

The department submitted 19 different papers with proposals in them. The UI Advisory Council approved all or some modification of all of them, except for 3.

*[For amendments to existing provisions in the statutes, the underlined material would be added and the stricken material would be deleted. Information in italics is explanatory]*

## **1. MISCONDUCT**

**S. 108.04(5) DISCHARGE FOR MISCONDUCT.** Unless sub. (5g) results in disqualification, an employee whose work is terminated by an employing unit for misconduct connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least 14 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be that rate which would have been paid had the discharge not occurred. The wages paid to an employee by an employer which terminates employment of the employee for misconduct connected with the employee's employment shall be excluded from the employee's base period wages under s. 108.06(1) for purposes of benefit entitlement. This subsection does not preclude an employee who has employment with an employer other than the employer which terminated the employee for misconduct from establishing a benefit year using the base period wages excluded under this subsection if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 from which base period wages are excluded under this subsection. Misconduct is defined

to mean actions or conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has a right to expect of his or her employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer. [This is current law under the 1941 Wisconsin Supreme Court decision in the Boynton Cab decision, which is the model for the nation and which is followed by most states, including all of our neighboring states: Minnesota, Illinois, Michigan, and Iowa. This proposal would simply put this in the statutes]

*[A new section (below) would be created which for the first time states that certain conduct would automatically constitute misconduct. None of our neighboring states has such a provision, although this conduct could be found to be misconduct under their laws and under Wisconsin's general misconduct law.]*

Actions or conduct that constitutes misconduct shall include, but are not limited to, the following.

(a) A violation of the employer's written policy which is reasonable and which is uniformly applied to all employees about the illegal use of drugs or the use of alcohol and the employee must have:

1. Had knowledge of the employer's drug policy and alcohol policy;
2. Admitted to the use of drugs or alcohol or tested positive for the use of drugs or alcohol and the drug testing method used by the employer must be one accepted as valid by the Department; and
3. In the case of alcohol, consumed alcohol or been under the influence of alcohol during working hours

(b) Knowing and deliberate larceny of property or services or theft of currency of any value.

(c) Except if covered by s.108.04(1)(f) [loss of license], the conviction of a crime, while on or off duty, if the circumstances of the crime substantially relate to the circumstances of the job and the circumstances of the crime make it impossible for the employee to perform the duties for which the employee works for the employer *[it is illegal for an employer to terminate the employment of an employee based on a conviction, unless the circumstances of the conviction substantially relate to the circumstances of the job under Wis. Stats. 111.321 and 111.335 (1)(c)]*

(d) Unless directed by the employer, a willful and deliberate violation of a standard or regulation of a tribal, state or federal government by an employee of an employer licensed or certified by a government agency, which violation leads to the employer being fined or having its license or certification suspended by the government agency

*[For conduct that is “misconduct” under the statutes, the employee is ineligible to receive benefits until 7 weeks have elapsed since the discharge and the employee earns wages equal to at least 14 times the weekly benefit rate. In addition, the employee loses credit for wages earned prior to the discharge. Under the statute that follows below, regarding absences and tardiness, the employee is ineligible to receive benefits until 6 weeks elapse since the discharge and the employee earns wages equal to at least 6 times the employee’s weekly benefit rate. Under this statute, the employee does not lose credit for wages earned prior to the discharge.]*

## 2. ABSENCES AND TARDINESS

Here is how the current statute would be amended:

"(5g) DISCHARGE FOR FAILURE TO NOTIFY EMPLOYER OF ABSENTEEISM OR TARDINESS. (a) If an employee is discharged for failing to notify his or her employer of absenteeism or tardiness that becomes excessive, and the employer has complied with the requirements of par. (d) with respect to that employee, the employee is ineligible to receive benefits until 6 weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least 6 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be the rate that would have been paid had the discharge not occurred.

(b) For purposes of this subsection, tardiness becomes excessive if an employee is late for ~~6~~ 4 or more scheduled workdays in the ~~12-month~~ 120 day period preceding the date of the discharge without providing adequate notice to his or her employer.

(c) For purposes of this subsection, absenteeism becomes excessive if an employee is absent for ~~5~~ 2 or more scheduled workdays in the ~~12-month~~ 120 day period preceding the date of the discharge without providing adequate notice to his or her employer.

(d) 1. The requalifying requirements under par. (a) apply only if the employer has a written policy on notification of tardiness or absences that:

- a. Defines what constitutes a single occurrence of tardiness or absenteeism;
- b. Describes the process for providing adequate notice of tardiness or absence, and, regarding tardiness, which gives the employee a

reasonable time for providing notice and which at least allows the employee the opportunity to provide notice as soon as practically possible; and

c. Notifies the employee that failure to provide adequate notice of an absence or tardiness may lead to discharge.

2. The employer shall provide a copy of the written policy under subd. 1. to each employee and shall have written evidence that the employee received a copy of that policy.

3. The employer must have given the employee at least one warning concerning the employee's violation of the employer's written policy under subd. 1. within the 12 month period preceding the date of the discharge.

4. The employer must apply the written policy under subd. 1. uniformly to all employees of the employer.

(e) The department shall charge to the fund's balancing account the cost of any benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 if the employee is discharged by that employer and par. (a) applies.

(em) If an employee is not disqualified under this subsection, the employee may nevertheless be subject to the disqualification under sub. (5). [general misconduct law]"

### **3. Modification of Three Exceptions to The Quit Disqualification**

#### **First Exception**

Under current law, if you quit a job, you are ineligible for benefits. There are several exceptions to this, mostly relating to secondary jobs, for policy reasons.

The first exception addressed by this proposal is a modification to the current law that says that if you quit a job that you had good cause not to take because it is not suitable employment or because it violates certain

labor standards, the fact that you subsequently quit that job will not disqualify you. Under current law, you can quit this job for up to 10 weeks after you start the job. If you quit after 10 weeks, the fact that you quit *will* disqualify you.

The labor standards referred to above are [s. 108.04 (9)] the vacant position is due to a strike, lockout or other dispute; the wages, hours, or other conditions are substantially less favorable; or as a condition of employment the employee would be required to join a union or refrain from joining a union.

The proposal makes this 30 days, instead of 10 weeks. So, you have 30 days to make up your mind whether you want to keep this job, instead of 10 weeks. The statute that would be amended is s. 108.04(7)(e). There are a lot of cases where this would make a difference. It has a significant fiscal effect.

The change in the law would be as follows:

**S. 108.04(7)(e) is amended to read:**

(e) Paragraph (a) does not apply if the department determines that the employee accepted work which the employee could have failed to accept with good cause under sub. (8) and terminated such work with the same good cause and within ~~10 weeks~~ the first 30 calendar days after starting work , or that the employee accepted work which the employee could have refused to accept under sub. (9) and terminated such work within ~~10 weeks~~ the first 30 calendar days after starting the work. For purposes of this paragraph, an employee has the same good cause for voluntarily terminating work if the employee could have failed to accept the work under sub. (8) (d) when it was offered, regardless of the reason articulated by the employee for the termination.

## Second Exception

*[There are two paragraphs in current law, which contain essentially the same provisions, although they differ slightly. This repeals the first and puts the same material in the second paragraph.]*

S. 108.04 (7) (L) and (p)

~~(L) Paragraph (a) does not apply if the department determines that the employee terminated work to accept employment or other work covered by the unemployment insurance law of any state or the federal government, and earned wages in the subsequent work equal to at least 4 times the employee's weekly benefit rate under s. 108.05 (1) if the work:~~

- ~~1. Offered average weekly wages at least equal to the average weekly wages that the employee earned in the terminated work;~~
- ~~2. Offered the same or a greater number of hours of work than those performed in the work terminated;~~
- ~~3. Offered the opportunity for significantly longer term work; or~~
- ~~4. Offered the opportunity to accept a position for which the duties were primarily discharged at a location significantly closer to the employee's domicile than the location of the terminated work.~~

(p) Paragraph (a) does not apply if the department determines that an employee, ~~while claiming benefits for partial unemployment,~~ terminated work to accept employment or other work covered by the unemployment insurance law of any state or the federal government, if that work ~~offered an average weekly wage greater than the average weekly wage earned in the work terminated.~~

1. Offered average weekly wages at least equal to the average weekly wages that the employee earned in the terminated work;
2. Offered the same or a greater number of hours of work than those performed in the work terminated;

3. Offered the opportunity for significantly longer term work; or

4. Offered the opportunity to accept a position for which the duties were primarily discharged at a location significantly closer to the employee's domicile than the location of the terminated work.

### **Third Exception**

*[This repeals a provision which protects certain union employees who quit a union position if the quit causes the employee to lose certain seniority rights and that results in the loss of employment for that employee with that employer.]*

S. 108.04 (7) (m)

~~(m) Paragraph (a) does not apply to an employee who terminates his or her work with a labor organization if the termination causes the employee to lose seniority rights granted under a collective bargaining agreement and if the termination results in the loss of the employee's employment with the employer which is a party to that collective bargaining agreement.~~

### **4. Quit Penalty**

Under current law, if an employee quits a job, the employee is ineligible for benefits until 4 weeks have elapsed since the end of the week in which the quit occurs and until the employee earns wages equal to at least 4 times the weekly benefit rate. This proposal changes that to require the employee to earn wages equal to at least 6 times the weekly benefit rate.

## **5. Penalty for Refusing an Offer of Suitable Work, While Receiving Benefits**

Under current law, if an employee refuses an offer of suitable work, the employee is ineligible for benefits until 4 weeks have elapsed and until the employee earns wages equal to at least 4 times the weekly benefit rate. This proposal changes that to require the employee to earn wages equal to at least 6 times the weekly benefit rate.

Suitable work is defined as work that is reasonable considering the claimant's training, experience, and duration of unemployment as well as the availability of jobs in the labor market.

## **6. Receipt of SSDI and UI Benefits**

A person may not currently receive SSDI and UI simultaneously. However, recovery may not be made from retroactive SSDI payments awarded to a person for UI paid during the time frame covered by the retroactive payments.

## **7. PIN**

If the owner of security credentials divulges the security credentials to another person, or fails to take adequate measures to protect them from being divulged to another person, the owner shall be strictly liable for any benefits erroneously paid as a result of such actions.

## **8. Work Search**

Increase work search requirements from two to four each week, impose certain registration requirements, and allow department to decide what constitutes a valid work search.

## **9. Records Match**

Enable department to identify delinquent debtors through financial record match process on a quarterly basis. Department could match unemployment insurance tax and non-tax delinquent debtor's files against accounts held at financial institutions.

## **10. DOT/DMV Database**

Allow searches using information from DOT/DMV database of driver's license information.

## **11. Limited Liability Companies**

Department will discontinue to treat limited liability companies with the same members as a single employer, to be consistent with federal law.

## **12. Excusing Some Interest Due from Employers**

Allows write off of some interest due from employers who were unaware they were required to pay tax.

## **13. Cafeteria Plans**

Restrict payments to cafeteria plans from being included in base period wages for determination of amount of benefits to be paid to a claimant.

## **14. Employers Tardy Filing Fee**

Increase the tardy filing fee for employers to \$100 or \$20/employee, but if employer later files the required report the fee may be decreased to \$50 for each delinquent report.

**15. Claimant's Information**

Amend information claimants must provide to department to facilitate claimants' reemployment.

**16. Employers Current on Taxes**

Authorize the department to require license holders to be current on their taxes or face non renewal, discontinuation, suspension or revocation.

**17. Benefit Increases**

Increase maximum rate paid to claimants by \$7 to be \$370 per week.