



Department of Workforce Development

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

**Council Members: Please bring your calendars to schedule future meetings.
Council Web Site: <http://dwd.wisconsin.gov/uibola/uiac/>**

MEETING

Date: January 19, 2017
Time: 10:00 a.m.
Place: Department of Workforce Development
201 E Washington Avenue
Madison, Wisconsin
GEF -1, Room F305

AGENDA ITEMS AND TENTATIVE SCHEDULE:

1. Call to Order and Introductions
2. Approval of Minutes of the November 17, 2016, Council Meeting
3. Update on Pre-employment & Occupational Drug Testing Emergency & Permanent Rules
 - Second Emergency Rule Regarding Pre-Employment Drug Testing
4. Report on the Unemployment Insurance Reserve Fund & Year End Financials – Tom McHugh
5. Report on Public Hearing
6. Correspondence
 - Senator Jon Erpenbach
 - Senator Sheila Harsdorf
 - Senator Tim Carpenter

7. Department Proposals For Agreed Bill
 - D17-01 – Charging Benefits to Employers that Fail to Comply with Requests for Information
 - D17-02 – Fiscal Agent Joint and Several Liability
 - D17-03 – Assessment for Failure to Produce Records
 - D17-04 – Ineligibility for Concealment of Holiday, Vacation, Termination, or Sick Pay
 - D17-05 – Ineligibility for Failure to Provide Information
 - D17-06 – Standard of Proof in Unemployment Insurance Law Cases
 - D17-07 – Revision of Collections Statutes
 - D17-08 – Various Minor and Technical Changes
 - D17-09 – Various Administrative Rule Changes
8. Comments from LIRC Regarding its Proposed Rule – Chairperson Laurie McCallum
9. Agenda Items for February 16, 2017 Meeting
10. Discussion of Council's Agreed Bill Timeline
11. Future Management & Labor Proposals for Agreed Bill
12. Adjourn

Notice:

- ❖ The Council may not address all agenda items or follow the agenda order.
- ❖ The Council may take up action items at a time other than that listed.
- ❖ The Council may discuss other items, including those on any attached lists.
- ❖ Some or all of the Council members may attend the meeting by telephone.
- ❖ The employee members and/or the employer members of the Council may convene in closed session at any time during the meeting to deliberate any matter for potential action and/or items posted in this agenda, pursuant to sec. 19.85(1)(ee), Stats. The employee members and/or the employer members of the Council may thereafter reconvene again in open session after completion of the closed session.
- ❖ This location is handicap accessible.
- ❖ If you have other special needs (such as an interpreter or written materials in large print), please contact Robin Gallagher, Phone: (608) 267-1405, Unemployment Insurance Division, Bureau of Legal Affairs, P.O. Box 8942, Madison, WI 53708. Hearing and speech impaired callers may reach us at the above phone number through WI TRS (or TDD/Voice Relay 1-800-947-3529.).

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Offices of the State of Wisconsin Department of Workforce Development
201 E. Washington Avenue, GEF 1, Room F305
Madison, WI

November 17, 2016

The meeting was preceded by public notice as required under Wis. Stat. § 19.84.

Members Present: Janell Knutson (Chair), Scott Manley, Ed Lump, Mike Gotzler, Earl Gustafson, Sally Feistel, Mike Crivello, Shane Griesbach, Terry Hayden, and Mark Reihl

Department Staff Present: Joe Handrick, Ben Peirce, Karl Dahlen, Andy Rubsam, Lili Crane, Mike Myszewski, Andrew Evenson, Tyler Tichenor, Becky Kikkert, Mathew Aslesen, Tom McHugh, Pam James, Janet Sausen, John Westbury, Amy Banicki, Emily Savard, Karen Schultz, and Robin Gallagher

Members of the Public Present: Chris Reader (Wisconsin Manufacturer & Commerce), Maria Gonzalez Knavel (Labor and Industry Review Council (LIRC), General Counsel) Mike Duchek (Legislative Reference Bureau), Aaron McKean (Legislative Reference Bureau), Shellee Bauknecht (Legislative Audit Bureau), Ryan Horton (Legislative Fiscal Bureau), Victor Forberger (UI Appeals Clinic), Brian Dake (WI Independent Businesses, Inc.)

1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council (Council) to order at 11:05 a.m. in accordance with the Wisconsin's Open Meetings law. Council members introduced themselves and Ms. Knutson introduced Ryan Horton (Fiscal Bureau) Maria Gonzalez (LIRC) Mike Duchek (Legislative Reference Bureau), Shellee Bauknecht (Legislative Audit Bureau) and Karl Dahlen (DWD Chief Legal Counsel). Thank you for attending.

2. Approval of Minutes of September 15, 2016

Motion by Mr. Griesbach, second by Mr. Lump, to approve the September 15, 2016 meeting minutes. The motion carried unanimously and the Council approved the minutes without correction.

3. Update from the Department

Ms. Crane provided an update on implementation of the online appeals portal. The first phase of the portal was implemented on October 24, which allows claimants to file appeals online. A claimant can log into the claimant portal and file an appeal to any department decision adverse to

them. All determinations for a claimant are listed and once an appeal is filed, a claimant has the ability to provide unavailability dates for scheduling hearings. Although there has been no increase in appeals, the ability to file claims online has relieved department staff of manual labor processing appeals. Since implementation, approximately 70% of appeals filed have been online. The department still accepts appeals filed in paper format through mail, fax or personal delivery. Moving forward with implementation, employers and claimant representatives will have the option to file appeals online.

Ms. Knutson stated the department received a supplemental grant from the U.S. Department of Labor (USDOL) that is funding online benefit appeals. The department has filed for a grant to implement an online tax appeal program, but that may be further down the road. The bulk of the appeals filed are a result of benefit cases. Last year, approximately 18,000 benefit appeals were filed and a few hundred tax appeals were filed.

4. Report on Unemployment Insurance Reserve Fund

Mr. McHugh reported on the following UI Trust Fund highlights:

- **Benefits paid** – From January to October 2016, total benefits paid were \$391.5 million compared to \$455.3 million in 2015 (a 14% decrease).
- **Tax Receipts** – From January to October 2016, total tax receipts received were \$833.6 million compared to \$1.031 billion in 2015 (a 19% decrease). This decrease was anticipated due to the move from Tax Schedule A to Tax Schedule B as well as lower rates through experience rating.
- **UI Trust Fund Balance** – The Trust Fund balance as of October 2016 was \$1.208 billion. This is a 50% increase compared to the balance on October 2015 of \$807.8 million.

The Trust Fund balance as of January 31, 2017 is anticipated to be \$1.1 billion. The Trust Fund balance will trigger a move from Tax Schedule B to Tax Schedule C and tax rates will continue to decrease. Triggering from Tax Schedule B to Tax Schedule C results in \$38 million less collected in taxes. In the future, if the schedule changes from Tax Schedule C to Tax Schedule D, taxes collected will decrease another \$30 million.

5. Misclassification Update

Ms. Knutson reported that the department was the recipient of a \$500,000 competitive grant from the USDOL. The department created two educational videos funded by that grant for under \$30,000. Mr. Myszewski presented the two educational videos – “*How to Properly Classify a Worker or Independent Contractor*” and “*How to Prepare for a Tax Appeal Hearing.*” These videos were made in response to the two greatest areas in which the department has received questions and complaints. These videos will be available on the department’s website, publically announced by the department’s communications office, through social media and to the public when department staff provides presentations.

The department will move forward by creating two radio public service announcements on worker misclassification in both English and Spanish.

6. Update on Pre-employment & Occupational Drug Testing Emergency and Permanent Rules

The department requested and received a second extension from the Joint Committee on Review of Administrative Rules on an emergency rule relating to pre-employment drug testing, substance abuse treatment program and job skills assessment. The emergency rule will be effective until January 30, 2017 and then expire.

The final draft rule for the permanent rule on pre-employment drug testing has been submitted for legislative committee review, which is expected to begin in January when the Legislature is back in session. To bridge the gap between the current emergency rule expiring and the adoption of the final rule, an additional emergency rule must be implemented. Ms. Knutson requested the Council review and approve the emergency rule scope statement at today's meeting.

Ms. Knutson stated that the federal regulations relating to occupational drug testing have been promulgated. The department will continue working on the occupational drug testing rule and keep the Council updated on its development.

7. Discussion of Recent Court Decisions

Mr. Rubsam updated the Council on the following court cases:

Operton v. Labor & Industry Review Commission

Ms. Operton was an employee of Walgreen's as a cashier and discharged for cash handling errors. The department determined she was discharged for misconduct, and Ms. Operton appealed that determination. The appeal tribunal determined the discharge was for substantial fault and when appealed to LIRC, LIRC affirmed the substantial fault finding. The case was appealed to Circuit Court where the court affirmed LIRC's decision. The case was appealed by Ms. Operton to the Court of Appeals, which reversed LIRC's decision and allowed benefits. The parties recently presented oral argument on the case at the Supreme Court and a decision is expected within six months. The Court of Appeals noted that Ms. Operton performed 80,000 cash transactions and correctly performed 99.9% of her cash handling transactions.

Bach v. Labor & Industry Review Commission

Ms. Bach provided in-home care services to her disabled son who receives Medicaid benefits, which were used to pay for Ms. Bach's services. Milwaukee County was acting as a fiscal agent, which by law is not considered an employer. Ms. Bach's son was transferred to a care facility and she ceased providing services for him. She applied for unemployment benefits, which were denied. Individuals who provide home care services for family members are ineligible for unemployment benefits. Ms. Bach appealed to LIRC. After multiple hearings and remands, LIRC determined Ms. Bach was an employee of her son, but her services are excluded so she is

not entitled to benefits. Ms. Bach appealed to Circuit Court and the Court of Appeals, both of which affirmed LIRC's decision. Ms. Bach has filed a petition for review with the Supreme Court.

DWD v. LIRC and Beres

The employee worked as a nurse and acknowledged receipt of the employer's policy handbook. The employer's policy on attendance was that one day of missed work during the probationary period is grounds for dismissal. The employee was a sick one day and did not call into work and therefore terminated. The department determined that the employee was discharged for misconduct. The appeal tribunal affirmed the decision. LIRC reversed the appeal tribunal decision on the grounds that the employer's policy was stricter than the default standards in statute. The department appealed to Circuit Court, which set aside LIRC's decision. LIRC appealed to the Court of Appeals. Both LIRC and the department have fully briefed the Court of Appeals and are waiting on a decision.

DWD v. LIRC and Morse et al.

The three claimants in this case received monthly Social Security disability payments. The department determined the claimants were ineligible for benefits for each week in the month that the claimants received SSDI payments. The claimants appealed and the appeal tribunal reversed the determinations. The appeal tribunal, applying LIRC's interpretation of the SSDI disqualification statute, held that the claimants were only ineligible for the single week of the month in which the claimants actually received the SSDI check. The department sought LIRC review. LIRC affirmed the appeal tribunals in two cases, and the department appealed those cases to Circuit Court. The Circuit Court reversed LIRC's decision and held that the claimants were ineligible for benefits for each week in a month in which the claimant received SSDI payments. LIRC waived the recovery of the overpaid benefits while offering little explanation on the reason for doing so. LIRC argued in circuit court that its waiver of the overpayments was proper because the appeal tribunal decisions allowing benefits were "department error" due to misinterpretation of the law. The Circuit Court affirmed LIRC's decision that waived the overpayments. The department has appealed the case to the Court of Appeals.

8. Correspondence

The department received a letter from Senator Janet Bewley on work search waiver recalls and changes made to the rule. Ms. Knutson responded to Senator Bewley stating her correspondence would be presented to the Council and included in the public hearing comments. Mr. Lump stated he has been receiving numerous calls from restaurant retailers about the possibility of changing this law.

9. Research Request from Council

Per the Council's request, Mr. Rubsam reported on misconduct and substantial fault and what has been seen at the department, appeal tribunal and LIRC levels. 2013 Wisconsin Act 20 created a two-tier standard for disqualifying employees for benefits, effective for determinations

issued on or after January 14, 2015. Act 20 codified the definition of misconduct and enumerated several specific types of conduct that are included in the definition including: substance abuse, theft, conviction of a crime, physical violence, attendance, falsifying business records and violation of a law. Act 20 also provides ineligibility for “substantial fault.”

When LIRC analyzes discharge for misconduct or substantial fault cases, they first analyze the facts under the enumerated types of misconduct. If the facts do not fall under those categories, the facts are analyzed under the general misconduct statute. If misconduct is not found, it must be determined if discharge was for substantial fault. If misconduct or substantial fault is not determined, benefits are awarded if otherwise eligible.

Mr. Rubsam provided cases where LIRC found enumerated types of misconduct, general misconduct and substantial fault. Ms. Knutson stated because of the coding and data used in the department’s computer system, providing accurate statistics at the different levels is not possible.

Ms. Knutson reported from *January 1, 2013 to January 4, 2014 at the adjudication level:*

Misconduct found and benefits denied – 24%
No Misconduct found and benefits allowed – 76%

After the law change at the adjudication level:

Misconduct or substantial fault found and benefits denied – 36%
No misconduct or substantial fault found and benefits allowed – 64%

Appeal rates of determinations issued at the adjudication level to the appeal tribunal remained virtually the same at 10.1% between January 1, 2013 to January 4, 2014 and after the law change.

Determinations that were appealed to the appeal tribunal from January 1, 2013 to January 4, 2014 for cases involving issues of misconduct that denied benefits, the outcomes of those hearings resulted in the following:

Affirmed and benefits denied – 27.8%
Reversed and benefits allowed – 48.3%
Dismissed (due to untimely appeals or failure to appear) – 19.2%
Withdrawn (by party) – 3.4%

Determinations that were appealed to the appeal tribunal from January 1, 2013 to January 4, 2014 for cases involving questions of misconduct and benefits were allowed, the outcomes of those hearings resulted in the following:

Affirmed and benefits allowed – 43.7%
Reversed and benefits denied – 19%
Dismissed (due to untimely appeals or failure to appear) – 15.9 %
Withdrawn (by party) – 15.5%

Determinations that were appealed to the appeal tribunal after the law change for cases involving issues of misconduct and substantial fault that denied benefits, the outcomes of those hearings resulted in the following:

Misconduct

Affirmed and benefits denied – 23.7%
Reversed and benefits allowed – 39.7%
Reversed and substantial fault found – 5.5%
Dismissed (due to untimely appeals or failure to appear) – 24.9%
Withdrawn (by party) – 4.6%

Substantial fault

Affirmed and benefits denied – 17.5%
Reversed and benefits allowed – 50.4%
Reversed and misconduct found – 6.3%
Dismissed (due to untimely appeals or failure to appear) – 19.8%
Withdrawn (by party) – 4.4%

Determinations that were appealed to the appeal tribunal after the law change for cases involving issues of misconduct and substantial fault that allowed benefits, the outcomes of those hearings resulted in the following:

Affirmed and benefits allowed – 38%
Reversed and benefits denied – 20.8%
Dismissed (due to untimely appeals or failure to appear) – 17.9%
Withdrawn (by party) – 17.1%

10. Motion to Caucus

Motion by Mr. Gotzler, second by Mr. Reihl go into closed session pursuant to Wis. Stat. §19.85 (1) (ee), to deliberate the second emergency rule scope statement on pre-employment drug testing, agenda items and future labor and management proposals at 12:05 p.m. All Council members voted “Aye” and the motion carried unanimously.

11. Reconvene out of Caucus

The Council reconvened at 1:30 p.m.

12. LIRC Proposed Rule

Ms. Knutson stated that LIRC filed a proposed hearing draft rule with the Legislative Clearinghouse on September 19, 2016 that will affect the UI program. The department reviewed the proposed rule and provided comments to LIRC at the public hearing held on November 15.

LIRC has statutory authority to promulgate rules of procedure only and the department's opinion is that some of the changes are more substantive than procedural. The following are some of the changes within the rule that the department disagrees with:

- During the appeals process, parties involved in UI cases will no longer be able to file answers and will be filing briefs only. There are some instances where the department may need to file its own petition to make sure the department's position is known.
- LIRC's review is de novo.
- Permit LIRC to consider evidence not contained in the hearing record without notice to the parties and allowing parties to object to new evidence. The parties could object within 14 days afterward. The department cited two statutes where LIRC is limited to decide cases based only on testimony heard by the Administrative Law Judge (ALJ), other evidence taken at the hearing, or by remand for additional evidence.
- Permit parties to file requests for reconsideration or to set aside decisions based on mistake or newly discovered evidence, with no time limit set forth within the proposed rule.

13. Research Request from Council

Ms. Knutson reported on the Council's request for information on work search waivers granted to claimants between November 2014 to February 2015 and November 2015 to February 2016. The department records data to determine what claims should be paid; unfortunately, the information is not recorded in a format that allows retrieval for statistical purposes.

The number of claimants that filed for benefits decreased 11% between these periods; however, the number of claimants required to search for work at the initial claim increased. In winter 2014-2015, 25.74% of claimants were required to search for work, and in winter 2015-2016, 38.91% of claimants were required to search for work. The number of claimants that received a recall waiver decreased from 51.76% in winter 2014-2015 to 40.93% in winter 2016-2106. This data is for initial claims only. The department provided information on the top 6 industries and occupations reported by claimants for the initial claim.

The overall average weeks paid declined from winter 2014-2015 to winter 2015-2016 by approximately 1 week. The average weeks paid for recall waiver claimants declined by approximately 2 weeks over this period. The average number of weeks for work search required claimants decreased by .5 of a week, implying there was a shift of claimants from those receiving a recall waiver and those required to search for work.

Mr. Lump stated the law is working as intended and the results are positive; but, there have been unintended consequences. Small businesses do not have the ability to adjust as easily, particularly with a declining worker pool. While we can all feel good about this rule, a lot of people have been hurt and continue to be hurt by this rule, that are in the category of smaller businesses.

14. Report out of Caucus

Emergency Rule Scope Statement on Pre-Employment Drug Testing

Motion: Moved by Mr. Manley, second by Mr. Reihl to approve the emergency rule scope statement on pre-employment drug testing. The motion carried unanimously.

15. Today's Public Hearing 3:00 p.m. – 6:00 p.m.

The UI public hearing will be held today beginning at 3:00 p.m. Department staff will arrive at approximately 2:30 p.m.

16. Agenda items for January 19, 2017 Meeting

The Council is scheduled to meet on January 19, 2017. Agenda items will include introduction of department proposals and the year-end financial presentation. Requests for additional agenda items can be submitted to Ms. Knutson.

17. Future Management and Labor Proposal for Agreed Bill

Ms. Knutson reviewed the proposed timeline for the agreed bill cycle. Department proposals will be introduced at the January 19, 2017 meeting. If Council is ready to exchange proposals, it can do so at that time. The department would like to submit a proposed Agreed Bill to the Legislature in August for introduction during the fall legislative session.

18. Adjourn

Motion by Mr. Gotzler, second by Mr. Reihl to adjourn at 1:55 p.m. The motion carried unanimously.

**ORDER OF THE WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT
EMERGENCY RULE**

1 The Wisconsin department of workforce development hereby adopts the following
2 emergency rule *to create* ch. 131 relating to pre-employment drug testing, substance abuse
3 treatment program and job skills assessment.

**Analysis Prepared by the Department of
Workforce Development**

Statutes Interpreted

Statutes Interpreted: Ch. 108, Stats.

Statutory Authority

Statutory Authority: ss. 108.04 (8) (b), 108.133 (2) (a) and (4), 108.14 (2) and (4), Stats.

Explanation of Statutory Authority

The Department of Workforce Development (DWD) has specific and general authority to establish rules interpreting and clarifying provisions of ch. 108, Stats., unemployment insurance and reserves, and general authority for promulgating rules with respect to ch. 108, Stats., under ss. 108.14 (2) and (4), Stats.

2015 Wisconsin Act 55 (Act 55) created s. 108.133 (4), Stats., which requires DWD to promulgate rules to create procedures for an employing unit to voluntarily submit the positive results of a test for the presence of controlled substances conducted on an individual, or report that an individual declined to submit to a test, as a condition of new employment. Act 55 also created s. 108.04 (8) (b), Stats., which requires DWD to promulgate rules to create a period of ineligibility or a requalification requirement, or both, as it relates to an individual's failure to accept suitable work due to the positive result of a test. Act 55 created s. 108.133 (3) (d), Stats., which permits an individual who fails a pre-employment drug test to remain eligible for benefits if the individual enrolls in and complies with the requirements of a drug treatment program and a skills assessment, which DWD must create under ss. 108.133 (2) (a) 2. and 4., Stats.,

Related Statute or Rules

Chapter 108, Stats. – Unemployment Insurance and Reserves

Plain Language Analysis

This emergency rule implements the requirements specified under Act 55, relating to pre-employment drug testing, substance abuse treatment program and job skills assessment. Act 55 created s. 108.04 (8) (b), Stats., which provides the following:

- There is a rebuttable presumption that an individual failed, without good cause, to accept suitable work if DWD determines, based on a report submitted by an employing unit, that an employing unit required the individual to submit to a test for the presence of controlled substances as a conditional offer of employment and withdrew the conditional offer after the individual declined to submit to the test, or tested positive for one or more controlled substances without providing evidence of a valid prescription for each controlled substance.
- For an individual that declines to submit to a test, the individual shall be ineligible for benefits until the individual qualifies for benefits in accordance with the rules promulgated by DWD.
- For an individual that tests positive for the presence of controlled substances without providing evidence of a valid prescription, the individual shall be ineligible for benefits until the individual qualifies for benefits in accordance with the rules promulgated by DWD or the individual may maintain eligibility for benefits if the individual enrolls in and complies with the requirements of a substance abuse treatment program and completes a job skills assessment.

In addition, Act 55 provides that DWD shall:

- Create and provide a substance abuse treatment program for individuals who engage in the unlawful use of controlled substances.
- Specify criteria that a claimant must satisfy in order to be considered in full compliance with the substance abuse treatment program.
- Create and conduct a job skills assessment for claimants who engage in the unlawful use of controlled substances.
- Identify criteria that an individual must satisfy to be considered in full compliance with the requirements of the job skills assessment.

This emergency rule implements the requirements specified under Act 55 and creates a process for an employing unit to voluntarily submit the positive results of a test conducted on an individual to DWD, if the test was required as a condition of an offer of employment and the individual was informed that the results may be submitted to DWD, the test was conducted or confirmed by a laboratory certified by the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services, and the individual tested positive for one or more controlled substances without evidence of a valid prescription. The department is relying on the standards enforced by the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services to ensure that prescription information is collected and evaluated by the laboratory and presented in the laboratory report. In addition, the emergency rule identifies the process by which the employing unit can report the positive results of a test to DWD.

An employing unit may voluntarily notify DWD that an individual declined to submit to a test for the presence of controlled substances as a condition of an offer of employment and the individual was informed before testing, that the employing unit may notify the department if the individual declined to submit to the test.

If a report is submitted by an employing unit of the positive results of a test conducted on an individual as a condition of an offer of employment, or the employing unit notifies DWD that an individual declined to submit to a test for the presence of controlled substances, DWD shall determine if the individual is receiving unemployment insurance benefits. If DWD determines that the individual is receiving unemployment insurance benefits, there is a rebuttable presumption that the individual failed to accept suitable work. This emergency rule provides the individual may overcome the presumption by proving certain facts by a preponderance of the evidence.

Under this emergency rule, an individual that fails a pre-employment drug test without presenting evidence of a valid prescription or declines to submit to a test is ineligible for benefits until the individual earns wages at least 6 times the individual's weekly benefit rate beginning after the week in which the individual tests positive or declines to submit to the test.

An individual that tests positive for controlled substances without presenting evidence of a valid prescription may maintain benefit eligibility by enrolling in and complying with a substance abuse treatment program, and completing a job skills assessment.

This emergency rule also identifies the parameters for a substance abuse treatment program for individuals that test positive for the presence of one or more controlled substances (without a valid prescription). In addition, this emergency rule does all of the following:

- Requires an individual to schedule an assessment with a substance abuse treatment provider within 5 working days as directed by the department.
- Requires an individual to comply with all conditions of a treatment plan developed by a substance abuse treatment provider.
- Specifies that the substance abuse treatment provider will determine if an individual is in compliance with the substance abuse treatment program requirements, and inform the department on a weekly basis of the individual's compliance.
- Provides that DWD will pay for the reasonable costs associated with the substance abuse treatment plan requirements for each week that the individual is otherwise eligible for unemployment insurance benefits under ch. 108, Stats.
- Requires an individual to complete a job skills assessment as directed by the department.

The substance abuse treatment and job skills assessment under this chapter only apply to circumstances of pre-employment drug testing.

Summary of, and comparison with, existing or proposed federal statutes and regulations

There are no existing or proposed federal regulations relating to pre-employment drug testing.

Comparison with rules in adjacent states

Michigan law previously provided that an individual would be disqualified from receiving unemployment insurance benefits if an employer withdrew a conditional offer of employment after the individual failed or refused to take a pre-employment drug test. Mich. Comp. Laws Ann. § 421.29(1)(e). The failed or refused pre-employment drug test would be considered a failure to accept suitable work. Michigan law did not provide drug treatment as an option for claimants to maintain benefit eligibility. Michigan's law was in effect from October 29, 2013 until October 29, 2014.

DWD is not aware of any unemployment insurance disqualification for a failed pre-employment drug test in Illinois, Minnesota or Iowa.

Summary of factual data and analytical methodologies

DWD consulted with the Unemployment Insurance Advisory Council and the Departments of Health Services, Corrections, and Children and Families to identify the parameters of a substance abuse treatment program for claimants who engage in the unlawful use of controlled substances.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis

The effect on small business was determined by reviewing estimates of costs a business would incur in order to comply with the law.

Fiscal Estimate

A complete fiscal estimate is attached.

Effect on small business

This emergency rule does not have an economic impact on small businesses as defined in s. 227.114 (1), Stats. DWD's regulatory review coordinator may be contacted by email at karl.dahlen@dwd.wisconsin.gov, or by calling (608) 266-9427.

Agency contact person

Questions and comments related to this emergency rule may be directed to:

Janell Knutson
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Division of Unemployment Insurance
P.O. Box 8942
Madison, WI 53708-8942
Telephone: (608) 266-1639
E-Mail: janell.knutson@dwd.wi.gov

Place where comments are to be submitted and deadline for submission

Janell Knutson
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E-Mail: janell.knutson@dwd.wi.gov

DWD will hold a hearing on February 27, 2017. Comments will be accepted until the time of the hearing.

EXEMPTION FROM FINDING OF EMERGENCY

The Legislature, by Section 9151 (5) (b) in 2015 Wisconsin Act 55, provides an exemption from a finding of emergency for the adoption of the rule.

SECTION 1. Chapter DWD 131 is created to read:

**CHAPTER DWD 131
PRE-EMPLOYMENT DRUG TESTING, SUBSTANCE ABUSE TREATMENT
PROGRAM AND JOB SKILLS ASSESSMENT**

DWD 131.001 Definitions. (1) Except as provided in sub. (2), the definitions in ch. DWD 100 apply to this chapter.

(2) Notwithstanding ch. DWD 100, all of the following definitions apply to this chapter:

(a) “Controlled substances” has the meaning given under s. 108.133 (1) (a), Stats.

1 Note: Section 108.133 (1) (a), Stats., states “Notwithstanding s. 108.02 (9), ‘controlled
2 substances’ has the meaning given in 21 USC 802.”
3

4 (b) “Positive results” means a test that confirms the presence of one or more controlled
5 substances and which is conducted or confirmed by a laboratory certified by the substance abuse
6 and mental health services administration of the United States department of health and human
7 services.

8 (c) “Substance abuse treatment provider” means an individual or organization that is
9 licensed by a government unit to administer substance abuse treatment services to individuals
10 that use controlled substances

11 (d) “Substance abuse treatment program” means the services offered by a substance
12 abuse treatment provider, beginning with an assessment.

13 **DWD 131.10 Pre-employment testing for the presence of controlled substances. (1)**

14 POSITIVE RESULTS OF A TEST; APPLICABILITY. An employing unit may report to the department
15 the positive results of a test for the presence of controlled substances conducted on an individual
16 if all of the following apply:

17 (a) The test for the presence of controlled substances was conducted as a condition of an
18 offer of employment and the employing unit informed the individual, before testing, that the
19 positive results may be submitted to the department.

20 (b) The individual tested positive for one or more controlled substances without evidence
21 of a valid prescription for each controlled substance.

22 (c) The employing unit complies with all of the provisions of this chapter.

23 (2) REPORTING POSITIVE RESULTS OF A TEST TO THE DEPARTMENT. To report positive
24 results to the department, the employing unit shall provide all of the following information, on a

1 form prescribed by the department, within 3 business days after the date on which the employing
2 unit received the positive results:

3 (a) The name, address, and telephone number of the employing unit, and, if applicable,
4 the unemployment insurance account number of the employing unit.

5 (b) The name, address, telephone number, and social security number of the individual
6 that tests positive for the presence of controlled substances.

7 (c) The following information related to the conditional offer of employment that the
8 employing unit offered to the individual:

9 1. Documentation of the conditional offer of employment.

10 2. The date on which the employing unit extended the conditional offer of employment
11 to the individual.

12 3. The date on which employment would begin, the rate of pay offered to the individual,
13 the number and arrangement of hours, and the kind of work that would be performed.

14 4. The date and manner in which the employing unit informed the individual that, as a
15 condition of the offer of employment, the individual must submit to a test for the presence of
16 controlled substances.

17 (d) The date and manner in which the employing unit informed the individual that the
18 positive results may be submitted to the department.

19 (e) The following information related to the administration of the test and the positive
20 results:

21 1. The name, address and telephone number of the laboratory that conducted the test.

22 2. The date on which the individual submitted to the test.

23 3. The controlled substances detected in the test.

1 4. A copy of the laboratory's report.

2 (f) The date on which the employing unit received the results of the test from the
3 laboratory.

4 (g) The date and manner in which the employing unit withdrew the conditional offer of
5 employment after the employing unit received the positive results.

6 (h) Any additional information requested by the department.

7 **Note:** To obtain a form under this section, contact the Department of Workforce
8 Development, Division of Unemployment Insurance, 201 E. Washington Avenue,
9 P.O. Box 7905, Madison, WI 53707 by telephone at (608) 232-0633 or (414) 438-
10 7705 or access the form online at
11 http://dwd.wisconsin.gov/dwd/forms/ui/ucb_18103_e.htm.

12
13 (3) INDIVIDUAL DECLINING TO SUBMIT TO A TEST FOR THE PRESENCE OF CONTROLLED
14 SUBSTANCES. An employing unit may notify the department that an individual declined to
15 submit to a test for the presence of controlled substances if all of the following apply:

16 (a) The test for the presence of controlled substances was required as a condition of an
17 offer of employment and the employing unit informed the individual, before testing, that the
18 employing unit may notify the department if the individual declines to submit to the test.

19 (b) The employing unit complies with all of the provisions of this chapter.

20 (4) NOTIFICATION TO DEPARTMENT OF INDIVIDUAL DECLINING TEST. To notify the
21 department that an individual declined to submit to a test for the presence of controlled
22 substances, the employing unit shall provide all of the following information, on a form
23 prescribed by the department, within 3 business days after the date on which the individual
24 declined to submit to the test:

25 (a) The name, address, and telephone number of the employing unit, and if applicable,
26 the unemployment insurance account number of the employing unit.

1 (b) The name, address, telephone number, and social security number of the individual
2 that declined to submit to a test for the presence of controlled substances.

3 (c) The following information related to the conditional offer of employment from the
4 employing unit to the individual:

5 1. Documentation of the conditional offer of employment.

6 2. The date on which the employing unit extended the conditional offer of employment
7 to the individual.

8 3. The date on which employment would begin, the individual's pay rate, the number and
9 arrangement of hours, and the kind of work that would be performed.

10 4. The date and manner in which the employing unit informed the individual that, as a
11 condition of the offer of employment, the individual must submit to a test for the presence of
12 controlled substances.

13 (d) The date and manner in which the employing unit informed the individual that the
14 employing unit may notify the department if the individual declined to submit to a test for the
15 presence of controlled substances.

16 (e) The following information related to the individual declining to submit to a test for
17 the presence of controlled substances:

18 1. The date on which the individual declined to submit to a test.

19 2. Documentation that the individual declined to submit to the test.

20 3. The date on which the employing unit received notification that the individual
21 declined to submit to the test.

1 (f) The date and manner the employing unit withdrew the conditional offer of
2 employment after the employing unit received notice that the individual declined to submit to a
3 test for the presence of controlled substances.

4 (g) Any additional information requested by the department.

5 **Note:** To obtain a form under this section, contact the Department of Workforce
6 Development, Division of Unemployment Insurance, 201 E. Washington Avenue,
7 P.O. Box 7905, Madison, WI 53708, by telephone at (608) 232-0633 or (414) 438-
8 7705 or access the form online at
9 http://dwd.wisconsin.gov/dwd/forms/ui/ucb_18102_e.htm.

10
11 (5) DEPARTMENT DETERMINATION OF AN INDIVIDUAL RECEIVING BENEFITS. (a) The
12 department shall determine, after receiving the information submitted by an employing unit
13 under sub. (2) or (4), whether the individual is receiving benefits under ch. 108, Stats.

14 (b) If the department determines the individual is receiving benefits under par. (a), the
15 department shall use the information reported under sub. (2) or (4) to determine eligibility under
16 s. 108.04 (8) (b), Stats. The department shall provide information regarding the documentation
17 submitted by an employing unit under sub. (2) or (4) to the individual.

18 (6) REBUTTABLE PRESUMPTION FOR FAILURE TO ACCEPT SUITABLE WORK. (a) If the
19 department determines an individual is receiving benefits under sub. (5) (a), the department shall
20 provide the individual an opportunity to overcome the presumption that the individual failed,
21 without good cause, to accept suitable work when offered under s. 108.04 (8) (b), Stats.

22 (b) An individual may overcome the presumption that the individual failed, without good
23 cause, to accept suitable work when offered under s. 108.04 (8) (b), Stats., if the individual tested
24 positive for the presence of one or more controlled substances, and the individual establishes by
25 a preponderance of the evidence, any of the following:

1 1. The employing unit did not extend an offer of employment contingent on the
2 individual submitting to a test for the presence of controlled substances.

3 2. The employing unit withdrew the offer of employment before the employing unit
4 received the positive results of the test.

5 3. The individual held a valid prescription at the time of the test for each controlled
6 substance detected in the test.

7 4. The test for the presence of controlled substances was not conducted or confirmed by
8 a laboratory certified by the substance abuse and mental health services administration of the
9 United States department of health and human services.

10 5. The requirements under s. 108.04 (9), Stats., apply to the work offered.

11 6. Any circumstances which the department determines are beyond the individual's
12 control.

13 (c) The individual may overcome the presumption that the individual failed, without
14 good cause, to accept suitable work when offered under s. 108.04 (8) (b), Stats., by declining to
15 submit to a test for the presence of controlled substances if the individual establishes by a
16 preponderance of the evidence, any of the following:

17 1. The employing unit did not extend an offer of employment contingent on the
18 individual submitting to a test for the presence of controlled substances.

19 2. The individual was unable to complete a test for the presence of controlled substances
20 due to medical reasons.

21 3. The individual accepted an offer of employment from another employing unit before or
22 at the time the individual declined to submit to the test under sub. (3).

23 4. The employing unit required the individual to pay for the test.

1 5. The requirements under s. 108.04 (9), Stats. apply to the work offered.

2 6. Any circumstances which the department determines are beyond the individual's
3 control.

4 (7) PERIOD OF INELIGIBILITY AND REQUALIFICATION REQUIREMENTS FOR BENEFITS. (a) An
5 individual under this section who has failed, without good cause, to accept suitable work due to
6 the positive results of a test without presenting evidence of a valid prescription, is ineligible to
7 receive benefits until the individual earns wages after the week in which the failure occurs equal
8 to at least 6 times the individual's weekly benefit rate under s. 108.05 (1), Stats., in employment
9 or other work covered by the unemployment insurance law of any state or the federal
10 government.

11 (b) Notwithstanding par. (a), an individual under this section who has failed, without
12 good cause, to accept suitable work due to the positive results of a test without presenting
13 evidence of a valid prescription, may maintain eligibility for benefits under ch. 108, Stats., by
14 enrolling in and complying with a substance abuse treatment program under s. DWD 131.30 and
15 completing a job skills assessment as prescribed under s. DWD 131.40.

16 (c) An individual under this section who has failed, without good cause, to accept
17 suitable work by declining to submit to a test for the presence of controlled substances, is
18 ineligible to receive benefits until the individual earns wages after the week in which the failure
19 occurs equal to at least 6 times the individual's weekly benefit rate under s. 108.05 (1), Stats., in
20 employment or other work covered by the unemployment insurance law of any state or the
21 federal government.

22 **DWD 131.30 Substance abuse treatment program.** (1) ELIGIBILITY. (a) An individual
23 whose positive results are reported under s. DWD 131.10 (2) may enroll in a substance abuse

1 treatment program if all of the following apply:

- 2 1. The individual is otherwise eligible for benefits under ch. 108, Stats.
- 3 2. The services offered by a substance abuse treatment program are administered by a
4 substance abuse treatment provider approved by the department.

5 (b) An individual eligible under par. (a) may enroll in a substance abuse treatment
6 program one time per benefit year.

7 (2) AUTHORIZATION TO RELEASE RECORDS. An individual who is eligible to enroll in a
8 substance abuse treatment program under sub. (1) shall provide written authorization to the
9 department for the disclosure of the individual's records by the substance abuse treatment
10 provider.

11 (3) ASSESSMENT. A substance abuse treatment provider shall use an assessment
12 conducted under this chapter in order to determine the extent and severity of the individual's use
13 of controlled substances, and to determine the type of intervention necessary to address the
14 individual's use of controlled substances.

15 (4) SUBSTANCE ABUSE TREATMENT PLAN. The substance abuse treatment provider shall
16 develop a substance abuse treatment plan that identifies the goals, objectives, resources and dates
17 of treatment for the individual. The substance abuse treatment provider shall provide a copy of
18 the substance abuse treatment plan to the department.

19 (5) SUBSTANCE ABUSE TREATMENT PROGRAM ENROLLMENT. Within 5 working days of
20 being directed by the department, an individual shall contact an approved substance abuse
21 treatment provider to schedule an assessment. An individual is considered to be enrolled in a
22 substance abuse treatment program if any of the following apply:

1 (a) The individual schedules an assessment for the earliest date that is available with a
2 substance abuse treatment provider.

3 (b) The individual requests placement on a waitlist maintained by the department for an
4 assessment if the individual is unable to schedule an assessment with a substance abuse treatment
5 provider. An individual who requests placement on a waitlist shall certify on a weekly basis, in a
6 manner prescribed by the department, that the individual will schedule an assessment when
7 services first become available with a substance abuse treatment program provider.

8 (6) SUBSTANCE ABUSE TREATMENT PROGRAM COMPLIANCE. (a) An individual shall
9 comply with all requirements of a substance abuse treatment plan as prescribed in sub. (4).

10 Compliance in a substance abuse treatment program shall be satisfied by any of the following:

11 1. The substance abuse treatment provider informs the department on a weekly basis, in a
12 manner prescribed by the department, of an individual's compliance with the substance abuse
13 treatment plan.

14 2. The individual certifies to the department on a weekly basis, in a manner prescribed by
15 the department, that the individual is placed on a waitlist for a substance abuse treatment
16 program and will comply with a substance abuse treatment plan when services first become
17 available with a substance abuse treatment provider.

18 (b) An individual who fails to comply with the substance abuse treatment plan under par.
19 (a) is ineligible to receive benefits until the individual earns wages after the week in which the
20 failure occurs equal to at least 6 times the individual's weekly benefit rate under s. 108.05 (1),
21 Stats., in employment or other work covered by the unemployment insurance law of any state or
22 the federal government.

1 (7) SUCCESSFUL COMPLETION OF SUBSTANCE ABUSE TREATMENT PROGRAM. (a) A
2 substance abuse treatment provider shall notify the department, as directed, when an individual
3 successfully completes the requirements of the substance abuse treatment program.

4 (b) An individual may complete a substance abuse treatment program with an alternate
5 substance abuse treatment provider with advance department approval.

6 (8) SUBSTANCE ABUSE TREATMENT PROGRAM COSTS. (a) The department shall pay for
7 reasonable costs of the services provided by the substance abuse treatment provider as set forth
8 in the individual's substance abuse treatment plan for each week the individual is eligible for
9 benefits under ch. 108, Stats.

10 (b) Notwithstanding par. (a), the department shall pay for reasonable costs of the services
11 provided by the substance abuse treatment provider as set forth in the substance abuse treatment
12 plan if the individual is determined ineligible for benefits under ch. 108, Stats., solely due to the
13 individual complying with the requirements of the individual's substance abuse treatment plan.

14 **DWD 131.40. Jobs skills assessment.** (1) An individual whose positive results are
15 reported under s. DWD 131.10 (2) and who elects to enroll in and comply with a substance abuse
16 treatment plan under s. DWD 131.30 shall complete a job skills assessment as directed by the
17 department.

18 (2) The department may require an individual to participate in reemployment services
19 under s. DWD 127.07 in order to complete the job skills assessment.

20 (3) An individual who fails to participate in a job skills assessment under this section as
21 directed by the department is ineligible to receive benefits until the individual earns wages after
22 the week in which the failure occurs equal to at least 6 times the individual's weekly benefit rate

1 under s. 108.05 (1), Stats., in employment or other work covered by the unemployment insurance
2 law of any state or the federal government.

3 **SECTION 2. EFFECTIVE DATE.** This rule shall take effect upon publication and remains
4 in effect for 150 days. The department may seek to extend this emergency rule as provided in s.
5 227.24, Stats.

Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE
DEVELOPMENT

By: _____
Raymond Allen, Secretary

UI Reserve Fund Highlights

12/31/2016

- Benefit payments for calendar year 2016 total \$457.4 million, a decrease of 15% when compared to the same period one year ago.

Benefits Paid	2016 (in millions)	2015 (in millions)	Change (in millions)	Percent Change
Total Regular UI Paid	\$457.4	\$535.3	-\$77.9	-15%

- 2016 calendar year tax receipts were \$842.5 million compared to 2015 tax receipts of \$1.0 billion.

Tax Receipts	2016 (in millions)	2015 (in millions)	Change (in millions)	Percent Change
Total Tax Receipts	\$842.5	\$1,040.9	-\$198.4	-19%

- The December 31, 2016, Trust Fund ending balance was \$1.2 billion, an increase of 56% when compared to the December 31, 2015, balance of \$742.9 million.

UI Trust Fund Balance	2016 (in millions)	2015 (in millions)	Change (in millions)	Percent Change
Cash Analysis Statement	\$1,159.2	\$742.9	\$416.3	56%

- Interest earned in 2016 was \$21.8 million, an increase of 95% when compared to 2015 interest of \$11.2 million.

UI Trust Fund Interest Earned	2016 (in millions)	2015 (in millions)	Change (in millions)	Percent Change
Total Interest Earned	\$21.8	\$11.2	\$10.6	95%

2017 UI Employer Tax Rate Highlights

Employer tax rates for 2017 were calculated and mailed during the month of October.

The balance of the Trust Fund on 6/30/16 determined the tax rate schedule for 2017. The Trust Fund balance on that date exceeded \$900 million. The 2017 tax table moved from schedule B to schedule C which will result in a reduction in UI taxes of approximately \$38 million.

Statutory Tax Schedules

- Wisconsin has 4 separate tax rate schedules. They run from A through D, with A raising the largest amount of tax revenue and D the least.
- The schedule for a year depends on the balance of the UI Trust Fund on June 30 of the preceding tax year.

Tax Schedule	UI Trust Fund Amount
A	Less than \$300 million
B	\$300 to \$900 million
C	\$900 million to \$1.2 billion
D	Greater than \$1.2 billion

- The following shows the number of employers in each of the various rate range categories indicated for both 2017 and 2016.

Tax Rate Bracket	Number of employers		Percent Difference
	Schedule B 2016	Schedule C 2017	
0%	0	11,096	n/a
>0% to <1%	44,352	45,121	1.7%
1% to <2%	32,336	27,248	-15.7%
2% to <3%	10,034	9,441	-5.9%
3% to <4%	25,022	26,497	5.9%
4% to <5%	7,734	6,226	-19.5%
5% to <6%	1	1	0.0%
6% to <7%	3,638	2,828	-22.3%
7% to <8%	1,896	888	-53.2%
8% to <9%	1,863	1,062	-43.0%
9% to <10%	1,100	922	-16.2%
10% to <11%	303	291	-4.0%
11% to <12%	937	791	-15.6%
12%	4,254	3,284	-22.8%
Total	133,470	135,696	

- 11,096 employers will have a zero total rate in 2017. These employers will pay no UI taxes for 2017 payrolls. Schedules A and B do not have a zero tax rate.
- Note that the 0% to 1% and 3% to 4% categories were the only categories that had an increase in the number of employers. This reflects both moving to a lower tax rate schedule for 2017 and further improvement in employer account balances due to the improved economy.
- There were nearly a thousand fewer employers at the maximum 12% rate in 2017 than for 2016.

2. The following shows the number of employers whose rate in comparison with the previous year either did not change, increased, decreased, or were rated at the new employer rate.

Change in Tax Rate	Schedule C		Schedule B		Schedule A	
	2017 Tax Rate	2017 % of Employers	2016 Tax Rate	2016 % of Employers	2015 Tax Rate	2015 % of Employers
No Change	3,343	2%	4,824	4%	26,727	20%
Rate Increase	28,876	21%	26,881	20%	35,841	27%
Rate Decrease	82,234	61%	81,363	61%	48,882	37%
New Employer Rate	21,243	16%	20,402	15%	20,167	15%
Total	135,696	100%	133,470	100%	131,617	100%

- The majority of the 3,343 employers whose rate did not change were negative balance employers who remained in one of the four highest tax rates.
- Approximately 25,700 of the 82,234 rate decreases were due solely to the rate schedule change. Had the schedule not changed, these employers would have been assigned the same rate they had last year.
- The remaining 56,500 rate decreases were due to both the rate schedule change and an increase in their reserve account balance.
- The rate for the 21,243 new employers decreased with Schedule C. For small employers the rate went from 3.25% to 3.05%. For large employers the rate fell from 3.40% to 3.25%. The statutory definition of "small" is a payroll under \$500,000 and for "large" a payroll equal or greater than \$500,000. The rate for new **construction** employers also decreased on the schedule from 6.60% to 4.40% for small employers and 4.55% for large. Employers are not experience rated until their 4th calendar year, so new employers in their second or third calendar year experienced a rate decrease.

3. To isolate the impacts of rates (alone) on taxes, each employer's actual tax rates for 2016 and 2017 were multiplied by the employer's reported FY 2016 taxable payroll. The resulting tax calculation for 2017 was subtracted from the taxes due for 2016. This estimated tax savings is not a forecast because payroll is held constant, and represents four quarters which span different calendar years.

	Estimated Tax Savings between 2016 and 2017
	(\$ millions)
NAICS Number and Description	
31-33 Manufacturing	-34.0
56 Administrative and Support and Waste Management and Remediation Services	-21.2
23 Construction	-15.1
62 Health Care and Social Assistance	-12.5
44-45 Retail Trade	-12.3
72 Accommodation and Food Services	-8.6
42 Wholesale Trade	-7.9
52 Finance and Insurance	-6.1
54 Professional, Scientific, and Technical Services	-6.0
48-49 Transportation and Warehousing	-4.9
81 Other Services (except Public Administration)	-3.5
71 Arts, Entertainment, and Recreation	-2.7
51 Information	-2.3
55 Management of Companies and Enterprises	-1.9
11 Agriculture, Forestry, Fishing and Hunting	-1.8
53 Real Estate and Rental and Leasing	-1.6
99 Unclassified	-0.8
61 Educational Services	-0.8
92 Public Administration	-0.7
22 Utilities	-0.6
21 Mining, Quarrying, and Oil and Gas Extraction	-0.4
Overall Savings	-145.7

APPENDIX 1

Change in Tax Rates (Per Employee)

Wisconsin Statute 108.18		Tax Reduction from SCHEDULE B To SCHEDULE C Employers Under \$500K				
RESERVE PERCENT		BASIC RATE B To C Unchanged	SOLVENCY RATE B	SOLVENCY RATE C	Change	Per Taxable Wage \$14,000
<u>At least</u>	<u>But less than</u>	All Employers	Employers Under \$500K			
15.00%	- - -	0.00	0.05	0.00	(0.05%)	\$ (7)
10.00%	15.00%	0.00	0.25	0.22	(0.03%)	(4)
9.50%	10.00%	0.15	0.25	0.22	(0.03%)	(4)
9.00%	9.50%	0.25	0.25	0.22	(0.03%)	(4)
8.50%	9.00%	0.45	0.40	0.30	(0.10%)	(14)
8.00%	8.50%	0.60	0.40	0.30	(0.10%)	(14)
7.50%	8.00%	0.70	0.40	0.30	(0.10%)	(14)
7.00%	7.50%	0.85	0.45	0.35	(0.10%)	(14)
6.50%	7.00%	1.10	0.50	0.35	(0.15%)	(21)
6.00%	6.50%	1.40	0.55	0.40	(0.15%)	(21)
5.50%	6.00%	1.75	0.65	0.45	(0.20%)	(28)
5.00%	5.50%	2.10	0.70	0.50	(0.20%)	(28)
4.50%	5.00%	2.45	0.75	0.55	(0.20%)	(28)
4.00%	4.50%	2.80	0.80	0.60	(0.20%)	(28)
3.50%	4.00%	3.25	0.85	0.60	(0.25%)	(35)
0	3.50%	3.80	0.85	0.60	(0.25%)	(35)
OVERDRAWN						
Less than 0	-1.00%	5.30	1.30	1.10	(0.20%)	(28)
-1.00%	-2.00%	5.80	1.30	1.10	(0.20%)	(28)
-2.00%	-3.00%	6.30	1.30	1.10	(0.20%)	(28)
-3.00%	-4.00%	6.80	1.30	1.10	(0.20%)	(28)
-4.00%	-5.00%	7.30	1.30	1.20	(0.10%)	(14)
-5.00%	-6.00%	7.80	1.30	1.25	(0.05%)	(7)
-6.00%	-7.00%	8.50	1.30	1.30	0.00%	0
-7.00%	-8.00%	9.25	1.30	1.30	0.00%	0
-8.00%	-9.00%	10.00	1.30	1.30	0.00%	0
-9.00%		10.70	1.30	1.30	0.00%	0
New Employer		2.50	0.75	0.55	(0.20%)	(28)

APPENDIX 1 (continued)
Change in Tax Rates (Per Employee)

Wisconsin Statute 108.18		Tax Reduction from SCHEDULE B To SCHEDULE C Employers \$500K or more				
RESERVE PERCENT		BASIC RATE B To C Unchanged	SOLVENCY RATE B	SOLVENCY RATE C	Change	Per Taxable Wage \$14,000
<u>At least</u>	<u>But less than</u>	All Employers	Employers \$500K or more			
15.00%	---	0.00	0.10	0.05	(0.05%)	\$ (7)
10.00%	15.00%	0.00	0.30	0.25	(0.05%)	(7)
9.50%	10.00%	0.15	0.35	0.25	(0.10%)	(14)
9.00%	9.50%	0.25	0.40	0.25	(0.15%)	(21)
8.50%	9.00%	0.45	0.50	0.35	(0.15%)	(21)
8.00%	8.50%	0.60	0.55	0.40	(0.15%)	(21)
7.50%	8.00%	0.70	0.60	0.45	(0.15%)	(21)
7.00%	7.50%	0.85	0.65	0.50	(0.15%)	(21)
6.50%	7.00%	1.10	0.70	0.55	(0.15%)	(21)
6.00%	6.50%	1.40	0.75	0.60	(0.15%)	(21)
5.50%	6.00%	1.75	0.80	0.65	(0.15%)	(21)
5.00%	5.50%	2.10	0.85	0.70	(0.15%)	(21)
4.50%	5.00%	2.45	0.90	0.75	(0.15%)	(21)
4.00%	4.50%	2.80	0.90	0.75	(0.15%)	(21)
3.50%	4.00%	3.25	0.90	0.75	(0.15%)	(21)
0	3.50%	3.80	0.90	0.75	(0.15%)	(21)
OVERDRAWN						
Less						
Than 0	-1.00%	5.30	1.30	1.10	(0.20%)	(28)
-1.00%	-2.00%	5.80	1.30	1.10	(0.20%)	(28)
-2.00%	-3.00%	6.30	1.30	1.10	(0.20%)	(28)
-3.00%	-4.00%	6.80	1.30	1.10	(0.20%)	(28)
-4.00%	-5.00%	7.30	1.30	1.20	(0.10%)	(14)
-5.00%	-6.00%	7.80	1.30	1.25	(0.05%)	(7)
-6.00%	-7.00%	8.50	1.30	1.30	0.00%	0
-7.00%	-8.00%	9.25	1.30	1.30	0.00%	0
-8.00%	-9.00%	10.00	1.30	1.30	0.00%	0
-9.00%		10.70	1.30	1.30	0.00%	0
New Employer		2.50	0.90	0.75	(0.15%)	(21)

APPENDIX 2

Change in Tax Rates Schedule A Through D

Total Tax Rate

Effective 1/1/2015

Tax Table		SCHEDULE A		SCHEDULE B		SCHEDULE C		SCHEDULE D	
RESERVE PERCENT		Total Tax %		Total Tax %		Total Tax %		Total Tax %	
At least	<u>But Less Than</u>	Employers Under \$500K	Employers \$500K or More	Employers Under \$500K	Employers \$500K or More	Employers Under \$500K	Employers \$500K or More	Employers Under \$500K	Employers \$500K or More
15.00%	--	0.27	0.70	0.05	0.10	0.00	0.05	0.00	0.05
10.00%	15.00%	0.27	0.70	0.25	0.30	0.22	0.25	0.12	0.15
9.50%	10.00%	0.45	1.05	0.40	0.50	0.37	0.40	0.27	0.30
9.00%	9.50%	0.53	1.23	0.50	0.65	0.47	0.50	0.37	0.40
8.50%	9.00%	0.92	1.42	0.85	0.95	0.75	0.80	0.65	0.70
8.00%	8.50%	1.09	1.59	1.00	1.15	0.90	1.00	0.80	0.90
7.50%	8.00%	1.26	1.76	1.10	1.30	1.00	1.15	0.90	1.05
7.00%	7.50%	1.47	1.97	1.30	1.50	1.20	1.35	1.10	1.25
6.50%	7.00%	1.83	2.23	1.60	1.80	1.45	1.65	1.35	1.55
6.00%	6.50%	2.18	2.58	1.95	2.15	1.80	2.00	1.70	1.90
5.50%	6.00%	2.62	3.02	2.40	2.55	2.20	2.40	2.10	2.30
5.00%	5.50%	3.06	3.46	2.80	2.95	2.60	2.80	2.50	2.70
4.50%	5.00%	3.40	3.90	3.20	3.35	3.00	3.20	2.90	3.10
4.00%	4.50%	3.84	4.34	3.60	3.70	3.40	3.55	3.30	3.45
3.50%	4.00%	4.28	4.78	4.10	4.15	3.85	4.00	3.75	3.90
0	3.50%	4.77	5.27	4.65	4.70	4.40	4.55	4.30	4.45
LT 0	-1.00%	6.60	6.60	6.60	6.60	6.40	6.40	6.40	6.40
-1.00%	-2.00%	7.10	7.10	7.10	7.10	6.90	6.90	6.90	6.90
-2.00%	-3.00%	7.60	7.60	7.60	7.60	7.40	7.40	7.40	7.40
-3.00%	-4.00%	8.10	8.10	8.10	8.10	7.90	7.90	7.90	7.90
-4.00%	-5.00%	8.60	8.60	8.60	8.60	8.50	8.50	8.50	8.50
-5.00%	-6.00%	9.10	9.10	9.10	9.10	9.05	9.05	9.05	9.05
-6.00%	-7.00%	9.80	9.80	9.80	9.80	9.80	9.80	9.75	9.75
-7.00%	-8.00%	10.55	10.55	10.55	10.55	10.55	10.55	10.55	10.55
-8.00%	-9.00%	11.30	11.30	11.30	11.30	11.30	11.30	11.30	11.30
-9.00%		12.00	12.00	12.00	12.00	12.00	12.00	12.00	12.00
Rates unaffected by Schedule A-D								Wisconsin Statute 108.18	
New Employer		3.60	4.10	3.25	3.40	3.05	3.25	3.05	3.25
New Construction Rates Calculated Annually									

FINANCIAL STATEMENTS

For the Month Ended December 31, 2016



Division of Unemployment Insurance

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCE SHEET
FOR THE MONTH ENDED December 30, 2016

	CURRENT YEAR	PRIOR YEAR
<u>ASSETS</u>		
CASH:		
U.I. CONTRIBUTION ACCOUNT	735,862.91	367,580.15
U.I. BENEFIT ACCOUNTS	235,427.34	(1,547.00)
U.I. TRUST FUND ACCOUNTS (1)	1,164,855,773.67	746,895,041.76
TOTAL CASH	1,165,827,063.92	747,261,074.91
ACCOUNTS RECEIVABLE:		
BENEFIT OVERPAYMENT RECEIVABLES	98,504,300.61	111,994,906.93
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (2)	(41,589,622.17)	(43,231,663.98)
NET BENEFIT OVERPAYMENT RECEIVABLES	56,914,678.44	68,763,242.95
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (3) (4)	38,282,967.93	44,971,885.98
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (2)	(24,368,902.08)	(31,586,226.95)
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	13,914,065.85	13,385,659.03
OTHER EMPLOYER RECEIVABLES	24,014,488.01	25,279,712.95
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	(11,326,144.17)	(12,050,743.74)
NET OTHER EMPLOYER RECEIVABLES	12,688,343.84	13,228,969.21
TOTAL ACCOUNTS RECEIVABLE	83,517,088.13	95,377,871.19
TOTAL ASSETS	1,249,344,152.05	842,638,946.10
<u>LIABILITIES AND EQUITY</u>		
LIABILITIES:		
CONTINGENT LIABILITIES (5)	35,182,381.90	40,249,586.39
OTHER LIABILITIES	7,545,936.11	5,599,707.77
FEDERAL BENEFIT PROGRAMS	361,852.53	399,054.95
CHILD SUPPORT HOLDING ACCOUNT	10,904.00	33,688.00
FEDERAL WITHHOLDING TAXES DUE	110,516.78	72,937.00
STATE WITHHOLDING TAXES DUE	1,502,802.01	1,528,398.64
DUE TO OTHER GOVERNMENTS (6)	414,485.38	412,612.86
TOTAL LIABILITIES	45,128,878.71	48,295,985.61
EQUITY:		
RESERVE FUND BALANCE	1,957,463,280.65	1,662,717,331.53
BALANCING ACCOUNT	(753,248,007.31)	(868,374,371.04)
TOTAL EQUITY	1,204,215,273.34	794,342,960.49
TOTAL LIABILITIES AND EQUITY	1,249,344,152.05	842,638,946.10

1. \$2,019,034 of this balance is for administration purposes and is not available to pay benefits.

2. The allowance for uncollectible benefit overpayments is 43.1%. The allowance for uncollectible delinquent employer taxes is 56.7%. This is based on the historical collectibility of our receivables. This method of recognizing receivable balances is in accordance with generally accepted accounting principals.

3. The remaining tax due at the end of the current month for employers utilizing the 1st quarter deferral plan is \$447,256. Deferrals for the prior year were \$619,923.

4. \$10,267,963, or 26.8%, of this balance is estimated.

5. \$23,056,718 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. \$12,125,664 of this balance is net interest, penalties, SAFI, and other fees assessed to employers and penalties and other fees assessed to claimants which, when collected, will be credited to the state fund.

6. This balance includes SAFI Payable of \$10,445. The 12/31/2016 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is \$18,369. \$9,391,459 was transferred from the Unemployment Interest Payment Fund to the Unemployment Program Integrity Fund on 08/19/16.

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
RESERVE FUND ANALYSIS
FOR THE MONTH ENDED December 30, 2016

	<u>CURRENT ACTIVITY</u>	<u>YTD ACTIVITY</u>	<u>PRIOR YTD</u>
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	2,440,291,580.68	2,118,970,629.39	1,804,710,813.07
BALANCING ACCOUNT	<u>(1,207,152,482.85)</u>	<u>(1,324,627,668.90)</u>	<u>(1,530,982,418.40)</u>
TOTAL BALANCE	1,233,139,097.83	794,342,960.49	273,728,394.67
<u>INCREASES:</u>			
TAX RECEIPTS/RFB PAID	1,875,838.68	603,623,252.20	664,427,626.74
ACCRUED REVENUES	1,965,006.04	(5,870,902.11)	(4,741,915.67)
SOLVENCY PAID	508,330.63	238,918,568.13	376,455,253.87
REDA PAID	0.00	30.20	172,509.99
FORFEITURES	79,566.00	1,002,655.37	1,574,683.37
BENEFIT CONCEALMENT INCOME	63,926.01	1,474,527.40	1,931,318.87
INTEREST EARNED ON TRUST FUND	6,530,369.55	21,833,381.51	11,238,870.76
INTEREST PAYMENT FUND INCOME	0.00	0.00	2,000,000.00
FUTA TAX CREDITS	(9,233.06)	95,822.13	1,269,461.04
OTHER CHANGES	<u>11,119.95</u>	<u>657,632.68</u>	<u>1,596,619.64</u>
TOTAL INCREASES	11,024,923.80	861,734,967.51	1,055,924,428.61
<u>DECREASES:</u>			
TAXABLE EMPLOYER DISBURSEMENTS	33,655,082.08	384,222,763.35	444,459,519.03
QUIT NONCHARGE BENEFITS	4,585,095.74	51,787,507.26	64,276,414.27
OTHER DECREASES	109,945.76	(4,596,184.94)	1,155,524.86
OTHER NONCHARGE BENEFITS	<u>1,598,624.71</u>	<u>20,448,568.99</u>	<u>25,418,404.63</u>
TOTAL DECREASES	39,948,748.29	451,862,654.66	535,309,862.79
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	1,957,463,280.65	1,957,463,280.65	1,662,717,331.53
BALANCING ACCOUNT	<u>(753,248,007.31)</u>	<u>(753,248,007.31)</u>	<u>(868,374,371.04)</u>
TOTAL BALANCE (7) (8)	<u><u>1,204,215,273.34</u></u>	<u><u>1,204,215,273.34</u></u>	<u><u>794,342,960.49</u></u>

7. This balance differs from the cash balance related to taxable employers of \$1,159,159,974 because of non-cash accrual items.

8. \$2,019,034 of this balance is set up in the Trust Fund in two subaccounts to be used for administration purposes and is not available to pay benefits.

**DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
RECEIPTS AND DISBURSEMENTS STATEMENT
FOR THE MONTH ENDED 12/31/16**

RECEIPTS	-CURRENT ACTIVITY--	--YEAR TO DATE---	PRIOR YEAR TO DATE
TAX RECEIPTS/RFB	\$1,875,838.68	\$603,623,252.20	\$664,427,626.74
SOLVENCY	508,330.63	238,918,568.13	376,455,253.87
ADMINISTRATIVE FEE	128.16	2,248.51	2,949.29
UNUSED CREDITS	276,879.90	4,960,192.60	5,094,947.59
GOVERNMENTAL UNITS	928,031.50	13,736,097.77	17,703,066.42
NONPROFITS	1,415,873.49	14,031,790.06	17,823,480.75
REDA PAID	0.00	30.20	172,509.99
INTERSTATE CLAIMS (CWC)	310,237.29	5,957,611.36	6,632,686.78
ERROR SUSPENSE	(706.98)	14,166.42	(920.70)
FEDERAL PROGRAMS RECEIPTS	364,684.83	1,916,520.91	901,117.35
OVERPAYMENT COLLECTIONS	1,616,041.43	29,526,369.21	34,946,532.18
FORFEITURES	79,566.00	1,002,655.37	1,574,683.37
BENEFIT CONCEALMENT INCOME	63,926.01	1,474,527.40	1,931,318.87
EMPLOYER REFUNDS	(541,100.28)	(6,371,363.36)	(8,863,654.09)
COURT COSTS	39,939.39	649,763.12	862,802.99
INTEREST & PENALTY	279,773.74	3,875,828.43	4,043,890.79
PENALTY-PROGRAM INTEGRITY	77,575.03	812,851.23	152,525.49
SPECIAL ASSESSMENT FOR INTEREST	5,093.24	44,218.19	65,837.49
SHORT-TIME COMPENSATION	0.00	0.00	777,396.00
INTEREST EARNED ON U.I. TRUST FUND BALANCE	6,530,369.55	21,833,381.51	11,238,870.76
INTEREST PAYMENT FUND INCOME	0.00	0.00	2,000,000.00
MISCELLANEOUS	(21,283.22)	220,433.60	131,396.39
TOTAL RECEIPTS	\$13,809,198.39	\$936,229,142.86	\$1,138,074,318.32
DISBURSEMENTS			
CHARGES TO TAXABLE EMPLOYERS	\$34,823,715.36	\$407,476,161.35	\$477,074,013.70
NONPROFIT CLAIMANTS	905,480.77	12,503,692.29	15,127,414.89
GOVERNMENTAL CLAIMANTS	1,000,970.20	12,210,863.53	16,082,602.28
INTERSTATE CLAIMS (CWC)	421,986.93	5,284,439.86	6,082,216.92
QUITS	4,585,095.74	51,787,507.26	64,276,414.27
OTHER NON-CHARGE BENEFITS	1,641,181.93	20,688,524.45	25,759,564.43
CLOSED EMPLOYERS	(2,033.16)	(7,015.52)	(16,488.12)
ERROR CLEARING ACCOUNT	0.00	0.00	(73.19)
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	186,302.87	1,725,077.99	2,317,769.21
EX-MILITARY (UCX)	82,528.80	1,300,582.17	2,192,247.22
TRADE ALLOWANCE (TRA/TRA-NAFTA)	389,082.33	5,473,457.57	6,178,456.68
DISASTER UNEMPLOYMENT (DUA)	0.00	(998.52)	(225.48)
2003 TEMPORARY EMERGENCY UI (TEUC)	(1,542.15)	(22,901.26)	(35,940.72)
FEDERAL ADD'L COMPENSATION \$25 ADD-ON (FAC)	(32,868.49)	(510,411.22)	(605,484.92)
FEDERAL EMERGENCY UI (EUC)	(307,547.33)	(5,637,574.71)	(8,450,259.05)
FEDERAL EXTENDED BENEFITS (EB)	(19,121.49)	(365,452.45)	(488,825.78)
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	(194.49)	(340.65)	(1,018.55)
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	(202.52)	(7,828.88)	(6,138.08)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	(357.33)	(6,155.57)	(5,218.38)
INTEREST & PENALTY	383,265.59	3,928,928.57	3,959,058.22
PENALTY-PROGRAM INTEGRITY	67,883.37	747,368.09	150,103.46
SPECIAL ASSESSMENT FOR INTEREST	0.00	45,078.10	73,076.47
COURT COSTS	38,068.18	663,118.78	863,456.12
ADMINISTRATIVE FEE TRANSFER	152.88	2,289.22	3,099.74
FEDERAL WITHHOLDING	(54,017.78)	(37,579.78)	(39,972.00)
STATE WITHHOLDING	(584,059.01)	25,596.63	(444,693.64)
REED ACT & ARRA SPECIAL ADMIN EXPENDITURES	0.00	139,226.56	668,207.68
STC IMPLEMENT/IMPROVE & PROMOTE/ENROLL EXP	0.00	353,322.12	12,367.50
FEDERAL LOAN REPAYMENTS	9,233.06	(95,822.13)	(1,269,461.04)
TOTAL DISBURSEMENTS	\$43,533,004.26	\$517,663,153.85	\$609,456,269.84
NET INCREASE(DECREASE)	(29,723,805.87)	418,565,989.01	528,618,048.48
BALANCE AT BEGINNING OF MONTH/YEAR	\$1,195,550,869.79	\$747,261,074.91	\$218,643,026.43
BALANCE AT END OF MONTH/YEAR	<u>\$1,165,827,063.92</u>	<u>\$1,165,827,063.92</u>	<u>\$747,261,074.91</u>

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
CASH ANALYSIS
FOR THE MONTH ENDED December 30, 2016

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BEGINNING U.I. CASH BALANCE	\$1,189,563,444.68	\$742,892,575.90	\$215,844,923.22
INCREASES:			
TAX RECEIPTS/RFB PAID	1,875,838.68	603,623,252.20	664,427,626.74
U.I. PAYMENTS CREDITED TO SURPLUS	1,148,302.93	248,646,878.51	384,110,568.26
INTEREST EARNED ON TRUST FUND	6,530,369.55	21,833,381.51	11,238,870.76
INTEREST PAYMENT FUND INCOME	0.00	0.00	2,000,000.00
FUTA TAX CREDITS	<u>(9,233.06)</u>	<u>95,822.13</u>	<u>1,269,461.04</u>
TOTAL INCREASE IN CASH	9,545,278.10	874,199,334.35	1,063,046,526.80
TOTAL CASH AVAILABLE	<u>1,199,108,722.78</u>	<u>1,617,091,910.25</u>	<u>1,278,891,450.02</u>
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	33,655,082.08	384,222,763.35	444,459,519.03
BENEFITS CHARGED TO SURPLUS	<u>6,293,666.21</u>	<u>73,216,623.73</u>	<u>90,858,779.91</u>
TOTAL BENEFITS PAID DURING PERIOD	39,948,748.29	457,439,387.08	535,318,298.94
REED ACT EXPENDITURES	0.00	139,226.56	668,207.68
SHORT-TIME COMPENSATION EXPENDITURES	<u>0.00</u>	<u>353,322.12</u>	<u>12,367.50</u>
ENDING U.I. CASH BALANCE (9) (10)	<u><u>1,159,159,974.49</u></u>	<u><u>1,159,159,974.49</u></u>	<u><u>742,892,575.90</u></u>

9. \$1,607,328 of this balance was set up in 2009 in the Trust Fund as a subaccount per the ARRA UI Modernization Provisions and is not available to pay benefits.

10. \$411,706 of this balance was set up in 2015 in the Trust Fund as a Short-Time Compensation (STC) subaccount to be used for Implementation and Improvement of the STC program and is not available to pay benefits.

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCING ACCT SUMMARY
FOR THE MONTH ENDED December 30, 2016

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	(\$799,683,825.37)	(\$919,824,755.63)	(\$1,128,681,971.60)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	508,330.63	238,918,568.13	376,455,253.87
FORFEITURES	79,566.00	1,002,655.37	1,574,683.37
OTHER INCREASES	<u>560,406.30</u>	<u>8,725,655.01</u>	<u>6,080,631.02</u>
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	1,148,302.93	248,646,878.51	384,110,568.26
TRANSFERS BETWEEN SURPLUS ACCTS (11)	4,746.00	(75,345,460.27)	(98,222,329.00)
INTEREST EARNED ON TRUST FUND	6,530,369.55	21,833,381.51	11,238,870.76
INTEREST PAYMENT FUND INCOME	0.00	0.00	2,000,000.00
FUTA TAX CREDITS	<u>(9,233.06)</u>	<u>95,822.13</u>	<u>1,269,461.04</u>
TOTAL INCREASES	7,674,185.42	195,230,621.88	300,396,571.06
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	4,585,095.74	51,787,507.26	64,276,414.27
OTHER NON-CHARGE BENEFITS	1,708,570.47	21,429,116.47	26,580,594.20
MISCELLANEOUS EXPENSE	<u>0.00</u>	<u>0.00</u>	<u>1,771.44</u>
BENEFITS CHARGED TO SURPLUS SUBTOTAL	6,293,666.21	73,216,623.73	90,858,779.91
REED ACT EXPENDITURES	0.00	139,226.56	668,207.68
SHORT-TIME COMPENSATION EXPENDITURES	<u>0.00</u>	<u>353,322.12</u>	<u>12,367.50</u>
BALANCE AT THE END OF THE MONTH/YEAR	<u><u>(798,303,306.16)</u></u>	<u><u>(798,303,306.16)</u></u>	<u><u>(919,824,755.63)</u></u>

11. The 10% writeoff for 2016 was \$63 million and is included in this balance. The 10% writeoff shifts employer benefit charges to the balancing account. The 10% writeoff has no effect on receivable balances.

UI Public Hearing - November 17, 2016

The Unemployment Insurance Advisory Council Public Hearing was held on November 17, 2016 via video conference in Madison, Eau Claire, Green Bay, La Crosse, Milwaukee, Superior and Wausau from 3:00 p.m. to 6:00 p.m. The department invited the public to submit written comments beginning September 1, 2016. The following information is a summary of the public hearing comments received:

295 people provided 307 comments by letter, e-mail or at the 2016 public hearing.

281 Written Comments Were Received

- 123 E-mails
- 158 Letters

Public Hearing Participation Summary

51 people attended the public hearing

36 people registered at the public hearing

- 19 people spoke at the public hearing
- 10 people registered (but did not speak or register opinion).
- 6 people spoke and provided written correspondence
- 1 person registered an opinion (but did not speak).

Eau Claire

Dept. Staff: Jeff Pawelski

4 attendees

3 people registered

3 people spoke

Green Bay

Dept. Staff: Tammy Edwards

10 attendees

10 people registered

4 people spoke

1 person provided a written comment

La Crosse

Dept. Staff: Ken Adler

4 attendees, all of whom registered and spoke

Madison

Dept. Staff: Janell Knutson, Andy Rubsam, Karen Schultz

UIAC Members: **Mark Reihl, Shane Griesbach and Terry Hayden**

23 attendees

10 people registered

8 people spoke

Milwaukee

Dept. Staff: Steven Glick

4 attendees

4 people registered

1 person spoke

Superior

Staff: Linda Holliday (Technical College Representative)

3 attendees, all of whom registered and spoke

Wausau

Dept. Staff: Joe Handrick

3 attendees

2 people registered

2 people spoke

Public Comment Topic Summary

<u>Issue</u>	<u>No. of Comments</u>
Work Search Waiver – Recall	246
1-Week Waiting Period	12
Customer Service	11
Work Search	10
UI Eligibility	10
Claim Filing	10
General Comment – System Change	6
Hearings	5
Fraud/Concealment	4
Length of UI	4
Charges to ER Accounts	4
Suitable Work	2
Program Integrity	2
ER Reporting Requirements	1
JobNet	1
Transition to Work	1
Extended Benefits	1
Claimant Accountability	1
Adjudication Process	1
Temp. Agencies	1
Exclusions for Referees	1
Worker's Compensation	1
Interest Charges on Taxes Owed	1
Meeting Request	1
Independent Contractor Test	1
Misconduct	1
Caregiver Exclusion	1
UCB -16 "Notice of Separation"	1

UIAC PUBLIC HEARING SUMMARY - November 17, 2016

No.	Law	Topic	Proposal/Comment Summary	Source	Date
1	DWD 127.02(2)	Work Search Waiver-Recall	Reconsider the issue of seasonal employees work search requirements and join the Senator in seeking a solution for these businesses and workers.	Senator Janet Bewley	(L)10-4-16
2	DWD 127.02(2)	Work Search Waiver-Recall	(a) Exempt seasonal EEs from work search as they have employment to return to. Many ERs rely on skilled EEs that they worked hard to train to return after the season layoff. (b) After attempting to work with the Council, introduced SB 764 that would have allowed a person who expects to be rehired by a former ER with 26 weeks, to be exempt from work search. (c) Encourages Council to address this problem and restore long-standing practice that allowed ERs to retain skilled EEs.	Senator Jon Erpenbach	(L) 11-16-16
3	DWD 127.02(2)	Work Search Waiver-Recall	The job search requirements for seasonal EEs are creating hardships for both ERs and EEs, with ERs incurring significant costs when they lose experienced and skilled workers. Urged Council to address the implications on EEs and ERs impacted by weather related work stoppages.	Senator Sheila Harsdorf	(L) 12-09-16
4	DWD 127.02(2)	Work Search Waiver-Recall	As a professional snow removal company, requiring EEs to find supplemental work to meet work search requirements is a safety issue. Would like opportunity to work with state officials to find a more equitable solution.	Aberman, Andrea LandWorks, Inc.	(E) 11-16-16
5	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Adams, Mason Henry G. Meigs, LLC	(L) 11-10-16
6	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Anderson, Mike Meigs Transport, LLC	(L) 11-10-16

UIAC PUBLIC HEARING SUMMARY - November 17, 2016

7	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Arnce, David Meigs Transport, LLC	(L) 11-10-16
8	DWD 127.02(2)	Work Search Waiver-Recall	As a professional snow removal company, requiring EEs to find supplemental work to meet work search requirements is a safety issue. Would like opportunity to work with state officials to find a more equitable solution. Would like an opportunity to work with state officials to find a more equitable solution.	Ball, Tom Ground Affects Landscaping, Inc.	(E) 11-18-16
9	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Beran, Matt Meigs Transport, LLC	(L) 11-10-16
10	(a) DWD 127.02(2) (b) DWD 123.03	(a) Work Search Waiver-Recall (b) UCB -16 "Notice of Separation"	(a) Is an ER in business for nearly 100 years. Over the past 1.5 years, ER has experienced a significant drop in business resulting in scheduling a number of reduced-hour work weeks, and many full layoff weeks. The change in law requiring EEs to register with Job Service after 8 weeks of filing claims, even if they are being recalled back to work, is confusing and cumbersome. Suggested that the ER be allowed a mechanism online to verify the weeks an EE is laid off and which they worked. (b) UCB-16 "Notice of Separation" should be available online rather than wasting paper and postage for each week an EE applies for benefits.	Bernstein, David Unit Drop Forge Co., Inc. (Comments forwarded by Senator Tim Carpenter)	(L) 01-06-17
11	DWD 127.02(2)	Work Search Waiver-Recall	As a professional snow removal company, requiring EEs to find supplemental work to meet work search requirements is a safety issue. Would like opportunity to work with state officials to find a more equitable solution.	Berryman, Darcy Berryman Lawn & Landscape, Inc.	(E) 11-15-16

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12	DWD 127.02(2)	Work Search Waiver-Recall	As a golf course EE, it is difficult to fulfill the job search requirements in the off season and is requesting a change to the job search procedure. His uncle is 84 years old and is given strange looks when fulfilling his job search requirements. The law should be changed to consider this.	Bertzzyk, Dennis	(E) 11-9-16 (E) 11-14-16
13	(a) 108.06(1) (b) 108.04 (c) None	(a) Length of UI (b) UI Eligibility (c) Customer Service	(a) Extend benefits from 26 weeks to 52 weeks with a minimum 3 job searches a week. (b) Too many barriers in place to get benefits. Program needs to be more efficient without so many delays in processing. (c) Department staff lacked ability to communicate effectively and she felt had been given "attitude."	Biese, Ann	(E) 10-11-16
14	(a) 108.04(11)(g) (b) None (c) DWD 127.01(1) (d) None (e) DWD 140.06(2)	(a) Fraud/Concealment (b) Claim Filing (c) Work Search (d) Customer Service (e) Hearings	Law student at the unemployment appeals clinic at UW-Madison. (a) Concerned that concealment is the default result of adjudication. (b) When filing via telephone, Question 4 is confusing. A client incorrectly answered this question and now owes \$11,000 of non-fraud overpayments. At this time, DWD is collecting more than what she pays in rent for repayment. (c) 4 weekly work searches must now be reported online or by fax, which is difficult. Faxes get lost. (d) DWD training is substandard. (e) 6-day turnaround for hearings is too fast.	Bizzotto, Jenifer UW Law School Unemployment Appeals Clinic	(PH) 11-17-16
15	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Blasel, Jody Henry G. Meigs, LLC	(L) 11-10-16
16	(a) DWD 127.02(2) (b) 108.04(3)	(a) Work Search Waiver-Recall (b) 1-Week Waiting Period	(a) Waive work search requirements for seasonal EEs. (b) Holding one week of UI wages is unfair.	Bollig, Paul	(L) 11-21-16

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17	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Bowman, Charles Chippewa Valley Foundations	(L) 10-31-16
18	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Brost, Gary Meigs Transport, LLC	(L) 11-10-16
19	DWD 127.02(2)	Work Search Waiver-Recall	Resort business employee (northern Door County). The law should be changed to waive the work search requirement for seasonal EEs. The new law on work search is not working with the Door County seasonal economy. Suggests an ER report if an EE is expected to return to work. If so, the EE should be exempt from work search requirements.	Brungraber, Sherry Maxinelton Braes	(PH) 11-17-16 (E) 11-18-16
20	(a) DWD 126 (b) DWD 127.01	(a) JobNet (b) Work Search	(a) ER receives many applications via JobNet from people who are not interested in the job or are not qualified. Increase started when individuals were required to register with the Job Center of WI. Requested information on who assists individuals in preparing a resume via JobNet. (b) Would like to know the mandatory job search process for individuals receiving benefits.	Buckles, Evelyn Midstate Independent Living Consultant, Inc.	(E) 11-18-16
21	(a) 108.04 (b) 108.06(1)	(a) UI Eligibility (b) Length of UI	(a) It is difficult when someone has fallen on hard times to be denied and then worry about becoming homeless. (b) Extend benefits for those who need them beyond 26 weeks.	Buggsy	(E) 11-11-16
22	DWD 127.02(2)	Work Search Waiver-Recall	Is a seasonal EE working as a roofer. Searching for work in the winter season is difficult and puts a strain on ERs who has to rehire and retrain EEs that have to accept a position if offered during the off season or risk losing benefits.	Bullion, Matthew	(E) 11-9-16

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23	108.06(1)	Length of UI	Extend benefits to 52 weeks due to lack of jobs as it is hard for 60 year olds to find work.	Burt, David	(E) 10-9-16 (E) 10-31-16 (E) 11-03-16 (E) 11-6-16 (E) 11-10-16
24	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Burton, Mark Henry G. Meigs, LLC	(L) 11-10-16
25	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Burton, Tracie Henry G. Meigs, LLC	(L) 11-10-16
26	DWD 127.02(2)	Work Search Waiver-Recall	Seasonal EEs shouldn't have to burden ERs when EEs have a job to go back too. Requests seasonal EEs be waived from job search requirement.	Butler, Carol Door County Visitor Bureau	(E) 10-25-16
27	DWD 127.02(2)	Work Search Waiver-Recall	As a professional snow removal company, requiring EEs to find supplemental work to meet work search requirements is a safety issue. Would like opportunity to work with state officials to find a more equitable solution.	Carrington, Sean Carrington Lawn & Landscape	(E) 11-18-16
28	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Carton, William Henry G. Meigs, LLC	(L) 11-10-16
29	DWD 127.02(2)	Work Search Waiver-Recall	Representing food processors, requested that seasonal food processors and migrant workers be exempt from the work search.	Castleberry, Aimee Jo Seneca Foods Corp.	(PH) 11-17-16
30	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal EE in Door County and working for same ER for five years, EE had lost one month of benefits because the EE wanted to return to work with the ER and did not do job search. The new law requirements are too difficult.	Cedar Court Inn	(E) 10-19-16

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31	(a) DWD 129 (b) None (c) None	(a) Claim Filing (b) Claim Filing (c) Claim Filing	(a) Hours of website availability should be clearly posted. In addition, information on phone system unavailability. Allow claims to be filed via fax. (b) Why is weekly claims filing optimized for mobile platforms? It takes a long time for pages to load when using laptop or computer. (c) Has had significant problems filing for initial claim. Was kicked out of system 6 times, was confused and took a significant amount of time.	Chris	(E) 11-16-16
32	DWD 127.02(2)	Work Search Waiver-Recall	Is a seasonal ER in the nursery industry with some EEs having worked at her company for 20 years and are highly trained in building patios and walls. The new law puts an ER at risk of losing qualified and skilled EEs. Requests that seasonal EEs be exempt from work search and for those who work temporarily jobs in the offseason, they not be penalized when trying to obtaining unemployment in the future.	Christen, Christine Christen Farm Nursery	(PH) 11-17-16
33	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Colby, Warren Meigs Transport, LLC	(L) 11-10-16
34	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Crawford, Julie Henry G. Meigs, LLC	(L) 11-10-16
35	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Dahlberg, Dennis	(L) 11-10-16

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36	(a)1. 108.18 (a)2. 108.04 (a)3. 108.04(11)(g) (a)4. 108.14(23) (a)5. DWD 127.07 (b) DWD 127.02(2)	(a)1. Charges to ER Accounts (a)2. Claimant Accountability (a)3. Program Integrity (a)4. General Comment - System Change (a)5. Transition to Work (b) Work Search Waiver-Recall	(a) WIB has developed a set of core principles to guide UI-related advocacy efforts: 1. Reduce the UI tax burden on small ERs. 2. Increase accountability on the part of UI claimants. 3. Improve program integrity and reduce the incidence of UI fraud. 4. Provide clarity to the enforcement of existing UI laws and regulations. 5. Transition UI claimants to gainful employment as quickly as possible. (b) The work search waiver changes are creating a hardship on small seasonal ERs. Request modification to ease the undue burden on seasonal ERs.	Dake, Brian Wisconsin Independent Businesses	(E) 11-18-16
37	DWD 127.02(2)	Work Search Waiver-Recall	Has been a seasonal ER since 1948 in the restaurant business. Their last season ended in October with four full-time EEs. Because of the new law, he lost three long-term EEs. With a tight labor market and losing key EEs, many times guests were not serviced in a way they had expected. After talking to many other seasonal restaurants, he had found they too had lost many key EEs due to the new law. Requests that a change in work search exemptions be given to EEs similar to the past law.	Davis, Steven Ardy's and Ed's Drive In	(PH) 11-17-16
38	(a) 108.04(11)(a) to (bm) (b) 108.04(5) to (7)	(a) ER Reporting Requirements (b) Adjudication Process	Driving instructor business. (a) Concerned with the proof required of ERs when ERs have work available but EEs are refusing to work. (b) Concerned with adjudication process regarding separations.	Decker, Thomas Decker's Driving Academy	(PH) 11-17-16
39	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal EE, does not make sense to search for work when she has a job to return too.	Dehart, Kristine RaiseRite Concrete, Inc. RaiseRite Foundation Pier Systems, Inc.	(E) 11-16-16
40	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Delmore, Robert Scott Construction, Inc.	(L) 11-10-16

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41	DWD 127.02	Work Search	Is seeking suggestions on how an ER can free up time to work with individuals who really want to work and are not just applying to fulfill a work search requirement.	Demos, Liza	(E) 11-26-16
42	DWD 129	Claim Filing	On the online claim form, allow more than 100 characters to enter the ER's website.	Derber, Dana	(E) 11-13-16
43	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Dickenson, Colleen Chippewa Valley Foundations	(L) 10-31-16
44	None	Customer Service	As a previous claimant, felt he was treated like a criminal or told what he had to do. There has been a major customer service change and encourages department staff to learn from Dane County Job Service.	Doran, Ben	(E) 11-18-16
45	(a) DWD 127.02(2) (b) None	(a) Work Search Waiver-Recall (b) Customer Service	Hospitality industry (Door County). (a) The law should be changed to waive the work search requirement for seasonal hospitality workers. Possibly have a one-month reprieve for work search at the end of the high season. (b) Has received inconsistent answers from DWD on UI questions.	Dorn, Miriam Liberty Square	(PH) 11-17-16
46	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Drew, Gary Henry G. Meigs, LLC	(L) 11-10-16
47	DWD 127.02(2)	Work Search Waiver-Recall	Cement business. Should have verification to track legitimate seasonal EEs versus EEs abusing the system.	DuPont, Joseph Pavematerials, LLC	(PH) 11-17-16
48	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Eberle, Richard Meigs Transport, LLC	(L) 11-10-16

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49	(a) DWD 127.02(2) (b) DWD 129(2)(b) (c) None	(a) Work Search Waiver-Recall (b) Claim Filing (c) Temp agencies	(a) As a seasonal EE with 7 years with ER, does not want another job and has one to return to after layoff. Starting over with a new ER after 7 years is foolish. (b) Allow more time for people to fill out weekly claim. (c) Get rid of the headhunters "ABR." EE makes less money and ERs are not required to pay benefits.	Ebert, Dean	(E) 11-15-16
50	DWD 127.02(2)	Work Search Waiver-Recall	Works for a utility contractor. EEs are concerned that the off-season job searches take jobs away from non-seasonal EEs.	Eckert, Tammy Underground Systems, Inc.	(PH) 11-17-16
51	DWD 127.02(2)	Work Search Waiver-Recall	As a general contractor specializing in concrete construction, would like EEs laid off in winter months to collect UI without the job search requirement. ER cannot afford to lose skilled EEs because of law change when the EE has a job to return to.	Ellenbecker, Dean S.D. Ellenbecker, Inc.	(E) 11-14-16
52	DWD 127.02(2)	Work Search Waiver-Recall	Has a seasonal business in Door County. Due to geographic location, relies on limited labor pool and relies on EEs returning to work after seasonal layoff. Requests that seasonal EEs be exempt from work search.	Elquist, Roy and Diane Wilson's Restaurant & Ice Cream Parlor	(E) 11-18-16
53	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Engel, Mark Meigs Transport, LLC	(L) 11-10-16
54	DWD 127.02(2)	Work Search Waiver-Recall	As a professional snow removal company, requiring EEs to find supplemental work to meet work search requirements is a safety issue. Would like opportunity to work with state officials to find a more equitable solution.	Epping, Jerry Breezy Hill Nursery, Inc.	(E) 11-16-16
55	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Faber, Brent Henry G. Meigs, LLC	(L) 11-10-16

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56	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Faber, Roger Meigs Transport, LLC	(L) 11-10-16
57	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Farber, Charles Scott Construction, Inc.	(L) 11-10-16
58	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Fettes, Terry Meigs Transport, LLC	(L) 11-10-16
59	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Fisher, Randy Meigs Transport, LLC	(L) 11-10-16
60	DWD 127.02(2)	Work Search Waiver-Recall	Seasonal EEs should not have to search for work when they will be called back to work after a few months.	Fitzpatrick, Merry	(E) 10-21-16
61	DWD 127.02(2)	Work Search Waiver-Recall	For seasonal EEs, extend UI benefits to 16 weeks without requirement to search for work so ERs can keep good EEs.	Flagstad, Dean Green Bay Nursery, Inc.	(E) 11-17-16
62	(a) None (b) 108.08(15) (c) 108.22(1)(a) (d) Ch. 102 (e) None	(a) Hearings (b) Exclusion for Referees (c) Interest Charges on Taxes Owed (d) Worker's Compensation (e) Meeting Request	(a) Public hearing should've went later into the evening for people to attend or started before work hours. (b) Referees should not be considered EEs and paying back interest on UI tax is unfair for small ERs. (c) Collecting interest on past due UI balances is unfair. (d) Requirement to hold Worker's Compensation is a burden. (e) Requests a possible meeting in person to discuss concerns.	Fosdick, Patrick Madison Sports & Social Club	(E) 11-18-16

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63	DWD 127.02(2)	Work Search Waiver-Recall	As a family owned seasonal business, EEs are family and ER does not want to lose them and look for work elsewhere.	Franda, Robin K&S Franda Construction, LLC	(E) 11-16-16
64	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Franseen, Marta Henry G. Meigs, LLC	(L) 11-10-16
65	DWD 129	Claim Filing	Allow claimants to register earlier to get benefits.	Frazier, Fredell	(E) 09-27-16
66	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Fredrick, Andrew Henry G. Meigs, LLC	(L) 11-10-16
67	DWD 127.02(2)	Work Search Waiver-Recall	As an owner of a small ready mix concrete business which is seasonal. Requiring EEs to search for work during lay-off will seriously impact his ability to sustain his business. CDL drivers are already in short supply, and relies on his crew that he knows will return each year. Skilled seasonal EEs should be exempt from work search requirements.	Fricke, Jay R & J Fricke, Inc.	(L) 11-3-16
68	DWD 140.11	Hearings	It is very difficult for hearing participants to leave the worksite to attend unemployment hearings in person. Is requesting hearings be defaulted to telephone, preferably via conference bridge.	Friedman, Allyssa ERC Associate- Unemployment	(E) 11-18-16
69	DWD 127.02(2)	Work Search Waiver-Recall	Is an owner of a small ready mix concrete business which is seasonal. Requiring EEs to search for work during lay-off will seriously impact his ability to sustain his business. CDL drivers are already in short supply, and relies on his crew that he knows will return each year. Skilled seasonal EEs should be exempt from work search requirements.	Frisch, Michael	(L) 11-2-16

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70	DWD 127.02(2)	Work Search Waiver-Recall	As a landscaping business, ER thinks highly of EEs and value all of their horticulture/landscape knowledge they learned from them over the years. They want the EEs to return to work with them after the seasonal layoff and not risk them finding employment with other ERs. Training new EEs will be costly and have a grave impact on small businesses in the green industry.	Froehle, Susie Schonheit Gardens Landscaping, Inc.	(L) 11-3-16
71	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Gate, R. Scott Construction, Inc.	(L) 11-10-16
72	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Gates, Jack Scott Construction, Inc.	(L) 11-10-16
73	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Gilbertson, James	(L) 11-14-16
74	DWD 127.02(2)	Work Search Waiver-Recall	Would like the option of not having to search for work when there is a seasonal layoff and instead perform volunteer work to maintain benefits.	Glorioso, Angelo	(E) 11-7-16
75	DWD 127.02(2)	Work Search Waiver-Recall	Requests the Council consider exempting seasonal EEs from the work search requirements. It is difficult for ERs to keep highly skilled and trained EEs with the new law requiring work searches. Providing an exemption from work search requirements for seasonal construction EEs allows ERs to be ready and fully staffed for construction season.	Goss, Pat WI Transportation Builders Association	(L) 11-17-16

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76	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Gossner, Kimberly Henry G. Meigs, LLC	(L) 11-10-16
77	DWD 127	Work Search	Filling out applications online is an ineffective method of searching for jobs. Encourage greater emphasis on direct contact with hiring managers. Provided personal experience on the benefits of meeting potential ERs in person.	Grass, Jeff	(E) 11-18-16
78	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Gray, Danielle Henry G. Meigs, LLC	(L) 11-10-16
79	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Gray, Joanne Henry G. Meigs, LLC	(L) 11-10-16
80	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Gregg, Corry	(L) 11-7-16
81	DWD 127.02(2)	Work Search Waiver-Recall	As a small seasonal ER, does not agree with requiring EEs to conduct work search when they are returned to the ER. With 3 EEs, they enjoy their job and want to keep their jobs.	Grochowski, Mark	(E) 11-27-16

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82	(a) DWD 127.02(2) (b) None	(a) Work Search Waiver-Recall (b) Customer Service	Landscape maintenance business. (a) Suggests verifying with employers the number of employees returning in spring. If returning to work, should be exempt from work search. The 8-week work search waiver period is not long enough. Concerned that the work search rule results in taking away interviews from workers who are actually looking for a job. If an employer is covering insurance during a layoff, the worker should not have to search for work. (b) Has received inconsistent information from and some DWD employees are rude.	Gronholz, Andrew Rivercity Landscape, Inc.	(PH) 11-17-16
83	108.04(3)	1-Week Waiting Period	Eliminate one week waiting period	Guetschow, S.	(E) 10-9-16
84	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Gustifson, Mike Henry G. Meigs, LLC	(L) 11-10-16
85	DWD 127.02(2)	Work Search Waiver-Recall	Is in the landscape architecture business and provides snow removal. On-call 24/7 for snow removal. The law should be changed to waive the work search requirement for seasonal EEs and snow plow drivers.	Hanauer, Joseph	(PH) 11-17-16
86	108.18	Charges to ER Accounts	Questions how there can be a tax decrease when her tax rate has increased with no files ever claimed against their business.	Hanus, Cindy DDDC LLC	(E) 10-22-16
87	(a) DWD 127.02(2) (b) DWD 129	(a) Work Search Waiver-Recall (b) Claim Filing	(a) As a landscape company with seasonal EEs, the new law puts the ER at risk of losing EEs when they are tempted to work for other companies. (b) Ease of applying for, and maintaining benefits is difficult. Questions are tricky to answer and if answered incorrectly, trying to correct it is next to impossible and time-consuming.	Harrington, Loriena Beautiful Blooms Landscape & Design, LLC	(E) 11-14-16
88	DWD 127.02(2)	Work Search Waiver-Recall	(a) As a landscape company, the ER is very fearful of losing key EEs due to the new law. A great deal is invested in developing and training EEs. Losing them because they have to search for work during a seasonal layoff requires going through the training process with new EEs, which is very costly. Some of the EEs are also involved in snow removal during the winter. (b) Would like guidelines established that would enable the ER to protect key EEs.	Haupt, Jerry Lakeland Landscape	(E) 11-7-16

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89	DWD 127.02(2)	Work Search Waiver-Recall	Tax services business. The law should be changed to waive the work search requirement for seasonal EEs. Calling DWD was difficult due to communication problems. Thinks work search rule is political.	Hefty, Paul Tax Services	(PH) 11-17-16
90	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal ER, would like to see the current UI law changed back to allow EE's laid off that are expected to be recalled in spring, be exempt from work search requirements for 26 weeks.	Hendrickson, Mary Tjader & Highstrom Utility Services, LLC	(E) 11-17-16
91	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Hoefs, Jim	(L) 11-7-16
92	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Holdham, Megan Henry G. Meigs, LLC	(L) 11-10-16
93	DWD 127.02(2)	Work Search Waiver-Recall	Change in work search law for seasonal EEs has negatively impacted ERs in Door County who are concerned about losing key EEs. Requests reconsideration of this legislation and consider creating an amendment that provides an exception to tourism driven counties that would allow EEs to have a work search waiver for longer than 12 weeks.	Holdmann Skare, Courtney The Cookery	(E) 11-17-16
94	DWD 127.02(2)	Work Search Waiver-Recall	As a professional snow removal company, requiring EEs to find supplemental work to meet work search requirements is a safety issue. Would like opportunity to work with state officials to find a more equitable solution.	Holzman, Lisa Earthscapes, Inc.	(E) 11-15-16
95	DWD 127.02(2)	Work Search Waiver-Recall	Does not make sense for an EE who is going back to an ER to conduct work search to maintain benefits.	Hop, Timothy	(E) 3-31-16
96	108.05(7)	UI Eligibility	Recommends adding a question that asks a claimant if they think they will be claiming or applying for early or regular pension retirement during the unemployment period they are applying for. Provided personal experience in collecting UI.	Hopgood, Howard	(E) 10-22-16

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97	DWD 127.02(2)	Work Search Waiver-Recall	Requiring seasonal EEs to find work threatens the quality of skilled and dedicated seasonal EEs to an ER by having to look for another job.	Hubbard, Cody Henry G. Meigs, LLC	(L) 11-10-16
98	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Hutson, Karen Henry G. Meigs, LLC	(L) 11-10-16
99	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Hyde, Rick Chippewa Valley Foundations	(L) 10-31-16
100	DWD 127.02(2)	Work Search Waiver-Recall	As an owner of a small ready-mix concrete business which is seasonal, requiring EEs to search for work during lay-off will seriously impact his ability to sustain his business. CDL drivers are already in short supply, and relies on his crew that he knows will return each year. Skilled seasonal EEs should be exempt from work search requirements.	Jochimsen, Bryan	(L) 11-1-16
101	(a) DWD 127.02(2) (b) None	(a) Work Search Waiver-Recall (b) Customer Service	(a) Requiring EEs to search for work due to a seasonal layoff is causing unnecessary hardship and the ER is at risk of losing long-term EEs. (b) ER has called UI many times for questions and each time was given different answers.	Jacobs, Jesse Otto Jacobs Company	(E) 10-27-16
102	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Jacobsen, Collin Scott Construction, Inc.	(L) 11/10/2016

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103	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Jacobson, Penny Henry G. Meigs, LLC	(L) 11-10-16
104	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Jalowitz, Ken	(L)
105	DWD 127.02(2)	Work Search Waiver-Recall	Making EEs do a job search when the EE has a job to go back to after the season is a waste of time. It is very hard to find good help and as an ER, would prefer his EEs not have to look for work.	Jankowski, Walter Advanced Concrete, Inc.	(E) 11-17-16
106	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Jari, Bruce Meigs Transport, LLC	(L) 11-10-16
107	108.18	General Comment- System Change	Governor Walker stated that ERs would be able to use savings from reforms to the unemployment program to increase their investments in recruitment, training and retention of workforce. Are there any provisions in law to ensure the savings will be directly invested?	Johnson, Angela	(E) 10-11-16
108	DWD 127.02(2)	Work Search Waiver-Recall	New law has created huge problems for ERs with seasonal EEs in key positions. Would like exceptions or different regulations for different types of businesses that cannot operate year round.	Johnson, Theresa Coachman's Golf Resort	(E) 11-7-16
109	108.04(6)(c)	UI Eligibility	EE feels that the ER made his medical condition worse while on the job and benefits should be allowed for people who cannot meet work search requirements due to being hurt.	Jones, Leo	(E) 10-26-16
110	108.04(3)	1-Week Waiting Period	Change UI law that eliminates the one-week wait period where claimants do not receive a check.	Jones, Ms.	(E) 11-13-16

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111	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Kaach, David	(L) 11-10-16
112	(a) 108.04(13)(c) (b) 108.04(11)(g)	(a) ER reporting requirements (b) Fraud/Concealment	Owner of several group homes that provides residential care to elderly persons with mental health and physical needs in the Milwaukee and surrounding areas. (a) Current reporting requirements on small ER when an EE quits, spends up to 45-60 minutes on phone reiterating hire dates and details are wasteful of ER time. (b) There should be an exclusion process for EEs who lie or defraud the system. Approximately 75% of scheduled interviews result in a no-show. Endless applications are being submitted to the company from people who are pretending to "job search". More thorough proof should be required that an EE engaged in a job search and report whether or not a job offer was received.	Kantrowitz, Ruth Sky Residential Services, Inc.	(PH) 11-17-16
113	(a) None (b) 108.05 (c) DWD 127	(a) General Comment-System Change (b) UI Payments (c) Work Search	(a) UI laws are very difficult to understand. (b) Amount of benefits paid should match Minnesota. (c) Requiring four job searches weekly is malarkey.	Kelley, Jody	(E) 09-07-16
114	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Kidney, Kyle Meigs Transport, LLC	(L) 11-10-16
115	DWD 127.02(2)	Work Search Waiver-Recall	General manager at a gardening business. The law should be changed to waive the work search requirement for seasonal EEs. As a professional snow removal company, requiring EEs to find supplemental work to meet work search requirements is a safety issue. Would like opportunity to work with state officials to find a more equitable solution.	Kielstrap, Becky AVANT Gardening & Landscaping	(PH) 11-17-16 (E) 11-16-16

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116	DWD 127.02(2)	Work Search Waiver-Recall	As a professional snow removal company, requiring EEs to find supplemental work to meet work search requirements is a safety issue. Would like opportunity to work with state officials to find a more equitable solution.	King, Tonia The Bruce Company of Wisconsin, Inc.	(E) 11-17-16
117	(a) DWD 127.02(2) (b) 108.04(3)	(a) Work Search Waiver-Recall (b) 1-Week Waiting Period	(a) Requiring seasonal construction EEs to search for work while laid off is unfair if the EE is to be recalled by the ER and also burdensome and unnecessary. (b) Eliminate one-week waiting period.	Kirchman, Beth	(L) 11-1-16
118	DWD 127.02(2)	Work Search Waiver-Recall	Is a landscape business and seasonal business. As a professional snow removal company, requiring EEs to find supplemental work to meet work search requirements is a safety issue.	Kittleson, Craig Kittleson Landscape, Inc.	(L) 11-16-16
119	(a) DWD 127.02(2) (b) 108.04(3)	(a) Work Search Waiver-Recall (b) 1-Week Waiting Period	(a) Requiring EE to search for work puts them at risk of losing insurance by having a new wait period and losing vested interest in retirement plan any time he switches jobs. (b) Having a one wait week period unlawful and the state is stealing a week of his income.	Kloss, Joe	(E) 11-16-16
120	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Kollmansberger, Jeff	(L) 11-15-16
121	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Kollmarsberger, Jim Meigs Transport, LLC	(L) 11-10-16
122	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Komatz, Dennis Henry G. Meigs, LLC	(L) 11-10-16

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123	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Kops, Michael Henry G. Meigs, LLC	(L) 11-10-16
124	DWD 127.02(2)	Work Search Waiver-Recall	(a) Seasonal EEs should be exempt from work search during off season. ER also depends on EEs to do snow removal, which is all dependent on weather. (b) It is unfair union workers do not need to search for work in the off season.	Kostelny, Trisha Fischer Ulman Construction, Inc.	(E) 11-18-16
125	DWD 127.02(2)	Work Search Waiver-Recall	Represents a school bus company. Seasonal ERs shouldn't lose EEs that are expected to return to work because they're forced to look for work during the off season. Extend work search waiver beyond 12 weeks.	Krueger, Tom Menomonie Transportation, Inc.	(E) 11-17-16
126	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Kushaw, Laura Henry G. Meigs, LLC	(L) 11-10-16
127	(a) DWD 127.01(1) & 108.04(8)(a) (c) DWD 129	(a) Work Search (b) Claim Filing	(a) Searching for 4 jobs a week is difficult and a waste of time for everyone involved. Often times there are no jobs to apply for. Because of requirement to search for 4 jobs a week, was offered a position that was not a good fit which he denied. Because he denied, benefits were withheld 4 weeks. (c) Missed filing claim within 14 days and benefits were withheld 2 weeks.	Kuzdas, Dan	(E) 11-17-16
128	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Kyes, Mark Henry G. Meigs, LLC	(L) 11-10-16

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129	DWD 127.02(2)	Work Search Waiver-Recall	As a professional snow removal company, requiring EEs to find supplemental work to meet work search requirements is a safety issue. Would like opportunity to work with state officials to find a more equitable solution.	La Rosa, Mike La Rosa Landscaping Company, Inc.	(L) 11-16-16 (E) 11-17-16
130	DWD 127.02(2)	Work Search Waiver-Recall	Greenhouse/flower shop business (Door County). The law should be changed to waive the work search requirement for seasonal EEs.	Lang, Joy Jerry's Flowers	(PH) 11-17-16
131	(a) DWD 127.02(2) (b) None	(a) Work Search Waiver-Recall (b) Customer Service	(a) Remove work search requirement for construction industry. (b) Staff at UI office were horrible last year. Had to speak with multiple people to get answers and spend an unbelievable amount of time trying to fix things.	Laurie	(E) 11-18-16
132	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	LaVigne, Ben Henry G. Meigs, LLC	(L) 11-10-16
133	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Lavigne, Rita Henry G. Meigs, LLC	(L) 11-10-16
134	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Lawrence, Kevin Scott Construction, Inc.	(L) 11-10-16
135	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Lawrence, Philip Meigs Transport, LLC	(L) 11-10-16

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136	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Lentz, Randy Henry G. Meigs, LLC	(L) 11-10-16
137	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Lenz, Duane	(L) 11-4-16
138	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Leverly, Gerrit	(L) 11-3-16
139	108.19(1s)	Program Integrity	Is unhappy with the recent changes to enhance "program integrity." EEs should be treated with dignity and compassion. ERs should not pinch pennies at the expense of EEs who lost their jobs.	Levine, Steven	(E) 11-18-16
140	DWD 127.02(2)	Work Search Waiver-Recall	As a professional snow removal company, requiring EEs to find supplemental work to meet work search requirements is a safety issue. Would like opportunity to work with state officials to find a more equitable solution.	Lightfoot, Liza AVANT Gardening & Landscape	(E) 11-11-16
141	DWD 127.02(2)	Work Search Waiver-Recall	As a concrete company, is very upset with the change in law. ER values EEs does not want to lose them. Finding good EEs is already difficult and ER does not want replace existing EEs. Requests EEs be waived from work search requirements and return the law to what it used to be.	Lincoln, Brian & Cindy Lincoln's Double G Concrete LLC	(E) 11-15-16
142	DWD 127.02(2)	Work Search Waiver-Recall	As a small concrete producer, the recent law change resulted in them losing many qualified truck drivers that were required to search for work during the seasonal layoff to maintain benefits. The change makes it difficult to keep veteran staff. Requests an exception to work search law for seasonal constructions EEs.	Lohr, Richard VanDerVart Concrete Products	(E) 11-17-16

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143	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Loos, Mike	(L) 11-10-16
144	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Lund-Knill, Mike Henry G. Meigs, LLC	(L) 11-10-16
145	DWD 127.02(2)	Work Search Waiver-Recall	As a construction company in Northern Wisconsin, many experienced EEs laid off for season are having to search for work as a result of the new law, which is detrimental to an ER in securing those EEs back.	Luppino, Nancy Angelo Luppino, Inc.	(E) 10-12-16
146	DWD 127.02(2)	Work Search Waiver-Recall	The new law change requiring 4 work searches a week has impacted tourism EE drastically. Suggests that a seasonal EE that can prove they held a position for 2 years or more with an ER, and is going back to work with that ER, should qualify for a 12-16 week work search waiver.	Lytle, Tammy	(E) 11-18-16
147	(a) 108.04(11)(g) (b) DWD 127.01(1)	(a) Fraud/Concealment (b) Work Search	Attorney for UI cases. (a) The compound question on the phone is confusing. The penalties are high. Attorneys cannot take cases because of the fee limits. ALJs overturn 50% of fraud cases; LIRC overturns 50% of fraud cases and remands 8%. (b) Seasonal migrant farmworkers and food processing all look for work at the same time. The work search requirement is difficult for those workers. But searches only count if the employer is hiring.	Magee, Kevin Legal Action of Wisconsin, Inc. UW Law School Unemployment Appeals Clinic	(PH) 11-17-16 (L) 11-17-16
148	DWD 127.02(2)	Work Search Waiver-Recall	Seasonal EEs that are recalled by an ER should be exempt from work search. ERs should not have to train new EEs every spring due to losing EEs. Benefits for seasonal EEs should not be treated as government handout, but part of yearly salary.	Marthaler, Neil	(E) 11-16-16

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149	(a) None (b) DWD 127 (c) DWD 127	(a) Customer Service (b) UI Eligibility (c) Work Search	(a) Has received conflicting information between UI customer service and what was learned during RES sessions. (b) Received letter that weekly networking group would count as one job search, but it is not on the list when filing. (c) Not clear what constitutes a job search.	Martin, Katie	(E) 11-16-16
150	DWD 127.02(2)	Work Search Waiver-Recall	As an EE for an ER that buries underground utilities, she is very concerned about the EEs laid-off during the winter season. Last year, EEs were told many different things to obtain and maintain benefits under the new law. Requests that job search requirements be waived for seasonal EEs.	Matthews, Barb Tjader & Highstrom	(PH) 11-17-16
151	DWD 127.02(2)	Work Search Waiver-Recall	Some EEs sacrificed UI benefits to return to work after seasonal layoff with the same ER. Proposes that all current UI rules apply for EEs laid off except that ERs defer the work search requirement for those identified as "franchise" EEs. ERs will monitor EEs status during layoff and inform DWD of any changes. All franchise EEs will be the first to be called back to work into the spring before ER.	Mattmiller, Pat PUSH Incorporated	(E) 11-9-16
152	(a) DWD 140.11 (b) 108.04 (8)(a)	(a) Hearings (b) Suitable Work	(a) Allow ER to participate in hearings via telephone. (b) EE had accepted a job then decided not to go because they didn't think it paid enough and still received benefits. Is there a way to make sure an EE doesn't receive benefits if they do not show for a job?	McCarthy, Ashley Trillium Construction	(E) 11-17-16
153	DWD 127.02(2)	Work Search Waiver-Recall	Is a seasonal ER (golf business) and must layoff EEs during the off season. EEs are very upset about the change in work search requirements and requested that a variance of the rules be given to seasonal ERs and EEs.	McDonough, Steve Voyager Village	(PH) 11-17-16
154	(a) None (b) DWD 127 (c) DWD 127 (d) None	(a) Customer Service (b) Work Search (c) Work Search (d) Customer Service	(a) Information provided by DWD is inconsistent. (b) Online job searches are not effective in finding employment. (c) Weekly meetings with career counselors and networking groups should be count as a job search and are most effective in gaining employment. (d) Provide more thorough training on UI requirements and customer service that mentors new EEs.	McHugh, April Career Counselor, UW-Madison	(PH) 11-17-16 (E) 11-18-16
155	(a) DWD 127.02(2) (b) 108.04(3)	(a) Work Search Waiver-Recall (b) 1-Week Waiting Period	(a) Waive work search requirement for seasonal EEs. ER's losing experienced EEs. (b) The one-week waiting period with no UI check is a problem for EEs.	Miller, Jeanette	(E) 11-18-16

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156	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Misly, Willis Meigs Transport, LLC	(L) 11-10-16
157	108.18	Charges to ER Accounts	After reading the Unemployment News for Employers, asked if the savings will be seen at the local government level also.	Mitchell, Kathy	(E) 10-11-16
158	DWD 127.02(2)	Work Search Waiver-Recall	As a small business the job search rules place an unfair burden on companies in the landscape industry. All EEs are seasonal EEs and most have been with their company between 10-35 years. These EEs cannot be replaced without an excessive loss to the ER. Requests that finer divisions of labor be established within the seasonal category to account for ERs such as theirs.	Monson, Julie Herman Landscape Service, Inc.	(E) 11-16-16
159	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Moxley, Sharon Henry G. Meigs, LLC	(L) 11-10-16
160	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Mueller, BreeAnn Henry G. Meigs, LLC	(L) 11-10-16
161	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal ER in the transportation/building industry (asphalt cement and asphalt emulsion), is requesting the Council consider amending the UI rules to exempt all seasonal constructions EEs from the work search requirements. The change in law has damaged the ERs ability to maintain dedicated professional and highly skilled EEs that have worked with the company most of their career. The result of the law change has caused a great deal of hardship for both EEs and ERs.	Mueller, Dustin H.G. Meigs, LLC and Meigs Transport, LLC	(PH) 11-17-16 (E) 11-18-16
162	None	Customer Service	UI system needs overhaul; staff is rude and takes too long to process claims.	Mueller, Lorie	(E) 09-14-16

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163	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Mullens, Joseph Scott Construction, Inc.	(L) 11-10-16
164	DWD 127.02(2)	Work Search Waiver-Recall	As a construction business, the new law has created hardships for the ER and EEs. Some EEs have been with company for over 30 years and now are faced with having to find other employment. Losing good, skilled EEs. Requests a modification to better accommodate the winter weather in WI. Proposes an extension to 16-20 weeks provided the ER can show an established precedent of return to work for its EEs.	Murphy, Joseph MCC, Inc.	(E) 11-14-16
165	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Musse, James Scott Construction, Inc.	(L) 11-10-16
166	DWD 127.02(2)	Work Search Waiver-Recall	Current law forces seasonal EEs to job search among competitors not because they want to, but because they have to. New laws are in conflict with any seasonal ER trying to build and develop consistent, professional staff. Offered to work with state officials to find a resolution.	Narr, Tim LandWorks, Inc.	(E) 11-16-16
167	(a) 108.05 (b) 108.04(5)	(a) UI Eligibility (b) General Comment-System Change	(a) Paying benefits for EEs terminated for not showing up to work under a 90-day trial period hurts small businesses. (b) The amount of documentation needed to terminate an EE is difficult with today's laws.	Nelson, Angela Small Business Owner	(E) 11-14-16
168	DWD 127.02(2)	Work Search Waiver-Recall	New law negatively impacts seasonal EEs and their families. Requests the law be changed so seasonal EEs can obtain UI benefits without searching for work.	Nutt, Laura, Dan and Lila	(E) 11-8-16
169	DWD 127.02(2)	Work Search Waiver-Recall	Waive work search requirements for seasonal EEs. It is a waste of time for ERs to through applicants who do not want the job.	Olson, Brian	(E) 11-18-16

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170	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Osgood, Gary Scott Construction, Inc.	(L) 11-10-16
171	(a) DWD 127.02(2) (b) 108.05	(a) Work Search Waiver-Recall (b) UI Payments	Road construction employee. (a) ER brings back the same workers every 6 weeks for a few days to keep them on unemployment. (b) EEs now go to Minnesota for work because there is no similar hassle for work searches and because the unemployment benefits are much higher in Minnesota.	Ott, Dennis Teamsters	(PH) 11-17-16
172	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Otto, Chris Meigs Transport, LLC	(L) 11-10-16
173	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Passch, Kenneth	(L) 11-17-16
174	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Paulsend, Jody	(L) 11-23-16
175	DWD 127.01	Work Search	EEs should not have to apply for jobs that do not pay a wage less than current wage.	Peltier, Denise	(E) 10-9-16

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176	DWD 127.02(2)	Work Search Waiver-Recall	Hires professional snow plow companies to ensure properties are well maintained. EEs are knowledgeable and professional and should be exempt from work search requirements to ensure EE safety and maintain quality of work performed.	Peterson, Larry The Salvation Army of Dane County	(E) 11-15-16
177	108.04(3)	1-Week Waiting Period	ER does a mandatory 2 week shut down over Christmas, and one week is withheld. Would like to find a way to file for benefits without the first week of benefits being withheld.	Pierre, Danielle	(E) 11-17-16
178	DWD 127.02(2)	Work Search Waiver-Recall	1. As an ER, requiring EEs to search for work when on a seasonal layoff risks losing EEs to other jobs. 2. Suggests having an employer fill out a form for EEs who are permanently positioned in seasonal jobs with a return to work date so they are exempt from job search requirements.	Pipito, Dean Aquatica/Dean Pipito Waterfeatures, LLC	(E) 10-20-16
179	DWD 127.02(2)	Work Search Waiver-Recall	As a professional snow removal company, requiring EEs to find supplemental work to meet work search requirements is a safety issue. Would like opportunity to work with state officials to find a more equitable solution.	Preseli, Tina Isthmus Engineering & Manufacturing	(E) 11-15-16
180	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Puhl, Derek Meigs Transport, LLC	(L) 11-10-16
181	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Putz, David Meigs Transport, LLC	(L) 11-10-16
182	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal ER in marina business, it is difficult to find and retain good EEs. An ER is at risk of losing EEs who are required to search for work. ER. Requests an exception to work search rule be made to EE in legitimate businesses that have to lay off EEs.	Rainey, Dawn Johnson's Boats & Motors	(E) 11-16-16

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183	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal ER in marina business, it is difficult to find and retain good EEs. Requiring EEs to look for work when laid off risks losing them to another ER. Requests an exception to work search rule be made to EE in legitimate businesses that have to lay off EEs.	Ralston, Jason Henry G. Meigs, LLC	(L) 11-10-16
184	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Ran, David Meigs Transport, LLC	(L) 11-10-16
185	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal ER, has seen many dedicated EEs leave because they found another job. It is a waste of money for ER to train EEs that are leaving or those they have to hire to replace those who left.	Reidelbaugh, Dennis	(L) Undated
186	DWD 127.02(2)	Work Search Waiver-Recall	As a professional snow removal company, requiring EEs to find supplemental work to meet work search requirements is a safety issue. Would like opportunity to work with state officials to find a more equitable solution.	Reimer, Jason Greenscapes	(E) 11-15-16
187	(a) 108.07(2) (b) 108.04 (11)(g) (c) DWD 127.02(2)	(a) Charges to ER Accounts (b) Fraud/Concealment (c) Work Search Waiver-Recall	(a) Is a landscape company and provides snow removal services. When hiring EEs during the winter months, feels it is unfair her unemployment account should be charged for the EE collecting benefits from their seasonal job. It is unfair when the EE refuses to go back to work at their company and benefits are still withdrawn from account when they go back with other ER. (b) EEs have asked for "cash jobs" so it does not screw up their unemployment. ER should report wages each week rather than EE. This will help reduce fraud. (d) Seasonal EEs who are required to search for work are wasting their time and the ERs time by applying for multiple jobs the EE has no intention on working at, but has to fulfill job search requirement to keep benefits.	Reinholtz, Margaret	(E) 11-16-16
188	DWD 127	General Comment - System Change	As a recipient of UI, program is in need of changes to help people find work and department staff should work better with the claimants. Explained personal experience as a UI recipient.	Rhyne, Regina	(E) 11-18-16

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189	DWD 127.02(2)	Work Search Waiver-Recall	Extend work search waiver from 12 weeks to 20 weeks for seasonal full-time EEs who have demonstrated a long consistent history of returning to work. Waiver will better ensure the company does not lose its already shrinking workforce during layoff.	Rivecca, Michael Sonage Ready Mix, Inc.	(L) 11-17-16
190	DWD 127.02(2)	Work Search Waiver-Recall	Provided an example of the kinds of resumes that are submitted now that seasonal EEs are required to search for work. On applicant demanded a high rate of pay and noted that he will be called back to work at any time. The EE that applied had been a seasonal EE with the same ER since 1974 at a golf course and was applying for a completely different kind of job to fulfill job search requirements.	Roesler, Eric	(L) 12-30-16
191	108.02(12)(bm)	Independent Contractor Test	The statutory test followed by WI in determining an individual's status for purposes of state unemployment tax results in WI being an outlier relative to the rest of the country. Urges consideration be given to following a common-law test.	Ryan, Paul MSPA North America	(E) 11-18-16
192	DWD 127.02(2)	Work Search Waiver-Recall	Waive work search requirements for seasonal EEs that work full-time.	S.D. Ellenbecker, Inc.	(E) 11-14-16
193	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Sabatke, Dennis	(L) 11-2-16
194	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Sabatke, Rodney	(L) 11-21-16

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195	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Sanders, Martin Meigs Transport, LLC	(L) 11-10-16
196	DWD 127.02(2)	Work Search Waiver-Recall	Holding onto valuable EEs in the seasonal landscaping industry is already difficult. Requiring EEs that are going to be recalled to search for work, will make retention more difficult. Suggests that an ER check a box on the initial separation notice that the EE is a seasonal worker. The ER can indicate the month and year of when the EE is expected to return to work. If the box is checked, the EE should be exempt from work search requirements.	Schauer, Cindy Lizer Landscape & Retail Nursery	(E) 10-19-16
197	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal ER, does not want EEs to have to look for work and go through process of obtaining work when they will be hired back. The law change has forced ER to bring EEs back early due to the return deadlines when there is no work available.	Schneider, Susan Evergreen Property Management, Inc.	(E) 11-18-16
198	DWD 129	Claim Filing	There should be a limitation how long a UI filing claim can be reopened.	Schoenheider, Wendy Regency Management Company, Inc.	(E) 10-13-16
199	(a)DWD 127.02(2) (b) None (c) None	(a) Work Search Waiver-Recall (b) Hearings (c) General Comment - System Change	(a) Business is a marine repair facility. The law should be changed to waive the work search requirement for seasonal EEs. One option could be a work search waiver for seasonal EEs who have worked longer for an ER. Seasonal EEs should not have to search for work. (b) Hard for people to attend hearing in November when many ERs are open based on weather. (c) Many ERs feel let down by the state.	Schultz, Robin Chucks Garage & Marine	(PH) 11-17-16 (E) 11-18-16
200	DWD 127.02(2)	Work Search Waiver-Recall	Attended Public Hearing, but did not speak. Registered and stated he wanted to find rules and changes for seasonal EEs.	Schumacker, Gerald Vande Hey Company	(PH) 11-17-16
201	DWD 127.02(2)	Work Search Waiver-Recall	Extend work search waiver from 12 to 20 weeks for EEs employed by companies that can demonstrate a history and ability to return to EE's work. EEs are highly trained and specialized and ER does not want to lose them to other ERs.	Schwenn, Cherish Wisconsin Ready Mixed Concrete Assoc.	(E) 11-17-16

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202	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal ER in the asphalt business for 90 years, due mainly to retaining qualified and dedicated EEs, with the law change, it is unlikely EEs will return to work after layoff. Requests Council review the work search requirements and understand the hardship this causes seasonal ERs.	Scott, John Scott Construction, Inc.	(E) 10-20-16
203	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Sedivy, Caleb Chippewa Valley Foundations	(L) 10-31-16
204	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Seeley, Mike Henry G. Meigs, LLC	(L) 11-10-16
205	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Seeley, Todd Henry G. Meigs, LLC	(L) 11-10-16
206	(a) DWD 127.02(2) (b) 108.04(3)	(a) Work Search Waiver-Recall (b) 1-Week Waiting Period	(a) As a seasonal EE it is unfair to have to conduct 4 job searches a week when returning to ER. (b) One week wait period make no sense.	Segebrecht, Deb & Steve	(E) 11-18-16
207	DWD 127.02(2)	Work Search Waiver-Recall	There are few jobs in the winter (Minocqua). The work search rule regarding recalled workers should be the previous rule.	Semrau, Monica	(PH) 11-17-16
208	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Senzig, Francis Scott Construction, Inc.	(L) 11-10-16

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209	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Senzig, James Scott Construction, Inc.	(L) 11-10-16
210	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Severson, Marcus Chippewa Valley Foundations	(L) 10-31-16
211	DWD 127.02(2)	Work Search	Food service EEs working at schools should be exempt from work search requirements since they are returning to work.	Sherrill, Audrey	(E) 09-08-16
212	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Simonitsch, James Scott Construction, Inc.	(L) 11-10-16
213	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Sires, Steven	(L) 11-10-16
214	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Smith, Charlie Meigs Transport, LLC	(L) 11-10-16

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215	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Smith, Debra Henry G. Meigs, LLC	(L) 11-10-16
216	DWD 127.02(2)	Work Search Waiver-Recall	Remember construction workers in Northern WI cannot return to work until the road bans go off. The additional 4 weeks to collect benefits without job search requirements, may not be enough.	Smith, Dianne	(E) 11-15-16
217	DWD 127.02(2)	Work Search Waiver-Recall	Works in landscape and on-call to plow snow in winter. New law has had negative impact on community, himself and his ER. Also being in snow removal, puts safety of himself and others at risk because determining snow fall is unpredictable.	Smith, Nathan	(E) 11-17-16
218	108.04(5)	Misconduct	Concerned with how the department handles cases and how misconduct is determined. Would like more of explanation to better help develop ER rules.	Sobiesczyk, Tony	(E) 10-12-16
219	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Sperber, Justin Chippewa Valley Foundations	(L) 10-31-16
220	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Steinberg, Jim Chippewa Valley Foundations	(L) 10-31-16
221	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Steiner, Morris Meigs Transport, LLC	(L) 11-10-16

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222	DWD 127.02(2)	Work Search Waiver-Recall	As a professional snow removal company, requiring EEs to find supplemental work to meet work search requirements is a safety issue. Would like opportunity to work with state officials to find a more equitable solution.	Stormer, Rick L'eft Bank Wine Company	(L) 11-15-16
223	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Swanten, Steven Henry G. Meigs, LLC	(L) 11-10-16
224	DWD 127.02(2)	Work Search Waiver-Recall	As a professional snow removal company, requiring EEs to find supplemental work to meet work search requirements is a safety issue. Would like opportunity to work with state officials to find a more equitable solution.	Swingle, Brian WI Nursery and Landscape Assoc.	(E) 11-16-16
225	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal ER, changes to UI law has impacted the business and EEs as a full service seasonal resort. Although laid-off, there is an occasional need for the seasonal EEs to be available for small groups that come in during the off season. Since the new law came became effective, many hours have been spent on phone with UI and working with each EE to ensure they are brought back within 12 weeks so they have income for their family. Requests that the Council change the law back to what is was and also differentiate rural seasonal employment areas and metropolitan seasonal employment areas.	Tharman, Sheryl Red Crown Lodge	(E) 11-9-16
226	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Thom, Gary	(L)11-17-16

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227	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Thom, Jon	(L) 11-2-16
228	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Thomson, Paul Meigs Transport, LLC	(L) 11-10-16
229	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal EE in construction and as an on-call snow plow driver, he should be exempt from the new law forcing him to search for work when he has a job to return to in spring.	Timm, Mark	(E) 11-8-16
230	(a) DWD 127.02(2) (b) 108.04(8)	(a) Work Search Waiver-Recall (b) Suitable Work	(a) Seasonal EEs who have been with an ER more than 3 years should be exempt from work search. (b) People should not be expected to accept a job that pays less than they are earning at their seasonal job, nor should they have to travel any farther than they do for their current job.	Tveten, Jeni	(E) 10-20-16
231	DWD 127.02(2)	Work Search Waiver-Recall	When there is a definite call-back date, EEs should not have to do a job search. The law change is threatening as it is already difficult to find new EEs.	Vanderhoof, Vickey Evergreen Nursery Company, Inc.	(E) 11-7-16
232	DWD 127.02(2)	Work Search Waiver-Recall	At 74 years old, and working for a golf course, being required to search for work is asinine and unfair. Recommends exempting all seasonal EEs over the age of 55 from the work search requirement.	Vespa, George	(E) 11-3-16
233	DWD 127.02(2)	Work Search Waiver-Recall	As a construction company, new law has created hardship to EEs and added expense to the ER to retain trained workforce. Requested that EEs be granted a work search waiver for a minimum 20 weeks.	Wall, Brendan Hatch Building Supply, Inc.	(E) 11-17-16
234	DWD 127.02(2)	Work Search Waiver-Recall	Requesting the Council to repeal the need for seasonal EEs to do a job search in order to receive benefits during their layoff. If an ER is planning to rehire the EE and informs DWD of this, the EE should be waived from work search requirement.	Walter, Jenny Retaining Wall Specialists LLC	(PH) 11-17-16 (E) 11-18-16

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235	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Weiland, Eric Henry G. Meigs, LLC	(L) 11-10-16
236	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Wendt, Darin	(L) 11-10-16
237	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Werner, Jesse Henry G. Meigs, LLC	(L) 11-10-16
238	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Widmer, James Henry G. Meigs, LLC	(L) 11-10-16
239	DWD 127.02(2)	Work Search Waiver-Recall	Job service EE. The rule change regarding work search is difficult because there is miscommunication between ERs, EEs and DWD. DWD needs well-trained workers who handle ERs only. The paperwork that is sent to EEs is extensive. People do not read or understand the information sent to them. Some ERs cannot find EEs and EEs lie about computer skills but have smartphones. If someone earns \$120,000 annually in road construction they should not receive unemployment benefits. Teachers commit fraud - they attend the same workshop over and over in the summer as a work search.	Wilberg, Rebecca	(PH) 11-17-16
240	DWD 127.02(2)	Work Search Waiver-Recall	Requiring seasonal EEs to find work threatens the quality of skilled and dedicated seasonal EEs to an ER by having to look for another job.	Wilichowski, John Henry G. Meigs, LLC	(L) 11-10-16

UIAC PUBLIC HEARING SUMMARY - November 17, 2016

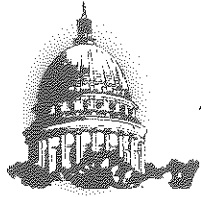
241	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Wilke, Donald Scott Construction, Inc.	(L) 11-10-16
242	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Williams, Mitchel Henry G. Meigs, LLC	(L) 11-10-16
243	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Windorski, Cody Chippewa Valley Foundations	(L) 10-31-16
244	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Witte, Robert	(L) 11-10-16
245	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Yates, Jack Henry G. Meigs, LLC	(L) 11-10-16
246	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Yates, Rachel Henry G. Meigs, LLC	(L) 11-10-16

UIAC PUBLIC HEARING SUMMARY - November 17, 2016

247	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	York, Tyler Henry G. Meigs, LLC	(L) 11-10-16
248	108.02(15)(km)	Caregiver Exclusion	Would like change in law that allows in-home caregivers the ability to collect UI.	Zachow, Anna	(E) 09-03-16
249	108.04	UI Eligibility	Owns a resort in Door County. Many EE's collect social security and pension and consider unemployment insurance an entitlement program. Federal law requires that anyone regardless of age, income or net worth is entitled to benefits. What is the state allowed to do?	Zaug, Jerry	(E) 10-22-16
250	(a) DWD 129 (b) None	(a) Claim Filing (b) Customer Service	(a) Instructions are overwhelming and hard to follow. (b) Was belittled by department EE who was rude and condescending.	Zeller, Judith	(E) 11-7-16
251	(a) 108.04(3) (b) DWD 127.07(2)	(a) 1-Week Waiting Period (b) Work Search Waiver-Recall	(a) Eliminate one-week waiting period. (b) Eliminate work search requirements for seasonal EEs. It is a burden for ERs that are approached by seasonal EEs that do not intend on staying at the job.	Unsigned	(L) 11-18-16
252	(a) 108.05 (b) 108.04 (c) 108.05	(a) UI Payments (b) UI Eligibility (c) UI Eligibility	(a) Do not increase benefits, there is plenty of work. (b) No one under 21 should be eligible for UI. (c) Put wage limit on the program.	Unsigned	(L) 11-21-16
253	108.141 108.142	Extended Benefits	Allow emergency extension of benefits. There are not many good paying jobs available.	Unsigned - Email only	(E) 11-8-16
254	108.04(3)	1-Week Waiting Period	One-week waiting period is unfair.	Unsigned - Email only	(E) 10-19-16
255	(a) 108.04(16) (b) 108.06(1)	(a) UI Eligibility (b) Length of UI	(a) Allow claimants to go to school and collect benefits. (b) Extend payments from 6 mos. to 1 year.	Unsigned - Email only	(E) 10-4-16
256	108.04(7)(cg)	UI Eligibility	Is a single father laid off from work due to staying home with sick child and attending family court. Feels he should be allowed benefits and is being treated unfairly.	Unsigned - Email only	(E) 10-2-16
257	108.04(3)	1-Week Waiting Period	Pitiful to have to give up first week of benefits every year.	Unsigned - Email only	(E) 11-2-16
258	DWD 129	Claim Filing	Obtaining UI benefits is too difficult.	Unsigned - Email only	(E) 10-22-16
259	DWD 127.02(2)	Work Search Waiver-Recall	Waive work search requirements for EEs returning to work with ER verification.	Unsigned - Email only	(E) 10-11-16

UIAC PUBLIC HEARING SUMMARY - November 17, 2016

260	(a) DWD 127.02(2) (b) 108.04(3)	(a) Work Search Waiver-Recall (b) 1-Week Waiting Period	(a) Is a seasonal EE - should not have to look for work on off season because a job is already secured to go back to. (b) Issue first week UI benefit checks.	Unsigned - Email only	(E) 11-10-16
261-275	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Henry G. Meigs, LLC Correspondence With Illegible Signature	(L) 11-10-16
276-278	DWD 127.02(2)	Work Search Waiver-Recall	As a seasonal construction EE, work search waiver was granted if EE had reasonable expectation to being recalled. Many EEs have been with the same ER their entire career and want to continue. In addition, ERs who employ CDL qualified drivers are already faced with a shortage of qualified and competent drivers. With the new work search requirement, ERs have an increased risk of losing these CDL qualified EEs.	Correspondence With Illegible Signature	(L) 11-10-16
279-286	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Meigs Transport, LLC Correspondence With Illegible Signature	(L) 11-10-16
287-294	DWD 127.02(2)	Work Search Waiver-Recall	ERs that rely on retaining skilled and dedicated seasonal EEs are now threatened and at risk of losing these EEs due to the new law which requires EEs to search for work if the recall date is not within an 8 to 12 week period. Requests Council review requirements and understand disruption for EEs who want to return to same ER.	Scott Construction, Inc. Correspondence With Illegible Signature	(L) 11-10-16
295	DWD 127.02(2)	Work Search Waiver-Recall	Has been employed with the same ER for 19 years and is a seasonal EE. Benefits are paid for by the ER and suggests making people on welfare and milking the system get jobs and not the ones who already have them, but are just temporarily laid off.	Illegible Signature	(L) 11-17-16



JON ERPENBACH

STATE SENATOR

November 16, 2016

Unemployment Insurance Advisory Council
Attn: Janell Knutson, Chair
P.O. Box 8942
Madison, WI 53708

Dear Chairperson Knutson:

Thank you for the opportunity to submit comments about the state's Unemployment Insurance system to you and the other members of the Unemployment Insurance Advisory Council.

As we approach another winter, I encourage you to take another look at the impact the new work search requirements have had on seasonal employees. The current Administration has had an intense focus on fraud prevention and benefit "reform" and Wisconsin's long tradition of seasonally-based employment has, I believe, inadvertently gotten caught in the cross-fire.

Last winter we started hearing from local business owners worried about losing quality employees because of a change requiring their laid-off workers to seek and accept other work after just 8 weeks. Applying work search requirements to seasonal employees after 8-12 weeks caused employers to lose well-trained employees, often to jobs beneath their current pay and skill level. Many were afraid of punishment if they were to turn down a job, any job, they were offered. Many felt dishonest performing work searches or taking jobs from others when they knew their job was waiting for them when the season started up again.

Last session, after attempting to work through the UIAC, my colleagues and I introduced a bill, (SB764) that would have allowed a person who expects to be rehired by a former employer within 26 weeks to be exempt from the new weekly work search requirements. It was drafted in response to the concerns raised by small businesses in my district and across the state, especially in rural Wisconsin.

I write to you today to encourage you to address this problem and restore the long-standing practice that allowed employers to retain the skilled, experienced employees that they worked hard to train and need for continued success. Locally-owned businesses, tourist destinations, construction and seasonal employers across Wisconsin have long been able to rely on retaining experienced and talented seasonal workers thanks to the way our UI System was administered. This system is uniquely Wisconsin and many other states might not have the same issues.

I appreciate the work the UIAC does on behalf of Wisconsin's workforce, and the opportunity to raise this issue again. The employers and employees, the working families of Wisconsin, are hoping to regain some stability with the restoration of the long-standing, successful seasonal unemployment system of years past.

I welcome the opportunity to work with you on a solution. Thank you again for the opportunity to address this issue.

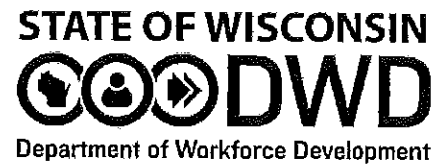
Sincerely,

A handwritten signature in black ink, appearing to read 'Jon Erpenbach', written over the printed name.

JON ERPENBACH
State Senator
27th District

JE/kb

Department of Workforce Development
Unemployment Insurance Division
Unemployment Insurance Advisory Council
201 E. Washington Ave., Rm. E300
P.O. Box 8942
Madison, WI 53708
Telephone: (608) 266-1639
Fax: (608) 266-8221



Scott Walker, Governor
Raymond Allen, Secretary

November 30, 2016

The Honorable Jon Erpenbach
State Capitol
PO Box 7882
Madison, WI 53707-7882

Dear Senator Erpenbach:

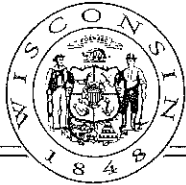
Thank you for your letter dated November 16, 2016 regarding seasonal employers and work search requirements for their employees. Your letter will be presented to the Unemployment Insurance Advisory Council at their next meeting and included in the comments from the public hearing.

Again, thank you for contacting the Unemployment Advisory Council with your concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Janell Knutson".

Janell Knutson, Chair
Unemployment Advisory Council



RECEIVED

2016 DEC 14 AM 10:00

State Senator Sheila Harsdorf

BUREAU OF
LEGAL AFFAIRS

December 9, 2016

Janell Knutson, Chair
Unemployment Insurance Advisory Council
P.O. Box 8942
Madison, WI 53708

Dear Chair Knutson;

As you know, last session the Department of Workforce Development and State Legislature adopted rules requiring a certain number of job searches each week in order for individuals to qualify for unemployment benefits. The rules affirmed Unemployment Insurance as a short-term assistance for those transitioning between jobs and recognized the need to address federal law changes impacting Wisconsin job seekers.

While I recognize the importance of and support requiring job searches as a means of helping the unemployed find employment, concerns have been brought to my attention as to how these required job searches are affecting employees and employers impacted by weather related work stoppages. I am referring specifically to those who are unable to work for a period of time during our cold winter months. I have heard from both employers and employees as to the financial challenges and inconvenience of these required job searches.

It is worth noting that these individuals, while unable to work for a period of weeks or months, are actually employed. While the employee is required to complete so many job searches each week after the 8th week of being temporarily laid off, the employer faces the likely probability of losing a skilled and experienced worker since an employee must take a comparable position if offered.

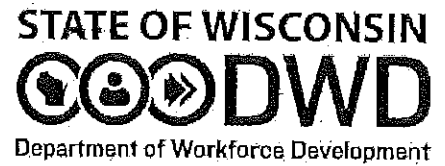
The required job searches are creating frustration for both employers and employees, while employers are incurring significant costs when they lose experienced and skilled workers. Given the importance of this issue to our workforce, I urge the Unemployment Insurance Advisory Council to address the implications on employers and employees impacted by weather related work stoppages.

Thank you for your consideration of this request. If you would like to visit further regarding this issue, please let me know. I would welcome the opportunity.

Sincerely,

Sheila Harsdorf
State Senator
10th Senate District

Department of Workforce Development
Unemployment Insurance Division
Unemployment Insurance Advisory Council
201 E. Washington Ave., Rm. E300
P.O. Box 8942
Madison, WI 53708
Telephone: (608) 266-1639
Fax: (608) 266-8221



Scott Walker, Governor
Raymond Allen, Secretary

December 14, 2016

The Honorable Sheila Harsdorf
State Capitol
PO Box 7882
Madison, WI 53707-7882

Dear Senator Harsdorf:

Thank you for your letter dated December 9, 2016 regarding seasonal employers and work search requirements for their employees. Your letter will be presented to the Unemployment Insurance Advisory Council at their next meeting and included in the comments from the public hearing.

Again, thank you for contacting the Unemployment Advisory Council with your concerns.

Sincerely,



Janell Knutson, Chair
Unemployment Advisory Council

STATE CAPITOL
PO BOX 7882
MADISON, WI 53707-7882



608-266-8535
TOLL FREE: 800-249-8173
FAX: 608-282-3543

Wisconsin State Senate
Senator Tim Carpenter
Third District

January 6, 2017

Unemployment Insurance Advisory Council
201 East Washington Avenue
GEF-1 Building Room F305
Madison, Wisconsin 53703

Dear Members of the Council,

A business in my district, Unit Drop Forge Co., Inc., has contacted me with concerns regarding the operation of Wisconsin's unemployment compensation system. He also had several thoughtful and specific suggestions to improve the procedures, including how an employer can verify the weeks that an employee was laid off.

I have enclosed with this letter his email to my office. Thank you for your review and consideration of this matter. If you have any questions or comments, please feel free to let me know.

Best wishes,

A handwritten signature in cursive script that reads "Tim".

Tim Carpenter
State Senator

A handwritten note in cursive script that reads "Thanks for looking into this!".

CC: David Bernstein
Vice President – Human Resources
Unit Drop Forge Co., Inc.

RECEIVED
2017 JAN 12 PM 12:56
BUREAU OF
LEGAL AFFAIRS

Ewy, Stuart

From: David Bernstein <David.Bernstein@unitforgings.com>
Sent: Friday, January 06, 2017 12:02 PM
To: Sen.Carpenter; Rep.Reimer@legis.wisconsin.gov
Subject: Unemployment Insurance Issues

Dear Sen. Carpenter and Rep. Reimer:

My name is David Bernstein, and I am Vice President – Human Resources at Unit Drop Forge Co., Inc. Our Company has been a fixture in West Allis (62nd and Burnham) for nearly 100 years, and we continue today to provide excellent, family-supporting jobs to about 150 talented and loyal employees, some of which have been with us over 40 years. Our production and maintenance workers are represented by UAW Local 407.

The reason for my writing today is to make you aware of some issues with our Wisconsin Unemployment Insurance system. In short, it is confusing, cumbersome, and seems to be intentionally designed to frustrate users to the point of giving up. While I understand that there may be a certain amount of fraud, UI is a critical safety net for many employees who suffer layoffs through no fault of their own.

Unit Drop Forge has, for about the past 1 ½ years, experienced a significant drop in business levels. This has required us to schedule a number of reduced-hour workweeks, as well as many full layoff weeks. For each full layoff week, employees are eligible and encouraged to apply for unemployment benefits.

Filing for unemployment benefits is a 2-step process. At the beginning of a layoff week, an employee must file an “initial claim.” Then, at the end of the week, he must file a “weekly certification.” This process must be repeated for each week that an employee is laid off. We have had layoff weeks as often as every other week recently.

In the past, employees often would keep their claim open during the weeks they worked, and simply reported their wages for those weeks. This was the preferred method, in fact. Unfortunately, when employees do that now, after 8 continuous weeks, they are required to register with Job Service, and start a job search! If they fail to do so, their UI benefits are denied – even though they have been recalled back to their job, and neither the employee nor employee has any desire to work elsewhere.

On Wednesday, January 3, I appeared with one of our employees at a UI Appeal Hearing in downtown Milwaukee. The employee’s benefits had been denied, and he had been instructed to register with Job Service, because he had kept his claim open for 8 weeks. This was a tremendous waste of time, money, and effort by both the employee and me (especially in the dead of winter). The Administrative Law Judge will issue a waiver for the job search requirement, and will authorize payment of benefits, so the desired outcome will take place. However, it never should have gotten to that point.

By the way, I will be accompanying another employee to a hearing next Monday, January 9, to try to get the same issue resolved for him. I know that several other employees simply gave up and didn’t file for a hearing. There should be a mechanism online for the Employer to verify the weeks an employee was laid off, and which weeks they worked. This would eliminate the requirement to register with Job Service and begin a job search that is not in either parties’ best interest.

A separate issue is the extraordinary waste of paper and postage generated by the Unemployment Insurance division. I receive a paper UCB-16 “Notice of Separation” form for EACH employee for EACH week they apply for benefits. Surely, there should be a way to have this information available online.

Thank you for your time in reading this email, and your anticipated action in improving the UI system. If you care to discuss further, please contact me via email or phone.

Sincerely,

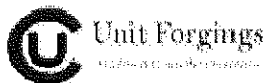
David Bernstein

Vice President – Human Resources

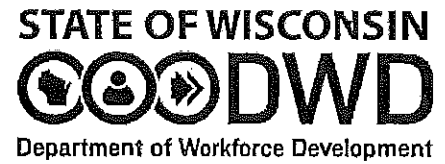
Unit Drop Forge Co., Inc.

414-882-7465

david.bernstein@unitforgings.com



Department of Workforce Development
Unemployment Insurance Division
Unemployment Insurance Advisory Council
201 E. Washington Ave., Rm. E300
P.O. Box 8942
Madison, WI 53708
Telephone: (608) 266-1639
Fax: (608) 266-8221



Scott Walker, Governor
Raymond Allen, Secretary

January 18, 2017

The Honorable Tim Carpenter
State Capitol
PO Box 7882
Madison, WI 53707-7882

Dear Senator Carpenter:

Thank you for forwarding the email from your constituent David Bernstein.

Mr. Bernstein's email will be included in the Unemployment Insurance Advisory Council public hearing comment summary and presented to the Council at their January 19, 2017 meeting.

Please contact me if you have any additional questions.

Sincerely,

A handwritten signature in black ink that reads "Janell Knutson". The signature is fluid and cursive, with the first name being the most prominent.

Janell Knutson, Chair
Unemployment Advisory Council

D17-01

Charging Benefits to Employers that Fail to Comply with Requests for Information

Date: January 19, 2017

Proposed by: DWD

Prepared by: Kristin Shimabuku and Andy Rubsam

ANALYSIS OF PROPOSED UI LAW CHANGE

Charging Benefits to Employers that Fail to Comply with Requests for Information

1. Description of Proposed Change

The department experiences difficulty in investigating concealment cases when employers fail to cooperate in providing necessary information. For example, an employer may fail to report the claimant’s weekly wages for weeks that the department believes the claimant is concealing work. If the employer does not provide the requested information, the department must make a determination based on the best evidence available. There is often little incentive for an employer to return the weekly wage verification form because the claimant’s benefits are usually not charged to their account. And, there is no civil penalty for failing to return the wage verification form.¹

Currently, if the department erroneously pays benefits from one employer’s account because a claimant has concealed work for another employer, the department credits the benefits paid to the first employer’s account and charges the benefits paid to the balancing account.² The claimant is “at fault” for the overpayment because the claimant committed an act of concealment.³

The department proposes a law change to charge an employer’s account for erroneously-paid benefits, including in cases of concealment, where the employer fails to comply with the department’s request for information during an adjudication.

¹ A criminal statute provides a fine of \$100 to \$500 and imprisonment up to 90 days for anyone who “knowingly refuses or fails to keep any records or to furnish any reports or information duly required by the department....”

² Wis. Stat. § 108.16(3).

³ Wis. Stat. § 108.04(13)(f).

D17-01

Charging Benefits to Employers that Fail to Comply with Requests for Information

2. Proposed Statutory Changes

To be provided at a later date.

3. Effects of Proposed Change

- a. Policy. The proposed change will incentivize employers to provide the department with complete and accurate information regarding their employees, leading to more accurate adjudication and payment of benefits.
- b. Administrative. This proposal will require training of benefits staff.
- c. Fiscal. A fiscal estimate will be provided at a later date.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

D17-02
Fiscal Agent Joint and Several Liability

Date: January 19, 2017
Proposed by: DWD
Prepared by: Kristin Shimabuku

ANALYSIS OF PROPOSED UI LAW CHANGE
Fiscal Agent Joint and Several Liability

1. Description of Proposed Change

Individuals who receive long-term support services in their home through government-funded care programs are domestic employers under Wisconsin's unemployment insurance law.¹ These employers receive financial services from fiscal agents, who directly receive and disperse government program funds. The fiscal agent is responsible for reporting employees who provide services for the domestic employers to the Department, and for paying unemployment tax liability on behalf of the employer.² Currently, approximately 16,000 of the 19,000 domestic employers in Wisconsin receive government-funded care and use a fiscal agent. These employers incur tax liability when fiscal agents fail to file quarterly reports or fail to make tax liability payments.³ It is difficult to collect delinquent tax from domestic employers who use fiscal agents because these employers are typically collection-proof.

Currently, Wisconsin's unemployment insurance law does not provide statutory authority to collect delinquent tax liability from the fiscal agent. Federal law provides that all provisions of law, including penalties, applicable to the employer are also applicable to the fiscal agent.⁴ Under federal law, fiscal agents are jointly and severally liable for the unemployment tax liability of the employer. The Department proposes that Wisconsin adopt an equivalent statutory

¹ Wis. Stat. § 108.02(15)(km).

² Wis. Stat. § 46.27(5)(i).

³ As of July 2016, the receivables for domestic employers is \$44,709.02.

⁴ 26 U.S.C. § 3504; 26 C.F.R. § 3504-1(b)(1).

D17-02
Fiscal Agent Joint and Several Liability

provision applicable to private agencies that serve as a fiscal agent or contract with a fiscal intermediary to serve as a fiscal agent.⁵

2. Proposed Statutory Changes

Section 108.22 (10) of the statutes is created to read:

(10) A private agency that serves as a fiscal agent under s. 46.2785, or contracts with a fiscal intermediary to serve as a fiscal agent under s. 46.27(5)(i), 46.272(7)(e), or 47.035 as to any individual performing services for a person receiving long-term support services under s. 46.27 (5) (b), 46.272 (7) (b), 46.275, 46.277, 46.278, 46.2785, 46.286, 46.495, 51.42, or 51.437 or personal assistance services under s. 47.02 (6) (c) may be found jointly and severally liable for the amounts owed by the person under this chapter, if, at the time the person's quarterly report is due under this chapter, the private agency served as a fiscal agent for the person. The liability of such agency as provided in this subsection survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the employer and shall be set forth in a determination or decision issued under s. 108.10.

3. Effects of Proposed Change

- a. Policy. The proposed change will provide the Department with an alternative for collecting unemployment tax liability owed by domestic employers receiving long-term support services in their home. The law change will encourage fiscal agents to comply with their responsibilities under Wisconsin's Unemployment Insurance Law. This will align Wisconsin's unemployment insurance law with the federal unemployment insurance law.
- b. Administrative. This proposal will require training of tax staff.
- c. Fiscal. A fiscal estimate is attached.

⁵ This proposal excludes joint and several liability for county departments and aging units.

D17-02
Fiscal Agent Joint and Several Liability

4. State and Federal Issues

There are no known federal conformity issues with this proposal. This proposal will align Wisconsin law with federal law. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

D17-02
Fiscal Agent Joint and Several Liability

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

UI Trust Fund Impact:

This law change proposal would have a negligible but positive impact on the UI Trust Fund. It would also incentivize proper reporting to the UI Division.

IT and Administrative Impact:

This law change proposal will require approximately 390 hours of IT changes at a one-time cost of \$33,930. The administrative cost is estimated at approximately 30% the IT cost or \$10,179. The total one-time cost is estimated at \$44,109.

Summary of the Proposal:

Currently, fiscal agents are representatives for UI purposes acting on behalf of employers, especially employers who are individuals who are unable to manage their own affairs. Fiscal agents are responsible for, among other things, filing unemployment insurance tax and wage reports on behalf of the employer and ensuring that tax payments are made to the Division. If fiscal agents do not correctly report to the Division, the Division is often unsuccessful in obtaining the correct information from the employer because the employer is a disabled or incapacitated individual. The Division proposes a law change to mirror federal law, which would result in fiscal agents being jointly liable for the unemployment tax of the employers that the agents represent.

Trust Fund Methodology:

The delinquent tax receivables for domestic employers using a fiscal agent are approximately \$45,000 going back to 2009. If collections could pursue collections activity again a fiscal agent, this would result in approximately \$6,500 additional debts per year that we can pursue recovery. Since we have never collected from a fiscal agent before, it is hard to approximate what the collection rate would be. At a 90% collection rate, this would result in a UI Trust Fund savings of approximately \$5,850 annually. This would be a negligible but positive impact on the UI Trust Fund.

This law change proposal would also incentivize proper reporting.

IT and Administrative Impact Methodology:

The IT hours and cost assumes is based on high level business requirements. It assumes 300 SUITES hours and 90 CEDARS hours to make the necessary changes. The administrative cost is 30% of the IT cost based on prior project estimates.

D17-03
Assessment for Failure to Produce Records

Date: January 19, 2017
Proposed by: DWD
Prepared by: Andy Rubsam

ANALYSIS OF PROPOSED UI LAW CHANGE
Assessment for Failure to Produce Records

1. Description of Proposed Change

Under current law, employing units are required to maintain work records and must allow the Department to audit those records.¹ When the Department intends to audit an employer, it sends a written notice to the employer requesting information regarding the employer's employment records. If the employer does not respond, the Department issues a second written request to the employer. If the employer fails to respond to the second written request, the Department issues a subpoena to the employer.² When the Department issues a subpoena, the Department must pay a fee to have the subpoena served.

About 40% of employers served with subpoenas provide an inadequate response or fail to respond to the subpoena. When an employer fails to comply with a subpoena, the Department's remedy is enforce the subpoena in Circuit Court requesting that the employer be held in contempt. This is a time-consuming process that the Department has not historically used.

The Department proposes to change the law to assess an administrative penalty of \$500.00 for a person's failure to produce subpoenaed records to the Department. The Department will rescind the penalty if the employer fully complies with the subpoena within 20 calendar days of the issuance of the penalty. The intent of this proposal is to ensure employer compliance with requests for wage data.

¹ Wis. Stat. § 108.21(1).

² Wis. Stat. § 108.14(2m).

D17-03
Assessment for Failure to Produce Records

The Wisconsin Department of Revenue may impose a similar assessment for a taxpayer's failure to produce requested records.³

The assessment for failing to produce records would be deposited into the program integrity fund.

2. Proposed Statutory Change

Section 108.19 (1s) (a) 5. of the statutes is created to read:

5. Assessments under s. 108.215.

Section 108.215 of the statutes is created to read:

Penalty for failure to produce records. (1) The department shall assess a penalty of \$500.00 to any person who fails to comply with a subpoena issued by the department for records.

(2) The department may issue a penalty under this section only if the subpoena contains a warning that, if the requested records are not produced by the date specified on the subpoena, the department shall assess the penalty under this section.

(3) The penalty under this section shall be an appealable determination under s. 108.10.

(4) The department shall set aside an assessment issued under this section if the person fully complies with the subpoena within 20 days after the determination assessing the penalty is issued.

(5) Assessments under this section shall be deposited into the unemployment program integrity fund.

³ Wis. Stat. § 71.80(9m): WI-DOR may impose a penalty of “the greater of \$500 or 25 percent of the amount of the additional tax on any adjustment made by the department that results from the person’s failure to produce the records.”

D17-03
Assessment for Failure to Produce Records

3. Effects of Proposed Change

- a. Policy. This proposal should result in the department completing a higher percentage of audits of employer accounts and should reduce delays in the audit process.
- b. Administrative. The audit staff will need to be trained on the changes resulting from this proposal. The department will be required to make technology changes in order to implement this proposal.
- c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

D17-03
Assessment for Failure to Produce Records

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

UI Trust Fund Impact:

This proposal would incentivize compliance, thus would have a negligible but positive impact on the Trust Fund. Any penalties recouped would go to the Program Integrity Fund.

IT and Administrative Impact:

This law change proposal will require approximately 750 hours of IT changes at a one-time cost of \$65,250. The administrative cost is estimated at approximately 30% the IT cost or \$19,575. The total one-time cost is estimated at \$84,825.

Summary of the Proposal:

The Division issues subpoenas when audit targets fail to respond to the Division's requests for initial requests for documentation. If a target fails to respond to the audit subpoena, the Division's only remedy is to file a request in Circuit Court to enforce the subpoena in order to have the target confined until they comply with the subpoena. This is a time-consuming process that the Division has not historically used. The Division proposes the creation of a new civil penalty of up to \$500 for failure to comply with a subpoena with a provision to waive the penalty for full compliance within a certain time period of issuing the penalty. The Benefits Operations Bureau may also issue subpoenas for the work and wage information that they request from employers if the employers is not responsive to a first request. Any penalty revenue would go to the UI Program Integrity Fund.

Trust Fund Methodology:

This proposal would incentivize compliance, thus would have a negligible but positive impact on the Trust Fund. Any penalty fees recouped would go to the UI Program Integrity Fund.

Per subject matter experts in the Bureau of Tax and Accounting, approximately 100 subpoenas would be issued annually, of which 40%, or about 40 subpoenas, would not be complied with and subject to the proposed penalty.

2015 data shows that the Division issued 427 prosecution-level work and wage determinations. Per subject matter experts in the Benefit Operation Bureau, approximately 20% of employers do not respond to work and wage audit requests. 20% of 427 would indicate that the Benefits Operations Bureau would issue approximately 85 subpoenas per year, of which approximately 40% or 34 subpoenas would not be complied with (based on BTA's percentage of subpoenas that are not complied) and subject to the proposed penalty.

A total of 74 subpoenas with a \$500 civil penalty would result in up to \$37,000 annually in recouped penalties that would flow to the UI Program Integrity Fund.

IT and Administrative Impact Methodology:

The IT hours and cost assumes is based on high level business requirements. It assumes 600 SUITES hours and 150 CEDARS hours to make the necessary changes. The administrative cost is 30% of the IT cost based on prior project estimates.

D17-04

Ineligibility for Concealment of Holiday, Vacation, Termination, or Sick Pay

Date: January 19, 2017

Proposed by: DWD

Prepared by: Andy Rubsam

ANALYSIS OF PROPOSED UI LAW CHANGE

Ineligibility for Concealment of Holiday, Vacation, Termination, or Sick Pay

1. Description of Proposed Change

A claimant who conceals wages or a material fact, such as vacation or holiday pay, must repay the overpaid benefits, is assessed a penalty in the amount of 40% of the overpayment and is ineligible for future benefits in the amount of two, four or eight times the claimant's weekly benefit rate times the number of acts of concealment.¹ Vacation, holiday, sick and termination pay are treated as wages for the purposes of calculating a claimant's partial benefit.²

Current law provides that a claimant who conceals work on an unemployment benefit claim is totally ineligible for benefits for that week and the partial benefit formula does not apply.³ But concealment of vacation, holiday, sick and termination pay will not necessarily result in total ineligibility for the week that the vacation or holiday pay was concealed because the partial benefit formula may apply.

The Department proposes an amendment to the statute to provide that concealment of holiday pay, vacation pay, sick pay, or termination/dismissal pay on a weekly benefit claim results in total ineligibility for the week for which the claimant concealed the pay.

¹ Wis. Stat. § 108.04(11)(be).

² Wis. Stat. §§ 108.05(4)-(5m).

³ Wis. Stat. § 108.05(3)(d).

D17-04

Ineligibility for Concealment of Holiday, Vacation, Termination, or Sick Pay

2. Proposed Statutory Change

Section 108.05 (3) (d) of the statutes is amended to read:

A claimant is ineligible to receive benefits for any week in which the claimant conceals holiday pay, vacation pay, termination pay, or sick pay, as provided in s. 108.04 (11) (a), or wages or hours worked as provided in s. 108.04 (11) (b).

3. Effects of Proposed Change

- a. Policy. The proposed change will result in consistent treatment of claimants who conceal information on unemployment benefit claims. A claimant who conceals holiday, vacation, termination, or sick pay will be ineligible for benefits in the week they conceal the pay like claimants who conceal wages. Concealment of all types of pay will be treated the same.
- b. Administrative. This proposal should result in minimal training for benefits staff. This proposal will reduce staff time spent calculating partial benefits for weeks in which different types of pay are concealed.
- c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

D17-04

Ineligibility for Concealment of Holiday, Vacation, Termination, or Sick Pay

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

UI Trust Fund Impact:

This law change proposal would save the UI Trust Fund approximately \$7,200 annually in additional benefit overpayment collections.

IT and Administrative Impact:

This law change proposal will require approximately 20 hours of IT changes at a one-time cost of \$1,740. The administrative cost is estimated at approximately 30% the IT cost or \$522. The total one-time cost is estimated at \$2,262.

Summary of the Proposal:

Current law provides that a claimant who conceals work on an unemployment benefit claim is totally ineligible for benefits for that week and the partial benefit formula does not apply. But concealment of vacation, holiday, dismissal, or sick pay will not necessarily result in total ineligibility for the week that the non-work pay was concealed because the partial benefit formula determines the amount of benefits. A claimant may still be eligible for a partial payment after accounting for the concealed non-work pay (the claimant may still be ineligible if they receive \$500 or 32 hours or more of vacation pay, holiday pay, dismissal pay, or sick pay). This law change proposes that concealment of vacation, holiday, dismissal or sick pay on a weekly benefit claim results in total ineligibility for the week for which the claimant concealed this pay.

Trust Fund Methodology:

This intent of this law change proposal is to treat the concealment of vacation, holiday, dismissal, sick pay and the concealment of work and wages consistently. Based on a review of 2015 adjudication data, total ineligibility for a week in which a claimant conceals vacation pay, holiday pay, dismissal pay and/or sick pay would result in approximately \$9,000 additional benefits overpaid. At an 80% collections rate, this law change proposal could save the UI Trust Fund approximately \$7,200 in additional benefit overpayment collections.

Increased overpayment amounts would also result in higher overpayment penalties, which is currently 40% of the overpayment amount. The penalties collected would flow to the UI Program Integrity Fund.

IT and Administrative Impact Methodology:

The IT hours and cost assumes simple adjudication resolution code changes and no changes for tax or reporting. The administrative cost is 30% of the IT cost based on prior project estimates.

D17-05

Ineligibility for Failure to Provide Information

Date: January 19, 2017

Proposed by: DWD

Prepared by: Andy Rubsam

ANALYSIS OF PROPOSED UI LAW CHANGE

Ineligibility for Failure to Provide Information

1. Description of Proposed Change

The department may request information from unemployment benefit claimants in order to ensure that they are eligible for benefits. Under current law, a claimant is ineligible for benefits for the week in which the claimant fails to answer the department's eligibility questions, and any subsequent weeks, until the claimant responds.¹ A claimant who later answers the department's eligibility questions is retroactively eligible for benefits beginning with the week in which they failed to answer the questions, if otherwise eligible.

The department proposes to amend the law to provide that claimants who fail to answer eligibility questions are ineligible beginning with the week involving the eligibility issue, not the week in which the claimant fails to answer the department's questions. This proposed amendment clarifies that, if the department questions a claimant's eligibility, the department will hold the claimant's benefits until the claimant responds in order to reduce improper payments.

2. Proposed Statutory Change

Section 108.04 (1) (hm) of the statutes is amended to read:

The department may require any claimant to appear before it and to answer truthfully, orally or in writing, any questions relating to the claimant's eligibility for benefits or to provide such demographic information as may be necessary to permit the department to conduct a statistically valid sample audit of compliance with this chapter. A claimant is ~~not eligible~~ ineligible to receive benefits for any week ~~in~~ about which the claimant fails to comply with a

¹ Wis. Stat. § 108.04(1)(hm).

D17-05

Ineligibility for Failure to Provide Information

request by the department to provide the information required under this paragraph, ~~or any subsequent week,~~ A claimant remains ineligible for benefits until the claimant complies with the request. Except as provided in sub. (2) (e) and (f), if a claimant later complies with a request by the department within the period specified in s. 108.09 (2) (c), the claimant is eligible to receive benefits as of the week ~~in which the failure occurred~~ about which the department questions the claimant's eligibility, if otherwise qualified.

3. Effects of Proposed Change

- a. Policy. The proposed change will prevent improper payments and will encourage claimants to promptly answer benefit eligibility questions.
- b. Administrative. This proposal will require training for benefits staff.
- c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

D17-05
Ineligibility for Failure to Provide Information

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

UI Trust Fund Impact:

This is a technical change and would not impact the Trust Fund.

IT and Administrative Impact:

This is a technical change and would not have an IT or Administrative impact.

Summary of Proposal:

Section 108.04(1)(hm) permits the Department to require claimants to answer questions about the claimants' eligibility for benefits. The statute provides: "A claimant is not eligible to receive benefits for any week in which the claimant fails to comply with a request by the department to provide the information required under this paragraph, or any subsequent week, until the claimant complies with the request." The Department proposes to amend the statute to permit a denial from the first week of the eligibility issue until the claimant responds to the request for information. This will prevent issuance of benefits before the eligibility issue is resolved. The proposed change clarifies the Department's interpretation of the law.

Trust Fund Methodology:

This is a technical change and would not impact the Trust Fund.

IT and Administrative Impact Methodology:

This is a technical change and would not have an IT or Administrative impact.

D17-06
Standard of Proof in Unemployment Insurance Law Cases

Date: January 19, 2017
Proposed by: DWD
Prepared by: Andy Rubsam

ANALYSIS OF PROPOSED UI LAW CHANGE
Standard of Proof in Unemployment Insurance Law Cases

1. Description of Proposed Change

The standard of proof is “a rule about the quality of the evidence that a party must bring forward to prevail.”¹ The standard of proof used in a legal proceeding depends on the nature of the proceeding. The preponderance of the evidence is the burden of proof used “in most civil trials, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be.”² A more stringent burden of proof is clear and convincing evidence, which is “evidence indicating that the thing to be proved is highly probable or reasonably certain.”³ The highest level of proof is beyond a reasonable doubt, which is used in criminal proceedings.

Currently, Wisconsin’s unemployment insurance law does not contain a uniform standard of proof. The Commission applies the clear and convincing standard to concealment cases and cases involving misconduct for theft by the employee. Minnesota unemployment law provides that all issues of fact are determined by a preponderance of the evidence.⁴ The Department proposes that all issues of fact in Wisconsin unemployment insurance cases (other than criminal penalties) shall be determined by a preponderance of the evidence. Criminal cases based on violations of the unemployment insurance law would continue to be determined by the higher “beyond a reasonable doubt” standard.

¹ Standard of Proof, Black’s Law Dictionary (10th ed. 2014).

² Preponderance of the Evidence, Black’s Law Dictionary (10th ed. 2014).

³ Evidence, Black’s Law Dictionary (10th ed. 2014).

⁴ MN Stat. § 268.031(1).

D17-06
Standard of Proof in Unemployment Insurance Law Cases

2. Proposed Statutory Changes

Section 108.09 (3m) of the statutes is created to read:

(3m) STANDARD OF PROOF. All issues of fact in cases decided under this section are determined by a preponderance of the evidence.

Section 108.095 (5) of the statutes is amended to read:

(5) ~~Any~~ A hearing on an appeal under this section shall be held before an appeal tribunal ~~appointed~~ established under s. 108.09 (3). Section 108.09 ~~(3m), (4), and (5)~~ applies to the proceeding before the appeal tribunal.

Section 108.10 (2) of the statutes is amended to read:

(2) ~~Any~~ A hearing on an appeal under this section ~~duly requested~~ shall be held before an appeal tribunal established as ~~provided by~~ under s. 108.09 (3), ~~and s. Section~~ 108.09 (3m), (4), and (5) ~~shall be applicable~~ applies to the proceedings before ~~such~~ the appeal tribunal. The department may be a party in any proceedings before an appeal tribunal. The employing unit or the department may petition the commission for review of the appeal tribunal's decision under s. 108.09 (6).

3. Effects of Proposed Change

- a. Policy. The proposed change regarding the standard of proof will require parties to all non-criminal unemployment insurance cases to show the same level of evidence as in other civil cases. This will align the burden of proof in unemployment insurance cases with the burden of proof in other civil cases.
- b. Administrative. This proposal will require training of adjudication staff and administrative law judges.
- c. Fiscal. A fiscal estimate will be provided in the future.

D17-06

Standard of Proof in Unemployment Insurance Law Cases

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

D17-07
Revision of Collections Statutes

Date: January 19, 2017
Proposed by: DWD
Prepared by: Andy Rubsam

ANALYSIS OF PROPOSED UI LAW CHANGE
Revision of Collections Statutes

1. Description of Proposed Change

The department proposes several changes to the collections statutes. Some of the changes are minor, such as amending the statutes to standardize similar provisions. Other changes are substantive, such as:

1. Providing an unrecorded lien against any person who owes the department a debt (currently only for employers). This will ensure that the department has a right to collect a debt without a warrant when property is liquidated and will improve the department's position with respect to the priority of creditors.
2. Creating a provision to confirm that the department's bankruptcy claims for benefit overpayments are treated as secured if a warrant has been filed. Currently, the department's bankruptcy claims for taxes are treated as secured when a warrant is filed.
3. Modifying an existing penalty for third parties who refuse to comply with a department levy in order to align the penalty with the Department of Revenue's penalty for levy non-compliance. The revised penalty will be 50% of the amount of the debt owed and will be deposited into the program integrity fund.
4. Amending the tax personal liability statute to remove the 20% owner requirement for a finding of personal liability, which would align the unemployment law more closely with the laws of the IRS, Wisconsin Department of Revenue, and the Department's Worker's Compensation Division and Equal Rights Division.

D17-07
Revision of Collections Statutes

5. Permitting the department to intercept state income tax refunds, lottery payments, state vendor payments, and unclaimed property of taxpayers (employers and individuals) who owe debts to the department. The department currently only intercepts such amounts for claimants who owe overpayments and penalties. Current law permits the department to intercept federal income tax refunds to satisfy tax and benefit debts.

The following chart details all of the proposed changes:

Statute	Currently	Proposed change
108.22(1)(g)	Current s. 108.22(8)(b)3. provides that the department may recover its collection costs when collecting overpayments. Current 108.225(6) and 108.22(2)(b) permit the department to recover the costs of a levy or warrant.	Create s. 108.22(1)(g) to confirm that the department may recover its actual costs in collecting any amount due from any party that owes the department a debt. Examples include statutorily-required certified postage and court filing fees.
108.22(1)(h)	No current provision.	Create s. 108.22(1)(h) to permit the department to charge debit and credit card bank fees to debtors. This will permit (<u>but not require</u>) claimants and employers to pay their debts owed to the department by credit or debit card.
108.22(1m)	Currently provides an unrecorded lien against employers who owe delinquent taxes.	Amend to change “employer” to “person,” which will result in an unrecorded lien against any individual or entity that owes the department a debt under chapter 108 (including claimants). (Discussed in detail above.)
108.22(2) 108.22(8)(b)1.b. 108.22(8)(b)2. 108.22(8)(bh) 108.223(1)(br)	Various statutes permit the department to record warrants (liens) against employers, claimants, and identity thieves.	Amend s. 108.22(2) and repeal/modify the other sections in order to consolidate the warrant provisions into one section and to confirm that the department may issue a warrant against any individual or entity that owes it a debt.
108.22(3m)	Currently, the department may only sell seized assets at a sheriff’s sale. This adds costs and delays to the asset seizure process.	Create s. 108.22(3m) to permit the department to sell seized assets at an online auction in order to satisfy debts owed to the department. This aligns chapter 108 with WI-DOR provisions.

D17-07
Revision of Collections Statutes

108.22(2)(a)3m.	No current provision.	Create s. 108.22(2)(a)3m. to confirm that the department’s warrants are statutory liens for the purposes of bankruptcy law. This should result in department receiving secured treatment of its bankruptcy claims for benefit overpayments if a warrant is filed. The department’s bankruptcy claims for taxes are already treated as secured if a warrant is filed.
108.22(1r) 108.22(8)(b)1.d.	Permits the department to intercept federal income tax refunds to satisfy UI tax debts and benefit fraud overpayments (a federal requirement).	Amend s. 108.22(1r) and repeal s. 108.22(8)(b)1.b. to consolidate the federal income tax refund intercept provision into one section, 108.22(1r), for simplification. This change also tracks the federal definition of a covered unemployment compensation debt.
108.22(1t) 108.22(8)(b)1.c.	Section s. 108.22(8)(b)1.c. permits the department to intercept WI state income tax refunds, lottery, unclaimed property and state vendor payments to satisfy benefit overpayments and claimant penalties.	Create (1t) and repeal s. 108.22(8)(b)1.c. to consolidate the state intercept provisions into (1t). This creates a new provision that permits the department to intercept state income tax refunds, lottery, vendor and unclaimed property payments in order to satisfy delinquent UI taxes.
108.225(1)(b)	Defines what a “debt” is for the purposes of issuing a levy.	Amend to simplify the definition to be any amount due under chapter 108.
108.225(4)(b)	Provides that a third party that fails to comply with a department levy (e.g. fails to turn over debtor’s property) owes 25% of the debt to the department.	Amend to remove the 25% provision and to create a new penalty of 50% of the debt owed as a penalty for failure to comply with a department levy. The penalty will be deposited into the program integrity fund. This is similar to an existing Department of Revenue penalty. ¹

¹ Wis. Stat. § 71.91(6)(d)2.

D17-07
Revision of Collections Statutes

108.22(9)	The requirements for an assessment of personal liability for employer tax are: (1) 20% ownership interest in the business; (2) responsibility of the individual to ensure that the taxes are paid; (3) willful failure to pay the tax; and (4) attempted collection of the tax from the employer.	Amend to remove the 20% ownership requirement , which is similar to IRS, WI-DOR, Worker’s Compensation, and Employment Regulation personal liability statutes. ²
108.22(9)	Personal liability for unpaid taxes, interest, tardy payment fees, costs and other fees.	Amend to confirm the department’s view of current law: an appeal of a personal liability determination excludes a review of the underlying tax owed. This change is recommended in order to prevent an erroneous decision.

2. Proposed Statute Changes

See attached.

3. Effects of Proposed Change

- a. Policy. This proposal will simplify the department’s collections statutes and facilitate collections. The new penalty should increase compliance with the department’s levies. The personal liability provisions should increase the department’s ability to hold responsible persons personally liable for employer taxes.
- b. Administrative. The collections staff will need to be trained on the proposed changes.
- c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

² 26 USC § 6672(a) (IRS); Wis. Stat. § 77.60(9) (WI-DOR); Wis. Stat. § 102.83(8) (Worker’s Compensation); Wis. Stat. § 103.01(1)(a) (Employment Regulations).

D17-07
Revision of Collections Statutes

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

D17-07
Revision of Collections Statutes

Section 108.22 (1) (g) of the statutes is created to read:

The department may recover its actual costs, disbursements, expenses, and fees incurred in recovering any amount due under this chapter.

Section 108.22 (1) (h) of the statutes is created to read:

The department may charge and recover the costs related to payments made to the department by debit card, credit card or other payment method.

Section 108.22 (1m) of the statutes is amended to read:

If ~~an employer~~ a person owes the department any amount ~~contributions, reimbursements, or assessments under s. 108.15, 108.151, 108.155, or 108.19 (1m), interest, fees, or payments for forfeitures or other penalties to the department~~ under this chapter and fails to pay the amount owed, the department has a perfected lien upon the ~~employer's~~ person's right, title, and interest in all of ~~its~~ the person's real and personal property located in this state in the amount finally determined to be owed, plus costs. Except where creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective when the department issues a determination of the amount owed under s. ~~108.10 (1)~~ this chapter and shall continue until the amount owed, plus costs and interest to the date of payment, is paid. If a lien is initially barred or stayed by bankruptcy or other insolvency law, it shall become effective immediately upon expiration or removal of such bar or stay. The perfected lien does not give the department priority over lienholders, mortgagees, purchasers for value, judgment creditors, and pledges whose interests have been recorded before the department's lien is recorded.

D17-07
Revision of Collections Statutes

Section 108.22 (1r) of the statutes is amended to read:

If any person ~~employing unit or any individual who is found personally liable under sub. (9)~~ fails to pay to the department a covered unemployment compensation debt, as defined in 26 USC 6402 (f) (4),³ ~~any amount found to be due it in proceedings pursuant to s. 108.10,~~ provided that no appeal or review permitted under this chapter ~~s. 108.10~~ is pending and that the time for taking an appeal or review has expired, the department or any authorized representative may ~~offset~~ set off the amount against a federal overpayment tax refund ~~as provided in~~ under 26 USC 6402 (f).

Section 108.22 (1t) of the statutes is created to read:

If any person fails to pay to the department any amount under this chapter, provided that no appeal or review permitted under this chapter is pending and that the time for taking an appeal or review has expired, the department or any authorized representative may set off the amount against a refund, overpayment, or disbursement under s. 71.93.

³ 26 USC 6402(f)(4) defines a “covered unemployment compensation debt” as:

(A) a past-due debt for erroneous payment of unemployment compensation due to fraud or the person’s failure to report earnings which has become final under the law of a State certified by the Secretary of Labor pursuant to section 3304 and which remains uncollected;

(B) contributions due to the unemployment fund of a State for which the State has determined the person to be liable and which remain uncollected; and

(C) any penalties and interest assessed on such debt.

D17-07
Revision of Collections Statutes

Section 108.22 (2) (a) 1. to 3. of the statutes are amended to read:

1. If any person ~~employing unit or any individual who is found personally liable under sub. (9)~~ fails to pay to the department any amount ~~found to be due it~~ under this chapter ~~in proceedings pursuant to s. 108.10~~, provided that no appeal or review permitted under ~~this chapters. 108.10~~ is pending and that the time for taking an appeal or review has expired, the department or any authorized representative may issue a warrant directed to the clerk of circuit court for any county of the state.
2. The clerk of circuit court shall enter in the judgment and lien docket the name of the person ~~employing unit or individual~~ mentioned in the warrant, ~~and~~ the amount owed ~~of the contributions, interest, costs and other fees for which the warrant is issued~~ and the date when such copy is entered.
3. A warrant entered under subd. 2. shall be considered in all respects as a final judgment constituting a perfected lien upon the person's ~~employing unit's or individual's~~ right, title and interest in all real and personal property located in the county where the warrant is entered.

Section 108.22 (2) (a) 3m. of the statutes is created to read:

Notwithstanding subd. 3., a warrant entered under subd. 2. shall be considered as a statutory lien under 11 USC 101(53).

D17-07
Revision of Collections Statutes

Section 108.22 (2) (a) 4. of the statutes is amended to read:

The department or any authorized representative may thereafter file an execution with the clerk of circuit court for filing by the clerk of circuit court with the sheriff of any county where real or personal property of the person ~~employing unit or individual~~ is found, commanding the sheriff to levy upon and sell sufficient real and personal property of the person ~~employing unit or individual~~ to pay the amount stated in the warrant in the same manner as upon an execution against property issued upon the judgment of a court of record, and to return the warrant to the department and pay to it the money collected by virtue thereof within 60 days after receipt of the warrant.

Section 108.22 (2) (b) of the statutes is amended to read:

The clerk of circuit court shall accept, file and enter each warrant under par. (a) and each satisfaction, release, or withdrawal under subs. (5), (6), and (8m) in the judgment and lien docket without prepayment of any fee, but the clerk of circuit court shall submit a statement of the proper fee semiannually to the department covering the periods from January 1 to June 30 and July 1 to December 31 unless a different billing period is agreed to between the clerk of circuit court and the department. The fees shall then be paid by the department, but the fees provided by s. 814.61 (5) for entering the warrants shall be added to the amount of the warrant and collected from the ~~employing unit or individual~~ person when satisfaction or release is presented for entry.

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Section 108.22 (3) of the statutes is amended to read:

The department may issue a warrant of like terms, force and effect to any employee or other agent of the department, who may file a copy of such warrant with the clerk of circuit court of any county in the state, and thereupon such clerk shall enter the warrant in the judgment and lien docket and the warrant shall become a lien in the same manner, and with the same force and effect, as provided in sub. (2). In the execution of the warrant, the employee or other agent shall have all the powers conferred by law upon a sheriff, but shall not be entitled to collect from the ~~employer~~ person any fee or charge for the execution of the warrant in excess of the actual expenses paid in the performance of his or her duty.

Section 108.22 (3m) of the statutes is created to read:

In executing a warrant as described in sub. (3), the employee or agent may conduct, or may engage a 3rd party to conduct, an execution sale of property in any county of this state and may sell, or may engage a 3rd party to sell, the property in any manner that in the discretion of the department will bring the highest net bid or price, including Internet-based auctions or sales. The cost of conducting each auction or sale shall be reimbursed to the department out of the proceeds of the auction or sale.

Section 108.22 (4) of the statutes is amended to read:

If a warrant ~~be~~ is returned not satisfied in full, the department shall have the same remedies to enforce the amount due ~~for contributions, interest, and costs and other fees~~ as if the department had recovered judgment against the person ~~employing unit~~ for the same and an execution is returned wholly or partially not satisfied.

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Section 108.22 (5) of the statutes is amended to read:

When the ~~contributions~~ amounts set forth in a warrant together with interest and other fees to date of payment and all costs due the department have been paid to it, the department shall issue a satisfaction of the warrant and file it with the clerk of circuit court. The clerk of circuit court shall immediately enter a satisfaction of the judgment on the judgment and lien docket. The department shall send a copy of the satisfaction to the person ~~employer~~.

Section 108.22 (8) (b) 1. of the statutes is amended to read:

1. To recover any overpayment to an individual which is not otherwise repaid or recovery of which has not been waived, the department may recoup the amount of the overpayment by: in addition to its other remedies in this chapter, deducting the amount of the overpayment from benefits the individual would otherwise be eligible to receive. Any recovery under this paragraph is limited to the actual amount of the overpayment, without interest.

~~a. Deducting the amount of the overpayment from benefits the individual would otherwise be eligible to receive;~~

~~b. Filing a warrant against the liable individual in the same manner as is provided in this section for collecting delinquent payments from employers;~~

~~c. Setting off the amount of the overpayment against a refund or disbursement due pursuant to s. 71.93; or~~

~~d. If the overpayment results from fraud or failure to report earnings, offsetting the amount of the overpayment against a federal tax refund as provided in 26 USC 6402 (f).~~

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Section 108.22 (8) (b) 2. of the statutes is repealed:

~~To recover any assessment under s. 108.04 (11) (cm), the department may file a warrant against the liable individual in the same manner as is provided in this section for collecting delinquent payments from employers.~~

Section 108.22 (8) (b) 3. of the statutes is repealed:

~~Any recovery under this paragraph is limited to the actual amount of the overpayment or assessment and any costs and disbursements, without interest.~~

Section 108.22 (8) (bh) of the statutes is repealed:

~~To recover any penalty under s. 108.04 (11) (bh), the department may recoup the amount of the penalty by filing a warrant against a liable individual in the same manner as is provided in this section for collecting delinquent payments from employers.~~

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Section 108.22 (9) of the statutes is amended to read:

Any ~~An individual person~~ who is an officer, employee, member, manager, partner, or other responsible person ~~holding at least 20 percent of the ownership interest of an employer corporation, limited liability company, or other business association subject to this chapter, and who has control or supervision of or responsibility for filing any required contribution reports or making payment of amounts due under this chapter, contributions,~~ and who willfully fails to file such reports or to make such payments to the department, or to ensure that such reports are filed or that such payments are made, may be found personally liable for such amounts, ~~including interest, tardy payment or filing fees, costs and other fees,~~ in the event that after proper proceedings for the collection of such amounts, as provided in this chapter, the employer corporation, limited liability company, or other business association is unable to pay such amounts to the department. ~~Ownership interest of a corporation, limited liability company, or other business association includes ownership or control, directly or indirectly, by legally enforceable means or otherwise, by the individual, by the individual's spouse or child, by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them, and such ownership interest of a parent corporation, limited liability company, or other business association of which the corporation, limited liability company, or other business association unable to pay such amounts is a wholly owned subsidiary. The p~~

Personal liability of such officer, employee, member, manager, partner, or other responsible person as provided in this subsection survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the employer corporation, limited liability company, or other business association and shall be set forth in a determination or decision issued under s. 108.10. An appeal or review of a determination under this subsection shall not include an appeal or review of determinations of amounts owed by the employer.

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Section 108.223 (1) (br) of the statutes is amended to read:

“Debtor” means a debtor, as defined in s. 108.225 (1) (c), whose debt has been finally determined under this chapter and is not subject to further appeal and for whom, with respect to a debt, a warrant has been issued under s. 108.22 (2); or (3) or (8).

Section 108.225 (1) (b) of the statutes is amended to read:

“Debt” means any amount due under this chapter. ~~delinquent contribution or repayment of a benefit overpayment, a delinquent assessment under s. 108.04 (11) (em) or 108.19 (1m), a liability incurred under s. 108.04 (11) (bh), an erroneous payment from the fund recovered under s. 108.245, or any liability of a 3rd party for failure to surrender to the department property or rights to property subject to levy after proceedings under sub. (4) (b) and s. 108.10 to determine that liability.~~

Section 108.225 (4) (b) of the statutes is amended to read:

~~Any 3rd party~~ The department may assess a person who fails to comply with sub. (3) surrender ~~any property or rights to property subject to levy, upon demand of the department, is subject to proceedings to enforce the levy. The 3rd party is not liable to the department under this paragraph for more than 25% a penalty in the amount of 50% of the debt owed by a debtor. The department shall serve a final demand as provided under sub. (13) on any 3rd party person who fails to comply with sub. (3). surrender property. Proceedings shall not be initiated by the department until 5 days after service of the final demand. The department shall issue a determination under s. 108.10 to the person 3rd party for the amount of the assessment under this subsection at least 7 days after service of the final demand. liability. Assessments under this subsection shall be deposited in the program integrity fund.~~

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Section 108.19 (1s) (a) 5. of the statutes is created to read:

Assessments under s. 108.225 (4) (b).

Section 815.29 (1) of the statutes is amended to read:

No execution sale of personal property shall be made unless 20 days previous notice of such sale has been given by posting a notice thereof in one public place of the town or municipality where such sale is to be had and, if the county where such sale is to be had maintains a Web site, by posting a notice on the Web site. If the town or municipality where such sale is to be had maintains a Web site, the town or municipality may also post a notice on its Web site. The notice shall specify the time and place of sale but when any property seized is likely to perish or depreciate in value before the expiration of the 20 days the court or a judge may order the same to be sold in such manner and upon such terms as the best interests of the parties demand. Every such sale shall be made at auction between the hours of 9 a.m. and 5 p.m. and no property shall be sold unless it is in view of those attending the sale, except as provided in ss. 71.91 (5) (c) 2. and 108.22 (3m) and in the case of the sale of the interest of the judgment debtor in property in the possession of a secured party. It shall be offered for sale in such lots and parcels as is calculated to bring the highest price.

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Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

UI Trust Fund Impact: This law change proposal is expected to save the UI Trust Fund approximately \$2.3M annually in additional debt collections.

IT and Administrative Impact: This law change proposal will require approximately 3,520 hours of IT changes at a one-time cost of \$306,240. The administrative cost is estimated at approximately 30% the IT cost, or \$91,872. Therefore the total one-time cost is estimated at \$398,112.

Summary of Proposal, Trust Fund Impact and IT/Administrative Impact:

The department proposes several changes to the collections statutes. Some of the changes are minor and technical in nature, such as rearranging the statutes to standardize similar provisions.

Other changes are substantive. The changes include:

1. Providing an unrecorded lien against any person who owes the department a debt (currently only for employers). This will ensure that the department has a right to collect a debt without a warrant when property is liquidated and will improve the department's standing with respect to the priority of creditors.

Trust Fund Impact: This proposal would have a negligible but positive impact on the Trust Fund. This proposal adds claimants and individual owners of business as individuals that the

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department can provide an unrecorded lien against, which makes collections more equitable. However, unrecorded liens are fairly rare.

IT and Administrative Impact: There would be no IT or administrative impact. An ad-hoc manual letter is sent out at this time, which would not change.

2. Creating a provision to confirm that the department's bankruptcy claims for benefit overpayments are treated as secured if a warrant has been filed. Currently, the department's bankruptcy claims for taxes are treated as secured when a warrant is filed.

Trust Fund Impact: This proposal would have a negligible but positive impact on the Trust Fund. This proposal adds claimants and benefit overpayments to bankruptcy claims if a warrant has been filed. This would make the law more equitable. The Department expects to recover a greater percentage of its benefit overpayment claims in bankruptcy cases.

IT and Administrative Impact: There would be no IT or administrative impact. The current functionality of insolvency in SUITES will remain the same.

3. Modifying an existing penalty for 3rd parties who refuse to comply with a department levy in order to align the penalty with the Department of Revenue's penalty for levy non-compliance. The new penalty will be 50% of the amount of the debt owed and will be deposited into the UI Program Integrity Fund.

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Trust Fund Impact: This proposal is expected to save the UI Trust Fund approximately \$1.0M annually in additional UI delinquent tax and benefit overpayment collections, as this proposal would incentivize compliance. Any penalties recouped would go to the UI Program Integrity Fund, though this proposal is not expected to result in a large source of revenue.

Currently, approximately 14% of levies are ignored by the 3rd party. The balance on accounts that are levied and ignored is approximately \$12.5M annually, of which \$2.1M (17%) is collected by other collections means. There is a net ignored levy debt of approximately \$10.4M annually. It is assumed that these levy tools to enforce compliance could result in 10% more collections. This rate is used because it is the same *additional* collections rate determined for expanding the Treasury Offset Program (TOP) to unpaid employer tax debt. Collecting an additional 10% of \$10.4M in debts would result in a UI Trust Fund savings of approximately \$1.0M annually.

IT and Administrative Impact: This law change proposal will require approximately 520 hours of IT changes at a one-time cost of \$45,240. It assumes 400 SUITES hours and 120 CEDARS hours to make the necessary changes. The administrative cost is estimated at approximately 30% the IT cost or \$13,572. The total one-time cost is estimated at \$58,812.

4. Amending the tax personal liability statute to remove the 20% owner requirement for a finding of personal liability, which would make the unemployment law more closely align with the laws of the IRS, Wisconsin Department of Revenue, and the Department's Worker's Compensation Division and Equal Rights Division.

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Trust Fund Impact: This proposal would have a negligible but positive impact on the Trust Fund. Without the 20% threshold, this change would streamline investigations into assigning the debt. Some nonprofits do not have a clear owner, so this may make assigning personal liability in cases involving nonprofits easier. However, in general, individuals the department is trying to assign personal liability to already meets the 20% threshold and thus would not result in a significant impact to collections.

IT and Administrative Impact: There would be no IT or administrative impact. The investigations into personal liability are done by staff. There may be some administrative work to update forms/documents, manuals, training guides, but it would be minimal.

5. Permitting the department to intercept state income tax refunds, lottery payments, state vendor payments, and unclaimed property of taxpayers.

Trust Fund Impact: This law change proposal is expected to save the UI Trust Fund approximately \$1.3M annually in additional employer debt collections.

The department already intercepts WI-DOR income tax refunds, lottery payments, unclaimed property, and state vendor payments in order to satisfy fraud and non-fraud debts owed to DWD by claimants. The claimant DOR offset collects approximately 30% of the total IRS Federal Tax intercept (TOP for claimants).

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The department is currently implementing IRS Federal Tax intercept (TOP) for employer debt. The TOP fiscal indicated that TOP could save the Trust Fund approximately \$4.3M in additional tax collections.

Assuming the relationship between collections for claimants will be predictive of the debt collected for employers, the DOR offset collections would be approximately \$1.3M annually, or 30% of the total TOP estimate for employer debt. However, since the estimate is based upon claimant experience and not employer experience, and the employer portion of the TOP program has yet to be implemented, this estimate has a high degree of variance.

IT and Administrative Impact: This law change proposal will require approximately 3,000 hours of IT changes at a one-time cost of \$261,000. It assumes 1,800 SUITES hours, 900 CEDARS hours and 300 BITS project managements hours to make the necessary changes. The administrative cost is estimated at approximately 30% the IT cost, or \$78,300.

6. Technical changes include confirming the department's ability to recover costs and fees; to clarify that any seized property could be sold at an online auction and not solely as a sheriff sale; consolidate the federal income tax refund intercept provision into one section and consolidate the state intercept provisions into one section; simplify the definition of "debt" for the purposes of issuing a levy; and to codify current law that an appeal of a personal liability determination excludes a review of the underlying tax owed.

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Trust Fund Impact: Since these changes are technical in nature there is no impact to the UI Trust Fund.

IT and Administrative Impact: This technical proposal would not have an IT or administrative impact.

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Date: January 19, 2017
Proposed by: DWD
Prepared by: Andy Rubsam

ANALYSIS OF PROPOSED UI LAW CHANGE
Various Minor and Technical Changes

1. Description of Proposed Change

The department proposes several minor and technical changes to chapter 108, as follows.

- a. Congress repealed the federal Workforce Investment Act of 1998 (“WIA”) and replaced it with the federal Workforce Innovation and Opportunity Act (“WIOA”). The department proposes to update the references in chapter 108 from WIA to WIOA and to include language to obviate the need to update the statute if WIOA is repealed.
- b. Under s. 108.04(17)(e), a school year employee employed by a government unit, Indian tribe, or nonprofit organization is ineligible for benefits during the summer between two school years if there is a reasonable assurance that the employee will perform those services in the second school year. The statute omits a reference to “Indian tribe” in one instance. The department believes that the missing reference to “Indian tribe” is a drafting error and proposes to insert “Indian tribe” where it is missing.
- c. The previous UIAC agreed bill, 2015 Act 334, modified certain provisions in s. 108.04(8), related to suitable work. A cross-reference in s. 108.04(7)(e) was not revised to reflect the changes to s. 108.04(8). The department proposes to correct this error.
- d. Previously, the department paid all unemployment benefits by paper checks. Currently, the department pays about 80% of benefits by direct deposit, about 20% by deposit to debit cards and less than 1% by paper check. The department proposes updating the statutes to replace references to checks with issuance of payment.

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- e. The previous UIAC agreed bill, 2015 Act 334, provided for electronic delivery of decisions as an alternative to mailing decisions to parties. The department proposes to revise other statutes in chapter 108 to provide for optional electronic delivery of other department determinations and notices.
- f. The previous UIAC agreed bill, 2015 Act 334, created provisions to permit appeal tribunals to issue decisions regarding a party's failure to appear at hearings without holding a hearing on the party's failure to appear. The amended statutes do not clearly state that the appeal tribunal should dismiss the appeal if the appellant lacked good cause for failing to appear and that the appeal tribunal should issue a decision based on the original hearing record if the respondent lacked good cause for failing to appear. The Legislative Reference Bureau recommends amending these statutes to confirm the department's interpretation of these statutes: the appeal tribunal should issue a decision (1) addressing whether the party had good cause for failing to appear; and (2) dismissing the appeal (if the appellant failed to appear) or deciding the case based on the original hearing (if the respondent failed to appear).
- g. If a state has outstanding federal loans for two or more consecutive years as a result of borrowing in order to pay state unemployment benefits, employers' federal unemployment tax (FUTA) credit will be reduced.¹ This is known as the FUTA credit reduction and results in employers paying additional federal unemployment taxes. The federal government applies the additional federal unemployment taxes to the state's loan balance. After the state's federal loan is repaid, the federal government remits the excess amount of additional federal unemployment taxes, if any, to the state. The state must

¹ 26 USC § 3302(c)(2).

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deposit the funds into the state's unemployment trust fund.² The Legislative Fiscal Bureau recommends a law change so that state law aligns with federal law so that any excess FUTA credit reduction payments made to Wisconsin in the future will be deposited into the balancing account.

h. In lieu of layoffs, employers may reduce employees' hours under a work share plan that results in a pro rata payment of unemployment benefits.³ The department recommends the following changes to the work share statute:

1. Vacation, holiday, termination, and sick pay should be treated as hours for the purposes of calculating an employee's work share benefit. This is similar to current law for regular benefits.
2. The department shall disregard discrepancies of less than 15 minutes of work reported, which is similar to the disregard of \$2 of wages earned in a week for regular benefits.
3. The department shall treat missed work available for work share employees similarly as claimants applying for regular benefits so that work share employees are not paid greater benefits when missing work with a work share employer.

i. Section 20.445 contains various provisions related to the appropriations of funds for the department. The department's Office of Policy and Budget recommends that the appropriation language for the unemployment interest payment fund and the unemployment program integrity fund be amended. The amendments will convert these

² 42 USC § 1101(d)(1)(B): "The Secretary of the Treasury is directed to transfer from the employment security administration account--To the account (in the Unemployment Trust Fund) of the State with respect to which employers paid such additional tax, an amount equal to the amount by which such additional tax received and covered into the Treasury exceeds that balance of advances, made under section 1321 of this title to the State, with respect to which employers paid such additional tax."

³ See Wis. Stat. § 108.062. For more information, visit <http://dwd.wisconsin.gov/uitax/workshare.htm>.

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funds from “segregated-sum sufficient” to “segregated-continuing.” The purpose of these changes is to make the accounting for these funds more efficient. The department also proposes a fiscal provision to add 5.0 positions, to be compensated from the program integrity fund. These staff will conduct program integrity activities, investigate concealment, and investigate worker misclassification.

2. Proposed Statutory Changes

Section 20.445 (1) (u) of the statutes is amended to read:

(u) *Unemployment interest payments and transfers.* ~~From~~ All moneys paid into the unemployment interest payment fund under s. 108.19 (1q), ~~a sum sufficient~~ to make the payments and transfers authorized under s. 108.19 (1m).

Section 20.445 (1) (v) of the statutes is amended to read:

(v) *Unemployment program integrity.* ~~From~~ All moneys paid into the unemployment program integrity fund under s. 108.19 (1s), ~~a sum sufficient~~ to make the payments authorized under s. 108.19 (1s).

Section 108.02 (13) (i) of the statutes is amended to read:

An “employer” shall cease to be subject to this chapter only upon department action terminating coverage of such employer. The department may terminate an “employer’s” coverage, on its own motion or on application by the “employer”, by ~~mailing~~ issuing a notice of termination to the “employer’s” ~~last known address~~. An employer’s coverage may be terminated whenever the employer ceased to exist, transferred its entire business, or would not otherwise be subject under any one or more of pars. (b) to (g). If any employer of agricultural labor or domestic service work becomes subject to this chapter under par. (c) or (d), with respect to such employment, and such employer is otherwise subject to this chapter with respect to other employment, the

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employer shall continue to be covered with respect to agricultural labor or domestic service or both while the employer is otherwise subject to this chapter, without regard to the employment or wage requirements under par. (c) or (d). If a termination of coverage is based on an employer's application, it shall be effective as of the close of the quarter in which the application was filed. Otherwise, it shall be effective as of the date specified in the notice of termination.

Section 108.04 (7) (e) of the statutes is amended to read:

Paragraph (a) does not apply if the department determines that the employee accepted work which the employee could have failed to accept under sub. (8) and terminated such work on the same grounds and within the first 30 calendar days after starting the work, or that the employee accepted work which the employee could have refused under sub. (9) and terminated such work within the first 30 calendar days after starting the work. For purposes of this paragraph, an employee has the same grounds for voluntarily terminating work if the employee could have failed to accept the work under sub. (8)(d) to (em) when it was offered, regardless of the reason articulated by the employee for the termination.

Section 108.04 (16) (a) 4. of the statutes is amended to read:

A plan for training approved under the federal ~~workforce investment act, 29 USC 2822~~ Workforce Innovation and Opportunity Act, 29 USC 3112, or another federal law that enhances job skills.

Section 108.04 (17) (e) of the statutes is amended to read:

A school year employee of a government unit, Indian tribe, or nonprofit organization which provides services to or on behalf of any educational institution who performs services other than in an instructional, research or principal administrative capacity is ineligible for benefits based on such services for any week of unemployment which occurs during a period between 2

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successive academic years or terms if the school year employee performed such services for any such government unit, Indian tribe, or nonprofit organization in the first such year or term and there is reasonable assurance that he or she will perform such services for any such government unit, Indian tribe, or nonprofit organization in the 2nd such year or term.

Section 108.062 (2) (m) of the statutes is amended to read:

Indicate whether the plan ~~will~~ includes employer-sponsored training to enhance job skills ~~sponsored by the employer~~ and acknowledge that, ~~pursuant to federal law~~, the employees in the work unit may participate in training funded under the federal ~~Workforce Investment Act of 1998~~ Workforce Innovation and Opportunity Act or another federal law that enhances job skills without affecting availability for work, subject to ~~the department~~ the department approval ~~of the department~~.

Section 108.062 (6) (a) of the statutes is amended to read:

Except as provided in par. (b), an employee who is included under a work-share program and who qualifies to receive regular benefits for any week during the effective period of the program shall receive a benefit payment for each week that the employee is included under the program in an amount equal to the employee's regular benefit amount under s. 108.05 (1) multiplied by the employee's proportionate reduction in hours worked for that week as a result of the work-share program. Such an employee shall receive benefits as calculated under this paragraph and not as provided under s. 108.05 (3). For the purposes of this paragraph, the department shall treat amounts paid for holiday pay, vacation pay, termination pay, and sick pay as hours worked. In applying this paragraph, the department shall disregard discrepancies of less than 15 minutes between hours reported by employees and employers.

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Section 108.062 (10) of the statutes is amended to read:

AVAILABILITY FOR WORK. An employee who ~~is receiving~~ receives benefits under sub. (6) (a) for any week need not be available for work in that week other than for the normal hours of work that the employee worked for the employer that creates the work-share program immediately before the week in which the work-share program began and any additional hours in which the employee is engaged in training to enhance job skills sponsored by the employer that creates the plan or department-approved training funded under the federal ~~Workforce Investment Act of 1998~~ Workforce Innovation and Opportunity Act or another federal law that enhances job skills that is approved by the department. Unless an employee receives holiday pay, vacation pay, termination pay, or sick pay for missed work available under a work-share program, the department shall treat the missed work that an employee would have worked in a given week as hours actually worked by the employee for the purpose of calculating benefits under sub. (6).

Section 108.09(4)(d)2. of the statutes is amended to read:

If the appellant submits to the appeal tribunal a written explanation for failing to appear at the hearing that is received before a decision is electronically delivered or mailed under subd. 1., an appeal tribunal shall review the appellant's explanation. The appeal tribunal shall electronically deliver or mail to the respondent a copy of the appellant's explanation. The respondent may, within 7 days after the appeal tribunal electronically delivers or mails the appellant's explanation to the respondent, submit to the appeal tribunal a written response to the appellant's explanation. If the appeal tribunal finds that the appellant's explanation does not establish good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding and dismissing the appeal. ~~and s~~ Such a decision may be issued without a hearing. If the appeal tribunal finds that the appellant's explanation establishes good cause for failing to appear, the appeal tribunal

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shall issue a decision containing this finding, and such a decision may be issued without a hearing. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination. If such a hearing is held concerning any matter in the determination, the appeal tribunal shall only consider testimony and other evidence admitted at that hearing in making a decision.

Section 108.09(4)(e)2. of the statutes is amended to read:

If the respondent submits to the appeal tribunal a written explanation for failing to appear at the hearing that is received before a decision favorable to the respondent is electronically delivered or mailed under subd. 1., the appeal tribunal shall acknowledge receipt of the explanation in its decision but shall take no further action concerning the explanation at that time. If the respondent submits to the appeal tribunal a written explanation for failing to appear that is received before a decision unfavorable to the respondent is electronically delivered or mailed under subd. 1., an appeal tribunal shall review the respondent's explanation. The appeal tribunal shall electronically deliver or mail to the appellant a copy of the respondent's explanation. The appellant may, within 7 days after the appeal tribunal electronically delivers or mails the respondent's explanation to the appellant, submit to the appeal tribunal a written response to the respondent's explanation. If the appeal tribunal finds that the respondent's explanation does not establish good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. The same or another appeal tribunal established by the department for this purpose shall also issue a decision based on the testimony and other evidence presented at the hearing at which the respondent failed to appear. If the appeal tribunal finds that the respondent's explanation establishes good cause for failing to appear, the appeal

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tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination. If such a hearing is held concerning any matter in the determination, the appeal tribunal shall only consider testimony and other evidence admitted at that hearing in making a decision.

Section 108.095 (8) of the statutes is amended to read:

The ~~mailing~~ issuance of determinations and decisions under this section shall be by electronic delivery or first class mail and may include the use of services performed by the postal service requiring the payment of extra fees.

Section 108.10 (5) of the statutes is amended to read:

The ~~mailing~~ issuance of determinations and decisions provided in subs. (1) to (4) shall be by electronic delivery or first class mail, and may include the use of services performed by the postal ~~department~~ service requiring the payment of extra fees.

Section 108.15 (3) (a) of the statutes is amended to read:

~~It~~ ~~The~~ government unit shall file a written notice of election ~~to that effect~~ with the department before the beginning of such year or within 30 days after the department issues a determination that the government unit is subject to this chapter, whichever is later. ~~except that if the government unit became newly subject to this chapter as of the beginning of such year, it shall file the notice within 30 days after the date of mailing to it a written notification by the department that it is subject to this chapter.~~ Such An election under this subsection shall remain in effect for not less than 3 calendar years.

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Section 108.15 (5) (b) of the statutes is amended to read:

The department shall monthly bill each government unit for any reimbursements required under this section. The reimbursements shall be due within 20 days after the department issues the bill.
~~, and any reimbursement thus billed shall be due and shall be paid by such government unit within 20 days after the date such bill is mailed to it by the department.~~

Section 108.155 (4) of the statutes is amended to read:

The department shall bill assessments under this section to a reimbursable employer at its last known address in the month of September of each year and the assessment shall be due to the department within 20 days after ~~the date such bill is mailed by the department~~ issues the assessment. Any assessment that remains unpaid after its ~~applicable~~ due date is a delinquent payment. If a reimbursable employer is delinquent in paying an assessment under this section, in addition to pursuing action under the provisions of ss. 108.22 and 108.225, the department may do any of the following:

Section 108.16 (2) (e) of the statutes is amended to read:

Except as provided in par. (em), benefits ~~to~~ shall be charged against a given employer's account ~~shall be so charged as of the date shown by the check that the department issues the payment covering such benefits.~~ Each ~~such check~~ benefit payment shall be promptly ~~mailed~~ issued and shall, in determining the experience or status of such account for contribution purposes, be deemed paid on the date ~~shown on the check~~ issued.

Section 108.16 (2) (em) of the statutes is amended to read:

Benefits improperly charged or credited to an employer's account for any reason other than adjustment of payroll amounts between 2 or more employers' accounts shall, when so identified, be credited to or debited from that employer's account and, where appropriate, recharged to the

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Various Minor and Technical Changes

correct employer's account as of the date of correction. Benefits improperly charged or credited to an employer's account as a result of adjustment of payroll amounts between 2 or more employers' accounts shall be so charged or credited and, where appropriate, recharged as of the date ~~shown by the check covering such benefits~~ on which the department issued the benefit payment. This paragraph shall be used solely in determining the experience or status of accounts for contribution purposes.

Section 108.16 (6) (p) of the statutes is created to read:

Any amount received from the federal employment security administration account under 42 USC 1101 (d) (1) (B).

Section 108.19 (1m) of the statutes is amended to read:

Each employer subject to this chapter as of the date a rate is established under this subsection shall pay an assessment to the unemployment interest payment fund at a rate established by the department sufficient to pay interest due on advances from the federal unemployment account under Title XII of the social security act (42 USC 1321 to 1324). The rate established by the department for employers who finance benefits under s. 108.15 (2), 108.151 (2), or 108.152 (1) shall be 75 percent of the rate established for other employers. The amount of any employer's assessment shall be the product of the rate established for that employer multiplied by the employer's payroll of the previous calendar year as taken from quarterly employment and wage reports filed by the employer under s. 108.205 (1) or, in the absence of the filing of such reports, estimates made by the department. Each assessment made under this subsection is due ~~on the 30th day commencing~~ within 30 days after the department issues the assessment. ~~date on which notice of the assessment is mailed by the department~~. If the amounts collected from employers under this subsection ~~are in excess of~~ exceed the amounts needed to pay interest due, the

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department shall use any excess to pay interest owed in subsequent years on advances from the federal unemployment account. If the department determines that additional interest obligations are unlikely, the department shall transfer the excess to the balancing account of the fund, the unemployment program integrity fund, or both in amounts determined by the department.

Section 108.21 (2) of the statutes is amended to read:

The findings of ~~any such~~ an authorized representative of the department under sub. (1), based on examination of the records of any such employing unit and embodied in an audit report issued mailed to the employing unit, ~~shall constitute~~ are a determination under ~~within the meaning of s.~~ 108.10.

Fiscal Change:

In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of workforce development under section 20.445 (1) (v) of the statutes, as affected by the acts of 2017, the dollar amount is increased by \$1,630,000 for the first fiscal year of the fiscal biennium in which this subsection takes effect for the purpose of increasing the authorized FTE positions for the department of workforce development by 5.0 SEG positions annually and providing additional funding for the purpose of conducting program integrity activities, investigating concealment, and investigating worker misclassification. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of workforce development under section 20.445 (1) (v) of the statutes, as affected by the acts of 2017, the dollar amount is increased by \$1,630,000 for the second fiscal year of the fiscal biennium in which this subsection takes effect for the purpose of increasing the authorized FTE positions for the department of workforce development by 5.0 SEG positions annually and providing additional funding for the

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purpose of conducting program integrity activities, investigating concealment, and investigating worker misclassification.

3. Effects of Proposed Change

- a. Policy. This proposal will align Wisconsin law with current federal law, correct typos in Wisconsin's law, and update outdated references in the statutes.
- b. Administrative. Staff will need to be made aware of the changes.
- c. Fiscal. A fiscal estimate is not yet available.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. The Department recommends that all changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

D17-09
Various Administrative Rule Changes

Date: January 19, 2017
Proposed by: DWD
Prepared by: Andy Rubsam

ANALYSIS OF PROPOSED UI LAW CHANGE
Various Administrative Rule Changes

1. Description of Proposed Change

During the previous agreed bill cycle, the Council agreed that the department's administrative rules should be amended to change the waiting time for appeal tribunal hearings from 15 minutes for appellants and 5 minutes for respondents to 10 minutes for all parties. The department proposes to make this rule change along with several other changes to the rules.

The department proposes several rule changes to amend outdated rules, repeal unused rules, to correct typographical errors, and to amend or repeal rules that are superseded by statute. The changes to Chapters DWD 100 through 150 will include minor edits and other technical changes, including (but not limited to) the following:

Statutes provide that employers with more than 25 employees must file unemployment tax and wage reports online using the department's website. The current administrative rule states that employers may file reports by paper or magnetic tape. The department no longer accepts reports filed on magnetic tape. Current statute requires larger employers to pay their unemployment tax by electronic payment but a current rule permits payments by check. The department proposes to amend these rules to conform to statute.

Current statutes provide deadlines to file reports. The applicable administrative code provisions will be updated accordingly.

Chapter DWD 111 requires employers to notify the department whether the employer provides health insurance for employees. The department proposes to repeal this provision because the department no longer collects this information from employers.

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Various Administrative Rule Changes

Chapter DWD 115 states that a mandatory successor must be “owned or controlled” by the same interests. The department proposes to modify the rule to state “owned, managed, or controlled,” which would align with the related statute, Wis. Stat § 108.16(8)(e)1.

Chapter DWD 140 provides procedures for in-person and telephone hearings for unemployment insurance cases. The department proposes to add procedures for videoconference hearings.

2. Proposed Administrative Rule Changes

If the Council approves this proposal, the department will prepare a scope statement and, after the scope statement is published, will begin to draft the proposed rule changes. The proposed rules will be submitted to the Council for its review, comment, and approval.

3. Effects of Proposed Change

- a. Policy. This proposal will implement the Council’s intent to change the rule regarding the wait times for hearings, as agreed in the last agreed bill cycle. This proposal will also update the administrative rules by repealing outdated rules and amending rules that do not conform to statute.
- b. Administrative. The hearing office staff and administrative law judges will need to be trained on the changes to the wait times for hearings. Staff will need to be made aware of the changes to the rules and update relevant citations in forms and decisions.
- c. Fiscal. A fiscal estimate is not yet available.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

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Various Administrative Rule Changes

5. Proposed Effective/Applicability Date

This proposal would be effective when the rules are promulgated.

Scott Walker
Governor

Laurie R. McCallum
Chairperson



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State of Wisconsin

Labor and Industry Review Commission

Clearinghouse Rule 16-050

PROPOSED RULEMAKING ORDER

The Labor and Industry Review Commission proposes an order to renumber and amend LIRC 1.027; to amend LIRC 1.01, 1.02 (intro.), 1.03, 1.05, 1.07, LIRC ch. 2 (title), 2.015 (intro.) and (1) to (7), 3.04 and 3.05; to repeal and recreate LIRC 1.015, 1.025, 1.04, 2.01, 2.05, 3.01 and 4.01; to create 1.02 (10), 1.08, 2.05 (Note), 3.05 (Note), 4.04 (Note), and LIRC ch. 5, relating to procedures before the commission.

ANALYSIS

Statutes interpreted.

Sections 40.65, 66.191, 102.18 (3) and (4), 102.23, 103.06 (6), 106.52 (4), 108.09 (6) and (7), 108.10 (2) and (3), 111.39 (5) (a), 303.07 (7), and 303.21, Stats.

Statutory authority.

Section 103.04 (2), Stats., authorizes the commission to promulgate rules of procedure. The commission is not authorized to promulgate any other rules.

Explanation of agency authority.

The Labor and Industry Review Commission serves as an independent higher authority for appeals of employment law decisions of administrative law judges involving unemployment insurance, worker's compensation, fair employment, public accommodation, and worker classification compliance cases. The commission promulgates procedural rules pursuant to s. 103.04 (2), Stats.

Related statutes or rules.

N/A

Plain language analysis.

The commission has statutory authority to promulgate rules regarding its procedures. The proposed rules will make the rules consistent with recent law changes in 2015 Wis. Acts 180 and 334, and will also clarify several commission procedures and help to improve the speed and efficiency in processing cases and issuing decisions.

In LIRC 1, regarding general procedural rules in all cases before the commission, the proposed rules will provide useful definitions that will simplify drafting and interpretation of the rules. The structure of the rule for filing petitions for review with the commission is reorganized to separate out the different filing requirements for different program areas, and to clarify when and how petitions are filed in each program area. The rule will clarify that commission review is a *de novo* review of the record made at the hearing before an administrative law judge and will describe the record used for commission review. The proposed rule will clarify how the commission may take administrative notice of records maintained by the Department of Workforce Development (department), how the commission may contact the department (such as to verify monetary amounts reflected in decisions and overpayments or to verify the adjudicative process leading to the department's determination), and how the commission may protect and seal confidential information in the record (such as social security numbers). The proposed rule will clarify when the commission may use a transcript of a hearing in lieu of a synopsis of a hearing. (The commission typically uses synopses of hearing testimony in its review but may use transcripts under certain circumstances.) The proposed rule will clarify how the commission may establish briefing schedules for parties in cases pending review. Finally, the proposed rule will clarify the process by which parties may request reconsideration or the setting aside of a commission decision. Various language changes are proposed for clarification and consistency in the rules.

In LIRC 2, regarding procedural rules for filing petitions for commission review of unemployment insurance appeal tribunal decisions, the proposed rule will update the manner in which petitions for commission review may be filed. A recent law change required that all petitions for commission review in unemployment insurance cases be filed with the commission and not with the department of workforce development. The proposed rule will clarify that the petitions for commission review of these decisions may be filed with the commission by mail, by facsimile transmission, or on-line through the commission's website. This will further facilitate the desired automation of the commission's processes, reduce errors, and improve efficiencies and timeliness. A note is created to explain that the commission has answers to frequently asked questions about appealing a commission unemployment insurance decision to circuit court and sample pleadings on the commission's website. The proposed rule makes changes to the provision regarding judicial review of commission decisions to take into account recent law changes. Various language changes are proposed for clarification and consistency in the rules.

In LIRC 3 and 4, regarding procedural rules for filing petitions for commission review in worker's compensation and equal rights cases, the proposed rule will update the locations at which petitions for commission review may be filed. The rule allowing parties to answer petitions for review is moved to LIRC 3 because answers are filed only in worker's compensation cases. Notes are created to explain that the commission has answers to frequently asked questions about appealing commission worker's compensation and fair employment decisions to circuit court with sample pleadings. Various language changes are proposed for clarification and consistency in the rules.

LIRC 5 will be created to explain the process for requesting review of an appeal tribunal decision regarding worker classification compliance by the commission pursuant to Wis. Stat. §103.06(6)(c). This statutory provision was created by 2009 Wisconsin Act 292. No cases have yet been petitioned to the commission under this law. The commission must adopt rules to facilitate and explain the process for handling petitions for review under this new law. The proposed rules establish a process for appealing to the commission that is organized similarly to the appeal process for other program areas, but with specificity for worker classification compliance issues.

Summary of, and comparison with, existing or proposed federal statutes and regulations.

There are no existing or proposed federal regulations that address the procedures to be regulated by these procedural rules of the commission.

Comparison with rules in adjacent states.

Illinois. The State of Illinois has a Board of Review of 5 members appointed by the Governor (2 employee representatives; 2 employer representatives; 1 unaffiliated) to hear appeals of unemployment insurance cases and various federal programs related to unemployment insurance administered by the Department of Employment Security, except claims involving labor disputes. Parties appeal a decision of an appeal hearing referee to the Board of Review within 30 days of the date of mailing the referee's decision. Appeals are filed in person, by mail, online or by facsimile transmission. Parties may request a transcript of the hearing, to submit written argument, and present oral argument within certain deadlines. The Board of Review's decision is based on the existing record obtained before the referee, with further hearings and oral argument seldom required, although parties may request to provide additional evidence if they meet certain conditions. The Board of Review must issue its decisions within 120 days of the date of appeal; if a decision is not issued within 120 days, an appellant may request a Notice of Right to Sue. If the Board of Review does not issue its decision within 14 days of the Notice of Right to Sue, the appellant may bring an action in circuit court. The Board of Review may issue decisions or remand a case to the referee; it does not have authority to reconsider its decisions.

Worker's compensation cases are handled in Illinois by the independent Illinois Worker's Compensation Commission (WCC). The first level decision is made by an

arbitrator of the WCC. If a party disagrees with the decision of the arbitrator, they can appeal to the commission, a panel of three commissioners from the ten-member WCC. The panel reviews the decision of the arbitrator and reviews briefs and oral argument. Appeals of the commission's decision are to the circuit court.

Fair employment laws in Illinois are handled by the Illinois Department of Human Rights (IDHR). A hearing is set before an ALJ of the Illinois Human Rights Commission within 30 to 90 days after a complaint has been filed with the IDHR. The ALJ issues a Recommended Order and Decision. If either party objects, the case will be reviewed by a three-member panel of commissioners. The commissioners are appointed by the governor and approved by the senate, and no more than seven commissioners may be appointed from the same political party. The commission consists of 13 commissioners. The panel may adopt, reverse or modify the proposed decision, or remand the case back to the ALJ. A party may appeal an unfavorable decision of the IHRC to the appellate court.

Iowa. The State of Iowa has a three-member Employment Appeal Board (EAB) that is appointed by the Governor and serves as the final administrative review for unemployment benefit appeals, peace officer issues, contractor registration requirements, rulings of the Occupational Safety and Health Administration (OSHA), and rulings of the Iowa Public Employees Retirement System. Slightly different procedures apply to appeals of different kinds of cases. Parties appeal a decision to the EAB within 15 days of the date of mailing an unemployment decision, or within 30 days for a personnel decision. In general, appeals are filed in person, by mail, or by facsimile transmission. The EAB may join additional parties and consolidate proceedings as necessary to resolve issues. The EAB's review is based on the record before the administrative law judge. A copy of the testimony and evidence at the hearing is mailed to each party. Parties may request to present new or additional evidence before the EAB; the EAB may remand to take additional evidence or hold a hearing to allow parties to present evidence and take testimony. Parties may present briefs and the EAB may allow oral arguments in its discretion. The EAB must render a decision within a reasonable time. Any party may file an application for rehearing with the EAB within 20 days of the date of the EAB's decision; an application shall be deemed denied unless the EAB acts within 20 days of the date of filing the application with the EAB. When the EAB issues its final decision, all administrative remedies have been exhausted and parties may petition to the district court for review.

Worker's compensation cases are decided at the first level by a deputy worker's compensation commissioner who issues an arbitration decision. If any party is dissatisfied with the decision, they can request rehearing or appeal to the Worker's Compensation Commissioner. No new evidence is allowed and the parties brief the issues on appeal. If any party is dissatisfied with the decision of the Worker's Compensation Commissioner, they can appeal to the district court.

Employment discrimination cases are handled in Iowa by the Iowa Civil Rights Commission. The commission consists of seven members appointed by the governor

to serve four-year staggered terms and subject to confirmation by the senate. No more than four members of the commission may belong to the same political party. If an administrative law judge finds probable cause to believe the improper action occurred, a conciliator tries to negotiate a settlement on behalf of the commission and the complainant. If negotiation fails, a decision is made whether to proceed to a public hearing. If the commission determines the respondent violated the Iowa Civil Rights Act, the commission will order “make whole” relief. Appeals of the commission’s decision are to a district court.

Michigan. The State of Michigan has a three-member panel of commissioners, with representatives from three different sectors (employee, employer, general public). The panel member that is a representative of the general public serves as the chairperson. Michigan law provides that a party that loses a case before an administrative law judge has a right to appeal the decision to the Michigan Compensation Appellate Commission (MCAC). The MCAC handles appeals of worker’s compensation and unemployment insurance cases. An appeal to MCAC must be in writing and signed or verified and must be received within 30 days of the date of the administrative law judge’s decision. Parties before an ALJ may agree to bypass the ALJ and transfer the proceeding to the MCAC. If both parties agree, they can stipulate to bypass the MCAC and proceed directly to circuit court. The MCAC review is of the hearing and exhibits in the record before the ALJ. Transcripts of hearings are available only on request and are subject to printing and processing fees. A party may request an opportunity to present oral argument to the MCAC, but that is granted in only rare cases. A party may request to provide written argument or briefs, but the request will only be granted if a request for oral argument was not approved and 2 or more members of the MCAC and all parties agree that written argument should be considered. The MCAC issues written decisions or orders, but may omit giving any reasons for its decision if it affirms an ALJ decision without alteration or modification. A party may request a rehearing of a final decision of the MCAC within 30 days of the date of the decision. A final decision of the MCAC may be appealed to circuit court within 30 days from the date of mailing of the MCAC decision. A decision of the MCAC may be reopened within one year for good cause.

Fair employment and employment discrimination complaints in Michigan are filed with the Michigan Department of Civil Rights. Appeals of hearing referee decisions are handled by the Michigan Civil Rights Commission. The Commission is an 8-member body. Commissioners are appointed by the governor to four-year terms and the appointment must be approved by the senate. No more than four members may be from the same political party.

Minnesota. The State of Minnesota does not have a higher authority administrative review of administrative law judge unemployment insurance decisions. A party may request reconsideration of an administrative law judge’s decision within 20 calendar days after the date of mailing the decision. If a party disagrees with the lower level review reconsideration decision, they must appeal to the Minnesota Court of Appeals within 30 days after the decision was sent by electronic transmission or within

33 days after the decision was mailed, and serve the other parties. An employer that appeals must pay a \$550 fee.

The State of Minnesota has an independent agency to review worker's compensation decisions of compensation judges called the Minnesota Worker's Compensation Court of Appeals. The agency consists of five review judges appointed to six-year terms by the governor and confirmed by the senate. A panel of three or five judges decides each appeal. The judges review the evidentiary record created at the initial hearing, preside over oral argument if necessary, and decide the legal and factual issues in the case, and issue written decisions and orders. Decisions are appealable directly to the Minnesota Supreme Court.

Fair employment cases in Minnesota are handled by the Minnesota Department of Human Rights. If complaints are not resolved there, they are referred to the attorney general for prosecution.

Summary of factual data and analytical methodologies.

The commission established a team to conduct a Value Stream Mapping (VSM) event to identify potential problems and provide suggestions to improve the commission's workflow. The team included the commission chairperson, the general counsel, the office manager, and several attorneys and support staff. The VSM identified areas for improvement in the efficient processing of petitions to the commission and the commission case review process. Process improvements and technological changes were subsequently made that improved the speed and efficiency of processing cases before the commission. The VSM also identified several procedural rule changes that would improve processing cases and establish consistencies in processing cases in the various program areas with which the commission works. A workgroup was established to review all commission procedural rules and make recommendations for changes. The workgroup consisted of one commissioner, the general counsel, the office manager, and several attorneys with special expertise in each program area. The rules workgroup created draft proposed rules, which the commission approved.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis.

The commission's procedural rules apply uniformly to all parties with cases before the commission, and do not establish regulatory standards, or compliance or reporting requirements for businesses. The rules do not have any direct economic effect on small businesses, and no discernible indirect economic effects on small businesses.

Effect on small business.

The procedural rule changes are not anticipated to have an economic effect on small businesses.

Fiscal estimate and economic impact analysis.

The proposed rules are procedural and modify and clarify where and how petitions for commission review may be filed and how the commission conducts its review. There are no anticipated fiscal impacts on state funds, or the liability and revenues of any county, city, village, town, school district, technical college district, or sewer district. The commission's rules apply uniformly to all parties with cases being reviewed by the commission and do not establish regulatory standards, or compliance or reporting requirements for businesses. The proposed rules will have no economic impact locally or statewide. See attached form DOA-2049.

Agency contact person. Comments may be submitted to:

Maria Gonzalez Knavel, General Counsel, Labor and Industry Review Commission, 3319 West Beltline Highway, P.O. Box 8126, Madison, WI 53708, (608) 266-3188, maria.gonzalezknavel@wisconsin.gov.

TEXT OF RULE

SECTION 1. LIRC 1.01 is amended to read:

LIRC 1.01 General. The labor and industry review commission has jurisdiction ~~for~~ to review ~~of cases arising~~ under ss. 40.65 (2), 66.191, 1981 Stats., ss. 102.18 (3) and (4), 103.06 (6), 106.52 (4), 106.56 (4), 108.09 (6), 108.10 (2) and (3), 111.39 (5) (a), 303.07 (7) and 303.21, Stats.

SECTION 2. LIRC 1.015 is repealed and recreated to read:

LIRC 1.015 Definitions. As used in chs. LIRC 1 to 5:

- (1) "Commission" means the Wisconsin labor and industry review commission.
- (2) "Commissioner" means a member of the commission.
- (3) "Department" means the Wisconsin department of workforce development unless otherwise indicated.
- (4) "Equal rights case" means a case in which the commission has jurisdiction under s. 106.52 (4), 106.56 (4), or 111.39 (5) (a), Stats.
- (5) "Equal rights division" means the division of equal rights of the department created by s. 15.223, Stats.
- (6) "Hearings and appeals division" means the Wisconsin department of administration division of hearings and appeals created by s. 15.103(1), Stats.
- (7) "Petition" means a written appeal to the commission to review a decision of an appeal tribunal of the department for unemployment insurance and worker classification compliance cases, a decision of an administrative law judge of the department or hearings and appeals division for worker's compensation cases,

or a decision of an administrative law judge or hearing examiner of the department for equal rights cases.

- (8) “Unemployment insurance case” means a case in which the commission has jurisdiction under s. 108.09 (6), or 108.10 (2) or (3), Stats.
- (9) “Unemployment insurance division” means the division of unemployment insurance of the department.
- (10) “Worker classification compliance case” means a case in which the commission has jurisdiction under s. 103.06 (6), Stats.
- (11) “Worker’s compensation case” means a case in which the commission has jurisdiction under ss. 40.65, 66.191, 1981 Stats., ss. 102.18 (3) or (4), 303.07 (7), or 303.21, Stats.
- (12) “Worker’s compensation division” means the division of worker’s compensation of the department.

SECTION 3. LIRC 1.02 (intro.) is amended to read:

LIRC 1.02 Petitions for review; appeal period. ~~All petitions~~ A petition for commission review shall be filed within 21 days from the date of the mailing or electronic delivery of the findings and decision or order, except that the petition may be filed on the next business day if the 21st day falls on any of the following:

SECTION 4. LIRC 1.02 (10) is created to read:

LIRC 1.02

- (10) Any other day the state office where the petition for review may be filed is officially closed.

SECTION 5. LIRC 1.025 is repealed and recreated to read:

LIRC 1.025 Petitions for review; where and how filed.

- (1) A petition for review shall be filed as follows:
 - (a) In unemployment insurance and worker classification compliance cases, with the commission as provided in sub. (2).
 - (b) In worker's compensation cases, with the commission as provided in sub. (2), or in person with the department or hearings and appeals division as provided in s. LIRC 3.01.
 - (c) In equal rights cases, with the department as provided in s. LIRC 4.01. A petition for review in equal rights cases may not be filed with the commission.
- (2) A petition for review filed with the commission under sub. (1) shall be filed with the commission by one of the following methods:
 - (a) On the commission's website on the designated appeal form.
 - (b) By facsimile (fax) transmission to 608-267-4409.
 - (c) By mail to the commission's office located at 3319 West Beltline Highway, P.O. Box 8126, Madison, Wisconsin 53708.
 - (d) In person at the commission's office at 3319 West Beltline Highway, 2nd Floor, Madison, Wisconsin 53713.
- (3) A petition for review may not be filed by email.
- (4) A petition for review transmitted electronically through the website of the commission is not considered filed unless and until a message confirming that the petition has been successfully filed is displayed on the petitioner's internet

browser. The commission is not responsible for errors in transmission that result in failure of a petition to be successfully filed electronically through the website of the commission. A petition for review filed electronically through the internet website of the commission is considered filed on the date of filing stated on the commission's electronic record of the filing.

(5) (a) A petition for review transmitted by facsimile (fax) is not considered filed unless and until the petition is physically received and printed at the facsimile machine of the commission to which the petition is being transmitted as provided in sub. (2) (b), or of the equal rights division to which the petition is being transmitted as provided in LIRC 4.01. The party transmitting a petition by facsimile is solely responsible for ensuring its timely receipt. The commission is not responsible for errors or failures in transmission.

(b) 1. Except as provided in subd. 2., a petition for review transmitted by facsimile is considered filed on the date of transmission recorded and printed by the facsimile machine on the petition.

2. In the case of a petition for review in equal rights cases, a facsimile transmission received after the regular business hours of the equal rights division shall be considered filed on the next business day. If the commission's or equal rights division's records indicate receipt of the facsimile at a date later than that shown, then the later date shall control.

(6) A petition for review filed by mail is considered filed only when it is physically received by the commission, except in any of the following cases:

- (a) A petition for review in an unemployment insurance case that is filed by mail is considered filed when physically received or postmarked as provided in s. LIRC 2.015.
 - (b) A petition for review that is filed by mail with the equal rights division as provided in s. LIRC 4.01 is considered filed when the petition is physically received by the equal rights division.
 - (c) A petition for review that is mailed to the post office box of the commission or the equal rights division, and for which the sender provides proof of delivery to the post office box by mail tracking service, shall be considered filed on the same day as its physical receipt in the post office box if the mail tracking service documentation establishes that the petition was delivered to the post office box on or before 7:45 a.m., and shall be considered filed on the next business day if the mail tracking service documentation establishes that the petition was delivered after 7:45 a.m.
- (7) A petition for review filed by personal delivery is considered filed when the petition is physically received by a state office authorized to accept personal delivery during regular business hours.

SECTION 6. LIRC 1.027 is renumbered LIRC 3.035 and amended to read:

LIRC 3.035 Answers. A party opposing a petition for ~~commission~~ review of an administrative law judge's decision under s. 102.18, Stats., may file an answer with the commission within 21 days from the party's receipt of a copy of the petition. A party filing an answer with the commission shall furnish a copy to the opposing party.

SECTION 7. LIRC 1.03 is amended to read:

LIRC 1.03 Withdrawals. ~~Requests~~ A request to withdraw ~~petitions~~ a petition for review shall be in writing. The commission may deny a request by any party to withdraw a petition if the commission has already reviewed and decided the case, but not yet issued its decision, or if the commission considers that withdrawal is not in the best interests of the proper administration of the program involved. Denials of withdrawals shall be in writing, ~~but~~and may be included in the findings and decision of the commission.

SECTION 8. LIRC 1.04 is repealed and recreated to read:

LIRC 1.04 Record used for review.

- (1) Review by the commission is *de novo* and is based on the procedural record of the case, and the evidence submitted at hearing before the department or the hearings and appeals division. The record of the hearing testimony may be in the form of a written synopsis or transcript, and may include an audio recording of the testimony taken at the hearing. The synopsis or transcript shall be prepared by the commission, the department, the hearings and appeals division, or by an outside contractor from an audio recording of the hearing or from notes taken at the hearing by the administrative law judge or hearing examiner. A party may obtain a copy of the synopsis or transcript used by the commission as provided in s. LIRC 1.045.
- (2) The commission may base its review on a transcript of the hearing testimony provided by a party if a party timely requests in writing that the commission conduct its review on the basis of a transcript it will provide, the party certifies in

the request that it has ordered preparation of a transcript at the party's own expense, the party files a paper and electronic copy of the transcript with the commission and serves a copy of the transcript on all other parties, and the commission agrees upon review that the transcript is an accurate record of the hearing testimony.

(3) (a) Subject to par. (b), the commission may, without prior notice to the parties, take administrative notice of any of the following:

1. Any generally recognized fact or established technical or scientific fact having reasonable probative value.
2. Department records or information obtained from the department when necessary to confirm the effect of the commission's decision on the amount of benefits due, overpaid, waived, or forfeited, or penalties imposed.

(b) In any case in which the commission took administrative notice under par. (a), a party may submit a written request within 14 days of the commission's decision for an opportunity to provide written argument for any of the following reasons:

1. To challenge the propriety of taking administrative notice of department records or other information under par. (a).
2. To challenge the accuracy of a finding of fact that was the subject of administrative notice.
3. To provide rebuttal evidence regarding a finding of fact that was the subject of administrative notice.

(4) The commission may redact social security numbers and other personally identifiable information and declare all or parts of a document or other material or evidence to be confidential and closed to inspection by one or more parties, representatives, or others.

SECTION 9. LIRC 1.05 is amended to read:

LIRC 1.05 Hearings. If the commission determines that a record in a case is inadequate for the commission to arrive at a decision, the commission shall set aside the decision of the administrative law judge or hearing examiner and remand the case to the department of ~~workforce development~~ hearings and appeals division to take additional evidence and issue a new decision, or remand the case to take additional evidence on behalf of the commission.

SECTION 10. LIRC 1.07 is amended to read:

LIRC 1.07 Briefs. ~~Either~~ A party may request that the commission ~~to~~ establish a briefing schedule. ~~Requests~~ A request to file ~~briefs~~ a brief may be made in the petition for review, ~~in an answer,~~ or in writing after the petition ~~and answer~~ has been filed. The commission may deny a request to file a brief ~~which~~ that is not made in a petition ~~or answer~~ if the commission has already reviewed the case ~~but not yet issued its decision~~ at the time the request is made but not yet issued its decision. ~~Each~~ A party may file ~~with the commission~~ briefs a brief or ~~memoranda~~ memorandum within the time limits of ~~the~~ a briefing schedule ~~established by the commission~~. ~~Requests~~ A request for ~~extensions~~ an extension of time for filing ~~briefs~~ a brief shall be made in writing. ~~Extensions~~ An extension may be approved in writing upon good cause shown. A party

filing a brief or memorandum with the commission shall furnish a copy to the opposing party.

SECTION 11. LIRC 1.08 is created to read:

LIRC 1.08 Reconsideration and requests to set aside decisions.

(1) A request for the commission to reconsider a decision, or to set aside any final determination or decision of an appeal tribunal, administrative law judge, or the commission, due to mistake or newly discovered evidence, shall be made in writing by one of the following methods:

(a) By facsimile (fax) transmission to 608-267-4409.

(b) By mail to the commission's office at 3319 West Beltline Highway, P.O. Box 8126, Madison, Wisconsin 53708.

(c) In person at the commission's office at 3319 West Beltline Highway, 2nd Floor, Madison, Wisconsin 53713.

(2) A request for reconsideration of a final commission decision does not toll the time to appeal a commission decision to the circuit court.

SECTION 12. LIRC ch. 2 (title) is amended to read:

CHAPTER LIRC 2

UNEMPLOYMENT COMPENSATION INSURANCE

SECTION 13. LIRC 2.01 is repealed and recreated to read:

LIRC 2.01 Petitions for review; where and how filed. A petition for review of an appeal tribunal decision under s. 108.09 or 108.10, Stats., shall be filed with the commission as provided in s. LIRC 1.025 (2). An out-of-state claimant also may file a

petition for review with a qualified employee of the agent state in which the out-of-state claimant files his or her interstate claim.

SECTION 14. LIRC 2.015 (intro.) and (1) to (7) are amended to read:

LIRC 2.015 Timeliness of petitions. ~~For purposes of s. 108.09 (6) (a), Stats., the words Petitions for review are considered “received” and or “postmarked” have the following meanings as follows:~~

- (1) If the petition for review is personally delivered, the petition is considered “received” when the ~~division of unemployment insurance of the department or the~~ commission physically receives the petition.
- (2) If the petition for review is mailed and bears only a United States postal service postmark, the petition is considered “postmarked” on the date of that postmark.
- (3) If the petition for review is mailed and bears both a United States postal service postmark and a private meter mark, the petition is considered “postmarked” on the date of the United States postal service postmark.
- (4) If the petition for review is mailed and bears only a private meter mark, the petition is considered “postmarked” on the date of that mark, unless it appears that the private meter mark is not accurate.
- (5) If the petition for review is mailed and bears no mark, or bears an illegible or inaccurate mark, the petition is considered “postmarked” 2 business days prior to the date the petition was physically received by the ~~division of unemployment insurance of the department or the~~ commission if the point of origin of the petition is within the State of Wisconsin, and 3 business days if the point of origin is outside the state.

(6) If the petition for review is sent using a delivery service other than the United States postal service, and bears a delivery service mark which is the equivalent of a United States postal service postmark, the petition is considered “postmarked” on the date of that delivery service mark.

(7) If the petition for review is sent using a delivery service other than the United States postal service, and does not bear a delivery service mark which is the equivalent of a United States postal service postmark, or bears an illegible or inaccurate delivery service mark, the petition is considered “postmarked” 2 business days prior to the date the petition was physically received by the ~~division of unemployment insurance of the department or the commission.~~

SECTION 15. LIRC 2.05 is repealed and recreated to read:

LIRC 2.05 Actions for judicial review. Judicial review of any commission decision under s. 108.09 or 108.10, Stats., shall be commenced in the manner and upon the grounds specified in s. 108.09 (7), Stats., and not under ch. 227 or s. 801.02, Stats. A party or the department may commence a legal action for review of the commission decision in circuit court within 30 days from the date of the commission’s decision. The action is commenced only by filing a summons and a complaint with the circuit court and serving an authenticated copy of the summons and a copy of the complaint upon the commission, all within 30 days. Service shall be made upon a commissioner or an agent authorized by the commission to accept service only at the commission’s office in Madison. Service shall be considered completed service on all parties, but there shall be left with the person so served as many copies of the authenticated summons and copies of the complaint as there are defendants. Service by mail is effective only if the

pleadings are physically received by the commission at its office in Madison within the appeal period. The complaint shall state the grounds upon which review is sought. For plaintiffs other than the department, the summons and complaint shall name as defendants the commission, the department, and every other party to the proceedings before the commission. When the plaintiff is the department, the summons and complaint shall name as defendants the commission, and every other party to the proceedings before the commission. The proceedings shall be in the circuit court of the county where the plaintiff resides except that, if the plaintiff is the department, the proceedings shall be in the circuit court of the county where a defendant other than the commission resides. The proceedings may be brought in any circuit court if all parties appearing in the case agree, or if the court, after notice and a hearing, so orders.

SECTION 16. LIRC 2.05 (Note) is created to read:

Note: The commission has answers to frequently asked questions about appealing a commission unemployment insurance decision to the circuit court and sample pleadings available on its website at <http://lirc.wisconsin.gov/uihowtoappeal.htm>.

SECTION 17. LIRC 3.01 is repealed and recreated to read:

LIRC 3.01 Petitions for review; where and how filed. A petition for review of the findings or order of an administrative law judge under s. 102.18, Stats., shall be filed with any of the following, but only in the manner provided:

- (1) The commission by any method as provided in s. LIRC 1.025 (2).
- (2) In person at a department worker's compensation office or an office of the hearings and appeals division.

SECTION 18. LIRC 3.04 is amended to read:

LIRC 3.04 Compromise settlements. Compromise settlements of worker's compensation claims are governed by s. 102.16, Stats., and s. DWD 80.03. Under s. 102.18 (4) (d), Stats., if a compromise is reached while a case is pending ~~commission~~ review, the compromise shall be submitted to the commission, and the commission shall remand the case to the worker's compensation division ~~of the department or the~~ hearings and appeals division, as appropriate, for consideration of the compromise. If the compromise is not approved, the party who filed the petition for ~~commission~~ review may reinstate its petition by notifying the commission. Under s. 102.24 (2), Stats., if a compromise is reached while a case is pending court review of a commission order, remand shall be to the commission and the commission shall then remand the case to the department or the hearings and appeals division, as appropriate, for consideration of the compromise.

SECTION 19. LIRC 3.05 is amended to read:

LIRC 3.05 Actions for judicial review. Judicial review of any commission decision shall be commenced in the manner and upon the grounds specified in s. 102.23, Stats., and not under ch. 227, Stats., or s. 801.02, Stats. ~~Either~~ A party may commence a legal action for review of the commission decision in circuit court. The action ~~must~~ shall be commenced within 30 days from the date of the decision. ~~Such~~ The action is commenced only by filing a summons and a complaint with the circuit court and serving an authenticated copy of the summons and a copy of the complaint upon the commission, all within 30 days. Service ~~must~~ shall be made upon a commissioner ~~of the labor and industry review commission~~ or an agent authorized by the commission to accept service only at the commission's office in Madison. ~~Such service~~ Service shall

be ~~deemed~~ considered complete service on all parties but there shall be left with the person so served as many copies of the authenticated summons and copies of the complaint as there are defendants. Service made by mail is effective only if the pleadings are ~~actually~~ physically received by the commission at its office in Madison within the appeal period. The complaint shall state the grounds upon which review is sought. ~~The action shall be commenced against the commission, and the party in whose favor the order or award was made shall also be made a defendant.~~ The summons and complaint shall name the party commencing the action as the plaintiff, and shall name as defendants the commission and all other parties identified by the commission in its decision as parties that must be made defendants. The proceedings shall be in the circuit court of the county where the plaintiff resides, except that, if the plaintiff is a state agency, the proceedings shall be in the circuit court of the county where ~~the~~ a defendant resides. If the plaintiff is a nonresident of Wisconsin, the proceedings shall be in the circuit court for the county where the claim arose. The proceedings may be brought in any circuit court if all parties stipulate and that court agrees.

SECTION 20. LIRC 3.05 (Note) is created to read:

Note: The commission has answers to frequently asked questions about appealing a commission worker's compensation decision to the circuit court and sample pleadings for claimants available on its website at <http://lirc.wisconsin.gov/wchowtoappeal.htm>.

SECTION 21. LIRC 4.01 is repealed and recreated to read:

LIRC 4.01 Petitions for review; where and how filed. A petition for review of the findings or order of a department administrative law judge or hearing examiner under s.

106.52 or 111.39 (5), Stats., shall be filed with an office of the equal rights division only as provided in s. DWD 218.21 or 221.22.

SECTION 22. LIRC 4.04 (Note) is created to read:

Note: The commission has answers to frequently asked questions about appealing a commission fair employment decision to the circuit court and a sample petition for judicial review form available on its website at <http://lirc.wisconsin.gov/erhowtoappeal.htm>.

SECTION 23. LIRC ch. 5 is created to read:

CHAPTER LIRC 5

WORKER CLASSIFICATION COMPLIANCE

LIRC 5.01 Petitions for review; where and how filed. Section 103.06 (6) (c), Stats., governs the procedure by which an employer or the department may petition the commission for review of an appeal tribunal decision issued under s. 103.06 (6) (b) 1. A petition for review of an appeal tribunal decision under s. 103.06 (6) (c), Stats., may be filed with the commission by any manner as provided in s. LIRC 1.025 (2).

LIRC 5.02 Timeliness of Petitions.

- (1) A petition for review under s. 103.06 (6) (c), Stats., is timely if it is physically received by the commission, or postmarked, within 21 days after the appeal tribunal decision was mailed to the employer's last-known address, as provided in s. LIRC 2.015.
- (2) The commission shall dismiss a petition that is not timely filed unless the petitioner shows that the petition was late for a reason beyond the petitioner's control.

LIRC 5.03 Actions for judicial review.

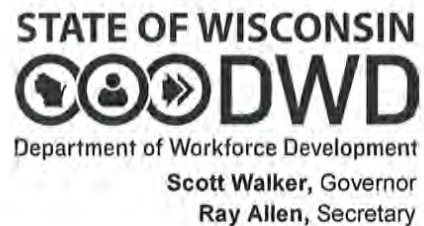
- (1) Section 103.06 (6) (d), Stats., governs the procedure by which an employer or the department may begin an action for judicial review of a commission decision issued under s. 103.06 (6) (c), Stats.
- (2) Judicial review of a commission decision under s. 103.06 (6) (d), Stats., may be commenced upon the grounds specified in s. 108.09 (7), Stats., and not under ch. 227, Stats., or s. 801.02, Stats. An employer or the department may commence an action for judicial review of a decision of the commission within 30 days after the date of the commission's decision. The action under this subsection is commenced only by filing a summons and a complaint with the circuit court and serving an authenticated copy of the summons and a copy of the complaint on the commission, all within 30 days. Service shall be made upon a commissioner or an agent authorized by the commission to accept service and shall be made only at the commission's office in Madison. Service shall be considered complete service on all parties but there shall be left with the person so served as many copies of the authenticated summons and copies of the complaint as there are defendants. Service by mail is effective only if the pleadings are physically received by the commission at its office in Madison within the appeal period. The complaint shall state the grounds upon which review is sought. The summons and complaint shall name as defendants the commission, the department, and every other party to the proceedings before the commission. The proceedings shall be in the circuit court of the county where the plaintiff resides except that, if the plaintiff is the department, the proceedings

shall be in the circuit court of the county where a defendant other than the commission resides. The proceedings may be brought in any circuit court if all parties appearing in the case agree, or if the court, after notice and a hearing, so orders.

(3) The scope of judicial review and the manner of that review, insofar as it is applicable, shall be the same as that provided in s. 108.09 (7), Stats.

SECTION 24. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Department of Workforce Development
Office of the Secretary
201 E. Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
Telephone: (608) 266-3131
Fax: (608) 266-1784



November 14, 2016

Hon. Laurie McCallum
Chairperson
Labor and Industry Review Commission
P.O. Box 8126
Madison, WI 53708

Re: Department of Workforce Development Comments on Proposed Rules

Dear Commissioner McCallum:

Please include the following comments in the public hearing comments on the Labor and Industry Review Committee's proposed administrative rules.

The statement of scope filed by LIRC indicates that the proposed rules will clarify LIRC's current procedures and will update the rules consistent with recent statutory changes. LIRC cites its statutory authority under Wis. Stat. § 103.04(2) to promulgate rules of procedure and notes that it is not authorized to promulgate any other rules.

DWD has identified issues with the proposed rules. While some of the proposed rule changes are procedural and designed to ensure that the rules conform to current statutes, a number of the rule provisions are substantive in nature and, therefore, outside of the scope of LIRC's statutory rulemaking authority.

The department has the following comments concerning specific provisions of the proposed rule.

Under Section 6, LIRC eliminates the process to allow a party to file an answer to a Petition for Commission Review (PCR) filed by another party in unemployment insurance (UI) cases and equal rights cases. Parties would only file briefs – and then only when requested by a party and approved by LIRC – which is more time consuming and expensive for parties and the department, if it is involved in a case before LIRC. Among other things, this may place the non-petitioning party at an unfair disadvantage in that it may not be able to address issues raised in the petitioner's PCR. And in some UI cases, the department would have no clear authority to participate in the proceeding before LIRC and therefore an opportunity to state its position unless the department timely files a petition for LIRC review. As a result, DWD may need to file petitions for LIRC review in cases where a party has already filed a petition for LIRC review.

Under Section 8 LIRC provides by rule that its review is *de novo*. LIRC proposes to create a rule incorporating its current policy and practice, while the current statute does not specifically

provide for this. Problems arise when LIRC decides facts without presiding over the hearing and observing the testimony firsthand. Demeanor and credibility are particularly important in UI fraud cases, and LIRC's proposal runs contrary to a long legal history of deference to the determinations of fact finders who preside over administrative and judicial proceedings.

Also under Section 8, LIRC's proposed rule will permit LIRC to consider evidence not contained in the hearing record without notice to the parties and requiring the parties to object to this new evidence within 14 days. This is in conflict with current statutes, which permit LIRC to decide cases based only on the testimony heard by the ALJ and any other evidence taken at hearing unless it orders the taking of additional evidence or remands the matter to the department for further proceedings (Wis. Stat. §§108.09(5)(d) and (6)(d)). Further, this provision appears to be contrary to the proposed LIRC 1.04(1). Many employees and employers who appear before LIRC do not have attorneys. This new rule will cause confusion and create additional difficulties for the parties in litigating cases.

Under Section 11, LIRC proposes to create a new rule provision permitting parties to file requests for reconsideration or to set aside decisions based on mistake or newly discovered evidence. There is no time limit set forth in the proposed rule, which may lead to litigation over the issue of timeliness of such requests as well as requests for reconsideration years after LIRC issues its decision. In addition, it is unclear whether the rule will include a right to appeal LIRC's denial of a motion for reconsideration or set aside.

Finally, two proposed rule provisions appear to be unnecessary. The proposed rule recreates LIRC 2.05, repeating the current statute on judicial review (Wis. Stat. s. 108.09(7)). Second, the creation of Chapter LIRC 5 is unnecessary because pursuant to Wis. Stat. §§ 103.06(6) and 108.09(6), LIRC review of stop work orders would be covered by current Chapter LIRC 2.

DWD would welcome the opportunity to discuss LIRC's proposed rules and the effect on DWD programs.

Sincerely,



Ray Allen
Secretary

Scott Walker
Governor

Laurie R. McCallum
Chairperson



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State of Wisconsin
Labor and Industry Review Commission

January 6, 2017

BJ Dernbach, Division Administrator
Worker's Compensation Division, DWD

Re: WCAC Discussion Regarding LIRC's Proposed Rules

Dear Administrator Dernbach:

Thank you for inviting me to address the Worker's Compensation Advisory Council at its December meeting. The Commission always appreciates the opportunity to meet new Council members, and to share information about the appeals process and LIRC's role in maintaining consistency and integrity in the worker's compensation program. As I mentioned in my presentation, the Commission also greatly appreciates the insightful comments submitted by Jim O'Malley in regard to LIRC's proposed administrative rules.

Based on comments made during the meeting, it is my understanding that you will be providing the Council with copies of Secretary Allen's and other comments regarding LIRC's proposed rules. As a result, I thought it would be useful to expand on my presentation at the December meeting by providing some background information to the Council as to the administrative rules process, and as to the current state of the law regarding LIRC's case review process.

LIRC has followed the statutory requirements for making changes to its administrative rules. The statement of scope of LIRC's proposed rules was reviewed by the Governor's Office and published in the Administrative Register; the draft rules have been reviewed by the Legislative Reference Bureau and the Legislative Council, and published in the Administrative Register; and comments were invited and a public hearing held. LIRC is presently drafting its formal response to the comments it has received and, once this response is finalized and any revisions to the proposed rule language made, LIRC will submit its rules to the Governor's Office and then to the Legislature for approval. The statement of scope for these rule changes was shared with the Worker's Compensation Division back in 2013. The rulemaking process was delayed while the changes to the Worker's Compensation Division were being legislated, the statutory changes for filing petitions at the commission were enacted (in the WCAC agreed-upon bill), and some administrative support functions for LIRC were changed from the Department of Workforce Development to the Department of Administration. When these changes were substantially completed, LIRC was again able to turn its attention to completing the administrative rules process.

As reflected in the statement of scope approved by the Governor's Office, the changes to its rules proposed by LIRC are not substantive and represent minor revisions to its procedures primarily to address changes in statutory language and in technology. Additionally, some of the rule changes are to clarify existing processes, for example in regard to the administrative notice provision, to preserve due process safeguards without requiring additional hearings.

LIRC asks the Council to consider the following as it reviews the comments to the draft rules:

- The Governor's Office reviewed the statement of scope for the proposed rules and found it to be in compliance with the scope of LIRC's rulemaking authority.
- The Legislative Council reviewed the draft proposed rules and did not indicate that any of the proposed rules exceeded LIRC's statutory authority; it only noted that LIRC should explain its authority to redact confidential information.
- The proposed rules reflect the processes of the Commission, as well as the statutes governing the unemployment insurance, worker's compensation and fair employment programs as interpreted by the courts.
- These statutes and court decisions provide that review by LIRC is not an appellate proceeding but an original or "*de novo*" proceeding in which LIRC makes its own findings of fact and conclusions of law based upon the evidence in the hearing record created by the administrative law judge (ALJ). This has been the well-respected role and responsibility of the commissioners for the worker's compensation program since 1911. I have enclosed a copy of a unanimous Wisconsin Supreme Court decision that succinctly explains LIRC's higher review authority. This is an unemployment insurance case but it has been cited with approval in numerous worker's compensation cases.
- As an independent quasi-judicial review authority, commissioners have never been required by law to give deference to an ALJ's decision, including an ALJ's credibility determination, and LIRC is only required to consult with an ALJ to determine how the ALJ's observations of a witness's demeanor may have affected the ALJ's assessment of the witness's credibility.
- Parties in worker's compensation cases occasionally file answers to petitions for commission review; parties do not file answers in other types of cases before LIRC. The proposed rule will not prevent parties from filing answers in worker's compensation cases; it will only move that provision to LIRC's rule regarding worker's compensation procedures where it more appropriately belongs.
- The statutes allow LIRC to reconsider its decisions under certain circumstances; the proposed rules do not create any new authority, but explain the process by which parties will know how to request reconsideration.
- The Commission's review process will not change. Therefore, parties will not incur any additional costs as a result of the proposed rules.

If the Council has any questions, I will be happy to answer them in writing or at one of the Council's scheduled meetings. The Commission always welcomes your and the Council's input and perspective.

Sincerely yours,



Laurie R. McCallum
Chairperson

Enclosure

cc: Secretary Ray Allen



Wisconsin DEPARTMENT OF INDUSTRY, LABOR & HUMAN RELATIONS, Unemployment Compensation Division, Plaintiff-Appellant, v. Wisconsin LABOR & INDUSTRY REVIEW COMMISSION, Sally B. Emerson and La Crosse Public School, Defendants-Respondents. [Case No. 89-1691.] Wisconsin DEPARTMENT OF INDUSTRY, LABOR & HUMAN RELATIONS, Unemployment Compensation Division, Plaintiff-Appellant, v. Wisconsin LABOR & INDUSTRY REVIEW COMMISSION, Kathryn A. Schnitzius and La Crosse Public School, Defendants-Respondents [Case No. 89-1852]

Nos. 89-1691, 89-1852

Supreme Court of Wisconsin

161 Wis. 2d 231; 467 N.W.2d 545; 1991 Wisc. LEXIS 34

November 27, 1990, Argued

April 10, 1991, Decided

PRIOR HISTORY: [***1] On certification from the Court of Appeals.

Case No. 89-1691: -- Appeal from a judgment of the Circuit Court For La Crosse County, Dennis G. Montabon, Judge.

Case No. 89-1852: -- Appeal from a judgment of the Circuit Court for La Crosse County, Michael J. Mulroy, Judge.

DISPOSITION: *By the Court.* -- The judgment of the circuit court in No. 89-1691 is affirmed. The judgment of the circuit court in No. 89-1852 is affirmed.

COUNSEL: For the plaintiff-appellant there were briefs (in the court of appeals) by *Gregory A. Frigo, Mary Lynn Endter, Judy M. Rogers* and *Department of Industry, Labor and Human Relations*, Madison and oral argument by *Glenn E. Kelley*.

For the defendant-respondent, Labor and Industry Review Commission, there was a brief (in the court of appeals) and oral argument by *Earl G. Buehler*, Madison.

For the defendants-respondents, Sally B. Emerson & Kathryn A. Schnitzius there was a brief (in the court of appeals) by *Bruce Meredith, Valerie Gabriel*, and *Wisconsin Education Association Council*, Madison and oral argument by *Mr. Meredith*.

JUDGES: William J. Bablitch, J.

OPINION BY: BABLITCH

OPINION

[*237] [**546] These cases were consolidated by the court of appeals and are before the [***2] court on certification from the court of appeals pursuant to sec. 809.61, Stats. In each case the Department of Industry, Labor and Human Relations (Department) is appealing [**547] a judgment of a circuit court for La Crosse county which affirmed a decision of the Labor and Industry Review Commission (Commission) awarding unemployment compensation (UC) benefits to a La Crosse Public School's teacher for weeks 24 through 35 (summer) of 1988. The Commission concluded that the teachers, who worked the entire 1987-88 academic year in an instructional capacity, were eligible for UC benefits

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because they did not have a reasonable assurance of performing [*238] such services in the same capacity for the successive academic year when they were only offered guaranteed teaching positions for the first semester of the 1988-89 academic year. The Department challenges the Commission's legal findings and asserts that the reviewing courts of this state should accord deference to its decisions rather than the Commission's when the agencies disagree on the interpretation of the UC statutes. We hold that where deference to an agency's decision is appropriate, the courts of this state should [***3] continue to accord deference to the Commission's findings because the legislature intended the Commission to have final review authority over disputed Department decisions. We further conclude that deference to the Commission's decision is appropriate in this case and that the Commission's interpretation of the applicable UC statute is reasonable. Therefore, the decisions of the circuit courts awarding UC benefits to the employees are affirmed.

The facts in these cases are not in dispute. Sally Emerson was employed as a home economics teacher by the La Crosse Public Schools during the 1987-88 academic year. Under the terms of her contract, she worked 83 percent of full-time at a salary of \$ 19,215. After being laid off at the end of the academic year which ended June 6, 1988, Emerson was offered a position as a long term substitute for the fall semester of the 1988-89 academic year. Emerson accepted this position and was to be paid \$ 8,893.00.

Kathryn Schnitzius was employed as a teacher of the hearing impaired by the La Crosse Public Schools for the 1987-88 academic year. Under the terms of her contract, she worked 60 percent of full-time at a salary of \$ 15,162.00. After [***4] being laid off at the end of the academic year which ended June 6, 1988, Schnitzius was offered a position as a long term substitute for the fall [*239] semester of the 1988-89 academic year. She accepted that position and was to be paid \$ 8,910.00.

Emerson and Schnitzius separately applied for unemployment compensation benefits for UC weeks 24 through 35 of 1988. The parties agree that the eligibility for benefits of both employees is primarily governed by *sec. 108.04(17)(a)*, Stats., which provides:

An employe of an educational institution
or an employe of a government unit or

nonprofit organization who provides services to or on behalf of an educational institution and who performs services in an instructional, research or principal administrative capacity is ineligible for benefits based on such services for any week of unemployment which occurs during a period between 2 successive academic years or 2 regular terms, whether or not successive, if such employe performed such services in the first such academic year or term and if there is a contract or a reasonable assurance that such employe will perform such services in the 2nd such academic year or term.

On June 17, 1988, [***5] the Department determined that the employees were ineligible for UC benefits under *sec. 108.04(17)(a)*, Stats., because the employees had worked in an instructional capacity before summer vacation and they had a reasonable assurance that they would perform such services in the next academic year or term. Emerson and Schnitzius appealed those determinations on June 20, 1988.

Pursuant to *sec. 108.09(3)*, Stats., Emerson and Schnitzius each had a hearing before an appeal tribunal of the Department on July 20, 1988. The appeal tribunal found that the employees had a reasonable assurance of performing services in an instructional capacity in the fall 1988 term and affirmed the Department's initial determination to deny the employees UC benefits [**548] for the [*240] weeks between the 1987-88 academic year and the fall 1988 term.

On July 29, 1988, Emerson and Schnitzius petitioned for Commission review of the Department's decision pursuant to *sec. 108.09(6)*, Stats. On November 25, 1988, the Commission issued its finding that the employees performed services in an instructional capacity for the employer in the 1987-88 academic year and that they did not have a reasonable assurance of performing [***6] such services in the 1988-89 academic year. The Commission found that the word "term," as used in *sec. 108.04(17)(a)* was intended to cover lapses in annual employment which occur at different times under different academic systems, other than the break between standard academic years under the conventional two semester system. It emphasized that the use of "term" in

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1991 Wisc. LEXIS 34, ***6

the statute was not intended to provide an optional method of addressing the question of reasonable assurance between two academic years. Therefore, it concluded that academic years should be compared in this case. The Commission's reversal of the appeal tribunal's decision made the employees eligible for UC benefits during the weeks between the academic years.

The Department commenced separate actions for judicial review of the Commission's decisions pursuant to the provisions of *secs. 108.09(7) and 102.23*, Stats. On July 27, 1989, Circuit Judge Dennis G. Montabon filed a Memorandum Decision and Order which affirmed the decision of the Commission awarding UC benefits to Emerson. On August 16, 1989, Circuit Judge Michael J. Mulroy filed a Memorandum Decision and Order which affirmed the Commission's decision awarding [***7] UC benefits to Schnitzius. In each case the circuit court accorded deference to the Commission's decision.

[*241] The Department appealed the decisions of both circuit courts and filed a motion to consolidate the cases. The court of appeals granted that motion on October 16, 1989. The court of appeals certified both cases and we accepted the certification.

I.

This case presents the novel situation in which two agencies, each with responsibility and experience in interpreting and applying a statute, contend that its decisions interpreting the statute should be given deference by the reviewing courts of this state. Therefore, the first issue we must address is whether this court should review the decision of the Department or the decision of the Commission. Because the legislature intended to give final review authority of Department decision's to the Commission, we hold that it is the findings and conclusions of the Commission that must be reviewed by the courts of this state, rather than those of the Department. We also find that deference to the Commission's decision is appropriate in this case.

Both agencies have experience, technical competence, and specialized knowledge [***8] in interpreting and applying the UC statutes. The circuit court gave deference to the Commission's decision. The Department contends that this court should give deference to its legal conclusions and not the Commission's because the Department is the agency with primary responsibility for the administration of

Unemployment Compensation law.

As the Department acknowledges, the decisions of the Commission have historically been given deference by the reviewing courts of this state. *See, e.g., Ace* [*242] *Refrigeration & H. Co. v. Industrial Comm.*, 32 Wis. 2d 311, 315, 145 N.W.2d 777 (1966); *Indianhead Truck Lines v. Industrial Comm.*, 17 Wis. 2d 562, 567, 117 N.W.2d 679 (1962); *Fitzgerald v. Globe-Union, Inc.*, 35 Wis. 2d 332, 337, 151 N.W.2d 136 (1967); *Goranson v. ILHR Department*, 94 Wis. 2d 537, 545, 289 N.W.2d 270 (1980); *Farmers Mill of Athens, Inc. v. ILHR, Dept.*, 97 Wis. 2d 576, 580, 294 N.W.2d 39 (Ct. App. 1980). We have emphasized that it is the factual and legal findings of the Commission that are scrutinized by [***9] the appellate court and not those of the appeal tribunal. *See, e.g., Ace Refrigeration & H. Co.*, 32 Wis. 2d at 315; *Indianhead Truck Lines*, 17 Wis. 2d at 567. "The [**549] ultimate responsibility for findings is upon the commission itself." *Ace Refrigeration & H. Co.*, 32 Wis. 2d at 315 (quoting *Indianhead Truck Lines*, 17 Wis. 2d at 567).

Nevertheless, the Department urges us to "take a fresh look at the issue of deference to agency expertise," by reexamining our practice of giving deference to the findings of the Commission in view of the reorganization of the Department in 1977. The Department asserts that prior to 1977, the Commission, as head of the Department, had primary responsibility for administering UC law and, therefore, deference to the Commission was appropriate. In 1977, the Commission was removed from the Department and created as a separate agency to review cases issued by the Department's appeal tribunals in the areas of unemployment compensation, worker's compensation and equal rights. *See ch. 29, Laws of 1977*. The Department [***10] asserts that, as a review agency, the Commission no longer has primary responsibility for administration of UC law and is less competent than the Department to decide UC issues.

[*243] The Department relies on language in *West Bend Ed. Ass'n. v. WERC*, 121 Wis. 2d 1, 357 N.W.2d 534 (1984), to argue that deference should be accorded to the Department's decision rather than the Commission's decision because the Department is the primary agency administering unemployment compensation law. In *West Bend Education Ass'n.*, 121 Wis. 2d at 12, we said:

Where a legal question is intertwined

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with factual determinations or with value or policy determinations or where the agency's interpretation and application of the law is of long standing, a court should defer to the agency which has primary responsibility for determination of fact and policy (emphasis added) (footnote omitted).

Similarly, in *Local No. 695 v. LIRC*, 154 Wis. 2d 75, 82-83, 452 N.W.2d 368 (1990), we stated that the general rule is that "the construction and interpretation of a statute adopted by the administrative agency [***11] charged by the legislature with the duty of applying it is entitled to great weight." (quoting *Beloit Education Assoc. v. WERC*, 73 Wis. 2d 43, 67, 242 N.W.2d 231 (1976)) (emphasis added).

The Department argues that it is the agency with primary responsibility for the determination of fact and policy and the agency charged with the duty of applying the unemployment compensation statutes. The Department emphasizes that it interprets and applies UC law in every instance, while the Commission only interprets UC law in cases of appeal. The Department also stresses that sec. 108.14(1), Stats., expressly provides that "[t]his chapter [covering UC] shall be administered by the department." In addition, the Department emphasizes its significant role in developing UC policy. Section [*244] 108.14(2) gives the Department authority to promulgate substantive rules affecting the UC statutes and sec. 108.14(5) requires the UC Advisory Council to keep the legislature abreast of the Department's recommendations and views regarding UC law.

We do not find the Department's argument persuasive.

The statutes do not support the Department's suggestion that the [***12] legislature intended to alter the historical role of the Commission as the ultimate finder of fact and law reviewed by the courts when it created the Commission as a separate agency in 1977. Section 108.09(7)(a), Stats., states that "[t]he department or either party may commence action for the judicial review of a decision of the commission . . ." (Emphasis added.) Furthermore, sec. 108.09(6)(d), which provides that "the commission may affirm, reverse, modify or set aside the decision [of the appeal tribunal] on the basis of

the evidence previously submitted . . ." does not require any deference by the Commission to the conclusions of fact or law of the Department. See *La Crosse Footwear v. LIRC*, 147 Wis. 2d 419, 434 N.W.2d 392 (Ct. App. 1988).

The Department's reliance on *West Bend Education Ass'n.*, 121 Wis. 2d 1, is misplaced. Neither *West Bend Education Ass'n.* or *Local No. 695*, [**550] 154 Wis. 2d 75 contemplated a situation in which there were two administrative agencies with expertise. *West Bend* and *Local No. 695* merely state one situation in which deference should [***13] generally be accorded to an administrative agency. It is clear that it is this court's practice and the legislature's desire that the Commission have ultimate responsibility for making the findings of fact and law that will be reviewed on appeal by the courts of this state.

[*245] Although the Department administers the UC program on a day-to-day basis, the Commission was created to have final review authority of Department interpretations. Granting deference to the Department's findings would undermine the reviewing authority of the Commission and result in increased judicial review without achieving any material corresponding benefits. The Commission provides an opportunity for the correction of errors and helps to assure consistent statutory application.

Based on the above, we hold that the reviewing courts of this state should accord deference to the findings of the Commission, rather than those of the Department, where deference to an agency's decision is appropriate.

II.

The second issue we address is whether the Commission erred in interpreting sec. 108.04(17)(a), Stats. Because deference to the Commission's decision is appropriate in this case, we will affirm the Commission's [***14] interpretation of the statute if it is reasonable, even if another conclusion would be equally reasonable. The Commission interpreted sec. 108.04(17)(a), to require a comparison of employment for the 1987-88 and 1988-89 academic years, rather than the 1987-88 spring term and the 1988-89 fall term. We conclude that this is a reasonable interpretation of the statute and that under this interpretation the employes had no reasonable assurance of employment for the 1988-89 academic year.

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The Department challenges the Commission's interpretation of *sec. 108.04(17)(a)*, Stats. The interpretation [*246] of a statute is a question of law that this court may review independently. *Local No. 695 v. LIRC*, 154 Wis. 2d at 82-83, *Nottelson v. ILHR Department*, 94 Wis. 2d 106, 116, 287 N.W.2d 763 (1980); *West Bend Education Ass'n.*, 121 Wis. 2d at 11-12. Nevertheless, an agency's construction of a statute is ordinarily entitled to deference in recognition that the agency's experience, technical competence, and specialized knowledge assist the agency in its interpretation of the statute. See, e.g., [***15] *West Bend Education Ass'n.*, 121 Wis. 2d at 12; *Nottelson*, 94 Wis. 2d at 117; *Milwaukee County v. ILHR Dept.*, 80 Wis. 2d 445, 259 N.W.2d 118 (1977). No weight, however, is given to an agency's interpretation of a statute if there is no evidence that the agency has any special expertise or experience interpreting the statute. *Local No. 695*, 154 Wis. 2d at 84. When deference is accorded to an administrative agency, the agency's conclusion of law will be sustained if it is reasonable, even if an alternative is equally reasonable. See, e.g., *West Bend Education Ass'n.*, 121 Wis. 2d at 13-14; *Fitzgerald*, 35 Wis. 2d at 337; *Tecumseh Products Co. v. Wisconsin E.R. Board*, 23 Wis. 2d 118, 129, 126 N.W.2d 520 (1964). This court will uphold the agency's construction of a statute unless it is clearly contrary to the legislative intent. *A.O. Smith Corp. v. ILHR Department*, 88 Wis. 2d 262, 267, 276 N.W.2d 279 (1979); *Leissring v. DILHR*, 115 Wis. 2d 475, 481, 340 N.W.2d 533 (1983). [***16]

The Commission has "experience, technical competence, and specialized knowledge" that assist the agency in its interpretation of the statute. See *West Bend Education Ass'n.*, 121 Wis. 2d at 12. The Commission has had experience with benefit provisions relating to educational employees at least since 1953. Section 108.02(5)(f)9, Stats. (1953) (created by Section 2, Chapter [*247] 483, Laws of 1953, published July 21, 1953). It has had experience in interpreting the legislation at issue since 1977. [**551] See *Leissring v. DILHR*, 115 Wis. 2d at 487. Therefore, deference to the Commission's decision is appropriate in this case.

The Commission determined that *sec. 108.04(17)(a)*, Stats., is ambiguous. We agree because reasonably well-informed individuals could understand the word "term" found in the statute in two or more senses. See *Leissring*, 115 Wis. 2d at 483. The word "term" has no universally recognized meaning in the context of

educational institutions. "Term" may signify a number of different scheduling alternatives including quarters, trimesters, and other variations on the [***17] standard two semester year, as well as the conventional "academic year." For example, the phrase "school term" is defined by *sec. 115.001(12)* as meaning, "the time commencing with the first school day and ending with the last school day that the schools of a school district are in operation for attendance of pupils in a school year, other than for the operation of summer classes." Because the statute is ambiguous, it was appropriate for the Commission to examine the statute to discern the manner in which the legislature intended "term" to be interpreted.

The Commission referred to publications of the United States Department of Labor for guidance in interpreting the language of *sec. 108.04(17)(a)*, Stats. In *Leissring*, 115 Wis. 2d at 484, we recognized that the provisions of ch. 108 are substantially influenced by provisions of the Federal Unemployment Tax Act, 26 U.S.C. *sec. 3301-3311*, which provides substantial tax credits to employers in states that administer unemployment compensation benefits in accordance with federal [*248] guidelines. *Section 108.04(17)(a)* was enacted in conformity with the Unemployment Compensation Amendments of 1976, Pub. [***18] L. 94-566, 90 Stat. 2667. See *Leissring*, 115 Wis. 2d at 486-87. Therefore, the publications of the United States Department of Labor, which interprets and administers the Federal Unemployment Tax Act, are relevant in interpreting the legislative intent behind *sec. 108.04(17)(a)*.

The Commission concluded that an examination of Department of Labor publications made it evident that the word "term" is used in the statutes to address those situations where a break in employment occurs due to a break between quarters, trimesters, or other periods used by an institution in lieu of the conventional two-semester system; and also to address those situations where a break in employment occurs due to a sabbatical leave or similar interruption in regular, annual employment. The Commission cited language in the Department of Labor's publication *Draft Legislation to Implement the Employment Security Amendments of 1970 . . . H.R. 14705* at 58, in support of this view:

Implicit in the two preceding paragraphs is a reading of the phrase in *section 3304(a)(6)(A)*, 'a similar period between

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two regular but not successive terms' as intending to provide (a) for the [***19] case of sabbatical leave and (b) for institutions of higher education that do not follow the conventional 2-semester academic year. The language of the Senate Committee report, quoted earlier, is clear as to sabbatical periods. In the case of institutions operating on a 3-semester or 4-quarter basis that embrace the entire 12 months of the year, the counterpart of 'the period between two successive academic years' is achieved, as indicated above, by viewing the semester or quarter in which services are not required as being in effect the equivalent. This view implements the expressed legislative [*249] intent described in the Senate Committee's report to meet the special situation of faculty and other professional employees of a college or university who are 'employed pursuant to an annual contract at an annual salary, but for a work period of less than 12 months.' Thus an individual who is employed under contract by a college or university for one semester or term only, in each of two years could not be considered to be under an annual contract at an annual salary.

[**552] The Department of Labor publication indicates that the word "term" used in 26 U.S.C. sec. 3304(a)(6)(A), [***20] was intended to cover customary lapses in annual employment other than the break between standard academic years under the conventional two-semester system. Disqualification "between terms" effectively prevents teachers who work in non-traditional schools with no extended break between academic years from subsidizing their off-term vacation.

We agree with the Commission that the use of "term" in sec. 108.04(17)(a), Stats., does not provide an optional method of addressing the question of reasonable assurance between two academic years. As in the federal statute, the word "term" provides a secondary alternative to "academic year" that is applicable when a non-conventional school year makes it inappropriate to consider customary breaks in employment by comparing conventional academic years.

The Commission's finding is not inconsistent with the policy behind sec. 108.04(17)(a), Stats., as discussed in *Leissring*. In *Leissring*, 115 Wis. 2d at 489, we emphasized that the intent of the limited disqualification in sec. 108.04(17)(a) is "to prevent subsidized summer [*250] vacations for those teachers who are employed during one academic year and who [***21] are reasonably assured of resuming their employment the following year." We further noted that the teacher whose only employment prospect for the following academic year includes a substantial decrease in hours and earning capacity, "is immediately confronted with a potential need to find alternative means of economic support If the teacher wants to secure another full-time position for the next academic year, he or she must utilize the summer months for this job search, and will need economic aid for this purpose as well." *Id.* at 490. The employees in this case, like the employees in *Leissring*, face the need to seek employment for the entire upcoming academic year.

The Commission's interpretation of sec. 108.04(17)(a), Stats., to require a comparison of academic years in this case is reasonable. The Commission's construction is supported by the federal agency's interpretation of the parallel federal statute. Furthermore, the Commission's interpretation is not inconsistent with the purpose of the UC legislation.

The Department does not dispute the conclusion that if academic years are compared, both employees are eligible for UC benefits [***22] because they do not have a reasonable assurance of employment under the same terms and conditions pursuant to the standards set by this court in *Leissring* and *Wisconsin Administrative Code Section ILHR 132.04(2)*.¹ For there to be a reasonable [*251] assurance of employment under the same terms and conditions, the employee must be assured of a salary of at least 80 percent of that received during the previous academic year. Emerson's salary offer for the 1988-89 academic year amounted to only 46 percent of her 1987-88 academic year pay. Schnitzius's salary offer for the 1988-89 academic year amounted to approximately 59 percent of her 1987-88 academic year pay. Because the employees were not assured of receiving more than 80 percent of their gross weekly wage in the upcoming academic year, they do not have a reasonable assurance of employment under [**553] the same terms and conditions and they are eligible for UC benefits pursuant to sec. 108.04(17)(a), Stats.

1 (2) STANDARD. Except as provided under sub. (3), the terms and conditions of the employment for which the claimant receives assurance from an educational institution under s. 108.04(17)(a), (b), and (c), Stats., for the academic year or term immediately following the weeks of unemployment which occurred between academic years or terms or during an established and customary vacation period or holiday recess are reasonably similar if:

(a) The gross weekly wage is more than 80% of the gross weekly wage earned in the academic year or term which preceded the weeks of unemployment;

(b) The number of hours per week is more than 80% of the average number of hours worked

per week in the academic year or term which preceded the weeks of unemployment; and

(c) The employment involves substantially the same skill level and knowledge as the employment in the academic year or term which preceded the weeks of unemployment.

[***23] Accordingly, the decisions of the La Crosse County Circuit Courts affirming the Commission's decisions awarding unemployment compensation benefits to the employes Kathryn Schnitzius and Sally Emerson for UC weeks 24 through 35 of 1988 are affirmed.

[*252] *By the Court.* -- The judgment of the circuit court in No. 89-1691 is affirmed. The judgment of the circuit court in No. 89-1852 is affirmed.

**Unemployment Insurance Advisory Council
Tentative Schedule
2017**

January 19, 2017	Scheduled Meeting of the Advisory Council Introduce Department Law Change Proposals
February 16, 2017	Scheduled Meeting of the Advisory Council Discuss Department Proposals Exchange of Labor and Management Law Change Proposals
March 16, 2017	Scheduled Meeting of the Advisory Council Discuss Department Proposals Discuss Labor and Management Law Change Proposals
April 20, 2017	Scheduled Meeting of the Advisory Council Discussion of Agreed Upon Bill
May 18, 2017	Scheduled Meeting of the Advisory Council Discussion and Agreement on Law Changes for Agreed Upon Bill
June 15, 2017	Scheduled Meeting of the Advisory Council Final Review and Approval of Department Draft of Agreed Upon Bill
July 20, 2017	Review and Approval of LRB Draft of Agreed Upon Bill
August 17, 2017	Agreed Upon Bill Sent to the Legislature for Introduction in the Fall Session
September 21, 2017	TBD
November 16, 2017	TBD