
Wisconsin Legislative Council



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Director

TO: SENATOR MARK MILLER

FROM: Margit Kelley, Senior Staff Attorney, and Peggy Hurley, Staff Attorney

RE: History of Unemployment Insurance Legislation from 2011 to 2020

DATE: May 22, 2020

This memorandum, prepared at your request, provides an overview of acts revising the unemployment insurance law from 2011 to date in 2020. The overview also identifies legislation that was introduced but not enacted during that time period.

A number of the bills were submitted by the Department of Workforce Development (DWD), as agreed upon and recommended by the unemployment insurance advisory council. The council is statutorily required to make recommendations for amendments to the unemployment insurance law every biennial session. The council has an equal membership of labor and management representatives who must jointly agree on the council's recommended bills. [s. 108.14 (5) (a), Stats.]

ACTS REVISING THE UNEMPLOYMENT INSURANCE LAW

2011-12 Legislative Session

2011 Wisconsin Act 32 (the biennial budget act) created a one-week “waiting period” for which unemployment benefits are not paid out until the person has claimed benefits for the full 26 weeks available in a person’s benefit year. The act also added a provision that addressed preemployment drug testing, which was later repealed by 2011 Wisconsin Act 198. [See Legislative Fiscal Bureau, [Comparative Summary](#) (pages 827 to 828).]

2011 Wisconsin Act 42 (recommended by the advisory council) responded to changes in federal law for extended benefits in defined periods of high unemployment. [See Legislative Council, [Act Memo](#).]

2011 Wisconsin Act 123 created a pilot program under which employers offered training to unemployment insurance claimants. The program sunset on July 1, 2013. The lead authors were Representatives Honadel and Kuglitsch, and Senators Wanggaard and Galloway. [See Legislative Council, [Act Memo](#).]

2011 Wisconsin Act 198 (recommended by the advisory council) made various changes to the unemployment insurance law. In particular, the act increased the “penalty weeks” that are forfeited for concealing any material facts relating to eligibility for benefits from a range of one to five times a person’s weekly benefit rate to a range of two to eight times a person’s weekly benefit rate, and specified that the penalties apply within a six-year period from an initial finding of concealment. The act also revised the provision for consideration of wages and partial employment, and repealed the provision

relating to preemployment drug testing created in 2011 Wisconsin Act 32. [See Legislative Council, [Act Memo.](#)]

2011 Wisconsin Act 236 (recommended by the advisory council) established a 15 percent penalty for concealment of any material facts relating to eligibility for benefits, conforming to a federal requirement enacted in October 2011. [42 U.S.C. s. 503 (a) (11).] The act also addressed a person's availability for work in a week in which the person is located in a country other than the United States or Canada for more than 48 hours, revised the computation of the interest rate paid by employers who are delinquent on payments, and revised other operational aspects. [See Legislative Council, [Act Memo.](#)]

For a summary of the recommendations from the advisory council in the 2011-12 legislative session, see the DWD report: *Activities of the Unemployment Insurance Advisory Council 2011-2012*.

2013-15 Legislative Session

2013 Wisconsin Act 11 created the work-share program that allows a business to keep workers employed, on reduced hours, using partial unemployment benefits. The lead authors were Representatives E. Brooks and Loudenbeck, and Senators Farrow and Gudex. [See Legislative Council, [Act Memo.](#)]

2013 Wisconsin Act 20 (the biennial budget act) elaborated on the standards for misconduct and substantial fault, modified or eliminated eligibility for benefits after a voluntary termination of work (commonly referred to as the "quit exception"), increased the work search requirement from two to four searches per week, created work search standards that apply to a person last employed by a temporary help company, and revised other operational aspects. [See Legislative Fiscal Bureau, [Comparative Summary](#) (pages 793 to 806).]

2013 Wisconsin Act 36 (recommended by the advisory council) increased the maximum weekly benefit rate, revised the acceptance of suitable work requirements, added a disqualification for eligibility if a person simultaneously receives Social Security Disability Insurance (SSDI) payments, revised other eligibility disqualifications, and made additional operational revisions. [See Legislative Council, [Act Memo.](#)]

A "trailer bill" to Act 36 passed nine months later. **2013 Wisconsin Act 276** (recommended by the advisory council) made corrections in the license revocation program for delinquent employers, deleted a reference to "good cause" for failing to comply with a request from DWD in a provision amended by Act 36, and corrected the date from which an employer's tardy filing fee becomes due. [See Legislative Council, [Act Memo.](#)]

2013 Wisconsin Act 104 revised the law exempting direct sellers from the unemployment laws to more closely align with federal law. The lead authors were Representatives Knodl and Bies, and Senator Grothman. [See Legislative Council, [Act Memo.](#)]

For a summary of the recommendations from the advisory council and other actions in the 2013-14 legislative session, see the DWD report: *Activities of the Unemployment Insurance Advisory Council 2013-2014*.

2015-16 Legislative Session

2015 Wisconsin Act 55 (the biennial budget act) required DWD to establish two programs relating to drug testing, which place conditions on a person's eligibility for benefits. These included drug screening

and testing for applicants who work in occupations that regularly conduct drug testing,¹ and a program for voluntary employer reporting of a failed or refused preemployment drug test.² The act also increased the penalty for a misrepresentation of material fact from 15 percent to 40 percent, and required rulemaking for what constitutes “suitable work” that a person must accept after receiving unemployment benefits for longer than six weeks. [See Legislative Fiscal Bureau, [Comparative Summary](#) (pages 890 to 896).]

2015 Wisconsin Act 86 (recommended by the advisory council) addressed certain aspects of a combined wage claim where a person has wages in more than one state, to conform to federal law. The act also revised the computation of partial unemployment benefits in the work-share program, and removed certain limitations on recovering benefit overpayments using the federal treasury offset program. [See Legislative Council, [Act Memo](#).]

2015 Wisconsin Act 203 specified that employees of franchisors are excluded from unemployment insurance coverage unless the franchisor explicitly agrees in writing to be considered the employer or DWD has made an individual determination that the franchisor is acting as an employer. The lead authors were Senators Kapenga and Marklein, and Representatives Kuglitsch and Born. [See Legislative Council, [Act Memo](#).]

2015 Wisconsin Act 258 amended the real estate agent exclusion. The lead authors were Representatives Allen and Bernier, and Senators Lasee and Cowles. [See Legislative Council, [Act Memo](#).]

2015 Wisconsin Act 334 (recommended by the advisory council) elaborated on the standard for suitable work that must be accepted, revised the standard for finding that a person intentionally concealed or misrepresented information, created a penalty for misclassification of an employee in the construction industry, and made many other operational revisions. [See Legislative Council, [Act Memo](#).]

For a summary of the recommendations from the advisory council and other actions in the 2015-16 legislative session, see the DWD report: *Unemployment Insurance Advisory Council Activities Report 2015-2016*.

2017-18 Legislative Session

2017 Wisconsin Act 59 (the biennial budget act) did not propose or make any changes to the unemployment insurance law.

2017 Wisconsin Act 147 revised the criminal penalty for knowingly making a false statement or misrepresentation from an unclassified misdemeanor to a graduated series of penalties, which increase depending on the amount of the benefits fraudulently obtained. The lead authors were Representatives Kerkman and R. Brooks, and Senators Kapenga and Craig. [See Legislative Council, [Act Memo](#).]

2017 Wisconsin Act 157 (recommended by the advisory council) reorganized and revised a number of aspects relating to collection of unemployment insurance debts from both employers and employees, updated terminology and clarified certain responsibilities for confidentiality, employer liability, and

¹ On September 14, 2015, DWD published scope statement [SS 091-15](#), for rulemaking relating to occupational drug testing. On October 4, 2019, the U.S. Department of Labor issued a final rule to allow drug testing of unemployment applicants. [[F.R. 53037](#) (Oct. 4, 2019).] DWD did not submit a proposed rule from the scope statement to the Administrative Rules Clearinghouse, and the scope statement expired on February 4, 2020.

² Preemployment drug testing is governed by [ch. DWD 131, Wis. Adm. Code.](#), which went into effect on May 1, 2017.

departmental payment relating to drug screening and testing, resolved other issues for consistent consideration of paid time off and missed work, and made other operational revisions. [See Legislative Council, [Act Memo](#).]

As part of measures enacted in an extraordinary session, **2017 Wisconsin Act 370** codified waivers from the registration and work search requirements for a person who has a reasonable expectation of returning to work for the same employer, has an anticipated start date with a new employer within four weeks, is a trades worker who routinely obtains work through a qualifying union hiring hall, or meets other identified circumstances, such as a person who has been called to jury service. The act also specified that DWD may modify or establish additional waivers from the registration and work search requirements only if necessary to comply with federal law or as specifically allowed under federal law. The legislation was introduced by the Joint Committee on Finance. [See Legislative Council, [Act Memo](#) (page 7).]

For a summary of the recommendations from the advisory council and other actions in the 2017-18 legislative session, see the DWD report: *Unemployment Insurance Advisory Council Activities Report 2017-2018*.

2019-20 Legislative Session

As part of the measures enacted in the extraordinary session addressing the COVID-19 coronavirus, **2019 Wisconsin Act 185** facilitates assistance to workers by: suspending the one-week waiting period for regular unemployment benefits; creating a modified, more accessible work-share program for employers to use in lieu of laying people off; and shifting responsibility for certain unemployment insurance charges from employers to the state. [See Legislative Council, [Information Memorandum IM-2020-05](#) (pages 6 to 8).]

PROPOSED LEGISLATION, NOT ENACTED

2011-12 Proposals Not Enacted

[2011 Assembly Bill 230](#) proposed to repeal the one-week waiting period for unemployment benefits, allowing a claimant to receive benefits beginning with the first week of eligibility. The lead authors were Representative Mason and Senator Wirch.

[2011 Assembly Bill 412](#) and [Senate Bill 424](#) are companion bills that proposed to require DWD, when a claimant applies for unemployment benefits, to notify the local job center and the local workforce development board that serve the area in which the claimant resides. The lead authors were Representative Sinicki and Senator Holperin.

[2011 Assembly Bill 457](#) proposed to modify requirements for extended training for claimants during periods of lower unemployment rates, modify the reasons a claimant may be disqualified if the claimant was discharged for inappropriate conduct or work rules violations, change the interest rates for delinquent payments by employers, require decisions by appeals tribunals to be consistent with state and federal law, and reduce the amount of benefits a claimant may receive while he or she is incarcerated. Representative Ballweg was the lead author.

[2011 Assembly Bill 462](#) and [Senate Bill 346](#) are companion bills that proposed to permit an employee to receive unemployment benefits while a labor dispute is in active progress if the employee is otherwise eligible to receive benefits, the employee is not participating in the dispute, and the employee is not a member of the collective bargaining unit of which, immediately before the dispute, there were members

employed with the employee's employer, if any of the members are participating in the dispute. The lead authors were Representative Pocan and Senator Wirch.

[2011 Senate Bill 559](#) proposed to create a work-share program. The lead authors were Senator Lassa and Representative Spanbauer.

2013-14 Proposals Not Enacted

[2013 Assembly Bill 50](#) and [Senate Bill 28](#) are companion bills that proposed to create a work-share program. The lead authors were Representative Pasch and Senator Lassa. **Note:** All of the provisions in these bills were enacted in 2013 Wisconsin Act 11, the lead authors of which were Representative E. Brooks and Senator Farrow, but that act contained an additional provision limiting eligibility for unemployment for certain participants in a work-share program.

[2013 Assembly Bill 184](#) and [Senate Bill 149](#) are companion bills that proposed to create a one-time appropriation to pay interest on federal advances to the unemployment reserve fund. The lead authors were Representative Klenke and Senator Leibham.

[2013 Assembly Bill 229](#) and [Senate Bill 192](#) are companion bills that proposed to permit an employee to receive unemployment benefits while a labor dispute is in active progress if the employee is otherwise eligible to receive benefits, the employee is not participating in the dispute, and the employee is not a member of the collective bargaining unit of which, immediately before the dispute, there were members employed with the employee's employer, if any of the members are participating in the dispute. The lead authors were Representative Tittl and Senator Leibham.

[2013 Assembly Bill 358](#) and [Senate Bill 276](#) are companion bills that proposed to establish additional criteria for determining whether a person is an independent contractor and not entitled to unemployment benefits or workers' compensation. The lead authors were Representative Severson and Senator Harsdorf.

[2013 Assembly Bill 366](#) is an omnibus bill that proposed to repeal several provisions passed as part of the 2013-15 biennial budget act and to modify several provisions in unemployment insurance law, including ineligibility for unemployment benefits because of employee misconduct, absenteeism, and tardiness; registration and work search requirements; temporary work companies and work search requirements; contribution and solvency rate schedules for employers; termination of work and exemptions from requalification requirements; and loans by this state to the unemployment reserve fund. Representative Sinicki was the lead author.

[2013 Assembly Bill 374](#) proposed to repeal the one-week waiting period for unemployment benefits, allowing a claimant to receive benefits beginning with the first week of eligibility. The lead authors were Representative Kolste and Senator Lassa.

[2013 Assembly Bill 400](#) and [Senate Bill 332](#) are companion bills that proposed to create a two-year pilot program for special, regional occupational training for unemployment claimants. The lead authors were Representative Loudenbeck and Senator Lazich.

[2013 Assembly Bill 819](#) and [Senate Bill 273](#) are companion bills that proposed to require DWD, when issuing a determination about eligibility for unemployment or other benefits that is adverse to the interests of a claimant, and when issuing a computation of unemployment benefits, to provide to the claimant information about resources that may be available to assist the claimant regarding the adverse determination or computation. The bill also requires DWD to maintain a telephone number so that such a claimant who is adversely affected by a determination or computation may call DWD to ask

questions about the determination or computation. The lead authors were Representative Ringhand and Senator Lassa.

2015-16 Proposals Not Enacted

[2015 Assembly Bill 140](#) proposed to direct the Department of Administration, with the assistance of the Department of Health Services, Department of Children and Families, and DWD, to create a system that: 1) identifies every individual or family in this state who receives any public assistance or unemployment benefits; 2) tabulates the total amount of benefits received in a year by each such individual or family; 3) generates a detailed statement showing the types and monetary value of all benefits received; and 4) sends the detailed statement for the preceding year to each individual or family who received benefits. Representative VanderMeer was the lead author.

[2015 Assembly Bill 192](#) proposed to direct DWD to establish a program to require claimants who apply for regular unemployment benefits to submit to drug tests. The lead authors were Representative Rohrkaste and Senator Olsen. **Note:** this bill's provisions were enacted as part of the biennial budget act, 2015 Wisconsin Act 55.

[2015 Assembly Bill 212](#) and [Senate Bill 140](#) are companion bills that proposed to make a person who commits a second act of concealment or impersonation ineligible to receive unemployment benefits for seven years. The lead authors were Representative Kerkman and Senator Cowles.

[2015 Assembly Bill 318](#) proposed to repeal the one-week waiting period for unemployment benefits, allowing a claimant to receive benefits beginning with the first week of eligibility. The lead authors were Representative Kolste and Senator Lassa.

[2015 Assembly Bill 533](#) and [Senate Bill 401](#) are companion bills that proposed to revise the criminal penalty for knowingly making a false statement or misrepresentation from an unclassified misdemeanor to a graduated series of penalties, which increase depending on the amount of the benefits fraudulently obtained. The lead authors were Representative Kerkman and Senator Kapenga. **Note:** the provisions were later enacted in 2017 Wisconsin Act 147.

[2015 Senate Bill 764](#) proposed to increase the duration of the waiver from the work search requirements for a person who has a reasonable expectation of returning to work for the same employer. The lead authors were Senator Bewley and Representative Hesselbein.

2017-18 Proposals Not Enacted

[2017 Assembly Bill 131](#) and [Senate Bill 83](#) are companion bills that proposed to increase the duration of the waiver from the work search requirements for a person who has a reasonable expectation of returning to work for the same employer. The lead authors were Representative Hesselbein and Senator Bewley.

[2017 Assembly Bill 243](#) proposed to fund a study regarding the feasibility of offering unemployment claimants mobility grants to relocate to areas with more favorable employment opportunities. Representative Gannon was the lead author.

[2017 Assembly Bill 482](#) is an omnibus bill that proposed to regulate medical and recreational marijuana use. The bill provides that an employee's use of marijuana off the employer's premises during nonworking hours does not generally disqualify a claimant from receiving unemployment benefits and excludes THC from drug testing programs. Representative Sargent was the lead author.

[2017 Senate Bill 772](#) proposed to require DWD to allow claimants to file for unemployment benefits by telephone. The lead authors were Senator Vinehout and Representative Sinicki.

2019-20 Proposals Not Enacted

2019 Wisconsin Act 9 (the biennial budget act), as originally introduced, included proposals for a number of revisions to the unemployment insurance law that were not enacted. These included proposals to repeal the occupational and preemployment drug testing programs, increase the maximum weekly benefit rate, repeal the one-week waiting period, require DWD to adjust the wage threshold for partial unemployment based on the annual change in the consumer price index, modify the standards for accepting suitable work and the good cause exception for failing to accept suitable work, modify the disqualification for benefits when a termination is due to a person's "substantial fault," repeal the codification of the registration and work search requirements from 2019 Wisconsin Act 370 and restore DWD's general rulemaking authority to establish waivers, and expand the quit exception to include when a person's spouse is required to relocate to an impractical commuting distance. [See Legislative Fiscal Bureau, [Comparative Summary](#) (pages 662 to 667).]

[2019 Senate Bill 671](#) (recommended by the advisory council) proposed the following:

- Revise administrative aspects for certain biennial reports on unemployment insurance to the Governor and the Legislature, including submission deadlines.
- Allow unemployment insurance benefits to be paid to persons affected by a federal government shutdown (subject to repayment as provided under current law).
- Prohibit a person from denying elements of a criminal conviction for an offense that is related to the unemployment insurance law.
- For nonprofit employers that have elected reimbursement financing, revise operational aspects for how DWD may assess for uncollectible benefits.
- Specify that an error of law made by an administrative law judge is not a departmental error and does not excuse a person from repaying benefits.
- Specify that the Department of Revenue may not make collections for amounts owed under the unemployment insurance program on behalf of DWD.
- Revise who may be considered an employer when a person who receives long-term support services uses a fiscal agent for those services.

[2019 Senate Bill 672](#) (recommended by the advisory council) proposed the following:

- Create a segregated administration fund for deposit of interest and penalties paid by employers, and other collected amounts that are not currently designated to another fund.
- Specify that benefits denied by the federal government for employees under a federal government shutdown may be paid from interest and penalty monies.
- Make clerical revisions to the unemployment insurance law chapter to reflect current revenue and appropriation sources, cross-references to state and federal law, and other administrative aspects.

If you have any questions, please feel free to contact us directly at the Legislative Council staff offices.

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