



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3454/1
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2011 SENATE BILL 559

March 14, 2012 - Introduced by Senators LASSA, HOLPERIN, HANSEN and S. COGGS, cosponsored by Representatives SPANBAUER, VRUWINK, BERCEAU, BEWLEY, SINICKI and ROYS. Referred to Committee on Senate Organization.

1 **AN ACT to amend** 108.04 (1) (a) (intro.), 108.04 (1) (b) 1., 108.04 (2) (a) 1., 108.05
2 (1) (q) (intro.) and 108.05 (3) (a); and **to create** 108.062 of the statutes; **relating**
3 **to:** payment of unemployment insurance benefits under a work-sharing
4 program.

Analysis by the Legislative Reference Bureau

Currently, if a claimant under the unemployment insurance (UI) law receives no wages or certain other amounts that are treated as wages for a given week, the claimant may receive the full benefit for that week to which the claimant is entitled if the claimant meets eligibility requirements. However, with certain exceptions, if a claimant earns wages or certain other amounts treated as wages in a given week, the first \$30 of the wages or other amounts are disregarded and the claimant's weekly benefit payment is reduced by 67 percent of any remaining amount earned, but no claimant is eligible to receive UI benefits for any week if the benefits would be less than \$5, and any wages that the claimant would have earned in any week for work performed for his or her employer had the claimant accepted available work from that employer are treated as wages earned for that week.

This bill permits an employer to create a work-sharing program within a work unit of the employer. Before implementation of any program, an employer must submit a work-share plan to the Department of Workforce Development (DWD) and obtain DWD's approval of the plan. As a part of its submittal, the employer must certify that its plan is in compliance with all requirements under the law. Under the bill, a work-share program may be in effect for no longer than six months within a

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five-year period and must include at least ten percent of and at least 20 employees in the work unit. Under the program, the working hours of all of the full-time employees in the program are reduced in an equitable manner in lieu of a total layoff of some of the employees and a continuation of full-time employment by the other employees. The bill provides that a claimant who is included in a work-share program may receive UI benefits during his or her continued employment with the work-sharing employer in an amount equal to the claimant's benefit for total unemployment multiplied by the same percentage reduction in normal working hours that the claimant incurs under the program, or the benefit that would be payable to the claimant under the current formula for payment of UI benefits for partial unemployment, whichever is higher. A claimant who begins receiving UI benefits before the effective period of a work-share program and who remains eligible for benefits is eligible to receive work-share benefits up to the total amount of the claimant's benefit entitlement and a claimant who has remaining benefit entitlement after the effective period of a work-share program and who remains eligible for UI benefits may continue to receive benefits until the entitlement is exhausted. The bill does not affect eligibility for supplemental UI benefits such as federal/state extended benefits, Wisconsin supplemental benefits and special additional federal benefits in the full amounts that would otherwise be payable.

The bill provides that if there is a single representative of the employees who are proposed to be included under a work-share program, the plan is subject to the approval of that representative. Under the bill, a work-share program must exclude participation by employees who are employed on a regular part-time, seasonal, temporary, or intermittent basis and may only apply to employees who have been engaged in employment with the employer for at least three months before the effective period of the program and who have been regularly employed in that employment for an average of at least 32 hours per week during that period. The bill provides that an employer that creates a work-share program must maintain retirement plan and health insurance coverage for employees who are included in the program during the effective period of the program under the same terms and conditions as if the employees were not included under the program. The bill permits DWD to revoke its approval of a work-share plan for specified reasons and also permits an employer to terminate a work-share program before the end of its scheduled effective period.

Currently, with certain exceptions, a claimant is eligible for UI benefits for any week in which the claimant earns no wages only if the claimant is available for work within that week. This bill provides a claimant who is receiving UI benefits for any week in which he or she is included in a work-share program need not be available for work in that week other than for the normal hours of work that the employer worked for the work-share employer immediately before the effective period of the work-share program. Under recent federal legislation, the federal government participates in the cost of administration of qualifying work-share programs and payment of benefits to participating employees. The bill directs DWD to seek full federal financial participation in the payment of these costs by this state.

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For further information see the *state* 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) (a) (intro.) of the statutes is amended to read:

2 108.04 (1) (a) (intro.) ~~If Except as provided in s. 108.062 (10), if~~ an employee
3 is with due notice called on by his or her current employing unit to report for work
4 actually available within a given week and is unavailable for, or unable to perform:

5 **SECTION 2.** 108.04 (1) (b) 1. of the statutes is amended to read:

6 108.04 (1) (b) 1. ~~Except as provided in s. 108.062 (10) and subd. 2., if~~ an
7 employee's employment is suspended by the employee or the employee's employer or
8 an employee is terminated by the employee's employer, due to the employee's
9 unavailability for work or inability to perform suitable work otherwise available
10 with the employee's employer, or if the employee is on a leave of absence, the
11 employee is ineligible for benefits while the employee is unable to work or
12 unavailable for work.

13 **SECTION 3.** 108.04 (2) (a) 1. of the statutes is amended to read:

14 108.04 (2) (a) 1. ~~The Except as provided in s. 108.062 (10), the~~ individual is able
15 to work and available for work during that week;

16 **SECTION 4.** 108.05 (1) (q) (intro.) of the statutes is amended to read

17 108.05 (1) (q) (intro.) ~~Each Except as provided in s. 108.062 (6), each~~ eligible
18 employee shall be paid benefits for each week of total unemployment that
19 commences on or after January 4, 2009, at the weekly benefit rate specified in this
20 paragraph. Unless sub. (1m) applies, the weekly benefit rate shall equal 4
21 percent of the employee's base period wages that were paid during that quarter of the

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1 employee's base period in which the employee was paid the highest total wages,
2 rounded down to the nearest whole dollar, except that, if that amount is less than the
3 minimum amounts shown in the following schedule, no benefits are payable to the
4 employee and, if that amount is more than the maximum amount shown in the
5 following schedule, the employee's weekly benefit rate shall be the maximum
6 amount shown in the following schedule and except that, if an employee's benefits
7 are exhausted during any week under s. 108.06 (1), the employee shall be paid the
8 remaining amount of benefits payable to the employee in lieu of the amount shown
9 in the following schedule: [See Figure 108.05 (1) (q) following]

10 **SECTION 5.** 108.05 (3) (a) of the statutes is amended to read:

11 108.05 (3) (a) Except as provided in s. 108.062 and pars. (b), (c), and (d), if an
12 eligible employee earns wages in a given week, the first \$30 of the wages shall be
13 disregarded and the employee's applicable weekly benefit payment shall be reduced
14 by 67% of the remaining amount, except that no such employee is eligible for benefits
15 if the employee's benefit payment would be less than \$5 for any week. For purposes
16 of this paragraph, "wages" includes any salary reduction amounts earned that are
17 not wages and that are deducted from the salary of a claimant by an employer
18 pursuant to a salary reduction agreement under a cafeteria plan, within the meaning
19 of 26 USC 125, and any amount that a claimant would have earned in available work
20 under s. 108.04 (1) (a) which is treated as wages under s. 108.04 (1) (bm), but excludes
21 any amount that a claimant earns for services performed as a volunteer fire fighter,
22 volunteer emergency medical technician, or volunteer first responder. In applying
23 this paragraph, the department shall disregard discrepancies of less than \$2
24 between wages reported by employees and employers.

25 **SECTION 6.** 108.062 of the statutes is created to read:

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1 **108.062 Work-share programs; benefit payments. (1) DEFINITIONS.** In
2 this section:

3 (a) “Regular benefits” means benefits payable to an individual under this
4 chapter or any other state law, including benefits payable to federal civilian
5 employees and to former military personnel pursuant to 5 USC ch. 85, other than
6 Wisconsin supplemental benefits, extended benefits and additional benefits as
7 defined in P.L. 91-373.

8 (b) “Work-share program” means a program approved by the department
9 under which the hours of work of employees in a work unit are reduced in lieu of a
10 layoff of one or more employees in the work unit.

11 (c) “Work unit” means an operational unit of employees designated by an
12 employer for purposes of a work-share program, which may include more than one
13 work site.

14 **(2) ELEMENTS OF PLAN.** Any employer may create a work-share program. Prior
15 to implementing a work-share program, an employer shall submit a work-share
16 plan for the approval of the department. In its submittal, the employer shall certify
17 that its plan is in compliance with all requirements under this section. Each plan
18 shall:

19 (a) Specify the work unit in which the plan will be implemented, the affected
20 positions, and the names of the employees filling those positions on the date of
21 submittal.

22 (b) Provide for inclusion of at least 10 percent of the employees in the affected
23 work unit on the date of submittal.

24 (c) Provide for initial coverage under the plan of at least 20 positions that are
25 filled on the effective date of the work-share program.

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1 (d) Specify the period when the plan will be in effect, which may not exceed 6
2 months in any 5-year period within the same work unit.

3 (e) Provide for apportionment of reduced working hours equitably among
4 employees in the work-share program.

5 (f) Exclude participation by employees who are employed on a regular
6 part-time, seasonal, temporary, or intermittent basis.

7 (g) Apply only to employees who have been engaged in employment with the
8 employer for a period of at least 3 months on the effective date of the work-share
9 program and who are regularly employed by the employer in that employment for
10 an average of at least 32 hours per week during that period.

11 (h) Specify the normal average hours per week worked by the employees in the
12 work unit and the intended reduction or range of reduction in the average hours of
13 work per week worked by the employees under the plan, which shall be at least 10
14 percent but not more than 50 percent of the normal hours per work of the employees
15 included under the plan.

16 (i) Describe the manner in which requirements for maximum federal financial
17 participation in the plan will be implemented, including a plan for giving notice,
18 where feasible, to participating employees of changes in work schedules.

19 (j) Provide an estimate of the number of layoffs that would occur without
20 implementation of the plan.

21 (k) Specify the effect on any fringe benefits provided by the employer to the
22 employees who are included in the work-share program other than fringe benefits
23 required by law.

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1 (L) Include a statement signed by the authorized agent of any representative
2 of the employees included in the work-share program to the effect that the
3 representative has approved the plan whenever approval is required under sub. (13).

4 (m) Include a statement affirming that the plan is in compliance with all
5 employer obligations under applicable federal and state laws.

6 **(3) APPROVAL OF PLANS.** The department shall approve a plan if the plan
7 includes all of the elements specified in sub. (2). The approval is effective for the
8 effective period of the plan.

9 **(4) EFFECTIVE PERIOD.** A work-share program becomes effective on the later of
10 the Sunday of the 2nd week beginning after approval of a work-share plan under
11 sub. (3) or any Sunday after that day specified in the plan. A work-share program
12 ends on the earlier of the last Sunday that precedes the end of the 6-month period
13 beginning on the effective date of the program or any Sunday before that day
14 specified in the plan unless the program terminates on an earlier date under sub. (5),
15 (14), or (15).

16 **(5) REVOCATION OF APPROVAL.** The department may revoke its approval of a
17 work-share plan for good cause, including conduct that tends to defeat the purpose
18 and effective operation of the plan, failure to comply with the requirements of this
19 section or the work-share plan, or an unreasonable change to the productivity
20 standards of the employees included under the work-share program. Any revocation
21 is effective on the Sunday of the 2nd week beginning after revocation of approval of
22 the plan under this subsection.

23 **(6) BENEFIT AMOUNT.** Except as provided in sub. (7), an employee who is
24 included under a work-share program and who qualifies to receive regular benefits
25 for any week during the effective period of the program shall receive a benefit

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1 payment for each week that the employee is included under the program in an
2 amount equal to the the employee's regular benefit amount under s. 108.05 (1)
3 multiplied by the employee's proportionate reduction in hours worked for that week
4 as a result of the work-share program.

5 **(7) BENEFITS FOR PARTIAL UNEMPLOYMENT.** An employee who would otherwise be
6 paid benefits under s. 108.05 (3) for any week shall receive a benefit payment for that
7 week in the amount payable to the employee under sub. (6) or the amount payable
8 to the employee under s. 108.05 (3), whichever is higher.

9 **(8) BENEFIT YEAR.** An employee may be paid a benefit under sub. (6) only for
10 weeks beginning in the employee's benefit year in an amount not exceeding the
11 employee's total benefit entitlement under s. 108.06 (1). Benefits paid under sub. (6)
12 may begin after the first week of the employee's benefit year or may terminate earlier
13 than the last week of the employee's benefit year.

14 **(9) OTHER BENEFITS.** An employee who receives benefits under sub. (6) remains
15 eligible for any benefits other than regular benefits for which the employee may
16 qualify and the amount of those benefits is not affected by the employee's receipt of
17 benefits under sub. (6).

18 **(10) AVAILABILITY FOR WORK.** An employee who is receiving benefits under sub.
19 (6) for any week need not be available for work in that week other than for the normal
20 hours of work that the employee worked for the employer that creates the
21 work-share program immediately before the week in which the work-share program
22 began.

23 **(11) OTHER EMPLOYMENT.** An employee who is included in a work-share
24 program during a benefit year may be paid wages during the same benefit year by
25 an employer other than the employer who creates the work-share program.

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1 **(12) RETIREMENT PLAN AND HEALTH INSURANCE COVERAGE.** An employer that
2 creates a work-share program shall maintain coverage under any defined benefit or
3 defined contribution retirement plan and any health insurance coverage that the
4 employer provides to the employees who are included in a work-share program,
5 including any particulars of coverage and percentages contributed by the employer
6 for the costs of that coverage, during the effective period of the program under the
7 same terms and conditions as if the employees were not included in the program.

8 **(13) APPROVAL BY EMPLOYEE REPRESENTATIVE.** If there is a single representative
9 representing some or all of the employees who are included in a work-share plan, the
10 plan is subject to approval of that representative.

11 **(14) TERMINATION BY EMPLOYER.** An employer that creates a work-share
12 program may terminate the program before the end of the effective period as
13 provided in the work-share plan by filing notice of termination with the department.
14 The program is then terminated on the 2nd Sunday following the date that the notice
15 of termination is filed unless the notice specifies that the program is terminated at
16 the beginning of a later week in which case the program terminates at the beginning
17 of that week.

18 **(15) INVOLUNTARY TERMINATION.** If in any week there are fewer than 20
19 employees who are included in a work-share program of any employer, the program
20 terminates on the 2nd Sunday following the end of that week.

21 **(16) SUCCESSIONSHIP.** If all or any part of the business of an employer that
22 creates a work-share program is transferred as provided in s. 108.16 (8), the
23 successor employer may continue the work-share program as provided in the
24 work-share plan or may terminate the program by filing notice of termination under
25 sub. (14). Termination by a successor employer does not affect any employees of the

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SECTION 6

1 transferring employer who continue their employment with the transferring
2 employer.

3 (17) TERMINATION OF EMPLOYMENT. An employee who is included in a
4 work-share program may be terminated or may voluntarily terminate his or her
5 employment during the effective period of the program and the employee's eligibility
6 or ineligibility for benefits for any weeks beginning after the date of termination is
7 not affected solely as a result of the employee's inclusion in the program.

8 (18) FEDERAL FINANCIAL PARTICIPATION. The department shall seek to qualify
9 this state for full federal participation in the cost of administration of this section and
10 financing of benefits to employees participating in work share programs under this
11 section.

12 (END)