



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #212

### **W-2 Sanctions (Children and Families -- Economic Support and Child Care)**

[LFB 2015-17 Budget Summary: Page 101, #4]

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#### **CURRENT LAW**

The Department of Children and Families (DCF) administers Wisconsin Works (W-2), a work-based program that provides training and support services to assist low-income parents obtain permanent and stable employment. In order to be eligible for a W-2 employment position for any month, an individual must meet certain nonfinancial and financial eligibility requirements.

Community service jobs (CSJ) are intended for participants who are not ready for unsubsidized employment. The CSJ placement provides work experience and training to develop the skills necessary to succeed in a normal job environment. In addition to placement with public, private, or nonprofit worksites, a CSJ may also include education and training. A full-time CSJ placement provides a monthly payment of \$653.

W-2 transitional placements are meant for individuals who are unable to perform independent, self-sustaining work due to barriers to employment, such as alcohol and drug abuse, medical or physical problems, and learning disabilities. Participants may be assigned to work activities such as a community rehabilitation program or a job similar to a community service job or a volunteer activity. A transitional placement may also include education and training activities, drug treatment programs, and other mental and physical rehabilitation activities. A transitional placement provides a monthly payment of \$608.

Sanctions may be imposed upon participants for refusal to participate in an employment position, not cooperating with child support requirements, intentional program violations, and for failing a drug test. Payments are reduced by \$5.00 per hour for hours missed without good cause for participants who fail to participate in assigned activities for a CSJ and W-2 transitional job. If

a W-2 participant (or individual in a participant's W-2 group) refuses to participate in a W-2 employment position component, the participant is ineligible to participate in the entire W-2 program for three months. If a participant (or individual in a participant's W-2 group) refuses without good cause to participate in a W-2 component three times, that participant is ineligible to further participate in that component.

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 W-2 agency must: (a) provide written notice of the proposed action and of the reasons for the proposed action to the W-2 participant; and (b) allow the W-2 participant reasonable time to rectify the deficiency, failure, or other behavior to avoid the proposed action.

## **GOVERNOR**

Remove the notice and rectification requirements for W-2 sanctions. W-2 participants would no longer receive notice and an opportunity to rectify prior to being sanctioned.

## **DISCUSSION POINTS**

### **Good Cause Policy**

1. The good cause policy in the W-2 Manual is meant to model what an employer would allow under its own absence policy. The good cause policy requires a participant to notify the agency of the reason for missing an assigned W-2 activity within seven working days of the non-participation.

2. If the participant fails to provide good cause, payment reductions will apply. The participant will receive a payment statement explaining the deduction. The payment statement also provides information on the W-2 dispute resolution process and includes language providing the participant the opportunity to disclose potential barriers to participation.

3. According to DCF, W-2 participants usually do not rectify nonparticipation or termination of eligibility.

4. If the sanction would reduce the participant's benefits by 20% or more, current law requires the W-2 agency to provide written notice of the proposed action and the reasons for the proposed action. The participant is then provided with an additional reasonable period of time (seven working days after the date the notice was mailed) within which to provide a good cause reason for the non-participation.

5. If good cause is provided, the W-2 agency will not apply the payment reduction. In those cases where payment is provided prior to resolution of the sanction, the W-2 agency must provide an auxiliary payment for the payment reduction.

6. DCF indicates that the good cause policy is undermined by allowing an additional

statutory opportunity to rectify. The good cause policy is meant to mirror the employer absentee policies which participants would face in the marketplace.

7. In cases of termination of benefits, current law requires notice and an opportunity to rectify prior to loss of benefits regardless of the reason for the termination. As a result, benefits may continue in many instances even where it would be impossible to cure the deficiency (such as where a participant becomes ineligible to participate by moving out of state, by receiving Supplemental Security Income benefits, or by the participant's youngest child reaching the age of 18).

8. Eliminating the statutory notice and cure provisions would reduce the over issuance of W-2 benefits in cases where it would be impossible to rectify the deficiency.

### **Federal Work Participation Rate**

9. Federal law requires that a work-eligible individual engage in work once the state determines that the individual is ready, or after 24 months of receiving assistance under the federal temporary assistance to needy families (TANF) program, whichever is earlier.

10. Generally, in order to meet the work requirement a participant must engage in work activity for an average of at least 30 hours a week. For a single-parent family with a child under the age of six, the participant must engage in work activities for 20 hours. Two-parent families, whose hours are combined for purposes of the work participation rate, are required to work: 35 hours a week, if not receiving federally funded child care, and 55 hours a week if receiving federally funded child care. States do not get partial credit for participants who work, but do not work enough hours to reach the minimum requirements.

11. Federal law requires states to achieve two minimum work participation rates: an overall rate and a two-parent rate. The overall work participation rate requires that 50% of all families receiving TANF assistance participate in work activities during the fiscal year. The two-parent work participation rate requires that 90% of two-parent families receiving TANF assistance during the fiscal year participate in work activities.

12. Failure to comply with the minimum participation requirements may result in a penalty which reduces the TANF block grant by 5% to 21%, depending on how many years the state fails to meet the requirements and the degree of non-compliance.

13. States that successfully meet their work participation requirements receive a reduction in the amount of state funding required under federal law that must be contributed for TANF-related programs. This is referred to as the maintenance-of-effort (MOE) requirement.

14. States may receive credit towards the required work participation rate. The state's target work participation rates may be reduced based on caseload reductions that have occurred since 2005 for reasons other than changes in program eligibility rules. States are also allowed to receive caseload reduction credits for excess MOE spending (the excess MOE caseload credit is calculated by dividing total annual excess MOE spending on assistance by the average monthly expenditures for assistance per case for the fiscal year).

15. According to DCF, the state did not reach the target work participation rates in federal fiscal years 2012 and 2013. The target for all families was 50%, but the actual rate was 32% and 34% respectively. The target for two-parent families was 90%, but the actual rate was 17% and 26% respectively.

16. The state did not receive any credits towards the federally required work participation rates in federal fiscal years 2012 through 2015. This is because the TANF caseload increased over the time period and because excess MOE spending has not large enough to result in a caseload adjustment which would result in a credit.

17. As of the time of this writing, the federal Department of Health and Human Services (DHHS) has not notified DCF about failing to meet work participation compliance for federal fiscal years 2012 and 2013 and no penalty amount has been determined.

18. Before any penalties are imposed, the state has the opportunity to claim reasonable cause to forgive the penalty. Further, the state may avoid the penalty by achieving compliance under a corrective compliance plan approved by the federal government.

19. During the above discussed statutorily required notice and rectification time period for imposing sanctions and for appeals of such sanctions, ineligible individuals continue to be counted for the purposes of calculating the work participation rate.

20. The administration believes that streamlining the processes for imposing sanctions would reduce non-participation in W-2 work activities. Furthermore, ineligible cases would be removed from the statistics used to calculate the federal work participation rate. As a result, the state's work participation rate would improve.

21. However, streamlined sanctions, alone, would not suffice to meet the federal work participation requirements. Even if all ineligible individuals had been timely removed from the work participation rate calculation, the state's performance would have been significantly below the federal work participation targets in 2012 and 2013.

22. For example, DCF indicates that approximately 39% of W-2 participants fail to meet the work participation requirements each month because they are either not assigned sufficient hours of countable work activities or are assigned activities which may only be counted for a limited period of time. Further, participants in W-2 transitional placements are less likely than other participants to meet TANF work participation requirements due to barriers to employment (such as a mental disability). The proposed statutory changes to notice and rectification would have no effect on such issues.

### **Procedural Protections**

23. Those qualifying to participate in W-2 have severe financial limitations. The income of a participant's W-2 group may not exceed 115% of the federal poverty level (\$23,104 for a family of three in 2015). Further, the participant's W-2 group cannot own assets having more than \$2,500 in combined equity value (except for one vehicle and the group's homestead).

24. As a result, W-2 benefits (\$653 per month for CSJ and \$608 per month for a W-2 transitional job) represent a large portion of a participating family's resources. Similarly, sanctions of 20% or more on such benefits represent a large loss of income for such families. Improper sanctions on participating W-2 families could inflict financial harm without warning.

25. The statutory notice and rectification requirement enables participants the opportunity to rectify a penalty before it is applied. If such requirements are repealed, the good cause policy would not provide notice prior to sanctioning a participant.

26. Without procedural protections, some families could be sanctioned simply due to employment barriers or in cases where participants are unaware that they have the opportunity to provide good cause for their nonparticipation. Further, W-2 agency mistakes could lead to unnecessary sanctions without advance notice.

27. The statutory change would have a wide impact on the W-2 program. DCF indicates that of the total number of participant months in the types of W-2 placements that could possibly be sanctioned during 2012-13 (172,707), approximately 17.4% of the W-2 participant months (30,096) had a sanction of 20% or more. More than 20.6% (36,822) of W-2 participant months in 2011-12 and 18.1% (29,307) in 2010-11 had a sanction of 20% or more.

28. The W-2 Sanctions Study conducted by the Department of Workforce Development in 2004 found that approximately one-third of sanctions which had been administratively appealed were reversed. Although dated, the report suggests that many sanctions could be imposed in error or using incomplete information.

## **ALTERNATIVES**

1. Approve the Governor's recommendation.
2. Modify the Governor's recommendation such that statutorily required notice and opportunity to rectify would not be required for actions predicated upon W-2 financial and non-financial eligibility criteria (such as a child becoming 18 years old or the participant moving out of the state). Actions predicated on sanctions which would terminate a participant's eligibility or reduce a participant's benefits by 20% or more (such as non-participation in an employment position or non-cooperation with child support requirements) would require notice and opportunity to rectify.
3. Delete provision.

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