

Plain Language Summary of Changes to Wisconsin Unemployment Insurance Law (2017-2018)

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Governor Walker signed three bills into law during the 2017-2018 biennium related to unemployment insurance: [2017 Wis. Act 59](#), the 2015-2017 budget; [2017 Wis. Act 147](#), related to increased criminal penalties for unemployment insurance fraud; and [2017 Wis. Act 157](#), the agreed-upon bill of the Unemployment Insurance Advisory Council with various law changes. The permanent administrative rules regarding pre-employment drug testing and drug treatment became effective in 2017.

Benefit Changes

Concealment of Holiday, Vacation, Termination, or Sick Pay

A claimant who conceals wages or holiday, vacation, termination, or sick pay on their unemployment claims must repay the overpaid benefits, is assessed a penalty in the amount of 40% of the overpayment, and is ineligible for an amount of future benefits.

A claimant who conceals work on an unemployment benefit claim is totally ineligible for benefits for that week. But, under prior law, a claimant who conceals holiday, vacation, termination, or sick pay on a weekly claim may still be eligible for partial benefits for that week. **2017 Act 157** amends the law to provide that concealment of holiday pay, vacation pay, sick pay, or termination pay results in total ineligibility for the week for which the claimant concealed the pay.

Effective Date: The changes to Wis. Stat. § 108.05(3)(d) apply to **determinations** issued on or after April 1, 2018.

Increased Criminal Penalties for Unemployment Insurance Fraud

Prior law provided that the criminal penalty for unemployment fraud is a \$100 to \$500 fine or up to 90 days in jail, or both, for each false statement. Alternatively, a person may be charged with the crime of theft by fraud for committing unemployment benefit fraud, which could be a felony, depending on the amount of benefits fraudulently obtained. **2017 Act 147** increases the criminal penalties for unemployment benefit fraud based on the amount of the benefits that the person fraudulently obtains as follows:

If the value of UI benefits fraudulently obtained is:	Claimant is guilty of:	Maximum criminal penalty:
\$2,500 or less	Class A Misdemeanor	Up to \$10,000 fine or imprisonment up to 9 months, or both
More than \$2,500, up to \$5,000	Class I Felony	Up to \$10,000 fine or imprisonment up to 3.5 years, or both
More than \$5,000, up to \$10,000	Class H Felony	Up to \$10,000 fine or imprisonment up to 6 years, or both
More than \$10,000	Class G Felony	Up to \$25,000 fine or imprisonment up to 10 years, or both

Effective Date: The changes to Wis. Stat. § 108.24(1)(a) to (c) apply to **violations committed** on or after April 1, 2018.

Ineligibility for Failure to Provide Information

The department may request information from unemployment claimants to ensure that they are eligible for benefits. Under prior law, a claimant is ineligible for benefits for the week in which the claimant fails to answer the department’s eligibility questions, and any subsequent weeks, until the claimant responds to the department’s request. A claimant who later answers the department’s eligibility questions is retroactively eligible for benefits beginning with the week in which they failed to answer the questions, if otherwise eligible.

2017 Act 157 amends the law to provide that claimants who fail to answer eligibility questions are ineligible **beginning with the week involving the eligibility issue**, rather than the week in which the claimant fails to answer the department's questions. This clarifies that, if the department questions a claimant's eligibility, the department will hold the claimant's benefits until the claimant responds.

Effective Date: The changes to Wis. Stat. §§ 108.04(1)(hm) and (hr) apply to **determinations** issued on or after April 1, 2018.

Amendments to Drug Testing Statutes

2017 Act 157 contains various changes to the drug testing statutes, such as:

- Limiting employers' civil liability under state law for submission of pre-employment drug testing information to the Department.
 - **Effective Date:** The changes to Wis. Stat. § 108.133(4)(c) apply to reports **submitted** by employers on or after April 1, 2018.
- Amending the privacy statute to ensure that all information related to drug testing and prescription medication is confidential. The prior statute specifies that drug treatment information is confidential. Existing administrative code provisions also provide general confidentiality protections.
 - **Effective Date:** The changes to Wis. Stat. § 108.133(3)(e) are effective on April 1, 2018.
- Federal law provides that states may only test "applicants" for unemployment insurance for controlled substances. "Applicant" is defined in federal law as "an individual who files an initial claim for unemployment compensation under State law. Applicant excludes an individual already found initially eligible and filing a continued claim."

Wisconsin's occupational drug testing statute is amended to refer to "applicants" instead of "claimants" to clearly conform state law to the federal definition.

- **Effective Date:** The changes to Wis. Stat. § 108.133(2)(a)1. are effective when the department promulgates the administrative rules regarding occupational drug testing.
- Confirming that the Department shall pay the reasonable cost of drug testing applicants under the occupational drug testing program.
 - **Effective Date:** The changes to Wis. Stat. § 108.133(2)(a)1. are effective when the department promulgates the administrative rules regarding occupational drug testing.
- The Legislature appropriates \$250,000 annually to the Department "to conduct testing for controlled substances, for the provision of substance abuse treatment, and for related expenses under s. 108.133." **2017 Act 157** amends the appropriation statute to confirm that the Department may use this funding to screen unemployment benefit applicants order to determine whether there is a reasonable suspicion that an applicant has engaged in the unlawful use of controlled substances. This bill also amends the appropriation statute so that any unencumbered funds from this appropriation will be transferred to the unemployment program integrity fund at the end of the biennium. Wis. Stat. § 20.445(1)(aL).

Pre-employment Drug Testing Permanent Rules

Wis. Stat. §§ 108.04(8)(b) and 108.133 require the department, by administrative rule, to create a voluntary program for employers to report the results of a failed or refused pre-employment drug test to the department. The permanent administrative rule in Wis. Admin.

Code ch. DWD 131 became **effective May 1, 2017**. A claimant's failed or refused pre-employment drug test is presumed to be a failure to accept suitable work. A claimant may overcome the presumption by proving certain facts to the department. An individual who fails or refuses a pre-employment drug test is ineligible for benefits until the individual earns wages after the week in which the failure occurs equal to at least 6 times the individual's weekly benefit rate under s. 108.05 (1), Stats., in employment or other work covered by the unemployment insurance law of any state or the federal government. A claimant who fails a pre-employment drug test without evidence of a valid prescription for the drug may remain eligible for unemployment insurance benefits if the claimant enrolls in and complies with a drug treatment program and completes a job skills assessment.

Tax / Collections Changes

Fiscal Agent Joint and Several Liability

Individuals who receive long-term support services in their homes through government-funded care programs are "domestic employers" under the unemployment insurance law. Fiscal agents directly receive and disperse government program funds on behalf of these domestic employers. The fiscal agent is responsible for reporting filing tax reports and paying unemployment taxes on behalf of the domestic employer.

Under federal law, fiscal agents are jointly and severally liable for the unemployment tax liability of the employer. **2017 Act 157** provides that Wisconsin may determine private agencies (but not government agencies) that serve as fiscal agents to be jointly and severally liable for the state unemployment tax of the employers they serve.

Effective Date: The creation of Wis. Stat. § 108.22(10) is effective on April 1, 2018.

Personal Liability for Tax – Repeal of the Ownership Requirement

2017 Act 157 amends the tax personal liability statute to remove the 20% owner requirement for a finding of personal liability.

Effective Date: The changes to Wis. Stat. § 108.22(9) apply to **determinations** issued on or after April 1, 2018.

State Tax Refund Intercept for Tax Recovery

2017 Act 157 permits the department to intercept state income tax refunds, lottery payments, state vendor payments, and unclaimed property of taxpayers (employers and personally liable individuals) who owe debts to the department. The department previously only intercepted such amounts for claimants who owe overpayments and penalties.

Effective Date: The changes to Wis. Stat. § 108.22(1t) are effective on April 1, 2018.

Levy Non-compliance Penalty

2017 Act 157 modifies an existing penalty for third parties who refuse to comply with a department levy. The new penalty will be 50% of the amount of the debt owed and the penalty funds will be deposited into the program integrity fund.

Effective Date: The changes to Wis. Stat. § 108.225(4)(b) are effective on April 1, 2018.

Secured Liens for Benefit Overpayments

2017 Act 157 creates an unrecorded lien against any person who owes the department a debt (under prior law, this provision only applied to employers). This amendment will ensure that the department has a right to collect a debt without a warrant when property is liquidated and will improve the department's position with respect to the priority of creditors.

Effective Date: The changes to Wis. Stat. § 108.22(1m) apply to amounts that are owed on or after April 1, 2018.

Warrant Notice Changes

2017 Act 157 codifies existing department practice by requiring the department to give 15 days' notice to a debtor before issuing a warrant.

Effective Date: Wis. Stat. § 108.22(2)(c) is **effective** on April 1, 2018.

Administrative Changes

Several minor and technical changes to unemployment statutes in **2017 Act 157**, **effective April 1, 2018**, are:

- Congress repealed the federal Workforce Investment Act of 1998 (“WIA”) and replaced it with the federal Workforce Innovation and Opportunity Act (“WIOA”). The references in Wisconsin unemployment law are updated from WIA to WIOA.
- Adding a reference to “Indian tribe” to correct a drafting error from a prior bill. Wis. Stat. § 108.04(17)(e).
- Correcting a cross-reference from the previous UIAC agreed bill, 2015 Act 334, related to suitable work. Wis. Stat. § 108.04(7)(e).
- Clarifying the steps that appeal tribunals (ALJs) should take when parties fail to appear at administrative hearings. Wis. Stat. §§ 108.09(4)(d)2. and 108.09(4)(e)2.
- Revising various unemployment statutes to provide for optional electronic delivery of certain department determinations and notices.
- Previously, the department paid all unemployment benefits by paper checks. Currently, the department pays about 80% of benefits by direct deposit, about 20% by deposit to

debit cards and less than 1% by paper check. The statutes are updated to replace references to checks with issuance of payment. Statutes amended: Wis. Stat. §§ 108.16(2)(e) and 108.16(2)(em).

- Creating Wis. Stat. § 108.16(6)(p) to confirm that under federal law, federal FUTA credit reduction payments will be deposited into the Wisconsin unemployment insurance balancing account. The department does not currently receive these federal funds, but will deposit them into the balancing account if the funds are paid to Wisconsin in the future.
- Various changes to the work share statutes to confirm the department’s interpretation of current law:
 - Vacation, holiday, termination, and sick pay will be treated as hours for the purposes of calculating an employee’s work share benefit. This is similar to current law for regular benefits. Statute amended: Wis. Stat. § 108.062(6)(a).
 - The department shall disregard discrepancies of less than 15 minutes of work reported, which is like the disregard of \$2 of wages earned in a week for regular benefits. Statute amended: Wis. Stat. § 108.062(6)(a).
 - The department shall treat missed work available for work share employees and claimants applying for regular benefits similarly, so that work share employees are not paid greater benefits when missing work with a work share employer. This is similar to current law for regular benefits. Statute amended: Wis. Stat. § 108.062(10).
- Amending the appropriation language for the unemployment interest payment fund (SAFI) and the unemployment program integrity fund to convert these funds from “segregated-sum sufficient” to “segregated-continuing.” The purpose of these changes is

to make the accounting for these funds more efficient. Act 157 also adds 5.0 positions - these are existing positions, to be compensated from the program integrity fund. These staff will perform program integrity activities, investigate concealment, and investigate worker misclassification. Wis. Stat. §§ 20.445(1)(u) and 20.445(1)(v).

Public Benefits and Chronic Absenteeism Study

2017 Act 59 § 9152(1) directs the departments of children and families, public instruction, health services, and workforce development to collaborate to prepare a report on the population overlap of families that receive public benefits and children who are absent from school for 10 percent or more of the school year. The report is due December 30, 2018 to the Governor and Legislature.