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## *FOR YOUR INFORMATION*

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News for School and Municipal Clients

### **New Act Amends Unemployment Insurance Law**

Unemployment insurance benefits are intended to offer temporary financial assistance to unemployed workers. Such benefits provide economic stability to the workers and their families during temporary periods of unemployment and help lessen the effect of unemployment on the local economy. Recently, the Wisconsin legislature made significant changes to the unemployment insurance law as a result of recommendations from the state's Unemployment Insurance Advisory Council. The changes are contained in 2005 Wisconsin Act 86 and, generally, became effective on January 1, 2006; however, some provisions of the Act have a later effective date. One significant change that directly affects municipal employers, including school districts, and their employees is summarized below. This significant change relates to claimants who are discharged for failing to notify the employer of tardiness or absenteeism and the effect of such a discharge on unemployment insurance benefits.

When an employee files a claim for benefits, he or she is called a claimant by the Unemployment Insurance Division of the Department of Workforce Development (DWD). A claimant must meet certain eligibility requirements before he or she is deemed eligible for unemployment insurance benefits. In certain cases, if a claimant is

otherwise eligible for unemployment insurance benefits but has been discharged for misconduct connected with employment, the claimant is ineligible to receive benefits until seven weeks after the discharge and until the employee earns wages of at least fourteen (14) times the employee's weekly unemployment insurance rate. Such discharges are identified as "disqualifications" under the unemployment insurance law because they "disqualify" an otherwise eligible claimant from unemployment insurance benefits for a period of time and/or until the claimant meets certain criteria.

2005 Wisconsin Act 86 now establishes a new disqualification under the unemployment insurance law for discharges relating to an employee's failure to notify the employer of absenteeism and tardiness. This disqualification becomes effective for discharges occurring on or after April 2, 2006.

Specifically, if an employee is discharged for failing to notify his or her employer of absenteeism or tardiness that has become excessive, and the employer complies with additional requirements set forth below related to establishing a written policy and providing the employee with a warning related to the conduct, a claimant will be disqualified for unemployment insurance benefits. As a result, the claimant will be

ineligible to receive benefits until six (6) weeks have elapsed and the employee earns wages after the week in which the discharge occurs equal to at least six (6) times the employee's weekly benefit rate in employment or other work covered by the unemployment insurance law.

Act 86 states that tardiness is excessive if an employee is late for six (6) or more scheduled workdays in the twelve-month period preceding the date of the discharge without providing adequate notice to his or her employer. It also provides that absenteeism is excessive if an employee is absent five (5) or more scheduled workdays in the twelve-month period preceding the date of the discharge without providing adequate notice to his or her employer.

Employers seeking this disqualification of the benefits of former employees must take certain actions to take advantage of this change. First, the employer must have a written policy on notification of tardiness and absences that (1) defines what constitutes a single occurrence of tardiness and absenteeism; (2) describes the process for providing adequate notice of tardiness and absence; and (3) notifies the employee that failure to provide adequate notice of an absence or tardiness may lead to discharge. Second, the employer must provide a copy of the written policy to each employee and have written evidence that the employee received

a copy of the policy. Third, the employer must have given the employee at least one warning concerning the employee's violation of the employer's written policy within the twelve-month period preceding the date of discharge. Fourth, and finally, the employer must apply the written policy uniformly to all employees of the employer.

Thus, this new amendment provides specific direction to employers and employees as to what constitutes absenteeism or tardiness sufficient to warrant discharge and disqualification from unemployment insurance benefits. It also sets forth the steps that the employer must take to ensure that the employee is disqualified from unemployment insurance benefits on the basis failing to notify the employer of absenteeism or tardiness. Previously, employers were left to follow the direction provided by decisions from the DWD, the agency that interprets and enforces the unemployment insurance law. Act 86 remains consistent with some of the central criteria in these decisions that led to the DWD's decisions to disqualify some claimants on the basis of absenteeism, including (1) the frequency of the employee's attendance problems, (2) the employee's failure to give notice or valid reasons for the absences, and (3) the warnings given to employees that their attendance is unsatisfactory.

*If you have any questions regarding this topic, please call any of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.*

Michael J. Julka (608) 286-7238  
Ronald J. Kotnik (608) 286-7214  
William L. Fahey (608) 286-7234

David E. Rohrer (608) 286-7249  
Michael J. Lawton (608) 286-7236  
Frank C. Sutherland (608) 286-7243  
Joanne Harmon Curry (608) 286-7248

Shana R. Lewis (608) 286-7202  
Richard F. Verstegen (608) 286-7233  
Carrie M. Benedon (608) 286-7208

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