



## UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

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

### MEETING

**Date:** April 26, 2018  
**Time:** 9:30 a.m. – 4:00 p.m.  
**Place:** Department of Natural Resources,  
101 S. Webster Street,  
Madison, Wisconsin  
GEF-2, Room G27

### AGENDA ITEMS AND TENTATIVE SCHEDULE:

1. Call to Order and Introductions
2. Approval of Minutes of the March 15, 2018 Council Meeting
3. Department Update
4. Trust Fund Update- Tom McHugh
5. Legislation Update
  - UIAC Agreed Bill (Act 157)
  - Increased Criminal Penalties for UI Benefit Fraud (Act 147)
6. Draft of Proposed Amendments to Administrative Rules
7. Research Requests
8. Future Meeting Dates
9. 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 9:30 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

March 15, 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, Earl Gustafson, Sally Feistel, Mark Reihl, Shane Griesbach, and Terry Hayden.

**Department Staff Present:** Andy Rubsam, BJ Dernbach (Assistant Deputy Secretary), Evan Bradtke (Legislative Liaison), Lili Crane, Patrick Lonergan, Mary Jan Rosenak, Pam James, Janet Sausen, Jill Moksouphanh, Robert Usarek, Amy Banicki, Karen Schultz, Grace Castagna, and Robin Gallagher.

**Members of the Public Present:** Mike Duchek (Legislative Reference Bureau), Victor Forberger (Atty. Wisconsin UI Clinic), Susan Quam (Wisconsin Restaurant Association), Joseph Tyman (ABR Employment Services), and Erika Strebel (Daily Reporter).

### 1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council meeting to order at 10:07 a.m. under Wisconsin's Open Meeting law. Council members introduced themselves and Ms. Knutson recognized Mike Duchek of the Legislative Reference Bureau, and introduced Evan Bradtke as the new DWD Legislative Liaison. Ms. Knutson also announced that Ernie Jones is the new DWD General Counsel, and BJ Dernbach is the new DWD Assistant Deputy Secretary.

### 2. Approval of Minutes of the January 18, 2018 Council Meeting

Motion by Ms. Feistel, second by Mr. Lump to approve the January 18, 2018 meeting minutes without correction. The motion carried unanimously.

### 3. Department Update

Ms. Knutson reported that the Trust Fund Balance, as of March 5, 2018, was about \$1.4 billion.

### 4. Open Records Training

Ms. Knutson played a training video on open records law for the Council, which completed the Department of Administration's annual training requirement.

## 5. Annual Fraud Report

Ms. Knutson covered the following highlights from the Annual Fraud Report:

- There is an overall decline in fraud and nonfraud overpayments. The department can detect overpayments much faster now due to robust detection tools. The percentage of nonfraud overpayments compared with total benefit payments increased by a slight amount, but there is no significance when looking at historical data. When questioned about recapture rates by Mr. Manley, Ms. Knutson reported that 82.5% of fraud and 80% of non-fraud overpayments were collected for a total of \$24 million in 2017.
- There was a significant increase in the number of work-search audits completed this year compared to last year, which has helped identify non-fraud overpayments. The U.S. Department of Labor has recently emphasized the importance of work-search requirements, and is expected to issue guidelines in the next year or two to increase uniformity among states.
- Worker misclassification auditors identified about 6,200 misclassified workers in 2017, which resulted in about \$1.4 million in tax being assessed. Wisconsin has a nationally-recognized website to help employers classify their workers, and last year the department produced 3 radio Public Service Announcements in English and Spanish to further educate the public about worker classification. The unit is expected to conduct about 500 worker misclassification field investigations in 2018.
- The Department improved notices to claimants regarding the potential legal and financial consequences of fraud. Claimants must acknowledge they are aware that committing fraud is illegal and they are aware of the penalties before they can access the online benefit filing system.
- The Bureau of Benefits created an Integrity and Quality Unit last year to investigate complex and organized attempts to commit UI fraud, and additional training was provided to all Bureau of Benefits staff. The attention and vigilance of UI staff continues to be one of the most effective tools in detecting fraud attempts.
- Legislation in the latest Agreed Upon Bill is intended to help deter fraudulent claims.
- Of the \$24 million in overpayments recovered last year, \$5.4 million was debt over 5 years old. Federal tax refund intercepts resulted in collections of \$4 million in fraud overpayments and \$1 million in non-fraud overpayments. Additionally, in February 2017 the department started to recover delinquent tax contributions through Federal tax refund intercepts, which was a federal requirement included in the previous Agreed Upon Bill.
- The Unemployment Insurance Division continues to partner with the Worker's Compensation Division to jointly fund a full-time Assistant Attorney General position with the Department of Justice. The department also works with the Department of Labor on complex fraud cases. In 2017, 159 cases were referred for potential state criminal prosecution, representing a total amount of almost \$1.8 million in overpayments.
- In 2017, 98% of the 87,000 claimants who were required to register with the Job Center of Wisconsin (JCW) did so. Registration with JCW is an important first step in receiving re-employment assistance. Ms. Knutson noted that the re-employment assistance program varies among claimants, and is tailored to suit individual needs.
- There was a 27% increase in the UI Trust Fund Balance at the end of the year.

Mr. Manley asked about the reason for the reduction in total overpayments collected from 2013-2017. Ms. Knutson reported that efforts to recover overpayments have increased, and the reduction is due to a combination of factors. There are fewer benefit overpayments, largely because the department is catching them sooner with current program integrity tools. There is also less claim activity as the unemployment rate is low.

Mr. Gotzler asked about re-employment services, and the number of people who use in-person counseling. Ms. Knutson explained that if people are expected to exhaust their benefits, they are more likely to be referred for in-person services. Per Mr. Gotzler's request, the department will collect information on the types of re-employment services provided to claimants, as well as the number of people who participate in them.

## **6. Update on Legislation**

### UIAC Agreed Bill (SB 399/AB516)

Ms. Knutson reported the UIAC Agreed Bill is waiting to be signed by the Governor. Council members will be notified when this is scheduled to happen.

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

Ms. Knutson reported that the bill relating to increased criminal penalties for UI benefit fraud has passed and is also awaiting signature.

### Methods for Filing UI Claims (SB 772)

Mr. Rubsam reported SB 772, introduced on February 7, 2018, would require the department to permit claims for benefits to be filed by telephone. There has not been a hearing scheduled for this bill, and as the Assembly has adjourned its session for the year, it is not expected to pass.

### Legalization of Marijuana (AB 482)

Mr. Rubsam reported that AB 482, relating to the legalization of marijuana, was introduced to the Assembly, but has seen no movement. It is not expected to pass this session.

### THC Testing (AB 1005)

Mr. Rubsam reported that AB 1005 was introduced March 7, 2018, and proposes prohibiting employers from testing for THC. While the bill is not expected to pass the Assembly this session, Mr. Rubsam noted the potential effect it would have on the UI program. The department believes the bill's passage would result in fewer disqualifications for misconduct due to the use of marijuana, as well as fewer referrals to the pre-employment drug testing program for people who fail their pre-employment drug test for marijuana usage.

### Mobility Grants for UI Claimants (AB 243)

Mr. Rubsam reported that AB 243, relating to mobility grants for UI claimants, passed the Assembly last year, but has seen no action in the Senate. It is possible the bill will pass this year, as the Senate is still in session.

#### Social Security Disability and UI Benefits (HR 2031)

Mr. Rubsam reported that HR 2031, a federal proposal to prevent claimants from receiving both Social Security Disability and UI Benefits simultaneously was introduced last year, but has not seen any activity.

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

Mr. Rubsam reported that HR 3330, relating to drug testing for UI claimants, has not seen any activity since it was introduced last year.

### **7. Update on Court Cases**

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

Ms. Knutson reported that the Supreme Court has not issued a decision yet.

### **8. Draft of Proposed Amendments to Administrative Rules**

Ms. Knutson informed the Council of the department's efforts to update DWD Chapters 100-150. Mr. Rubsam highlighted the following rule change proposals for DWD Chapters 129 and 140:

- Repeal the reference to use of the telephone claiming system (IVR) in DWD 129.01 (4) (e) as it is no longer in service.
- Revise DWD 140.01 to clarify where to file an appeal for an Unemployment Insurance Determination, including adding language to confirm that appeals can be filed online.
- Update language in DWD 140.09 (3) to require all personally identifiable information (not just Social Security Numbers) be removed from files before they can be viewed by any person not a party in the hearing.
- Include language in DWD 140.11 (1) and (2) that would allow for conducting UI hearings by video conference.
- As the Council previously agreed, under DWD 140.12, change the waiting time before an ALJ can dismiss an appeal from 15 minutes for the appellant and 5 minutes for the respondent to 10 minutes for both parties.

Mr. Lump inquired further about page 18 of the proposed rule changes, stating a concern of unfairly disadvantaging the timely party, or disrupting the chance for rebuttals if late testimony is taken. Bureau of Legal Affairs Deputy Director Lili Crane clarified that the process is the same for both appellants and respondents, and testimony will not be taken from any party after the hearing has been closed. If the late party appears after the hearing has started, but while the hearing is still in session, the ALJ has the authority to either allow or deny them the chance to

participate. If the late party proves good cause for being late, a new hearing will be held with all parties required to appear again.

Mr. Manley raised a concern about the language on page 18, lines 12-15, which gives ALJs the authority to limit redundant, repetitive, or irrelevant testimony. He questioned whether the ALJ should unilaterally be allowed to determine what is relevant in a hearing. Ms. Knutson responded that the record is developed by the ALJ, as is required by the USDOL's standards for conducting efficient hearings. If evidence is excluded by the ALJ, a party can make an offer of proof, and file an appeal to the Labor and Industry Review Commission. Mr. Rubsam noted that the proposed rule change was intended primarily to include the word "direct," to give appeal tribunals authority to deny direct questioning in addition to cross-examination questioning that unduly burdens the record. Ms. Knutson explained that the proposed change was made to be consistent with Worker's Compensation rules and to clarify current procedures, but the Council can vote against changing the language if they choose.

Mr. Manley noted an inconsistency between Wis. Stat. § 108.09 (4) (d), which states the appeal tribunal *shall* dismiss the appeal when a party is late, while proposed rule DWD 140.13 (page 18, line 2) states the appeal tribunal *may* dismiss the appeal. Ms. Feistel noticed the same language inconsistency regarding an appeal tribunal's right to commence hearings (page 18, line 4). Ms. Knutson agreed to review the language and update the rules to be consistent with Wisconsin Stats.

Mr. Rubsam and Ms. Knutson thanked the Council in advance for their review of the proposed rule changes, and noted the importance of updating Administrative Rules to comply with Legislative expectations, as well as to increase ease and understanding for readers.

## **9. Research Request**

Mr. Rubsam reported on Mr. Lump's research request from the January 18, 2018 UIAC meeting regarding potentially including a state UI tax exclusion for full-time student camp counselors. There is currently a federal exclusion, but not an exclusion in Wisconsin state law. To meet the federal exclusion requirements, the worker must be a full-time student, work for the camp less than 13 calendar weeks a year, and the camp must operate less than 7 months in a year. If the camp is a non-profit entity, the exclusion would not have much of an effect because it could be considered a reimbursable employer. If the camp is a religious organization, it would already be excluded from UI taxes. Thus, the only employers that would be affected by the state exclusion would be for-profit, non-religious camps. A high-level fiscal estimate expects the state exclusion would result in about an annual reduction to the Trust Fund of about \$77,000. The state exclusion is estimated to have a negligible impact on reducing UI benefit payments, as full-time students would not be expected to qualify for benefits since they are unable to meet the able and available for work requirement. If the Council is interested in pursuing the state exclusion, they can submit a proposal for the next Agreed Bill cycle. Mr. Lump expressed his desire to do so.

## **10. Future Meeting Dates**

The next scheduled Council meeting is April 19th, followed by May 17th. The department will conduct a poll to verify availability.

### **11. Caucus and Adjournment**

Motion by Mr. Manley, second by Mr. Reihl to go into closed caucus under Wis. Stat. § 19.85(1)(ee) to consider matters on the agenda including research requests and amendments to Administrative Rules. The motion carried unanimously. The public meeting was adjourned at 11:20 a.m. The Council adjourned from caucus.



## UI Reserve Fund Highlights

April 26, 2018

- Benefit payments through March 2018 declined \$17.2 million or 10.1% when compared to benefits paid through March 2017.

<b>Benefits Paid</b>	<b>2018 YTD*</b> <i>(in millions)</i>	<b>2017 YTD*</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Percent</b> Change
Total Regular UI Paid	\$ 154.0	\$ 171.2	\$ (17.2)	(10.1%)

- March 2018 year-to-date tax receipts declined by 16.4% from the same time last year. This decrease is attributable both to a change in tax schedules and to the improvement of employer reserve fund balances. Tax receipts at the beginning of the year reflect taxes on 4<sup>th</sup> quarter wages.

<b>Tax Receipts</b>	<b>2018 YTD*</b> <i>(in millions)</i>	<b>2017 YTD*</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Percent</b> Change
Total Tax Receipts	\$ 68.8	\$ 82.3	\$ (13.5)	(16.4%)

- The March 2018 Trust Fund ending balance was \$1.4 billion, an increase of 29.3% when compared to the same time last year.

<b>UI Trust Fund Balance</b>	<b>2018 YTD*</b> <i>(in millions)</i>	<b>2017 YTD*</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Percent</b> Change
Cash Analysis Statement	\$ 1,397.7	\$ 1,080.8	\$ 316.9	29.3%

- Interest earned on the Trust Fund is received quarterly. Interest earned first quarter 2018 is \$8.1 million compared to \$6.3 million for the first quarter of 2017. The U.S. Treasury interest rate for the Trust Fund for the first quarter is 2.26%.

<b>UI Trust Fund Interest</b>	<b>2018 YTD*</b> <i>(in millions)</i>	<b>2017 YTD*</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Percent</b> Change
Total Interest Earned	\$ 8.1	\$ 6.3	\$ 1.8	28.6%

- With the passage of Wis. Stat. §108.155, effective October 2, 2016, two million dollars was set aside in the balancing account to cover identity theft charges against reimbursable employer's accounts. There have been no charges against this amount, and the interest on this account to date is \$68,319.

\* All Year-to-date (YTD) numbers are based on the March 31, 2018 Financial Statements

## Financial Information By State for 4th Quarter 2017

Rank	State	Revenues Last 12 Months (000)	Trust Fund Balance (000)	Trust Fund as % of Total Wages	Loan Balance (000)
1	Washington	\$ 1,113,796	\$ 4,374,067	2.73	-
2	Oregon	\$ 1,000,984	\$ 3,942,776	5.41	-
3	Michigan	\$ 1,236,086	\$ 3,646,237	2.00	-
4	Florida	\$ 712,983	\$ 3,626,300	1.06	-
5	North Carolina	\$ 853,237	\$ 3,172,224	1.85	-
6	New Jersey	\$ 2,245,197	\$ 2,212,908	1.05	-
7	Pennsylvania	\$ 3,046,505	\$ 2,083,619	0.87	-
8	New York	\$ 2,812,640	\$ 1,924,721	0.38	-
9	Georgia	\$ 691,769	\$ 1,814,994	0.95	-
10	Illinois	\$ 2,018,193	\$ 1,598,622	0.57	-
11	Minnesota	\$ 737,902	\$ 1,598,373	1.27	-
12	Wisconsin	\$ 708,405	\$ 1,479,554	1.41	-
13	Virginia	\$ 492,013	\$ 1,148,066	0.67	-
14	Iowa	\$ 483,888	\$ 1,118,226	2.00	-
15	Maryland	\$ 557,487	\$ 1,116,819	0.97	-
16	Tennessee	\$ 292,729	\$ 1,096,251	0.92	-
17	Utah	\$ 191,558	\$ 1,077,211	2.01	-
18	Nevada	\$ 613,604	\$ 1,059,507	1.92	-
19	Oklahoma	\$ 233,449	\$ 1,008,585	1.66	-
20	Massachusetts	\$ 1,479,968	\$ 998,796	0.50	-
21	Texas	\$ 2,585,082	\$ 924,348	0.16	-
22	Louisiana	\$ 215,035	\$ 909,569	1.27	-
23	Missouri	\$ 434,446	\$ 826,487	0.80	-
24	Colorado	\$ 671,871	\$ 792,103	0.64	-
25	South Carolina	\$ 361,506	\$ 734,895	1.01	-
26	Mississippi	\$ 116,262	\$ 655,646	1.97	-
27	Kansas	\$ 253,844	\$ 642,940	1.15	-
28	Arkansas	\$ 228,094	\$ 641,543	1.54	-
29	Ohio	\$ 1,287,315	\$ 629,433	0.31	-
30	Idaho	\$ 166,523	\$ 584,761	2.63	-
31	Arizona	\$ 493,973	\$ 574,040	0.51	-
32	Alabama	\$ 203,626	\$ 560,164	0.80	-
33	Puerto Rico	\$ 161,457	\$ 537,269	3.17	-
34	Hawaii	\$ 168,338	\$ 520,365	2.29	-
35	Alaska	\$ 125,055	\$ 454,832	3.73	-
36	Connecticut	\$ 769,730	\$ 449,127	0.51	-
37	District of Columbia	\$ 161,744	\$ 434,082	1.08	-
38	Kentucky	\$ 492,773	\$ 433,218	0.64	-
39	New Mexico	\$ 162,849	\$ 431,323	1.67	-
40	Maine	\$ 113,980	\$ 426,024	2.26	-
41	Nebraska	\$ 80,217	\$ 425,098	1.29	-
42	Vermont	\$ 140,589	\$ 389,954	4.03	-
43	Indiana	\$ 558,115	\$ 381,759	0.34	-
44	Rhode Island	\$ 237,141	\$ 360,917	1.93	-
45	Montana	\$ 99,250	\$ 314,979	2.04	-
46	Wyoming	\$ 64,148	\$ 304,238	3.38	-
47	New Hampshire	\$ 57,176	\$ 297,804	1.06	-
48	North Dakota	\$ 184,921	\$ 145,799	0.93	-
49	Delaware	\$ 103,530	\$ 129,262	0.66	-
50	South Dakota	\$ 36,835	\$ 121,235	0.93	-
51	West Virginia	\$ 198,410	\$ 83,882	0.40	-
52	California	\$ 5,991,913	\$ 11,715	-	\$ 1,163,485
53	Virgin Islands	N.A.	\$ 373	0.04	\$ 68,828
	United States	\$ 38,448,142	\$ 55,227,038	0.86	\$ 1,232,312

## Financial Information By State for 4th Quarter 2017

Rank	State	Revenues Last 12 Months (000)	Trust Fund Balance (000)	Trust Fund as % of Total Wages	Loan Balance (000)
1	Oregon	1,000,984	3,942,776	5.41	-
2	Vermont	140,589	389,954	4.03	-
3	Alaska	125,055	454,832	3.73	-
4	Wyoming	64,148	304,238	3.38	-
5	Puerto Rico	161,457	537,269	3.17	-
6	Washington	1,113,796	4,374,067	2.73	-
7	Idaho	166,523	584,761	2.63	-
8	Hawaii	168,338	520,365	2.29	-
9	Maine	113,980	426,024	2.26	-
10	Montana	99,250	314,979	2.04	-
11	Utah	191,558	1,077,211	2.01	-
12	Iowa	483,888	1,118,226	2.00	-
13	Michigan	1,236,086	3,646,237	2.00	-
14	Mississippi	116,262	655,646	1.97	-
15	Rhode Island	237,141	360,917	1.93	-
16	Nevada	613,604	1,059,507	1.92	-
17	North Carolina	853,237	3,172,224	1.85	-
18	New Mexico	162,849	431,323	1.67	-
19	Oklahoma	233,449	1,008,585	1.66	-
20	Arkansas	228,094	641,543	1.54	-
21	Wisconsin	708,405	1,479,554	1.41	-
22	Nebraska	80,217	425,098	1.29	-
23	Minnesota	737,902	1,598,373	1.27	-
24	Louisiana	215,035	909,569	1.27	-
25	Kansas	253,844	642,940	1.15	-
26	District of Columbia	161,744	434,082	1.08	-
27	Florida	712,983	3,626,300	1.06	-
28	New Hampshire	57,176	297,804	1.06	-
29	New Jersey	2,245,197	2,212,908	1.05	-
30	South Carolina	361,506	734,895	1.01	-
31	Maryland	557,487	1,116,819	0.97	-
32	Georgia	691,769	1,814,994	0.95	-
33	North Dakota	184,921	145,799	0.93	-
34	South Dakota	36,835	121,235	0.93	-
35	Tennessee	292,729	1,096,251	0.92	-
36	Pennsylvania	3,046,505	2,083,619	0.87	-
37	Alabama	203,626	560,164	0.80	-
38	Missouri	434,446	826,487	0.80	-
39	Virginia	492,013	1,148,066	0.67	-
40	Delaware	103,530	129,262	0.66	-
41	Colorado	671,871	792,103	0.64	-
42	Kentucky	492,773	433,218	0.64	-
43	Illinois	2,018,193	1,598,622	0.57	-
44	Arizona	493,973	574,040	0.51	-
45	Connecticut	769,730	449,127	0.51	-
46	Massachusetts	1,479,968	998,796	0.50	-
47	West Virginia	198,410	83,882	0.40	-
48	New York	2,812,640	1,924,721	0.38	-
49	Indiana	558,115	381,759	0.34	-
50	Ohio	1,287,315	629,433	0.31	-
51	Texas	2,585,082	924,348	0.16	-
52	Virgin Islands	N.A.	373	0.04	\$ 68,828
53	California	5,991,913	11,715	-	\$ 1,163,485
	United States	38,448,142	55,227,038	0.86	\$ 1,232,312

# FINANCIAL STATEMENTS

For the Month Ended March 31, 2018



Division of Unemployment Insurance

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
BALANCE SHEET  
FOR THE MONTH ENDED March 31, 2018

	CURRENT YEAR	PRIOR YEAR
<u>ASSETS</u>		
CASH:		
U.I. CONTRIBUTION ACCOUNT	1,185,726.94	2,296,694.83
U.I. BENEFIT ACCOUNTS	(155,864.69)	214,747.92
U.I. TRUST FUND ACCOUNTS (1) (2)	1,406,109,766.33	1,086,352,026.08
TOTAL CASH	1,407,139,628.58	1,088,863,468.83
ACCOUNTS RECEIVABLE:		
BENEFIT OVERPAYMENT RECEIVABLES	81,312,264.42	92,270,652.93
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (3)	(38,355,557.43)	(41,373,951.33)
NET BENEFIT OVERPAYMENT RECEIVABLES	42,956,706.99	50,896,701.60
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (4) (5)	38,559,805.14	45,030,210.78
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (3)	(19,759,159.29)	(24,257,139.97)
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	18,800,645.85	20,773,070.81
OTHER EMPLOYER RECEIVABLES	23,554,878.61	24,338,014.05
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	(9,224,315.73)	(11,069,944.23)
NET OTHER EMPLOYER RECEIVABLES	14,330,562.88	13,268,069.82
TOTAL ACCOUNTS RECEIVABLE	76,087,915.72	84,937,842.23
TOTAL ASSETS	1,483,227,544.30	1,173,801,311.06
<u>LIABILITIES AND EQUITY</u>		
LIABILITIES:		
CONTINGENT LIABILITIES (6)	30,234,603.64	33,011,525.17
OTHER LIABILITIES	9,188,570.01	7,562,263.43
FEDERAL BENEFIT PROGRAMS	640,715.67	916,763.76
CHILD SUPPORT HOLDING ACCOUNT	21,595.00	11,792.00
FEDERAL WITHHOLDING TAXES DUE	108,671.00	87,617.00
STATE WITHHOLDING TAXES DUE	2,592,983.68	2,404,719.61
DUE TO OTHER GOVERNMENTS (7)	762,071.81	816,708.61
TOTAL LIABILITIES	43,549,210.81	44,811,389.58
EQUITY:		
RESERVE FUND BALANCE	2,108,685,982.61	1,872,572,866.44
BALANCING ACCOUNT	(669,007,649.12)	(743,582,944.96)
TOTAL EQUITY	1,439,678,333.49	1,128,989,921.48
TOTAL LIABILITIES AND EQUITY	1,483,227,544.30	1,173,801,311.06

1. \$2,014,936 of this balance is for administration purposes and is not available to pay benefits.
2. \$2,068,319 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.
3. The allowance for uncollectible benefit overpayments is 46.8%. The allowance for uncollectible delinquent employer taxes is 51.4%. This is based on the historical collectibility of our receivables. This method of recognizing receivable balances is in accordance with generally accepted accounting principles.
4. The remaining tax due at the end of the current month for employers utilizing the 1st quarter deferral plan is \$0. Deferrals for the prior year were \$0.
5. \$7,579,927, or 19.7%, of this balance is estimated.
6. \$17,427,927 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. \$12,806,677 of this balance is net interest, penalties, SAFI, and other fees assessed to employers and penalties and other fees assessed to claimants which, when collected, will be credited to the state fund.
7. This balance includes SAFI Payable of \$6,653. The 03/31/2018 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is \$23,141. Total Life-to-date transfers from DWD Fund 214 to the Unemployment Program Integrity Fund (DWD Fund 298) were \$9,451,827.

DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
RESERVE FUND ANALYSIS  
FOR THE MONTH ENDED March 31, 2018

	<u>CURRENT ACTIVITY</u>	<u>YTD ACTIVITY</u>	<u>PRIOR YTD</u>
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	2,590,329,214.99	2,635,459,959.45	2,409,958,025.15
BALANCING ACCOUNT	<u>(1,126,895,790.92)</u>	<u>(1,125,485,495.65)</u>	<u>(1,205,742,751.81)</u>
TOTAL BALANCE	1,463,433,424.07	1,509,974,463.80	1,204,215,273.34
<u>INCREASES:</u>			
TAX RECEIPTS/RFB PAID	1,993,669.56	52,716,157.27	60,816,816.59
ACCRUED REVENUES	9,909,871.29	6,278,404.67	6,617,688.16
SOLVENCY PAID	649,323.01	16,110,863.01	21,514,671.83
FORFEITURES	28,614.00	120,899.00	183,498.00
BENEFIT CONCEALMENT INCOME	171,166.76	297,455.87	431,317.75
INTEREST EARNED ON TRUST FUND	8,081,307.57	8,081,307.57	6,329,239.62
FUTA TAX CREDITS	4,511.28	6,228.18	18,852.94
OTHER CHANGES	<u>39,855.83</u>	<u>127,990.26</u>	<u>129,418.24</u>
TOTAL INCREASES	20,878,319.30	83,739,305.83	96,041,503.13
<u>DECREASES:</u>			
TAXABLE EMPLOYER DISBURSEMENTS	37,844,419.23	130,839,870.89	145,660,555.84
QUIT NONCHARGE BENEFITS	4,965,108.18	17,663,706.22	18,379,221.49
OTHER DECREASES	98,370.51	204,148.13	264,668.47
OTHER NONCHARGE BENEFITS	<u>1,725,511.96</u>	<u>5,327,710.90</u>	<u>6,962,409.19</u>
TOTAL DECREASES	44,633,409.88	154,035,436.14	171,266,854.99
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	2,108,685,982.61	2,108,685,982.61	1,872,572,866.44
BALANCING ACCOUNT	<u>(669,007,649.12)</u>	<u>(669,007,649.12)</u>	<u>(743,582,944.96)</u>
TOTAL BALANCE (8) (9) (10)	<u><u>1,439,678,333.49</u></u>	<u><u>1,439,678,333.49</u></u>	<u><u>1,128,989,921.48</u></u>

8. This balance differs from the cash balance related to taxable employers of \$1,397,674,667 because of non-cash accrual items.

9. \$2,014,936 of this balance is set up in the Trust Fund in two subaccounts to be used for administration purposes and is not available to pay benefits.

10. \$2,068,319 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
CASH ANALYSIS  
FOR THE MONTH ENDED March 31, 2018

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BEGINNING U.I. CASH BALANCE	\$1,429,623,223.44	\$1,471,761,579.73	\$1,159,159,974.49
INCREASES:			
TAX RECEIPTS/RFB PAID	1,993,669.56	52,716,157.27	60,816,816.59
U.I. PAYMENTS CREDITED TO SURPLUS	2,605,365.46	19,144,830.82	25,751,439.56
INTEREST EARNED ON TRUST FUND	8,081,307.57	8,081,307.57	6,329,239.62
FUTA TAX CREDITS	4,511.28	6,228.18	18,852.94
TOTAL INCREASE IN CASH	<u>12,684,853.87</u>	<u>79,948,523.84</u>	<u>92,916,348.71</u>
TOTAL CASH AVAILABLE	<u>1,442,308,077.31</u>	<u>1,551,710,103.57</u>	<u>1,252,076,323.20</u>
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	37,844,419.23	130,839,870.89	145,660,555.84
BENEFITS CHARGED TO SURPLUS	6,788,990.65	23,195,565.25	25,606,299.15
TOTAL BENEFITS PAID DURING PERIOD	<u>44,633,409.88</u>	<u>154,035,436.14</u>	<u>171,266,854.99</u>
ENDING U.I. CASH BALANCE (11) (12) (13)	<u><u>1,397,674,667.43</u></u>	<u><u>1,397,674,667.43</u></u>	<u><u>1,080,809,468.21</u></u>

11. \$1,607,328 of this balance was set up in 2009 in the Trust Fund as a subaccount per the ARRA UI Modernization Provisions and is not available to pay benefits.

12. \$407,608 of this balance was set up in 2015 in the Trust Fund as a Short-Time Compensation (STC) subaccount to be used for Implementation and Improvement of the STC program and is not available to pay benefits.

13. \$2,068,319 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

# Plain Language Summary of Changes to Wisconsin Unemployment Insurance Law (2017-2018)

Prepared by: DWD Unemployment Insurance Division Bureau of Legal Affairs

Governor Walker signed three bills into law during the 2017-2018 biennium related to unemployment insurance: [2017 Wis. Act 59](#), the 2015-2017 budget; [2017 Wis. Act 147](#), related to increased criminal penalties for unemployment insurance fraud; and [2017 Wis. Act 157](#), the agreed-upon bill of the Unemployment Insurance Advisory Council with various law changes. The permanent administrative rules regarding pre-employment drug testing and drug treatment became effective in 2017.

## Benefit Changes

### *Concealment of Holiday, Vacation, Termination, or Sick Pay*

A claimant who conceals wages or holiday, vacation, termination, or sick pay on their unemployment claims must repay the overpaid benefits, is assessed a penalty in the amount of 40% of the overpayment, and is ineligible for an amount of future benefits.

A claimant who conceals work on an unemployment benefit claim is totally ineligible for benefits for that week. But, under prior law, a claimant who conceals holiday, vacation, termination, or sick pay on a weekly claim may still be eligible for partial benefits for that week. **2017 Act 157** amends the law to provide that concealment of holiday pay, vacation pay, sick pay, or termination pay results in total ineligibility for the week for which the claimant concealed the pay.

**Effective Date:** The changes to Wis. Stat. § 108.05(3)(d) apply to **determinations** issued on or after April 1, 2018.



***Increased Criminal Penalties for Unemployment Insurance Fraud***

Prior law provided that the criminal penalty for unemployment fraud is a \$100 to \$500 fine or up to 90 days in jail, or both, for each false statement. Alternatively, a person may be charged with the crime of theft by fraud for committing unemployment benefit fraud, which could be a felony, depending on the amount of benefits fraudulently obtained. **2017 Act 147** increases the criminal penalties for unemployment benefit fraud based on the amount of the benefits that the person fraudulently obtains as follows:

<b>If the value of UI benefits fraudulently obtained is:</b>	<b>Claimant is guilty of:</b>	<b>Maximum criminal penalty:</b>
\$2,500 or less	Class A Misdemeanor	Up to \$10,000 fine or imprisonment up to 9 months, or both
More than \$2,500, up to \$5,000	Class I Felony	Up to \$10,000 fine or imprisonment up to 3.5 years, or both
More than \$5,000, up to \$10,000	Class H Felony	Up to \$10,000 fine or imprisonment up to 6 years, or both
More than \$10,000	Class G Felony	Up to \$25,000 fine or imprisonment up to 10 years, or both

**Effective Date:** The changes to Wis. Stat. § 108.24(1)(a) to (c) apply to **violations committed** on or after April 1, 2018.

***Ineligibility for Failure to Provide Information***

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

**2017 Act 157** amends the law to provide that claimants who fail to answer eligibility questions are ineligible **beginning with the week involving the eligibility issue**, rather than the week in which the claimant fails to answer the department's questions. This clarifies that, if the department questions a claimant's eligibility, the department will hold the claimant's benefits until the claimant responds.

**Effective Date:** The changes to Wis. Stat. §§ 108.04(1)(hm) and (hr) apply to **determinations** issued on or after April 1, 2018.

### *Amendments to Drug Testing Statutes*

**2017 Act 157** contains various changes to the drug testing statutes, such as:

- Limiting employers' civil liability under state law for submission of pre-employment drug testing information to the Department.
  - **Effective Date:** The changes to Wis. Stat. § 108.133(4)(c) apply to reports **submitted** by employers on or after April 1, 2018.
- Amending the privacy statute to ensure that all information related to drug testing and prescription medication is confidential. The prior statute specifies that drug treatment information is confidential. Existing administrative code provisions also provide general confidentiality protections.
  - **Effective Date:** The changes to Wis. Stat. § 108.133(3)(e) are effective on April 1, 2018.
- Federal law provides that states may only test "applicants" for unemployment insurance for controlled substances. "Applicant" is defined in federal law as "an individual who files an initial claim for unemployment compensation under State law. Applicant excludes an individual already found initially eligible and filing a continued claim."

Wisconsin's occupational drug testing statute is amended to refer to "applicants" instead of "claimants" to clearly conform state law to the federal definition.

- **Effective Date:** The changes to Wis. Stat. § 108.133(2)(a)1. are effective when the department promulgates the administrative rules regarding occupational drug testing.
- Confirming that the Department shall pay the reasonable cost of drug testing applicants under the occupational drug testing program.
  - **Effective Date:** The changes to Wis. Stat. § 108.133(2)(a)1. are effective when the department promulgates the administrative rules regarding occupational drug testing.
- The Legislature appropriates \$250,000 annually to the Department "to conduct testing for controlled substances, for the provision of substance abuse treatment, and for related expenses under s. 108.133." **2017 Act 157** amends the appropriation statute to confirm that the Department may use this funding to screen unemployment benefit applicants order to determine whether there is a reasonable suspicion that an applicant has engaged in the unlawful use of controlled substances. This bill also amends the appropriation statute so that any unencumbered funds from this appropriation will be transferred to the unemployment program integrity fund at the end of the biennium. Wis. Stat. § 20.445(1)(aL).

### ***Pre-employment Drug Testing Permanent Rules***

Wis. Stat. §§ 108.04(8)(b) and 108.133 require the department, by administrative rule, to create a voluntary program for employers to report the results of a failed or refused pre-employment drug test to the department. The permanent administrative rule in Wis. Admin.

Code ch. DWD 131 became **effective May 1, 2017**. A claimant's failed or refused pre-employment drug test is presumed to be a failure to accept suitable work. A claimant may overcome the presumption by proving certain facts to the department. An individual who fails or refuses a pre-employment drug test is ineligible for benefits until the individual earns wages after the week in which the failure occurs equal to at least 6 times the individual's weekly benefit rate under s. 108.05 (1), Stats., in employment or other work covered by the unemployment insurance law of any state or the federal government. A claimant who fails a pre-employment drug test without evidence of a valid prescription for the drug may remain eligible for unemployment insurance benefits if the claimant enrolls in and complies with a drug treatment program and completes a job skills assessment.

## **Tax / Collections Changes**

### ***Fiscal Agent Joint and Several Liability***

Individuals who receive long-term support services in their homes through government-funded care programs are "domestic employers" under the unemployment insurance law. Fiscal agents directly receive and disperse government program funds on behalf of these domestic employers. The fiscal agent is responsible for reporting filing tax reports and paying unemployment taxes on behalf of the domestic employer.

Under federal law, fiscal agents are jointly and severally liable for the unemployment tax liability of the employer. **2017 Act 157** provides that Wisconsin may determine private agencies (but not government agencies) that serve as fiscal agents to be jointly and severally liable for the state unemployment tax of the employers they serve.

**Effective Date:** The creation of Wis. Stat. § 108.22(10) is effective on April 1, 2018.

### ***Personal Liability for Tax – Repeal of the Ownership Requirement***

**2017 Act 157** amends the tax personal liability statute to remove the 20% owner requirement for a finding of personal liability.

**Effective Date:** The changes to Wis. Stat. § 108.22(9) apply to **determinations** issued on or after April 1, 2018.

### ***State Tax Refund Intercept for Tax Recovery***

**2017 Act 157** permits the department to intercept state income tax refunds, lottery payments, state vendor payments, and unclaimed property of taxpayers (employers and personally liable individuals) who owe debts to the department. The department previously only intercepted such amounts for claimants who owe overpayments and penalties.

**Effective Date:** The changes to Wis. Stat. § 108.22(1t) are effective on April 1, 2018.

### ***Levy Non-compliance Penalty***

**2017 Act 157** modifies an existing penalty for third parties who refuse to comply with a department levy. The new penalty will be 50% of the amount of the debt owed and the penalty funds will be deposited into the program integrity fund.

**Effective Date:** The changes to Wis. Stat. § 108.225(4)(b) are effective on April 1, 2018.

### ***Secured Liens for Benefit Overpayments***

**2017 Act 157** creates an unrecorded lien against any person who owes the department a debt (under prior law, this provision only applied to employers). This amendment will ensure that the department has a right to collect a debt without a warrant when property is liquidated and will improve the department's position with respect to the priority of creditors.

**Effective Date:** The changes to Wis. Stat. § 108.22(1m) apply to amounts that are owed on or after April 1, 2018.

### ***Warrant Notice Changes***

**2017 Act 157** codifies existing department practice by requiring the department to give 15 days' notice to a debtor before issuing a warrant.

**Effective Date:** Wis. Stat. § 108.22(2)(c) is **effective** on April 1, 2018.

## **Administrative Changes**

Several minor and technical changes to unemployment statutes in **2017 Act 157**, **effective April 1, 2018**, are:

- Congress repealed the federal Workforce Investment Act of 1998 (“WIA”) and replaced it with the federal Workforce Innovation and Opportunity Act (“WIOA”). The references in Wisconsin unemployment law are updated from WIA to WIOA.
- Adding a reference to “Indian tribe” to correct a drafting error from a prior bill. Wis. Stat. § 108.04(17)(e).
- Correcting a cross-reference from the previous UIAC agreed bill, 2015 Act 334, related to suitable work. Wis. Stat. § 108.04(7)(e).
- Clarifying the steps that appeal tribunals (ALJs) should take when parties fail to appear at administrative hearings. Wis. Stat. §§ 108.09(4)(d)2. and 108.09(4)(e)2.
- Revising various unemployment statutes to provide for optional electronic delivery of certain department determinations and notices.
- Previously, the department paid all unemployment benefits by paper checks. Currently, the department pays about 80% of benefits by direct deposit, about 20% by deposit to

debit cards and less than 1% by paper check. The statutes are updated to replace references to checks with issuance of payment. Statutes amended: Wis. Stat. §§ 108.16(2)(e) and 108.16(2)(em).

- Creating Wis. Stat. § 108.16(6)(p) to confirm that under federal law, federal FUTA credit reduction payments will be deposited into the Wisconsin unemployment insurance balancing account. The department does not currently receive these federal funds, but will deposit them into the balancing account if the funds are paid to Wisconsin in the future.
- Various changes to the work share statutes to confirm the department’s interpretation of current law:
  - Vacation, holiday, termination, and sick pay will be treated as hours for the purposes of calculating an employee’s work share benefit. This is similar to current law for regular benefits. Statute amended: Wis. Stat. § 108.062(6)(a).
  - The department shall disregard discrepancies of less than 15 minutes of work reported, which is like the disregard of \$2 of wages earned in a week for regular benefits. Statute amended: Wis. Stat. § 108.062(6)(a).
  - The department shall treat missed work available for work share employees and claimants applying for regular benefits similarly, so that work share employees are not paid greater benefits when missing work with a work share employer. This is similar to current law for regular benefits. Statute amended: Wis. Stat. § 108.062(10).
- Amending the appropriation language for the unemployment interest payment fund (SAFI) and the unemployment program integrity fund to convert these funds from “segregated-sum sufficient” to “segregated-continuing.” The purpose of these changes is

to make the accounting for these funds more efficient. Act 157 also adds 5.0 positions - these are existing positions, to be compensated from the program integrity fund. These staff will perform program integrity activities, investigate concealment, and investigate worker misclassification. Wis. Stat. §§ 20.445(1)(u) and 20.445(1)(v).

***Public Benefits and Chronic Absenteeism Study***

**2017 Act 59 § 9152(1)** directs the departments of children and families, public instruction, health services, and workforce development to collaborate to prepare a report on the population overlap of families that receive public benefits and children who are absent from school for 10 percent or more of the school year. The report is due December 30, 2018 to the Governor and Legislature.



1 **DWD 129 – BENEFIT CLAIMING PROCEDURES**

2 **DWD 129.01 Notice of unemployment. (4) WAIVER; EXCEPTIONAL CIRCUMSTANCES.**

3 The department shall waive the requirements of this section if exceptional circumstances exist.

4 Exceptional circumstances 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 – UNEMPLOYMENT INSURANCE APPEALS**

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

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

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

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

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

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

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

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

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

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

3           **DWD 140.01 Hearings and appeals. (1) APPEAL RIGHTS.** Any party to a  
4 determination issued under ~~ss. s.~~ s. 108.09, 108.095 or 108.10, Stats., has the right to an appeal. An  
5 appeal as to any matter in a determination is a request for hearing and shall be filed with ~~the~~  
6 ~~department~~ an appeal tribunal by the appellant or its representative. An appeal is filed with an  
7 appeal tribunal when it is submitted to a hearing office or public employment office in an agent  
8 state under sub. (2) (b). Each determination issued under ~~ss. s.~~ s. 108.09, 108.095 or 108.10, Stats.,  
9 shall specify the time limit within which any appeal is required to be filed ~~with the department~~  
10 under ch. 108, Stats.

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

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

22           ~~1. An unemployment insurance office.~~

23           2. A hearing office.

1           3. ~~The central administrative office of the bureau of legal affairs, unemployment~~  
2 ~~insurance division, department of workforce development.~~

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

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

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

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

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

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

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

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

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

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

1           Note: ~~The address for the central administrative office of the bureau of legal affairs,~~  
2 ~~unemployment insurance division, department of workforce development, is 201 E. Washington,~~  
3 ~~room 331X, P.O. Box 8942, Madison, Wisconsin 53708-8942.~~  
4

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

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

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

22           **(2)** An appellant may submit a request to retract its withdrawal and reinstate ~~its~~ an  
23 appeal. The retraction request shall be in writing and state a the reason for the request. The  
24 ~~administrative law judge~~ appeal tribunal may not grant a request to retract a withdrawal unless

1 the request establishes good cause for the retraction and is received within 21 days after the  
2 withdrawal decision was electronically delivered or mailed to the appellant.

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

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

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

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

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

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

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

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

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



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

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

5           (b) Stipulations of fact and agreements concerning the identity of or authenticity of  
6 documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (b) Unless the ~~administrative law judge~~ appeal tribunal orders otherwise, the sole means  
2 of discovery available to a party or party's representative ~~prior to~~ before a hearing is inspection of  
3 the hearing file and procurement of copies of file contents. The ~~administrative law judge~~ appeal  
4 tribunal may also order a prehearing conference under s. DWD 140.07. The provisions of ch.  
5 804, Stats., do not apply to hearings under ss. 108.09, 108.095 and 108.10, Stats.

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

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

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

- 1 (a) The initial determination.
- 2 (b) The exhibits submitted and marked as exhibits at the hearing, whether or not received
- 3 by the ~~administrative law judge~~ appeal tribunal.
- 4 (c) The appeal tribunal decision issued for the hearing.
- 5 (d) The hearing recording.
- 6 (e) The written synopsis of testimony.
- 7 (f) The transcript of the testimony, if one is prepared at the department's direction.

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

11  
12 **(4) CONFIDENTIALITY OF CERTAIN RECORDS AT ALL STAGES OF HEARING.**

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

- 15 1. The ~~worker's individual's~~ unemployment insurance record as that record relates to
- 16 work for another employing unit unless ~~an administrative law judge~~ the appeal tribunal approves
- 17 a request.
- 18 2. Department memoranda concerning unemployment tax litigation strategy.
- 19 3. The investigation reports of department auditors concerning the status and liability of
- 20 employing units under ch. 108, Stats.

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

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

4 (d) Notwithstanding subs. (1) to (3), no party, party's representative or other person,  
5 except a statutory reviewing body, as specified under ss. 108.09, 108.095 and 108.10, Stats., may  
6 inspect the ~~handwritten~~ notes made by the ~~administrative law judge~~ appeal tribunal at the  
7 hearing.

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

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

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

20 (b) The evidence sought is hearsay.

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

23 (d) The evidence requested discloses business secrets.

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

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

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

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

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

21           **140.11 Telephone and videoconference hearings.** (1) The ~~department~~ appeal tribunal  
22 may conduct hearings in whole or in part by telephone or videoconference when it is impractical  
23 for the ~~department~~ appeal tribunal to conduct an in-person hearing, when necessary to ensure a

1 prompt hearing or when one or more of the parties would be required to travel an unreasonable  
2 distance to the hearing location. When 2 or more parties are involved, the evidence shall be  
3 presented during the same hearing unless the ~~department~~ appeal tribunal determines that it is  
4 impractical to do so. A party scheduled to appear by telephone or videoconference may appear in  
5 person at the ~~administrative law judge's~~ appeal tribunal's location. The ~~department~~ appeal  
6 tribunal may postpone or adjourn a hearing initially scheduled as a telephone or videoconference  
7 hearing and reschedule the hearing for an in-person appearance if circumstances make it  
8 impractical to conduct a telephone or videoconference hearing.

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

20 (3) If the appellant is scheduled to appear by telephone or videoconference, the  
21 ~~administrative law judge~~ appeal tribunal shall, within ~~15~~ 10 minutes after the starting time for the  
22 hearing, attempt to place at least two calls to the appellant's telephone number of record or the  
23 telephone number furnished to the hearing office. One of the calls shall be attempted at or near

1 the end of the ~~15~~ 10 minute period unless the ~~administrative law judge appeal tribunal~~  
2 determines after reasonable efforts that the appellant cannot be reached at that number. If, within  
3 ~~15~~ 10 minutes after the starting time for the hearing, neither the appellant nor the appellant's  
4 ~~authorized~~ representative can be reached at the telephone number of record or the telephone  
5 number furnished to the hearing office, then the ~~administrative law judge appeal tribunal~~ **may**  
6 **shall** dismiss the appeal.

7 (4) If the respondent is scheduled to appear by telephone or videoconference, the  
8 ~~administrative law judge appeal tribunal~~ **may shall** proceed with the hearing if, within ~~5~~ 10  
9 minutes after the starting time for the hearing, neither the respondent nor the respondent's  
10 ~~authorized~~ representative can be reached at the respondent's telephone number of record or the  
11 telephone number furnished to the hearing office. The ~~administrative law judge appeal tribunal~~  
12 may refuse to allow a respondent to testify if the ~~administrative law judge appeal tribunal~~ is  
13 unable to reach the respondent or the respondent's ~~authorized~~ representative and neither the  
14 respondent nor the respondent's ~~authorized~~ representative have contacted the hearing office  
15 within ~~15~~ 10 minutes after the starting time for the hearing. The respondent ~~shall be~~ is considered  
16 to have failed to appear for the hearing if the ~~administrative law judge appeal tribunal~~ so refuses.  
17 The respondent may ~~appeal~~ petition such a finding under ~~this chapter~~ s. 108.09 (6), Stats.

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



1 within one hour of the scheduled starting time of the hearing, the ~~administrative law judge appeal~~  
2 ~~tribunal~~ **may shall** dismiss the appeal.

3 (6) The hearing office shall mark and electronically deliver or mail the potential exhibits  
4 for a telephone or videoconference hearing from the hearing file to ~~both~~ all parties as soon as  
5 possible ~~prior to~~ before the date of the telephone or videoconference hearing. A party may  
6 submit additional documents as potential exhibits by simultaneously electronically delivering or  
7 mailing those documents to the hearing office and copies to ~~the other~~ each party. A party may  
8 submit potential exhibits which are not documents in the manner designated by the hearing office  
9 to which the case is assigned. The ~~administrative law judge conducting the hearing appeal~~  
10 ~~tribunal~~ may refuse to consider any documents not received by the hearing office or ~~the other~~  
11 each party ~~within~~ at least 3 days ~~prior to~~ before the hearing.

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

- 16 (a) The parties entered into the stipulation voluntarily;
- 17 (b) The stipulation contains all the relevant and necessary facts to resolve the issues as  
18 determined by the ~~administrative law judge appeal tribunal~~.
- 19 (c) The stipulation is in writing and signed, or electronically executed, by the parties.

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

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

4           **DWD 140.13 Parties who fail to appear; general provisions.** All parties who are  
5 required to appear in person shall appear at the hearing location no later than the starting time  
6 listed on the notice of hearing. If the appellant does not appear within ~~15~~ 10 minutes after the  
7 scheduled starting time of the hearing, the ~~administrative law judge~~ appeal tribunal **may shall**  
8 dismiss the appeal. If the respondent does not appear within ~~5~~ 10 minutes after the scheduled  
9 starting time of the hearing and the appellant is present, the ~~administrative law judge~~ appeal  
10 tribunal **may shall** commence the hearing. The provisions of s. 108.09 (4), Stats., apply ~~as to the~~  
11 ~~rights of the parties and procedures to be followed with regard to the failure of either~~ when a  
12 party fails to appear at a hearing under this chapter.

13           **DWD 140.15 Hearing procedure; order of witnesses; public hearing and exclusion**  
14 **of certain persons; oral decisions.** (1) All testimony shall be given under oath or affirmation.  
15 The ~~administrative law judge~~ appeal tribunal shall administer the oath or affirmation to each  
16 witness. No person who refuses to swear or affirm the veracity of ~~his or her~~ their testimony may  
17 testify. Each party shall be given an opportunity to examine and cross-examine witnesses. The  
18 ~~administrative law judge~~ appeal tribunal may limit ~~the testimony to only those matters that are~~  
19 disputed. The appeal tribunal may not allow into the record, either on direct or cross-examination  
20 of witnesses so as not to unduly burden the record, redundant, irrelevant or repetitive testimony.

21           (2) The ~~administrative law judge~~ appeal tribunal has the responsibility to develop the  
22 facts and may call and examine any witness that ~~he or she~~ the appeal tribunal deems necessary  
23 ~~and may also,~~ determine the order ~~in which~~ that witnesses are called and the order of

1 examination of each witness. The ~~administrative law judge~~ appeal tribunal may deny the request  
2 of any party to examine a witness adversely. The ~~administrative law judge~~ appeal tribunal may  
3 hear closing arguments from the parties ~~but~~ and may limit the time of such arguments. The  
4 ~~administrative law judge~~ appeal tribunal may adjourn and continue a hearing to a future date  
5 when the hearing cannot be completed in the time scheduled.

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

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

20 **DWD 140.16 Admissibility of evidence; administrative notice.** (1) Statutory and  
21 common law rules of evidence and rules of procedure applicable to courts of record are not  
22 controlling with respect to hearings. The ~~administrative law judge~~ appeal tribunal shall secure the  
23 facts in as direct and simple a manner as possible. Evidence having reasonable probative value is

1 admissible, ~~but irrelevant.~~ Irrelevant, immaterial and ~~repetitious~~ repetitive evidence is not  
2 admissible. Hearsay evidence is admissible if it has reasonable probative value but no issue may  
3 be decided solely on hearsay evidence unless the hearsay evidence is admissible under ch. 908,  
4 Stats.

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

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

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

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

21 **DWD 140.18 Fees for representation of parties.** No representative ~~attorney~~ may  
22 charge or receive from a claimant for representation in a dispute concerning benefit eligibility or  
23 liability for overpayment of benefits, or in any administrative proceeding under ch. 108, Stats.,

1 concerning such a dispute, a fee which, in the aggregate, is more than 10% of the maximum  
2 benefits at issue unless the department has approved a specified higher fee before the claimant is  
3 charged. When a request for waiver of the 10% limitation is received, the department shall  
4 consider whether extended benefits or any other state or federal unemployment benefits are at  
5 issue. Any request for waiver of the 10% limitation on fees shall be submitted in writing to the  
6 central administrative office of the bureau of legal affairs, ~~unemployment insurance in the~~  
7 ~~division, department of workforce development. The department is not authorized under.~~ Under  
8 s. 108.13, Stats., to the department shall not assign any past or future benefits for the collection  
9 of ~~attorney~~ representative fees.

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

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

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

21 **(2)** If the person with a hearing impairment makes arrangements on ~~his or her~~ their own  
22 behalf to have a person assist ~~him or her~~ them in communicating, the department may reimburse  
23 such person for fees and travel expenses at the rate specified for interpreters under s. DWD  
24 140.20, if the ~~department~~ appeal tribunal determines that such person is necessary to assist the  
25 person with the hearing impairment in communicating.

1           (3) The ~~department~~ hearing office shall attempt to schedule hearings in buildings which  
2 have ease of access for any person with a temporary or permanent incapacity or disability. The  
3 ~~administrative law judge~~ appeal tribunal may reschedule any hearing in which such a person who  
4 is a party or a necessary witness to the hearing does not have ease of access into the building ~~in~~  
5 ~~which~~ where the hearing is scheduled.

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

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

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

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

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

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

22           (a) and (d) .

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

1 (d) For travel expenses, 20 cents per mile from the witness' or interpreter's residence in  
2 this state to the hearing site and back or, if without the state, from the point at which the witness  
3 passes the state boundary to the hearing site, and back or, if without the state, from the point at  
4 which the witness passes the state boundary to the hearing site, and back.

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

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

11 **Note:** ~~Requests for~~ To request hearing recordings and waivers of fees ~~may be made to~~  
12 contact the Department of Workforce Development, Division of Unemployment  
13 Insurance, Bureau of Legal Affairs, Unemployment Insurance Division, Department  
14 of Workforce Development, 201 E. Washington Avenue, P.O. Box 8942, Madison,  
15 Wisconsin 53708-8942 or telephone (608) 266-3174.  
16

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

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

21 (c) The department's standard affidavit form for appeals under ss. 108.09, 108.095 and  
22 108.10, Stats., is available at the department's website or by requesting a copy from the hearing  
23 office.

24 **Note:** To obtain the department's standard affidavit form, call (608) 266-8010 or visit the  
25 website [https://dwd.wisconsin.gov/dwd/forms/ui/ucl\\_17500\\_e.htm](https://dwd.wisconsin.gov/dwd/forms/ui/ucl_17500_e.htm).  
26

27 ~~Note: The standard affidavit form can be found at the department's website:~~  
28 ~~<http://www.dwd.wisconsin.gov> or by contacting any of the following hearing offices:~~  
29 ~~Eau Claire Hearing Office~~

1 ~~715 S. Barstow Street, Suite #1~~  
2 ~~Eau Claire, WI 54701~~

3  
4 ~~Fox Valley Hearing Office~~  
5 ~~54 Park Place, Suite 800~~  
6 ~~Appleton, WI 54914~~

7  
8 ~~Madison Hearing Office~~  
9 ~~3319 W. Beltline Hwy., Room E308~~  
10 ~~P.O. Box 7975~~  
11 ~~Madison, WI 53707-7975~~

12  
13 ~~Milwaukee Hearing Office~~  
14 ~~819 N. 6th Street, Room 382~~  
15 ~~Milwaukee, WI 53203~~

16  
17 **(2) AFFIDAVIT REQUIREMENTS.**

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

19 1. The name and address of the affiant.

20 2. The signature or mark of the affiant.

21 3. The date the statement was sworn.

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

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

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

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



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

**Unemployment Insurance Advisory Council  
Tentative Schedule  
2018 – 2019**

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<b>November 15, 2018</b>	<b>Scheduled Meeting of the Advisory Council Public Hearing</b>
December 20, 2018	Council Adjourn for Holidays (Tentative)
January 17, 2019	Scheduled Meeting of UIAC Introduce Department Law Change Proposals
February 21, 2019	Scheduled Meeting of UIAC Discuss Department Proposals
March 21, 2019	Scheduled Meeting of UIAC Discuss Department Proposals Exchange of Labor & Management Law Change Proposals
April 18, 2019	Scheduled Meeting of UIAC Discuss Department Proposals Discuss Labor & Management Proposals
May 16, 2019	Scheduled Meeting of UIAC Discuss Department Proposals Discuss Labor & Management Proposals
June 20, 2019	Scheduled Meeting of UIAC Discussion and Agreement on Law Changes for Agreed Upon Bill
July 18, 2019	Scheduled Meeting of UIAC Continue Discussion on Law Change Proposals for Agreed Upon Bill
August 15, 2019	Council Adjourn for Summer (Tentative)
<b>September 19, 2019</b>	<b>Scheduled Meeting of UIAC Review and Approval of Department Draft of Agreed Upon Bill</b>
October 17, 2019	Scheduled Meeting of UIAC Review and Approval of LRB Draft of Agreed Upon Bill
<b>November 21, 2019</b>	<b>Scheduled Meeting of UIAC Final Review and Approval of LRB Draft of Agreed Upon Bill</b>
<b>Dec. 2019/Jan. 2020</b>	<b>Agreed Upon Bill Sent to the Legislature for Introduction in the Spring 2020 Legislative Session</b>