ANALYSIS OF PROPOSED UI LAW CHANGE
Work Share Revisions

1. Description of Proposed Change

The work share program permits employers to reduce employees’ hours under a plan that permits employees to receive a work share benefit. Under pre-pandemic law, employers could reduce employees’ hours by 10-50% and employees would receive a work share benefit that is a pro-rated amount of unemployment insurance based on the reduction in hours. For example, an employee who usually works 40 hours per week could work 20 hours per week in a work share plan and receive a work share benefit of 50% of their maximum UI weekly benefit amount.

Work share plans also require employers to maintain existing health insurance and defined benefit or defined contribution retirement plans. Employees in work share plans are not required to complete four work search actions or register for work. Work share plans are designed to prevent layoffs but are not intended to become a permanent part of the employer’s business model. During the pandemic, employees who participated in work share plans also received the $300 or $600 weekly Federal Pandemic Unemployment Compensation.

Federal legislation enacted during the pandemic encouraged increased employer participation in work share because the federal government currently pays the work share benefit costs. State legislation, 2019 Wis. Act 185 and 2021 Wis. Act 4, provided greater flexibility for work share plans as follows:

1. Reducing the minimum number of employees in work share from 20 to 2, which especially benefited small businesses.
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2. Increasing the maximum reduction in employees’ hours from 50% to 60%, which is the maximum allowed under federal law.

3. Permits work share plans to cover any employees, not just employees in a particular work unit.

4. Eliminates the requirement that hours be apportioned equitably among employees in the work share plan.

5. Provides 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.

State law allows the Department’s Secretary to waive provisions of the work share statutes if doing so is necessary for state law to conform to federal requirements or if a waiver would result in increased federal funding of work share benefits. During the pandemic, the Secretary waived the requirement that a work share plan may only extend for a period of up to six months in a 5-year period, permitting plans to last up to 12 months in a 5-year period, as long as federal funding for work share benefits exists.

The Department proposes that the temporary changes to the work share statutes during the pandemic should be made permanent, as well as a permanent law change to permit plans to extend up to 12 months in a 5-year period. These changes will give employers greater flexibility when creating work share plans and may encourage more employers to use work share, which would reduce layoffs while preserving employee work benefits.
2. Proposed Statutory Changes

Section 108.062 (1) (c) is repealed.

(c) “Work unit” means an operational unit of employees designated by an employer for purposes of a work-share program, which may include more than one work site.

Section 108.062 (2) (b) and (e) are repealed.

(b) Provide for inclusion of at least 10 percent of the employees in the affected work unit on the date of submittal.

(e) Provide for apportionment of reduced working hours equitably among employees in the work-share program.

Section 108.062 (2) (a) (c), (d), (h), and (m) are amended to read:

(a) Specify the work unit in which the plan will be implemented, the affected positions, and the names of the employees filling those positions on the date of submittal.

(c) Provide for initial coverage under the plan of at least 20 positions that are filled on the effective date of the work-share program.

(d) Specify the period or periods when the plan will be in effect, which may not exceed a total of 6 months in any 5-year period within the same work unit.

(h) Specify the normal average hours per week worked by each employee in the work unit and the percentage reduction in the average hours of work per week worked by that employee, exclusive of overtime hours, which shall be applied in a uniform manner and which shall be at least 10 percent but not more than 60 percent of the normal hours per week of that employee.

(m) Indicate whether the plan includes employer-sponsored training to enhance job skills and acknowledge that the employees in the work-share program may participate in training funded under the federal Workforce Innovation and Opportunity Act, 29 USC 3101 to 3361, or
another federal law that enhances job skills without affecting availability for work, subject to
department approval.

**Section 108.062 (3) is amended to read:**

(3) Approval of plans. The department shall approve a plan if the plan includes all of the elements
specified in sub. (2) or (20), whichever is applicable. The approval is effective for the effective
period of the plan unless modified under sub. (3m).

**Section 108.062 (3r) is amended to read:**

(3r) Applicability of laws. A work-share program shall be governed by the law that was in effect
when the plan or modification was last approved under sub. (3) or (3m), until the program ends as
provided in sub. (4), but an employer with a work-share program governed by sub. (2) by a
previous version of this section may, while sub. (20) is in effect, apply for a modification under
sub. (3m), and that modification application shall be governed by sub. (20) the law in effect when
the modification is approved.

**Section 108.062 (4) is amended to read:**

(4) Effective period.

(a)

1. Except as provided in subd. 2., a work-share program becomes effective on the later
   of the Sunday of the 2nd week beginning or after approval of a work-share plan under
   sub. (3) or any Sunday after that day specified in the plan.

2. With respect to a work-share plan approved during a period described under sub. (20),
   the work-share program becomes effective on the later of the Sunday of or after approval
   of a work-share plan under sub. (3) or any Sunday after that day specified in the plan.
(b) A work-share program ends on the earlier of the last Sunday that precedes the end of the 6-month period beginning on the effective date of the program or any Sunday before that day specified in the plan unless the program terminates on an earlier date under sub. (5), (14), or (15).

**Section 108.062 (6) (b) is amended to read:**

(b) No employee who is included in a work-share program is eligible to receive any benefits for a week in which the plan is in effect in which the employee is engaged in work for the employer that sponsors the plan which, when combined with work performed by the employee for any other employer for the same week, exceed 90 percent of the employee's average hours of work per week for the employer that creates the plan, as identified in the plan.

**Section 108.062 (15) is amended to read:**

(15) Involuntary termination. If in any week there are fewer than 20 employees who are included in a work-share program of any employer, the program terminates on the 2nd Sunday following the end of that week. This subsection does not apply to a work-share program to which sub. (20) applies.

**Section 108.062 (19) is amended to read:**

(19) Secretary may waive compliance. The secretary may do any of the following waive compliance with any requirement under this section if the secretary determines that doing so is necessary to permit continued certification of this chapter for grants to this state under Title III of the federal Social Security Act, for maximum credit allowances to employers under the federal Unemployment Tax Act, or for this state to qualify for full federal financial participation in the cost of administration of this section and financing of benefits to employees participating in work-share programs under this section.
(a) Waive compliance with any requirement under this section.

(b) Waive the application of sub. (20), in whole or in part, to the extent necessary for any of the purposes specified in this subsection or, to the extent necessary for any of those purposes, require the continued application of any requirement under sub. (2).

Section 108.062 (20) of the statutes is repealed.

3. Effects of Proposed Change
   a. Policy: The proposed change may encourage more employers to set up work share plans, thereby potentially reducing layoffs and ensuring that employees’ benefits are uninterrupted.
   b. Administrative: This proposal will require training of Department staff.
   c. Fiscal: A fiscal estimate is not yet available.

4. State and Federal Issues

   There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

   This proposal would be effective for work share plans submitted on or after the effective date of the law changes.
Summary of Proposal:
This proposal would amend Wisconsin law to make the temporary changes to the work share statutes, during the pandemic, permanent, as well as a permanent law change to permit plans to extend up to 12 months in a 5-year period. These changes will give employers greater flexibility when creating work share plans and may encourage more employers to use work share, which would reduce layoffs while preserving employee work benefits.

UI Trust Fund Impact:
This proposal is not expected to have a measurable impact on the UI Trust Fund.

IT and Administrative Impact:
This proposal would require 180 hours of IT work at a cost of approximately $16,000. There is expected to be a one-time $5,287 administrative impact.

Trust Fund Methodology:
Prior to the Pandemic, work-share was a lightly used program. As the economy exits the pandemic, it is expected that work-share usage will return to pre-pandemic levels. As such, changes in work-share will not have a measurable impact on UI benefits or the UI Trust Fund.