

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Offices of the State of Wisconsin Department of Workforce Development
201 East Washington Avenue, GEF-1, Room H306
Madison, WI

November 18, 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, Michael Gotzler, Anthony Rainey, Mark Reihl, Shane Griesbach and Phil Neuenfeldt.

Department Staff Present: Bob Rodriguez (UI Administrator), Scott Sussman, Tom McHugh, Pam James, Mary Jan Rosenak, Janet Sausen, Robert Usarek, Jill Moksouphanh, Jason Schunk, Laurie Boehlke, Lutfi Shahrani, Amy Banicki, Karen Schultz and Robin Gallagher.

State Legislators, Legislative Aides and Members of the Public Present: Chris Reader (Wisconsin Manufacturers & Commerce), Tammi Richmond (Legislative Audit Bureau), Victor Forberger (Wisconsin UI Law Clinic), Brian Dake (Wisconsin Independent Businesses, Inc.), Bob Anderson (Legal Action of Wisconsin), Tracey Schwalbe (Labor and Industry Review Commission), Commissioner Bill Jordahl (Labor and Industry Review Commission), Jim Boullion (AGC Of Wisconsin) 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 9:35 a.m. in accordance with Wisconsin’s open meetings law. Ms. Knutson welcomed Mr. Griesbach, new Council member who will finish the term of Terry McGowan and Commissioner Jordahl and Ms. Schwalbe from LIRC. Council members introduced themselves.

2. Approval of Minutes

Motion by Mr. Lump, second by Mr. Rainey, to approve the October 17, 2013, minutes without corrections. Motion carried unanimously.

3. Correspondence Relating to Proposed Law Changes of the Labor and Industry Review Commission from Chairperson Laurie McCallum

Ms. Schwalbe, general counsel of the Labor and Industry Review Commission (LIRC) requested Council support on proposed changes to provisions contained in chs. 103 and 108, Stats. LIRC handles the appeals of decisions issued by administrative law judges within the Department of Workforce Development unemployment insurance, workers compensation and equal rights divisions. LIRC is comprised of three commissioners, each serving staggered six-year terms. LIRC handles 3,000 UI appeals per year. The proposed procedural changes will assist in streamlining the process. Ms. Schwalbe requested the Council consider the following changes to provisions impacting LIRC within chs. 103 and 108:

- Require unemployment insurance appeals to be filed at LIRC office discontinuing the option of filing appeals at the hearing offices.
- Clarify the "reason beyond control" standard of review for late appeals.
- Clarify that the time to appeal LIRC's decision to the circuit court starts from the date of LIRC's decision. Ms. Schwalbe confirmed that LIRC indicates on its decisions that the decisions are issued and mailed on the same date.
- Allow LIRC to use synopses and transcripts of hearings in more circumstances.
- Clarify that costs may not be taxed against LIRC in court actions.
- Correct drafting errors and repeal obsolete provisions.

Ms. Schwalbe noted that the changes were primarily procedural with respect to handling unemployment insurance appeals.

The Council tabled action on the LIRC proposal to allow time for further review and possible public comment.

4. Report on Unemployment Insurance Reserve Fund

McHugh provided an update to the Council on the Unemployment Insurance Reserve Fund and provided the following information:

- The Trust Fund loan balance on November 13, 2013, was \$301.9 million, a decrease of \$443.9 million from November 13, 2012.
- Update on the FUTA credit loss due to the Trust Funds loan balance: Currently, for states with no federal loan balance, employers pay a net FUTA tax rate of 0.6%. In 2014, Wisconsin employers are projected to pay an additional \$143 million in taxes due to a 2013 FUTA rate increase of 0.9%. The 2013-15 State Budget allocated up to \$50 million in general purpose revenue (GPR) as an interest free loan to pay off the federal loan balance to allow employers to experience a lower FUTA rate. In 2015, assuming the Trust Fund is within \$50 million of solvency or solvent on November 9, 2014, the full FUTA credit will be restored. If the Trust Fund loan is greater than \$50 million on

November 9, 2014, employers will pay an additional \$190 million in taxes in 2015 due to a 2014 FUTA rate increase from 0.9% to 1.2%.

- The federal government charges interest on loans to help fund unemployment benefits. Wisconsin made the interest payments in 2011 and 2012 with funds collected through a Special Assessment for Interest (SAFI) on employers. The 2013-15 State Budget includes a provision which allocates \$30 million of state GPR to pay interest due on UI Trust Fund loans from the federal government. Wisconsin used GPR funds to cover the interest payment of \$18.9 million in 2013. It is estimated that \$6.4 million in interest payments will be due in 2014, which will also be paid with GPR funds. The interest projected to be due in 2015 is \$650,000 and will be paid through excess 2012 SAFI receipts. It is projected there will be no need for a special assessment charged to employers in 2013, 2014, and 2015.
- Tax receipts through October 2013 totaled \$1.15 billion, compared to \$1.18 billion through October 2012.
- Regular UI benefits paid through October totaled \$735.1 million, compared to \$735.8 million through October 2012.
- Employer tax rates were calculated and mailed during the month of October. Approximately 23,600 employers were rated at the minimum basic rate of .07%. Last year there were approximately 100 more employers at the minimum rate. Approximately 8,800 employers were rated at the maximum total rate of 9.8%, approximately 1,100 employers less than last year.
- At the end of October 2013 over 17,000 employers owed delinquent taxes totaling approximately \$79 million. The top three major industries owing delinquent taxes include:
 - Construction with an outstanding balance of \$19,725,866.
 - Health Care and Social Assistance with an outstanding balance of \$9,401,888.
 - Administrative and Support and Waste Management and Remediation Services with an outstanding balance of \$8,113,893.

5. Department Update

Ms. Knutson updated the Council on the following:

STC (Work Share)

The department will implement the STC program by the end of calendar year 2013. The department is working on resolving an issue with the U.S. Department of Labor (DOL) regarding clarification of statutory interpretations and there remain technical challenges that must be resolved before implementation can occur. Ms. Knutson will continue to update the Council on the progress of the work share program.

SB 332/AB 400 – Pilot Training Program for UI Claimants

(DOL) reviewed the Pilot Training Program for UI Claimants (Senate Bill 332 and Assembly Bill 400) and informed the department that a conformity issue must be addressed with respect to the legislation. An unrelated amendment to the bill has been adopted in the Assembly, but not considered in the Senate. As a result, the legislation is still being considered by the full legislature.

SB 365/AB 449 – Direct Sellers

Section 108.02 (15) (k) (16), Wis. Stats., provides an exclusion from taxation and coverage for individuals who work in the direct selling industry. Senate Bill 365 and Assembly Bill 449 would amend the direct seller exclusion. At the last meeting, the Council supported the legislation with a proposed modification. The modification provided that the language must include that the pay the direct seller receives for other output must be "related to the sales." The legislature accepted the Council's modification, but removed the word "the" from the Council's recommended modification, in order to make the amendment read "related to sales". After legal review, the department determined that the removal of the word "the" would likely not alter the Council's intent with respect to its modification of the legislation. The legislature approved the legislation and the bill is expected to be signed by the Governor.

SB 276/AB 358 – Cottage Industries

The department has met with staff of the sponsors of this legislation to address certain issues. This legislation will affect the unemployment insurance program as well as the worker's compensation program. The sponsors of this legislation requested the Council table any action until the next meeting in which modified language may be presented to the Council for consideration.

6. Response to chs. DWD 126, 127 and 129 (Final Draft) – Unemployment Insurance Work Registration, Work Search and Benefit Claiming Procedures

Ms. Knutson indicated the department requested that the Council approve the final draft rule for chs. DWD 126, 127 and 129 relating to unemployment insurance work registration, work search and benefit claiming procedures. Public hearings were held in Milwaukee, Appleton and Madison on November 4, 2013. No one attended the public hearings. The department did receive one written comment from Attorney Victor Forberger.

Mr. Sussman noted there were 17 changes from the hearing draft to the final draft that were vastly non-substantive in nature. The final draft strengthened the language that requires the department to make accommodations for disabled individuals unable to use a computer-based program for work registration as suggested by the public comment. The final draft also reflects changes requested by the Legislative Council Rules Clearinghouse. For instance, the final draft changed the criteria the department will use to determine if a claimant is genuinely interested in seeking employment in order to determine whether the department would require a claimant to perform five work search actions.

The Council discussed the language contained in ch. DWD 127 in which the department may require a claimant to conduct five work search actions in a week. Ms. Knutson explained that the current administrative code provisions already grant the department the authority to require a claimant to conduct additional work search actions, but the department rarely exercises this authority. The amendments clarify when the department will require a claimant to conduct additional work search actions. As part of the State Budget, the legislature amended s. 108.04 (2), Wis. Stats., to mandate that claimants not waived from the work search requirement conduct at least four weekly work search actions. The Joint Finance Committee added language that requires the department to promulgate rules that specify the criteria used when a claimant is required to conduct more than four weekly work search actions.

Mr. Neuenfeldt requested that a further explanation be provided regarding when the department will require a claimant to conduct five weekly work search actions. Mr. Sussman explained that the administrative rule provisions for this were contained at s. DWD 127.06 and the criteria include that the claimant must have:

- Been unemployed for four or more consecutive weeks; and,
- Placed unreasonable limitations as to salary, hours, or conditions of work in accepting new work or not engaged in work search efforts as would a prudent person who is out of work and is seeking work.

7. Response to chs. DWD 111, 113, 114, 115, 132 and 140 (Hearing Draft) – Amendments to Unemployment Insurance Administrative Code Provisions Required under 2013 Wisconsin Act 20 and 2013 Wisconsin Act 36

Ms. Knutson introduced a proposed hearing draft rule that revises chs. DWD 111, 113, 115, 132 and 140, of the Administrative Code and creates ch. DWD 114, related to quarterly wage reporting, settlement of disputes and compromise of liabilities, license revocation and financial record matching, business transfer, determining eligibility of benefits and unemployment insurance appeals. The department anticipates holding a public hearing on this proposed rule in January.

This rule will do the following:

- Repeal the rule provisions on penalty assessments for a late quarterly wage report because the rule provisions are inconsistent with statutory language created by 2013 Wisconsin Act 36 ("Act 36").
- As authorized by Act 36, create standards for the department to waive or settle the amount of interest charged on an employer's delinquent tax payment.
- Amend the standards for the department to accept an optional successorship application that a business files late due to excusable neglect, consistent with changes in Act 36.

- Repeal the rule provision which relates to an exception that had allowed UI benefits despite a voluntary quit. This exception has been repealed by 2013 Wisconsin Act 20.
- Create a standard affidavit form for use in UI hearings, as mandated by Act 36.
- Create procedures for the department to invoke the new provisions created by Act 36 which provides authority for the department to certify a licensing agency that it should deny, suspend or revoke the license credentials of an individual who owes delinquent UI taxes.
- Create rules for a financial record matching program, as authorized by Act 36, to aid in the collection of UI taxes.

Mr. Manley noted there are currently four Wisconsin agencies that operate a financial record matching program to collect debts owed to these agencies. The legislature is considering legislation to consolidate these four programs under the umbrella of one agency in order to create a more efficient system. Mr. Manley asked the department be cognizant of this information proceeding forward with this rule.

8. UI Trust Fund Solvency Subcommittee Proposal

The UI Trust Fund Solvency Subcommittee (Subcommittee) proposal was distributed for Council consideration. Ms. Knutson reported the Subcommittee held six meetings and reviewed extensive data and research throughout these meetings. The proposal is projected to be revenue neutral over the next five years with respect to its impact on the Trust Fund and the overall amount of taxes paid by employers. The proposal contained two parts:

- The first component repeals the three additional tax brackets that were created by the State Budget. These three additional tax brackets fall at the bottom of the tax schedule for employers with significantly negative reserve fund percentages.
- The second part, known as the surtax proposal, would charge certain employers an additional surtax of 2.4% of the employer's taxable payroll. An employer would be required to pay the surtax if:
 - The employer used the 10% write-off provision contained in Wisconsin's law based on having sufficient overdrafts on June 30 (computation date) for the three previous consecutive years; and,
 - The employer would be at the highest contribution rate for the next calendar year.

Multiple scenarios were presented to the Subcommittee to address the Trust Fund solvency issues. This information included:

- Changing the triggers for determining which of the four tax schedules would be used based on the balance of the Trust Fund. The schedule triggers were set to reflect the Wisconsin economy of the late 1980s, and not a reflection of the economy of the early 2000s. During the last recession, the Trust Fund balance decreased quickly dropping

below the \$300 million threshold in 2009, triggering the highest tax schedule (Schedule A) for 2010.

- Increasing the taxable wage base. The current taxable wage base is set at a fixed dollar amount, which is currently set at 35% of total payroll. If the fixed dollar amount remains the same every year, it will result in the taxable wage base decreasing as a percentage of total payroll.

9. Recess for Caucus and Reconvene

Motion by Mr. Neuenfeldt, second by Mr. Manley to recess and go into closed caucus session pursuant to s. 19.85 (1) (ee), Stats., to discuss the administrative rules and the UI Trust Fund Solvency Subcommittee proposal, and reconvene later in the day. The motion carried unanimously and the meeting recessed at approximately 11:25 a.m.

The Council reconvened at approximately 1:20 p.m.

10. Report from Caucus

Ms. Knutson requested a report from the Council following caucus on the administrative rules and UI Trust Fund Solvency proposal.

Chapters DWD 126, 127 and 129 (Final Draft)

Motion by Mr. Neuenfeldt, second by Mr. Manley to approve the final draft rule with the following changes:

- Create a note under ss. DWD 126.02 (2m), 127.04 (1), 129.01 (1) (b) and (2) (a) 2., that specifies that the department will consider alternate methods of verifying information submitted by a claimant when there is good cause that the claimant is unable to use computer-based programs and provide information on how a claimant may request assistance from the department when good cause exists.
- Create a note under s. DWD 127.01 (2) (j) that specifies that the department will include in the Handbook for Claimants examples of reasonable work search actions. In addition, the department shall include information on how claimants can contact the department with questions related to work search actions.
- Amend s. DWD 127.06 (1) to read that a claimant may be required to perform additional work search actions if the claimant has been unemployed for seven or more consecutive weeks.
- Amend s. DWD 127.02 (2) to include the criteria under s. DWD 127.02 (2) (a) to (c) which was repealed in the hearing draft rule related to work search waivers and an employer's failure to verify the claimant's employment status. If the employer does not verify the claimant's employment status, the department may consider other factors to determine if the claimant has a reasonable expectation to return to work.

Motion carried unanimously.

Subcommittee Proposal

The Council did not reach a consensus on the proposal of the Subcommittee. Mr. Neuenfeldt asked that the proposal be placed on the next meeting agenda. Mr. Reihl mentioned that the Subcommittee will be meeting later this afternoon and there may be some changes to the proposal as a result of the Subcommittee's meeting and that it may be necessary to hold a Council meeting in December for further consideration of the proposal. Ms. Knutson explained that the proposal has been submitted to the Legislative Reference Bureau and the department has received a preliminary draft of the statutory language, but more work was necessary with respect to the statutory language for the proposal.

11. Future Meetings and Agenda Items

The Council will not meet in December unless needed and this could be done via teleconference. The Council will next meet on January 16, 2014.

12. Adjournment

Motion by Mr. Neuenfeldt, second by Mr. Lump to adjourn at 1:30 p.m. The motion carried unanimously.