

W I S C O N S I N A C T 3 5

AMENDMENTS

TO

UNEMPLOYMENT

INSURANCE

LAW

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EXECUTIVE SUMMARY

On December 17, 2001 Governor McCallum signed Wisconsin Act 35, amending Chapter 108, Wisconsin's Unemployment Insurance law.

Highlights of the Act include:

- Increasing the maximum weekly benefit rate for 2002 from \$313 to \$324 and to \$329 for 2003.
- Phasing out the subtraction of Social Security benefits from the weekly unemployment benefit rate.
- Allowing unemployment benefits to workers available for work at least thirty-two hours per week instead of the present thirty-five.
- Requiring an administrative rule to disqualify employees from benefits when discharged for repeated absences or tardiness.
- Excluding the services of certain non-resident aliens temporarily in the United States from the statutory definition of employment and therefore from taxation.
- Expanding the required use of electronically filed quarterly reports by fiscal and employer agents when reporting for twenty-five or more employers.
- Continuing an administrative fee for improvements in departmental information systems.

INTRODUCTION

By statute the Unemployment Insurance Advisory Council has been given major responsibility for formulating unemployment insurance policy. The council advises the Department of Workforce Development in carrying out the purposes of the unemployment insurance law. In addition, the council is authorized to recommend statutory changes to the legislature and provide the legislature with its views on any unemployment insurance bills introduced.

The council is appointed by the Secretary of the Department of Workforce Development with consideration given to balanced representation of the industrial, commercial, construction, nonprofit and public sectors of the state's economy and is required to include a small business representative. The council consists of five representatives of employees, five representatives of employers, and a nonvoting chairperson who must be a permanent, classified employee of the department. In order to facilitate communication with the legislature and assure that its concerns are considered, the council also invites the legislature to appoint an ex officio member from each party from each of the Assembly and Senate Labor Committees.

After two years of public testimony and expert briefings, the council recommended to the legislature the changes described in this booklet. The changes represent adjustments to changing labor market conditions, modifications to benefits and taxation, and enhancements in administrative practice.

Key improvements were made in benefits. They recognize a need to adjust benefit rates, build labor market security, and ensure program fairness and integrity.

For workers, the maximum weekly benefit rate will be increased to reflect changes in the cost of living. The practice of subtracting social security benefits from the weekly benefit rate will gradually be eliminated in order to increase incomes of older workers whose earning capacity is limited and in order to encourage others to remain in the work force. Benefits will also be extended to workers willing to work at least thirty-two hours a week rather than the current thirty-five.

For employers, benefit fraud reports and work search requirements were reinforced. Unexcused absences and tardiness will be strictly defined by administrative rule for consistency and accountability.

Several changes were also made in tax policies. These enhance fund stability, ease employers' cash management burdens, and provide more certainty about who is an employer.

To stabilize the fund, the use of levies and liens to collect delinquent payments, penalties, and interest was extended to nonprofit employers and those who aid and abet claimants in committing fraud. Larger employers may defer payment of unemployment insurance taxes on first quarter payrolls to later quarters. Consistent with federal law, state unemployment insurance taxes were eliminated on wages for services performed by nonresident aliens temporarily in the United States on F1, J1, M1, or Q visas. Explicit recognition was given to professional employer organizations, which may supply and share the management of all of a work site's workers including corporate officers.

Some changes help the department better administer the unemployment insurance program. A current administrative fee charged to employers for upgrading information systems was extended two more years. The department received authority to hire fifteen temporary, federally funded staff to cover the daily program duties of permanent personnel currently dedicated to upgrading information systems. The department also received authority to hire retired administrative law judges temporarily if the number of appeals warrants.

The department may also increase the use of electronic means of communication (e-mail and facsimile transmissions) to send documents and other communications needed to conduct its business when requested by employers. Finally, agents who file quarterly tax reports for twenty-five or more employers will be required to file those reports electronically.

The sections below describe all of the changes contained in 2001 Wisconsin Act 35. They are organized into sections describing changes in benefits, taxes, and administrative practice.

Appendices are also included for reference. Appendix A is a topical index. Appendix B lists changes in order of their statute numbers. Appendix C contains a list of council members and their addresses and telephone numbers.

BENEFIT CHANGES

- **Increase the maximum weekly benefit rate \$11 in 2002 and \$5 in 2003.**

The new law raises the maximum weekly benefit rate to \$324 in 2002 and \$329 in 2003. It also increases the minimum weekly benefit rate to \$48 in 2002 and \$49 in 2003.

- **Phase out the Social Security offset of unemployment benefits.**

Under prior law, unemployment insurance claimants' unemployment benefits were reduced by fifty per cent of the amount of Social Security benefits they received on the basis of their own employment. The new law reduces the offset to twenty-five per cent in 2002 and eliminates the offset in 2003.

- **Allow unemployment benefits for workers available to work at least thirty-two hours a week.**

New law permits payment of unemployment benefits to qualified claimants who are available to perform thirty-two hours work per week. The previous standard for availability was thirty-five hours.

- **Establish standards for repeated absences or tardiness as they relate to misconduct disqualifying a claimant from unemployment insurance benefits.**

New law directs the department to develop administrative rules that specify a level of absence or tardiness that constitutes misconduct. The intent of the change is to increase certainty for employers and employees in ambiguous situations involving absence and tardiness. The suggested

numbers of absences and instances of tardiness without notification to the employer were three and five, respectively. Because current law can result in total loss of wage credits, current law also requires the department to consider the reasons for the absence or tardiness even if the employee is not required to provide them when notifying the employer of the absence or tardiness. Both the Unemployment Insurance Advisory Council and the legislature are expected to review the rules before they are adopted.

- **Extend by seven days the deadlines for filing initial and resumed claims.**

Under prior law claimants were required to file an initial claim before the close of the week for which they intended to receive benefits. Claimants had to meet the same filing deadline for any resumed or additional claim, defined as one following a week for which no valid claim is made. The change requires filing for these two types of claims within seven days from the close of the week for which the claimant intends to receive benefits. Claimants continue to have fourteen days from the close of the week for which they intend to receive benefits to file a continued claim, which is defined as a claim that follows a week for which a valid claim has been filed. The change is expected to reduce the need to investigate late filings which result in payment of benefits when exceptional circumstances prevent timely filing.

- **Specify what constitutes an establishment for purposes of disqualifying a claimant from unemployment insurance benefits during a labor dispute.**

Under the new law the department must develop an administrative rule to clarify current administrative and judicial interpretations of what is an establishment under existing provisions of the statute requiring disqualification of a claimant who has left or lost work with an employing unit because of a strike in the establishment at which the employee is or was employed. There are very few occasions on which the department or a court finds that the same employer's multiple plants are the same establishment. The administrative rule would clarify the circumstances under which multiple plants are or are not the same establishment.

- **Charge the Fund's balancing account when proper notice of recall is sent but not received.**

An individual who fails to return to work when duly recalled within fifty-two weeks of a lay off may be disqualified from receiving unemployment insurance benefits until four weeks elapse and the individual earns four times his or her weekly benefit rate. If the individual later requalifies and receives benefits, the amount of those benefits attributable to wages paid by the recalling employer prior to the recall is charged to the Fund's balancing account.

Sometimes an employer properly recalls an individual but the notice is not received. Under prior law benefits attributed to the recalling employer were charged to the employer's account. Under the new law benefits attributable to the recalling employer are charged to the Fund's balancing account.

It is important to note that several elements must be present in the situation described. First, employees affected by this situation have an obligation to keep the employer informed of their whereabouts. Second, the employer must provide evidence that it gave the employee proper notice of a bona fide offer of work and that the notice was not received. Perhaps the best evidence an employer could provide is a returned registered letter.

- **Charge the Reserve Fund's balancing account for certain benefits paid to displaced workers who quit specified jobs to enter training programs authorized under the Trade Adjustment Assistance (TAA) and Economic Dislocation and Worker Adjustment Assistance (EDWAA) Acts.**

When workers lose jobs to foreign competition, they are eligible for both unemployment benefits and federally funded specialized job training. If no training or comparable work is immediately available, they may receive unemployment insurance benefits. However, many choose to take full-time work requiring less than their previous skills and offering a lower rate of pay. If federal training becomes available during this employment, the worker may quit to enter the training. If the interim job met precise federal standards, the worker may also collect unemployment benefits.

Under previous law, the employer that was quit when the worker entered TAA or EDWAA training had its account charged for the worker's unemployment benefits. Under new law, benefits will be charged instead to the Fund's balancing account.

About two thousand Wisconsin workers per year received training under EDWAA from 1990 through 1998. Another five hundred per year received training under TAA from 1990 through 1995. While the effect of this change on the Fund's balancing account is insignificant in a brisk economy during a labor shortage, data does not exist to calculate the effect of the change if a recession occurs or if more funds were made available by the federal government for training.

- **Issue an annual report on fraud.**

In February of each year the department will publish a report on the detection and prosecution of fraud. It will present the report to the Unemployment Insurance Advisory Council shortly after publication.

- **Verify claimants' work search efforts.**

The department will sample and verify self-reported work search effort. As most people who are out of work look for work, the provision is not expected to disqualify many claimants. However, it will assure that those who are not looking for work will not continue to receive unemployment insurance benefits.

- **Extend the requirement to engage in at least two job search activities each week.**

The department will continue until the end of 2003 to require claimants to complete two verified work searches per week to remain eligible for benefits. Beyond 2003, the department will determine by rule the kinds and numbers of activities that constitute a reasonable search for work.

TAX CHANGES

- **Exclude certain non-immigrant visa holders from the unemployment insurance program.**

Non-immigrant foreigners who are issued F1, M1, J1, or Q visas are permitted to work in Wisconsin, for specific employers, for specific jobs, for a specific period of time. However, federal law excludes these individuals from unemployment insurance coverage. The change makes state law conform to federal law.

- **Exclude from unemployment insurance coverage services to certain Medicaid recipients.**

New law excludes from the statutory definition of “employment” in-home nursing and respiratory care services to Medicaid recipients when provided by individuals certified by the Wisconsin Department of Health and Family Services as nurses in independent practice, independent nurse practitioners, or respiratory care providers in independent practice. As a result, Medicaid recipients who obtain these in-home services from the specified independent practitioners will not be found “employers” according to unemployment insurance law. Moreover, the reimbursement received by these providers is not subject to state unemployment insurance taxes and does not count as wages for purposes of determining unemployment insurance benefit eligibility or entitlement.

- **Require tribes to participate in the state unemployment insurance program.**

A change in federal law removes tribes from federal unemployment insurance coverage and requires them to participate in once-voluntary state unemployment insurance programs. In Wisconsin all tribes had previously chosen coverage as taxable employers under the state program.

The new law also requires states to offer to tribes the choice of taxable or reimbursing employer status. Under the latter the state pays unemployment insurance benefits to qualified laid-off employees of the tribes and tribes reimburse the state for those costs. Previously, tribes

could not choose to become reimbursing employers.

Tribes will also be required to pay for one hundred per cent of extended benefits, which are available in times of high unemployment and were previously funded by federal unemployment insurance taxes. Tribes are no longer required to pay federal unemployment insurance taxes.

- **Give explicit statutory recognition to professional employer organizations.**

A professional employer organization typically leases an entire work force to each of its clients and may include in the terms of its contract the corporate officers of the client. In contrast, a temporary help agency usually provides only a part of the client's work force. One advantage of a professional employer organization is that it may offer fringe benefits such as health insurance by acting as the employer of all of the workers that it supplies to many businesses. Giving statutory recognition to professional employer organizations helps to clarify that it is the employer of the leased workers even if it shares direction and control of the work with its clients.

- **Eliminate optional partial successorship.**

When at least twenty-five per cent of a business was transferred from one unrelated employer to another under prior law, the transferee had an option, under certain circumstances, to assume the factors used in determining the unemployment insurance tax rate of the transferor. If the transferee did not choose to become a successor to the rating factors (the unemployment insurance account balance and taxable payroll) of the transferor, the transferee either started with a new employer tax rate if a new entity or, if already in business, treated the new workers for unemployment insurance tax purposes as if they were newly hired in an existing business. Under the new law an unrelated employer may not succeed to the rating factors of a transferor unless one hundred per cent of the business is transferred.

Under prior law all business transfers between related parties required the transferee to assume the rating factors of the transferor. Under the new law a transferee related to a transferor assumes the rating factors of the

transferor only if one hundred per cent of the business is transferred or the transferor's unemployment insurance account balance is overdrawn. In all other cases the transferee receives a new employer tax rate or, if already in business, treats the new workers as if newly hired into an existing business.

- **Permit deferral of sixty per cent of first quarter taxes owed by employers with first quarter tax liability of \$5,000 or more.**

Beginning no later than 2004, employers with a first quarter tax liability of \$5,000 or more may elect to defer a portion of the payment due. They may pay forty per cent of taxes due on first quarter payroll on the usual due date for these taxes, thirty per cent of taxes on first quarter payroll at the same time as taxes are due on payroll in the second quarter, twenty per cent of taxes on first quarter payroll at the same time as taxes are due on payroll in the third quarter, and the final ten per cent of their first quarter tax liability at the time taxes are due on payroll in the fourth quarter. In addition to the deferred taxes, employers would be required to pay all of the taxes due on second, third and fourth quarter payrolls on the usual due dates.

Taxes for many employers electing the option would be higher in one or more years following the first year of deferral. The deferral would lead to a lower June 30 employer account balance that may result in higher tax rates for a temporary period of time.

- **Expand the use of liens to collect unpaid debts.**

Under prior law, the department could file a lien with the circuit court to encumber a taxable employer's real and personal property for the purpose of collecting taxes, interest, and fees. The new law extends this practice to nonprofit and governmental employers that fail to provide required reimbursement for benefit payments and to those penalized for aiding and abetting fraud.

- **Expand the use of levy powers.**

Under prior law the department could seize the personal property of delinquent taxable employers for the purpose of collecting unpaid taxes,

interest, and penalties. The new law extends this practice to fees, includes nonprofit and governmental employers that fail to provide reimbursement for benefit payments, and includes employers penalized for aiding and abetting fraud.

- **Permit the department to use levy powers against certain third parties.**

Under prior law the department could not levy the property of a third party who did not respond to the department's demand to turn over the property or wages of a debtor. Typically such persons are related to the delinquent taxpayer or benefit claimant who failed to repay an overpayment. The new law allows the department to levy the property of third parties that do not respond to the department's demand to turn over a debtor's property.

ADMINISTRATIVE CHANGES

- **Authorize the department to send electronic, rather than paper, documents to employers requesting them.**

Some employers prefer to receive official documents and notices by electronic mail, but the department has not been authorized to send official documentation electronically. This change allows employers voluntarily to accept electronic services. It complements the department's existing authority to receive information electronically.

- **Require electronic filing of quarterly unemployment insurance contribution reports by employer agents that report for twenty-five or more employers.**

At present, twenty agents representing eight thousand employers voluntarily file quarterly contribution reports electronically. Another one hundred fifty agents representing about twelve thousand employers file paper reports.

This change will reduce bank fees paid by the department by about

\$17,000 per year. It will also eliminate numerous staff hours spent manually entering figures from twelve thousand quarterly paper reports and correcting their errors.

Electronic reports would be required beginning the fourth quarter after the quarter in which the employer is subject to the requirement to file electronically. Under this change, agents that file contribution reports for twenty-five or more employers may be fined \$25 for each employer for which a paper report is filed.

- **Extend for two years the current administrative fee for upgrading technology.**

Assessed at one hundredth of one per cent of taxable wages, the administrative fee will continue through December 31, 2003, unless extended by law again. The fee was also extended two years in 1999. The administrative fee is expected to raise \$2.4 million in 2002 and \$2.5 million in 2003.

The fee will continue to be offset by an equal reduction in the employer's solvency tax rate. For example, a two hundredths of one per cent solvency rate will become one hundredth of one percent. The fee will not be charged to employers with zero solvency tax rates.

- **Appropriate funds to repay the United States Department of Labor for disallowed costs of providing employment services to unemployment insurance claimants.**

In 1998, the Unemployment Insurance Division conducted a successful pilot project providing employment services such as advanced skill training to unemployment insurance claimants. To provide these services, it used \$250,000 in federal funds for unemployment insurance administration. The United States Department of Labor subsequently disallowed the expenses and required repayment as the activities were not specifically for administration of the unemployment insurance program. Funds for repayment will be drawn from interest and penalties charged delinquent employers.

- **Provide authority for fifteen federally funded project positions to handle regular workload of staff developing new automated systems.**

Developing a new computer-based information system to aid in managing unemployment insurance taxes and benefit payments has required extensive input from staff in every bureau of the Unemployment Insurance Division. Everyday work has become backlogged. Project positions utilizing available federal funds will be deployed to reduce backlogs and keep ongoing work current.

- **Permit the department to hire retired administrative law judges during workload peaks.**

Prior law required administrative law judges to be permanent state employees except in appeals in which they or the department were interested parties. The change permits the department to rehire retired personnel as limited term employees. The new law gives the department flexibility in responding to periods of peak work while simultaneously facing increasing retirements and fewer entrants into the labor market.

APPENDIX A

Wisconsin Chapter 108 Statutory and DWD Rule changes by Topic

<u>Statute</u>	<u>Description</u>	<u>Page</u>
<u>Benefits</u>		
108.04(2)(a)3	Work search	7
108.04(7)(h)	Quit to enter TAA or EDWAA training	6
108.04(8)(c)	Recall notice	6
108.05(1)	Maximum weekly benefit rate	4
108.05(7)(f)(1) 2001 WI Act 35, Section 72 (1)	Social Security offset	4
2001 WI Act 35, Section 72 (2)(a)1.	Definition of full time work	4
2001 WI Act 35, Section 72 (2)(a)2.	Absentee and tardy disqualification	4
2001 WI Act 35, Section 72 (2)(a)3.	Labor disputes	5
2001 WI Act 35, Section 72 (2)(b)	Filing initial claims	5
108.14(19)	Benefit fraud report	7
2001 WI Act 35, Section 72 (6)	Verification of work search	7
<u>Tax</u>		
108.02(15)(k)20	Independent care employment exclusion	8
108.02(15)(j)6	Non-immigrant visa holder exclusion	8
108.152	Indian tribe coverage	8
108.16(8)	Successorship	9
108.16(8)(L), 108.065, 108.067	Professional employer organizations	9
108.17(2c)	Tax payment deferral	10
108.22(1m)	Extend use of liens	10
108.225(1) (a),(b),(c) & 16	Extend use of levy	10
108.225(1) (b) & (c)	Levy third party	11
<u>Administration</u>		
108.09(3)	Retired administrative law judges	13
108.14(2e)	Business electronics	11
108.17(2g), 108.22(1) (ad) & (am)	Extend electronic report filing	11
108.19(1e)(a) & (d)	Information technology fee	11
2001 WI Act 35, Section 73 (1)	Funding employment services	12
2001 WI Act 35, Section 72 (7)	Temporary staff	12

APPENDIX B

Wisconsin Chapter 108 Statutory Changes by Statute Section

<u>Statute</u>	<u>Description</u>	<u>Page</u>
108.02(15)(j)6	Non-immigrant visa holder exclusion	8
108.02(15)(k)20	Independent care employment exclusion	8
108.04(2)(a)3	Work search	7
108.04(7)(h)	Quits to enter TAA or EDWAA training	6
108.04(8)(c)	Recall notice	6
108.05(1)	Maximum weekly benefit rate	4
108.05(7)(f)(1) 2001 WI Act 35, Section 72 (1)	Social Security offset	4
108.09(3)	Retired administrative law judges	13
108.14(2e)	Business electronics	11
108.14(19)	Benefit fraud report	7
108.152	Indian tribe coverage	8
108.16(8)(b)	Successorship	9
108.16(8)(L), 108.065, 108.067	Professional employer organizations	9
108.17(2c)	Tax payment deferral	10
108.17(2g), 108.22(1) (ad) & (am)	Extend electronic report filing	11
108.19(1e)(a) & (d)	Information technology fee	12
108.22(1m)	Extend use of liens	10
108.225(1) (a),(b),(c) & 16	Extend use of levy	10
108.225(1) (b) & (c)	Levy third party	11
<i>Following changes are found in 2001 WISCONSIN ACT 35:</i>		
Section 73 (1)	Funding employment services	12
Section 72 (2)(a)1	Definition of full time work	4
Section 72 (2)(a)2	Absentee and tardy disqualification	4
Section 72 (2)(a)3	Labor disputes	5
Section 72 (2)(b)	Filing initial claims	5
Section 72 (6)	Verification of work search	7
Section 72 (7)	Temporary staff	13

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