

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

February 20, 2014

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

Members Present: Janell Knutson (Chair), Scott Manley, Edward Lump, Michael Gotzler, Mark Reihl and Shane Griesbach. Earl Gustafson, Phil Neuenfeldt, and Sally Feistel participated via teleconference.

Department Staff Present: Bob Rodriguez (UI Administrator), BJ Dernbach (Legislative Liaison), Lili Crane (Deputy Director Bureau of Legal Affairs) Scott Sussman, Tom McHugh, Lutfi Shahrani, Janet Sausen, Robin Gallagher, Jason Schunk, Pam James, Mary Jan Rosenak, Amy Banicki, Robert Usarek, Jill Moksouphanh, Karen Schultz, Andy Rubsam, Robin Gallagher and Tyler Tichenor.

State Legislators, Legislative Aides and Members of the Public Present: Chris Reader (Wisconsin Manufacturers & Commerce), Tracey Schwalbe (LIRC), Brian Dake (Wisconsin Independent Business, Inc.), Julie Gray (UW System), 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 10:10 a.m. in accordance with Wisconsin’s open meetings law. Council members introduced themselves and Ms. Knutson welcomed those in attendance.

2. Approval of Minutes of the January 16, 2014, Council Meeting

Motion by Mr. Manley, second by Mr. Griesbach, to approve the January 16, 2014, minutes without corrections. Motion carried unanimously.

3. Report on the Unemployment Insurance Reserve Fund

Mr. McHugh, Director for the Unemployment Insurance Division's Bureau of Tax and Accounting, updated the Council on the Unemployment Insurance Reserve Fund. Comparing year-to-date activity from January 2014 to January 2013, tax collections increased 5.6% to approximately \$108 million and benefit payments decreased 11.7%. Historically, fourth quarter tax receipts received in the first quarter represent 9% of the department's annual receipts.

Mr. McHugh also provided an overview of the federal advance to the Wisconsin UI Trust Fund. When compared to the same time last year, the Trust Fund loan balance decreased by 50.8% to roughly \$457 million. FUTA tax credits received through January 31, 2014 totaled \$84,895. Revenue generated to the UI Trust Fund from the FUTA tax credit reduction to-date is roughly \$142 million and the department expects the total to equal \$282 million by the end of year.

Mr. McHugh also updated the Council on the projection of the UI Trust Fund balance through December 2015. This projection is based on the Department of Revenue forecast that was released in the summer of 2013. Mr. McHugh informed the Council that the Trust Fund would be in and out of debt through the rest of the year. The first quarter tax filing for employers ends April 30, 2014, at which time the payments received will result in a positive Trust Fund balance. The Trust Fund balance will deplete in July 2014, resulting in the department having to borrow money from the federal government until second quarter tax payments are received. Based on current projections, the Trust Fund balance will be positive on two key federal dates, November 1 and January 1. Due to the projected positive balance on these two key dates, employers will revert back to a 0.6% FUTA tax rate. For 2013, employers paid a FUTA tax rate of 1.5%.

4. Report on Administrative Law Judge (ALJ) Training

Ms. Crane, Deputy Director of the Unemployment Insurances' Bureau of Legal Affairs provided a report on the ALJ training being conducted by the department. There are four Unemployment Insurance (UI) hearing offices located in Madison, Milwaukee, Appleton and Eau Claire that handle benefit and tax appeals. The hearing offices are comprised of 23 ALJs and three supervising ALJs that also hold hearings. In 2012, the hearing offices handled approximately 25,000 benefit appeals compared to approximately 23,000 in 2013. On average, ALJs handle roughly 1,000 cases per year.

Ms. Crane indicated the department had initiated training prior to the recent law change requiring ALJ training. She described the training provided to the ALJs as follows:

Formal Training

- ALJ Classroom Training – This in-depth classroom training is conducted for all new UI-ALJs. It focuses on UI laws and the department's position on these laws, department operations, and the initial claims and adjudication processes. This past year was the first time classroom training had occurred and was open to experienced ALJs also.
- Bureau of Legal Affairs (BOLA) Conference and Legal Writing Seminar – The division sponsors an annual BOLA conference. The conference provides an opportunity for ALJs to receive training on new laws that impact the UI program. The conference also focuses on the review of decisions issued by the Labor and Industry Review Commission (LIRC) and Wisconsin Courts. This past year, a one-day legal writing seminar was incorporated with professional training on writing clear and understandable decisions.
- Demeanor Training – This training focused on how to handle conflict and difficult parties during a hearing and on communicating clearly to the parties involved in the hearing. The

training, conducted by a professional trainer, was well received and the department hopes to hold more than one session per year.

- Quarterly ALJ training session – This quarterly training is required for all ALJs. The upcoming March session will focus on the new laws and implementation to ensure consistency among ALJs and hearing offices.

Informal Training

- ALJs routinely meet with their supervising attorney to review LIRC decisions.
- When a party involved in an appeal files a complaint against an ALJ, the division has implemented a complaint investigation process in which the Deputy Director or supervising ALJ will review the hearing recording and contact the complainant to discuss their concerns.
- Decisions issued by ALJs are randomly selected for review by the supervising ALJ to provide input and oversight.
- The ALJ training manual was updated in October 2013 and again in January 2014 to reflect new laws.
- Uniform performance standards were developed to promote accountability and guide ALJ performance expectations.
- With all the recent law changes, questions that arise are addressed and then shared with all ALJs to maintain consistency.

Mr. Lump asked if there has been a sort of "climate change" within the hearing offices. Ms. Crane responded that she has seen a real change in the climate with ALJs now focusing on the parties and the process. Mr. Lump then asked if there was anything being done to gather reactions from both sides, claimant and employer. Ms. Crane stated that the department receives a lot of feedback when speaking at Labor Law Clinics and when appearing at special events. She also pointed out that she listens to all comments from the public hearings the agency conducts. Mr. Lump asked if the department had considered surveying the parties. Ms. Crane stated that would be problematic because 50% of the participants leave a hearing unhappy. Mr. Lump then clarified, asking about the possibility of surveying participants on "the process." Ms. Crane stated that she would take that into consideration.

Mr. Reihl asked about the time frame between filing an appeal and having a hearing. Ms. Crane responded that federal guidelines are that 60% of cases must have the appeal process completed within 30 days. On average, it typically takes two weeks or less for the scheduling of a hearing. Statutorily the department must provide at least a six-day notice to the parties, but a process has been established for fast tracked appeals in which both of the parties waive the six-day notice so the hearing can occur sooner. Mr. Reihl inquired if the department can track scheduling performance. Ms. Crane responded that the department currently tracks information related to scheduling of appeals.

Mr. Gotzler asked what sort of training was being provided to adjudicators at the Initial Determination stage. Ms. Knutson responded that call centers and adjudicators are receiving training and everyone is receiving the same message. Mr. Schunk, UI Division Bureau of Benefits, stated the department provides training to staff throughout the year. He also stated that the training is consistent and is provided to everyone at the same time.

5. Review of Proposed Law Changes

Ms. Knutson presented the law change proposal requested by LIRC at the last Council meeting. Ms. Knutson stated that at the last meeting, the Council agreed to the changes in concept and requested the department send the changes to the Legislative Reference Bureau (LRB) for drafting. LRB provided a draft, but the drafting attorneys had some questions regarding the changes. One of the issues brought up by the drafting attorneys was that the changes to appeals proposed by LIRC would also affect appeals under the worker classification law from 2009. The department responded that it had no issues with the changes applying to the worker classification portion of the law and LIRC concurred. The drafting attorneys also suggested some language changes. The department sent the changes to LIRC and LIRC provided comments that were then forwarded onto the drafters. The drafters are currently working on a final draft of the proposed changes.

LIRC proposed to change the time-frame a claimant or employer can file for an appeal from 21 days after the decision is mailed, to 21 days after the date the decision is issued. Ms. Knutson stated it is the department's practice to date and mail decisions on the same day. Ms. Knutson also noted that worker's compensation statutes contain the same language and LIRC has not proposed any similar changes for worker's compensation. Ms. Knutson also stated that after consulting with the Secretary's Office, it was determined that moving a bill this late in the session would be nearly impossible. The changes proposed by LIRC could be included in the next agreed bill cycle and the Council could consider this in caucus.

6. Report on Public Hearing and Approval of Final Draft Rules relating to chs. DWD 111-140

Ms. Knutson indicated the department held a public hearing on the proposed administrative rule changes related to chs. DWD 111, 113, 114, 115, 132 and 140, quarterly wage reporting procedures, settlement of disputes and compromise of liabilities, license revocation and financial record matching, business transfers, determining eligibility for benefits, and unemployment insurance appeals. No one attended the hearing and the department received one written comment from Attorney Victor Forberger. A copy of Mr. Forberger's comments, a summary of his comments with the department's response, and a memo outlining the changes from the hearing draft to the final draft in response to the legislative rules clearinghouse report were provided to the Council. Ms. Knutson requested the Council provide further guidance in response to the hearing comments received by Mr. Forberger that were not addressed by the department.

7. Department Update

Senate Bill 533/Assembly Bill 684

Ms. Knutson reported on the UI Technical Corrections Bill, Senate Bill 533/Assembly Bill 684 (AB 684). Public hearings were held in the Senate and Assembly, and no one testified in opposition to the legislation at either hearing. AB 684 is on today's schedule for the Assembly floor.

DWD 126, 127, and 129 – Emergency Rule

Ms. Knutson indicated the department requested an extension from the Joint Committee for the Review of Administration Rules (JCRAR) on the emergency rule relating to chs. DWD 126, 127 and 129, unemployment insurance work registration, work search and benefit claiming procedures. The emergency rule was scheduled to expire on February 25, 2014, and an extension was granted until April 26, 2014. The department will request an additional extension from JCRAR as the permanent rule will not be adopted before the emergency rule expires.

Senate Bill 419

Ms. Knutson indicated Senate Bill 419 is a technical corrections bill introduced by the Legislative Law Revision Committee that contains minor changes to ch. 108, Stats., to conform to the provisions under 2013 Wisconsin Acts 20 and 36. SB 419 is currently engrossed and awaiting Governor Walker's signature.

Federal Legislation

Mr. Sussman provided an update on federal legislation. The Bipartisan Budget Control Act, signed on December 26, 2013, mandates that all states utilize the Treasury Offset Program to aid in the collection of department overpayments to claimants and employers delinquent in tax payments. The department currently utilizes the program for assistance in the recovery of overpayment of benefits to claimants, but state legislation is required to comply with the new mandate relating to recovering delinquent tax payments from employers. Ms. Knutson advised the Council that a department proposal will likely be presented during the next agreed bill cycle. Until a proposal is adopted, the department will continue to utilize the program for the recovery of benefit overpayments to claimants only.

8. Correspondence

Ms. Knutson brought correspondence from Ms. Carol Holterman to the attention of the Council. Ms. Knutson explained to Ms. Holterman that the Council cannot review her case, but she is welcome to appear at the public hearing in the fall and to send in any suggested law changes.

9. Future Meeting and Agenda Items

Ms. Knutson stated that the goal is to get the Council back on a normal agreed bill cycle with no scheduled meetings June through July unless something occurs at the federal level that would need the attention of the Council. The department is working on scheduling the UIAC public hearing for the week of November 10-14, 2014. Ms. Knutson asked that the Council consider when the window should be open to accept public comment after the public hearing. Ms. Knutson suggested the department could set aside a few minutes at each Council meeting from November 2014 through February 2015 to allow for constituent input.

10. Other Business

Ms. Knutson provided an update to the Council on the application of the new Social Security Disability Insurance (SSDI) provision that went into effect on January 5, 2014. There have been a couple of ALJ decisions that have applied the provision rather narrowly. Mr. Manley stated that the Council members would like to discuss the issue in caucus.

Mr. Manley stated that the Council will discuss any changes to the final draft rule relating to chs. DWD 111-140 during caucus. He also stated that the Council would not discuss the LIRC proposal and that would wait until the changes were finalized by LRB.

Motion by Mr. Manley, second by Mr. Griesbach to recess and go into closed caucus session pursuant to s. 19.85 (1) (ee), Stats., to discuss the final draft rule relating to chs. DWD 111-140 and the application of the SSDI provision, and reconvene later in the day. The motion carried unanimously and the meeting recessed at 11:11 a.m.

Chairperson Knutson reconvened the Council meeting at 12:42 p.m. and asked for a report out of the caucus.

SSDI Resolution

Motion by Mr. Manley, second by Mr. Reihl to approve the following resolution relating to SSDI. The resolution reads:

"The "actually receive" language was meant to clarify that the act of applying for SSDI benefits does not disqualify claimants from Wisconsin unemployment insurance benefits, the claimant must be actually receiving SSDI benefits.

SSDI benefits are paid on a monthly basis. It was intended that claimants are not only ineligible in the week in which the SSDI check is delivered to the SSDI benefit recipient. It was intended that a SSDI payment would disqualify a claimant from unemployment insurance benefits in all weeks of the month."

The motion carried unanimously.

Chs. DWD 111-140 Final Draft Rule

Motion by Mr. Manley, second by Mr. Gotzler to approve the final administrative rule changes with the following amendments to s. DWD 114.30:

- 1. Extend the response period for license revocation notices from 10 days to 14 days.*
- 2. The department shall provide a 7 day notice to an employer when the employer has missed a payment before issuing a certificate of delinquency*

Ms. Knutson asked if the Bureau of Tax and Accounting had any concerns regarding the amendments. Mr. McHugh responded that the bureau did not have any concerns.

The motion carried unanimously.

11. Adjournment

Motion by Mr. Lump, second by Mr. Reihl to adjourn at 12:48 p.m. The motion carried unanimously.