

**1848 UNEMPLOYMENT INSURANCE FRAUD: MAKING A FALSE STATEMENT TO OBTAIN A BENEFIT PAYMENT — § 108.24(1)(a)**

**Statutory Definition of the Crime**

Unemployment insurance fraud, as defined in § 108.24(1)(a) of the Wisconsin Statutes, is committed by any person who knowingly makes a false statement or representation to obtain any benefit payment under Chapter 108, either for himself or herself or for any other person.

**State's Burden of Proof**

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

**Elements of the Crime That the State Must Prove**

1. The defendant obtained a benefit under Chapter 108 for (himself) (herself) (another person), by making a (statement) (representation).
2. The (statement) (representation) to obtain a benefit under Chapter 108 was false when made.
3. The defendant knew the (statement) (representation) to obtain a benefit under Chapter 108 was false when made.

### **Deciding About Knowledge**

You cannot look into a person’s mind to find knowledge. Knowledge must be found, if found at all, from the defendant’s acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon knowledge.

### **Jury’s Decision**

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

ADD THE FOLLOWING IF THE DEFENDANT IS CHARGED WITH FRAUDULENTLY SECURING MORE THAN \$2,500 AND THE EVIDENCE WOULD SUPPORT THAT FINDING.<sup>1</sup>

If you find the defendant guilty, you must also determine beyond a reasonable doubt the value of any unemployment insurance benefits for which the defendant was not eligible and insert that amount in the verdict.<sup>2</sup>

### **Determining Value**

(“Was the value of any benefit obtained more than \$10,000?”)

Answer: “yes” or “no.”)

(“Was the value of any benefit obtained more than \$5,000?”)

Answer “yes” or “no.”)

(“Was the value of any benefit obtained more than \$2,500?”)

Answer “yes” or “no.”)

Before you answer “yes,” you must be satisfied beyond a reasonable doubt that the value of any benefit obtained was more than the amount stated in the question.

#### COMMENT

Wis JI-Criminal 1848 was approved by the Committee in July 2018.

This instruction is for criminal violations of § 108.24(1)(a), making a false statement to obtain unemployment insurance benefit payments. The penalty structure was modified by 2017 Wisconsin Act 147 [effective date: April 1, 2018]. Fraudulently obtaining unemployment benefits not exceeding \$2,500 is a Class A misdemeanor. The penalty increases to a felony if the value of the benefit received exceeds specified amounts. There are four ranges of criminal penalties, depending on the value of the benefits or payments obtained. See sub. (2) of § 108.24. The penalty issue is addressed by adding a special question at the end of the instruction. See footnote 1, below.

1. The jury must make a finding of the value of the unemployment insurance benefit payment if the felony offense is charged and if the evidence supports a finding that the required amount is involved. *Heyroth v. State*, 275 Wis. 104, 81 N.W.2d 56 (1957). While value may not, strictly speaking, be an element of the crime, it determines the range of permissible penalties and should be established “beyond a reasonable doubt.”

2. The penalties for violations of § 108.24(1)(a) depend on the value of the payment or benefit. The jury should be asked to determine that value. (See, by analogy, Wis JI-Criminal 1441 Theft, footnote 8.) The applicable penalty is capped by the crime charged in the complaint or information. The penalties are specified in sub. (1)(b) as follows:

<u>Value of benefit</u>	<u>Penalty</u>
less than \$2,500	Class A misdemeanor
more than \$2,500 but does not exceed \$5,000	Class I felony
more than \$5,000 but does not exceed \$10,000	Class H felony
more than \$10,000	Class G felony

The Committee concluded that if the securing of less than \$2,500 is charged, the jury need not make a finding of value.