

Unemployment Insurance Advisory Council Agreed-Upon Bill ([2021 Wis. Act 231](#)) Plain Language Summary

Benefits Changes

Effect of a Criminal Conviction

When the department refers matters for criminal prosecution, an administrative determination has usually already been issued. However, criminal prosecution may result in court-ordered restitution when the department has yet not issued an administrative determination that a debt is owed. Act 231 provides that final criminal conviction judgments are binding on criminal defendants for the purposes of related proceedings that arise under unemployment law.

Statute created: section 108.101(5), effective April 10, 2022.

Departmental Error

Under current law, the department waives the recovery of benefits that were erroneously paid if the overpayment was the result of departmental error, such as a computation error, misapplication or misinterpretation of law, or mistake of evidentiary fact. But an amendment, modification, or reversal of a department determination by an appeal tribunal, the Labor and Industry Review Commission, or a court is not departmental error for the purposes of waiving the overpayment. The Commission currently waives some overpayments if it finds that an appeal tribunal allows benefits in error, even if the appeal tribunal followed an erroneous LIRC or court decision. The Commission considers appeal tribunals to be part of the department because the administrative law judges are department employees. Act 231 amends the law to provide that an error made by an appeal tribunal is not “departmental error.” **This provision applies to determinations issued on or after April 10, 2022 (statute created: section 108.02(10e)(c)).**

Camp Counselor Exclusion

Federal unemployment law excludes the services of camp counselors from the definition of “employment” if the following criteria are met:

1. The worker is a full-time student. This means that the worker is currently enrolled in an educational institution **or** is between academic years/terms, was enrolled in the preceding year/term, and will be enrolled in the succeeding year/term.
2. The worker worked for the camp for less than 13 calendar weeks in a year.
3. The camp operates in less than seven months in a year **or** had average gross receipts for any 6 months in the preceding calendar year which were not more than 33 $\frac{1}{3}$ percent of its average gross receipts for the other 6 months in the preceding calendar year.

Act 231 adds a corresponding exclusion to state law for private for-profit employers. **This exclusion applies to services performed on or after January 1, 2023 (statute created: section 108.02(15)(k)21.).**

Tax Changes

Reimbursable Employer Debt Assessment Charging

When employers subject to reimbursement unemployment insurance financing (“self-insured”) are charged for benefits that are based on identity theft, the department restores those charges to the employers’ accounts from the balancing account. The 2015 – 2016 UIAC agreed bill (2015 Wis. Act 334) required that the department set aside \$2 million in the balancing account, plus interest, to pay identity theft charges to reimbursable employers’ accounts.

Non-profit reimbursable employers may be subject to an annual reimbursable employer debt assessment (REDA) for payment of uncollectible benefit reimbursements due from other reimbursable employers no longer in business. Under current law, the REDA to recover

uncollectible reimbursements must be at least \$5,000 but no more than \$200,000 and each non-profit employer assessed pays based on the employer's payroll. Employers for whom the assessment would be less than \$10 are not assessed, which usually results in about half of non-profit reimbursable employers being assessed the REDA.

Act 231 provides that a limited amount of the reimbursable employer identity theft fraud funds set aside in the balancing account will be made available to recover uncollectible reimbursements instead of assessing the REDA (or to reduce the amount of the REDA). This provides that the identity theft fraud funds may be used to pay the REDA only if the use of those funds would not reduce the balance of the funds below \$1.75 million. Act 231 also increases the minimum amount of the REDA per employer from \$10 to \$20.

Statutes created or amended: sections 108.151(7)(c), (f), (i), 108.155(2)(a), effective April 10, 2022.

Fiscal Agent Election of Employer Status

Individuals who receive long-term health support services in their home through government-funded care programs are employers under Wisconsin's unemployment insurance law. These employers receive financial services from fiscal agents, who directly receive and disperse government program funds. The fiscal agent is responsible for reporting employees who provide services for the employers to the department, and for paying unemployment tax liability on behalf of the employer. Under current law, if the worker is a certain class of family member of the person receiving care, the worker is ineligible for unemployment benefits when the employment relationship ends.

Act 231 permits private fiscal agents (not government units) to elect to be the employer of workers who provide care services under chapters 46, 47, and 51. The fiscal agent would be

required to inform the recipient of care of the election and the fiscal agent would need to be treated as the employer for federal unemployment tax purposes. If the fiscal agent elects to be the employer and the worker is a certain class of family member of the person receiving care, that worker would be an employee of the fiscal agent and could now potentially be eligible for unemployment benefits. Benefits would be charged to the fiscal agent's account, which would affect its experience rating. This provision is expected to simplify unemployment insurance reporting requirements for fiscal agents.

Fiscal agents may elect to be the employer of the care workers as of January 1, 2023 (statute amended and created: sections 108.02(13)(k) and 108.065(3m)).

Work Share Amendments

2019 Wis. Act 185 and 2021 Wis. Act 4 provided greater flexibility for work share plans such as:

1. Reducing the minimum number of employees in a work share plan from 20 to 2.
2. Increasing the maximum reduction in employees' hours from 50% to 60%, which is the maximum allowed under federal law.
3. Permitting work share plans to cover any employees, not just employees in a particular work unit.
4. Eliminating the requirement that hours be apportioned equitably among employees in the work share plan.
5. Providing that work share plans become effective on the later of the Sunday of or after approval of the work-share plan, instead of the second Sunday after approval of the plan, unless a later Sunday is specified.

Act 231 makes these changes permanent, as well as permitting a plan to extend up to 12 months in a 5-year period. The changes to the work share law are effective on **April 10, 2022**. A work-share plan is governed by the law that was in effect when the plan or modification was last approved. (**Various changes to section 108.062.**)

Administrative Changes

Changing the deadlines to submit certain statutorily-required reports to the Legislature

For the UI financial outlook report, the deadline will be changed from April 15 of each odd-numbered year to May 31 of each even-numbered year. For the report summarizing the deliberations of the Unemployment Insurance Advisory Council, the deadline will be changed from May 15 of each odd-numbered year to January 31 of each even-numbered year. These changes are designed to improve the usefulness of the reports to the Legislature, the Governor, and the Council. **This change will require the Department to issue a financial outlook by May 31, 2022 (statute amended: section 16.48, effective April 10, 2022.)**

Prohibiting DOR collection of UI debts

Current law requires state agencies and the Wisconsin Department of Revenue (DOR) to enter into an agreement to have DOR collect debts owed to agencies under certain conditions. Act 231 prohibits DOR from collecting debts on behalf of the UI Division. This change will ensure that employers and claimants are not assessed additional fees when repaying their debts and will ensure that state recoveries of debts owed to the UI Division continue to be maximized for the benefit of the UI Trust Fund. **(Statute created: section 71.93(8)(b)1.d., effective April 10, 2022.)**