STATE OF WISCONSIN DWD
Department of Workforce Development

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Council Members: Please bring your calendars to schedule future meetings.
Council Website: http://dwd.wisconsin.gov/uibola/uiac/

MEETING

Date: April 20, 2017

Time: **9:30** 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 March 16, 2017 Council Meeting
3. Department Update
4. Open Records Training – Karl Dahlen
5. Financial Outlook Report – Rob Usarek
6. Worker Misclassification Quarterly Report – Mike Myszewski
7. Update on Court Cases
   - *Lela M. Operton v LIRC & Walgreen Co Illinois*
   - *DWD v. LIRC, Valarie Beres & Mequon Jewish Campus, Inc.*
8. Update on Occupational Drug Testing
   - US House Joint Resolution 42
9. Various Administrative Rule Changes – Scope Statement

10. Update on Legislation
    - Budget Bill (SB30 / AB64)
    - Mobility Grant Study (AB 243)
    - Work Search Waiver (SB83 / AB131)
11. Department Proposals For Agreed Bill Pending Action
    - 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 (Revised)
    - D17-08 – Various Minor and Technical Changes
    - D17-10 – Amendments to Drug Testing Statutes (Revised)
12. Management & Labor Proposals for Agreed Bill
13. Timeline of Agreed Bill
14. Agenda Items for May 18, 2017 Meeting
15. 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

March 16, 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, Mike Crivello, Terry Hayden, Mark Reihl, and Shane Griesbach

Department Staff Present: Joe Handrick, Andy Rubsam, Lili Crane, Georgia Maxwell, Karl Dahlen, Andrew Evenson, Tyler Tichenor, Tom McHugh, Mary Jan Rosenak, Pam James, Janet Sausen, Robert Usarek, Jill Moksouphanh, Emily Savard, Matthew Aslesen, Karen Schultz, and Robin Gallagher

Members of the Public Present: Senator Sheila Harsdorf (Senate District 10), Terri Griffiths (Senate District 10), Chris Reader (Wisconsin Manufacturer & Commerce), Maria Gonzalez Knavel (Labor Industry Review Board (LIRC), General Counsel) Mary Beth George (Rep. Sinicki's Office) Mike Duchek (Legislative Reference Bureau), Ryan Horton (Legislative Fiscal Bureau), Victor Forberger (Wisconsin UI Clinic), and Brian Dake (Wis. Independent Businesses, Inc.)

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 Senator Sheila Harsdorf, Terry Griffiths, Georgia Maxwell (DWD Deputy Secretary), Ryan Horton of the Legislative Fiscal Bureau, Mike Duchek of the Legislative Reference Bureau and Maria Gonzalez of LIRC.

2. Approval of Minutes

January 19, 2017 Meeting Minutes

At the February 16, 2017 meeting, there were seven members in attendance; however, one member abstained from voting on the January 19, 2017 minutes, resulting in a lack of the required votes to approve the minutes, which are presented at today's meeting for approval. Motion by Mr. Gotzler, second by Mr. Hayden to approve the January 19, 2017 meeting minutes. The motion carried unanimously and the Council approved the minutes without correction.

February 16, 2017 Meeting Minutes

Mr. Gustafson requested that the header in Item 2. be corrected by removing the duplicate word "Minutes." Motion by Mr. Manley, second by Mr. Griesbach to approved the February 16, 2017 meeting minutes as corrected. The motion carried unanimously and the Council approved the minutes with correction.

3. Senator Sheila Harsdorf

Senator Sheila Harsdorf, 10^{th} Senate District, thanked the Council for the opportunity to speak at today's meeting. When conducting listening sessions, both employers and employees attending the sessions expressed concern with the change in the law relating to job search requirements. Senator Harsdorf stated she supports the overall concept of job search - for people who are unemployed to search for work. Jobs in the construction and cement industries do not allow employees to work during the winter months. From an employee's standpoint, they have a job, but are forced to do job searches and forced to take a job if offered. From an employer's standpoint, they have employees who cannot work for a period of time and risk losing trained and skilled employees, which is a tremendous loss to the company. Because this issue impacts both employers and employees, Senator Harsdorf felt it is appropriate for the Council to address the issue and come to a resolution. The taxes paid by employers are sometimes never utilized by the employer paying, and subsidize employers that have seasonal workers.

Mr. Lump stated this is an issue that impacts small businesses in general, and a lot of seasonal employers in the tourism industry face the same issue. At the public hearing, the vast majority of comments came from both employers and employees in a variety of industries and businesses on this issue. This is a very serious issue and he is on Senator Harsdorf's side.

Senator Harsdorf reiterated that those who are truly unemployed should be encouraged to actively seek employment. However, there are some professions that are falling through the cracks.

Mr. Meilke thanked Senator Harsdorf for coming today and stated that although there is not an easy solution, the Council is aware of the issue.

Mr. Manley thanked Senator Harsdorf for bringing this issue forward. He indicated from an employer representative position, this issue is particularly challenging as not all employers agree there is a problem. A survey conducted in December of the WMC members showed that 70% of employers are having a difficult time hiring. For those employers, not requiring an individual out of work for 4 to 6 months to search for work is difficult to accept, especially when those employers experience work slow-downs and are forced to temporarily lay-off employees who are not protected from work search requirements. Mr. Manley stated there may be a way to meet the needs of both, but he is unsure how to do that to make sure there is equity in the system for everyone who pays into it.

Senator Harsdorf stated the challenge is there are many unique industries are affected by the weather while other industries are looking for workers. Employers looking for employees do not want to hire and train employees only to lose them after three months.

Mr. Mielke stated that many employers in the construction industry are expressing concern about losing long-term, skilled employees that are laid off specifically because of the weather. It is important that these employers know if these employees will be returning to work to determine the size of their workforce to bid on certain projects. Mr. Mielke commended the department for the improvements made in the system, making it easier for both employees and employers to navigate the work search requirements, but finding an equitable solution is challenging.

Mr. Reihl sympathized with Senator Harsdorf's position. There are certain industries and certain employers that lay off more people than others and the system is not fair. But, Mr. Reihl expressed the importance of recognizing everyone is in this state together and these industries provide good paying jobs that we want to maintain in this state even when they have unique ways to operate. From a construction viewpoint, Mr. Reihl can sympathize with employers because it is difficult to attract people to these industries when it is known that they will be laid off due to weather situations. Mr. Reihl stated he would like to see something accomplished.

Mr. Gotzler thanked Senator Harsdorf for speaking to the Council. There is a range of employers and industries in the state impacted by this issue and the biggest hurdle is finding a solution. Mr. Gotzler represents the Temporary Staffing Industry, and an annual survey is conducted on the members. For the past five years, the number one concern, over 70%, is finding enough workers. Mr. Gotzler stated a possible partnership with employers who need workers and those laying off workers. As an example, construction or cement workers likely have a broad range of other skills that could be used by another employer for a short-term project.

Ms. Knutson stated that the Legislature had been hearing concerns before the rule change, specifically that approximately 85% of people collecting benefits in the winter months were not required to search for work and Wisconsin had the highest percentage of work search waivers compared to any other state in this area. Other concerns expressed were some employers could not find workers during the off season, and because of the tax structure, employers with the highest tax rate were only paying for 4.5 weeks of benefits for any individual employee. If a worker is laid off for 16 weeks, only 4.5 weeks of benefits are being paid from the employer's account and the remaining payments are paid from the balancing account, into which all other taxable employers pay.

Mr. Handrick reported the overall UI program is designed for individuals who lose work through no fault of their own, but are able and available for work, and actively seeking employment. Work search waivers were never meant to be applied to the vast majority of claimants, and when 85% of claimants are exempt from work search, it is difficult to declare an exception to the general rule.

Ms. Knutson reported over the last few years, the federal government has made it very clear that individuals need to be searching for work as a federal compliance and conformity requirement. There can be some exceptions; for example, individuals who have a short-term lay-off with a specific recall date identified by employers can be exempt from work search. This is a multifaceted problem and the Council has received numerous comments and will continue to discuss this issue. Ms. Knutson thanked Senator Harsdorf for bringing this issue to the Council.

4. Department Update

Ms. Knutson stated that, in conjunction with Sunshine Week, this year all Councils are required to complete a brief open records training. The 15-minute video will be added to the agenda at the next meeting, and Mr. Dahlen will be available to answer any questions.

5. Report on the Unemployment Insurance Reserve Trust Fund

Mr. McHugh reported on the following UI Reserve Fund Highlights:

- Regular UI benefit payments as of February 28, 2017 total $119.8 million, a decrease of $7.4 million (5.8%) when compared to the same period in 2016.
- Benefits paid in the past 52 weeks, compared to the prior year, declined $75.3 million (13.5%) from $558,884,084 to $483,587,709.
- Year-to-date tax receipts, including 4th quarter 2016 tax payments due by January 31, total $78.5 million. Prior year tax receipts for the same period last year were $106.2 million, a decrease of $27.7 million (26.1%) largely due to the change from the highest Tax Schedule A to Tax Schedule B.
- Trust Fund receipts, which include interest payments, for the end of calendar year 2016 were approximately $874.2 million compared to 2015 Trust Fund receipts totaling approximately $1.1 billion. The decline in tax receipts is due both to the tax rate schedule change and the improved economy.
- 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.

Mr. McHugh stated there was an overall decrease of $145 million due to the schedule change, experience rating and improved economy, with $44.7 million strictly due to the schedule change.

Ms. Knutson stated the Financial Outlook Report will be presented to the Council at the April meeting.

6. Fraud Report

Mr. Handrick presented the "Wisconsin Unemployment Insurance Supporting Integrity, Accountability and Re-Employment, 2017 Report to the Unemployment Insurance Advisory Council." The title reflects the strategic vision and direction that has been advanced by DWD Secretary Ray Allen. The department employs 585 staff who combat benefit fraud, educate employers and claimants, enforce worker classification laws and facilitate the rapid re-employment of UI claimants. The department has pivoted from being a benefits agency to a talent development agency.

In 2016, the amount and rate of fraud against the UI program continued to decline significantly. Total benefits declined 15.5%, UI fraud overpayments declined 35.3% and non-fraud overpayments declined 24.7%.

To assist claimants in navigating the system and to cut down on errors, the department implemented the Internet Weekly Claim System (IWC) which eliminated many of the compound questions and provides numerous pop-up menus that answer questions. It is also mobile friendly for those without a personal computer connected to the internet, but have access to a smart phone device. The department is currently working on implementing a Spanish version of the IWC.

Ms. Knutson reported that in 2016, 63 cases were referred for potential state criminal prosecution with fraudulent benefit amounts totaling $607,000, an average of over $9,000 per case. The UI Division and Worker's Compensation Division have partnered to jointly fund a full-time Assistant Attorney General position in the Department of Justice in 2016 to prosecute select UI fraud cases and all worker's compensation fraud cases.

In addition to informing an employer that a claimant reported wages when filing for benefits, the department has implemented the "post verification of wages cross match" technique in which the department informs the employer when a claimant stops reporting wages. This tool detected $290,483 in fraudulent UI claims in 2016.

Mike Myszewski, Program Integrity Policy Advisor in the UI Bureau of Legal Affairs, will provide a quarterly update at the April or May Council meeting on worker misclassification. Ms. Knutson reported on the following:

- The website link to the educational videos on worker misclassification is provided in the report.
- The detection and deterrence tools used to combat fraud include cross matching and enhanced penalties for deterrence purposes.
- Statutory changes in the agreed bill from last session.
- Collection efforts resulting in the department recovering $30 million in overpayments, using collection tools such as the Treasury Tax Offset Program (intercepts tax refunds). The department just began using this program for employers, and a report will be presented at a later meeting.
- Addendum provided at the end of the report provides detailed data on overpayments (both fraud and non-fraud) and overpayment collections data.

7. Pre-Employment Drug Testing and Occupational Drug Testing

Public Comments Regarding Pre-Employment Drug Testing Emergency Rule

Ms. Knutson reported the department held a public hearing on the pre-employment drug testing emergency rule on February 27, 2017. No one attended the hearing, but one person submitted a written comment expressing concern on drug-testing in general. The permanent rule is expected to be effective May 1, 2017 on pre-employment drug testing.

U.S. House Joint Resolution 42

Ms. Knutson reported that U.S. House Joint Resolution 42 was passed by the Senate and is now before the President for signature. U.S. House Joint Resolution 42 disapproves the USDOL rule for occupational drug testing.

8. Court Decisions

Mr. Rubsam provided an update on the Court of Appeals case of *DWD v. LIRC, Valarie Beres & Mequon Jewish Campus, Inc.* Ms. Beres missed one day of work during her probationary period due to an illness and did not notify her employer that she would be absent. The employer's policy, which Ms. Beres signed, stated that a single no-call, no-show during probation would result in termination. The employer fired Ms. Beres for missing that one day of work. Ms. Beres filed for UI benefits, which were denied by the department and the appeal tribunal. LIRC reversed the appeal tribunal decision and allowed benefits stating the employer's policy was more strict than the default standard under the misconduct statute. The department appealed LIRC's decision to the circuit court, which reversed LIRC's decision. LIRC appealed to the Court of Appeals, which then reinstated LIRC's decision finding that LIRC correctly applied the statute and allowed benefits. The dissent would have given LIRC no deference and would have agreed with department that Ms. Beres was discharged for misconduct related to her attendance. The department has not yet decided whether to petition to the Supreme Court.

If an employer does not have a written policy, misconduct is based on what is written in statute. If a written policy is given to the employee and the employee signed the policy, even if it is more strict, it is considered misconduct under a plain reading of the statute.

9. Update on Legislation

2017-2019 Budget Bill (SB30/AB64)

Mr. Rubsam reported that under the proposed budget bill, the main UI-related item is the elimination of LIRC. LIRC reviews decisions issued by the department's appeal tribunal in UI cases. By eliminating LIRC, the appellate procedures would also change and the UI division administrator would review appeal tribunal decisions. If a litigant disagrees with the administrator's decision, the litigant can appeal to the circuit court and court of appeals. If individuals or businesses file a petition for LIRC review before the effective date of the budget bill, the case will be reviewed by LIRC. Appeals filed after the effective date of the budget bill will be reviewed by the administrator. Any LIRC cases still pending after the elimination of LIRC will be transferred to the division administrator. In addition, the budget bill:

- Requires the department to conduct a study regarding the feasibility of establishing a program, using a social impact bond model, to assist claimants for UI benefits by offering them mobility grants to relocate to areas with more favorable employment opportunities.
- The departments of children and families, public instruction, health services and workforce development are to collaborate and create a report to determine a link between absenteeism by children receiving public benefits and missing school.

Work Search Waiver (SB 83/AB 131)

Mr. Rubsam reported that SB 83/AB 131 is the work search waiver bill, similar to the bill which Senator Bewley addressed the Council on last session. Federal and state work search requirements were provided to the Council. The bill provides for a 26-week work search waiver and would supersede the rule. Ms. Knutson stated the fiscal estimate is not yet finalized, but it is anticipated the proposal would have a negative effect on the Trust Fund.

Ms. Knutson stated that, under the bill, anyone laid off from an employer that has a reasonable expectation to return to work within 26 weeks of being laid off, even without a specific return to work date, would be exempt from work search requirements. Any comments or recommendations the Council has to the bill sponsors can be relayed by the department.

10. Department Proposals for Agreed Bill

D17-08 – Various and Minor Technical Changes

Ms. Knutson stated there is one correction to department proposal D17-08 relating to various minor and technical changes. The narrative on page 3 erroneously stated the Legislative Fiscal Bureau requested the change, which they did not.

D17-09 – Various Administrative Rule Changes

Ms. Knutson requested the Council review the proposal for approval so the department can begin working on a scope statement, which will be submitted to the Council for its review before filing.

D17-10 – Amendments to Drug Testing

Mr. Rubsam introduced department proposal D17-10 relating to amendments to the drug testing statutes. There is no fiscal impact anticipated with the proposed changes. The proposal includes mostly minor changes that are technical in nature, and provides the following:

- Creates immunity from civil liability under state law for submission of the pre-employment drug testing information to the department. This change could result in increased participation in this voluntary program, which has been very limited to date.
- Amends the privacy provision in the statute to ensure all information received regarding a person's drug test, including participation in a substance abuse program, is confidential and not subject to the right of inspection or copying. There will likely be information that the department receives from employers relating to individuals who are not UI claimants and this will ensure their information is kept confidential.

D17-07 Revision of Collection Statutes

Mr. Rubsam reported that an update to the D17-07 proposal will be provided at the next meeting with changes to the statutory language related to benefit overpayment claims in bankruptcy cases. The department seeks to ensure that benefit overpayment claims are treated the same as tax claims in bankruptcy. The proposal should ensure that, where the department has filed a warrant, the department will be treated as a secured creditor rather than a general unsecured creditor.

11. Management and Labor Proposals for Agreed Bill

Ms. Knutson stated Council members may discuss their proposals during caucus.

12. Agenda Items for April 20, 2017

Specific requests for agenda items can be submitted to Ms. Knutson.

13. 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 11:10 a.m. All Council members voted "Aye" and the motion carried unanimously.

14. Report out of Caucus

The Council reconvened at 1:10 p.m. Mr. Reihl stated Labor members have requested information and will continue to work on proposals. The Labor members are ready to approve D17-09.

Mr. Manley stated Management members have the same status as Labor and are ready to vote to approve department proposal D17-09.

Motion by Mr. Reihl, second by Mr. Manley to approve department proposal D17-09. The motion carried unanimously.

15. Adjourn

Motion by Mr. Lump, second by Mr. Gotzler to adjourn at 1:15 p.m. The motion carried unanimously.

Financial Outlook

Wisconsin
Unemployment
Insurance
Program

Report prepared for the Governor and Legislature, pursuant to
§ 16.48 Wisconsin Statutes

Ray Allen, Secretary
Department of Workforce Development
April 2017
UCD-8967-P (R.04/2017)

Executive Summary

Due in large part to Wisconsin's vastly improved economy, Wisconsin's Unemployment Insurance (UI) Trust Fund ended 2016 with a balance of nearly $1.2 billion. This is a substantial increase from 2014, when the UI Trust Fund ended the year with a $214 million balance and a complete reversal since Governor Walker took office. At the end of 2010, Wisconsin's UI Trust Fund was over $1 billion in the red, and employers were facing increased costs associated with having to borrow to make statutorily required benefit payments.

Historically low UI benefit payments have caused the UI Trust Fund to grow quickly over the past two years. The UI Trust Fund is currently able to meet the projected UI benefit cost without having to borrow. In addition, the UI Trust Fund and UI tax revenue are projected to be sufficient to pay benefits for the immediate future.

The economy is projected to grow throughout the projection period of 2017 through 2019. Employers are currently paying taxes based upon the second lowest UI tax schedule, Schedule C for tax year 2017. In the current projection, the UI Trust Fund balance exceeds $1.2 billion on June 30, 2017. This means that for 2018, the expected UI Tax Schedule will be Schedule D, the lowest UI tax schedule. It is expected that UI taxes will remain on Schedule D through the rest of the projection period.

The historically low UI benefit payments have increased the variance in the projection for future UI benefits. To account for this variance, multiple scenarios are presented of UI benefit payments. All assume economic growth.

Table of Contents

Introduction

The Department of Workforce Development is pleased to present this report on the financial outlook of the State of Wisconsin Unemployment Insurance (UI) Trust Fund.

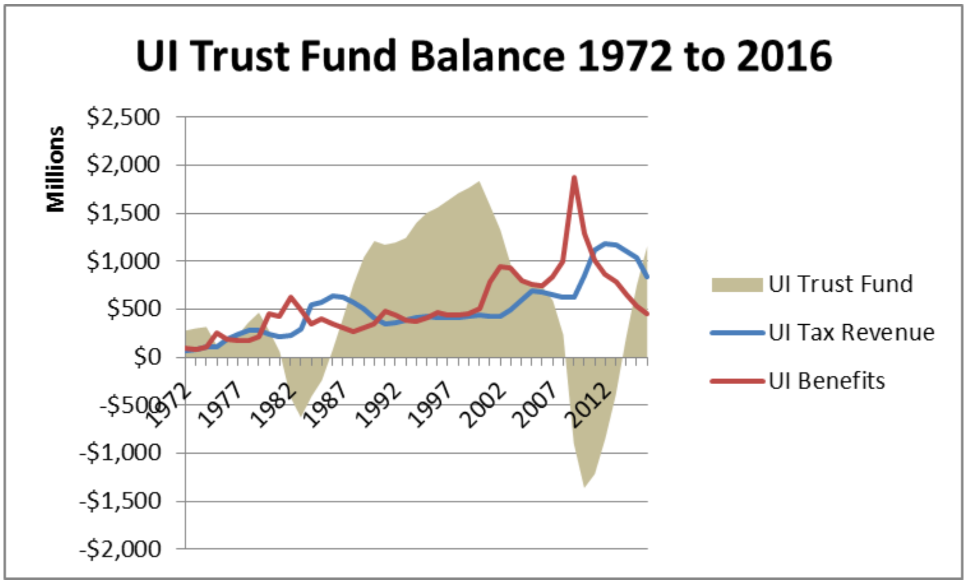


Chart 1

ET Financial Handbook 394, https://ows.doleta.gov/unemploy/hb394.asp

Due to multiple factors, including the continued strength of the Wisconsin economy, UI benefits have been historically low during the past two years. This has led to strong growth in the UI Trust Fund.

The UI Trust Fund balance at the end of 2016 was nearly $1.2 billion. In comparison, the UI Trust Fund ended 2014 with a positive balance closer to $214 million. Declining benefit payments combined with increases in the UI Trust Fund balance resulted in a reduction in UI taxes paid by employers for two consecutive years.

This *Financial Outlook* provides: a basic summary of the UI program to measure the adequacy of the UI Trust Fund and the UI financing system; a brief history of the Fund and the financing system; recent law changes that may affect the UI Trust Fund; and a Trust Fund forecast under different benefit scenarios.

Section 1: Unemployment Insurance Benefits and Financing System

Unemployment Insurance (UI) is funded by employer contributions (taxes) to provide temporary economic assistance to Wisconsin's workers who lose their employment through no fault of their own and meet other eligibility requirements. This section provides a brief background on Wisconsin's UI financing system.

Unemployment Insurance Benefits

UI benefit payments are paid to claimants who have lost employment through no fault of their own and meet other eligibility requirements. To continue to qualify for UI benefit payments, a claimant must be able and available for full-time work and, unless granted an exception, must be actively searching for work. The amount of UI benefit payments a claimant may receive is based upon the claimant’s past earned wages, up to a maximum weekly benefit rate of $370. Under the regular UI program, a claimant may receive up to 26 weeks of benefits in Wisconsin, which is consistent with the maximum duration for the vast majority of states.

Covered Employers in the Unemployment Insurance System

The majority of employers in Wisconsin participate in the UI program. By statute, there are some categories of employers that are not required to participate in UI in Wisconsin, for example, certain religious organizations.

Covered employers fall into two groups:

Reimbursable Employers

Reimbursable employers self-finance unemployment benefits for their workers. Wisconsin UI pays the benefits to individuals who worked for reimbursable employers and then bills those employers directly for the benefits paid. Employers who are allowed to be reimbursable are set by statute. Local governmental entities, non-profit organizations and American Indian Tribes can elect to be funded as reimbursable employers.

Taxable Employers

Taxable employers make up the majority of employers in the state of Wisconsin. Individual employers fund UI benefit payments and partially fund program operations through quarterly UI taxes. The system spreads unemployment benefit risk across all taxable employers via taxes that are experience rated, instead of having employers self-finance unemployment benefits.

Unemployment Insurance Taxes

UI benefits are financed by taxes levied on an employer’s payroll. Taxes are levied by both the federal and the state governments.

State Taxes

UI taxes are a payroll tax that finance Wisconsin UI benefits. They are assessed on the first $14,000 of each employee's earnings, commonly known as the taxable wage base. The tax rate an employer pays on wages up to the wage base is determined by two factors: the UI tax schedule in effect for a given rate year, and an employer's experience with the UI program.

The UI tax schedule in effect depends upon the balance in the UI Trust Fund. As the Trust Fund balance increases, schedules with lower rates are set to automatically take effect. Currently Schedule C, the second lowest rate schedule, is in effect.

An employer's experience with the UI program is based on the degree that employees of a given employer use the UI system to collect benefits. The more an employer's current or former employees utilize the UI program, the higher the tax rate an employer pays. No employer pays a tax rate higher than 12 percent, which funds roughly four and one-half weeks of benefit payments per employee earning the taxable wage base or greater. New Wisconsin employers who do not have a previous history with the Wisconsin UI system are assigned a new employer tax rate for the first three years. This rate varies depending upon the industry and size of the employer. After three years, these employers pay taxes based upon their experience with the UI system.

There are two components of the Wisconsin UI state taxes that an employer pays:

Basic Taxes

The basic tax is the portion of the tax an employer pays that is credited to its UI account. The amount an employer pays in basic taxes is correlated to the employer's experience with the UI system.

Solvency Taxes

Solvency taxes are credited to the UI balancing account, and are used to pay benefits not charged to specific employers and represents risk sharing among employers participating in the UI system.

Administrative Assessment

Recently, the Wisconsin State Legislature passed and Governor Walker signed legislation that allowed for a separate assessment collected along with the UI state tax for specific UI program integrity programs. The amount is a flat 0.01 percent rate with a corresponding reduction in the solvency tax. Thus, the administrative assessment does not change the amount of tax any given employer is required to pay.

UI Employer Account

The employer account is not a savings account just for that employer to pay for future benefits, the employer account acts as a measure to gauge an employer's experience with the UI system. The net difference between all the taxes collected over the entire employer's history and the charged benefits over the entire employer's history constitutes the balance of the employer's account, also known as the Reserve Fund Balance. If an employer's account falls below zero, benefits will still be paid to its eligible former workers. The basic tax an employer pays is entered as a credit on the account. UI benefit payments received by former, or in some cases current, workers are charged against the account.

An employer's UI account balance determines the employer's tax bracket and, ultimately, the tax rate an employer pays. On June 30 (the end of the state's fiscal year), the employer's account balance for that day is compared to the employer's current payroll[1]. A ratio is calculated (i.e., the reserve fund percentage) of the employer's account balance divided by the employer's payroll. This percentage is then compared to the tax schedule in effect the following year, and the employer's tax rate for the following calendar year is determined.

UI Balancing Account

Some benefit payments are not charged to a specific employer's account; they are instead charged to the UI balancing account. The balancing account represents the social insurance aspect of the Unemployment Insurance system for employers. There are seven basic categories of benefit charges to the balancing account. Names and full descriptions of each category are available in Appendix F.

Revenue to the balancing account typically comes from two sources[2]. The first, and by far the largest, is the solvency tax paid by employers. The second source is any interest earned on the UI Trust Fund. For 2016, the UI Trust Fund earned $21.8 million in interest revenue.

Federal Unemployment Taxes (FUTA)

As mentioned, employers participating in the UI system pay taxes levied by both the state and federal government. The taxes pay for different portions of the UI program. The state taxes collected are used mainly to pay regular benefits to Wisconsin's unemployed workers. Federal taxes are often referred to as FUTA taxes after the Federal Unemployment Tax Act.

These taxes are collected for three purposes:

1. **Unemployment Insurance Administration**
   Like all other states, the administration of Wisconsin's UI program is funded by FUTA tax revenues. The United States Department of Labor (USDOL) determines the amount of grant funding available to each state. Receipt of federal grant funds requires compliance and conformity with federal UI law.

2. **Extended Benefits and EUC**
   Wisconsin qualified for the Extended Benefit (EB) program from February 2009 until April 2012. Normally, funding for the EB program is shared equally by both the state and the federal government. The state portion is funded through the state's UI Trust Fund and the federal portion is funded through FUTA tax revenue. During the Great

[1]While the payroll used is for the fiscal year ending June 30, employers' second quarter contribution and wage reports and payments due July 31 are reflected in this calculation if made on a timely basis.
[2] Other federally distributed funds are also credited to the UI Balancing Account. One example is the FUTA credit reduction revenue which occurs when the UI system is borrowing.

Recession, the funding for EB was entirely paid by the federal government until the end of 2013. It has now reverted to again having shared costs between the federal government and the state.

The U.S. Congress has the option of authorizing EUC payments, which has occurred during severe recessions. Funding for the additional benefits normally comes from FUTA tax revenues reserved over time for this purpose. The severe nature of the Great Recession caused Congress to authorize general tax revenue to partially fund EUC. Wisconsin claimants received EUC benefits throughout the Great Recession until the program expired at the end of 2013.

3. Trust Fund Borrowing
After the Wisconsin UI Trust Fund was exhausted in 2009, Wisconsin borrowed from the federal government to pay benefits. Wisconsin paid back the federal loans with interest in 2014.

Consequences of Borrowing to Fund UI Benefit Payments

FUTA Credit Reductions

The rate for FUTA is 6.0 percent on the first $7,000 of an employee's wages; however, up to 5.4 percent can be credited back to employers if a state's UI program meets certain requirements, including maintaining a positive UI Trust Fund balance. If a state's UI Trust Fund remains negative on January 1st for two consecutive years, the FUTA tax credit is reduced by 0.3 percentage points each year while the loan is outstanding. From 2011 through 2013, Wisconsin employers were subject to FUTA tax credit reductions resulting in a total cost to employers of $291 million, which was used to pay back the federal loans needed to fund benefit payments. The Wisconsin UI Trust Fund became positive in 2014, therefore; employers were again eligible for the full FUTA credit.

Special Assessment for Interest (SAFI)

Federal law prohibits using regular State UI tax revenue to pay the interest on a federal loan to a state; therefore; a separate funding source is needed. Wisconsin paid the interest through a special assessment for interest on employers (SAFI). SAFI charges were assessed on Wisconsin employers to pay the interest on the federal loans in 2011 and 2012. Starting in 2013, the Wisconsin State Legislature provided state general purpose revenue to cover the interest due on the UI loan.

Interest charged by the federal government and the FUTA credit reduction are designed to provide incentives to keep states from allowing their trust funds to become insolvent. Given the time inconsistency between when the interest and credit reductions are assessed and when states need to decide to build up their trust funds, it may not be the most effective compliance mechanism. Ideally, large trust fund balances are accumulated and drawn down during a recession and built back up during expansions.

Section 2: Modern History of the Wisconsin Unemployment Insurance Trust Fund

The UI Trust Fund and UI financing system have dramatically changed since the start of the Wisconsin Unemployment Insurance system in 1935. This section focuses on the modern history of the UI financing system beginning with the events that produced the system in its current form.

Creation of Our Current UI Financing System: 1981-1982 Recession and Aftermath

Much of the current Wisconsin UI financing system was developed in response to the difficulties experienced by the UI Trust Fund during the recession of the early 1980s. The UI Trust Fund was rapidly depleted by the recession and Wisconsin had to borrow nearly $1 billion from the federal government to pay UI benefits.

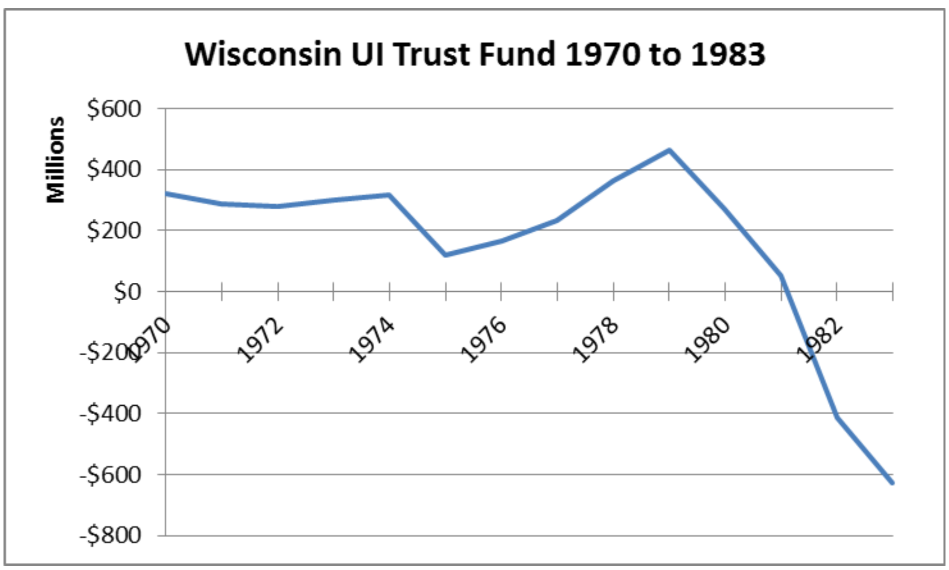


Chart 2
ET Financial Data Handbook 394, https://ows.doleta.gov/unemploy/hb394.asp

Wisconsin borrowed $988 million between 1982 and 1986. To provide context, this was about 4.1 percent of Total Covered Payroll in the mid-1980s. The same 4.1 percent of Total Covered Payroll of taxable employers in 2016 would be about $4.1 billion. The maximum outstanding loan balance was $737 million in 1984, which would be similar to $2.6 billion in 2016. Due to the mid-1980s borrowing, Wisconsin's employers paid $124 million in interest.

To eliminate the large UI Trust Fund debt during the 1980s, legislation was enacted with major changes to the UI financing system. These changes included:

- Reducing the maximum benefit duration from 34 weeks to 26 weeks;
- Increasing the taxable wage base from $6,000 to $10,500;
- Creating new rate schedules that are dependent on the UI Trust Fund balance;
- Increasing the Rate Limiter to 2 percent;

- Temporarily discontinuing the ten percent write-off;
- Limiting the effect of voluntary contributions;
- Charging the state's share of Extended Benefits to employers instead of the Balancing Account;
- Increasing the requirements to qualify for benefits;
- Increasing the requalification requirements; and
- Eliminating the indexing of the weekly maximum benefit amount.

These changes allowed Wisconsin to rapidly repay the UI Trust Fund loan and build up a sizable UI Trust Fund by the end of the 1980s.

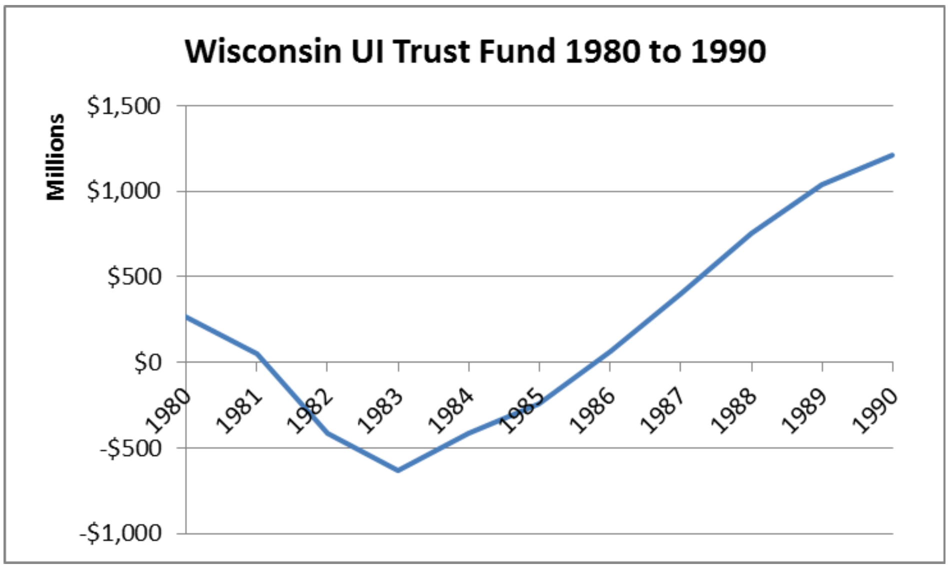


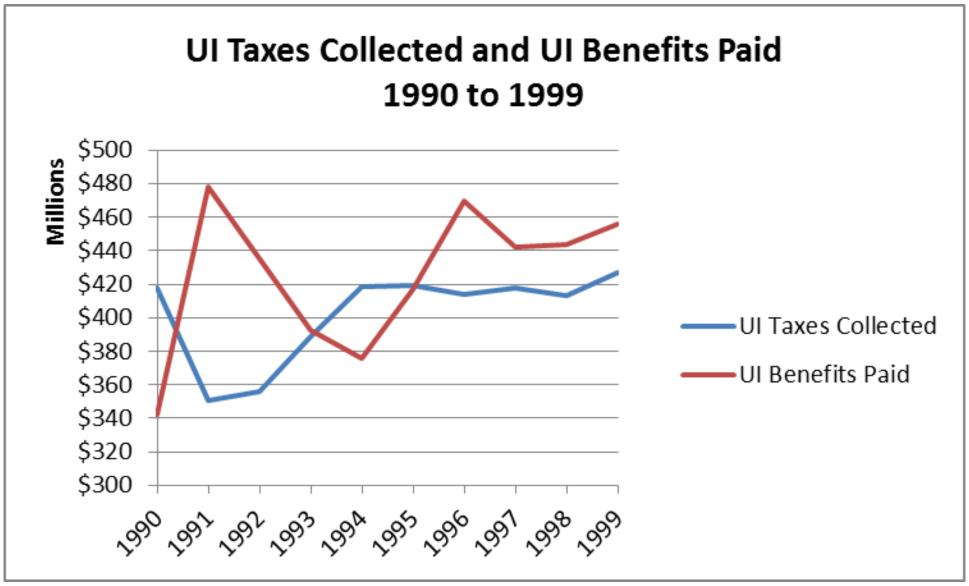
Chart 3
ET Financial Data Handbook 394, https://ows.doleta.gov/unemploy/hb394.asp

The Static UI Financing System in the 1990s

The UI Trust Fund accumulated a large balance before the onset of the 1991 recession. When the recession began, total UI benefits paid increased and exceeded the amount of UI tax revenue collected. As the recession wound down, tax revenue rebounded and benefits fell as expected.

During periods of economic growth, the UI financing system is designed to build up the UI Trust Fund to pay UI benefits during an economic downturn and avoid borrowing. This is what occurred following the 1991 recession. After the UI Trust Fund reaches a balance large enough to finance a recession, year-to-year UI benefits paid and UI tax revenue collected should be roughly equal to maintain the UI Trust Fund balance ensuring it will be large enough for the next recession.

Beginning in 1996, annual UI benefits paid exceeded annual UI tax revenue collected. Relatively high interest rates in the mid-1990s provided large annual interest earnings on the UI Trust Fund which allowed the UI Trust Fund to continue to grow despite the UI program running a yearly deficit, with annual benefit payments exceeding annual taxes.



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ET Financial Data Handbook 394, https://ows.doleta.gov/unemploy/hb394.asp

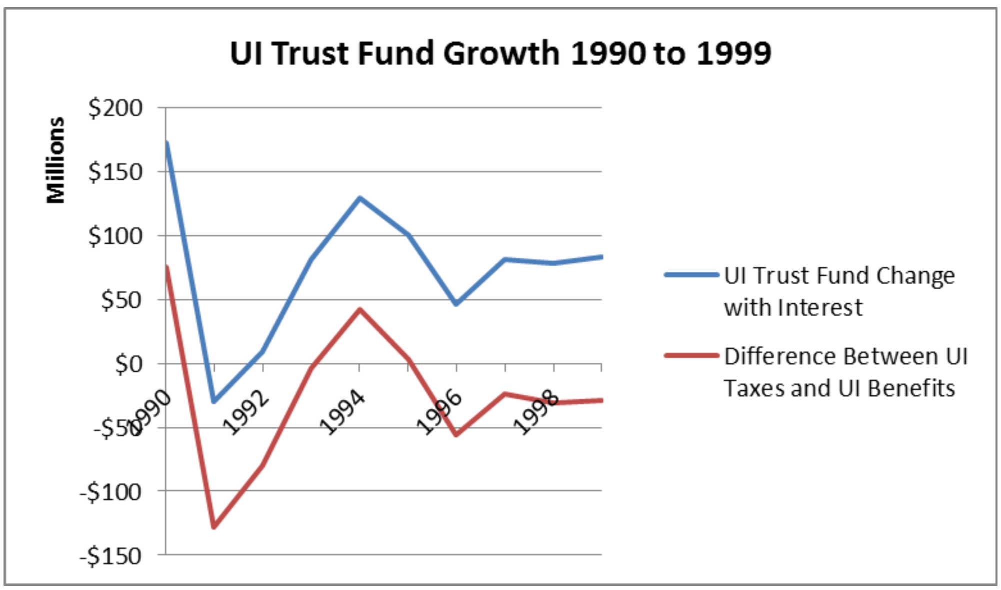


Chart 5
ET Financial Data Handbook 394, https://ows.doleta.gov/unemploy/hb394.asp

The Shrinking of the UI Trust Fund in the 2000s

The 2001-2002 recession began to expose the structural deficiencies of the UI financing system of the 1990s. After the end of the recession, the UI Trust Fund continued to shrink and taxes collected never exceeded benefits. Nationally, economic growth was tepid during the early part of the decade and growth was slightly slower in Wisconsin than in the nation.

The level of unemployment claims had increased over typical levels in the late 1990s. Furthermore, interest earnings were no longer covering the gap between UI benefits paid and UI tax revenue. The UI financing system did not adequately respond to either the recession or the shrinking UI Trust Fund. Taxes collected never exceeded benefits paid, and began to decrease even though the UI Trust Fund balance continued to decline.

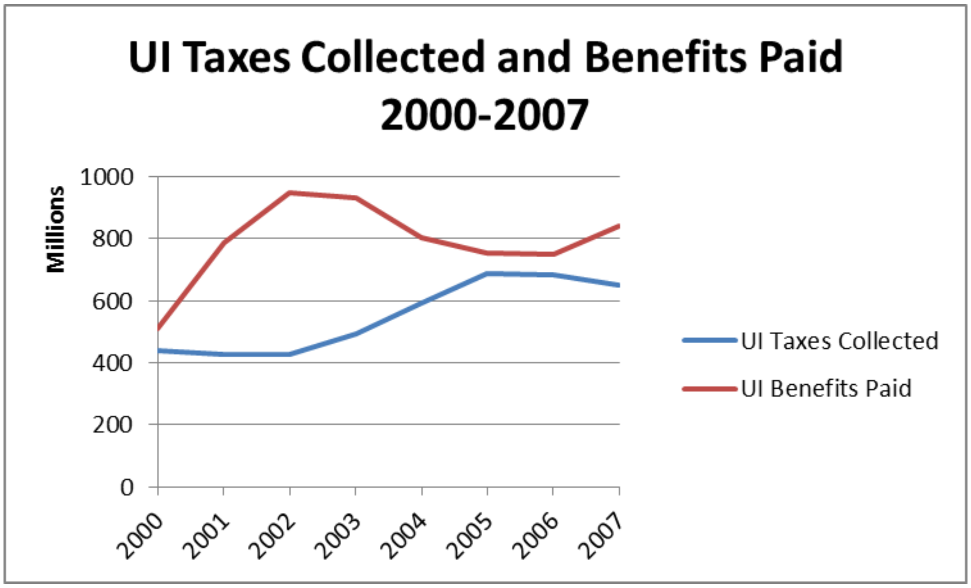


Chart 6
ET Financial Data Handbook 394, https://ows.doleta.gov/unemploy/hb394.asp

What caused the financing system to be unresponsive?

The changes made to UI financing laws were static in nature and were not designed to be self-correcting through the inclusion of automatic adjustment mechanisms.

In this case, the financing system was unresponsive in two primary ways:

1. **UI Taxable Wage Base Not Reflective of Wage Growth**
   The taxable wage base remained at $10,500, the level set in 1986. As a result, the ratio of taxable wages to total wages fell throughout the 1990s and 2000s.

   Growing wages caused UI benefit payments to increase faster than tax revenue, even without any change in benefit policy. When the economy started to recover in 2003, employment did not rise as quickly as wages. Because the wage base was set in 1986, the increase in wages was not subject to taxes even though it was still increasing the risk to the system through higher UI benefit payments.

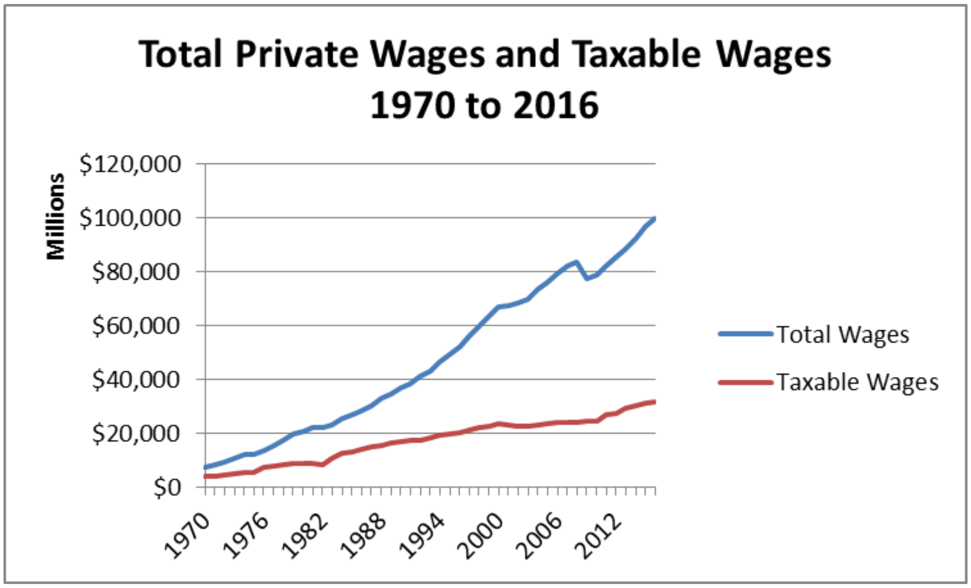


Chart 7

ET Financial Data Handbook 394, https://ows.doleta.gov/unemploy/hb394.asp

2. **The UI Tax Rate Schedule Change Triggers Reflect the 1980s Economy**

The UI tax system is comprised of four tax rate schedules. The balance of the Trust Fund determines which schedule is in effect. When these schedule triggers were established, they reflected the Wisconsin economy of the late 1980s. However, as the Wisconsin economy grew, the triggers remained static. Even with the Trust Fund shrinking rapidly, the balance never fell below the $300 million balance threshold required to trigger the highest tax rate schedule. Without the statutorily required implementation of the higher rates in Tax Schedule A, the Trust Fund continued to shrink.

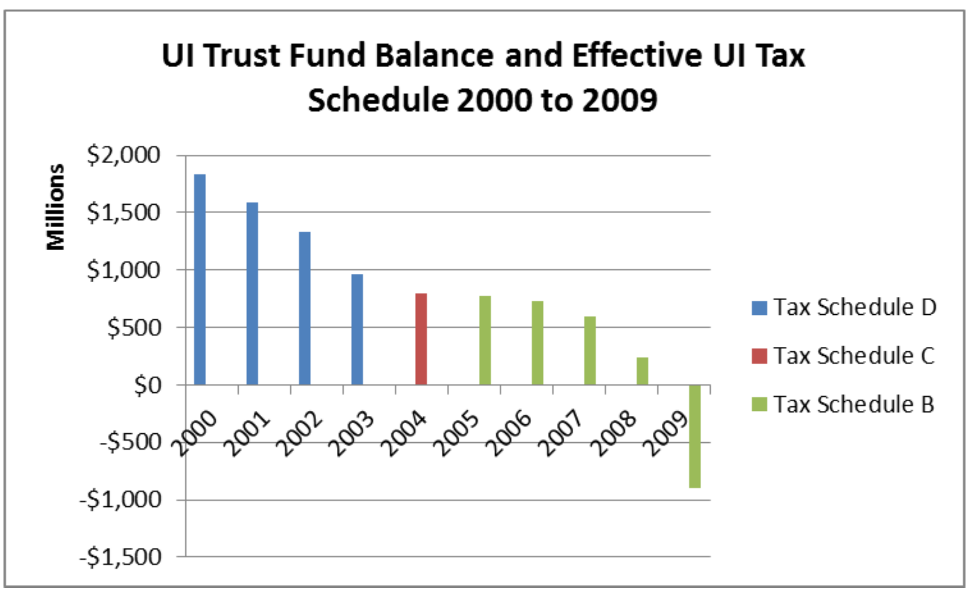


Chart 8

ET Financial Data Handbook 394, https://ows.doleta.gov/unemploy/hb394.asp

Between 2003 and the onset of the Great Recession, benefits paid remained above taxes collected. Unlike in the 1990s, interest earnings were not large enough to cover the gap, thus the UI Trust Fund continued to shrink. Any type of downturn would have inevitably caused the depletion of the UI Trust Fund.

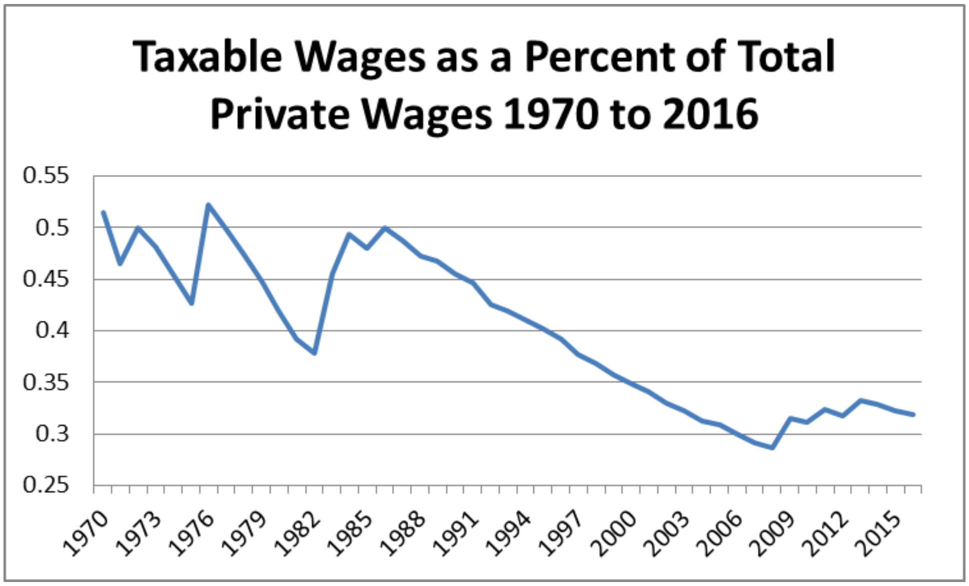


Chart 9
WI UI projections, ET Financial Data Handbook 394, https://ows.doleta.gov/unemploy/hb394.asp

In 2008 legislation was enacted to increase the taxable wage base to $12,000 in 2009, $13,000 in 2011, and $14,000 in 2013. This helped to reverse a portion of the decline of the ratio of the UI taxable wages to overall wages. Currently, taxable wages as a percent of total wages are above where they were in 2008 when the law was put in place.

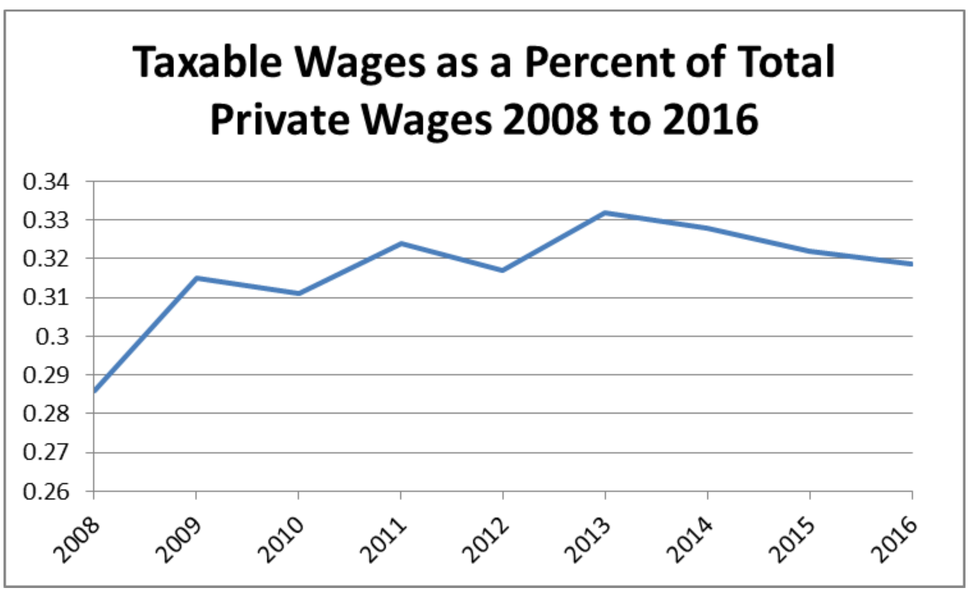


Chart 10
ET Financial Data Handbook 394, https://ows.doleta.gov/unemploy/hb394.asp

The Great Recession

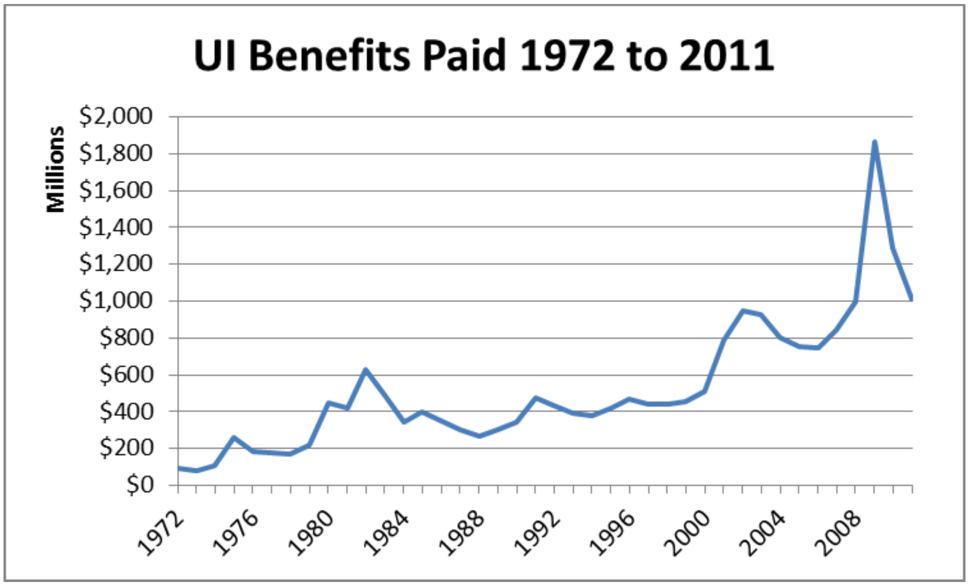


Chart 11
ET Financial Data Handbook 394, https://ows.doleta.gov/unemploy/hb394.asp

The Great Recession strained the entire nation's Unemployment Insurance system, including Wisconsin's. The initial impact on the Wisconsin UI system began in 2007, but it was not until 2008 and 2009 that UI benefits increased dramatically while overall employment fell. In raw dollar terms, the four largest benefit outlays in Wisconsin history occurred in the years 2008, 2009, 2010, and 2011, with the largest amount, $1.8 billion, occurring in 2009.

Five Highest Benefit Years based on Benefits Paid as a Percent of Total Payroll 1972-2014

Year	Benefits as a Percent of Total Payroll
1982	2.84
2009	2.41
1980	2.17
1975	2.13
1983	2.11

ET Financial Data Handbook 394, https://ows.doleta.gov/unemploy/hb394.asp

A better way to measure benefit expenditures is by comparing it to the amount of wages in the economy. Payroll can be viewed in terms of how many dollars are at risk. An analogy can be made to homeowner's insurance. The more expensive the home, the more money that needs to be paid out if there is a fire. For Unemployment Insurance, the more wages in the economy, the more benefits that will need to be paid during a recession.

When looking at UI benefits paid as a percentage of total payroll, the percentage during the Great Recession, while high, is below benefit payment rates during the 1981-1982 recession. When viewed from this perspective, only 2009 is among the highest benefit years since 1972. The level of UI benefits paid during the recent recession was in line with other recessions and the large dollar amount reflects the growth of the economy and the increase in total payroll over 4 decades.

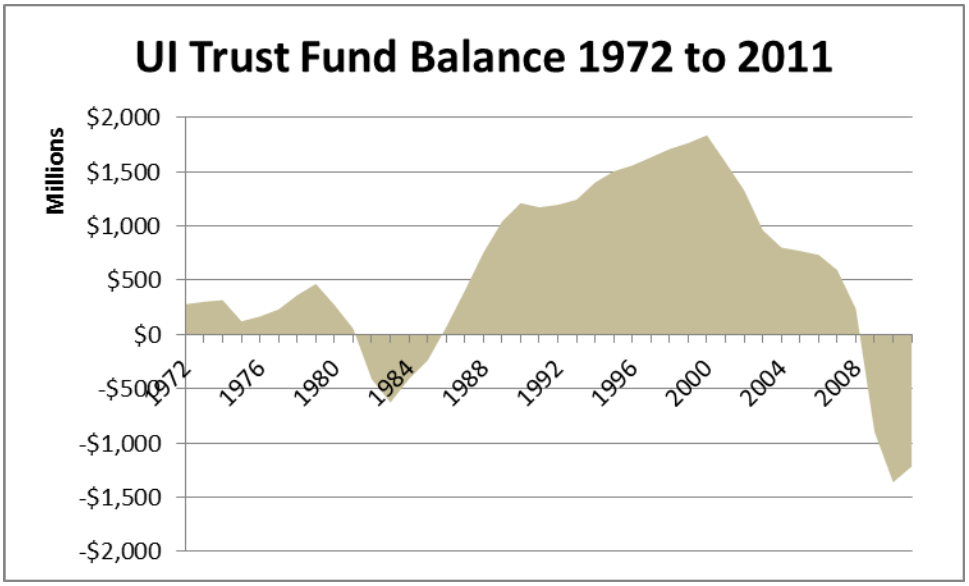


Chart 12
ET Financial Data Handbook 394, https://ows.doleta.gov/unemploy/hb394.asp

As illustrated above, the Wisconsin UI Trust Fund was shrinking throughout the 2000s; the Great Recession was the catalyst that caused the UI Trust Fund to borrow to pay UI benefits.

The decline of the UI Trust Fund and the need to borrow to pay benefits led to certain automatic responses taking effect:

- The reduction in the FUTA tax credit. Revenue from the tax credit reduction is used to pay off Trust Fund loans.

- Trigger to the highest Wisconsin UI tax schedule, Schedule A. When the Trust Fund fell below $300 million in 2009, Schedule A went into effect for 2010. This schedule raises approximately $90 to $100 million more per year in tax revenue than the next schedule, Schedule B. When the Trust Fund balances exceeds $300 million, an automatic trigger to UI tax Schedule B occurs.

When the Wisconsin UI financing system triggered to Tax Schedule A, the UI Trust Fund was already exhausted. This is an indicator that the dollar value assigned to the trigger thresholds was too low to prevent the need to borrow from the federal government. To put it in perspective, quarterly benefit payments exceeded $300 million (the threshold to trigger to Schedule A) in 8 of the 16 quarters between 2009 and 2012.

There were three Wisconsin legislative changes intended to address the structural deficit in the UI Trust Fund during and following the Great Recession:

- Defining full-time work to be 32 hours or more;

- Eliminating partial benefits for claimants who earns over $500 per week; and

- Establishing a waiting week for UI claimants.

The waiting week resulted in the largest positive impact on the UI Trust Fund and is required in the majority of state UI programs. The first week that an individual is otherwise deemed eligible for UI benefit payments, the payment of UI benefits is withheld. This does not reduce the maximum number of weeks or amount of benefits for which a person is eligible; rather, it requires that a claimant file for one eligible week before getting paid. The impact is a reduction in the amount of UI benefits paid by approximately 5 percent per year. For 2014 this amounted to approximately $32 million in reduced benefit payments.

Repayment of the Loan and Recovery of the UI Trust Fund

The nation experienced a slow recovery following the end of the Great Recession and many people received UI benefits for long periods of time. Many of these additional weeks were paid under federally funded Emergency Unemployment Compensation (EUC) and the Wisconsin UI Trust Fund was not responsible for paying those benefits. Therefore, while there were many people still claiming UI benefits during the recovery period, much of this was paid by the federal government and did not impact the Wisconsin UI Trust Fund.

There are three significant factors that contributed to the satisfaction of the UI Trust Fund loan and leading positive balance in the period 2012 to 2014:

1. Low level of UI benefits paid;

2. Increase in UI tax revenue due to the highest tax rate schedule being in effect and higher tax rates paid by employers due to high benefit payments; and

3. The FUTA tax credit reduction.

Wisconsin UI Benefits

UI benefit payments were elevated through 2011. UI benefits fell to a more normal level in 2012, and in 2013, UI benefits fell to an amount below average. In 2014, UI benefits were substantially below average. The low level of UI benefits reduced expenditures from the Wisconsin UI Trust Fund.

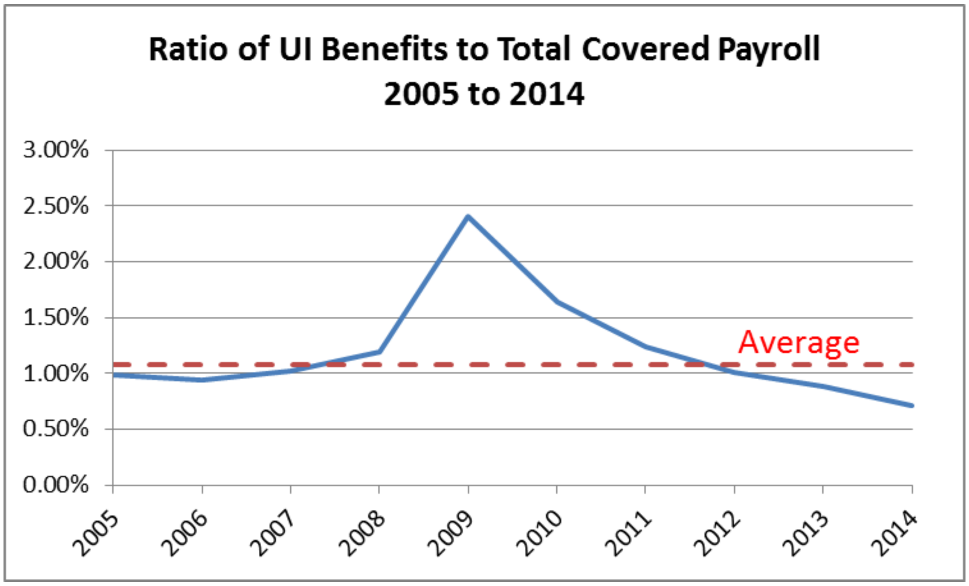


Chart 13
ET Financial Data Handbook 394, https://ows.doleta.gov/unemploy/hb394.asp

UI Tax Revenue

While UI benefits declined rapidly, UI tax revenue declined at a slower rate. The UI Trust Fund started building up balances as the net positive difference between taxes and benefits grew. UI Tax Schedule A remained in effect during this period and high UI benefit payments during the recession affected employer reserve funds, both leading to higher rates.

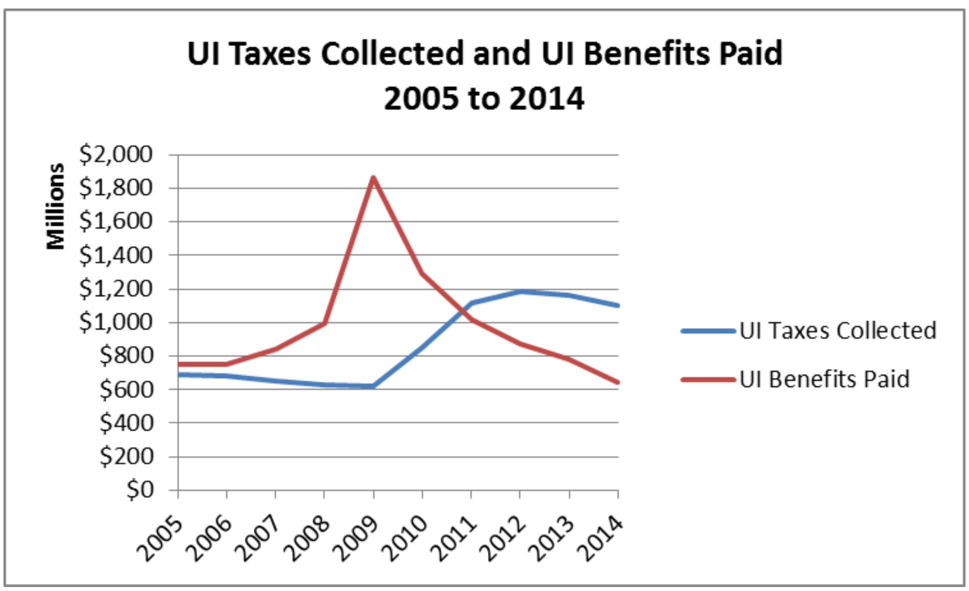


Chart 14
ET Financial Data Handbook 394, https://ows.doleta.gov/unemploy/hb394.asp

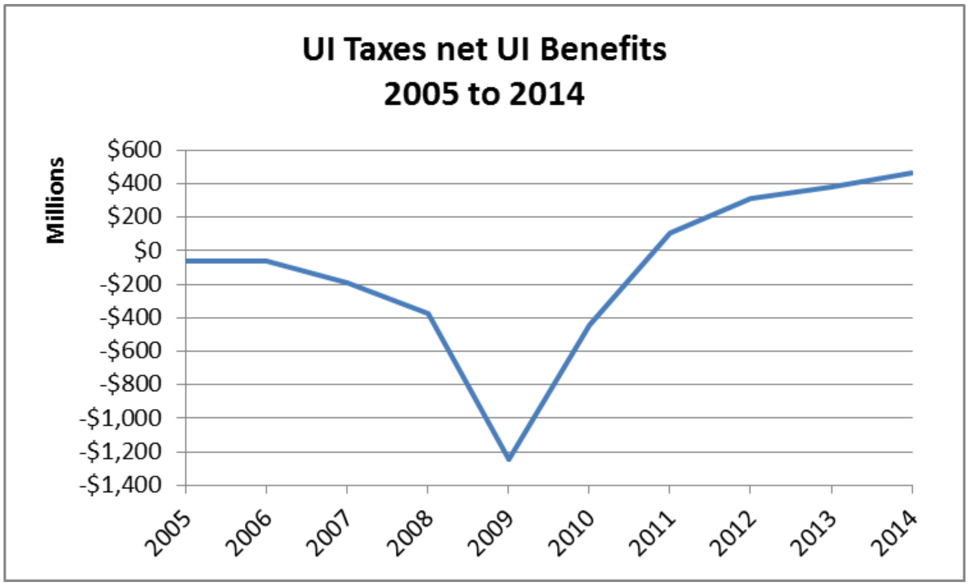


Chart 15
ET Financial Data Handbook 394, https://ows.doleta.gov/unemploy/hb394.asp

FUTA Tax Credit Reduction

For states that borrow from the U.S. Treasury, the FUTA tax credit is reduced according to the number of years a state has borrowed. Employers in Wisconsin had their credit for their Federal Unemployment Taxes (FUTA) reduced, which led to higher federal unemployment taxes. The funds the federal government collects from these FUTA credit reductions are used to reduce the state's UI Trust Fund debt. The FUTA credit reduction experienced by Wisconsin employers added approximately $291 million to the UI Trust Fund. Without the revenue from the FUTA credit reduction the Wisconsin UI Trust Fund would have remained negative until first quarter receipts at the end of April 2015.

Cost of Wisconsin UI Borrowing during and after the Great Recession

Borrowing to pay UI benefits has costs associated with it that are borne by UI employers and other Wisconsin taxpayers. As mentioned above, the reduction in employer's FUTA credit increased federal UI taxes by $291 million over the years 2012 to 2014. There are two details about the FUTA tax increase that differentiate it from state UI taxes. The first is that it is a flat wage tax, meaning the tax rate is not experience rated. Employers are taxed at the same rate no matter how much or how little they have used the UI system in the past. The second is that the FUTA tax does not affect future tax rates. If employers paid $291 million in higher state UI taxes, their future tax rates would decline as they built up their employer account. In contrast, the FUTA taxes are not credited to employer accounts and therefore have no impact on their experience rating.

The other significant borrowing cost was interest payments on the loans to pay UI benefits. In total, UI Trust Fund borrowing accumulated $103 million in interest costs. Of this amount, $78 million was paid by employers through the Special Assessment for Interest (SAFI). The remaining $25 million was paid through Wisconsin General Purpose Revenue (GPR) funds. Interest rates during this recession were low; however, that is not true for every recession. There were very high interest rates during the 1982 recession.

Direct Costs of Wisconsin UI Borrowing during and after the Great Recession (Millions of $)

	2011	2012	2013	2014	**Total**
FUTA Credit Reduction		$47	$96	$148	**$291**
Trust Fund Loan Interest Paid Via SAFI	$42	$36			**$78**
Trust Fund Loan Interest Paid Via GPR			$19	$6	**$25**
Total Borrowing Costs					**$394**

Wisconsin UI Tax Data

The Recent Historically Low UI Benefit Payments and Resulting Increase in the UI Trust Fund Balance

As Wisconsin emerged from the Great Recession, UI benefits began to fall as expected. It was unexpected that benefits continued to fall to amounts that are historically low. To account for economic growth over time, UI benefits can be normalized by comparing them to the amount of wages paid by taxable employers. Looking at this percentage, recent UI benefit amounts are the lowest they have been in the last 40 years.

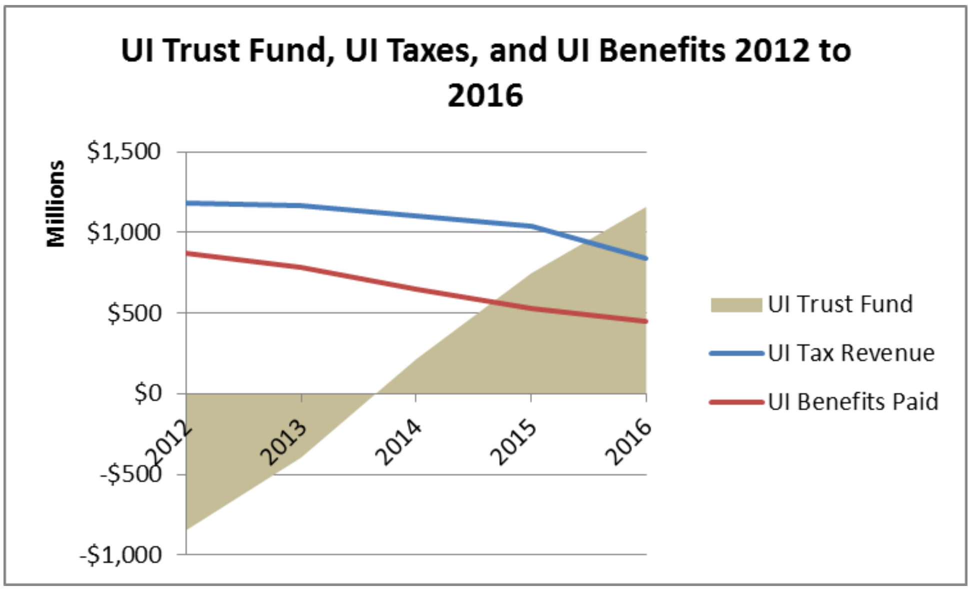


Chart 16

Projections from Wisconsin Unemployment Insurance Division based upon Wisconsin Unemployment Insurance data and ET Financial Data Handbook 394, https://ows.doleta.gov/unemploy/hb394.asp

While UI tax revenue has declined, UI benefit payments declined even faster, which led to a large growth in the UI Trust Fund.

Section 3: Recent UI Law Changes with Significant Impact on the UI Trust Fund

More than twenty-five changes to the Unemployment Insurance law took effect during the 2015-2016 legislative biennium. A complete plain language summary of the changes is available online (http://dwd.wisconsin.gov/uibola/pdf/plainlang2015.pdf).

Unemployment Insurance Benefits

Drug Testing and Treatment

The 2015-2017 Budget Act created statutory authority for two new programs related to drug testing.

The Department, by administrative rule, created a voluntary program for employers to report the results of a failed or refused pre-employment drug test to the department. A claimant's failed or refused pre-employment drug test is presumed to be a failure to accept suitable work. A claimant may overcome the presumption by proving certain facts to the Department. A claimant who fails a pre-employment drug test without evidence of a valid prescription for the drug may remain eligible for unemployment insurance benefits if the claimant enrolls in and complies with a drug treatment program and completes a job skills assessment. The administrative rule went into effect in May 2016.

The Department must also, by administrative rule, create a program for testing certain UI benefit applicants. The Department's testing of benefit applicants has not yet started. While drug testing is allowable under federal statute, Congress recently repealed the federal regulations that permit states to drug test UI applicants.

Suitable Work

A statutory definition of "suitable work" was created. During the six-week canvassing period, "suitable work" means work that is not at a lower grade of skill than one of the claimant's most recent jobs and that pays at least 75 percent of what the claimant recently earned at one of the claimant's most recent jobs. After the canvassing period, the statutory definition of "suitable work" is "any work that the employee is capable of performing, regardless of whether the employee has any relevant experience or training, that pays wages that are above the lowest quartile of wages for similar work in the labor market area in which the work is located, as determined by the department." Claimants have "good cause" for refusing to accept suitable work if the refusal is related to the claimant's personal safety, sincerely held religious beliefs, an unreasonable commuting distance, or another compelling reason that would have made accepting the offer unreasonable.

Real Estate Agent Exclusion

The Wisconsin exclusion for services performed by real estate agents now more closely aligns with the federal real estate agent exclusion.

Work Search and Work Registration (Administrative Rule Change)

From 2004 until June 14, 2015, the Department, by administrative rule, waived a claimant's work search requirement if the claimant was laid off but there was a "reasonable expectation of reemployment of the claimant by that employer."

As of June 14, 2015, Wisconsin's administrative rule 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." The rule change also provides an equivalent waiver for work registration.

Unemployment Insurance Tax Changes

Administrative and Criminal Penalties for Intentional Misclassification

New administrative penalties were enacted for construction employers who knowingly and intentionally misclassify workers as independent contractors. The penalty is $500 per employee intentionally misclassified with a maximum penalty of $7,500 per employer per incident. And, the Department may assess construction employers who coerce individuals to adopt independent contractor status a penalty of $1,000 per employee coerced with a maximum penalty of $10,000 per employer per year.

Recovery of Tax Debts under the Treasury Offset Program

In conformity with federal requirements, the Department may now intercept federal income tax refunds to recover tax debts from employers and personally liable individuals. The Department previously intercepted income tax refunds to satisfy claimant overpayment debts.

Reimbursable Employer ID Theft Charging

Unlike contribution employers, reimbursable employer accounts (public employers, nonprofits and Indian tribes) are charged for benefits erroneously paid due to identity theft fraud unless the Department recovers the overpayments from the identity thief. A new provision sets aside $2 million, plus future interest on that amount, in the UI Balancing Account for accounting purposes in order to credit reimbursable employer charges due to identity theft. When there is only $100,000 remaining, all reimbursable employers will be assessed for identity theft charges.

Program Integrity Assessment

Contribution employers now pay an assessment of 0.01 percent of their payroll with a corresponding reduction in their UI solvency tax. The result is no net increase of tax for employers. The proceeds of this assessment are deposited into the UI Integrity Fund for the program integrity activities, such as fraud reduction.

Transfer of SAFI Funds

Employers paid special assessments for interest ("SAFIs") to pay the interest on the money borrowed from the federal government for the UI Trust Fund during the recession. The federal loans are fully repaid. The statute allows the transfer of the surplus SAFI funds to the UI Trust Fund or the UI Program Integrity Fund.

Section 4: UI Trust Fund Financial Outlook

This *Financial Outlook* presents scenarios and provides insight into the ability of the UI Trust Fund to fulfill its requirement to fund UI benefits during an economic downturn. To mitigate the uncertainty surrounding the current UI benefit payment level, three different forecasts are presented to give a range of possible scenarios for the near future.

All of these scenarios envision steady economic growth with an average annual) unemployment in the 4 percent to 4.5 percent range. The first scenario assumes that benefits for the next three years will be similar to the benefits over the past three years, maintaining the current historically low level of benefits over the projection period. The second scenario assumes that benefits slowly return to the level of benefits that has typically corresponded to a similar unemployment rate. The third scenario assumes that benefits quickly return to a level consistent with historic trends of benefits given the underlying unemployment rate.

Scenario 1: UI Benefits Remain at Historically Low Levels-- Using the Average Benefit Rate of the Last 3 Years

Unemployment Insurance Reserve Fund Activity and Condition (Millions $)					
		2016	2017	2018	2019
Opening Unemployment Reserve Fund Balance		$743	$1,160	$1,418	$1,531
Revenues:					
State Unemployment Revenues (employer taxes)		$852	$681	$568	$522
Interest Income		$22	$32	$36	$38
Total Revenue		$874	$713	$604	$571
Expenses:					
Unemployment Benefits		$457	$455	$491	$566
Ending Reserve Fund Balance		**$1,160**	**$1,418**	**$1,531**	**$1,536**

Projections from Wisconsin Unemployment Insurance Division based upon Wisconsin Unemployment Insurance data and the U.S. Congressional Budget Office The Budget and Economic Outlook 2017 to 2027 January, 2017.

Under this scenario, the UI Trust Fund is expected to grow throughout the period but at a much slower rate than seen in the past few years. Benefits remain relatively flat throughout the projection period with slight increases due to increases in employment and wages. The reason we see the decline in the growth in the UI Trust Fund is that UI tax revenue is expected to decline over the next three years. This is due to two factors. First, the decline in UI benefits improves employer reserve fund balances. As these reserve fund balances improve, employer's UI tax rates fall leading to lower UI tax revenue.

UI Tax Schedule Trigger Amounts

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

Wisconsin Unemployment Insurance Division

Second, the UI tax schedule is expected to trigger to UI Tax Schedule D beginning with tax year 2018 and remain in effect in 2019. Schedule D is the schedule with the lowest rates for employers. In the past, whenever Schedule D was in effect, the UI Trust Fund balance declined quickly. Due to the historically low benefits being forecast, the UI Trust Fund is still expected to increase over this period due to a combination of UI taxes exceeding benefit being paid and interest earned on the UI Trust Fund.

Scenario 2: UI Benefits Slowly Increasing to Historically Typical Level

Unemployment Insurance Reserve Fund Activity and Condition (Millions $)					
		2016	2017	2018	2019
Opening Unemployment Reserve Fund Balance		$743	$1,160	$1,418	$1,480
Revenues:					
State Unemployment Revenues (employer taxes)		$852	$681	$568	$544
Interest Income		$22	$32	$36	$36
Total Revenue		$874	$713	$604	$580
Expenses:					
Unemployment Benefits		$457	$455	$542	$626
Ending Reserve Fund Balance		**$1,160**	**$1,418**	**$1,480**	**$1,434**

Projections from Wisconsin Unemployment Insurance Division based upon Wisconsin Unemployment Insurance data and the U.S. Congressional Budget Office The Budget and Economic Outlook 2017 to 2027 January, 2017.

This scenario assumes that the underlying reasons for the currently low benefit levels dissipate and the UI system slowly returns to benefit levels typically seen with 4 percent to 4.5 percent unemployment.

As in the previous scenario, the UI Tax Schedule would change to Schedule D in tax year 2018 and remain there in 2019. The difference here is that as benefits approach a more typical level, tax revenue is lower than the amount of UI benefits paid in 2019 causing the UI Trust Fund balance to decline. Even with the increase in benefits in 2018, tax revenue is expected to decrease in 2019. This occurs due to a combination of low UI benefit payments, the small differences between rates on Schedule D (so that taxes do not change significantly for many employers when they change their reserve ratio), and UI tax revenue is still slightly greater than benefits paid for the year 2018.

Scenario 3: UI Benefits Quickly Return to a Historically Typical Level

Unemployment Insurance Reserve Fund Activity and Condition (Millions $)					
		2016	2017	2018	2019
Opening Unemployment Reserve Fund Balance		$743	$1,160	$1,418	$1,283
Revenues:					
State Unemployment Revenues (employer taxes)		$852	$681	$568	$578
Interest Income		$22	$32	$34	$29
Total Revenue		$874	$713	$602	$607
Expenses:					
Unemployment Benefits		$457	$455	$737	$820
Ending Reserve Fund Balance		**$1,160**	**$1,418**	**$1,283**	**$1,070**

Projections from Wisconsin Unemployment Insurance Division based upon Wisconsin Unemployment Insurance data and the U.S. Congressional Budget Office The Budget and Economic Outlook 2017 to 2027 January, 2017.

This scenario assumes that in 2018, UI benefits begin to quickly return to levels typically experienced with mid 4 percent unemployment rates. UI benefits increase by $282 million between 2017 and 2018. However, even with the increase in benefits, the projection of UI tax revenue remains basically flat. This is again due to UI benefit payments being low for a long period, the small differences between rates on Schedule D across reserve fund balances, and the small difference between UI benefit payments and UI tax revenue.

These scenarios present a range of possible outcomes for the UI Trust Fund through the end of the 2019.

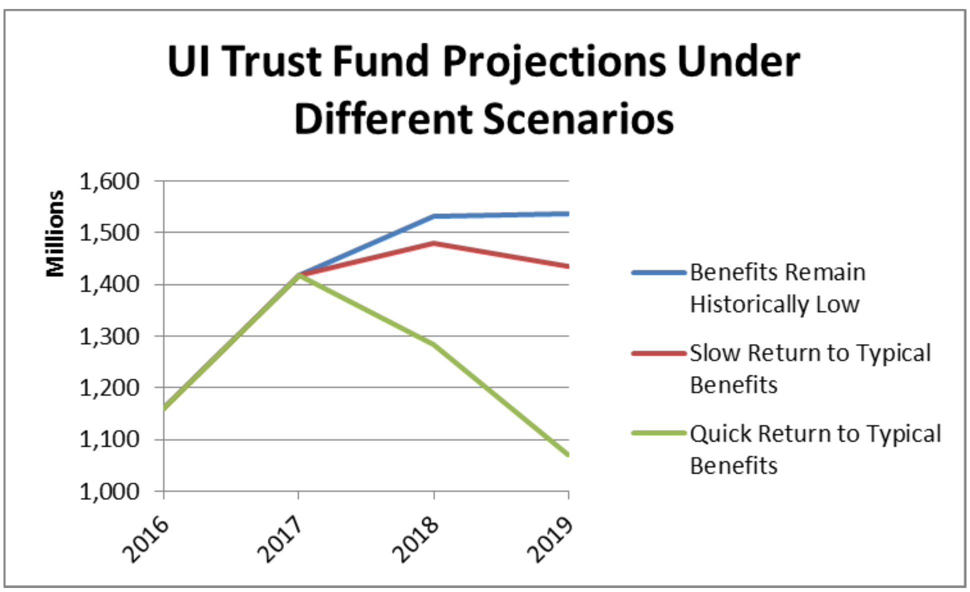


Chart 17

Projections from Wisconsin Unemployment Insurance Division based upon Wisconsin Unemployment Insurance data and the U.S. Congressional Budget Office The Budget and Economic Outlook 2017 to 2027 January, 2017.

Average High Cost Multiple

Many different measures have been developed to determine if a state UI Trust Fund is sufficient to pay UI benefits in the event of a recession. The strongest measures are those that determine the recommended balance based upon the historic amount of benefits paid during previous recessions while at the same time accounting for growth in the economy. The measure known as the Average High Cost Multiple (AHCM) achieves both these goals. The AHCM looks at UI benefits as a percentage of Total Covered Payroll, also known as the benefit ratio. The benefit ratio accounts for economic growth and inflation by having them cancel each other out in the ratio. Looking only at the dollar amounts ignores growth and inflation and provides an incomplete picture as benefits are expected to increase with increases in wage amounts in the economy.

The AHCM finds the highest three benefit ratios of the last 20 years or three recessions (whichever period is longer), which are then averaged to provide a benchmark. For Wisconsin, these three years are 2002, 2009, and 2010, with corresponding benefit ratios of 1.39, 2.41, and 1.64 respectively. This places the current AHCM at a relative low for Wisconsin. It no longer includes any of the rather large benefit amounts from the early 1980's recession. The average ratio for Wisconsin currently is 1.81, which corresponds to a UI Trust Fund balance of approximately $1.8 billion for 2016.

If a UI Trust Fund has sufficient funds to cover an annual payout equal to this benefit rate, it receives an AHCM of 1.0 which then serves as an index for the UI Trust Fund. A score of 2.0 represents 2 years of benefits at the highest average rate; likewise, a score of 0.5 represents 6 months. USDOL recommends that a state UI system have a UI Trust Fund balance large enough to have an AHCM of 1.0 or greater in order to have sufficient funds to be able to self-finance during a recession.

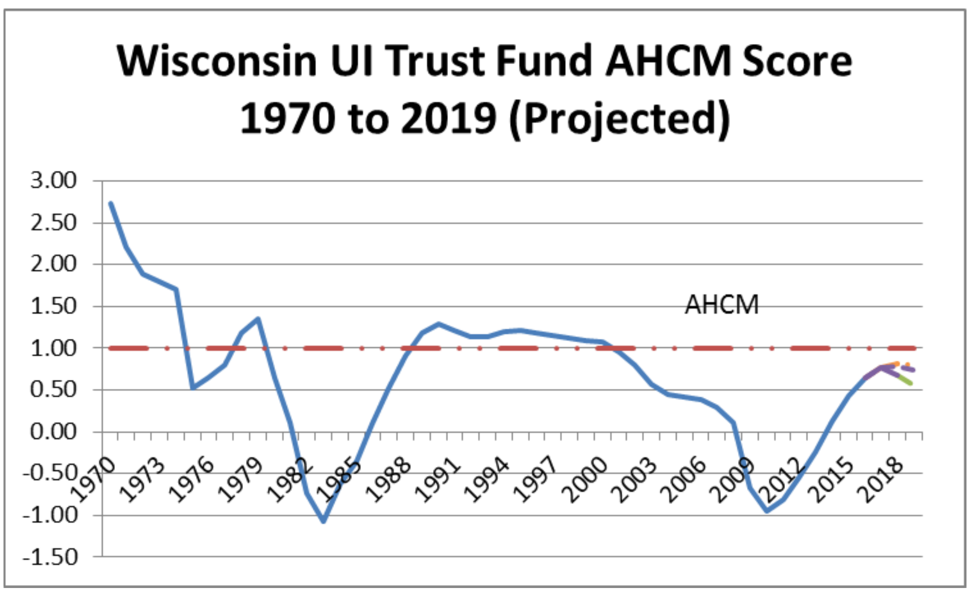


Chart 18

ET Financial Handbook 394, https://ows.doleta.gov/unemploy/hb394.asp, Wisconsin Unemployment Insurance UI Trust Fund Balance Projections

In 2007, if Wisconsin had maintained a UI Trust Fund balance equivalent to an AHCM 1.0 or greater, it is possible the Wisconsin UI system would not have had to borrow during the Great Recession. There would perhaps have been the need for interest free short term loans to pay benefits during peak usage periods. This means that there would have been no SAFI assessment to employers. In addition, without needing to borrow, there would have been no FUTA credit reduction to employers.

In order to illustrate the impacts of the three different scenarios, it is helpful to focus on only a subsection of this chart. In all three cases, the UI Trust Fund is not expected to reach an AHCM of 1.0 during the projection period from 2017 to 2019. If Wisconsin were to experience a recession during the projection period, the UI Trust Fund would likely be exhausted (depending on the depth, intensity, and length of a recession), forcing Wisconsin to borrow in order to pay benefits.

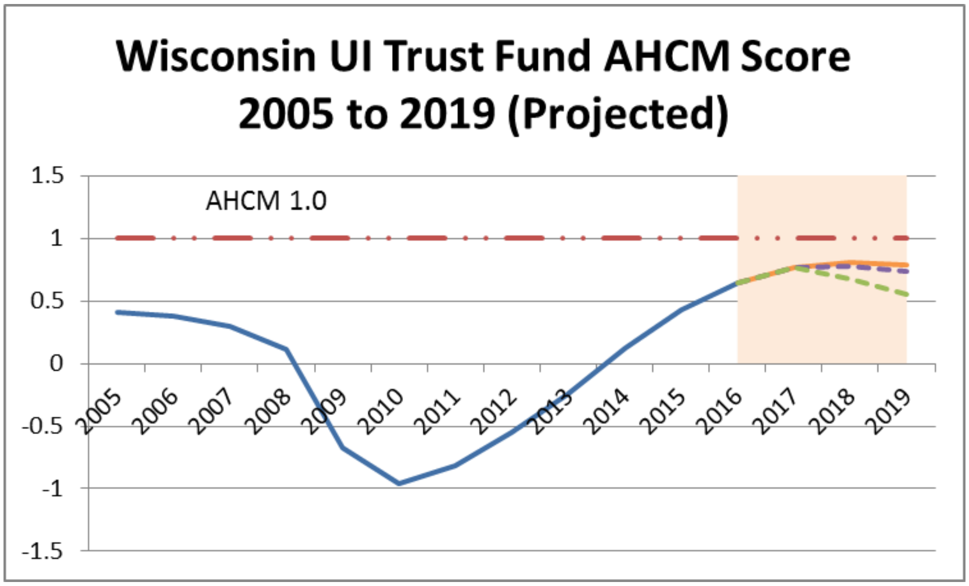


Chart 19

ET Financial Handbook 394, https://ows.doleta.gov/unemploy/hb394.asp, Wisconsin Unemployment Insurance UI Trust Fund Balance Projections

Decline of the AHCM during the Early 2000s

During the decade preceding the Great Recession, the Wisconsin UI Trust Fund's AHCM was in decline. Wisconsin UI benefits began to slightly exceed UI tax revenue in 1996, even though the difference between benefits and UI tax revenue was less than interest income until 2001. Starting in 2001, UI benefit payments exceeded UI tax revenue and interest income for every year until 2011. When the Great Recession caused a shift in the UI Tax Schedule to Schedule A and employers' tax rates increased based on their experience, UI tax revenue exceeded UI benefits paid.

Even if the Great Recession had not occurred, the Wisconsin UI Trust Fund was still on a trajectory to continue to decline over time. It would likely have continued to decrease until the point in time when the balance would have dipped below $300 million, triggering UI Tax Schedule A. At this point the higher UI tax revenue would have equaled or slightly exceeded UI benefit payments. While the UI Trust Fund may have remained positive without the Great Recession, it would have declined to a very small balance.

Recommendation for UI Financial Outlook

The Secretary recommends the Unemployment Insurance Advisory Council (UIAC) review and advance legislative measures to strengthen the UI Trust, and support policies that support Trust Fund solvency.

Future UIAC proposals could address mechanisms to build and maintain sufficient reserve funding to meet the obligations of projected future benefit expenditures. Such mechanisms could encompass both benefits and revenue.

The Secretary recommends the UIAC's support of policies and programs that support reemployment and advance UI program integrity to support the UI Trust Fund. Federal data ranked Wisconsin 2nd among states when measuring the rate of UI claimants who were reemployed in the quarter following a first UI payment (July 1, 2015-June 30, 2016). A quick return to work means reduced reliance on the Trust, which supports solvency. Additionally, the rate of fraud declined twice as fast as the rate of decline in UI payments during 2016, meaning enhanced program integrity measures and public education are reducing overpayments out of the UI Trust Fund.

The Department is prepared to support the Council as it considers options to further strengthen Wisconsin’s Unemployment Insurance program

Appendix A: Wisconsin Unemployment Statistics 1992 to 2016
Wisconsin Unemployment Reserve Fund

(Amounts in Millions of $)
Wisconsin Unemployment Insurance Division Data

	Revenues						Expenses			
Year	Taxes	Interest and Other	Reed Act	ARRA	FUTA Credit Reduction	Total Receipts	Benefit Expenses	Reed Act Expenditures	Total Expenses	**Ending Balance**
1992	358	90				448	437		437	**1,185**
1993	391	85				476	394		394	**1,267**
1994	418	87				505	377		377	**1,395**
1995	421	98				519	418		418	**1,496**
1996	415	102				517	471		471	**1,542**
1997	419	105				524	445		445	**1,621**
1998	414	110				524	452		452	**1,693**
1999	431	113				544	466		466	**1,771**
2000	442	117				559	515		515	**1,815**
2001	432	110				542	791		791	**1,566**
2002	430	88	166			684	949		949	**1,301**
2003	497	65				562	932		932	**931**
2004	596	48				644	795	3	798	**777**
2005	687	42				729	752	4	756	**750**
2006	684	39				723	753	3	756	**717**
2007	649	37				686	845	4	849	**554**
2008	628	21				649	997	23	1,020	**183**
2009	634	1		144		779	1,873	3	1,876	**(915)**
2010	850					850	1,288	(5)	1,283	**(1,348)**
2011	1,115					1,115	1,012	(6)	1,006	**(1,239)**
2012	1,187				47	1,234	876	(5)	871	**(876)**
2013	1,172				96	1,268	793		793	**(401)**
2014	1,107	2			148	1,257	642		642	**214**
2015	1,048	13			1	1,062	536		536	**741**
2016	852	22				874	458		458	**1,157**

Appendix B: Wisconsin Unemployment Statistics 1992 to 2016 Usage of Wisconsin Unemployment Insurance

ET Financial Data Handbook 394

Year	First Payments	Weeks Compensated	Duration	Insured Unemployment Rate	Maximum Weekly Benefit Amount
1992	215,669	2,978,897	13.8	2.7	$240
1993	197,203	2,608,193	13.2	2.3	$243
1994	191,952	2,443,988	12.7	2.1	$256
1995	213,327	2,518,458	11.8	2.1	$266
1996	234,291	2,791,774	11.9	2.3	$274
1997	210,504	2,857,991	13.6	2.1	$282
1998	219,771	2,726,008	11.5	2	$290
1999	209,497	2,473,569	11.8	1.9	$297
2000	230,458	2,582,328	11.2	2	$305
2001	327,155	3,762,208	11.5	2.9	$313
2002	328,083	4,363,674	13.3	3.4	$324
2003	315,409	4,346,562	13.8	3.4	$329
2004	269,306	3,759,400	14	2.9	$329
2005	262,724	3,500,388	13.3	2.7	$329
2006	258,845	3,421,577	13.2	2.6	$341
2007	279,814	3,678,462	13.1	2.8	$355
2008	321,164	4,225,212	13.2	3.2	$355
2009	447,970	7,605,705	17	6.1	$363
2010	324,879	5,770,210	17.8	4.7	$363
2011	283,624	4,588,323	16.2	3.7	$363
2012	232,949	3,926,156	16.9	3.3	$363
2013	214,125	3,407,788	15.9	2.9	$363
2014	175,853	2,698,223	15.3	2.3	$370
2015	152,641	2,152,899	14.1	1.8	$370
2016	133,083	1,716,415	12.9	1.5	$370

Appendix C: Wisconsin Unemployment Statistics 1992 to 2016 Total Covered Employment, Average Weekly Wage, and Average Benefit Amounts

ET Financial Data Handbook 394

Year	Covered Employment	Average Weekly Wage	Average Weekly Benefit	Maximum Weekly Benefit Amount
1992	2,253,976	$434	$175	$240
1993	2,308,361	$444	$183	$243
1994	2,384,509	$458	$188	$256
1995	2,449,029	$473	$199	$266
1996	2,493,484	$491	$202	$274
1997	2,550,955	$518	$188	$282
1998	2,602,559	$542	$215	$290
1999	2,661,710	$564	$223	$297
2000	2,703,542	$584	$233	$305
2001	2,686,548	$598	$242	$313
2002	2,660,922	$614	$248	$324
2003	2,657,571	$630	$252	$329
2004	2,684,896	$656	$251	$329
2005	2,714,477	$669	$253	$329
2006	2,737,431	$694	$259	$341
2007	2,751,715	$717	$267	$355
2008	2,743,267	$735	$273	$355
2009	2,614,062	$728	$288	$363
2010	2,600,207	$745	$275	$363
2011	2,634,447	$766	$270	$363
2012	2,664,284	$788	$271	$363
2013	2,691,719	$803	$276	$363
2014	2,728,833	$823	$285	$370
2015	2,765,376	$851	$296	$370
2016	2,772,828	$868	$312	$370

Appendix D: Wisconsin Unemployment Statistics 1992 to 2016 Taxable UI Benefits and UI Taxes as a Percentage of Total Wages in Taxable Covered Employment

(Amounts in Millions of $)
ET Financial Data Handbook 394

Year	Total Wages in Taxable Covered Employment	Taxable Benefits as a percent of Total Wages	Taxes as a percent of Total Wages
1992	$41,212	1.06%	0.86%
1993	$43,218	0.91%	0.90%
1994	$46,208	0.81%	0.90%
1995	$49,104	0.85%	0.85%
1996	$51,877	0.91%	0.80%
1997	$55,968	0.79%	0.75%
1998	$59,724	0.74%	0.69%
1999	$63,497	0.72%	0.67%
2000	$66,771	0.76%	0.66%
2001	$67,452	1.17%	0.63%
2002	$68,151	1.39%	0.63%
2003	$69,588	1.34%	0.71%
2004	$73,323	1.09%	0.81%
2005	$75,730	0.99%	0.91%
2006	$79,249	0.95%	0.86%
2007	$82,118	1.02%	0.79%
2008	$83,328	1.20%	0.75%
2009	$77,419	2.41%	0.80%
2010	$78,617	1.64%	1.08%
2011	$82,114	1.23%	1.36%
2012	$85,601	1.02%	1.38%
2013	$88,438	0.89%	1.32%
2014	$92,088	0.70%	1.19%
2015	$96,775	0.54%	1.07%
2016	$98,756	0.46%	0.86%

Appendix E: Wisconsin Unemployment Statistics 1992 to 2016 UI Benefits Directly Charged to the Balancing Account (Excludes Charges for the -10 percent Write-Off)

(Amounts in Millions of $)

Wisconsin Unemployment Insurance Division Data

Year	Quit	Misconduct	Substantial Fault	Suitable Work	Continued Employment	Waiver Agency Error	2nd Benefit Year	Temporary Supplemental Benefits	Training Benefits	Subtotal Bal Acct Direct Charges	Total UI Benefit Charges
1992	$51	$1	----	$0	$1	----	----	----	----	$53	$438
1993	$48	$1	----	$0	$1	----	----	----	----	$50	$394
1994	$50	$1	----	$0	$1	$0	----	----	----	$53	$377
1995	$61	$1	----	$0	$1	$0	----	----	----	$64	$418
1996	$69	$2	----	$0	$2	$0	$3	----	----	$77	$471
1997	$68	$2	----	$0	$4	$0	$12	----	----	$86	$445
1998	$69	$2	----	$0	$4	$0	$10	----	----	$85	$452
1999	$73	$2	----	$0	$4	$0	$10	----	----	$90	$466
2000	$81	$2	----	$0	$4	$0	$12	----	----	$99	$516
2001	$117	$3	----	$1	$5	$0	$17	----	----	$142	$791
2002	$112	$4	----	$1	$6	$1	$28	$11	----	$161	$949
2003	$99	$4	----	$1	$7	$0	$31	$0	----	$141	$932
2004	$85	$3	----	$1	$6	$0	$25	----	----	$119	$795
2005	$89	$3	----	$1	$5	$0	$20	----	----	$118	$752
2006	$94	$3	----	$0	$5	$0	$19	----	----	$122	$753
2007	$104	$4	----	$1	$5	$0	$19	----	----	$134	$845
2008	$112	$4	----	$0	$6	$0	$25	----	----	$148	$997
2009	$168	$7	----	$1	$11	$1	$50	----	----	$236	$1,874
2010	$86	$5	----	$0	$12	$1	$55	----	----	$158	$1,289
2011	$83	$4	----	$0	$9	$1	$33	----	$16	$146	$1,012
2012	$86	$3	----	$0	$7	$1	$24	----	$19	$140	$876
2013	$82	$3	----	$0	$5	$0	$22	----	$15	$128	$793
2014	$69	$3	$0	$0	$5	$0	$17	----	$8	$103	$642
2015	$64	$3	$1	$0	$4	$0	$12		$6	$91	$535
2016	$52	$2	$1	$0	$3	$0	$10		$5	$73	$457

Appendix F: Explanation of UI Benefit Charges to the Balancing Account

Standard Charges to the Balancing Account

Write-Offs
These are different from other Balancing Account charges since these are first charged to an employer's account. When the UI Division calculates the Reserve Fund Percentage for Basic Tax purposes, the Reserve Fund Percentage is limited to -10 percent and charged benefits that would decrease the Reserve Fund Percentage below that point are written off. These written-off benefit charges are re-charged to the Balancing Account. The largest charge to the Balancing Account comes from write-offs. In 2014 this accounted for $114 million in charges to the Balancing Account. All other charges to the Balancing Account in 2014 totaled $103 million. Thus write-offs represent over 50 percent of all charges to the balancing account in 2014.

Quits
When an employee quits work but becomes eligible for benefits, instead of charging the former employer, those benefits are charged to the Balancing Account. The idea is to not hold employers responsible when a claimant collects UI benefits due to no attributable action on behalf of the employer. A quit can occur if the claimant falls under one of the quit exceptions enumerated in statute or more likely if the claimant quits a job to take a new one and then is subsequently laid off. Quits are the second largest category of charges against the balancing account.

Misconduct
This situation occurs when an employer terminates an employee for misconduct connected with employment. The employee then finds employment at a second employer. This second employer then lays off the employee (i.e. the employee is not terminated for cause from the second employer). The claimant's benefit amount is based on his work history from both employers, assuming the claimant's new work history is sufficient enough to re-qualify for benefits. Wages from the terminated with-cause employer are removed from consideration when calculating a claimant's maximum benefit amount. These wages however, will be used to determine the weekly benefit amount a claimant can receive. Any portion of the pro-rated benefit amount that comes from the terminated with-cause employer will be charged to the Balancing Account.

Substantial Fault
This is similar to what occurs under misconduct. If an employee who is terminated with justifiable cause under substantial fault finds work with another employer and is then laid off he may re-qualify for benefits. If he does qualify for benefits, wages from the terminated with cause employer are used both in calculating the maximum benefit amount and the weekly benefit rate. The pro-rated portion of benefits assigned to the terminated with cause employer is instead charged to the Balancing Account.

Continued Employment

The typical case for this occurs when a claimant is working for two employers, either both part time, or one full time and one part time. The claimant is laid off from one employer but still continues working at the second employer. The claimant files a claim based upon the reduction in wages earned. These benefits will be based upon the entire earnings of the claimant but the current employer, who did not reduce the claimant's wages, will not be charged for their benefit share; instead they are charged to the Balancing Account.

Second Benefit Year

This occurs when an employer was charged for a claimant's benefits in the first benefit year, and wages paid by the employer are part of a second benefit year for a claimant, but the employer has not employed the claimant for over a year. This can occur because benefits are based upon the first 4 of the previous 5 quarters. The 5th quarter could be part of a future benefit claim. That employer would not be charged for the fifth quarter but those benefits would instead be charged to the balancing account.

Training Benefits

UI benefits paid to claimants participating in Department Approved Training programs are charged to the UI Balancing Account. The Training Benefits category includes benefits paid to claimants who were enrolled in the Extended Training program. The Extended Training program was ended by the Wisconsin Legislature in 2013, so no future charges for that program are expected.

Non-standard Charges to the Balancing Account

Temporary Supplemental Benefits

In 2002, special state Temporary Benefits were charged to the Balancing Account and similar programs in the future could also be changed to the Balancing Account.

2017 Financial Outlook: Wisconsin Unemployment Insurance Program

WISCONSIN DWD

UIAC Meeting
April 20 ,2017

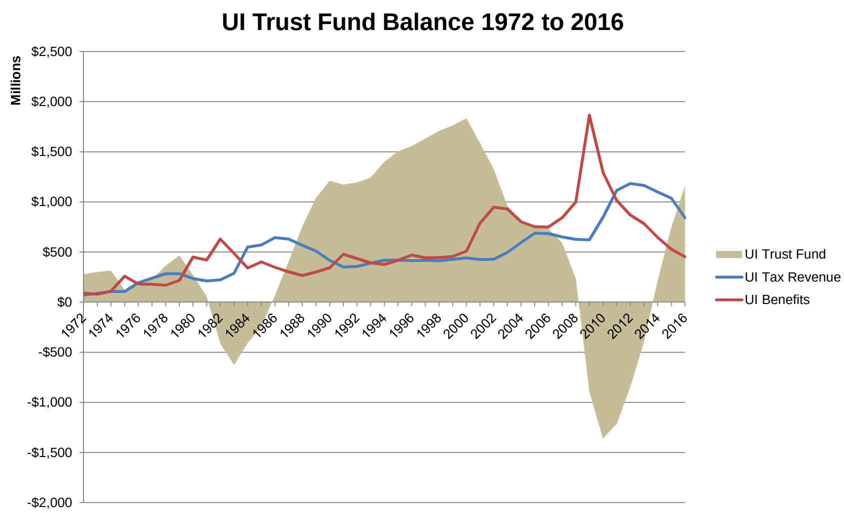
Unemployment Insurance Division
Department of Workforce Development

2017 UI Financial Outlook Highlights

DWD

- The 2017 *Financial Outlook* of the Wisconsin Unemployment Insurance (UI) program was submitted to the Governor's Office on April 14, 2017
- The *Financial Outlook* provides background on the Wisconsin UI financing system and an immediate term projection of the UI Trust Fund

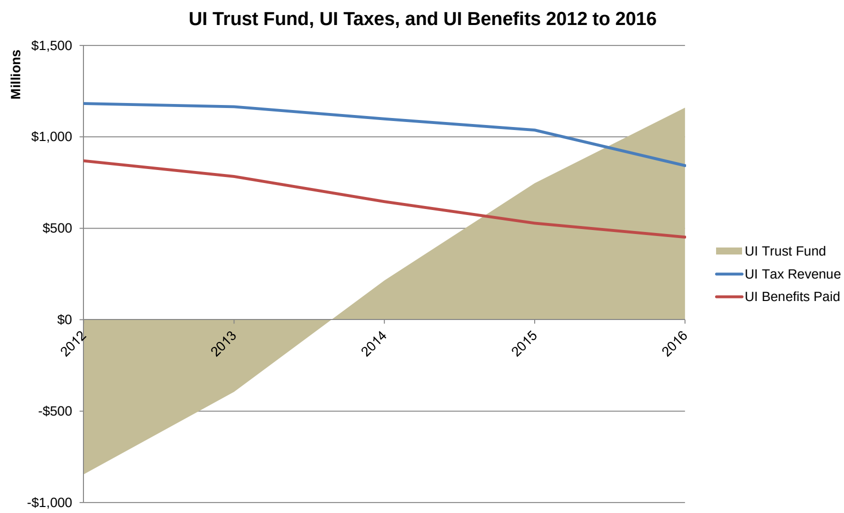
2017 UI Financial Outlook Highlights



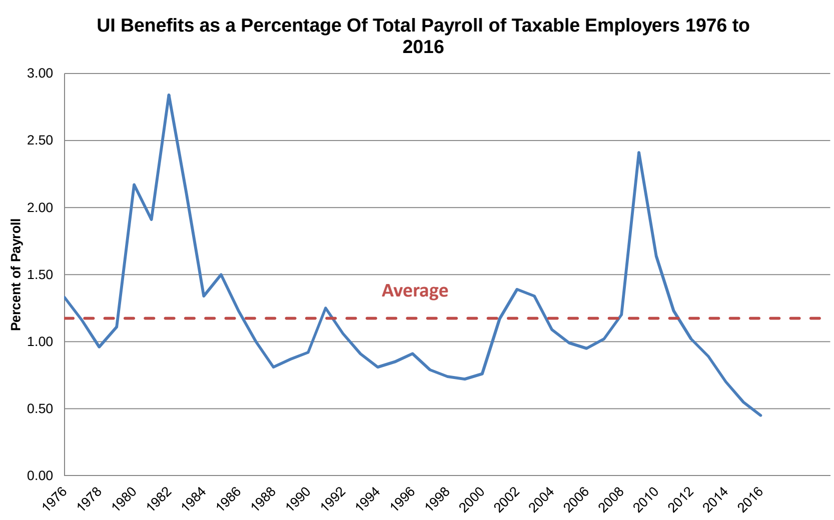
2017 UI Financial Outlook Highlights

- Over the past two years the UI Trust Fund has increased substantially
  - At the end of 2014 the UI Trust Fund Balance was $214 million
  - At the end of 2016 the UI Trust Fund Balance was $1.16 billion
- Due to multiple factors, including the strength of the Wisconsin economy, UI benefits have been historically low during the past two years.

2017 UI Financial Outlook Highlights



2017 UI Financial Outlook Highlights



2017 UI Financial Outlook Projections

- The historically low UI benefit amounts creates two issues for UI benefit and UI Trust Fund Projections
  1. It is difficult to create projection equations that capture the current state based upon historic experience
  2. A return to a historically normal benefit path creates a challenge to the UI Trust Fund separate from the typical cyclical economic risk

2017 UI Financial Outlook Projections

- In order to account for the issues tied to historically low UI benefits, three projection scenarios have been produced, all assumming continued economic growth:
  1. A benefit projection assuming that benefits remain at the level of the last three years
  2. A slow return to historically normal benefit amounts
  3. A quick return to historically normal benefit amounts

2017 UI Financial Outlook Projections

DWD

Scenario 1: UI Benefits Remain at Historically Low Levels-- Using the Average Benefit Rate of the Last 3 Years

Unemployment Insurance Reserve Fund Activity and Condition (Millions $)					
		2016	2017	2018	2019
Opening Unemployment Reserve Fund Balance		$743	$1,160	$1,418	$1,531
Revenues:					
State Unemployment Revenues (employer taxes)		$852	$681	$568	$522
Interest Income		$22	$32	$36	$38
Total Revenue		$874	$713	$604	$571
Expenses:					
Unemployment Benefits		$457	$455	$491	$566
Ending Reserve Fund Balance		**$1,160**	**$1,418**	**$1,531**	**$1,536**

2017 UI Financial Outlook Projections

DWD

Scenario 2: UI Benefits Slowly Increasing to Historically Typical Level

Unemployment Insurance Reserve Fund Activity and Condition (Millions $)					
		2016	2017	2018	2019
Opening Unemployment Reserve Fund Balance		$743	$1,160	$1,418	$1,480
Revenues:					
State Unemployment Revenues (employer taxes)		$852	$681	$568	$544
Interest Income		$22	$32	$36	$36
Total Revenue		$874	$713	$604	$580
Expenses:					
Unemployment Benefits		$457	$455	$542	$626
Ending Reserve Fund Balance		**$1,160**	**$1,418**	**$1,480**	**$1,434**

2017 UI Financial Outlook Projections

DWD

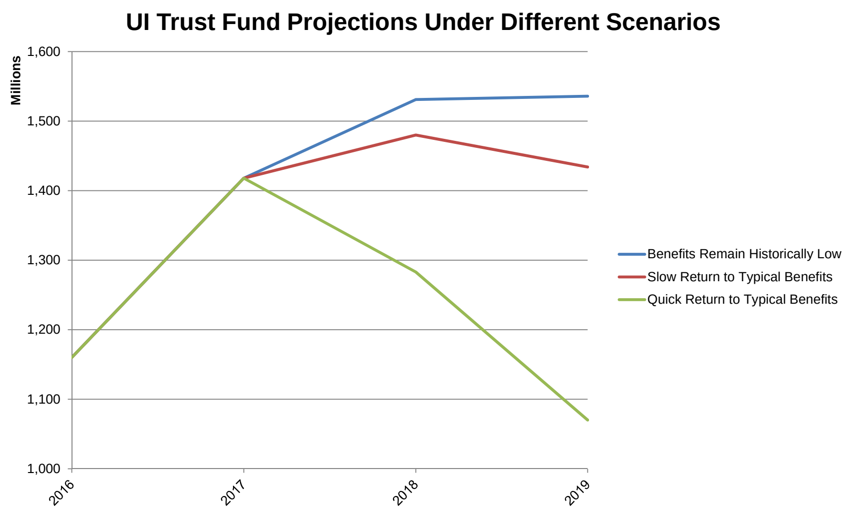
Scenario 3: UI Benefits Quickly Return to a Historically Typical Level

Unemployment Insurance Reserve Fund Activity and Condition (Millions $)

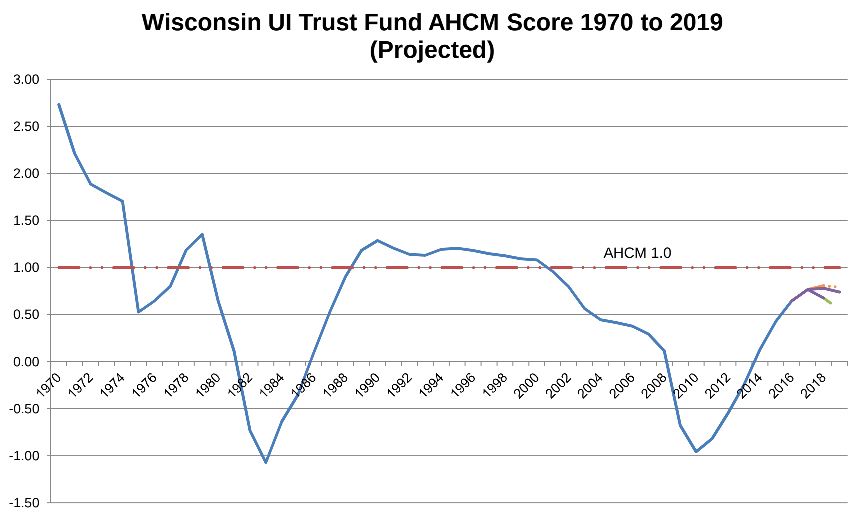
		2016	2017	2018	2019
Opening Unemployment Reserve Fund Balance		$743	$1,160	$1,418	$1,283
Revenues:					
State Unemployment Revenues (employer taxes)		$852	$681	$568	$578
Interest Income		$22	$32	$34	$29
Total Revenue		$874	$713	$602	$607
Expenses:					
Unemployment Benefits		$457	$455	$737	$820
Ending Reserve Fund Balance		**$1,160**	**$1,418**	**$1,283**	**$1,070**

2017 UI Financial Outlook Projections

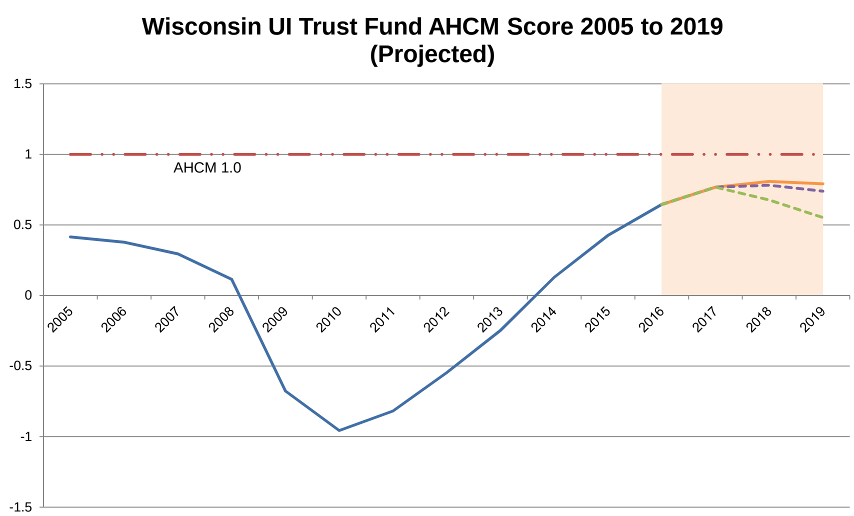
DWD



2017 UI Financial Outlook Projections



2017 UI Financial Outlook Projections



2017 UI Financial Outlook Recommendation

Secretary's Recommendation, page 28:

The Secretary recommends the Unemployment Insurance Advisory Council (UIAC) review and advance legislative measures to strengthen the UI Trust Fund, and support policies that support Trust Fund solvency.

Future UIAC proposals could address mechanisms to build and maintain sufficient reserve funding to meet the obligations of projected future benefit expenditures. Such mechanisms could encompass both benefits and revenue.

The Secretary recommends the UIAC's support of policies and programs that support reemployment and advance UI program integrity to support the UI Trust Fund. . .

The Department is prepared to support the Council as it considers options to further strengthen Wisconsin's Unemployment Insurance program

H. J. Res. 42

One Hundred Fifteenth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the third day of January, two thousand and seventeen

Joint Resolution

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

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress disapproves the rule submitted by the Department of Labor relating to "Federal-State Unemployment Compensation Program; Middle Class Tax Relief and Job Creation Act of 2012 Provision on Establishing Appropriate Occupations for Drug Testing of Unemployment Compensation Applicants" (published at 81 Fed. Reg. 50298 (August 1, 2016)), and such rule shall have no force or effect.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

STATEMENT OF SCOPE
Department of Workforce Development

Rule No: Chapters DWD 100 through 150

Relating to: Non-Substantive or Minor Technical Changes to Various DWD Rule Chapters

Rule Type: Permanent

Finding/nature of emergency

Not applicable.

Detailed description of the objective of the proposed rule.

The objective of the proposed rule is to make minor and technical changes to existing DWD rules, delete obsolete language and make other non-substantive changes in chs. DWD 100 to 150 relating to Wisconsin's unemployment insurance (UI) program. The proposed rule will align administrative rules with current state statutes to provide a clearer regulatory landscape for Wisconsin employers and unemployment insurance claimants.

Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.

The proposed rule will make technical changes (non-substantive or minor changes) to a number of administrative code chapters administered by DWD in chs. DWD 100 to 150 relating to Wisconsin's UI program and will not contain any significant changes in policy. The proposed rule will:

- Make non-substantive organizational and drafting changes.
- Update the rule regarding submission of reports from employers to the department to reflect current statute and practice.
- Repeal the requirement that employers notify the department as to whether the employer provides health insurance for employees under ch. DWD 111.
- Update hearing procedures under ch. DWD 140 to include webcast and videoconference hearings.
- Allow the appellant or respondent to appear within 10 minutes of the scheduled start time for an appeal tribunal hearing. Currently, the appeal tribunal waits 15 minutes for appellants and 5 minutes for respondents.
- Correct typographical errors.
- Correct erroneous and obsolete language, terminology, citations and cross-references.
- Make other minor changes to current rules to incorporate new statutory language.

The policy alternative is to do nothing. If the department does not promulgate the proposed rule, existing rules in chapters DWD 100 to 150 will not conform to state statute requirements and will contain outdated language and references.

Detailed explanation of statutory authority for the rule, including the statutory citation and language.

Section 108.14 (2), Wis. Stats.

"The department may adopt and enforce all rules which it finds necessary or suitable to carry out this chapter."

Estimate of amount of time that state employees will spend developing the rule and other resources necessary to develop the rule.

The estimated time is 160 hours.

List with description of all entities that may be affected by the proposed rule.

The proposed rule may affect employers that are subject to Wisconsin's UI program and individuals that file or collect UI benefits.

Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.

Under 20 CFR 601.5, federal law requires that state laws conform to and comply with federal requirements.

Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses).

The proposed rule is technical in nature and is not expected to have any economic effect.

Contact Person: Janell Knutson, Director, UI Bureau of Legal Affairs, (608) 266-1639, janell.knutson@dwd.wisconsin.gov.

Approval of the agency head or authorized individual:

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Karl Dahlen, Chief Legal Counsel

____

Date Submitted

D17-10
Amendments to Drug Testing Statutes

Date: April 20, 2017 (revised)
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.[1]

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.[2] "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."[3] The

[1] Wis. Stat. § 108.133.
[2] 42 USC § 503(l)(1)(A).
[3] 20 CFR § 620.2.

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 <u>reasonable</u> 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.[4] Existing administrative code provisions provide general confidentiality protections[5] 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. The Department also seeks to amend the appropriation statute in order to permit the Department to transfer any unused funds from this appropriation to the unemployment program integrity fund.

[4] Wis. Stat. § 108.133(3)(e).
[5] Wis. Admin. Code § DWD 149.02(1).

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. The treasurer of the unemployment reserve fund may transfer moneys from this appropriation account to the appropriation account under par. (v).

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

(v) *Unemployment program integrity*. From the unemployment program integrity fund and all moneys transferred to this appropriation account from the appropriation account under par. (aL), a sum sufficient to make the payments authorized under s. 108.19 (1s).

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:

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Amendments to Drug Testing Statutes

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.

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 ~~claimant~~ 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 ~~claimant~~ 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 ~~claimant~~ 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 ~~claimant~~ 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.

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

3. If the ~~claimant 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 ~~claimant~~ applicant.

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.

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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.

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

(c) 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 tests positive for one or more controlled substances without presenting evidence satisfactory to the department that the ~~claimant~~ applicant possesses a valid prescription for each controlled substance for which the ~~claimant~~ applicant tested positive, 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., except as provided in par. (d).

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

(d) An ~~claimant~~ 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 ~~claimant~~ applicant remains eligible for benefits under this chapter, if otherwise eligible, for each week the ~~claimant~~ 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.

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

(e) All information relating to an ~~claimant'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.

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. Any unused appropriations would transfer to the UI Program Integrity 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.[6] Existing administrative code provisions provide general confidentiality protections[7] 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. The Department also seeks to amend the appropriation statute in order to permit the Department to transfer any unused funds from this appropriation to the UI Program Integrity Fund.

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. Any unused appropriations would transfer to the UI Program Integrity Fund.

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

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[6] Wis. Stat. § 108.133(3)(e).
[7] Wis. Admin. Code § DWD 149.02(1).

Unemployment Insurance Advisory Council
Tentative Schedule
2017

April 20, 2017	Scheduled Meeting of the Advisory Council Discussion of Labor & Management Law Change Proposals. Discussion of Agreed Upon Bill
May 18, 2017	Scheduled Meeting of the Advisory Council Discussion of Labor & Management Law Change Proposals. Discussion of Agreed Upon Bill
June 15, 2017	Scheduled Meeting of the Advisory Council Final Draft Review Agreed Upon Bill
July 18, 2017	TBD
August 17, 2017	TBD
September 15, 2017	TBD
October 19, 2017	TBD
November 16, 2017	TBD
December 21, 2017	TBD

2017-2018 Legislative Session Schedule

January 3, 2017	2017 Inauguration
January 10, 2017	Floorperiod
January 17 to 19, 2017	Floorperiod
February 7 and 9, 2017	Floorperiod
March 7 to 9, 2017	Floorperiod
March 28 to April 6, 2017	Floorperiod
April 20, 2017	Bills sent to Governor
May 2 to 11, 2017	Floorperiod
June 6 to 30, 2017, **OR** budget passage	Floorperiod
August 3, 2017	Nonbudget Bills sent to Governor
August 3, 2017 (or later)	Budget Bill sent to Governor
September 12 to 21, 2017	Floorperiod
October 10 to October 12, 2017	Floorperiod
October 31 to November 9, 2017	Floorperiod
December 7, 2017	Bills sent to Governor
January 16 to 25, 2018	Floorperiod
February 13 to 22, 2018	Floorperiod
March 13 to 22, 2018	Last general-business Floorperiod
April 12, 2018	Bills sent to Governor
April 17 to 19, 2018	Limited-business Floorperiod
April 26, 2018	Bills sent to Governor
May 8 and 9, 2018	Veto Review Floorperiod
March 23, 2018 to January 7, 2019	Interim, committee work
May 23, 2018	Bills sent to Governor
January 7, 2019	2019 Inauguration