

# UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

## Meeting Minutes

Offices of the State of Wisconsin Department of Workforce Development  
201 East Washington Avenue, GEF-1, Room F305  
Madison, WI

October 17, 2013

The meeting was preceded by public notice as required under s. 19.84, Stats.

**Members Present:** Janell Knutson (Chair), Scott Manley, Edward Lump, Earl Gustafson, James LaCourt, Anthony Rainey, Mark Reihl, Michael Gotzler, Terrence McGowan (Via Telephone).

**Department Staff Present:** Bob Rodriguez (UI Administrator), Tyler Tichenor, Scott Sussman, Tom McHugh, Pam James, Janet Sausen, Robert Usarek, Jill Moksouphanh, Betsy Kenyon, Laurie Boehlke, Lutfi Shahrani, Amy Banicki, Karen Schultz and Robin Gallagher.

**State Legislators, Legislative Aides and Members of the Public Present:** BJ Dernbach (Representative Dan Knodl's Office), Shane Griesbach (Operating Engineers Local 139), Chris Reader (Wisconsin Manufacturer's & Commerce), Tammi Richmond (Legislative Audit Bureau), Victor Forberger (Wisconsin UI Clinic), Brian Dake (Wisconsin Independent Businesses, Inc.), Bob Anderson (Legal Action of Wisconsin), Mary Wilkosz (ABR Employment Services), Bill Smith (National Federation of Independent Business) and Dan Shaw (Daily Reporter).

### 1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council ("Council") meeting to order at approximately 10:10 a.m. in accordance with Wisconsin's open meetings law. Council members introduced themselves and legislative aide Mr. Dernbach was acknowledged.

### 2. Approval of Minutes

Motion by Mr. Lump, second by Mr. Gotzler to approve the September 19, 2013 minutes without corrections. Motion carried unanimously.

### 3. Report on Unemployment Insurance Reserve Fund

Mr. McHugh provided an update to the Council related to highlights of the Unemployment Insurance Reserve Fund. Highlights include:

- The October 11, 2013 Trust Fund loan balance decreased \$430.3 million (50.8%) to \$416.3 million compared to 2012.

- A payment of \$18.9 million for federal fiscal year 2013 was made to the United States Treasury on September 30 to pay accrued interest on federal loans used to pay benefits. Due to provisions in the state budget, employers were not charged an assessment to pay this federal interest. Instead, the Wisconsin Legislature allocated general purpose revenue to pay this interest. The projected interest for fiscal year 2014 is approximately \$6.7 million and the Legislature has allocated additional general purpose revenue to pay this interest.
- Tax receipts through September 2013 totaled \$993.4 million compared to \$1.03 billion in 2012.
- Regular UI benefits paid through October 5, 2013 decreased by \$42.6 million (5.9%) to \$682.7 million compared to 2012.
- Employer tax rates for 2014 were calculated and rate notices were mailed to employers this week. Some comparisons to last year include:
  - Approximately 19,000 employers received the new employer rate because they had not yet paid wages for three years. This is approximately the same number as last year.
  - Approximately 23,600 employers were rated at the minimum basic rate of .07%, a decrease of approximately 100 employers.
  - Approximately 8,800 employers were rated at the maximum total rate of 9.8%, a decrease from approximately 9,900.
  - 9,886 employers received a 10% write-off that totaled \$171.9 million, compared to 11,292 employers receiving a 10% write-off totaling \$199.1 million last year.

#### **4. Update on the Trust Fund Solvency Subcommittee**

Ms. Knutson provided an update on the work and status of the Trust Fund Solvency Subcommittee (Subcommittee). The Subcommittee last met after the Council meeting on September 19, where additional research items were presented to the Subcommittee. The Subcommittee will be meeting later today to review additional research and discuss policy options. The Subcommittee is expecting to provide their recommendations to the full Council at the November 21, 2013 meeting.

#### **5. Department Update:**

##### **STC (Work Share)**

The department submitted a draft proposal for grant funding to cover costs associated with the administration and marketing of the work share program to the Department of Labor. Division staff continues to work diligently on programming changes and other administrative issues involving implementation of the program.

## **Administrative Rules**

- A public hearing is scheduled for November 4 for both the permanent and emergency rules relating to chs. DWD 126, 127 and 129, unemployment insurance work registration, work search and benefit claiming procedures. The hearing will be simultaneously held at three locations in order to maximize the ability of the public to provide comment on the proposed amendments to these administrative code provisions.
- An emergency rule relating to chs. DWD 126, 127 and 129 took effect on September 29, 2013, with the exception of the changes to the work search and work registration waivers. The changes to the work search and work registration waivers will be effective when the Secretary determines all programming changes necessary to implement the changes to the work search and work registration waivers have been made and the department is ready to implement the waiver changes.
- The scope statement for chs. DWD 111, 113, 115, 132 and 140 and creating ch. DWD 114, was published in the Wisconsin Administrative Register and is expected to be approved by the Secretary on October 28. Department staff will begin drafting the hearing draft rule upon approval of the Secretary.

## **Impact of Federal Government Shutdown**

Mr. Rodriguez provided an update on the impact on the Unemployment Insurance Division with respect to the partial federal government shutdown and raising the debt ceiling. Congress the previous night had resolved both of these issues and the legislation funds the federal government through January 15, 2014, and raises the debt ceiling through February 7, 2014. The partial federal government shutdown began October 1, 2013, and had minimal, to no impact on how the Division of Unemployment Insurance operates on a day-to-day basis. The department was approved by federal government to use carry over funds to pay benefits and salary of employees that would cover approximately four months. With limited staff available at the Department of Labor, the biggest challenge the department has experienced is lack of guidance on certain issues.

If Congress had not raised the debt ceiling, the impact would have had a severely negative impact on the department and only a few days of benefits would have been payable. The department formed a team of staff to explore different options available in the event the debt ceiling was not raised and establish a contingency plan. Although the current situation was averted, the division continues to learn and will be better prepared in the future if the situation arises again. There was no guidance provided by the Department of Labor on the debt ceiling issue.

## **Emergency Unemployment Compensation**

Ms. Knutson reminded the Council that unless Congress extends the Emergency Unemployment Compensation (EUC) program, the last payable week of EUC benefits will be the week ending December 28, 2013.

## **Assembly Bill 400/Senate Bill 332**

Senator Mary Lazich and Representative Amy Loudenbeck submitted correspondence requesting Council support of legislation creating a special occupational training pilot program in three Wisconsin geographic regions for unemployment insurance claimants. A similar program was administered from June 1, 2012 to June 3, 2013.

The main differences between the previous program and the proposed program include:

- Claimants will be able to work up to 40 hours per week with the special occupational employers, compared to the maximum of 24 hours per week under the prior program.
- If a claimant works at least 20 hours in a given week under the program, the requirement that a claimant conducts work searches or accepts an offer of suitable work is waived. Under the prior program, the claimant was required to follow the rules applicable to all unemployment insurance claimants with respect to conducting work searches and accepting suitable offers of work.
- Claimants will receive a graduated amount of a stipend between the range of \$50-\$100 per week, compared to the \$75 per week stipend received under the prior program. The schedule shall provide for the payment of larger stipends to claimants who receive placements earlier in their benefit year and smaller stipends to claimants who receive placements later in their benefit year.

## **Direct Sellers Exclusion**

Representative Dan Knodl submitted correspondence requesting Council support of legislation related to people who engage in the business of direct selling to expand the direct seller exclusion within Wisconsin's unemployment insurance law. The proposed changes are intended to have Wisconsin's exclusion mirror the same exclusion contained in federal law.

Typically, if Wisconsin law excludes an employer from paying state unemployment taxes, the employer faces additional federal taxation. Since federal law provides a similar exclusion from the federal unemployment tax, Wisconsin direct seller companies should avoid additional federal unemployment tax.

Hearings on the legislation are scheduled for next week and the legislation is expected to be presented on the floor on November 12, 2013.

## **Labor and Industry Review Commission (LIRC) Proposed Law Changes**

LIRC submitted correspondence to the Council that provided a brief summary of proposed law changes, along with proposed statutory language, and requested the Council's consideration of LIRC's proposed statutory changes. A representative from LIRC is expected to speak to the Council at the November meeting and it was requested that the Council not take any action with respect to this legislation until the November meeting.

## **Senate Bill 276**

Senator Sheila Harsdorf and Representative Erik Severson submitted correspondence to the Council requesting input with respect to legislation concerning work performed by employees involved in "cottage industries."

The bill's authors have requested that the Council table this agenda item until further notice.

## **Assembly Bill 374**

Assembly Bill 374 relates to the deletion of the waiting period for the collection of unemployment insurance benefits. Representatives Debra Kolste and Cory Mason requested the Council's position on the bill.

## **Senate Bill 273**

Senate Bill 273 relates to requirements for the department when issuing determinations under the unemployment insurance law or any other law regulating employment that is administered by the department. Senators Julie Lassa and Mark Miller requested the Council's position on the bill.

## **6. Other Business**

### **Administrative Law Judges**

Mr. Lump requested information from the department related to the qualifications and training of the department's administrative law judges (ALJ). Mr. Lump stated there is a feeling of a lack of fairness and requested a short summary of expectations of an ALJ.

Ms. Knutson explained new hires receive training on department procedures and interpretation of statutes and rules and are required to attend the yearly Bureau of Legal Affairs Conference. This year the conference included an extra day of training on the writing of legal decisions. In December additional training will be provided on new law changes and interpretations. This is also the first year that performance evaluations for an ALJ will include a code of conduct. Ms. Knutson offered the opportunity to Mr. Lump and others interested members to discuss the entire training process. Mr. Gotzler applauded the department for its focus on this issue and requested that the department continue to provide information to associations and organizations on the hearing process.

## **7. Recess for Caucus and Reconvene**

Motion from Mr. Manley, second by Mr. Reihl to recess and go into closed caucus session pursuant to s. 19.85 (1) (ee), Stats., to discuss the legislative proposals and reconvene later in the day. The motion carried unanimously and the meeting recessed at approximately 11:55 a.m.

The Council reconvened at 12:37 p.m.

## **8. Report from Caucus**

Ms. Knutson requested a report from the Council following caucus on the proposals discussed earlier in the meeting.

### **Senate Bill 332 and Assembly Bill**

Motion from Mr. Manley, second by Mr. Reihl to support Senate Bill 332 and Assembly Bill 400 related to the pilot training program for unemployment insurance claimants. The motion carried unanimously.

### **Direct Seller Exclusion**

Motion from Mr. Manley, second by Mr. Reihl to support the direct seller exclusion proposal with the addition of the following underlined language on page 2, line 5:

*“...remuneration therefor is directly related to the sale or other output related to the sales rather than to ....”*

The motion carried unanimously.

### **Assembly Bill 374**

The Council did not reach a consensus on Assembly Bill 374 relating to the deletion of the waiting period for the collection of unemployment insurance benefits.

### **Senate Bill 273**

The Council did not reach a consensus on Senate Bill 273 relating to adverse decisions.

Ms. Knutson will provide written correspondence to the sponsors of all proposals stating the Council's position. No additional information was provided by the labor or management members to be included in the correspondence.

## **9. Future Meetings**

The Council is scheduled to meet on November 21, 2013.

## **10. Adjournment**

Motion by Mr. Reihl, second by Mr. Gustafson to adjourn at 12:41 p.m. The motion carried unanimously.