



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-3005/1
MED:emw

2021 ASSEMBLY BILL 939

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

AUTHORS SUBJECT TO CHANGE

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.

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

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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.

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.

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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

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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.

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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,

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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

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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

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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:

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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

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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)