



State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-3005/1  
MED:emw

## 2021 BILL

1     **AN ACT** *to renumber* 108.04 (2) (ae); *to renumber and amend* 108.14 (19); *to*  
2             *amend* 108.04 (2) (bm), 108.04 (2) (g) 2., 108.04 (11) (cm), 108.04 (13) (c), 108.04  
3             (13) (e), 108.04 (13) (f), 108.09 (1), 108.14 (21) and 108.22 (8) (a); and *to create*  
4             108.04 (1) (hg), 108.04 (2) (ae) 1., 108.04 (2) (hL), 108.14 (19) (b) and 108.14 (28)  
5             of the statutes; **relating to:** various changes to the unemployment insurance  
6             law.

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### *Analysis by the Legislative Reference Bureau*

Current law requires each employer that is notified of a claim for unemployment insurance (UI) benefits to promptly inform the Department of Workforce Development in writing as to any eligibility question in objection to such a claim together with the reasons for the objection.

This bill requires an employer that is notified of a claim for UI benefits to fully and promptly respond to DWD as to any eligibility question that may be at issue with respect to the claim, regardless of any objection to the claim on the part of the employer. The bill also 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 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

**BILL**

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. DWD must include information on reports submitted by employing units 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.

Finally, the bill requires, instead of allows, DWD to act to recover overpayments in certain circumstances and requires overpayments to be repaid in cases where an individual makes misrepresentations to obtain benefits in the name of another person.

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:***

- 1           **SECTION 1.** 108.04 (1) (hg) of the statutes is created to read:
- 2           108.04 (1) (hg) 1. An employing unit may report to the department whenever
- 3 any of the following occurs:
- 4           a. An individual declines a job interview or job offer with the employing unit.
- 5           b. An individual fails to respond to a job interview offer or job offer made by the
- 6 employing unit.
- 7           c. An individual fails to attend a scheduled job interview with the employing
- 8 unit, unless the individual attempts to reschedule the job interview.

**BILL**

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

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

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

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

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

10 108.04 (2) (ae) 1. In determining whether a claimant is available for work  
11 under par. (a) 1. and has maintained an attachment to the labor market, the  
12 department shall consider reports made by employing units under sub. (1) (hg).

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

14 108.04 (2) (bm) A claimant is ineligible to receive benefits for any week for  
15 which there is a determination that the claimant failed to comply with the  
16 registration for work and work search requirements under par. (a) 2. or 3. or failed  
17 to provide verification to the department that the claimant complied with those  
18 requirements, unless the department has waived those requirements under par. (b),  
19 (bb), or (bd) or s. 108.062 (10m). If the department has paid benefits to a claimant  
20 for any such week, the department ~~may~~ shall act to recover the overpayment under  
21 s. 108.22.

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

23 108.04 (2) (g) 2. If a claimant's security credentials are used in the filing of an  
24 initial or continued claim for benefits or any other transaction, the individual using  
25 the security credentials is presumed to have been the claimant or the claimant's

**BILL**

1 authorized agent. This presumption may be rebutted by a preponderance of evidence  
2 showing that the claimant who created the security credentials or the claimant's  
3 authorized agent was not the person who used the credentials in a given transaction.  
4 If a claimant uses an agent to engage in any transaction with the department using  
5 the claimant's security credentials, the claimant is responsible for the actions of the  
6 agent. If a claimant who created security credentials or the claimant's authorized  
7 agent divulges the credentials to another person, or fails to take adequate measures  
8 to protect the credentials from being divulged to an unauthorized person, and the  
9 department pays benefits to an unauthorized person because of the claimant's action  
10 or inaction, the department ~~may recover from the claimant the benefits that were~~  
11 ~~paid to the unauthorized person~~ shall, in the same manner as provided for  
12 overpayments to claimants under s. 108.22 or under s. 108.245, act to recover from  
13 the claimant the benefits that were paid to the unauthorized person. If a claimant  
14 who created security credentials or the claimant's authorized agent divulges the  
15 credentials to another person, or fails to take adequate measures to protect the  
16 credentials from being divulged to an unauthorized person, the department is not  
17 obligated to pursue recovery of, or to reimburse the claimant for, benefits payable to  
18 the claimant that were erroneously paid to another person.

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

20 108.04 (2) (hL) 1. Subject to subd. 2., if a claimant is subject to the requirement  
21 under par. (a) 3. to conduct a reasonable search for suitable work for a given week  
22 and the department received one or more credible reports in that week that the  
23 claimant declined or failed to respond to a job interview offer or failed to attend a  
24 scheduled job interview, the claimant shall not be considered to have conducted a  
25 reasonable search for suitable work in that week under par. (a) 3.

**BILL**

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

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

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

10           108.04 **(11)** (cm) If any person makes a false statement or representation in  
11 order to obtain benefits in the name of another person, the benefits received by that  
12 person constitute a benefit overpayment. Such person may shall, by a determination  
13 or decision issued under s. 108.095, be required to repay the amount of the benefits  
14 obtained and be assessed an administrative assessment in an additional amount  
15 equal to the amount of benefits obtained.

16           **SECTION 8.** 108.04 (13) (c) of the statutes is amended to read:

17           108.04 **(13)** (c) If an employer, after notice of a benefit claim, fails to file an  
18 objection a response to the claim under s. 108.09 (1), any benefits allowable under  
19 any resulting benefit computation shall, unless the department applies a provision  
20 of this chapter to disqualify the claimant, be promptly paid. Except as otherwise  
21 provided in this paragraph, any ~~eligibility question in objection~~ response to the claim  
22 raised made by the employer after benefit payments to the claimant are commenced  
23 does not affect benefits paid before the end of the week in which a determination is  
24 issued as to the eligibility question unless the benefits are erroneously paid without  
25 fault on the part of the employer. Except as otherwise provided in this paragraph,

**BILL**

1 if an employer fails to provide correct and complete information requested by the  
2 department during a fact-finding investigation, but later provides the requested  
3 information, benefits paid before the end of the week in which a redetermination is  
4 issued regarding the matter or, if no redetermination is issued, before the end of the  
5 week in which an appeal tribunal decision is issued regarding the matter, are not  
6 affected by the redetermination or decision, unless the benefits are erroneously paid  
7 without fault on the part of the employer as provided in par. (f). If benefits are  
8 erroneously paid because the employer and the employee are at fault, the  
9 department shall charge the employer for the benefits and proceed to create an  
10 overpayment under s. 108.22 (8) (a). If benefits are erroneously paid without fault  
11 on the part of the employer, regardless of whether the employee is at fault, the  
12 department shall charge the benefits as provided in par. (d), unless par. (e) applies,  
13 and proceed to create an overpayment under s. 108.22 (8) (a). If benefits are  
14 erroneously paid because an employer is at fault and the department recovers the  
15 benefits erroneously paid under s. 108.22, the recovery does not affect benefit  
16 charges made under this paragraph.

17 **SECTION 9.** 108.04 (13) (e) of the statutes is amended to read:

18 108.04 (13) (e) If the department erroneously pays benefits from one  
19 employer's account and a 2nd employer is at fault, the department shall credit the  
20 benefits paid to the first employer's account and charge the benefits paid to the 2nd  
21 employer's account. Filing of a tardy or corrected report or ~~objection~~ response does  
22 not affect the 2nd employer's liability for benefits paid before the end of the week in  
23 which the department makes a recomputation of the benefits allowable or before the  
24 end of the week in which the department issues a determination concerning any  
25 eligibility question raised by the report or by the 2nd employer. If the 2nd employer

**BILL**

1 fails to provide correct and complete information requested by the department  
2 during a fact-finding investigation, but later provides the requested information,  
3 the department shall charge to the account of the 2nd employer the cost of benefits  
4 paid before the end of the week in which a redetermination is issued regarding the  
5 matter or, if no redetermination is issued, before the end of the week in which an  
6 appeal tribunal decision is issued regarding the matter, unless the benefits  
7 erroneously are paid without fault on the part of the employer as provided in par. (f).  
8 If the department recovers the benefits erroneously paid under s. 108.22, the  
9 recovery does not affect benefit charges made under this paragraph.

10 **SECTION 10.** 108.04 (13) (f) of the statutes is amended to read:

11 108.04 (13) (f) If benefits are erroneously paid because the employer fails to file  
12 a report required by this chapter, the employer fails to provide correct and complete  
13 information on the report, the employer fails to ~~object~~ respond to the benefit claim  
14 under s. 108.09 (1), the employer fails to provide correct and complete information  
15 requested by the department during a fact-finding investigation, unless an appeal  
16 tribunal, the commission, or a court of competent jurisdiction finds that the employer  
17 had good cause for the failure to provide the information, or the employer aids and  
18 abets the claimant in an act of concealment as provided in sub. (11), the employer is  
19 at fault. If benefits are erroneously paid because an employee commits an act of  
20 concealment as provided in sub. (11) or fails to provide correct and complete  
21 information to the department, the employee is at fault.

22 **SECTION 11.** 108.09 (1) of the statutes is amended to read:

23 108.09 (1) FILING. Claims for benefits shall be filed pursuant to department  
24 rules. Each employer that is notified of a benefit claim shall ~~promptly inform~~ provide  
25 a full and prompt response to the department in writing as to any eligibility question

**BILL****SECTION 11**

1 ~~in objection to such claim together with the reasons for the objection that may be at~~  
2 ~~issue with respect to the claim, regardless of any objection to the claim on the part~~  
3 ~~of the employer.~~ The department may also obtain information from the employee  
4 concerning the employee's eligibility, employment or wages.

5 **SECTION 12.** 108.14 (19) of the statutes is renumbered 108.14 (19) (intro.) and  
6 amended to read:

7 108.14 (19) (intro.) No later than March 15 annually, the department shall  
8 prepare and furnish to the council on unemployment insurance and to the chief clerk  
9 of each house of the legislature, for distribution to the appropriate standing  
10 committees under s. 13.172 (3), a report summarizing the department's activities  
11 related to detection and prosecution of unemployment insurance fraud in the  
12 preceding year. The department shall include all of the following in the report  
13 information:

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

16 **SECTION 13.** 108.14 (19) (b) of the statutes is created to read:

17 108.14 (19) (b) Information on reports submitted by employing units under s.  
18 108.04 (1) (hg) 1., including actions taken by the department in response to the  
19 reports as required under s. 108.04 (1) (hg) 2. and their effect on claimants' eligibility  
20 for benefits under s. 108.04 (2) (ae) 1. and (hL).

21 **SECTION 14.** 108.14 (21) of the statutes is amended to read:

22 108.14 (21) The department shall maintain a portal on the Internet that allows  
23 employers employing units to log in and file with the department complaints related  
24 to the administration of this chapter and reports under s. 108.04 (1) (hg).

25 **SECTION 15.** 108.14 (28) of the statutes is created to read:

**BILL**

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

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

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

17           **SECTION 16.** 108.22 (8) (a) of the statutes is amended to read:

18           108.22 **(8)** (a) If benefits are erroneously paid to an individual, the individual's  
19 liability to reimburse the fund for the overpayment ~~may~~ shall be set forth in a  
20 determination or decision issued under s. 108.09. Any determination ~~which~~ that  
21 establishes or increases an overpayment shall include a finding concerning whether  
22 waiver of benefit recovery is required under par. (c). If any decision of an appeal  
23 tribunal, the commission or any court establishes or increases an overpayment and  
24 the decision does not include a finding concerning whether waiver of benefit recovery

**BILL****SECTION 16**

1 is required under par. (c), the tribunal, commission or court shall remand the issue  
2 to the department for a determination.

3 **SECTION 17. Initial applicability.**

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

7 **SECTION 18. Effective dates.** This act takes effect on the Sunday after  
8 publication, except as follows:

9 (1) The treatment of s. 108.14 (28) takes effect on the first Sunday after the  
10 180th day after publication.

11 (END)