



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4456/P3
MED:amn

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to repeal* 108.02 (24g) and 108.14 (27); *to renumber and amend* 108.04
2 (8) (d); *to amend* 108.04 (7) (e), 108.04 (8) (c), 108.04 (12) (e) and 108.141 (3g)
3 (a) 3. (intro.); and *to create* 108.04 (8) (d) 2., 108.04 (8) (dm) and 108.04 (8) (em)
4 of the statutes; **relating to:** various changes to the unemployment insurance
5 law.

Analysis by the Legislative Reference Bureau

This bill makes various changes in the unemployment insurance law, which is administered by the Department of Workforce Development. Significant changes include:

Failure to accept suitable work when offered; good cause for such failure

Under current law, if a claimant for UI benefits fails, without good cause, to accept suitable work when offered, the claimant is ineligible to receive benefits until he or she earns wages after the week in which the failure occurs equal to at least six times the claimant's weekly UI benefit rate in covered employment. Current law specifies, for purposes of this provision, that a claimant has good cause for such a failure to accept suitable work if DWD determines that the failure involved work at a lower grade of skill or a significantly lower rate of pay than applied to the claimant on one or more recent jobs, and that the claimant had not yet had a reasonable opportunity, in view of labor market conditions and the claimant's degree of skill, to seek a new job substantially in line with the claimant's prior job skill and rate of pay.

This provision specifying what constitutes good cause, however, applies only with respect to six weeks after the claimant became unemployed. In addition current law requires DWD to define by rule what constitutes suitable work for claimants, with the rule specifying different levels of suitable work based upon the number of weeks that a claimant has received benefits in a given benefit year.

The bill deletes the language in current law specifying what constitutes good cause and the provision requiring DWD to define by rule what constitutes suitable work for claimants and instead provides all of the following with respect to failures to accept suitable work when offered:

1. That with respect to the first six weeks after the claimant became unemployed, “suitable work” means work that 1) is not at a lower grade of skill than that which applied to the claimant on one or more of his or her most recent jobs; and 2) would have had an hourly wage that was 75 percent or more of what the claimant earned on the highest paying of his or her most recent jobs.

2. That with respect to the seventh week after the claimant became unemployed and any week thereafter, “suitable work” means any work that the claimant is capable of performing, regardless of whether the claimant has any relevant experience or training, that pays wages that are above the lowest quartile of wages for similar work in the labor market area in which the work is located, as determined by DWD.

3. That a claimant has good cause for failing to accept suitable work if DWD determines that the failure related to the claimant’s personal safety, the claimant’s sincerely held religious beliefs, or an unreasonable commuting distance, or if the claimant had another compelling reason that would have made accepting the offer unreasonable.

Eligibility for UI when receiving worker’s compensation payments

Under current law, an individual who receives a temporary total disability worker’s compensation payment for a whole week is ineligible for UI benefits for that same week, unless otherwise provided by federal law. The bill similarly provides that an individual who receives a permanent total disability worker’s compensation payment for a whole week is ineligible for UI benefits for that same week, unless otherwise provided by federal law.

Also under current law, a temporary total disability or temporary partial disability worker’s compensation payment for part of a week is treated as wages for purposes of eligibility for partial UI benefits. The bill similarly provides that a permanent total disability worker’s compensation payment for part of a week is treated as wages for purposes of eligibility for partial UI benefits.

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

1 **SECTION 1.** 108.02 (24g) of the statutes, as created by 2015 Wisconsin Act 55,
2 is repealed.

1 **SECTION 2.** 108.04 (7) (e) of the statutes is amended to read:

2 108.04 (7) (e) Paragraph (a) does not apply if the department determines that
3 the employee accepted work which the employee could have failed to accept with good
4 cause under sub. (8) and terminated such work ~~with the same good cause~~ on the same
5 grounds and within the first 30 calendar days after starting the work, or that the
6 employee accepted work which the employee could have refused under sub. (9) and
7 terminated such work within the first 30 calendar days after starting the work. For
8 purposes of this paragraph, an employee has the same ~~good cause~~ grounds for
9 voluntarily terminating work if the employee could have failed to accept the work
10 under sub. (8) (d) when it was offered, regardless of the reason articulated by the
11 employee for the termination.

 ***NOTE: These changes to this quit exception were made to better conform the
 language to the changes made in s. 108.04 (8).

12 **SECTION 3.** 108.04 (8) (c) of the statutes is amended to read:

13 108.04 (8) (c) If an employee fails, without good cause, to return to work with
14 a former employer that recalls the employee within 52 weeks after the employee last
15 worked for that employer, the employee is ineligible to receive benefits until the
16 employee earns wages after the week in which the failure occurs equal to at least 6
17 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other
18 work covered by the unemployment insurance law of any state or the federal
19 government. For purposes of requalification, the employee's weekly benefit rate
20 shall be that rate which would have been paid had the failure not occurred. This
21 paragraph does not preclude an employee from establishing a benefit year during a
22 period in which the employee is ineligible to receive benefits under this paragraph
23 if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The

1 department shall charge to the fund's balancing account any benefits otherwise
2 chargeable to the account of any employer that is subject to the contribution
3 requirements under ss. 108.17 and 108.18 whenever an employee of that employer
4 fails, without good cause, to return to work with that employer. This paragraph does
5 not apply to an employee who fails to return to work with a former employer if the
6 work offered would not be considered suitable work under par. (d) or (dm), whichever
7 is applicable. If an employee receives actual notice of a recall to work, par. (a) applies
8 in lieu of this paragraph.

****NOTE: These changes are so that the same standards for failing to accept
suitable work would apply with respect to certain claimants who are recalled by their
former employers.

9 **SECTION 4.** 108.04 (8) (d) of the statutes is renumbered 108.04 (8) (d) (intro.)
10 and amended to read:

11 108.04 (8) (d) (intro.) ~~An employee shall have good cause under par. (a) or (c),~~
12 ~~regardless of the reason articulated by the employee for the failure, if the department~~
13 ~~determines that the failure involved work at~~ With respect to the first 6 weeks after
14 the employee became unemployed, "suitable work," for purposes of par. (a), means
15 work to which all of the following apply:

16 1. The work does not involve a lower grade of skill or significantly lower rate
17 of pay than that which applied to the employee on one or more of his or her most
18 recent jobs, and that the employee had not yet had a reasonable opportunity, in view
19 of labor market conditions and the employee's degree of skill, but not to exceed 6
20 weeks after the employee became unemployed, to seek a new job substantially in line
21 with the employee's prior job skill and rate of pay.

****NOTE: This provision has changes requested by DWD – it uses "one or more" per
current DWD policy.

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

1 108.04 (8) (d) 2. The hourly wage for the work is 75 percent or more of what the
2 employee earned on the highest paying of his or her most recent jobs.

 ****NOTE: This provision has changes requested by DWD to match current DWD
policy, with the exception that the figure 75 percent will be used instead of the currently
used 80 percent.

3 **SECTION 6.** 108.04 (8) (dm) of the statutes is created to read:

4 108.04 (8) (dm) With respect to the 7th week after the employee became
5 unemployed and any week thereafter, “suitable work,” for purposes of par. (a), means
6 any work that the employee is capable of performing, regardless of whether the
7 employee has any relevant experience or training, that pays wages that are above
8 the lowest quartile of wages for similar work in the labor market area in which the
9 work is located, as determined by the department.

 ****NOTE: A change here was requested by DWD to better conform the language
to current practice – “the region in which the employee is located” was changed to “the
labor market area in which the *work* is located.”

10 **SECTION 7.** 108.04 (8) (em) of the statutes is created to read:

11 108.04 (8) (em) An employee shall have good cause under this subsection only
12 if the department determines that the failure related to the employee’s personal
13 safety, the employee’s sincerely held religious beliefs, or an unreasonable commuting
14 distance, or if the employee had another compelling reason that would have made
15 accepting the offer unreasonable.

16 **SECTION 8.** 108.04 (12) (e) of the statutes is amended to read:

17 108.04 (12) (e) Any individual who receives a temporary total disability
18 payment or a permanent total disability payment for a whole week under ch. 102 or
19 under any federal law which provides for payments on account of a work-related
20 injury or illness analogous to those provided under ch. 102 shall be ineligible for
21 benefits paid or payable for that same week under this chapter unless otherwise

1 provided by federal law. A temporary total disability payment or, a temporary partial
2 disability payment, or a permanent total disability payment under those provisions
3 received by an individual for part of a week shall be treated as wages for purposes
4 of eligibility for benefits for partial unemployment under s. 108.05 (3).

5 **SECTION 9.** 108.14 (27) of the statutes, as created by 2015 Wisconsin Act 55, is
6 repealed.

****NOTE: Because this bill creates statutory provisions defining “suitable work,”
this change, along with the changes in SECTION 1 and 10, deletes language added in the
budget requiring DWD to define suitable work by rule.

7 **SECTION 10.** 108.141 (3g) (a) 3. (intro.) of the statutes, as affected by 2015
8 Wisconsin Act 55, is amended to read:

9 108.141 (3g) (a) 3. (intro.) ~~Notwithstanding s. 108.02 (24g), work~~ Work is
10 suitable within the meaning of subd. 2. if:

11 **SECTION 11. Initial applicability.**

12 (1) **SUITABLE WORK.** The treatment of section 108.04 (7) (e) and (8) (c), (dm), and
13 (em) of the statutes, the renumbering and amendment of section 108.04 (8) (d) of the
14 statutes, and the creation of section 108.04 (8) (d) 2. of the statutes first apply to
15 determinations issued under section 108.09 of the statutes on the effective date of
16 this subsection.

17 (2) **RECEIPT OF WORKER'S COMPENSATION.** The treatment of section 108.04 (12) (e)
18 of the statutes first applies to determinations issued under section 108.09 of the
19 statutes on the effective date of this subsection.

20 **SECTION 12. Effective dates.** This act takes effect on the first Sunday after
21 publication, except as follows:

22 (1) **SUITABLE WORK.** The treatment of section 108.04 (7) (e) and (8) (c), (dm), and
23 (em) of the statutes, the renumbering and amendment of section 108.04 (8) (d) of the

1 statutes, and the creation of section 108.04 (8) (d) 2. of the statutes and SECTION 11
2 (1) of this act take effect on the 5th Sunday beginning after publication.

3 (2) RECEIPT OF WORKER'S COMPENSATION. The treatment of section 108.04 (12) (e)
4 of the statutes and SECTION 11 (2) of this act take effect on the 5th Sunday beginning
5 after publication.

****NOTE: A four-week delayed effective date was requested by DWD for both items
to allow for training and implementation time.

6 (END)