



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 102.07 (8) (d) and 111.327; **to amend** 108.24 (2m); and **to**
2 **create** 108.19 (1s) (a) 4. and 108.221 of the statutes; **relating to:** various
3 changes to the unemployment insurance law and providing a penalty.

Analysis by the Legislative Reference Bureau

Misclassification; assessments and penalties

Under current law, an employer engaged in construction projects or in the painting or drywall finishing of buildings or other structures who willfully provides false information to DWD for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee under the UI law is subject to a criminal fine of \$25,000 for each violation. Similar penalties apply to such employers who so act with the intent to evade any requirement of the worker's compensation law or the fair employment law. DWD is required to promulgate rules defining what constitutes a willful misclassification of an employee as a nonemployee for purposes of each of these provisions.

This bill does the following with respect to these provisions:

1. Repeals the prohibitions that apply with respect to the worker's compensation law and the fair employment law, as well as the requirement that DWD promulgate rules defining what constitutes a willful misclassification of an employee as a nonemployee for purposes of these provisions.

2. Requires DWD to assess an administrative penalty against such an employer who knowingly and intentionally provides false information to DWD for the purpose of misclassifying or attempting to misclassify an individual who is an

employee of the employer as a nonemployee under the UI law. The bill provides for a penalty of \$500 for each employee who is misclassified, not to exceed \$7,500 per incident, and requires DWD to consider certain factors in determining whether an employer committed a violation.

3. Revises the current prohibition regarding such employers who provide false information to misclassify an individual under the UI law so that the bill 1) changes the standard from “willfully” providing such false information to “knowingly and intentionally” doing so; 2) requires, as an element of the crime, that the employer was previously assessed a penalty by DWD for providing such false information; and 3) revises the penalty to be \$1,000 for each employee who is misclassified, subject to a maximum fine of \$25,000 for each violation.

In addition, the bill requires DWD to assess an administrative penalty against such an employer who, through coercion, requires an individual to adopt the status of a nonemployee in the amount of \$1,000 for each individual so coerced, but not to exceed \$10,000 per calendar year.

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

1 **SECTION 1.** 102.07 (8) (d) of the statutes is repealed.

2 **SECTION 2.** 108.19 (1s) (a) 4. of the statutes is created to read:

3 108.19 (1s) (a) 4. Assessments under s. 108.221 (1) and (2).

 ****NOTE: LRB-2020 establishes a list of amounts that are to be deposited in the program integrity fund numbered s. 108.19 (1s) (a) 1. to 3.

4 **SECTION 3.** 108.221 of the statutes is created to read:

5 **108.221 Misclassification; administrative assessments.** (1) (a) Any
6 employer described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing
7 of buildings or other structures who knowingly and intentionally provides false
8 information to the department for the purpose of misclassifying or attempting to
9 misclassify an individual who is an employee of the employer as a nonemployee shall,
10 for each incident, be assessed a penalty by the department in the amount of \$500 for
11 each employee who is misclassified, but not to exceed \$7,500 per incident.

12 (b) The department shall consider the following nonexclusive factors in
13 determining whether an employer described under par. (a) knowingly and

1 intentionally provided false information to the department for the purpose of
2 misclassifying or attempting to misclassify an individual who is an employee of the
3 employer as a nonemployee:

****NOTE: The word “nonexclusive” was added here per DWD to make it clear that
other factors could be considered.

4 1. Whether the employer was previously found to have misclassified an
5 employee in the same or a substantially similar position.

6 2. Whether the employer was the subject of litigation or a governmental
7 investigation relating to worker misclassification and the employer, as a result of
8 that litigation or investigation, received an opinion or decision from a federal or state
9 court or agency that the subject position or a substantially similar position should
10 be classified as an employee.

****NOTE: A requested clarification to the language was made here.

11 (2) Any employer described in s. 108.18 (2) (c) or engaged in the painting or
12 drywall finishing of buildings or other structures who, through coercion, requires an
13 individual to adopt the status of a nonemployee shall be assessed a penalty by the
14 department in the amount of \$1,000 for each individual so coerced, but not to exceed
15 \$10,000 per calendar year.

****NOTE: The instructions provided for a maximum penalty of \$10,000 “per year.”
A change was made here to clarify that this would be measured on a calendar year basis.

16 (3) Assessments under subs. (1) and (2) shall be deposited in the
17 unemployment program integrity fund.

18 **SECTION 4.** 108.24 (2m) of the statutes is amended to read:

19 108.24 (2m) Any employer described in s. 108.18 (2) (c) or engaged in the
20 painting or drywall finishing of buildings or other structures who willfully, after
21 having previously been assessed an administrative penalty by the department under
22 s. 108.221 (1), knowingly and intentionally provides false information to the

1 department for the purpose of misclassifying or attempting to misclassify an
2 individual who is an employee of the employer as a nonemployee shall be fined \$1,000
3 for each employee who is misclassified, subject to a maximum fine of \$25,000 for each
4 violation. The department may refer violations of this subsection for prosecution by
5 the department of justice or the district attorney for the county in which the violation
6 occurred.

****NOTE: This language provides specific authority for cases to be referred to DOJ
(DOJ also already has authority to enforce UI laws under s. 165.60, stats.), but also
provides that DWD may refer cases to local DAs as well.

7 **SECTION 5.** 111.327 of the statutes is repealed.

8 **SECTION 6. Initial applicability.**

9 (1) MISCLASSIFICATION; ASSESSMENTS AND PENALTIES. The treatment of sections
10 102.07 (8) (d), 108.221, 108.24 (2m), and 111.327 of the statutes first applies to
11 violations committed on the effective date of this subsection.

12 **SECTION 7. Effective dates.** This act takes effect on the first Sunday after
13 publication, except as follows:

14 (1) MISCLASSIFICATION; ASSESSMENTS AND PENALTIES. The treatment of sections
15 102.07 (8) (d), 108.19 (1s) (a) 4., 108.221, 108.24 (2m), and 111.327 of the statutes and
16 SECTION 6 (1) of this act take effect on the first Sunday of the 7th month beginning
17 after publication.

****NOTE: A six-month delayed effective date was requested by DWD to allow for
training and implementation time.

18 (END)