

SUMMARY OF 2011 ACT 198 & 236 UNEMPLOYMENT INSURANCE PROVISIONS

BENEFIT CHANGES

Forfeiture for concealment

Currently, a claimant who commits concealment forfeits an amount of benefits equal to a full week of future benefits payable at the weekly benefit rate (WBR), for each act of concealment of work, wages or a material fact related to benefit eligibility. After the department issues a first determination of concealment, the forfeiture for subsequent acts of concealment escalates to 3 times WBR and, following a second determination, the forfeiture is 5 times the WBR. Act 198 increases the escalating scale by increasing the respective forfeiture amounts from 1 times, 3 times and 5 times to the higher amounts of 2 times, 4 times and 8 times WBR.

Current law provides the employer's account is charged for "forfeited" benefits, even though the benefits remain in the Unemployment Reserve Fund and are not paid to a claimant. Act 198 repeals the charging of benefits to the employer and changes the "forfeiture" concept to "ineligibility" for benefits in the amounts of 2 times, 4 times or 8 times the weekly benefit rate (WBR).

Benefit ineligibility under these circumstances will no longer result in an employer charge. In addition, the claimant does not have to pay taxes as this "ineligibility" is no longer considered a benefit payment.

Finally, the claimant will not receive a waiting period credit under s. 108.04(3) for the period of ineligibility for concealment.

EFFECTIVE DATE for changes to s. 108.04(11)(a), (b), (be) and (bm): October 21, 2012.

Ineligibility of claimants for benefit year earnings

The current disqualification for full-time work is complex. Act 198 denies benefits to a claimant who, during a particular week, for 32 hours or more:

- performs work;
- has wages ascribed to the claimant under s. 108.04(1)(bm) (i.e., could have performed work available to him or her);
- and/or received holiday pay, vacation pay, termination pay, or sick pay under circumstances satisfying requirements for treating such compensation as "wages" for these purposes. See s. 108.05(4), (5) or (5m).

Under current law, a claimant might qualify for a minimal benefit amount (\$5) notwithstanding wage earnings of as much as \$565. Act 198 provides that a claimant is ineligible to receive benefits for a week if the claimant receives more than \$500 during a week or receives sick pay, holiday pay, vacation pay, or termination pay which by itself or in combination with wage earnings is equivalent to more than \$500.

EFFECTIVE DATE for changes to s. 108.05: October 21, 2012.

Repeal of suspension for failure or refusal to take a test for illegal drugs

Act 198 repeals the benefit suspension enacted in 2011 (in the state budget bill) for a claimant's failure of a pre-employment drug test or refusal to take such test. Act 198 also eliminates requirements related to employer record keeping and the department retention of such reports.

EFFECTIVE DATE for repeal of s. 108.04 (8)(b), (13)(cm) and 108.09 (4r): Weeks of unemployment beginning April 22, 2012.

Amend ineligibility for failure to perform work searches

Act 198 creates s.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 conduct a reasonable search for suitable work and the department has not waived the search requirement under par. (b). If the department has paid benefits to a claimant for any such week, the department may recover the overpayment under s. 108.22 (8)."

This statute overrides the provisions of Wis. Admin. Code §DWD 127.08, which prohibits disqualification in certain kinds of cases for claim weeks already paid prior to the eligibility determination, unless the claimant made a false statement or concealed or misrepresented information pertaining to his/her work search efforts. As a result of Act 198, a claimant is ineligible to receive benefits for any week in which there is a department determination that the claimant failed to conduct a "reasonable work search" (as detailed in Wis. Admin. Code Ch. DWD 127 Work Search), except when the work search requirement has been waived. The part of the rule that is the contrary to the new statute, §DWD 127.08, should be disregarded as overridden by the statute. If DWD paid benefits to a claimant for any week the claimant did not meet the work search requirement, DWD may recover the overpayment.

EFFECTIVE DATE for treatment of s. 108.04(2)(a)3. (intro.) and (bm): (a) Determinations issued beginning April 22, 2012 or (b) in relation to determinations that are appealed, to decisions issued beginning April 22, 2012.

Tighten benefit eligibility requirement of availability for work

Act 236 provides that a claimant does not satisfy the requirement of availability for work in any week in which he or she is located outside of the U.S or Canada for more than 48 hours unless the claimant: (1) has authorization to work in that country; and (2) there is a reciprocal agreement concerning the payment of unemployment benefits between that country and the United States.

EFFECTIVE DATE of s. 108.04(2)(ae): Weeks of unemployment beginning April 22, 2012.

Assess and collect a 15% penalty on benefit overpayments resulting from fraud

In November 2011, the federal government enacted a mandate that states impose a 15% penalty on overpayments resulting from claimant fraud (i.e. “concealment”) by October 21, 2013, to be placed in states’ unemployment reserve funds. Act 236 requires the department to assess the 15% penalty and authorizes the issuance of determinations, appeals, warrants and levies to enforce and collect the penalties. The penalty proceeds initially will be used to fund program integrity functions for the UI program, pursuant to Act 198. The law provides for a separate, nonlapsible program integrity fund, to which recovered penalties will be credited beginning October 21, 2012. Penalty proceeds for overpayments established after October 21, 2013 will be payable to the Unemployment Reserve Fund.

EFFECTIVE DATE of s. 108.04 (11) (bh), 108.09 (2) (b), (3) (a) 1, and (8) (b), 108.22 (8) (bh), 108.225 (1) (b), (16) (am) 1. (intro.), and (17) and 108.24 (1): Weeks of unemployment beginning October 21, 2012.

EFFECTIVE DATE of s. 108.16 (6) (n): The provision crediting overpayments to the unemployment reserve fund first applies to overpayments established after October 21, 2013.

TAX CHANGES

Simplify rating of contributions for successor employers

Current law enacted in 2005 requires a successor employer to report payrolls under two different tax contribution rates within the year of business transfer, causing confusion and resulting in late and incorrectly filed contribution reports, and FUTA certification problems with the IRS.

For employers already subject to the UI law who are deemed successor employers, under Act 198, the tax contribution rates will be redetermined effective the first day of the calendar year following the business transfer. Prior law provided the redetermination of the tax rate was effective the first day of the calendar quarter following the date of the business transfer.

EFFECTIVE DATE for amendment of s. 108.16(8)(h): Transfers of business occurring after December 31, 2011.

Modify interest rate on delinquent tax payments

Employers are presently charged interest on delinquent payments of state UI taxes at the rate of one percent per month, or 12% annually. Act 236 changes the interest rate to a monthly rate that annualized is equal to the greater of: (a) 9%; or (b) 2 percent more than the prime rate as published in the Wall Street Journal as of September 30 of the preceding year, for each month or fraction of a month that the employer is delinquent.

Act 236 will reduce interest recoveries from employers in the current (low interest rate) economy. The change will not directly impact the UI reserve fund because interest is credited to the interest and penalties account.

EFFECTIVE DATE of s. 108.22 (1) (a): First applies with respect to accrual of interest for the month of August 2012.

OTHER CHANGES

Offset Department of Treasury payments to recover benefit overpayments resulting from claimants' erroneous wage reports

Currently, the department is authorized by statute to recover a claimant's liability for benefit overpayments resulting from fraud (e.g., the claimant's concealment of work and wages) from federal income tax refunds. Act 198 extends the offset to overpayments due to misreported wages that were not intentionally concealed.

EFFECTIVE DATES of ss. 108.16(6)(L), (6m) (g), and (10) and 108.22 (8) (b) 1. d.: Satisfaction of liabilities outstanding on April 22, 2012.

Create more explicit standards for determining "employer"; and limited exception

When more than one entity affects control of an employee, current law provides no clear standard as to which is the employer for purposes of UI tax obligations. Act 198 establishes general standards for determining the employer in these cases. It also prescribes an exception for certain employers providing home health care and personal care services funded by medical assistance allowing them to elect to be the employer of employees providing such services. To qualify for an election, the provider must meet these requirements: the provider must notify, in writing, the recipient of the services of its election, for purposes of UI law, to be the employer of any worker providing services to the recipient, and must be treated as the employer by the IRS for purposes of federal UI taxes on the worker's services.

EFFECTIVE DATE for treatment of s. 108.065: Services performed after December 31, 2011.

Create two separate nonlapsible trust funds: an unemployment interest payment fund, and an unemployment program integrity fund

Currently, when the Wisconsin unemployment reserve fund lacks sufficient money needed to fully pay claims the department is authorized to borrow from the federal government. The department then levies an annual interest assessment to cover interest due on federal advances. Interest earned on assessments received is held in the Interest and Penalty Account (I&P).

Act 198 creates a separate, nonlapsible trust fund called the "Unemployment Interest Payment Fund" for deposit of all unencumbered moneys collected as interest assessments previously made and to be made in the future. Interest earned on the

proceeds of assessments pending transfer to the federal government and any interest or penalties collected from employers who are delinquent in paying their assessments are credited to the segregated Unemployment Interest Payment Fund.

Act 198 provides that the department shall use the moneys in the fund to make interest payments due to the federal government on advances made to the unemployment reserve fund. It directs the department to use excess moneys in the fund to pay interest due in future years, or if it determines that additional interest obligations are unlikely, to transfer the excess to the balancing account.

Act 198 also makes delinquent assessments subject to a simplified collection procedure under s. 108.22 (1m) that is currently used by the department for collection of other UI liabilities.

Finally, Act 198 creates a separate, nonlapsible trust fund designated the “Unemployment Program Integrity Fund” consisting of all amounts collected as a 15% penalty for benefit overpayments due to claimant fraud under newly created s. 108.04(11)(bh).

Act 236 provides that the Unemployment Program Integrity Fund is repealed on January 1, 2014.

EFFECTIVE DATES of ss. 108.19 (1q) and (1s) and 108.22(1m):

- §108.19 (1q) creation of the “Unemployment Interest Payment Fund”: April 22, 2012.
- §108.19(1s) creation of the “Unemployment Program Integrity Fund”: October 21, 2012.

The repeal of s. 108.19 (1s): first applies with respect to overpayments established by the department of workforce development after October 21, 2013.

- §108.22(1m): Liabilities on assessments under section 108.19(1m) made on and after January 1, 2011.

Reduce restrictions on department’s hiring of temporary appeal tribunals

The current statute provides that the department is required to appoint only permanent employees as UI appeal tribunals. (“Appeal tribunal” means unemployment administrative law judge.) However, the statute also provides that the department may appoint a “temporary reserve appeal tribunal” if the individual appointed “formerly served as an appeal tribunal while employed by the department and retired from state service as a permanent employee.” Act 236 allows the department the flexibility to appoint any attorney licensed to practice in this state as a temporary employee (LTE) to serve as a temporary appeal tribunal.

EFFECTIVE DATE of s. 108.09 (3)(a)2: April 22, 2012.

Require that appeal tribunal decisions be consistent with federal and state law

Appeal tribunals hear and decide disputed unemployment benefit and tax and other matters arising under the unemployment insurance law. Act 236 specifies that the decisions of the administrative law judges (appeal tribunals) are to be consistent with relevant state and federal law.

EFFECTIVE DATE of s. 108.09 (3)(b): April 22, 2012