



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: May 23, 2017

Time: 9:30 a.m. – 4:00 p.m.

Place: Department of Workforce Development
201 E. Washington Avenue
Madison, Wisconsin
GEF-1, Room H306

AGENDA ITEMS AND TENTATIVE SCHEDULE:

1. Call to Order and Introductions
2. Approval of Minutes of the May 11, 2017 Council Meeting
3. Report of Activities of the Unemployment Insurance Advisory Council
4. UIAC 85th Anniversary
5. Department Update
6. Update on Court Cases
 - *DWD v. LIRC, Valarie Beres & Mequon Jewish Campus, Inc.*
7. Update on Legislation
 - Budget Bill (SB30 / AB64)
 - Mobility Grant Study (AB243)
 - Work Search Waiver (SB83 / AB131)
8. Department Proposals For Agreed Bill Pending Action
 - D17-03 – Assessment for Failure to Produce Records
 - D17-06 – Standard of Proof in Unemployment Insurance Law Cases

- D17-07 – Revision of Collections Statutes
 - D17-08 – Various Minor and Technical Changes
9. Labor Proposals For Agreed Bill Pending Action
- L17-01 – Increase the Maximum Weekly Benefit Rate by \$10 in 2018 and by \$10 in 2019
 - L17-02 – Amend the Trigger for Schedule D to \$1.8 Billion
 - L17-03 – Increase the Taxable Wage Base to \$16,500 in 2019 and Index in Future
10. Management Proposals For Agreed Bill Pending Action
- M17-01 – Repeal the Quit Exception in Wis. Stat. § 108.04(7)(e)
 - M17-02 – State and Federal Holidays are not Working Days for Partial Benefits if the Employer is Closed
 - M17-03 – Reduce the Maximum Number of Benefit Weeks Based on the Unemployment Rate: 22 Weeks when the Unemployment Rate is below 7%; 18 Weeks when the Unemployment Rate is below 5%
 - M17-04 – Amend Definitions of Misconduct and Substantial Fault
11. Timeline of Agreed Bill/Future Meeting Dates
12. Agenda Items for June 15, 2017 Meeting
13. Adjourn

Notice:

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

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

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

May 11, 2017

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

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

Department Staff Present: Joe Handrick, Ben Peirce, Andy Rubsam, Karl Dahlen, Andrew Evenson, Becky Kikkert, Tom McHugh, Mary Jan Rosenak, Pam James, Janet Sausen, Robert Usarek, Jill Moksouphanh, Troy Sterr, Amy Banicki, Karen Schultz, and Robin Gallagher

Members of the Public Present: Maria Gonzalez Knavel (Labor and Industry Review Commission (LIRC), General Council) Mike Duchek (Legislative Reference Bureau), Victor Forberger (Wisconsin UI Clinic), Brian Dake (WI Independent Businesses, Inc.), and Shelly Bauknecht (Legislative Audit Bureau)

1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council (Council) meeting to order at 9:40 a.m. under Wisconsin's Open Meeting law. Council members introduced themselves and Ms. Knutson recognized Maria Gonzalez of LIRC, Mike Duchek of the Legislative Reference Bureau (LRB), and Shelly Bauknecht of the Legislative Audit Bureau.

2. Approval of Minutes of the April 20, 2017 Council Meeting

Motion by Mr. Manley, second by Mr. Reihl to approve the April 20, 2017 meeting minutes. The motion carried unanimously and the minutes were approved without correction.

3. Department Update

Ms. Knutson reported on the following:

Council's 85th Anniversary

The Council is celebrating its 85th anniversary in the month of May and the department will recognize this at the May 23, 2017 meeting.

Initial Online Claims Filing

The Council received a press release issued by the department announcing the discontinuation of the automated telephone system for filing initial claims effective May 24, 2017. Claimants will be required to file initial claims online. Mr. Handrick indicated as the department moves forward in the 21st century to improve customer service, the next phase of the initiative will be to retire the antiquated and costly automated telephone claim filing for weekly claims and the inquiry system.

4. Report on the Unemployment Insurance Reserve Fund

Mr. McHugh reported on the Unemployment Insurance (UI) Trust Fund highlights. The first quarter tax receipts (which accounts for a little less than 50% of receipts received for the year) have been paid and the UI Trust Fund balance as of May 8, 2017, was approximately \$1.3 billion.

Year-to-date UI benefit payments total \$217.3 million, a decrease of \$20.6 million (8.7%) compared to the same period last year. Benefits paid in the past 52 weeks also declined \$63.1 million (11.7%) compared to the same time period last year.

Due to the lower tax schedule as well as experience rating, 2017 tax receipts as of May 6, 2017 decreased by 18.1% to \$407.1 million.

First quarter interest earned was approximately \$6.3 million. The 2017 forecasted interest is \$31.5 million. Interest earned in 2016 totaled \$21.8 billion. Currently, the Trust Fund is earning approximately \$90,000 per day in interest.

Tax Schedule A was in effect for 2015; Schedule B for 2016; and Schedule C for 2017. Assuming Tax Schedule D is in effect for 2018, as forecasted in the Financial Outlook report, tax revenue will decrease \$25 to \$28 million. The Trust Fund balance on June 30, 2017, will officially determine which tax schedule is in effect for 2018. If the Trust Fund balance exceeds \$1.2 billion on June 30, 2017, Schedule D will be in effect for 2018. Moving to Schedule D will allow small and large employers with a positive Trust Fund balance to save \$14 per employee for employees who have wages of \$14,000 or more. For small and large employers with overdrawn accounts, (benefits paid exceed taxes paid), there is no reduction in tax rates with one exception. The 9.8% bracket in Schedule C will change to 9.75%. This is a \$7 per employee decrease for employees with wages of \$14,000 or more.

For a small employer to qualify for a zero percent tax rate, the employer must have a reserve rate of at least 15%. There is no zero percent tax rate for large employers in Schedule C or D; the lowest tax rate for large employers is 0.05% (solvency tax).

5. Update on Court Cases

Lela M. Operton v LIRC & Walgreen Co. Illinois case.

Mr. Rubsam provided an update on the *Lela M. Operton v LIRC & Walgreen Co. Illinois* case. Ms. Operton was a cashier at Walgreens that was fired for cash handling errors. Ms. Operton filed for benefits and the department determined Ms. Operton was discharged for misconduct and benefits were denied. The appeal tribunal determined Ms. Operton was discharged for substantial fault and LIRC affirmed the appeal tribunal decision. The Circuit Court affirmed LIRC's decision; however, the Court of Appeals, using the *de novo* standard, reversed LIRC's decision finding the claimant was discharged due to "inadvertent errors" and allowed benefits.

The Supreme Court reversed LIRC's decision and awarded benefits to Ms. Operton. Justice Roggensack indicated in the majority opinion that the statute does not state whether there is a limitation on the number of inadvertent errors an employee may commit before the employee's errors are no longer inadvertent.

Justice Abrahamson's concurrence stated that LIRC was due no deference in this case and criticized the majority's opinion "inadvertent errors" analysis indicating there are no numerical limits contained in the statute. The Supreme Court decision does not provide enough clarity to determine whether an employee can make unlimited inadvertent errors and be discharged under substantial fault.

The adjudicator denied benefits to Ms. Operton and found misconduct based on the information presented at the time the claim was filed. Additional evidence was presented at the hearing and the appeal tribunal found substantial fault. LIRC also found substantial fault based on the evidence presented to the appeal tribunal. The Circuit Court, Court of Appeals and Supreme Court only review LIRC's decision.

DWD v. LIRC, Valarie Beres & Mequon Jewish Campus, Inc.

The department filed a petition with the Supreme Court in *DWD v LIRC, Valarie Beres & Mequon Jewish Campus, Inc.* The Supreme Court has not yet decided whether to grant the petition.

6. Update on Legislation

Budget Bill

Ms. Knutson stated there is no information to provide on the Budget Bill.

Mobility Grant Study (AB 243)

The Mobility Grant Study (AB 243) passed the Assembly and is now before the Senate.

Work Search Waiver (SB 83/AB 131)

The Work Search Waiver companion bills are before the Senate and Assembly Committees. No hearings have been scheduled at this time.

7. Department Proposals for Agreed Bill Pending Action

D17-01 Assessment for Failure to Produce Records

The department is withdrawing D17-01 at this time until the Information Technology (IT) enhancement is finished. There is no estimated completion date at this time.

D17-03 Assessment for Failure to Produce Records

Ms. Knutson stated there is no updated information on this proposal.

D17-06 Standard of Proof in Unemployment Insurance Law Cases

Ms. Knutson stated there is no updated information on this proposal.

D17-07 Revision of Collections Statutes

The department is finalizing language to address the ruling received in U.S. Bankruptcy Court. The department anticipates presenting the changes at the next meeting.

D17-08 Various Minor and Technical Changes

Ms. Knutson stated there is no updated information on this proposal.

8. Management & Labor Proposals for Agreed Bill

Ms. Knutson stated that the goal is for Management and Labor Members to exchange proposals today.

9. Timeline of Agreed Bill

A spreadsheet tracking department proposals is included in the Council's meeting materials. Labor and Management proposals will be added to the spreadsheet for tracking after they are exchanged.

10. Agenda Items for May 23, 2017 Meeting

The Council will meet next on May 23 and celebrate the 85th Anniversary of the Council. After polling Council members, the Council will meet on June 15. At this time, there is not a quorum

for the July 18 meeting. Mr. Manley requested the Council not hold meetings in July or August if proposals can be exchanged and agreed upon.

Ms. Knutson stated the proposals already agreed upon have been sent to the LRB for drafting. Depending on the number of proposals, the Council can meet via teleconference to approve draft language.

11. Motion to Caucus

Motion by Mr. Manley, second by Mr. Hayden to recess and go into closed session pursuant to Wis. Stat. §19.85(1)(ee), to deliberate agenda items at 10:15 a.m. All Council members voted "Aye" and the motion carried unanimously.

12. Report Out of Caucus

The Council reconvened at 1:50 p.m.

Labor Report

Mr. Reihl reported that Labor Members did not have an opportunity to discuss department proposals and plan to review the proposals at the next meeting.

Labor Members proposed the following:

- Increase the maximum weekly benefit rate \$10 in 2018 and \$10 in 2019.
- Move the trigger from Schedule C to Schedule D to \$1.8 billion, which equates to an Average High Cost Multiple of 1.0.
- Increase the taxable wage base to \$16,500 (a \$2,500 increase) in 2019 and index the wage base thereafter.

Mr. Reihl requested the department provide a financial estimate on specific costs associated with each proposal.

Management Report

Mr. Manley reported that Management Members will discuss and review department proposals at the May 23 meeting.

Management Members proposed the following:

- Repeal Wis. Stat. §108.04(7)(e). This provision applies when the employee quit the job within the first 30 calendar days if benefits could have been allowed had the employee originally refused the offer.
- Consider state and federal holidays as non-working days for the purpose of partial benefit payments if the claimant works for a business that is closed on these days.

- Link the number of weeks a claimant is eligible for benefits to the unemployment rate so the number of benefit weeks drop as the unemployment rate drops. Management Members proposed to reduce the number of weeks to 22 when the unemployment rate is below 7% and 18 weeks when the unemployment rate is below 5%.
- Change the definition and grounds for misconduct and substantial fault to provide more clarity in light of recent court decisions.

Ms. Knutson stated the department will gather information on costs associated with the proposals and address questions to Mr. Reihl and Mr. Manley as necessary.

13. Adjournment

Motion by Mr. Hayden, second by Mr. Gotzler to adjourn at 2:00 p.m. The motion carried unanimously.

UNEMPLOYMENT INSURANCE

ADVISORY COUNCIL ACTIVITIES REPORT

2015-2016



STATE OF WISCONSIN



Department of Workforce Development

May 15, 2017

To: The Honorable Scott Walker and Members of the Wisconsin State Legislature:

This report describes the activities of Wisconsin's Unemployment Insurance Advisory Council for the 2015-2016 period.

Wisconsin's thriving economy and the common-sense reforms made to Wisconsin's Unemployment Insurance program have improved the stability and integrity of the Unemployment Insurance Trust Fund. When Governor Walker took office in January 2011, the Trust Fund had a negative balance of \$1.4 billion. At the end of 2016, the Trust Fund was nearly \$1.2 billion in the black, a \$2.6 billion improvement. And, the Trust Fund balance is expected to be greater than \$1.2 billion on June 30, 2017, which would result in an additional Unemployment Insurance tax reduction for Wisconsin employers for 2018. That would be the third straight tax year that Wisconsin employers would experience such a reduction.

This report describes the reforms to the Unemployment Insurance program during the 2015-2016 biennium. Examples include:

- ▶ Provisions to reduce Unemployment Insurance benefit fraud;
- ▶ Administrative and criminal penalties for intentional worker misclassification;
- ▶ Credit for benefit charges related to identity theft for employers with reimbursable financing;
- ▶ Modernization of unemployment appeals;
- ▶ Implementing the administrative rules for the pre-employment drug testing program as required by the 2015-2016 Wisconsin state budget.

The Department of Workforce Development and the Unemployment Insurance Advisory Council look forward to working with the Governor and the Legislature to continue to strengthen Wisconsin's Unemployment Insurance program. The department and the Council seek to ensure that this vital program remains available to workers who lose their job through no fault of their own and accountable to the Wisconsin employers who fund benefit payments.

Sincerely,



Ray Allen, Secretary
Department of Workforce Development

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INTRODUCTION

The following report summarizes the deliberations of the Unemployment Insurance Advisory Council (Council) and provides the position of the Council concerning each proposed change to Unemployment Insurance (UI) law during 2015-2016. The report is prepared by the Secretary of the Department of Workforce Development and provided to the Governor and Legislative leaders as required by Wis. Stat. § 16.48(1)(b).

ABOUT THE UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Created in 1932, the Council celebrates its 85th anniversary in 2017. Since its inception, the Council has recommended changes to Wisconsin's UI Law to the Wisconsin State Legislature.

The Council's primary responsibilities are to:¹

- (1) Advise the Department of Workforce Development in its administration of the UI law;
- (2) Report its views on pending legislation affecting the UI program to legislative committees;
- (3) Submit its recommended changes to Wisconsin's UI law to the Wisconsin State Legislature.

The Council studies potential law changes on an ongoing basis, providing a balanced forum where the interests of both employees and employers are considered. The Council's negotiated recommendations to change the UI law are presented to the Legislature as an "Agreed Bill" for the Legislature's consideration.

The Legislature has traditionally recognized the value of the Council process in bringing together the two groups most affected by the UI program, employees and employers. The Legislature's support of the Council process has helped to ensure that Wisconsin's UI law continues to conform to federal requirements, which is required for Wisconsin to receive the federal funding necessary to administer the UI program.

The Council communicates with the Legislature regarding specific issues that affect the UI program. Members of the Legislature are encouraged to attend Council meetings and address the Council on their proposed changes to the UI law prior to introduction.



▲ Management members of the UI Advisory Council, from left to right: Jon Mielke, Mike Gotzler, Ed Lump and Scott Manley

¹ The Council responsibilities are specified in Wis. Stat. § 108.14(5)(a).

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL MEMBERSHIP

The Secretary of the Department of Workforce Development appoints Council members to six-year terms. The Council is composed of five management members representing the interests of employers and five labor members representing the interests of employees. One management representative is required by state law to be an owner of a small business or represent an association that is primarily composed of small businesses. The non-voting Council chairperson is a permanent, classified department employee.

Employer Representatives (Management)

Michael Gotzler – Board Member, Wisconsin Association of Staffing Services, Shorewood, WI: term expires June 30, 2017 (reappointed through June 30, 2023)

Earl Gustafson – Vice President, Energy Forestry & Human Resource, Wisconsin Paper Council, Appleton, WI: term expires June 30, 2019

Edward J. Lump (Small Business Representative) – President and CEO, Wisconsin Restaurant Association: term expires June 30, 2017 (reappointed through June 30, 2023)

Scott M. Manley – Senior Vice President of Government Relations, Wisconsin Manufacturers and Commerce, Madison, WI: term expires August 31, 2021

John Mielke – President, Associated Builders & Contractors of Wisconsin, Inc., Madison, WI: term expires August 31, 2021

Employee Representatives (Labor)

Michael Crivello – President, Milwaukee Police Association, Milwaukee, WI: term expires August 31, 2021

Sally Feistel – Sub-District Director, United Steel Workers, District 2, Menasha, WI: term expires May 31, 2020

Shane Griesbach – Business Representative, International Union of Operating Engineers Local 139, Appleton, WI: term expires June 30, 2017 (reappointed through June 30, 2023)

Terry Hayden – Business Manager, UA Local 434 Plumbers & Steamfitters, Mosinee, WI: term expires August 31, 2021

Mark Reihl – Executive Director, Wisconsin State Council of Carpenters, Madison, WI: term expires November 14, 2018

Chairperson

Janell Knutson – Director, Bureau of Legal Affairs, UI Division, Department of Workforce Development

COUNCIL PROCEDURES

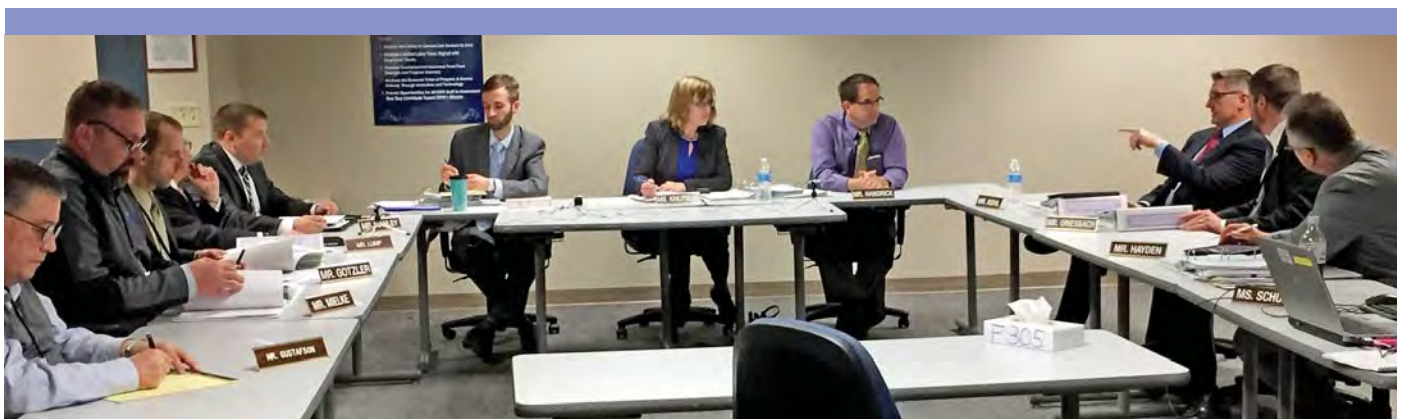
Business Meetings

Council members negotiate proposed changes to Wisconsin's UI law in biennial cycles, and review and approve administrative rules drafted by the department and unemployment-related legislation proposed by lawmakers throughout the biennium. The Council typically meets monthly and communicates with department staff, legislators and the public regarding potential law changes on a continuing basis. Council meetings are open to the public and are noticed in accordance with Wisconsin's open meetings law. Management and Labor members are permitted under state law to hold separate, closed caucus sessions to discuss potential law changes.²

The Council Chairperson leads the Council meetings and presents department proposals to change UI law to the Council for review. The department provides an analysis of each proposal that typically includes a description of the suggested law change, the rationale, the history and background of current law, potential federal conformity issues relevant to the proposal, the policy and fiscal effects, and the administrative feasibility and effect of the proposal. Council members deliberate proposals presented by the department, their own proposals, and any unemployment-related bills pending in the Legislature. A vote of seven of the ten Council members is required for the Council to act on any matter.

Public Hearing

Each biennium, the Council holds a statewide hearing for the public to suggest law changes to the UI program. Most recently, the Council held a public hearing on November 17, 2016 via videoconference with hearing locations in Eau Claire, Green Bay, La Crosse, Madison, Milwaukee, Superior and Wausau. The Council also accepted written comments from the public. Nineteen people spoke at the public hearing and 281 written comments were submitted on a wide range of topics.



▲ UI Advisory Council discussion during council meeting in May 2017

² Closed caucus sessions are permissible under Wis. Stat. § 19.85(1) (ee).

LAW CHANGES ENACTED DURING THE REPORTING PERIOD

Governor Walker signed five bills into law during the 2015-2017 biennium that relate to the UI program: 2015 Wis. Act 55, the 2015-2017 budget; 2015 Wis. Act 86, an agreed-upon bill regarding certain federal requirements; 2015 Wis. Act 203, regarding franchisor liability for UI contributions; 2015 Wis. Act 258, amending the real estate agent exclusion; and 2015 Wis. Act 334, an agreed-upon bill with eighteen law changes.

Law Changes Related to UI Benefits

Pre-employment Drug Testing and Drug Treatment

The 2015-2017 Budget Act (Act 55) requires the department, by administrative rule, to create 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. By rule, a failure to accept suitable work due to a failed or refused pre-employment drug test will make the claimant ineligible for UI benefits until he or she earns six times their weekly benefit rate in wages. A claimant may overcome the presumption that the failed or refused test is a failure to accept suitable work by proving certain facts to the department. A claimant who fails a pre-employment drug test may remain eligible for UI benefits if the claimant enrolls in and complies with a drug treatment program and completes a job skills assessment.

The Council approved an emergency rule under the requirements of Act 55 for the pre-employment drug testing program which became effective on May 6, 2016. The permanent rule for the pre-employment drug testing program was later approved by the Council and became effective on May 1, 2017.

Concealment Definition

Act 334 clarified the definition of concealment and codified a duty of care for claimants to provide an accurate and complete response to each inquiry made by the department in connection with the claimant's receipt of benefits. The statute was amended to provide a list of factors for the department to consider when making a concealment determination.

Suitable Work

Act 334 created a statutory definition of suitable work. For the first six weeks of a claimant's unemployment, work is suitable if the work does not involve a lower grade of skill than one of the claimant's most recent jobs and the hourly wage for the work is 75% or more of what the claimant earned on their highest paying, most recent job. After the first six weeks of unemployment, suitable work includes any work the claimant is capable of performing, regardless of whether the claimant has any relevant experience or training, and 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.

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.

Social Security Disability Insurance (SSDI) Disqualification

Act 334 clarified that an individual is ineligible for UI benefits for each week in the entire month in which a SSDI payment is issued to an individual.

Worker's Compensation Disqualification

Act 334 provided that an individual who receives a worker's compensation payment for temporary total disability or permanent total disability for a full week is ineligible for UI benefits for that same week. A worker's compensation payment for part of the week for temporary total disability, temporary partial disability or permanent total disability, is treated as wages for purposes of eligibility for UI benefits for partial unemployment.

Work Share Benefit Formula

Under a work-share program, employers reduce employees' work hours in lieu of layoffs. The law originally provided employees would receive the greater of the work-share benefit amount (a proportionate reduction based on their reduction in work hours) or the UI partial wage benefit amount. Act 86 provided employees in a work-share program would only receive the work-share benefit amount.

Law Changes Related to UI Taxes

Administrative and Criminal Penalties for Misclassifying an Employee

Act 334 created a new administrative penalty for construction employers who knowingly and intentionally misclassify workers as independent contractors. The penalty is \$500 per employee intentionally misclassified with a maximum of \$7,500 per employer, per incident. Construction employers, after having previously been assessed an administrative penalty for knowingly and intentionally misclassifying workers as independent contractors, may be criminally fined by a court \$1,000 for each employee who is misclassified with a maximum fine of \$25,000 per employer, per violation.

Administrative Penalty for Coercion

Act 334 created a new administrative penalty for construction employers who coerce individuals to adopt independent contractor status. The penalty is \$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 now has the statutory authority to intercept federal income tax refunds to recover tax debts from employers and personally liable individuals. The department has had statutory authority to intercept federal income tax refunds to satisfy claimant overpayment debts since 2010.

Personal Liability Assessment for Limited Liability Partners (LLP)

Before Act 334, officers, employees, members, or managers with at least 20 percent ownership interest in a corporation or LLC could be held personally liable for unpaid UI contributions. Act 334 allows the department to hold individuals personally liable for the UI contributions of "other forms of business association," which includes LLPs.

Reimbursable Employer ID Theft Charging

Before Act 334, reimbursable employer accounts (public employers, nonprofits and Indian tribes) were charged for benefits erroneously paid due to identity theft fraud unless the department recovered the overpayments from the identity thief. For contribution employers, identity theft charges were credited to the employer's account and transferred to the Trust Fund balancing account. Act 334 set aside \$2 million in the balancing account for accounting purposes and credits reimbursable employers for charges due to identity theft. Each year, the department will determine the amount of interest accrued on the funds set aside and the total charges for identity theft against reimbursable employer accounts. If the set aside is reduced to \$100,000 or less, all reimbursable employers will be assessed proportionately for identity theft charges. The department will report to the Council annually on the set aside amount remaining.

Program Integrity Assessment

Act 334 created a new program integrity assessment of 0.01 percent and reduced employer taxes by a corresponding amount, resulting in no tax increase for Wisconsin employers. The proceeds of this assessment are deposited into the UI Program Integrity Fund for program integrity activities, such as combatting UI fraud.

In September 2016, the Council approved the Secretary's request to implement the 0.01 percent program integrity assessment for 2017. The proceeds allow the department to continue its aggressive anti-fraud and other program integrity efforts without raising employer taxes.

Program Administration

Appeals Modernization

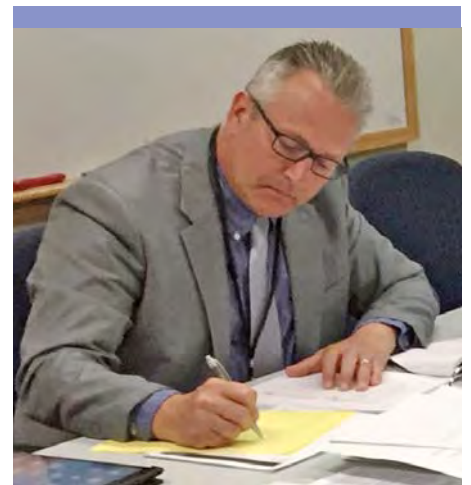
Act 334 provided the statutory authority for changes in the appeals process to streamline and improve efficiency within the UI appeals process. The changes include:

- Allowing electronic delivery of notices and decisions;
- Streamlining the handling of the review of failure to appear at hearings;
- Allowing appeals to be filed directly with the appeal tribunal;
- Allowing the Administrative Law Judge to sign appeal tribunal decisions electronically;
- Incorporating enabling language to allow the department to hold video hearings.

Judicial Review

Before Act 334, the statutory provisions for procedures to appeal decisions of the Labor Industry Review Commission (LIRC) in UI cases to circuit court were contained in Wis. Stat. ch. 102 (the worker's compensation law). Act 334 incorporated the judicial review process for UI cases into the UI law, Wis. Stat. ch. 108. In addition, Act 334 modified certain judicial review procedures such as:

- The department is not required to exhaust its administrative remedies before filing an action for judicial review;
- The department is a party to judicial review actions of benefits issues;
- LIRC must transmit the appeal record to circuit court within 60 days;
- The appeal is filed in the county where the plaintiff resides. In the event the department is the plaintiff, the action is filed in the county where a defendant that is not LIRC resides.



▲ UI Council member Terry Hayden works on Labor law change proposals at May 2017 Council Meeting

Able and Available

Before Act 334, the department issued one determination when a claimant filed for benefits that included a determination of separation and the claimant's availability for work and ability to work. Under Act 334, the department will issue two separate determinations: a determination identifying the reason for separation, and a determination regarding the claimant's availability for work and ability to work.

Fiscal Agents and Employer Definition

Act 55 created a provision to ensure that fiscal agents may act on behalf of children who receive long-term community support services. The unemployment definition of "employer" excludes fiscal agents for certain individuals who receive long-term support services. Act 334 amended the definition of "employer" to exclude fiscal agents acting on behalf of children receiving long-term support services.

Transfer of SAFI Funds

During the recession, the Wisconsin UI program had to borrow money from the federal government to pay for benefits. Interest due on the loans was paid by employers through a special assessment for interest (SAFI). Act 334 permitted the department to transfer SAFI funds that exist after the repayment of the interest on federal loans to the Trust Fund balancing account, the Program Integrity Fund, or both.

Unemployment Program Integrity Fund Sunset – Repeal

The Unemployment Program Integrity Fund was scheduled to sunset (expire) on January 1, 2034. Act 334 repealed the sunset due to the new assessments and penalties that will be deposited into the Program Integrity Fund.

Statutory Benefit Tables Elimination

Before Act 334, the statutes provided a formula for calculating the amount of weekly benefits to which a benefit claimant is entitled with charts showing the benefit rate based on an individual's earnings. Act 334 provided in statute the weekly benefit rate formula and removed the charts from the statute. The removal of the charts did not change a claimant's weekly benefit rate and the charts continue to be published on the department's website.

Combined Wage Claims

Act 86 addressed a mandate by the federal government that requires states to pay UI benefits in cases where an unemployed individual has wages and employment in more than one state, commonly referred to as a combined wage claim. The federal requirement also prohibits states from providing relief from charges to an employer's UI account when the employer's actions caused an improper UI benefits payment. Under Act 86, the department may issue a determination to an out-of-state employer if that employer is at fault for the erroneous payment of benefits under a combined wage claim.



ISSUES PENDING WITH THE COUNCIL

Occupational Drug Testing and Drug Treatment

Act 55 requires the department, by administrative rule, to create a program for drug testing certain UI benefit applicants. If the department determines that an applicant's only suitable work is in an occupation that regularly conducts drug testing, the department will screen the applicant to determine whether there is a reasonable suspicion that the applicant is using controlled substances. If a screening indicates a reasonable suspicion that the applicant engaged in the unlawful use of controlled substances, the applicant must submit to a drug test. A failed or refused drug test will disqualify the claimant from receiving benefits. The department, by rule, must determine a period of ineligibility or requalification requirement, or both. A claimant who fails a drug test without evidence of a valid prescription for the drug may remain eligible for UI benefits if the claimant enrolls in and complies with a drug treatment program and completes a job skills assessment.

The Council approved a scope statement for a permanent and emergency rule relating to occupational drug testing. The scope statement was approved by the Governor and printed in the Wisconsin Administrative Register.

The U.S. Department of Labor promulgated regulations (effective September 30, 2016) that established the list of occupations that regularly conduct drug testing. U.S. House Joint Resolution 42, signed by the President, nullified the regulations.

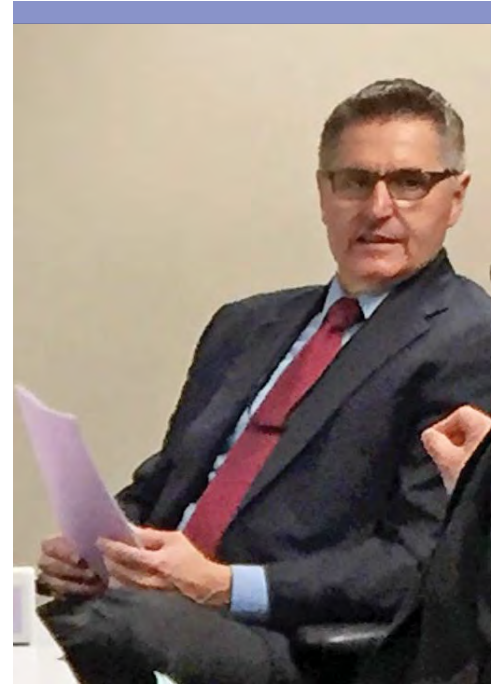
Work Search Waiver Exceptions for Seasonal Employees

From 2004 to 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, the 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 also provides an equivalent waiver for work registration.

The department received comments during the statewide UI public hearing from employees and employers that expressed opposition to the change in the recall waiver. In addition, various State Legislators requested the Council review and address this issue to ensure employers are not losing skilled, long-term employees to other companies. The Council continues to review this issue.

Various Administrative Rule Changes

The Council agreed in January 2016 to amend the administrative rule to change the time that an ALJ would wait for a party to appear at a hearing from 15 minutes for appellants and 5 minutes for respondents to 10 minutes for all parties. The department expects to begin the rule promulgation process for this rule change as well as various other minor and technical changes to Wisconsin Administrative Code chapters DWD 100 through 150 in 2017.



▲ UI Council member Mark Reihl engages in discussion with fellow labor representatives during May 2017 meeting

CONCLUSION

The Council process ensures the participation of labor and management in the development of UI law. Celebrating its 85th year of service, the Council continues to recommend revisions to Wisconsin's UI law in order to improve Trust Fund solvency. The Council anticipates completing deliberation on its next agreed-bill later this year and looks forward to continuing its positive working relationship with the Legislature and the Governor.



▲ Chairperson Janell Knutson and Andy Rubsam, lead attorney for the UI Council, discuss federal legislation impacting the UI program



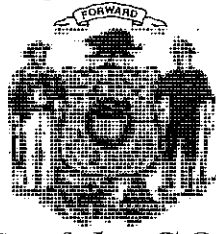
Department of Workforce Development

201 E. Washington Ave.

Madison, WI 53707

608-266-3131 | dwd.wisconsin.gov

STATE of WISCONSIN



OFFICE of the GOVERNOR

Proclamation

WHEREAS; the burdens of unemployment result in decreased and irregular purchasing power of wage earners, which, in turn, affects the livelihood of farmers, merchants, and manufacturers, resulting in decreased demand for their products, and thus tends to somewhat paralyze the economic life of the entire state; and

WHEREAS; employers and employees throughout the state should cooperate, in advisory committees under government supervision, to promote and encourage the steadiest possible employment; and

WHEREAS; Wisconsin's Unemployment Insurance Law, the first of its kind enacted in the United States, passed in January 1932; and

WHEREAS; the Advisory Committee on Unemployment Compensation, now known as the Unemployment Insurance Advisory Council, was created in 1932 in order to ensure the continued participation of labor and management in the development of Wisconsin's Unemployment Insurance Law; and

WHEREAS; the Unemployment Insurance Advisory Council advises the Wisconsin Department of Workforce Development in carrying out the administration of Wisconsin's Unemployment Insurance Law; and

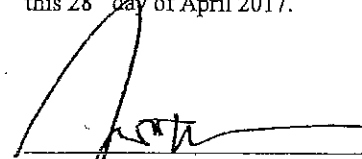
WHEREAS; the Wisconsin Department of Workforce Development, with the advice and aid of the Unemployment Insurance Advisory Council, takes all appropriate steps within its means to reduce and prevent unemployment;

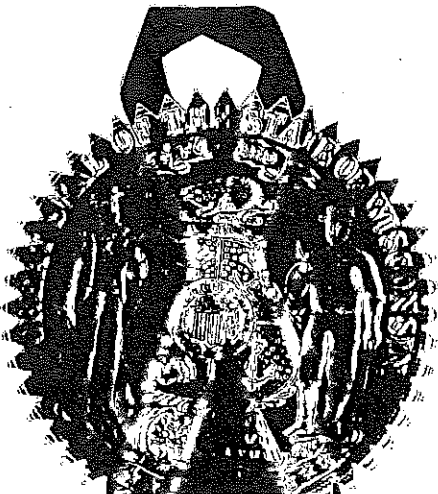
NOW, THEREFORE, I, Scott Walker, Governor of the State of Wisconsin,
do hereby proclaim May 2017 as the commemoration of the

85th ANNIVERSARY OF THE UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

throughout the State of Wisconsin and I commend this observance to all of our citizens.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done at the Capitol in the City of Madison this 28th day of April 2017.


SCOTT WALKER
GOVERNOR



LABOR AND INDUSTRY REVIEW COMMISSION

Survey of Decisions
[LFB Paper #425]

Motion:

Move to approve Alternative 2c. In addition, request the Chief Justice of the Supreme Court to survey LIRC decisions related to unemployment insurance, equal rights and worker's compensation citing the statutes LIRC interpreted and whether LIRC's decisions proceeded on to the Circuit Court.

Request the Chief Justice of the Supreme Court to submit a report of the survey's findings to the Governor and Joint Committee on Finance by July 1, 2018.

Note:

The motion would retain the current LIRC and delete 7.8 vacant positions. In addition, the motion would request the Chief Justice of the Supreme Court to survey LIRC decisions and submit findings to the Governor and Joint Committee on Finance by July 1, 2018.

[Change to Base: -\$706,400 PR (-\$353,200 annually) and -7.80 positions (-0.50 GPR, -6.80 PR and -0.50 SEG)]

[Change to Bill: \$364,400 GPR, \$2,949,300 PR and \$1,146,000 SEG (\$121,300 GPR, \$1,218,000 PR and \$382,000 SEG in 2017-18, and \$243,000 GPR, \$1,731,300 PR and \$764,000 SEG, and 0.80 GPR, 13.70 PR and 4.20 SEG positions)]

Posted By:
Wheeler Reports, Inc.

D17-07 (Revised)
Revision of Collections Statutes

Date: May 23, 2017
Proposed by: DWD
Prepared by: Andy Rubsam

ANALYSIS OF PROPOSED UI LAW CHANGE
Revision of Collections Statutes

1. Description of Proposed Change

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

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

D17-07 (Revised)
Revision of Collections Statutes

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

The following chart details all of the proposed changes:

| Statute | Currently | Proposed change |
|--------------|--|--|
| 108.22(1)(g) | Current s. 108.22(8)(b)3. provides that the department may recover its collection costs when collecting overpayments. Current 108.225(6) and 108.22(2)(b) permit the department to recover the costs of a levy or warrant. | Create s. 108.22(1)(g) to confirm that the department may recover its actual costs in collecting any amount due from any party that owes the department a debt. Examples include statutorily-required certified postage and court filing fees. |
| 108.22(1)(h) | No current provision. | Create s. 108.22(1)(h) to permit the department to charge debit and credit card bank fees to debtors. This will permit (<u>but not require</u>) claimants and employers to pay their debts owed to the department by credit or debit card. |
| 108.22(1m) | Currently provides an unrecorded lien against employers who owe delinquent taxes. | Amend to change “employer” to “person,” which will result in an unrecorded lien against any individual or entity that owes the department a debt under chapter 108 (including claimants). (Discussed in detail above.) |

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Revision of Collections Statutes

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|---|---|--|
| <p>108.22(2) 108.22(8)(b)1.b. 108.22(8)(b)2. 108.22(8)(bh) 108.223(1)(br) 108.22(3h)</p> | <p>Various statutes permit the department to record warrants (liens) against employers, claimants, and identity thieves.</p> | <p>Amend s. 108.22(2) and repeal/modify the other sections in order to consolidate the warrant provisions into one section and to confirm that the department may issue a warrant against any individual or entity that owes it a debt. Warrants may be issued regardless of appeal status. Add a 10-day notice before warrants may be issued.</p> <p>These changes, with the changes to s. 108.22(1m), should result in department receiving secured treatment of its bankruptcy claims for benefit overpayments if a warrant is filed. The department’s bankruptcy claims for taxes are already treated as secured if a warrant is filed.</p> |
| <p>108.22(3r)</p> | <p>Currently, the department may only sell seized assets at a sheriff’s sale. This adds costs and delays to the asset seizure process.</p> | <p>Create s. 108.22(3r) to permit the department to sell seized assets at an online auction in order to satisfy debts owed to the department. This aligns chapter 108 with WI-DOR provisions.</p> |
| <p>108.22(1r) 108.22(8)(b)1.d.</p> | <p>Permits the department to intercept federal income tax refunds to satisfy UI tax debts and benefit fraud overpayments (a federal requirement).</p> | <p>Amend s. 108.22(1r) and repeal s. 108.22(8)(b)1.b. to consolidate the federal income tax refund intercept provision into one section, 108.22(1r), for simplification. This change also tracks the federal definition of a covered unemployment compensation debt.</p> |
| <p>108.22(1t) 108.22(8)(b)1.c.</p> | <p>Section s. 108.22(8)(b)1.c. permits the department to intercept WI state income tax refunds, lottery, unclaimed property and state vendor payments to satisfy benefit overpayments and claimant penalties.</p> | <p>Create (1t) and repeal s. 108.22(8)(b)1.c. to consolidate the state intercept provisions into (1t).</p> <p>This creates a new provision that permits the department to intercept state income tax refunds, lottery, vendor and unclaimed property payments in order to satisfy delinquent UI taxes.</p> |
| <p>108.225(1)(b)</p> | <p>Defines what a “debt” is for the purposes of issuing a levy.</p> | <p>Amend to simplify the definition to be any amount due under chapter 108.</p> |

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Revision of Collections Statutes

| | | |
|---------------|---|---|
| 108.225(4)(b) | Provides that a third party that fails to comply with a department levy (e.g. fails to turn over debtor's property) owes 25% of the debt to the department. | Amend to remove the 25% provision and to create a new penalty of 50% of the debt owed as a penalty for failure to comply with a department levy. The penalty will be deposited into the program integrity fund. This is similar to an existing Department of Revenue penalty. ¹ |
| 108.22(9) | The requirements for an assessment of personal liability for employer tax are: (1) 20% ownership interest in the business; (2) responsibility of the individual to ensure that the taxes are paid; (3) willful failure to pay the tax; and (4) attempted collection of the tax from the employer. | Amend to remove the 20% ownership requirement , which is similar to IRS, WI-DOR, Worker's Compensation, and Employment Regulation personal liability statutes. ² |
| 108.22(9) | Personal liability for unpaid taxes, interest, tardy payment fees, costs and other fees. | Amend to confirm the department's view of current law: an appeal of a personal liability determination excludes a review of the underlying tax owed. This change is recommended in order to prevent an erroneous decision. |

2. Proposed Statute Changes

See attached.

3. Effects of Proposed Change

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

¹ Wis. Stat. § 71.91(6)(d)2.

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

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4. State and Federal Issues

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

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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Revision of Collections Statutes

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

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

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

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

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

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

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Revision of Collections Statutes

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

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

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

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

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

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

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

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

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Revision of Collections Statutes

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

1. If any ~~employing unit or any individual who is found personally liable under sub. (9)~~ person fails to pay to the department any amount ~~found to be due it in proceedings pursuant to s. 108.10,~~ or determined to be owed under this chapter, ~~provided that no appeal or review permitted under s. 108.10 is pending and that the time for taking an appeal or review has expired,~~ the department or any authorized representative may ~~issue~~ record the lien created under sub. (1m) by issuing a warrant directed to the clerk of circuit court for any county of the state.

2. The clerk of circuit court shall enter in the judgment and lien docket the name of the ~~employing unit or individual~~ person mentioned in the warrant, ~~and~~ the amount ~~of the contributions, interest, costs and other fees for which the warrant is issued~~ owed and the date when ~~such copy~~ the warrant is entered.

3. A warrant entered under subd. 2. shall be considered in all respects as a final judgment constituting a perfected lien upon the ~~employing unit's or individual's~~ person's right, title and interest in all real and personal property located in the county where the warrant is entered.

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

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

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

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

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

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

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

At least 10 days before issuing the first warrant to a person under this section, the department shall issue a demand to the person for payment of the amounts owed and give written or electronic notice that the department may issue a warrant. The refusal or failure of the person to receive the notice does not prevent the department from issuing the warrant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Revision of Collections Statutes

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

Any ~~An individual person~~ who is an officer, employee, member, manager, partner, or other responsible person ~~holding at least 20 percent of the ownership interest of an employer corporation, limited liability company, or other business association subject to this chapter, and who has control or supervision of or responsibility for filing any required contribution reports or making payment of amounts due under this chapter, contributions,~~ and who willfully fails to file such reports or to make such payments to the department, or to ensure that such reports are filed or that such payments are made, may be found personally liable for such amounts, ~~including interest, tardy payment or filing fees, costs and other fees,~~ in the event that after proper proceedings for the collection of such amounts, as provided in this chapter, the employer corporation, limited liability company, or other business association is unable to pay such amounts to the department. ~~Ownership interest of a corporation, limited liability company, or other business association includes ownership or control, directly or indirectly, by legally enforceable means or otherwise, by the individual, by the individual's spouse or child, by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them, and such ownership interest of a parent corporation, limited liability company, or other business association of which the corporation, limited liability company, or other business association unable to pay such amounts is a wholly owned subsidiary. The p~~
Personal liability of such officer, employee, member, manager, partner, or other responsible person as provided in this subsection survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the employer corporation, limited liability company, or other business association and shall be set forth in a determination or decision issued under s. 108.10. An appeal or review of a determination under this subsection shall not include an appeal or review of determinations of amounts owed by the employer.

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

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

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

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

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

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

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

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

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

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

D17-07 (Revised)
Revision of Collections Statutes

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

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

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

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

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

Other changes are substantive. The changes include:

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

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

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Revision of Collections Statutes

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

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

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

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

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

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

D17-07 (Revised)
Revision of Collections Statutes

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

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

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

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

D17-07 (Revised)
Revision of Collections Statutes

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

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

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

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

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

D17-07 (Revised)
Revision of Collections Statutes

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

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

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

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

D17-07 (Revised)
Revision of Collections Statutes

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

IT and Administrative Impact: These technical proposals would not have an IT or administrative impact.

UIAC Proposal Tracking - 2017

| No. | Department Proposal Title/Description | Presented to UIAC | Action |
|--------|--|--|--------------------------------|
| D17-01 | Assessment for Employers that Fail to Comply with Adjudication Request | 1-19-17 2-16-17 Revised | Dept. Withdrawal 5-11-17 |
| D17-02 | Fiscal Agent Joint and Several Liability | 1-19-17 | Approved 4-20-17 |
| D17-03 | Assessment for Failure to Produce Records | 1-19-17 | |
| D17-04 | Ineligibility for Concealment of Holiday, Vacation, Termination, or Sick Pay | 1-19-17 | Approved 4-20-17 |
| D17-05 | Ineligibility for Failure to Provide Information | 1-19-17 | Approved 4-20-17 |
| D17-06 | Standard of Proof in Unemployment Insurance Law Cases | 1-19-17 2-16-17 Fiscal | |
| D17-07 | Revision of Collections Statutes | 1-19-17 5-23-17 Revised | |
| D17-08 | Various Minor and Technical Changes | 1-19-17 2-16-17 Fiscal 3-16-17 Revised | |
| D17-09 | Various Administrative Rule Changes | 1-19-17 | Approved 3-16-17 |
| D17-10 | Amendments to Drug Testing Statutes | 3-16-17 4-20-17 Revised | Approved 4-20-17 |

| No. | Management Proposal Title/Description | Presented to UIAC | Action |
|------------|---|--------------------------|---------------|
| M17-01 | Repeal the Quit Exception in Wis. Stat. § 108.04(17)(e) | 5-11-17 | |
| M17-02 | State and Federal Holidays are not Working Days for Partial Benefits if the Employer is Closed | 5-11-17 | |
| M17-03 | Reduce the Maximum Number of Benefit Weeks Based on the Unemployment Rate: 22 Weeks when the Unemployment Rate is below 7%; 18 Weeks when the Unemployment Rate is below 5% | 5-11-17 | |
| M17-04 | Amend Definitions of Misconduct and Substantial Fault | 5-11-17 | |

| No. | Labor Proposal Title/Description | Presented to UIAC | Action |
|------------|---|--------------------------|---------------|
| L17-01 | Increase the Maximum Weekly Benefit by \$10 in 2018 and by \$10 in 2019 | 5-11-17 | |
| L17-02 | Adjust the Trigger to Schedule D to \$1.8 Billion | 5-11-17 | |
| L17-03 | Increase the Taxable Wage Base to \$16,500 in 2019 and Index in Future | 5-11-17 | |

To: Unemployment Insurance Advisory Council

From: Andy Rubsam

CC: Janell Knutson, Chair

Date: May 23, 2017

Re: Proposed Law Changes of Labor and Management Council Members

On May 11, 2017, the Labor and Management members of the Council presented their proposed changes to Wisconsin's Unemployment Insurance Law. The Council requested that the Department provide analysis, including the fiscal effect, of the proposals. The proposals, as the Department understands them, are as follows, with the Department's analysis.

Labor Proposals

1. Increase the maximum weekly unemployment benefit rate by \$10 in 2018 and by \$10 in 2019

Wisconsin's current maximum weekly benefit rate is \$370, which has been the maximum weekly benefit rate since January 6, 2014. From January 4, 2009 through January 5, 2014, the maximum weekly benefit rate in Wisconsin was \$363. For years 2007-2008, it was \$355. The current minimum weekly benefit rate that an individual could qualify for is \$54. Labor's proposal would increase the maximum weekly rate to \$380 for 2018 and \$390 for 2019 and later.

For comparison, the maximum weekly benefit rates in certain other states are:

| State | Max. Weekly | Max. w/Dependents |
|------------------|--------------------|--------------------------|
| Illinois | \$449.00 | \$613.00 |
| Indiana | \$390.00 | \$390.00 |
| Iowa | \$447.00 | \$548.00 |
| Kansas | \$474.00 | \$474.00 |
| Michigan | \$362.00 | \$362.00 |
| Minnesota | \$683.00 | \$683.00 |
| Missouri | \$320.00 | \$320.00 |
| Nebraska | \$392.00 | \$392.00 |
| Ohio | \$443.00 | \$598.00 |
| Region 5 Average | \$440.00 | \$486.67 |
| US Average | \$438.64 | \$464.96 |

The Department estimates that the effect of this proposal on the Trust Fund would be about \$13.67 million annually due to an increase in benefit payments of about \$20.5 million annually and an increase in revenue of about \$6.83 million annually.

2. Amend the trigger for tax Schedule D to \$1.8 billion

Tax Schedule D first applied to wages paid beginning January 1, 1998 as a result of 1997 Act 39. Before Act 39, the tax schedules were as follows:

| Schedule | If, as of June 30 of preceding year, Trust Fund balance is |
|-----------------|---|
| A | Less than \$300,000,000 |
| B | At least \$300,000,000 but less than \$1,000,000,000 |
| C | At least \$1,000,000,000 |

Currently, there are four tax schedules:

| Schedule | If, as of June 30 of preceding year, Trust Fund balance is |
|-----------------|---|
| A | Less than \$300,000,000 |
| B | At least \$300,000,000 but less than \$900,000,000 |
| C | At least \$900,000,000 but less than \$1,200,000,000 |
| D | At least \$1,200,000,000 |

The Labor members of the Council propose to increase the trigger for Schedule D to be \$1,800,000,000 beginning January 1, 2018. This would have the effect, for 2018, of requiring Wisconsin’s Trust Fund to have an Average High Cost Multiple of at least 1.0 before triggering to Schedule D.

Tax Schedule C applies for calendar year 2017. The Department projects a Trust Fund balance of at least \$1.2 billion on June 20, 2017, which would, under current law, trigger a change to tax Schedule D for calendar year 2018. Under Labor’s proposal, the Department projects that tax rates would remain in Schedule C for 2018 because the Trust Fund is not expected to be at least \$1.8 billion on June 30, 2017.

The Department estimates that the fiscal effect of this proposal would be an additional \$19 million annually in tax revenue.

3. Increase the taxable wage base to \$16,500 in 2019 and index in future years

The wage base is the amount of wages that are taxed for unemployment insurance purposes. An employer’s tax rate applies only to the first \$14,000 of wages earned by an employee in a calendar year. The maximum taxable wage base has been as follows:

| Year | Maximum taxable wage base |
|-----------------|----------------------------------|
| Before 2010 | \$10,500 |
| 2009 and 2010 | \$12,000 |
| 2011 and 2012 | \$13,000 |
| 2014 to present | \$14,000 |

Labor proposes to increase the taxable wage base to \$16,500 for calendar year 2019 and to automatically increase the wage base each year thereafter. Labor did not specify the index for the annual increases to the wage base. An option could be comparing the wage base to total covered wages, as is done in some other states that automatically index their wage bases. The Department recommends that, if this proposal is approved, that the indexed wage base be rounded to the nearest \$100 for administrative simplicity. The Department is still working on a fiscal estimate for this proposal.

Management Proposals

1. Repeal the quit exception in Wis. Stat. § 108.04(7)(e)

An unemployment insurance benefit claimant who quits a job within 30 days of being hired may retain their benefit eligibility if the claimant quit a job that the claimant could have failed to accept under the “suitable work” provisions of Wis. Stat. § 108.04(8) **OR** the claimant quit a job that the claimant could have refused to accept under the federally-required labor standards provisions of Wis. Stat. § 108.04(9).

This quit exception was first effective in 1976 (Chapter 343, Laws of 1975), though it has been amended since then. The quit exception originally applied to work that the claimant could

have failed to accept under the suitable work provisions for up to the first 10 weeks of starting the work.

Some claimants may qualify for more than one quit exception, so a repeal of this exception would not necessarily result in ineligibility for all claimants who qualify for this exception. Assuming that no claimants qualify for a quit exception other than the exception to be repealed, the Department estimates a savings of up to about \$6.42 million annually for the Trust Fund, which represents about a \$9.63 million decrease in benefit payments and \$3.21 million less tax revenue.

For reference, the current text of Wis. Stat. § 108.04(7)(e) is:

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

2. State and federal holidays are working days for partial benefits if the employer is closed on the holiday

Currently, a claimant is ineligible for benefits if they work 32 hours or more in a week. The Management members of the Council propose that employees would be ineligible for benefits if they work more than 24 hours in a week for an employer that closes on a state or federal holiday in that week. If the employer is closed for two state or federal holidays in a week, the employee would be ineligible if they worked 16 hours or more in that week. The Department is still working on a fiscal estimate for this proposal.

3. Reduce the maximum number of benefit weeks based on the unemployment rate: 22 weeks when the unemployment rate is below 7%; 18 weeks when the unemployment rate is below 5%

Currently, the maximum duration of unemployment insurance benefits in Wisconsin is 26 weeks. For comparison, 41 states (including Wisconsin), plus Puerto Rico, the Virgin Islands, and Washington, DC each have a maximum of 26 weeks. The maximum duration in Montana is 28 weeks. In Massachusetts, it is 30 weeks.¹ Some states (CA, CT, HI, MA, ME, and MI) extend benefits for workers in approved training or in approved vocational rehabilitation.

The following chart shows the maximum benefit duration of states that offer fewer than 26 weeks for the maximum duration, some of which link the duration to the unemployment rate:

| State | Maximum duration |
|--|--|
| Arkansas | 25 |
| Florida | 12-23, based on unemployment rate. 12 weeks if 5% or less, incrementally up to 23 weeks if at least 10.5% |
| Georgia | 14-20, based on unemployment rate. 14 weeks if 6.5% or less, incrementally up to 20 weeks if at least 9% |
| Idaho (included in count of 26-week states above) | 10-26, based on unemployment rate and earnings. 10 weeks if 2.9% or less, incrementally up to 26 weeks if at least 8%. |
| Kansas (included in count of 26-week states above) | 16-26, based on unemployment rate. 16 weeks if 4.5% or less, 20 weeks if between 4.5% and 6%, 26 weeks if 6.0% or more. |
| Michigan | 20 |
| Missouri | 20 |
| North Carolina | 12-20, based on unemployment rate. 12 weeks if less than or equal to 5.5%; incrementally up to 20 weeks if greater than 9% |
| South Carolina | 20 |

Management proposes to change the maximum duration of benefits in Wisconsin based on the unemployment rate, as follows:

| Unemployment Rate | Duration of Unemployment Benefits |
|--------------------------|--|
| Below 5% | 18 weeks |
| At least 5% but below 7% | 22 weeks |
| At least 7% | 26 weeks |

¹ Reduces to 26 weeks during periods of federal extended benefits.

If this proposal is enacted, it may affect the amount of Extended Benefits (“EB”) and Emergency Unemployment Compensation (“EUC”) that could be paid to Wisconsin claimants in a future recession. For example, the amount of EB is based on the duration of regular state unemployment benefits. If a state’s maximum duration of benefits is 26 weeks, the amount of EB would be 13 weeks. If the maximum duration of benefits is reduced to 22 weeks, EB would be 11 weeks; if the maximum duration is 18 weeks, EB would be 9 weeks.

Under the Unemployment Compensation Extension Act of 2008, the payment of EUC was in proportion to the duration of state unemployment benefits. Like EB, under the 2008 EUC Act, the duration for EUC was 50% of the duration of regular benefits.

The Department has not completed a fiscal estimate for this proposal. If the unemployment rate is 7% or higher, this proposal would not result in a savings to the Trust Fund because the maximum duration would be 26 weeks, which is current law.

4. Amend definitions of misconduct and substantial fault

Due to recent decisions of the Wisconsin Supreme Court and Court of Appeals regarding discharge for misconduct and substantial fault, the Management members of the Council propose to amend the definitions of “misconduct” and “substantial fault” in order to clarify legislative intent. The Department does not have a fiscal estimate for this proposal at this time because the Management members have not detailed their proposed statutory changes.

For reference, the current misconduct and substantial fault statutes, as amended by 2013 Act 20, are:

Wis. Stat. § 108.04(5)

Discharge for misconduct. An employee whose work is terminated by an employing unit for misconduct by the employee connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least 14 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be the rate that would have been paid had the discharge not occurred. The wages paid to an employee by an employer which terminates employment of the employee for misconduct connected with the employee's employment shall be excluded from the employee's base period wages under s. 108.06 (1) for purposes of benefit entitlement. This subsection does not preclude an employee who has employment with an employer other than the employer which terminated the employee for misconduct from establishing a benefit year using the base period wages excluded under this subsection if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 from which base period wages are excluded under this subsection. For purposes of this subsection, "misconduct" means one or more actions or conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which an employer has a right to expect of his or her employees, or in carelessness or negligence of such degree or recurrence as to manifest culpability, wrongful intent, or evil design of equal severity to such disregard, or to show an intentional and substantial disregard of an employer's interests, or of an employee's duties and obligations to his or her employer. In addition, "misconduct" includes:

(a) A violation by an employee of an employer's reasonable written policy concerning the use of alcohol beverages, or use of a controlled substance or a controlled substance analog, if the employee:

1. Had knowledge of the alcohol beverage or controlled substance policy; and
2. Admitted to the use of alcohol beverages or a controlled substance or controlled substance analog or refused to take a test or tested positive for the use of alcohol

beverages or a controlled substance or controlled substance analog in a test used by the employer in accordance with a testing methodology approved by the department.

(b) Theft of an employer's property or services with intent to deprive the employer of the property or services permanently, theft of currency of any value, felonious conduct connected with an employee's employment with his or her employer, or intentional or negligent conduct by an employee that causes substantial damage to his or her employer's property.

(c) Conviction of an employee of a crime or other offense subject to civil forfeiture, while on or off duty, if the conviction makes it impossible for the employee to perform the duties that the employee performs for his or her employer.

(d) One or more threats or acts of harassment, assault, or other physical violence instigated by an employee at the workplace of his or her employer.

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

(f) Unless directed by an employee's employer, falsifying business records of the employer.

(g) Unless directed by the employer, a willful and deliberate violation of a written and uniformly applied standard or regulation of the federal government or a state or tribal government by an employee of an employer that is licensed or certified by a governmental agency, which standard or regulation has been communicated by the employer to the employee and which violation would cause the employer to be sanctioned or to have its license or certification suspended by the agency.

Wis. Stat. § 108.04(5)

Discharge for substantial fault.

(a) An employee whose work is terminated by an employing unit for substantial fault by the employee connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the termination occurs and the employee earns wages after the week in which the termination occurs equal to at least 14 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's benefit rate shall be the rate that would have been paid had the discharge not occurred. For purposes of this paragraph, "substantial fault" includes those acts or omissions of an employee over which the employee exercised reasonable control and which violate reasonable requirements of the employee's employer but does not include any of the following:

1. One or more minor infractions of rules unless an infraction is repeated after the employer warns the employee about the infraction.
2. One or more inadvertent errors made by the employee.
3. Any failure of the employee to perform work because of insufficient skill, ability, or equipment.

(b) The department shall charge to the fund's balancing account the cost of any benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 if the employee is discharged by the employer and paragraph (a) applies.

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 |