



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-4346/1
MED&EAW:cjs&cde

2021 BILL

1 **AN ACT** *to renumber and amend* 108.04 (2) (a) 4. and 108.04 (5) (e); *to amend*
2 16.54 (2) (a) 1., 108.04 (5) (b) and 108.14 (20); and *to create* 16.54 (14), 108.04
3 (2) (a) 4. d., 108.04 (5) (e) (intro.), 108.04 (5) (e) 2., 108.04 (5) (h), 108.14 (10m),
4 108.14 (23m), 108.14 (29) and 108.14 (30) of the statutes; **relating to:** various
5 changes to the unemployment insurance law, requiring an audit to be
6 conducted by the Legislative Audit Bureau, requiring approval by the Joint
7 Committee on Finance of certain federally authorized unemployment benefits,
8 and authorizing the secretary of administration to transfer employees from any
9 executive branch agency to the Department of Workforce Development for
10 certain purposes.

Analysis by the Legislative Reference Bureau

UNEMPLOYMENT INSURANCE

This bill makes various changes in the unemployment insurance (UI) law, which is administered by the Department of Workforce Development. Significant changes include all of the following:

BILL***Misconduct***

Currently, if an employee is discharged for misconduct connected with his or her employment, the employee is ineligible to receive benefits until certain requalification criteria are satisfied. In addition, all wages earned with the employer that discharges the employee are excluded in determining the amount of any future benefits to which the employee is entitled. Current law provides a general definition of misconduct and also specifies a number of specific actions that constitute misconduct. This bill does all of the following with respect to what is considered misconduct:

1. Current law specifically provides that misconduct includes theft of an employer's property or services with intent to deprive the employer of the property or services permanently, theft of currency of any value, felonious conduct connected with an employee's employment with his or her employer, or intentional or negligent conduct by an employee that causes substantial damage to his or her employer's property. This bill:

a. Deletes the requirement that the employee have the intent to deprive the employer of the property or services permanently.

b. Provides that intentional or negligent conduct by an employee that causes the destruction of an employer's records is also considered misconduct.

c. Adds unauthorized possession of an employer's property, theft or unauthorized distribution of an employer's confidential or proprietary information, and use of an employer's credit card or other financial instrument for an unauthorized or nonbusiness purpose without prior approval from the employer to the list of what is considered misconduct.

2. Current law specifically provides that misconduct includes absenteeism by an employee on more than two occasions within the 120-day period before the date of the employee's termination, unless otherwise specified by his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature, or excessive tardiness by an employee in violation of a policy of the employer that has been communicated to the employee, if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness.

This bill instead provides that misconduct includes both of the following: 1) a violation of an employer's reasonable policy that covers employee absenteeism, tardiness, or both and that results in an employee's termination, if that termination is in accordance with that policy and the policy is specified by the employer in an employment manual of which the employee has acknowledged receipt with his or her signature; and 2) if an employer does not have a policy covering absenteeism that meets the criteria just described, absenteeism on more than two occasions within the 120-day period preceding an employee's termination, if the employee does not provide to the employer both notice and one or more valid reasons for the absenteeism.

3. The bill specifically provides that misconduct includes a violation by an employee of an employer's reasonable employment policy that covers the use of social

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media specified by the employer in an employment manual of which the employee has acknowledged receipt with his or her signature.

General qualifying requirements

Under current law, a claimant for UI benefits is generally required to 1) register for work, 2) be able to work and available for work, and 3) conduct a work search for each week in order to remain eligible. A claimant is required to conduct at least four work search actions each week, and DWD may require, by rule, that an individual conduct more than four work search actions per week. Finally, if a claimant is claiming benefits for a week other than an initial week, the claimant must provide information or job application materials that are requested by DWD and participate in a public employment office workshop or training program or in similar reemployment services required by DWD.

This bill does the following:

1. Requires a claimant who resides outside this state and who is claiming benefits for a week other than an initial week to register with his or her local job center website or labor market exchange and requires DWD to verify that each such claimant has complied with that requirement.

2. Requires DWD to conduct random audits for at least 50 percent of all work search actions reported to have been performed by claimants. Current law requires random audits of work search actions, but does not require a specific number or level of audits.

Identity proofing

The bill requires DWD to implement identity proofing measures for UI claimants who are engaging in benefit-related transactions with DWD that: 1) require a claimant to verify his or her identity prior to filing an initial claim for benefits and when engaging in other transactions with DWD, and 2) achieve the IAL2 and AAL2 standards adopted in the National Institute of Standards and Technology's Digital Identity Guidelines.

Education and informational materials

Current law requires DWD to compile and provide to employers certain information about how the UI system works, including a handbook on the UI system for employers and information concerning the financing of the UI system to be published on DWD's website. This bill requires DWD to also provide certain training materials for employers and claimants on the UI system. The bill requires DWD to publish prerecorded training videos on its website and also to provide quarterly, free, live training seminars for employing units.

Assistance call center

This bill requires DWD to operate a call center to assist claimants for UI benefits or similar federal payments. Under the bill, if the volume of calls has increased by 300 percent or more over the same week during the previous year or if there is a declared statewide emergency that causes or relates to an increase in UI claims, DWD is required to increase the hours for the call center to include evening hours after 5 p.m. and weekend hours.

BILL***Database comparisons***

This bill requires DWD to perform a comparison of state and national databases that track death records, employment records, and prison records against recipients of UI benefits for the purposes of detecting fraud or erroneous payments. The bill requires DWD to perform the comparison on at least a weekly basis. The bill provides that DWD may also make such comparisons with other databases.

OTHER CHANGES***UI benefit augmentations subject to review by Joint Committee on Finance***

This bill provides that whenever any UI benefit augmentation is provided for through an act of congress or by executive action of the president of the United States, the cochairpersons of the Joint Committee on Finance must be notified, in writing, of the proposed benefit augmentation. The bill defines “benefit augmentation” to mean any action whereby the governor or any other state agency or official would encumber or expend moneys received from, or accept reimbursement from, the federal government or whereby the governor or any other state agency or official would enter into any contract or agreement with the federal government or any federal agency to 1) increase the weekly UI benefit rate payable to claimants above what is provided under state law, or 2) increase the total amount of UI benefits to which a claimant is entitled above what is provided under state law. Under the bill, such a benefit augmentation is subject to a 14-day passive review by the Joint Committee on Finance.

In addition, the bill provides that no benefit augmentation may be effectuated unless it is subject to termination or cancellation by the Joint Committee on Finance.

Worker’s compensation; misconduct

Currently, under the worker’s compensation law, an employer is not liable for temporary disability benefits during an employee’s healing period if the employee is suspended or terminated from employment due to misconduct, as defined under the UI law. Under the bill, the changes to the UI law’s definition of misconduct described above apply under the worker’s compensation law as well.

Audit of UI fraud detection and prevention efforts

This bill requires the Legislative Audit Bureau to conduct an audit of DWD’s efforts to detect and prevent fraud and to recover fraud overpayments in the UI program, the federal pandemic unemployment assistance program, and the pandemic emergency unemployment compensation program.

Transfer of employees to DWD

The bill authorizes the secretary of administration to temporarily transfer employees from any executive branch agency to DWD to assist in deciding UI appeals. Under the bill, DWD must pay all salary and fringe benefit costs of that employee during the time the employee is at DWD.

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

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

1 **SECTION 1.** 16.54 (2) (a) 1. of the statutes is amended to read:

2 16.54 (2) (a) 1. Except as provided in subd. 2. and sub. (14), whenever funds
3 shall be made available to this state through an act of congress and the funds are
4 accepted as provided in sub. (1), the governor shall designate the state board,
5 commission, or department to administer any of such funds, and the board,
6 commission, or department so designated by the governor is authorized and directed
7 to administer such funds for the purpose designated by the act of congress making
8 an appropriation of such funds, or by the department of the United States
9 government making such funds available to this state. Whenever a block grant is
10 made to this state, no moneys received as a part of the block grant may be transferred
11 from use as a part of one such grant to use as a part of another such grant, regardless
12 of whether a transfer between appropriations is required, unless the joint committee
13 on finance approves the transfer.

14 **SECTION 2.** 16.54 (14) of the statutes is created to read:

15 16.54 (14) (a) In this subsection, “benefit augmentation” means for any state
16 agency or official, including the governor, to encumber or expend moneys received
17 from, or accept reimbursement from, the federal government or for any state agency
18 or official, including the governor, to enter into any contract or agreement with the
19 federal government or any federal agency, to do any of the following:

20 1. Increase the weekly unemployment insurance benefit rate payable to
21 claimants above what is provided under s. 108.05, including by providing any stipend

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1 or other benefit separately from unemployment insurance benefits, if eligibility for
2 that stipend or benefit is determined, in whole or in part, based on an individual's
3 receipt of, or eligibility for, unemployment insurance benefits.

4 2. Increase the total amount of unemployment insurance benefits to which a
5 claimant is entitled above what is provided under s. 108.06 (2), including by
6 providing an increased overall benefit entitlement or additional weeks of benefits.

7 (b) 1. Whenever any benefit augmentation is provided for through an act of
8 congress or by executive action of the president of the United States, the governor
9 or other state agency or official shall notify the cochairpersons of the joint committee
10 on finance, in writing, of the proposed benefit augmentation. The notice shall
11 contain a detailed description of the proposed benefit augmentation, an affirmative
12 statement that the proposed benefit augmentation complies with subd. 2., and, if the
13 proposed benefit augmentation requires any contract or agreement with the federal
14 government or any federal agency, a copy of the proposed contract or agreement if
15 available. If the cochairpersons of the committee do not notify the governor, agency,
16 or official that the committee has scheduled a meeting for the purpose of reviewing
17 the proposed benefit augmentation within 14 working days after the date of the
18 governor's, agency's, or official's notification, the benefit augmentation may, subject
19 to subd. 2., be effectuated as proposed by the governor, agency, or official. If, within
20 14 working days after the date of the governor's, agency's, or official's notification,
21 the cochairpersons of the committee notify the governor, agency, or official that the
22 committee has scheduled a meeting for the purpose of reviewing the proposed benefit
23 augmentation, the benefit augmentation may not be effectuated without the
24 approval of the committee. The committee may not approve a proposed benefit
25 augmentation unless it complies with subd. 2.

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1 2. No benefit augmentation may be effectuated unless it is subject to
2 termination or cancellation by the joint committee on finance.

3 (c) This subsection does not apply with respect to federal extended benefits
4 under s. 108.141.

5 **SECTION 3.** 108.04 (2) (a) 4. of the statutes is renumbered 108.04 (2) (a) 4.
6 (intro.) and amended to read:

7 108.04 (2) (a) 4. (intro.) If the claimant is claiming benefits for a week other
8 than an initial week, the claimant ~~provides~~ does all of the following:

9 a. Provides information or job application materials that are requested by the
10 department ~~and participates.~~

11 b. Participates in a public employment office workshop or training program or
12 in similar reemployment services that are required by the department under sub.
13 (15) (a) 2.

14 **SECTION 4.** 108.04 (2) (a) 4. d. of the statutes is created to read:

15 108.04 (2) (a) 4. d. Registers with his or her local job center website or labor
16 market exchange, if the claimant resides outside of this state. The department shall
17 verify that each such claimant has complied with this subd. 4. d.

18 **SECTION 5.** 108.04 (5) (b) of the statutes is amended to read:

19 108.04 (5) (b) Theft or unauthorized possession of an employer's property ~~or,~~
20 theft of an employer's services with intent to deprive the employer of the property or
21 services permanently, theft or unauthorized distribution of an employer's
22 confidential or proprietary information, use of an employer's credit card or other
23 financial instrument for an unauthorized or nonbusiness purpose without prior
24 approval from the employer, theft of currency of any value, felonious conduct

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1 connected with an employee's employment with his or her employer, or intentional
2 or negligent conduct by an employee that causes the destruction of an employer's
3 records or substantial damage to ~~his or her~~ an employer's property.

4 **SECTION 6.** 108.04 (5) (e) (intro.) of the statutes is created to read:

5 108.04 (5) (e) (intro.) Any of the following:

6 **SECTION 7.** 108.04 (5) (e) of the statutes is renumbered 108.04 (5) (e) 1. and
7 amended to read:

8 108.04 (5) (e) 1. Absenteeism by an employee on more than 2 occasions within
9 the 120-day period before the date of the employee's termination, ~~unless otherwise~~
10 ~~specified by his or her employer~~ if the employee does not provide to his or her
11 employer both notice and one or more valid reasons for the absenteeism. This
12 subdivision does not apply if the employer has a reasonable policy that covers
13 absenteeism described in subd. 2. in an employment manual of which the employee
14 has acknowledged receipt with his or her signature, ~~or excessive tardiness by an~~
15 ~~employee in violation of a policy of the employer that has been communicated to the~~
16 ~~employee, if the employee does not provide to his or her employer both notice and one~~
17 ~~or more valid reasons for the absenteeism or tardiness.~~

18 **SECTION 8.** 108.04 (5) (e) 2. of the statutes is created to read:

19 108.04 (5) (e) 2. A violation of an employer's reasonable policy that covers
20 employee absenteeism, tardiness, or both, and that results in an employee's
21 termination, if that termination is in accordance with that policy and the policy is
22 specified by the employer in an employment manual of which the employee has
23 acknowledged receipt with his or her signature.

24 **SECTION 9.** 108.04 (5) (h) of the statutes is created to read:

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1 108.04 (5) (h) A violation by an employee of an employer's reasonable policy
2 that covers the use of social media and is substantially related to the employee's
3 employment, if the violation results in an employee's termination and if that
4 termination is in accordance with that policy and the policy is specified by the
5 employer in an employment manual of which the employee has acknowledged receipt
6 with his or her signature.

7 **SECTION 10.** 108.14 (10m) of the statutes is created to read:

8 108.14 (10m) The department shall implement identity proofing measures for
9 claimants who are engaging in benefit-related transactions with the department
10 that satisfy all of the following:

11 (a) The measures require a claimant to verify his or her identity prior to filing
12 an initial claim for benefits and when engaging in other transactions with the
13 department.

14 (b) The measures achieve the IAL2 and AAL2 standards adopted in the
15 National Institute of Standards and Technology's Digital Identity Guidelines.

16 **SECTION 11.** 108.14 (20) of the statutes is amended to read:

17 108.14 (20) The department shall conduct random audits on claimants for
18 benefits under this chapter to assess compliance with the work search requirements
19 under s. 108.04 (2) (a) 3. The department shall conduct the audits required under
20 this subsection at a level sufficient for the department to assess at least 50 percent
21 of all work search actions reported to have been performed by claimants.

22 **SECTION 12.** 108.14 (23m) of the statutes is created to read:

23 108.14 (23m) The department shall provide training materials on the
24 unemployment insurance system, including all of the following:

BILL**SECTION 12**

1 (a) Training videos for claimants and employing units published on the
2 department's Internet site.

3 (b) Quarterly, free, live training seminars for employing units. The seminars
4 may be in-person, online, or both.

5 **SECTION 13.** 108.14 (29) of the statutes is created to read:

6 108.14 (29) (a) The department shall maintain a call center to provide
7 telephone assistance and support to claimants for benefits under this chapter or
8 payments under federal assistance programs for unemployment.

9 (b) The department shall, during each of the following periods, extend the call
10 center hours to include hours after 5 p.m. on weekdays and at least 16 hours on
11 weekends:

12 1. During a declared statewide emergency that causes or relates to an increase
13 in unemployment claims.

14 2. For 90 days after any week in which the call center experiences an increase
15 of at least 300 percent in calls compared to the same week during the previous year,
16 and for 90 days after each subsequent week in which such an increase occurs.

17 **SECTION 14.** 108.14 (30) of the statutes is created to read:

18 108.14 (30) (a) The department shall, on at least a weekly basis, perform a
19 comparison of recipients of benefits under this chapter against all of the following for
20 the purpose of detecting fraud or erroneous payments:

21 1. Nationally recognized databases that contain information on death records,
22 including the federal social security administration's death master file.

23 2. The National Association of State Workforce Agencies' integrity data hub.

24 3. The national directory of new hires maintained by the office of child support
25 enforcement in the U.S. department of health and human services.

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1 4. Prisoner databases maintained by the department of justice, the department
2 of corrections, and the U.S. department of justice.

3 (b) The department may perform comparisons of recipients of benefits under
4 this chapter against public or private databases other than those specified in par. (a)
5 1. to 4.

SECTION 15. Nonstatutory provisions.

6 (1) The department of workforce development shall submit a notice to the
7 legislative reference bureau for publication in the Wisconsin Administrative
8 Register when the department determines that the department has any rules in
9 place that are necessary to implement the renumbering and amendment of s. 108.04
10 (2) (a) 4. and the creation of s. 108.04 (2) (a) 4. d. by this act.

11 (2) The legislative audit bureau shall conduct an audit of the department of
12 workforce development's efforts to detect and prevent fraud and to recover
13 overpayments that occurred as a result of fraud in the unemployment insurance
14 program under ch. 108, the federal pandemic unemployment assistance program
15 under 15 USC 9021, and the federal pandemic emergency unemployment
16 compensation program under 15 USC 9025. The legislative audit bureau shall file
17 a report on the audit conducted under this subsection in the manner described under
18 s. 13.94 (1) (b).

19 (3) (a) In this subsection, "allowable period" means the period described in par.
20 (c).

21 (b) During the allowable period, the secretary of administration may transfer
22 any employee to the department of workforce development from any other state
23 agency to provide services for the department of workforce development that are
24 needed to hear and decide appeals under s. 108.09 (4). Such an employee may,
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1 notwithstanding s. 108.09 (3) (a), serve as an appeal tribunal under ss. 108.09 to
2 108.10, subject to approval of the secretary of workforce development. The
3 department of workforce development shall pay all salary and fringe benefit costs of
4 the employee during the time he or she is providing services for the department of
5 workforce development. Any action by the secretary under this paragraph shall
6 remain in effect until rescinded by the secretary or 90 days after the last day of the
7 allowable period, whichever is earliest.

8 (c) A transfer under par. (b) may be made at any time during the period
9 beginning on the effective date of this paragraph and ending on the 120th day after
10 the effective date of this paragraph, except that the joint committee on finance may,
11 upon request of the secretary of administration, extend the period by not more than
12 an additional 120 days.

13 (d) If an employee is transferred under par. (b), the department of workforce
14 development may not increase the employee's salary at the time of transfer or during
15 the time he or she is providing services for the department of workforce development,
16 and the agency from which the employee was transferred may not increase the
17 employee's salary at the time the employee returns to the agency.

18 (e) The secretary of administration shall submit a report to the joint committee
19 on finance, no later than the first day of the 2nd month beginning after the effective
20 date of this paragraph and on the first day of each subsequent month during the
21 allowable period, that provides information on all employee transfers under par. (b).
22 Each report shall specify the number of employees transferred, the title of each
23 employee transferred, the title the employee assumed at the department of
24 workforce development, and the reasons for each employee transfer.

SECTION 16. Initial applicability.

