



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #226

Sanctions for Refusal to Participate Under the Wisconsin Works Program (DCF -- Economic Support and Child Care)

[LFB 2009-11 Budget Summary: Page 153, #3]

CURRENT LAW

A participant who refuses to participate three times in any Wisconsin Works (W-2) employment component is ineligible to participate in that component. The participant is eligible to participate in any other appropriate W-2 employment position component for which the participant has not refused to participate three times. A participant is considered to have refused to participate if he or she: (a) expresses verbally or in writing to a W-2 agency that he or she refuses to participate; (b) fails to appear for an interview with a prospective employer or, if the participant is in a W-2 transitional placement, fails to appear for an assigned activity without good cause; (c) voluntarily leaves appropriate employment or training without good cause; (d) loses employment as a result of being discharged for cause; (e) refuses to accept a bona fide offer of employment; or (f) demonstrates through other behavior or action, as determined by the W-2 agency financial and employment planner, that he or she refuses to participate.

Before any action is taken to reduce a participant's benefits by 20% or more or to terminate the participant's eligibility to participate in W-2, a W-2 agency must: (a) provide written notice of the proposed action and the reasons for the proposed action to the participant; (b) explain to the participant orally in person or by phone, or make reasonable attempts to explain to the participant orally in person or by phone, the proposed action and the reasons for the proposed action; and (c) after providing the written notification and oral explanation, allow the participant a reasonable time to rectify the deficiency, failure, or other behavior to avoid the proposed action.

GOVERNOR

Modify the sanction for refusing to participate in a W-2 employment position, specify procedures for determining nonparticipation, and modify requirements before taking action 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 as described below:

Sanction for Nonparticipation. Modify the sanction for nonparticipation in a W-2 employment position such that if a participant, or an individual in the participant's W-2 group, refuses to participate [as determined under guidelines promulgated by the Department of Children and Families (DCF)], then the participant would be ineligible to participate in the W-2 program for three months.

Determining Nonparticipation Without Good Cause. Require DCF to promulgate rules that specify guidelines for determining when a 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.

Specify that when determining a participant is ineligible to participate in the W-2 program as a sanction for nonparticipation, the W-2 agency would have 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.

Conciliation Period for Compliance. Require a W-2 agency, if the W-2 agency determines that a participant or individual has refused to participate without good cause, to allow the participant or individual a conciliation period during which he or she would have to participate in all assigned activities unless good cause exists that prevents compliance during the conciliation period. Require DCF to establish, by rule, the length of time for a conciliation period.

Requirements Before 20% Benefit Reduction or Termination of W-2 Eligibility. Modify current procedures before taking any action against a 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. Specify that the procedures would require the W-2 agency to: (a) first, explain to the participant orally in person or by phone, or make reasonable attempts to explain to the participant orally or by phone, the proposed action and the reasons for the proposed action; (b) second, after providing the explanation under (a), provide written notice of the proposed action and of the reasons for the proposed action to the participant; and (c) third, after providing the oral explanation and written notification, allow the participant a reasonable time to rectify the deficiency, failure, or other behavior to avoid the proposed action, if the participant was not already afforded a conciliation period.

These provisions would first apply to individuals participating in W-2 on October 30, 2009, or on the 30th day beginning after publication of the budget bill, whichever is later.

DISCUSSION POINTS

Current Law W-2 Sanctions

1. W-2 participants may be sanctioned for missing work or failing to participate in a required activity without good cause, for not cooperating with child support requirements, for intentional program violations, for failing a drug test, and for refusal to participate in a W-2 employment component.

2. A \$5.15 hourly sanction is imposed if a participant in a community service job or transitional placement misses required work or educational activities without good cause. This amount is based on the federal minimum wage at the time this law went into effect. Good cause is determined by the agency's financial and employment planner and includes: (a) a required court appearance for any reason, including for a victim of domestic abuse; (b) unavailability of child care; (c) lack of transportation; (d) W-2 group member's illness, injury, disability, or incapacity; (e) accommodations necessary to participate are not available to complete the assigned activity; (f) conflict with another assigned W-2 activity or job search attempts; (g) inclement weather that impedes transportation or travel; (h) school emergency; (i) domestic violence issues; (j) death in immediate family; (k) routine medical or school appointments that cannot be scheduled at times other than assigned activities; (l) observance of religious holiday; and (m) other circumstances beyond the control of the participant, but only as determined by the financial and employment planner.

3. If an individual fails three times to cooperate with requirements to establish paternity and obtain child support, other support, or property to which that parent and the dependent child may have rights, then the individual is ineligible for W-2 until all members of that individual's W-2 group cooperate or for a period of six months, whichever is later.

4. W-2 agencies may permanently deny all W-2 benefits to an individual if it is determined by a court or an administrative hearing that a member of a W-2 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.

5. 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, the full benefit amount must be restored. The W-2 agency may require an individual who tests positive for use of a controlled substance to participate in a drug abuse evaluation, assessment, and treatment program as part of the work or education and training requirements for that employment position.

6. Finally, a participant who refuses to participate three times in any W-2 employment component is ineligible to participate in that component. The participant is eligible to participate in any other appropriate W-2 employment position component for which the participant has not refused to participate three times. A participant is considered to have refused to participate if he or she: (a) expresses verbally or in writing to a W-2 agency that he or she refuses to participate; (b) fails to appear for an interview with a prospective employer or, if the participant is in a W-2 transitional placement, fails to appear for an assigned activity without good cause; (c) voluntarily leaves appropriate employment or training without good cause; (d) loses employment as a result of being discharged for cause; (e) refuses to accept a bona fide offer of employment; or (f) demonstrates through other behavior or action, as determined by the financial and employment planner, that he or she refuses to participate.

Required Actions Before Sanctions Imposed

7. 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) 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.

AB 75

8. The Governor's provision would modify only the sanction for refusal to participate. The remaining sanctions for missing work or failing to participate in a required activity without good cause, for not cooperating with child support requirements, for intentional program violations, or for failing a drug test would remain the same as under current law.

9. A comprehensive review of the W-2 program was completed by the Legislative Audit Bureau (LAB) in its April, 2005, report, *Wisconsin Works (W-2) Program*. In this report, the LAB discussed the imposition of sanctions for missing work or failing to participate in a required activity without good cause, for failing a drug test, and for refusing to participate in a W-2 component. The LAB reported that from October, 1999, through June, 2004, W-2 agencies

imposed a total of \$30.2 million in sanctions, and every agency sanctioned at least one participant.

10. The other sanctions were used less frequently. From September, 1999, through June, 2004, seven agencies imposed 40 drug sanctions totaling \$2,391 on 11 participants. The LAB also found that the strikes for refusal 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 are imposed infrequently because there are no consequences associated with the first and second strikes, and the consequence associated with the third strike is too severe. The Department of Workforce Development (DWD), which previously administered W-2, did not monitor the use of these sanctions at the time of the LAB report.

11. The LAB report recommended that DWD either instruct the W-2 agencies to comply with the statutory provisions relating to the imposition of drug sanctions and program strikes for refusing to participate or recommend statutory changes to the Legislature to eliminate or modify these provisions. AB 75 would modify the sanction for refusing to participate.

12. Rather than impose a strike for each instance a W-2 participant refuses to participate in an employment component, such that the W-2 participant is permanently barred from participating in that component after three strikes, AB 75 would impose a sanction that would bar a W-2 participant from participating in any component of W-2 for three months for each violation, beginning with the first violation.

13. DCF indicates that from the period May, 2008, through April, 2009, there were no cases closed due to strikes. One case had three strikes in a community service job placement and has been barred from participating in another community service job.

14. In addition, AB 75 would modify requirements before a sanction could be imposed. First, AB 75 would require 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. The W-2 agency would be required 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.

15. Second, AB 75 would require a W-2 agency, if the W-2 agency determines that a participant or individual has refused to participate without good cause, to allow the participant or individual a conciliation period during which he or she would have to participate in all assigned activities unless good cause exists that prevents compliance during the conciliation period. DCF would be required to establish, by rule, the length of time for a conciliation period.

16. Finally, AB 75 would modify current law requirements before a 20% benefit reduction or termination of W-2 eligibility could occur. Under AB 75, a W-2 agency would be

required to first explain to the participant orally in person or by phone, or make reasonable attempts to explain to the participant orally in person or by phone, the proposed action and the reasons for the proposed action (this would occur second under current law). Second, the W-2 agency would be required, after providing the explanation, to provide written notice of the proposed action and of the reasons for the proposed action to the participant (this would occur first under current law). After providing the oral explanation and written notification, the W-2 agency would have to allow the participant a reasonable time to rectify the deficiency, or other behavior, to avoid the proposed action, if the participant was not already afforded a conciliation period (this would incorporate the conciliation period into this process).

17. The Committee could approve this recommendation. As noted by the LAB audit in 2005, W-2 agencies still are not imposing the strikes. The proposal would simplify the process and mandate that W-2 agencies prohibit any participation in any component of W-2 for three months if an individual refuses to participate. After three months, the individual would be given another chance to participate. W-2 agencies would not have to impose strikes. This sanction would apply to the first refusal (subject to guidelines promulgated by DCF).

18. On the other hand, the Committee could delete this proposal. The three strikes system is set up to give the W-2 participant a chance to cooperate. The W-2 participant has two opportunities to correct his or her behavior before a sanction is imposed. In addition, although the W-2 participant is permanently barred from participating in the employment component for which the refusal took place, the W-2 participant would be able to participate in other components of W-2 immediately. However, as noted in the "Wisconsin Works Time Limit Changes" issue paper, once a W-2 participant is placed in an employment position, he or she generally remains in that position for the duration of their time in W-2.

ALTERNATIVES

1. Approve the Governor's recommendation for sanctions on individuals who refuse to participate in an employment component, for requiring DCF to establish rules regarding good cause to refuse, for establishing a conciliation period for compliance, and for modification of current requirements for a 20% benefit reduction or termination of W-2 eligibility to include the conciliation period. The sanction imposed would make a W-2 participant ineligible to participate in the W-2 program for three months for each refusal.

2. Delete provision.

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