid post-war increases in contribution rates, so far as practicable) as may then be specified by amendment of this chapter. [Spl. S. 1931 c. 20 s. 2; 1933 c. 383 s. 4, 8; 1935 c. 192, 446; 1937 c. 95 s. 1, 4; 1937 c. 343; 1939 c. 186, 372; 1941 c. 288; 1943 c. 181]

**108.161 State compliance and appropriation.** Each of the state's budget subdivisions shall be and remain an employer subject hereto, throughout each fiscal year in which it employs any individual in employment subject hereto; and its contributions to the unemployment reserve fund shall be duly paid from the general fund, upon filing by the commission with the secretary of state of a certificate specifying the amount due and the appropriation to be charged, and each of the state's boards, commissions, departments and other budget subdivisions shall have charged to and deducted from its proper appropriation the amount of contributions paid on its account, unless the budget director certifies that a stated amount of contributions cannot thus be charged, in which event such amount shall be charged to the general fund in accordance with such certification. Each budget subdivision of the state shall be a separate employer and have a separate employer's account in the fund for all purposes. The benefit liability of each such account with the fund shall commence on the date applicable to all other employers who become subject to this chapter on July 1, 1934. [1935 c. 192; 1937 c. 95 s. 3; 1937 c. 343; 1943 c. 177]

**108.17 Payment of contributions.** (1) Contributions shall accrue and become payable by each employer then subject to this chapter on the first day of July, 1934, and shall be paid thenceforth in accordance with this chapter. Thereafter contributions shall accrue and become payable by any employer on and after the date on which he becomes newly subject to this chapter.

(1m) In the case of an employer who becomes, as of the beginning of 1937 or of any subsequent calendar year, newly subject to this chapter based on his employment during the given year, his contributions based on payrolls prior to the date on which his employment made him subject hereto shall not be considered as payable for the purposes of section 108.22 until such subsequent date (occurring within sixty days) as the commission may determine.

(2) All contributions required under this chapter from employers shall be paid to the industrial commission, at such times and in such manner as the commission may prescribe.

(3) If an employer (of any person) makes application to the commission to adjust an alleged overpayment by him of contributions or interest under this chapter, and files such application within 3 years after the close of the calendar year in which such payment was made, a commission deputy shall make a determination under section 108.10 as to the existence and extent of any such overpayment, and the provisions of said section

shall apply to such determination. As to any amount determined under said section to have been erroneously paid by the employer, the commission shall allow him a corresponding credit, without interest, against his future contribution payments; or, if the commission finds it impracticable to allow the given employer such a credit, it shall refund such overpayment to him, without interest, from the fund or the administration fund, as the case may be. This subsection shall not apply to any payment made pursuant to subsection (4) of section 108.18. [Spl. S. 1931 c. 20 s. 2; 1933 c. 186 s. 3; 1935 c. 192; 1937 c. 95 s. 3; 1941 c. 288; 1943 c. 177]

**108.18 Contributions.** (1) Each employer shall regularly make contributions to his account in the fund at the "standard rate" of two and seven-tenths per cent on his defined "pay roll," and shall contribute at the standard rate unless and until his account has been potentially liable for the payment of benefits throughout the most recently completed calendar year. Thereafter his contribution rate on his "pay roll" for any given calendar year shall be such rate (based on his actual contribution and benefit experience) as the commission finds applicable pursuant to this section.

(2) Whenever as of any computation date an employer's account meets the conditions specified in subsection (3), his contributions shall be payable to such account for the next calendar year at less than the standard rate, as follows:

(a) If the reserve percentage of the employer's account as of the computation date is  $7\frac{1}{2}$  per cent or more, but less than 10 per cent, his contribution rate to such account shall be one per cent on his pay roll for the next calendar year.

(b) If the reserve percentage of the employer's account as of the computation date is 10 per cent or more, his contribution rate to such account shall be zero per cent on his pay roll for the next calendar year.

(3) As to any calendar year, an employer shall be permitted to pay contributions to his account at a rate lower than the standard rate only when, as of the applicable computation date:

(a) Benefits have been payable from such account throughout the year preceding such date, and

(b) The net reserve of such account as of such date amounts to not less than 5 times the largest amount of benefits charged against such account within any one of the 3 years preceding such date, and

(c) The reserve percentage of such account as of such date equals or exceeds  $7\frac{1}{2}$  per cent, and

(d) Contributions to such account were payable thereto pursuant to this chapter with respect to the 3 years preceding such date, and

(e) The employer's pay roll for each of the 3 years preceding such date has equalled at least \$100 and at least 10 per cent of his largest pay roll for any one of those 3 years, and

(f) Permitting him to pay such contributions at such a lower rate for such calendar year is consistent with the conditions applicable to additional credit allowance for such year under section 1602 (a) (3) of the federal unemployment tax act.

(4) Any employer may at any time make payments to his account, in excess of the other requirements of this section; and all such payments shall be considered as contributions required under this chapter. Any such payment made within the twelve-month period starting on February 1 of a given calendar year shall be considered as a contribution payable and paid on his pay roll for that calendar year.

(5) Whenever an employer's account, as of any computation date which occurs at the close of (or following) a calendar year throughout which benefits have been chargeable to such account, does not meet the conditions specified in subsection (3), the employer's contribution rate to such account shall be determined as follows:

(a) If his reserve percentage is four per cent or more, his contribution rate for the next calendar year shall be the standard rate.

(b) If his reserve percentage is two and one-half per cent or more, but less than four per cent, his contribution rate for the next calendar year shall be three and two-tenths per cent on his pay roll.

(c) If his reserve percentage is less than two and one-half per cent, his contribution rate for the next calendar year shall be three and seven-tenths per cent on his pay roll.

(d) If the employer's account is overdrawn as of any computation date, his contribution rate for the next calendar year shall be 4 per cent on his pay roll.

(e) In no case shall an employer's contribution rate for any calendar year exceed by more than one-half of one per cent on his pay roll whichever of the following rates is higher, namely the standard rate or that rate which applied to him at the beginning of the previous calendar year.

(6) In case an employer's contribution rate has been incorrectly determined, it shall

be corrected and contributions shall be adjusted or become payable accordingly, provided the error is discovered:

(a) Within the calendar year to which such rate applies, or

(b) At any time thereafter, except as the commission may by general rule prescribe such a reasonable time limit for corrections as will be consistent with the continued certification of this chapter under section 1602 (b) of the federal unemployment tax act.

(7) WAR-RISK CONTRIBUTIONS, IN CERTAIN CASES. (a) Wartime expansion has increased the pay rolls of some employers substantially over their 1940 pay rolls, with a corresponding increase in the potential post-war benefit liabilities of their reserve accounts, but without a corresponding increase in the level of those accounts under this chapter. Unless corrected, this condition would endanger the post-war solvency of such accounts, and would require higher contribution rates to be collected from employers generally, during the post-war years. Therefore, such accounts should now be built up toward more nearly adequate post-war levels, to help avoid (or reduce) the post-war rate increases which would otherwise result, by collecting contributions from such employers at higher wartime rates, based on their pay roll increases and the relative adequacy of their accounts.

(b) Accordingly, the provisions of this subsection shall, in lieu of preceding subsections, determine what contribution rates shall apply to the pay roll of any such employer for the several contribution periods from July 1, 1943, through December 31, 1945.

(c) Initially, the commission shall determine as to each employer, as of the December 31, 1942 computation date, whether this subsection applies to him for the 6-month period starting July 1, 1943, and at what rate he shall contribute hereunder on his pay roll for that contribution period. Thereafter, the commission shall determine as to each employer, as of each subsequent computation date, whether this subdivision applies to him and at what rate he shall contribute hereunder on his pay roll for the ensuing calendar year.

(d) Each such employer's contribution rate under this subsection, on his pay roll for the relevant contribution period, shall, subject to the requirements of subsection (3), be the rate shown by the following schedule on that line which includes the reserve percentage his account had on the relevant computation date and in that column which includes the percentage by which his pay roll for the year ending on the relevant computation date exceeded his pay roll for the calendar year 1940; provided, however, that the maximum contribution rate under the following schedule shall, for the 6-month period starting July 1, 1943, be 4 per cent.

#### SCHEDULE

Percent of Increase in Pay Roll, for  
Year Ending on "Computation Date",  
over 1940 pay roll

Line	Reserve Percentage (as of "compu- tation date")	Contribution Rate, under this subsection.				
		50% but less than 100%	100% but less than 150%	150% but less than 200%	200% but less than 300%	300% but less than 400% or more
1.	less than 4%.....	4.0%	4.5%	5.0%	5.0%	5.0%
2.	4 but less than 6.....	3.5	4.0	4.5	5.0	5.0
3.	6 but less than 7.5 .....	3.0	3.5	4.0	4.5	5.0
4.	7.5 but less than 8 .....	2.0	2.5	3.0	3.5	4.0
5.	8 but less than 9.....	1.5	2.0	2.5	3.0	3.5
6.	9 but less than 10.....	1.0	1.5	2.0	2.5	3.0
7.	10 but less than 11.....	.5	1.0	1.5	2.0	2.5
8.	11 but less than 12.....	.0	.5	1.0	1.5	2.0
9.	12 but less than 13.....	.0	.0	.5	1.0	1.5
10.	13 but less than 14.....	.0	.0	.0	.5	1.0
11.	14 but less than 15.....	.0	.0	.0	.0	.5
12.	15 or more.....	.0	.0	.0	.0	.0

(e) In case an employer's contribution rate for any period would, under the above schedule, be less than the "standard rate" of 2.7 per cent, he shall nevertheless pay said standard rate (in lieu of the schedule rate) unless his account, as of the relevant computation date, met all the conditions specified in subsection (3).

(f) This subsection shall apply, for the relevant contribution period, to each employer whose pay roll for the year ending on the relevant computation date exceeded by 50 per cent or more his pay roll for the calendar year 1940, except as hereinafter specified.

(g) This subsection shall also apply, in the case of any employer who becomes newly subject to this chapter after 1942, to his first year of coverage under this chapter, except as hereinafter specified.

(h) In applying this subsection to any employer who had no pay roll (covered by this chapter) in the calendar year 1940, his contribution rate shall be determined by the last column in the above schedule.

(i) This subsection shall not apply, for the relevant contribution period, to any employer who was subject to this chapter on the relevant computation date but whose pay roll for the year ending on that date was below \$30,000, nor to any other employer (not thus subject) whose pay roll for his first year of coverage under this chapter is below \$30,000, unless it is finally determined that the application of this paragraph would invalidate this subsection.

(8) POST-WAR RESERVES. (a) To help assure post-war solvency of the fund and payment of all benefits due under this chapter, and to avoid (or reduce) both the post-war transfers from employer accounts to the fund's "balancing account" which would otherwise be required under section 108.16 (12) and the post-war rate increases which would otherwise result from such transfers, by building added reserves in the fund for post-war use, each employer shall, in addition to any other contribution required of him under this chapter, contribute to the fund at the rate of one-half of one per cent on his pay roll for the period specified in paragraph (e).

(b) The additional contributions paid by each employer under this subsection shall be held in suspense, as a special "post-war reserve" in the employer's account, for possible transfer to the fund's balancing account if needed, as specified in section 108.16 (13).

(c) The additional contributions required by this subsection shall apply to each employer's pay roll for the period starting on July 1, 1943, and ending on the earlier one of the two following dates:

1. December 31, 1945; or

2. The close of the third month following the first calendar quarter for which the total of all pay rolls then covered by this chapter is less than \$200,000,000, as determined by the commission in a finding of fact to be published in the official state paper.

(9) An employer shall not, for the purposes of section 108.02 (8), be deemed to be contributing "at more than the standard rate" in case his reserve percentage was 4 per cent or more, so that his contribution rate exceeds 2.7 per cent solely by reason of subsections (7) and (8). [1935 c. 192, 446; 1937 c. 95 s. 4; 1937 c. 343; 1939 c. 186, 372; 1941 c. 288; 1943 c. 181]

**108.19 Contributions to the administration fund.** (1) Each employer subject to this chapter shall regularly contribute to the unemployment administration fund created in section 108.20 at the rate of two-tenths of one per cent per annum on his pay roll as defined in section 108.02. But the commission may prescribe at the close of any fiscal year such lower rates of contribution under this section, to apply to classes of employers throughout the ensuing fiscal year, as will in the commission's judgment adequately finance the administration of this chapter, and as will in the commission's judgment fairly represent the relative cost of the services rendered by the commission to each such class.

(2) If the commission finds, at any time within a fiscal year for which it has prescribed lower contribution rates to the administration fund than the maximum rate permitted hereunder, that such lower rates will not adequately finance the administration of this chapter or are excessive for that purpose, the commission may by general rule prescribe a new schedule of rates (in no case exceeding the specified maximum) to apply under this section for the balance of the fiscal year.

(3) If the Federal Unemployment Tax Act is amended to permit a maximum rate of credit against said federal tax higher than the 90 per cent maximum rate of credit now permitted under section 1601 (e) of the Internal Revenue Code, to an employer with respect to any state unemployment compensation law whose standard contribution rate on pay roll under said law is more than 2.7 per cent, in that event the standard contribution rate as to all employers under this chapter shall, by a commission rule to be issued with the governor's approval, be increased from 2.7 per cent on pay roll to that percentage on pay roll which corresponds to the higher maximum rate of credit thus permitted against the federal unemployment tax; and such increase shall become effective on the same date as such higher maximum rate of credit becomes permissible under such federal amendment.

(4) If section 303 (a) (5) of Title III of the Social Security Act and section 1603 (a) (4) of the Internal Revenue Code are amended to permit a state agency to use, in financing administrative expenditures incurred in carrying out its employment security functions, some part of the moneys collected or to be collected under the state unemployment compensation law, in partial or complete substitution for grants under said Title III, in that event this chapter shall, by a commission rule to be issued with the governor's approval, be modified in the manner and to the extent and within the limits necessary to

permit such use by the commission under this chapter; and such modifications shall become effective on the same date as such use becomes permissible under such federal amendments. [Spl. S. 1931 c. 20 s. 2; 1935 c. 192; 1943 c. 177, 181]

**Note:** In setting up reserves and paying assessment for administrative fund under unemployment reserves and compensation act, municipalities may charge amount thereof to appropriations made for maintenance, machinery repairs, etc., in case of county highway employees. In case of highway maintenance or construction work performed by county for state, county is not authorized to directly charge these items to state. 23 Atty. Gen. 773.

**108.20 Unemployment administration fund and appropriation.** (1) To finance the administration of this chapter and to carry out its provisions and purposes there is established the "Unemployment Administration Fund." This fund shall consist of all contributions and moneys paid to or transferred by the industrial commission for the administration fund as provided in section 20.57 and 108.19, and of all moneys received for this fund by the state or by the commission from any source, including all federal moneys allotted or apportioned to the state or the commission for the Wisconsin state employment service or for administration of this chapter, or for services, facilities or records supplied to any federal agency; and the commission is hereby directed to make to federal agencies such reports as are necessary in connection with or because of such federal aid.

(2) All amounts received by the commission for such fund shall be paid over to the state treasurer and credited to the unemployment administration fund, and, as provided in section 20.573 of the statutes, are appropriated to the commission for the administration of this chapter and the Wisconsin state employment service. [Spl. S. 1931 c. 20 s. 2; 1935 c. 446; 1937 c. 95 s. 4; 1939 c. 186]

**Note:** Travel expense of members of industrial commission in administering unemployment compensation law is chargeable to unemployment administration fund created by 108.20 and 20.573. 26 Atty. Gen. 154.

**108.21 Record and audit of pay rolls.** (1) Every employer of one or more persons in Wisconsin shall keep such a true and accurate employment record for each individual employed by him, including full name, address and social security number, as will permit determination of the weekly wages earned by each such individual from him, and shall furnish to the commission upon demand a sworn statement of the same. Such record and any other records which may show any wages paid by the employer shall be opened to inspection by any authorized commission representative at any reasonable time.

(2) The findings of any such authorized representative of the commission, based on examination of the records of any such employer and embodied in an audit report mailed to the employer, shall constitute a determination within the meaning of section 108.10 and the provisions of said section shall apply accordingly.

(3) In the event that any such employer fails to keep adequate employment and pay roll records under this section or fails to file such reports as the commission may require under this chapter, the employer's contribution liability with respect to the period for which such records are lacking or deficient or for which such reports have not been filed may be estimated by a commission deputy in a determination made pursuant to section 108.10, and the provisions of said section shall apply to any such determination. [Spl. S. 1931 c. 20 s. 2; 1937 c. 343; 1941 c. 288]

**108.22 Delinquent payments.** (1) If any employer is delinquent in making by the assigned due-date any contribution report or payment to the commission required of him under this chapter, he shall be liable for a tardy filing fee of one dollar for each such delinquency and shall become additionally liable for interest on such delinquent payment at the rate of one-half per cent per month (or fraction thereof) from the date such payment became due, except that said fee shall apply in lieu of such interest in any case where such interest (accrued up to the date on which such delinquent contribution and said fee are paid) is less than one dollar. Such tardy filing fees and interest shall be paid to the commission and credited to the balancing account of the unemployment reserve fund.

(2) If any employer fails to pay to the commission any amount found to be due in proceedings pursuant to section 108.10, provided that no appeal or review permitted by said section is pending and that the time for taking an appeal or review has expired, the commission or any duly authorized representative may issue a warrant directed to the sheriff of any county of the state, commanding him to levy upon and sell sufficient of the real and personal property which may be found within his county of the employer who has defaulted in the payment of any amount thus found to be due to pay such amount, together with interest and costs and other fees, and to proceed upon the same in all respects and in the same manner as upon an execution against property issued out of a court of record, and to return such warrant to the commission and pay to it the money collected by virtue thereof within 60 days after the receipt of such warrant. The sheriff shall, within 5 days after the receipt of the warrant, file with the clerk of the circuit court of his county a copy thereof, unless the employer shall make satisfactory

arrangements for the payment thereof with the commission, in which case the sheriff shall at the direction of the commission return such warrant to it. The clerk shall enter in the judgment docket the name of the employer mentioned in the warrant and the amount of the contributions, interest, costs and other fees for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property of the employer against whom it is issued in the same manner as a judgment duly docketed in the office of such clerk.

(3) In the discretion of the commission, a warrant of like terms, force and effect may be issued and directed to any employe or agent of the commission duly authorized by it as a deputy, who may file a copy of such warrant with the clerk of circuit court of any county in the state, and thereupon such clerk shall docket the same and it shall become a lien in the same manner, and with the same force and effect as hereinbefore provided with respect to a warrant issued and directed to and filed by a sheriff. In the execution thereof such employe or agent shall have all the powers conferred by law upon a sheriff, but shall not be entitled to collect from the employer any fee or charge for the execution of such warrant in excess of the actual expenses paid in the performance of his duty.

(4) If a warrant be returned not satisfied in full, the commission shall have the same remedies to enforce the amount due for contributions, interest, and costs and other fees as if the commission had recovered judgment against the employer for the same and an execution returned wholly or partially not satisfied.

(5) When the contributions set forth in a warrant together with interest and other fees to date of payment and all costs due the commission have been paid to it, the commission shall issue a satisfaction of the warrant and deliver or mail it to the employer, and the warrant shall be satisfied of record by the clerk upon presentation to him of such satisfaction and payment by the employer of the fees due such clerk.

(6) The commission, if it finds that the interests of the state will not thereby be jeopardized, and upon such conditions as it may exact, may issue a release of any warrant with respect to any real property upon which said warrant is a lien or cloud upon title, and such release shall be entered of record by the clerk upon presentation to him and payment of the fee for filing said release and the same shall be held conclusive that the lien or cloud upon the title of the property covered by the release is extinguished.

(7) As an alternative to any other remedy provided in this section the commission may in its own name collect any delinquent payments due it, together with interest and costs and other fees. A statement of the amount of such delinquent payments certified by the commission shall be prima facie evidence of the employer's liability for such amount. At any time before judgment in an action for the collection of such delinquent payments, the commission may commence and maintain a garnishee action as provided by chapter 267 for actions founded on contract, or may use the remedy of attachment as provided by chapter 266 for actions founded on contract. The place of trial of an action for the collection of such delinquent payments shall not be changed from the county in which such action is commenced, except upon consent of the parties. [Spl. S. 1931 c. 20 s. 2; 1937 c. 95 s. 2; 1937 c. 343; 1941 c. 288]

**108.23 Preference of required payments.** In the event of an employer's dissolution, reorganization, bankruptcy, receivership, assignment for benefit of creditors, judicially confirmed extension proposal or composition, or any analogous situation including the administration of estates in courts of probate, the payments required of the employer under this chapter shall have preference over all claims of general creditors and shall be paid next after the payment of preferred claims for wages. Provided, however, that if the employer is indebted to the federal government for taxes due under the federal unemployment tax act and a claim for such taxes has been duly filed, the amount of contributions which should be paid to allow the employer the maximum offset against such taxes shall have preference over preferred claims for wages and shall be on a par with debts due the United States, if by establishing such preference the offset against the federal tax can be secured under section 1601 (a) (3) of the federal unemployment tax act. [Spl. S. 1931 c. 20 s. 2; 1933 c. 383 s. 4; 1935 c. 192; 1937 c. 95 s. 2; 1941 c. 288]

**Note:** Unemployment compensation payment constitute preferred claims in liquidation due from bank prior to time it was closed and taken over by banking commis- sion by terms of this section. 27 Atty. Gen. 769.

**108.24 Penalties.** (1) Any person who knowingly makes a false statement or representation to obtain any benefit payment under this chapter, either for himself or for any other person, shall upon conviction be deemed guilty of a misdemeanor and be punished by a fine of not less than ten dollars nor more than fifty dollars, or by imprisonment in the county jail not longer than thirty days, or by both such fine and imprisonment; and

each such false statement or representation shall constitute a separate and distinct offense. The commission may by civil action recover any benefits obtained by means of any statement or representation which is untrue.

(2) Any person who knowingly makes a false statement or representation in connection with any report or as to any information duly required by the commission hereunder, or who knowingly refuses or fails to keep any records or to furnish any reports or information duly required by the commission hereunder, shall upon conviction be deemed guilty of a misdemeanor and be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment in the county jail not longer than 30 days, or by both such fine and imprisonment; and each such false statement or representation and every day of such refusal or failure shall constitute a separate and distinct offense.

(3) Any person who makes any deduction from the wages of any employe because of liability for contributions hereunder or because of the employe's potential right to benefits, or who knowingly refuses or fails to furnish to an employe any notice, report or information duly required hereunder by the commission to be furnished to such employe, or who, directly or indirectly by promise of reemployment or by threat not to employ or not to reemploy or by any other means, attempts to induce any employe to refrain from claiming or accepting benefits or to waive any other right hereunder, or whose rehiring policy has discriminated against former employes by reason of their having claimed benefits, shall upon conviction be deemed guilty of a misdemeanor and be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not longer than thirty days, or by both such fine and imprisonment; and each such deduction from wages, and every day of such refusal or failure, and each such attempt to induce shall constitute a separate and distinct offense. [*Spl. S. 1931 c. 20 s. 2; 1935 c. 192; 1937 c. 95 s. 2; 1939 c. 186; 1941 c. 288*]

108.25 [Repealed by 1937 c. 343]

108.25 **Separability of provisions.** If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby. [*Spl. S. 1931 c. 20 s. 2; 1937 c. 343*]

108.26 [Repealed by 1937 c. 343]

108.26 **Saving clause.** The legislature reserves the right to amend or repeal all or any part of this chapter at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time. [*1935 c. 446; 1937 c. 343*]

108.27 [Renumbered section 108.25 by 1937 c. 343]

108.28 [Renumbered section 108.26 by 1937 c. 343]