



State of Wisconsin
2021 - 2022 LEGISLATURE

January 2021 Special Session

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 1**

February 17, 2021 - Offered by JOINT COMMITTEE ON FINANCE.

1 **AN ACT to amend** 108.04 (3) (b), 108.062 (20) (intro.), 108.07 (5) (bm) 1. and
2 108.07 (5) (bm) 2. a.; and **to create** 16.75 (6) (em), 108.07 (5) (bm) 1m., 108.14
3 (27) and 895.476 of the statutes; **relating to:** the unemployment insurance
4 program and immunity from liability related to COVID-19 exposure.

Analysis by the Legislative Reference Bureau

This bill does all of the following:

Unemployment insurance; IT systems

This bill requires the Department of Workforce Development, in cooperation with the Department of Administration, to begin the process of updating the information technology systems used for processing and paying claims for unemployment insurance (UI) benefits. The bill requires an RFP for the project to be issued within 30 days after the bill's effective date, and requires the project to commence by June 30, 2021, though that deadline may be extended by the Joint Committee on Finance. The bill allows DWD to fund the update through a request for supplemental funding or a transfer of funding to the JCF or through the master lease program through DOA. The bill also allows the governor to exercise emergency procurement waivers to expedite the update. The bill requires DWD to report quarterly to JCF and the Joint Committee on Information Policy and Technology on the status of the update.

Civil liability exemption for certain entities relating to COVID-19 claims

The bill establishes a civil liability exemption for entities for any act or failure to act resulting in or relating to a person's exposure to the novel coronavirus identified as SARS-CoV-2 or COVID-19 in the course of or through the performance or provision of the entity's functions or services. Under the bill, entities are defined to include any legal entity, including businesses, associations, tribal governments or entities, governmental entities, schools, institutions of higher education, or nonprofit organizations, as well as employers or business owners, employees, agents, or independent contractors of the entity, regardless of whether they are paid or volunteers, and also include employers covered under the UI law. Under the bill, immunity does not apply if the act or omission involves reckless or wanton conduct or intentional misconduct. The immunity granted in the bill applies retroactively to claims accruing on or after March 1, 2020, except that it does not apply to actions filed before the bill goes into effect.

Unemployment insurance; waiting period

Currently, a claimant must generally wait one week after becoming eligible to receive UI benefits before the claimant may receive benefits, but the application of the one-week waiting period is temporarily suspended for benefit years that began after March 12, 2020, and before February 7, 2021. This bill extends the end date for suspending the one-week waiting period to March 14, 2021.

Unemployment insurance; benefit charging

Current law, as enacted in 2019 Wisconsin Act 185, requires DWD, when processing claims for UI benefits and evaluating work-share plans, to determine whether a claim or plan is related to the public health emergency declared by the governor under Executive Order 72. If a claim is so related, current law provides that the regular benefits for that claim for weeks occurring after March 12, 2020, and before December 31, 2020, not be charged to the employers' accounts in the unemployment trust fund or to the employers directly, as is normally required. Instead, the benefits for those weeks are, subject to numerous exceptions, to be charged to other accounts. This bill provides for this noncharging of benefits to continue through March 13, 2021, and requires DWD to presume that an initial claim for benefit years beginning on or after March 15, 2020, through March 13, 2021, relates to the public health emergency declared on March 12, 2020, by Executive Order 72 unless one of certain exceptions applies. The bill provides that an employer is not required to submit a request for charging relief for initial claims filed through March 13, 2021.

Unemployment insurance; work-share programs

Current law allows an employer to create a work-share program within a work unit of the employer. Under a work-share program, the working hours of all of the full-time employees in the program are reduced in an equitable manner in lieu of a layoff of some of the employees and a continuation of full-time employment by the other employees. A claimant for UI benefits who is included in a work-share program may receive UI benefits during his or her continued employment with the work-share employer in an amount equal to the claimant's benefit for total

unemployment multiplied by the same percentage reduction in normal working hours that the claimant incurs under the program. Current law also provides for the temporary modification of certain requirements that apply to work-share plans with respect to work-share plans submitted on or after April 17, 2020, and before December 31, 2020. This bill extends the applicability of these modifications until the earlier of the conclusion of a national emergency declared by the U.S. president in response to the 2019 novel coronavirus or July 4, 2021.

Unemployment insurance; federal extended benefits

Under federal law, the extended benefits program provides for additional weeks of UI benefits, which are usually funded 50 percent by the federal government and 50 percent by the particular state. The extended benefits program is activated, and deactivated, in a state when the state's insured unemployment rate or total unemployment rate reaches certain thresholds, except that federal and state laws also require an "off" period of 13 weeks before an extended benefits period may be activated following a prior extended benefits period for the state. However, the Continued Assistance for Unemployed Workers Act of 2020 provides that states may opt out of the mandatory 13-week off period between November 1, 2020, and December 31, 2021. The bill provides that DWD may, until June 30, 2021, waive this requirement for the 13-week off period under state law.

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

- 1 **SECTION 1.** 16.75 (6) (em) of the statutes is created to read:
- 2 16.75 **(6)** (em) The governor may waive any requirement of this subchapter,
- 3 except s. 16.705 (1r), for the purpose of expediting the information technology
- 4 systems project under s. 108.14 (27) if the governor finds the waiver is necessary to
- 5 timely complete the project. The governor shall require the award of each contract
- 6 under this paragraph to be made with such competition as is practicable under the
- 7 circumstances. The governor shall file with the department a statement of facts
- 8 constituting the necessity for each waiver issued under this paragraph and a
- 9 statement of the basis for selection of each contractor under this procedure. This
- 10 paragraph does not apply to the requirement specified in sub. (7).
- 11 **SECTION 2.** 108.04 (3) (b) of the statutes is amended to read:

1 108.04 (3) (b) Paragraph (a) does not apply with respect to benefit years that
2 begin after March 12, 2020, and before ~~February 7~~ March 14, 2021. The department
3 shall seek the maximum amount of federal reimbursement for benefits that are,
4 during the time period specified in this paragraph, payable for the first week of a
5 claimant's benefit year as a result of the application of this paragraph.

6 **SECTION 3.** 108.062 (20) (intro.) of the statutes is amended to read:

7 108.062 (20) SUSPENSIONS OF CERTAIN PROVISIONS. (intro.) Notwithstanding sub.
8 (2), this subsection, and not sub. (2), applies to work-share plans submitted on or
9 after April 17, 2020, and before ~~December 31, 2020~~ the conclusion of a national
10 emergency declared by the U.S. president under 50 USC 1621 in response to the 2019
11 novel coronavirus or July 4, 2021, whichever is earlier, subject to sub. (19). During
12 that period, prior to implementing a work-share program, an employer shall submit
13 a work-share plan for the approval of the department. In its submittal, the employer
14 shall certify that its plan is in compliance with all requirements under this section.
15 Each plan shall:

16 **SECTION 4.** 108.07 (5) (bm) 1. of the statutes is amended to read:

17 108.07 (5) (bm) 1. The Subject to subd. 1m., the department shall, when
18 processing initial claims for regular benefits, determine whether a claim or plan is
19 related to the public health emergency declared on March 12, 2020, by executive
20 order 72. If a claim is so related, the regular benefits for that claim shall, except as
21 provided in subd. 2., be paid as provided in subd. 3.

22 **SECTION 5.** 108.07 (5) (bm) 1m. of the statutes is created to read:

23 108.07 (5) (bm) 1m. For purposes of this paragraph, the department shall
24 presume that an initial claim for benefit years beginning on or after March 15, 2020,
25 through March 13, 2021, relates to the public health emergency declared on March

1 12, 2020, by Executive Order 72 unless the claimant's most recent separation from
2 employment is due to a labor dispute, voluntary termination of work, discharge for
3 misconduct, or discharge for substantial fault. An employer is not required to submit
4 a request for charging relief under this paragraph for initial claims described in this
5 subdivision.

6 **SECTION 6.** 108.07 (5) (bm) 2. a. of the statutes is amended to read:

7 108.07 (5) (bm) 2. a. Subdivision 1. applies only with respect to benefits payable
8 for weeks beginning after March 12, 2020, and beginning before ~~December 31, 2020~~
9 March 14, 2021.

10 **SECTION 7.** 108.14 (27) of the statutes is created to read:

11 108.14 (27) (a) 1. The department of workforce development shall, in
12 cooperation with the department of administration as required under subch. VII of
13 ch. 16, undertake a project to update its information technology systems used for
14 processing and paying claims for benefits. The department shall seek and exhaust
15 any federal funding available to use for the project, including any funding made
16 available by federal COVID-19 relief legislation.

17 2. The project under this paragraph shall be undertaken no later than June 30,
18 2021, except that if the departments are unable to undertake the project by that date,
19 the department may request from the joint committee on finance an extension not
20 to exceed 90 days in a written submission that includes a report on the progress on
21 the project and the reason an extension is needed. If the cochairpersons of the joint
22 committee on finance do not notify the department within 14 working days after the
23 date of the request for an extension under this subdivision that the committee has
24 scheduled a meeting for the purpose of reviewing the extension request, the
25 extension is considered granted. If, within 14 working days after the date of the

1 request for an extension under this subdivision, the cochairpersons of the committee
2 notify the department that the committee has scheduled a meeting for the purpose
3 of reviewing the extension request, the department may consider the extension
4 granted only upon approval by the committee.

5 (b) A request for proposals for the project under par. (a) shall be issued no later
6 than the 30th day after the effective date of this paragraph [LRB inserts date].
7 The department of workforce development and the department of administration
8 shall report to the joint committee on finance and the joint committee on information
9 policy and technology on the results of the request for proposals.

10 (c) The department may submit to the joint committee on finance one or more
11 requests to make supplementations or transfers under s. 13.101 (3) or (4) for the
12 purpose of obtaining funding for the project under par. (a). If the joint committee on
13 finance approves a request in whole or in part, the committee may transfer moneys
14 without making any of the findings required under s. 13.101 (3) or (4).

15 (d) The department may finance the project under par. (a) under a master lease
16 entered into as provided in s. 16.76 (4).

17 (e) 1. The department of workforce development and the department of
18 administration shall report to the joint committee on finance and the joint committee
19 on information policy and technology on the project under par. (a) as provided in
20 subd. 2. Each report prepared under this paragraph shall include all of the following:

21 a. An overview of the project.

22 b. The status of the project, including targeted implementation dates.

23 c. An analysis of the cost of the project, how the project is being funded, and all
24 resources being used to implement the project.

1 2. The department shall submit an initial report under subd. 1. no later than
2 the 60th day after the effective date of this subdivision [LRB inserts date]. The
3 department shall make additional reports each quarter, which shall be submitted no
4 later than the end of the month following each such quarter, for each succeeding
5 quarter ending after the date of the initial report.

6 3. Subdivision 1. does not apply beginning on the date that the project is
7 considered complete, as determined by the joint committee on finance.

8 **SECTION 8.** 895.476 of the statutes is created to read:

9 **895.476 Civil liability exemption; exposure to the novel coronavirus**
10 **SARS-CoV-2 or COVID-19. (1)** In this section:

11 (a) “COVID-19” means the infection caused by the novel coronavirus
12 SARS-CoV-2 or by any viral strain originating from SARS-CoV-2, and conditions
13 associated with the infection.

14 (b) “Entity” means a partnership, corporation, association, governmental
15 entity, tribal government, tribal entity, or other legal entity, including a school,
16 institution of higher education, or nonprofit organization. “Entity” includes an
17 employer or business owner, employee, agent, or independent contractor of the
18 entity, regardless of whether the person is paid or an unpaid volunteer. “Entity”
19 includes an employer covered under ch. 108.

20 **(2)** Beginning March 1, 2020, an entity is immune from civil liability for the
21 death of or injury to any individual or damages caused by an act or omission resulting
22 in or relating to exposure, directly or indirectly, to the novel coronavirus identified
23 as SARS-CoV-2 or COVID-19 in the course of or through the performance or
24 provision of the entity’s functions or services.

1 **(3)** Subsection (2) does not apply if the act or omission involves reckless or
2 wanton conduct or intentional misconduct.

3 **(4)** Immunity under this section is in addition to, not in lieu of, other immunity
4 granted by law, and nothing in this section limits immunity granted under any other
5 provision of law, including immunity granted under s. 893.80 (4).

6 **SECTION 9. Nonstatutory provisions.**

7 **(1) CIVIL LIABILITY EXEMPTION FOR CERTAIN ENTITIES.** The immunity and
8 limitation on recovery of damages under s. 895.476 applies retroactively to all claims,
9 except that it does not apply to actions filed before the effective date of this
10 subsection.

11 **(2) FEDERAL EXTENDED UNEMPLOYMENT BENEFITS.**

12 **(a) Definitions.** In this subsection, the definitions in s. 108.141 (1) apply.

13 **(b) Secretary may waive compliance.** Notwithstanding s. 108.141 (1) (c) 1. b.,
14 the secretary of workforce development may waive the prohibition under s. 108.141
15 (1) (c) 1. b. that no extended benefit period may begin by reason of a Wisconsin “on”
16 indicator before the 14th week following the end of a prior extended benefit period
17 that was in effect with respect to Wisconsin.

18 **(c) Effective period.** This subsection does not apply after June 30, 2021.

19 **(END)**