

E*Alert

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January, 2006

Wisconsin's Unemployment Insurance Reform Act signed into Law

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On December 28, 2005, Governor James Doyle signed into law 2005 Wisconsin Act 86. The act imposes some rather significant changes to Wisconsin's Unemployment Insurance system, which were based upon the recommendations of the Unemployment Insurance Advisory Committee. Among its most critical provisions, the new law raises unemployment insurance payments slightly over the next two years, imposes a penalty on employers who fail to respond during the initial fact-finding interview, creates a specific disqualification from benefits relating to absences and tardiness without notice, and creates a position in the Department of Justice to combat tax and unemployment insurance fraud.

Benefit Rate Increase

The act provides for increases in the maximum weekly benefit rate. The increase that became effective January 1, 2006, raised the maximum weekly rate from \$329 to \$341. The increase beginning January 1, 2007 will be from \$341 to \$355 per week.

Employer Fault and Benefit Charging

This act also redefined "employer fault" to include situations in which an employer fails to respond to an adjudicator's request for information during a fact-finding interview. Any benefits paid until a new decision is made will now "stand as paid" unless an ALJ finds that the failure is with good cause. This change in the law was necessitated by employers who fail to respond to requests for information at the initial adjudication level, but then subsequently provide the necessary information at the appeal level. This failure to respond has historically resulted in numerous overpayments when the initial determination is later overturned. The new law now provides consequences for an employer's failure to respond.

Disqualification for Failure to Give Notice of Absence/Tardiness

Perhaps the most significant change was made to § 108.04(5g), Wis. Stats., which now provides a benefit disqualification for an individual who accumulates a sufficient number of absences and tardiness without notice. In order for the provision to apply, an employer is required: (1) to have a written policy that defines what constitutes a “tardiness;” (2) to have a written policy that describes the process for giving notice of an absence or tardiness and notifies the employee that failure to provide adequate notice of an absence or tardiness may result in discharge; (3) to provide verification that the employee received the policy; (4) give one warning before the discharge; and (5) show that the policy was applied uniformly. If these elements are present and an employee accumulates six tardies or five absences without notice within a twelve-month period, the individual is disqualified from receiving benefits. To requalify for benefits, the individual must wait six weeks and have earned six times the employee’s weekly benefit rate.

Prior to the implementation of this new provision, an employer who terminated an employee for attendance-related problems was required to show that the employee engaged in misconduct, which was often a very difficult standard for an employer to meet.

Authorized Position in the Department of Justice

The provision also creates and appropriates funding for a half-time position in the Wisconsin Department of Justice. This person will be responsible for enforcing those statutes relating to unemployment that provide for criminal penalties, which will likely allow for the increased prosecution of Unemployment Insurance benefit fraud.

If you have any questions about the issues raised by this e-alert, please feel free to contact Oyvind Wistrom at (414) 273-3910 or by e-mail at owistrom@lindner-marsack.com.

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