



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2009 Wisconsin Act 287
[2009 Assembly Bill 884]

Unemployment Insurance

2009 Wisconsin Act 287 makes changes to the state's unemployment insurance (UI) law. The Act is the result of recommendations by the UI Advisory Council. The major provisions of the Act are summarized below.

- An independent contractor is not an “employee” for purposes of UI law and, thus, is not eligible for UI benefits. Under *current law*, with some exceptions, an independent contractor is an individual who meets at least 7 of 10 specified conditions by contract and in fact. The *Act* replaces the current law test by providing that an independent contractor is an individual who meets the following conditions by contract and in fact:
 1. The services of the individual are performed free from control or direction by the employing unit over the performance of his or her services. In determining whether an individual's services are performed free from control or direction, the Department of Workforce Development (DWD) may consider the following nonexclusive factors:
 - a. Whether the individual is required to comply with instructions concerning how to perform the services.
 - b. Whether the individual receives training from the employing unit with respect to the services performed.
 - c. Whether the individual is required to personally perform the services.
 - d. Whether the services of the individual are required to be performed at times or in a particular order or sequence established by the employing unit.
 - e. Whether the individual is required to make oral or written reports to the employing unit on a regular basis.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

2. The individual meets six or more of the following conditions:
 - a. The individual advertises or otherwise affirmatively holds himself or herself out as being in business.
 - b. The individual maintains his or her own office, or performs most of the services in a facility or location chosen by the individual and uses his or her own equipment or materials in performing the services.
 - c. The individual operates under multiple contracts with one or more employing units to perform specific services.
 - d. The individual incurs the main expenses related to the services that he or she performs under contract.
 - e. The individual is obligated to redo unsatisfactory work for no additional compensation or is subject to a monetary penalty for unsatisfactory work.
 - f. The services performed by the individual do not directly relate to the employing unit retaining the services.
 - g. The individual may realize a profit or suffer a loss under contracts to perform such services.
 - h. The individual has recurring business liabilities or obligations.
 - i. The individual is not economically dependent upon a particular employing unit with respect to the services being performed.
- The **Act** provides that the following employment is excluded from UI coverage, unless an Indian tribe elects otherwise with DWD's approval: (1) service as a member of an elective legislative body or the judiciary of an Indian tribe; (2) service in a major nontenured policymaking or advisory position with an Indian tribe; (3) service in a policymaking or advisory position with an Indian tribe the duties of which do not ordinarily require more than eight hours per week; and (4) service by an individual receiving work relief or work training as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by an Indian tribe.
- The **Act** provides that service provided by an individual to an ill or disabled family member who is the employing unit for such service, if the service is personal care or companionship, is excluded from UI coverage, unless the employer elects otherwise with DWD's approval.
- The **Act** provides that for purposes of UI law, "full-time work" is defined as work performed for 32 or more hours per week and that "part-time work" is defined as work performed for less than 32 hours per week. Further, the Act modifies certain provisions regarding voluntary termination of work and disqualification for full-time work to reflect the definitions of "full-time work" and "part-time work."
- **Current law** provides that DWD may not reduce or deny UI benefits to an otherwise eligible individual because the individual is enrolled in a course of vocational training or basic education that is a prerequisite to such training if certain conditions are met. The **Act**

broadens the types of training that are approved training to include certain training administered by DWD and certain training under the federal Workforce Investment Act. The Act also provides that DWD may not deny UI benefits to an individual who leaves work that the individual was engaged in on a temporary basis during a break or delay in the training or because the individual left on-the-job training that did not meet certain federal requirements within 30 days after commencing that training. Lastly, the Act provides that UI benefits for individuals enrolled in approved training are charged to the UI reserve fund's balancing account.

- **Current law** provides that a claimant who has exhausted all rights to UI benefits, is enrolled in approved training, and meets certain other conditions may be eligible to receive additional UI benefits while enrolled in that training. The **Act** broadens the types of training that are approved training, as described above, and eliminates a requirement that a claimant be separated from employment in a declining occupation or involuntarily separated from employment as a result of a permanent reduction in the employer's operations in order to receive additional UI benefits.
- The **Act** provides that if a pension payment is actually or constructively received on other than a periodic basis, DWD must allocate the payment to the week in which it was received for purposes of determining any reduction in a claimant's UI benefits.
- The **Act** provides that, for purposes of UI benefits for partial unemployment, a bonus or profit-sharing payment is considered to be earned in the week in which the bonus or payment is paid by the employer.
- **Current law** provides that a voluntary contribution is timely if it is received by DWD no later than November 30 following the computation date for the calendar year to which it applies, or, if mailed, is either postmarked no later than that date or is received by DWD no later than three days after that date. The **Act** removes the mailing deadline.
- The **Act** provides that an employer that suffers physical damage to its business caused by a catastrophic event for which the employer is not primarily responsible and that incurs benefit charges to its UI account for layoffs due to that damage may, through a voluntary contribution, increase its reserve percentage to no greater than the reserve percentage that would have applied to the employer as of the next computation date had that damage not caused the layoffs.
- **Current law** requires that an Indian tribe or tribal unit electing reimbursement financing file assurance of reimbursement, such as a surety bond. The **Act** removes this requirement.
- The **Act** provides that to recover an overpayment to an individual, DWD may set off the amount of the overpayment against a state tax refund or disbursement, or if the overpayment results from fraud, DWD may offset the amount of the overpayment against a federal tax refund.
- The **Act** provides that in an action commenced by an employing unit for judicial review of a decision of the Labor and Industry Review Commission, DWD is an adverse party and must be named as a party in the complaint commencing the action.

- The *Act* provides that a professional employer organization (PEO) must be registered with the Department of Regulation and Licensing to be considered a PEO for purposes of UI law.
- Under *current law*, employers generally pay an assessment to cover the interest due on any loan that the state obtains from the federal government. If the amounts collected from the assessment exceed the amount needed to pay interest, the excess is retained in the administrative account. The *Act* provides, instead, that the excess is credited to the balancing account.
- *Current law* provides that if a claimant conceals any material fact relating to his or her eligibility for UI benefits or conceals any of his or her wages for a given week, the claimant must forfeit UI benefits and be disqualified from receiving UI benefits for the act of concealment. The *Act* removes language regarding benefits disqualification.
- Under *current law*, no person may: (1) make a deduction from an employee's wages to finance an employer's UI costs; (2) knowingly refuse or fail to furnish to an employee any information required by UI law; (3) attempt to induce an employee to refrain from claiming UI benefits or to waive any other right under UI law; or (4) maintain a rehiring policy that discriminates against employees who claim UI benefits. Any person who violates this provision is subject to a fine of not less than \$100 nor more than \$500 or imprisonment for not more than 90 days, or both. The *Act* also provides that no person may: (1) attempt to induce an employee to refrain from claiming UI benefits or to waive any other right under UI law by threatening to terminate the employee; (2) attempt to induce an employee to refrain from participating in a DWD audit or investigation or testifying in a UI hearing; or (3) discriminate or retaliate against an individual because the individual claims UI benefits, participates in a DWD audit or investigation, testifies in a UI hearing, or exercises any other right under UI law. The *Act* removes the provision in current law regarding rehiring policies and increases the maximum fine to \$1,000 for all offenses.

Effective date: The Act takes effect on July 4, 2010, but various provisions of the Act first apply on later dates.

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May 27, 2010

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