



State of Wisconsin  
2023 - 2024 LEGISLATURE

LRB-2680/1

MED:amn

## 2023 SENATE BILL 231

April 14, 2023 - Introduced by Senators TOMCZYK, CABRAL-GUEVARA, FELZKOWSKI, MARKLEIN, NASS, STROEBEL and BALLWEG, cosponsored by Representatives PLUMER, MOSES, PENTERMAN, BEHNKE, BINSFELD, BODDEN, BRANDTJEN, BROOKS, DALLMAN, DITTRICH, DONOVAN, EDMING, GREEN, GUNDRUM, GUSTAFSON, KNODL, MAGNAFICI, MURPHY, NEDWESKI, O'CONNOR, PETERSEN, PETRYK, RETTINGER, ROZAR, SCHMIDT, SNYDER, SORTWELL, STEFFEN and MICHALSKI. Referred to Committee on Economic Development and Technical Colleges.

**AN ACT** *to renumber* 108.04 (2) (ae); *to renumber and amend* 108.14 (19); *to amend* 108.04 (2) (bm), 108.04 (2) (g) 2., 108.04 (11) (cm), 108.14 (21) and 108.22 (8) (a); and *to create* 108.04 (1) (hg), 108.04 (2) (ae) 1., 108.04 (2) (hL), 108.14 (19) (b) and 108.14 (28) of the statutes; **relating to:** various changes to the unemployment insurance law.

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

This bill makes various changes regarding the unemployment insurance (UI) law, which is administered by the Department of Workforce Development.

#### ***Suitable work; work search***

Current law requires that, as a condition of being eligible for UI benefits for a given week, a claimant must 1) be able to work and available for work; 2) register for work in the manner prescribed by DWD; and 3) conduct a reasonable search for suitable work. Separately, current law also makes a claimant ineligible for UI benefits if a claimant fails, without good cause, to accept suitable work when offered.

The bill provides that an employer may report to DWD whenever 1) an individual declines a job interview or job offer; 2) an individual fails to respond to a job interview offer or job offer; 3) an individual fails to attend a scheduled job

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interview without attempting to reschedule the job interview; 4) a UI claimant is unavailable for, or unable to perform, work actually available within a given week; or 5) under certain circumstances, the employer recalls a former employee receiving UI benefits who fails to return to work. The bill requires DWD to consider these reports in determining claimants' attachment to the labor market. The bill also provides that a UI claimant is not considered to have conducted a reasonable search for suitable work in a given week, and is therefore ineligible for benefits for that week, if the claimant had one or more credible reports without good cause of declining a job interview, failing to respond to a job interview offer, or failing to attend a job interview in that week. The bill, however, provides that the first such credible report is to be disregarded and allows subsequent reports to be disregarded upon certain showings by a claimant. The bill requires DWD to investigate each such report as needed to determine its effect on claimants' eligibility for benefits.

The bill requires DWD to include information on reports submitted by employers under the bill in its annual UI fraud report made to the Council on Unemployment Insurance, including actions taken by DWD in response to the reports and their effect on claimants' eligibility for benefits. In addition, the bill requires that this annual fraud report be submitted to the appropriate standing committees of the legislature.

The bill requires DWD to have in effect methods to address any circumstances in which a claimant for UI benefits fails to return to work or to accept suitable work without good cause or is unavailable for work or unable to work, including reporting methods for employers and a notice from DWD to claimants about the laws governing such circumstances.

***Recovery of overpayments***

Current law allows DWD to act to recover overpayments in certain circumstances and allows overpayments to be required to be repaid in cases where an individual makes misrepresentations to obtain benefits in the name of another person. This bill makes such recoveries mandatory, instead of permissive.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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

**SECTION 1.** 108.04 (1) (hg) of the statutes is created to read:

108.04 (1) (hg) 1. An employing unit may report to the department whenever any of the following occurs:

- a. An individual declines a job interview or job offer with the employing unit.

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b. An individual fails to respond to a job interview offer or job offer made by the employing unit.

c. An individual fails to attend a scheduled job interview with the employing unit, unless the individual attempts to reschedule the job interview.

d. An employee claiming benefits is unavailable for, or unable to perform, work actually available within a given week as described in par. (a).

e. The employing unit recalls an employee who fails to return to work as described in sub. (8) (c).

2. The department shall investigate each report submitted under subd. 1. as needed to determine whether the report affects a claimant's eligibility under sub. (2) (hL).

**SECTION 2.** 108.04 (2) (ae) of the statutes is renumbered 108.04 (2) (ae) 2.

**SECTION 3.** 108.04 (2) (ae) 1. of the statutes is created to read:

108.04 (2) (ae) 1. In determining whether a claimant is available for work under par. (a) 1. and has maintained an attachment to the labor market, the department shall consider reports made by employing units under sub. (1) (hg).

**SECTION 4.** 108.04 (2) (bm) of the statutes is amended to read:

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 comply with the registration for work and work search requirements under par. (a) 2. or 3. or failed to provide verification to the department that the claimant complied with those requirements, unless the department has waived those requirements under par. (b), (bb), or (bd) or s. 108.062 (10m). If the department has paid benefits to a

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claimant for any such week, the department ~~may~~ shall act to recover the overpayment under s. 108.22.

**SECTION 5.** 108.04 (2) (g) 2. of the statutes is amended to read:

108.04 (2) (g) 2. If a claimant's security credentials are used in the filing of an initial or continued claim for benefits or any other transaction, the individual using the security credentials is presumed to have been the claimant or the claimant's authorized agent. This presumption may be rebutted by a preponderance of evidence showing that the claimant who created the security credentials or the claimant's authorized agent was not the person who used the credentials in a given transaction. If a claimant uses an agent to engage in any transaction with the department using the claimant's security credentials, the claimant is responsible for the actions of the agent. If a claimant who created security credentials or the claimant's authorized agent divulges the credentials to another person, or fails to take adequate measures to protect the credentials from being divulged to an unauthorized person, and the department pays benefits to an unauthorized person because of the claimant's action or inaction, the department ~~may recover from the claimant the benefits that were paid to the unauthorized person~~ shall, in the same manner as provided for overpayments to claimants under s. 108.22 or under s. 108.245, act to recover from the claimant the benefits that were paid to the unauthorized person. If a claimant who created security credentials or the claimant's authorized agent divulges the credentials to another person, or fails to take adequate measures to protect the credentials from being divulged to an unauthorized person, the department is not obligated to pursue recovery of, or to

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reimburse the claimant for, benefits payable to the claimant that were erroneously paid to another person.

**SECTION 6.** 108.04 (2) (hL) of the statutes is created to read:

108.04 (2) (hL) 1. Subject to subd. 2., if a claimant is subject to the requirement under par. (a) 3. to conduct a reasonable search for suitable work for a given week and the department received one or more credible reports in that week that the claimant declined or failed to respond to a job interview offer or failed to attend a scheduled job interview, the claimant shall not be considered to have conducted a reasonable search for suitable work in that week under par. (a) 3.

2. a. A claimant may demonstrate to the department that a report described in subd. 1. was inaccurate, that an interview was for a job that the claimant was not required to accept under sub. (8) (d) to (em), or that the claimant had other good cause for the declination or failure reported. If the department so determines, the report shall be disregarded for purposes of subd. 1.

b. The first credible report described in subd. 1. received during a claimant's benefit year that is not otherwise disregarded under subd. 2. a. shall be disregarded for purposes of subd. 1.

**SECTION 7.** 108.04 (11) (cm) of the statutes is amended to read:

108.04 (11) (cm) If any person makes a false statement or representation in order to obtain benefits in the name of another person, the benefits received by that person constitute a benefit overpayment. Such person ~~may~~ shall, by a determination or decision issued under s. 108.095, be required to repay the amount

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of the benefits obtained and be assessed an administrative assessment in an additional amount equal to the amount of benefits obtained.

**SECTION 8.** 108.14 (19) of the statutes is renumbered 108.14 (19) (intro.) and amended to read:

108.14 (19) (intro.) No later than March 15 annually, the department shall prepare and furnish to the council on unemployment insurance and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), a report summarizing the department's activities related to detection and prosecution of unemployment insurance fraud in the preceding year. The department shall include all of the following in the report ~~information:~~

(a) Information about audits conducted by the department under sub. (20), including the number and results of audits performed, in the previous year.

**SECTION 9.** 108.14 (19) (b) of the statutes is created to read:

108.14 (19) (b) Information on reports submitted by employing units under s. 108.04 (1) (hg) 1., including actions taken by the department in response to the reports as required under s. 108.04 (1) (hg) 2. and their effect on claimants' eligibility for benefits under s. 108.04 (2) (ae) 1. and (hL).

**SECTION 10.** 108.14 (21) of the statutes is amended to read:

108.14 (21) The department shall maintain a portal on the Internet that allows ~~employers~~ employing units to log in and file with the department complaints related to the administration of this chapter and reports under s. 108.04 (1) (hg).

**SECTION 11.** 108.14 (28) of the statutes is created to read:

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108.14 (28) The department shall have in effect methods to address circumstances in which an employee fails to return to work or to accept suitable work without good cause as described in s. 108.04 (8) or in which the employee is unavailable for work or unable to perform work under s. 108.04 (1) (a). The methods shall include all of the following:

(a) Reporting methods, including a telephone line, an electronic mail address, and an online portal, for an employing unit to notify the department when an employee refuses an offer of work.

(b) A plain-language notice provided to employees by the department when applying for benefits about the application of s. 108.04 (8) (a) to (c), including what constitutes suitable work under s. 108.04 (8) (d) and (dm), and an employee's right to fail to accept suitable work for good cause under s. 108.04 (8) (em); about the application of s. 108.04 (1) (a); and including information on contesting the denial of a claim that has been denied due to a report by an employing unit that an employee failed to return to work, failed to accept suitable work, or was unavailable for work or unable to perform work.

**SECTION 12.** 108.22 (8) (a) of the statutes is amended to read:

108.22 (8) (a) If benefits are erroneously paid to an individual, the individual's liability to reimburse the fund for the overpayment ~~may~~ shall be set forth in a determination or decision issued under s. 108.09. Any determination ~~which~~ that establishes or increases an overpayment shall include a finding concerning whether waiver of benefit recovery is required under par. (c). If any decision of an appeal tribunal, the commission or any court establishes or increases

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an overpayment and the decision does not include a finding concerning whether waiver of benefit recovery is required under par. (c), the tribunal, commission or court shall remand the issue to the department for a determination.

**SECTION 13. Initial applicability.**

(1) The renumbering of s. 108.04 (2) (ae) and the creation of s. 108.04 (2) (ae) 1. and (hL) first apply to weeks of unemployment beginning on the effective date of this subsection.

**SECTION 14. Effective dates.** This act takes effect on the Sunday after publication, except as follows:

(1) The treatment of s. 108.14 (28) takes effect on the first Sunday after the 180th day after publication.

**(END)**