



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #214

### Wisconsin Works Sanctions (DCF -- Economic Support and Child Care)

[LFB 2011-13 Budget Summary: Page 101, #5]

#### CURRENT LAW

Participants in Wisconsin Works (W-2) who miss required work or educational activities without good cause, refuse to participate in any W-2 employment position component, fail to cooperate with child support efforts, otherwise intentionally violate program requirements, or fail a drug test may be sanctioned. W-2 agencies must follow specific procedures before taking any action against a W-2 participant that would result in a 20% or more reduction of that participant's benefits or result in termination of the participant's eligibility to participate in W-2. In addition, W-2 participants must be afforded an opportunity to rectify any deficiency during a conciliation period or similar process.

*Missing Required Work or Educational Activities.* For every hour a W-2 participant misses required work or education activities without good cause, the monthly grant is reduced by \$5.15, based on the federal minimum wage at the time the current grant amounts went into effect.

*Refusal to Participate.* If a participant, or an individual in the participant's W-2 group, refuses to participate in required activities, then the participant is ineligible to participate in the W-2 program for a period of three months.

In determining whether a participant refused to participate, a W-2 agency must: (a) determine whether the failure of the participant or individual to participate is because the participant or individual refuses to participate or is unable to participate; (b) ensure that the services offered to the participant or individual are appropriate for him or her; and (c) determine whether good cause exists for the failure to participate.

*Cooperation with Child Support Efforts.* In order to be eligible for a W-2 employment position, every parent in an individual's W-2 group must fully cooperate in efforts to establish

paternity and obtain support payments, unless there is good cause for not cooperating. An individual who fails three times to meet these requirements remains ineligible for W-2 until all members of the individual's W-2 group cooperate or for a period of six months, whichever is later.

*Intentional Program Violations.* W-2 agencies may permanently deny all W-2 benefits to an individual if it is determined by a court or after an administrative hearing that a member of a group receiving W-2 benefits has intentionally violated, on three separate occasions, any W-2 statutory provision or rule for the purpose of establishing or maintaining eligibility for W-2 benefits or increasing the value of those benefits.

*Drug Testing.* Individuals applying for a W-2 employment position or job access loan must state in writing whether they have been convicted of a felony that has as an element possession, use, or distribution of a controlled substance. If a participant in a community service job or transitional placement was convicted in any state or federal court of such a felony after August 22, 1996, and within five years of applying for a W-2 employment position, the W-2 agency must require the individual to submit to a test for use of a controlled substance as a condition of continued eligibility. If the test results are positive, the W-2 agency must decrease the pre-sanction benefit amount for that participant by up to 15% for at least 12 months, or for the remainder of the participant's period of participation in the employment position, if less than 12 months. If, at the end of 12 months, the individual is still a participant in the employment position and submits to another test for the use of controlled substances, and if the results of the test are negative, then the full benefit amount must be restored.

*Procedures Before Implementation of Sanctions.* W-2 agencies are required to do all of the following before taking any action against a W-2 participant that would result in a 20% or more reduction in the participant's benefits or in termination of the participant's eligibility to participate in W-2: (a) explain orally in person or by phone, or make reasonable attempts to explain orally in person or by phone, the proposed action and the reasons for the proposed action; (b) after providing the oral explanation, provide written notice of the proposed action and of the reasons for the proposed action to the W-2 participant; and (c) after providing the oral explanation and written notice, allow the W-2 participant reasonable time to rectify the deficiency, failure, or other behavior to avoid the proposed action only if the participant was not already afforded a conciliation period.

*Conciliation Period for Compliance.* If a W-2 agency has determined that a participant or individual has refused to participate without good cause, the agency must allow the participant or individual a conciliation period during which he or she must participate in all assigned activities unless good cause exists that prevents compliance during a conciliation period.

## **GOVERNOR**

*Refusal to Participate.* Eliminate the requirement that in determining whether a W-2 participant refused to participate, a W-2 agency must: (a) determine whether the failure of the participant or individual to participate is because the participant or individual refuses to

participate or is unable to participate; (b) ensure that the services offered to the participant or individual are appropriate for him or her; and (c) determine whether good cause exists for the failure to participate.

*Procedures Before Implementation of Sanctions.* Before taking action against an individual that would result in a 20% or more reduction to the individual's benefits or in termination of the individual's eligibility to participate in W-2, eliminate the requirement that a W-2 agency must explain orally in person or by phone, or make reasonable attempts to explain orally in person or by phone, the proposed action and the reasons for the proposed action.

*Conciliation Period for Compliance.* Eliminate the conciliation period for W-2 participants to comply with assigned activities before being sanctioned if it has been determined that the participant has refused to participate.

## **DISCUSSION POINTS**

1. Most of the sanctions that may be imposed on W-2 participants described above were established either under the initial legislation that created W-2 (1995 Wisconsin Act 289) or the subsequent biennial budget bill (1997 Wisconsin Act 27), except for the following: (a) procedures before implementation of sanctions; (b) refusal to participate; and (c) conciliation period for compliance.

### **Procedures Before Implementation of Sanctions**

2. Provisions of 2005 Wisconsin Act 25 required agencies to do all of the following before taking any action against a W-2 participant that would result in a 20% or more reduction in the participant's benefits or in termination of the participant's eligibility to participate in W-2: (a) provide written notice of the proposed action and of the reasons for the proposed action to the W-2 participant; (b) after providing written notice, explain orally in person or by phone, or make reasonable attempts to explain orally in person or by phone, the proposed action and the reasons for the proposed action; and (c) after providing written notice and an oral explanation, allow the W-2 participant reasonable time to rectify the deficiency, failure, or other behavior to avoid the proposed action.

3. Provisions of 2009 Wisconsin Act 28 modified the order of these procedures to require the oral explanation under (b) first, the written notice under (a) second, and a reasonable time to rectify the deficiency under (c) after the oral and written explanations. Act 28 also required W-2 agencies to provide the time to rectify the deficiency under (c) only if the participant was not already afforded a conciliation period, described in further detail below.

### **Refusal to Participate**

4. Under 1995 Act 289, a sanction was established for W-2 participants who refused to participate. If a participant refused to participate three times in any W-2 employment position component, the participant was no longer eligible to ever participate in that component. However, the participant was eligible to participate in any other W-2 employment position component for

which the participant had not refused to participate three times.

5. Under Act 289, the following constituted a refusal to participate: (a) expressing verbally or in writing to a W-2 agency that the individual refuses to participate; (b) failing to appear for an interview with a prospective employer or, if the participant is in a W-2 transitional placement, failing to appear for an assigned activity without good cause, as determined by the W-2 agency; (c) voluntarily leaving appropriate employment or training without good cause, as determined by the W-2 agency; (d) losing employment as a result of being discharged for cause; or (e) demonstrating through other behavior or action, as specified under rule, that he or she refuses to participate. A "strike" against the W-2 participant was intended to be imposed for each refusal. There was no consequence for the first two strikes. On the third strike, there was a permanent ban on participation in the specific employment position component that earned the strike.

6. In an April, 2005, report called *Wisconsin Works (W-2) Program*, the Legislative Audit Bureau (LAB) discussed the imposition of sanctions by W-2 agencies. The LAB report found that the strikes for refusing to participate were seldom imposed. Of 16 W-2 agencies reviewed, only one reported that it routinely imposed strikes. Ten agencies reported imposing strikes occasionally or rarely. Five agencies reported never imposing them. W-2 agencies indicated that strikes were imposed infrequently because there were no consequences associated with the first and second strikes, and the consequence associated with the third strike was too severe.

7. To address this issue in the LAB report, 2009 Act 28 modified the sanction for refusal to participate. Rather than impose a strike and ban a participant from ever participating in a specific W-2 employment position component upon the third strike, Act 28 banned participation in the entire W-2 program for three months for each violation, beginning with the first violation. Rationale for these changes included simplifying the sanction process and establishing a procedure that W-2 agencies would utilize.

8. However, to address concerns regarding the imposition of a penalty without warning, Act 28 also created additional safeguards for W-2 participants. First, Act 28 required the Department of Children and Families (DCF) to promulgate rules to specify guidelines for determining when a W-2 participant, or individual in the participant's W-2 group, who engages in behavior considered to be a refusal is actually demonstrating a refusal to participate. Second, Act 28 required W-2 agencies to: (a) determine whether the failure of the participant or individual to participate is because the participant or individual refuses to participate or is unable to participate; (b) ensure that the services offered to the participant or individual are appropriate for him or her; and (c) determine whether good cause exists for the failure to participate. Finally, Act 28 established a conciliation period for compliance.

### **Conciliation Period**

9. In addition to modifying the sanction for refusal to participate and requiring a W-2 agency to make certain determinations before imposing this sanction, Act 28 also provided for a conciliation period for a participant or individual to comply with all assigned activities unless good cause existed to prevent compliance. If the participant or individual complied, then the sanction of not being allowed to participate in W-2 for three months would not be imposed.

## **Senate Bill 27/Assembly Bill 40**

10. The bill would eliminate the following requirements for W-2 agencies: (a) explain to an individual orally in person or by phone, or make reasonable attempts to explain orally, the proposed action and the reasons for the proposed action if the result of the action is a 20% or more reduction to benefits or in termination of eligibility to participate in W-2; (b) the actions W-2 agencies must perform before determining whether a W-2 participant refused to participate; and (c) a conciliation period for compliance before imposition of a sanction for a refusal to participate.

11. The Committee could adopt the proposal to eliminate the requirement for an oral explanation before taking an action that would reduce benefits by 20% or more or terminate eligibility to participate in W-2, effective October 1, 2011 (Alternative A1). Eliminating the requirement to contact a participant in person or by phone reduces the administrative burden of providing notice to the participant. In addition, W-2 participants who would receive a 20% or more reduction to benefits or whose eligibility would be terminated would still receive written notice and reasonable time to rectify the deficiency. It should be noted that DCF indicates time would be needed to make any changes outlined in this paper and has requested October 1, 2011, be the effective date of this provision.

12. On the other hand, some would argue that many W-2 participants have significant barriers to employment. In order to fully understand the consequences for their actions, or inactions, an oral explanation is not only helpful, but necessary. The Committee could delete this provision (Alternative A2).

13. The Committee could adopt, effective October 1, 2011, the proposal to eliminate the requirement for W-2 agencies, before imposing a sanction for refusing to participate, to: (a) determine whether the failure of the participant or individual to participate is because the participant or individual refuses to participate or is unable to participate; (b) ensure that the services offered to the participant or individual are appropriate for him or her; and (c) determine whether good cause exists for the failure to participate (Alternative B1).

14. In support of Alternative B1, W-2 agencies would still be required to ensure that the refusal meets the definition under rules promulgated by DCF and would still be required to follow requirements outlined in Operations Memoranda issued by DCF related to procedures W-2 agencies must take before a case may be closed. W-2 agencies are required to: (a) review the case for underlying barriers; (b) address any identified barriers; (c) provide good cause when appropriate; (d) apply payment reductions (in the case of non-cooperation with job search requirements); and (e) develop a supportive services plan with the participant. In addition, W-2 participants would be able to appeal the decision if they believed it to be in error.

15. However, if the W-2 agency sanctions a participant in error, the employment plan for the participant would be interrupted during the appeals process. The Committee could delete this provision to ensure that the participants have actually refused to participate before a W-2 agency imposes a sanction that would prohibit participation in W-2 for three months (Alternative B2).

16. Finally, the Committee could adopt, effective October 1, 2011, the proposal to eliminate the conciliation period for compliance (Alternative C1). Because the prohibition of participating in the W-2 program for three months is an action that would likely reduce benefits by 20% or more or terminate eligibility to participate in W-2, participants would most likely be provided with a reasonable time period to rectify the deficiency, failure, or other behavior to avoid the proposed action. In addition, the close-out procedures described above would also apply.

17. Alternatively, the Committee could delete the proposal (Alternative C2). Given that there is no longer any warning in the form of two strikes without consequences, the Committee could choose to retain current law, which specifically allows participants to correct the behavior that led to a determination of a refusal through a conciliation period before a sanction is imposed. This conciliation period is specifically for sanctions related to refusing to participate.

## **ALTERNATIVES**

### **A. Procedures Before Implementation of Sanctions**

1. Adopt the Governor's proposal to eliminate the requirement that an oral explanation be provided to W-2 participants before a W-2 agency can take any action against an individual that would result in a 20% or more reduction to the individual's benefits or in termination of the individual's eligibility to participate in W-2, and specify an effective date for this provision of October 1, 2011.

2. Delete provision.

### **B. Refusal to Participate**

1. Adopt the Governor's proposal, beginning October 1, 2011, to eliminate the requirement that a W-2 agency, before a W-2 agency determines that a W-2 participant is ineligible to participate in W-2 because that individual demonstrated a refusal to participate, must: (a) determine whether the failure of the individual to participate is because the individual refuses or is unable to participate; (b) ensure that the services offered to the individual are appropriate for him or her; and (c) determine whether good cause exists for the failure to participate.

2. Delete Provision.

### **C. Conciliation Period**

1. Adopt the Governor's proposal, beginning October 1, 2011, to eliminate the conciliation period for compliance after a determination of refusal to participate before a sanction is imposed.

2. Delete provision.

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