

**From: Rep. Dave Armstrong  
Sen. Eric Wimberger**

**Date: April 5, 2023**

**RE: LRB 2176: various changes to the unemployment insurance law and requiring approval by the Joint Committee on Finance of certain federally authorized unemployment benefits.**

**Short deadline: Friday, April 7, at 12:00 PM**

In yesterday's advisory referendum, the people of Wisconsin made it clear that they want able-bodied adults to actively seek work if they wish to receive government assistance like unemployment insurance. In addition, the disastrous response of Governor Evers' DWD to the surge of pandemic-related unemployment claims remains fresh in many memories, both in legislative offices and around the state.

LRB 2716 includes concrete reforms to protect the integrity of our UI program and ensure that benefits go to claimants who lost their jobs through no fault of their own and who actually are looking for work. These reforms include:

- Updating misconduct statutes to include destruction of records, unapproved use of a company credit card and violations of companies' attendance and social media policies
- Requiring DWD to audit 50% of work searches
- Subjecting enhanced unemployment benefits to JFC oversight

If you would like to co-sponsor this legislation, please reply to this e-mail or contact Rep. Armstrong's office (9175) or Sen. Wimberger (6-5670) by **12:00 PM on Friday, April 7**. Cosponsors will be added to both bills.

### ***Analysis by the Legislative Reference Bureau***

#### **UNEMPLOYMENT INSURANCE**

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

#### ***Misconduct***

Currently, if an employee is discharged for misconduct connected with his or her employment, the employee is ineligible to receive UI benefits until certain requalification criteria are satisfied. In addition, all wages earned with the employer that discharges the employee are excluded in determining the amount of any future benefits to which the employee is entitled. Current law provides a general definition of misconduct and also specifies a number of specific actions that constitute misconduct. The bill does all of the following with respect to what is considered misconduct:

1. Current law specifically provides that misconduct includes theft of an employer's property or services with intent to deprive the employer of the property or services permanently, theft of currency of any value, felonious conduct connected with an employee's employment with his or her employer, or intentional or negligent conduct by an employee that causes substantial damage to his or her employer's property. The bill does the following:

- a. Eliminates the requirement that the employee have intent to deprive the employer of the property or services permanently.
- b. Provides that intentional or negligent conduct by an employee that causes the destruction of an employer's records is also considered misconduct.
- c. Adds unauthorized possession of an employer's property, theft or unauthorized distribution of an employer's confidential or proprietary information, and use of an employer's credit card or other financial instrument for an unauthorized or nonbusiness purpose without prior approval from the employer to the list of what is considered misconduct.

2. Current law specifically provides that misconduct includes absenteeism by an employee on more than two occasions within the 120-day period before the date of the employee's termination, unless otherwise specified by his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature, or excessive tardiness by an employee in violation of a policy of the employer that has been communicated to the employee, if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness.

The bill instead provides that misconduct includes both of the following: 1) a violation of an employer's reasonable policy that covers employee absenteeism, tardiness, or both and that results in an employee's termination, if that termination is in accordance with that policy and the policy is specified by the employer in an employment manual of which the employee has acknowledged receipt with his or her signature; and 2) if an employer does not have a policy covering absenteeism that meets the criteria just described, absenteeism on more than two occasions within the 120-day period preceding an employee's termination, if the employee does not provide to the employer both notice and one or more valid reasons for the absenteeism.

3. The bill specifically provides that misconduct includes a violation by an employee of an employer's reasonable employment policy that covers the use of social media specified by the employer in an employment manual of which the employee has acknowledged receipt with his or her signature.

### ***General qualifying requirements***

Under current law, a claimant for UI benefits is generally required to 1) register for work, 2) be able to work and available for work, and 3) conduct a work search for each week in order to remain eligible. A claimant is required to conduct at least four work search actions each week, and DWD may require, by rule, that an individual conduct more than four work search actions per week. Finally, if a claimant is claiming benefits for a week other than an initial week, the claimant must provide information or job application materials that are requested by DWD and participate in a public employment office workshop or training program or in similar reemployment services required by DWD.

The bill does the following:

1. Requires a claimant who resides outside this state and who is claiming benefits for a week other than an initial week to register with his or her local job center website or labor market exchange and requires DWD to verify that each such claimant has complied with that requirement.
2. Requires DWD to conduct random audits for at least 50 percent of all work search actions reported to have been performed by claimants. Current law requires random audits of work search actions, but does not require a specific number or level of audits.

## OTHER CHANGES

### ***UI benefit augmentations subject to review by Joint Committee on Finance***

The bill provides that whenever any UI benefit augmentation is provided for through an act of Congress or by executive action of the president of the United States, the cochairpersons of the Joint Committee on Finance must be notified, in writing, of the proposed benefit augmentation. The bill defines “benefit augmentation” to mean any action whereby the governor or any other state official or agency would encumber or expend moneys received from, or accept reimbursement from, the federal government or whereby the governor or any other state agency or official would enter into any contract or agreement with the federal government or any federal agency to 1) increase the weekly UI benefit rate payable to claimants above what is provided under state law, or 2) increase the total amount of UI benefits to which a claimant is entitled above what is provided under state law. Under the bill, such a benefit augmentation is subject to a 14-day passive review by the Joint Committee on Finance.

In addition, the bill provides that no benefit augmentation may be effectuated unless it is subject to termination or cancellation by the Joint Committee on Finance.

### ***Worker's compensation; misconduct***

Currently, under the worker's compensation law, an employer is not liable for temporary disability benefits during an employee's healing period if the employee is suspended or terminated from employment due to misconduct, as defined under the UI law. Under the bill, the changes to the UI law's definition of misconduct described above apply under the worker's compensation law as well.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.