

*WISCONSIN ACT 59*

Unemployment Insurance  
Advisory Council

2007

Unemployment  
Insurance  
Amendments  
- Summary -

2007 WISCONSIN ACT 59

Amendments to

Wisconsin Statutes

Chapter 108,

*UNEMPLOYMENT*

*INSURANCE*

*LAW*

Prepared by Bureau of Legal Affairs, Office of Policy Research  
staff Barbara J. Unger. Legal assistance provided by  
Bureau of Legal Affairs Research Attorney Tracey Schwalbe.  
Cover design and layout by Lora Waddell.  
This publication is written for public information  
purposes as a general description of  
2007 Wisconsin Act 59. It is not intended  
to interpret or supersede law or  
applicable administrative rules.

For information about the Department of Workforce Development,  
visit web page:

<http://dwd.wisconsin.gov>

March 2008

# CONTENTS

<i>HIGHLIGHTS OF ACT 59</i> .....	1
<i>INTRODUCTION</i> .....	3
<i>BACKGROUND</i> .....	3
<i>CHANGES STRENGTHENING THE RESERVE FUND</i> .....	7
<i>CHANGES IN BENEFIT POLICIES</i> .....	11
<i>CHANGES IN TAX POLICIES</i> .....	15
<i>ADMINISTRATIVE PROVISIONS</i> .....	18
<i>APPENDIX A: Statutory Changes by Topic</i> .....	19
<i>APPENDIX B: Changes by Statute Section</i> .....	20
<i>APPENDIX C: Employer Tax Rate Schedule for 2009</i> .....	21
<i>Advisory Council on Unemployment Insurance</i> .....	22



## *HIGHLIGHTS of ACT 59*

On March 5, 2008 Governor Doyle signed 2007 Wisconsin Act 59, amending Chapter 108 of Wisconsin's Unemployment Insurance law. The Act includes provisions to:

- Gradually increase the taxable wage base over the next six years.
- Restructure the tax table to put more funds into the balancing account.
- Increase total wages needed to qualify.
- Increase penalties for claimants and employers that commit fraud.
- Allow more employers to defer a portion of first quarter tax payments.
- Increase the maximum weekly benefit rate in 2009.
- Expand electronic reporting and payment by employers.
- Study the definition of employee and independent contractor.
- Change due dates for payments and tax and wage reports.



## INTRODUCTION

This booklet describes changes to unemployment law as recommended by the Unemployment Insurance Advisory Council and included in Act 59 of 2007. Of primary interest are measures taken to strengthen the Unemployment Reserve Fund, which has declined since 2001. After a description of the reasons for that decline, the most recent changes to the law are described in the following order: changes strengthening the reserve fund, changes in benefit policies, changes in tax policies, and administrative changes. For reference, Appendix A lists the changes by topic while Appendix B lists the changes in order of their statute number.

## BACKGROUND

The Unemployment Reserve Fund cash balance declined from \$1.815 billion at the end of 2000 to \$554.3 million at the end of 2007. The decline in the balance during the 2001 recession was expected; the Reserve Fund typically declines during a recession and the following year or so until the economy picks up pace. However, the balance continued to drop in 2004, 2005, 2006 and 2007, a period during which the state's economy performed well. As a result of the Reserve Fund decline, if Wisconsin were to experience a significant recession in the near future, it is unlikely that the Unemployment Reserve Fund would have sufficient resources to pay the additional benefits that are required during an economic downturn.

Failure to fund benefits during a recession can lead to borrowing from the federal government. In turn, borrowing from the federal government can cause a sharp increase in taxes, decreases in benefits, or a reduction in federal tax credits for employers. When the Department had to borrow in the early 1980's, the loan was \$737 million. In addition, Wisconsin employers paid approximately \$125 million in interest on the debt. In order to repay the debt, maximum weekly benefits were frozen at \$196 for five years (1983-1988), and employer taxes were substantially increased.

Act 86 of 2005 required the Department to look at the long term fiscal stability of the Unemployment Reserve Fund. In July of 2007 the Department reported to the Unemployment Insurance Advisory Council:

- The Reserve Fund financing system currently in effect does not adequately reflect growth in the economy because there have been

only limited changes to the Reserve Fund financing system that was developed for the economy of the 1990s.

- An employer's "experience" with unemployment has declined in importance in determining tax rates because fewer benefits are charged to employer accounts.

As a result of these two problems, the growth in tax revenues to fund unemployment benefits has been less than the growth in benefits. To explain how this happened, we start with an overview of how the Unemployment Insurance benefit and tax systems work. Then, we discuss the specific reasons why the Reserve Fund declined. Finally, we present changes made by Act 59 to increase Reserve Fund stability.

**Benefits:** The primary purpose of the Unemployment Insurance program is to provide cash payments (benefits) that partially and temporarily replace wages to recently employed workers who involuntarily become unemployed. By helping unemployed workers afford life's necessities, Unemployment Insurance benefits sustain the demand for goods and services provided by other employers.

In order to qualify for benefits, claimants must have sufficient wages from all employers in two or more calendar quarters in a "base period", which typically consists of the first four of the most recently completed five calendar quarters. Claimants must also have enough wages to qualify for at least a minimum weekly benefit rate.

Benefit expenditures are driven by increases in wages and employment, the insured unemployment rate, and changes in policies increasing or decreasing benefits. Since 1986 all the factors that increase benefit payments have seen increases.

**Taxes:** To fund Unemployment Insurance benefits, employers pay taxes. These taxes are the primary source of revenue for the Unemployment Reserve Fund. Taxes are computed by applying tax rates to a portion of employees' wages. That portion is commonly called the wage base. Since 1986 Wisconsin's taxable wage base has been statutorily defined as the first \$10,500 of wages paid by each employer to each employee during a calendar year.

The Reserve Fund is made up of the sum of employer accounts and a “balancing” account. Employer accounts and the balancing account are funded through separate tax rates.

First, each employer’s individual “account” is credited with the basic taxes that the employer pays on behalf of each employee. This account is charged with unemployment insurance benefits when an employer does not have work for its employees. Basic tax rates are the same for all employers with the same experience in employees laid off. Employer accounts can be positive or negative. Positive accounts represent a reserve for paying possible future benefits and result in lower tax rates - even a 0% tax rate if the employer never lays employees off. Negative accounts operate in a deficit because more benefits have been paid out to employees than taxes were paid in for those employees. Negative balance employers pay the higher tax rates on wages. When employees are not working and have base period wages from more than one employer, each employer’s account is charged for the percent of the base period wages each employer paid.

The second account is called the balancing account. This account receives the solvency tax that employers pay and any interest earned on the balance in the whole Reserve Fund.

Charges to the balancing account come from benefits that are paid, but either are not charged to a particular employer or are removed from an employer’s account when its benefits exceed its taxes by a specified percentage. The most common instance of charges not made to an employer’s account are those that occur when a claimant quits one job, is subsequently hired by another employer, and then is later laid off while the claimant still has base period wages from the employer that the claimant quit. All the benefit charges based on work for the employer quit are charged to the balancing account. In addition, when an employer has a negative balance in its account of more than 10% of its taxable payroll, the amount over 10% is removed from the employer’s account and charged to the balancing account.

If income and charges to the balancing account were equal, the balancing account balance would be \$0. However, in recent years, charges to the balancing account have exceeded income by a substantial margin. At the end of 2007 the balancing account had a negative balance of \$495 million dollars.

By law, all income to the State's Unemployment Reserve Fund is deposited into a United States Treasury account and pooled for the purpose of making benefit payments. The U.S. Treasury pays quarterly interest on each state's account balance. As mentioned above, Wisconsin credits the interest to the balancing account. Since 2001 interest payments have decreased because of the Reserve Fund decline.

***Summary of benefit payments and taxes paid interaction:*** An employer currently paying the maximum basic tax of 8.9% on taxable wages of \$10,500 per year would pay into the fund \$934.50 for each employee. If that employee were laid off and became a claimant qualifying for the maximum weekly benefit of \$355 per week for the maximum 26 weeks of eligibility, the claimant could receive \$9,230 – almost ten times as much as the taxes paid on the taxable wage. Similarly, at the minimum tax rate of zero, the employee may receive \$9,230 even though the employer paid no tax in a given year on behalf of the employee.

***Reserve Fund Study Results:*** The Reserve Fund study presented to the Unemployment Insurance Advisory Council in July 2007 showed that the funding structure for the Unemployment Insurance program developed in the late 1980s is no longer suitable because of several economic changes since then. Over the years benefit expenditures have grown because of growth in wages, growth in employment, and inflation. Details on the study include:

- Employee wages are higher but the wage base the employer pays taxes on has not increased. Since 1986 Wisconsin's taxable wage base has been statutorily defined as the first \$10,500 of wages paid to each employee during a calendar year. There have been no changes in this amount. Twenty one years ago the average Wisconsin weekly wage was \$343.55 or about \$17,864 per year. This meant the taxable wage base was 59% of average yearly wages. The average weekly wage is now \$717.08 or about \$37,288 per year. This makes the taxable wage base 28% of the average yearly wages paid, less than half of what it was in 1986.
- Employment growth is another factor in decreased Reserve Fund stability. Between 1990 and 2005 the number of jobs in private taxable employment increased 21% from 1,784,000 to 2,160,000 jobs. When there are more workers at a given insured unemployment

rate, more workers will be unemployed and more benefit dollars will be paid to claimants.

- Since 1990 benefits paid from the balancing account have increased with no additional revenue from the solvency tax to pay for these “unfunded” benefits. Since these benefits do not come from employer accounts, the employer’s taxes do not increase and there is no increase in revenue to fund solvency benefits. In 1990 balancing account charges were \$42 million. In 2005 they were \$118 million. The charges have almost tripled with no corresponding increase in revenue.

After examining the way in which the Unemployment Reserve Fund has been operating, the Unemployment Insurance Advisory Council recommended and the Legislature enacted the changes described below. These changes balance the interests of employers and employees in strengthening Wisconsin’s Unemployment Insurance system.

## **CHANGES STRENGTHENING THE RESERVE FUND**

*Increase the taxable wage base in three steps over the next six years.*

Increase the taxable wage base from the first \$10,500 of wages paid to each employee in a year to the first:

- \$12,000 in 2009 and 2010
- \$13,000 in 2011 and 2012
- \$14,000 in 2013 and 2014

By 2007 the taxable wage base was out of alignment with current average weekly wages being paid. As mentioned, Wisconsin’s taxable wage base has not been changed since 1986.

Compared to all states, Wisconsin’s new wage base is in about the middle. Some states have an annual wage base over \$20,000 including nearby Iowa at \$22,000 and Minnesota at \$24,000. In these states an employer at the maximum tax rate may pay as much as \$1,917 or \$2,568 when the highest tax schedule is in effect, compared to \$1,029 in Wisconsin.

Restructure the tax table.

The second change restructures the tax table so that more tax dollars go into the balancing account rather than into employer accounts. The amount of taxes transferred depends on whether the employer has a positive or negative account balance.

- Positive account balance employers will have:
  1. A decrease of 0.2% (two-tenths of one percent) in their basic tax rate, and,
  2. An increase of 0.2% (two-tenths of one percent) in their solvency tax rate.
  
- Negative account balance employers will have:
  1. A decrease of 0.4% (four-tenths of one percent) in their basic tax rate, and,
  2. An increase of 0.4% (four-tenths of one percent) in their solvency tax rate.

Charts below provide examples showing how the changes affect small employers (annual payroll less than \$500,000), large employers and positive and negative balance employers at a given tax rate. The examples below are taken from Tax Schedule B and hypothetical payrolls of \$100,000 and \$1,000,000 for ease in computation of the tax amounts.

Positive Balance Employer Examples:

	Small Employers in 2008			Small Employers in 2009		
	Basic	Solvency	Total	Basic	Solvency	Total
Tax Rate	1.60%	0.35%	1.95%	1.40%	0.55%	1.95%
Taxable Payroll	<u>\$100,000</u>	<u>\$100,000</u>	<u>\$100,000</u>	<u>\$100,000</u>	<u>\$100,000</u>	<u>\$100,000</u>
Tax	\$1,600	\$350	\$1,950	\$1,400	\$550	\$1,950

	Large Employers in 2008			Large Employers in 2009		
	Basic	Solvency	Total	Basic	Solvency	Total
Tax Rate	1.60%	0.55%	2.15%	1.40%	0.75%	2.15%
Taxable Payroll	<u>\$1,000,000</u>	<u>\$1,000,000</u>	<u>\$1,000,000</u>	<u>\$1,000,000</u>	<u>\$1,000,000</u>	<u>\$1,000,000</u>
Tax	\$16,000	\$5,500	\$21,500	\$14,000	\$7,500	\$21,500

**Negative Balance Employer Examples:**

	Small Employers in 2008			Small Employers in 2009		
	Basic	Solvency	Total	Basic	Solvency	Total
Tax Rate	7.20%	0.90%	8.10%	6.80%	1.30%	8.10%
Taxable Payroll	<u>\$100,000</u>	<u>\$100,000</u>	<u>\$100,000</u>	<u>\$100,000</u>	<u>\$100,000</u>	<u>\$100,000</u>
Tax	\$7,200	\$900	\$8,100	\$6,800	\$1,300	\$8,100

	Large Employers in 2008			Large Employers in 2009		
	Basic	Solvency	Total	Basic	Solvency	Total
Tax Rate	7.20%	0.90%	8.10%	6.80%	1.30%	8.10%
Taxable Payroll	<u>\$1,000,000</u>	<u>\$1,000,000</u>	<u>\$1,000,000</u>	<u>\$1,000,000</u>	<u>\$1,000,000</u>	<u>\$1,000,000</u>
Tax	\$72,000	\$9,000	\$81,000	\$68,000	\$13,000	\$81,000

The new table of tax rates effective in 2009 is shown in Appendix C. As under current law there are four schedules of rates. The specific schedule used depends on the Reserve Fund balance on June 30 of the year preceding the year in which the schedule will be used. The schedule for 2009 will depend on the June 30, 2008 Reserve Fund balance.

**Increase the amount of total base period wages claimants need in order to qualify for benefits.**

Under prior law individuals claiming unemployment benefits were required to have total base period wages of at least 30 times their weekly benefit rate. Act 59 tightens qualifying requirements by raising the total wage requirement to 35 times the weekly benefit rate. For a claimant at the 2008 maximum weekly benefit rate of \$355 per week this will mean additional

base period wages of \$1,775. All other requirements for qualifying wages remain the same.

**Progressively increase forfeitures on claimants and employers that commit fraud by concealing information from the Department.**

Act 59 defines concealment as intentionally misleading or defrauding the Department by withholding or hiding information or making a false statement or misrepresentation. A common concealment situation happens when a claimant fails to report wages after returning to work.

When the Department finds fraud, it imposes on the claimant a penalty called forfeiture. The forfeiture is applied against benefits which would otherwise become payable to the claimant for weeks of unemployment occurring after the week of concealment. Former law forfeitures were not less than 25 percent nor more than 400 percent of the claimant's weekly benefit rate for the week for which the claim was made if the act of concealment resulted in no benefit overpayment or an overpayment of less than 50 percent of the claimant's weekly benefit rate. When an act of concealment resulted in an overpayment of 50 percent or more of the claimant's weekly benefit rate, the forfeiture ranged from 100 percent to 400 percent of the weekly benefit rate for the week(s) in which claim(s) were made.

Act 59 increases the forfeitures progressively if a claimant continues to commit fraud. The forfeiture for the first offence is one times the individual's weekly benefit rate for each act of fraud (for example, each week they conceal wages if they do it for multiple weeks).

After a claimant is notified of a first offense fraud determination, any subsequent acts of concealment will have a forfeiture of three times the weekly benefit rate for each act of fraud. After a second determination of fraud, should a third concealment occur, the assessed forfeiture will be five times the claimant's weekly benefit rate for each week of benefits obtained by fraud.

In addition to changes to forfeiture assessments, Act 59 makes the claimant ineligible for any benefits paid in any week in which any benefits are obtained by fraud. Prior law let the claimant keep some benefits for that

week if the amount concealed was not large enough to reduce the claimant's payment to zero.

In addition to concealment by claimants, the Department sometimes finds that an employer aids and abets a claimant or attempts to aid and abet a claimant in committing concealment. Similar to claimant forfeitures, employer penalties become progressively higher after each Departmental determination of fraud. The penalty for each act included in a first determination of fraud is \$500; the penalty for a second fraud determination is \$1,000; and, a third determination is \$1,500. Former law only gave the department permission to issue a determination that required the employer to pay an amount equal to the amount of benefits incorrectly paid to the claimant because of the fraud. Act 59 retains this feature of prior law and adds the \$500 - \$1,000 - \$1,500 penalties described above.

## **CHANGES IN BENEFIT POLICIES**

### **Increase the maximum weekly benefit rate \$8 per week in 2009.**

The current maximum weekly benefit rate of \$355 per week will continue in 2008. Beginning in 2009 the maximum will increase \$8 to \$363 per week. The minimum weekly benefit rate will also increase from \$53 to \$54 per week in 2009.

### **Consolidate and streamline the provisions of unemployment law that determine when a claimant may be considered able to work and available for work.**

Act 59 changes how the Department analyzes situations when employees perform some but not all of the work available in a week. Prior law had several slightly different provisions that treated claimants inconsistently when they were unable or unavailable to perform all of the work available in a given week. Act 59 requires the Department to look at the number of hours the employee was absent from available work as follows.

1. When an employee is absent for sixteen hours of work or less in a given week and claims unemployment benefits, the Department will apply a benefit reduction formula. The formula counts the actual

wages earned in the week and wages that could have been earned if all the scheduled work had been performed. The employee may receive a partial benefit for the week.

2. When an employee is absent from work with a given employer for more than sixteen hours of work in a week, the employee is disqualified from unemployment benefits for the entire week.

Allow full unemployment benefit entitlement for parents who are employed by their child but have limited ownership interest in their child's family owned corporation, partnership, or limited liability corporation or partnership.

For most unemployed claimants maximum benefit entitlement is the lesser of either 26 times their weekly benefit rate or 40% of their base period wages. However, this entitlement does not apply to family owned businesses. Maximum benefit entitlement for owners, spouses of owners, their children under the age of 18, and their parents in these family owned businesses is limited to only four weeks of benefits. This limited entitlement prevents payment of benefits far in excess of taxes by individuals who control their own unemployment.

Under prior law children were considered regular employees when working in a parent's business if these children were over the age of 18 and had limited ownership interest in that business. If laid off, these children were allowed full benefit entitlement. On the other hand, parents who were employed in their child's business and had limited ownership in that business received only four weeks of benefits.

Act 59 allows parents employed in their child's family owned business but having limited ownership in that child's business to be treated as regular employees for Unemployment Insurance purposes. If such parents are laid off, they are now eligible for full benefit entitlement.

Clarify statutory language to assure that employers may seek to disqualify claimants under either of two statutory provisions after employees are discharged for problems related to attendance.

Under Wisconsin Unemployment Insurance law as interpreted by the Wisconsin Supreme Court, misconduct occurs when an employee's behavior

exhibits willful and substantial disregard for an employer's interest. Examples of misconduct are theft, intentional damage to an employer's property, and fighting. An employee's failure to report for work may also be misconduct if it demonstrates both willful and substantial disregard for the employer. While a chronic illness, for example, may disqualify a claimant who is unavailable for work and may work to the substantial detriment of an employer, it would be difficult in most instances to show that absences due to the illness constitute willful disregard of the employer's interests. On the other hand, an employee who without good reason fails to show up for work may meet both of the tests required for misconduct.

Because misconduct presumes a serious infraction of an employer's policy or common expectations for behavior in the workplace, the penalty for misconduct is severe. When the Department finds that an employee was discharged for misconduct, the employee is ineligible for Unemployment Insurance benefits for seven weeks and until earning fourteen times his or her weekly benefit rate in wages from a new employer. The employee also loses all base period wage credits from the discharging employer for purposes of determining total benefits available.

Act 86 of 2005 added a new disqualification to the law specifically used when employees are discharged because they did not notify their employer of absence or tardiness. In order to use the new attendance disqualification, an employer must have a written attendance policy that applies uniformly to all employees and includes:

- 1) A description of what constitutes a single occurrence of absence or tardiness;
- 2) The procedure for giving proper notice of absence or tardiness; and
- 3) Information that failure to notify may result in a discharge.

The employer must provide a copy of the policy to each employee and keep a dated, signed statement that the employee read and understood the policy. If there is failure to notify, the employer must give the employee at least one warning that future violation of the policy may result in a discharge.

If an employee is discharged for failing to notify an employer of at least five documented incidents of absence and/or six documented incidents of

tardiness in a twelve month period, the employee may be disqualified from receiving Unemployment Insurance benefits. When this disqualification applies, the employee is ineligible for unemployment benefits until six weeks have passed and the employee has earned six times his or her weekly benefit rate in new wages. The employee may continue to use wages from the discharging employer for Unemployment Insurance purposes but any benefits paid at a later time are charged to the balancing account.

Act 59 makes two changes to the statutes regarding failure to notify an employer of absences or tardiness. First, it amends the statute to specify that either the misconduct disqualification or the new disqualification for failure to notify may apply when there are attendance issues. Second, Act 59 removes the 2009 expiration date for the provision and makes it part of the permanent statutes.

*Make permanent the expanded definition of employer fault that would otherwise sunset at the end of June 2008.*

Before 2005, when the Department requested information from a claimant's former employer or the employer's agent, the employer or employer's agent sometimes did not reply. Then, the Department had to make a decision from the information available and may have allowed benefits when no benefits were due. After employers and employer agents received notice that benefits were being paid, they often requested a hearing for the purpose of appealing the initial determination. When the employer or employer agent provided evidence at the hearing, the initial decision was sometimes reversed. A reversal meant the claimant was overpaid benefits and was required to pay the benefits back.

Act 86 of 2005 expanded the definition of employer fault to include instances when the employer or employer's agent failed to provide timely, complete, and correct information when requested during the Department's initial fact finding investigation for benefit eligibility. Act 86 had several provisions including the following:

1. If benefits were paid from the account of an employer that failed to provide information needed for the initial decision but later appealed and won as a result of providing that information during a hearing benefits before the hearing reversal date would "stand as paid" from the account.

2. When initial decisions were overturned because of the lack of timely, complete and correct information, the claimant no longer had to repay any benefits incorrectly received between the time of the initial determination and the hearing decision based on receipt of information needed to make the correct decision initially.
3. The Department was given authority to suspend the privilege of any agent to act as an employer's representative in Wisconsin if the agent's failure to respond reached a specified level within twelve months.
4. The statute included a trial period allowing the law to sunset on June 28, 2008 if the Department determined the changes did not bring about the desired results.

In two years the provision has proven effective at curbing delay in receiving needed information from employers and employer agents. Act 59 makes the provision permanent.

Act 59 also makes a technical change to facilitate the process of hearing appeals when they occur. Act 59 allows the admissibility of departmental records as prima facie evidence of failure to respond without requiring other testimony, provided that the parties to the hearing have an opportunity to rebut the information in the record.

## CHANGES IN TAX POLICIES

Lower the threshold for deferring unemployment first quarter tax liability from \$5,000 to \$1,000.

Under prior law an employer with a first quarter tax liability of at least \$5,000 could choose to defer up to 60 percent of the tax due on April 30 without interest payments. In order to defer payment, the employer could not be delinquent in making past tax payments or have an outstanding balance due as a result of any interest, penalties, or fees that had been assessed. Qualified employers choosing to defer a portion of contributions due had to pay at least 40 percent of the total due by April 30. Next quarter payments were due July 31 and at least 30 percent of the first quarter

amount was due along with all of the second quarter's taxes. By the October 31 payment date the employer had to pay at least 20 percent of first quarter taxes along with its regular third quarter payment. Any remaining tax liability was due in full by January 31 of the next year along with all of the fourth quarter's taxes. If an employer failed to make a deferred payment when due, the entire deferred amount became due and interest was charged on it.

Act 59 permits a qualified employer that has a first quarter contribution liability of at least \$1,000 to defer payment of its first quarter taxes to future quarters as described above. In order to take advantage of deferring contributions, employers must file notice of their intent to defer and must file all quarterly contribution, employment and wage reports electronically in the manner and form prescribed by the Department.

*Require specified employers and all employer agents to make payments electronically.*

Beginning in 2009, all employer agents will be required to make payments electronically. In addition, any employer with a tax liability of at least \$10,000 for any twelve month period ending on June 30 will be required to make all future tax payments electronically beginning January 1 of the next calendar year. Failure to pay electronically will result in a penalty of the greater of \$50 or ½ of 1% of the amount due.

*Expand the use of electronic filing for wage and tax reports.*

*Quarterly Tax Reports:* Under prior law employers with 50 or more employees were required to file tax reports electronically using the internet. For tax reports due for the third quarter of 2008, new law requires employers with 25 or more employees to file their reports electronically in the manner and form required by the Department.

Under prior law employer agents that prepared and filed tax reports for fewer than 25 employers were required to use the internet while those representing more than 25 employers were required to file the reports using an electronic medium and format approved by the Department. Under the new law all employer agents are required to file tax reports electronically in the manner and form prescribed by the Department.

Quarterly Wage Reports: New law requires that each employer file an electronic wage report beginning with the first calendar quarter in which the employer has 25 or more employees. As of the third quarter of 2008, electronic wage reports are required for the first quarter in which the employer meets the reporting requirements and for all subsequent quarters. Under prior law, electronic wage reports were not required until the fourth calendar quarter after the quarter in which the employer had 50 or more employees. The penalty for failure to file in the manner and form prescribed by the Department increases from \$10 per employee to \$15 per employee in October 2008 and \$20 per employee in October 2009. In addition, new law imposes a uniform \$50 tardy filing fee for all late or missing reports instead of tardy filing fees that vary by size of employer.

Under both old and new law all employer agents are required to file all quarterly wage reports electronically in the manner and form prescribed by the Department. Under new law, the penalty for failing to file wage reports in the manner and form required by the Department increases from \$10 to \$15 per employee in October 2008. In October 2009 the penalty increases to \$20 per employee.

Employers and agents can find information about the various electronic reporting methods on the Department's internet web site at:

<http://unemployment.wisconsin.gov>

Look at the left side links, and choose either Wage Quarterly Reporting or Tax Quarterly Reporting for the report you wish to do. Assistance is available Monday through Friday from 8 am to 4 pm at (608) 261-6700.

*Change the due date for payments and tax and wage reports.*

Previously all tax and wage reports and payments were timely if they were postmarked no later than the due date, or the department received the report or payment no later than three days after the due date. With the new law, reports and payments are timely if received by the Department on or before the last day of the month following the end of each calendar quarter.

## ADMINISTRATIVE PROVISIONS

Extend for two years the current administrative fee for upgrading technology to operate the unemployment insurance program.

Assessed at one hundredth of one per cent of taxable wages, the administrative fee will continue until June 30, 2010, unless extended by law. The fee will continue to be offset by an equal reduction in the employer's solvency tax rate. For example, a five hundredth of one percent solvency rate will become four hundredths of one percent. The fee will not be charged to employers with zero solvency tax rates.

Use Reed Act funds for Unemployment Insurance administration.

Funding for administration of the Unemployment Insurance program is maintained. Act 59 authorizes use of up to \$1 million dollars per year for Wisconsin Unemployment Insurance administration if needed during federal fiscal years 2008 and 2009 (October 1, 2007 – September 30, 2009). The source of the funds is a federal Reed Act distribution authorized by Public Law 107-147. The Department received legislative authorization to use these funds for administration during the previous biennium but did have to do so.

Appoint a committee to study the definition of employee.

Workers can be classified as employees, who may be eligible for Unemployment Insurance, or as independent contractors, who have no such eligibility. Making the distinction often proves difficult. Despite substantial experience, misclassification of employees as independent contractors is common in industries such as construction, logging, and trucking. In addition, as the labor market changes and different business models evolve, there are often few precedents for precisely defining employees and independent contractors in newly evolving service industries.

Act 59 directs the Unemployment Insurance Advisory Council to appoint a committee to study the definition of employee for the purpose of suggesting changes to the definition. The committee report is due to the Council on June 30, 2009.

# APPENDIX A

## Statutory Changes by Topic

Statute	Description	Page
<b><u>CHANGES STRENGTHENING THE RESERVE FUND</u></b>		
108.02(21)(b)	Progressively increase taxable wage base	7
108.18(4),(8),(9); 108.15(3)(e); 108.151(1);108.152(2)(b); 108.18(2)(a)	Restructure Tax Table	8
108.04(4)(a)	Tighten eligibility for benefits	9
108.04(11)(a),(b),(be),(bm),(c); (c)(1-3);(cm); (f);(g); 108.05(3)(d)	Increase forfeitures on claimants and employers that commit fraud by concealing information	10
<b><u>BENEFIT POLICY CHANGES</u></b>		
108.05(1)(p),(q)	2009 Maximum and minimum benefit rate increases	11
108.04(1)(a),&(b)	Streamline able and available statute provisions	11
108.04(1)(g) 1 & 2	Treat parents same as adult children in family businesses	12
108.04(5);(5g)(em)	Allow either misconduct or absenteeism disqualifications	12
108.04(13)(c),(e),(f); 108.09 (4o)	Make definition of employer fault permanent and allow use of department records as prima facie evidence	14
<b><u>CHANGES IN TAX POLICIES</u></b>		
108.17(2c)(a),(c),(f);(2g)	Allow more employers to defer tax payments	15
108.17(7) (a-b)	Require some employers and all employer agents to make payments electronically	16
108.17(2)(a),(b),(2b); 108.205(1m); 108.205 (2); 108.22(1)(a); 108.22(1)(ac,ad,ae,af)	Expand use of electronic filing for wage and tax reports	16
108.22 (1)(c)	Due dates	17
<b><u>ADMINISTRATIVE PROVISIONS</u></b>		
108.19(1e)(a)	Extend information technology assessment fee	18
20.445 (1) (n), (nf)	Fund FY 2008 – 2009 UI administration if necessary	18
Section 71 – Non statutory	Study definition of employee and independent contractors	18

## APPENDIX B

### Wisconsin Chapter 108 Statutory Changes by Statute Section

Statute	Description	Page
108.02(21)(b)	Progressively increase taxable wage base	7
108.04(1)(a),&(b)	Streamline able and available statute provisions	11
108.04(1)(g) 1 & 2	Treat parents same as adult children in family businesses	12
108.04(11)(a),(b),(be),(bm),(c); (c)(1-3);(cm); (f);(g); 108.05(3)(d)	Increase forfeitures on claimants and employers that commit fraud by concealing information	10
108.04(13)(c),(e),(f); 108.09 (4o)	Make definition of employer fault permanent and allow use of department records as prima facie evidence	14
108.04(4)(a)	Tighten eligibility for benefits standard	9
108.04(5);(5g)(em)	Allow either misconduct or absenteeism disqualifications	12
108.05(1)(p),(q)	2009 Maximum and minimum benefit rate increases	11
108.17(2)(a),(b),(2b); 108.205(1m); (2); 108.22(1)(a);108.22(1)(ac,ad,ae,af);	Expand use of electronic filing for wage and tax reports	16
108.17(2c)(a),(c),(f);(2g)	Allow more employers to defer tax payments	15
108.17(7) (a-b)	Require some employers and all employer agents to make payments electronically	16
108.18(4),(8),(9); 108.15(3)(e); 108.151(1); 108.152(2)(b); 108.18(2)(a)	Restructure Tax Table	8
108.19(1e)(a)	Extend information technology assessment fee	18
108.22 (1)(c)	Due dates	17
20.445 (1) (n), (nf)	Fund FY 2008 – 2009 UI administration if necessary	18
Section 71 – Non statutory	Study definition of employee and independent contractors	18

**APPENDIX C**  
**Wisconsin Unemployment Insurance Tax Rates**

Effective January 1, 2009

RESERVE PERCENT		SCHEDULE A			SCHEDULE B			SCHEDULE C			SCHEDULE D		
		BASIC RATE	SOLVENCY RATE		BASIC RATE	SOLVENCY RATE		BASIC RATE	SOLVENCY RATE		BASIC RATE	SOLVENCY RATE	
At least	But less than	All Employers	Employers Under \$500K	Employers Over \$500K	All Employers	Employers Under \$500K	Employers Over \$500K	All Employers	Employers Under \$500K	Employers Over \$500K	All Employers	Employers Under \$500K	Employers Over \$500K
15.0%	---	0.07	0.20	0.63	0.00	0.05	0.10	0.00	0.00	0.05	0.00	0.00	0.05
10.0%	15.0%	0.07	0.20	0.63	0.00	0.25	0.30	0.00	0.22	0.25	0.00	0.12	0.15
9.5%	10.0%	0.25	0.20	0.80	0.15	0.25	0.35	0.15	0.22	0.25	0.05	0.22	0.25
9.0%	9.5%	0.33	0.20	0.90	0.25	0.25	0.40	0.25	0.22	0.25	0.15	0.22	0.25
8.5%	9.0%	0.52	0.40	0.90	0.45	0.40	0.50	0.45	0.30	0.35	0.35	0.30	0.35
8.0%	8.5%	0.59	0.50	1.00	0.60	0.40	0.55	0.60	0.30	0.40	0.50	0.30	0.40
7.5%	8.0%	0.66	0.60	1.10	0.70	0.40	0.60	0.70	0.30	0.45	0.60	0.30	0.45
7.0%	7.5%	0.77	0.70	1.20	0.85	0.45	0.65	0.85	0.35	0.50	0.75	0.35	0.50
6.5%	7.0%	1.03	0.80	1.20	1.10	0.50	0.70	1.10	0.35	0.55	1.00	0.35	0.55
6.0%	6.5%	1.28	0.90	1.30	1.40	0.55	0.75	1.40	0.40	0.60	1.30	0.40	0.60
5.5%	6.0%	1.62	1.00	1.40	1.75	0.65	0.80	1.75	0.45	0.65	1.65	0.45	0.65
5.0%	5.5%	1.96	1.10	1.50	2.10	0.70	0.85	2.10	0.50	0.70	2.00	0.50	0.70
4.5%	5.0%	2.30	1.10	1.60	2.45	0.75	0.90	2.45	0.55	0.75	2.35	0.55	0.75
4.0%	4.5%	2.64	1.20	1.70	2.80	0.80	0.90	2.80	0.60	0.75	2.70	0.60	0.75
3.5%	4.0%	2.98	1.30	1.80	3.25	0.85	0.90	3.25	0.60	0.75	3.15	0.60	0.75
0	3.5%	3.37	1.40	1.90	3.80	0.85	0.90	3.80	0.60	0.75	3.70	0.60	0.75
<b>OVERDRAWN</b>													
>0	1.0%	5.30	1.30	1.30	5.30	1.30	1.30	5.30	1.10	1.10	5.30	1.10	1.10
1.0%	2.0%	5.80	1.30	1.30	5.80	1.30	1.30	5.80	1.10	1.10	5.80	1.10	1.10
2.0%	3.0%	6.30	1.30	1.30	6.30	1.30	1.30	6.30	1.10	1.10	6.30	1.10	1.10
3.0%	4.0%	6.80	1.30	1.30	6.80	1.30	1.30	6.80	1.10	1.10	6.80	1.10	1.10
4.0%	5.0%	7.30	1.30	1.30	7.30	1.30	1.30	7.30	1.20	1.20	7.30	1.20	1.20
5.0%	6.0%	7.80	1.30	1.30	7.80	1.30	1.30	7.80	1.25	1.25	7.80	1.25	1.25
6.0%	---	8.50	1.30	1.30	8.50	1.30	1.30	8.50	1.25	1.35	8.50	1.25	1.25

Schedule A is effective when the Unemployment Reserve Fund balance is less than \$300 million.

Schedule B is effective when the Unemployment Reserve Fund balance is \$300 million to \$900 million.

Schedule C is effective when the Unemployment Reserve Fund balance is \$900 million to \$1.2 billion.

Schedule D is effective when the Unemployment Reserve Fund balance is in excess of \$1.2 billion.

## ADVISORY COUNCIL ON UNEMPLOYMENT INSURANCE

E-mail: legalnet@dwd.state.wi.us

### Chairperson

Daniel LaRocque, Bureau of Legal Affairs; 201 East Washington Avenue,  
PO Box 8942, Madison, WI 53708; (608) 267-1405; FAX NO.(608) 266-8221

### Employee Representatives

Michael Bolton, Sub-District Director USW District 2, 1244 A Midway Road,  
Menasha, WI 54492; (920) 722-7630; FAX NO. (920) 722-7634

Phillip Neuenfeldt, Wisconsin State AFL-CIO, 6333 West Bluemound Road,  
Milwaukee, WI 53213 (414) 771-0700; FAX NO. (414) 771-1715

Dennis Penkalski, West 275 58840 Hidden Lakes Drive, Mukwonago, WI 53149  
(262) 363-4345; FAX NO. (262) 970-5770

Red Platz, UAW Sub Regional 4 Director, 7435 South Howell Street,  
Oak Creek, WI 53154; (920) 458-1351; FAX NO. (920) 458-6246

Patricia Yunk, Public Policy, Council 48 AFSCME, 3427 W. St. Paul Avenue,  
Milwaukee, WI 53208 (414) 344-6868; FAX NO. (414) 344-1274

### Employer Representatives

James Buchen, WI Manufacturers & Commerce, 501 East Washington Avenue,  
PO Box 352, Madison, WI 53701-0352; (608) 258-3400; FAX NO. (608) 258-3413

Earl Gustafson, WI Paper Council, 250 North Green Bay Road, PO Box 718,  
Neenah, WI 54957-0718; (920) 722-1500; FAX NO. (920) 722-7541

Susan Haine, CPA, 6708 Cooper Avenue, Middleton, WI 53562  
(608) 225-8185; FAX NO. (608) 836-3487

Edward J. Lump, WI Restaurant Association, 2801 Fish Hatchery Road;  
Madison, WI; (608) 270-9950; FAX NO. (608) 270-9960

Daniel Petersen, J.H. Findorff & Son Inc., 300 South Bedford Street,  
PO Box 1647, Madison, WI 53703; (608) 257-5321; FAX NO. (608) 257-5306