**Wisconsin Supreme Court Issues Important Decision in**

**UI Benefit Eligibility Case**

In 2013, state lawmakers substantially tightened employee eligibility for unemployment insurance (UI) benefits by revising Wisconsin's UI benefit misconduct law.

By way of background, a terminated employee is ineligible for UI benefits for a specified period and until certain conditions are met if the employee was terminated for misconduct. The previous misconduct standard was based on a 1941 Wisconsin Supreme Court case. Over time, this standard had been broadly interpreted such that only the most egregious examples of employee misconduct resulted in a discharged employee being denied UI benefits.

2013 Wisconsin Act 20 clarified the definition of misconduct and enumerated eight specific acts of misconduct which would disqualify a terminated employee from eligibility for UI benefits. For instance:

Misconduct includes absenteeism by an employee on more than 2 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.

For the past three years, this "absenteeism" misconduct standard has been the subject of ongoing litigation. The facts of the case are as follows:

Valerie Beres was employed by Mequon Jewish Campus. Beres had signed her employer's written attendance policy providing that an employee in his or her probationary period may have his or her employment terminated if, in a single instance, the employee does not give the employer advanced notice of an absence. The employer's policy was that an employee must "call-in 2 hours ahead of time" if the employee was unable to work his or her shift.

Beres was in her 90-day probationary period when she did not come to work due to "flulike symptoms." She did not communicate with her employer two hours prior to the beginning of her shift to inform her employer that she was sick and that she was unable to work her shift. The employer terminated her employment three days later because of her violation of the employer's absenteeism policy.

Shortly thereafter, Beres filed for UI benefits. The Wisconsin Department of Workforce Development (DWD) denied her claim and cited her violation of the employer's written "No Call, No Show" attendance policy as an act of misconduct. This administrative action set off a protracted legal dispute that eventually made its way to the Wisconsin Supreme Court.

The crux of the legal dispute are the two prongs of the misconduct for absenteeism standard. Beres claims an employer's absenteeism policy may not be stricter than the "2 in 120-day" standard. The DWD counters that an employer's absentee policy can exceed this standard if the policy is set forth in an employment manual of which the employee has acknowledged receipt with his or her signature.

The Wisconsin Supreme Court unanimously upheld the statutory interpretation made by the DWD. Writing for the Court, Justice Abrahamson stated:

Beres's employer has an absenteeism policy specified in its employment manual. Beres acknowledged receipt of this policy in the employment manual with her signature. Beres violated the employer's policy when she missed an entire shift without providing her employer notice of the absenteeism. Under these circumstances, Beres's violation of her employer's written absenteeism policy constituted "misconduct" by absenteeism and Beres was properly denied the benefits at issue.