

**PLAIN LANGUAGE SUMMARY
OF THE UI ADVISORY COUNCIL'S
1999 BILL**

BENEFITS CHANGES

108.05(3)(c) Denial of partial benefits to those who are not "unemployed"

Adds a paragraph to prevent payment of partial UI benefits to claimants who experience reduced earnings without accompanying unemployment. Any claimant who works 40 or more total hours per week, regardless of the number of employers for which the claimant worked in that week, will not be eligible for benefits.

REASON: Our state law does not conform to federal law as interpreted by the U.S. Secretary of Labor in Unemployment Insurance Program Letter (UIPL) 08-98, dated January 12, 1998. That program letter explained that federal law permits withdrawals from a state's unemployment fund only to individuals who experience "unemployment", that is, *loss of work*. Our law currently fails to conform because we determine "unemployment" by looking at *reduction in wages*.

The present partial benefits formula was designed to maximize incentives to work. The change required by the federal government is anticipated to lead some individuals to seek less work when combined income from less than full-time work plus UI will exceed income from full-time work alone.

108.04(1)(b)2 Bringing consistency to "voluntary leave of absence" and "work available" situations

Amends the statute to permit eligibility for partial benefits under the partial benefits formula if the voluntary leave of absence lasts for less than an entire week. Claimants will continue to be ruled ineligible for full week leaves.

REASON: This section will bring consistency to existing law, particularly since we currently treat two similar situations, *i.e.*, work available (but not taken) and formal voluntary leave, differently. If an individual does not accept all available work for a week as determined under UI law, then the wages for the missed work are treated as earned wages and the employee may still receive a partial benefit check. But if an employee is granted a leave of absence for part of a week, the employee is not eligible to receive any partial UI benefits for that week. The only difference between the two situations is that in one instance the employee informally received time off from work and in the other the employee formally obtained a leave of absence.

108.04(13)(d) Clarification to law giving immediate credit to employer accounts when recovery of overpayment is waived

Amends current provision to clarify that employers whose accounts are charged when recovery of overpayment is waived due to departmental error will receive an immediate credit.

REASON: Due to a misplaced reference in a paragraph, Wisconsin law has been misinterpreted to mean that when recovery of overpayment is waived, the section providing grant of an immediate credit to the employer does not apply.

108.04(7)(b) Repeal of the narrow sexual harassment quit exception and consolidation under the "good cause attributable to the employer" exception.

Repeals the narrow sexual harassment quit exception, 108.04(7)(i), and consolidates and broadens that exception within amended section 108.04(7)(b). Sexual harassment under amended sub. (7)(b) will be recognized as a form of good cause attributable to the employer for an employee to quit employment, without losing eligibility for UI benefits. The employer will be chargeable with resulting benefits. The amended section 108.04(7)(b) specifically applies the more expansive definition of sexual harassment from section 111.32(13) of the Wisconsin Fair Employment Act, which encompasses not just criminal or unwelcome sexual advances in the workplace but also hostile work environment.

REASON: As the quit exception of section 108.04(7)(i) is currently written, the language requires what amounts to criminal conduct by an employer against the employee in order for the employee to be eligible for benefits immediately after quitting. However, the department has been administratively applying section 108.04(7)(b) (without explicit statutory language related to sexual harassment) to allow benefits in situations involving *either* criminal or non-criminal forms of sexual harassment on the grounds that it constitutes good cause attributable to the employer for quitting. Therefore, the department has not been using section 108.04(7)(i). This repeal and amendment will incorporate sexual harassment as formerly provided in section 108.04(7)(i) within an explicit sexual harassment exception added as good cause under section 108.04(7)(b).

108.05(1) Increase in maximum weekly benefit rate

Amends the statute to increase the maximum weekly benefit rate by \$8 for each week of total unemployment which commences on or after April 2, 2000, and also increase the maximum weekly benefit rate by \$8 for each week of total unemployment which commences on or after October 1, 2000.

REASON: The increases anticipate changes in the cost of living of approximately 2.7% in each of the next two years. However, the increases are timed to permit the department to have all computer-related resources available to respond if internal or external computer problems arise as a result of the transition to the year 2000.

108.02(4) Adoption of an alternative base period

and Amends the law to permit the department to use an alternate base period
108.06(2)(cm)(the four most recent completed quarters) to determine whether an individual will qualify for UI benefits, if he or she does not qualify using the regular base period (the first four of the last five completed quarters). Creates a provision to prevent quarterly wages used to establish eligibility under this alternate base period from being used again to establish a later regular benefit year.

REASON: Expands benefit eligibility by allowing claimants who are unable to establish a new benefit year using wages under the regular UI base period by using more recent wages. Its effect would be to allow recent entrants or re-entrants to the workforce to be eligible for benefits under the UI program sooner than the current law.

108.04(7)(cm) Creation of a quit exception for refusal to transfer to another shift due to lack of childcare

Adds a new exception to the quit disqualification in 108.04(7)(a). Where an employee is hired to work on a particular shift, this grants benefit eligibility if the employee quits by refusing to accept a transfer to another shift due to lack of childcare. However, the employee must remain able to work and available for full-time work on the same shift as the employee's last job.

REASON: The Council recognizes the added complexity in family situations arising from changes in the labor force. This provision accommodates the growing number of families with two wage earners who have childcare responsibilities.

108.04(2)(b) Requirement that claimants make two work searches per week

This amendment requires that claimants take actions constituting two work searches per week as prescribed by department rules, unless waived under those rules. It replaces the current administrative requirement of just one work search action per week. This change has a *two-year sunset period*.

REASON: The Council believes that increasing the work search requirement to two per week is reasonable, particularly in view of the current low rate of unemployment and favorable job market for employees.

108.04(7)(s) Creation of a quit exception for domestic abuse

Adds a quit exception that permits a person to be eligible for benefits if (1) the reason for the claimant voluntarily terminating employment is domestic abuse, concerns about personal safety, or harassment of his or her children; (2) the claimant has obtained a restraining order; and (3) the claimant has demonstrated to the department that the restraining order has been or is reasonably likely to be violated. Benefits paid under this provision are charged to the UI Balancing Account and not to that of the employer involved in the termination.

REASON: To promote the safety and well-being of persons who forced to quit work because they are victims of domestic abuse.

BENEFITS AND TAX CHANGE

108.02(12)(b) Amendment of the definition of "employee" (versus independent contractor)

Amends the paragraph by eliminating as mandatory requirements that the worker either (1) hold or have applied for a federal employer identification number (FEIN) or (2) have filed business or self-employment tax forms for a previous year. To establish non-employee or independent contractor status, a worker's services had to meet one of these two alternate requirements, as well as six of eight alternate tests. The two former mandatory factors are made part of a new test requiring the presence of seven of ten-factors, all optional. Furthermore, the tax-filing requirement can now be met in the year the worker's services started, if they were not performed in the previous year. If the individual fails to meet seven of these ten listed optional factors, the individual is deemed an "employee" under this section. This change has a *four-year sunset period*. Moreover, the Council will consider further amendment of the current law if a federal definition of employee/independent contractor is adopted.

REASON: For many years, the UI definition of "employee" has been an area of ongoing concern for the department, legislators, workers, and businesses. The purpose for the change is to recognize the growth of the consulting service industry and to facilitate the establishment of independent contractor status for individuals who are first entering business when their status is in question.

TAX CHANGES

108.205(2) Electronic filing of quarterly wage information

Expands the electronic filing requirement to employers with 100 or more employees (from the current requirement of employers with 250 or more employees) and specifies electronic media (disk, magnetic tape, modem, etc.) as the required method of filing quarterly wage detail reports for large employers. Also amends 108.22(1) to impose penalties for late filing and failure to file reports electronically.

REASON: To increase department efficiency and lower department costs in processing quarterly wage detail reports. Currently, about 4800 employers in Wisconsin have 100 or more employees and about 3600 of them report electronically. The change would require the remaining 1200 employers to file electronic reports, which would then be available for use by the department much more quickly. The penalty provision provides some incentive for employers to comply with the new reporting requirement. This provision will not take effect until reports due for the first calendar quarter of 2001, thereby giving time to the department to assist employers with their conversion to electronic reporting.

108.18(2)(b)(1) Repeal of 1.3% assessment on new employers

&(2) Eliminates the additional 1.3% tax assessment that would apply to employers required to pay contributions during the first three years of UI coverage if there is a negative account balance on January 31 or June 30 following any of those first three years.

REASON: The current law essentially imposes a different experience rating system on employers during their first three calendar years of UI coverage than applies to other employers by requiring new employers with negative account balances to pay an extra 1.3% tax. The department has concluded that the amount assessed each year is not sufficient to provide any significant immediate tax rate moderation for those employers. Moreover, additional tax burdens on new employers are in many cases unexpected, which creates employer concerns and collections problems for the department.

108.15(5)(b) Grace period for benefit reimbursements by reimbursable employers

and Extends the 20-day period in which no interest or penalty is charged to
108.151 (5)(f) reimbursable employers on their benefit reimbursement payments to the last day of the month in which the department sends a bill for payment.

REASON: Current law provides for a due date of 20 days from the date the department mails the bill. The department's automatic billing cycle normally sends the bills by the third business day of the month. If payment is not received by the due date, interest commences to run on the delinquent amount. The department's experience with the current law is that the time to pay is too short for many reimbursable employers and that the 20-day period makes the interest assessment needlessly complicated. While the due date will remain the same (that is, 20 days from the date the department mails the bill), the reimbursable employer will be given a statutory *grace period* during which it will not be assessed any interest or penalty as long as the payment is received by the last day of the month.

108.18(9) Tax rate reduction

Reduces the solvency tax rate from .02% to 0 for small employers with a 0% basic tax rate under rate schedules C and D.

REASON: To eliminate the need for approximately 8000 low-rate employers to make tax payments of less than \$2.00. Such payments are an irritant for employers and cost more to process than the revenue collected. The change is not expected to have a significant fiscal impact on the reserve fund.

ADMINISTRATIVE AND OTHER CHANGES

108.161 (3e) Use of federal Reed Act moneys

and In accordance with federal law, adds a section providing that moneys
20.445(1)(n) allocated to this state under the federal Reed Act of 1954 may only be used for the purpose of unemployment insurance administration allocated for federal fiscal years 2000, 2001, and 2002. Also amends appropriations section relating to UI administration to correspond with 108.161(3e).

REASON: Under current state law, Wisconsin is permitted to use Reed Act moneys for three purposes: UI administration, employment services, and to pay unemployment benefits. However, the federal Balanced Budget Act of 1997 (the legislation that granted the upcoming Reed Act distributions to the states)

included language providing that for fiscal years 2000, 2001, and 2002 only, the Reed Act funds received by the states are to be used exclusively for unemployment insurance law administration. Thus, current Wisconsin law must be amended to allow Reed Act funds to be used for UI administration only and to disallow the use of Reed Act funds for any other uses in federal fiscal years 2000, 2001 and 2002.

108.19(1 e), Administrative fee extension

(a)&(d) Extends by two years the department's authorization to assess a fee of .01% on payroll and clarifies that its specific use is for the renovation and modernization of the core UI tax and accounting system. During the effective period of this provision the solvency tax rate of affected employers will be reduced by .01%.

REASON: The current UI tax and accounting automated system is inadequate for current purposes. Though funding sources for large information technology development (as opposed to maintenance of current systems) are scarce, the department requires funding for this necessary project.

108.04(11)(cm) Law to combat "impostors" through department procedure

and
108.095 Amends current law and creates an additional section to combat fraud by allowing the department's administrative process to handle impostor cases, *i.e.*, those cases in which persons falsely identify themselves to obtain the UI benefits of others.

REASON: Permits the Bureau of Program Integrity to follow up on the small number of cases in which unsuspecting persons discover that benefits have been drawn under their names without their knowledge or permission. Allows the department to recover the stolen benefits plus impose an administrative assessment equaling 50% of the benefits taken.

108.04(5),(6) Repeal of rule-making directive for misconduct and suspension

cases

Deletes language in current law that requires the department to promulgate drug misconduct and disciplinary suspension rules in the Wisconsin Administrative Code.

REASON: The UI Advisory Council recommends removal from these discharge for misconduct and disciplinary suspension statutes of the directive to the department to promulgate interpretive rules. The Council has agreed that the department should continue to administer relevant departmental policies and apply relevant court decisions that prescribe the conditions under which an employee's possession, use of (or impairment by) controlled substances constitute misconduct.

108.20(5),(6), Restriction on use of Interest and Penalties (I&P) Fund

(7)&(8) Repeals statutory sections that authorize use of I&P money for non-UI purposes.

REASON: At one time, unemployment insurance and public employment offices were closely interrelated. In recent years, the services of the employment service and UI have become increasingly dissociated. The Council prefers to limit the use of the I&P fund for purposes directly related to the UI program.

108.22(8)(c) Clarification of the waiver of recovery of overpayment provision

Clarifies when the department will not require repayment of overpaid benefits from a claimant when the error was solely that of the department. Removes language that is susceptible to misinterpretation and adds language to make clear that the department will waive recovery of benefits erroneously paid to a claimant if the overpayment was caused solely by departmental error.

REASON: This section requires amendment so that it is capable of only one clear meaning, even when read in conjunction with other sections.

108.16(6)(e) Extension of the period of reissuing replacement UI checks to claimants to six years

Permits claimants to obtain replacement UI checks for up to six years from the date of issuance rather than the current two years. As written, the proposal is retroactive to checks issued on or after 1/1/95.

REASON: This will enable the department to replace lost or stolen UI benefit checks in line with a larger time frame consistent with procedures applicable to the Claims Board, which lacks jurisdiction in UI matters.

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