

# 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

January 16, 2014

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

**Members Present:** Janell Knutson (Chair), Edward Lump, Earl Gustafson, James LaCourt, Michael Gotzler, Mark Reihl, Shane Griesbach and Sally Feistel.

**Department Staff Present:** Bob Rodriguez (UI Administrator), Scott Sussman, Tom McHugh, Dave Anderson (Assistant Deputy Secretary), BJ Dernbach (Legislative Liaison), Lutfi Shahrani, Lili Crane, Janet Sausen, Robin Gallagher, Jason Schunk, Pam James, Janet Sausen, Mary Jan Rosenak, Amy Banicki, Robert Usarek, Jill Moksouphanh and Tyler Tichenor.

**State Legislators, Legislative Aides and Members of the Public Present:** Chris Reader (Wisconsin Manufacturers & Commerce), Tammi Richmond (Legislative Audit Bureau), Tracey Schwalbe (LIRC), Brian Dake (Wisconsin Independent Business, Inc.), Julie Gray (UW System), Mary Beth George (Representative Sinicki), James Buchen (Wisconsin Manufacturers & Commerce), Bob Anderson (Legal Action of Wisconsin), Victor Forberger (Wisconsin UI Clinic), Larry Smith (UC Management Services)

### 1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council (“Council”) meeting to order at approximately 10:08 a.m. in accordance with Wisconsin’s open meetings law. Council members introduced themselves. Ms. Knutson deferred approval of the minutes until the arrival of a Council member who was running late.

### 2. Remarks from Assistant Deputy Secretary Dave Anderson and Legislative Liaison BJ Dernbach

Assistant Deputy Secretary Anderson introduced himself to the Council. After giving a brief history of his background, he applauded the Council’s work and stated he recognized the important role the Council plays in setting Unemployment Insurance policy. Legislative Liaison Dernbach introduced himself and stated he looks forward to working with the Council.

### **3. Department Update**

Ms. Knutson updated the Council on the following:

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

The department implemented the law on December 31, 2013 and is ready to take applications from businesses, but to date has not received any. The department is still working with the United States Department of Labor on promotional materials for the program.

#### **SB 365/AB 449 – Direct Sellers**

At its November meeting, the Council was presented with statutory language to expand Wisconsin's direct seller exclusion contained in Wisconsin's unemployment insurance law by amending s. 108.02 (15) (k) 16., Wis. Stats. The statutory language presented to the Council at its November meeting would have amended the direct seller exclusion to read:

“By an individual who is engaged, in a home or otherwise than in a permanent retail establishment, in the service of selling or soliciting the sale of consumer products for use, sale, or resale by the buyer, if substantially all of the remuneration therefore is directly related to the sales or other output rather than to hours worked.”

The Council had supported the legislation with one amendment. The Council's proposed amendment would insert "related to the sales" immediately after the word "output".

UIAC Staff Attorney Sussman explained that the final legislation contained the statutory language supported by the Council, except for one minor change to the proposed amendment recommended by the Council. The amendment removed the word "the" so that the amendment read "related to sales". Ms. Knutson stated that the department did not feel the change was substantive.

The legislation was signed into law by Governor Scott Walker and became effective January 1, 2014.

#### **SB 276/AB 358 Cottage Industries**

Ms. Knutson stated that the bill is still tabled. If there is any further action on the bill, she will notify the Council.

#### **Request for Emergency Rule Extension (DWD 126, 127 and 129)**

The department filed a request for an extension of the emergency rule due to the fact that the permanent rule (with amendments) is not scheduled to take effect until May 1, 2014. Ms. Knutson indicated the emergency rule is scheduled to expire February 25, 2014 and an extension would likely expire on April 26, 2014 so another request for an extension will likely be needed.

## **Public Hearing on DWD 111-140**

The language to amend chs. DWD 111-140 was presented to the Council at the November meeting. The department has scheduled a public hearing on the rule changes from 11:00 a.m. to 2:00 p.m. on January 21, 2014 in Madison, Wisconsin due to the low turn-out at the previous public hearing with respect to the amendments to chs. DWD 126, 127 and 129 which was held in multiple locations throughout the state. The department is extending the window of time for written comments to be submitted to January 31, 2014. Ms. Knutson stated that the comments of the Wisconsin Legislative Council Rule Clearinghouse would be incorporated and all comments from the public hearing will be presented to the Council.

Mr. Gotzler asked how many people attended the last public hearing. Ms. Knutson explained that no one attended the last public hearing at any of the locations.

Ms. Knutson stated that it may be in the Council's interest to begin considering how to attempt to get back on a two-year agreed upon bill cycle. She also mentioned that even numbered years are typically public hearing years. She stated the last public hearing in 2012 was held via a statewide video conference and the department felt the turnout was good. She indicated the department was seeking Council approval to do the same format. One question that should be answered sooner rather than later is whether to have the hearing in the late summer or fall. The department indicated they would be seeking some guidance on this from the Council at the February meeting. Mr. Gustafson indicated that late fall may be best because late summer seems to be when everyone has something going on. Mr. Gotzler agreed.

Mr. Gotzler also stated that whatever the department did for promoting the public hearing two years ago should be replicated this time around as it seemed to be very effective. Ms. Knutson acknowledged but also indicated that the labor side had expressed that more outreach should be done for claimants so that they are aware of the public hearing. Mr. Gustafson asked Ms. Knutson to refresh his memory on where in the state the hearing was held last time. Ms. Knutson responded that the hearings were held in Madison, Milwaukee, Green Bay, Wausau, La Crosse and Spooner. Ms. Knutson also indicated that the department would have a proposed plan for Council review at the February meeting.

Ms. Knutson also requested that the Council give direction on their meeting schedule for the coming year. She indicated that the legislature may complete their work by April 1, 2014.

## **4. Report on the Unemployment Insurance Reserve Fund**

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

- The Trust Fund loan balance decreased by \$455.9 million during 2013 to \$399.4 million on December 31, 2013.
- UI tax receipts totaled \$1.17 billion during 2013 compared to \$1.19 billion during 2012.
- Regular UI benefits paid and funded from the Reserve Fund during 2013 totaled \$792.8 million compared to \$875.7 million last year.

- Additional FUTA taxes paid during 2013 by employers and credited to our outstanding loan balance totaled \$95.8 million compared to \$46.8 million during 2012. This is expected to increase \$141 million during 2014.
- Amounts collected from delinquent employers during 2013 totaled \$30.9 million. Amounts collected from overpaid claimants during 2013 totaled \$49.1 million.
- The federal loan interest payment made on September 30, 2013 totaled \$18.9 million and was funded by a state GPR appropriation. Unlike 2011 and 2012, there was no special assessment for interest charged to employers during 2013.
- The interest rate on loans outstanding for 2014 is 2.387% compared to 2.576% for 2013. The rate is based on the Federal Trust Fund earnings rate during the 4<sup>th</sup> quarter of the previous year.
- Projected interest to be paid on September 30, 2014 is approximately \$6 million.

Mr. McHugh noted that in 2013, 312,325 claimants received UI benefits totaling \$1.2 billion compared to 566,353 claimants receiving a total of \$3.1 billion in benefits in 2009. Mr. Gustafson inquired as to whether or not those numbers reflected individual claimants to which Mr. McHugh responded in the affirmative. Mr. Gotzler asked whether or not all benefits received by claimants are reflected on their IRS form 1099's to which Mr. McHugh responded in the affirmative. Mr. Gotzler also inquired regarding what the reduction in the interest rate on the federal loan calculated to real dollars. Mr. McHugh responded that the amount of interest owed on the loan will drop from a projected amount of \$7.0 million to \$6.0 million and stated that the reduction in the projected amount of interest is controlled by a number of factors including the lower interest rate and the fact that Wisconsin is borrowing less.

Mr. McHugh reiterated that November 9, 2014 is the key date that the reserve fund must be positive on to avoid further FUTA credit reductions. As a result of Wisconsin borrowing from the federal unemployment account for the past three consecutive years, Mr. McHugh noted that employers paid an extra .9% on the first \$7,000 paid to every employee last year in federal unemployment insurance taxes due to Wisconsin.

Mr. McHugh indicated that the extra dollars remaining from the last SAFI assessment could be used to pay the loan balance. Mr. Gotzler asked if Mr. McHugh had an idea of what the additional 1.2% in the FUTA reduction would mean in real dollars to employers. Mr. McHugh responded that the reduction accounts for an additional \$47 million dollars each time; at a 1.2% reduction, employers would pay an additional \$188 million.

Mr. McHugh also explained that when a state has a negative reserve fund balance for five straight years the federal government can also institute the Benefit-Cost Ratio (BCR) add-on (which is in addition to the loss of the FUTA credit reduction). The state can request a waiver from the add-on if need be, but at the moment the department is not anticipating a reduction this year in the FUTA credit for employers.

After the Mr. McHugh's report, Ms. Knutson asked that the record reflect Mr. LaCourt's arrival at 10:30 a.m. and updated him on what was covered in his absence.

## **5. Approval of Minutes**

Motion by Mr. Lump, seconded by Sally Feistel to approve the November minutes without corrections. Motion carried unanimously.

## **5. Technical Corrections LRB 2855**

Ms. Knutson indicated the Department is requesting approval from the Council for a technical corrections bill. Mr. Sussman explained that Act 36 gave the department the authority to revoke licenses from those who are delinquent on UI contributions, but Act 20 transferred licensing authority from some agencies to others. Due to the fact that Acts 20 and 36 were signed into law within a week of each other, the changes made by Act 20 could not be reflected in Act 36. Act 36 referenced the agencies that no longer have licensing authority and this first correction would now reference the correct agency.

The second correction pertains to Act 36 that relieved claimants of the requirement of showing good cause for failing to provide the department requested information in order to receive suspended benefits. Prior to passage of Act 36, s. 108.04 (1) (hm), Wis. Stats., contained two references that required a claimant to have good cause for failing to providing the department information in order to receive benefits that were suspended. Act 36 did not include an amendment to strike one portion of a sentence within s. 108.04(1)(hm), Wis. Stats., that contained the good cause requirement. The law still can be interpreted to not require a claimant to be required to show "good cause" in order to receive the suspended benefits and the Department is interpreting the statutory language in this manner. Nonetheless, a technical amendment is advisable to remove the "good cause" language from the portion of s. 108.04 (1) (hm), Wis. Stats., that was not amended by Act 36 in order to avoid possible confusion.

The third correction pertains to the amount of the tardy filing fee imposed on employers who are late in filing their quarterly wage reports. The statutory amendment provides an incentive for employers to file their quarterly wage reports on time. Act 36 provided that an employer would be eligible for a reduction in the tardy filing fee if the employer files the report within 30 days of the due date. In order to reflect department procedures, the law should provide that an employer is eligible for the reduction in the amount of the tardy filing fee if the employer files the required wage report within 30 days from the date the department assesses the tardy filing fee. Ms. Knutson indicated that the department wants the language to be amended in order to avoid any confusion.

Ms. Knutson asked the Council to consider the provisions contained in LRB 2855 and give approval today if a consensus could be reached so the department could send it to the legislature. The Council agreed to review the bill draft in closed caucus.

## **6. UI Trust Fund Solvency Subcommittee Proposal Bill Draft LRB 3613**

Ms. Knutson provided a short overview of the proposal that would replace the additional tax brackets contained in Wisconsin 2013 Act 20 with a "surtax" for employers who are overdrawn in their UI employer account for 3 consecutive years. The "surtax" would constitute a 2.4% add-

on. She stated it was presented at the last Council meeting but it was referred back to the subcommittee for more consideration. Since the last subcommittee meeting the department updated their memo on the topic and had a bill drafted (LRB 3613). Ms. Knutson stated that it was up to the Council if they wanted to take action on the proposal. Mr. Reihl responded that they would discuss this proposal in caucus.

## **7. Consideration of the Proposed Law Changes of the Labor and Industry Review Commission (LIRC)**

Ms. Knutson stated there was one more item of business. She referenced the November meeting when LIRC presented their proposal for law changes to the Council. At that time the Council had questions and wanted time to further consider the proposal and tabled the matter. Since the November meeting the department has put together an analysis of the proposal, which has been provided to the Council members.

Ms. Knutson stated that LIRC had communicated to the department that two items within the proposal are a higher priority than the other items. The first of which is the suggested amendment to s. 108.09(5)(d), Wis. Stats., which would enable LIRC to:

- Use a transcript provided by a party without requiring a party to show that the written synopsis of the hearing is not complete or accurate;
- Correct a synopsis of a hearing, if LIRC determines that a synopsis of the hearing is defective; and,
- Use a transcript provided by a party, if LIRC verifies the transcript is complete and accurate.

The second high priority item for LIRC is the proposed amendment to s. 108.09(6)(a), Wis. Stats., which would provide that appeals to LIRC could only be filed at LIRC's office or on-line on the LIRC website and provides clarity with respect to the standard for LIRC to review late appeals.

The second group of LIRC proposals was identified as not immediately pressing. Those include repealing s. 108.09(2)(cm), Wis. Stats.; amending portions of s. 108.09(5)(b), Wis. Stats., which removes outdated language; amending ss. 108.09(7), 108.095(7) and 108.10(4), Wis. Stats., which relate to the time-period that a party has to appeal a decision of LIRC; and amending s. 108.09(7)(d), Wis. Stats., to include portions of Chapter 102 in Chapter 108 to clarify that LIRC should not be charged costs by the courts when a party appeals a LIRC decision.

Ms. Knutson stated that the department also had changes concerning how hearing requests are filed that they would be bringing to the Council for the next agreed upon bill cycle. It is the position of the department that these department proposals and the LIRC proposal regarding hearing appeal requests should be considered at the same time.

Ms. Knutson stated that the last LIRC proposal was a change that would allow LIRC to waive the recovery of erroneously paid benefits if LIRC finds that those benefits were paid due to department error. Ms. Knutson stated that a literal reading of the statute indicates that LIRC

should remand those types of issues back to the department. Ms. Knutson stated that the department is still studying this proposal and recommended the UIAC wait to consider it until the fall.

Ms. Knutson stated that if the Council is able to approve the two items today the department can send those to the drafters. Mr. Lump asked Ms. Knutson if the department wished for the Council to hold on all the LIRC proposals. Ms. Knutson reiterated that LIRC hopes that the Council can agree on the first two proposals as they are characterized as timely. Tracey Schwalbe, LIRC General Counsel, requested to be recognized by the Council. The Council so recognized and Ms. Schwalbe addressed the Council.

Ms. Schwalbe stated that LIRC hopes to streamline the appeals process. She stated that these changes have already been drafted in Worker's Compensation and are being drafted for the Equal Rights Division. LIRC is considering administrative rule changes and their current plans indicate an applicability date of January 1, 2015 to allow for IT changes, notice to the public, etc. Ms. Schwalbe also indicated that the provision related to the use of a transcript instead of the written synopsis would save LIRC money. The other changes were born out of a search for the word "commission" in Chapter 108 and are not as critical.

Ms. Knutson indicated that it was the position of the department that LIRC's changes are not within the parameter of technical corrections. In addition, the law changes need to be in effect before the rule change process is started.

Mr. Gustafson asked Ms. Schwalbe if LIRC put together the redline changes contained in the meeting materials to which Ms. Schwalbe responded in the affirmative.

Ms. Knutson asked Mr. Sussman to provide an update for the Council on SB 419 that contains non-substantive changes to Chapter 108 that were put forth by the law revision committee that were needed due to the near simultaneous passage of Act 20 and Act 36. Mr. Sussman stated that the department has not been involved in the development of SB 419. Ms. Knutson stated that these corrections are separate from the department's technical correction bill.

Ms. Knutson asked the Council if there was any other business the Council would like to address. Mr. Gustafson referenced a recent story that aired in the Green Bay area related to the Unemployment Insurance claim telephone line experiencing back-ups. He asked how the department is handling this issue. Division Administrator Robert Rodriguez stated that currently the department is experiencing its typical peak season but due to a multitude of things this season has been more difficult. Mr. Rodriguez stated that the department received 220,000 calls last week. Mr. Rodriguez explained that the department cannot dictate how claimants use the system although online is recommended. It is, of course, the claimant's choice but the department would like everyone who is able to use the online filing portal to use it, but understands that some people have limitations.

Mr. Gustafson stated there was not any real issue causing the increase in telephone calls such as something similar to the most recent recession, and he was worried that the story was misleading and painted the department in a bad light and it implied a much larger problem. Mr. Rodriguez

stated that the department is scaled well for 46 or 47 weeks to meet demand but we have responded to the most recent influx by adding staff, which the department typically does during the seasonal peak, and has authorized additional overtime. Mr. Gustafson stated that the story did not ask the question how the department was reacting to the issue. Mr. Rodriguez stated that an individual having to call the department 20-40 times is not acceptable but reiterated that current numbers show that the issue is going away. Ms. Feistel asked if there were issues with the online claim filing system. Ms. Knutson recognized and asked Mr. Lutfi Shahrani, the department's Benefits Director, to address the Council on this issue.

Mr. Shahrani stated that this is not a new issue. Wisconsin typically takes 8,000 calls in early November and that number increases towards the end of November and for the month of December but then begins to taper off in January. Mr. Shahrani stated that the difficulty is not on the side of those filing for benefits, but for those who are placing inquiry calls. A multitude of factors, such as the expiration of the federal EUC program, the reduction in capacity due to how the holidays fell this year, and the additional individuals who were unable to work due to the deep freeze all are contributing to the increase in inquiry calls. Mr. Shahrani brought up the 220,000 figure stating that we do not have 220,000 claimants currently receiving benefits. He explained how callers who repeatedly hit redial clog the system. He reiterated the department has reacted to the issue by hiring additional staff, extending work hours by allowing more overtime, by not allowing vacation during the holidays and by rededicating staff during the peak time. Mr. Shahrani also stated that just yesterday the IVR system which handles incoming calls was only at 60 to 70% capacity. Mr. Gustafson again reiterated that he felt the department was unfairly characterized within the news story.

Mr. Gotzler requested an update on the internal training for department staff to prepare for the multitude of changes to the UI law. Ms. Knutson stated that the first training session took place in December and asked Lili Crane, Deputy Director of the UI Divisions Bureau of Legal Affairs to address the Council. Ms. Crane stated that staff has been undergoing classroom training on the new laws, is tracking potential new issues relating to those law changes, and the training that staff has been participating in is very interactive and hands-on. She asked the Council if they would like a report on the training at the next meeting to which the Council responded in the affirmative. Ms. Knutson stated that item would be placed on the next meeting agenda. Ms. Crane stated that if any of the member's constituents had an issue that they should feel free to contact her. If any issue is brought to her she will listen to the hearing. Ms. Crane indicated that after she reviews the hearing she does reach out to the inquiring party and also mentioned that she typically makes in person visits to all the hearing locations in the state. Mr. Gotzler asked Ms. Crane's opinion on how the training went and Ms. Crane responded that the training is ongoing with another session scheduled for March and at that time some of the issues surrounding the newly implemented law changes will have come to hearing and information can be shared.

Motion by Mr. Gotzler to meet in closed caucus to consider agenda items 5, 6, and 7; second by Mr. Reihl. Motion carried unanimously and the Council went into closed caucus at approximately 11:10 a.m.

The Council members returned from caucus and Ms. Knutson reconvened the meeting at approximately 12:18pm. Ms. Knutson requested a report from caucus.

Mr. Lump indicated that the Council agreed to the provisions in LRB 2855, the Technical Corrections bill draft, and motioned for approval. Mr. Gotzler seconded and the motion carried unanimously. Mr. Lump also indicated that the Council agreed "in concept" to the first two items within the proposal offered by LIRC, but indicated that the Council would take another look at these two items after they were drafted as statutory language. As outlined previously, these two items were to amend:

- Section 108.09(5)(d), Stats., and,
- Section 108.09(6)(a), Stats.

Motion by Mr. Lump, second by Ms. Feistel to support "in concept" amendments to these sections of Chapter 108. The motion carried unanimously. The Council requested that Ms. Knutson send these two amendments to the Legislative Reference Bureau for drafting.

Mr. Lump then motioned to return to closed caucus; Ms. Feistel seconded and the motion carried unanimously. The Council returned to closed caucus at approximately 12:25 p.m.

Council members returned from caucus and Ms. Knutson reconvened the meeting at approximately 1:02 p.m. Ms. Knutson asked if there was a report out of caucus.

Mr. Lump indicated that due to the fact that a Council member had to depart early, the Council no longer had a quorum and motioned to adjourn.

Ms. Knutson indicated that the date of the next Trust Fund Solvency Subcommittee would be set after consultation with the subcommittee members. Mr. Reihl stated that it is important to continue that process. Ms. Knutson indicated the next Council meeting would be February 20, 2014.

The January 16, 2014 meeting of the Unemployment Insurance Advisory Council adjourned at approximately 1:06 p.m.