

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 19, 2015

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

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

Department Staff Present: Joe Handrick (UI Administrator), Scott Sussman, Andrew Rubsam, Karen Schultz, Lili Crane, Patrick Lonergan, Ben Peirce, BJ Dernbach (Legislative Liaison), Tyler Tichenor, Lutfi Shahrani, Amy Banicki, Tom McHugh, Pam James, Robert Usarek, Matthew Aslesen and Robin Gallagher.

Members of the Public Present: Representative Michael Shraa (53rd District), Jason Miller (Rep. Jacque's Office), Mark Austinson (Rep. Knodl's Office), Mary Beth George (Rep. Sinicki's Office), Rachael Inman (Legislative Audit Bureau), Brian Dake (WI Independent Businesses, Inc.), Dan Shaw (Daily Reporter), Ryan Horton (WI State Legislature), Victor Forberger (UI Appeals Clinic), and Tracey Schwalbe (Labor & Industry Review Commission).

1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council (Council) meeting to order at 10:00 a.m. in accordance with Wisconsin's open meetings law. Council members and department staff at the table introduced themselves. Ms. Knutson recognized Representative Shraa, Jason Miller from Representative Jacque's office, Mark Austinson from Representative Knodl's office, Mary Beth George from Representative Sinicki's office and Rachael Inman from the Legislative Audit Bureau and welcomed those in attendance.

2. Minutes

Motion by Mr. Gotzler, second by Mr. Griesbach to approve the October 7, 2014 minutes without corrections. Motion carried unanimously.

3. Secretary's Office Update

Mr. Dernbach provided the Council with an update on the following:

Legislative Audit Committee

The Legislative Audit Bureau (LAB) conducted an audit of the UI call center and its waste, fraud and abuse efforts. There were no programmatic changes recommended by the audit committee. LAB requested the department provide two reports by March 16 on the handling of UI calls over the winter and identifying the amount of overpayments collected by the department and the year in which the overpayments were established. Since last summer, the UI call center has not experienced any dropped calls. A copy of both reports will be provided to the Council.

State Budget Bill

Governor Walker introduced his recommendations for the next state budget which were introduced by the legislature as Senate Bill 21 and Assembly Bill 21. There are four provisions within the budget bill that impact UI. The Governor recommended implementing new drug screening, testing and treatment mechanisms to assist and increase employability of individuals receiving UI benefits who struggle with controlled substance abuse. The Governor also recommended funding for substance abuse treatment by providing \$500,000 general purpose revenue for state fiscal year 2017. In addition, the Governor recommended:

- An increase in criminal penalties for UI fraud ranging from a Class A misdemeanor to a Class G felony.
- An increase in civil monetary penalties for fraud from 15% to 40%.
- Requiring the department to promulgate administrative rules to create a tiered system defining suitable work for a UI benefit claimant based upon the length of time the claimant is receiving UI benefits.

The department will provide a technical analysis of the budget provisions at a future Council meeting.

The Legislature anticipates holding public hearings in March, with the executive sessions starting soon after. Representative Nygren has commented that the Joint Finance Committee will complete its executive decisions by Memorial Day.

4. Report on the Unemployment Insurance Reserve Fund

Mr. McHugh provided the Council with an update on the UI Trust Fund. Each employer's reserve fund balance reflects basic taxes paid by the employer less any benefits paid out or charged to an employer's account for former employees. In total, the reserve fund balance for all employers ending December 30, 2014, was approximately \$1.34 billion compared to \$1.03 billion in 2013.

The department tracks each employer's reserve fund balance in order to establish a yearly tax rate. An employer with a higher reserve fund balance relative to payroll is assessed a lower tax rate and an employer with a low or negative reserve fund balance relative to payroll is assessed a higher tax rate. All revenue received by the department is paid to the U.S. Treasury. As of December 31, 2014 the Trust Fund balance for Wisconsin at the U.S. Treasury was \$215.8

million; whereas on December 31, 2013 the Trust Fund balance reflected a negative \$396.4 million cash balance to the department's outstanding federal loans.

UI reserve fund highlights for 2014 include:

- Year-end tax receipts (reserve fund balance and solvency balance) decreased by \$66 million (5.6%) to a total of \$1.1 billion. The decrease reflects the reduction in average tax rates from 2013 to 2014 due to experience rating improvement with the improving economy.
- Employers will receive the full FUTA tax credit in 2014 due to the UI Trust Fund having a positive balance on November 9, 2014.
- Total regular UI benefits paid in 2014 were approximately \$642.5 million, compared to \$792.8 million in 2013.
- The department has not borrowed any federal money to pay benefits since July 23, 2014.
- Regular UI benefits paid in 2014 decreased by \$150 million (19%) compared to 2013. The number of claimants paid and the benefit payment amounts have decreased since the record high year of the recession in 2009:

Year	Regular Benefits Paid	Total Benefits Paid	Claimants Paid
2014	\$ 642,451,361	\$ 716,258,465	233,129
2013	792,817,341	1,283,637,389	312,325
2012	875,746,233	1,571,815,129	366,829
2011	1,011,840,124	2,076,607,917	445,538
2010	1,288,529,429	3,118,412,271	530,886
2009	1,873,576,982	3,166,852,114	566,353
2008	996,772,338	1,243,700,322	386,574

5. Report on the Public Hearing

Ms. Knutson provided a summary of the UI public hearing. The department solicited public comments on the UI law from August 25, 2014 to November 14, 2014. In addition, two public hearing sessions were held on November 13, 2014 at seven locations via videoconference throughout Wisconsin from 2:30 p.m. – 4:30 p.m. and 5:30 p.m. – 7:00 p.m.

The department presented a summary of 75 comments to the Council consisting of public hearing testimony and written correspondence. The department received 72 total written comments: 55 comments were received through an email address created specifically for the public hearing, 8 handouts during public hearing testimony, 5 letters, and 4 comments on public hearing cards from individuals who attended the public hearing sessions, but did not testify.

The top five topics issues and the number of comments received for each topic are as follows:

- Work search (16 comments)
- Hearing procedures (11 comments)
- Misconduct (8 comments)
- Suitable work (8 comments)
- One-week waiting period (6 comments)

Public hearing session locations and the number of individuals providing testimony were as follows:

- Madison – 3 afternoon/1 evening
- Milwaukee - 3 afternoon
- Eau Claire – 2 afternoon
- Wausau – 2 afternoon
- Green Bay – 1 afternoon
- La Crosse – 1 afternoon
- Superior – No attendees

Ms. Knutson requested the Council consider combining the afternoon and evening session into one given the low turn-out experienced during this public hearing and the public hearing held in 2012, by holding one session from 3:00 p.m. - 6:00 p.m. Combining sessions will cut administrative costs to conduct hearings. Moving forward, department staff will consider ways to increase outreach efforts to solicit and encourage public hearing participation.

6. Information Request from Council

The Council had requested a written summary of the worker misclassification presentation given by Mike Myszewski at the October 7, 2014 meeting. In addition to the information distributed at today's meeting, the department will provide the Council a quarterly update on worker misclassification, scheduling the next update on the April meeting agenda.

Mr. Gotzler requested information on UI Trust Fund projections. The department is still gathering information to address this request and analyzing data for future projections. Recent data shows overall projections on economic growth are greater than what had been previously anticipated and total benefits paid in 2014 were significantly lower than in 2013. The financial outlook report is due to the Legislature in April, and a copy will be provided to the Council.

7. Department Proposals

The department presented the following seven UI law change proposals for Council consideration:

D15-01 – Clarification of Recently Enacted Social Security Disability Insurance (SSDI) Provision

Mr. Sussman provided a summary of the department proposal relating to clarification of the recently enacted SSDI provision. Previously, claimants were allowed to simultaneously collect SSDI and UI benefits. This practice allows the claimant to collect benefits from two benefit programs designed to replace lost earnings due to the claimant's inability to work. 2013 Wisconsin Act 36 was intended to provide, with Council support, that claimants who received SSDI in any given month would not be eligible for UI benefits during that month.

The Labor and Industry Review Commission has issued a number of decisions that interpret the language of this statute to mean that a claimant is only ineligible for UI benefits during the week the SSDI payment is received by the claimants. The department has appealed 11 of these decisions to circuit court, and to date, filed one brief. The court has not yet issued any interpretation of law.

The department is currently drafting statutory language and anticipates presenting a draft of the proposal at the next Council meeting.

D15-02 - Combined Wage Claims

Mr. Sussman provided a summary of the department proposal relating to combined wage claims (CWC). The proposed amendment addresses a mandate by the federal government that requires states to pay UI benefits in cases where an unemployed individual has wages and employment in more than one state, commonly referred to as a combined wage claim. The federal mandate also prohibits states from providing relief from charges to an employer's UI account when the employer's actions cause an improper UI benefit payment. This proposal will allow the department to issue a determination to an out-of-state employer who is at fault if UI benefits are erroneously paid as a result of a CWC and the out-of-state employer's account is potentially chargeable. This proposal also allows the department to contact other state UI agencies and provide the determinations issued to employers principally located in that state.

D15-03 – Treasury Offset Program

Mr. Sussman provided a summary of the department proposal relating to the Treasury Offset Program (TOP). TOP is a centralized collection tool administered by the U.S. Department of Labor, Bureau of Fiscal Service (Fiscal Service) used to collect delinquent debts owed to federal agencies and states who have submitted debt information to Fiscal Service. The Bipartisan Budget Act requires states, as a condition for receipt of grants to administer UI programs, to use the TOP to recover UI debt that remains uncollected as of the date that is one year after the debt was determined to be due. Previously, participation in the TOP was voluntary and Wisconsin participates in the TOP to collect delinquent debt due to claimant fraud or a claimant's failure to report earnings. The proposal expands statutory language to require the department use the TOP to collect unpaid specified UI debt owed by employers as a result of unpaid UI contributions due to the Trust Fund and any penalties and interest assessed on the debt.

D15-04 – Reimbursable Employer Fraud Charging Issue

Ms. Knutson provided a summary of the department proposal relating to reimbursable employers whose accounts are charged as a result of identity theft. Identity theft is a problem for state UI agencies. Thieves assume the work history of a claimant in order to receive UI benefits, which result in fraudulent charges against an employer's account. Charges for UI benefit overpayments resulting from identity theft are handled differently for contribution and reimbursable employers. For employers subject to contribution, fraudulently obtained UI benefits are restored to the UI employer's account and the UI benefit charges are transferred to the fund's balancing account, representing a form of risk sharing among contribution employers. For governmental units, nonprofit organizations and Indian tribes, which have elected reimbursement financing, the overpayment remains charged to the employer's account until the money is recouped by the department, with the exception of overpayments due to department error. The department proposes to set aside \$2 million in the UI Trust Fund (plus any accrued interest) to pay for identity theft charges against reimbursable employers. If set aside funds reach a balance of \$100,000, the department proposes all reimbursable employers be assessed to pay the UI benefit charges due to identity theft, similar to the Reimbursable Employer Debt Assessment authorized by statute to recover bad debt that results from uncollectible benefit charges. The department is currently drafting statutory language and anticipates presenting a draft of the proposal at the next Council meeting.

Mr. Lump requested information on an assessment to replenish the set aside funds back to \$2 million if the balance reaches \$100,000 at the individual reimbursable level.

D15-05 – Enabling Department to Hold Managing Partners of LLPs Personally Liable

Mr. Rubsam provided a summary of the department proposal relating to holding managing partners of a limited liability partnership (LLP) personally liable for the contributions owed by the LLP. Currently, the department may hold individuals who are officers, employees, members or managers holding at least 20% of the ownership interest of a corporation or limited liability corporation (LLC) personally liable for the unpaid UI contributions of the corporation or LLC. Current law does not clearly permit the department to hold managing partners of a LLP personally liable for the unpaid contributions of the LLP. This proposal will allow the department to hold individuals personally liable for the UI contribution of "other forms of business association," which include LLPs. Wisconsin law permits the Wisconsin Department of Revenue (WI-DOR) to hold an "officer, employee or other responsible person of a corporation or other form of business association or a member, employee or other responsible person of a partnership, LLC or sole proprietorship" personally liable for the unpaid sales and use tax of a business entity. The change will align UI law more closely to WI-DOR law, ensuring more predictability for individuals for who are potentially liable for unpaid taxes.

Mr. Manley asked if within Ch. 77, Stats., "other responsible person" is defined and in Ch. 71, Stats., if "other form of business" is defined. The department will research this issue.

D15-06 – Appeals Modernization and Efficiency Improvements

Ms. Knutson provided a summary of the department proposal relating to appeals modernization and efficiency improvements. The UI appeals process can be streamlined and become more efficient if staff and all parties take advantage of technological changes. The proposed changes include:

- Allowing electronic delivery of notices and decisions.
- Streamlining the handling of the review of failure to appear at hearings.
- Allow appeals to be filed directly with the appeal tribunal.
- Allow Administrative Law Judges to sign appeal tribunal decisions electronically.
- Incorporate enabling language to allow the department to hold video hearings when technology is implemented and allowed.

D15-07 – Work Share Partial Wage Formula

Ms. Knutson provided a summary of the department proposal relating to Wisconsin's work share program, which became effective December 31, 2013. Voluntary participation in the work share program provides an employer with an alternative to layoffs when faced with a temporary decline in business. The layoff of workers is avoided by an employer reducing the hours for employees in a particular unit or their entire workforce. Wisconsin is the only state that provides two methods to determine the amount of UI benefit payments. A regular UI claimant may be eligible for partial UI benefits if their work hours are reduced by more than eight hours and earnings are less than \$500 in a week. The first method calculates the benefit rate using the partial wage formula, and the second method calculates the benefit rate using a proportional benefit rate as a percentage of regular UI benefits. A work share claimant receives the higher of the two benefit rates.

The U.S. Department of Labor (USDOL) has determined that employers participating in a work share program will not be reimbursed by the federal government for UI benefits paid using the partial wage formula. The cost of implementing technological changes to implement the current law exceeds the amount of the USDOL grant. This proposal will amend current statutory language eliminating the provision for calculation of UI benefits based on the partial wage formula.

8. Correspondence

Ms. Knutson reported that the department received a joint correspondence from Representatives Christine Sinicki, Tod Ohnstad and Chris Taylor offering comments as the Council reviews proposed changes to UI law and rules. Ms. Knutson stated the department has responded to this correspondence.

9. Other Business

Ms. Knutson reported that Jeff Kuesel has retired after 42 years of state service from the Legislative Reference Bureau. The department has requested a Governor's commendation and

Ms. Knutson requested the Council consider a resolution to recognize Mr. Kuesel's for his expertise in UI and the work performed drafting legislation for UI law changes. Mr. Kuesel offered to provide a 10 minute presentation to the Council on the history of the UI program at a future meeting.

The department will provide information on additional department proposals and materials from today's proposals at the March meeting.

10. Future Meetings and Agenda Items

The Council's next meeting is scheduled for March 19, 2015. Council members were encouraged to contact Ms. Knutson with agenda items and research requests.

Ms. Knutson summarized the 2015 agreed bill timeline, which tentatively schedules the Council finalizing the agreed bill at the June 18 meeting.

Motion

Motion by Mr. Gotzler, second by Mr. Reihl to recess and go into closed caucus session pursuant to s. 19.85 (1) (ee), Stats., to discuss department proposals and reconvene at 11:50 a.m. The motion carried unanimously and the meeting was recessed at 11:15 a.m.

Report out of Caucus:

The Council reconvened at approximately 11:50 a.m. The Council reported they are still considering department proposals. Mr. Reihl requested an updated report on the estimated Trust Fund balance given the more recent expectation of increased economic growth. In addition, Mr. Reihl requested information on when the department expects the balance of the Trust Fund will trigger moving from Schedule A to Schedule B.

11. Adjourn

Motion by Ms. Feistel, second by Mr. Manley to adjourn at 12:00 p.m. Motion carried unanimously.