

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Department of Workforce Development
GEF-1 Building Room H206
201 East Washington Avenue
Madison, Wisconsin

March 8, 2012

Members Present: Mr. Buchen, Ms. Feistel, Mr. Gotzler, Ms. Gustafson, Ms. Knutson (Chair), Mr. Lump, and Mr. McGowan

Department Staff: Ms. Banicki, Mr. Barkelar (UI Administrator), Ms. James, Ms. Maxwell (Executive Assistant to the Secretary), Mr. McHugh, Ms. Reid (UI Deputy Administrator), Ms. Sausen, Mr. Schunk, Mr. Shahrani, and Mr. Sussman.

- 1. Call to Order and Introductions:** Ms. Knutson convened the Unemployment Insurance Advisory Council (UIAC) meeting at approximately 10:35 a.m. in accordance with Wisconsin's open meetings law. UIAC members, Department staff, and members of the audience introduced themselves. Ms. Knutson announced that unfortunately there was not a quorum to conduct official business. Ms. Knutson welcomed Senator Julie Lassa and Representative Roger Rivard.
- 2. Meeting Minutes:** The members of the UIAC reviewed but did not approve the February 2, 2012, meeting minutes. Ms. Knutson stated that if anyone had any corrections they could provide those before the next meeting.
- 3. Annual Fraud Detection Report:** Mr. Shahrani presented the Annual Fraud Detection Report. He noted that Wisconsin law provides that the Department must annually give a report related to its efforts concerning fraud detection and prosecution. The report is to be given on or about February 15th of each year. The report is under development and just needed final formatting and review and he provided the Council the summary of the highlights of it.

The Division of Unemployment Insurance (UI) strengthened its program integrity efforts by utilizing numerous strategies, which included:

- a. Hiring a new supervisor in program integrity;
- b. Implementing an automated inmate cross-match system;
- c. Employing more effective procedures in the use of state and federal new hire directories;
- d. Increasing education using various mediums to inform claimants of fraud consequences; and,
- e. Investigating a higher number of potential fraud claims identified through various means.

Mr. Shahrani handed out notes to the members of the Unemployment Insurance

Advisory Council that highlighted the increased fraud detection and prevention initiatives undertaken in 2011. As an example, the Unemployment Insurance Division increased and expanded program integrity initiatives that led to the detection of more fraud. In 2011, the Division uncovered:

- a. Non-fraud overpayments of \$46.4 million, which is \$5.0 million, or 12.1%, more than it detected in 2010; and,
- b. Fraud overpayments of \$41.6 million, which is \$4.1 million, or 11.1%, more than it detected in 2010.

Ms. Knutson informed the Council that the Department was working on the final draft of the Annual Fraud Detection Report and that it would be presented to Council members when in final form.

- 4. LRB-3454/1 Work Share Draft Legislation:** Senator Julia Lassa presented to the Council draft legislation to implement a work share program for Wisconsin. Under a work share program, the working hours of employees are reduced in an equitable manner in lieu of a total layoff of some of the employees and a continuation of employment by the other employees. Senator Lassa provided an example of how a work share program would work under her proposed bill. She mentioned that the current draft of the legislation complied with the requirements of the recently enacted federal legislation authorizing states to have a work share plan. The advantage to complying with the federal requirements is that state employers would receive full federal funding of the unemployment insurance benefits paid to participating workers in the program.

Senator Lassa stated that the bill was being circulated for sponsorship but that since the current Legislative session only had one more week she was not introducing it at the moment, but she was starting to lay the groundwork for the bill.

- 5. Wisconsin Workers Win (W3) (AB 450 training for benefit claimants):** Ms. Knutson provided an update on the current status of the W3 bill. The bill creates a pilot program to provide special occupational training for Wisconsin benefit claimants. The Council supported the bill and Legislature adopted it with three amendments on February 21, 2012. These amendments:
 - a. Provided that the employer providing the training, instead of the State, will be treated as the employer for purposes of worker's compensation;
 - b. Revised the bill's provisions that impact Chapter 102 regarding setting the wage for worker's compensation benefits for employees participating in the program. The Worker's Compensation Advisory Council had recommended this revision; and,
 - c. Provided a sunset date with respect to the bill of July 1, 2013.

Ms. Knutson stated that Governor Scott Walker was expected to sign the bill and it would have an effective date of 180 days after his signature. In May of 2013, the bill requires the Unemployment Insurance Division to provide an update on the program

to the Legislature. Ms. Knutson advised that the bill will be in effect for a short time before the Legislature will need to determine whether to extend or eliminate the benefit provisions contained in it.

- 6. Status of Unemployment Insurance Advisory Council Bills:** Ms. Knutson gave the following updates with respect to state legislation:
- a. **SB 219 (AB 310)** was adopted by the Senate and was passed by the Joint Finance Committee on March 6, 2012 and the Assembly is scheduled to take action with respect to it on March 13, 2012. The Council had previously approved the provisions contained in SB 219 at its September 22, 2011, meeting. SB 219 dealt with a wide-range of unemployment insurance matters and covered nine different areas of unemployment insurance law.
 - b. **SB 417 (AB 504)** was approved by the Senate and was in the Assembly Committee on Rules. On March 6, 2012 the bill moved out of committee and the assembly is expected to vote on it on March 13, 2012. Ms. Knutson highlighted four matters that are contained in SB 417:
 1. **Concealment** – If a claimant in filing an application for benefits or a claim conceals certain material facts, the claimant will be ineligible for a specified amount of benefits;
 2. **Availability for Work** – Tightens the availability for work requirement when a claimant is outside of the country;
 3. **Interest on Delinquent Payments** – Reduces the interest charged to employers who are behind in payments pursuant to Chapter 108; and,
 4. **Appeal Tribunals** – Expands the number of potential candidates who may be appointed to serve as a temporary administrative law judge to hear unemployment insurance hearings and specifies that an appeal tribunal's actions must be consistent with applicable state and federal laws.

The Council had previously approved the provisions contained in SB 417 at its meeting on January 12, 2012.
 - c. **Bonding Legislation.** Ms. Knutson communicated that the Department is working on enabling legislation with respect to bonding. The Department is working with the State's bonding council and DOA capital finance and when the Department has further information it would be brought back to the Council for its review at a future meeting.
- 7. Middle Class Tax Relief and Job Creation Act of 2012:** On February 22, 2012 President Obama signed the Middle Class Tax Relief and Job Creation Act of 2012 (Act). Presentations were made with respect to eight aspects of the Act:
- a. **Impact on Extended Benefit and Emergency Unemployment Compensation Programs:** Mr. Schunk presented on the Act's impact on Extended Benefit (EB)

and Emergency Unemployment Compensation (EUC) programs. The Act extended the full federal funding of EB and three year look back through the end of 2012. Due to Wisconsin's unemployment rate decreasing, it was mentioned that by the end of April the Department estimates that Wisconsin will trigger off the EB program. The Act extends the EUC program through the week ending of December 29 of 2012. The Act also made a number of changes with respect to the EUC program:

1. EUC will no longer have the phase out portion to its program. Therefore as of the week ending of December 29 of 2012, claimants will not receive EUC.
2. There are currently four EUC benefit extensions available or what is known as Tiers. Not all residents of all states are eligible for all four Tiers. Whether a state resident is eligible for a EUC Tier is dependent on whether the state has triggered off the particular Tier and the trigger is tied the state's unemployment rate. As of May, the Act added some triggers to some of the Tiers contained within the EUC Program. For instance, Tier 2 currently has no trigger for a state to go off of it, but as of May a trigger has been added that will make a state's residents no longer eligible for Tier 2 if the state's unemployment rate is sufficiently low.
3. As of the week ending September 8, the Act decreases the length of time that a claimant may remain in a Tier. As an example, the Act reduces the length of time from twenty to fourteen weeks a claimant can be in Tier 1.

b. **Impact on Job Search Requirements:** Ms. Banicki explained how the Act created a federal definition for the job search requirement and Ms. Banicki mentioned to the Council that these included requiring:

1. A claimant to register for employment services;
2. A claimant to engage in work search appropriate to labor market and the claimant's skills;
3. A claimant to make a certain number of contacts with each state able to determine the amount;
4. A claimant to keep a record of all employer contacts; and,
5. Work search audits to be done with the number of audits conducted by a state to be determined by the Department of Labor.

Ms. Banicki communicated that these changes applied to both state and federally funded unemployment insurance programs. She also stated that Wisconsin already complied with these requirements except there may be a need to increase the number of work search audits.

c. **Reemployment Services and Activities:** Mr. Schunk highlighted that as of March 23, 2012, states will be required to provide reemployment services to all recipients of federal extensions. Wisconsin does have some reemployment services it provides to some claimants, but the change in federal law will require more resources to provide these services to all individuals who are either

receiving EUC or EB. The Act requires every claimant receiving EB or EUC to complete these services unless they have completed a reemployment service within the last three to four months or if they have justifiable cause for nonparticipation. In March the Department of Labor is expected to provide guidance on what will satisfy the requirement of justifiable cause for nonparticipation.

Two divisions within the Department will be handling complying with this aspect of the federal law. The Division of Employment and Training will provide the reemployment services to claimants. The Division of Unemployment Insurance will monitor if a claimant does not participate in reemployment services. If it is determined that a claimant did not participate in reemployment services, it will disqualify the individual from receiving federal benefits.

- d. **Overpayment Recovery of Overpaid Federal Benefits:** Ms. Banicki highlighted that with respect to EUC and EB, currently a state may only offset fifty percent of the overpayment from future unemployment payments to the claimant. The Act enables states to offset one-hundred percent of the federal benefits.
 - e. **Drug Testing Provisions:** Mr. Sussman noted that the Act allows states to require an unemployment insurance claimant to take a drug test if a claimant:
 - 1. Lost his or her job due to the illegal use of drugs; or,
 - 2. May only obtain suitable work in an occupation that regularly conducts drug testing.
 - f. **Work Share Program:** Mr. Sussman explained that the Act allows states to implement a work share program and receive full federal funding of the unemployment insurance benefits paid to workers participating in the program. It appears that Senator Lassa's draft legislation complies with the requirements of the Act in order to receive full federal funding.
 - g. **Self-Employment Assistance Program:** Self-Employment Assistance programs are designed to encourage and enable unemployed workers to create their own jobs by starting their own small businesses. Under these programs, States can pay a self-employed allowance, instead of regular unemployment insurance benefits, to help unemployed workers while they are establishing businesses and becoming self-employed. Mr. Sussman highlighted that the Act allows states to now also include EUC or EB claimants in the program.
 - h. **Demonstration Projects:** Mr. Sussman communicated that the Act allows up to ten States to use unemployment insurance funds to test reemployment pilot programs where unemployed workers are placed in training positions or jobs. It was emphasized that the W3 program may be eligible to be a pilot program under the Act.
8. **Work Search and Registration Requirement Changes:** Ms. Knutson highlighted that at the February meeting the Council was given information regarding the Department's recommended changes to work search and work registration

requirements. The Department is recommending that the work search and work registration requirements be the same for claimants receiving federal and state unemployment insurance benefits. She also highlighted that the current DWD administrative rules contained in Chapter 126 pertaining to work registration are confusing. More specifically, she raised the fact that there is a need for clarification of the requirements contained in these rules to ensure that it is clear that the rules include the requirement:

- a. That registration with job service by submission of a resume online with jobcenterofwisconsin.com is a required condition of eligibility for benefits; and,
- b. The waiver of work registration and work search requirements should dovetail.

The initial thought was to just do minor changes to Chapter 126 to provide this clarification, but it was determined that a major overhaul was necessary. She noted that the Department handed out preliminary first draft of statutory and rule changes.

- 9. Correspondence:** Ms. Knutson mentioned that the Department and Council members received correspondence from a claimant who had concerns about an overpayment determination. The Department followed up with the claimant and has not received any subsequent correspondence from the claimant.
- 10. Future Meetings:** The Department is looking for a May or June future meeting with a plan to have a brief meeting followed by a public hearing. For the public hearing, the Department intends to do videoconferencing with a statewide broadcast that would be held throughout the day and include an evening session to give people who are working a chance to participate.
- 11. Other Business:** No additional business.
- 12. Adjournment:** Discussion of all agenda items was completed and the meeting adjourned at approximately noon.