

# State of Wisconsin



2021 Assembly Bill 938

Date of enactment:  
Date of publication\*:

## 2021 WISCONSIN ACT

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

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

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

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

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

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

1. Increase the weekly unemployment insurance benefit rate payable to claimants above what is provided under s. 108.05, including by providing any stipend or other benefit separately from unemployment insurance benefits, if eligibility for that stipend or benefit is determined, in whole or in part, based on an individual's receipt of, or eligibility for, unemployment insurance benefits.

2. Increase the total amount of unemployment insurance benefits to which a claimant is entitled above what is provided under s. 108.06 (2), including by providing an

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\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

increased overall benefit entitlement or additional weeks of benefits.

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

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

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

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

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

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

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

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

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

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

108.04 (5) (b) ~~Theft or unauthorized possession of an employer's property or, theft of an employer's services with intent to deprive the employer of the property or services permanently, theft or unauthorized distribution of an employer's confidential or proprietary information, use of an employer's credit card or other financial instrument for an unauthorized or nonbusiness purpose without prior approval from the employer,~~ 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 the destruction of an employer's records or substantial damage to his or her an employer's property.

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

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

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

108.04 (5) (e) 1. Absenteeism by an employee on more than 2 occasions within the 120-day period before the date of the employee's termination, ~~unless otherwise specified by his or her employer if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism. This subdivision does not apply if the employer has a reasonable policy that covers absenteeism described in subd. 2.~~ 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.~~

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

108.04 (5) (e) 2. 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.

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

108.04 (5) (h) A violation by an employee of an employer's reasonable policy that covers the use of social media and is substantially related to the employee's employment, if the violation results in an employee's termination and 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 15. Nonstatutory provisions.**

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

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

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

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

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

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

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

**SECTION 16. Initial applicability.**

(1) The renumbering and amendment of s. 108.04 (2) (a) 4. and the creation of s. 108.04 (2) (a) 4. d. first apply

with respect to weeks of unemployment beginning on the effective date of this subsection.

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

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

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

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

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