



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-2710/1
MED:skw

2023 SENATE BILL 237

April 14, 2023 - Introduced by Senators WIMBERGER, FELZKOWSKI, NASS and STROEBEL, cosponsored by Representatives ARMSTRONG, BEHNKE, BROOKS, EDMING, GREEN, GUNDRUM, KNODL, MACCO, MOSES, MURPHY, NEDWESKI, O'CONNOR, PENTERMAN, PETERSEN, PETRYK, PLUMER, RETTINGER, ROZAR and SCHMIDT. Referred to Committee on Economic Development and Technical Colleges.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to renumber and amend* 108.04 (2) (a) 4. and 108.04 (5) (e); *to amend*
2 16.54 (2) (a) 1., 108.04 (5) (b), 108.04 (15) (a) 1. and 108.14 (20); and *to create*
3 16.54 (14), 108.04 (2) (a) 4. c., 108.04 (5) (e) (intro.), 108.04 (5) (e) 2. and 108.04
4 (5) (h) of the statutes; **relating to:** various changes to the unemployment
5 insurance law and requiring approval by the Joint Committee on Finance of
6 certain federally authorized unemployment benefits.

Analysis by the Legislative Reference Bureau

UNEMPLOYMENT INSURANCE

This bill makes various changes in the unemployment insurance (UI) law, which is administered by the Department of Workforce Development. Significant changes include all of the following:

Misconduct

Currently, if an employee is discharged for misconduct connected with his or her employment, the employee is ineligible to receive UI benefits until certain requalification criteria are satisfied. In addition, all wages earned with the employer that discharges the employee are excluded in determining the amount of any future benefits to which the employee is entitled. Current law provides a general definition of misconduct and also specifies a number of specific actions that constitute misconduct. The bill does all of the following with respect to what is considered misconduct:

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1. Current law specifically provides that misconduct includes theft of an employer's property or services with intent to deprive the employer of the property or services permanently, theft of currency of any value, felonious conduct connected with an employee's employment with his or her employer, or intentional or negligent conduct by an employee that causes substantial damage to his or her employer's property. The bill does the following:

a. Eliminates the requirement that the employee have intent to deprive the employer of the property or services permanently.

b. Provides that intentional or negligent conduct by an employee that causes the destruction of an employer's records is also considered misconduct.

c. Adds unauthorized possession of an employer's property, theft or unauthorized distribution of an employer's confidential or proprietary information, and use of an employer's credit card or other financial instrument for an unauthorized or nonbusiness purpose without prior approval from the employer to the list of what is considered misconduct.

2. Current law specifically provides that misconduct includes absenteeism by an employee on more than two occasions within the 120-day period before the date of the employee's termination, unless otherwise specified by his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature, or excessive tardiness by an employee in violation of a policy of the employer that has been communicated to the employee, if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness.

The bill instead provides that misconduct includes both of the following: 1) a violation of an employer's reasonable policy that covers employee absenteeism, tardiness, or both and that results in an employee's termination, if that termination is in accordance with that policy and the policy is specified by the employer in an employment manual of which the employee has acknowledged receipt with his or her signature; and 2) if an employer does not have a policy covering absenteeism that meets the criteria just described, absenteeism on more than two occasions within the 120-day period preceding an employee's termination, if the employee does not provide to the employer both notice and one or more valid reasons for the absenteeism.

3. The bill specifically provides that misconduct includes a violation by an employee of an employer's reasonable employment policy that covers the use of social media specified by the employer in an employment manual of which the employee has acknowledged receipt with his or her signature.

General qualifying requirements

Under current law, a claimant for UI benefits is generally required to 1) register for work, 2) be able to work and available for work, and 3) conduct a work search for each week in order to remain eligible. A claimant is required to conduct at least four work search actions each week, and DWD may require, by rule, that an individual conduct more than four work search actions per week. Finally, if a claimant is claiming benefits for a week other than an initial week, the claimant must provide information or job application materials that are requested by DWD and participate

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in a public employment office workshop or training program or in similar reemployment services required by DWD.

The bill does the following:

1. Requires a claimant who resides outside this state and who is claiming benefits for a week other than an initial week to register with his or her local job center website or labor market exchange and requires DWD to verify that each such claimant has complied with that requirement.

2. Requires DWD to conduct random audits for at least 50 percent of all work search actions reported to have been performed by claimants. Current law requires random audits of work search actions, but does not require a specific number or level of audits.

OTHER CHANGES***UI benefit augmentations subject to review by Joint Committee on Finance***

The bill provides that whenever any UI benefit augmentation is provided for through an act of Congress or by executive action of the president of the United States, the cochairpersons of the Joint Committee on Finance must be notified, in writing, of the proposed benefit augmentation. The bill defines “benefit augmentation” to mean any action whereby the governor or any other state official or agency would encumber or expend moneys received from, or accept reimbursement from, the federal government or whereby the governor or any other state agency or official would enter into any contract or agreement with the federal government or any federal agency to 1) increase the weekly UI benefit rate payable to claimants above what is provided under state law, or 2) increase the total amount of UI benefits to which a claimant is entitled above what is provided under state law. Under the bill, such a benefit augmentation is subject to a 14-day passive review by the Joint Committee on Finance.

In addition, the bill provides that no benefit augmentation may be effectuated unless it is subject to termination or cancellation by the Joint Committee on Finance.

Worker’s compensation; misconduct

Currently, under the worker’s compensation law, an employer is not liable for temporary disability benefits during an employee’s healing period if the employee is suspended or terminated from employment due to misconduct, as defined under the UI law. Under the bill, the changes to the UI law’s definition of misconduct described above apply under the worker’s compensation law as well.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 16.54 (2) (a) 1. of the statutes is amended to read:

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1 16.54 (2) (a) 1. Except as provided in subd. 2. and sub. (14), whenever funds
2 shall be made available to this state through an act of congress and the funds are
3 accepted as provided in sub. (1), the governor shall designate the state board,
4 commission, or department to administer any of such funds, and the board,
5 commission, or department so designated by the governor is authorized and directed
6 to administer such funds for the purpose designated by the act of congress making
7 an appropriation of such funds, or by the department of the United States
8 government making such funds available to this state. Whenever a block grant is
9 made to this state, no moneys received as a part of the block grant may be transferred
10 from use as a part of one such grant to use as a part of another such grant, regardless
11 of whether a transfer between appropriations is required, unless the joint committee
12 on finance approves the transfer.

13 **SECTION 2.** 16.54 (14) of the statutes is created to read:

14 16.54 (14) (a) In this subsection, “benefit augmentation” means for any state
15 agency or official, including the governor, to encumber or expend moneys received
16 from, or accept reimbursement from, the federal government or for any state agency
17 or official, including the governor, to enter into any contract or agreement with the
18 federal government or any federal agency, to do any of the following:

19 1. Increase the weekly unemployment insurance benefit rate payable to
20 claimants to a rate that is higher than what is provided under s. 108.05, including
21 by providing any stipend or other benefit separately from unemployment insurance
22 benefits, if eligibility for that stipend or benefit is determined, in whole or in part,
23 based on an individual’s receipt of, or eligibility for, unemployment insurance
24 benefits.

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1 2. Increase the total amount of unemployment insurance benefits to which a
2 claimant is entitled to an amount that is greater than what is provided under s.
3 108.06 (2), including by providing an increased overall benefit entitlement or
4 additional weeks of benefits.

5 (b) 1. Whenever any benefit augmentation is provided for through an act of
6 congress or by executive action of the president of the United States, the governor
7 or other state official or state agency shall notify the cochairpersons of the joint
8 committee on finance, in writing, of the proposed benefit augmentation. The notice
9 shall contain a detailed description of the proposed benefit augmentation, an
10 affirmative statement that the proposed benefit augmentation complies with subd.
11 2., and, if the proposed benefit augmentation requires any contract or agreement
12 with the federal government or any federal agency, a copy of the proposed contract
13 or agreement if available. If the cochairpersons of the committee do not notify the
14 governor, official, or agency that the committee has scheduled a meeting for the
15 purpose of reviewing the proposed benefit augmentation within 14 working days
16 after the date of the governor's, official's, or agency's notification, the benefit
17 augmentation may, subject to subd. 2., be effectuated as proposed by the governor,
18 official, or agency. If, within 14 working days after the date of the governor's,
19 official's, or agency's notification, the cochairpersons of the committee notify the
20 governor, official, or agency that the committee has scheduled a meeting for the
21 purpose of reviewing the proposed benefit augmentation, the benefit augmentation
22 may not be effectuated without the approval of the committee. The committee may
23 not approve a proposed benefit augmentation unless it complies with subd. 2.

24 2. No benefit augmentation may be effectuated unless it is subject to
25 termination or cancellation by the joint committee on finance.

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1 (c) This subsection does not apply with respect to federal extended benefits
2 under s. 108.141.

3 **SECTION 3.** 108.04 (2) (a) 4. of the statutes is renumbered 108.04 (2) (a) 4.
4 (intro.) and amended to read:

5 108.04 (2) (a) 4. (intro.) If the claimant is claiming benefits for a week other
6 than an initial week, the claimant provides does all of the following:

7 a. Provides information or job application materials that are requested by the
8 department ~~and participates.~~

9 b. Participates in a public employment office workshop or training program or
10 in similar reemployment services that are required by the department under sub.
11 (15) (a) 2.

12 **SECTION 4.** 108.04 (2) (a) 4. c. of the statutes is created to read:

13 108.04 (2) (a) 4. c. Registers on his or her local job center website or with his
14 or her labor market exchange, if the claimant resides outside this state. The
15 department shall verify that each such claimant has complied with this subd. 4. c.

16 **SECTION 5.** 108.04 (5) (b) of the statutes is amended to read:

17 108.04 (5) (b) Theft or unauthorized possession of an employer's property ~~or,~~
18 theft of an employer's services with intent to deprive the employer of the property or
19 services permanently, theft or unauthorized distribution of an employer's
20 confidential or proprietary information, use of an employer's credit card or other
21 financial instrument for an unauthorized or nonbusiness purpose without prior
22 approval from the employer, theft of currency of any value, felonious conduct
23 connected with an employee's employment with his or her employer, or intentional

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1 or negligent conduct by an employee that causes the destruction of an employer's
2 records or substantial damage to ~~his or her~~ an employer's property.

3 **SECTION 6.** 108.04 (5) (e) (intro.) of the statutes is created to read:

4 108.04 (5) (e) (intro.) Any of the following:

5 **SECTION 7.** 108.04 (5) (e) of the statutes is renumbered 108.04 (5) (e) 1. and
6 amended to read:

7 108.04 (5) (e) 1. Absenteeism by an employee on more than 2 occasions within
8 the 120-day period before the date of the employee's termination, ~~unless otherwise~~
9 ~~specified by his or her employer~~ if the employee does not provide to his or her
10 employer both notice and one or more valid reasons for the absenteeism. This
11 subdivision does not apply if the employer has a reasonable policy that covers
12 absenteeism described in subd. 2. in an employment manual of which the employee
13 has acknowledged receipt with his or her signature, ~~or excessive tardiness by an~~
14 ~~employee in violation of a policy of the employer that has been communicated to the~~
15 ~~employee, if the employee does not provide to his or her employer both notice and one~~
16 ~~or more valid reasons for the absenteeism or tardiness.~~

17 **SECTION 8.** 108.04 (5) (e) 2. of the statutes is created to read:

18 108.04 (5) (e) 2. A violation of an employer's reasonable policy that covers
19 employee absenteeism, tardiness, or both, and that results in an employee's
20 termination, if that termination is in accordance with that policy and the policy is
21 specified by the employer in an employment manual of which the employee has
22 acknowledged receipt with his or her signature.

23 **SECTION 9.** 108.04 (5) (h) of the statutes is created to read:

24 108.04 (5) (h) A violation by an employee of an employer's reasonable policy
25 that covers the use of social media and is substantially related to the employee's

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1 employment, if the violation results in an employee's termination and if that
2 termination is in accordance with that policy and the policy is specified by the
3 employer in an employment manual of which the employee has acknowledged receipt
4 with his or her signature.

5 **SECTION 10.** 108.04 (15) (a) 1. of the statutes is amended to read:

6 108.04 (15) (a) 1. Use the information or materials provided under sub. (2) (a)
7 4. a. to assess a claimant's efforts, skills, and ability to find or obtain work and to
8 develop a list of potential opportunities for a claimant to obtain suitable work. A
9 claimant who otherwise satisfies the requirement under sub. (2) (a) 3. is not required
10 to apply for any specific positions on the list in order to satisfy that requirement.

11 **SECTION 11.** 108.14 (20) of the statutes is amended to read:

12 108.14 (20) The department shall conduct random audits on claimants for
13 benefits under this chapter to assess compliance with the work search requirements
14 under s. 108.04 (2) (a) 3. The department shall conduct the audits required under
15 this subsection at a level sufficient for the department to assess at least 50 percent
16 of all work search actions reported to have been performed by claimants.

17 **SECTION 12. Nonstatutory provisions.**

18 (1) The department of workforce development shall submit a notice to the
19 legislative reference bureau for publication in the Wisconsin Administrative
20 Register when the department determines that the department has any rules in
21 place that are necessary to implement the renumbering and amendment of s. 108.04
22 (2) (a) 4. and the creation of s. 108.04 (2) (a) 4. c. by this act.

23 **SECTION 13. Initial applicability.**

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1 (1) The renumbering and amendment of s. 108.04 (2) (a) 4. and the creation of
2 s. 108.04 (2) (a) 4. c. first apply with respect to weeks of unemployment beginning on
3 the effective date of this subsection.

4 (2) The renumbering and amendment of s. 108.04 (5) (e), the amendment of s.
5 108.04 (5) (b), and the creation of s. 108.04 (5) (e) (intro.) and 2. and (h) first apply
6 with respect to determinations issued under s. 108.09 on the effective date of this
7 subsection.

8 **SECTION 14. Effective dates.** This act takes effect on the Sunday after
9 publication, except as follows:

10 (1) The renumbering and amendment of s. 108.04 (2) (a) 4. and the creation of
11 s. 108.04 (2) (a) 4. c. and SECTION 13 (1) of this act take effect on the Sunday after the
12 notice under SECTION 12 (1) of this act is published in the Wisconsin Administrative
13 Register or on December 31, 2023, whichever occurs first.

14 (2) The renumbering and amendment of s. 108.04 (5) (e), the amendment of s.
15 108.04 (5) (b), and the creation of s. 108.04 (5) (e) (intro.) and 2. and (h) and SECTION
16 13 (2) of this act take effect on December 31, 2025, or on the first Sunday after the
17 180th day after publication, whichever occurs later.

18 (END)