

## CHAPTER 108

## UNEMPLOYMENT RESERVES AND COMPENSATION

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NOTE: Chapter 133, laws of 1977, which amended many sections of this chapter, contained notes explaining the revision. See the 1977 session law volume.

**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.

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

(1) **BENEFITS.** "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.** "Commission" means the labor and industry review commission.

(2m) **DEPARTMENT.** "Department" means the department of industry, labor and human relations.

(3) **EMPLOYEE.** (a) "Employee" means any individual who is or has been performing services for an employing unit, in an employment, whether or not he is paid directly by such employing unit; except as provided in par. (b). If a contractor performing services for an employing unit 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 employing unit shall be considered the employe of the employing unit.

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

1. That such individual has been and will continue to be free from the employing unit'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 employing unit'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.

(d) Any individual who is, under this subsection, an "employee" of a given employing unit shall be deemed "employed" by that employing unit for the purposes of this chapter.

(4) **EMPLOYER.** (a) "Employer", except where the term by its context may apply to any unit employing one or more individuals, means every government unit and any person, partnership, association, corporation, whether domestic or foreign, or legal representative, trustee in bankruptcy or receiver or trustee of a person, partnership, association or corporation, or legal representative of a deceased person, and any fraternal benefit society as defined in s. 614.01 (1), who is subject to this chapter under the statutes of 1975, or who has had employment in this state and becomes subject to this chapter under this subsection and, notwithstanding any other provisions of this section, any service insurance corporation organized or operating under ch. 613.

(b) Any employer which is a nonprofit organization shall become an "employer" subject to this chapter as of the beginning of any calendar year if it employed as many as 4 individuals in employment for some portion of a day on at least 20 days, each day being in a different calendar week, whether or not such weeks were consecutive, in either that year or the preceding calendar year.

(c) 1. Any employer of an individual or individuals in agricultural labor shall become an "employer" subject to this chapter as of the beginning of any calendar year if such employer paid cash wages for agricultural labor which totaled \$20,000 or more during any calendar quarter in either the current or preceding calendar year, or if such employer employed as many as 10 individuals in some agricultural labor for some portion of a day on at least 20 days, each day being in a different calendar week, whether or not such weeks were consecutive, in either the current or preceding calendar year.

2. For the purpose of this paragraph any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be an employe of such crew leader if:

a. Such crew leader holds a valid certificate of registration under the federal farm labor contractor registration act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment which is provided by such crew leader; and

b. If such crew leader is not an employe of such other person under sub. (3).

3. For the purposes of this paragraph if any individual who is furnished by a crew leader to perform service in agricultural labor is not an employe of the crew leader under subd. 2, such other person, and not the crew leader, is the employer of such individual and the other person shall be considered to have paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on behalf of the crew leader or such other person, for the service in agricultural labor performed for such other person.

4. For the purpose of this paragraph, "crew leader" means an individual who furnishes individuals to perform service in agricultural labor for any other person, pays on behalf of himself or herself or on behalf of such other person the individuals so furnished to perform such labor, and has not entered into a written agreement with such other person under which he or she is designated as an employe of such other person.

(d) Any employer of an individual or individuals in domestic service shall become an "employer" subject to this chapter as of the beginning of any calendar year if such employer paid cash wages of \$1,000 or more during any calendar quarter in either the current or preceding calendar year for such domestic service.

(e) Any other employer, except a government unit, shall become an "employer" subject

to this chapter as of the beginning of any calendar year if such employer:

1. Paid wages for employment which totaled \$1,500 or more during any calendar quarter in either that year or the preceding calendar year; or

2. Employed at least one individual in some employment in each of 20 or more calendar weeks in either that year or the preceding calendar year, whether or not the same individual was in employment in each such week and whether or not such weeks were consecutive; except that

3. Wages and employment for agricultural labor which meets the conditions of par. (c) shall be counted under this paragraph, but wages and employment for domestic service shall not be so counted except as par. (i) applies.

(f) Any other employer who is subject to the federal unemployment tax act for any calendar year, or who, as a condition for approval of this chapter for full tax credit against the tax imposed by the federal unemployment tax act, is required, pursuant to such act, the social security act, or any other federal law, to be an "employer" under this chapter, shall be an "employer" subject to this chapter as of the beginning of such calendar year.

(g) Any other employer, who succeeds to the business of any "employer" under this chapter, shall thereby become an "employer" subject to this chapter, as provided in s. 108.16 (8).

(h) Any employer not otherwise subject to this chapter, who files with the department a written election to become an "employer" subject to this chapter for not less than 3 calendar years, shall, with the written approval of such election by the department, become an "employer" fully subject to this chapter, as of the date and under the conditions stated in such approved election.

1. The department may refuse to approve any such election in the interests of the proper administration of this chapter. The department shall not approve any such election by a non-profit organization unless the employer also elects reimbursement financing in accordance with s. 108.151 (2), and shall terminate such election under this chapter if the election of reimbursement financing is terminated under s. 108.151 (3). Any election approved by the department shall be void, in case the electing party was himself or herself "employed" in the same enterprise as the individuals to whom such election applied. The department may at any time by written notice to the employer terminate any election in the interests of proper administration of this chapter.

2. An electing "employer" may, after 3 such years, terminate the election and thereby cease to be an "employer" subject to this chapter,

despite par. (i), at the close of any week which ends after the month in which such "employer" has filed a written notice to that effect with the department, provided such "employer" is not then subject to this chapter under any one or more of pars. (b) to (g).

(i) An "employer" shall cease to be subject to this chapter only upon department action terminating coverage of such employer. The department may terminate an "employer's" coverage, on its own motion or on application by the "employer", by mailing a notice of termination to the "employer's" last-known address. An employer's coverage may be terminated whenever the employer ceased to exist, transferred its entire business, or would not otherwise be subject under any one or more of pars. (b) to (g). If any employer of agricultural labor or domestic service work becomes subject to this chapter under par. (c) or (d), with respect to such employment, and such employer is otherwise subject to this chapter with respect to other employment, the employer shall continue to be covered with respect to agricultural labor or domestic service or both while the employer is otherwise subject to this chapter, without regard to the employment or wage requirements under par. (c) or (d). If a termination of coverage is based on an employer's application, it shall be effective as of the close of the calendar quarter in which the application was filed. Otherwise, it shall be effective as of the date specified in the notice of termination.

**(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 department 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 department'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).

(dm) "Employment" includes an individual's service, wherever performed within the United States or Canada, if:

1. Such service is not covered under the unemployment compensation law of any other state or Canada; and

2. The place from which the service is directed or controlled is in Wisconsin.

(dn) "Employment" includes the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada), in the employ of an American employer, other than service which is deemed "employment" under par. (b), (c) or (d) or the parallel provisions of another state's law, if:

1. The employer's principal place of business in the United States is located in Wisconsin; or

2. The employer has no place of business in the United States, but:

a. The employer is an individual who is a resident of Wisconsin; or

b. The employer is a corporation which is organized under the laws of Wisconsin; or

c. The employer is a partnership or a trust and the number of the partners or trustees who are residents of Wisconsin is greater than the number who are residents of any one other state; or

3. None of the criteria of subs. 1 and 2 is met but the employer has elected coverage in Wisconsin or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under this chapter.

(do) 1. An "American employer", for purposes of par. (dn), means a person who is:

a. An individual who is a resident of the United States; or

b. A partnership if two-thirds or more of the partners are residents of the United States; or

c. A trust, if all the trustees are residents of the United States; or

d. A corporation organized under the laws of the United States or of any state.

2. For the purposes of pars. (dm) to (do), the term "United States" includes the states, the District of Columbia, commonwealth of Puerto Rico, and the Virgin Islands.

NOTE: Chapter 133, laws of 1977, which amended (5) (dm) (intro.) and 1, (dn) (intro.) and (do) 2, relating to the Virgin Islands, provided in section 38 that the treatment of these amendments apply to "employment beginning January 1 of the year following the year in which the U.S. secretary of labor approved the unemployment compensation law of the Virgin Islands under section 3304 (a) of the internal revenue code of 1954."

(e) In determining whether an individual's entire services shall be deemed "employment" subject to this chapter, under pars. (b), (c), (d), (dm) and (dn), the department 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) "Employment" as applied to work for a government unit, except as such unit duly elects otherwise with the department's approval, does not include service:

1. As an official elected by vote of the public;

2. As an official appointed to fill part or all of the unexpired term of a vacant position normally otherwise filled by vote of the public;

3. As a member of a legislative body or the judiciary of a state or political subdivision;

4. As a member of the Wisconsin national guard in a military capacity;

5. As an employe serving solely on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency; or

6. In a position which, under or pursuant to the laws of this state, is designated as a major nontenured policymaking or advisory position, or is designated as a policymaking or advisory position the performance of the duties of which does not ordinarily require more than 8 hours per week.

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

1. By an individual receiving work relief or work training as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision

thereof, unless otherwise required as a condition for participation by the unit or organization in such program;

2. In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

3. By an inmate of a custodial or penal institution.

(h) "Employment" as applied to work for a nonprofit organization, except as such organization duly elects otherwise with the department's approval, does not include service:

1. In the employ of a church or convention or association of churches;

2. In the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

3. By a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

(i) "Employment" as applied to work for an educational institution, except as such institution duly elects otherwise with the department's approval, does not include service:

1. By a student who is enrolled and is regularly attending classes at such institution; or

2. By the spouse of such a student, if given written notice at the start of such service, that the work is under a program to provide financial assistance to the student and that the work will not be covered by any program of unemployment compensation.

(j) "Employment" as applied to work for a given employer, except as such employer duly elects otherwise with the department's approval, does not include service:

1. By an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program and such institution has so certified to the employer, except as to a program established

by or on behalf of an employer or group of employers;

2. As a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school;

3. As an intern in the employ of a hospital by an individual who has completed a 4-year course in a medical school;

4. In the employ of a hospital by a patient of such hospital; or

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

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

1. In agricultural labor unless performed for an employer subject to this chapter under sub. (4) (c) or (i);

2. As a domestic in the employ of an individual in such individual's private home, or as a domestic in the employ of a local college club or of a local chapter of a college fraternity or sorority, unless performed for an individual, club or chapter which is an employer subject to this chapter under sub. (4) (d) or (i);

3. As a caddy on a golf course;

4. As an individual selling or distributing newspapers or magazines on the street or from house to house;

5. With respect to which unemployment compensation is payable under the federal railroad unemployment insurance act (52 Stat. 1094);

6. By an individual for a person as an insurance agent or an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commissions;

7. By an individual for a person as a real estate agent or as a real estate salesperson, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

8. As an unpaid officer of a corporation or association;

9. Covered by any other unemployment compensation law pursuant to a reciprocal arrangement made by the department under s. 108.14 (8m);

10. For an employer who would otherwise be subject to this chapter solely because of sub. (4)

(f), if and while the employer, with written notice to and approval by the department, duly covers under the unemployment compensation law of another jurisdiction all services for such employer which would otherwise be covered under this chapter;

11. By an individual in the employ of the individual's son, daughter or spouse, and by an individual under the age of 18 for his or her parent; or

12. In any type of maritime service specifically excluded from coverage under the federal unemployment tax act.

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

1. Service performed by an individual:

a. While regularly attending an educational institution and carrying at least a half-time schedule, in any week in which such individual worked for the given employer not more than 24 hours; or

b. Solely within the customary vacation days or periods of the educational institution last attended unless the individual has graduated from that institution and does not enter any educational institution in the next succeeding school term after the expiration of such vacation days or period.

2. Employment by an employer who is engaged in the canning of fresh perishable fruits or vegetables within a given calendar year of an employe who has been employed by such employer within fewer than the number of weeks of employment specified in s. 108.04 (4) (a) and solely within the active canning season or seasons, as determined by the department, of the establishment in which the employe has been employed by such employer, unless the employe had earned wages for services performed for one or more other covered employers, and submits adequate evidence of such wages, of \$200 or more during the 52 weeks preceding the employe's first week of employment by the canning employer ending within that year.

(m) If the remuneration for any employment excluded under other paragraphs of this subsection is subject to, or at any time after November 1, 1977 is made subject to the federal unemployment tax act, such exclusion under this chapter shall not apply to that remuneration during any period that such remuneration is subject to the federal unemployment tax act, except as provided in s. 108.14 (8m) (b).

(n) If any employment excluded under other paragraphs of this subsection are required by the federal unemployment tax act, the social security act, or any other federal law, to be

employment covered by this chapter as a condition for approval of this chapter for full tax credit against the tax imposed by the federal unemployment tax act, such exclusion shall not apply under this chapter.

(6) **WAGES.** "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 department) 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, and any other similar advantage received from the individual's employing unit or directly with respect to work for it; 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. Tips shall be counted as "wages" solely for benefit purposes.

(7) **AVERAGE WEEKLY WAGE.** An employe's "average weekly wage" with respect to a given employer and benefit computation is the amount obtained by dividing the employe's number of weeks of employment by such employer, within the base period, which have not been used in a previous benefit computation into the total gross wages paid for such employment.

(8) **PAYROLL.** (a) An employer's "payroll" for a period shall include all wages paid within that period to the employer's employes for their "employment" by him or her. It shall also include all wages for employment which is excluded under sub. (5) (L) if such wages:

1. Are subject to a tax under the federal unemployment tax act; and

2. Are not subject to contributions under any other unemployment compensation law.

(b) Notwithstanding par. (a), an employer's "payroll" for any calendar year after 1975 includes only the first \$6,000 of wages paid by the employer during such year to an individual with respect to "employment", including any employment covered by the unemployment compensation law of any other state.

(c) If the federal unemployment tax is amended to apply to a higher amount of wages (paid to an individual during a calendar year) than the amount specified in par. (b), then such higher amount shall likewise apply under par. (b), as a substitute for the amount there specified, starting with the same period to which such federal amendment first applies.

(9) **FUND.** "Fund" means the unemployment reserve fund established in s. 108.16.

(10) **EMPLOYER'S ACCOUNT.** "Employer's account" means a separate account in the fund,

reflecting the employer's experience with respect to contribution credits and benefit charges under this chapter.

**(11) RESERVE PERCENTAGE.** "Reserve percentage" shall for contribution purposes refer to the status of an employer's account, as determined by the department as of the applicable "computation date". In calculating an employer's net reserve as of any computation date, his account shall be charged with benefits paid on or before said date, and shall be credited with contributions, on his payroll through said date, if paid by the close of the month which follows said date or if paid pursuant to s. 108.18 (7) and within the period therein specified. The employer's "reserve percentage" means his account's net reserve as of the computation date, stated as a percentage of his "payroll" in the year ending on such date or in the year applicable under s. 108.18 (6).

**(11m) COMPUTATION DATE.** "Computation date" means that date as of the close of which the department computes reserve percentages and determines contribution rates for the next calendar year. The computation date shall be June 30, starting in 1963.

**(12) WEEK.** "Week" means calendar week, starting Sunday and ending Saturday; but, where an employe starts a working shift on a given Saturday, all his hours and pay for that shift shall be counted in the calendar week which includes that Saturday.

**(13) WEEKS OF EMPLOYMENT.** An employe's "weeks of employment" by an employer means all those weeks in which the employe has performed any wage-earning services for the employer in employment subject to this chapter and, when requested by the employe, all those weeks for which the employe's vacation pay or dismissal or termination pay was allocable as wages for benefit purposes and for which benefits were not paid.

**(14) CREDIT WEEK.** "Credit week" means a week of employment (of an employe by an employer) counted in computing benefits under s. 108.06.

**(15) WEEKLY BENEFIT RATE.** An employe's "weekly benefit rate" from a given employer means the amount computed in accordance with s. 108.05.

**(16) PARTIAL UNEMPLOYMENT.** An employe is "partially unemployed" in any week for which he receives some wages but less than his weekly benefit rate.

**(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.

**(20) ADMINISTRATION FUND.** "Administration fund" means the fund established in s. 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 the employ of any person, 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 livestock, 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 any commodity defined as an agricultural commodity in s. 15 (g) of the federal agricultural marketing act, as amended (46 Stat. 1550, s. 3; 12 U.S.C. 1141 j) or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(d) In the employ of the operator of a farm 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, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more

than one-half of the commodity with respect to which such service is performed.

(dm) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in par. (d), but only if such operators produced more than one-half of the commodity with respect to which such service is performed.

(dn) The provisions of pars. (d) and (dm) 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.

(24) **BENEFIT YEAR.** An employee's "benefit year" means the period for which the employee's benefit rights are computed under s. 108.06.

(25) **BASE PERIOD.** An employee's "base period" means the period, immediately preceding the employee's benefit year, which is used to compute his or her benefit rights for that year pursuant to s. 108.06.

(26) **NONPROFIT ORGANIZATIONS.** A "non-profit organization" is an organization described in s. 501 (c) (3) of the internal revenue code which is exempt from federal income tax under s. 501 (a) of said code.

(27) **INSTITUTION OF HIGHER EDUCATION.** "Institution of higher education" means a non-profit or public educational institution which provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree or a program of training to prepare students for gainful employment in a recognized occupation, and admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate.

(28) **GOVERNMENT UNIT.** "Government unit" means:

(a) This state, including all of its constitutional offices, branches of government, agencies, departments, boards, commissions, councils, committees and all other parts and subdivisions of state government, and all public bodies or instrumentalities of this state and one or more other states; and

(b) Any school district, county, city, village, town and any other public corporation or entity,

any combination thereof and any agency of any of the foregoing, and any public body or instrumentality of any political subdivision of this state and one or more other states or one or more political subdivisions of one or more other states.

(29) **SCHOOL DISTRICT.** "School district" means any public agency operating one or more public schools, other than institutions of higher education. "Public school" means a school which is supported wholly or substantially from public funds.

**History:** 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133.

**Cross Reference:** See 613.81 for exemption for employees of hospital service corporations.

An employe can at the same time be an employer under 108.02 (3) (a), Stats. 1967, and if he is an employer, he is responsible for unemployment compensation to his employes. (3) (b) may apply to the employe himself but not to his employes. *Price County Telephone Co. v. Lord*, 47 W (2d) 704, 177 NW (2d) 904.

Under (3) the status of employe must be found under (a) before applying the tests under (b). The agency must state the reasons for its conclusions. The agency may apply a "proprietary interest" test in applying (3) (b) 2. *Transport Oil, Inc. v. Cummings*, 54 W (2d) 256, 195 NW (2d) 649.

Institutions of higher education, including VTAE districts, are included within the unemployment compensation act by reason of 26 U.S.C.A., sec. 3309 (a) and (d). 61 Atty. Gen. 18

**108.03 Payment of benefits. (1)** Benefits shall be paid to each unemployed and eligible employe from his employer's account, under the conditions and in the amounts stated in (or approved by the department pursuant to) this chapter, and at such times, at such places, and in such manner as the department may from time to time approve or prescribe.

(2) The benefit liability of each employer's account shall begin to accrue under s. 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.

(3) When an employer, after due notice of a benefit claim, has conceded liability or failed to file the required report, or has failed to raise any eligibility question in objection to such claim, any benefits allowable under any resulting benefit computation shall, unless the department has taken administrative notice of any fact indicating the claimant's ineligibility, be promptly paid. Any eligibility question in objection to such claim thereafter raised by the employer shall not affect benefits paid prior to the end of the week in which a determination is issued as to such eligibility question.

**History:** 1971 c. 53; 1975 c. 343.

**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 employing unit 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:

1. While he is physically unable to work, or substantially unavailable for work, if his employment with such employer was suspended by the employe or by the employer or was terminated by such employer because the employe was physically unable to do, or unavailable for, his work; or

2. While he is on a voluntary leave of absence granted for a definite period, until such period has ended or until the employe has returned to work, whichever occurs first.

(e) An individual who is self-employed shall not be eligible for benefits for any week in which he has worked at his self-employment, unless he establishes to the satisfaction of the department that in view of labor market conditions he has made an active and bona fide search for employment.

(f) If an employe is required by law to have a license, issued by a governmental agency, to perform his customary work for an employer, the employe shall not be eligible for benefits from the employer's account where the employe's employment was suspended or terminated because his license has been suspended, revoked or not renewed due to his own fault, until he has a valid license to perform such work.

(g) If an individual claims benefits based on the individual's employment by: 1) a partnership, if a one-half or greater ownership interest in the partnership is or during such employment was owned or controlled, directly or indirectly, by the individual's spouse or child, or by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them; or 2) a corporation, if one-half or more of the ownership interest, however designated or evidenced, in the corporation is or during such employment was owned or controlled, directly or indirectly, by the individual's spouse or child, or by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them; or 3) a corporation, if one-fourth or more of the ownership interest, however designated or evidenced, in the corporation is or during such employment was owned or controlled, directly or indirectly, by the individual:

1. The corporate or partnership employer shall so inform the department on its reports as to such individual for benefit purposes; and

2. The individual shall so report, when claiming benefits; and

3. The individual's credit weeks based on such employment shall, if more than 5, be reduced to 5.

**(2) REGISTRATION FOR WORK.** (a) An employe shall be deemed eligible, for waiting period or benefit purposes, as to any given week for which he receives no wages, only if he has within such week registered for work in such manner as may then be prescribed by department rules; provided that, if the department finds that there are conditions under which an employe cannot reasonably be required to comply with the foregoing registration requirement, the department 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 department may from time to time prescribe.

(b) Any claimant, thus registered, may also be required at any time to make such other efforts to secure work as the department may reasonably direct under the circumstances, and to supply proper evidence thereof; and shall, if he fails without good cause to do so, be ineligible for each week such failure continues.

(c) A claimant who earns or receives wages for one or more weeks of unemployment may be required, pursuant to department rules, to register and be available for work in order to be or remain eligible for benefits for any such week.

**(3) WAITING PERIOD.** The first week of an employe's benefit year shall be his "waiting period" for that year.

**(3m) PAYMENT OF WAITING PERIOD WEEK.** Benefits, from a claimant's remaining benefit credits, shall be paid to the claimant for his or her waiting period week if the claimant becomes eligible for benefits for a subsequent week of unemployment within that benefit year and is otherwise eligible for benefits for the waiting period week. There shall be no waiting period for any claim with a benefit year which commences during or after the 2nd week ending in January 1977.

**(4) QUALIFYING CONDITIONS.** (a) An employe shall not be eligible to start a benefit year with any given week of unemployment unless he or she has had a total of 17 or more "weeks of employment" from one or more employers within the 52 weeks preceding that week or within those 52 weeks plus the number of any weeks over 7 (occurring within those 52 weeks) for which he or she received temporary total disability payments under ch. 102, or back pay within the meaning and limits of s. 108.05 (6). The number of "weeks of employment" required to start a new benefit year is reduced to 16 weeks beginning in the 2nd week ending in 1977 and is reduced to 15 weeks beginning in the first week ending in 1978.

(b) There shall be counted toward the "weeks of employment" required by par. (a) any federal service, within the relevant period, which is assigned to Wisconsin under an agreement pursuant to 5 USC 8501 to 8525.

(c) An employe is not eligible to start a new benefit year unless at least one of the required "weeks of employment" is a week in which the employe has performed some actual wage-earning services subsequent to the start of any previous benefit year.

(5) **DISCHARGE FOR MISCONDUCT.** An employe's eligibility, for benefits based on those credit weeks then accrued with respect to an employing unit, shall be barred for any week of unemployment completed after he has been discharged by the employing unit 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 3 next following weeks.

(6) **DISCIPLINARY SUSPENSION.** 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 as follows:

(a) If the suspension was for misconduct connected with his employment, he shall be ineligible from the given employer's account for each such week and ineligible from other previous employer accounts for the first 3 such weeks.

(b) If the suspension was for other good cause connected with his employment, he shall be ineligible for the first 3 such weeks.

(7) **VOLUNTARY TERMINATION OF EMPLOYMENT.** (a) If an employe terminates his or her employment with an employing unit, the employe shall be ineligible for any benefits for the week of termination and thereafter until he or she has again been employed within at least 4 weeks and has earned wages of at least \$200, except as otherwise provided in this subsection.

(am) Paragraph (a) shall not apply if the department determines that the suspension or termination of the claimant's employment was in lieu of a suspension or termination by the employer of another employe's employment. The claimant shall not be deemed unavailable for the claimant's work with the employer by reason of such suspension or termination.

(b) Paragraph (a) shall not apply if the department determines that the employe terminated his employment with good cause attributable to the employing unit.

(c) Paragraph (a) shall not apply if the department determines that the employe terminated his employment but had no reasonable

alternative because he was physically unable to do his work or because of the health of a member of his immediate family; but if the department determines that he is physically unable to work or substantially unavailable for work, he shall be ineligible while such inability or unavailability continues.

(d) The requalifying employment and work requirements of par. (a) shall not apply if the department determines that the employe terminated his or her employment to accept a recall to work for a former employer within 52 weeks after having last worked for such employer.

(e) Paragraph (a) shall not apply if the department determines that the employe accepted work which the employe could have refused with good cause under sub. (8) and terminated such employment with the same good cause and within the first 10 weeks after starting work.

(f) Paragraph (a) shall not apply if the department determines that the employe terminated his employment because he was transferred by his employing unit to work paying less than two-thirds of his immediately preceding wage rate with the employing unit; provided that he shall be ineligible for benefits for the week of termination and the 4 next following weeks.

(g) Paragraph (a) shall not suspend an employe's eligibility for benefits based on employment for other previous employers if the department determines that the employe:

1. Maintained a temporary residence near the employment terminated; and

2. Maintained a permanent residence in another locality; and

3. Terminated such employment and returned to his permanent residence because the work available to him had been reduced to less than 20 hours per week in at least 2 consecutive weeks.

(h) 1. Any benefits paid based on the employment terminated to which par. (a) is applied shall be charged against the fund's balancing account; but the employer shall be recognized as an interested party.

2. Subdivision 1 shall not apply if the employer is exempt from the contribution requirements of ss. 108.17 and 108.18 under s. 108.15 or 108.151.

(i) Paragraph (a) shall not apply if the department determines that the employe terminated because the employer made employment, compensation, promotion or job assignments contingent upon the employe's consent to sexual contact or sexual intercourse as defined in s. 940.225 (5).

(8) **SUITABLE WORK.** (a) An employe who fails either to apply for work when notified by a public employment office or to accept work

when offered shall, if the failure was without good cause as determined by the department, be ineligible for the week in which such failure occurs and thereafter until the employe has again been employed within at least 4 weeks and has earned wages equaling at least \$200.

(b) An employe who fails to return to work with a former employer who has duly recalled the employe within 52 weeks after having last worked for such employer shall, if the failure was without good cause as determined by the department, be ineligible for benefits from that employer's account for the week in which such failure occurs and thereafter until the employe has again been employed within at least 4 weeks and has earned wages equaling at least \$200. If the employe received actual notice of the recall to work, par. (a) shall apply rather than this paragraph.

(c) An employe shall have good cause under par. (a) or (b) if the department determines that the failure related to work at a lower grade of skill or significantly lower rate of pay than applied to the employe on one or more recent jobs, and that the employe had not yet had a reasonable opportunity, in view of labor market conditions and the employe's degree of skill, but not to exceed 6 weeks after the employe became unemployed, to seek a new job substantially in line with the employe's prior job skill and rate of pay.

(d) If the department determines that a failure under this subsection has occurred with good cause, but that the employe is physically unable to work or substantially unavailable for work, the employe shall be ineligible for the week in which such failure occurred and while such inability or unavailability continues.

**(9) 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 (including arrangement and number) 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.

**(10) LABOR DISPUTE.** An employe who has left (or partially or totally lost) his employment with an employing unit 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.

**(10m) LABOR DISPUTE PROGRESS.** If the active progress of such a strike or other bona fide labor dispute ends on a Sunday, it shall not be deemed under sub. (10) to be in active progress in the calendar week beginning on that Sunday as to any employe who did not normally work on Sundays in such establishment.

**(11) FRAUDULENT CLAIMS.** In addition to any other provisions, including penalties, which may apply under this chapter:

(a) If a claimant, in filing his claim for any week, conceals any part of his wages earned in or paid or payable for that week, or conceals his refusal (within that week) of a job offer or any other material fact relating to his eligibility for benefits, so much of any benefit payment as was paid because of such concealment shall be recovered as an overpayment.

(b) Any such claimant may also, by a determination issued under section 108.09, be required, as to each such act of concealment, to forfeit such benefits as would otherwise become payable to him for not more than 3 weeks of compensable unemployment completed not later than 2 years following the date of such determination. The benefits thus forfeited by a claimant shall be duly charged against his benefit credits and against the proper employer's account and shall be credited to the fund's balancing account.

**(12) PREVENTION OF DUPLICATE PAYMENTS.**

(b) Any individual who receives, through the department, any other type of unemployment benefit or allowance for a given week is ineligible for benefits for that same week under this chapter, except as specifically required for conformity with the federal trade act of 1974 (P.L. 93-618).

(c) Any individual who receives unemployment compensation for a given week under any federal law through any federal agency shall be ineligible for benefits paid or payable for that same week under this chapter.

(d) Any individual who receives unemployment compensation for a given week under the law of any other state (with no use of benefit credits earned under this chapter) shall be ineligible for benefits paid or payable for that same week under this chapter.

(e) Any individual who receives a temporary total disability payment under ch. 102 for a given week shall be ineligible for benefits paid or payable for that same week under this chapter.

**(13) NOTIFICATION AS TO INELIGIBILITY.**

(a) The department may take administrative notice of any fact indicating an employee's ineligibility, whether or not the employing unit has reported such fact or asserted the employee's ineligibility under this chapter.

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

(c) In case an employer, after a request therefor has been duly mailed to him, 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, or if such report is received more than 7 days after such mailing:

1. The department may compute and proceed to pay the benefits thus claimed, based on the claimant's statements and any other information then available.

2. If benefits are thus computed, the employer shall be liable for a tardy filing fee of \$15, to be paid to the department and credited to the administration fund, except where the employer later files the required report and satisfies the department that it was tardy because of circumstances beyond the employer's control.

(d) As to any benefits paid from one employer's account by reason of another employer's failure to file duly a report requested from it by the department, any benefits thus paid shall be credited to the one employer's account and charged to the other employer's account. Filing of a tardy or corrected report shall not affect benefits paid prior to the end of the week in which the department makes a recomputation of the benefits allowable or prior to the end of the week in which a determination is issued as to any eligibility question raised by the report or by the other employer.

(e) Whenever an individual claims benefits based on his employment by a government unit, it shall, if it believes that sub. (15) as to

retirement payments may apply, so notify the department. In any such case the Wisconsin retirement fund and the state teachers retirement system shall, on request from the department, report to it the relevant facts, and the department shall apply sub. (15) accordingly.

**(14) WAR-TIME APPLICATION OF SUBSECTION (7) OR (8).** If the department finds that the official war-time manpower policies of the United States are or may be materially hampered, in any clearly definable class of cases, by any application of sub. (7) or (8), so as to interfere with the effective war-time use of civilian manpower in Wisconsin, the department may by general rule, after public hearing, modify or suspend such application accordingly.

**(15) RETIREMENT PAYMENTS.** If an employe claims benefits based on his past work for a covered employer, but such employer duly notifies the department pursuant to sub. (13), and the department determines, that the employe is receiving or has claimed and will receive, or has been retired at such employer's compulsory retirement age and could claim and receive, retirement payments, as to any week covered by his benefit claim, under a group retirement system to whose financing any employing unit has substantially contributed or under a government retirement (or old-age insurance) system or under both, then the benefits thus claimed:

(a) Shall be determined pursuant to sub. (7), if the employe left his employment with that employer to retire before he reached the compulsory retirement age used by that employer.

(b) Shall not be denied for any such week, from the account of such employer, if the employe is otherwise eligible and left or lost his employment with that (or any other) employing unit because he had reached the compulsory retirement age used by the employing unit in question.

(c) Shall, if payable, be determined for any such week by treating as if it were wages:

1. That amount of the employe's weekly rate of retirement payments which has been financed by his employer or others (and not by the employe's own contributions), under any retirement system where such amount is separately calculated or can be estimated with reasonable accuracy, provided acceptable evidence as to such amount is furnished the department.

2. All but \$30 of the employe's weekly rate of retirement payments under one or more other retirement systems.

(d) Shall not be affected by any retirement payments made on other than a regular periodic instalment basis.

**(16) APPROVED TRAINING.** (a) Benefits shall not be denied, nor shall sub. (1) (e) or (g)

3, (2) or (8) operate to deny benefits to any otherwise eligible individual for any week because he is enrolled in a full-time course of vocational training or basic education which is a prerequisite to such training, provided it is determined that:

1. The individual possesses aptitudes or skills which can be usefully supplemented by training; and

2. The course is expected to increase his opportunities to obtain employment, is of not more than 10 months duration, does not grant substantial credit leading to a bachelor's or higher degree, and is given by a school established under s. 38.02 or other training institution approved by the department; and

3. The individual can reasonably be expected to complete the training course successfully, and to find and accept work; and

4. The individual attended the training course full time during the given training week or had good cause for his failure to do so, and is making satisfactory progress in the course. The department may require the training institution to file a certification showing the individual's attendance and progress.

(b) If a claimant receives or will receive any type of allowance under any state or federal law because the claimant is in training to which par. (a) applies, the weekly amount of such allowance, excluding allowances for needed transportation, equipment or supplies, or for added living costs because the training requires the claimant to live away from the claimant's residence, shall be treated as if it were wages.

**(17) EMPLOYEES OF EDUCATIONAL INSTITUTIONS.** (a) An employe who performs services for a nonprofit or public educational institution in an instructional, research, or principal administrative capacity is ineligible for benefits based on such services for any week of unemployment which occurs during a period between 2 successive academic years or 2 regular terms, whether or not successive, if such employe performed such services in the first such academic year or term and if there is a contract or a reasonable assurance that such employe will perform services in any such capacity for a nonprofit or public educational institution in the 2nd such academic year or term.

(b) An employe who performs services for a nonprofit or public educational institution, other than an institution of higher education and other than in an instructional, research or principal administrative capacity, is ineligible for benefits based on such services for any week of unemployment which occurs during a period between 2 successive academic years or terms if such employe performed such services in the first such academic year or term and there is a

reasonable assurance that such employe will perform such services in the 2nd such academic year or term.

(c) An employe who performs services as described in par. (a) or (b) is ineligible for benefits based on such services for any week of unemployment which occurs during an established and customary vacation period or holiday recess if such employe performed such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such employe will perform such services in the period immediately following such vacation period or holiday recess.

(d) Paragraph (a) or (b) and par. (c) shall apply to an employe who performs services as described in par. (a) or (b) for an educational service agency in an educational institution. An educational service agency is a government agency or government entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

**(18) ILLEGAL ALIENS.** (a) An employe who performed services while such employe was an alien shall be ineligible for benefits based on such services unless such employe is an alien who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203 (a) (7) or 212 (d) (5) of the federal immigration and nationality act. All claimants shall be uniformly required to provide information as to whether they are citizens and, if they are not, any determination denying benefits under this subsection shall not be made except upon a preponderance of the evidence.

(b) Any amendment of s. 3304 (a) (14) of the federal unemployment tax act specifying conditions other than as stated in par. (a) for denial of benefits based on services performed by aliens, or changing the effective date for required implementation of par. (a) or such other conditions, which is a condition of approval of this chapter for full tax credit against the tax imposed by the federal unemployment tax act, shall be applicable to this subsection.

**(19) PROFESSIONAL ATHLETES.** An employe who performs services substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, shall be ineligible for benefits for any week of unemployment which occurs during the period between 2 successive sport seasons or similar periods if the employe performed such services

in the first such year or period and there is a reasonable assurance that such employe will perform such services in the 2nd such year or period.

**History:** 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418.

Employes at Wisconsin terminals of trucking companies laid off as a result of a strike at the Chicago terminal are eligible for unemployment compensation because the Chicago terminal is a separate establishment. *Liberty Trucking Co. v. ILHR Dept. 57 W (2d) 331, 204 NW (2d) 457*

In (9) the words "new work" include indefinitely laid off employes who are recalled as well as new job applicants, and applies to both (8) (a) and (8) (af). The department must determine whether a laid-off employe had good cause for refusing work on a different shift with a higher pay scale. *Allen-Bradley Co. v. ILHR Dept. 58 W (2d) 1, 205 NW (2d) 129*.

When a union which had given a notice of contract termination withdrew it before a strike began, there was no labor dispute in progress when the employer later closed the plant. *Kansas City Star Co. v. ILHR Dept. 60 W (2d) 591, 211 NW (2d) 488*.

Sub (10) discussed in concurring and dissenting opinions on rehearing. *Kansas City Star Co. v. ILHR Dept. 62 W (2d) 783, 217 NW (2d) 666*.

An employe was guilty of misconduct as a matter of law under (5) and (6) because his reaction put a dangerous object in the air and thereby endangered the safety of anyone in its path. *McGraw-Edison Co. v. ILHR Dept. 64 W (2d) 703, 221 NW (2d) 677*.

Where the self-employed claimant was both the employe and the employer he could not disassociate the fault or misfortune of himself as an employer so as to become eligible for

unemployment benefits under (7) (b). *Fish v. White Equip. Sales & Service, Inc. 64 W (2d) 737, 221 NW (2d) 864*.

Masons unemployed because their employer locked out masons' laborers were ineligible under (10) for benefits because masons would be working "but for" a bona fide labor dispute. *De Leeuw v. DILHR, 71 W (2d) 446, 238 NW (2d) 706*.

Employer's grooming code may be justified notwithstanding employes' constitutional right to choice of hairstyle. *Consolidated Const. Co., Inc. v. Casey, 71 W (2d) 811, 238 NW (2d) 758*.

The policy of (15) is generally to prevent the overlap of pension and unemployment benefits. *McGraw-Edison Co. v. DILHR, 72 W (2d) 99, 240 NW (2d) 148*.

Where record of a meeting indicated that employes would not be rehired, (10) did not apply and employes were eligible for benefits subsequent to discharge. *Carley Ford, Lincoln, Mercury v. Bosquette, 72 W (2d) 569, 241 NW (2d) 596*.

"Fault" under (1) (f), in context of employe's failure to pass licensing examination, means blameworthy or negligent conduct, not incompetence. *Milwaukee County v. DILHR, 80 W (2d) 445, 259 NW (2d) 118*.

**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: [See Figure 108.05 (1) following]

Figure 108 05 (1)

**SCHEDULE**

Line	Average Weekly Wage Class	Weekly Benefit Rate	Line	Average Weekly Wage Class	Weekly Benefit Rate
1	Under \$50.01	None	59	164.01 to 166.00	83
2	\$50.01 to 52.00	\$26	60	166.01 to 168.00	84
3	52.01 to 54.00	27	61	168.01 to 170.00	85
4	54.01 to 56.00	28	62	170.01 to 172.00	86
5	56.01 to 58.00	29	63	172.01 to 174.00	87
6	58.01 to 60.00	30	64	174.01 to 176.00	88
7	60.01 to 62.00	31	65	176.01 to 178.00	89
8	62.01 to 64.00	32	66	178.01 to 180.00	90
9	64.01 to 66.00	33	67	180.01 to 182.00	91
10	66.01 to 68.00	34	68	182.01 to 184.00	92
11	68.01 to 70.00	35	69	184.01 to 186.00	93
12	70.01 to 72.00	36	70	186.01 to 188.00	94
13	72.01 to 74.00	37	71	188.01 to 190.00	95
14	74.01 to 76.00	38	72	190.01 to 192.00	96
15	76.01 to 78.00	39	73	192.01 to 194.00	97
16	78.01 to 80.00	40	74	194.01 to 196.00	98
17	80.01 to 82.00	41	75	196.01 to 198.00	99
18	82.01 to 84.00	42	76	198.01 to 200.00	100
19	84.01 to 86.00	43	77	200.01 to 202.00	101
20	86.01 to 88.00	44	78	202.01 to 204.00	102
21	88.01 to 90.00	45	79	204.01 to 206.00	103
22	90.01 to 92.00	46	80	206.01 to 208.00	104
23	92.01 to 94.00	47	81	208.01 to 210.00	105
24	94.01 to 96.00	48	82	210.01 to 212.00	106
25	96.01 to 98.00	49	83	212.01 to 214.00	107
26	98.01 to 100.00	50	84	214.01 to 216.00	108
27	100.01 to 102.00	51	85	216.01 to 218.00	109
28	102.01 to 104.00	52	86	218.01 to 220.00	110
29	104.01 to 106.00	53	87	220.01 to 222.00	111
30	106.01 to 108.00	54	88	222.01 to 224.00	112
31	108.01 to 110.00	55	89	224.01 to 226.00	113
32	110.01 to 112.00	56	90	226.01 to 228.00	114
33	112.01 to 114.00	57	91	228.01 to 230.00	115
34	114.01 to 116.00	58	92	230.01 to 232.00	116
35	116.01 to 118.00	59	93	232.01 to 234.00	117
36	118.01 to 120.00	60	94	234.01 to 236.00	118
37	120.01 to 122.00	61	95	236.01 to 238.00	119
38	122.01 to 124.00	62	96	238.01 to 240.00	120
39	124.01 to 126.00	63	97	240.01 to 242.00	121
40	126.01 to 128.00	64	98	242.01 to 244.00	122
41	128.01 to 130.00	65	99	244.01 to 246.00	123
42	130.01 to 132.00	66	100	246.01 to 248.00	124
43	132.01 to 134.00	67	101	248.01 to 250.00	125
44	134.01 to 136.00	68	102	250.01 to 252.00	126
45	136.01 to 138.00	69	103	252.01 to 254.00	127
46	138.01 to 140.00	70	104	254.01 to 256.00	128
47	140.01 to 142.00	71	105	256.01 to 258.00	129
48	142.01 to 144.00	72	106	258.01 to 260.00	130
49	144.01 to 146.00	73	107	260.01 to 262.00	131
50	146.01 to 148.00	74	108	262.01 to 264.00	132
51	148.01 to 150.00	75	109	264.01 to 266.00	133
52	150.01 to 152.00	76	110	266.01 to 268.00	134
53	152.01 to 154.00	77	111	268.01 to 270.00	135
54	154.01 to 156.00	78	112	270.01 to 272.00	136
55	156.01 to 158.00	79	113	272.01 to 274.00	137
56	158.01 to 160.00	80	114	274.01 to 276.00	138
57	160.01 to 162.00	81	115	276.01 or more	139
58	162.01 to 164.00	82			

Note: The Department of Industry, Labor and Human Relations is authorized to amend the above schedule semiannually by 108 05 (2). The schedule printed above applies to benefit determinations whose first benefit check is issued in the half year starting July 3, 1978

**(1m) FINAL PAYMENTS IN CERTAIN CASES.** Whenever an employee's benefit credits from an employer's account under a given computation are nearly exhausted, so that paying the benefits normally due for a given week of unemployment would reduce such credits below the employee's applicable weekly benefit rate, the actual benefits for such week shall equal all benefit credits remaining from that employer's account under such computation.

**(2) SEMIANNUAL ADJUSTMENT OF MAXIMUM AND MINIMUM BENEFIT RATES.** (a) This chapter's maximum weekly benefit rate, as to weeks of unemployment in a given half year starting January 1 or July 1 shall be based on the "average wages per average week" of the preceding "base year", ended 6 months before the starting date of the given half year, pursuant to this subsection.

(b) The department shall determine by each December 1 and June 1 for the last completed "base year", ended June 30 or December 31 respectively, from reports to the department and corrections thereof filed within 3 months after the close of that "base year" by employers covered by this chapter, other than government units, as to their employes in employment covered by this chapter:

1. The gross wages thus reported by all such employers as paid in that year for such employment; and

2. The average of the 12 mid-month totals of all such employes in employment thus reported for that year; and

3. The quotient obtained by dividing said gross wages by said average; and

4. The amount, called "average wages per average week" in this section, obtained by dividing such quotient by 52.

(c) This chapter's maximum weekly benefit rate, as to weeks of unemployment in the ensuing half year, shall equal the result obtained by rounding 66-2/3% of the "average wages per average week" to the nearest multiple of one dollar, and the minimum weekly benefit rate shall be an amount which is 19% of the maximum rate and adjusted, if not a multiple of one dollar, to the next lower multiple of one dollar.

(d) Whenever the new maximum rate is, or the new maximum and minimum rates are, higher or lower than such rate, or rates if both are affected, in the current benefit rate schedule, the department shall change the starting lines and wage classes so that the first line will show that average wages below the least amount necessary to qualify for the minimum rate will have no benefit rate and the 2nd line will show the new minimum rate and the average weekly wage class to which it applies and shall change the closing lines so that the next to last line will

show a benefit rate \$1 less than the new maximum rate and the average weekly wage class to which it applies and the last line will show the new maximum rate and an average weekly wage class which starts one cent above the higher wage figure of the next to last line and ranges upward without limit. The intervening lines of the schedule shall be consecutively numbered with a separate line for each \$1 change in benefit rate and the applicable average weekly wage class for each benefit rate shall have as its higher figure an amount equal to 2 times the benefit rate and a lower figure one cent above the higher figure on the preceding line.

(e) The department shall have officially published within 10 days, the "average wages per average week" and the corresponding maximum and minimum weekly benefit rates thus determined by it, and the resulting schedule of average weekly wage classes and weekly benefit rates, which shall then apply to all weeks of unemployment in the ensuing half year.

(f) The department shall certify such schedule to the revisor of statutes, who shall when publishing the statutes include the latest such schedule then available.

(g) Any change in the minimum benefit rate does not affect benefits payable to a claimant for a benefit year that begins prior to the effective date of a new rate schedule.

(h) Whenever January 1 or July 1 does not fall on Saturday, Sunday or Monday, any change in weekly benefit rates under this subsection shall apply after the first ensuing Sunday.

**(3) BENEFITS FOR PARTIAL UNEMPLOYMENT.**

(a) If an eligible employee's total wages for a given week are less than his applicable weekly benefit rate, but are at least one half of said rate, he shall be paid one half of his weekly benefit rate for such week.

(b) If an eligible employee's total wages for a given week are less than one-half of his applicable weekly benefit rate, he shall be paid his full weekly benefit rate for such week.

**(4) HOLIDAY OR VACATION PAY.** (a) An employee's holiday pay for a given week shall, for benefit purposes, be treated as wages for that week only if it has become definitely payable to the employee within 4 days after the close of that week.

(b) An employee's vacation pay shall, for benefit purposes, be treated as wages for a given week only if it has by the close of that week become definitely allocated and payable to the employee for that week and he has had due notice thereof, and only if such pay (until fully assigned) is allocated:

1. At not less than the employee's approximate full weekly wage rate; or



2. Pursuant to any other reasonable basis of allocation, including any basis commonly used in computing the vacation rights of employes.

(5) **TERMINATION PAY.** An employe's dismissal or termination pay shall, for benefit purposes, be treated as wages for a given week only if it has by the close of that week become definitely allocated and payable to the employe for that week, and he has had due notice thereof, and only if such pay (until fully assigned) is allocated:

(a) At not less than the employe's approximate full weekly wage rate; or

(b) Pursuant to any other reasonable basis of allocation, including any basis commonly used in computing the termination pay of employes.

(6) **BACK PAY.** A payment to an individual by an employing unit, which is in the nature of back pay (or in lieu of pay for personal services) for certain past weeks, whether made under a back-pay award or similar decision or otherwise, shall be wages for benefit purposes but only when paid within 104 weeks after the start of the earliest such week.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 29.

#### 108.06 Benefit liability and credits. (1)

(a) Each credit week shall, in computing the employe's total benefit credits, be valued at eight-tenths of the employe's weekly benefit rate as to an employer.

(b) The total benefit credits under any benefit computation, based on its credit weeks and weekly benefit rate as to a given employer, shall be adjusted to the nearest multiple of one-half of such weekly benefit rate.

(c) If the credit weeks available in an employe's base period would allow the employe a total of more than 34 weeks of benefits for total unemployment in a given benefit year, such total shall be reduced to 34 by eliminating the last credits available.

(2) No benefits shall be payable to a claimant, based on credit weeks in the base period, for any week of unemployment occurring after the close of the claimant's benefit year except under s. 108.141.

(3) (a) There shall be payable to an employe, for weeks ending within the benefit year, only those benefits computed for that benefit year based on the credit weeks, other than those canceled under s. 108.04 (5) or reduced under s. 108.04 (1) (g), in the immediately preceding base period. Credit weeks used in a given benefit computation, including any such weeks canceled under s. 108.04 (5) or reduced under s. 108.04 (1) (g), shall not be available for use in any subsequent benefit computation except under s. 108.141.

(b) To compute qualifying employment under s. 108.04 (4), and any other benefit rights, the department shall count all credit weeks with a given employer as if they had occurred consecutively and immediately prior to the last day of any work with that employer.

(4) (a) Except as provided in par. (b), an employe's "base period" shall be the 52 weeks which immediately precede a "valid new claim week", and an employe's "benefit year" shall be the 52 weeks which begin with a "valid new claim week".

(b) If an employe receives temporary total disability payments under ch. 102, or back pay within the meaning and limits of s. 108.05 (6):

1. For more than 7 of the 52 weeks preceding a valid new claim week, the base period shall be lengthened by the number of weeks over 7 (occurring within those 52 weeks) for which such payments were received.

2. For more than 17 of the 52 weeks of a benefit year, that benefit year shall be lengthened by the number of weeks over 17 (occurring within those 52 weeks) for which such payments were received.

(5) An employe shall have a "valid new claim week" starting a new benefit year if all the following conditions are met:

(a) The week is not within an unexpired benefit year.

(b) The employe is totally or partially unemployed in that week, and has claimed as to that week pursuant to s. 108.08 (1).

(c) The employe has registered for work pursuant to s. 108.04 (2), if it applies to that week.

(d) As of the start of that week, the employe has qualifying employment pursuant to s. 108.04 (4).

(e) As of the start of that week, the employe has some uncanceled and uncharged credit weeks.

(f) The employe is otherwise eligible as to that week.

History: 1971 c. 53; 1975 c. 343.

#### 108.07 Liability of several employers. (1)

(a) In case a claimant had 2 or more employers in the base period and is otherwise eligible, benefits shall be paid based on the most recent employment in the base period, except as provided in this section.

(b) If the claimant's benefit eligibility is suspended under s. 108.04 as to a given employer and the claimant is otherwise eligible, benefits shall be paid based on the most recent employment in the base period with benefit credits available.

(2) In case a claimant has usually performed services in the same week for 2 or more employers, under an arrangement between such employers, the department may combine the wages and employment from such employers to compute benefit rights as if such wages and employment had been from a single employer, and pay benefits accordingly and prorate the resulting benefit charges between the accounts of such employers by such methods as it deems fair and reasonable. The department may temporarily charge such benefit payments to the fund's balancing account, pending their pro rata allocation to the accounts of such employers.

(3) If the department finds that applying sub. (1) (a) would be grossly inequitable to the claimant it may establish a sequence of payment that is more equitable.

(4) Once a benefit year has been established, the sequence of benefit payments and charges in that benefit year shall not be affected by any later determination that a subsequent employing unit was also a covered employer.

(5) If s. 108.04 (7) (a) applies to an employe as to one or more employers, no benefits shall be paid to him from the account of any such employer, despite subs. (1) (b) and (3), until the employe has used any benefit credits available to him from other employers.

History: 1971 c. 53; 1975 c. 343.

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

(2) The department 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 department may prescribe.

**108.09 Settlement of benefit claims. (1)** FILING. Claims for benefits shall be filed pursuant to general department rules, either at the public employment office for the district or as the department's rules may otherwise direct. Each employer duly notified of a benefit claim shall promptly inform the department in writing as to the employe's weekly wages and credit weeks, and of any eligibility question in objection to such claim together with the reasons therefor. In any case the employe's statement may be taken as to eligibility, weekly wages, and credit weeks.

(2) COMPUTATION AND DETERMINATION. (a) The department shall promptly issue a

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

(b) A department deputy shall issue determinations whenever necessary to resolve any matters which may bar, suspend, terminate or otherwise affect the employe's eligibility for benefits.

(c) A department deputy may set aside or amend a determination at any time on the basis of subsequent information or to correct a technical or clerical mistake, unless a party has filed a timely request for hearing as to the determination.

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

(2r) HEARING REQUEST. Any party to a determination may request a hearing as to any matter in that determination if such request is made in accordance with procedure prescribed by the department and is received by the department within 14 days after a copy of the determination was duly mailed or given to such party, whichever first occurs. An employer cannot request a hearing unless the employer has completed and filed or simultaneously with the request for hearing completes and files any required report as to the employe's eligibility, weekly benefit rate and credit weeks, and cannot request a hearing with respect to benefits already paid either in accordance with the employer's concession of liability or because the employer failed to complete or timely file any required report as to the employe's eligibility, weekly benefit rate and credit weeks.

(3) APPEALS. (a) Unless the 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 department designates or establishes for this purpose.

(b) At the discretion of the department or the appeal tribunal the hearing may be held in more than one location and may be continued, adjourned or postponed from time to time.

(c) If the party requesting a hearing fails to appear at the hearing, the appeal tribunal or an examiner designated for this purpose may issue its decision dismissing the appeal, provided that due notice of the hearing was mailed to the party's last-known address.

(d) 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.

(e) If a party, having failed to appear at a hearing, shows probable good cause for such failure to the appeal tribunal within 7 days after the decision was mailed to such party's last-known address the appeal tribunal may set aside its decision and afford further opportunity to be heard, either before the same or another appeal tribunal.

(f) The appeal tribunal shall dismiss any request for hearing which has not been timely filed unless the party filing such request shows probable good cause that the reason for having failed to file the request timely was beyond the control of such party.

(g) Within 14 days after its decision was mailed to the parties the appeal tribunal may on its own motion amend or set aside its decision and may thereafter make new findings and decision on the basis of evidence previously submitted in such case, or the same or another appeal tribunal may make new findings and a decision after taking additional testimony.

(h) The appeal tribunal may take testimony with regard to whether a party had good cause for failing to appear at a hearing or whether a party's failure to file a timely request for hearing was for a reason beyond the control of such party and may dispose of the case on that ground if it finds that such good cause or reason is not established.

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

**(4) APPEAL TRIBUNALS.** To hear and decide disputed claims, the department shall establish one or more appeal tribunals, each of which shall consist of a salaried examiner who is an employe of the department. No examiner may

hear any case in which the examiner is a directly interested party.

**(5) PROCEDURE.** (a) 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 department 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.

(b) All testimony at any hearing under this section shall be taken down by a stenographer, or recorded by a recording machine, but need not be transcribed unless either of the parties requests a transcript prior to expiration of that party's right to further appeal under this section and pays a fee to the department in advance, the amount of which shall be established by rule of the department. When a transcript is thus furnished one of the parties upon 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.

(c) If the testimony at a hearing was recorded by a recording machine the department may furnish a copy of the tape recording in lieu of a transcript. The fee for obtaining a copy of a tape recording shall be established by rule of the department.

(d) A written synopsis of the testimony and other evidence taken at a hearing, prepared by the appeal tribunal or by an attorney employed by the department, shall be used by the commission in its review of an appeal tribunal decision unless a satisfactory showing is made by any party that the synopsis is not sufficiently complete and accurate to fairly reflect the relevant and material testimony and other evidence taken, except that the commission may direct the preparation of a transcript in any case.

**(6) COMMISSION REVIEW.** (b) Any party may petition the commission for review of an appeal tribunal decision, pursuant to general department rules, if such petition is received by the department within 14 days after the appeal tribunal decision was mailed to the party's last-known address. Promptly after the receipt of a petition, the commission shall dismiss it if not timely at any level or, if timely, may affirm, reverse, change, or set aside the appeal tribunal decision, on the basis of the evidence previously submitted in such case or it may order the taking of additional evidence as to such matters as it may direct and thereafter make its findings and decision.

(c) Within 28 days after a decision of the commission is mailed to the parties, the commission may on its own motion reverse, change, or

set aside the decision for further consideration or remand the case to the department for further proceedings.

(d) The commission may on its own motion, for reasons it deems sufficient, set aside any final deputy's determination or appeal tribunal or commission decision within one year from the date thereof upon grounds of mistake or newly discovered evidence, and may make new findings and a decision, after affording reasonable opportunity for hearing, or it may reinstate the previous findings and decision.

**(7) JUDICIAL REVIEW.** (a) Either party may commence judicial action for the review of a decision of the commission under this chapter after exhausting the remedies provided under this section if the party has commenced such judicial action in accordance with s. 102.23 within 30 days after a decision of the commission is mailed to a party's last-known address.

(b) Any judicial review under this chapter shall be confined to questions of law, and the provisions of ch. 102 with respect to judicial review of orders and awards shall likewise apply to any decision of the commission reviewed under this section. In any such judicial action the commission may appear by any qualified attorney who is a regular salaried employe of the department and has been designated by it for this purpose, or at the commission's request by the department of justice.

(c) If, as a result of judicial review of a commission decision denying an employe's eligibility for benefits, it is finally determined that benefits are payable, they shall be calculated as of the date of the commission's decision.

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

**(9) PAYMENT OF BENEFITS.** (a) Benefits shall be paid promptly in accordance with a deputy's determination or the decision of an appeal tribunal, the commission or a reviewing court, notwithstanding the pendency of the period to request a hearing, to file a petition for commission review or to commence judicial action or the pendency of any such hearing, review or action.

(b) Where such determination or decision is subsequently amended, modified or reversed by

a more recently issued determination or decision, benefits shall be paid or denied in accordance with the most recently issued determination or decision.

(c) If any determination or decision awarding benefits is finally amended, modified or reversed, any benefits paid to the claimant which would not have been paid under such final determination or decision shall be deemed an erroneous payment. Sections 108.16 (2m) and (3) and 108.22 (8) shall apply to the charging and recovery of such erroneous payment.

**History:** 1971 c. 147; 1973 c. 247; 1975 c. 343; 1977 c. 29, 418.

See note to 102.23, citing *Lees v. ILHR Dept. 49 W (2d) 491, 182 NW (2d) 245*.

The findings of the appeal tribunal were conclusive, and could not be enlarged upon by the circuit court. *McGraw-Edison Co. v. ILHR Dept. 64 W (2d) 703, 221 NW (2d) 677*.

**108.10 Settlement of issues other than benefit claims.** 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 s. 108.09 and with respect to which no penalty is provided in s. 108.24, the following procedure shall apply:

**(1)** A deputy designated by the department 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 20 days after such mailing and in accordance with such procedure as the department may by rule prescribe.

**(2)** Any hearing duly requested shall be held before an appeal tribunal established as provided by s. 108.09 (4), and s. 108.09 (3) and (5) shall be applicable to the proceedings before such tribunal. Within 20 days after the appeal tribunal's decision is mailed to the employer's last-known address, the employer may petition the commission for review thereof pursuant to general department rules. On review, the commission may affirm, reverse, change, or set aside the decision of the appeal tribunal on the basis of evidence previously submitted in such case, or set aside the decision and remand the case to the department for further proceedings.

**(3)** The commission's authority to take action as to any issue or proceeding under this section shall be the same as that specified in s. 108.09 (6) (b), (c) and (d).

(4) 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 30 days after such decision was mailed to his last known address. The scope of judicial review, and the manner thereof insofar as applicable, shall be the same as that provided in s. 108.09 (7).

(5) The mailing of determinations and decisions provided in subs. (1) to (4) shall be first class, and may include the use of services performed by the postal department requiring the payment of extra fees.

(6) 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 department only insofar 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.

History: 1973 c. 247; 1975 c. 343; 1977 c. 29

**108.11 Agreement to contribute by employees void.** (1) No agreement by an employe or by employes to pay any portion of the contributions or payments in lieu of 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 s. 108.09 for settling disputed benefit 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.

History: 1973 c. 247.

**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.

**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 department 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.

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

(2) The department 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. A copy of such rules and regulations shall be delivered to every person making application therefor. The department 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.

(2m) In the discharge of their duties under this chapter a member of an appeal tribunal, and any deputy, examiner, commissioner or duly authorized representative of the department may 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 investigation, hearing or other proceeding under this chapter. However, in any investigation, hearing or other proceeding involving the administration of oaths or the use of subpoenas under this subsection due notice shall be given to any interested party involved, who shall be given an opportunity to appear and be heard at any such proceeding and to examine witnesses and otherwise participate therein. Witness fees and other expenses involved in proceedings under this chapter, including a party's traveling expenses, may be allowed by the appeal tribunal or representative of the department at rates specified by general department rules, and shall be paid from the unemployment administration fund.

(3) The department 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 this chapter the department and the state may be represented by any qualified attorney who is a regularly salaried employe of the department or the commission and is designated by it for this purpose or at the commission's request by the department of justice. 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 department in connection with such proceeding may be charged to the administration fund.

(4) The department 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 department 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 department 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) (a) The council on unemployment compensation shall advise the department in carrying out the purposes of this chapter. The council 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.

(b) Under its authority in s. 15.04 (1) (c), the department may appoint employment councils for industries and local districts. Each such council shall be subject to the membership requirements of s. 15.227 (3).

(6) It shall be one of the purposes of this chapter to promote the regularization of employment in enterprises, localities, industries and the state. The department, with the advice and aid of any employment councils appointed under sub. (5) (b) and the council on unemployment compensation, shall take all appropriate steps within its means to reduce and prevent unemployment. To this end the department 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 department 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 department in connection with the administration of this chapter shall be open to public inspection only when and to the extent that the department may allow such inspection as it deems advisable in the interests of effective administration. The department 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.

(8) (a) The department 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 department 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 registration 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 department may consider suitable in effecting 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 department (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) (a) The department 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.

(b) If the federal unemployment tax act is so amended as to make subject thereto remuneration paid for any maritime employment excluded under section 108.02 (5) (k) 12, such exclusion under this chapter shall cease if the department enters into a reciprocal arrangement with respect to such employment pursuant to this paragraph, as of the effective date of such arrangement. The department may enter into reciprocal arrangements with the appropriate agencies of other states with respect to such maritime services, whereby all such services by an individual for a single employer, wherever performed, shall be deemed performed wholly within this state or within any such other state. Any such services thus deemed performed in Wisconsin shall also be deemed "employment" covered by this chapter, and the election requirement of section 108.02 (5) (c) 2 shall not apply.

**(8n)** (a) The department shall enter into a reciprocal arrangement which is approved by the U.S. secretary of labor pursuant to s. 3304 (a) (9) (B) of the federal internal revenue code, to provide more equitable benefit coverage for individuals whose recent work has been covered by the unemployment compensation laws of 2 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 department 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 computing and paying benefits under the law administered by such other agency. Reciprocally, such arrangements may provide for similar acceptance, combination and use by the department of data received from other jurisdictions to compute 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 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.

(e) This state's share of any benefits paid under this subsection shall be charged to the account of each employer by whom the employe was employed in the applicable base period, in proportion to the total amount of wages he or she earned from each employer in such base period, except that if s. 108.04 (5) or (7) (a) would have applied to employment by such an employer, who is not exempt from the contribution requirements of ss. 108.17 and 108.18 under s. 108.15 or 108.151, the share of benefits based on employment with that employer shall be charged to the fund's balancing account. The balancing account shall be charged with any other state's share of such benefits pending reimbursement by that state.

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

**(8r)** Section 108.07 does not apply if any part of potential benefits in a benefit year can be charged to the federal government or qualify for federal reimbursement.

(a) The department may combine employment within the applicable period to compute benefits as if such employment had been from a single employer and allocate the resulting benefit charges to the accounts of affected employers by methods it deems fair and reasonable.

(b) The department may temporarily charge benefit payments to the fund's balancing account, pending their pro rata allocation to the accounts of employers under par. (a).

(c) In making allocations, if the department determines that s. 108.04 (5) or (7) (a) applies to employment by an employer who is not exempt from the contribution requirements of ss. 108.17 and 108.18 under s. 108.15 or 108.151, the share of benefits based on employment with that employer shall be charged to the fund's balancing account.

(d) An employer shall be treated as a party for purposes of s. 108.09, other than s. 108.09 (2) (a), only with respect to those eligibility issues reported by such employer in accordance with s. 108.04 (13).

**(8s)** If the agency administering another unemployment compensation law has overpaid benefits to an individual located in Wisconsin,

and certifies to the department the facts involved and that the individual is liable, under such law, to repay such benefits, and requests the department to recover such overpayment, and agrees to reimburse the department for any court costs incurred by it in such recovery efforts, the department may in its own name, but acting as agent for such other agency, collect such overpayment by civil action, and shall pay the net amount recovered to such other agency. If benefits are currently payable under this chapter to such individual, the department may, with notice to the individual, pay as much of such benefits to such agency as are necessary to satisfy the individual's indebtedness to such agency.

(9) The department 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 department may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment compensation law. The department 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 department 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 department under this subsection shall be paid into the administration fund under s. 108.20.

(9m) The department may afford reasonable cooperation 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. All moneys payable to or received by this state for any program of allowances pursuant to an agreement with any government or nonprofit agency, whereby moneys are made available to the state solely for that purpose, shall be paid to the state and shall promptly be deposited by the department to the credit of a separate account therefor, with such custodians as the state may from time to time select, who shall hold, release

and transfer the cash in any such account in a manner approved by the department of administration. Payments from any such account shall be made upon vouchers or drafts authorized by the department, in such manner as the department of administration may from time to time approve or prescribe. The treasurer of the unemployment reserve fund shall serve as treasurer of any account under this subsection. The bond of the treasurer, as required under ss. 19.01 (2) and 108.16 (4), shall likewise be conditioned upon the faithful performance of the duties under this subsection by the treasurer and his subordinates, in such additional amount as may be fixed by the department. The treasurer shall report annually to the department of administration regarding receipts and disbursements under this subsection.

(11) The department may require any employer of one or more individuals in Wisconsin to make such arrangements as will reasonably assure the department that the employer will keep such records, make such reports, and pay such contributions as are required under this chapter. Any employer whom the department 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 s. 180.825 (2), 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 department 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 pars. (8) and (9) of s. 303 (a) of Title III of the federal social security act, all moneys received in the administration fund from any federal agency under said Title III shall be expended solely for the purposes and in the amounts found necessary by said agency 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 unencumbered 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 agency 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 department on its own motion or



on notice from said agency 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 department shall either make the necessary replacement from those administration fund moneys specified in s. 20.445 (1) (v) 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 department may, with the advice of the council on unemployment compensation, by general rule modify or suspend any provision of this chapter if and to the extent necessary to permit continued certification of this chapter for grants to this state under Title III of the federal social security act and for maximum credit allowances to employers under the federal unemployment tax act.

(14) The department shall fully cooperate 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 department may make, and may cooperate 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.

(16) The department shall have duplicated or printed, and shall distribute without charge, such employment security reports, studies and other materials (including the text of this chapter and instructional or explanatory pamphlets for employers or workers) as it deems necessary for public information or for the proper administration of this chapter; but the department may collect a reasonable charge, which shall be credited to the unemployment administration fund, for any such item the cost of which is not fully covered by federal administrative grants.

(17) To help provide suitable quarters for the administration of this chapter at the lowest practicable long-run cost, the department may,

with the governor's approval and subject to all relevant statutory requirements, use part of the moneys available for such administration under s. 20.445 (1) (u) and (v) to buy suitable real property, or to help construct suitable quarters on any state-owned land, or for the long-term rental or rental-purchase of suitable land and quarters. In each such case full and proper use shall be made of any federal grants available for the administration of this chapter.

History: 1971 c. 53; 1973 c. 90 s. 559; 1973 c. 247; 1975 c. 343; 1977 c. 29, 133; 1977 c. 196 s. 131; 1977 c. 272 s. 98.

**108.141 Extended benefits. (1) DEFINITIONS.** As used in this section, unless the context clearly requires otherwise:

(a) "Extended benefit period" means a period which:

1. Begins with the 3rd week after whichever of the following weeks occurs first:

a. A week for which there is a national "on" indicator; or

b. A week for which there is a Wisconsin "on" indicator, provided that no extended benefit period may begin by reason of a Wisconsin "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to Wisconsin; and

2. Ends with either of the following weeks, whichever occurs later:

a. The 3rd week after the first week for which there is both a national "off" indicator and a Wisconsin "off" indicator; or

b. The 13th consecutive week of such period.

(b) There is a national "on" indicator for a week if the U.S. secretary of labor determines that, for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (seasonally adjusted) for all states equalled or exceeded 4.5%.

(c) There is a national "off" indicator for a week if the U.S. secretary of labor determines that, for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (seasonally adjusted) for all states was less than 4.5%.

(d) There is a Wisconsin "on" indicator for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that, for the period consisting of such week and the immediately preceding 12 weeks, the Wisconsin rate of insured unemployment (not seasonally adjusted):

1. Equalled or exceeded 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; and

2. Equalled or exceeded 4%.

(e) There is a Wisconsin "off" indicator for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that, for the period consisting of such week and the immediately preceding 12 weeks, the Wisconsin rate of insured unemployment (not seasonally adjusted):

1. Was less than 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; or
2. Was less than 4%.

(f) "Wisconsin rate of insured unemployment" means the percentage derived by dividing:

1. The average weekly number of individuals filing claims in Wisconsin for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the department on the basis of its reports to the U.S. secretary of labor; by

2. The average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.

(g) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employes and to ex-servicemen pursuant to 5 U.S.C. ch. 85, other than extended benefits and additional benefits as defined in P.L. 91-373.

(h) "Extended benefits" means benefits (including benefits payable to federal civilian employes and to ex-servicemen pursuant to 5 U.S.C. ch. 85) payable to an individual under this section for weeks of unemployment in his eligibility period.

(i) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(j) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

1. Has received, prior to such week, all of the regular benefits that were available to him under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employes and ex-servicemen under 5 U.S.C. ch. 85, in his current benefit year that includes such week or is precluded from receiving regular benefits by reason of the law of another state which meets the requirement of sec. 3304 (a) (7) of the internal revenue code of 1954 or is precluded from receiving regular benefits by reason of a seasonal limitation in the law of another state. An individual shall be

deemed to have received all of the regular benefits that were available to him although as a result of a pending appeal under s. 108.09 or 108.10 he may subsequently be determined to be entitled to added regular benefits; or

2. His or her benefit year having expired in the extended benefit period and prior to such week, lacks qualifying employment on the basis of which he or she could establish a "valid new claim week", under s. 108.06; and

3. Has no right to unemployment benefits or allowances, as the case may be, under the railroad unemployment insurance act or such other federal laws as are specified in regulations issued by the U.S. secretary of labor, and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if the individual is seeking such benefits and the appropriate agency finally determines that he or she is not entitled to benefits under such law he or she is an exhaustee.

NOTE: Chapter 133, laws of 1977, which amended (j) 3., provided in section 38 that the amendment takes effect on "the day after the day on which the U.S. secretary of labor approves the unemployment compensation law of the Virgin Islands under section 3304 (a) of the internal revenue code of 1954."

(k) "State law" means the unemployment compensation law of any state, approved by the U.S. secretary of labor under s. 3304 of the internal revenue code of 1954.

**(2) EFFECT OF OTHER CHAPTER 108 PROVISIONS.** Except when the result would be inconsistent with the other provisions of this section, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

**(3) ELIGIBILITY REQUIREMENTS FOR EXTENDED BENEFITS.** An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if:

- (a) He is an "exhaustee"; and
- (b) He has satisfied those requirements of this chapter for the payment of regular benefits that apply to individuals claiming extended benefits, including not being disqualified.

**(4) WEEKLY EXTENDED BENEFIT RATE.** The weekly extended benefit rate payable to an individual for a week of total unemployment in his or her eligibility period shall be an amount equal to the total amount of regular benefits which the individual was paid in his or her most recent benefit year divided by the number of weeks for which such benefits were paid, rounded to the nearest whole dollar. For this purpose, a payment under s. 108.05 (1m) shall be counted as a week and a half, and a payment under s. 108.05 (3) (a) shall be counted as one-half of a week. If no payment was made, it shall

be the weekly benefit rate at which the individual would first have been paid in such benefit year. Section 108.05 (2) shall not apply.

**(5) DURATION OF EXTENDED BENEFITS.** Extended benefits shall be payable to an individual for weeks of unemployment in his eligibility period for not more than the least of the amounts determined by multiplying the weekly extended benefit rate by the following number of weeks:

(a) One-half of the number of weeks of regular benefits which were payable (including benefits canceled pursuant to s. 108.04 (5)) to him under this chapter in his most recent benefit year, rounded to the next higher half week if not already a multiple of one-half a week; or

(b) Thirteen weeks; or

(c) Thirty-nine weeks reduced by the number of weeks of regular benefits which were paid or deemed paid to him under this chapter in his most recent benefit year. For this purpose, a week of benefits shall be deemed paid if it was withheld because of the application of s. 108.04 (11).

**(6) PUBLISH INDICATORS.** (a) Whenever an extended benefit period is to become effective in Wisconsin as a result of a Wisconsin or a national "on" indicator, or an extended benefit period is to be terminated in Wisconsin as a result of Wisconsin and national "off" indicators, the secretary shall have it officially published.

(b) Computations required by sub. (1) (f) shall be made in accordance with regulations prescribed by the U.S. secretary of labor.

**(7) EXTENDED BENEFITS ACCOUNT; CHARGES OF BENEFITS.** (a) The fund's treasurer shall maintain an "extended benefits account" as a subaccount of the fund's balancing account. One-half of extended benefits based on employment covered by this chapter, other than employment for a government unit, shall be charged to such account. The remaining one-half of such benefits shall be charged as follows:

1. Benefits based on employment to which s. 108.151 (5) applies shall be charged to the reimbursement account of the employer on whose employment such benefits were based.

2. Benefits based on employment covered by the law of another state, under s. 108.14 (8n), shall be charged to such state.

3. Benefits based on other employment shall be charged to the fund's balancing account.

4. To the extent that 2 or more paragraphs may apply to such benefits, the department shall determine the proper amounts and the sequence in which they shall be charged.

(b) The full amount of extended benefits based on employment for a government unit

shall be charged to the account of such government unit.

**(8) FEDERAL REIMBURSEMENT.** Any federal reimbursement of extended benefits shall be credited to the extended benefits account.

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

History: 1971 c. 53; 1973 c. 247; 1975 c. 1, 343; 1977 c. 29, 133; 418.

**108.15 Benefits for public employes. (1)**

**BENEFIT PAYMENTS.** Benefits shall be payable from the fund to any public employe, if unemployed and otherwise eligible, based on "employment" by any government unit which is an "employer" covered by this chapter.

**(2) REIMBURSEMENT FINANCING.** The state and every other government unit which is an employer subject to this chapter shall be subject to all its provisions except that, in lieu of contributions under ss. 108.17 and 108.18, it shall reimburse the fund for benefits charged to its account.

**(3) ELECTION OF CONTRIBUTION FINANCING.** Any government unit other than the state may, in lieu of the reimbursement requirement of sub. (2), elect contribution financing under ss. 108.17 and 108.18 as of the beginning of any calendar year, subject to the following requirements:

(a) It shall file a written notice to that effect with the department before the beginning of such year except that if the government unit became newly subject to this chapter as of the beginning of such year, it shall file the notice within 30 days after the date of mailing to it a written notification by the department that it is subject to this chapter. Such election shall remain in effect for not less than 3 calendar years.

(b) A government unit may thereafter terminate its election of contribution financing effective at the end of any calendar year by filing a written notice to that effect with the department before the close of such year.

(c) No election or termination of election of contribution financing is effective if the government unit, at the time of filing notice of such election or termination of election, is delinquent under s. 108.22.

(d) If a government unit elects contribution financing for any calendar year after the first calendar year it becomes newly subject to this chapter, it shall be liable to reimburse the fund for any benefits based on prior employment. If a

government unit terminates its election of contribution financing, ss. 108.17 and 108.18 shall apply to employment in the prior calendar year, but after all benefits based on such prior employment have been charged to its contribution account any balance remaining in such account shall be transferred to the balancing account.

(e) Each time a government unit elects or reelects contribution financing its initial contribution rate shall be 2.7% on its payroll for each of the first 3 calendar years in which such election or reelection is in effect, and s. 108.18 (2) (b) shall apply. If a government unit terminates its election of contribution financing it may not reelect contribution financing within a period of 3 calendar years thereafter.

**(4) REIMBURSEMENT ACCOUNTS FOR GOVERNMENT UNITS.** (a) For each government unit covered by this chapter which is liable for reimbursement to the fund, the fund's treasurer shall maintain a reimbursement "employer account", as a subaccount of the fund's balancing account.

(b) Each government unit's reimbursement account shall be duly charged with any benefits based on work for such unit, and shall be duly credited with any reimbursement paid by or for it to the fund, and with any benefit overpayment from the account recovered by the department. Whenever the account of a government unit is credited with an overpayment under this paragraph, the department shall, at the close of any month, refund that amount to the government unit upon request, after deducting the amount of any reimbursements to the account of such government unit which have been billed but not paid.

(c) Any government unit may at any time make payments into its reimbursement account in the fund under s. 108.18 (7).

(d) Whenever a government unit's reimbursement account has a positive net balance, no reimbursement of the benefits charged to that account is required under this section.

(e) Whenever a government unit's reimbursement account has a negative balance, any benefits chargeable to such account shall be duly paid and charged thereto; and reimbursements covering the total negative balance thus resulting shall become due pursuant to this section.

(f) The write-off provisions of s. 108.16 (7) (c) do not apply to the reimbursement account of any government unit.

(g) If any government unit covered by this chapter requests the department to maintain separate accounts for parts of such unit which are separately operated or financed, the department may do so for such periods and under such conditions as it may from time to time determine.

**(5) REIMBURSEMENTS AND CONTRIBUTIONS.**

(a) Each government unit which is an "employer" shall include in its budget for each budgetary period an estimated amount for payment of the contributions required by ss. 108.17 and 108.18 or reimbursements required by this section, including in each case any contribution or reimbursement remaining unpaid for the current or any prior period.

(b) The department shall monthly bill each government unit for any reimbursements required under this section, and any reimbursement thus billed shall be due and shall be paid by such government unit within 30 days after the date such bill is mailed to it by the department.

(c) Reimbursements due hereunder from budget subdivisions of the state shall be paid pursuant to sub. (7).

(d) Reimbursements due under this section or contributions due under ss. 108.17 and 108.18 from government units shall, if they remain unpaid after their due date, be collected under sub. (6) or under any other applicable provision of law.

**(6) DELINQUENT PAYMENTS.** (a) Any reimbursement duly billed under this section, or contribution payable under s. 108.17 or 108.18, which remains unpaid after its applicable due date is a "delinquent payment" under s. 108.22 (1).

(b) Whenever a government unit's "delinquent payments", including interest and penalties thereon, total more than the benefits duly charged to such unit's reimbursement account for the 6 most recent months, or contributions, including interest and penalties thereon, are delinquent for at least 2 calendar quarters, a department deputy shall so determine under s. 108.10.

(c) If such delinquency is finally established under s. 108.10, the fund's treasurer shall, in case such unit receives a share of any state tax or any type of state aid, certify to the state treasurer the existence and amount of such delinquency.

(d) Upon receipt of such certification, the state treasurer shall withhold, from each sum of any such tax or aid thereafter payable to the government unit, until the delinquency is satisfied, the lesser of the following amounts:

1. The delinquent amount thus certified; or
2. One-half the sum otherwise payable to such government unit.

(e) Any amount withheld by the state treasurer under par. (d) shall be paid by him to the fund's treasurer, who shall duly credit such payment toward satisfying the delinquency.

**(7) STATE COMPLIANCE AND APPROPRIATIONS.** (a) "State", as used in this section,

includes all state constitutional offices, all branches of state government, all agencies, departments, boards, commissions, councils, committees, and all other parts or subdivisions of state government however organized or designated.

(b) Each reimbursement payable under this section shall be duly paid to the fund, upon filing by the fund's treasurer of a certificate to the department of administration specifying the amount of reimbursement due and the appropriation apparently chargeable.

(c) Each of the state's budget subdivisions shall have each such reimbursement amount charged to and deducted from its proper fund or appropriation, unless the secretary of administration certifies that a stated amount thereof cannot be thus charged, in which event that amount shall be charged to the general fund under such certification.

**(8) REPORTING.** (a) Each government unit which is an "employer" shall give such suitable benefit notices to its employes as the department may direct, and shall make benefit reports to the department under the same conditions as apply to other employers.

(b) Each government unit shall designate one or more officers or employes who shall be responsible for filing the required benefit reports, and shall inform the department as to the name and address of each person so designated. If it designates more than one such person, it shall specify for what groups or classes of employes each will report. Section 108.24 (2) applies to each person so designated.

**(9) GROUP REIMBURSEMENT ACCOUNTS.** If any group of government units which have not elected contribution financing file a joint request, they shall be treated as one employer for the purposes of this chapter under the conditions of this subsection.

(a) The group will be treated as one employer for at least 3 calendar years and the group may be discontinued or dissolved at the beginning of any subsequent calendar year by filing advance written notice thereof with the department before the beginning of such subsequent calendar year.

(b) The members of the group are jointly and severally liable for any required reimbursements together with any interest thereon and any tardy filing fees.

(c) The group shall be dissolved at the beginning of any calendar year after the required 3 calendar years of participation if any member of the group files written notice with the department in advance of such calendar year of its intended withdrawal from the group.

**History:** 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133

**108.151 Financing benefits for employes of nonprofit organizations. (1) EMPLOYER'S CONTRIBUTION RATE.** Each nonprofit organization which is or becomes an employer subject to this chapter shall be subject to all its provisions except as it may elect reimbursement financing in accordance with sub. (2). If such an approved election is terminated, the employer's contribution rate shall be 2.7% on his payroll for each of the next 3 calendar years, and s. 108.18 (2) (b) shall apply.

**(2) ELECTION OF REIMBURSEMENT FINANCING.** Any nonprofit organization may, in lieu of the contribution requirements of ss. 108.17 and 108.18, elect reimbursement financing, as of the beginning of any calendar year, subject to the following requirements:

(a) It shall file a written notice to that effect with the department before the beginning of such year except that if the employer became newly subject to this section as of the beginning of such year, it shall file the notice within 30 days after the date of the determination that it is subject to this chapter.

(b) An employer whose prior election of reimbursement financing has been terminated pursuant to sub. (3) may not thereafter reelect reimbursement financing unless it has been subject to the contribution requirements of ss. 108.17 and 108.18 for at least 3 calendar years thereafter and is not, at the time of filing such reelection, delinquent under s. 108.22.

(c) No election of reimbursement financing shall be valid unless the employer has satisfied the requirements of sub. (4) within 60 days after it filed the notice of election.

(d) Sections 108.17 and 108.18 shall apply to all prior employment, but after all benefits based on prior employment have been charged to any account it has had under s. 108.16 (2) any balance remaining therein shall be transferred to the balancing account as if s. 108.16 (6) (c) or (6m) (d) applied.

**(3) TERMINATION OF ELECTION.** (a) An employer who elected reimbursement financing may terminate its election as of the close of the 3rd calendar year to which such election applies, or at the close of any subsequent calendar year, by filing a written notice to that effect with the department before the close of such calendar year;

(b) The department may terminate any election as of the close of any calendar year if the department determines that the employer has failed to make the required reimbursement payments or no longer satisfies the requirements of sub. (4), or whenever s. 108.16 (8) applies.

**(4) ASSURANCE OF REIMBURSEMENT.** (a) If an employer elects reimbursement financing it

shall file a surety bond with the fund's treasurer, payable to the unemployment reserve fund, to guarantee the payment of required reimbursements together with any interest thereon and any tardy filing fees.

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

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

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

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

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

(5) REIMBURSEMENT ACCOUNT. (a) For each nonprofit organization which has elected reimbursement financing, pursuant to sub. (2), the fund's treasurer shall maintain a reimbursement account, as a subaccount of the fund's balancing account.

(b) The employer's reimbursement account shall be charged with all regular benefits, and with one-half of any extended benefits under s. 108.141, based on weeks of employment ended while its election is in effect.

(c) The employer's reimbursement account shall be credited with any reimbursement paid by or for it to the fund, and with any benefit overpayment from the account recovered by the department.

(d) The employer may at any time make other payments to be credited into its reimbursement account, in anticipation of future benefit charges.

(e) Whenever the employer's reimbursement account has a positive net balance no reimbursement of the benefits charged thereto shall be required.

(f) Whenever an employer's reimbursement account has a negative balance as of the close of any calendar month, the fund's treasurer shall promptly bill such employer, at its last-known address, for that portion of its negative balance which has resulted from the net benefits charged to such account within such month. Reimbursement payment shall be due within 30 days thereafter. Any required payment which remains unpaid after its applicable due date is a delinquent payment. Section 108.22 shall apply for collecting delinquent payments.

(6) GROUP REIMBURSEMENT ACCOUNTS. If any group of nonprofit organizations who have elected reimbursement financing file a joint request, they shall be treated as if they were one employer for the purposes of this chapter, provided that:

(a) They shall be so treated for at least the 3 calendar years following their request, unless their election of reimbursement financing is terminated under sub. (3), but they may discontinue their group arrangement as of the beginning of any subsequent calendar year by filing advance notice with the department. A member of such a group may discontinue its participation in the group and the group shall be dissolved at the beginning of any calendar year after the 3rd year.

(b) They shall be jointly and severally liable for any required reimbursements together with any interest thereon and any tardy filing fees.

(c) They shall designate one or more individuals as agent for all members of the group for all fiscal and reporting purposes under this chapter.

(d) If such a group is discontinued, par. (a) shall apply to each of its members.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343.

**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 department 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) A separate employer's account shall be maintained by the department as to each employer contributing to said fund.

(b) 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 employes based on their past employment by him, except as otherwise specified in this chapter.

(c) Any reference in this chapter to eligibility for, or to payment of, benefits "from an employer's account", or any similar reference, shall mean benefits payable or paid from the fund based on past employment by the employer in question.

(d) The fund shall be mingled and undivided, and nothing in this chapter shall be construed to grant to any employer or employe any prior claim or right to any part of the fund.

(e) Benefits to be "charged" against a given employer's account shall be so charged 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.

(f) The department shall promptly advise the employer as to each benefit check thus charged to his account.

(2m) If the department 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 the employer shall be notified as to the erroneous payment. In case benefits are currently payable to such individual from the employer's account, the department may correct the error by adjusting such benefits accordingly. To correct any erroneous payment not thus adjusted, the fund's treasurer shall be notified of the erroneous payment and, except where the employer is a government unit or a nonprofit organization which has elected reimbursement financing, the treasurer shall restore the proper amount to the employer's account and charge such amount to

the fund's balancing account, and may thereafter reimburse the balancing account by crediting to it benefits which would otherwise be payable to, or cash recovered from, the individual. To correct any erroneous payment from the account of an employer who is a government unit, or a nonprofit organization which has elected reimbursement financing, the treasurer may credit to such account benefits which would otherwise be payable to, or cash received from, the individual.

(3) (a) The fund's treasurer shall write off and waive recovery of such overpayment for which the claimant's liability to reimburse the fund was established under s. 108.22 (8) upon receipt of certification by a department deputy that the claimant has been duly discharged of such liability by a federal bankruptcy court; that the claimant has died and reasonable efforts have been made to recover the overpayment from the claimant's estate; or that the overpayment has been outstanding 6 years or more after the liability was established and that reasonable efforts have been made to recover it.

(b) Any such waiver shall be recorded as satisfying any warrant then outstanding under s. 108.22 (8) as to such overpayment.

(4) Consistently with sub. (5), all contributions payable to the unemployment reserve fund shall be paid to the department, and shall promptly be deposited by the department to the credit of the unemployment reserve fund, with such custodians as the department may from time to time select, who shall hold, release and transfer the fund's cash in a manner approved by the department. Payments from said fund shall be made upon vouchers or drafts authorized by the department, in such manner as the department 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 department shall designate a treasurer of the unemployment reserve fund, who shall be either a regular salaried employe of the department or the state treasurer and shall serve as treasurer of the fund until a successor designated by the department has assumed the duties of this office. He shall give a separate bond conditioned upon his faithful performance of these duties pursuant to s. 19.01 (2), 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 department. 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.

(5) (a) All money received for the fund shall promptly upon such receipt be deposited to its credit in 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 the purposes of this chapter) from which no other state or agency can make withdrawals, any other statutory provision to the contrary notwithstanding.

(b) The department 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 for such other unemployment compensation payments or employment security expenditures as are expressly authorized by this chapter and consistent with any relevant federal requirements.

(c) 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.

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

(a) All interest earnings, on moneys belonging to the fund, received by (or duly apportioned to) the fund, as of the close of the calendar quarter in which such interest accrued.

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

(c) Any balance credited to an employer's account, if and when he ceases to be subject to this chapter, except as provided in subsection (8);

(e) 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;

(f) Any amount available for such crediting under s. 108.04 (11); 108.07 (2); 108.14 (8n) (e); or 108.141.

(g) Any payment received for the balancing account under s. 108.15.

(h) Any amount of solvency contribution received for or transferred to the balancing account pursuant to s. 108.18.

(i) Any federal reimbursement of benefits paid under any federal unemployment benefit program administered by the department.

(j) Any federal reimbursement of benefits paid under this chapter, except as this chapter or a federal agreement requires otherwise.

(6m) There shall be charged against the fund's balancing account:

(a) The benefits thus chargeable under (and pursuant to) ss. 108.07 (2); 108.14 (8n) (e) or (8r) (c); 108.141; 108.151; or subs. (2m), (6) (e), (7) (a) and (b).

(b) Any benefits paid under any federal unemployment benefit program administered by the department, pending their reimbursement.

(c) The overdraft write-offs thus chargeable under and pursuant to sub. (7) (c).

(d) Any negative balance of a closed employer account, except as provided in sub. (8).

(7) (a) All benefits shall be paid from the fund. All benefits duly chargeable to an employer's account shall be so charged, whether or not such account is overdrawn. All other benefits shall be charged to the fund's balancing account.

(b) 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 10 per cent of his annual payroll (namely, the payroll 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 10 per cent of said payroll.

(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. As used in this subsection "business" includes any activity of an employer,



whether organized or carried on for profit, non-profit or governmental purposes. The transfer of any of the assets of a covered employer by any means, other than in the ordinary course of trade or other operation of the employer, shall also be deemed a transfer of business and shall constitute the transferee a successor under this subsection. The transferee shall not be a successor under this subsection if the department, on its own motion or on application of an interested party, finds that both the following conditions exist:

1. The transferee has not continued or resumed the business of the transferor, either in the same establishment or elsewhere; and

2. The transferee has not employed substantially the same employes as those the transferor had employed in connection with the assets transferred.

(b) The transferee, if not already subject to this chapter, shall become an "employer" subject to this chapter on the date of such transfer, and shall accordingly become liable for contributions or payments in lieu of contributions, whichever is applicable, under this chapter from and after said date.

(c) The transferee shall take over and continue the transferor's account, including its plus or minus balance and all other aspects of its experience under this chapter, in proportion to the payroll or employes assignable to the transferred business as determined for the purposes of this chapter by the department. The transferee shall be secondarily liable for any amounts owed by the transferor to the fund (and to the administration fund) at the time of such transfer. Such liability shall be proportioned to the extent of the transfer of business and shall not exceed the value of the assets transferred, unless the transferor is a nonprofit organization.

(e) The account taken over by the transferee 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 the transferee.

(f) The contribution rates applicable with respect to the accounts of the transferee and the transferor shall be respectively determined or redetermined as of the applicable computation date, 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 s. 108.18, as follows: For the purposes of s. 108.18, the department shall determine the "experience under this chapter" of the transferee's account and of the transferor's account by allocating to the transferee's account for each period in question the respective proportions of the transferor's payroll and

benefits which the department determines to be properly assignable to the business transferred.

(9) (a) Consistently with s. 3305 of the federal internal revenue code, relating to federal instrumentalities which are neither wholly nor partially owned by the United States nor otherwise specifically exempt from the tax imposed by s. 3301 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 s. 3304 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 s. 3305 of said code.

(10) All money withdrawn from the fund shall be used solely in the payment of benefits, exclusive of expenses of administration, and for refunds of sums erroneously paid into the fund, for refund of a positive net balance in an employer's reimbursement account under ss. 108.15 (4) and 108.151 (5) on request by the employer, and for expenditures made pursuant to s. 108.161 and consistently with the federal limitations applicable to s. 108.161.

(10m) The department shall not pay any interest on any benefit payment or any refund, or collect any interest on any benefit overpayment.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133.

**108.161 Administrative financing account.** (1) The fund's treasurer shall maintain within the fund an employment security "administrative financing account", and shall credit thereto all amounts credited to the fund pursuant to the federal employment security administrative financing act (of 1954) and section 903 of the federal social security act, as amended.

(1m) He shall also credit to said account all federal moneys credited to the fund pursuant to sub. (8).

(2) The requirements of said section 903 shall control any appropriation, withdrawal and use of any moneys in said account.

(3) Consistently with this chapter and said section 903, such moneys shall be used solely for benefits or employment security administration, including unemployment compensation, employment service and related statistical operations.

(4) Such moneys shall be encumbered and spent for employment security administrative

purposes only pursuant to (and after the effective date of) a specific legislative appropriation enactment:

(a) Stating for which such purposes and in what amounts the appropriation is being made to the administration fund created by s. 108.20.

(b) Directing the fund's treasurer to transfer the appropriated amounts to the administration fund only as and to the extent that they are currently needed for such expenditures, and directing that there shall be restored to the account created by sub. (1) any amount thus transferred which has ceased to be needed or available for such expenditures.

(c) Specifying that the appropriated amounts are available for obligation solely within the 2 years beginning on the appropriation law's date of enactment.

(d) Limiting the total amount which may be so obligated during any fiscal year to the aggregate of all amounts credited under sub. (1), including amounts credited pursuant to sub. (8), within that year and the 24 preceding fiscal years, reduced by the sum of any moneys obligated and charged against any of the amounts thus credited within those 25 years.

(5) The total of the amounts thus appropriated for use in any fiscal year shall in no event exceed the moneys available for such use hereunder, considering the timing of credits hereunder and the sums already spent or appropriated or transferred or otherwise encumbered hereunder.

(6) The fund's treasurer shall keep a record of all such times and amounts; shall charge each sum against the earliest credits duly available therefor; shall include any sum thus appropriated but not yet spent hereunder in computing the fund's net balance as of the close of any month, in line with the federal requirement that any such sum shall (until spent) be deemed part of the fund; and shall certify the relevant facts whenever necessary hereunder.

(7) If any moneys appropriated hereunder are used to buy and hold suitable land, with a view to the future construction of an employment security building thereon, and if such land is later sold or transferred to other use, the proceeds of such sale (or the value of such land when transferred) shall be credited to the account created by sub. (1).

(8) If any sums are appropriated and spent hereunder to buy land and to build a suitable employment security building thereon, then any federal moneys thereafter credited to the fund or paid to the department by way of gradual reimbursement of such employment security capital expenditures, or in lieu of the estimated periodic amounts which would otherwise (in the absence

of such expenditures) be federally granted for the rental of substantially equivalent quarters, shall be credited to the account created by sub. (1), consistently with any federal requirements applicable to the handling and crediting of such moneys.

(8m) To the extent that employment security moneys finance the capital cost of acquiring office quarters, either in a separate employment security building project or in a larger state building, no rental for the quarters thus financed (or for equivalent substitute quarters) shall be charged the department or its employment security functions at any time. The department shall so certify, in applying for the federal moneys specified in sub. (8).

(9) Any land and building or office quarters acquired hereunder shall continue to be used for employment security purposes. Such realty or quarters shall not be sold or transferred to other use without the governor's approval. If thus sold or transferred, the proceeds of such sale, or the value of such realty or quarters when transferred, shall, except as federally approved equivalent substitute rent-free quarters are provided, be allocated and credited to the account created by sub. (1) and/or to the fund created by s. 108.20, in accordance with any then applicable federal requirements; and shall, to the extent said requirements permit, be used to finance employment security quarters.

(10) Any realty acquired hereunder shall not be included in the computation of the building depreciation reserve under s. 13.48 (3).

History: 1971 c. 259.

#### 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 60 days) as the department may determine.

(2) All contributions required under this chapter from employers shall be reported and paid to the department, for such periods and in such manner as the department may prescribe. Each contribution report and payment shall be

due at the close of the month next following the end of the applicable reporting period, except as the department may assign a later due date pursuant to sub. (1m) or general department rules.

**(2m)** When a written statement of account is issued to an employer by the department, showing as duly credited a specified amount received from him under this chapter, no other form of state receipt therefor is required.

**(3)** If an employer (of any person) makes application to the department 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 department deputy shall make a determination under s. 108.10 as to the existence and extent of any such overpayment; and said section shall apply to such determination. As to any amount determined under said section to have been erroneously paid by the employer, the department shall allow him a corresponding credit, without interest, against his future contribution payments; or, if the department 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.

**(4)** However, in case an employer's contribution rate for any year has been incorrectly determined, it shall be corrected and contributions shall be adjusted or become payable accordingly only if due notice of such error is given during, or within 6 months after the close of, the calendar year to which such rate applies, or within one year after his account is credited with the amount of an erroneous payment pursuant to s. 108.16 (2m).

History: 1973 c. 247.

**108.18 Contributions to the fund. (1) TOTAL RATE.** (a) Each employer shall pay contributions to the fund for each calendar year at whatever rate on his payroll for that year duly applies to him pursuant to this section.

(b) An employer's contributions shall be credited to the employer's account in the fund, but only after any solvency contribution paid or

payable by the employer has been credited to the fund's balancing account.

**(2) INITIAL RATES.** (a) An employer's contribution rate shall be 2.7% on his payroll for each of the first 3 calendar years with respect to which contributions are credited to his account, except as additional contributions apply under this section.

(b) As to each of those first 3 calendar years, if the employer's payroll for any such year was \$20,000 or more, he shall be required to pay an additional contribution at the rate of 1.3 per cent on that calendar year's payroll, within 60 days after notice from the department that such additional contribution is payable, if his account:

1. At the close of that calendar year was overdrawn (on a cash basis, with the benefits paid and charged to the account exceeding the contributions paid and credited thereto, through said close of year); or

2. As of the next June 30 computation date was overdrawn (with a negative reserve percentage).

**(3) REQUIREMENTS FOR REDUCED RATE.** As to any calendar year, an employer shall be permitted to pay contributions to the fund at a rate lower than the standard rate of 2.7% on his payroll for that year only when, as of the applicable computation date:

(a) Benefits have been chargeable to the employer's account during the 18 months preceding such date; and

(b) Such lower rate applies under this section; and

(c) Permitting him to pay such lower rate is consistent with the relevant conditions then applicable to additional credit allowance for such year under section 3303 (a) of the federal unemployment tax act, any other provision to the contrary notwithstanding.

**(4) EXPERIENCE RATES.** Except as otherwise specified in this section, an employer's contribution rate on his payroll for a given calendar year shall be based on the reserve percentage of his account as of the applicable computation date, as follows: [See Figure 108.18 (4) following]

Figure 108.18 (4):

## SCHEDULE

Line	Reserve Percentage	Contribution Rate
1.	8.5% or more	0.0%
2.	8.0% but under 8.5%	0.5%
3.	7.0% but under 8.0%	1.0%
4.	6.0% but under 7.0%	1.5%
5.	5.0% but under 6.0%	2.0%
6.	3.5% but under 5.0%	2.5%
7.	2.0% but under 3.5%	3.0%
8.	0.0% but under 2.0%	3.5%
9.	Overdrawn by less than minus 2.0%	4.0%
10.	Overdrawn by minus 2.0% but under minus 4.0%	4.5%
11.	Overdrawn by minus 4.0% or more	5.0%

**(5) LIMITATION.** To prevent unduly sharp increases in contribution rates during bad years, an employer's contribution rate for any calendar year shall in no case exceed by more than one percent on the employer's payroll the rate which applied to it at the close of the preceding calendar year, except under subs. (2) and (8).

**(5m) LIMITATION, COMPUTATION.** The one per cent limit of sub. (5) shall be computed from the employer's experience rate assigned to him under subs. (4), (5) and (6).

**(6) COMPUTATION IN SPECIAL CASES.** If during the year ending on a computation date an employer has been liable for contributions but has had no payroll, his reserve percentage as of that computation date shall be computed on the basis of his most recent year (ending on a computation date which applied to him) of some payroll; but his contribution rate for the calendar year following the computation date shall in no case be less than one per cent.

**(7) VOLUNTARY CONTRIBUTIONS.** Any employer may at any time make payments to the fund, in excess of the other requirements of this section. Each such payment shall be credited to the employer's account as of the date when paid, except that any such payment made during the period July 1 through November 30 shall, for the purpose of computing his reserve percentage, be credited thereto as of the immediately preceding computation date; and each such payment shall be treated as a contribution required and irrevocably paid under this chapter with respect to payrolls preceding the date as of which it is thus credited.

**(8) SOLVENCY CONTRIBUTIONS.** Each employer's solvency contribution for each period of a calendar year shall be figured by applying the solvency rate determined for that year under sub. (9) to the employer's payroll for that

period, and shall be payable to the fund's balancing account by the due-date of its contribution report.

**(9) SOLVENCY RATES.** (a) The solvency rate for 1978 and 1979 shall be as follows:

1. 1.0% if an employer's reserve percentage is zero or more;
2. 1.5% if an employer's reserve percentage is less than zero.

(b) The solvency rate required for each subsequent calendar year shall depend on the extent to which the net balance of the fund's balancing account at the close of the preceding July falls short of the adequacy level then required, and shall be determined by the fund's treasurer pursuant to this subsection except that the solvency rate of any employer having either a 0.0% or a 0.5% contribution rate under sub. (4) shall not be more than 0.5%.

(c) The adequacy level required for the fund's balancing account at the close of July 1979, and each subsequent July, shall be the amount which equals 0.4% of the gross wages paid by all employers in the immediately preceding calendar year, as determined under par. (h).

(d) The fund's treasurer shall determine the net balance of the fund's balancing account, at the close of each July, after deducting the debit balances of any employer accounts then overdrawn and any positive balance of any government unit, and after crediting any benefit payments reimbursable by any government unit or any covered employer with a valid election of reimbursement financing under s. 108.151, and any sharable compensation payable to this state under the federal-state extended unemployment compensation act of 1970 (title II of P.L. 91-373).

(e) He shall subtract that net balance from the relevant adequacy level required by par. (c), to determine the "deficiency amount" for the balancing account at the close of July.

(f) He shall then compare that deficiency amount with the aggregate payrolls (for the preceding calendar year) determined under par. (h), to figure the lowest multiple of one-tenth per cent which would, if applied to those payrolls, yield the "deficiency amount".

(g) The multiple of one-tenth per cent thus computed shall be the solvency rate for the calendar year which follows that close of July.

(h) The department shall determine the gross wages and the aggregate "payrolls" for each calendar year, by the following June 1, from reports to the department, including corrections thereof, filed within 3 months after the close of that year by employers as to their employes in employment covered by this chapter, excluding reports from government units and any employer with a valid election of reimbursement financing under s. 108.151. If the "payroll" amount is increased under s. 108.02 (8), so that the "payroll" amount for the preceding and subsequent calendar years are not the same, the aggregate "payrolls" for the preceding calendar year shall be the amount derived from the above reports increased proportionately by 90% of the difference between such "payroll" amounts.

(i) The fund's treasurer shall promptly make the calculations required by this subsection, and shall publish the resulting findings in the official state paper by October 15, and shall notify each employer by November 15 as to what solvency rate will apply to the ensuing calendar year.

**History:** 1971 c. 42, 53, 211; 1973 c. 247; 1975 c. 343; 1977 c. 133

**108.19 Contributions to the administration fund. (1)** Each employer subject to this chapter shall regularly contribute to the unemployment administration fund created in s. 108.20 at the rate of two-tenths of one per cent per annum on his payroll as defined in s. 108.02. But the department 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 department's judgment adequately finance the administration of this chapter, and as will in the department's judgment fairly represent the relative cost of the services rendered by the department to each such class.

**(2)** If the department 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 department 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.

**(2m)** Within the limit specified by sub. (1), the department may by rule prescribe at any time as to any period any such rate or rates or schedule as it deems necessary and proper hereunder. Unless thus prescribed, no such rate or rates or schedule shall apply under sub. (1) or (2).

**(3)** If the Federal Unemployment Tax Act is amended to permit a maximum rate of credit against said federal tax higher than the 90% maximum rate of credit now permitted under s. 3302 (c) (1) of the Internal Revenue Code, to an employer with respect to any state unemployment compensation law whose standard contribution rate on payroll under said law is more than 2.7%, in that event the standard contribution rate as to all employers under this chapter shall, by a department rule to be issued with the governor's approval, be increased from 2.7% on payroll to that percentage on payroll 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 s. 303 (a) (5) of Title III of the Social Security Act and s. 3304 (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 department 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 department under this chapter; and such modifications shall become effective on the same date as such use becomes permissible under such federal amendments.

**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 department for the administration fund under s. 108.19, and of all moneys received for this fund by the state or by the department from any source, including all federal moneys allotted or apportioned to the state or the department for the employment service or for administration of this chapter, or

for services, facilities or records supplied to any federal agency. The department shall make to federal agencies such reports as are necessary in connection with or because of such federal aid.

(2) All amounts received by the department for such fund shall be paid over to the state treasurer and credited to the unemployment administration fund for the administration of this chapter and the employment service.

(3) There shall be included in the moneys governed by s. 20.445 (1) (v) any amounts collected by the department under s. 108.19 (1) or (2), or under s. 108.04 (13) (c) or s. 108.22 (1) as tardy filing fees or as interest on delinquent payments.

(4) Any moneys transferred to the unemployment administration fund from the administrative financing account pursuant to s. 108.161 shall be expended (or restored to that account) in accordance with that section.

(5) If and to the extent that moneys transferred under sub. (4) are unavailable to finance some or all of the capital costs involved in any employment security building project or in constructing office space for use by the department in connection with its employment security operations, the moneys available under s. 20.445 (1) (v) may be used for such financing.

(6) To the extent that moneys available under s. 20.445 (1) (v) are used to finance some or all of the capital costs involved in acquiring employment security office space, there shall be applied to the moneys thus used (the same as if they were moneys credited under s. 108.161) the provisions of s. 108.161 (7), (8), (8m) and (9), except that any resulting credits attributable to the moneys thus used shall be credited under ss. 20.445 (1) (v) and 108.20.

(7) To the extent that federal grants hereunder, or moneys available under s. 20.445 (1) (v), or both, are used to amortize the capital costs of employment security office quarters in a state office building, s. 108.161 (9) shall apply to the costs and quarters thus amortized, except that any resulting credits shall be allocated according to the funds thus used. When such grants or moneys or both have fully amortized such costs, s. 108.161 (8m) shall apply to such quarters.

(8) As to office space used for employment security purposes in a state building, if and while federal grants for employment security administration do not fully cover the current costs (either gross rent, or operating costs) properly payable by the department to the state with respect to such space, the department may reserve and use the moneys available under s. 20.445 (1) (v) to assure the required payments to the state.

(9) There shall be charged to any moneys available under s. 108.161, until the moneys currently available are fully obligated, any amounts obligated for employment security local office building projects, with any remaining costs of such projects charged to the employment security moneys available under s. 20.445 (1) (v), pursuant to sub. (5).

History: 1973 c. 90 s. 559.

#### 108.21 Record and audit of payrolls. (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 department 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 department representative at any reasonable time.

(2) The findings of any such authorized representative of the department, 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 s. 108.10 and said section shall apply accordingly.

(3) In the event that any such employer fails to keep adequate employment and payroll records under this section or fails to file such reports as the department 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 department deputy in a determination made pursuant to s. 108.10, and said section shall apply to any such determination.

#### 108.22 Delinquent payments. (1)

If any employer is delinquent in making by the assigned due-date any employment and wage report, contribution report, or payment to the department required of it under this chapter, the employer shall pay a tardy payment or filing fee of \$15 for each such delinquency and shall additionally pay interest on such delinquent payment at the rate of .8% per month or fraction thereof from the date such payment became due. Such tardy payment and filing fees and interest shall be paid to the department and credited to the unemployment administration fund.

(2) If any employer fails to pay to the department any amount found to be due it in proceedings pursuant to s. 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 department 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 department 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 department, in which case the sheriff shall at the direction of the department 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 warrant so docketed shall be considered in all respects as a final judgment creating a perfected lien upon the employer's right, title and interest in all of his real and personal property located in the county wherein the warrant is docketed.

(3) In the discretion of the department, a warrant of like terms, force and effect may be issued and directed to any employe or agent of the department 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 department shall have the same remedies to enforce the amount due for contributions, interest, and costs and other fees as if the department 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 department have been paid to it, the department 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 department, 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 department 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 department 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 department may commence and maintain a garnishee action as provided by ch. 812 for actions founded on contract, or may use the remedy of attachment as provided by ch. 811 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.

(8) (a) In case benefits have been erroneously paid to an individual, the individual's liability to reimburse the fund for such overpayment may be set forth in a determination or decision issued under s. 108.09.

(b) To recover any overpayment which is not otherwise repaid or recovery of which has not been waived, the department may offset the amount of the overpayment against benefits the individual would otherwise be eligible to receive, or file a warrant against the liable individual in the same manner as is provided in this section for collecting delinquent payments from employers, or both, but only to the extent of recovering the actual amount of the overpayment and any costs and disbursements, without interest.

**History:** 1973 c 247; Sup Ct. order, 67 W (2d) 774; 1975 c 343.

Unemployment compensation warrants may be docketed by clerk of circuit court prior to issuance of sheriff for levy purposes. 61 Atty. Gen. 148.

**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 circuit courts, 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. If the employer is indebted to the federal government for taxes due under the federal unemployment tax act and a claim for the taxes has been duly filed, the amount of contributions which should be paid to allow the employer the maximum offset against the taxes shall have preference over preferred claims for wages and shall be on a par with debts due the United States, if by establishing the preference the offset against the federal tax can be secured under s. 3302 (a) (3) of the federal unemployment tax act.

History: 1977 c 449.

**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 fined not less than \$25 nor more than \$100, or imprisoned in the county jail not longer than 30 days, or both; and each such false statement or representation shall constitute a separate and distinct offense. The department 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 department hereunder, or who knowingly refuses or fails to keep any records or to furnish any reports or information duly required by the department hereunder, shall upon

conviction be deemed guilty of a misdemeanor and be fined not less than \$25 nor more than \$100, or imprisoned in the county jail not longer than 30 days, or both; 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 a deduction from the wages of an employe because of liability for contributions or payments in lieu of contributions under this chapter 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 under this chapter by the department 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 an employe to refrain from claiming or accepting benefits or to waive any other right under this chapter, or whose rehiring policy has discriminated against former employes by reason of their having claimed benefits, shall upon conviction be guilty of a misdemeanor and be fined not less than \$25 nor more than \$100, or imprisoned not longer than 30 days, or both; and each such deduction from wages, every day of such refusal or failure, and each such attempt to induce shall constitute a separate offense.

History: 1973 c 247.

**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.