

# State of Wisconsin



2021 Assembly Bill 939

Date of enactment:  
Date of publication\*:

## 2021 WISCONSIN ACT

AN ACT *to renumber* 108.04 (2) (ae); *to renumber and amend* 108.14 (19); *to amend* 108.04 (2) (bm), 108.04 (2) (g) 2., 108.04 (11) (cm), 108.04 (13) (c), 108.04 (13) (e), 108.04 (13) (f), 108.09 (1), 108.14 (21) and 108.22 (8) (a); and *to create* 108.04 (1) (hg), 108.04 (2) (ae) 1., 108.04 (2) (hL), 108.14 (19) (b) and 108.14 (28) of the statutes; **relating to:** various changes to the unemployment insurance law.

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

**SECTION 1.** 108.04 (1) (hg) of the statutes is created to read:

108.04 (1) (hg) 1. An employing unit may report to the department whenever any of the following occurs:

- a. An individual declines a job interview or job offer with the employing unit.
- b. An individual fails to respond to a job interview offer or job offer made by the employing unit.
- c. An individual fails to attend a scheduled job interview with the employing unit, unless the individual attempts to reschedule the job interview.
- d. An employee claiming benefits is unavailable for, or unable to perform, work actually available within a given week as described in par. (a).
- e. The employing unit recalls an employee who fails to return to work as described in sub. (8) (c).

2. The department shall investigate each report submitted under subd. 1. as needed to determine whether the report affects a claimant's eligibility under sub. (2) (hL).

**SECTION 2.** 108.04 (2) (ae) of the statutes is renumbered 108.04 (2) (ae) 2.

**SECTION 3.** 108.04 (2) (ae) 1. of the statutes is created to read:

108.04 (2) (ae) 1. In determining whether a claimant is available for work under par. (a) 1. and has maintained an attachment to the labor market, the department shall consider reports made by employing units under sub. (1) (hg).

**SECTION 4.** 108.04 (2) (bm) of the statutes is amended to read:

108.04 (2) (bm) A claimant is ineligible to receive benefits for any week for which there is a determination that the claimant failed to comply with the registration for work and work search requirements under par. (a) 2. or 3. or failed to provide verification to the department that the claimant complied with those requirements, unless the department has waived those requirements under par. (b), (bb), or (bd) or s. 108.062 (10m). If the department has paid benefits to a claimant for any such week, the department ~~may~~ shall act to recover the overpayment under s. 108.22.

**SECTION 5.** 108.04 (2) (g) 2. of the statutes is amended to read:

108.04 (2) (g) 2. If a claimant's security credentials are used in the filing of an initial or continued claim for benefits or any other transaction, the individual using the security credentials is presumed to have been the claimant or the claimant's authorized agent. This presumption may be rebutted by a preponderance of evi-

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

dence showing that the claimant who created the security credentials or the claimant's authorized agent was not the person who used the credentials in a given transaction. If a claimant uses an agent to engage in any transaction with the department using the claimant's security credentials, the claimant is responsible for the actions of the agent. If a claimant who created security credentials or the claimant's authorized agent divulges the credentials to another person, or fails to take adequate measures to protect the credentials from being divulged to an unauthorized person, and the department pays benefits to an unauthorized person because of the claimant's action or inaction, the department ~~may recover from the claimant the benefits that were paid to the unauthorized person shall~~, in the same manner as provided for overpayments to claimants under s. 108.22 or under s. 108.245, act to recover from the claimant the benefits that were paid to the unauthorized person. If a claimant who created security credentials or the claimant's authorized agent divulges the credentials to another person, or fails to take adequate measures to protect the credentials from being divulged to an unauthorized person, the department is not obligated to pursue recovery of, or to reimburse the claimant for, benefits payable to the claimant that were erroneously paid to another person.

**SECTION 6.** 108.04 (2) (hL) of the statutes is created to read:

108.04 (2) (hL) 1. Subject to subd. 2., if a claimant is subject to the requirement under par. (a) 3. to conduct a reasonable search for suitable work for a given week and the department received one or more credible reports in that week that the claimant declined or failed to respond to a job interview offer or failed to attend a scheduled job interview, the claimant shall not be considered to have conducted a reasonable search for suitable work in that week under par. (a) 3.

2. a. A claimant may demonstrate to the department that a report described in subd. 1. was inaccurate, that an interview was for a job that the claimant was not required to accept under sub. (8) (d) to (em), or that the claimant had other good cause for the declination or failure reported. If the department so determines, the report shall be disregarded for purposes of subd. 1.

b. The first credible report described in subd. 1. received during a claimant's benefit year that is not otherwise disregarded under subd. 2. a. shall be disregarded for purposes of subd. 1.

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

108.04 (11) (cm) If any person makes a false statement or representation in order to obtain benefits in the name of another person, the benefits received by that person constitute a benefit overpayment. Such person ~~may shall~~, by a determination or decision issued under s. 108.095, be required to repay the amount of the benefits obtained and be assessed an administrative assessment in

an additional amount equal to the amount of benefits obtained.

**SECTION 8.** 108.04 (13) (c) of the statutes is amended to read:

108.04 (13) (c) If an employer, after notice of a benefit claim, fails to file ~~an objection~~ a response to the claim under s. 108.09 (1), any benefits allowable under any resulting benefit computation shall, unless the department applies a provision of this chapter to disqualify the claimant, be promptly paid. Except as otherwise provided in this paragraph, any ~~eligibility question in objection~~ response to the claim ~~raised~~ made by the employer after benefit payments to the claimant are commenced does not affect benefits paid before the end of the week in which a determination is issued as to the eligibility question unless the benefits are erroneously paid without fault on the part of the employer. Except as otherwise provided in this paragraph, if an employer fails to provide correct and complete information requested by the department during a fact-finding investigation, but later provides the requested information, benefits paid before the end of the week in which a redetermination is issued regarding the matter or, if no redetermination is issued, before the end of the week in which an appeal tribunal decision is issued regarding the matter, are not affected by the redetermination or decision, unless the benefits are erroneously paid without fault on the part of the employer as provided in par. (f). If benefits are erroneously paid because the employer and the employee are at fault, the department shall charge the employer for the benefits and proceed to create an overpayment under s. 108.22 (8) (a). If benefits are erroneously paid without fault on the part of the employer, regardless of whether the employee is at fault, the department shall charge the benefits as provided in par. (d), unless par. (e) applies, and proceed to create an overpayment under s. 108.22 (8) (a). If benefits are erroneously paid because an employer is at fault and the department recovers the benefits erroneously paid under s. 108.22, the recovery does not affect benefit charges made under this paragraph.

**SECTION 9.** 108.04 (13) (e) of the statutes is amended to read:

108.04 (13) (e) If the department erroneously pays benefits from one employer's account and a 2nd employer is at fault, the department shall credit the benefits paid to the first employer's account and charge the benefits paid to the 2nd employer's account. Filing of a tardy or corrected report or ~~objection~~ response does not affect the 2nd employer's liability for benefits paid before the end of the week in which the department makes a recomputation of the benefits allowable or before the end of the week in which the department issues a determination concerning any eligibility question raised by the report or by the 2nd employer. If the 2nd employer fails to provide correct and complete information requested by the department during a fact-finding

investigation, but later provides the requested information, the department shall charge to the account of the 2nd employer the cost of benefits paid before the end of the week in which a redetermination is issued regarding the matter or, if no redetermination is issued, before the end of the week in which an appeal tribunal decision is issued regarding the matter, unless the benefits erroneously are paid without fault on the part of the employer as provided in par. (f). If the department recovers the benefits erroneously paid under s. 108.22, the recovery does not affect benefit charges made under this paragraph.

**SECTION 10.** 108.04 (13) (f) of the statutes is amended to read:

108.04 (13) (f) If benefits are erroneously paid because the employer fails to file a report required by this chapter, the employer fails to provide correct and complete information on the report, the employer fails to ~~object~~ respond to the benefit claim under s. 108.09 (1), the employer fails to provide correct and complete information requested by the department during a fact-finding investigation, unless an appeal tribunal, the commission, or a court of competent jurisdiction finds that the employer had good cause for the failure to provide the information, or the employer aids and abets the claimant in an act of concealment as provided in sub. (11), the employer is at fault. If benefits are erroneously paid because an employee commits an act of concealment as provided in sub. (11) or fails to provide correct and complete information to the department, the employee is at fault.

**SECTION 11.** 108.09 (1) of the statutes is amended to read:

108.09 (1) FILING. Claims for benefits shall be filed pursuant to department rules. Each employer that is notified of a benefit claim shall ~~promptly inform~~ provide a full and prompt response to the department in writing as to any eligibility question ~~in objection to such claim together with the reasons for the objection that may be at issue with respect to the claim, regardless of any objection to the claim on the part of the employer.~~ The department may also obtain information from the employee concerning the employee's eligibility, employment or wages.

**SECTION 12.** 108.14 (19) of the statutes is renumbered 108.14 (19) (intro.) and amended to read:

108.14 (19) (intro.) No later than March 15 annually, the department shall prepare and furnish to the council on unemployment insurance and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), a report summarizing the department's activities related to detection and prosecution of unemployment insurance fraud in the preceding year. The department shall include all of the following in the report ~~information:~~

(a) Information about audits conducted by the department under sub. (20), including the number and results of audits performed, in the previous year.

**SECTION 13.** 108.14 (19) (b) of the statutes is created to read:

108.14 (19) (b) Information on reports submitted by employing units under s. 108.04 (1) (hg) 1., including actions taken by the department in response to the reports as required under s. 108.04 (1) (hg) 2. and their effect on claimants' eligibility for benefits under s. 108.04 (2) (ae) 1. and (hL).

**SECTION 14.** 108.14 (21) of the statutes is amended to read:

108.14 (21) The department shall maintain a portal on the Internet that allows ~~employers~~ employing units to log in and file with the department complaints related to the administration of this chapter and reports under s. 108.04 (1) (hg).

**SECTION 15.** 108.14 (28) of the statutes is created to read:

108.14 (28) The department shall have in effect methods to address circumstances in which an employee fails to return to work or to accept suitable work without good cause as described in s. 108.04 (8) or in which the employee is unavailable for work or unable to perform work under s. 108.04 (1) (a). The methods shall include all of the following:

(a) Reporting methods, including a telephone line, an electronic mail address, and an online portal, for an employing unit to notify the department when an employee refuses an offer of work.

(b) A plain-language notice provided to employees by the department when applying for benefits about the application of s. 108.04 (8) (a) to (c), including what constitutes suitable work under s. 108.04 (8) (d) and (dm), and an employee's right to fail to accept suitable work for good cause under s. 108.04 (8) (em); about the application of s. 108.04 (1) (a); and including information on contesting the denial of a claim that has been denied due to a report by an employing unit that an employee failed to return to work, failed to accept suitable work, or was unavailable for work or unable to perform work.

**SECTION 16.** 108.22 (8) (a) of the statutes is amended to read:

108.22 (8) (a) If benefits are erroneously paid to an individual, the individual's liability to reimburse the fund for the overpayment ~~may~~ shall be set forth in a determination or decision issued under s. 108.09. Any determination ~~which~~ that establishes or increases an overpayment shall include a finding concerning whether waiver of benefit recovery is required under par. (c). If any decision of an appeal tribunal, the commission or any court establishes or increases an overpayment and the decision does not include a finding concerning whether waiver of bene-

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fit recovery is required under par. (c), the tribunal, commission or court shall remand the issue to the department for a determination.

**SECTION 17. Initial applicability.**

(1) The renumbering of s. 108.04 (2) (ae) and the creation of s. 108.04 (2) (ae) 1. and (hL) first apply to weeks

of unemployment beginning on the effective date of this subsection.

**SECTION 18. Effective dates.** This act takes effect on the Sunday after publication, except as follows:

(1) The treatment of s. 108.14 (28) takes effect on the first Sunday after the 180th day after publication.

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