



## 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:** March 16, 2017  
**Time:** 10:00 a.m. – 4:00 p.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 January 19, & February 16, 2017, Council Meetings
3. Senator Sheila Harsdorf
4. Department Update
5. Report on the Unemployment Insurance Reserve Fund – Tom McHugh
6. Fraud Report
7. Pre-Employment Drug Testing and Occupational Drug Testing
  - Public Comments Regarding Pre-employment Drug Testing Emergency Rule
  - US House Joint Resolution 42
8. Court Decisions
  - *DWD v. LIRC, Valarie Beres & Mequon Jewish Campus, Inc.*

9. Update on Legislation

- 2017-2019 Budget Bill (SB 30/AB 64)
- Work Search Waiver (SB 83/AB 131)

10. Department Proposals For Agreed Bill

- D17-01 – Assessment for Employers that Fail to Comply with Adjudication Request
- 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 (Revised)
- D17-09 – Various Administrative Rule Changes
- D17-10 – Amendments to Drug Testing Statutes

11. Management & Labor Proposals for Agreed Bill

12. Agenda Items for April 20, 2017 Meeting

13. 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**

**January 19, 2017**

The department provided public notice of the meeting under Wis. Stat. § 19.84.

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

**Department Staff Present:** Joe Handrick, Ben Peirce, Andy Rubsam, Lili Crane, Becky Kikkert, Tom McHugh, Mary Jan Rosenak, Pam James, Janet Sausen, Robert Usarek, Jill Moksouphanh, Amy Banicki, Emily Savard, Matthew Aslesen, Karen Schultz, and Robin Gallagher

**Members of the Public Present:** Chris Reader (Wisconsin Manufacturer & Commerce), Maria Gonzalez Knavel (Labor and Industry Review Commission (LIRC), General Council), Mary Beth George (Rep. Sinicki's Office) Mike Duchek (Legislative Reference Bureau), Staci Duros (Legislative Reference Bureau), Madeline Kasper (Legislative Reference Bureau), Emma Gradian (Legislative Reference Bureau), Shellee Bauknecht (Legislative Audit Bureau). Ryan Horton (Legislative Fiscal Bureau), Victor Forberger (Wisconsin UI Clinic), Brian Dake (Wisconsin Independent Businesses, Inc.), Kevin Magee (Legal Action of Wisconsin) and Erica Strebel (Daily Reporter)

### **1. Call to Order and Introductions**

Ms. Knutson called the Unemployment Insurance Advisory Council (Council) meeting to order at 10:05 a.m. under Wisconsin's Open Meetings law. Council members introduced themselves and Ms. Knutson recognized Mike Duchek, Staci Duros, Madeline Kasper and Emma Gradian of the Legislative Reference Bureau, Ryan Horton of the Fiscal Bureau, Maria Gonzalez Knavel of LIRC, and Shellee Bauknecht of the Legislative Audit Bureau.

Ms. Knutson informed the Council that the department will transition from paper copies of meeting materials to electronic distribution. A complete packet of the Council's meeting materials will be available at 10:00 a.m. at <http://www.dwd.wisconsin.gov/uibola/uiac/>. Council members and members of the public are invited to access materials in our new format. Materials will be projected at future meetings. A limited number of paper copies of materials will continue to be available at the meetings.

## **2. Approval of Minutes of November 17, 2016**

Motion by Ms. Feistel, second by Mr. Lump, to approve the November 17, 2016 meeting minutes. The motion carried unanimously and the Council approved the minutes without correction.

## **3. Update on Pre-employment & Occupational Drug Testing Emergency & Permanent Rules**

Ms. Knutson reported that the emergency rule currently in effect on pre-employment drug testing expires January 30, 2017 and the permanent rule under promulgation will not be effective until May or June. Ms. Knutson requested that the Council approve an emergency rule on pre-employment drug testing that mirrors the final draft of the permanent rule. This emergency rule would be effective on January 30, 2017 in order to prevent a gap in the applicability of the rule.

### **Motion**

Motion by Mr. Manley, second by Mr. Gotzler to approve the emergency rule relating to pre-employment drug testing, substance abuse treatment program and job skills assessment. The motion carried unanimously.

## **4. Report on the Unemployment Insurance Reserve Fund & Year End Financials**

Mr. McHugh provided an update on the UI Reserve Fund Highlights.

### **Benefits**

Benefit payments for calendar year 2016 totaled \$457.4 million. Benefit payments for calendar year 2015 totaled \$535.3 million (a 15% decrease from 2015 to 2016). Benefit payments have not been this low since 1998.

### **Tax Receipts**

Tax receipts for calendar year 2016 totaled \$842.5 million. Tax receipts for calendar year 2015 totaled \$1 billion (a 19% decrease from 2015 to 2016). This decrease was anticipated due to the move from Tax Schedule A to Tax Schedule B as well as lower tax rates through experience rating.

### **Trust Fund Balance**

The Trust Fund balance on December 31, 2016 was approximately \$1.2 billion. The Trust Fund balance on December 31, 2015 was \$742.9 million. This is a 56% increase from 2015 to 2016.

### **Trust Fund Interest Earned**

The interest earned in 2016 was \$21.8 million compared to \$11.2 million earned in 2015 (a 95% increase).

### **Tax Rate Tables**

There are four tax rate schedules in Wisconsin ranging from Tax Schedule A (raising the largest amount of tax revenue) to Tax Schedule D (raising the lowest amount of tax revenue). Tax Schedule A was in effect from 2010 through 2015, Tax Schedule B was in effect in 2016 and Tax Schedule C is in effect for 2017. Tax rate notices were sent to 135,696 employers for 2017. A total of 11,096 employers will have a zero total tax rate in 2017 and will pay no UI taxes for 2017 payroll. There was a decrease of 22.8% (970 employers) for employers at the maximum 12% total rate in 2017 compared to 2016.

### **New Employer Rate**

The new employer rate is a standard rate assigned to new employers for the first three years. For small employers, the new employer rate will decrease from 3.25% in 2016 to 3.05% in 2017. The large employer rate will decrease from 3.4% in 2016 to 3.25% in 2017. The construction industry has a separate new employer rate. In 2016, for both large and small construction employers, the new employer rate was 6.6%. The 2017 new employer rate in the construction industry will drop to 4.55% for large employers and to 4.4% for small employers.

Mr. Manley requested a breakdown of information for all business sectors showing the amount of taxes paid and the amount of benefit claims paid. Mr. McHugh stated he would provide that information to the Council. Mr. McHugh will also provide information on tax rates for business sectors.

## **5. Public Hearing Summary**

Ms. Knutson reported on the UIAC public hearing held November 17, 2016. A total of 295 people provided 307 comments by letter, e-mail or at the public hearing. The department received the majority of correspondence by letter (158 letters) or through e-mail (123 emails). A total of 51 people attended the public hearing in which 19 people testified, 6 people testified and provided written correspondence and 1 person registered an opinion, but did not speak. A majority of the correspondence was specific to an employer or industry and contained the same text. A tally of the comments showed 246 comments received related to work search waivers for recalled employees. Ms. Knutson recognized Council Members Mr. Reihl, Mr. Griesbach and Mr. Hayden for attending the public hearing in Madison. Mr. Gustafson thanked department staff for the public hearing summary provided at today's meeting and stated that the comments will be read and reviewed.

Ms. Knutson requested Council input on handling comments that continue to be submitted on recommended law changes. Mr. Lump suggested that the department consider these comments and provide a separate summary of those comments to the Council.

## **6. Correspondence**

Correspondence from Senator Erpenbach and Senator Harsdorf are included in the Council materials relating to work search waivers. A copy of Senator Bewley's letter was included in Council materials at the last meeting. Correspondence from Senator Carpenter contained a constituent letter relating to work search waivers.

## **7. Department Proposals**

Ms. Knutson reported that the department is introducing nine proposals for Council consideration and anticipates a small number of additional proposals in the future. Proposals include substantive and technical statutory changes and changes to administrative rules. Changes to administrative rules can be worked on when the agreed bill is finished; however, moving forward with a scope statement allows the department to begin drafting of the rule which will be presented to the Council for consideration.

Mr. Rubsam reviewed the following department proposals with the Council:

### ***D17-01 Charging Benefits to Employers that Fail to Comply with Requests for Information***

The department proposes a law change that will charge an employer's account for erroneously-paid benefits when an employer fails to comply with the department's request for information when investigating concealment cases. Currently, there is little incentive for an employer to return the weekly wage verification form because the claimant's benefits are not typically charged to the employer's account in cases involving concealment. Mr. Rubsam stated that proposed language and a fiscal estimate will likely be available at the next meeting.

### ***D17-02 Fiscal Agent Joint and Several Liability***

This proposed change would align state law with federal law for fiscal agents. The department proposes to adopt statutory language that provides joint and several liability for fiscal agents with respect to the unemployment tax liability of a domestic employer. Individuals who receive long-term support services in their home through government-funded care programs are considered domestic employers under Wisconsin's UI law. Fiscal agents are entities that perform services for these domestic employers and are responsible for reporting employees who provide services for the domestic employers to the department and also for paying UI taxes on behalf of the domestic employer. Currently, domestic employers incur tax liability when fiscal agents fail to file quarterly reports or fail to make tax liability payments. It is difficult to collect delinquent tax from domestic employers who use fiscal agents because the income of domestic employers is typically collection-proof. This proposal will provide an incentive for fiscal agents to correctly report wages for employers and to pay UI tax. In addition, this proposal is expected to have a positive impact on the UI Trust Fund.

### ***D17-03 Assessment for Failure to Produce Records***

The department proposes to assess an administrative penalty of \$500 for failure to produce subpoenaed records to the department. Under current law, if the department intends to audit an employer's work records, a written notice requesting information is sent. If the employer does not respond to the request, a second written notice is sent to the employer requesting records. If the employer fails to respond to the second request, the department may serve a subpoena with a time and place specified for an employer to produce records. In approximately 40% of the subpoenas served, the employer provides an inadequate response or fails to respond to the subpoena and the department's only remedy is to enforce the subpoena in Circuit Court and request that the employer be held in contempt. Under this proposal, the \$500 penalty can be waived if the employer fully complies with the request within 20 calendar days of the issuance of the penalty. This proposal will provide an incentive for employers to provide records and ensure taxes are properly assessed. Any penalties collected under this proposal will be deposited into the Program Integrity Fund.

### ***D17-04 Ineligibility for Concealment of Holiday, Vacation, Termination or Sick Pay***

The department proposes an amendment to 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. Currently, a claimant who conceals wages or a material fact 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 benefits rate times the number of concealment. However, concealment of vacation, holiday pay, sick and termination pay, will not necessarily result in total ineligibility for the week that vacation or holiday pay was concealed because the partial wage formula may apply. This proposal provides for the same treatment of claimants who conceal wages as those who conceal other types of pay.

### ***D17-05 Ineligibility for Failure to Provide Information***

The department proposes that, for claimants who fail to answer questions relating to their benefit eligibility, the claimants will be ineligible for benefits beginning with the week involving the eligibility issue. Current law makes such claimants ineligible and the amendment clarifies that the department will hold the claimant's benefits until the claimant responds in order to reduce improper payments. When a claimant responds, benefits are retroactively paid beginning the week in which they failed to answer the questions, if otherwise eligible.

### ***D17-06 Standard of Proof in Unemployment Insurance Law Cases***

Currently, Wisconsin's UI law does not contain a uniform standard of proof. LIRC applies the clear and convincing standard to concealment cases and cases involving theft misconduct. The department proposes that the preponderance of the evidence standard be applied to all issues of fact in Wisconsin UI cases (other than criminal penalties). A fiscal estimate will be provided at the next meeting.

### ***D17-07 Revision of Collections Statutes***

The department proposes several changes to the collections statutes. Some changes are minor and technical in nature, while others are substantive and include:

- Providing an unrecorded lien against any person who owes the department a debt (currently for employers only).
- 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 for employers only).
- 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 (DOR) penalty for levy non-compliance.
- 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, DOR and the department's divisions of worker's compensation and equal rights.
- Permitting the department to intercept state income tax refunds, lottery payments, state vendor payments and unclaimed property of taxpayers who owe debts to the department. Current law permits the department to intercept such payments for claimants who owe debts to the department. The department may also currently intercept federal income tax refunds to satisfy tax and benefit debts.

### ***D17-08 Various and Minor Technical Changes***

The department proposes several minor and technical changes to Wis. Stat. Ch. 108. A fiscal estimate for this proposal will be provided at the next meeting.

### ***D17-09 – Various Administrative Rule Changes***

The department proposes several administrative rule changes to amend outdated rules, repeal unused rules, correct typographical errors and to amend or repeal rules that are superseded by statutes. The changes to chs. DWD 100 to 150 are minor or technical in nature. If the Council approves this proposal, the department will draft a scope statement for the Council's approval. If the scope statement is approved by the Governor, the department will begin working on the rule changes.

## **8. LIRC**

Ms. Knutson reported that LIRC requested an opportunity for LIRC Chairperson Laurie McCallum to speak to the Council on LIRC's proposed rule. LIRC contacted the department yesterday and withdrew the request. Materials received from LIRC were forwarded to the Council and any questions can be directed to LIRC for response. Chairperson McCallum previously addressed the Worker's Compensation Advisory Council about the rule.

**9. Agenda Items for Next Meeting**

Ms. Knutson stated items for the next meeting will include department proposals, including any additional proposals from the department.

**10. Agreed Bill Time Line**

Ms. Knutson reviewed the tentative timeline on the Agreed Bill cycle. The goal is to complete work on the Agreed Bill and submit the Agreed Bill to the legislature in August for introduction in the fall legislative session.

**11. Motion to Caucus**

Motion by Mr. Manley, second by Mr. Reihl to recess and go into closed session pursuant to Wis. Stat. §19.85(1)(ee), to consider any items on today's agenda at 11:30 a.m. All Council members voted "Aye" and the motion carried unanimously.

**12. Report out of Caucus:**

The Council reconvened at 1:22 p.m. Mr. Manley reported that Management Members will continue to review department proposals and work on Management proposals for the next meeting.

Mr. Reihl reported that Labor Members will continue to review department proposals, work on Labor proposals, and ask for information as the process continues.

**13. Adjourn**

Motion by Mr. Reihl, second by Mr. Manley to adjourn at 1:25 p.m. The motion carried unanimously.

# **UNEMPLOYMENT INSURANCE ADVISORY COUNCIL**

## **Meeting Minutes**

**Offices of the State of Wisconsin Department of Workforce Development  
201 E. Washington Avenue, GEF 1, Room H306**

**February 16, 2017**

The department provided public notice of the meeting under Wis. Stat. § 19.84.

**Members Present:** Janell Knutson (Chair) Michael Gotzler, Earl Gustafson, Scott Manley, Sally Feistel, Shane Griesbach and Terry Hayden. John Mielke appeared via telephone

**Department Staff Present:** Karl Dahlen, Joe Handrick, Ben Peirce, Andy Rubsam, Lili Crane, Andrew Evenson, Tyler Tichenor, Becky Kikkert, Tom McHugh, Mary Jan Rosenak, Pam James, Janet Sausen, Robert Usarek, Jill Moksouphanh, Amy Banicki, Emily Savard, Matthew Aslesen, Karen Schultz, and Jenny Strickland

**Members of the Public Present:** Maria Gonzalez Knavel (Labor and Industry Review Commission, General Counsel), Mary Beth George (Representative Sinicki's Office), Larry Smith (UC Management Services), Mike Duchek (Legislative Reference Bureau), and Chris Reader (WI Manufacturer & Commerce)

### **1. Call to Order and Introductions**

Ms. Knutson called the Unemployment Insurance Advisory Council (Council) meeting to order at 10:02 a.m. under Wisconsin's Open Meetings law. Council members introduced themselves and Ms. Knutson recognized Maria Gonzalez of LIRC.

### **2. Approval of Minutes of the Minutes of the January 17, 2017, Council Meeting**

Motion by Mr. Manley, second by Mr. Hayden to approve the minutes from the January meeting. Mr. Greisbach abstained. \*

(\*Due to a lack of the required votes, the minutes of the January 17, 2017 meeting will be presented for approval at the March 16, 2017 meeting).

### **3. Department Update**

Mr. Dahlen addressed the Council on the Governor's budget proposal. The department is reviewing the provisions of the budget and will report back to the Council on particular areas in the coming months to assess how it will affect the department.

Ms. Knutson updated the Council on the UI modernization appeals process. Claimants are now able to file an online appeal to request a hearing before an Administrative Law Judge (ALJ), the first step following a determination issued by adjudication. Approximately 70 percent of appeals are now being requested online. Appeal requests are still being accepted by mail or fax. The online filing process has reduced staff time in scheduling appeals, increased claimant responsiveness and claimants have the ability to decide what determination they want to appeal. The department has received additional funding to begin working on the implementation of an employer portal that will allow employers to file appeals online. Ms. Crane has been the leader in this initiative, for which the Bureau of Legal Affairs was awarded the UI Idea of the Year due to the \$266,000 annual savings for implementing the online appeals option.

#### **4. Update - Pre-employment Drug Testing and Occupational Drug Testing**

##### ***Notice of Public Hearing for Emergency Rule Regarding Pre-Employment Drug Testing***

The department will hold a public hearing on the pre-employment drug testing emergency rule on February 27 at 2:00 p.m. The department expects the Legislature to approve the permanent rule this spring.

##### ***U.S. House Joint Resolution 42***

U.S. House Joint Resolution 42 passed the U.S. House of Representatives yesterday disapproving regulations submitted by the U.S. Department of Labor (USDOL) relating to drug testing of unemployment insurance applicants. The Joint Resolution is now before the US Senate. If the Senate approves the Joint Resolution, it is expected that the President will sign it into law.

The resolution would nullify the regulations that USDOL enacted that provided a limited category of claimant occupations that can be drug tested for unemployment insurance benefits. If the regulations are nullified, USDOL will have to promulgate new regulations unless a federal statutory change is made. Wisconsin statute states the department shall promulgate rules to test certain unemployment insurance applicants whose only suitable work is in an occupation identified by the federal regulations.

#### **5. Discussion of Recent Court Decisions**

##### ***Easterling v. LIRC & Badger Bus Lines, Inc.***

Mr. Rubsam reported on the Court of Appeals decision in the substantial fault case *Easterling v. LIRC & Badger Bus Lines, Inc.* Ms. Easterling was a driver for a van service for special needs individuals and signed the employer's policy stating all passengers' wheelchairs must be secured to prevent them from tipping over. Ms. Easterling was terminated because she failed to secure a passenger's wheelchair, which tipped over while she was driving. Ms. Easterling stated she had too many passengers in the van and was distracted. Ms. Easterling filed for unemployment benefits, which the department denied on the grounds of substantial fault. The Appeal Tribunal found misconduct. Ms. Easterling appealed to LIRC, which found substantial fault. The Circuit

Court affirmed LIRC's decision, but the Court of Appeals reversed the decision and allowed benefits because Ms. Easterling's error was unintentional and inadvertent, which does not result in disqualification under substantial fault.

Ms. Knutson stated the decision in this case will provide general guidance to adjudicators and ALJs; however, cases are very fact-intensive to determine if it is truly an inadvertent error or substantial fault. Mr. Manley stated there should be a way to sharpen the definition of substantial fault to leave less gray area for interpretation and would not allow exceptions that disregard the entire rule. An employee that signed an employer policy of expectations that were not followed should not be able to claim that those policies were not followed because of a mistake to claim benefits. Mr. Manley expressed concern that the decision by the Court of Appeals is not within the spirit of what the Legislature intended to be as the definition of substantial fault. If decisions are based on this conclusion because the statute is not worded as clearly as it should be, it should be revisited.

## **6. Additional Public Hearing Comments**

Mr. Crivello received correspondence from Mr. Hyden, addressed to the Council, which will be added to the chart of public comments.

## **7. Department Proposals**

Ms. Knutson stated the department is still working on some additional proposals that are not quite ready. The department may present those proposals at the March meeting.

### **D17-01 – Assessment for Employers that Fail to Comply with Adjudication Requests**

Mr. Rubsam reported on revised department proposal D17-01. The proposal was originally intended to be a charging proposal if an employer or employer agent fails to comply with certain fact findings by the department. The revised proposal assesses a penalty of \$100 for an employer or employer agent that fails to comply with the department's request for information during adjudication. This penalty can be waived if the department finds the failure to respond was due to a reason beyond the control of the employer or employer agent. The fiscal estimate indicates there are approximately 1,000 cases in which employers do not comply with the department request for information to determine if the claimant is correctly reporting wage earnings for proper payment of benefits. The department anticipates that the penalty will deter noncompliance. Any revenue received for the penalty will be deposited into the Program Integrity Fund.

### **D17-06 – Standard of Proof in Unemployment Insurance Law Cases**

The department has provided a fiscal estimate for proposal D17-06 which is expected to have a minor positive fiscal impact on the Trust Fund.

## **D17-08 – Various Minor and Technical Changes**

Mr. Rubsam stated that the fiscal estimate for department proposal D17-08 is included. The fiscal estimate reflects that the source of funding for program-integrity related investigative positions will be paid for by the program integrity fund rather than federal grants.

### **8. Agenda Items for March 16, 2017 Meeting**

Ms. Knutson reported that the department will have new requirements for entering the building in place by the next meeting. A security guard will be stationed at the front desk and anyone that attends the meeting will need to be escorted by a department staff member.

Ms. Knutson requested the Council review the various minor and technical changes to administrative rules in order to move forward with a scope statement.

### **9. Management and Labor Proposals for Agreed Bill**

Ms. Knutson stated that caucus rooms were available for the Council to discuss Management and Labor proposals.

### **10. Caucus and Adjournment**

Motion by Mr. Manley, second by Ms. Feistel to go into closed session pursuant to Wis. Stat. § 19.85(1)(ee), to adjourn the public meeting and to go into closed caucus to deliberate on all agenda items. All Council members voted “Aye” and the motion carried unanimously. The public meeting was adjourned at 10:40 a.m.

## **UI Reserve Fund Highlights**

Month Ended February 28, 2017

- 1) Regular UI Benefits Payments for 2017 year-to-date total \$119.8 million, \$7.4 million or 5.8% less than the same period in 2016.
- 2) Benefits paid in the past 52 weeks compared to the prior year declined \$75.3 million or 13.5%.  
2017 past 52 weeks (UI week 12/2016 to 10/2017): \$483,587,709  
2016 past 52 weeks (UI week 12/2015 to 11/2016): \$558,884,084
- 3) Year-to-date tax receipts, which include 4<sup>th</sup> quarter 2016 tax payments, total \$78.5 million. Prior year tax receipts for the same period last year were \$106.2 million, a decrease of \$27.7 million or 26.1%.
- 4) Trust fund receipts in 2016 compared to 2015:

Trust Fund receipts end of calendar year 2015: \$1,063,046,527 (Schedule A)

Trust Fund receipts end of calendar year 2016: \$ 874,199,334 (Schedule B)

The decline in tax receipts is due both to the tax rate schedule change from A to B and to the improved economy.

- 5) The Trust Fund ending balance on February 28, 2017 was \$1.1 billion, an increase over last year's balance of \$724.5 million. This represents a \$394.7 million increase.

# FINANCIAL STATEMENTS

For the Month Ended February 28, 2017



Division of Unemployment Insurance

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
BALANCE SHEET  
FOR THE MONTH ENDED February 28, 2017

	<u>CURRENT YEAR</u>	<u>PRIOR YEAR</u>
<u>ASSETS</u>		
CASH:		
U.I. CONTRIBUTION ACCOUNT	384,878.70	429,967.78
U.I. BENEFIT ACCOUNTS	(1,192,439.61)	(3,236,901.33)
U.I. TRUST FUND ACCOUNTS (1) (2)	<u>1,125,969,173.50</u>	<u>732,853,627.53</u>
TOTAL CASH	1,125,161,612.59	730,046,693.98
ACCOUNTS RECEIVABLE:		
BENEFIT OVERPAYMENT RECEIVABLES	96,451,578.87	108,562,103.35
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (3)	<u>(41,483,442.18)</u>	<u>(43,143,039.88)</u>
NET BENEFIT OVERPAYMENT RECEIVABLES	54,968,136.69	65,419,063.47
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (4) (5)	33,500,029.28	38,275,241.23
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (3)	<u>(24,315,164.48)</u>	<u>(31,303,800.91)</u>
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	9,184,864.80	6,971,440.32
OTHER EMPLOYER RECEIVABLES	25,807,236.98	25,986,116.88
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	<u>(11,211,372.78)</u>	<u>(11,824,043.47)</u>
NET OTHER EMPLOYER RECEIVABLES	14,595,864.20	14,162,073.41
TOTAL ACCOUNTS RECEIVABLE	<u>78,748,865.69</u>	<u>86,552,577.20</u>
TOTAL ASSETS	<u>1,203,910,478.28</u>	<u>816,599,271.18</u>
<u>LIABILITIES AND EQUITY</u>		
LIABILITIES:		
CONTINGENT LIABILITIES (6)	34,873,094.15	39,038,577.68
OTHER LIABILITIES	7,580,890.23	6,442,642.10
FEDERAL BENEFIT PROGRAMS	438,040.37	1,022,754.05
CHILD SUPPORT HOLDING ACCOUNT	46,358.00	107,958.00
FEDERAL WITHHOLDING TAXES DUE	171,678.53	272,689.00
STATE WITHHOLDING TAXES DUE	1,670,291.78	1,530,549.79
DUE TO OTHER GOVERNMENTS (7)	<u>579,262.07</u>	<u>512,029.86</u>
TOTAL LIABILITIES	45,359,615.13	48,927,200.48
EQUITY:		
RESERVE FUND BALANCE	1,913,266,389.33	1,623,462,900.21
BALANCING ACCOUNT	<u>(754,715,526.18)</u>	<u>(855,790,829.51)</u>
TOTAL EQUITY	1,158,550,863.15	767,672,070.70
TOTAL LIABILITIES AND EQUITY	<u>1,203,910,478.28</u>	<u>816,599,271.18</u>

- \$2,019,034 of this balance is for administration purposes and is not available to pay benefits.
- \$2,011,207 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.
- 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.
- The remaining tax due at the end of the current month for employers utilizing the 1st quarter deferral plan is \$0. Deferrals for the prior year were \$0.
- \$10,684,974, or 31.9%, of this balance is estimated.
- \$22,142,776 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. \$12,730,318 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.
- This balance includes SAFI Payable of \$5,776. The 02/28/2017 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is \$28,832.

DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
RESERVE FUND ANALYSIS  
FOR THE MONTH ENDED February 28, 2017

	<u>CURRENT ACTIVITY</u>	<u>YTD ACTIVITY</u>	<u>PRIOR YTD</u>
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	2,407,729,825.62	2,409,958,025.15	2,118,970,629.39
BALANCING ACCOUNT	<u>(1,196,081,708.01)</u>	<u>(1,205,742,751.81)</u>	<u>(1,324,627,668.90)</u>
TOTAL BALANCE	1,211,648,117.61	1,204,215,273.34	794,342,960.49
<u>INCREASES:</u>			
TAX RECEIPTS/RFB PAID	1,477,587.70	57,838,493.55	68,814,146.32
ACCRUED REVENUES	465,358.02	(4,810,582.69)	(6,649,758.05)
SOLVENCY PAID	437,376.88	20,625,730.99	37,402,916.01
REDA PAID	0.00	0.00	30.20
FORFEITURES	57,713.00	135,730.00	273,850.00
BENEFIT CONCEALMENT INCOME	140,721.30	215,189.89	468,011.69
FUTA TAX CREDITS	0.00	4,046.36	(1,553.20)
OTHER CHANGES	<u>34,590.38</u>	<u>110,342.73</u>	<u>227,493.39</u>
TOTAL INCREASES	2,613,347.28	74,118,950.83	100,535,136.36
<u>DECREASES:</u>			
TAXABLE EMPLOYER DISBURSEMENTS	47,621,082.54	101,986,622.21	108,078,805.64
QUIT NONCHARGE BENEFITS	5,875,447.93	12,972,334.34	13,944,783.05
OTHER DECREASES	55,094.51	113,292.19	66,034.67
OTHER NONCHARGE BENEFITS	<u>2,158,976.76</u>	<u>4,711,112.28</u>	<u>5,116,402.79</u>
TOTAL DECREASES	55,710,601.74	119,783,361.02	127,206,026.15
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	1,913,266,389.33	1,913,266,389.33	1,623,462,900.21
BALANCING ACCOUNT	<u>(754,715,526.18)</u>	<u>(754,715,526.18)</u>	<u>(855,790,829.51)</u>
TOTAL BALANCE (8) (9) (10)	<u><u>1,158,550,863.15</u></u>	<u><u>1,158,550,863.15</u></u>	<u><u>767,672,070.70</u></u>

8. This balance differs from the cash balance related to taxable employers of \$1,119,205,220 because of non-cash accrual items.

9. \$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.

10. \$2,011,207 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

03/14/17

**DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
RECEIPTS AND DISBURSEMENTS STATEMENT  
FOR THE MONTH ENDED 02/28/17**

**RECEIPTS**

	-CURRENT ACTIVITY--	--YEAR TO DATE---	PRIOR YEAR TO DATE
TAX RECEIPTS/RFB	\$1,477,587.70	\$57,838,493.55	\$68,814,146.32
SOLVENCY	437,376.88	20,625,730.99	37,402,916.01
ADMINISTRATIVE FEE	17.88	125.30	391.75
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	1.34	7.45	0.00
UNUSED CREDITS	(383,950.88)	342,747.55	1,059,754.13
GOVERNMENTAL UNITS	1,465,163.04	2,558,756.83	2,960,305.16
NONPROFITS	1,191,000.74	2,108,031.51	2,273,414.64
REDA PAID	0.00	0.00	30.20
INTERSTATE CLAIMS (CWC)	305,973.84	334,388.61	850,751.97
ERROR SUSPENSE	(26,710.22)	(5,932.62)	8,447.72
FEDERAL PROGRAMS RECEIPTS	167,071.24	487,081.00	707,975.87
OVERPAYMENT COLLECTIONS	2,349,448.47	3,998,743.41	7,057,662.71
FORFEITURES	57,713.00	135,730.00	273,850.00
BENEFIT CONCEALMENT INCOME	140,721.30	215,189.89	468,011.69
EMPLOYER REFUNDS	(493,122.49)	(647,838.72)	(863,252.44)
COURT COSTS	51,548.16	95,759.32	146,690.49
INTEREST & PENALTY	303,820.51	621,777.59	638,767.14
PENALTY-PROGRAM INTEGRITY	193,605.16	284,433.50	101,369.16
SPECIAL ASSESSMENT FOR INTEREST	3,757.41	5,776.14	6,172.66
INTEREST EARNED ON U.I. TRUST FUND BALANCE	0.00	0.00	0.00
MISCELLANEOUS	5,120.65	21,650.26	135,531.77
TOTAL RECEIPTS	\$7,246,143.73	\$89,020,651.56	\$122,042,936.95

**DISBURSEMENTS**

CHARGES TO TAXABLE EMPLOYERS	\$49,076,452.06	\$105,094,660.61	\$113,588,923.66
NONPROFIT CLAIMANTS	992,078.76	2,184,319.04	1,975,956.73
GOVERNMENTAL CLAIMANTS	1,133,512.46	2,552,662.09	2,826,628.01
INTERSTATE CLAIMS (CWC)	526,003.05	1,182,217.32	1,328,901.63
QUITS	5,875,447.93	12,972,334.34	13,944,783.05
OTHER NON-CHARGE BENEFITS	2,132,655.57	4,664,541.29	4,917,971.17
CLOSED EMPLOYERS	(4,721.87)	(3,353.87)	(4,302.00)
ERROR CLEARING ACCOUNT	0.00	0.00	0.00
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	194,203.23	438,426.83	461,964.02
EX-MILITARY (UCX)	91,241.29	209,520.86	319,898.84
TRADE ALLOWANCE (TRA/TRA-NAFTA)	297,018.70	659,034.43	965,032.06
DISASTER UNEMPLOYMENT (DUA)	0.00	0.00	(27.81)
2003 TEMPORARY EMERGENCY UI (TEUC)	(1,419.10)	(3,908.72)	(5,954.96)
FEDERAL ADD'L COMPENSATION \$25 ADD-ON (FAC)	(42,942.37)	(82,223.84)	(138,379.55)
FEDERAL EMERGENCY UI (EUC)	(403,739.33)	(746,031.34)	(1,423,584.49)
FEDERAL EXTENDED BENEFITS (EB)	(34,708.78)	(63,181.14)	(93,016.17)
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	0.00	(14.11)	(9.28)
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	(417.65)	(729.81)	(1,759.18)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	(182.67)	(444.31)	(1,805.13)
INTEREST & PENALTY	317,957.08	597,730.82	640,808.75
PROGRAM INTEGRITY	90,834.45	168,409.48	38,407.06
SPECIAL ASSESSMENT FOR INTEREST	0.00	10,444.67	11,304.58
COURT COSTS	44,211.16	84,150.55	103,075.86
ADMINISTRATIVE FEE TRANSFER	107.42	235.58	523.45
FEDERAL WITHHOLDING	(6,692.53)	(61,161.75)	(199,752.00)
STATE WITHHOLDING	(775,686.62)	(167,489.77)	(2,151.15)
REED ACT & ARRA SPECIAL ADMIN EXPENDITURES	0.00	0.00	1,571.74
STC IMPLEMENT/IMPROVE & PROMOTE/ENROLL EXP	0.00	0.00	755.79
FEDERAL LOAN REPAYMENTS	0.00	(4,046.36)	1,553.20
TOTAL DISBURSEMENTS	\$59,501,212.24	\$129,686,102.89	\$139,257,317.88

NET INCREASE(DECREASE)	(52,255,068.51)	(40,665,451.33)	(17,214,380.93)
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BALANCE AT BEGINNING OF MONTH/YEAR	\$1,177,416,681.10	\$1,165,827,063.92	\$747,261,074.91
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BALANCE AT END OF MONTH/YEAR	<u>\$1,125,161,612.59</u>	<u>\$1,125,161,612.59</u>	<u>\$730,046,693.98</u>
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DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
CASH ANALYSIS  
FOR THE MONTH ENDED February 28, 2017

	CURRENT ACTIVITY	YEAR TO DATE ACTIVITY	PRIOR YTD ACTIVITY
BEGINNING U.I. CASH BALANCE	\$1,171,850,221.21	\$1,159,159,974.49	\$742,892,575.90
INCREASES:			
TAX RECEIPTS/RFB PAID	1,477,587.70	57,838,493.55	68,814,146.32
U.I. PAYMENTS CREDITED TO SURPLUS	1,588,013.02	21,986,066.81	39,997,651.33
FUTA TAX CREDITS	0.00	4,046.36	(1,553.20)
TOTAL INCREASE IN CASH	3,065,600.72	79,828,606.72	108,810,244.45
TOTAL CASH AVAILABLE	1,174,915,821.93	1,238,988,581.21	851,702,820.35
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	47,621,082.54	101,986,622.21	108,078,805.64
BENEFITS CHARGED TO SURPLUS	8,089,519.20	17,796,738.81	19,124,892.98
TOTAL BENEFITS PAID DURING PERIOD	55,710,601.74	119,783,361.02	127,203,698.62
REED ACT EXPENDITURES	0.00	0.00	1,571.74
SHORT-TIME COMPENSATION EXPENDITURES	0.00	0.00	755.79
ENDING U.I. CASH BALANCE (11) (12) (13)	1,119,205,220.19	1,119,205,220.19	724,496,794.20

11. \$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.

12. \$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.

13. \$2,011,207 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
BALANCING ACCT SUMMARY  
FOR THE MONTH ENDED February 28, 2017

	CURRENT ACTIVITY	YEAR TO DATE ACTIVITY	PRIOR YTD ACTIVITY
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	(\$787,569,191.34)	(\$798,303,306.16)	(\$919,824,755.63)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	437,376.88	20,625,730.99	37,402,916.01
FORFEITURES	57,713.00	135,730.00	273,850.00
OTHER INCREASES	<u>1,092,923.14</u>	<u>1,224,605.82</u>	<u>2,320,885.32</u>
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	1,588,013.02	21,986,066.81	39,997,651.33
TRANSFERS BETWEEN SURPLUS ACCTS	9,528.38	48,762.66	(10,228.00)
FUTA TAX CREDITS	<u>0.00</u>	<u>4,046.36</u>	<u>(1,553.20)</u>
TOTAL INCREASES	1,597,541.40	22,038,875.83	39,985,870.13
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	5,875,447.93	12,972,334.34	13,944,783.05
OTHER NON-CHARGE BENEFITS	<u>2,214,071.27</u>	<u>4,824,404.47</u>	<u>5,180,109.93</u>
BENEFITS CHARGED TO SURPLUS SUBTOTAL	8,089,519.20	17,796,738.81	19,124,892.98
REED ACT EXPENDITURES	0.00	0.00	1,571.74
SHORT-TIME COMPENSATION EXPENDITURES	<u>0.00</u>	<u>0.00</u>	<u>755.79</u>
BALANCE AT THE END OF THE MONTH/YEAR	<u>(794,061,169.14)</u>	<u>(794,061,169.14)</u>	<u>(898,966,106.01)</u>



# WISCONSIN UNEMPLOYMENT INSURANCE

Supporting Integrity, Accountability and Re-employment

2017 Report to the Unemployment Insurance Advisory Council



STATE OF WISCONSIN



Department of Workforce Development



A man and a woman wearing blue hard hats and high-visibility orange safety jackets are standing in a field of tall grass. The man is pointing towards the left, and the woman is holding a clipboard and looking in the same direction.

**STATE OF WISCONSIN**



Department of Workforce Development

Unemployment Insurance

# Inside

- 1 A Message from the Secretary
- 2 Re-employment Services
- 3 Unemployment Fraud – Down Again
- 4 Non-Fraudulent Overpayments Also Down
- 5 Wisconsin: On the Front Line of the Fight Against Fraud
- 11 Addenda

*"Our mission at DWD is to advance Wisconsin's economy and business climate by empowering and supporting the workforce. An important part of that mission is ensuring we have an unemployment insurance program that is strong, secure, and fiscally sound."*

- Secretary Ray Allen, Wisconsin Department of Workforce Development



March 15, 2017

Dear Members of the Unemployment Insurance Advisory Council:

The Department of Workforce Development (DWD) is pleased to present the following report on the state of the Wisconsin Unemployment Insurance (UI) Trust Fund and Wisconsin's UI program. We are proud to report that the state of the Trust Fund and the state of UI program are both strong.

In 2016, both the amount and rate of fraud against the UI program continued to decline significantly and the Trust Fund continued to grow ending the year with a balance of \$1.2 billion, a \$416 million increase from the previous year. As a result the UI employer tax burden will decline by an estimated \$189 million for tax year 2017.

The continued growth of the fund and the drop in UI fraud can be partially attributable to the success of Wisconsin's economy under the leadership of Governor Scott Walker. In 2016:

- ◆ Wisconsin's total employment reached historic levels
- ◆ Average initial unemployment insurance claims were at the lowest level since 1989
- ◆ Average weekly unemployment insurance claims were at the lowest level in at least 30 years
- ◆ Wisconsin's labor force participation rate outpaced the national rate and ranked among the best in the United States

DWD also continues to emphasize anti-fraud initiatives to ensure that a solvent, reliable UI program remains accountable to the employers who fund benefit payments, and benefit payments remain available to workers who lose their employment through no fault of their own. Wisconsin continues to be recognized nationally for our efforts to combat benefit fraud, educate employers and claimants, enforce worker classification laws, and facilitate the rapid re-employment of UI claimants.

Additionally, we continue to modernize our systems to allow more opportunities for the people we serve to interact with the UI program online at their convenience, through modern, mobile friendly and secure web-based claim and inquiry systems. Since its launch in 2014 our redesigned Internet Initial Claims system continues to perform beyond expectations and has dramatically reduced the need for claimants to call a claims specialist. Today, 93 percent of individuals who begin their initial claim online can complete their claim without needing to call a specialist and more than four out of every five UI claimants accessed DWD's online UI systems at least once in 2016.

In 2016, total UI benefit payments declined by 15.5 percent from 2015 to 2016. In comparison, the percent of total benefits paid that were obtained fraudulently declined by 35.3 percent, more than double the rate of decline in total UI benefit payments. An improving economy, enhanced measures to detect and prevent UI fraud, and enhanced customer education all help to ensure a reliable and sustainable UI system for employers and workers.

Contained in this report you will find these and other statistical details, along with a summary of the tools we use to prevent, detect and deter UI fraud.

We will continue to build upon the successes of the past year to protect the integrity of the UI program and look forward to working with you and the members of the Wisconsin State Legislature to advance even more improvements.

Sincerely,



Ray Allen, Secretary  
Department of Workforce Development



Joe Handrick, Administrator  
Unemployment Insurance Division

Wisconsin ranks 2nd nationally at re-employment outcomes for UI recipients.

~ United States Department of Labor

### Moving from Government Dependence to True Independence

#### Robust Re-employment Services Are Helping Workers

Unemployment Insurance provides a valuable economic stabilizer for families and communities by providing short-term assistance to unemployed workers who qualify for the program while they transition to new employment.

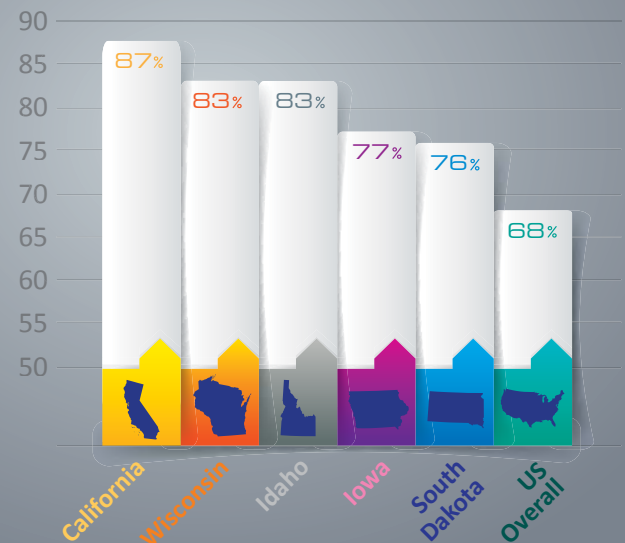
The Department's goal is to ensure individuals receive the assistance they need in the short-term while helping them find new employment for their long-term security.

Under Wisconsin law, UI recipients must register with Job Center of Wisconsin (JCW) and actively seek employment, unless an individual is granted a work search waiver. In 2016, nearly 98 percent of the 101,219 claimants who were required to register with JCW satisfied this requirement.

Once registered with JCW, claimants who are determined to potentially benefit from re-employment assistance are provided a re-employment curriculum tailored to their unique job seeking needs. These services are delivered through a combination of online training modules and in-person counseling at one of 54 local job centers in Wisconsin.

This strategy is working for Wisconsin. According to the most recent data from the U.S. Department of Labor (USDOL), Wisconsin ranks second nationally at re-employment outcomes for UI recipients.

#### Facilitation of Reemployment Percentage



Percentage of UI claimants who received a first payment in a calendar quarter who are reemployed in the subsequent quarter.

State ranking of Core Measure for Period 07/01/2015 to 06/30/2016 (the most recent period available)  
<https://oui.doleta.gov/unemploy/reemploy.asp>



▲ Wisconsin's re-employment services success has garnered nation-wide attention. **Bruce Palzkill**, Deputy Administrator for Wisconsin's Division of Employment and Training, shared our successes with UI personnel from around the nation at a UI seminar in June of 2016.



▲ DWD supports employment services for veterans to help those who have served their nation.

"We are pleased to report that in 2016 both the amount and the rate of fraud against the UI system continued to decline significantly."

~ Secretary Ray Allen

## Fraud Overpayments Continue to Decline

Under Governor Walker's leadership, DWD remains committed to ensuring the integrity of the UI program, and our continued focus on combatting not only fraud, but non-fraud overpayments, is working and winning for the employer funded UI Trust Fund.

Fraud against the Wisconsin Unemployment Insurance program is down — both in terms of actual dollars and in terms of a percentage of total unemployment claims.

While these reductions can partially be attributed to a decline in total benefits paid due to the strong Wisconsin economy, they are also solid evidence that our program integrity efforts are working for Wisconsin.

In 2016, while total benefits declined by 15.5 percent, UI fraud overpayments declined by 35.3 percent. That is great news for Wisconsin, as the decline in fraud overpayments continues to outpace the overall decline in UI benefit payments.

### DECLINE IN FRAUD OVERPAYMENTS OUTPACING THE OVERALL DECLINE IN UI BENEFIT PAYMENTS

	2016 Amount	2015 Amount	Dollar Reduction	Percent Reduction
Total UI Payments	\$511,891,628	\$605,481,027	\$93,589,399	15.5%
+ <b>Fraud Overpayment<sup>1</sup></b>	\$8,655,187	\$13,384,998	\$4,729,811	35.3%
As Percent of Total Payments	1.7%	2.2%		
+ <b>Non-Fraud Overpayment<sup>1</sup></b>	\$8,902,765	\$11,878,072	\$2,975,262	25.0%
As Percent of Total Payments	1.7%	2.0%		
= <b>OVERPAYMENT TOTALS</b>	<b>\$17,557,952</b>	<b>\$25,263,070</b>	<b>\$7,705,118</b>	<b>30.5%</b>

	2016 Number of Cases	2015 Number of Cases	Case Reduction	Percent Reduction
+ <b>Fraud Cases</b>	8,438	9,793	1,355	13.8%
+ <b>Non-Fraud Cases</b>	59,362	78,851	19,489	24.7%
= <b>CASE TOTALS</b>	<b>67,800</b>	<b>88,644</b>	<b>20,844</b>	<b>23.5%</b>

<sup>1</sup>Overpayment figures reflect the amounts detected in the stated calendar year. A portion of those overpayments would have been disbursed in prior calendar years.

**In 2016, while total benefits declined by 15.5 percent, UI fraud overpayments declined by 35.3 percent**

## Non-Fraudulent Overpayments Are Also Down

### Non-Fraudulent Overpayments Continue to Decline

As illustrated in the chart on page 3, non-fraud overpayments also declined by 25 percent in 2016. This decline in non-fraud overpayments can be partly attributed to the Department's commitment to enhancing our online systems to make them easier to navigate, more efficient and easier to understand.

A major step forward in this regard occurred in the spring of 2016 with the deployment of a new, redesigned system for individuals filing continued claims.

The new Internet Weekly Claim (IWC) system permits all claimants to file claims online and provides clear, easy-to-follow questions to collect important information. Additionally, the IWC system provides detailed explanations for questions to ensure claimants are responding accurately. The new system is mobile device-friendly to keep up with evolving technology. Although a majority of claimants now file online, our help center continues to provide fast service to those who have inquiries or who need a little extra help. Looking forward the Department plans to make this enhanced online weekly claims filing application available in Spanish.

The Department has also improved notices that are on both telephone and web-based systems regarding the potential legal and financial consequences of committing fraud.

Education is a key component to any prevention and deterrence effort.

The Department provides to claimants a claimant handbook with detailed instructions on the claim filing process and a brochure titled *Top 10 Things You Should Know About the Unemployment Insurance System When Filing Your Claim*, which is posted at <http://dwd.wisconsin.gov/dwd/publications/ui/ucb17144p.pdf>.

We also provide written educational guidance to employers on how to protect themselves and the Trust Fund including a pamphlet titled, *How to Protect Your Business From Higher Taxes*, which is posted at [http://dwd.wisconsin.gov/dwd/publications/ui/uct\\_17287\\_p.pdf](http://dwd.wisconsin.gov/dwd/publications/ui/uct_17287_p.pdf).

Additional resources available to both employees and employers include:

- ▶ UI Internet resources for both employers and employees such as, "Frequently Asked Questions about UI Benefit Fraud," which includes methods for reporting UI fraud; and
- ▶ An employer handbook that contains information on how to properly classify a worker in accordance with Wisconsin law.



**"Our primary objective is to prevent fraud from ever happening and detect it early when it does. Our staff is on the front line of that effort."**

**~ Joe Handrick, UI Administrator**



## Wisconsin a leader in program integrity efforts

*Wisconsin is a nationally recognized leader in program integrity efforts including detection and investigation of claimant fraud and worker misclassification.*

In December 2016, two Wisconsin UI staff members were invited to speak at the National Association of State Workforce Agencies' (NASWA) UI Integrity Symposium in Baltimore. Invitations were extended after NASWA staff had visited Wisconsin in the fall and were impressed with the actions Wisconsin has taken to help ensure the integrity of the UI program. All of those actions have one thing in common - they succeed because of the highly trained staff that is on the front lines every day.

Amy Banicki, Bureau of Benefit Operations Director, gave a presentation regarding a Wisconsin fictitious employer case and how Wisconsin UI detects and investigates fictitious employers. Mike Myszewski, Worker Misclassification Unit, Bureau of Legal Affairs (BOLA), presented at a workshop on Worker Misclassification and featured DWD's innovative approach to both educating employers and enforcing Wisconsin's worker misclassification laws. Attendance at the conference was approximately 270 participants from 48 states and 2 territories.

## Unemployment Fraud is A Crime

*Criminal Referral for UI Fraud*

The Department pursues criminal prosecution in cases of egregious fraudulent activity and works cooperatively with district attorneys, the Wisconsin Department of Justice, and federal prosecutors. In 2016, 63 cases (with a total dollar amount of \$607,000) were referred for potential state criminal prosecution, reflecting the Department's emphasis on pursuing criminal charges against those who flagrantly abuse the system. Cases referred for criminal prosecution can take several years to resolve. The prosecution of UI fraud not only punishes the offender but serves as a deterrent against future fraudulent activity.

All criminal investigations completed by benefit fraud investigators are referred to BOLA for review by legal and investigative staff to ensure that the investigations meet department standards for prosecution. After the review, BOLA staff refer the cases to either a county district attorney or the Wisconsin Department of Justice. BOLA acts as the liaison between the Department and the prosecuting agency as the case moves through the criminal justice system. BOLA staff serve as advocates at sentencing, not only for the Department, but for our partners in the business and worker community who properly utilize the UI program.

The UI Division has partnered with the Worker's Compensation Division to jointly fund a full-time assistant attorney general (AAG) position in the Department of Justice in 2016. The AAG prosecutes Unemployment Insurance fraud primarily in Milwaukee County and Workers Compensation fraud statewide. The AAG also provides advice and guidance to local prosecutors on UI fraud cases.

## Wisconsin: On the Front Line of the Fight Against Fraud

**"The vast majority of UI claimants utilize the system properly, but when bad actors commit fraud against the UI program, we will utilize all tools at our disposal, including criminal prosecution, to preserve the program for those who sincerely need it."**

**~ DWD Deputy Secretary Georgia Maxwell**



### Post Verification of Wages Cross-Match

#### *Detecting Fraud Faster*

Cross-match techniques are some of the most powerful anti-fraud tools employed by the Wisconsin UI system. The Wage Cross-Match is one technique used to detect and prevent potential unemployment fraud by persons who stop reporting wages on their weekly claim.

Prior to December 2015, the Department sent a weekly wage verification form to the employer when the claimant reported wages in a week. Starting in December 2015, the Department began sending employers wage verification notices when claimants who had been reporting wages weekly stop reporting wages in a week. This allows the employer the opportunity to timely report eligibility issues such as work and wages or a separation, which previously may not have been detected until much later.

The Department detected an estimated \$290,483 in fraudulent UI claims last year using this tool.

### Worker Misclassification Efforts

#### *Protecting Workers, Protecting Employers*

Wisconsin's UI system is not immune from the nationwide challenge of worker misclassification. In 2016, UI auditors identified a total of 8,613 misclassified workers.

Worker misclassification contributes to waste and fraud in the UI program through the loss of UI tax revenue that is deposited into the UI Trust Fund from employers who misclassify workers, and the creation of an unfair business climate which places businesses that follow the law in a position of competitive disadvantage.

The Department has demonstrated its continued commitment to fighting worker misclassification through an ongoing initiative combining education of employers and workers and a robust program of worksite misclassification investigations.

#### *Worker Misclassification Education*

Wisconsin's worker classification website remains the only one of its kind in the United States. It provides employers with a clear and understandable process to assist them in determining if their workers are employees or independent contractors.

The Department produced two educational videos in 2016. The first video instructs employers on how to properly classify a worker as an employee or an independent contractor. The second video instructs employers on how to prepare for a tax appeal hearing. Both of these videos are linked to the worker classification website at [http://dwd.wisconsin.gov/worker\\_classification/ui/](http://dwd.wisconsin.gov/worker_classification/ui/).

Looking forward, the Department will create two radio public service announcements in 2017. The first will target worker misclassification in general, and the second will target intentional misclassification in the construction industry. Both of the public service announcements will be produced in English and Spanish.

### *Worker Misclassification Investigations*

Worksite investigations are conducted by seven experienced department investigators, six of whom have law enforcement backgrounds in white collar and economic crime investigations. These investigators have been temporary employees funded through a temporary federal grant (set to expire this September). Thanks to a budget reform passed by the Council in 2016, a permanent funding source has been established for these investigators. Department investigators interview suspected misclassified workers at work sites and obtain evidence for use by field auditors and legal staff. One of the investigators speaks fluent Spanish, which aids in conducting investigations in an ethnically diverse construction industry.

The worker misclassification initiative continued to demonstrate success in 2016. The worker classification website yielded 59 tips in 2016 which resulted in 44 misclassification investigations. The investigative staff conducted 658 field investigations that resulted in 167 referrals to the Field Audit Section. On average, an audit conducted by the Department resulting from a referral by investigators yielded 10 misclassified workers and an additional \$3,605 in unpaid UI taxes.

**"Misclassification not only deprives workers of the protection afforded by Unemployment Insurance, it also puts employers who pay their fair share UI taxes at a competitive disadvantage with those who misclassify."**

**~ Mark Reihl, Unemployment Insurance Advisory Council Member**

As of February 2017, \$1,129,326 has been generated in UI taxes, interest and penalties as a result of the Department's efforts to detect worker misclassification from these grants. The total dollar amount will continue to increase as a result of audits still being conducted from 2016 misclassification cases.

The investigative staff delivered more than a 20 presentations to hundreds of business and labor group representatives, and provided seven internal training sessions to department staff.

The Department has committed to conducting a total of 650 worker classification field investigations in 2017. In addition, investigative team members will present at construction industry events, labor union meetings and other public forums on worker misclassification, and will hold meetings with individual contractors that have large numbers of misclassified workers. The goal of the meetings will be to educate the employers on worker misclassification, warn them of the legal and financial consequences of misclassification, and work with the employers to bring them into voluntary compliance with the worker classification laws.

**Wisconsin's Worker Classification website continues to be the only one in the nation that educates employers on proper classification of workers as either employees or independent contractors**

## **Prevention Tools**

### *Data Analytics*

The Wisconsin UI program has instituted cutting-edge data analytics aimed at protecting the UI Trust Fund through prevention of fraud. As with the private sector, identity theft poses a threat to the integrity of Wisconsin's UI program. Across the Department, employees are trained to recognize and report any suspicious activity.

## Wisconsin: On the Front Line of the Fight Against Fraud

By cross-referencing Federal Social Security Administration records and Wisconsin Department of Transportation records, the Department attempts to ensure that an individual is not claiming benefits fraudulently on behalf of another person. The Department also reviews employer wage files to determine a claimant's work history.

The Department's current process proactively identifies suspected fraudulent claims, allowing time to place holds on those claims, properly investigate them, and prevent potential improper payments. It is estimated that the data analytics used to identify and prevent claims resulting from identity theft is preventing thousands of dollars in potential losses.

### *Additional Prevention Approaches*

Other fraud prevention tools include:

- ▶ Benefit Payment Notices informing employers of UI benefit charges to their account;
- ▶ Non-citizen work authorization verification with United States Citizenship and Immigration Services (USCIS) when the claimant is not a U.S. citizen;
- ▶ Scanning employer tax and benefit charge information to identify potential fictitious employers.

## Detection Tools

Although the Department invests considerable time and resources in fraud prevention activities, when individuals are not deterred from committing UI fraud, the department has a wide range of systems and methods to detect and recover fraudulently obtained benefits. The Department aggressively pursues additional federal funding for the purpose of fighting fraud when it is made available.

### *Dedicated UI Workers*

Staff across the Department review and analyze claims. If they notice something suspicious, they report it and the matter is investigated to ensure the integrity of the program. Staff vigilance is one of our best tools for detection.

In addition, we employ benefit fraud investigators with law enforcement experience and extensive backgrounds in criminal investigations. They work to unravel and resolve the most complex and organized efforts to scam the system. These positions were originally project positions funded by a federal grant, but as of September 2016 those grants expired. Thanks to a budget reform approved by the Council, a permanent funding stream has been established and these investigators have been made permanent.

### *Cross-Matches*

The Department utilizes numerous cross-matches that assist in detecting "work and wage" and other types of UI fraud.

**Quarterly Wage Cross-Match** - The Department cross-matches benefit payment records with wage records submitted by employers.

**Interstate Wage Record Cross-Match** - The Department utilizes a quarterly cross-match of benefit payment records with wage records submitted by interstate employers.

**Wisconsin and National New Hire Cross-Match** - Employers are required to report basic information about employees who are newly hired, rehired, or who return to work after a separation from employment. Department staff cross-match UI payment records with new hire information. In August 2015, Wisconsin began cross-matching quarterly federal wage data from the National Directory of New Hire reports for claimants who are former federal government employees.

**Vital Statistics (Death Records) Cross-Match** - The Department of Health Services provides a record of deaths in Wisconsin from the Vital Statistics section. This data is then cross-matched with claimant data to determine if UI claims continue to be filed after a claimant is deceased.

## Work Search Audits

UI claimants who are required to search for work must submit a copy of their work search record each week a claim is filed. These records are subject to random audits for integrity purposes. Benefits are denied for that week if a work search record is found not to meet legal requirements.

In 2016, the Department conducted 16,747 work search audits. Those audits resulted in 3,196 decisions where work search requirements were not being met. Although these efforts resulted in \$1.47 million in overpaid benefits, our ultimate objective is 100% compliance.

## Other Detection Approaches

Additional detection approaches utilized to preserve and protect the integrity of the UI Trust Fund include:

- ▶ Audits of employers resulting in assessments totaling \$1.86 million;
- ▶ Employer complaints and tips from the public concerning suspected fraudulent claims;
- ▶ Using 1099 information from the Internal Revenue Service (IRS) to investigate employers who may be misclassifying employees as independent contractors;
- ▶ Contacts from local, state, and federal law enforcement officers and correctional officers reporting suspicious activities;
- ▶ U.S. Bank utilizes sophisticated fraud monitoring tools, which allows the department to monitor, predict, and respond quickly to suspected fraudulent activity;
- ▶ Contacts with other state agencies, ensuring we investigate all benefits fraud associated with a claimant.

## Deterrence Tools

Since 2011 the Governor, Legislature, and the Council have enacted a number of reforms designed to deter tax and benefit fraud against the UI system. In 2016 the Governor, Legislature and Council took additional steps to protect the Trust Fund.

### Definition of "Conceal"

The definition of "conceal" was clarified effective April 2016 to create a duty of care for claimants to "provide an accurate and complete response to each inquiry made by the Department in connection with his or her receipt of benefits" and provides a list of factors for the Department to consider when making a concealment determination.

### Worker Misclassification Penalties

New penalties for intentional worker misclassification went into effect in October 2016 for construction employers. Any construction employer who knowingly and intentionally misclassifies workers as independent contractors faces a civil penalty of \$500 per employee intentionally misclassified with a maximum penalty of \$7,500 per incident. A construction employer who knowingly and intentionally provides false information in order to misclassify workers after being assessed a civil penalty will face a criminal fine of \$1,000 per employee misclassified with a maximum fine of \$25,000 per incident. A construction employer who coerces individuals to adopt independent contractor status faces a penalty of \$1,000 per employee coerced with a maximum penalty of \$10,000 per employee per year.

**"The UI system is funded by employers and intended to help workers in need. Protecting those funds from waste, fraud, and abuse is an important mission."**

**~ Scott Manley, Unemployment Insurance Advisory Council Member**

## Wisconsin: On the Front Line of the Fight Against Fraud

### Collection Tools

Despite our best efforts, overpayments do occur. But when they do, Wisconsin is very successful at recovering overpayments.

An internal UI longitudinal state study tracked overpayment collections over 10 years and determined 82.5 percent of fraud and 80 percent of non-fraud overpayments were collected.

In 2016 overpayments declined by 30.5 percent to \$17.6 million. Based on our historical success, the Department estimates that at least \$14 million of the overpayments established in 2016 will be recovered in the coming years.

In 2016 the Department recovered \$30 million in overpayments, including almost \$3.7 million in debts older than 5 years. We achieved this by utilizing various mechanisms, including:

**Tax Refund Intercept** - The Department is able to intercept a claimant's state and federal tax refund. The Department participates in the United States Treasury's Tax Offset Program (TOP) to intercept tax refunds. By utilizing the tools available through TOP, the Department was able to recover \$5.7 million in fraud overpayments and over \$1 million in non-fraud overpayments, penalties, and collections costs. In February 2017 the Department began to recover delinquent tax contributions, interest and penalties through TOP.

**Bankruptcy** - Fraud debts are not dischargeable in bankruptcy. Department attorneys file adversary petitions to dispute discharge of the debt. A claim is also filed against the assets of the debtor.

**Warrants** - A lien is placed on the debtor's personal property to secure repayment of a delinquent debt.

**Levy Against Wages and Bank Accounts** - A levy is issued against wages, bank accounts or any property belonging to the debtor.

**Financial Record Matching Program** - A financial record matching program is used for debt collectors to identify the bank accounts of delinquent Unemployment Insurance debtors.

**DWD recovered \$30 million UI overpayments in 2016, returning the funds to the UI Trust Fund**



## Addendum A – Overpayment Data

Historical data on benefit payments.

Combined State & Federal	2016	2015	2014	2013	2012
Total Federal & State UI Paid	\$511,891,628	\$605,481,027	\$732,327,104	\$1,270,761,600	\$1,612,616,543
+ <b>Fraud Overpayment<sup>1</sup></b>	\$8,655,187	\$13,384,998	\$20,455,759	\$24,796,194	\$31,505,810
Number of Cases	8,438	9,793	13,034	14,682	15,825
Avg. Overpayment	\$1,026	\$1,367	\$1,569	\$1,689	\$1,991
+ <b>Non-Fraud Overpayment<sup>1</sup></b>	\$8,902,765	\$11,878,072	\$16,891,299	\$26,347,894	\$31,487,390
Number of Cases	59,362	78,851	105,758	153,072	205,055
Avg. Overpayment	\$150	\$151	\$160	\$172	\$154
= <b>OVERPAYMENT TOTALS</b>	\$17,557,952	\$25,263,070	\$37,347,058	\$51,144,088	\$62,993,200
NUMBER OF CASES TOTAL	67,800	88,644	118,792	167,754	220,880
Avg. Overpayment	\$259	\$285	\$314	\$305	\$285

<sup>1</sup>Overpayment figures reflect the amounts detected in the stated calendar year. A portion of those overpayments would have been disbursed in prior calendar years.

Fraud Overpayment Detection Amounts and Decisions by Source for 2015-2016.

Detection Method	2016		2015	
	Amount	Decisions	Amount	Decisions
Wage Record Crossmatch	\$3,176,729	2,429	\$6,023,960	3,496
Agency Detection - Not Covered by Other Codes	2,470,748	1,794	3,333,237	2,254
Liabe Employer Protests Benefit Charges	880,186	1,108	1,572,269	1,402
State New Hire Crossmatch	741,198	1,384	946,059	1,383
Tips and Leads from Other than Liabe Employer	417,061	380	372,683	305
Post Verification-No Wages Reported	290,483	690	1,584	4
Post Verification of Wages	201,869	203	422,956	278
Claimant Initiated	135,364	116	250,978	174
Interstate Crossmatch	90,384	24	82,657	29
National New Hire Crossmatch	77,433	67	94,735	68
Appriss Inmate Crossmatch	58,585	119	161,607	326
Audit of Worksearch	41,981	58	316	1
Quality Control	40,953	32	44,325	26
Inmate Crossmatch	16,251	26	16,026	23
Field Audit Discoveries	11,225	5	57,687	18
Other	4,737	3	3,919	6
<b>Total</b>	<b>\$8,655,187</b>	<b>8,438</b>	<b>\$13,384,998</b>	<b>9,793</b>

## Addendum A continued – Overpayment Data

Non-Fraud Overpayment Detection Amounts and Decisions by Source for 2015-2016.

Detection Method	2016		2015	
	Amount	Decisions	Amount	Decisions
Post Verification of Wages	\$2,075,314	41,674	\$2,673,474	54,204
Audit of Worksearch	1,426,286	2,860	466,600	976
Liabe Employer Protests Benefit Charges	1,314,236	3,412	1,752,584	5,251
Agency Detection - Not Covered by Other Codes	1,299,539	2,143	2,246,914	3,618
Claimant Initiated	1,157,629	5,397	1,633,618	7,404
Reversals	462,137	326	722,064	430
Wage Record Crossmatch	371,627	791	1,172,981	2,860
Tips and Leads from Other than Liabe Employer	290,773	655	283,306	892
State New Hire Crossmatch	223,271	905	738,458	2,805
Post Verification - No Wages Reported	181,730	975	1,302	4
Quality Control	47,598	87	76,580	114
Appriss Inmate Crossmatch	26,486	89	58,881	171
National New Hire Crossmatch	17,248	34	23,962	84
Inmate Crossmatch	6,417	9	4,972	16
Other	2,474	5	22,376	22
<b>Total</b>	<b>\$8,902,765</b>	<b>59,362</b>	<b>\$11,878,072</b>	<b>78,851</b>

## Addendum B – Collection Data

Overpayment *recoveries* in 2016 by year of the decision.

Year Identified	Fraud	Non-fraud	Total
2016	\$1,187,853	\$5,592,843	\$6,780,696
2015	5,017,592	2,229,378	7,246,970
2014	3,262,194	890,585	4,152,779
2013	2,148,884	665,178	2,814,062
2012	1,920,655	618,007	2,538,662
2011	1,919,318	793,984	2,713,302
Greater than 5 years old	2,601,249	1,092,194	3,693,443
<b>Total collected in 2016</b>	<b>\$18,057,745</b>	<b>\$11,882,169</b>	<b>\$29,939,914</b>

Recoveries obtained through the Tax Offset Program.

Federal Tax Offset Program Recoveries	2016	2015	2014	2013	2012	2011
Fraud	\$5,713,579	\$7,495,899	\$8,206,781	\$10,082,628	\$10,769,881	\$2,869,398
Non-Fraud	591,933	867,815	1,030,964	1,563,841	0	0
Other*	549,526	692,655	409,503	58,615	30,267	21,684
<b>Total</b>	<b>\$6,855,038</b>	<b>\$9,056,369</b>	<b>\$9,647,248</b>	<b>\$11,705,084</b>	<b>\$10,800,148</b>	<b>\$2,891,082</b>

State Tax Offset Program Recoveries	2016	2015	2014	2013	2012	2011
Fraud	\$1,323,466	\$1,516,003	\$2,219,663	\$2,724,161	\$3,174,385	\$2,386,358
Non-Fraud	1,276,997	1,655,580	2,555,895	3,084,434	3,537,636	2,001,289
Other*	390,332	358,514	255,895	52,306	64,179	23,837
<b>Total</b>	<b>\$2,990,795</b>	<b>\$3,530,097</b>	<b>\$5,031,453</b>	<b>\$5,860,901</b>	<b>\$6,776,200</b>	<b>\$4,411,484</b>

\*Other includes items such as penalties and collection costs

## Addendum B continued – Collection Data

Forfeiture Assessment and Collection, Benefit Reduction Amount and Penalty Assessment and Collection 2012-2016\*.

Other Fraud-Related Activity	2016	2015	2014	2013	2012
Forfeitures Assessed	\$295,848	\$716,823	\$2,073,555	\$11,949,972	\$39,469,232
Benefit Amount Reduction	\$22,480,473	\$30,152,510	\$43,264,146	\$32,690,125	\$7,582,891
Penalties Assessed	\$3,368,650	\$2,532,081	\$2,823,964	\$2,202,840	\$20,768
Recovered for All Years Assessed	2016	2015	2014	2013	2012
Forfeitures Collected	\$1,109,493	\$1,748,211	\$3,309,935	\$8,595,250	\$9,366,384
BAR Satisfied	\$5,292,259	\$5,050,371	\$5,133,741	\$3,102,731	\$50,632
Penalties Collected	\$2,362,788	\$2,133,735	\$1,774,331	\$327,106	\$603
Overpayments Collected	2016	2015	2014	2013	2012
Fraud	\$18,057,745	\$20,719,194	\$21,773,656	\$23,990,550	\$25,223,873
Non-Fraud	\$11,882,169	\$14,787,703	\$18,686,386	\$25,112,055	\$24,945,202
Total	\$29,939,914	\$35,506,897	\$40,460,042	\$49,102,605	\$50,169,075

\*For benefit weeks before 10/12/2012 forfeitures (penalties) were assessed and future UI benefits were withheld to satisfy the assessment. With 2011 Act 198, the forfeiture concept was changed to Benefit Amount Reduction (BAR) or ineligibility for benefits in the amounts of 2 times the weekly benefit rate for the 1st act of fraud, 4 times the weekly benefit rate for the second act of fraud and 8 times the weekly benefit rate for each act subsequent to the second determination.



Department of Workforce Development

201 E. Washington Ave.

Madison, WI 53707

608-266-3131 | [dwd.wisconsin.gov](http://dwd.wisconsin.gov)

**From:** Les Braze <[lesbraze@gmail.com](mailto:lesbraze@gmail.com)>  
**Date:** February 26, 2017 at 3:27:49 PM CST  
**To:** [Janell.Knutson@dwd.wi.gov](mailto:Janell.Knutson@dwd.wi.gov)  
**Subject:** Pre-Employment Drug Testing

Dear Ms. Knutson. Please entering into the record my negative opinion and questions that need to be asked pertaining to the Pre-Employment Drug Testing issue.

Personally, I believe that private companies can ask for drug testing before they hire and make hiring decisions based on the results. My concern is how will the state pay for this proposed program? If we are unable to spend taxpayers money on education and healthcare how can this be justified?

Please provide statistics to show how this enforcement and associated expenditures weighs against losses due to refused drug tests. Chasing this measure isn't worth one dollar lost to education, and healthcare programs.

Why are we adding more government programs that intrude into private and personal issues? The current administration maintains its stance that government needs to remain out of peoples private life and reduce the size of government, isn't this measure hypocritical?

It appears this measure is akin to shooting ants with a shotgun. In comparison, the benefit payments that will be saved by this measure will be less than a drop in the bucket compared to the "unlimited state funds" this administration has allocated to fight a court order righting illegal gerrymandering. The State of Wisconsin should be protecting all its residents, not just the political incumbents and donors.

I would have no objection to drug testing if all elected officials would have to submit to a drug test annually to be sure we are experiencing sober, equal and compassionate representation. That would be worth the expenditure.

Sincerely,

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**Les Braze**  
**414-534-2893**

115TH CONGRESS  
1ST SESSION

# H. J. RES. 42

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 16, 2017

Received

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## JOINT RESOLUTION

Disapproving the rule submitted by the Department of Labor relating to drug testing of unemployment compensation applicants.

1       *Resolved by the Senate and House of Representatives*  
2   *of the United States of America in Congress assembled,*  
3   That Congress disapproves the rule submitted by the De-  
4   partment of Labor relating to “Federal-State

1 Unemployment Compensation Program; Middle Class Tax  
2 Relief and Job Creation Act of 2012 Provision on Estab-  
3 lishing Appropriate Occupations for Drug Testing of Un-  
4 employment Compensation Applicants” (published at 81  
5 Fed. Reg. 50298 (August 1, 2016)), and such rule shall  
6 have no force or effect.

Passed the House of Representatives February 15,  
2017.

Attest:

KAREN L. HAAS,  
*Clerk.*

To: Unemployment Insurance Advisory Council

CC: Janell Knutson, Chair

From: Andy Rubsam

Date: March 16, 2017

Re: *DWD v. LIRC, Beres, and Mequon Jewish Campus, Inc.* (2016AP1365, District II)

Valerie Beres worked for Mequon Jewish Campus, Inc. as a nurse. The employer's written attendance policy, which Beres signed, stated that a single no-call, no-show during an employee's probationary period was grounds for termination. Employees were required to call two hours ahead of their shift if they were going to be absent. Beres had "flu-like symptoms" and failed to call her employer before missing work on one day during her probationary period. The employer terminated Beres, who filed for unemployment benefits.

The department denied benefits on the grounds of misconduct because Beres violated the employer's attendance policy. The appeal tribunal affirmed the department's finding of misconduct under s. 108.04(5)(e). The claimant appealed to LIRC, which reversed the appeal tribunal and allowed benefits. LIRC held that, because the employer's attendance policy was stricter than the statutory attendance misconduct standard, a violation of the employer's policy is not misconduct under sub. (5)(e).

The department appealed the decision to circuit court, which reversed LIRC and held that the plain language of sub. (5)(e) requires a finding of misconduct for attendance if the employer's policy is stricter than the statutory standard. LIRC appealed to the court of appeals, which reversed the circuit court and affirmed LIRC's holding, granting due weight deference to LIRC. The court of appeals stated: "Employers are free to adopt a 'zero-tolerance' attendance policy and discharge employees for that reason, but not every discharge qualifies as misconduct for unemployment insurance purposes." Decision, ¶ 20. The court of appeals also quoted a Wisconsin Supreme Court decision regarding misconduct discharges: "The principle that

violation of a valid work rule may justify discharge but at the same time may not amount to statutory ‘misconduct’ for unemployment compensation purposes has been repeatedly recognized by this court.”<sup>1</sup> The court of appeals recommends this case for publication.

The dissent would have given LIRC no deference because the statute has been recently amended to include the enumerated types of misconduct. The dissent would have found misconduct. The dissent stated (§ 30): “At bottom, LIRC does not like the new policy the legislature and governor enacted, so it has decided to effectively rewrite it. And the majority is going along with it. It is neither LIRC’s nor this court’s role to ‘soften’ what the legislature intended by what it wrote. If the consequences of what it wrote are harsh in the eyes of some, legislators may be held accountable for it at the ballot box; new representatives and senators may be elected to affect a change in the language. But neither LIRC nor we are charged with changing the language ourselves.”

The relevant statute language provides:

Absenteeism by an employee on more than 2 occasions within the 120-day period before the date of the employee’s termination, unless otherwise specified by his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature, or excessive tardiness by an employee in violation of a policy of the employer that has been communicated to the employee, if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness.

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<sup>1</sup> *Consol. Const. Co. v. Casey*, 71 Wis. 2d 811, 819–20, 238 N.W.2d 758, 763 (1976) (Termination for failure to comply with construction company’s grooming code that requires short hair and no beards on safety grounds was *not* misconduct because long hair could be tucked in a hairnet under a helmet. But case was remanded to the department for a determination of whether employee’s beard posed a safety hazard—the refusal to shave it *could* justify a finding of misconduct.) The *Casey* court stated: “In a case where the evidence showed that an unreasonable safety hazard was created by the grooming preferences of an employee, and that such grooming preferences violated a safety rule of the employer instituted to guard against a hazard reasonably likely to harm the employer’s business interests, the denial of unemployment compensation would be justifiable.” *Id* at 820.

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 8, 2017**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2016AP1365**

**Cir. Ct. No. 2015CV358**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT,**

**PLAINTIFF-RESPONDENT,**

**V.**

**WISCONSIN LABOR AND INDUSTRY REVIEW COMMISSION,**

**DEFENDANT-APPELLANT,**

**VALARIE BERES AND MEQUON JEWISH CAMPUS, INC.,**

**DEFENDANTS.**

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APPEAL from an order of the circuit court for Ozaukee County:  
SANDY A. WILLIAMS, Judge. *Reversed.*

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

¶1 REILLY, P.J. This case addresses eligibility for unemployment benefits when an employer has terminated an employee for misconduct due to absenteeism. The Wisconsin Department of Workforce Development (DWD) challenges the Labor and Industry Review Commission’s (LIRC) interpretation of the absenteeism statute, WIS. STAT. § 108.04(5)(e) (2015-16).<sup>1</sup> Given our standard of review, we uphold LIRC’s interpretation of § 108.04(5)(e) as reasonable and reverse the circuit court.

¶2 Prompted by concerns within the employer community that eligibility for unemployment benefits was too generous, the legislature, in 2013, made wholesale changes to the unemployment benefit law,<sup>2</sup> including modifying the absenteeism ineligibility criteria from “5 or more” absences without notice in a twelve-month period to “more than 2” absences without notice in a 120-day period, “*unless otherwise specified by his or her employer in an employment manual.*” Compare WIS. STAT. § 108.04(5g)(c) (2011-12), with § 108.04(5)(e) (emphasis added). It is this final clause that is at the heart of the dispute.

¶3 DWD argues that the statute by its plain language allows an employer to have an attendance policy more restrictive than the “2 in 120” standard, whereas LIRC argues that the “2 in 120” is the default standard. According to LIRC, while employers may be more generous (i.e., utilize the former “5 in 12 month” standard), an employer may not be more restrictive than

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

<sup>2</sup> 2013 Wis. Act 20; see also *Operton v. LIRC*, 2016 WI App 37, ¶7, 369 Wis. 2d 166, 880 N.W.2d 169, review granted, 2016 WI 82, 371 Wis. 2d 616, 888 N.W.2d 236. The amendments to WIS. STAT. § 108.04(5)-(5g), enacted in 2013, became effective with respect to determinations issued on or after January 5, 2014.

the “2 in 120” default standard. As we are required to accord deference to LIRC rather than DWD, and as we conclude that LIRC’s interpretation is more reasonable given LIRC’s three-step approach, we affirm LIRC’s interpretation and reverse the circuit court.

*WIS. STAT. § 108.04(5)*

¶4 As noted, in 2013, the legislature created a two-tier standard for denial of benefits: misconduct and substantial fault.<sup>3</sup> WIS. STAT. § 108.04(5)-(5g). “Misconduct” is defined in two parts. The first part defines misconduct as willful or wanton actions demonstrating deliberate violations; carelessness or negligence of such degree to manifest culpability, wrongful intent, or evil design; or the intentional and substantial disregard of an employer’s interests. Sec. 108.04(5). In addition to these bad/intentional acts, the legislature enumerated seven specific circumstances that qualify as misconduct (i.e. no requirement to prove deliberate or bad acts on part of the employee): (1) use of drugs and alcohol, (2) theft from an employer, (3) conviction of a crime that affects the employee’s ability to perform his or her job, (4) threats or harassment at work, (5) absenteeism or excessive tardiness, (6) falsifying business records, and (7) willful or deliberate violation of a written and uniformly applied government standard or regulation. Sec. 108.04(5)(a)-(g).

¶5 This case involves the legislature’s definition of absenteeism. At the same time the legislature overhauled the unemployment insurance statute and created substantial fault, it also folded “absenteeism,” which was previously a

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<sup>3</sup> We addressed a challenge to the newly created substantial fault standard in *Operton*, 369 Wis. 2d 166, which is currently pending before the Wisconsin Supreme Court.

stand-alone statutory basis for denial of benefits under WIS. STAT. § 108.04(5g) (2011-12), into discharge for misconduct. Sec. 108.04(5)(e). The legislature further modified the definition of what constitutes “absenteeism” by removing any reference to the term “excessive” and defining misconduct as including “[a]bsenteeism by an employee on more than 2 occasions within the 120-day period before the date of the employee’s termination, unless otherwise specified by his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature ... if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism.” *Id.*

#### *Statement of Facts*

¶6 Valarie Beres, a registered nurse, was employed by Mequon Jewish Campus (MJC) and was in her ninety-day probationary period when she did not show for work on February 23, 2015, due to “flu-like symptoms.” Beres had signed MJC’s written attendance policy which provided that employees in their probationary period may have their employment terminated for one instance of “No Call No Show.” MJC’s policy required that an employee “call in 2 hours ahead of time” if they are unable to work. Beres did not call MJC prior to her shift to inform MJC that she would be unable to work. Beres was informed on February 26, 2015, that her employment was terminated.

¶7 Beres filed for unemployment benefits. DWD denied benefits on the ground of “misconduct” as Beres violated MJC’s “No Call No Show” attendance policy. Beres appealed to LIRC, who reversed on the grounds that employers may not be more restrictive than the “2 in 120” day standard and that Beres’ actions did not meet the definitions of misconduct or substantial fault. The circuit court

reversed LIRC, adopting DWD's argument that the plain language of WIS. STAT. § 108.04(5)(e) allows an employer to have its own rules as to what constitutes misconduct related to absenteeism. LIRC now appeals.

### *Standard of Review*

¶8 While DWD is the agency charged with administering the unemployment insurance program, LIRC handles all appeals of unemployment insurance claims and has final review authority of DWD's interpretations. ***Racine Harley-Davidson v. State Div. of Hearings & Appeals***, 2006 WI 86, ¶¶32, 33, 292 Wis. 2d 549, 717 N.W.2d 184; ***DILHR v. LIRC***, 161 Wis. 2d 231, 245, 467 N.W.2d 545 (1991). "Where deference to an agency decision is appropriate, we are to accord that deference to LIRC, not to the [DWD]." <sup>4</sup> ***DILHR v. LIRC***, 193 Wis. 2d 391, 397, 535 N.W.2d 6 (Ct. App. 1995) (citing ***DILHR***, 161 Wis. 2d at 245).

¶9 There are three levels of deference applicable to administrative agency interpretations: great weight, due weight, and de novo review. ***Harnischfeger Corp. v. LIRC***, 196 Wis. 2d 650, 659-60, 539 N.W.2d 98 (1995). Great weight deference, the highest level of deference, is appropriate when "(1) the agency is charged by the legislature with administering the statute at issue; (2) the interpretation of the statute is one of longstanding; (3) the agency employed its expertise or specialized knowledge in forming the interpretation; and (4) the agency's interpretation will provide uniformity in the application of the statute." ***Milwaukee Cty. v. LIRC***, 2014 WI App 55, ¶14, 354 Wis. 2d 162, 847

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<sup>4</sup> On appeal, our review is limited to whether LIRC's decision was correct. ***DILHR v. LIRC***, 193 Wis. 2d 391, 396, 535 N.W.2d 6 (Ct. App. 1995).

N.W.2d 874 (citation omitted). Due weight deference applies “when an agency has some experience in the area but has not developed the expertise that necessarily places it in a better position than a court to interpret and apply a statute.” *Id.*, ¶15 (citation omitted). De novo review is applied if the “issue before the agency is one of first impression or when an agency’s position on an issue provides no real guidance.” *Id.*, ¶16 (citation omitted).

¶10 LIRC argues for great weight deference as it asserts all four conditions are met, most notably that it has issued at least fifty uniform decisions applying WIS. STAT. § 108.04(5)(e) since the statute was amended. DWD argues for de novo review as this case involves a recently amended statute, and this specific issue is one of first impression.

¶11 We conclude that due weight deference is appropriate. LIRC clearly has “some experience” in this area as demonstrated by the fifty-plus decisions uniformly applying WIS. STAT. § 108.04(5)(e); however, we conclude that this case boils down to a legal issue of statutory analysis that is best determined by a court.<sup>5</sup> See *Milwaukee Cty.*, 354 Wis. 2d 162, ¶15. “When employing due weight deference, we uphold the agency’s interpretation and application as long as it is reasonable and another interpretation is not more reasonable.” *deBoer Transp., Inc. v. Swenson*, 2011 WI 64, ¶34, 335 Wis. 2d 599, 804 N.W.2d 658.

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<sup>5</sup> We recognize that in *Operton*, 369 Wis. 2d 166, ¶20, we concluded that de novo review was appropriate. *Operton* involved a completely new legal concept not previously in existence: substantial fault. *Id.* Here, although the statute has been significantly amended, discharge due to absenteeism was previously provided for in the statute. See WIS. STAT. § 108.04(5g) (2011-12). Secondly, in *Operton*, LIRC’s decision was contrary to its previous decisions on the same issue, thereby providing no guidance to us on the issue. *Operton*, 369 Wis. 2d 166, ¶¶16-19. We note that under either level of deference, de novo or due weight, we would reach the same conclusion in this case.

### *Analysis*

¶12 Employing due weight deference, we examine LIRC’s interpretation and application of WIS. STAT. § 108.04(5)(e). As noted above, DWD denied Beres’ benefits because she acknowledged receipt of MJC’s written employment manual, exceeded the employer’s absenteeism standard (one absence), and failed to provide notice. DWD found that Beres’ illness was a valid reason for her absence. DWD also found that because Beres did not give notice prior to her shift under the employer’s policy, she committed an act of misconduct under § 108.04(5)(e).

¶13 LIRC reversed DWD. LIRC utilizes a three-step approach in analyzing discharges. First, LIRC determines whether the employee was discharged for misconduct by engaging in any of the actions enumerated in WIS. STAT. § 108.04(5)(a)-(g). If not, LIRC then determines whether the employee’s actions constitute misconduct under § 108.04(5), the codified misconduct definition from *Boynton Cab Co. v. Neubeck*, 237 Wis. 249, 259-60, 296 N.W. 636 (1941), and lastly, if misconduct is not found, LIRC then determines whether the discharge was for substantial fault.

¶14 LIRC agreed with DWD that Beres failed to call or show up for her scheduled shift on February 23, 2015, due to illness. LIRC found that MJC’s written attendance policy was more strict than the “default standard” set forth in WIS. STAT. § 108.04(5)(e) and that LIRC had previously held in *Gonzalez-Santan v. Therm-Tech of Waukesha Inc.*, UI Hearing No. 14608989MW at 3 (LIRC Mar. 10, 2015), <http://lirc.wisconsin.gov/ucdecns/4092.htm>, that while an employee’s absenteeism “might still be considered misconduct,” absenteeism

based on an attendance policy more strict than the default standard “would not be misconduct under paragraph (5)(e).”

¶15 LIRC then proceeded to address whether Beres’ actions constituted misconduct under *Boynton Cab* as codified in WIS. STAT. § 108.04(5). LIRC found that Beres’ one absence due to illness and her failure to notify MJC prior to her absence was “an isolated incident of ordinary negligence resulting from her ill health.” LIRC found that Beres’ discharge was not for misconduct connected with her employment. Lastly, LIRC examined whether Beres’ discharge was for substantial fault and found that Beres did not have reasonable control over her absence due to her illness and that her failure to notify MJC was due to inadvertence related to her illness.

¶16 LIRC has noted that the absenteeism provision in WIS. STAT. § 108.04(5)(e) is “unique” as it “enables an employer to substitute a different standard to suit its needs, in this case a different quantity of absences.” *Gonzalez-Santan*, UI Hearing No. 14608989MW at 3. In *Gonzalez-Santan*, LIRC determined that an employer’s attendance policy could be “more generous” than the default standard, but if an employer’s policy is “more strict” than the default standard, then the employee’s behavior may “fall short of meeting the default standard in paragraph (5)(e).” *Id.* LIRC’s reasoning, both in this case and in *Gonzalez-Santan*, is that the default standard, or misconduct/substantial fault, must be met in order to deny unemployment benefits due to absenteeism.

¶17 DWD argues that the plain language of the statute allows for an employer to enact a policy more strict than the default standard; therefore, Beres’ single absence without notice meets the statutory definition of misconduct. We conclude that LIRC’s interpretation of a default standard within WIS. STAT.

§ 108.04(5)(e) is more reasonable. The fact that LIRC considers the default standard of “2 in 120” days to be a statutory floor for a § 108.04(5)(e) finding does not mean that misconduct under § 108.04(5) cannot be found for violating an employer’s more restrictive attendance policy. LIRC’s interpretation of § 108.04(5)(e) in conjunction with § 108.04(5) and public policy regarding unemployment benefits is a reasonable application of the unemployment benefit law as related to absenteeism.

¶18 Wisconsin unemployment statutes are “remedial in nature,” *Princess House, Inc. v. DILHR*, 111 Wis. 2d 46, 62, 330 N.W.2d 169 (1983), and any language resulting in forfeiture of unemployment benefits “should be read strictly to soften its severity,” *Boynton Cab*, 237 Wis. at 259. “The law presumes that the employee is not disqualified from unemployment compensation.” *Consolidated Constr. Co. v. Casey*, 71 Wis. 2d 811, 820, 238 N.W.2d 758 (1976). “[T]he [Unemployment Compensation Act] should be ‘liberally construed to effect unemployment compensation coverage for workers who are *economically dependent* upon others in respect to their wage-earning status.’” *Larson v. LIRC*, 184 Wis. 2d 378, 390, 516 N.W.2d 456 (Ct. App. 1994) (alteration in original) (quoting *Princess House*, 111 Wis. 2d at 62). The purpose of unemployment insurance benefits is to serve as a bridge for employees from one job to the next or “to cushion the effect of unemployment,” absent “actions or conduct evincing such willful or wanton disregard of an employer’s interests.” WIS. STAT. § 108.04(5); *Boynton Cab*, 237 Wis. at 258-59.

¶19 An example illustrates the reasonableness of LIRC’s interpretation that Beres’ actions did not rise to the level to deny benefits. Assume Beres was found to be in a tavern during her scheduled shift and, when called, lied about being sick. At the opposite end of the spectrum, assume that Beres was involved

in a serious car accident within two hours of the start of her shift due to no fault of her own and required hospitalization. In both of these examples, Beres would be in violation of MJC's attendance policy. LIRC's interpretation of WIS. STAT. § 108.04(5) and (5)(e) allows an examination of the employee's conduct in relation to both the employer's policy as well as the policy that unemployment benefits should only be denied if the employee engages in actions constituting misconduct or substantial fault. The first example would likely qualify as misconduct under both § 108.04(5) and MJC's written attendance policy, whereas the second example is a technical violation of MJC's attendance policy, but is not an act of misconduct or substantial fault.

¶20 Employers are free to adopt a “zero-tolerance” attendance policy and discharge employees for that reason, but not every discharge qualifies as misconduct for unemployment insurance purposes. As our supreme court explained, “The principle that violation of a valid work rule may justify discharge but at the same time may not amount to statutory ‘misconduct’ for unemployment compensation purposes has been repeatedly recognized by this court.” *Casey*, 71 Wis. 2d at 819-20. Similarly, this court found in *Operton* that employers have “the right to have high expectations of its employees and also [have] the right to discharge an employee for not meeting their expectations,” but we concluded that high expectations were insufficient to deny unemployment benefits. *See Operton*, 369 Wis. 2d 166, ¶31.

### *Conclusion*

¶21 Under due weight deference, we conclude that LIRC's interpretation and application of WIS. STAT. § 108.04(5) and (5)(e) is reasonable and more reasonable than an interpretation that can lead to absurd results. Accordingly, we

conclude that LIRC properly determined that Beres' discharge was not for misconduct connected with her employment under § 108.04(5)(e). We reverse the circuit court's contrary order and affirm LIRC's decision and remand for further proceedings consistent with this opinion.

*By the Court.*—Order reversed.

Recommended for publication in the official reports.

**No. 2016AP1365(D)**

¶22 GUNDRUM, J. (*dissenting*). I dissent because the majority affords undue deference to LIRC’s interpretation of WIS. STAT. § 108.04(5)(e), and in doing so, adopts an incorrect interpretation of the statute.

¶23 To begin, the majority incorrectly affords LIRC’s interpretation “due weight” deference. I believe de novo review is appropriate because the statutory language in question is new and the correct interpretation of this language is an issue “of first impression.” See *Milwaukee Cty. v. LIRC*, 2014 WI App 55, ¶16, 354 Wis. 2d 162, 847 N.W.2d 874 (citation omitted). As the majority points out, the statute “has been significantly amended.” Majority, ¶11 n.5. LIRC’s legal interpretation of these changes by the legislature is entitled to no deference. This is precisely the type of situation where courts should independently review LIRC’s interpretation of a statute, so LIRC does not continue to erroneously apply the statute.

¶24 WISCONSIN STAT. § 108.04(5)(e) defines misconduct as:

Absenteeism by an employee on more than 2 occasions within the 120-day period before the date of the employee’s termination, unless otherwise specified by his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature, or excessive tardiness by an employee in violation of a policy of the employer that has been communicated to the employee, if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness.

LIRC interprets this new language to mean that an employer policy defining misconduct may be less strict than the WIS. STAT. § 108.04(5)(e) “default

standard” of more than two absences within 120 days, but may not be more strict. LIRC misreads the statute.

¶25 The language plainly states that the default standard applies “unless otherwise specified ... in an employment manual of which the employee has acknowledged receipt with his or her signature.” Nothing in WIS. STAT. § 108.04(5)(e) suggests the legislature intended “unless otherwise specified ...” to mean only “unless a less strict policy is specified.” LIRC simply reads that language into the statute—never mind the legislature.

¶26 In addition, whether a policy is more or less strict than the default standard may be in the eye of the beholder. Take the old “5 in 12 months” standard for example. The majority refers to that standard as “more generous” than the “more than 2 occasions within the 120-day period” standard, but is it? It would not seem “more generous” to an employee that had only two absences in each of three consecutive 120-day periods, for that conduct would not be considered misconduct under the new default standard (because it is not more than two absences in any given 120-day period), but under the old standard it would be considered “excessive” and affect unemployment benefits (because it amounts to more than five absences in twelve months). Or consider an employer policy subjecting an employee to termination on the basis of misconduct if he/she had more than one unexcused absence within thirty days. Would that be more or less strict than the default standard of termination on the basis of misconduct for more than two unexcused absences within 120 days? Under a “more than 1 in 30” policy, an employee could be terminated for misconduct if he/she had two absences within a thirty-day period, but under the default standard, the employee could not be terminated for misconduct unless he/she also had one more absence within the following ninety days. By this view, the employer policy might seem

more strict than the default standard. The employer policy would seem to be less strict than the default policy, however, if an employee had one unexcused absence in each of three or even four consecutive months. Under the employer's policy, the employee could not be terminated for misconduct because he/she was not absent more than one time within thirty days. Under the default standard, however, the employee could be terminated for misconduct—and lose unemployment benefits—because he/she would have been absent more than two times in 120 days.

¶27 LIRC of course recognizes all of this, which is why it really interprets WIS. STAT. § 108.04(5)(e) as requiring that an employee be in violation of *both* the default standard *and* his/her employer's standard in order for the termination to be considered to have been for misconduct.<sup>1</sup> This interpretation of course is completely inconsistent with the plain language of the statute, which, again, defines misconduct as “[a]bsenteeism by an employee on more than 2 occasions within the 120-day period before the date of the employee's termination, *unless otherwise specified ... in an employment manual.*” (Emphasis added.)

¶28 The legislature did not intend for LIRC to decide which employer policies are more or less strict than the default standard, because it did not write the statute that way. The legislature did not intend that absenteeism would only be considered misconduct if the employee was in violation of *both* his/her employer's standard *and* the default standard, because it did not write the statute that way. The legislature wrote the statute as it did to allow employers to set standards for

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<sup>1</sup> Of course, presumably the matter would not even be before LIRC if the employee had not been terminated for violating the employer's standard.

misconduct that may work better for their individual businesses than the default standard, and those standards would also serve as the standard for misconduct for purposes of unemployment benefits—whether the employer’s standard was more or less strict than the default standard. That is why the legislature wrote “unless otherwise specified.” DWD correctly notes, “The statute is clear that if the employer satisfies [the “unless” conditions], the statute’s default standard is *not* applicable.”

¶29 Other language of WIS. STAT. § 108.04(5)(e) should also be considered. As DWD points out:

A disqualification under the *tardiness* prong of [§ 108.04](5)(e) requires only that the employer “communicate” the employer’s tardiness policy to the employee. Neither the default standard nor the tardiness provision requires that the employer communicate the absence/tardiness policy *in writing*, much less prove an “acknowledged receipt [of a policy] with the employee’s signature.” (Emphasis added.)

I agree with DWD that it is unlikely

the Legislature would have created the provision encouraging employer policies on absenteeism—with disqualification conditioned on written notice to the employee and proof of receipt by signed acknowledgement—solely, as LIRC contends, to support disqualification by standards that are *less strict* than the statutory default standard. The default standard was legislated in the same sentence comprising [§ 108.04](5)(e) but requires no notice of that standard to the employee in order to effect a misconduct disqualification.

The fact the legislature wrote into para. (5)(e) a more stringent requirement in order for a policy “otherwise specified” by an employer to have effect supports the plain reading of para. (5)(e) discussed above.

¶30 At bottom, LIRC does not like the new policy the legislature and governor enacted, so it has decided to effectively rewrite it. And the majority is going along with it. It is neither LIRC's nor this court's role to "soften" what the legislature intended by what it wrote. If the consequences of what it wrote are harsh in the eyes of some, legislators may be held accountable for it at the ballot box; new representatives and senators may be elected to affect a change in the language. But neither LIRC nor we are charged with changing the language ourselves.

¶31 I would affirm the circuit court.

To: Unemployment Insurance Advisory Council  
CC: Janell Knutson, Chair  
From: Andy Rubsam  
Date: March 16, 2017  
Re: 2017-2019 Budget Bill (SB 30/AB 64)

*Elimination of LIRC*

The Governor's 2017-2019 Budget Bill provides for the elimination of the Labor and Industry Review Commission. The Commission currently reviews unemployment insurance, worker's compensation, and equal rights decisions issued by administrative law judges. The Budget Bill proposes that, instead of LIRC, the Division Administrator of the respective Divisions will review administrative law judges' decisions. A party may, as now, seek judicial review of an Administrator's decision in circuit court.

If a litigant files a petition for LIRC review before the effective date of the Budget Bill, the case will stay with LIRC for it to decide. If any cases are still pending before LIRC on the latter of January 1, 2018 or on the first day of the 6<sup>th</sup> month beginning after publication of the Budget Bill, the cases will be transferred to the Division Administrator for issuing a decision.

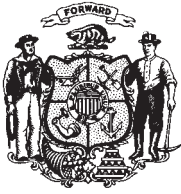
On the effective date of the budget (the latter of July 1, 2017 or the day after publication of the Budget Bill), litigants will file appeals of appeal tribunal decisions to the Division Administrator, not to LIRC.

*Mobility Grant Study*

The Budget Bill requires the department conduct a study regarding the feasibility of establishing a program, using a social impact bond model, to assist claimants for unemployment insurance benefits by offering them mobility grants to relocate to areas with more favorable employment opportunities.

*Public Benefits and Chronic Absenteeism Study*

The departments of children and families, public instruction, health services, and workforce development shall collaborate to prepare a report on the population overlap of families that receive public benefits and children who are absent from school for 10 percent or more of the school year. The report is due December 30, 2018 to the Governor and Legislature.



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-1938/1  
ALL:all

## 2017 SENATE BILL 30

February 8, 2017 - Introduced by JOINT COMMITTEE ON FINANCE, by request of Governor Scott Walker. Referred to Joint Committee on Finance.

1     **AN ACT relating to:** state finances and appropriations, constituting the  
2             executive budget act of the 2017 legislature.

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*Analysis by the Legislative Reference Bureau*

**INTRODUCTION**

This bill is the “executive budget bill” under section 16.47 (1) of the statutes. It contains the governor’s recommendations for appropriations for the 2017-2019 fiscal biennium.

The bill repeals and recreates the appropriation schedule in chapter 20 of the statutes, thereby setting the appropriation levels for the 2017-2019 fiscal biennium. The descriptions that follow relate to the most significant changes in the law that are proposed in the bill. In most cases, changes in the amounts of existing spending authority and changes in the amounts of bonding authority under existing bonding programs are not discussed.

For additional information concerning this bill, see the Department of Administration’s publication *Budget in Brief* and the executive budget books, the Legislative Fiscal Bureau’s summary document, and the Legislative Reference Bureau’s drafting files, which contain separate drafts on each policy item.

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**GUIDE TO THE BILL**

As is the case for all other bills, the sections of the budget bill that affect statutes are organized in ascending numerical order of the statutes affected.

Treatments of prior session laws (styled “laws of [year], chapter ...” from 1848 to 1981, and “[year] Wisconsin Act ...” beginning with 1983) are displayed next by year of original enactment and by act number.

**SENATE BILL 30**

The remaining sections of the budget bill are organized by type of provision and, within each type, alphabetically by state agency. The first two digits of the four-digit section number indicate the type of provision:

- 91XX Nonstatutory provisions.**
- 92XX Fiscal changes.**
- 93XX Initial applicability.**
- 94XX Effective dates.**

The remaining two digits indicate the state agency or subject area to which the provision relates:

- XX01 Administration.**
- XX02 Agriculture, Trade and Consumer Protection.**
- XX03 Arts Board.**
- XX04 Building Commission.**
- XX05 Child Abuse and Neglect Prevention Board.**
- XX06 Children and Families.**
- XX07 Circuit Courts.**
- XX08 Corrections.**
- XX09 Court of Appeals.**
- XX10 District Attorneys.**
- XX11 Educational Approval Board.**
- XX12 Educational Communications Board.**
- XX13 Elections Commission.**
- XX14 Employee Trust Funds.**
- XX15 Employment Relations Commission.**
- XX16 Ethics Commission.**
- XX17 Financial Institutions.**
- XX18 Governor.**
- XX19 Health and Educational Facilities Authority.**
- XX20 Health Services.**
- XX21 Higher Educational Aids Board.**
- XX22 Historical Society.**
- XX23 Housing and Economic Development Authority.**
- XX24 Insurance.**
- XX25 Investment Board.**
- XX26 Joint Committee on Finance.**
- XX27 Judicial Commission.**
- XX28 Justice.**
- XX29 Legislature.**
- XX30 Lieutenant Governor.**
- XX31 Local Government.**
- XX32 Military Affairs.**
- XX33 Natural Resources.**

**SENATE BILL 30**

- XX34 Public Defender Board.**
- XX35 Public Instruction.**
- XX36 Public Lands, Board of Commissioners of.**
- XX37 Public Service Commission.**
- XX38 Revenue.**
- XX39 Safety and Professional Services.**
- XX40 Secretary of State.**
- XX41 State Fair Park Board.**
- XX42 Supreme Court.**
- XX43 Technical College System.**
- XX44 Tourism.**
- XX45 Transportation.**
- XX46 Treasurer.**
- XX47 University of Wisconsin Hospitals and Clinics Authority;**  
**Medical College of Wisconsin.**
- XX48 University of Wisconsin System.**
- XX49 Veterans Affairs.**
- XX50 Wisconsin Economic Development Corporation.**
- XX51 Workforce Development.**
- XX52 Other.**

For example, for general nonstatutory provisions relating to the State Historical Society, see SECTION 9122. For any agency that is not assigned a two-digit identification number and that is attached to another agency, see the number of the latter agency. For any other agency not assigned a two-digit identification number or any provision that does not relate to the functions of a particular agency, see number “52” (**Other**) within each type of provision.

Separate section numbers and headings appear for each type of provision and for each state agency, even if there are no provisions included in that section number and heading. Section numbers and headings for which there are no provisions will be deleted in enrolling and will not appear in the published act.

Following is a list of the most commonly used abbreviations appearing in the analysis.

DATCP ... Department of Agriculture, Trade and Consumer Protection  
 DCF ..... Department of Children and Families  
 DETF ..... Department of Employee Trust Funds  
 DFI ..... Department of Financial Institutions  
 DHS ..... Department of Health Services  
 DMA ..... Department of Military Affairs  
 DNR ..... Department of Natural Resources  
 DOA ..... Department of Administration  
 DOC ..... Department of Corrections  
 DOJ ..... Department of Justice  
 DOR ..... Department of Revenue

**SENATE BILL 30**

DOT ..... Department of Transportation  
DPI ..... Department of Public Instruction  
DSPS ..... Department of Safety and Professional Services  
DVA ..... Department of Veterans Affairs  
DWD ..... Department of Workforce Development  
JCF ..... Joint Committee on Finance  
LRB ..... Legislative Reference Bureau  
OCI ..... Office of the Commissioner of Insurance  
PSC ..... Public Service Commission  
SHS ..... State Historical Society  
TCS ..... Technical College System  
UW ..... University of Wisconsin  
WEDC .... Wisconsin Economic Development Corporation  
WHEDA .. Wisconsin Housing and Economic Development Authority  
WHEFA ... Wisconsin Health and Educational Facilities Authority

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**AGRICULTURE**

This bill changes the amount of license fees and agricultural chemical cleanup surcharges that manufacturers and distributors of fertilizer and of soil or plant additives, manufacturers and labelers of pesticides, dealers and distributors of restricted-use pesticides, and commercial applicators of pesticides are required to pay to DATCP, and provides that many of these fees are reduced depending on the amount available in the agricultural chemical cleanup fund. The bill also requires a licensed pesticide manufacturer or labeler who stops selling or distributing a pesticide to pay a final license fee and a final agricultural chemical cleanup surcharge, and changes the amount of each license fee received from a pesticide manufacturer or labeler that is deposited into the environmental fund. The bill also eliminates the requirement that a pesticide manufacturer or labeler pay an environmental cleanup surcharge for certain pesticide products intended for use on wood, and creates a reduced feed inspection fee and weights and measures inspection fee for licensed commercial feed distributors who distribute less than 200 tons of commercial feed per year. In addition, the bill eliminates the classification of an “exempt buyer,” which under current law allows certain licensed commercial feed manufacturers or distributors to claim credits against certain required inspection fees. The bill also increases the maximum amount of corrective action costs, incurred in response to a harmful discharge of an agricultural chemical, that may be incurred while still remaining eligible for a 75 percent reimbursement from DATCP.

This bill repeals the farm to school program, under which DATCP promotes programs that connect schools with nearby farms to provide children with locally produced foods in school meals, and eliminates the farm to school council, which advises DATCP and reports to the legislature about the needs and opportunities for farm to school programs.

This bill increases the general obligation bonding authority for the Soil and Water Resource Management Program, which awards grants to counties to help fund their land and water conservation activities, by \$7,000,000. The bill also requires

**SENATE BILL 30**

academic staff teaching workloads. The plan must also include policies for rewarding faculty and instructional academic staff who teach more than a standard academic load. The Board of Regents and the chancellor of UW-Madison must revise their personnel systems and employment relation policies and practices as necessary to be consistent with the plan. In addition, the Board of Regents and UW-Madison chancellor must include aggregate data on faculty and instructional academic staff teaching hours in annual accountability reports required under current law. The Board of Regents must also publish the aggregate data on the accountability dashboard on the UW System's Internet site and provide links to individual faculty and academic staff member teaching hours on that dashboard.

This bill makes a change to the residency requirement for the fee remission program for veterans' spouses and children at UW schools and technical colleges. Under the bill, this fee remission program for a veteran's spouse and children applies if the veteran was not a resident of this state when he or she entered the armed forces but resided in this state for at least five consecutive years immediately preceding registration at a UW school or technical school.

This bill requires the Board of Regents and each UW school to be committed to freedom of expression and inquiry and to protect and promote this freedom for members of the UW System's community.

This bill transfers responsibility for leases of real property occupied by the Board of Regents for use as student housing from DOA to the Board of Regents.

During the 2017-19 fiscal biennium, this bill prohibits the Board of Regents from using the procedure for state agencies to supplement their budgets from compensation reserves.

This bill eliminates the Educational Approval Board and transfers all of its functions to DSPS.

Under this bill, the College Savings Program Board, which administers the EdVest program, is an agency attached to DFI instead of being attached to DOA.

**OTHER EDUCATIONAL AND CULTURAL AGENCIES**

This bill requires SHS to operate the Circus World Museum. Current law allows SHS, which owns the museum, to enter into a lease with the Circus World Museum Foundation, Inc., to operate the museum. The bill eliminates SHS's authority to enter into that lease and provides that, if a lease is in effect on the bill's effective date, the lease terminates on January 1, 2018, or the termination date specified in the lease, whichever is earlier. Also, for individuals employed by the foundation when the lease terminates, the bill requires SHS to offer employment to those individuals, but only if vacant authorized or limited term positions are available and SHS has funding for those positions.

**EMPLOYMENT**

Generally, under current law, certain workers employed on the site of projects of public works 1) must be paid the prevailing wage rate, as determined under the federal Davis-Bacon Act; and 2) may not be required or permitted to work more than 10 hours per day and 40 hours per week, unless they are paid overtime pay for all excess hours. The prevailing wage laws include two separate laws: one applies to certain projects of public works to which the state is a party (state prevailing wage

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law), and one applies to projects under a contract based on bids to which the state is a party for the construction or improvement of highways (highway prevailing wage law). This bill eliminates the state prevailing wage law and the highway prevailing wage law.

Under current law, the Labor and Industry Review Commission (LIRC) reviews administrative decisions of DWD relating to unemployment insurance (UI) and discrimination in employment or in equal enjoyment of places of public accommodation (discrimination) and reviews administrative decisions of the Division of Hearings and Appeals relating to worker's compensation. Review by LIRC is a prerequisite to any judicial review. This bill eliminates LIRC and instead provides for administrative review of administrative decisions relating to worker's compensation by the administrator of the Division of Hearings and Appeals and provides for administrative review of administrative decisions relating to UI and discrimination by the respective administrator of the division in DWD that administers the law in question.

This bill creates statutory offers of settlement procedures for resolving complaints involving violations of the state fair employment law, family and medical leave law, or organ and bone marrow donation law. The bill allows the parties to such complaints to make settlement offers to resolve claims and, in cases where a settlement offer is declined, provides for cost and fee shifting or interest depending on whether the complainant receives a more favorable award than what was included in the settlement offer.

This bill allows DWD, as part of its workforce training program, commonly referred to as the Fast Forward Program, to award grants for any of the following:

1. Projects to provide high school students with industry-recognized certifications in high-demand fields.
2. Programs that train teachers and that train individuals to become teachers, including teachers in dual enrollment programs.
3. Partnerships designed to improve workforce retention through employee support and training.
4. Increasing the number of students who are placed with employers for internships.
5. A nursing training program for middle school and high school students.

In addition, this bill requires DWD to allocate at least \$5,000,000 in fiscal year 2017-18 for grants to technical colleges for workforce training programs and at least \$1,500,000 in the fiscal biennium for the grants described above related to nursing credentials and allows DWD to allocate up to \$1,000,000 to fund grants for the creation and operation of mobile classrooms to provide job skills training to individuals in underserved areas of this state, including inmates at correctional facilities who are preparing for reentry into the workforce. The bill also allows DWD to allocate up to \$50,000 in each fiscal year to fund the upkeep and maintenance of those mobile classrooms.

Under current law, the testimony at a hearing held under the worker's compensation law must be taken down by a stenographic reporter or, if there is an

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emergency, recorded by a recording machine. The bill allows the testimony to be recorded by a recording machine regardless of whether there is an emergency.

This bill requires DWD to designate an employee to serve as an apprenticeship coordinator to expand and streamline apprenticeship program offerings for inmates in correctional facilities.

This bill requires DWD to allocate \$50,000 for the purpose of conducting a study regarding the feasibility of establishing a program, using a social impact bond model, to assist claimants for unemployment insurance benefits by offering them mobility grants to relocate to areas with more favorable employment opportunities.

**ENVIRONMENT****WATER QUALITY**

Under current law, a person operating a public water supply system must prepare a water supply plan, approved by DNR, that shows the proposed water supply service areas and an assessment of the environmental and economic impacts of carrying out the water supply plan, along with other information. If the planning area is within an area for which an areawide water quality planning agency has been designated, the agency is responsible for designating the proposed water supply service area in the water supply plan. This bill provides that the Great Lakes - St. Lawrence River Basin Water Resources Council may designate, in a water supply plan, the water supply service area for a public water supply system making a withdrawal from the Great Lakes basin. Under the bill, water supply service areas designated by the council do not need to be consistent with the approved areawide water quality management plan for the planning area.

This bill also requires DNR and DATCP to conduct a study and make recommendations on transferring the regulation of concentrated animal feeding operations (CAFOs) from DNR to DATCP and to submit a joint report to the governor, JCF, and appropriate standing committees of the legislature by December 31, 2018, stating whether DATCP may act as the federal EPA's delegated agent in regulating CAFOs, whether improvements would result from the transfer, and whether the transfer would have a financial impact on the water pollutant discharge elimination system (WPDES) permit program. If the departments recommend the transfer, the departments must also recommend in the report an effective date for the transfer and the number of positions and funding to be transferred and must describe how rules that have already been promulgated by DNR and DATCP will be affected.

In addition, this bill lowers the interest rate for certain loans for projects to control water pollution, provided under the Clean Water Fund Program for the 2017-19 biennium or later, from 70 percent of the market interest rate to 55 percent of the market interest rate. This bill also eliminates the financial hardship assistance program under the Clean Water Fund Program and modifies the requirements for municipalities to receive low-interest loans under the Clean Water Fund Program. Under current law, a municipality may obtain financial hardship assistance, in the form of a grant or a loan at a lowered interest rate, for certain water quality projects if 1) the median household income in the municipality is 80 percent or less of the median household income in this state; and 2) the estimated annual wastewater treatment charges per residential user in the municipality exceeds 2

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1 known as a “commission”, but is not a commission for purposes of s. 15.06. ~~The parole~~  
2 ~~commission created under s. 15.145 (1) shall be known as a “commission”, but is not~~  
3 ~~a commission for purposes of s. 15.06.~~

4 **SECTION 11.** 15.01 (4) of the statutes is amended to read:

5 15.01 (4) “Council” means a part-time body appointed to function on a  
6 continuing basis for the study, and recommendation of solutions and policy  
7 alternatives, of the problems arising in a specified functional area of state  
8 government, except the council on physical disabilities has the powers and duties  
9 specified in s. 46.29 (1) and (2), the state council on alcohol and other drug abuse has  
10 the powers and duties specified in s. 14.24, the uniform dwelling code council has the  
11 powers and duties specified in s. 101.596, and the electronic recording council has the  
12 powers and duties specified in s. 706.25 (4).

13 **SECTION 12.** 15.06 (1) (bm) of the statutes is created to read:

14 15.06 (1) (bm) The employment relations commission shall consist of a  
15 chairperson, appointed by the governor for a 6-year term, except that the term of the  
16 first chairperson appointed after the effective date of this paragraph .... [LRB inserts  
17 date], expires on March 1, 2023.

18 **SECTION 13.** 15.06 (2) (a) of the statutes is amended to read:

19 15.06 (2) (a) Except as provided in par. (b), each commission may annually elect  
20 officers other than a chairperson from among its members as its work requires. Any  
21 officer may be reappointed or reelected. At the time of making new nominations to  
22 commissions, the governor shall designate a member or nominee of each commission,  
23 other than the public service commission, and except as provided in par. (b), to serve  
24 as the commission’s chairperson for a 2-year term expiring on March 1 of the  
25 odd-numbered year ~~except that the labor and industry review commission shall elect~~

**SENATE BILL 30****SECTION 13**

1 ~~one of its members to serve as the commission's chairperson for a 2-year term~~  
2 ~~expiring on March 1 of the odd-numbered year.~~

3 **SECTION 14.** 15.06 (3) (a) 4. of the statutes is repealed.

4 **SECTION 15.** 15.06 (3) (c) of the statutes is repealed.

5 **SECTION 16.** 15.06 (6) of the statutes is amended to read:

6 15.06 (6) QUORUM. A majority of the membership of a commission constitutes  
7 a quorum to do business, except that vacancies shall not prevent a commission from  
8 doing business. This subsection does not apply to the ~~parole commission, elections~~  
9 ~~commission, or ethics commission.~~

10 **SECTION 17.** 15.06 (10) of the statutes is amended to read:

11 15.06 (10) COMPENSATION. ~~Members~~ A member of the elections commission and  
12 ~~members~~ a member of the ethics commission shall receive a per diem of \$50 for each  
13 ~~day they were actually and necessarily engaged in performing their duties a per diem~~  
14 ~~equal to the amount prescribed under s. 753.075 (3) (a) for reserve judges sitting in~~  
15 ~~circuit court on which the member attends or participates by audio or video~~  
16 conference call in a meeting of the member's commission.

17 **SECTION 18.** 15.07 (3) (b) of the statutes is amended to read:

18 15.07 (3) (b) Except as provided in par. ~~par.~~ (bm) and (c), each board not  
19 covered under par. (a) shall meet annually, and may meet at other times on the call  
20 of the chairperson or a majority of its members. ~~The auctioneer board, the cemetery~~  
21 ~~board, and the real estate appraisers board shall also meet on the call of the secretary~~  
22 ~~of safety and professional services or his or her designee within the department.~~

23 **SECTION 19.** 15.07 (3) (bm) 3. of the statutes is repealed.

24 **SECTION 20.** 15.07 (3) (bm) 6. of the statutes is repealed.

25 **SECTION 21.** 15.07 (3) (c) of the statutes is created to read:

**SENATE BILL 30****SECTION 183**

STATUTE, AGENCY AND PURPOSE	SOURCE	TYPE	2017-2018	2018-2019
20.410 DEPARTMENT TOTALS				
GENERAL PURPOSE REVENUE			1,126,557,700	1,127,326,700
PROGRAM REVENUE			115,704,100	117,680,300
FEDERAL			(2,589,900)	(2,589,900)
OTHER			(59,911,700)	(60,434,500)
SERVICE			(53,202,500)	(54,655,900)
SEGREGATED REVENUE			-0-	-0-
OTHER			(-0-)	(-0-)
TOTAL-ALL SOURCES			1,242,261,800	1,245,007,000

**20.425 Employment Relations Commission**

## (1) LABOR RELATIONS

(a) General program operations	GPR	A	985,500	986,400
(i) Fees, collective bargaining training, publications, and appeals	PR	A	145,600	145,600

## (1) PROGRAM TOTALS

GENERAL PURPOSE REVENUE	985,500	986,400
PROGRAM REVENUE	145,600	145,600
OTHER	(145,600)	(145,600)
TOTAL-ALL SOURCES	1,131,100	1,132,000

## 20.425 DEPARTMENT TOTALS

GENERAL PURPOSE REVENUE	985,500	986,400
PROGRAM REVENUE	145,600	145,600
OTHER	(145,600)	(145,600)
TOTAL-ALL SOURCES	1,131,100	1,132,000

**20.427 Labor and Industry Review Commission**

## (1) REVIEW COMMISSION

(a) General program operations, review commission	GPR	A	121,300	-0-
(g) Agency collections	PR	C	-0-	-0-
(k) Unemployment administration	PR-S	C	1,103,700	-0-
(km) Equal rights; other moneys	PR-S	C	112,400	-0-

**SENATE BILL 30****SECTION 183**

<b>STATUTE, AGENCY AND PURPOSE</b>	<b>SOURCE</b>	<b>TYPE</b>	<b>2017-2018</b>	<b>2018-2019</b>
(m) Federal moneys	PR-F	C	-0-	-0-
(ra) Worker's compensation operations fund; worker's compensation activities	SEG	A	382,000	-0-
(1) PROGRAM TOTALS				
GENERAL PURPOSE REVENUE			121,300	-0-
PROGRAM REVENUE			1,216,100	-0-
FEDERAL			(-0-)	(-0-)
OTHER			(-0-)	(-0-)
SERVICE			(1,216,100)	(-0-)
SEGREGATED REVENUE			382,000	-0-
OTHER			(382,000)	(-0-)
TOTAL-ALL SOURCES			1,719,400	-0-
20.427 DEPARTMENT TOTALS				
GENERAL PURPOSE REVENUE			121,300	-0-
PROGRAM REVENUE			1,216,100	-0-
FEDERAL			(-0-)	(-0-)
OTHER			(-0-)	(-0-)
SERVICE			(1,216,100)	(-0-)
SEGREGATED REVENUE			382,000	-0-
OTHER			(382,000)	(-0-)
TOTAL-ALL SOURCES			1,719,400	-0-
<b>20.432 Board on Aging and Long-Term Care</b>				
(1) IDENTIFICATION OF THE NEEDS OF THE AGED AND DISABLED				
(a) General program operations	GPR	A	1,360,100	1,360,200
(i) Gifts and grants	PR	C	-0-	-0-
(k) Contracts with other state agencies	PR-S	C	1,564,500	1,631,200
(kb) Insurance and other information, counseling and assistance	PR-S	A	508,600	506,100
(m) Federal aid	PR-F	C	-0-	-0-
(1) PROGRAM TOTALS				
GENERAL PURPOSE REVENUE			1,360,100	1,360,200
PROGRAM REVENUE			2,073,100	2,137,300
FEDERAL			(-0-)	(-0-)
OTHER			(-0-)	(-0-)

**SENATE BILL 30****SECTION 183**

STATUTE, AGENCY AND PURPOSE	SOURCE	TYPE	2017-2018	2018-2019
TOTAL-ALL SOURCES			1,467,500	1,469,500
<b>20.440 Health and Educational Facilities Authority</b>				
(1) CONSTRUCTION OF HEALTH AND EDUCATIONAL FACILITIES				
(a) General program operations	GPR	C	-0-	-0-
(1) PROGRAM TOTALS				
GENERAL PURPOSE REVENUE			-0-	-0-
TOTAL-ALL SOURCES			-0-	-0-
(2) RURAL HOSPITAL LOAN GUARANTEE				
(a) Rural assistance loan fund	GPR	C	-0-	-0-
(2) PROGRAM TOTALS				
GENERAL PURPOSE REVENUE			-0-	-0-
TOTAL-ALL SOURCES			-0-	-0-
20.440 DEPARTMENT TOTALS				
GENERAL PURPOSE REVENUE			-0-	-0-
TOTAL-ALL SOURCES			-0-	-0-
<b>20.445 Workforce Development, Department of</b>				
(1) WORKFORCE DEVELOPMENT				
(a) General program operations	GPR	A	7,937,700	7,946,000
(aa) Special death benefit	GPR	S	525,000	525,000
(aL) Unemployment insurance administration; controlled substances testing and treatment	GPR	B	250,000	250,000
(b) Workforce training; programs, grants and services	GPR	C	26,095,900	13,595,900
(bm) Workforce training; administration	GPR	B	3,582,000	3,582,000
(cr) State supplement to employment opportunity demonstration projects	GPR	A	200,600	200,600

**SENATE BILL 30****SECTION 183**

<b>STATUTE, AGENCY AND PURPOSE</b>	<b>SOURCE</b>	<b>TYPE</b>	<b>2017-2018</b>	<b>2018-2019</b>
(d) Reimbursement for tuition payments	GPR	A	1,150,300	1,753,500
(f) Death and disability benefit payments; public insurrections	GPR	S	-0-	-0-
(g) Gifts and grants	PR	C	-0-	-0-
(ga) Auxiliary services	PR	C	379,800	379,800
(gb) Local agreements	PR	C	261,500	261,500
(gc) Unemployment administration	PR	C	-0-	-0-
(gd) Unemployment interest and penalty payments	PR	C	1,859,100	1,864,700
(gg) Unemployment information technology systems; interest and penalties	PR	C	-0-	-0-
(gh) Unemployment information technology systems; assessments	PR	C	-0-	-0-
(gk) Child labor permit system; fees	PR	A	367,500	367,500
(gm) Unemployment insurance handbook	PR	C	-0-	-0-
(gr) Agricultural education and workforce development council, gifts and grants	PR	C	-0-	-0-
(ka) Interagency and intra-agency agreements	PR-S	C	36,755,200	36,755,200
(kc) Administrative services	PR-S	A	35,102,300	35,145,500
(km) Nursing workforce survey and grants	PR-S	C	155,600	155,600
(m) Workforce investment and assistance; federal moneys	PR-F	C	74,650,900	74,650,900

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<b>STATUTE, AGENCY AND PURPOSE</b>	<b>SOURCE</b>	<b>TYPE</b>	<b>2017-2018</b>	<b>2018-2019</b>
(n) Employment assistance and unemployment insurance administration; federal moneys	PR-F	C	52,752,900	52,843,900
(na) Employment security buildings and equipment	PR-F	C	-0-	-0-
(nb) Unemployment administration; information technology systems	PR-F	C	-0-	-0-
(nd) Unemployment administration; apprenticeship and other employment services	PR-F	A	523,000	523,000
(ne) Unemployment insurance administration and bank service costs	PR-F	C	-0-	-0-
(o) Equal rights; federal moneys	PR-F	C	850,200	850,200
(p) Worker's compensation; federal moneys	PR-F	C	-0-	-0-
(pz) Indirect cost reimbursements	PR-F	C	25,300	25,300
(ra) Worker's compensation operations fund; administration	SEG	A	12,701,900	12,711,000
(rb) Worker's compensation operations fund; contracts	SEG	C	93,900	93,900
(rp) Worker's compensation operations fund; uninsured employers program; administration	SEG	A	1,130,200	1,130,200
(s) Self-insured employers liability fund	SEG	C	-0-	-0-
(sm) Uninsured employers fund; payments	SEG	S	5,500,000	5,500,000
(t) Work injury supplemental benefit fund	SEG	C	5,360,000	5,360,000

**SENATE BILL 30****SECTION 183**

STATUTE, AGENCY AND PURPOSE		SOURCE	TYPE	2017-2018	2018-2019
(u)	Unemployment interest payments and transfers	SEG	S	-0-	-0-
(v)	Unemployment program integrity	SEG	S	-0-	-0-
(1) PROGRAM TOTALS					
GENERAL PURPOSE REVENUE				39,741,500	27,853,000
PROGRAM REVENUE				203,683,300	203,823,100
FEDERAL				(128,802,300)	(128,893,300)
OTHER				(2,867,900)	(2,873,500)
SERVICE				(72,013,100)	(72,056,300)
SEGREGATED REVENUE				24,786,000	24,795,100
OTHER				(24,786,000)	(24,795,100)
TOTAL-ALL SOURCES				268,210,800	256,471,200
(5) VOCATIONAL REHABILITATION SERVICES					
(a)	General program operations; purchased services for clients	GPR	C	17,446,800	17,446,800
(gg)	Contractual services	PR	C	-0-	-0-
(gp)	Contractual aids	PR	C	-0-	-0-
(h)	Enterprises and services for blind and visually impaired	PR	C	149,100	149,100
(he)	Supervised business enterprise	PR	C	125,000	125,000
(i)	Gifts and grants	PR	C	1,000	1,000
(kg)	Vocational rehabilitation services for tribes	PR-S	A	314,900	314,900
(kx)	Interagency and intra-agency programs	PR-S	C	-0-	-0-
(ky)	Interagency and intra-agency aids	PR-S	C	-0-	-0-
(kz)	Interagency and intra-agency local assistance	PR-S	C	-0-	-0-
(m)	Federal project operations	PR-F	C	50,000	50,000

**SENATE BILL 30****SECTION 183**

STATUTE, AGENCY AND PURPOSE	SOURCE	TYPE	2017-2018	2018-2019
(ma) Federal project aids	PR-F	C	6,388,400	5,970,000
(n) Federal program aids and operations	PR-F	C	68,296,800	68,296,800
(nL) Federal program local assistance	PR-F	C	-0-	-0-

**(5) PROGRAM TOTALS**

GENERAL PURPOSE REVENUE	17,446,800	17,446,800
PROGRAM REVENUE	75,325,200	74,906,800
FEDERAL	(74,735,200)	(74,316,800)
OTHER	(275,100)	(275,100)
SERVICE	(314,900)	(314,900)
TOTAL-ALL SOURCES	92,772,000	92,353,600

**20.445 DEPARTMENT TOTALS**

GENERAL PURPOSE REVENUE	57,188,300	45,299,800
PROGRAM REVENUE	279,008,500	278,729,900
FEDERAL	(203,537,500)	(203,210,100)
OTHER	(3,143,000)	(3,148,600)
SERVICE	(72,328,000)	(72,371,200)
SEGREGATED REVENUE	24,786,000	24,795,100
OTHER	(24,786,000)	(24,795,100)
TOTAL-ALL SOURCES	360,982,800	348,824,800

**20.455 Justice, Department of****(1) LEGAL SERVICES**

(a) General program operations	GPR	A	13,969,100	13,970,200
(d) Legal expenses	GPR	B	738,700	738,800
(gh) Investigation and prosecution	PR	C	650,700	650,700
(gs) Delinquent obligation collection	PR	A	7,000	7,000
(hm) Restitution	PR	C	-0-	-0-
(k) Environment litigation project	PR-S	C	482,000	482,000
(km) Interagency and intra-agency assistance	PR-S	C	1,675,800	1,679,700
(m) Federal aid	PR-F	C	1,094,800	1,095,900

**SENATE BILL 30****SECTION 399**

1 transit assistance grant program under s. 106.26, the workforce training program  
2 under s. 106.27, and the teacher development program grants under s. 106.272, the  
3 career and technical education incentive grant program under s. 106.273, and the  
4 apprentice programs under subch. I of ch. 106.

5 **SECTION 400.** 20.445 (1) (d) of the statutes is created to read:

6 20.445 (1) (d) *Reimbursement for tuition payments.* The amounts in the  
7 schedule to reimburse school districts for payments under s. 118.55 (5) (e) 2.

8 **SECTION 401.** 20.445 (1) (g) of the statutes is amended to read:

9 20.445 (1) (g) *Gifts and grants.* All Except as provided in par. (gr), all moneys  
10 received as gifts or grants to carry out the purposes for which made.

11 **SECTION 402.** 20.445 (1) (n) of the statutes is amended to read:

12 20.445 (1) (n) *Employment assistance and unemployment insurance*  
13 *administration; federal moneys.* All federal moneys received, as authorized by the  
14 governor under s. 16.54, for the administration of employment assistance and  
15 unemployment insurance programs of the department, for the performance of the  
16 department's other functions under subch. I of ch. 106 and ch. 108, and to pay the  
17 compensation and expenses of appeal tribunals and of employment councils  
18 appointed under s. 108.14, to be used for such purposes, except as provided in s.  
19 108.161 (3e), and, from the moneys received by this state under section 903 (d) of the  
20 federal Social Security Act, as amended, to transfer to the appropriation account  
21 under par. (nb) an amount determined by the treasurer of the unemployment reserve  
22 fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the  
23 amounts in the schedule under par. (nb), to transfer to the appropriation account  
24 under par. (nd) an amount determined by the treasurer of the unemployment reserve  
25 fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the

**SENATE BILL 30****SECTION 402**

1 amounts in the schedule under par. (nd), and to transfer to the appropriation account  
2 under par. (ne) an amount not exceeding the lesser of the amount specified in s.  
3 108.161 (4) (d) or the sum of the amounts in the schedule under par. (ne) and the  
4 amount determined by the treasurer of the unemployment reserve fund that is  
5 required to pay for the cost of banking services incurred by the unemployment  
6 reserve fund, ~~and to transfer to the appropriation account under s. 20.427 (1) (k) an~~  
7 ~~amount determined by the treasurer of the unemployment reserve fund.~~

8 **SECTION 403.** 20.445 (1) (o) of the statutes is amended to read:

9 20.445 (1) (o) *Equal rights; federal moneys.* All federal moneys received for the  
10 activities of the division of equal rights in the department, to be used for those  
11 purposes, ~~and to transfer to the appropriation account under s. 20.427 (1) (km).~~

12 **SECTION 404.** 20.445 (1) (ra) of the statutes is amended to read:

13 20.445 (1) (ra) *Worker's compensation operations fund; administration.* From  
14 the worker's compensation operations fund, the amounts in the schedule for the  
15 administration of the worker's compensation program by the department, for  
16 assistance to the department of justice in investigating and prosecuting fraudulent  
17 activity related to worker's compensation, for transfer to the uninsured employers  
18 fund under s. 102.81 (1) (c), and for transfer to the appropriation accounts account  
19 under par. (rp) ~~and s. 20.427 (1) (ra).~~ All moneys received under ss. 102.28 (2) (b) and  
20 102.75 shall be credited to this appropriation account. From this appropriation, an  
21 amount not to exceed \$5,000 may be expended each fiscal year for payment of  
22 expenses for travel and research by the council on worker's compensation, an amount  
23 not to exceed \$500,000 may be transferred in each fiscal year to the uninsured  
24 employers fund under s. 102.81 (1) (c), and the amount in the schedule under par. (rp)  
25 shall be transferred to the appropriation account under par. (rp), ~~and the amount in~~

**SENATE BILL 30****SECTION 1414**

1 sub. (3) by a fair preponderance of the evidence. Costs in an amount not to exceed  
2 \$100 plus actual disbursements for the attendance of witnesses may be taxed to the  
3 prevailing party on the appeal.

4 **SECTION 1415.** 106.56 (4) (a) of the statutes is amended to read:

5 106.56 (4) (a) The department shall receive and investigate complaints  
6 charging discrimination or discriminatory practices in particular cases, and  
7 publicize its findings with respect thereto to those complaints. The department has  
8 all powers provided under s. 111.39 with respect to the disposition of such  
9 complaints. The findings and orders of examiners may be reviewed by the  
10 administrator as provided under s. 106.52 (4) (b).

11 **SECTION 1416.** 106.56 (4) (b) of the statutes is amended to read:

12 106.56 (4) (b) Findings Following review by the administrator under s. 106.52  
13 (4) (b), findings and orders of ~~the commission~~ under this section are subject to judicial  
14 review under ch. 227. Upon such review, the department of justice shall represent  
15 the ~~commission~~ department.

16 **SECTION 1417.** 108.02 (1m) of the statutes is created to read:

17 108.02 (1m) ADMINISTRATOR. "Administrator" means the administrator of the  
18 division of the department that is responsible for administering this chapter.

19 **SECTION 1418.** 108.02 (7) of the statutes is repealed.

20 **SECTION 1419.** 108.04 (13) (f) of the statutes is amended to read:

21 108.04 (13) (f) If benefits are erroneously paid because the employer fails to file  
22 a report required by this chapter, the employer fails to provide correct and complete  
23 information on the report, the employer fails to object to the benefit claim under s.  
24 108.09 (1), the employer fails to provide correct and complete information requested  
25 by the department during a fact-finding investigation, unless an appeal tribunal,

**SENATE BILL 30****SECTION 1419**

1 the ~~commission~~ administrator, or a court of competent jurisdiction finds that the  
2 employer had good cause for the failure to provide the information, or the employer  
3 aids and abets the claimant in an act of concealment as provided in sub. (11), the  
4 employer is at fault. If benefits are erroneously paid because an employee commits  
5 an act of concealment as provided in sub. (11) or fails to provide correct and complete  
6 information to the department, the employee is at fault.

7 **SECTION 1420.** 108.09 (4) (f) 2. (intro.) of the statutes is amended to read:

8 108.09 (4) (f) 2. (intro.) Unless a party or the department has filed a timely  
9 petition for review of the appeal tribunal decision by the ~~commission~~ administrator  
10 under sub. (6), the appeal tribunal may set aside or amend an appeal tribunal  
11 decision, or portion thereof, at any time if the appeal tribunal finds that:

12 **SECTION 1421.** 108.09 (4) (f) 3. of the statutes is amended to read:

13 108.09 (4) (f) 3. Unless a party or the department has filed a timely petition for  
14 review of the appeal tribunal decision by the ~~commission~~ administrator under sub.  
15 (6), the appeal tribunal may, within 2 years after the date of the decision, reopen its  
16 decision if it has reason to believe that a party offered false evidence or a witness gave  
17 false testimony on an issue material to its decision. Thereafter, and after receiving  
18 additional evidence or taking additional testimony, the same or another appeal  
19 tribunal may set aside its original decision, make new findings, and issue a decision.

20 **SECTION 1422.** 108.09 (5) (b) of the statutes is amended to read:

21 108.09 (5) (b) All testimony at any hearing under this section shall be recorded  
22 by electronic means, but need not be transcribed unless either of the parties requests  
23 a transcript before expiration of that party's right to further appeal under this  
24 section and pays a fee to the ~~commission~~ department in advance, the amount of which  
25 shall be established by rule of the ~~commission~~ department. When the ~~commission~~

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1 department provides a transcript to one of the parties upon request, the ~~commission~~  
2 department shall also provide a copy of the transcript to all other parties free of  
3 charge. The transcript fee collected shall be paid to the administrative account.

4 **SECTION 1423.** 108.09 (5) (d) of the statutes is renumbered 108.09 (6) (bm) and  
5 amended to read:

6 108.09 (6) (bm) In its review of the decision of an appeal tribunal, the  
7 ~~commission~~ administrator shall use the electronic recording of the hearing or a  
8 written synopsis of the testimony or shall use a transcript of the hearing prepared  
9 under the direction of the department ~~or commission~~ and shall also use any other  
10 evidence taken at the hearing.

11 **SECTION 1424.** 108.09 (6) of the statutes is amended to read:

12 108.09 (6) ~~COMMISSION REVIEW~~ REVIEW BY DIVISION ADMINISTRATOR. (a) The  
13 department or any party may petition ~~the commission~~ for review of an appeal  
14 tribunal decision by the administrator, pursuant to rules promulgated by the  
15 ~~commission~~ department under par. (e), if the petition is received by the ~~commission~~  
16 department or postmarked within 21 days after the appeal tribunal decision was  
17 electronically delivered to the party or mailed to the party's last-known address. ~~The~~  
18 ~~commission shall dismiss any~~ A petition shall be dismissed if not timely filed unless  
19 the petitioner shows good cause that the reason for having failed to file the petition  
20 timely was beyond the control of the petitioner. If the petition is not dismissed, the  
21 ~~commission~~ administrator may take action under par. (d).

22 (b) Within 28 days after a decision of the ~~commission~~ administrator is  
23 electronically delivered or mailed to the parties, the ~~commission~~ administrator may,  
24 on its own motion, set aside the decision for further consideration and take action  
25 under par. (d).

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1           (c) On its own motion, for reasons it deems sufficient, the ~~commission~~  
2     administrator may set aside any final determination of the department or appeal  
3     tribunal or commission decision within 2 years after the date thereof upon grounds  
4     of mistake or newly discovered evidence, and take action under par. (d). The  
5     ~~commission~~ administrator may set aside any final determination of the department  
6     or any decision of an appeal tribunal or of the ~~commission~~ administrator at any time,  
7     and take action under par. (d), if the benefits paid or payable to a claimant have been  
8     affected by wages earned by the claimant that have not been paid, and the  
9     commission is provided with notice from the appropriate state or federal court or  
10    agency that a wage claim for those wages will not be paid in whole or in part.

11          (d) In any case before the ~~commission~~ administrator for action under this  
12    subsection, the ~~commission~~ administrator may affirm, reverse, modify, or set aside  
13    the decision on the basis of the evidence previously submitted; order the taking of  
14    additional evidence as to such matters as it may direct; or remand the matter to the  
15    department for further proceedings.

16           **SECTION 1425.** 108.09 (6) (e) of the statutes is created to read:

17           108.09 **(6)** (e) The department may promulgate any rules necessary to provide  
18    for reviews of appeal tribunal decisions by the administrator under this subsection.

19           **SECTION 1426.** 108.09 (7) (a), (b), (c), (dm), (e) and (f) of the statutes are  
20    amended to read:

21           108.09 **(7)** (a) Any party that is not the department may commence an action  
22    for the judicial review of a decision of the ~~commission~~ administrator under this  
23    chapter after exhausting the remedies provided under this section. The department  
24    may commence an action for the judicial review of a ~~commission~~ decision of the  
25    administrator under this section, but the department is not required to have been

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1 a party to the ~~proceedings before the commission~~ review by the administrator or to  
2 have exhausted the remedies provided under this section. In an action commenced  
3 under this section by a party that is not the department, the department shall be a  
4 defendant and shall be named as a party in the complaint commencing the action.  
5 If a plaintiff fails to name either name the department ~~or the commission~~ as  
6 defendants and a defendant or serve the ~~commission~~ department as required by this  
7 subsection, the court shall dismiss the action.

8 (b) Any judicial review under this chapter shall be confined to questions of law  
9 and shall be in accordance with this subsection. In any such judicial action, the  
10 ~~commission~~ department may appear by any licensed attorney who is a salaried  
11 employee of the ~~commission~~ department and has been designated by it for that  
12 purpose, or, at the ~~commission's~~ department's request, by the department of justice.  
13 ~~In any such judicial action, the department may appear by any licensed attorney who~~  
14 ~~is a salaried employee of the department and has been designated by it for that~~  
15 ~~purpose.~~

16 (c) 1. The findings of fact made by the ~~commission~~ an appeal tribunal acting  
17 within its powers shall, in the absence of fraud, be conclusive. The order of the  
18 ~~commission~~ administrator is subject to review only as provided in this subsection and  
19 not under ch. 227 or s. 801.02. Within 30 days after the date of an order made by the  
20 ~~commission~~ administrator, any party or the department may, by serving a complaint  
21 as provided in subd. 3. and filing the summons and complaint with the clerk of the  
22 circuit court, commence an action ~~against the commission~~ for judicial review of the  
23 order. In an action for judicial review of ~~a commission~~ an order of the administrator,  
24 every other party to the proceedings before the ~~commission~~ administrator shall be  
25 made a defendant. The department shall also be made a defendant if the department

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1 is not the plaintiff. If the circuit court is satisfied that a party in interest has been  
2 prejudiced because of an exceptional delay in the receipt of a copy of any order, the  
3 circuit court may extend the time in which an action may be commenced by an  
4 additional 30 days.

5 2. Except as provided in this subdivision, the proceedings shall be in the circuit  
6 court of the county where the plaintiff resides, except that if the plaintiff is the  
7 department, the proceedings shall be in the circuit court of the county where a  
8 defendant ~~other than the commission~~ resides if there is such a county. The  
9 proceedings may be brought in any circuit court if all parties appearing in the case  
10 agree or if the court, after notice and a hearing, so orders. Commencing an action  
11 in a county in which no defendant resides does not deprive the court of competency  
12 to proceed to judgment on the merits of the case.

13 3. In such an action, a complaint shall be served with an authenticated copy  
14 of the summons. The complaint need not be verified, but shall state the grounds upon  
15 which a review is sought. Service upon the ~~commission~~ department or an agent  
16 authorized by the ~~commission~~ department to accept service constitutes complete  
17 service on all parties, but there shall be left with the person so served as many copies  
18 of the summons and complaint as there are defendants, and the ~~commission~~  
19 department shall mail one copy to each other defendant.

20 4. Each defendant shall serve its answer within 20 days after the service upon  
21 the ~~commission~~ department under subd. 3., which answer may, by way of  
22 counterclaim or cross complaint, ask for the review of the order referred to in the  
23 complaint, with the same effect as if the defendant had commenced a separate action  
24 for the review of the order.

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1           5. Within 60 days after appearing in an action for judicial review, the  
2 ~~commission~~ department shall make return to the court of all documents and  
3 materials on file in the matter, all testimony that has been taken, and the  
4 ~~commission's~~ administrator's order and findings. Such return of the ~~commission~~  
5 department, when filed in the office of the clerk of the circuit court, shall constitute  
6 a judgment roll in the action, and it shall not be necessary to have a transcript  
7 approved. After the ~~commission~~ department makes return of the judgment roll to  
8 the court, the court shall schedule briefing by the parties. Any party may request  
9 oral argument before the court, subject to the provisions of law for a change of the  
10 place of trial or the ~~calling in~~ substitution of another judge.

11           6. The court may confirm or set aside the ~~commission's~~ administrator's order,  
12 but may set aside the order only upon one or more of the following grounds:

13           a. That the ~~commission~~ appeal tribunal or the administrator acted without or  
14 in excess of its powers.

15           b. That the ~~order~~ decision was procured by fraud.

16           c. That the findings of fact by the ~~commission~~ appeal tribunal do not support  
17 the order.

18           (dm) The court shall disregard any irregularity or error of the ~~commission~~  
19 appeal tribunal, the administrator, or the department unless it is made to  
20 affirmatively appear that a party was damaged by that irregularity or error.

21           (e) The record in any case shall be transmitted to the ~~commission~~ department  
22 within 5 days after expiration of the time for appeal from the order or judgment of  
23 the court, unless an appeal is taken from the order or judgment.

24           (f) ~~If the commission's order depends on any fact found by the commission,~~ the  
25 The court shall not substitute its judgment for that of the ~~commission~~ appeal

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1 tribunal as to the weight or credibility of the evidence on any finding of fact. The  
2 court may, however, set aside the ~~commission's~~ administrator's order and remand the  
3 case ~~to the commission~~ if the ~~commission's~~ order depends on any material and  
4 controverted finding of fact that is not supported by credible and substantial  
5 evidence.

6 **SECTION 1427.** 108.09 (7) (h) and (i) of the statutes are amended to read:

7 108.09 (7) (h) The clerk of any court rendering a decision ~~affecting a decision~~  
8 ~~of the commission~~ under this section shall promptly furnish all parties a copy of the  
9 decision without charge.

10 (i) No fees may be charged by the clerk of any circuit court for the performance  
11 of any service required by this chapter, except for the entry of judgments and for  
12 certified transcripts of judgments. In proceedings to review an order under this  
13 section, costs as between the parties shall be in the discretion of the court.  
14 Notwithstanding s. 814.245, no costs may be taxed against the ~~commission or the~~  
15 department.

16 **SECTION 1428.** 108.09 (9) (a) of the statutes is amended to read:

17 108.09 (9) (a) Benefits shall be paid promptly in accordance with the  
18 department's determination or the decision of an appeal tribunal, the ~~commission~~  
19 administrator, or a reviewing court, notwithstanding the pendency of the period to  
20 request a hearing, to file a petition for ~~commission~~ review by the administrator, or  
21 to commence judicial action or the pendency of any such hearing, review, or action.

22 **SECTION 1429.** 108.095 (6) of the statutes is amended to read:

23 108.095 (6) Any party may petition ~~the commission~~ for review of the decision  
24 of the an appeal tribunal under s. 108.09 (6). ~~The commission's~~ by the administrator.

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1 The administrator's authority to take action concerning any issue or proceeding  
2 under this section is the same as that provided in s. 108.09 (6).

3 **SECTION 1430.** 108.095 (7) of the statutes is amended to read:

4 108.095 (7) Any party may commence an action for judicial review of a decision  
5 of the ~~commission~~ administrator under this section, after exhausting the remedies  
6 provided under this section, by commencing the action within 30 days after the  
7 administrator's decision of the ~~commission~~ is delivered electronically or mailed to the  
8 department and is delivered electronically to, or mailed to the last-known address  
9 of, each other party. The scope and manner of judicial review is the same as that  
10 provided in s. 108.09 (7).

11 **SECTION 1431.** 108.10 (2) of the statutes is amended to read:

12 108.10 (2) Any hearing duly requested shall be held before an appeal tribunal  
13 established as provided by s. 108.09 (3), and s. 108.09 (4) and (5) shall be applicable  
14 to the proceedings before such the tribunal. The department may be a party in any  
15 proceedings before an appeal tribunal. The employing unit or the department may  
16 petition the ~~commission~~ for review of the appeal tribunal's decision by the  
17 administrator under s. 108.09 (6).

18 **SECTION 1432.** 108.10 (3) of the statutes is amended to read:

19 108.10 (3) The ~~commission's~~ administrator's authority to take action as to any  
20 issue or proceeding under this section is the same as that specified in s. 108.09 (6).

21 **SECTION 1433.** 108.10 (4) of the statutes is amended to read:

22 108.10 (4) The employing unit may commence an action for the judicial review  
23 of a ~~commission~~ decision of the administrator under this section, provided the  
24 employing unit has exhausted the remedies provided under this section. The  
25 department may commence an action for the judicial review of a ~~commission~~ decision

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1 of the administrator under this section, but the department is not required to have  
2 been a party to the ~~proceedings before the commission~~ review by the administrator  
3 or to have exhausted the remedies provided under this section. In an action  
4 commenced under this section by a party that is not the department, the department  
5 shall be a defendant and shall be named as a party in the complaint commencing the  
6 action. If a plaintiff fails to name either name the department ~~or the commission~~ as  
7 ~~defendants and a defendant or~~ serve them the department as required under s.  
8 108.09 (7), the court shall dismiss the action. The scope of judicial review, and the  
9 manner thereof insofar as applicable, shall be the same as that provided in s. 108.09  
10 (7). ~~a defendant defendant summons and~~

11 **SECTION 1434.** 108.10 (6) of the statutes is amended to read:

12 108.10 **(6)** Any determination by the department or any decision by an appeal  
13 tribunal or by the ~~commission~~ administrator is conclusive with respect to an  
14 employing unit unless the department or the employing unit files a timely request  
15 for a hearing or petition for review as provided in this section. A determination or  
16 decision is binding upon the department only insofar as the relevant facts were  
17 included in the record that was before the department at the time the determination  
18 was issued, or before the appeal tribunal or ~~commission~~ the administrator at the time  
19 the decision was issued.

20 **SECTION 1435.** 108.10 (7) of the statutes is repealed.

21 **SECTION 1436.** 108.14 (2m) of the statutes is amended to read:

22 108.14 **(2m)** In the discharge of their duties under this chapter an appeal  
23 tribunal, ~~commissioner~~ or other another authorized representative of the  
24 department ~~or commission~~ may administer oaths to persons appearing before them,  
25 take depositions, certify to official acts, and by subpoenas, served in the manner in

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1 which circuit court subpoenas are served, compel attendance of witnesses and the  
2 production of books, papers, documents, and records necessary or convenient to be  
3 used by them in connection with any investigation, hearing, or other proceeding  
4 under this chapter. A party's attorney of record may issue a subpoena to compel the  
5 attendance of a witness or the production of evidence. A subpoena issued by an  
6 attorney must be in substantially the same form as provided in s. 805.07 (4) and must  
7 be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of  
8 issuance, send a copy of the subpoena to the appeal tribunal or other representative  
9 of the department responsible for conducting the proceeding. However, in any  
10 investigation, hearing, or other proceeding involving the administration of oaths or  
11 the use of subpoenas under this subsection due notice shall be given to any interested  
12 party involved, who shall be given an opportunity to appear and be heard at any such  
13 proceeding and to examine witnesses and otherwise participate therein. Witness  
14 fees and travel expenses involved in proceedings under this chapter may be allowed  
15 by the appeal tribunal or representative of the department at rates specified by  
16 department rules, and shall be paid from the administrative account.

17 **SECTION 1437.** 108.14 (3m) of the statutes is amended to read:

18 108.14 **(3m)** In any court action to enforce this chapter the department, the  
19 ~~commission~~, and the state may be represented by any licensed attorney who is an  
20 employee of the department ~~or the commission~~ and is designated by either of them  
21 the department for this purpose or ~~at the, upon~~ request of either of them by the  
22 department, by the department of justice. If the governor designates special counsel  
23 to defend, in behalf of the state, the validity of this chapter or of any provision of Title  
24 IX of the social security act, the expenses and compensation of the special counsel  
25 and of any experts employed by the department in connection with that proceeding

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1 may be charged to the administrative account. If the compensation is being  
2 determined on a contingent fee basis, the contract is subject to s. 20.9305.

3 **SECTION 1438.** 108.14 (7) (a) of the statutes is amended to read:

4 108.14 (7) (a) The records made or maintained by the department or  
5 ~~commission~~ in connection with the administration of this chapter are confidential  
6 and shall be open to public inspection or disclosure only to the extent that the  
7 department or ~~commission~~ permits in the interest of the unemployment insurance  
8 program. No person may permit inspection or disclosure of any record provided to  
9 it by the department or ~~commission~~ unless the department or ~~commission~~ authorizes  
10 the inspection or disclosure.

11 **SECTION 1439.** 108.14 (22) of the statutes is amended to read:

12 108.14 (22) The ~~commission~~ department shall maintain a searchable,  
13 electronic database of significant decisions made by ~~the commission~~ appeal tribunals  
14 and the administrator on matters under this chapter for the use of attorneys  
15 employed by ~~the department and the commission~~ and other individuals employed by  
16 the department and ~~the commission~~ whose duties necessitate use of the database.  
17 The department may also include in the database decisions of the labor and  
18 industrial review commission that were required to be maintained in the database  
19 under s. 108.14 (22), 2015 stats.

20 **SECTION 1440.** 108.17 (3m) of the statutes is amended to read:

21 108.17 (3m) If an appeal tribunal or the ~~commission~~ administrator issues a  
22 decision under s. 108.10 (2), or a court issues a decision on review under s. 108.10 (4),  
23 in which it is determined that an amount has been erroneously paid by an employer,  
24 the department shall, from the administrative account, credit the employer with  
25 interest at the rate of 0.75 percent per month or fraction thereof on the amount of the

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1 erroneous payment. Interest shall accrue from the month which the erroneous  
2 payment was made until the month in which it is either used as a credit against  
3 future contributions or refunded to the employer.

4 **SECTION 1441.** 108.22 (8) (a) of the statutes is amended to read:

5 108.22 (8) (a) If benefits are erroneously paid to an individual, the individual's  
6 liability to reimburse the fund for the overpayment may be set forth in a  
7 determination or decision issued under s. 108.09. Any determination which  
8 establishes or increases an overpayment shall include a finding concerning whether  
9 waiver of benefit recovery is required under par. (c). If any decision of an appeal  
10 tribunal, the ~~commission~~ administrator, or any court establishes or increases an  
11 overpayment and the decision does not include a finding concerning whether waiver  
12 of benefit recovery is required under par. (c), the appeal tribunal, ~~commission~~  
13 administrator, or court shall remand the issue to the department for a  
14 determination.

15 **SECTION 1442.** 108.22 (8) (c) 2. of the statutes is amended to read:

16 108.22 (8) (c) 2. If a determination or decision issued under s. 108.09 is  
17 amended, modified, or reversed by an appeal tribunal, the ~~commission~~  
18 administrator, or any court, that action shall not be treated as establishing a  
19 departmental error for purposes of subd. 1. a.

20 **SECTION 1443.** 108.24 (4) of the statutes is amended to read:

21 108.24 (4) Any person who, without authorization of the department, permits  
22 inspection or disclosure of any record relating to the administration of this chapter  
23 that is provided to the person by the department under s. 108.14 (7) (a), (b), or (bm)  
24 and any person who, without authorization of the commission, permits inspection or  
25 disclosure of any record relating to the administration of this chapter that is provided

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1 to the person by the commission under s. 108.14 (7) (a), shall be fined not less than  
2 \$25 nor more than \$500 or may be imprisoned in the county jail for not more than  
3 one year or both. Each such unauthorized inspection or disclosure constitutes a  
4 separate offense.

5 **SECTION 1444.** 109.09 (1) of the statutes is amended to read:

6 109.09 (1) The department shall investigate and attempt equitably to adjust  
7 controversies between employers and employees as to alleged wage claims. The  
8 department may receive and investigate any wage claim that is filed with the  
9 department, or received by the department under s. 109.10 (4), no later than 2 years  
10 after the date the wages are due. The department may, after receiving a wage claim,  
11 investigate any wages due from the employer against whom the claim is filed to any  
12 employee during the period commencing 2 years before the date the claim is filed.  
13 The department shall enforce this chapter and s. 66.0903, 2013 stats., s. 103.49, 2013  
14 stats., and s. 229.8275, 2013 stats., and s. 16.856, 2015 stats., and ss. ~~16.856~~, 103.02,  
15 103.82, and 104.12. In pursuance of this duty, the department may sue the employer  
16 on behalf of the employee to collect any wage claim or wage deficiency and ss. 109.03  
17 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions under s.  
18 109.10, the department may refer such an action to the district attorney of the county  
19 in which the violation occurs for prosecution and collection and the district attorney  
20 shall commence an action in the circuit court having appropriate jurisdiction. Any  
21 number of wage claims or wage deficiencies against the same employer may be joined  
22 in a single proceeding, but the court may order separate trials or hearings. In actions  
23 that are referred to a district attorney under this subsection, any taxable costs  
24 recovered by the district attorney shall be paid into the general fund of the county  
25 in which the violation occurs and used by that county to meet its financial

**SENATE BILL 30****SECTION 9101**

(6) ELIMINATION OF LABOR AND INDUSTRY REVIEW COMMISSION; PENDING MATTERS.

(a) *Matters before commission on effective date.* Notwithstanding the treatment of sections 102.01 (2) (af) and (ag), 102.18 (3) and (4) (b), (c) (intro.), and (d), 102.22 (2) and (3), 102.23 (1) (a) 1. and 2., (b), (c), (d), and (e) 1. and 3., (2), (5), and (6), 102.24 (1) and (2), 102.25 (1) and (2), 102.26 (1), 102.33 (2) (a), (b) (intro.), 1., 2., and 4., (c), and (d) 2., 102.565 (3), 102.61 (2), 102.64 (title) and (3), 102.75 (1), 103.001 (1) and (2), 103.005 (14) (c) and (16), 103.04, 103.06 (1) (a) and (ag) and (6) (c), (d), and (e), 103.545 (6), 106.52 (4) (a) 4., (b) 1., 2., and 3., and (c), 106.56 (4) (a) and (b), 108.02 (1m) and (7), 108.04 (13) (f), 108.09 (4) (f) 2. (intro.) and 3., (5) (b) and (d), (6), (7) (a), (b), (c), (dm), (e), (f), (h), and (i), and (9) (a), 108.095 (6) and (7), 108.10 (2), (3), (4), (6), and (7), 108.14 (2m) and (3m), 108.14 (7) (a) and (22), 108.17 (3m), 108.22 (8) (a) and (c) 2., 108.24 (4), 111.32 (1), (1g), and (2), 111.375 (1), 111.39 (5), 111.395, and 227.52 (7) of the statutes, a review that is before the labor and industry review commission on the effective date of this paragraph shall remain with the labor and industry review commission for disposition as provided in the 2015 statutes until the date on which the commission is eliminated as provided in SECTION 9401 (3) of this act.

(b) *Matters subject to review by the commission on effective date; unemployment insurance.*

1. This paragraph applies to an appeal tribunal decision issued under section 103.06, 2015 stats., or under chapter 108, 2015 stats., to which all of the following apply:

a. No petition for review of the appeal tribunal decision has been filed with the labor and industry review commission prior to the effective date of this subdivision

1. a.

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1           b. The period for filing a petition for review of the appeal tribunal decision by  
2           the labor and industry review commission under section 103.06 (6) (c), 2015 stats.,  
3           or under section 108.09 (6) (a), 2015 stats., has not expired as of the effective date of  
4           this subdivision 1. b.

5           2. Beginning on the effective date of this subdivision, a person may not file a  
6           petition for review by the labor and industry review commission of an appeal tribunal  
7           decision described in subdivision 1. Such a person may instead file a petition for  
8           review with respect to the matter as provided in section 103.06, as affected by this  
9           act, or chapter 108 of the statutes, as affected by this act, except that,  
10          notwithstanding sections 103.06 (6) (c) and 108.09 (6) (a) of the statutes, as affected  
11          by this act, a petition for review of an appeal tribunal decision described in  
12          subdivision 1. may be filed within 21 days after the effective date of this subdivision.

13          (c) *Matters subject to judicial review on effective date; unemployment insurance.*

14          1. This paragraph applies to a decision of the labor and industry review  
15          commission issued under section 103.06, 2015 stats., or under chapter 108, 2015  
16          stats., to which all of the following apply:

17           a. No action for judicial review of the decision has been commenced as of the  
18           effective date of this subdivision 1. a.

19           b. The period for commencing an action for judicial review of the decision of the  
20           labor and industry review commission under section 103.06 (6) (d), 2015 stats., or  
21           section 108.09 (7) (c) 1., 2015 stats., has not expired as of the effective date of this  
22           subdivision 1. b.

23          2. Notwithstanding the treatment of section 103.06 and chapter 108 of the  
24          statutes by this act, a person may file an action for judicial review of a decision of the

**SENATE BILL 30****SECTION 9101**

1 labor and industry review commission described in subdivision 1. as provided under  
2 section 103.06, 2015 stats., or chapter 108., 2015 stats., whichever is applicable.

3 (d) *Matters subject to review by the commission on effective date; worker's*  
4 *compensation.*

5 1. This paragraph applies to a decision issued by a hearing examiner in the  
6 division of hearings and appeals under chapter 102, 2015 stats., to which all of the  
7 following apply:

8 a. No petition for review of the decision has been filed with the labor and  
9 industry review commission prior to the effective date of this subdivision 1. a.

10 b. The period for filing a petition for review of the decision by the labor and  
11 industry review commission under section 102.18 (3), 2015 stats., has not expired as  
12 of the effective date of this subdivision 1. b.

13 2. Beginning on the effective date of this subdivision, a person may not file a  
14 petition for review by the labor and industry review commission of a decision  
15 described in subdivision 1. Such a person may instead file a petition for review with  
16 respect to the matter as provided in chapter 102 of the statutes, as affected by this  
17 act, except that, notwithstanding section 102.18 (3) of the statutes, as affected by this  
18 act, a petition for review of a decision described in subdivision 1. may be filed within  
19 21 days after the effective date of this subdivision.

20 (e) *Matters subject to judicial review on effective date; worker's compensation.*

21 1. This paragraph applies to a decision of the labor and industry review  
22 commission issued under chapter 102, 2015 stats., to which all of the following apply:

23 a. No action for judicial review of the decision has been commenced as of the  
24 effective date of this subdivision 1. a.

**SENATE BILL 30****SECTION 9101**

1           b. The period for commencing an action for judicial review of the decision of the  
2       labor and industry review commission under section 102.23 (1) (a) 2., 2015 stats., has  
3       not expired as of the effective date of this subdivision 1. b.

4           2. Notwithstanding the treatment of chapter 102 of the statutes by this act, a  
5       person may file an action for judicial review of a decision of the labor and industry  
6       review commission described in subdivision 1. as provided under chapter 102, 2015  
7       stats.

8           (f) *Matters subject to review by the commission on effective date; equal rights.*

9           1. This paragraph applies to a decision issued by a hearing examiner in the  
10      department of workforce development under section 106.52, 2015 stats., section  
11      106.56, 2015 stats., or section 111.39, 2015 stats., to which all of the following apply:

12          a. No petition for review of the decision has been filed with the labor and  
13      industry review commission prior to the effective date of this subdivision 1. a.

14          b. The period for filing a petition for review of the decision by the labor and  
15      industry review commission under section 106.52 (4) (b), 2015 stats., or section  
16      111.39 (5), 2015 stats., has not expired as of the effective date of this subdivision 1.  
17      b.

18          2. Beginning on the effective date of this subdivision, a person may not file a  
19      petition for review by the labor and industry review commission of a decision  
20      described in subdivision 1. Such a person may instead file a petition for review with  
21      respect to the matter as provided in section 106.52, 106.56, or 111.395 of the statutes,  
22      as affected by this act, except that, notwithstanding section 106.52 (4) (b) 4. of the  
23      statutes and section 111.39 (5) (b) of the statutes, as affected by this act, a petition  
24      for review of a decision described in subdivision 1. may be filed within 21 days after  
25      the effective date of this subdivision.

**SENATE BILL 30****SECTION 9101**

(g) *Matters subject to judicial review on effective date; equal rights.*

1. This paragraph applies to a decision of the labor and industry review commission issued under section 106.52 (4) (b), 2015 stats., or section 111.39 (5), 2015 stats., to which all of the following apply:

a. No action for judicial review of the decision has been commenced as of the effective date of this subdivision 1. a.

b. The period for commencing an action for judicial review of the decision of the labor and industry review commission under section 106.52 (4) (c) of the statutes, as affected by this act, or section 227.53 (1) (a) of the statutes, has not expired as of the effective date of this subdivision 1. b.

2. Notwithstanding the treatment of sections 106.52, 106.56, and 111.39 of the statutes by this act, a person may file an action for judicial review of a decision of the labor and industry review commission described in subdivision 1. as provided under section 106.52, 2015 stats., section 106.56, 2015 stats., or section 111.39, 2015 stats., whichever is applicable.

(h) *Emergency rules; department of workforce development.* Using the procedure under section 227.24 of the statutes, the department of workforce development may promulgate emergency rules under sections 106.52 (2), 108.09 (6) (e), and 111.375 (1) of the statutes as needed to provide for review of administrative decisions under sections 103.06, 106.52, and 106.54 and subchapter II of chapter 111 and chapter 108 of the statutes, as affected by this act. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this

**SENATE BILL 30****SECTION 9101**

1 paragraph. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency  
2 rules promulgated under this paragraph remain in effect for 2 years after the date  
3 they become effective, or until the date on which permanent rules take effect,  
4 whichever is sooner, and the effective period may not be further extended under  
5 section 227.24 (2) of the statutes.

6 (i) *Emergency rules; division of hearings and appeals.* Using the procedure  
7 under section 227.24 of the statutes, the division of hearings and appeals may  
8 promulgate emergency rules under section 102.15 (1) of the statutes as needed to  
9 provide for review of administrative decisions under chapter 102 of the statutes, as  
10 affected by this act. Notwithstanding section 227.24 (1) (a) and (3) of the statutes,  
11 the division is not required to provide evidence that promulgating a rule under this  
12 paragraph as an emergency rule is necessary for the preservation of the public peace,  
13 health, safety, or welfare and is not required to provide a finding of emergency for a  
14 rule promulgated under this paragraph. Notwithstanding section 227.24 (1) (c) and  
15 (2) of the statutes, emergency rules promulgated under this paragraph remain in  
16 effect for 2 years after the date they become effective, or until the date on which  
17 permanent rules take effect, whichever is sooner, and the effective period may not  
18 be further extended under section 227.24 (2) of the statutes.

19 (7) **ELIMINATION OF LABOR AND INDUSTRY REVIEW COMMISSION; TRANSFERS AND**  
20 **OTHER MATTERS.**

21 (a) *Unemployment insurance.*

22 1. 'Assets and liabilities.' On the effective date of this subdivision, the assets  
23 and liabilities of the labor and industry review commission primarily related to  
24 matters under section 103.06 or chapter 108 of the statutes, as determined by the

**SENATE BILL 30****SECTION 9101**

1 secretary of administration, become assets and liabilities of the department of  
2 workforce development.

3 2. 'Tangible personal property.' On the effective date of this subdivision, all  
4 tangible personal property, including records, of the labor and industry review  
5 commission that is primarily related to matters under section 103.06 or chapter 108  
6 of the statutes, as determined by the secretary of administration, is transferred to  
7 the department of workforce development.

8 3. 'Contracts.' All contracts entered into by the labor and industry review  
9 commission in effect on the effective date of this subdivision that are primarily  
10 related to matters under section 103.06 or chapter 108 of the statutes remain in effect  
11 and are transferred to the department of workforce development. The department  
12 of workforce development shall carry out any obligations under such a contract until  
13 the contract is modified or rescinded by the department of workforce development  
14 to the extent allowed under the contract.

15 4. 'Orders.' All orders issued by the labor and industry review commission  
16 related to matters under section 103.06 or chapter 108 of the statutes that are in  
17 effect on the effective date of this subdivision remain in effect until their specified  
18 expiration date or until modified or rescinded by the department of workforce  
19 development.

20 5. 'Pending matters.' Any matter pending with the labor and industry review  
21 commission on the effective date of this subdivision related to matters under section  
22 103.06 or chapter 108 of the statutes is transferred to the department of workforce  
23 development for assignment to the appropriate division administrator and all  
24 materials submitted to or actions taken by the labor and industry review commission

**SENATE BILL 30****SECTION 9101**

1 with respect to the pending matter are considered as having been submitted to or  
2 taken by that division administrator.

3 (b) *Worker's compensation.*

4 1. 'Assets and liabilities.' On the effective date of this subdivision, the assets  
5 and liabilities of the labor and industry review commission primarily related to  
6 matters under chapter 102 of the statutes, as determined by the secretary of  
7 administration, become assets and liabilities of the department of administration.

8 2. 'Tangible personal property.' On the effective date of this subdivision, all  
9 tangible personal property, including records, of the labor and industry review  
10 commission that is primarily related to matters under chapter 102 of the statutes,  
11 as determined by the secretary of administration, is transferred to the department  
12 of administration.

13 3. 'Contracts.' All contracts entered into by the labor and industry review  
14 commission in effect on the effective date of this subdivision that are primarily  
15 related to matters under chapter 102 of the statutes remain in effect and are  
16 transferred to the department of administration. The department of administration  
17 shall carry out any obligations under such a contract until the contract is modified  
18 or rescinded by the department of administration to the extent allowed under the  
19 contract.

20 4. 'Orders.' All orders issued by the labor and industry review commission that  
21 are in effect on the effective date of this subdivision remain in effect until their  
22 specified expiration date or until modified or rescinded by the department of  
23 administration.

24 5. 'Pending matters.' Any matter pending with the labor and industry review  
25 commission on the effective date of this subdivision related to matters under chapter

**SENATE BILL 30****SECTION 9150**

**SECTION 9150. Nonstatutory provisions; Wisconsin Economic Development Corporation.**

(1) GPR EXPENDITURE LIMITATION. Notwithstanding the cap on expenditures under section 20.192 (1) (a) of the statutes, no more than \$12,474,000 may be expended from that appropriation in fiscal year 2017-18.

(2) FABRICATION LABORATORIES. Notwithstanding the limit under section 238.145 (3) (a) of the statutes, the Wisconsin Economic Development Corporation shall award at least \$500,000 from the appropriation under section 20.192 (1) (a) of the statutes for grants for fabrication laboratories under section 238.145 of the statutes in each of the 2017-18 and 2018-19 fiscal years.

**SECTION 9151. Nonstatutory provisions; Workforce Development.**

(1) FAST FORWARD GRANTS FOR TECHNICAL COLLEGES. Of the amounts appropriated to the department of workforce development under section 20.445 (1) (b) of the statutes, the department shall allocate not less than \$5,000,000 in fiscal year 2017-18 for grants to technical colleges for workforce training programs under section 106.27 (1) of the statutes.

(2) FAST FORWARD GRANTS FOR NURSING TRAINING PROGRAMS. Of the amounts appropriated to the department of workforce development under section 20.445 (1) (b) of the statutes, the department shall allocate not less than \$1,500,000 in the 2017-19 fiscal biennium for grants for nursing training programs under section 106.27 (1) (e) of the statutes.

(3) WORKER'S COMPENSATION POSITION TRANSFER.

(a) *Employee transfer.* On the effective date of this paragraph, 5.5 FTE positions and the incumbent employees holding those positions in the department of workforce development who perform duties relating to worker's compensation

**SENATE BILL 30****SECTION 9151**

1 hearings, as determined by the secretary of administration, are transferred to the  
2 department of administration.

3 (b) *Employee status.* The employees transferred under paragraph (a) have all  
4 the rights and the same status under chapter 230 of the statutes in the department  
5 of administration that the employees enjoyed in the department of workforce  
6 development immediately before the transfer. Notwithstanding section 230.28 (4)  
7 of the statutes, no employee transferred under paragraph (a) who has attained  
8 permanent status in class is required to serve a probationary period.

9 (4) **MOBILITY GRANT STUDY.** From the appropriation under section 20.445 (1) (m)  
10 of the statutes, the department of workforce development shall, if such funds are  
11 available, allocate \$50,000 in the 2017-19 fiscal biennium for the purpose of  
12 conducting a study regarding the feasibility of establishing a program, using a social  
13 impact bond model, to assist claimants for unemployment insurance benefits under  
14 chapter 108 of the statutes by offering them mobility grants to relocate to areas with  
15 more favorable employment opportunities.

16 **SECTION 9152. Nonstatutory provisions; Other.**

17 (1) **STUDY ON PUBLIC BENEFITS AND CHRONIC ABSENTEEISM.** The departments of  
18 children and families, public instruction, health services, and workforce  
19 development, together with any other relevant programs or agencies the  
20 departments identify as appropriate, shall collaborate to prepare a report on the  
21 population overlap of families that receive public benefits and children who are  
22 absent from school for 10 percent or more of the school year. The agencies shall  
23 submit the report on or before December 30, 2018, to the governor and appropriate  
24 standing committees of the legislature under section 13.172 (3) of the statutes.

25 **SECTION 9201. Fiscal changes; Administration.**

**SENATE BILL 30****SECTION 9352**

1           (3) ELIMINATION OF PREVAILING WAGE LAW. The treatment of sections 16.856,  
2           19.36 (3) and (12), 59.20 (3) (a), 84.062, 84.41 (3), 106.04, 109.09 (1), 111.322 (2m) (c)  
3           and (d), 230.13 (1) (intro.), 233.13 (intro.), 946.15, and 978.05 (6) (a) first applies, with  
4           respect to a project of public works that is subject to bidding, to a project for which  
5           the request for bids is issued on the effective date of this subsection and, with respect  
6           to a project of public works that is not subject to bidding, to a project the contract for  
7           which is entered into on the effective date of this subsection.

8           (4) PROJECT LABOR AGREEMENTS. The treatment of sections 16.75 (1p), 16.855  
9           (1p), 16.971 (4) (c) 2., and 66.0901 (1) (a), (ae), and (am), (6), (6m), (6s), and (9) (a) of  
10          the statutes first applies to bids or proposals solicited on the effective date of this  
11          subsection.

12          **SECTION 9400. Effective dates; general.** Except as otherwise provided in  
13          SECTIONS 9401 to 9452 of this act, this act takes effect on July 1, 2017, or on the day  
14          after publication, whichever is later.

15          **SECTION 9401. Effective dates; Administration.**

16          (1) TRANSFER OF COLLEGE SAVINGS PROGRAMS DUTIES TO THE DEPARTMENT OF  
17          FINANCIAL INSTITUTIONS. The renumbering of sections 16.255 (title) and 16.64 of the  
18          statutes, the renumbering and amendment of sections 15.105 (25m), 16.255 (1),  
19          16.255 (2), 16.255 (3), 16.641, 16.642, 20.505 (1) (tb), 20.505 (1) (td), 20.505 (1) (tf),  
20          20.505 (1) (th), 20.505 (1) (tj), 20.505 (1) (tL), 20.505 (1) (tn), and 20.505 (1) (tp) of the  
21          statutes, the amendment of sections 20.144 (intro.), 20.144 (1) (g), 25.17 (2) (f), 25.80,  
22          25.85, 25.853, 25.855, 71.05 (6) (a) 26. (intro.), 71.05 (6) (a) 26. c., 71.05 (6) (b) 23.,  
23          71.05 (6) (b) 28. h., 71.05 (6) (b) 31., 71.05 (6) (b) 32. (intro.), 71.05 (6) (b) 32m., 71.05  
24          (6) (b) 33. (intro.), 815.18 (3) (o), and 815.18 (3) (p) of the statutes, and the creation  
25          of sections 16.705 (1b) (d), 16.71 (5r), 20.144 (3) (title), 224.48 (1) (am), 224.50 (1) (c),

**SENATE BILL 30****SECTION 9401**

1 and 224.51 (1g) of the statutes and SECTION 9101 (1) of this act take effect on October  
2 1, 2017, or on the day after publication, whichever is later.

3 (2) INFORMATION TECHNOLOGY INFRASTRUCTURE FUNDING; SUNSET. The treatment  
4 of section 20.505 (4) (s) (by SECTION 442) of the statutes takes effect on July 1, 2019.

5 (3) ELIMINATION OF LABOR AND INDUSTRY REVIEW COMMISSION. The treatment of  
6 sections 15.06 (2) (a), 15.105 (15), 20.427, 20.445 (1) (n), (o), and (ra), 20.923 (4) (e)  
7 4., 102.75 (1m), and 230.08 (2) (xc) of the statutes and SECTION 9101 (7) of this act take  
8 effect on January 1, 2018, or on the first day of the 6th month beginning after  
9 publication, whichever is later.

10 (4) HUMAN RESOURCES SERVICES. The treatment of section 16.004 (20) of the  
11 statutes and SECTION 9101 (9) of this act takes effect on July 1, 2018.

12 (5) YOUTH WELLNESS CENTER; TRIBAL PAYMENT. The treatment of section 20.505  
13 (8) (hm) (by SECTION 455) of the statutes takes effect on July 1, 2019.

14 **SECTION 9402. Effective dates; Agriculture, Trade and Consumer**  
15 **Protection.**

16 **SECTION 9403. Effective dates; Arts Board.**

17 **SECTION 9404. Effective dates; Building Commission.**

18 **SECTION 9405. Effective dates; Child Abuse and Neglect Prevention**  
19 **Board.**

20 **SECTION 9406. Effective dates; Children and Families.**

21 (1) FOSTER CARE AND KINSHIP CARE RATES. The treatment of sections 48.57 (3m)  
22 (am) (intro.) and (3n) (am) (intro.) and 48.62 (4) of the statutes takes effect on  
23 January 1, 2018, or on the day after publication, whichever is later.

24 (2) CHILD CARE BACKGROUND CHECKS. The treatment of sections 20.435 (6) (jm),  
25 20.437 (1) (jm) and (2) (jn), 48.65 (1), 48.651 (1) (intro.), (a), and (b), (1d) (b), (2), (2m),

To: Unemployment Insurance Advisory Council  
From: Andy Rubsam  
Cc: Janell Knutson  
Date: March 16, 2017  
Re: Proposal to increase work search waiver to 26 weeks for certain claimants (SB 83/AB131)

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Federal law requires unemployment insurance benefit claimants to search for work in order to remain eligible for benefits.<sup>1</sup> The federal guidance regarding the work search requirement is that states have some discretion to define work search requirements, including provisions waiving the work search requirement for claimants who are on a temporary layoff with a definite recall date to their same employer.<sup>2</sup>

Wisconsin law states that unemployment claimants must conduct “a reasonable search for suitable work” in each week they claim benefits, which “must include at least 4 actions per week.”<sup>3</sup> The work search requirement does not apply to claimants who are “currently laid off from employment with an employer but there is a reasonable expectation of reemployment by an employer.”<sup>4</sup> In determining whether the claimant has a reasonable expectation of reemployment, the department considers the employer’s history of layoffs and reemployments, the anticipated reemployment date and whether the claimant has recall rights under a collective bargaining agreement.<sup>5</sup>

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<sup>1</sup> 42 USC § 503(a)(12) (“a claimant must be...actively seeking work.”). Federal law provides a few exceptions to this requirement, such as if the claimant participates in approved training. 26 USC § 3304(a)(8).

<sup>2</sup> *Work Search and Overpayment Offset Provisions Added to Permanent Federal Unemployment Compensation Law by Title II, Subtitle A of the Middle Class Tax Relief and Job Creation Act of 2012*, Unemployment Insurance Program Letter 05-13, page 3 (US-DOL, January 10, 2013).

<sup>3</sup> Wis. Stat. § 108.04(2)(a)3.

<sup>4</sup> *Id.*

<sup>5</sup> Wis. Stat. § 108.04(2)(a)3.a. to c.

Before 2004, Wisconsin law provided a maximum work search waiver of 12 weeks for claimants that qualified for a waiver. Under the law in effect until June 14, 2015, the department, by administrative rule, waived a claimant's work search requirement if certain circumstances applied. If the claimant was laid off but there was a "reasonable expectation of reemployment of the claimant by that employer," the work search requirement was waived.<sup>6</sup>

As of June 14, 2015, Wisconsin law provides for a work search waiver if the claimant "is currently laid off from employment with an employer but there is a reasonable expectation that the claimant will be returning to employment within a period of 8 weeks, which may be extended an additional 4 weeks but may not exceed a total of 12 weeks."<sup>7</sup>

Senators Bewley, Erpenbach, Hansen, Johnson, Ringhand, Risser, and Vinehout and Representatives Hesselbein, Pope, Billings, Berceau, Bowen, Considine, Goyke, Milroy, Ohnstad, Sargent, Spreitzer, Subeck and C. Taylor propose to amend the work search statute to provide for a 26-week work search waiver period for claimants who have a reasonable expectation of reemployment with the same employer. This proposal would, in effect, cause Wisconsin law to revert to the law of pre-June 14, 2015 administrative rule, which did not set a limit of weeks for work search waivers for claimants who have a reasonable expectation of reemployment with the same employer.

The Department anticipates that this proposal will have a negative effect on the trust fund because it will take longer for claimants to return to work, resulting in more benefits paid.

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<sup>6</sup> Wis. Admin. Code § DWD 127.02(2) (before June 14, 2015).

<sup>7</sup> Wis. Admin. Code § DWD 127.02(2) (effective June 14, 2015).



## 2017 SENATE BILL 83

March 2, 2017 - Introduced by Senators BEWLEY, ERPENBACH, HANSEN, JOHNSON, RINGHAND, RISSER and VINEHOUT, cosponsored by Representatives HESSELBEIN, POPE, BILLINGS, BERCEAU, BOWEN, CONSIDINE, GOYKE, MILROY, OHNSTAD, SARGENT, SPREITZER, SUBECK and C. TAYLOR. Referred to Committee on Workforce Development, Military Affairs and Senior Issues.

- 1     **AN ACT to amend** 108.04 (2) (a) 3. (intro.) of the statutes; **relating to:** an  
2             exemption from work search requirements for certain individuals claiming  
3             unemployment insurance benefits.

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### *Analysis by the Legislative Reference Bureau*

This bill provides that a claimant for unemployment insurance benefits who reasonably expects to be reemployed by the claimant's former employer within 26 weeks is exempt from the eligibility requirement of conducting weekly searches for suitable work.

Under current law, a claimant is generally required to conduct searches for work each week to be eligible for unemployment benefits. Current law provides that a claimant who is laid off is exempt from the work search requirement if the claimant reasonably expects to be reemployed by the former employer and the Department of Workforce Development verifies that expectation. DWD may grant a claimant a waiver of the work search requirement under certain conditions. Administrative rules promulgated by DWD require DWD to grant a claimant a waiver of the work search requirement for eight weeks if the claimant reasonably expects to be reemployed with the claimant's employer within that period. The rules permit DWD to provide an additional four-week extension of that waiver. The rules also provide additional reasons a claimant may qualify for a waiver.

This bill modifies current law to specifically provide that a claimant is exempt from the work search requirement for up to 26 weeks after the week the claimant was laid off if the claimant reasonably expects to be reemployed within that 26-week period.

**SENATE BILL 83**

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 108.04 (2) (a) 3. (intro.) of the statutes is amended to read:

108.04 (2) (a) 3. (intro.) The individual conducts a reasonable search for suitable work during that week, unless the search requirement is waived under par. (b) or s. 108.062 (10m). The search for suitable work must include at least 4 actions per week that constitute a reasonable search as prescribed by rule of the department. In addition, the department may, by rule, require an individual to take more than 4 reasonable work search actions in any week. The department shall require a uniform number of reasonable work search actions for similar types of claimants. ~~This subdivision does not apply to an individual if~~ If the department determines that the an individual is currently laid off from employment with an employer but there is a reasonable expectation of reemployment of the individual by that employer within 26 weeks after the week the individual was laid off, this subdivision does not apply to that individual with respect to that 26-week period. In determining whether the individual has a reasonable expectation of reemployment by an employer, the department shall request the employer to verify the individual's employment status and shall also consider other factors, including:

**SECTION 2. Initial applicability.**

(1) This act first applies to weeks of unemployment beginning on the effective date of this subsection.

**SECTION 3. Effective date.**

2

**D17-08 (with minor revision)**  
**Various Minor and Technical Changes**

Date: March 16, 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.

**D17-08 (with minor revision)**  
**Various Minor and Technical Changes**

- 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.<sup>1</sup> 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

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<sup>1</sup> 26 USC § 3302(c)(2).

**D17-08 (with minor revision)**  
**Various Minor and Technical Changes**

deposit the funds into the state's unemployment trust fund.<sup>2</sup> The Department recommends a law change to align state law 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.<sup>3</sup> 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

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<sup>2</sup> 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."

<sup>3</sup> 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 subs. (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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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 attached.

**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.

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**Various Minor and Technical Changes**

Prepared by: Technical Services Section

**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

**UI Trust Fund Impact:**

These minor or technical changes would not impact the Trust Fund.

**IT and Administrative Impact:**

The amendments to Section 20.445 would allow an administrative change in the funding source in the amount of \$1,630,000 to fund 5 program integrity related positions and other program integrity related activities. All changes are minor or technical in nature and would not result in an IT or administrative impact.

**Summary of Proposal:**

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

- a. 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. Correct a drafting error regarding school-year employment. The relevant statute, s. 108.04(17)(e), appears to be missing the phrase “Indian tribe” in one instance.
- c. Correct a drafting error regarding suitable work language that was not updated in a cross reference.
- d. Update the statutes to remove the word “check.” Currently, Chapter 108 refers to the issuance of “checks” for payment of unemployment benefits. But, the Department primarily pays benefits by direct deposit or debit card deposit.
- e. Amend the statutes to refer to the option of “electronic delivery” for all types of determinations and notices.
- f. The Legislative Reference Bureau recommends amending the statutes to confirm the department’s interpretation: 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. Authorize the deposit of FUTA credit reduction payments to the balancing account in accordance with the current practice and in compliance with federal law. FUTA credit reduction payments are made by the federal government to the states when the states borrow funds from the federal government in order to pay unemployment benefits.
- h. Modify three areas of the work share provisions. First, codify Department policy, which is that the amounts of dismissal, sick or vacation payments be treated as hours for work share calculation purposes. Second, disregard discrepancies of less than 15 minutes of work reported, which is similar to the \$2 disregard of wages earned in a week for regular benefits. Third, clarify that a claimant who misses work available with a work-share employer would be treated the same as if the claimant missed work while receiving regular UI benefits.

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- i. Amend appropriation language in Section 20.445 for the unemployment interest payment fund and the unemployment program integrity fund. The amendments will convert these funds from "segregated-sum sufficient" to "segregated-continuing" to make accounting for these fund more efficient. This would result in allowing an administrative change in the funding source in the amount of \$1,630,000 to fund five program integrity-related positions and other program integrity-related activities.

**Trust Fund Methodology:**

These minor or technical changes would not impact the Trust Fund.

**IT and Administrative Impact Methodology:**

The amendments to Section 20.445 would allow an administrative change in the funding source in the amount of \$1,630,000. It would allow utilization of funds from the Program Integrity Fund rather than UI Grant Monies and/or SBR funds. The amount will fund five program integrity-related staff positions and other program integrity-related activities. All changes are minor or technical in nature and would not result in an IT or administrative impact.

**D17-10**  
**Amendments to Drug Testing Statutes**

Date: March 16, 2017  
Proposed by: DWD  
Prepared by: Andy Rubsam

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Amendments to Drug Testing Statutes**

**1. Description of Proposed Change**

The 2015-2017 Budget Bill (Act 55) directs the Department to create, by rule, a program to test unemployment insurance applicants for controlled substances, to create a program for employers to submit the results of pre-employment drug tests to the Department, to provide treatment for controlled substance abuse, and to provide job skills assessments.<sup>1</sup>

The Department has promulgated an emergency rule for the pre-employment drug testing, drug treatment, and job skills assessment provisions and the department anticipates the final draft of the permanent rule will be effective in June. The Department has begun to draft, but has not yet promulgated, the rule regarding the testing of unemployment insurance applicants for controlled substances (i.e. occupational drug testing).

During the rulemaking process, the Department has identified statutory changes that, if enacted, would ease the administration of the drug testing and treatment programs and would ensure that Wisconsin law conforms to federal requirements. The Department proposes the following statutory changes:

- Federal law provides that states may only test “applicants” for unemployment insurance for controlled substances.<sup>2</sup> “Applicant” is defined in federal law as “an individual who files an initial claim for unemployment compensation under State law. Applicant excludes an individual already found initially eligible and filing a continued claim.”<sup>3</sup> The

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<sup>1</sup> Wis. Stat. § 108.133.

<sup>2</sup> 42 USC § 503(l)(1)(A).

<sup>3</sup> 20 CFR § 620.2.

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Department proposes to amend Wisconsin's occupational drug testing statute to refer to "applicants" instead of "claimants" in order to clearly align state law with this federal definition. This will ensure conformity to federal requirements.

- Confirming that the Department shall pay the reasonable cost of drug testing applicants under the occupational drug testing program.
- Amending the privacy statute to ensure that all information related to drug testing and prescription medication is confidential. The current statute specifies that drug treatment information is confidential.<sup>4</sup> Existing administrative code provisions provide general confidentiality protections<sup>5</sup> but a statutory change would ensure specific protections regarding drug testing results and prescriptions.
- Limiting employers' civil liability under state law for submission of pre-employment drug testing information to the Department. This may encourage employer participation in the program.
- The Legislature appropriated \$250,000 annually to the Department "to conduct testing for controlled substances, for the provision of substance abuse treatment, and for related expenses under s. 108.133." The Department recommends amending the appropriation statute to confirm that the Department may use this funding to screen unemployment benefit applicants in order to determine whether there is a reasonable suspicion that a claimant has engaged in the unlawful use of controlled substances.

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<sup>4</sup> Wis. Stat. § 108.133(3)(e).

<sup>5</sup> Wis. Admin. Code § DWD 149.02(1).

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**2. Proposed Statutory Change**

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

(aL) *Unemployment insurance administration; controlled substances testing and substance abuse treatment.* Biennially, the amounts in the schedule to conduct screenings of applicants, to conduct testing for controlled substances, for the provision of substance abuse treatment, and for related expenses under s. 108.133.

**Section 108.133(1)(am) of the statutes is created to read:**

(am) “Applicant” means an individual who files a new initial claim for regular benefits under this chapter.

**Section 108.133(2)(intro) of the statutes is amended to read:**

(2) DRUG TESTING PROGRAM. The department shall establish a program to test ~~claimants~~ who apply applicants ~~for regular benefits under this chapter~~ for the ~~presence~~ unlawful use of controlled substances in accordance with this section and shall, under the program, do all of the following:

**Section 108.133(2)(a)1. of the statutes is amended to read:**

1. Identify a process for testing ~~claimants~~ applicants for the ~~presence~~ unlawful use of controlled substances. The department shall ensure that the process adheres to any applicable federal requirements regarding drug testing. The department shall pay the reasonable costs of controlled substances testing.

**Section 108.133(2)(a)3. of the statutes is amended to read:**

3. Create a screening process for determining whether there is a reasonable suspicion that an applicant ~~claimant~~ has engaged in the unlawful use of controlled substances.

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**Section 108.133(2)(a)5. of the statutes is amended to read:**

5. Identify a period of ineligibility that must elapse or a requalification requirement that must be satisfied, or both, in order for an ~~elaimant~~ applicant to again be eligible for or qualify for benefits after becoming ineligible for benefits under sub. (3) (a) or (c).

**Section 108.133(2)(b) of the statutes is amended to read:**

When an ~~elaimant~~ applicant applies for regular benefits under this chapter, do all of the following:

**Section 108.133(2)(b)1. of the statutes is amended to read:**

1. Determine whether the ~~elaimant~~ applicant is an individual for whom suitable work is only available in an occupation that regularly conducts drug testing.

**Section 108.133(2)(b)2. of the statutes is amended to read:**

2. Determine whether the ~~elaimant~~ applicant is an individual for whom suitable work is only available in an occupation identified in the rules promulgated under par. (am), unless the department determined that the applicant is an individual for whom suitable work is only available in an occupation that regularly conducts drug testing under subd. 1.

**Section 108.133(2)(b)3. of the statutes is amended to read:**

3. If the ~~elaimant is determined by the~~ department determines, under subd. 1., that the applicant is to be an individual for whom suitable work is only available in an occupation that regularly conducts drug testing, conduct a screening on the ~~elaimant~~ applicant.

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**Section 108.133(2)(b)4. of the statutes is amended to read:**

4. If the ~~claimant is determined by the department~~ determines, under subd. 2., that the applicant is to be an individual for whom suitable work is only available in an occupation identified in the rules promulgated under par. (am), conduct a screening on the ~~claimant~~ applicant if a screening is not already required under subd. 3.

**Section 108.133(2)(b)5. of the statutes is amended to read:**

5. If a screening conducted as required under subd. 3. or 4. indicates a reasonable suspicion that the ~~claimant~~ applicant has engaged in the unlawful use of controlled substances, require the ~~claimant~~ applicant to submit to a test for the presence of controlled substances.

**Section 108.133(3)(a) of the statutes is amended to read:**

(3) DRUG TESTING; SUBSTANCE ABUSE TREATMENT. (a) If an ~~claimant~~ applicant is required under sub. (2) (b) 5. to submit to a test for the presence of controlled substances and the ~~claimant~~ applicant declines to submit to such a test, the ~~claimant~~ applicant is ineligible for benefits under this chapter until the ~~claimant~~ applicant is again eligible for benefits as provided in the rules promulgated under sub. (2) (a) 5.

**Section 108.133(3)(b) of the statutes is amended to read:**

(b) If an ~~claimant~~ applicant who is required under sub. (2) (b) 5. to submit to a test for the presence of controlled substances submits to the test and does not test positive for any controlled substance or the ~~claimant~~ applicant presents evidence satisfactory to the department that the ~~claimant~~ applicant possesses a valid prescription for each controlled substance for which the ~~claimant~~ applicant tests positive, the ~~claimant~~ applicant may receive benefits under this chapter if otherwise eligible and may not be required to submit to any further test for the presence of controlled substances until a subsequent benefit year.

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**Section 108.133(3)(c) of the statutes is amended to read:**

(c) If an ~~elaimant~~ applicant who is required under sub. (2) (b) 5. to submit to a test for the presence of controlled substances submits to the test and tests positive for one or more controlled substances without presenting evidence satisfactory to the department that the ~~elaimant~~ applicant possesses a valid prescription for each controlled substance for which the ~~elaimant~~ applicant tested positive, the ~~elaimant~~ applicant is ineligible for benefits under this chapter until the ~~elaimant~~ applicant is again eligible for benefits as provided in the rules promulgated under sub. (2) (a) 5., except as provided in par. (d).

**Section 108.133(3)(d) of the statutes is amended to read:**

(d) An ~~elaimant~~ applicant who tests positive for one or more controlled substances without presenting evidence of a valid prescription as described in par. (c) may maintain his or her eligibility for benefits under this chapter by enrolling in the substance abuse treatment program and undergoing a job skills assessment. Such an ~~elaimant~~ applicant remains eligible for benefits under this chapter, if otherwise eligible, for each week the ~~elaimant~~ applicant ~~is in full~~ fully complies ~~compliance~~ with any requirements of the substance abuse treatment program and job skills assessment, as determined by the department in accordance with the rules promulgated under sub. (2) (a) 2. and 4.

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**Section 108.133(3)(e) of the statutes is amended to read:**

(e) All information relating to an elaimant's individual's declining to take a test for the presence of controlled substances, testing positive for the unlawful use of controlled substances, prescription medication, medical records, and enrollment and participation in the substance abuse treatment program under this chapter shall, subject to and in accordance with any rules promulgated by the department, be confidential and not subject to the right of inspection or copying under s. 19.35 (1).

**Section 108.133(4)(c) of the statutes is created to read:**

(c) Any employing unit that, in good faith, submits the results of a positive test or notifies the department that an individual declined to submit to a test under par. (a) is immune from civil liability for its acts or omissions with respect to the submission of the positive test results or the notification to the department that the individual declined to submit to the test.

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

5. Amounts transferred from the appropriation under s. 20.445(1)(aL).

**3. Effects of Proposed Change**

- a. Policy. This proposal may result in increased employer participation in the pre-employment drug testing program. This proposal ensures that individuals' medical and drug testing information is kept confidential. Under this proposal, the Department will have more flexibility to use the funds appropriated to it.
- b. Administrative. Staff will need to be trained on the proposed changes.
- c. Fiscal. A fiscal estimate is attached.

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**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. The Department believes that this proposal will ensure that Wisconsin law better aligns with federal requirements.

**5. Proposed Effective/Applicability Date**

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

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**Amendments to Drug Testing Statutes**

Prepared by: Technical Services Section

**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

**UI Trust Fund Impact:**

These are technical changes and would not impact the UI Trust Fund.

**IT and Administrative Impact:**

These are technical changes and would not have an IT or Administrative impact.

**Summary of Proposal:**

During the rulemaking process, the Department has identified statutory changes that, if enacted, would ease the administration of the drug testing and treatment programs and would ensure that Wisconsin law conforms to federal requirements. The Department proposes the following statutory changes:

- Refer to “applicants” instead of “claimants” in order to clearly align state law with this federal definition. This will ensure conformity to federal requirements.
- Confirm that the Department shall pay the reasonable cost of drug testing applicants under the occupational drug testing program.
- Amending the privacy statute to ensure that all information related to drug testing and prescription medication is confidential. The current statute specifies that drug treatment information is confidential.<sup>6</sup> Existing administrative code provisions provide general confidentiality protections<sup>7</sup> but a statutory change would ensure specific protections regarding drug testing results and prescriptions.
- Limiting employers’ civil liability under state for submission of pre-employment drug testing information to the Department.
- The Legislature appropriated \$250,000 annually to the Department “to conduct testing for controlled substances, for the provision of substance abuse treatment, and for related expenses under s. 108.133.” The Department recommends amending the appropriation statute to confirm that the Department may use this funding to screen unemployment benefit applicants in order to determine whether there is a reasonable suspicion that a claimant has engaged in the unlawful use of controlled substances.

**Trust Fund Methodology:**

These are technical changes and would not impact the UI Trust Fund. Though the proposal may provide an incentive for employers to submit pre-employment drug tests to the Department, it is uncertain at this time whether there will be any significant impact on the UI Trust Fund.

**IT and Administrative Impact Methodology:**

These are technical changes and would not have an IT or Administrative impact.

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<sup>6</sup> Wis. Stat. § 108.133(3)(e).

<sup>7</sup> Wis. Admin. Code § DWD 149.02(1).