



Department of Workforce Development

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

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

MEETING

Date: March 15, 2018
Time: 10:00 a.m. – 4:00 p.m.
Place: Department of Workforce Development
201 E. Washington Avenue
Madison, Wisconsin
GEF-1, Room F305

AGENDA ITEMS AND TENTATIVE SCHEDULE:

1. Call to Order and Introductions
2. Approval of Minutes of the January 18, 2018 Council Meeting
3. Department Update
4. Open Records Training – Ernest Jones
5. Annual Fraud Report – Joe Handrick & Janell Knutson
6. Update on Legislation
 - UIAC Agreed Bill (SB 399/AB 516)
 - Increased Criminal Penalties for UI Benefit Fraud (SB 542/AB 710)
 - Methods for Filing UI Claims (SB 772)
 - Legalization of Marijuana (AB 482)
 - THC Testing (AB 1005)
 - Mobility Grants for UI Claimants (AB 243)
 - Social Security Disability and UI Benefits (HR 2031)
 - Ensuring Quality in the UI Program (EQUIP) Act (HR 3330)
7. Update on Court Cases
 - *DWD v. LIRC, Valarie Beres & Mequon Jewish Campus, Inc.*

8. Draft of Proposed Amendments to Administrative Rules
9. Research Request
10. Future Meeting Dates
11. 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.
- ❖ The Council members may attend the meeting by telephone.
- ❖ The employee or employer members of the Council may convene in closed session at any time during the meeting to deliberate any matter for potential action or items posted in this agenda, under sec. 19.85(1)(ee), Stats. The employee or 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 a disability and need assistance (such as an interpreter or information in an alternate format), please contact Robin Gallagher, Unemployment Insurance Division, at 608-267-1405 or dial 7-1-1 for Wisconsin Relay Service.
- ❖ Today's meeting materials will be available online at 10:00 a.m. at <http://dwd.wisconsin.gov/uibola/uiac/meetings.htm>

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

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

January 18, 2018

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

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

Department Staff Present: Joe Handrick, Ben Peirce, Andy Rubsam, Lili Crane, Patrick Lonergan, Mike Myszewski, Christopher Hagerup, Charlotte Klenke, Tom McHugh, Mary Jan Rosenak, Pam James, Janet Sausen, Jill Moksouphanh, Robert Usarek, Amy Banicki, Emily Savard, Karen Schultz, Grace Castagna, Tom Mund, and Robin Gallagher.

Members of the Public Present: Mike Duchek (Legislative Reference Bureau), Brian Dake (Wisconsin Independent Businesses, Inc.), Karl Dahlen (Labor & Industry Review Commission (LIRC)), Georgia Maxwell (LIRC), Victor Forberger (Wisconsin UI Clinic), Susan Quam (Wisconsin Restaurant Association), and Bill Burris (Consultant).

1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council meeting to order at 10:03 a.m. under Wisconsin's Open Meeting law. Council members introduced themselves and Ms. Knutson recognized Mike Duchek of the Legislative Reference Bureau, LIRC Chairperson Georgia Maxwell, DWD Chief Legal Counsel Charlotte Klenke, and DWD Deputy Secretary Chris Hagerup. Ms. Knutson informed the Council that Ernest Jones is the new DWD Deputy Chief Legal Counsel, and Karl Dahlen, formerly the DWD Chief Legal Counsel, is now the Chief Legal Counsel at LIRC.

2. Approval of Minutes of the September 21, 2017 Council Meeting

Motion by Mr. Mielke, second by Mr. Hayden to approve the September 21, 2017 meeting minutes without correction. The motion carried unanimously.

3. Department Update

Mr. Handrick introduced Bill Burris, a visiting consultant to the DWD. Mr. Burris is a national expert specializing in state organization and maximizing federal tax dollars.

Mr. Handrick reported that the department's ongoing efforts to phase out the antiquated IVR system are complete. Now initial and continued claims applications can be made completely online in both English and Spanish. During the last week, 94.5% of initial claims were filed online and 98.7% of continued claims were completed online. Mr. Handrick also noted that in the past week 14,231 calls were made to Wisconsin's help center, demonstrating the continued importance of claims assistance.

Mr. Griesbach asked if claimants can call during any day of the week with questions. Mr. Handrick, with assistance from Bureau of Benefits Director Amy Banicki, clarified that claimants calling regarding an initial claim or an inquiry are limited to getting their issues resolved on certain days based on their Social Security number Monday through Wednesday. Thursday and Friday are unrestricted and anyone can call those two days. The phone system will instruct the claimant which day they need to call if they are calling regarding an initial claim or an inquiry. Calls are not prioritized for authorization, weekly claim filing, or employer line calls. The efficiency of the online system will increase productivity for the department, and allow money to be repurposed into more program integrity projects moving forward.

4. Report on the Unemployment Insurance Reserve Fund

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

- Last year (January to December 2017) there were \$408 million benefits paid, compared to \$457 million in 2016. This is a 10.8% decrease. The last time the number of benefits paid was that low was in 1999.
- There was an 18.9% decrease in tax receipts, which was expected due to improved experience rating and the shift to a lower tax table.
- There was a 27% increase in the Trust Fund balance, with an ending balance of \$1.4 billion on December 31st. Interest earned in 2017 was \$29.7 million. The interest rate for 4th quarter 2017 was 2.21%. When questioned about fluctuations in the interest rate, Mr. McHugh clarified that in the short-run UI Trust Fund interest rates are not particularly reactive to changes in the Treasury market. Initial claims ended 2017 at their lowest level in 30 years.
- In 2018, Wisconsin transitioned from Tax Schedule C to Tax Schedule D, as the UI Trust Fund balance was greater than \$1.2 billion on June 30, 2017. Schedule D was in effect from 1998 to 2003.
- In 2018, 11,867 employers have a 0% tax rate. This is a 6.9% increase from last year. There are 2,730 employers paying the maximum tax rate of 12%, which is a 16.9% decrease from last year. Mr. McHugh explained that employers' tax rates are affected by their reserve fund balance relative to their taxable payroll. For example, those with a negative balance will have a higher tax rate. In general, employers are leaving higher tax brackets and shifting to lower rates in 2018, just as they did in 2017.
- In 2018, under Tax Schedule D, 10,819 employers saw no change in taxes, 30,447 employers had an increase in taxes and 74,672 employers had a decrease in taxes.
- To give an idea of the magnitude of changes in 2018 tax rates we did the following exercise. We assumed every employer had the same payroll as 2017

and calculated their tax based on their 2017 tax rate and their 2018 tax rate. We found employers would save a total of \$97 million in taxes for 2018. Mr. McHugh clarified this report is a hypothetical exercise, as payroll will change between 2017 and 2018 which would affect taxes paid; however, it does give a sense of how much money is saved through lower tax rates and by switching schedules. Ms. Knutson asked how much of the \$97 million would be solely due to the rate schedule change. Mr. McHugh stated that \$30 million of the \$97 million tax reduction is due to the change to Schedule D.

- For each industry we compared taxes paid and benefits charged for the period July 1, 2014 to June 30, 2017. Nearly every industry had a surplus except construction which had a deficit of \$32.9 million.
- Wisconsin is the only state with tax rate limiters. Increases to an employer's basic tax are limited to 1% for employers with a positive reserve fund balance and 2% for employers with a negative reserve fund balance. Employers' estimated savings due to tax rate limiters is \$14.6 million for 2018.
- When looking at tax rates by sector, 64% of employers have a tax rate of less than 2%. Just 3% of employers have a tax rate of more than 10%.
- Mr. McHugh also presented tax rate ranges by payroll to consider the size of employers and 77% of employers' payrolls are taxed at less than 2%. Only 2% of employers' payrolls are taxed at more than 10%. Mr. Griesbach asked what would put an employer at a tax rate of more than 10%. Mr. McHugh explained that tax rates are based on an employer's reserve fund balance relative to payroll. Employers with a negative reserve fund balance will have a tax rate of 6.4% or higher.

The Council thanked Mr. McHugh for the thoroughness of his report.

5. Worker Misclassification Quarterly Report

Mr. Myszewski reported on the following Worker Misclassification statistics:

- 129 worker classification investigations have been completed for this fiscal year (October 1, 2017 through January 11, 2018).
- 45 cases have been referred to Field Audit this fiscal year, an increase of 6 referrals from last year.
- From the beginning of the program (May 2013) to present, 1,556 worker classification investigations have been conducted.
- Since May 2013, 3,800 misclassified workers have been identified, and \$1.6 million has been assessed in UI tax interest and penalties.
- Since the beginning of the project, approximately 34% of investigations have resulted in referrals to Field Audit.

Six worker misclassification public service announcements were completed and broadcast in August and September of 2017, both in English and Spanish. They were broadcast on 190 radio stations in Wisconsin a total of 10,815 times. They will be repeated in April and May of 2018 with a similar number of radio stations and number of announcements played. The radio

announcements cost \$24,000, which was paid for with a federal grant, and Wisconsin Broadcasting Association gave the PSAs \$240,000 worth of air play. About 50-60 misclassification complaints were received in response to these PSAs.

Federal grant funding ended September 2017. After that date funds were made available from the UI Program Integrity Fund to continue misclassification investigations. Through these funds 1.6 full time equivalent positions have been filled. The Unit now consists of 2.6 full-time employees, one of whom is fluent in Spanish, and 2 part-time employees.

The new intentional misclassification law went into effect on October 2, 2016. Since that time 14 referrals have been made to Field Audit for second offense misclassification.

Construction has not slowed because of winter weather, and Mr. Myszewski reported most investigative resources continue to be applied to construction work sites.

6. Update on Legislation

UIAC Agreed Bill (SB 399/AB516)

Ms. Knutson reported the UIAC Agreed Bill passed both houses of the Legislature. The Assembly concurred on the Senate Bill on January 16, 2018. The vote was 94-0. Council members will be updated when the bill is expected to be signed by the Governor.

Legalization of Marijuana (AB 482)

Mr. Rubsam reported on AB 482, relating to the legalization of marijuana, and highlighted the sections of the bill that would affect Chapter 108. Under AB 482, the discharge of an employee for use of marijuana off the employer's premises would not be considered discharge for misconduct or substantial fault. Additionally, for the UI drug testing program, marijuana would not be included as a controlled substance. Mr. Rubsam clarified that the bill is not expected to pass this legislative session, but still wanted council members to be aware of the potential effects on the UI Program.

Mobility Grants for UI Claimants (AB 243)

Mr. Rubsam reported that AB 243, relating to a study of mobility grants for UI claimants, passed the Assembly in May but has had no action in the Senate. The Legislature will likely conclude its session in February, so unless the Senate votes on the bill in the upcoming weeks, it is not expected to pass.

Social Security Disability and UI Benefits (HR 2031)

Mr. Rubsam provided an update on HR 2031, a federal proposal to prevent claimants from receiving both Social Security Disability and UI Benefits simultaneously. The bill was introduced April 6, 2017 and has not seen any activity. Currently, Wisconsin law prohibits

claimants from receiving UI benefits if they receive SSDI payments, thus HR 2031 would not affect Wisconsin.

Ensuring Quality in the UI Program (EQUIP) Act (HR 3330)

Mr. Rubsam reported that HR 3330, relating to drug testing for claimants, was introduced July 20, 2017, but there has been no activity. Mr. Rubsam noted that Representative Grothman from Wisconsin is a co-sponsor of the bill.

7. Increased Criminal Penalties for UI Benefit Fraud (SB 542/AB 710)

Mr. Rubsam reported that a bill proposing increased criminal penalties for UI benefit fraud was introduced into the Senate and the Assembly. A public hearing in the Assembly is scheduled for January 30, 2018. There was a public hearing in the Senate January 11, 2018. Ms. Knutson noted that the same bill was introduced last session (in 2015) and did not pass. At that time, Senator Kapenga spoke to the Council but the Council did not take a position on the proposed bill. Ms. Knutson stated that the Council once again has the option to take a position for SB 542/AB 710 should they choose to.

8. Update on Court Cases

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

Ms. Knutson reported that oral arguments were heard before the Supreme Court on December 1, 2017. The department anticipates a decision by spring.

9. Research Request

Ms. Knutson asked if the Council had any research requests. Mr. Lump responded that he had been approached by the Wisconsin Association of Summer Camps, asking for an exemption from UI taxes for youth camp counselors. There is a federal exemption, and the Wisconsin Association of Summer Camps would like a similar exemption in Wisconsin. Mr. Lump requested a report on potential costs and effects to the UI Reserve Fund, and an overall opinion on whether employers of camp counselors should be exempt from UI taxes.

10. Future Meeting Dates

The next scheduled Council meeting is February 15th. The Council discussed postponing the next meeting until March. The department will conduct a poll to verify Council availability.

11. Adjourn

Motion by Ms. Feistel, second by Mr. Manley to adjourn at 11:14 a.m. The motion carried unanimously.

WISCONSIN UNEMPLOYMENT INSURANCE

Integrity  Customer Service  Accountability



2018 Report to the

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Celebrating 85 Years of the Wisconsin UIAC





"Ensuring an unemployment system that is strong, secure, and financially sound is central to our core mission here at DWD. The Integrity of our UI system is not only vital to our economy, but for Wisconsin employers and Wisconsin workers, their families, and their communities."

~ Secretary Ray Allen,
Wisconsin Department of Workforce Development

Inside

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- 10 Trust Fund Balance
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Department of Workforce Development

Unemployment Insurance

This report is presented to the Wisconsin Unemployment Insurance Advisory Council pursuant to Wis. Stat. §108.14(19). The report contains information relating to the detection and prosecution of unemployment insurance fraud in the preceding year.

"This past year the Department celebrated the 85th Anniversary of the Unemployment Insurance Advisory Council (UIAC). I want to continue to thank the members of the UIAC who volunteer their time, energy, and expertise to help keep our UI system one of the best in the nation."

~ Ray Allen, DWD Secretary



March 15, 2018

Dear Members of the Unemployment Insurance Advisory Council:

Thank you for your continued service to Governor Walker and to the people of Wisconsin. The Department of Workforce Development (DWD) is pleased to present the following report on the state of Wisconsin's Unemployment Insurance (UI) program integrity efforts and the state of the UI Trust Fund.

We are proud to report that the UI program and the UI Trust Fund are both healthy and strong.

Our low unemployment rate and the number of individuals employed reached historic levels in 2017, and our labor force participation rate has consistently ranked in or near the top five amongst states nationally.

Once again in 2017, both the amount and rate of fraud against the UI program continued to decline significantly and the Trust Fund continued to grow, ending the year with a balance of nearly \$1.5 billion -- a \$313 million increase from the previous year. Total UI benefit payments declined by 11 percent from 2016 to 2017. In comparison, the percentage of total benefits paid that were obtained fraudulently declined by 42 percent -- more than triple the rate of decline in total UI benefit payments.

DWD continues to implement anti-fraud initiatives that ensure a solvent and reliable UI program both for the employers who fund the system and for workers who lose their jobs through no fault of their own.

The Department continues to make great advancements in customer service and efficient service delivery through modernization of online filing systems. Customers now have the ease and convenience of using smartphones, tablets, or computers to file claims quickly, securely, and at the time of their choosing. Weekly claims can now be filed online in Spanish. Currently, approximately 98 percent of unemployment claims are filed online. We continue to operate a Help Center which provides assistance to citizens from throughout the state.

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

The program and Trust Fund are strong thanks to your work, the leadership of the Governor and Legislature, and the hard-working staff in our UI Division. On the front cover and pictured throughout this report are members of the UI staff who work every day to provide excellent customer service and to protect and defend the integrity of the UI program and Trust Fund.

Integrity, customer service, and accountability – this is what our Department strives to provide to our citizens. We will continue to build upon the successes of the past and look forward to working with you and the members of the Legislature to continue to evaluate programs and policies to ensure Wisconsin's UI program retains its reputation as one of the strongest and most secure in the nation.

Sincerely,



Ray Allen, Secretary
Department of Workforce Development



Joe Handrick, Administrator
Unemployment Insurance Division

"Once again in 2017, both the amount and rate of fraud against the UI program continued to decline significantly and the Trust Fund continued to grow, ending the year with a balance of nearly \$1.5 billion."

~ Ray Allen, DWD Secretary

Fraud Overpayments

Under Governor Walker's leadership, DWD remains committed to ensuring the integrity of the UI program. Our continued focus on combatting fraud is working.

Fraud against the Wisconsin UI program is down — both in terms of actual dollars and in terms of a percentage of total unemployment claims. In 2017, while total benefit payments declined by 11 percent, UI fraud overpayments declined by 42 percent.

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

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

| | 2016 Amount | 2017 Amount | Dollar Reduction | Percent Reduction |
|--|---------------------|---------------------|---------------------|-------------------|
| Total UI Payments | \$511,891,628 | \$453,715,534 | \$-58,176,094 | -11% |
| + Fraud Overpayment¹ | \$8,655,187 | \$5,016,369 | \$-3,638,818 | -42% |
| As Percent of Total Payments | 1.7% | 1.1% | | |
| + Non-Fraud Overpayment¹ | \$8,902,765 | \$8,922,443 | \$19,678 | 0.2% |
| As Percent of Total Payments | 1.7% | 2.0% | | |
| = OVERPAYMENT TOTALS | \$17,557,952 | \$13,938,812 | \$-3,619,140 | -21% |

| | 2016 Number of Cases | 2017 Number of Cases | Case Reduction | Percent Reduction |
|--------------------------|----------------------|----------------------|----------------|-------------------|
| + Fraud Cases | 8,438 | 5,132 | 3,306 | -39% |
| + Non-Fraud Cases | 59,362 | 48,484 | 10,878 | -18% |
| = CASE TOTALS | 67,800 | 53,616 | 14,184 | -21% |

¹Overpayment figures reflect the amounts detected in the stated calendar year. A portion of those overpayments were disbursed in prior calendar years.

In 2017, while total benefits declined by 11 percent, UI fraud overpayments declined by 42 percent



Non-Fraudulent Overpayments

The national UI system as established by Congress is complex. In Wisconsin, the Department goes to great lengths to help customers successfully navigate that system. DWD operates a Help Center that provides telephone assistance for people from around the state, and provides easy-to-use Internet platforms that can be accessed by nearly every type of electronic device.

Despite these efforts, sometimes customers do make unintentional errors. These instances are tracked separately from intentional fraud and are referred to as "non-fraudulent overpayments." As is the case with intentional fraud, the Department's systems seek to prevent and detect these errors and collect these overpayments for deposit into the Trust Fund.

Work Search Audits

As shown on the previous page, non-fraudulent overpayments increased slightly year-over-year. This can partly be attributed to the Department's expanded effort to audit weekly work searches – an effort that was requested by the Legislature.

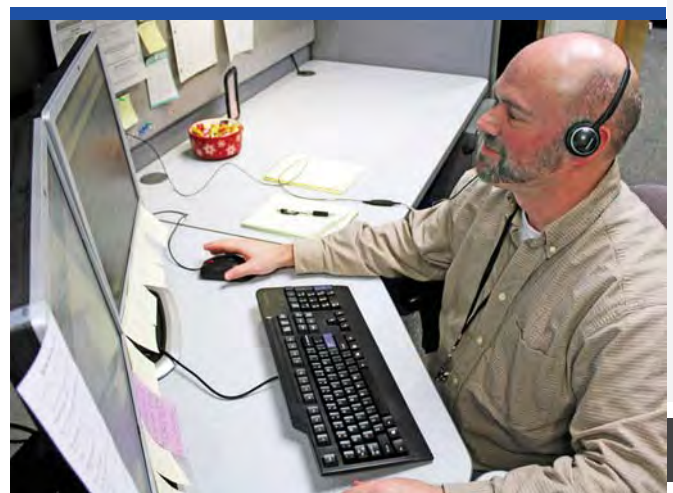
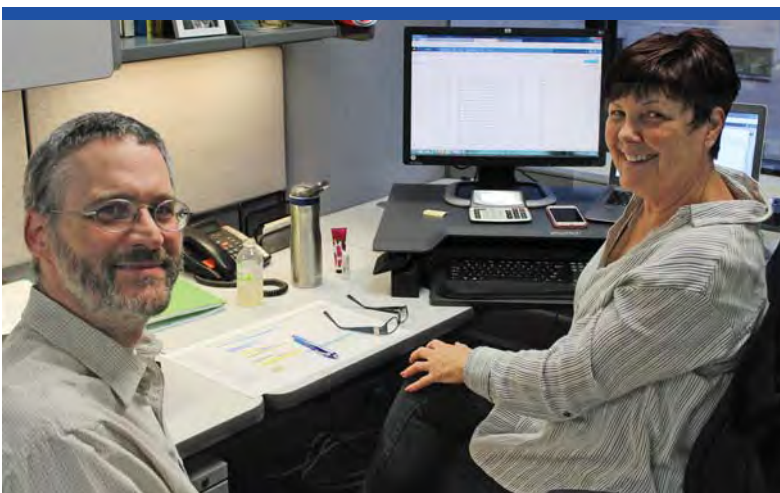
In response to that request, the Department established a robust auditing program. UI claimants who are required to search for work must submit their work search record each week a claim is filed. These records are subject to random audits for program integrity purposes. These audits uncover mistakes made by claimants, instances of intentional fraud, and provide an incentive for compliance.

In 2017 the Department conducted 33,589 work search audits -- over double the number performed in 2016. Those audits resulted in 7,452 decisions that work search requirements were not met.

Online Filing

The online claim filing systems were enhanced to increase efficiency, clarity, and ease of understanding, which in turn helps claimants file accurate claims. The UI Division retired its antiquated telephone filing system near the end of 2017 and modernized its online system to include the ability to file weekly claims in Spanish. Advantages to online filing include:

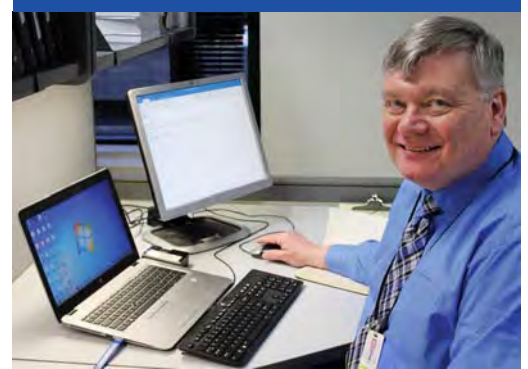
- ▶ The ability to enter work search information online;
- ▶ A mobile-friendly application, allowing claimants to file their claim using any smartphone, tablet, or computer;
- ▶ A convenient employer search tool to add important employer information to a claim;
- ▶ The ability for claimants to save their claim and return later that same day to complete the claim; and
- ▶ Clarifying help text to support greater self-service and accurate claim filing.



Protecting Workers, Protecting Employers

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

In 2017, Wisconsin UI auditors identified 6,230 misclassified workers and \$1,398,132 was generated in UI taxes, interest, and penalties due to the Department's efforts to detect worker misclassification. These continued actions include a robust program of worksite misclassification investigations combined with efforts to educate employers and workers through direct and paid media outreach.



Worker Classification Education

Wisconsin's worker classification website provides employers with a clear and understandable process to assist them in determining whether their workers are employees or independent contractors. The website also provides a mechanism to report suspected worker misclassification.

In 2017, the Department produced three radio public service announcements (PSAs), in both English and Spanish. Two of the PSAs targeted worker misclassification in general and the third focused on employer responsibility to properly classify workers. They were broadcast 11,000 times on 190 Wisconsin radio stations during the fall of 2017 and will be repeated during the spring of 2018.

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

Worker Classification Investigations

Worksite investigations are conducted by experienced Department investigators, many of whom have law enforcement backgrounds in white collar and economic crime investigations.

The Department has committed to conducting a total of 500 worker classification field investigations in 2018. In addition, investigative team members will continue to present at construction industry events, labor union meetings and other public forums on worker misclassification, and will hold meetings with individual contractors that have large numbers of misclassified workers.

Worker Misclassification Penalties

New penalties for intentional worker misclassification went into effect in October 2016 for construction employers. While these new penalties provide the Department with an additional tool to protect workers and employers, the expectation is that these penalties will provide a deterrent to businesses who choose to misclassify workers.

"Fraud against the system takes many forms. Intentional misclassification is fraud. The Council has made progress in addressing this issue and will continue working to protect the integrity of the UI system against all types of fraud."

~ Mark Reihl, Unemployment Insurance Advisory Council Member

"Well trained, dedicated staff utilizing the best technology – they are our best tool to prevent and detect fraud. Our staff are on the front lines, and they do a great job."

~ Joe Handrick, UI Administrator



Prevention Tools

Data Analytics

The Wisconsin UI program has instituted cutting-edge data analytics aimed at protecting the UI Trust Fund through prevention of fraud. Identity theft is an ongoing concern in both the public and private sectors and poses a threat to the integrity of Wisconsin's UI program. Our staff are trained and we are modernizing our systems to detect this ever-changing threat.

The Department's current process proactively identifies suspected fraudulent claims, allowing time to stop those claims, investigate them, and prevent improper payments.

Education

Education is a key component to any prevention and deterrence effort. The Department has improved notices regarding the potential legal and financial consequences of committing fraud, such as:

- ▶ Before logging into online benefit services, claimants must acknowledge they are aware committing UI fraud is illegal and they are aware of the penalties for doing so;
- ▶ Claimants who previously committed UI fraud receive a special message upon logging in reminding them of their prior act and the potential for increased penalties; and
- ▶ In the online initial and weekly claim applications, claimants must acknowledge more than once that the information they are providing is true. The goal is to help claimants avoid making mistakes.

A claimant handbook with detailed instructions on the claim filing process is available. This handbook is posted at dwd.wisconsin.gov/uiben/handbook.

The Department offers written educational guidance for employers on how to protect themselves and the Trust Fund, including the pamphlet *How to Protect Your Business from Higher Taxes*. This guidance is posted at dwd.wisconsin.gov/dwd/publications/ui/uct_17287_p.pdf.

Additional resources available to both employees and employers include:

- ▶ UI Internet resources for both employers and employees, such as methods for reporting UI fraud and "Frequently Asked Questions about UI Benefit Fraud"; and
- ▶ An employer handbook containing information on how to properly classify a worker.

Additional Prevention Approaches

Other fraud prevention tools include:

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

Detection Tools

The Department has a wide range of systems and methods to detect and recover fraudulently obtained UI benefits.

Dedicated UI Workers

Staff vigilance is one of DWD's best tools for detection. In 2017, the UI Division created an Integrity and Quality (IQ) unit which, in addition to providing training for the entire Benefit Operations Bureau, also investigates the most complex and organized efforts to scam the system. Members of this unit also prepare and recommend cases for prosecution referral.

Post Verification of Wages

The Department sends wage verification notices to employers when claimants, who had been reporting wages weekly, stop reporting wages in a week. This allows employers the opportunity to timely report any issues. **The Department detected an estimated \$192,267 in fraudulent UI claims in 2017 using this tool.**

Cross-Matches

The Department utilizes numerous cross-matches that assist in detecting UI fraud.

Quarterly Wage Cross-Match – This cross-match compares benefit payment records with wage records submitted by employers covered under Wisconsin's UI program. Employers are required by law to submit these records to the Department quarterly.

Inmate Cross-Match - The Department uses two inmate cross-matches that maintain databases of incarceration records for all of Wisconsin's county jails, prisons, and for incarcerating facilities nationwide.

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

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

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



Photo: The Department opens a new facility in Eau Claire. Staff at this location and at centers in Madison, Menomonee Falls, and Appleton work to prevent and detect fraud.

Other Detection Approaches

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

- ▶ Audits of employers - resulting in assessments totaling \$1.4 million in 2017;
- ▶ Employer complaints and tips from the public concerning suspected fraudulent claims;
- ▶ Using 1099 information from the Internal Revenue Service (IRS) to investigate employers who may be misclassifying employees as independent contractors;
- ▶ Contacts from local, state, and federal law enforcement officers regarding suspicious activities;
- ▶ Sophisticated fraud monitoring tools employed by U.S. Bank, which allow the Department to monitor, predict, and respond quickly to suspected fraudulent activity; and
- ▶ Meetings with several other state agencies on a quarterly basis to discuss fraud trends and cases of mutual interest. The agencies share fraud tips to ensure fraud occurring across agencies is thoroughly investigated and stopped.

Deterrence Tools

Since 2011, the Governor, Legislature, and the Council have enacted several reforms designed to deter tax and benefit fraud against the UI system. Recently the state took additional steps to protect the Trust Fund.

Levy Non-Compliance Penalty - A law change included in the agreed-upon bill increased the penalty for third parties who refuse to comply with a Department levy from 25% to 50% of the amount of debt owed. The penalties collected will be deposited into the UI Program Integrity Fund.

Ineligibility for Concealment of Holiday, Vacation, Termination, or Sick Pay - A law change that was included in the UIAC agreed-upon bill provides that the concealment of vacation, holiday, dismissal/termination and sick pay are treated consistently with the concealment of work and wages. The amended statute provides that concealment of holiday pay, vacation pay, sick pay or termination pay on a weekly benefit claim results in total ineligibility for the week for which the claimant concealed the pay.

Enhanced UI Fraud Penalties – As of this report’s publication, additional reforms are under consideration by the Legislature to increase the criminal penalties for unemployment benefit fraud based on the amount of benefits that the person wrongfully obtains. Senate Bill 542 and Assembly Bill 710, authored by Senator Chris Kapenga and Representative Samantha Kerkman, seek to remedy the inconsistency between the penalties for UI fraud and other types of theft.

"Protecting our Trust Fund from those who would commit fraud against it is one of the best ways we can protect the Trust Fund for those who need it."

~ Scott Manley, Unemployment Insurance Advisory Council Member



Photo: Council members John Mielke and Mark Reihl join UI Administrator Joe Handrick and UIAC Chair Janell Knutson at an Assembly hearing in support of the labor-management agreed-upon Council bill.

Collection Tools

Wisconsin is very successful at recovering overpayments when they do occur. According to an internal UI longitudinal state study over a ten-year period, 82.5 percent of fraud and 80 percent of non-fraud overpayments are collected.

In 2017, the Department recovered \$24 million in overpayments, including almost \$5.4 million in debts older than 5 years. This was achieved by utilizing the various mechanisms outlined below.



Tax Refund Intercept - The Department is able to intercept employer and claimant state and federal tax refunds. The Department participates in the Treasury Offset Program (TOP) to intercept federal tax refunds. By utilizing the tools available through TOP, the Department recovered \$4 million in fraud overpayments and almost \$1 million in non-fraud overpayments, penalties, and collections costs. In February 2017, the Department started to recover delinquent tax contributions, interest, and penalties through TOP. In 2017, receipts related to employer TOP totaled \$630,000. In addition, rather than have their tax refund intercepted, employers paid \$400,000 upon receipt of the Notice of Intent to Certify debt to IRS, for a total collection attributable to employer TOP of over \$1 million.

Benefit Offset - Benefits are withheld from a claimant as an offset for an overpayment. The claimant does not receive the full UI benefit payment amount until the overpayment has been repaid.

Out of State Offset - Wisconsin UI can have another state withhold unemployment benefits to a claimant in that state to repay a Wisconsin overpayment.

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

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

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

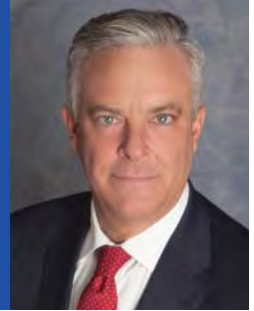
Financial Record Matching Program - A financial record matching program is used by UI debt collectors to identify the bank accounts of delinquent Unemployment Insurance debtors.

Secured Liens for Benefit Overpayments - The 2017 UIAC agreed-upon bill included a change that gives the Department enhanced ability to recover unemployment-related debts. The amended lien provision in state law provides consistency for claimant and employer debts. In addition, an amended provision is intended to assist in collecting fraud and non-fraud overpayments in bankruptcy court.

DWD recovered \$24 million in UI overpayments in 2017, returning the funds to the UI Trust Fund

"The UI system is intended to help Wisconsin workers who have lost their jobs through no fault of their own. We have and will continue to seek prosecution for those who intentionally attempt to steal from the system."

~ Chris Hagerup, DWD Deputy Secretary



Prosecution

Criminal Referrals for UI Fraud

The Department pursues criminal prosecution in cases of egregious fraudulent activity, and works cooperatively with district attorneys, the Wisconsin Department of Justice (DOJ), and federal prosecutors.

In 2017, 159 cases (with a total dollar amount of almost \$1.8 million) were referred for potential state criminal prosecution, a 152 percent increase over 2016. This reflects improvements to processes resulting in the Department pursuing criminal charges more frequently against those who flagrantly defraud the system. The prosecution of UI fraud serves as an important deterrent against future fraudulent activity.

Professional Department staff investigate complex fraud cases. Many of these professionals have past experience in law enforcement.

All criminal investigations completed by benefit fraud investigators are referred to our Bureau of Legal Affairs (BOLA) for review by legal and investigative staff to ensure the investigations meet Department standards for prosecution.

After review, BOLA staff refers the cases to either a county district attorney or the DOJ. BOLA acts as the liaison between the Department and the prosecuting agency as the case moves through the criminal justice system. BOLA staff serve as advocates at sentencing for the Department and for the claimants and employers who properly utilize the UI program.

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

In addition, the Department works with the U.S. Department of Labor, Office of Inspector General on complex fraud cases.

UNEMPLOYMENT INSURANCE

FRAUD IS A CRIME

To report unemployment fraud, please contact our Fraud Hotline at 1-800-909-9472.

UI program achieves 98% Job Center registration compliance

Moving from Government Dependence to True Independence

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

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

Under Wisconsin law, UI recipients must register with Job Center of Wisconsin (JCW) and actively seek employment, unless an individual is granted a work search waiver. In 2017, 98 percent of the 87,055 claimants who were required to register with JCW satisfied this requirement.

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



Photo: Secretary Ray Allen meets with UI staff to thank them for their contributions to great customer service and program integrity.

Trust Fund Balance

Wisconsin UI Trust Fund balance in excellent shape

The Unemployment Insurance Trust Fund balance on December 31, 2017 was nearly \$1.5 billion, an increase of 27 percent when compared to the December 31, 2016 balance of nearly \$1.2 billion. The Department's integrity efforts directly contribute to a healthy Trust Fund.

| | 2017 <i>(in millions)</i> | 2016 <i>(in millions)</i> | Change <i>(in millions)</i> | % Change |
|------------------------------|-------------------------------------|-------------------------------------|---------------------------------------|-----------------|
| Year Ended December 31 | | | | |
| UI Trust Fund Balance | \$1,471.8 | \$1,159.2 | \$312.6 | 27.0% |

(See Addendum C for a 5-year Trust Fund history)

Addendum A – Overpayment Data

HISTORICAL DATA ON BENEFIT PAYMENTS

| Combined State & Federal | 2017 | 2016 | 2015 | 2014 | 2013 |
|--|---------------|---------------|---------------|---------------|-----------------|
| Total Federal & State UI Paid | \$453,715,534 | \$511,891,628 | \$605,481,027 | \$732,327,104 | \$1,270,761,600 |
| + Fraud Overpayment¹ | \$5,016,369 | \$8,655,187 | \$13,384,998 | \$20,455,759 | \$24,796,194 |
| Number of Cases | 5,132 | 8,438 | 9,793 | 13,034 | 14,682 |
| Avg. Overpayment | \$977 | \$1,026 | \$1,367 | \$1,569 | \$1,689 |
| + Non-Fraud Overpayment¹ | \$8,922,443 | \$8,902,765 | \$11,878,072 | \$16,891,299 | \$26,347,894 |
| Number of Cases | 48,484 | 59,362 | 78,851 | 105,758 | 153,072 |
| Avg. Overpayment | \$184 | \$150 | \$151 | \$160 | \$172 |
| = OVERPAYMENT TOTALS | \$13,938,812 | \$17,557,952 | \$25,263,070 | \$37,347,058 | \$51,144,088 |
| NUMBER OF CASES TOTAL | 53,616 | 67,800 | 88,644 | 118,792 | 167,754 |
| Avg. Overpayment | \$260 | \$259 | \$285 | \$314 | \$305 |

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

FRAUD OVERPAYMENT DETECTION AMOUNTS AND DECISIONS BY SOURCE FOR 2016-2017

| Detection Method | 2017 | | 2016 | |
|--|--------------------|--------------|--------------------|--------------|
| | Amount | Decisions | Amount | Decisions |
| Wage Record Cross-Match | \$1,621,722 | 1,265 | \$3,176,729 | 2,429 |
| Agency Detection - Not Covered by Other Codes | \$1,331,325 | 1,140 | \$2,470,748 | 1,794 |
| State New Hire Cross-Match | \$502,833 | 965 | \$741,198 | 1,384 |
| Liable Employer Protests Benefit Charges | \$434,745 | 525 | \$880,186 | 1,108 |
| Tips and Leads from Other than Liable Employer | \$250,602 | 197 | \$417,061 | 380 |
| Audit of Work Search | \$210,709 | 184 | \$41,981 | 58 |
| Post Verification - No Wages Reported | \$192,267 | 434 | \$290,483 | 690 |
| Post Verification of Wages | \$161,322 | 134 | \$201,869 | 203 |
| Claimant Initiated | \$123,782 | 70 | \$135,364 | 116 |
| National New Hire Cross-Match | \$62,124 | 65 | \$77,433 | 67 |
| Appriss Inmate Cross-Match | \$41,875 | 98 | \$58,585 | 119 |
| Interstate Cross-Match | \$28,081 | 14 | \$90,384 | 24 |
| Quality Control | \$22,212 | 16 | \$40,953 | 32 |
| Fictitious Employer Cases | \$18,999 | 2 | \$0 | 0 |
| Inmate Cross-Match | \$9,078 | 19 | \$16,251 | 26 |
| Field Audit Discoveries | \$3,783 | 1 | \$11,225 | 5 |
| Reversals | \$573 | 2 | \$0 | 0 |
| State Payroll Cross-Match | \$337 | 1 | \$4,556 | 2 |
| Federal Wage Cross-Match | \$0 | 0 | \$181 | 1 |
| Total | \$5,016,369 | 5,132 | \$8,655,187 | 8,438 |

Addendum A continued - Overpayment Data

NON-FRAUD OVERPAYMENT DETECTION AMOUNTS AND DECISIONS BY SOURCE FOR 2016-2017

| Detection Method | 2017 | | 2016 | |
|---|--------------------|---------------|--------------------|---------------|
| | Amount | Decisions | Amount | Decisions |
| Audit of Work Search | \$3,099,373 | 6,137 | \$1,426,286 | 2,860 |
| Post Verification of Wages | \$1,404,792 | 31,494 | \$2,075,314 | 41,674 |
| Liabile Employer Protests Benefit Charges | \$1,091,571 | 2,724 | \$1,314,236 | 3,412 |
| Agency Detection - Not Covered by Other Codes | \$1,064,338 | 1,844 | \$1,299,539 | 2,143 |
| Claimant Initiated | \$826,493 | 3,054 | \$1,157,629 | 5,397 |
| Reversals | \$502,009 | 278 | \$462,137 | 326 |
| Tips and Leads from Other than Liabile Employer | \$258,182 | 690 | \$290,773 | 655 |
| Wage Record Cross-Match | \$245,547 | 579 | \$371,627 | 791 |
| State New Hire Cross-Match | \$199,917 | 807 | \$223,271 | 905 |
| Post Verification - No Wages Reported | \$114,559 | 602 | \$181,730 | 975 |
| Quality Control | \$58,172 | 108 | \$47,598 | 87 |
| Appriss Inmate Cross-Match | \$39,670 | 123 | \$26,486 | 89 |
| National New Hire Cross-Match | \$6,848 | 24 | \$17,248 | 34 |
| Inmate Cross-Match | \$5,262 | 15 | \$6,417 | 9 |
| Field Audit Discoveries | \$4,440 | 1 | \$40 | 1 |
| Interstate Cross-Match | \$1,270 | 4 | \$2,064 | 3 |
| Total | \$8,922,443 | 48,484 | \$8,902,765 | 59,362 |

Addendum B – Collection Data

OVERPAYMENT RECOVERIES IN 2017 BY YEAR OF THE DECISION.

| Year Identified | Fraud | Non-fraud | Total |
|--------------------------------|---------------------|---------------------|---------------------|
| 2017 | \$645,459 | \$5,164,260 | \$5,809,719 |
| 2016 | \$3,155,810 | \$1,535,184 | \$4,690,994 |
| 2015 | \$1,962,622 | \$487,042 | \$2,449,664 |
| 2014 | \$1,604,177 | \$447,417 | \$2,051,594 |
| 2013 | \$1,507,849 | \$460,896 | \$1,968,745 |
| 2012 | \$1,622,231 | \$509,505 | \$2,131,736 |
| Greater than 5 years old | \$3,754,721 | \$1,622,334 | \$5,377,055 |
| Total collected in 2017 | \$14,252,869 | \$10,226,638 | \$24,479,507 |

Addendum B continued – Collection Data

BENEFIT OVERPAYMENT RECOVERIES

| Federal Tax Offset Program Recoveries | 2017 | 2016 | 2015 | 2014 | 2013 |
|---------------------------------------|--------------------|--------------------|--------------------|--------------------|---------------------|
| Fraud | \$4,046,395 | \$5,713,579 | \$7,495,899 | \$8,206,781 | \$10,082,628 |
| Non-Fraud | \$293,010 | \$591,933 | \$867,815 | \$1,030,964 | \$1,563,841 |
| Other* | \$677,632 | \$549,526 | \$692,655 | \$409,503 | \$58,615 |
| Total | \$5,017,037 | \$6,855,038 | \$9,056,369 | \$9,647,248 | \$11,705,084 |

| State Tax Offset Program Recoveries | 2017 | 2016 | 2015 | 2014 | 2013 |
|-------------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| Fraud | \$939,187 | \$1,323,466 | \$1,516,003 | \$2,219,663 | \$2,724,160 |
| Non-Fraud | \$907,126 | \$1,276,997 | \$1,655,580 | \$2,555,895 | \$3,084,434 |
| Other* | \$376,553 | \$390,332 | \$358,514 | \$255,895 | \$52,307 |
| Total | \$2,222,866 | \$2,990,795 | \$3,530,097 | \$5,031,453 | \$5,860,901 |

| Intercept of Unemployment Benefits | 2017 | 2016 | 2015 | 2014 | 2013 |
|------------------------------------|--------------------|--------------------|--------------------|--------------------|---------------------|
| Fraud | \$477,693 | \$619,255 | \$782,127 | \$1,325,031 | \$2,698,731 |
| Non-Fraud | \$4,360,089 | \$4,551,321 | \$5,481,994 | \$7,448,546 | \$12,578,420 |
| Other* | \$9,080 | \$10,482 | \$16,066 | \$12,076 | \$13,991 |
| Total | \$4,846,862 | \$5,181,058 | \$6,280,187 | \$8,785,653 | \$15,291,142 |

| Checks, EFT Payments, & Recoupments from Other States | 2017 | 2016 | 2015 | 2014 | 2013 |
|---|---------------------|---------------------|---------------------|---------------------|---------------------|
| Fraud | \$8,789,594 | \$10,401,445 | \$10,925,165 | \$10,022,181 | \$8,485,031 |
| Non-Fraud | \$4,666,413 | \$5,461,918 | \$6,782,314 | \$7,650,981 | \$7,885,360 |
| Other* | \$1,749,807 | \$2,000,422 | \$1,726,034 | \$1,521,323 | \$534,634 |
| Total | \$15,205,814 | \$17,863,785 | \$19,433,513 | \$19,194,485 | \$16,905,025 |

*Other includes items such as penalties and collection costs

Addendum B continued – Collection Data

FORFEITURE, BENEFIT REDUCTIONS, AND OVERPAYMENT PENALTIES 2013-2017

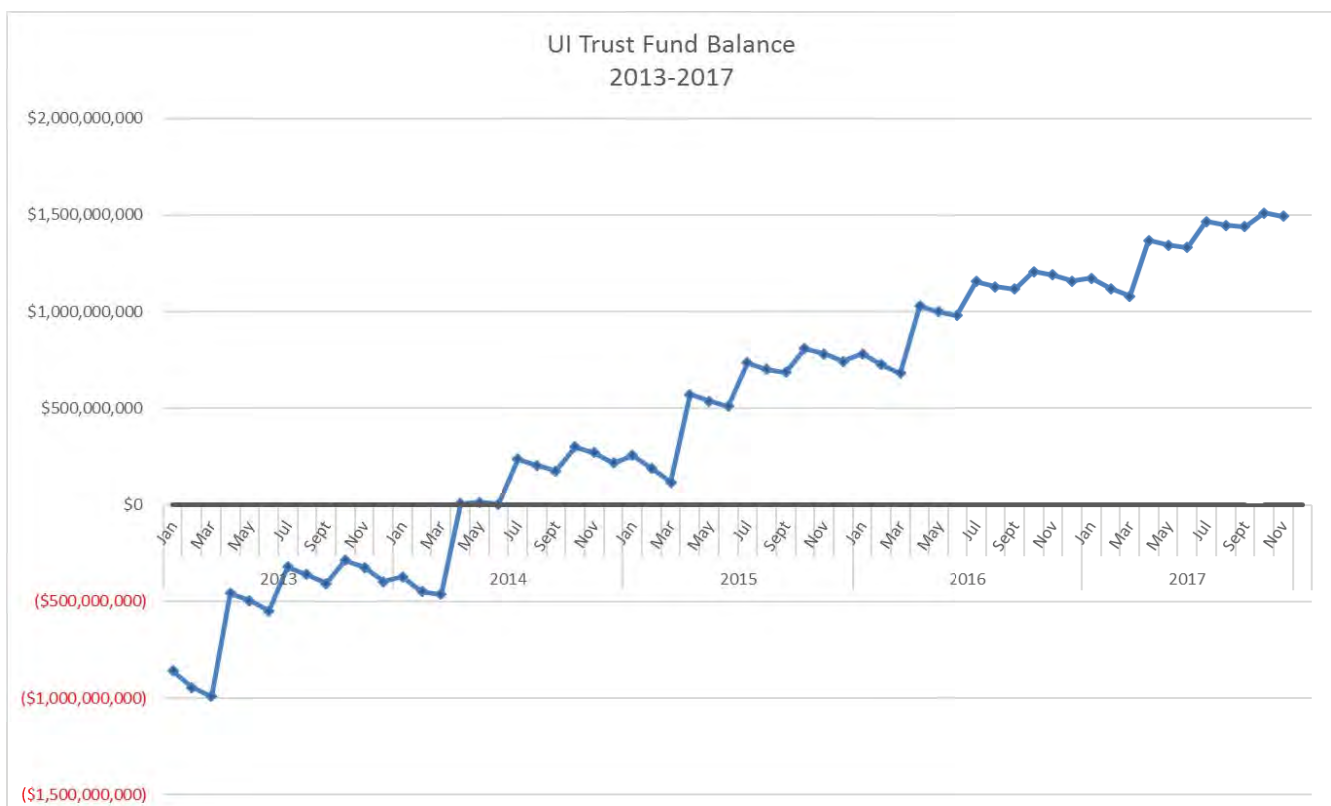
| Other Fraud-Related Activity | 2017 | 2016 | 2015 | 2014 | 2013 |
|------------------------------|--------------|--------------|--------------|--------------|--------------|
| Forfeitures Assessed | \$114,996 | \$295,848 | \$716,823 | \$2,073,555 | \$11,949,972 |
| Benefit Amount Reduction | \$13,912,308 | \$22,480,473 | \$30,152,510 | \$43,264,146 | \$32,690,125 |
| Penalties Assessed | \$1,961,063 | \$3,368,650 | \$2,532,081 | \$2,823,964 | \$2,202,840 |

| Recovered for All Years Assessed | 2017 | 2016 | 2015 | 2014 | 2013 |
|----------------------------------|-------------|-------------|-------------|-------------|-------------|
| Forfeitures Collected | \$531,459 | \$1,109,493 | \$1,748,211 | \$3,309,935 | \$8,595,250 |
| BAR Satisfied | \$4,405,349 | \$5,292,259 | \$5,050,371 | \$5,133,741 | \$3,102,731 |
| Penalties Collected | \$2,313,408 | \$2,362,788 | \$2,133,735 | \$1,774,331 | \$327,106 |

| Overpayments Collected | 2017 | 2016 | 2015 | 2014 | 2013 |
|------------------------|--------------|--------------|--------------|--------------|--------------|
| Fraud | \$14,252,869 | \$18,057,745 | \$20,719,194 | \$21,773,656 | \$23,990,550 |
| Non-Fraud | \$10,226,638 | \$11,882,169 | \$14,787,703 | \$18,686,386 | \$25,112,055 |
| Total | \$24,479,507 | \$29,939,914 | \$35,506,897 | \$40,460,042 | \$49,102,605 |

Addendum C - Trust Fund History

Unemployment Insurance Trust Fund Balance 2013-2017



NOTES

NOTES



Department of Workforce Development

201 E. Washington Ave.

Madison, WI 53707

608-266-3131 | dwd.wisconsin.gov



2017 SENATE BILL 772

February 7, 2018 - Introduced by Senators VINEHOUT, BEWLEY, ERPENBACH, RINGHAND, L. TAYLOR, RISSER, HANSEN and CARPENTER, cosponsored by Representatives SINICKI, HEBL, VRUWINK, POPE, BERCEAU, WACHS, MURSAU, CROWLEY, FIELDS, SPREITZER, SUBECK, SHANKLAND, C. TAYLOR, PRONSCHINSKE and SARGENT. Referred to Committee on Public Benefits, Licensing and State-Federal Relations.

1 **AN ACT to amend** 108.08 (1) and 108.09 (1) of the statutes; **relating to:** methods
2 of filing for claims for unemployment insurance benefits.

Analysis by the Legislative Reference Bureau

This bill requires the Department of Workforce Development to allow claims for unemployment insurance benefits to be filed by telephone.

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

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

3 **SECTION 1.** 108.08 (1) of the statutes is amended to read:
4 108.08 (1) To receive benefits for any given week of unemployment, a claimant
5 shall give notice to the department with respect to such week of unemployment
6 within such time and in such manner as the department may by rule prescribe,
7 except that the department shall permit such notice to be given to the department
8 via telephone.

Fiscal Estimate Narratives

DWD 2/15/2018

| | | | | | |
|--|-----------|---------------------|--------|---------------|----------|
| LRB Number | 17-4898/1 | Introduction Number | SB-772 | Estimate Type | Original |
| Description methods of filing for claims for unemployment insurance benefits | | | | | |

Assumptions Used in Arriving at Fiscal Estimate

This bill requires the Department of Workforce Development to allow claims for unemployment insurance benefits to be filed by telephone.

The US Department of Labor requires state unemployment programs to provide to citizens an alternative means of claim and benefit filing for any person who cannot utilize the primary method (or methods) offered by the state program.

In the first week of 2018, 95.7% of all initial claims and 99% of all weekly claims filed in Wisconsin were completed using the primary (online) filing method.

In Wisconsin, two alternative means are offered: 1) The ability to file initial and weekly claims via telephone; 2) The ability to file weekly claims via the US Postal Service. Consistent with the federal requirements noted above, the department already permits use of telephone as an alternative method of filing. Therefore, under the provisions of this bill the department estimates there would be no fiscal impact on either technology, infrastructure, or operations.

Long-Range Fiscal Implications



2017 ASSEMBLY BILL 1005

March 7, 2018 - Introduced by Representatives BOWEN, SARGENT, SPREITZER, SINICKI, ANDERSON, BROSTOFF, SUBECK and YOUNG. Referred to Committee on Labor.

1 **AN ACT** *to create* 103.155 of the statutes; **relating to:** prohibiting employers
2 from testing employees and prospective employees for the presence of
3 tetrahydrocannabinols, synthetic cannabinoids, or controlled substance
4 analogs of tetrahydrocannabinols or synthetic cannabinoids as a condition of
5 employment.

Analysis by the Legislative Reference Bureau

This bill, subject to certain exceptions, prohibits an employer, including the state, from requiring an employee or prospective employee to submit to a test for the presence of any tetrahydrocannabinol (THC), which is the active ingredient in marijuana, synthetic cannabinoid, or controlled substance analog to THC or a synthetic cannabinoid in his or her system (drug testing) as a condition of employment. The bill, subject to certain exceptions, provides that any agreement between an employer and an employee or prospective employee offering employment or any pay or benefit to an employee or prospective employee in return for the employee or prospective employee submitting to drug testing is prohibited.

The bill, however, does not apply to the drug testing of an employee or prospective employee who is subject to drug testing under 1) any regulation promulgated by the federal Department of Transportation that requires drug testing of an employee or prospective employee or any rule promulgated by the Department of Transportation of this state adopting such a regulation for purposes of enforcing the requirements of that regulation with respect to intrastate commerce; 2) any

ASSEMBLY BILL 1005

contract entered into between the federal government and an employer or any grant of financial assistance from the federal government to an employer that requires drug testing of employees and prospective employees as a condition of receiving the contract or grant; 3) any federal statute, regulation, or order that requires drug testing of employees and prospective employees for purposes of safety or security; 4) any substance abuse prevention program under a collective bargaining agreement or under the current law that requires such programs for public works and public utility projects; or 5) rules promulgated by the Law Enforcement Standards Board requiring drug testing of prospective law enforcement officers, tribal law enforcement officers, jail officers, and secure detention officers.

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

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

1 **SECTION 1.** 103.155 of the statutes is created to read:

2 **103.155 Testing for marijuana or synthetic cannabinoids prohibited.**

3 **(1) DEFINITIONS.** In this section:

4 (a) “Controlled substance analog” has the meaning given in s. 961.01 (4m).

5 (b) “Employer” means any person engaging in any activity, enterprise, or
6 business employing at least one individual. “Employer” includes the state, its
7 political subdivisions, and any office, department, independent agency, authority,
8 institution, association, society, or other body in state or local government created or
9 authorized to be created by the constitution or any law, including the legislature and
10 the courts.

11 (c) “Synthetic cannabinoid” means a substance included under s. 961.14 (4) (tb).

12 (d) “Tetrahydrocannabinol” means a substance included under s. 961.14 (4) (t).

13 **(2) TESTING PROHIBITED.** (a) Except as provided in sub. (3), no employer or agent
14 of an employer may directly or indirectly solicit or require an employee or prospective
15 employee to submit to testing for the presence of any tetrahydrocannabinol,

ASSEMBLY BILL 1005

1 synthetic cannabinoid, or controlled substance analog of a tetrahydrocannabinol or
2 synthetic cannabinoid in his or her system as a condition of employment.

3 (b) Except as provided in sub. (3), any agreement between an employer or agent
4 of an employer and an employee or prospective employee offering employment or any
5 pay or benefit to an employee or prospective employee in return for the employee or
6 prospective employee submitting to testing for the presence of any
7 tetrahydrocannabinol, synthetic cannabinoid, or controlled substance analog of a
8 tetrahydrocannabinol or synthetic cannabinoid in his or her system is prohibited.

9 **(3) EXCEPTIONS.** Subsection (2) does not apply to the testing for the presence
10 of any tetrahydrocannabinol, synthetic cannabinoid, or controlled substance analog
11 of a tetrahydrocannabinol or synthetic cannabinoid in the system of an employee or
12 prospective employee who is subject to drug testing under any of the following:

13 (a) Any regulation promulgated by the federal department of transportation
14 that requires testing of an employee or prospective employee in accordance with 49
15 CFR 40 or any rule promulgated by the department of transportation of this state
16 adopting such a regulation for purposes of enforcing the requirements of that
17 regulation with respect to intrastate commerce.

18 (b) Any contract entered into between the federal government and an employer
19 or any grant of financial assistance from the federal government to an employer that
20 requires drug testing of employees and prospective employees as a condition of
21 receiving the contract or grant.

22 (c) Any federal statute, regulation, or order that requires drug testing of
23 employees and prospective employees for purposes of safety or security.

| Rule | Action | Title | Current rule | Purpose of change |
|--------------------|---------------|--|---|---|
| 129.01 (4) and (a) | Amend | Notice of unemployment. WAIVER; EXCEPTIONAL CIRCUMSTANCES | | Technical updates to conform to rule writing requirements and changes for reader ease. |
| 129.01 (4) (e) | Repeal | Notice of unemployment. WAIVER; EXCEPTIONAL CIRCUMSTANCES | Relates to unsuccessful attempts to access telephone initial claims | The IVR system is no longer used, so this rule is no longer needed. Roughly 95% of initial claims are filed and completed online. |
| 129.03 | Amend | Backdating of benefit year; circumstances | | Technical updates to conform to rule writing requirements. |

- Throughout ch. DWD 140 the following have been amended:
 1. References to "administrative law judge" is amended to "appeal tribunal" in order to conform to statute.
 2. References to "department" are amended to either "hearing office" or "appeal tribunal" for clarification.
 3. Allows for electronic delivery of:
 - a. Determinations.
 - b. Decision for a request to withdraw appeal
 - c. Notice of hearing.
 - d. Contents of a hearing file.
 - e. Potential exhibits for hearings held by telephone or videoconference.
 - f. Submitting affidavits as a potential exhibit.
 4. Added references of s. 108.095, Stats., (false statements or representations to obtain benefits payable to other person) to conform to statute.

| | | | | |
|--------------------------|--------|---|---|---|
| 140.001 | Amend | Definitions | | <p>Current definitions are renumbered and the following definitions were moved from ch. DWD 100:</p> <ul style="list-style-type: none"> -Agent state -Ease of access -Hearing office <p>Technical changes were made to "Representative" and "Hearing Office" Created a definition of "appeal tribunal" for clarification purposes.</p> |
| 140.01 (1) | Amend | Hearings and Appeals; Appeal rights. | States an appeal to any determination shall be filed with <u>the department</u> . | Provides that an appeal shall be filed with an <u>appeal tribunal</u> and is considered filed when the appeal is submitted to a <u>hearing office or of public employment office in an agent state</u> . This change is made for consistency with s. 108.09(2r). |
| 140.01 (2) (b) 2. and 4. | Repeal | Hearings and Appeals; TIME LIMIT FOR FILING. | States an appeal can be filed with a <u>UI office</u> , a hearing office, <u>bureau of legal affairs</u> (UI) and at a public employment office in the agent state. | Repeals that an appeal can be filed at a <u>UI office or bureau of legal affairs</u> . This change is made for consistency with s. 108.09(2r). |
| 140.01 (2) (c) 7. Note | Repeal | Hearings and Appeals; TIME LIMIT FOR FILING. | Identifies the address for the bureau of legal affairs. | No longer necessary because an appeal cannot be filed with the central office of the bureau of legal affairs. |
| 140.05 (4) | Amend | Withdrawal of appeal and retraction. | Relates to an <u>administrative law judge</u> denying a request for retraction <u>by letter</u> . | Updates language relating to an <u>appeal tribunal</u> denying a request <u>in writing</u> . <u>This change permits electronic delivery of the denial</u> . |

| | | | | |
|---------------|-------|--|---|---|
| 140.06 (1) | Amend | Notice of hearing; contents; to whom sent; issues not on notice of hearing; consolidation of issues | -States <u>department</u> shall schedule hearings. -Provides hearing office mails a copy of notice of hearing to all parties. | -States the <u>hearing office</u> shall schedule hearings. -Deletes this provision as redundant because instructions for providing copies are in sub. (2) of this section. |
| 140.06 (2) | Amend | Notice of hearing; contents; to whom sent; issues not on notice of hearing; consolidation of issues | Provides that the hearing office shall mail the notice of hearing... <u>6 days</u> before the hearing.. | Provides that the hearing office shall <u>electronically deliver</u> or mail the hearing notice and clarifies <u>6 calendar</u> days. |
| 140.07 | Amend | Prehearing conference | -Allows prehearing conferences in person or by telephone. -Identifies 10 days' notice of prehearing conferences -Various | -Allows prehearing conferences <u>in person, by telephone or by videoconference.</u> -Clarifies 10 <u>calendar</u> days' notice of prehearing conferences. -Updates on format requirements and consistency. |
| 140.08 | Amend | Postponement of hearings. | Various | Updates on format requirements and consistency. |
| 140.09 | Amend | Access to hearing files; limited discovery; inspection of records. | Various | Updates on format requirements and consistency. |
| 140.09 (1)(a) | Amend | Access to hearing files; limited discovery; inspection of records. PREHEARING STAGE | States a hearing office may <u>mail</u> copies of file contents to a party or a party's representative, union agent or legislator if <u>written or verbal authorization</u> is given by that party. | States a hearing office may <u>mail</u> or <u>electronically deliver</u> a file contents to a party and provides that a party's representative, union agent or legislator may inspect as prescribed in <u>DWD 149.03 (2).</u> This change is made to ensure consistency with the confidentiality requirements of DWD 149. |

| | | | | |
|--------------------|-------|--|---|--|
| 140.09 (3) | Amend | Access to hearing files; limited discovery; inspection of records. POST HEARING STAGE. | Provides a party or representative may inspect hearing file contents only if social security numbers have been redacted | Provides a party or <u>party's</u> representative may inspect hearing file contents only if <u>personally identifiable information</u> has been redacted. This change is made to expand the type of information that must be redacted. |
| 140.09 (4) (d) | Amend | Access to hearing files; limited discovery; inspection of records. CONFIDENTIALITY OF CERTAIN RECORDS AT ALL STAGES OF HEARING. | The inspection of the administrative law judge's <u>handwritten</u> notes | The inspection of the appeal tribunal's <u>notes</u> . |
| 140.10 | Amend | Subpoenas; issuance and service; modification | -Delivery of subpoena -Various | -Updates on format requirements and consistency. |
| 140.11 (1) and (2) | Amend | Telephone hearings. | -Allows <u>telephone</u> hearings if impractical to conduct in-person hearing. | - Allows hearings to be held by <u>telephone or videoconference</u> if impractical to conduct in-person hearing. |
| 140.11 (3) | Amend | Telephone and videoconference hearings. | Allows <u>15</u> minutes for appellant to appear by telephone after the start time of a hearing and <u>5</u> minutes for respondent to appear by telephone start time of a hearing. | Allows <u>10</u> minutes for both appellant or respondent to appear by telephone or connect by videoconference after the start time of the hearing. The UIAC previously voted to make this change. |
| 140.12 | Amend | Parties who fail to appear; general provisions | Allows <u>15</u> minutes for appellant to appear after the start time of a hearing and <u>5</u> minutes for respondent to appear after the start time of a hearing. | Allows <u>10</u> minutes for both appellant and respondent to appear after the start time to a hearing. The UIAC previously voted to make this change. |
| 140.17 | Amend | Form of decision. | A petition to review can be filed with the department or LIRC. | A petition to review can be filed as directed under 108.09 (6), 108.095 (6) or 108.10 (2), with LIRC. All petitions for LIRC review are currently filed only with LIRC. |

| | | | | |
|--------------|-------|---|--|--|
| 140.18 | Amend | Fees for representation of parties | References representative attorney | Because the definition of representative includes "attorney", "attorney" has been omitted here. |
| 140.20 | Amend | Witness and interpreter fees; travel expenses. | Designates \$35 fee for interpreters. | Designates \$35 fee for interpreters or a <u>contracted amount</u> . This change is made to clarify the fee for interpreters because the department contracts with a service to provide interpretation services at hearings. |
| 140.21 | Amend | Transcripts and recordings | States the department may furnish a copy of hearing recording in lieu of a transcript. | The department does not provide transcripts, so this has been removed. |
| 140.22(1)(c) | Amend | Note | Directs parties to the hearing office for the affidavit form | Provides a link to the form on the department's website and a phone number to call to receive a copy of the form. |

1 **DWD 129.01 Notice of unemployment.**

2 **(4) WAIVER; EXCEPTIONAL CIRCUMSTANCES.** The department shall waive the
3 requirements of this section if exceptional circumstances exist. Exceptional circumstances
4 include ~~all~~ any of the following:

5 (a) An error made by an employee of the department ~~relating to the giving of~~ when
6 providing notice by to the claimant or a reasonable misunderstanding by the claimant based on
7 information given to the claimant by the department.

8 (b) Action by an employer, in any manner, directly or indirectly, instructing, warning, or
9 persuading the claimant not to file a benefit claim.

10 (c) The claimant did not comply because the claimant was not aware of the duty to
11 notify the department, and the claimant's most recent employer failed to post and maintain the
12 notice on claiming unemployment benefits that was supplied to the employer under s. DWD
13 120.01.

14 (d) The claimant performed services as a school year employee in other than an
15 instructional, research, or principal administrative capacity and had reasonable assurance of
16 performing services for the employer in a similar capacity in the 2nd academic year or term but
17 was subsequently not offered the opportunity to perform such services.

18 ~~(e) The claimant made an unsuccessful attempt to access the telephone initial claims~~
19 ~~system during a week when the system was inoperable or was unavailable for more than 40% of~~
20 ~~the time the system is scheduled to be staffed by claimstakers during that week. The times during~~
21 ~~which the system is inoperable or unavailable will be measured as follows:~~

1 ~~1. Each day during the week will be divided into half hour time periods, beginning with~~
2 ~~the time when the system is first scheduled to be staffed by claimstakers and ending with the~~
3 ~~time when the system is scheduled to no longer be staffed by claimstakers.~~

4 ~~2. The system will be considered to be inoperable or unavailable for any such half hour~~
5 ~~time period during which a busy signal occurs or during which the system is not operating.~~

6 (f) Other exceptional circumstances over which the claimant has no control.

7 **DWD 129.03 Backdating of benefit year; circumstances.** Under s. 108.06 (2) (bm),
8 Stats., a claimant's benefit year begins on the Sunday of the week in which the claimant meets
9 the requirements to establish a benefit year under s. DWD 129.02, except that the department
10 may, by rule, permit a claimant to begin a benefit year ~~prior to~~before that time. The department
11 shall permit the backdating of a benefit year if an exceptional circumstance exists. Exceptional
12 circumstances include, ~~but are not limited to,~~ those listed in s. DWD 129.01 (4).

1 **DWD 140.001 Definitions. (1)** IN GENERAL. Except as provided in sub. (2), the
2 definitions in ch. DWD 100 apply to this chapter.

3 (2) In this chapter. Notwithstanding ch. DWD 100, the following words and phrases
4 have the designated meanings:

5 ~~(a)~~ a) "Affiant" means a person who swears to an affidavit.

6 ~~(a)~~ b) "Affidavit" means a written statement sworn under oath before a notary public or
7 other person authorized by law to verify sworn statements and must be based upon personal
8 knowledge or upon information and belief.

9 (c) "Agent state" means any state other than Wisconsin in which a person files a claim
10 for unemployment benefits from the state of Wisconsin.*

11 (d) "Appeal tribunal" means an individual designated under s. 108.09 (3), Stats., to
12 conduct hearings arising under ch. 108, Stats., and s. 103.06 (6), Stats.

13 ~~(a)~~ e) "Division" means the unemployment insurance division of the department of
14 workforce development.

15 (f) "Ease of access" means the physical characteristics of a building which allow a
16 person with a temporary or permanent incapacity or disability to enter, circulate within and leave
17 the building and to use the public toilet facilities and passenger elevators in the building without
18 assistance.*

19 (g) "Hearing office" means an office of the ~~unemployment insurance~~ division of the
20 ~~department of workforce development which~~ that is responsible for scheduling and conducting
21 hearings arising under ch. 108, Stats., and s. 103.06 (6), Stats.*

22 ~~(b)~~ h) "Representative" means any attorney or agent who notifies the department ~~has~~
23 ~~notice is~~ they are authorized to represent any party.

1 **DWD 140.01 Hearings and appeals. (1) APPEAL RIGHTS.** Any party to a

2 determination issued under ~~ss. s. 108.09, 108.095~~ or 108.10, Stats., has the right to an appeal. An
3 appeal as to any matter in a determination is a request for hearing and shall be filed with ~~the~~
4 ~~department~~ an appeal tribunal by the appellant or its representative. An appeal is filed with an
5 appeal tribunal when it is submitted to a hearing office or public employment office in an agent
6 state under sub. (2) (b). Each determination issued under ~~ss. s. 108.09, 108.095~~ or 108.10, Stats.,
7 shall specify the time limit within which any appeal is required to be filed ~~with the department~~
8 under ch. 108, Stats.

9 **(2) TIME LIMIT AND METHOD FOR FILING.** (a) An appeal shall be filed after a copy of the

10 determination is electronically delivered, mailed or given to a party, whichever first occurs, as
11 specified under ~~ss. s. 108.09, 108.095~~ or 108.10, Stats. If a party first receives a determination
12 after the statutory appeal period has expired and through no fault of that party, the statutory
13 appeal period as specified under ~~ss. s. 108.09, 108.09~~ or 108.10, Stats., shall extend from the date
14 the party receives the determination. An appeal received within these time limits is timely filed.
15 If the deadline for filing an appeal falls on a Saturday, Sunday, any of the holidays enumerated
16 under ss. 230.35 (4) (a) and 995.20, Stats., or any other day on which mail is not delivered by
17 the United States postal service, then the deadline shall be extended to include the next business
18 day.

19 (b) An appeal shall be filed with any of the following:

- 20 ~~1. An unemployment insurance office.~~
21 2. A hearing office.
22 ~~3. The central administrative office of the bureau of legal affairs, unemployment~~
23 ~~insurance division, department of workforce development.~~

1 4. An appeal by an interstate claimant may ~~also~~ be filed at a public employment office in
2 the agent state under s. 108.14 (8), Stats., in the manner prescribed for timely filing with the
3 department under this section.

4 (c) An appeal shall be considered filed on the earliest of the following dates:

5 1. The date ~~on which the department~~ a hearing office actually receives the written appeal.

6 2. If the appeal was mailed and bears only a United States postal service postmark, on the
7 date of that postmark.

8 3. If the appeal was mailed and bears both a United States postal service postmark and a
9 private meter mark, on the date of the United States postal service postmark.

10 4. If the appeal was mailed and bears only a private meter mark, on the date of the of the
11 private meter mark.

12 5. If the appeal was mailed and bears no United States postal service postmark, no private
13 meter mark, or an illegible mark, 2 business days ~~prior to~~ before the date the appeal was actually
14 received by ~~the department~~ a hearing office.

15 6. If the appeal was sent using a delivery service other than the United States postal
16 service, on the date ~~the department~~ a hearing office actually receives the appeal.

17 7. If the appeal was ~~faxed~~ filed by facsimile transmission, ~~the date of transmission~~
18 ~~recorded on the faxed appeal. If the fax is received without a date of transmission recording, the~~
19 ~~date~~ the facsimile is actually received by ~~the department~~ a hearing office is presumed to be the
20 date of transmission.

21 8. The date the department receives an electronically-filed appeal.

22 Note: ~~The address for the central administrative office of the bureau of legal affairs,~~
23 ~~unemployment insurance division, department of workforce development, is 201 E. Washington,~~
24 ~~room 331X, P.O. Box 8942, Madison, Wisconsin 53708-8942.~~

25

1 **DWD 140.04 Failure to file a timely appeal. (1)** The hearing office may schedule a
2 hearing on the question of whether a late appeal was for a reason beyond the appellant's control.
3 The hearing office may also schedule a provisional hearing on any matter in the determination at
4 the same time as the hearing on the appellant's late appeal.

5 (2) The ~~administrative law judge~~ appeal tribunal shall issue a decision which makes
6 ultimate findings of fact and conclusions of law as to whether or not the appellant's late appeal
7 was for a reason beyond the appellant's control. If the ~~administrative law judge~~ appeal tribunal
8 decides this question in favor of the appellant, the same or another ~~administrative law judge~~
9 appeal tribunal shall then make ultimate findings of fact and conclusions of law on the merits of
10 the case. If the ~~administrative law judge~~ appeal tribunal decides that the late appeal was late for a
11 reason within the appellant's control, the ~~administrative law judge~~ appeal tribunal shall dismiss
12 the appeal.

13 **DWD 140.05 Withdrawal of appeal and retraction. (1)** An appellant may withdraw
14 ~~its~~ an appeal at any time before the issuance of a decision on the merits by notifying the hearing
15 office or by choosing not to continue to participate in a hearing. The ~~administrative law judge~~
16 appeal tribunal shall issue a withdrawal decision after determining that an appeal has been
17 withdrawn.

18 (2) An appellant may submit a request to retract its withdrawal and reinstate ~~its~~ an
19 appeal. The retraction request shall be in writing and state ~~a~~ the reason for the request. The
20 ~~administrative law judge~~ appeal tribunal may not grant a request to retract a withdrawal unless
21 the request establishes good cause for the retraction and is received within 21 days after the
22 withdrawal decision was electronically delivered or mailed to the appellant.

1 (3) If the hearing office receives a ~~timely~~ retraction request before the issuance of a
2 withdrawal decision and the request establishes good cause for the retraction, the ~~administrative~~
3 ~~law judge~~ appeal tribunal shall acknowledge the request ~~by letter~~ in writing to the appellant. If a
4 timely retraction request is received by the hearing office after issuance of the withdrawal
5 decision and the request establishes good cause for the retraction, the ~~administrative law judge~~
6 appeal tribunal shall issue a decision setting aside the withdrawal decision and the hearing office
7 shall schedule another hearing.

8 (4) If the hearing office receives a retraction request before or after the issuance of a
9 withdrawal decision and the request does not establish good cause for the retraction, the
10 ~~administrative law judge~~ appeal tribunal shall deny the request ~~by letter~~ in writing to the
11 appellant.

12 **DWD 140.06 Notice of hearing; contents; to whom sent; issues not on notice of**
13 **hearing; consolidation of issues.** (1) The ~~department~~ hearing office shall schedule a hearing at
14 the earliest feasible time after the appeal is received. ~~The hearing office shall mail a notice of~~
15 ~~hearing to each party.~~

16 (2) The notice of hearing shall state the time and place of the hearing, the department's
17 statutory authority for convening the hearing and the issues to be heard. The hearing office shall
18 electronically deliver or mail the notice of hearing to the last-known address of each party not
19 less than 6 calendar days before the hearing, unless all parties waive the notice requirement.

20 (3) The ~~administrative law judge~~ appeal tribunal may receive evidence and render a
21 decision on issues not listed on the notice of hearing if ~~each party is so~~ all parties are notified at
22 the hearing and ~~does~~ do not object.

1 (4) The hearing office may consolidate, for hearing or decision, issues involving the
2 same parties or issues involving more than one appellant or respondent and arising out of the
3 same or similar circumstances.

4 **DWD 140.07 Prehearing conference. (1)** After an appeal is filed, ~~an administrative~~
5 ~~law judge~~ the appeal tribunal may direct the parties to appear before the ~~administrative law judge~~
6 appeal tribunal for a prehearing conference. In determining whether a prehearing conference is
7 necessary, the ~~administrative law judge~~ appeal tribunal may consider any of the following
8 criteria:

- 9 (a) The complexity of issues.
- 10 (b) The number of possible witnesses.
- 11 (c) Documentary evidence.
- 12 (d) The number of parties involved.
- 13 (e) Other facts which would tend to prolong the hearing.

14 (2) Prehearing conferences may be conducted in person ~~or~~, by telephone or by
15 videoconference. The date and time for the prehearing conference shall be set by the hearing
16 office. Parties shall have at least 10 ~~days~~ calendar days' notice of the prehearing conference. The
17 ~~administrative law judge~~ appeal tribunal may adjourn the conference or order additional
18 prehearing conferences.

19 (3) Following the prehearing conference, the ~~administrative law judge~~ appeal tribunal
20 shall issue an order with respect to the course of the conference on any ~~or all~~ of the following
21 matters:

- 22 (a) Definition and simplification of the issues of fact and law.

1 (b) Stipulations of fact and agreements concerning the identity of or authenticity of
2 documents.

3 (c) Limitation of the number of witnesses and the exchange of the names of witnesses.

4 (d) Stipulations relating to alternative methods of evidence submission and acceptance.

5 (e) Such other matters as may aid in the disposition of the appeal.

6 (4) If a party fails to appear or is unprepared to participate in a prehearing conference,
7 the ~~administrative law judge~~ appeal tribunal may conduct a conference and enter the prehearing
8 order without participation by the party.

9 **DWD 140.08 Postponement of hearings.** (1) A party who requests a postponement
10 of a hearing shall ~~make the request known to~~ notify the hearing office as soon as the party
11 becomes aware that a postponement is necessary. Unreasonable delay in requesting a
12 postponement may be the basis for denial of the request.

13 (2) No postponements may be granted for the mere convenience of a party. All parties
14 are expected to arrange time off from their everyday affairs, including management duties, work,
15 and school, to attend hearings. The hearing office or the ~~administrative law judge~~ appeal tribunal
16 scheduled to conduct the hearing may grant a postponement only for an exceptional reason. An
17 exceptional reason may include any of the following ~~such as the following~~:

18 (a) Serious illness of a party or a necessary witness;

19 (b) Death of an immediate family member of a party or a necessary witness;

20 (c) Weather conditions on the day of the hearing which make it hazardous for a party or
21 a necessary witness to travel to the hearing location;

22 (d) Transportation difficulties arising suddenly which prevent a party or a necessary
23 witness from traveling to the hearing location;

1 (e) A business meeting of a necessary witness which was scheduled ~~prior to~~ before
2 receipt of the hearing notice and ~~which cannot be; re-scheduled;~~ rescheduled.

3 (f) Commitment of a representative which was scheduled ~~prior to his or her~~ before being
4 retained and which cannot be ~~re-scheduled~~ rescheduled, if the party contacted the representative
5 within a reasonable time after receipt of the hearing notice; ~~or,~~

6 (g) An unavoidable delay on the day of the hearing which prevents the ~~administrative~~
7 ~~law judge~~ appeal tribunal from conducting the hearing as scheduled.

8 **DWD 140.09 Access to hearing files; limited discovery; inspection of records. (1)**

9 PRE-HEARING STAGE. (a) The hearing office shall compile a hearing file for every case in which
10 a request for hearing has been received which shall contain the papers, documents and
11 departmental records relating to the issue of the hearing. ~~Prior to~~ Before the scheduled date of the
12 hearing, a party to a hearing may inspect the hearing file and procure copies of file contents
13 during regular hearing office hours at the hearing office or other convenient location as
14 ~~determined~~ approved by the hearing office. If requested, the hearing office may electronically
15 deliver or mail copies of file contents to a party. The department may allow such inspection or
16 release of file contents to a party's representative, union agent or legislator ~~only if that individual~~
17 ~~indicates by a written or verbal statement that the individual has authorization from the party, as~~
18 prescribed under s. DWD 149.03 (2).

19 (b) Unless the ~~administrative law judge~~ appeal tribunal orders otherwise, the sole means
20 of discovery available to a party or party's representative ~~prior to~~ before a hearing is inspection of
21 the hearing file and procurement of copies of file contents. The ~~administrative law judge~~ appeal
22 tribunal may also order a prehearing conference under s. DWD 140.07. The provisions of ch.
23 804, Stats., do not apply to hearings under ss. 108.09, 108.095 and 108.10, Stats.

1 (c) The ~~administrative law judge~~ appeal tribunal may deny a request to inspect the
2 hearing file or procure copies of file contents on the day of the hearing if ~~such~~ the inspection or
3 procurement would delay or ~~otherwise~~ interfere with the hearing.

4 (2) HEARING STAGE. At the hearing, evidence and exhibits are open to inspection by any
5 party or party's representative except that the ~~administrative law judge~~ appeal tribunal may
6 conduct a closed inspection of evidence and exhibits if the interests of justice so require. The
7 ~~judge~~ appeal tribunal may sequester from the hearing ~~room~~ any person, party or representative as
8 part of the closed inspection. The ~~judge~~ appeal tribunal may also issue a protective order to
9 prohibit the parties ~~and their representatives~~ or the parties' representatives from disclosing any
10 evidence and exhibits listed as confidential in the protective order if the interests of justice so
11 require.

12 (3) POST HEARING STAGE. After the hearing is concluded, a party or a party's
13 representative may inspect any hearing file contents that the party or party's representative may
14 inspect under subs. (1) and (2), and also the hearing recording, written synopsis of testimony,
15 and any transcript that is prepared at the department's direction. Any person who is not a party or
16 party's representative at the hearing may inspect only the following and only if ~~social security~~
17 ~~numbers have~~ personally identifiable information, as defined in s. 19.62 (5), Stats., has been
18 redacted from the documents:

19 (a) The initial determination.

20 (b) The exhibits submitted and marked as exhibits at the hearing, whether or not received
21 by the ~~administrative law judge~~ appeal tribunal.

22 (c) The appeal tribunal decision issued for the hearing.

23 (d) The hearing recording.

- 1 (e) The written synopsis of testimony.
- 2 (f) The transcript of the testimony, if one is prepared at the department's direction.

3 **Note:** Under s. 19.62 (5) "Personally identifiable information" means information that
4 can be associated with a particular individual through one or more identifiers or other
5 information or circumstances.

6

7 **(4) CONFIDENTIALITY OF CERTAIN RECORDS AT ALL STAGES OF HEARING.**

8 (a) Notwithstanding subs. (1) to (3), neither an employing unit which is a party to a
9 hearing nor its representative may inspect:

10 1. The ~~worker's~~ individual's unemployment insurance record as that record relates to
11 work for another employing unit unless ~~an administrative law judge~~ the appeal tribunal approves
12 a request.

13 2. Department memoranda concerning unemployment tax litigation strategy.

14 3. The investigation reports of department auditors concerning the status and liability of
15 employing units under ch. 108, Stats.

16 (b) Notwithstanding subs. (1) to (3), the ~~administrative law judge~~ appeal tribunal may
17 declare all or parts of documents or other material ~~which~~ that contains records or preserves
18 information ~~and which~~ that the ~~administrative law judge~~ appeal tribunal examined in a closed
19 inspection under sub. (2) to be, in whole or in part, confidential and closed to inspection by one
20 or more parties, representatives or other persons.

21 (c) Notwithstanding subs. (1) to (3), evidence and exhibits declared to be confidential
22 under a protective order issued by the ~~administrative law judge~~ appeal tribunal under sub. (2) are
23 closed to inspection as stated in the order.

24 (d) Notwithstanding subs. (1) to (3), no party, party's representative or other person,
25 except a statutory reviewing body, as specified under ss. 108.09, 108.095 and 108.10, Stats., may

1 inspect the ~~handwritten~~ notes made by the ~~administrative law judge~~ appeal tribunal at the
2 hearing.

3 **DWD 140.10 Subpoenas; issuance and service; modification. (1)** Only the
4 department, an ~~administrative law judge~~ appeal tribunal or a party's attorney of record may issue
5 a subpoena to compel the attendance of any witness or the production of any books, papers,
6 documents or other tangible things. A party ~~who desires that the department issue~~ may request,
7 as soon as possible after receipt of the hearing notice, that the appeal tribunal issue a subpoena
8 ~~shall make the request known to the hearing office as soon as possible.~~ Subpoenas issued by the
9 department or an ~~administrative law judge~~ appeal tribunal shall be issued on completed
10 department forms ~~and may not be issued blank.~~

11 (2) Subpoenas shall only be issued when necessary to ensure fair adjudication of the
12 ~~issue or~~ issues of the hearing. The department or ~~administrative law judge~~ an appeal tribunal may
13 refuse to issue any subpoena if any of the following occur:

14 (a) The evidence sought is not relevant or material.

15 (b) The evidence sought is hearsay.

16 (c) The evidence sought is unduly cumulative or repetitive of other evidence to be
17 presented by the party.

18 (d) The evidence requested discloses business secrets.

19 (3) A party whose request for a subpoena has been denied may, at the hearing, request
20 the ~~administrative law judge who conducts the hearing~~ presiding appeal tribunal to issue the
21 subpoena. If the ~~administrative law judge~~ appeal tribunal grants the request for a subpoena, the
22 ~~judge~~ appeal tribunal may adjourn the hearing to allow sufficient time for service of and
23 compliance with the subpoena.

1 (4) The ~~administrative law judge~~ appeal tribunal scheduled to conduct a hearing for
2 which a subpoena has been issued may quash or modify the subpoena if the ~~administrative law~~
3 ~~judge~~ appeal tribunal determines that the witness or tangible things subpoenaed are not necessary
4 to a fair adjudication of the issues of the hearing or that the subpoena has not been served ~~in the~~
5 ~~proper manner~~ as required under sub. (5).

6 (5) The party at whose request a subpoena is issued shall serve the subpoena as provided
7 under ch. 885 and s. 805.07 (5), Stats., and pay the witness fees and travel expenses specified
8 under s. DWD 140.20 to the subpoenaed witness at or before the time of service. An attorney
9 issuing a subpoena shall comply with the requirements of s. 108.14 (2m), Stats.

10 (6) The department may subpoena a witness for a party if the party is unable to prepay
11 the witness fees and travel expenses. The department shall pay a witness as provided under s.
12 DWD 140.20.

13 (7) If any witness fails to comply with a subpoena issued under this section, the
14 department may petition a judge or court commissioner for a writ of attachment under s. 885.12,
15 Stats.

16 **140.11 Telephone and videoconference hearings.** (1) The ~~department~~ appeal tribunal
17 may conduct hearings in whole or in part by telephone or videoconference when it is impractical
18 for the ~~department~~ appeal tribunal to conduct an in-person hearing, when necessary to ensure a
19 prompt hearing or when one or more of the parties would be required to travel an unreasonable
20 distance to the hearing location. When 2 or more parties are involved, the evidence shall be
21 presented during the same hearing unless the ~~department~~ appeal tribunal determines that it is
22 impractical to do so. A party scheduled to appear by telephone or videoconference may appear in
23 person at the ~~administrative law judge's~~ appeal tribunal's location. The ~~department~~ appeal

1 tribunal may postpone or adjourn a hearing initially scheduled as a telephone or videoconference
2 hearing and reschedule the hearing for an in-person appearance if circumstances make it
3 impractical to conduct a telephone or videoconference hearing.

4 (2) If the appellant is scheduled to testify by telephone or videoconference and fails to
5 provide the hearing office with the appellant's telephone number or the name and telephone
6 number of the appellant's ~~authorized~~ representative or fails to connect to the videoconference
7 within a reasonable time ~~prior to~~ before the hearing and if the ~~administrative law judge appeal~~
8 tribunal has made reasonable attempts to contact the appellant, the ~~administrative law judge~~
9 appeal tribunal may dismiss the appeal. If the respondent fails to provide the hearing office with
10 the telephone number or the name and telephone number of the respondent's ~~authorized~~
11 representative ~~prior to~~, or the representative fails to connect to the videoconference before the
12 hearing, and if the ~~administrative law judge appeal tribunal~~ tribunal has made reasonable attempts to
13 contact the respondent, the ~~administrative law judge appeal tribunal~~ tribunal may proceed with the
14 hearing.

15 (3) If the appellant is scheduled to appear by telephone or videoconference, the
16 ~~administrative law judge appeal tribunal~~ shall, within ~~15~~ 10 minutes after the starting time for the
17 hearing, attempt to place at least two calls to the appellant's telephone number of record or the
18 telephone number furnished to the hearing office. One of the calls shall be attempted at or near
19 the end of the ~~15~~ 10 minute period unless the ~~administrative law judge appeal tribunal~~
20 determines after reasonable efforts that the appellant cannot be reached at that number. If, within
21 ~~15~~ 10 minutes after the starting time for the hearing, neither the appellant nor the appellant's
22 ~~authorized~~ representative can be reached at the telephone number of record or the telephone

1 number furnished to the hearing office, then the ~~administrative law judge appeal tribunal~~ may
2 dismiss the appeal.

3 (4) If the respondent is scheduled to appear by telephone or videoconference, the
4 ~~administrative law judge appeal tribunal~~ may proceed with the hearing if, within ~~5~~ 10 minutes
5 after the starting time for the hearing, neither the respondent nor the respondent's ~~authorized~~
6 representative can be reached at the respondent's telephone number of record or the telephone
7 number furnished to the hearing office. The ~~administrative law judge appeal tribunal~~ may refuse
8 to allow a respondent to testify if the ~~administrative law judge appeal tribunal~~ is unable to reach
9 the respondent or the respondent's ~~authorized~~ representative and neither the respondent nor the
10 respondent's ~~authorized~~ representative have contacted the hearing office within ~~45~~ 10 minutes
11 after the starting time for the hearing. The respondent ~~shall be~~ is considered to have failed to
12 appear for the hearing if the ~~administrative law judge appeal tribunal~~ so refuses. The respondent
13 may ~~appeal-petition~~ such a finding under ~~this chapter~~ s. 108.09 (6), Stats.

14 (5) All parties shall remain available for the hearing up to one hour after the scheduled
15 starting time in the event ~~the administrative law judge is unable to timely place a telephone call~~
16 ~~due to~~ of a delay in the prior hearings or other unforeseen circumstances. If the respondent
17 cannot be contacted by telephone or connect by videoconference within one hour of the
18 scheduled starting time of the hearing, the ~~administrative law judge appeal tribunal~~ may proceed
19 with the hearing if the appellant has appeared. If the appellant cannot be contacted within one
20 hour of the scheduled starting time of the hearing, the ~~administrative law judge appeal tribunal~~
21 may dismiss the appeal.

22 (6) The hearing office shall mark and electronically deliver or mail the potential exhibits
23 for a telephone or videoconference hearing from the hearing file to ~~both~~ all parties as soon as

1 possible ~~prior to~~ before the date of the telephone or videoconference hearing. A party may
2 submit additional documents as potential exhibits by simultaneously electronically delivering or
3 mailing those documents to the hearing office and copies to ~~the other~~ each party. A party may
4 submit potential exhibits which are not documents in the manner designated by the hearing office
5 to which the case is assigned. The ~~administrative law judge conducting the hearing~~ appeal
6 tribunal may refuse to consider any documents not received by the hearing office or ~~the other~~
7 each party ~~within~~ at least 3 days ~~prior to~~ before the hearing.

8 **DWD 140.12 Stipulations.** (1) After an appeal is filed, the parties may stipulate to
9 relevant facts and request that the stipulation be used in lieu of a hearing. The ~~administrative law~~
10 ~~judge appeal tribunal~~ may accept the stipulation in lieu of a hearing only if all of the following
11 occur:

12 (a) The parties entered into the stipulation voluntarily;
13 (b) The stipulation contains all the relevant and necessary facts to resolve the issues as
14 determined by the ~~administrative law judge appeal tribunal~~.

15 (c) The stipulation is in writing and signed, or electronically executed, by the parties.

16 (2) If the ~~administrative law judge appeal tribunal~~ does not accept the stipulation of the
17 parties, a hearing shall be held unless the ~~administrative law judge appeal tribunal~~ provides the
18 parties with additional opportunities to submit an acceptable stipulation.

19 (3) At the hearing, the ~~administrative law judge appeal tribunal~~ may accept a partial
20 stipulation of relevant facts not in dispute if the stipulation is entered into the hearing record and
21 is agreed to on the record by the parties.

22 **DWD 140.13 Parties who fail to appear; general provisions.** All parties who are
23 required to appear in person shall appear at the hearing location no later than the starting time

1 listed on the notice of hearing. If the appellant does not appear within ~~15~~ 10 minutes after the
2 scheduled starting time of the hearing, the ~~administrative law judge~~ appeal tribunal may dismiss
3 the appeal. If the respondent does not appear within ~~5~~ 10 minutes after the scheduled starting
4 time of the hearing and the appellant is present, the ~~administrative law judge~~ appeal tribunal may
5 commence the hearing. The provisions of s. 108.09 (4), Stats., apply ~~as to the rights of the parties~~
6 ~~and procedures to be followed with regard to the failure of either~~ when a party fails to appear at a
7 hearing under this chapter.

8 **DWD 140.15 Hearing procedure; order of witnesses; public hearing and exclusion**

9 **of certain persons; oral decisions.** (1) All testimony shall be given under oath or affirmation.
10 The ~~administrative law judge~~ appeal tribunal shall administer the oath or affirmation to each
11 witness. No person who refuses to swear or affirm the veracity of ~~his or her~~ their testimony may
12 testify. Each party shall be given an opportunity to examine and cross-examine witnesses. The
13 ~~administrative law judge~~ appeal tribunal may limit ~~the testimony to only those matters that are~~
14 disputed. The appeal tribunal may not allow into the record, either on direct or cross-examination
15 of witnesses so as not to unduly burden the record, redundant, irrelevant or repetitive testimony.

16 (2) The ~~administrative law judge~~ appeal tribunal has the responsibility to develop the
17 facts and may call and examine any witness that ~~he or she~~ the appeal tribunal deems necessary
18 ~~and may also,~~ determine the order ~~in which~~ that witnesses are called and the order of
19 examination of each witness. The ~~administrative law judge~~ appeal tribunal may deny the request
20 of any party to examine a witness adversely. The ~~administrative law judge~~ appeal tribunal may
21 hear closing arguments from the parties ~~but~~ and may limit the time of such arguments. The
22 ~~administrative law judge~~ appeal tribunal may adjourn and continue a hearing to a future date
23 when the hearing cannot be completed in the time scheduled.

1 (3) The ~~administrative law judge~~ appeal tribunal may, upon motion of a party or upon
2 the ~~judge's appeal tribunal's~~ own motion, exclude witnesses from the hearing room until called to
3 testify and may instruct the excluded witnesses not to discuss the matter being heard until the
4 hearing has been concluded. The ~~administrative law judge~~ appeal tribunal may close the hearing
5 to any person to the extent necessary to protect the interests and rights of either party to a fair
6 hearing. This subsection does not authorize exclusion of a party who is a natural person; one
7 officer or employee of a party which is not a natural person; or a person whose presence is
8 shown by a party to be essential to the presentation of the party's case.

9 (4) The ~~administrative law judge~~ appeal tribunal may exclude any person who disrupts
10 the hearing. The ~~administrative law judge~~ appeal tribunal may recess or adjourn the hearing if
11 any person disrupts the hearing. The ~~administrative law judge~~ appeal tribunal may prohibit any
12 excluded representative from representing a party at that hearing or any continuance. The
13 ~~administrative law judge~~ appeal tribunal shall offer a party whose representative has been
14 excluded or refused admittance an opportunity to secure another representative.

15 **DWD 140.16 Admissibility of evidence; administrative notice.** (1) Statutory and
16 common law rules of evidence and rules of procedure applicable to courts of record are not
17 controlling with respect to hearings. The ~~administrative law judge~~ appeal tribunal shall secure the
18 facts in as direct and simple a manner as possible. Evidence having reasonable probative value is
19 admissible, ~~but irrelevant.~~ Irrelevant, immaterial and ~~repetitious~~ repetitive evidence is not
20 admissible. Hearsay evidence is admissible if it has reasonable probative value but no issue may
21 be decided solely on hearsay evidence unless the hearsay evidence is admissible under ch. 908,
22 Stats.

1 (2) The ~~administrative law judge~~ appeal tribunal may take administrative notice of any
2 department records, generally recognized fact or established technical or scientific fact having
3 reasonable probative value but the parties shall be given an opportunity to object and to present
4 evidence to the contrary before the ~~administrative law judge~~ appeal tribunal issues a decision.

5 **DWD 140.17 Form of decision.** (1) The ~~administrative law judge~~ appeal tribunal may
6 issue an oral decision at the hearing on the matters at issue but the ~~judge~~ appeal tribunal shall
7 confirm the oral decision with a written decision. ~~The only~~ Only the written decision ~~which is~~
8 ~~appealable is the written decision.~~

9 (2) The written decision of the ~~administrative law judge~~ appeal tribunal shall contain
10 ultimate findings of fact and conclusions of law. The findings of fact shall consist of concise and
11 separate findings necessary to support the conclusions of law. The decision shall contain the
12 reasons and rationale which follow from the findings of fact to the conclusions of law.

13 (3) The decision of the ~~administrative law judge~~ appeal tribunal shall specify the time
14 limit ~~within which any~~ to file a petition for commission review ~~is required to be filed~~ with the
15 ~~department or the commission under ch. 108 s. 108.09 (6), 108.095 (6) or 108.10 (2), Stats., and~~
16 ~~ss. LIRC 1.02 and 2.01.~~

17 **DWD 140.18 Fees for representation of parties.** No representative ~~attorney~~ may
18 charge or receive from a claimant for representation in a dispute concerning benefit eligibility or
19 liability for overpayment of benefits, or in any administrative proceeding under ch. 108, Stats.,
20 concerning such a dispute, a fee which, in the aggregate, is more than 10% of the maximum
21 benefits at issue unless the department has approved a specified higher fee before the claimant is
22 charged. When a request for waiver of the 10% limitation is received, the department shall
23 consider whether extended benefits or any other state or federal unemployment benefits are at

1 issue. Any request for waiver of the 10% limitation on fees shall be submitted in writing to the
2 central administrative office of the bureau of legal affairs, ~~unemployment insurance in the~~
3 ~~division, department of workforce development. The department is not authorized under.~~ Under
4 s. 108.13, Stats., ~~to~~ the department shall not assign any past or future benefits for the collection
5 of ~~attorney~~ representative fees.

6 Note: ~~The address of the central administrative office of the bureau of legal affairs,~~
7 ~~unemployment insurance division, department of workforce development is;~~ Any request for a
8 waiver under this section shall be submitted in writing to: Department of Workforce
9 Development, Division of Unemployment Insurance Central Administrative Office of the Bureau
10 of Legal Affairs, 201 E. Washington Avenue, P.O. Box 8942, Madison, Wisconsin 53708-8942.

11 **DWD 140.19 Departmental assistance for persons with disabilities and hearing**

12 **impairments. (1)** The department may, at its own expense, provide a person to assist a person
13 with a hearing impairment in communicating at a hearing, if the person with a hearing
14 impairment notifies the ~~department~~ hearing office within a reasonable time ~~prior to~~ before the
15 date of the hearing and the ~~department~~ appeal tribunal determines that the impairment is of a type
16 which may hinder or prevent the person from communicating.

17 (2) If the person with a hearing impairment makes arrangements on ~~his or her~~ their own
18 behalf to have a person assist ~~him or her~~ them in communicating, the department may reimburse
19 such person for fees and travel expenses at the rate specified for interpreters under s. DWD
20 140.20, if the ~~department~~ appeal tribunal determines that such person is necessary to assist the
21 person with the hearing impairment in communicating.

22 (3) The ~~department~~ hearing office shall attempt to schedule hearings in buildings which
23 have ease of access for any person with a temporary or permanent incapacity or disability. The
24 ~~administrative law judge~~ appeal tribunal may reschedule any hearing in which such a person who

1 is a party or a necessary witness to the hearing does not have ease of access into the building ~~in~~
2 ~~which~~ where the hearing is scheduled.

3 **DWD 140.20 Witness and interpreter fees; travel expenses. (1)** The ~~administrative~~
4 ~~law judge~~ appeal tribunal may authorize reimbursement by the department to any witness
5 subpoenaed by a party or any party who has already made reimbursement to such a witness for
6 witness fees and travel expenses. The ~~administrative law judge~~ appeal tribunal may also require
7 reimbursement for an interpreter who is necessary to interpret testimony of a witness offered at
8 the hearing.

9 (2) The department may refuse to reimburse a witness subpoenaed on behalf of a party
10 other than the department for witness fees or travel expenses if the ~~administrative law judge~~
11 appeal tribunal determines that the testimony was not relevant or material to the issue of the
12 hearing.

13 (3) No witness subpoenaed on behalf of or requested to appear by the department is
14 entitled to prepayment of witness fees or travel expenses but any such witness who appears at the
15 hearing shall be paid the fees and travel expenses provided under sub. (4).

16 (4) The fees of witnesses and interpreters are:

17 (a) For witnesses, \$16.00 per day.

18 (b) For expert witnesses, the rate set under s. 814.04 (2), Stats., plus the fees under pars.

19 (a) and (d) .

20 (c) For interpreters, \$35.00 per half day, or the contracted amount.

21 (d) For travel expenses, 20 cents per mile from the witness' or interpreter's residence in
22 this state to the hearing site and back or, if without the state, from the point at which the witness

1 passes the state boundary to the hearing site, and back or, if without the state, from the point at
2 which the witness passes the state boundary to the hearing site, and back.

3 **DWD 140.21 Transcripts and recordings. (1)** Copies of hearing transcripts may be
4 obtained from the ~~labor and industry review~~ commission under s. LIRC 1.045.

5 (2) Under s. 108.09 (5), Stats., if testimony at a hearing is recorded, the department may
6 furnish a person with a copy of the hearing recording ~~in lieu of a transcript~~. The fee is \$7.00 per
7 ~~compact disk~~ electronic recording. The department may waive this fee if the department is
8 satisfied that the person is unable to pay.

9 **Note:** ~~Requests for To request~~ hearing recordings and waivers of fees ~~may be made to~~
10 contact the Department of Workforce Development, Division of Unemployment
11 Insurance, Bureau of Legal Affairs, Unemployment Insurance Division, Department
12 of Workforce Development, 201 E. Washington Avenue, P.O. Box 8942, Madison,
13 Wisconsin 53708-8942 or telephone (608) 266-3174.

14
15 **DWD 140.22 Standard affidavit form. (1)** IN GENERAL. (a) Personal knowledge is
16 the recognition of facts through firsthand observation or experience.

17 (b) Information and belief is not based on firsthand observation or experience but is
18 based on secondhand information that is sworn as true.

19 (c) The department's standard affidavit form for appeals under ss. 108.09, 108.095 and
20 108.10, Stats., is available at the department's website or by requesting a copy from the hearing
21 office.

22 **Note:** To obtain the department's standard affidavit form, call (608) 266-8010 or visit the
23 website https://dwd.wisconsin.gov/dwd/forms/ui/ucl_17500_e.htm.

24
25 ~~Note: The standard affidavit form can be found at the department's website:~~
26 ~~<http://www.dwd.wisconsin.gov> or by contacting any of the following hearing offices:~~

27 ~~Eau Claire Hearing Office~~
28 ~~715 S. Barstow Street, Suite #1~~
29 ~~Eau Claire, WI 54701~~

30
31 ~~Fox Valley Hearing Office~~

1 54 Park Place, Suite 800
2 Appleton, WI 54914
3
4 ~~Madison Hearing Office~~
5 ~~3319 W. Beltline Hwy., Room E308~~
6 ~~P.O. Box 7975~~
7 ~~Madison, WI 53707-7975~~

8
9 ~~Milwaukee Hearing Office~~
10 ~~819 N. 6th Street, Room 382~~
11 ~~Milwaukee, WI 53203~~

12
13 (2) AFFIDAVIT REQUIREMENTS.

14 (a) An affidavit must contain all of the following information:

15 1. The name and address of the affiant.

16 2. The signature or mark of the affiant.

17 3. The date the statement was sworn.

18 4. The signature or mark of the notary public or other person authorized by law to verify
19 sworn statements.

20 5. The county and state where the statement was sworn.

21 (b) An affidavit based upon information and belief must state the source of the
22 information and the grounds for the belief.

23 (3) PROCEDURE. (a) A party may submit an affidavit as a potential exhibit by
24 simultaneously delivering the affidavit to the hearing office and electronically delivering or
25 mailing a copy to ~~the other each~~ party. The ~~administrative law judge~~ appeal tribunal conducting
26 the hearing may refuse to consider an affidavit not received by the hearing office and ~~the other~~
27 each party at least 3 days ~~prior to~~ before the hearing.

28 (b) At the hearing, the ~~administrative law judge~~ appeal tribunal may accept the affidavit
29 as evidence as provided under s. DWD 140.16.

To: Unemployment Insurance Advisory Council
From: Andy Rubsam
Cc: Janell Knutson
Date: March 15, 2018
Re: Proposal to add exclusion for students employed as seasonal camp counselors

Under Wisconsin's unemployment insurance law, "employment" means "any service...performed by an individual for pay."¹ But, a variety of services are excluded from the state definition of "employment."² If services are excluded from the definition of "employment" in state law, the department will exclude the wages associated with those services when calculating a claimant's unemployment insurance benefits. But, the claimant may qualify for benefits if they have other services included in the definition of "employment." If services are excluded from the state and federal definitions of "employment," an employer will not be assessed state and federal unemployment taxes for those wages.³

Not every federal "employment" exclusion exists in Wisconsin law. For example, under federal law, the services of a full-time student employed by an organized camp may be excluded from the federal definition of "employment."⁴ In order to qualify for the federal exclusion, the following elements must be satisfied:

1. The worker is a full-time student. This means that the worker is currently enrolled in an educational institution **or** is between academic years/terms, was enrolled in the preceding year/term, and will be enrolled in the succeeding year/term.
2. The worker worked for the camp for less than 13 calendar weeks in a year.
3. The camp operates in less than seven months in a year **or** had "average gross receipts for any 6 months in the preceding calendar year which were not more than 33 $\frac{1}{3}$ percent of its average gross receipts for the other 6 months in the preceding calendar year."

Wisconsin law does not currently contain an exclusion that mirrors the federal exclusion for the services of full-time student camp counselors. For-profit Wisconsin employers who operate as organized camps must pay state unemployment tax for those workers but are not required to pay the federal unemployment tax. Full-time students who work for organized camps in Wisconsin may use the wages that they earn from the camps to qualify for unemployment benefits, if they are otherwise qualified.⁵ It appears that only two of the ten states in DOL Region 5 currently include a state exclusion based on the federal full-time student exclusion.⁶

In order to exclude the services of full-time students who work for for-profit Wisconsin employers that are organized camps, Wisconsin law would need to be amended to include an exclusion that mirrors the federal exclusion. The exclusion would reduce the state unemployment tax for Wisconsin camps and reduce the wage base for full-time student workers.

If a camp is a non-profit organization that is “operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches,” the services of **all** the workers of that camp are already excluded from the state unemployment definition of “employment.”⁷

If a camp is a non-profit employer (but is not operated for religious purposes), it may elect reimbursement financing instead of paying unemployment contributions.⁸ Employers with reimbursement financing reimburse the Trust Fund for each dollar of benefits paid to their former employees. But, if none of the employer’s former employees claim unemployment benefits, the employer would not owe reimbursements. As discussed in endnote 5, because the proposed exclusion would only apply to full-time students who may already be ineligible for unemployment benefits due to their enrollment status, non-profit camps could effectively enjoy the intended effect of the proposed exclusion by electing reimbursement financing.⁹

Proposal: Seasonal Full-Time Student Camp Counselor Exclusion

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

This proposal would amend Wisconsin law to include an exclusion that would mirror the federal exclusion for seasonal full-time student camp counselors. See BOLA memo for additional details.

UI Trust Fund Impact:

This proposal would reduce the Trust Fund by approximately \$77,000 or less annually due to decreased tax revenue. It would have a negligible impact on reducing UI benefit payments.

IT and Administrative Impact:

This proposal would have minimal one-time IT and administrative impact. However, this exclusion may be difficult for employers to administer and report correctly. This could lead to ongoing administrative costs for both the division and for employers due to investigations into benefit eligibility and employer audits. If the employer reports wages that should have been excluded, this could lead to employer fault, and the employer would still be charged if benefits were overpaid.

Trust Fund Methodology:

Seasonal full-time student camp counselors could fall into several employer NAICS code categories, which also include employment types that would not qualify under this exclusion. For the purposes of a high level fiscal, NAICS code 721214 or recreational and vacation camps (except campgrounds) was the employer category identified as most impacted by this exclusion. Reimbursable non-profit employers were removed from this impact analysis as their wages are not taxable and have no fiscal impact on the Trust Fund. For this exclusion to be applied the employee must work less than 13 calendar weeks in a year, and in general the camp operates in less than 7 months of the year. Based on these criteria, employees that had wages with the employer outside third quarter (summer months) were removed. Estimated wages that met these criteria were then multiplied by those employer's tax rates. This resulted in approximately \$77,000 in tax revenue in 2017. However, an additional requirement is that the employee must be a full-time student (currently enrolled or is between academic years). It is unknown how much of this tax revenue would be based on excluded wages due to being earned by full-time students only.

It is difficult to determine the reduction in UI benefit payments based on this exclusion. However, since a requirement of this exclusion is that the employee is a full-time student, these employees may already be ineligible for UI benefits based on their school enrollment status. In 2017, there were no claimants that met the wage criteria above that used those wages to qualify for an unemployment claims. Based on the number of potentially affected employees, and based on the school enrollment status, it is estimated that this proposal would have a negligible impact on reducing benefit payments.

¹ Wis. Stat. § 108.02(15)(a).

² Wis. Stat. § 108.02(15)(k).

³ “Services performed by an employee for the person employing him do not constitute employment for purposes of the tax if they are specifically excepted from employment under any of the numbered paragraphs of section 3306(c).” 26 CFR § 31.3306(c)-326. USC § 3306(c) defines “employment” for federal unemployment tax purposes.

⁴ 26 USC § 3306(c)(20). If an organized camp pays its state unemployment taxes, its federal unemployment tax is 0.6% of the first \$7,000 paid to each worker. The federal exclusion saves employers FUTA taxes up to \$42 per full-time student worker, per year.

⁵ If a person is enrolled in a full-time educational program, they could be unavailable for full-time work and therefore ineligible for benefits. But, if the full-time educational program is considered “approved training,” the person is not disqualified due to their full-time enrollment. Wis. Stat. § 108.04(16)(am).

⁶ Missouri (V.A.M.S. 288.034(15)) and Ohio (ORC § 4141.01(B)(3)(t)).

⁷ Wis. Stat. § 108.02(15)(h).

⁸ Wis. Stat. § 108.151(2).

⁹ Because each tax scenario is unique, employers are encouraged to speak with a qualified professional to determine their potential tax liability by electing or not electing reimbursement financing. This memo is not legal or tax advice.