



State of Wisconsin  
2021 - 2022 LEGISLATURE

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

## 2021 ASSEMBLY BILL 938

January 31, 2022 - Introduced by Representatives ARMSTRONG, PETRYK, PENTERMAN, AUGUST, BRANDTJEN, CABRAL-GUEVARA, CALLAHAN, DITTRICH, EDMING, JAMES, KATSMA, KITCHENS, KNODL, KRUG, KUGLITSCH, LOUDENBECK, MACCO, MAGNAFICI, MOSES, OLDENBURG, PETERSEN, PLUMER, SCHRAA, SNYDER, SORTWELL, STEFFEN, TITTL, TUSLER, VORPAGEL, WICHGERS, ZIMMERMAN and BORN, cosponsored by Senators WIMBERGER, BERNIER, DARLING, FELZKOWSKI, FEYEN, MARKLEIN, NASS and STROEBEL. Referred to Committee on Workforce Development.

\*\*\*AUTHORS SUBJECT TO CHANGE\*\*\*

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.

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### *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:

**ASSEMBLY BILL 938*****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

**ASSEMBLY BILL 938**

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.

**ASSEMBLY BILL 938*****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.

**ASSEMBLY BILL 938**

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.** 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

**ASSEMBLY BILL 938****SECTION 2**

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.

**ASSEMBLY BILL 938**

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

**ASSEMBLY BILL 938****SECTION 5**

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:



**ASSEMBLY BILL 938**

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:

**ASSEMBLY BILL 938****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.

**ASSEMBLY BILL 938**

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.

6           **SECTION 15. Nonstatutory provisions.**

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

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

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

22           (b) During the allowable period, the secretary of administration may transfer  
23 any employee to the department of workforce development from any other state  
24 agency to provide services for the department of workforce development that are  
25 needed to hear and decide appeals under s. 108.09 (4). Such an employee may,

**ASSEMBLY BILL 938**

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.**

**ASSEMBLY BILL 938**

1           (1) The renumbering and amendment of s. 108.04 (2) (a) 4. and the creation of  
2           s. 108.04 (2) (a) 4. d. first apply with respect to weeks of unemployment beginning  
3           on the effective date of this subsection.

4           (2) The renumbering and amendment of s. 108.04 (5) (e), the amendment of s.  
5           108.04 (5) (b), and the creation of s. 108.04 (5) (e) (intro.) and 2. and (h) first apply  
6           with respect to determinations issued under s. 108.09 on the effective date of this  
7           subsection.

8           **SECTION 17. Effective dates.** This act takes effect on the Sunday after  
9           publication, except as follows:

10           (1) The renumbering and amendment of s. 108.04 (2) (a) 4. and the creation of  
11           s. 108.04 (2) (a) 4. d. and SECTION 16 (1) of this act take effect on the Sunday after the  
12           notice under SECTION 15 (1) of this act is published in the Wisconsin Administrative  
13           Register or on January 2, 2022, whichever occurs first.

14           (2) The renumbering and amendment of s. 108.04 (5) (e), the amendment of s.  
15           108.04 (5) (b), and the creation of s. 108.04 (5) (e) (intro.) and 2. and (h) and SECTION  
16           16 (2) of this act take effect on January 2, 2022, or on the first Sunday after the 180th  
17           day after publication, whichever occurs later.

18

(END)