



State of Wisconsin  
2023 - 2024 LEGISLATURE

LRBs0333/1  
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**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO ASSEMBLY BILL 398**

February 20, 2024 - Offered by Representative SINICKI.

1     **AN ACT** *to repeal* 101.1472; *to renumber and amend* 108.221 (1) (a) and  
2           108.221 (2); *to amend* 102.125 (2), 102.125 (3), 102.85 (1) (a), 102.85 (1) (b) and  
3           102.85 (2) (intro.); and *to create* 16.40 (24), 101.147, 101.19 (1g) (m), 102.125  
4           (1m), 102.85 (1) (c), 102.85 (1) (d), 102.85 (2j), 102.85 (2k), 103.005 (4m), 108.221  
5           (1) (a) 2., 108.221 (2) (b), 182.01 (8), 601.41 (13) and 943.395 (1) (e) of the  
6           statutes; **relating to:** construction contractor registration, worker  
7           misclassification, granting rule-making authority, making an appropriation,  
8           and providing a penalty.

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***Analysis by the Legislative Reference Bureau***

***Registration as construction contractor with Department of Safety and Professional Services***

This bill requires most persons who hold themselves out or act as construction contractors to be registered by the Department of Safety and Professional Services. DSPS may directly assess a forfeiture by issuing an order against any person who fails to register as required under the bill. The registration requirement does not

apply to a person who engages in construction on his or her own property, to a state agency or local governmental unit, or to a person who engages in construction in the course of his or her employment by a state agency or local governmental unit.

***Auditor positions in Department of Workforce Development***

This bill requires the Unemployment Insurance Division in the Department of Workforce Development to coordinate with the Division of Personnel Management in the Department of Administration to review all recruitment and onboarding programs to ensure that auditor positions are correctly classified and the compensation for auditors is comparable to that in the private labor market. The bill also requires DWD to review resources available to investigators and auditors and evaluate potential strategies and improvements that could be implemented by the department. The bill also requires DWD to submit a report to the legislature of its findings no later than January 31, 2025. Finally, the bill authorizes three full-time positions for DWD to perform investigations and audits regarding worker misclassification.

***Outreach and education regarding employee misclassification***

The bill directs the commissioner of insurance to conduct, on at least an annual basis, outreach and education to insurers and other persons regulated by the state insurance laws on how to identify the misclassification of employees and report suspected misclassifications to the appropriate federal and state agencies.

***Worker classification notice and posting***

The bill requires DWD to design and make available to employers a notice regarding worker classification laws, requirements for employers and employees, and penalties for noncompliance. Under the bill, all employers in this state must post the notice in a conspicuous place where notices to employees are customarily posted. The bill also provides a penalty of not more than \$100 for an employer that does not post the notice as required.

***Website for worker classification laws***

Under the bill, DWD must establish and maintain on the department's website information regarding worker classification laws, requirements for employers and employees, penalties for noncompliance, and contact information at each state agency that administers worker classification laws.

***Unemployment insurance; worker misclassification penalties***

Current law requires DWD to assess an administrative penalty against an employer engaged in construction projects or in the painting or drywall finishing of buildings or other structures who knowingly and intentionally provides false information to DWD for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee under the UI law. The penalty under current law is \$500 for each employee who is misclassified, not to exceed \$7,500 per incident. Current law additionally requires DWD to assess an administrative penalty against such an employer who, through coercion, requires an individual to adopt the status of a nonemployee in the amount of \$1,000 for each individual so coerced, but not to exceed \$10,000 per calendar year. Penalties are deposited in the unemployment program integrity fund.

The bill removes the \$7,500 and \$10,000 limitations on these penalties and provides that the penalties double for each act occurring after the date of the first determination of a violation. The bill also removes the limitations on the types of employers that the penalties apply to, allowing them to be assessed against any type of employer that violates the above prohibitions.

***Worker's compensation; penalties for uninsured employers***

Under current law, DWD is required to assess an administrative penalty against an employer who requires an employee to pay for any part of worker's compensation insurance or who fails to provide mandatory worker's compensation insurance coverage. If the employer violates those requirements, for the first 10 days, the penalty under current law is not less than \$100 and not more than \$1,000 for such a violation. If the employer violates those requirements for more than 10 days, the penalty under current law is not less than \$10 and not more than \$100 for each day of such a violation.

The bill provides that the penalty for violations occurring after the second such violation is \$3,000 per violation, or three times the amount of the insurance premium that would have been payable, whichever is greater. The bill also provides that the penalty for violations occurring after the third such violation is \$4,000 per violation, or four times the amount of the insurance premium that would have been payable, whichever is greater.

Also under current law, if an employer who is required to provide worker's compensation insurance coverage provides false information about the coverage to his or her employees or contractors who request information about the coverage, or who fails to notify a person who contracts with the employer that the coverage has been canceled in relation to the contract, DWD is required to assess a penalty of not less than \$100 and not more than \$1,000 for each such violation.

The bill provides that the penalty for violations occurring after the third such violation is \$3,000 per violation, and \$4,000 for violations occurring after the fourth such violation.

***Worker misclassification outreach***

The bill requires the Department of Administration to direct state agencies, constitutional offices, departments, independent agencies, and societies, associations, and certain other agencies of state government for which appropriations are made by law, to provide educational outreach regarding worker misclassification to employers, workers, and organizations that serve vulnerable populations.

***Worker misclassification information***

The bill requires the Department of Financial Institutions to provide informational materials and resources on worker misclassification to each person who files with DFI documents forming a business corporation, nonstock corporation, limited liability company, limited liability partnership, or limited partnership.

***False or fraudulent worker's compensation claims***

Under current law, if an insurer or self-insured employer has evidence that a worker's compensation claim is false or fraudulent, the insurer or self-insured

employer must generally report the claim to DWD. If, based on the investigation, DWD has a reasonable basis to believe that criminal insurance fraud has occurred, DWD must refer the matter to the district attorney for prosecution. Also under current law, DWD may request assistance from the Department of Justice to investigate false or fraudulent activity related to a worker's compensation claim. If, based on that investigation, DWD has a reasonable basis to believe that theft, forgery, fraud, or any other criminal violation has occurred, DWD must refer the matter to the district attorney or DOJ for prosecution. The bill extends these requirements to insurers who have evidence that an application for worker's compensation insurance coverage is fraudulent or that an employer has committed fraud by misclassifying employees to lower the employer's worker's compensation insurance premiums.

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

1           **SECTION 1.** 16.40 (24) of the statutes is created to read:

2           16.40 (24) **WORKER MISCLASSIFICATION OUTREACH.** Direct all departments to  
3 provide targeted educational outreach regarding worker misclassification in  
4 English, Spanish, and other languages spoken by a significant number of individuals  
5 in this state, to employers, workers, and organizations that serve vulnerable  
6 populations, including individuals with limited English proficiency. The outreach  
7 shall emphasize the appropriate departments to contact and the rights of individuals  
8 to remain anonymous when reporting worker misclassification.

9           **SECTION 2.** 101.147 of the statutes is created to read:

10           **101.147 Construction contractor registration.** (1) (a) Except as provided  
11 in par. (b), no person may hold himself or herself out or act as a construction  
12 contractor unless that person is registered as a construction contractor by the  
13 department.

14           (b) The registration requirement under par. (a) does not apply to any of the  
15 following:

1           1. A person who engages in construction on property owned or leased by that  
2 person.

3           2. A state agency or local governmental unit.

4           3. A person who engages in construction in the course of his or her employment  
5 by a state agency or local governmental unit.

6           **(2)** An application for a registration under this section shall require the  
7 applicant to submit all of the following:

8           (a) The applicant's name, contact information, and physical address for the  
9 business principal.

10          (b) If the applicant is a corporation, limited liability company, limited  
11 partnership, or limited liability partnership and is not organized under ch. 178, 179,  
12 180, 181, or 183, evidence that the applicant is registered, or has obtained a  
13 certificate of authority or registration, to transact business in this state under s.  
14 178.1003, 179.1002, 180.1503, 181.1503, or 183.0909, as applicable.

15          (c) Evidence of compliance with the requirements under ss. 108.17 to 108.205.

16          (d) Evidence of compliance with s. 102.28 (2).

17          (e) An acknowledgment of worker classification laws and penalties to ensure  
18 that construction contractors registered under this section are aware of their  
19 obligations.

20          **(3)** The department may directly assess a forfeiture by issuing an order against  
21 any person who violates this section.

22          **(4)** The department shall, with the advice of the department of workforce  
23 development, promulgate rules to administer and enforce this section.

24          **SECTION 3.** 101.1472 of the statutes is repealed.

25          **SECTION 4.** 101.19 (1g) (m) of the statutes is created to read:

1           101.19 **(1g)** (m) Registering construction contractors under s. 101.147.

2           **SECTION 5.** 102.125 (1m) of the statutes is created to read:

3           102.125 **(1m)** APPLICATION AND PREMIUM FRAUD. If an insurer has evidence that  
4           an application for worker's compensation insurance coverage is fraudulent or that  
5           an employer has committed fraud by misclassifying employees to lower the  
6           employer's worker's compensation insurance premiums in violation of s. 943.395, the  
7           insurer shall report the claim to the department. The department may require an  
8           insurer to investigate an allegedly fraudulent application or alleged fraud by  
9           misclassification of employees and may provide the insurer with any records of the  
10          department relating to that alleged fraud. An insurer that investigates alleged fraud  
11          under this subsection shall report the results of that investigation to the department.

12          **SECTION 6.** 102.125 (2) of the statutes is amended to read:

13          102.125 **(2)** ASSISTANCE BY DEPARTMENT OF JUSTICE. The department of workforce  
14          development may request the department of justice to assist the department of  
15          workforce development in an investigation under sub. (1) or (1m) or in the  
16          investigation of any other suspected fraudulent activity on the part of an employer,  
17          employee, insurer, health care provider, or other person related to worker's  
18          compensation.

19          **SECTION 7.** 102.125 (3) of the statutes is amended to read:

20          102.125 **(3)** PROSECUTION. If based on an investigation under sub. (1), (1m), or  
21          (2) the department has a reasonable basis to believe that a violation of s. 943.20,  
22          943.38, 943.39, 943.392, 943.395, 943.40, or any other criminal law has occurred, the  
23          department shall refer the results of the investigation to the department of justice  
24          or to the district attorney of the county in which the alleged violation occurred for  
25          prosecution.

1           **SECTION 8.** 102.85 (1) (a) of the statutes is amended to read:

2           102.85 (1) (a) ~~An~~ For each act occurring before the date of the first  
3 determination of a violation of this subsection, an employer who fails to comply with  
4 s. 102.16 (3) or 102.28 (2) for less than 11 days shall forfeit not less than \$100 ~~nor~~ and  
5 not more than \$1,000.

6           **SECTION 9.** 102.85 (1) (b) of the statutes is amended to read:

7           102.85 (1) (b) ~~An~~ For each act occurring after the date of the first or second  
8 determination of a violation of this subsection, an employer who fails to comply with  
9 s. 102.16 (3) or 102.28 (2) for more than 10 days shall forfeit not less than \$10 ~~nor~~ and  
10 not more than \$100 for each day on which the employer fails to comply with s. 102.16  
11 (3) or 102.28 (2).

12           **SECTION 10.** 102.85 (1) (c) of the statutes is created to read:

13           102.85 (1) (c) For each act occurring after the date of the 3rd determination of  
14 a violation of this subsection, the employer shall be assessed a penalty in the amount  
15 of \$3,000 for each act, or 3 times the amount of the premium that would have been  
16 payable, whichever is greater.

17           **SECTION 11.** 102.85 (1) (d) of the statutes is created to read:

18           102.85 (1) (d) For each act occurring after the date of the 4th determination of  
19 a violation of this subsection, the employer shall be assessed a penalty in the amount  
20 of \$4,000 for each act, or 4 times the amount of the premium that would have been  
21 payable, whichever is greater.

22           **SECTION 12.** 102.85 (2) (intro.) of the statutes is amended to read:

23           102.85 (2) (intro.) ~~An~~ For each act occurring after the date of the first  
24 determination under this subsection, an employer who is required to provide

1 worker's compensation insurance coverage under this chapter shall forfeit not less  
2 than \$100 ~~nor~~ and not more than \$1,000 if the employer does any of the following:

3 **SECTION 13.** 102.85 (2j) of the statutes is created to read:

4 102.85 **(2j)** For each act occurring after the date of the 3rd determination under  
5 sub. (2), an employer who is required to provide worker's compensation insurance  
6 coverage under this chapter shall forfeit \$3,000 per violation.

7 **SECTION 14.** 102.85 (2k) of the statutes is created to read:

8 102.85 **(2k)** For each act occurring after the date of the 4th determination  
9 under sub. (2), an employer who is required to provide worker's compensation  
10 insurance coverage under this chapter shall forfeit \$4,000 per violation.

11 **SECTION 15.** 103.005 (4m) of the statutes is created to read:

12 103.005 **(4m)** (a) The department shall design and make available to employers  
13 a notice regarding worker classification laws, requirements for employers and  
14 employees, and penalties for noncompliance.

15 (b) All employers shall post, in one or more conspicuous places where notices  
16 to employees are customarily posted, the notice designed by the department under  
17 par. (a). Any employer who violates this paragraph shall forfeit not more than \$100  
18 for each offense.

19 (c) The department shall establish and maintain on the department's website  
20 information regarding worker classification laws, requirements for employers and  
21 employees, penalties for noncompliance, and contact information at each state  
22 agency that administers worker classification laws.

23 **SECTION 16.** 108.221 (1) (a) of the statutes is renumbered 108.221 (1) (a) (intro.)  
24 and amended to read:



1           108.221 (1) (a) (intro.) Any employer described in s. 108.18 (2) (c) or engaged  
2           in the painting or drywall finishing of buildings or other structures who knowingly  
3           and intentionally provides false information to the department for the purpose of  
4           misclassifying or attempting to misclassify an individual who is an employee of the  
5           employer as a nonemployee shall, for each incident, be assessed a penalty by the  
6           department as follows:

7           1. For each act occurring before the date of the first determination of a violation  
8           of this subsection, the employer shall be assessed a penalty in the amount of \$500  
9           for each employee who is misclassified, but not to exceed \$7,500 per incident.

10          **SECTION 17.** 108.221 (1) (a) 2. of the statutes is created to read:

11          108.221 (1) (a) 2. For each act occurring after the date of the first determination  
12          of a violation of this subsection, the employer shall be assessed a penalty in the  
13          amount of \$1,000 for each employee who is misclassified.

14          **SECTION 18.** 108.221 (2) of the statutes is renumbered 108.221 (2) (intro.) and  
15          amended to read:

16          108.221 (2) (intro.) Any employer described in s. 108.18 (2) (c) or engaged in the  
17          ~~painting or drywall finishing of buildings or other structures~~ who, through coercion,  
18          requires an individual to adopt the status of a nonemployee shall be assessed a  
19          penalty by the department as follows:

20          (a) For each act occurring before the date of the first determination of a  
21          violation of this subsection, the employer shall be assessed a penalty in the amount  
22          of \$1,000 for each individual so coerced, but not to exceed \$10,000 per calendar year.

23          **SECTION 19.** 108.221 (2) (b) of the statutes is created to read:

1           108.221 (2) (b) For each act occurring after the date of the first determination  
2 of a violation of this subsection, the employer shall be assessed a penalty in the  
3 amount of \$2,000 for each individual so coerced.

4           **SECTION 20.** 182.01 (8) of the statutes is created to read:

5           182.01 (8) INFORMATION TO BE PROVIDED WITH BUSINESS FORMATION FILINGS. The  
6 department shall provide informational materials and resources on worker  
7 misclassification to each person who files with the department any of the following:

8           (a) Articles of incorporation under s. 180.0202 or 181.0202.

9           (b) Articles of organization under s. 183.0201.

10          (c) A statement of qualification under s. 178.0901.

11          (d) A certificate of limited partnership under s. 179.0201.

12          **SECTION 21.** 601.41 (13) of the statutes is created to read:

13          601.41 (13) EMPLOYEE MISCLASSIFICATION OUTREACH AND EDUCATION. The  
14 commissioner shall, on at least an annual basis, conduct outreach and education to  
15 persons subject to regulation under chs. 600 to 655 on how to identify the  
16 misclassification of employees as independent contractors and how to report  
17 suspected misclassifications to the appropriate federal and state agencies.

18          **SECTION 22.** 943.395 (1) (e) of the statutes is created to read:

19          943.395 (1) (e) Presents an application for worker's compensation insurance  
20 coverage that is false or fraudulent or that falsely or fraudulently misclassifies  
21 employees to lower worker's compensation insurance premiums.

22          **SECTION 23. Nonstatutory provisions.**

23          (1) INVESTIGATION AND ENFORCEMENT OF WORKER CLASSIFICATION. The department  
24 of workforce development shall do all of the following before December 31, 2024:

1           (a) Require the unemployment insurance division, in coordination with the  
2 division of personnel management in the department of administration, to review all  
3 recruitment and onboarding programs to ensure that auditor positions are correctly  
4 classified and the compensation for auditors is comparable to that in the private  
5 labor market.

6           (b) Review resources available to investigators and auditors and evaluate  
7 potential strategies and improvements that could be implemented, including at least  
8 all of the following:

- 9           1. Cross-training all investigators and auditors working in the department.
- 10           2. Adding bilingual staff.
- 11           3. Information technology improvements for more efficient exchange of  
12 information.

13           (2) REPORTING. By no later than January 31, 2025, the department of workforce  
14 development shall submit a report to the chief clerk of each house of the legislature  
15 for distribution to the standing committees of the legislature under s. 13.172 (3) with  
16 jurisdiction over workforce development. The report shall include the findings of the  
17 department under sub. (1) (a) and (b).

18           **SECTION 24. Fiscal changes.**

19           (1) INVESTIGATION AND ENFORCEMENT OF WORKER CLASSIFICATION. In the schedule  
20 under s. 20.005 (3) for the appropriation to the department of workforce development  
21 under s. 20.445 (1) (gc), the dollar amount for fiscal year 2023-24 is increased by  
22 \$157,500 to increase the authorized FTE positions for the department by 3.0 PR  
23 positions for the purpose of investigating and enforcing worker classification laws  
24 and rules. In the schedule under s. 20.005 (3) for the appropriation to the department

1 of workforce development under s. 20.445 (1) (gc), the dollar amount for fiscal year  
2 2024-25 is increased by \$210,000 for the positions authorized under this subsection.

3 (END)