

D15-09
Revisions to Able & Available Law

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Proposed by: DWD
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D15-09 - Summary of Statutory Changes Regarding Able and Available Law

Current Law	Summary of Current Law	Proposed Change and Effect
Wis. Stat. § 108.04(1)(b)	<p>If a claimant takes a leave of absence, is suspended or is terminated because they are unable or unavailable for work with their current employer, the claimant may receive partial benefits for the first week of that leave of absence, suspension or termination.</p> <p>The department issues a single determination regarding the leave of absence, suspension or termination and the claimant's ability to work and availability for work.</p>	<p>Repeal and recreate section 108.04(1)(b), which would result in two determinations: one regarding the claimant's leave of absence, suspension or termination and a second regarding the claimant's availability to work and ability to work.</p>
Wis. Stat. § 108.04(7)(c)	<p>This is the quit exception for claimants who quit because they are unable to do their current job due to illness or disability or quit in order to take care of a family member who is ill or disabled.</p> <p>The department issues a single determination regarding the quit exception as well as the claimant's ability to work and availability for work.</p>	<p>Amend section 108.04(7)(c) to be the quit exception for claimants who quit a job due to an illness or disability and create new section 108.04(7)(cg) to be the quit exception for claimants who quit in order to take care of ill or disabled family members.</p> <p>The claimant's ability to work and availability for work will be adjudicated in a separate determination.</p>
Wis. Stat. § 108.04(8)(e)	<p>If claimant fails, with good cause, to accept suitable work or to return to work to an employer who recalls the employee within 52 weeks, the claimant is eligible for benefits if the claimant is also able to work and available for work.</p> <p>The department issues a single determination regarding the good cause and the claimant's ability to work and availability for work.</p>	<p>Repeal section 108.04(8)(e), which would result in two determinations: one issued under current section 108.04(8)(d) regarding the good cause and another under section 108.04(2)(a)1 regarding the claimant's ability to work and availability for work.</p>

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108.04 (1) (b) of the statutes is repealed and recreated to read:

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

~~2. If an employee is absent from work for 16 hours or less in the first week of a leave taken under subd. 1. or in the week in which a suspension or termination under subd. 1. occurs, the employee's eligibility for benefits for that week shall be determined under par. (bm).~~

(b) Except as provided in s. 108.062 (10), if an employee is absent from work for 16 hours or less in the first week of his or her leave of absence or in the week in which his or her employment is suspended or terminated due to the employee's unavailability for work with the employer or inability to perform suitable work otherwise available with the employer, the employee's eligibility for benefits for that week shall be determined under par. (bm).

108.04 (1) (bm) of the statutes is amended to read:

(bm) For purposes of par. (a) 1. and (b) ~~2.~~, the department shall treat the amount that the employee would have earned as wages for a given week in available work as wages earned by the employee and shall apply the method specified in s. 108.05 (3) (a) to compute the benefits payable to the employee. The department shall estimate wages that an employee would have earned if it is not possible to compute the exact amount of wages that would have been earned by the employee.

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108.04 (7) (c) of the statutes is amended to read:

~~(c) Paragraph (a) does not apply if the department determines that the employee terminated his or her work but had no reasonable alternative because the employee was unable to do his or her work, or that the employee terminated his or her work because of the verified illness or disability of a member of his or her immediate family and the verified illness or disability reasonably necessitates the care of the family member for a period of time that is longer than the employer is willing to grant leave; but if the department determines that the employee is unable to work or unavailable for work, the employee is ineligible to receive benefits while such inability or unavailability continues.~~

(c) Paragraph (a) does not apply if the department determines that the employee terminated his or her work but had no reasonable alternative because of the verified illness or disability of the employee.

108.04 (7) (cg) of the statutes is created to read:

(cg) Paragraph (a) does not apply if the department determines that the employee terminated his or her work because of the verified illness or disability of a member of his or her immediate family and the verified illness or disability reasonably necessitates the care of the family member for a period of time that is longer than the employer is willing to grant leave.

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108.04 (8) (e) of the statutes is repealed:

~~(e) If the department determines that a failure under this subsection has occurred with good cause, but that the employee is unable to work or unavailable for work, the employee shall be ineligible for the week in which such failure occurred and while such inability or unavailability continues.~~

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Cross-references to be amended:

108.04 (7) (h) of the statutes is amended to read:

(h) The department shall charge to the fund's balancing account benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 if the employee voluntarily terminates employment with that employer and par. (a), (c), ~~(cg)~~, (e), (L), (q), (s), or (t) applies.

108.04 (16) (b) of the statutes is amended to read:

(b) The department shall not apply any benefit reduction or disqualification under sub. (1) (b), (2) (a), (7) (c), or ~~(7) (cg)(8) (e)~~ or s. 108.141 (3g) (d) that is not the result of approved training while an individual is enrolled in approved training.

108.14 (8n) (e) of the statutes is amended to read:

(e) The department shall charge this state's share of any benefits paid under this subsection to the account of each employer by which the employee claiming benefits was employed in the applicable base period, in proportion to the total amount of wages he or she earned from each employer in the base period, except that if s. 108.04 (1) (f), (5), (7) (a), (c), ~~(cg)~~, (e), (L), (q), (s), or (t), (7m) or (8) (a) or 108.07 (3), (3r), or (5) (b) would have applied to employment by such an employer who is subject to the contribution requirements of ss. 108.17 and 108.18, the department shall charge the share of benefits based on employment with that employer to the fund's balancing account, or, if s. 108.04 (1) (f) or (5) or 108.07 (3) would have applied to an employer that is not subject to the contribution requirements of ss. 108.17 and 108.18, the department shall charge the share of benefits based on that employment in accordance with s. 108.07 (5) (a) and (b). The department shall also charge the fund's balancing account with any other state's share of such benefits pending reimbursement by that state.

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108.141 (7) (a) of the statutes is amended to read:

(a) The department shall charge the state's share of each week of extended benefits to each employer's account in proportion to the employer's share of the total wages of the employee receiving the benefits in the employee's base period, except that if the employer is subject to the contribution requirements of ss. 108.17 and 108.18 the department shall charge the share of extended benefits to which s. 108.04 (1) (f), (5), (7) (a), (c), ~~(cg)~~, (e), (L), (q), (s), or (t), (7m) or (8) (a) or 108.07 (3), (3r), or (5) (b) applies to the fund's balancing account.