STATE OF WISCONSIN

DWD

Department of Workforce Development

Unemployment Insurance Advisory Council

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

MEETING

Date: September 20, 2018

Time: 10:00 a.m. – 4:00 p.m.

Place: Department of Workforce Development
201 E. Washington Avenue
Madison, Wisconsin
GEF-1, Room F305

AGENDA ITEMS AND TENTATIVE SCHEDULE:

1. Call to Order and Introductions
2. Approval of Minutes of the April 26, 2018 Council Meeting
3. Re-Employment Services – Bruce Palzkill
4. Department Update
5. Report on the Unemployment Insurance Reserve Fund – Tom McHugh
6. Program Integrity Assessment
7. Worker Misclassification Quarterly Report – Mike Myszewski
8. Proposed Amendments to DWD Administrative Rules Chapters 100-150
   - Clearinghouse Report
9. Update on Court Cases
   - *DWD v. LIRC, Valarie Beres & Mequon Jewish Campus, Inc.*
   - *WDR v LIRC, Tetra Tech EC, Inc., & Lower Fox River Remediation LLC*
10. Research Request

11. Future Meeting Dates and Public Hearing

12. Adjourn

Notice:

- The Council may not address all agenda items or follow the agenda order.
- The Council may take up action items at a time other than that listed.
- The Council may discuss other items, including those on any attached lists.
- The Council members may attend the meeting by telephone.
- The employee or employer members of the Council may convene in closed session at any time during the meeting to deliberate any matter for potential action or items posted in this agenda, under sec. 19.85(1)(ee), Stats. The employee or employer members of the Council may thereafter reconvene again in open session after completion of the closed session.
- This location is handicap accessible. If you have a disability and need assistance (such as an interpreter or information in an alternate format), please contact Robin Gallagher, Unemployment Insurance Division, at 608-267-1405 or dial 7-1-1 for Wisconsin Relay Service.
- Today's meeting materials will be available online at 10:00 a.m. at http://dwd.wisconsin.gov/uibola/uiac/meetings.htm

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Offices of the State of Wisconsin Department of Natural Resources
101 S. Webster Street, GEF 2, Room G27
Madison, WI

April 26, 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, John Mielke, Mark Reihl, Shane Griesbach, Terry Hayden, and Mike Crivello.

Department Staff Present: DWD Secretary Ray Allen**,** Evan Bradtke (DWD Legislative Liaison), Joe Handrick, Ben Peirce, Andy Rubsam, Lili Crane, Patrick Lonergan, Tom McHugh, Mary Jan Rosenak, Janet Sausen, Jill Moksouphanh, Robert Usarek, Emily Savard, Karen Schultz, Grace Castagna, Tom Mund, and Robin Gallagher.

Members of the Public Present: Victor Forberger (Atty., Wisconsin UI Clinic), Susan Quam (Wisconsin Restaurant Association), Karl Dahlen (General Counsel, Labor & Industry Review Commission) Erika Strebel (Daily Reporter), Claudia Gotzler (daughter Mike Gotzler).

1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council meeting to order at 9:32 a.m. under Wisconsin's Open Meeting law. Council members introduced themselves and Ms. Knutson recognized DWD Secretary Ray Allen, Legislative Liaison Evan Bradtke, and LIRC General Counsel Karl Dahlen.

2. Approval of Minutes of the March 15, 2018 Council Meeting

Motion by Mr. Griesbach, second by Mr. Lump, to approve the March 15, 2018 meeting minutes without correction. The motion carried unanimously.

3. Department Update

Mr. Handrick announced that UI Deputy Administrator Ben Peirce has been hired as the Director for the Information Technology Center at the National Association of State Workforce Agencies. Mr. Handrick congratulated Mr. Peirce and thanked him for his 25 years of work for the State of Wisconsin.

4. Trust Fund Update

Mr. McHugh provided the following UI Reserve Fund Highlights:

- Benefit payments through March 2018 declined $17.2 million, or 10.1%, compared to benefits paid through March 2017.
- March 2018 year-to-date tax receipts declined by $13.5 million, or 16.4%, compared to the same time last year. This decrease is attributable to a change in tax schedules, as well as the improvement of employer reserve fund balances.
- The March 2018 Trust Fund ending balance was $1.4 billion, an increase of 29.3% when compared to the same time last year.
- Interest earned on the Trust Fund for the first quarter of 2018 was $8.1 million, compared to $6.3 million for the first quarter 2017.
- With the passage of Wis. Stat. § 108.155, effective October 2, 2016, $2 million was set aside in the balancing account to cover identity theft charges against reimbursable employers' accounts. There have been no charges against the set aside amount, and the interest to date is $68,319. Mr. Handrick noted that the lack of charges against the account is a testament to the department's success in fighting identity theft.
- At the end of fourth quarter, 2017, Wisconsin had a Trust Fund Balance of nearly $1.5 billion, ranking 12th in the nation.
- When looking at Trust Fund Balance as a percentage of total wages, Wisconsin ranks 21st in the nation at 1.41%.

5. Legislative Update

Ms. Knutson reported that the UIAC Agreed Bill (Act 157) and Increased Criminal Penalties for UI Benefit Fraud (Act 147) were both signed by Governor Walker on March 28, 2018. The Council members were provided with the department's plain language summary of Acts 147 and 157.

6. Draft of Proposed Amendments to Administrative Rules

Mr. Rubsam highlighted the following proposed changes to administrative rules:

- Chapter 100: repealed definitions that are no longer used, created definition of "decision," moved definitions that only occur in one chapter to those chapters.
- Chapter 101: small changes made to permit repeal of Chapter 130.
- Chapter 102: Renumbering change on page 3, line 10 to be consistent with numbering rules.
- Chapter 103: Added language regarding unpaid managers of LLCs to be consistent with Chapter 108.
- Chapters 105 & 107: Rewritten in places to read more smoothly, removed double negatives so rule can be applied easily.
- Chapter 110: Page 19, line 10 changed from sub (5) to sub (4) due to repeal of sub (5).

- Chapter 111: Changed language to be consistent with wage reporting processes requiring tax and wage reports be reported online.
- Chapter 113: Language updates made for readability and to reflect changes made in latest Agreed Bill.
- Chapter 114: Changes made for style only.
- Chapter 115: Statutory cross-references changed and updated, included the word "managed" to be consistent with Chapter 108. Incorrect internal cross-references fixed.
- Chapter 120: Created notes to explain how to obtain documents from department website.
- Chapter 127: Changed "justifiable cause" to "good cause," as this is the more commonly-used term.
- Chapter 128: Definition changes.
- Chapter 130: Repealed.
- Chapter 131: Made changes to update terminology to be consistent with Chapter 108.
- Chapter 132: Updated language to be consistent with federal guidelines, updated statute references.
- Chapter 133: Style changes.
- Chapter 135: Included mailing address for TRA overpayments.
- Chapter 136: Updated definitions so they are consistent with definitions in Chapter 108, corrected mailing addresses.
- Chapter 140: changed language from "may" to "shall" per previous Council request, and to be consistent with Chapter 108.
- Chapter 142: Changed rule language to be consistent with federal statute changes.
- Chapter 147: Repealed repetitive and inconsistent language to align with Chapter 108.
- Chapter 149: Changed definition of "public official" to align with new federal definition. Amended DWD 149.02(2)(b) to confirm that personally identifiable information is redacted from appeal records consistent with DWD 140.09(3).
- Chapter 150: Repealed an unused provision and updated the forms list.

Mr. Rubsam clarified that these changes are all minor technical changes. The proposed changes are not meant to alter the meaning or legal effect of the rule; but are included to update language and increase ease of reading for users.

Ms. Knutson thanked the Council for their review of the proposed changes.

7. Research Requests

Mr. Gotzler had requested information on re-employment services provided by the department. Ms. Knutson reported that DET Assistant Administrator Mr. Bruce Palzkill is available to provide a brief presentation on re-employment services at the next Council meeting. Mr. Gotzler had also requested information on the collection percentage from misclassification audits for tax contributions and interests. Ms. Knutson indicated that it is difficult to collect this information,

as it would require manually reviewing each account. However, she informed the Council that based on preliminary reporting, there were 128 misclassification audits closed in 2017, with 12 cases filing appeals. Those audits found that 85% of employers were compliant with the law. Mr. Reihl asked what the process is for informing other agencies when employers have neglected to pay payroll taxes. Ms. Knutson responded that the department shares the information with the worker's compensation division, to check for worker's compensation insurance coverage. In the past, information has been shared with the Department of Revenue as well; however, Ms. Knutson is unsure if they are notified of every case.

8. Future Meeting Dates

The next Council meeting is scheduled for September 20, 2018. The department will poll for members' availability. Ms. Knutson also provided the Council with a tentative schedule for the next Agreed Bill cycle. The agenda includes a public hearing scheduled in November 2018, and proposes the final bill be sent to the Legislature December 2019/January 2020 for introduction in the Spring 2020 Legislative Session.

9. Motion to Caucus

Motion by Mr. Reihl, second by Mr. Manley to go into closed caucus under Wis. Stat. § 19.85(1)(ee) to deliberate Administrative Rule changes and any other agenda items at 10:28 a.m. The motion carried unanimously.

10. Report out of Caucus

The Council reconvened at 12:24 p.m. Mr. Manley reported that Management Members were prepared to move forward with all proposed revisions, except Chapters 105 and 107, which they would like more time to research. Mr. Reihl reported that the Labor Members were supportive of this.

Motion by Mr. Hayden, second by Mr. Gotzler, to approve the proposed Administrative Rule changes, except for Chapters 105 and 107. The motion carried unanimously.

11. Adjourn

Motion by Mr. Manley, second by Mr. Reihl to adjourn at 12:29 p.m. The motion carried unanimously.

Wisconsin RESEA Program

Re-employment Services and Eligibility Assessment (RESEA)

WISCONSIN DWD

UI Advisory Committee
September 20, 2018
Madison, WI (GEF-1, F305)

Bruce Palzkill
Deputy Division Administrator

Ann Astin
RESEA/UI Specialist

Division of Employment and Training
Department of Workforce Development

RESEA Selection Process

- UI claimant registers on JobCenterofWisconsin.com (JCW) and creates a JCW resume.
- Required to conduct work search.
- Received first UI benefit payment.
- Completes JCW online orientation and assessment.
- Assessment scoring determines need for claimant to schedule in-person RESEA.
- Initial RESEA: 3-hour group session

Initial RESEA Group Session

- Job Center orientation
- Program information
  - WIOA Title I (Adult & Dislocated Worker)
  - Registered Apprenticeship
  - Office of Veterans Employment Services
  - Division of Vocational Rehabilitation (DVR)
  - Title II (Adult Basic Education)
  - Job Readiness assistance
- Job Search assistance
- Labor Market Information (LMI)

Individual 1-on-1 Meeting

- During or after group session with Job Service staffer.
- Review online assessment for barriers
- Review previous two weeks' work searches
- Review resume
- Review LMI
- Develop Individual Employment Plan (IEP)
- Provide referrals and assign mandatory follow-up job search activities

RESEA Participants PY2016-17

July 1, 2016 – June 30, 2017

• Letters sent to UI claimants	38,878
• In-person session required	16,635
• In-person session attended	12,433
• Subsequent session required	12,033
• Subsequent session completed	9,863

RESEA Participants PY2017-18

July 1, 2017 – June 30, 2018

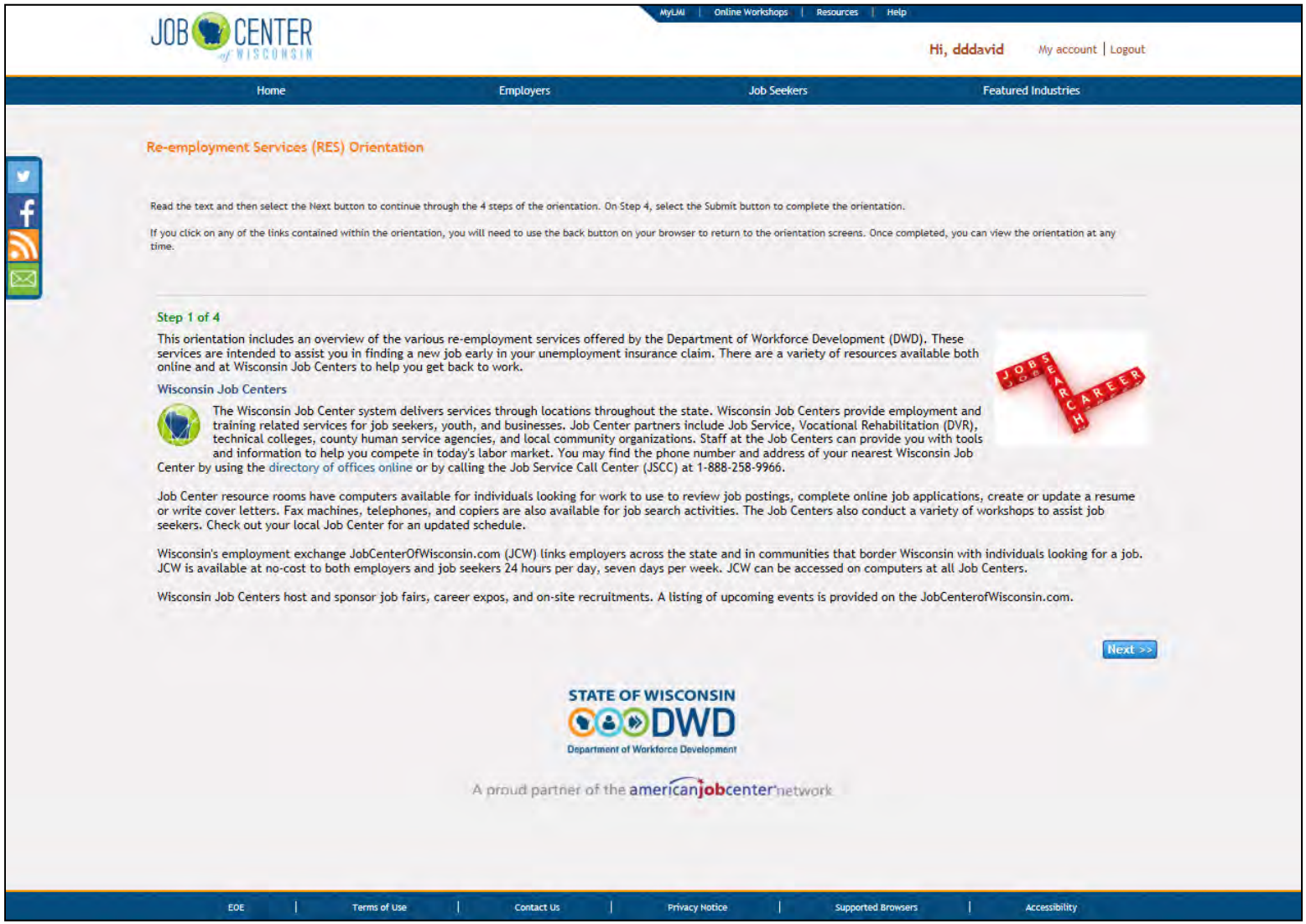
• Letters sent to UI claimants	40,665
• In-person session required	24,399
• In-person session attended	17,411
• Subsequent session required	16,933
• Subsequent session completed	13,871

Key Components

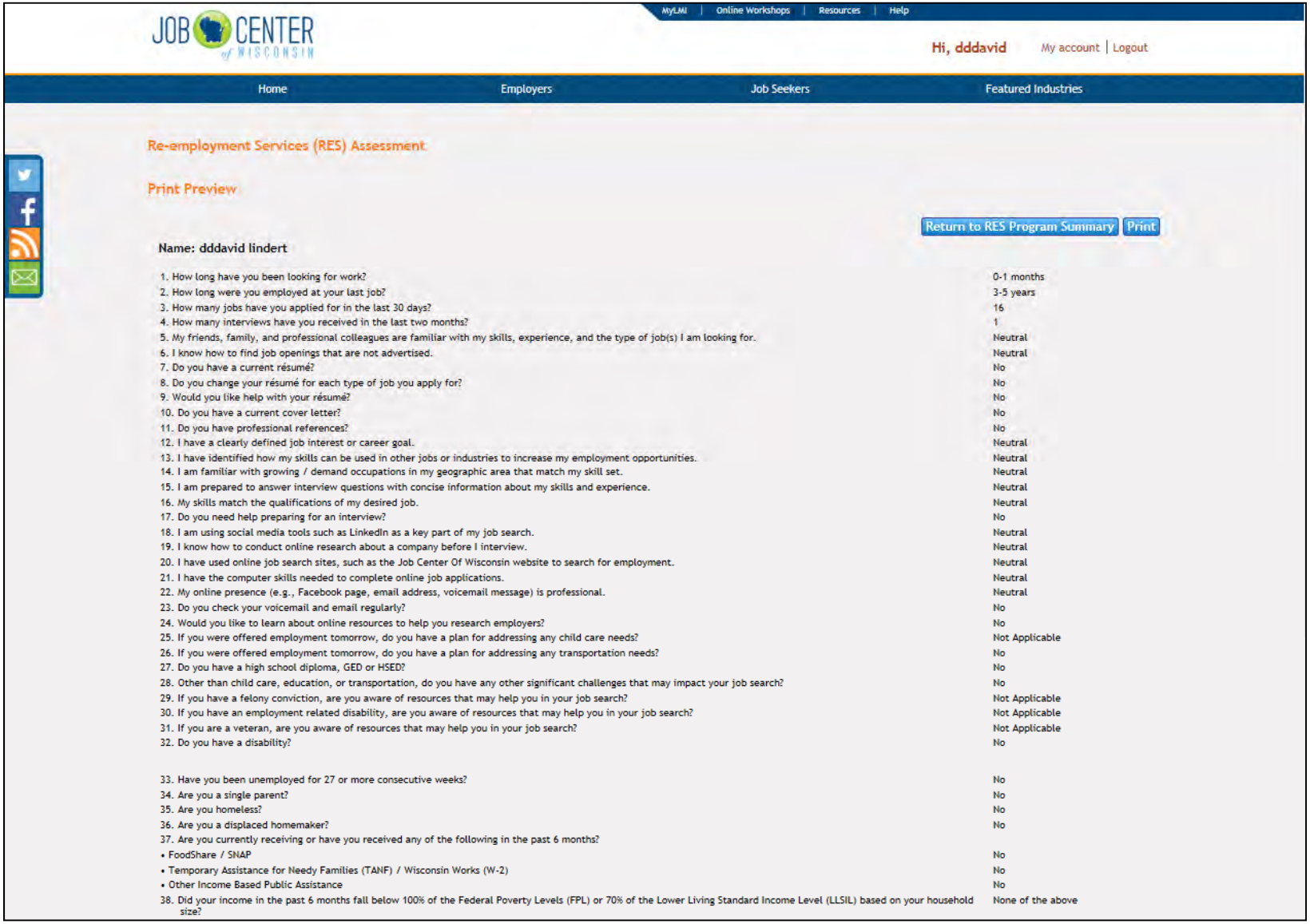
- Online Orientation
- Online **Assessment**
- Scoring/Automated Triaging
- Online **Tutorials**
- Self-Scheduling
- Use of Email for Communication
- Increased **UI/DET coordination**

Key Components: Online Orientation

Key Components: Online Orientation



Key Components: Online Assessment



JOB CENTER of WISCONSIN

MyLMI | Online Workshops | Resources | Help

Hi, dddavid My account | Logout

Home | Employers | Job Seekers | Featured Industries

Re-employment Services (RES) Assessment

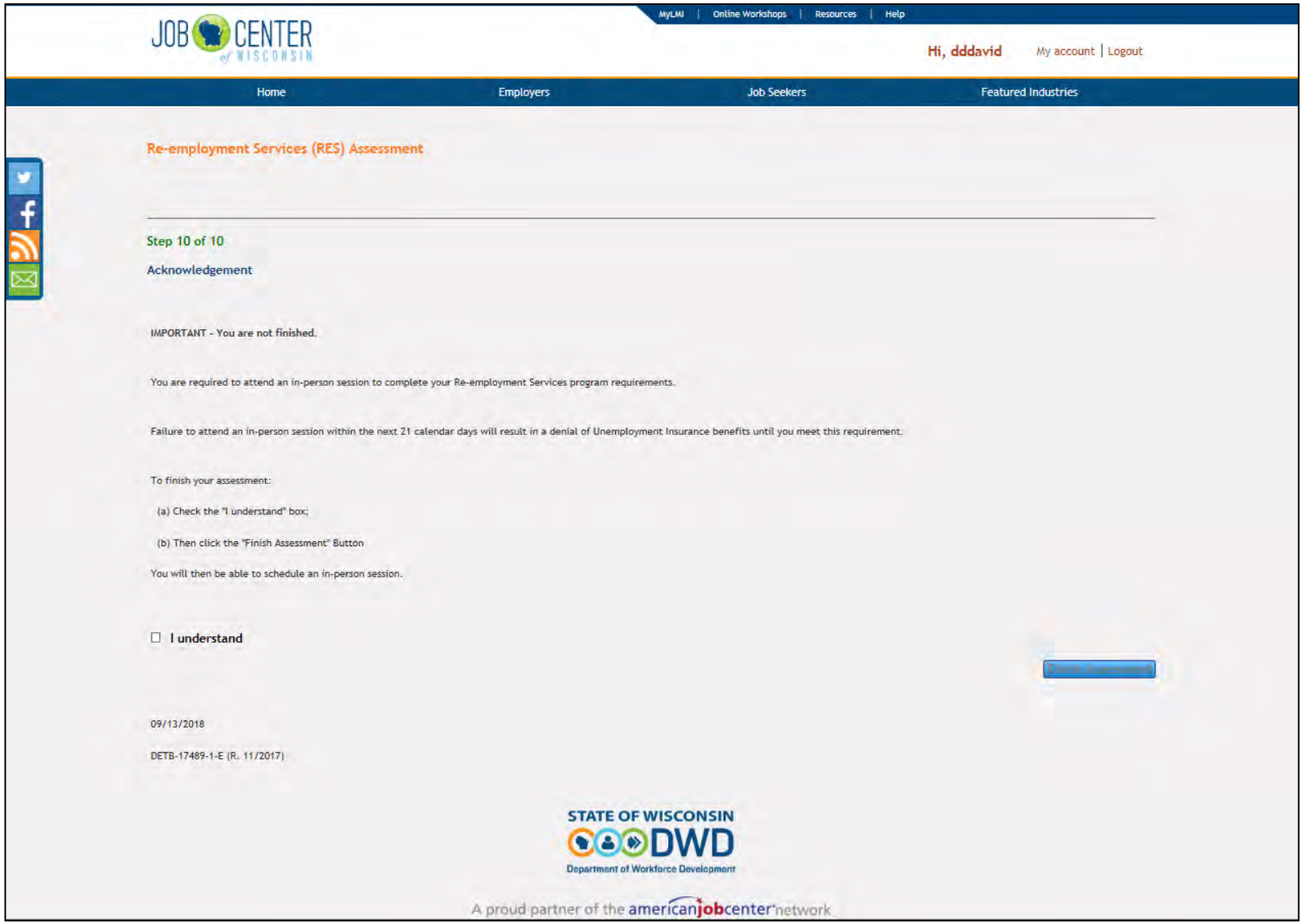
Print Preview

Return to RES Program Summary | Print

Name: dddavid lindert

1. How long have you been looking for work?	0-1 months
2. How long were you employed at your last job?	3-5 years
3. How many jobs have you applied for in the last 30 days?	16
4. How many interviews have you received in the last two months?	1
5. My friends, family, and professional colleagues are familiar with my skills, experience, and the type of job(s) I am looking for.	Neutral
6. I know how to find job openings that are not advertised.	Neutral
7. Do you have a current résumé?	No
8. Do you change your résumé for each type of job you apply for?	No
9. Would you like help with your résumé?	No
10. Do you have a current cover letter?	No
11. Do you have professional references?	No
12. I have a clearly defined job interest or career goal.	Neutral
13. I have identified how my skills can be used in other jobs or industries to increase my employment opportunities.	Neutral
14. I am familiar with growing / demand occupations in my geographic area that match my skill set.	Neutral
15. I am prepared to answer interview questions with concise information about my skills and experience.	Neutral
16. My skills match the qualifications of my desired job.	Neutral
17. Do you need help preparing for an interview?	No
18. I am using social media tools such as LinkedIn as a key part of my job search.	Neutral
19. I know how to conduct online research about a company before I interview.	Neutral
20. I have used online job search sites, such as the Job Center Of Wisconsin website to search for employment.	Neutral
21. I have the computer skills needed to complete online job applications.	Neutral
22. My online presence (e.g., Facebook page, email address, voicemail message) is professional.	Neutral
23. Do you check your voicemail and email regularly?	No
24. Would you like to learn about online resources to help you research employers?	No
25. If you were offered employment tomorrow, do you have a plan for addressing any child care needs?	Not Applicable
26. If you were offered employment tomorrow, do you have a plan for addressing any transportation needs?	No
27. Do you have a high school diploma, GED or HSED?	No
28. Other than child care, education, or transportation, do you have any other significant challenges that may impact your job search?	No
29. If you have a felony conviction, are you aware of resources that may help you in your job search?	Not Applicable
30. If you have an employment related disability, are you aware of resources that may help you in your job search?	Not Applicable
31. If you are a veteran, are you aware of resources that may help you in your job search?	Not Applicable
32. Do you have a disability?	No
33. Have you been unemployed for 27 or more consecutive weeks?	No
34. Are you a single parent?	No
35. Are you homeless?	No
36. Are you a displaced homemaker?	No
37. Are you currently receiving or have you received any of the following in the past 6 months?	
• FoodShare / SNAP	No
• Temporary Assistance for Needy Families (TANF) / Wisconsin Works (W-2)	No
• Other Income Based Public Assistance	No
38. Did your income in the past 6 months fall below 100% of the Federal Poverty Levels (FPL) or 70% of the Lower Living Standard Income Level (LLSIL) based on your household size?	None of the above

Key Components: Acknowledgement



Key Components: Online Tutorials

- Interviewing
- Job Searching with Technology
- Networking
- Resume and Job Application
- Your Workplace Skills

Key Components: Self-Scheduling

Search for upcoming Re-employment Services (RES) Session

To search for an available session:

1. Select to search by either City or Zip Code from the first dropdown list.
2. Select your city or zip code from the second dropdown list.
   Tip - After clicking the arrow to open the dropdown list, you can start quickly typing the first letters of your city or the first numbers of your zip code and the list will automatically jump to the desired location.
3. Select the Search button to see available sessions that fall within your 21 day compliance period that matches your search criteria.
4. Choose a session to attend and select Enroll.

If you need assistance with enrolling in a session, contact one of our customer service representatives at 1-888-258-9966.

Search By: City

☐ Check box if you live in a state bordering Wisconsin

* City: ASHLAND

* Distance: Within 30 miles

Search

3 Sessions found

Date	Time	County	City	Location	Enroll	Find Us
Friday, September 14, 2018	08:00 AM to 09:00 AM	ASHLAND	Ashland	Ashland Job Center, 422 3rd St West Suite 201 Ashland WI 54806	Enroll	Map
Monday, September 17, 2018	08:00 AM to 09:00 AM	ASHLAND	Ashland	Ashland Job Center, 422 3rd St West Suite 201 Ashland WI 54806	Enroll	Map
Tuesday, September 18, 2018	08:00 AM to 09:00 AM	ASHLAND	Ashland	Ashland Job Center, 422 3rd St West Suite 201 Ashland WI 54806	Enroll	Map

Page 1

Key Components: Email Communication

Re-employment Services Session Enrollment Confirmation.

You are scheduled to attend the following Re-employment Services session.

Session Date:	**07/19/2018**
Session Time:	**08:00 AM - 08:30 AM**
Location:	**1900 Center Ave Janesville WI 53546**

Please remember to bring the following to your session:

- A current Photo ID (i.e. State issued driver license, State issued identification card, Military ID issued by the U.S. Uniformed Services, U.S. passport)
- A copy of your completed Re-employment Services Assessment,
- A copy of your posted JCW Resume, and
- Two copies of your completed work search tracking log for the week prior to your session. Blank copies of the form can be found at http://dwd.wisconsin.gov/dwd/forms/ui/ucb_12_e.htm

Attendance at the Re-employment Services session is mandatory as part of continued eligibility for UI benefits.

You must arrive on time.

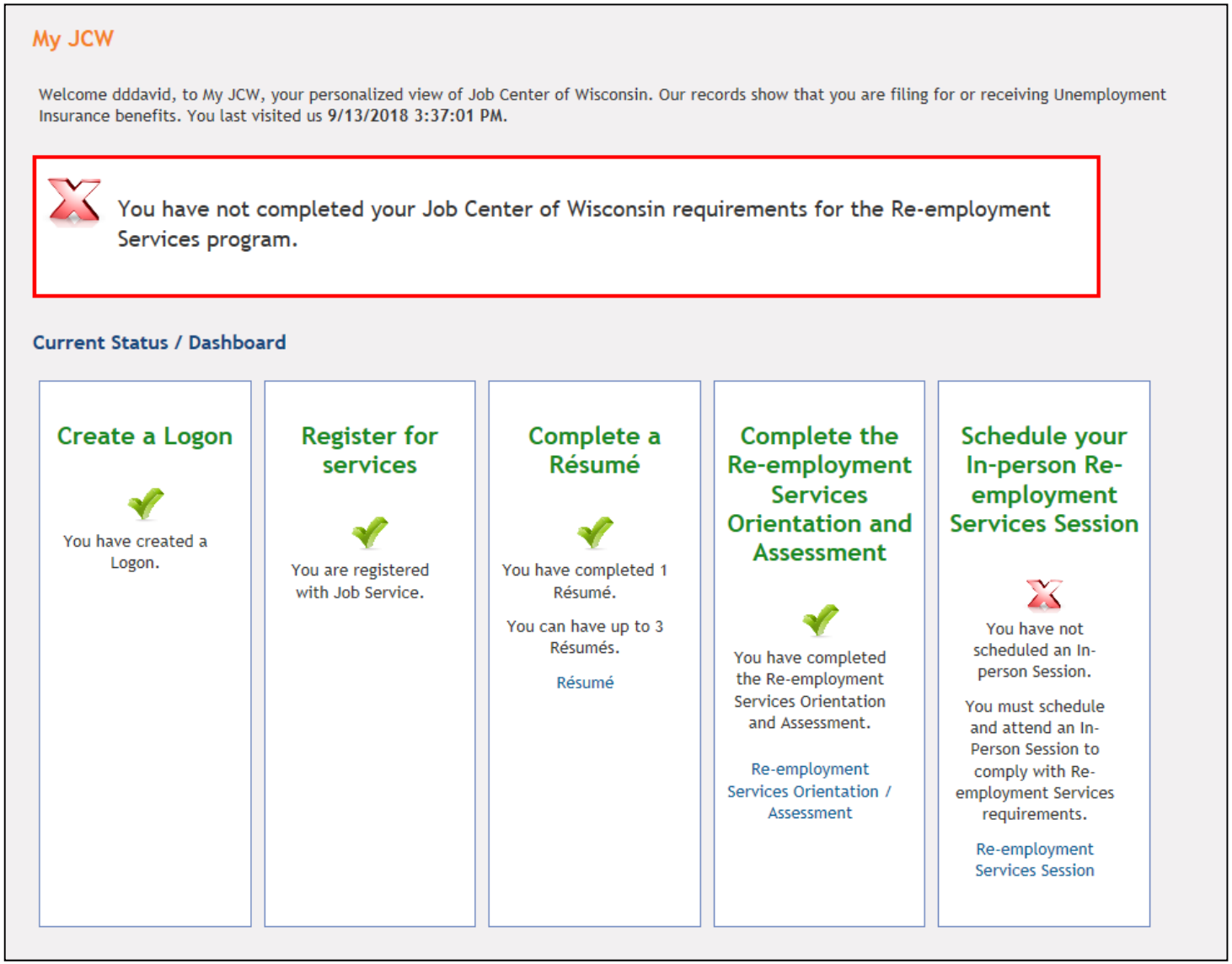
You may be scheduled for additional requirements during your session.

If you need special accommodations, please call 888-258-9966.

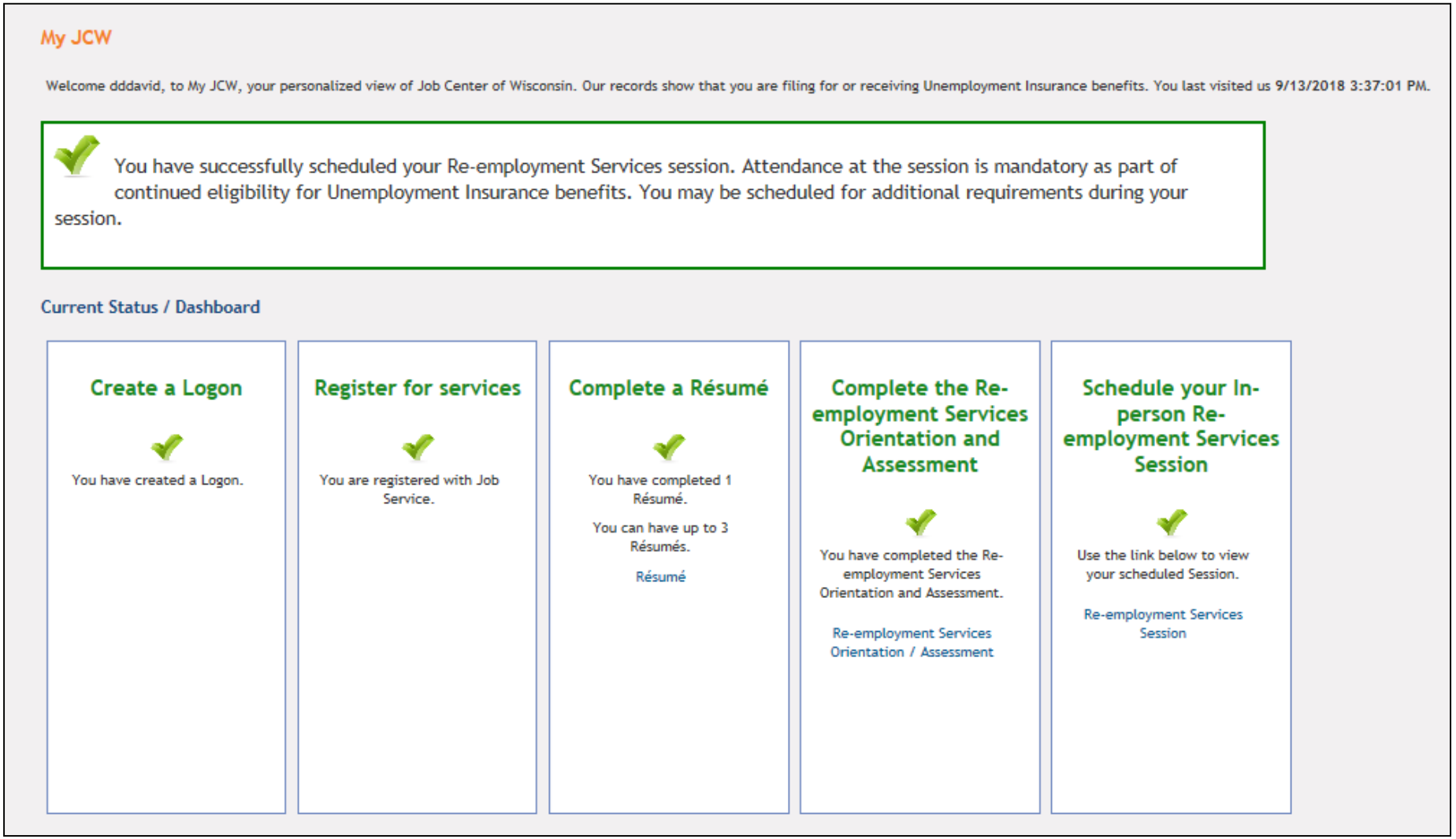
If you fail to attend this session or any follow-up appointments, or if you fail to meet the requirements prior to attending, you will not be eligible for benefits until you comply with all of the requirements.

Job Center of Wisconsin: A proud partner of the American Job Center network

Key Components: Increased DET/UI Coordination



Key Components: Increased DET/UI Coordination



Best Practices

- Tableau for dashboards, metrics and local management reporting
- Executive commitment
- Online self-scheduling
- Fluid cross-divisional communication
- Real-time integration for compliance

Questions?

Bruce Palzkill

DET Deputy Division Administrator

(608) 266-3623

Bruce.Palzkill@dwd.wi.gov

http://JobCenterofWisconsin.com

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WISCONSIN DWD

UI Reserve Fund Highlights

September 20, 2018

1. Benefit payments through August 2018 declined $29.7 million or (9.5%) when compared to benefits paid through August 2017.

Benefits Paid	2018 YTD* *(in millions)*	2017 YTD* *(in millions)*	Change *(in millions)*	Percent Change
Total Regular UI Paid	$ 284.5	$ 314.2	$ (29.7)	(9.5%)

2. August 2018 year-to-date tax receipts declined by (13.6%) from the same time last year. This decrease is attributable to a change in tax schedules and to the improvement of employer reserve fund balances.

Tax Receipts	2018 YTD* *(in millions)*	2017 YTD* *(in millions)*	Change *(in millions)*	Percent Change
Total Tax Receipts	$ 502.6	$ 581.7	$ (79.1)	(13.6%)

3. The August 2018 Trust Fund ending balance was over $1.7 billion, an increase of 18.3% when compared to the same time last year. It is official that Schedule D will continue through the 2019 tax year. The trigger amount of $1.2 billion on June 30 was exceeded this year by $400 million. (June 30, 2018 ending UI Cash Balance $1.6 billion.)

UI Trust Fund Balance	2018 YTD* *(in millions)*	2017 YTD* *(in millions)*	Change *(in millions)*	Percent Change
Cash Analysis Statement	$ 1,711.2	$ 1,446.7	$ 264.5	18.3%

4. Interest earned on the Trust Fund is received quarterly. Interest earned for the first two quarters 2018 is $16.9 million compared to $13.5 million for the first two quarters 2017. The U.S. Treasury annualized interest rate for the second quarter is 2.269%. As of August 1, the Trust Fund is earning over $100,000 interest daily.

UI Trust Fund Interest	2018 YTD* (in millions)	2017 YTD* (in millions)	Change (in millions)	Percent Change
Total Interest Earned	$ 16.9	$ 13.5	$ 3.4	25.2%

* All calendar year-to-date (YTD) numbers are based on the August 31, 2018 Financial Statements.

FINANCIAL STATEMENTS

For the Month Ended August 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 August 31, 2018

	CURRENT YEAR	PRIOR YEAR
ASSETS		
CASH:		
U.I. CONTRIBUTION ACCOUNT	500,402.43	283,622.30
U.I. BENEFIT ACCOUNTS	49,795.06	(16,963.32)
U.I. TRUST FUND ACCOUNTS (1) (2)	1,719,381,611.58	1,455,864,750.10
TOTAL CASH	1,719,931,809.07	1,456,131,409.08
ACCOUNTS RECEIVABLE:		
BENEFIT OVERPAYMENT RECEIVABLES	77,567,859.63	88,123,910.61
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (3)	(35,953,845.10)	(38,848,856.18)
NET BENEFIT OVERPAYMENT RECEIVABLES	41,614,014.53	49,275,054.43
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (4) (5)	31,050,110.75	34,159,140.64
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (3)	(18,972,971.63)	(20,106,810.40)
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	12,077,139.12	14,052,330.24
OTHER EMPLOYER RECEIVABLES	23,158,244.89	23,609,678.46
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	(8,938,390.26)	(10,228,129.23)
NET OTHER EMPLOYER RECEIVABLES	14,219,854.63	13,381,549.23
TOTAL ACCOUNTS RECEIVABLE	67,911,008.28	76,708,933.90
TOTAL ASSETS	1,787,842,817.35	1,532,840,342.98
LIABILITIES AND EQUITY		
LIABILITIES:		
CONTINGENT LIABILITIES (6)	29,410,701.14	32,873,457.27
OTHER LIABILITIES	9,953,734.07	10,553,143.35
FEDERAL BENEFIT PROGRAMS	252,372.01	325,814.51
CHILD SUPPORT HOLDING ACCOUNT	8,707.00	7,840.00
FEDERAL WITHHOLDING TAXES DUE	69,890.00	61,634.00
STATE WITHHOLDING TAXES DUE	1,065,708.23	1,072,585.00
DUE TO OTHER GOVERNMENTS (7)	443,916.49	520,026.62
TOTAL LIABILITIES	41,205,028.94	45,414,500.75
EQUITY:		
RESERVE FUND BALANCE	2,306,398,166.56	2,130,782,795.79
BALANCING ACCOUNT	(559,760,378.15)	(643,356,953.56)
TOTAL EQUITY	1,746,637,788.41	1,487,425,842.23
TOTAL LIABILITIES AND EQUITY	1,787,842,817.35	1,532,840,342.98

1. $2,014,936 of this balance is for administration purposes and is not available to pay benefits.

2. $2,079,363 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 49.2%. The allowance for uncollectible delinquent employer taxes is 45.4%. 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 $763,325. Deferrals for the prior year were $1,074,520.

5. $9,743,506, or 31.4%, of this balance is estimated.

6. $15,787,236 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. $13,623,466 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 $3,172. The 08/31/2018 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is $25. Total LIfe-to-date transfers from DWD Fund 214 to the Unemployment Program Integrity Fund (DWD Fund 298) were $9,483,715.

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

	CURRENT ACTIVITY	YTD ACTIVITY	PRIOR YTD
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	2,769,814,886.49	2,635,459,959.45	2,409,958,025.15
BALANCING ACCOUNT	(1,004,898,806.17)	(1,125,485,495.65)	(1,205,742,751.81)
TOTAL BALANCE	1,764,916,080.32	1,509,974,463.80	1,204,215,273.34
INCREASES:			
TAX RECEIPTS/RFB PAID	2,094,728.24	367,159,163.32	434,862,712.84
ACCRUED REVENUES	1,271,186.31	(1,017,152.01)	(3,695,559.93)
SOLVENCY PAID	483,958.26	135,472,369.61	146,871,356.85
FORFEITURES	6,893.00	192,395.16	364,783.69
BENEFIT CONCEALMENT INCOME	43,604.98	577,352.20	784,587.97
INTEREST EARNED ON TRUST FUND	0.00	16,930,813.76	13,459,505.70
FUTA TAX CREDITS	2,204.95	28,468.22	54,492.56
OTHER CHANGES	12,927.00	319,345.76	337,360.46
TOTAL INCREASES	3,915,502.74	519,662,756.02	593,039,240.14
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	18,389,464.06	240,228,764.83	265,309,271.62
QUIT NONCHARGE BENEFITS	2,762,391.32	33,127,007.34	35,140,609.11
OTHER DECREASES	139,891.13	(809,394.48)	(3,680,407.48)
OTHER NONCHARGE BENEFITS	902,048.14	10,453,053.72	13,059,198.00
TOTAL DECREASES	22,193,794.65	282,999,431.41	309,828,671.25
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	2,306,398,166.56	2,306,398,166.56	2,130,782,795.79
BALANCING ACCOUNT	(559,760,378.15)	(559,760,378.15)	(643,356,953.56)
TOTAL BALANCE (8) (9) (10)	1,746,637,788.41	1,746,637,788.41	1,487,425,842.23

8. This balance differs from the cash balance related to taxable employers of $1,711,152,386 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. $2,079,363 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
RECEIPTS AND DISBURSEMENTS STATEMENT
FOR THE MONTH ENDED 08/31/18

RECEIPTS	-CURRENT ACTIVITY--	--YEAR TO DATE---	PRIOR YEAR TO DATE
TAX RECEIPTS/RFB	$2,094,728.24	$367,159,163.32	$434,862,712.84
SOLVENCY	483,958.26	135,472,369.61	146,871,356.85
ADMINISTRATIVE FEE	61.35	861.22	1,104.61
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	8,750.55	2,865,861.07	2,497,119.94
UNUSED CREDITS	(185,555.16)	3,883,627.06	5,236,618.43
GOVERNMENTAL UNITS	889,090.50	7,777,669.83	8,480,672.16
NONPROFITS	1,202,179.04	7,748,695.75	9,163,092.75
REDA PAID	0.00	0.00	0.00
INTERSTATE CLAIMS (CWC)	379,466.20	2,828,513.37	3,689,118.17
ERROR SUSPENSE	(18,875.28)	2,125.08	(13,858.13)
FEDERAL PROGRAMS RECEIPTS	7,189.75	133,926.93	(68,502.88)
OVERPAYMENT COLLECTIONS	1,365,477.31	14,305,758.79	17,841,096.37
FORFEITURES	6,893.00	192,395.16	364,783.69
BENEFIT CONCEALMENT INCOME	43,604.98	577,352.20	784,587.97
EMPLOYER REFUNDS	(463,970.81)	(4,690,066.11)	(3,651,990.09)
COURT COSTS	35,887.57	361,075.21	427,948.06
INTEREST & PENALTY	341,107.47	2,623,543.11	2,856,053.54
BENEFIT CONCEALMENT PENALTY-PROGRAM INTEGRITY	51,977.53	804,433.54	1,038,155.82
MISCLASSIFIED EMPLOYEE PENALTY-PROGRAM INTEGRIT`	200.00	1,730.41	0.00
SPECIAL ASSESSMENT FOR INTEREST	1,234.03	11,881.64	38,867.45
INTEREST EARNED ON U.I. TRUST FUND BALANCE	0.00	16,930,813.76	13,459,505.70
MISCELLANEOUS	1,511.68	47,281.21	89,455.51
TOTAL RECEIPTS	$6,244,916.21	$559,039,012.16	$643,967,898.76
DISBURSEMENTS			
CHARGES TO TAXABLE EMPLOYERS	$19,589,903.63	$251,478,236.28	$278,377,763.30
NONPROFIT CLAIMANTS	1,040,148.66	7,542,418.58	8,632,001.07
GOVERNMENTAL CLAIMANTS	793,815.10	7,077,549.27	7,939,577.60
INTERSTATE CLAIMS (CWC)	195,418.43	2,748,200.56	3,153,907.50
QUITS	2,762,391.32	33,127,007.34	35,140,609.11
OTHER NON-CHARGE BENEFITS	1,035,603.53	10,735,225.65	13,303,255.75
CLOSED EMPLOYERS	(1,008.44)	5,585.93	(41,695.85)
ERROR CLEARING ACCOUNT	0.00	0.00	0.00
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	69,906.34	964,835.96	1,047,384.23
EX-MILITARY (UCX)	33,296.22	377,016.83	551,513.62
TRADE ALLOWANCE (TRA/TRA-NAFTA)	160,090.08	1,831,568.11	2,371,444.17
2003 TEMPORARY EMERGENCY UI (TEUC)	(520.55)	(12,779.14)	(16,866.65)
FEDERAL ADD'L COMPENSATION $25 ADD-ON (FAC)	(29,723.83)	(307,886.64)	(359,800.30)
FEDERAL EMERGENCY UI (EUC)	(208,944.47)	(2,431,453.13)	(3,383,164.33)
FEDERAL EXTENDED BENEFITS (EB)	(13,368.90)	(198,209.14)	(237,393.25)
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	(308.20)	(1,697.94)	(14.11)
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	(185.00)	(2,391.43)	(5,568.24)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	(169.58)	(2,986.00)	(1,393.10)
INTEREST & PENALTY	305,365.11	2,555,772.35	2,751,800.65
PROGRAM INTEGRITY	765,657.27	3,679,898.71	3,541,599.60
SPECIAL ASSESSMENT FOR INTEREST	0.00	16,241.51	41,910.82
COURT COSTS	41,729.30	365,810.12	426,845.89
ADMINISTRATIVE FEE TRANSFER	103.67	872.94	1,130.41
FEDERAL WITHHOLDING	145,609.00	(43,359.00)	48,882.78
STATE WITHHOLDING	(483,349.00)	499,791.00	430,217.01
FEDERAL LOAN REPAYMENTS	(2,204.95)	(28,468.22)	(54,492.56)
TOTAL DISBURSEMENTS	$26,199,254.74	$319,976,800.50	$353,663,553.60
NET INCREASE(DECREASE)	(19,954,338.53)	239,062,211.66	290,304,345.16
BALANCE AT BEGINNING OF MONTH/YEAR	$1,739,886,147.60	$1,480,869,597.41	$1,165,827,063.92
BALANCE AT END OF MONTH/YEAR	$1,719,931,809.07	$1,719,931,809.07	$1,456,131,409.08

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

	CURRENT ACTIVITY	YEAR TO DATE ACTIVITY	PRIOR YTD ACTIVITY
BEGINNING U.I. CASH BALANCE	$1,730,520,378.70	$1,471,761,579.73	$1,159,159,974.49
INCREASES:			
TAX RECEIPTS/RFB PAID	2,094,728.24	367,159,163.32	434,862,712.84
U.I. PAYMENTS CREDITED TO SURPLUS	728,869.24	139,733,128.30	153,388,455.43
INTEREST EARNED ON TRUST FUND	0.00	16,930,813.76	13,459,505.70
FUTA TAX CREDITS	2,204.95	28,468.22	54,492.56
TOTAL INCREASE IN CASH	2,825,802.43	523,851,573.60	601,765,166.53
TOTAL CASH AVAILABLE	1,733,346,181.13	1,995,613,153.33	1,760,925,141.02
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	18,389,464.06	240,228,764.83	265,309,271.62
BENEFITS CHARGED TO SURPLUS	3,804,330.59	44,232,002.02	48,889,504.71
TOTAL BENEFITS PAID DURING PERIOD	22,193,794.65	284,460,766.85	314,198,776.33
SHORT-TIME COMPENSATION EXPENDITURES	0.00	0.00	4,098.48
ENDING U.I. CASH BALANCE (11) (12) (13)	1,711,152,386.48	1,711,152,386.48	1,446,722,266.21

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.

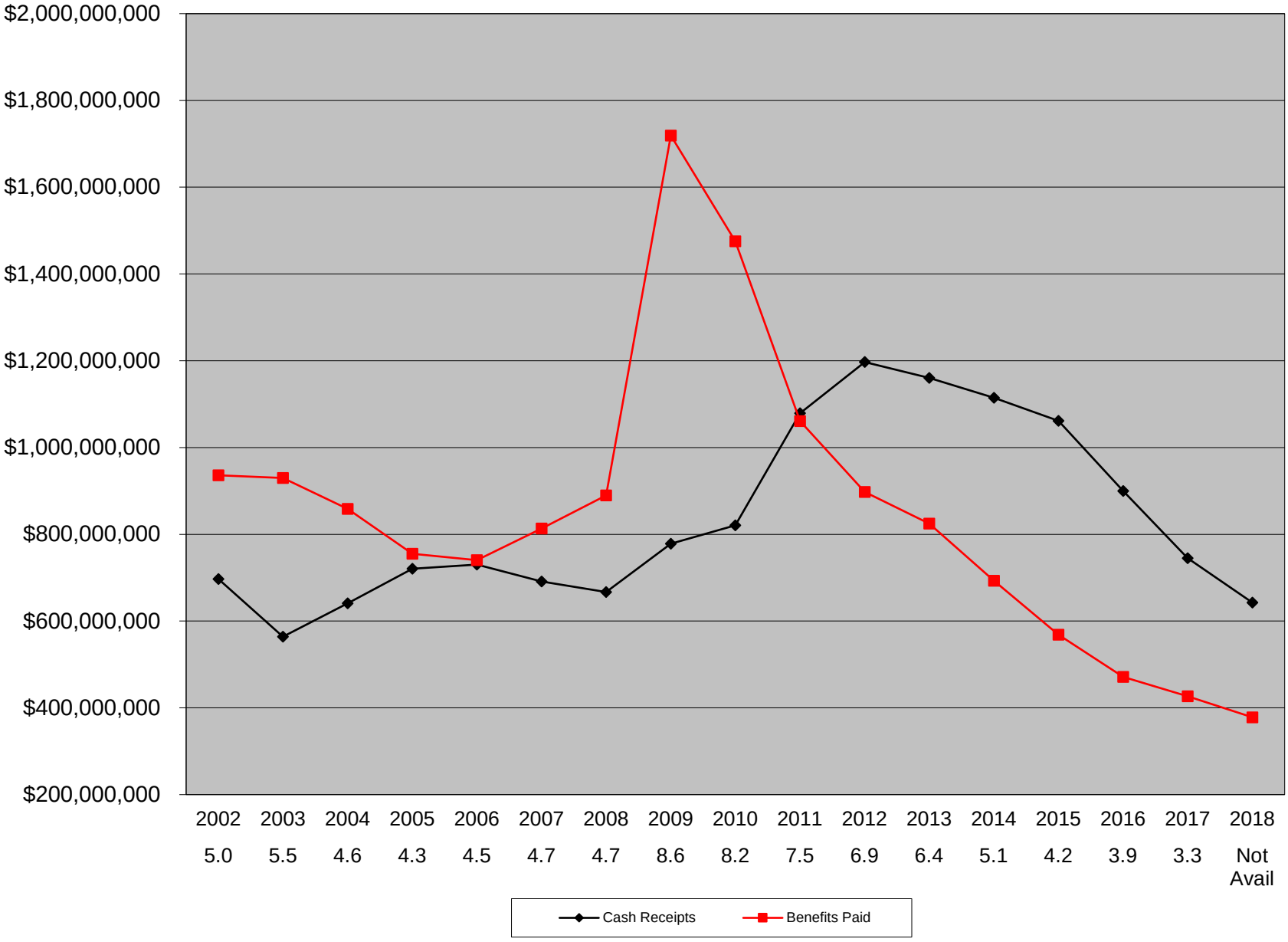
12. $407,608 of this balance was set up in 2015 in the Trust Fund as a Short-Time Compensation (STC) subaccount to be used for Implementation and Improvement of the STC program and is not available to pay benefits.

13. $2,079,363 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCING ACCT SUMMARY
FOR THE MONTH ENDED August 31, 2018

	CURRENT ACTIVITY	YEAR TO DATE ACTIVITY	PRIOR YTD ACTIVITY
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	($592,186,987.83)	($715,103,113.34)	($798,303,306.16)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	483,958.26	135,472,369.61	146,871,356.85
FORFEITURES	6,893.00	192,395.16	364,783.69
OTHER INCREASES	238,017.98	4,068,363.53	6,152,314.89
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	728,869.24	139,733,128.30	153,388,455.43
TRANSFERS BETWEEN SURPLUS ACCTS (14)	14,464.15	7,396,925.00	(3,766,073.92)
INTEREST EARNED ON TRUST FUND	0.00	16,930,813.76	13,459,505.70
FUTA TAX CREDITS	2,204.95	28,468.22	54,492.56
TOTAL INCREASES	745,538.34	164,089,335.28	163,136,379.77
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	2,762,391.32	33,127,007.34	35,140,609.11
OTHER NON-CHARGE BENEFITS	1,041,939.27	11,104,994.68	13,748,895.58
MISCELLANEOUS EXPENSE	0.00	0.00	0.02
BENEFITS CHARGED TO SURPLUS SUBTOTAL	3,804,330.59	44,232,002.02	48,889,504.71
SHORT-TIME COMPENSATION EXPENDITURES	0.00	0.00	4,098.48
BALANCE AT THE END OF THE MONTH/YEAR	(595,245,780.08)	(595,245,780.08)	(684,060,529.58)

Cash Activity Related to Taxable Employers with WI Unemployment Rate
(for all years from September to August)



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STATE OF WISCONSIN
DWD
Department of Workforce Development

Scott Walker, Governor
Raymond Allen, Secretary

September 20, 2018

Dear Members of the Unemployment Insurance Advisory Council:

Current law authorizes a 0.01% assessment of employers for program integrity efforts, to be offset by a corresponding reduction in the solvency tax. The Council and Legislature approved this law provision in 2016 to help maintain funding for anti-fraud and other program integrity efforts.

The law requires the Secretary of the Department to consult with the Council before directing the 0.01% to the Program Integrity Fund and to consider the balance of the Unemployment Insurance Trust Fund. The notice of assessment must be published by November 30 of each year for the assessment to be effective on January 1 of the following year.

In weighing the need for continued funding of program integrity efforts with the large balance in the Trust Fund, I **recommend that the Department invest the 0.01% assessment into the Program Integrity Fund** which will allow the Department to continue all current program integrity operations with no corresponding tax increase on employers.

In making this recommendation, I considered the following:

- The amount that would be generated for the Program Integrity Fund from this assessment is projected to be $3.2 million for the year. This represents 4.6% of the total UI operating budget for FY19;
- The Trust Fund balance at the start of the fiscal year (July 1) was $1,622,415,914. The projected assessment amount represents 0.2% of this balance;
- The Wisconsin economy is projected to grow through calendar year 2019;
- The US Department of Labor recently eliminated the 5% stop-loss maximum on federal UI operating grants to states. As a result, our federal FY19 UI operating grant will decrease by $5.9 million in the upcoming year; and,
- The March 2018 fraud report showed that fraudulent activity dropped in 2017 both in terms of real dollars and as a percentage of claims -- Our efforts are working.

The Department intends to continue placing a priority on program integrity and anti-fraud efforts. To this end, I believe the use of the 0.01% assessment to fund integrity efforts continues to be warranted.

As previously stated, the Department will use these funds to continue existing program integrity efforts. These include, but are not limited to, fraud investigation efforts, worker classification enforcement, worker classification public outreach efforts, identity verification and cross-matching efforts, and investigation and prosecution of criminal UI fraud.

I would appreciate your continued support for this proposal and am happy to answer any questions you may have. Thank you for your consideration and, as always, thank you for your service to the Department and the citizens of Wisconsin.

Sincerely,

Ray Allen
Secretary

To: Unemployment Insurance Advisory Council
cc: Janell Knutson, Chair
From: Andy Rubsam
Date: September 20, 2018
Re: Department response to Clearinghouse comments on proposed changes to ch. DWD 100-150

2. Form, Style and Placement in Administrative Code

a. The plain language analysis states that the proposed rule repeals the definition of "employer". However, the definition of "employer" in s. DWD 100.02 (19) is not affected by the proposed rule. Does the agency intend to repeal this definition, or does the repeal of "employer" refer to the language stricken in s. DWD 115.001 (2)?

- The Department incorporated this recommended change and removed the reference.

b. In the plain language analysis, the agency should explain the changes made in ss. DWD 132.04 (1) and (2) (a) and 132.05 (1) (a) of the proposed rule.

- The Department incorporated this recommended change.

c. Throughout the proposed rule, when all subparts of a part are treated in the SECTION's treatment clause, only the part should be listed in the SECTION. For example:
   (1) In SECTION 28, the treatment clause should read: "DWD 102.02 (1) and (3) (a) are amended to read:". The introduction and subdivisions of par. (a) need not be listed.

   (2) In SECTION 33, the treatment clause should read: "DWD 110.05 is amended to read:". The introduction and subsections of s. DWD 110.05 need not be listed.

   (3) In SECTION 39, the treatment clause should read: "DWD 110.09 (1) is amended to read:". The introduction and paragraphs of sub. (1) need not be listed.

- The Department incorporated this recommended change.

d. In SECTION 3, "DWD 113.001 (2) (bm)" should replace "DWD 113.001 (1) (cm)" because the definitions are contained in sub. (2) and the definitions in s. DWD 113.001 (2) should appear in alphabetical order.

- The Department incorporated this recommended change.

e. In s. DWD 103.01 (1), "~~directors~~ directors'" should replace "directors'" in two instances. [s. 1.06 (2), Manual.]

- The Department incorporated this recommended change.

f. In s. DWD 113.03 (4) (intro.), "any of" should be inserted before "the following". [s. 1.03 (3), Manual.]

- The Department incorporated this recommended change.

g. In s. DWD 114.30 (1), "~~days~~ days'" should replace "days'". [s. 1.06 (2), Manual.]

- The Department incorporated this recommended change.

h. In s. DWD 136.001 (2) (a), the comma after "s. 108.225 (1) (d)" should not be underscored because it is existing text. [s. 1.06, Manual.]

- The Department incorporated this recommended change.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. DWD 102.02 (3) (am), ", Stats.," should be inserted after "s. 108.18 (2) (c)". [s. 1.07 (2), Manual.]

- The Department incorporated this recommended change.

b. Section DWD 115.11 (2) (c) references s. DWD 110.07 (5), but that provision is repealed in SECTION 36 of the proposed rule.

- The Department incorporated this recommended change and removed the reference to s. DWD 110.07 (5) in s. DWD 115.11 (2) (c).

c. In s. DWD 132.05 (1) (a), "s." should be inserted before "108.04 (5), Stats.". [s. 1.07 (2), Manual.]

- The Department incorporated this recommended change.

d. In s. DWD 136.001 (2) (a) (Note), "s. 108.225 (1) (d), Stats.," should replace "108.225 (1) (d)". A similar comment applies to s. DWD 136.001 (2) (b) (Note) and (2) (f) (Note). In addition, in s. DWD 136.001 (2) (a) (Note), "s. 108.225, Stats." should replace "this section". [s. 1.07 (2), Manual.]

- The Department incorporated this recommended change.

e. Sections DWD 149.06 (4) and 149.07 (6) reference 42 USC 503 (a) (1), which requires state law to include "methods of administration … as are found by the Board [Secretary of Labor] to be reasonably calculated to insure full payment of unemployment compensation when due". The provision does not specifically refer to confidentiality requirements. Does the agency intend to refer to this provision?

- The Department intended to refer to this provision. Current sections DWD 149.06 (4) and 149.07 (6) reference 42 USC 303 (a) (1). The proposed change is to amend "303" to "503." Section 303 of the federal Social Security Act is 42 USC § 503. 42 USC § 503(a)(1), not 42 USC § 303(a)(1), is the statutory basis for US-DOL's federal regulations regarding confidentiality referenced in sections DWD 149.06 (4) and 149.07 (6). *See* 20 CFR § 603.4. The Department is correcting the typo in the current rule to reflect the correct federal statute.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. DWD 132.05 (2) (intro.), ", but is not limited to" should be stricken.

- The Department agrees to strike ", but is not limited to". The Department will also strike "includes" and will insert "may include" before "any of the following."

b. In s. DWD 140.18, "the department may not" should replace "the department shall not". [s. 1.01 (2), Manual.]

- The Department incorporated this recommended change.

c. In s. DWD 149.001 (2) (d) (Note), the acronyms "WDB" and "WIOA" should be spelled out in the first instance they are used. [s. 1.01 (8), Manual.]

- The Department incorporated this recommended change.

Additional changes made by the Department after the hearing (not requested by Clearinghouse):

The Department amended "Informer" to "Informant" in s. DWD 101.001 (2) (b) because the term "informer" carries a negative connotation that was not likely intended when the rule was promulgated. "Informant" has a more neutral connotation. "Informant" is also the more commonly-used term.

The Department struck "opposing party" in s. DWD 113.02 (3) (c) and replaced it with "appellant" to be consistent with the same change in s. DWD 113.02 (3) (d).

The Department amended s. DWD 140.20 (4) (d) to remove a redundant phrase regarding the payment of mileage for witnesses and interpreters.

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Margit Kelley
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE RULE 18-033

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

2. Form, Style and Placement in Administrative Code

a. The plain language analysis states that the proposed rule repeals the definition of "employer". However, the definition of "employer" in s. DWD 100.02 (19) is not affected by the proposed rule. Does the agency intend to repeal this definition, or does the repeal of "employer" refer to the language stricken in s. DWD 115.001 (2)?

b. In the plain language analysis, the agency should explain the changes made in ss. DWD 132.04 (1) and (2) (a) and 132.05 (1) (a) of the proposed rule.

c. Throughout the proposed rule, when all subparts of a part are treated in the SECTION's treatment clause, only the part should be listed in the SECTION. For example:

(1) In SECTION 28, the treatment clause should read: "DWD 102.02 (1) and (3) (a) are amended to read:". The introduction and subdivisions of par. (a) need not be listed.

(2) In SECTION 33, the treatment clause should read: "DWD 110.05 is amended to read:". The introduction and subsections of s. DWD 110.05 need not be listed.

(3) In SECTION 39, the treatment clause should read: "DWD 110.09 (1) is amended to read:". The introduction and paragraphs of sub. (1) need not be listed.

d. In SECTION 3, "DWD 113.001 (2) (bm)" should replace "DWD 113.001 (1) (cm)" because the definitions are contained in sub. (2) and the definitions in s. DWD 113.001 (2) should appear in alphabetical order.

e. In s. DWD 103.01 (1), "~~directors~~ directors'" should replace "directors'" in two instances. [s. 1.06 (2), Manual.]

f. In s. DWD 113.03 (4) (intro.), "any of" should be inserted before "the following". [s. 1.03 (3), Manual.]

g. In s. DWD 114.30 (1), "~~days~~ days'" should replace "days'". [s. 1.06 (2), Manual.]

h. In s. DWD 136.001 (2) (a), the comma after "s. 108.225 (1) (d)" should not be underscored because it is existing text. [s. 1.06, Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. DWD 102.02 (3) (am), ", Stats.," should be inserted after "s. 108.18 (2) (c)". [s. 1.07 (2), Manual.]

b. Section DWD 115.11 (2) (c) references s. DWD 110.07 (5), but that provision is repealed in SECTION 36 of the proposed rule.

c. In s. DWD 132.05 (1) (a), "s." should be inserted before "108.04 (5), Stats.". [s. 1.07 (2), Manual.]

d. In s. DWD 136.001 (2) (a) (Note), "s. 108.225 (1) (d), Stats.," should replace "108.225 (1) (d)". A similar comment applies to s. DWD 136.001 (2) (b) (Note) and (2) (f) (Note). In addition, in s. DWD 136.001 (2) (a) (Note), "s. 108.225, Stats." should replace "this section". [s. 1.07 (2), Manual.]

e. Sections DWD 149.06 (4) and 149.07 (6) reference 42 USC 503 (a) (1), which requires state law to include "methods of administration … as are found by the Board [Secretary of Labor] to be reasonably calculated to insure full payment of unemployment compensation when due". The provision does not specifically refer to confidentiality requirements. Does the agency intend to refer to this provision?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. DWD 132.05 (2) (intro.), ", but is not limited to" should be stricken.

b. In s. DWD 140.18, "the department may not" should replace "the department shall not". [s. 1.01 (2), Manual.]

c. In s. DWD 149.001 (2) (d) (Note), the acronyms "WDB" and "WIOA" should be spelled out in the first instance they are used. [s. 1.01 (8), Manual.]

PROPOSED ORDER OF THE WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT CREATING AND ADOPTING RULES

The Wisconsin department of workforce development proposes the following order ***to repeal*** DWD 100.02 (1), (25), (26), (46), and (66), 102.02 (3) (b), 110.07 (5) and (7), 111.02 (1) (b), (4), and (Note), 111.03 (2), 111.04, 111.06 (3), 129.01 (4) (e) (intro.), 1., and 2., ch. 130, 132.04 (2) (b), 140.01 (2) (b) 1., 3., and (c) 7. (Note), 147.01 (1) (a) to (c), and 150.03 (intro.) and (1); ***to renumber*** DWD 100.02 (17), (28), (31), (44m), (52), (55), (64), (65), and (69), 111.001, 128.001, 132.001, and 140.001 (2) (ag), (am), and (ar); ***to renumber and amend*** DWD 100.02 (2), (10), (32), (33), (51), (53), (54), (62), (63), (68), and (72), 101.001 (2), 111.02 (1) (a), 111.03 (1), 113.001 (2) (b), 115.001 (2), 140.001 (2) (b), and 147.01 (1) (intro.); ***to amend*** DWD 100.02 (43), 101 (title), 101.01, 101.02, 101.05 (1), 102.02 (1), (3) (a), 103.01 (intro.) and (1), 110.02 (2) (intro.), (a) to (d), and (3), 110.05, 110.06 (5) (a), (b) (intro.), 1., 2., (c), and (d), 110.07 (3) (a), (4), and (8), 110.08 (2), 110.09 (1), 110.10 (1) (intro.) and (a), 111.02 (2) (intro.) and (a) to (c), 111.06 (1) and (2), 113.001 (1), (2) (intro.), and (d), 113.02 (1) (a), (b), (2) (intro.), (a) to (d), (f), and (3), 113.025 (1) (c) to (f), 113.03 (1), (3), and (4) (intro.), (a), and (b), 113.04, 113.05 (1), (2), and (4), 113.06, 113.07, 114.20 (1) (intro.) and (a), 114.30 (1), 114.50, 115.01 (5) (intro.), (a) to (j), and (6), 115.02 (intro.), (1), and (2), 115.03 (2) and (4), 115.04 (1) (intro.), (a), and (b), 115.05 (intro.) and (1) to (3), 115.06 (1), 115.07 (1) and (2) (a) to (c), 115.08 (title), (1) and (2), 115.09 (1), (4) (intro.), (a), and (b), 115.10 (3) (a) and (b), 115.11 (1) (intro.), (a), (2) (b), and (c), 127.01 (3), 127.02 (11) (intro.), 127.06 (2), 127.07 (2) (intro.), 128.01 (1), 129.01 (4) (intro.) and (a), 129.03, 131.001 (2) (intro.) and (b), 131.10 (title), (1) (intro.), (a), (2) (intro.),

(b), (c) 4., (d), (e) (intro.), (g), (3) (intro.), (a), (4) (intro.), (b), (c) 4., (d), (e) (intro.), (f), (6) (b) (intro.), 1., 2., 4., (c) (intro.), 1., 2., and (7) (a) to (c), 131.30 (1) (a) (intro.), 131.40 (1), 132.04 (1), (2) (intro.), and (a), 132.05 (1) (a), (b), (2), 133.02 (1) (a), (b) (intro.), and (c), 135.04 (1), 136.001 (2) (a), (b), and (f), 136.02 (2) (b) (Note), 136.03 (1) (c) 3. (Note), 140.01 (1), (2), (a), (b) 4., (c) 1., and 5. to 7., 140.04 (2), 140.05 (1) to (4), 140.06 (1) to (3), 140.07 (1) (intro.), (2), (3) (intro.), and (4), 140.08, 140.09 (1) (a) to (c), (2), (3) (intro.), (b), (4) (a) 1., and (b) to (d), 140.10 (1), (2) (intro.), (3), and (4), 140.11, 140.12, 140.13, 140.15, 140.16, 140.17 , 140.18 and (Note), 140.19, 140.20 (1), (2), and (4) (c), 140.21, 140.22 (1) (c) and (3) (a) and (b), 142.02 (2) to (5) and (7) (b), 149.001 (2) (d), 149.02 (2) (b), 149.05 (1) (intro.), (a), (c), (d) (intro.), and 5., 149.06 (4), 149.07 (6), 150.05, and 150 (table); ***to repeal and recreate*** DWD 140.22 (1) (c) (Note) and 142.02 (5) (Note); and ***to create*** DWD 100.02 (16f), 103.01 (2), 111.001 (2) (intro.), 111.03 (Note), 111.06 (2) (Note), 113.001 (2) (ar), 120.01 (Note), 120.03 (2) (Note), 128.001 (2) (intro.), 132.001 (2) (intro.), 136.001 (2) (a) (Note), (b) (Note), and (f) (Note), 140.001 (2) (d), 140.01 (2) (c) 8., 140.09 (3) (f) (Note), 149.001 (2) (d) (Note), 150.05 (Note) relating to minor and technical changes to the unemployment insurance program.

Analysis Prepared by the Department of Workforce Development

Statutes Interpreted

Statutes interpreted: ch. 108, Stats.

Statutory Authority

Section 108.14 (2), Stats.

Explanation of Statutory Authority

Under s. 108.14 (2), Stats., the department may adopt and enforce all rules which it finds necessary or suitable to carry out the unemployment insurance program.

Related Statutes or Rules

Ch. 108, Stats. and chs. DWD 100-150.

Plain Language Analysis

The Wisconsin unemployment insurance program is administered under chs. DWD 100-150. The proposed rule is minor and technical in nature, and is designed as a "clean-up." The proposed rule is promulgated to align current rules with federal laws and state statute. In addition, the rule updates obsolete or incorrect cross-references, informs the public of where to obtain information or how to contact the department, and clarifies language.

Chapter DWD 100 provides definitions for all terms that are applied to chs. DWD 100-150. The proposed rule made changes to ch. DWD 100, such as:

- Repeals the definitions "fax," "first shift," "profiling system," and "unemployment insurance office" because they are no longer used in chs. DWD 100-150.
- Renumbers the definition "decision" from ch. DWD 113 to ch. DWD 100, because the term is referenced in multiple chapters within chs. DWD 100-150.
- Amends the definition "payroll base" to specify the statutory amount.
~~Repeals the definition "employer" because that term is already defined in statute.~~
- Amends the definition "total unemployment and totally unemployed" to only "total unemployment".
- Amends the definitions "disposable earnings," "federal minimum hourly wage," and "levy" to reference statute because they are already defined in statute.
- Amends the definition of "newly hired employee" under s. DWD 142.02 (7) (b) to reflect an unpaid absence of 60 days rather than 90 days as required by federal guidance.
- Amends the definition of "public official" in s. DWD 149.001 to reflect the new federal definition that was enacted to align with the Wisconsin Innovation and Opportunity Act.

The following definitions were renumbered from ch. DWD 100 because the terms are only used in specific chapters:

- "Informer" is renumbered in ch. DWD 101 and amended to "informant."
- "Wage report" and "wage reporting" are renumbered in ch. DWD 111.
- "Compromise," "same business or operation," and "settle" are renumbered in ch. DWD 113.
- "Transfer percentage," transferee," and "transferor" are renumbered in ch. DWD 115.
- "Full-time," "shift," "total unemployment," and "weekly certification" are renumbered in ch. DWD 128.

- "Health care facility," "sexual contact," and "sexual intercourse" are renumbered in ch. DWD 132
- "Agent state," "ease of access," and "hearing office" are renumbered in ch. DWD 140.

In addition, the proposed rule:

- Amends the title for ch. DWD 101 to include "benefit purposes" and s. DWD 101.01 to clarify how the department shall apply the definition of wages for benefit purposes.
- Creates s. DWD 103.01 (2) to include "unpaid managers of a limited liability company" as excluded "employment" to align with statute.
- Repeals ss. DWD 110.07 (5) and (7) because due dates for filing certain reports are already identified in statute.
- Amends DWD 110.07 (8) to clarify the requirement for an employer to remit contributions as prescribed by the department.
- Repeals the requirement that employers notify the department as to whether the employer provides health insurance for employees under ch. DWD 111 because the department no longer collects this information.
- Amends s. DWD 111.03 to require employers to submit a wage report to the department as prescribed.
- Repeals ss. DWD 111.04 and DWD 111.05 because the proposed changes under DWD 111.03 will make these sections obsolete.
- Amends "individual" with "person" under ch. DWD 113 to align with statute.
- Amends s. DWD 115.06 to include "limited liability company" as a transferee to align with statute for transfers involving fiduciaries.
- Repeals the requirement the department consider a mailed application timely if postmarked by the due date or received no more than 3 days after the due date under s. DWD 115.07 because this is not allowed by statute.
- Amends s. DWD 115.11 from 2 years to 3 years for new employers assigned an initial rate to align with statute.
- Amends references to "justifiable cause" and replaces with "good cause" for consistency under. Ch. DWD 127.
- Repeals 129.01 (4) (e) because the automated telephone claim system for filing benefit claims is no longer used.
- Repeals chapter DWD 130 because the proposed amendments to ch. DWD 101 make this chapter unnecessary.
- Amends language in ch. DWD 131 to align with statute by changing "presence" to "unlawful use."
- Amends language in s. DWD 132.04 (1) by striking language referencing a case of the Wisconsin Supreme Court because it is not necessary in the rule.
- Amends language in s. DWD 132.04 (2) (a) to conform to federal standards specified by the U.S. Department of Labor in UIPL (Unemployment Insurance Program Letter) 5-17.
- Repeals s. DWD 132.04 (2) (b) relating to the number of hours worked for educational employees, due to updated guidance by the U.S. Department of Labor in UIPL 5-17.

- Amends the language in s. DWD 132.05 (1) (a) by striking a reference to a Wisconsin Supreme Court interpretation of the definition of "misconduct" because s. 108.04 (5), Stats., supersedes the court case.
- Amends the table in ch. DWD 150 to reflect forms currently used.

Chapter DWD 140 outlines the unemployment insurance appeals process. Numerous updates and amendments were made to this chapter to conform to statute changes. The definition "appeal tribunal" was created to align with state statute and it replaced the term "administrative law judge," which was repealed in ch. DWD 100. The proposed rule specifies that appeals be filed with a hearing office or public employment office in an agent state rather than with the department. In addition, hearings may be conducted via videoconference. Current rule allows 15 minutes for an appellant to appear by telephone and 5 minutes for a respondent to appear after the start time of a hearing (in person or via telephone or videoconference). The proposed rule allows 10 minutes for both appellant or respondent to appear after the start time of a hearing.

Summary of, and comparison with, existing or proposed federal statutes and regulations

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

Comparison with rules in adjacent states

All adjacent states are required to conform to federal law requirements for unemployment insurance and the rules are similar to Wisconsin.

Summary of factual data and analytical methodologies

This rule does not depend on any complex analysis of data. The rule changes are minor and technical in nature.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis

The proposed rule will have no significant economic effect on small businesses as defined in s. 227.114 (1), Stats. and there is no economic impact created by this proposed rule because the changes are all minor or technical in nature. The department also consulted the Unemployment Insurance Advisory Council.

Effect on small business

The proposed rule will not have a negative effect on small businesses as defined in s. 227.114 (1), Stats.

Agency contact person

Questions and comments related to this rule may be directed to:

Janell Knutson, Bureau of Legal Affairs
Division of Unemployment Insurance
Department of Workforce Development
P.O. Box 8942
201 E. Washington Avenue, E300
Madison, WI 53708
Telephone: (608) 266-1639
E-Mail: Janell.Knutson@dwd.wisconsin.gov

Place where comments are to be submitted and deadline for submission

Janell Knutson, Bureau of Legal Affairs
Division of Unemployment Insurance
Department of Workforce Development
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Hearing comments were accepted until July 12, 2018.

SECTION 1. DWD 100.02 (1) is repealed.

SECTION 2. DWD 100.02 (2) is renumbered 140.001 (2) (c) and as renumbered, is amended to read:

DWD 140.001 (2) (c) "Agent state" means any state other than Wisconsin in which a person files a claim for unemployment benefits from the state of Wisconsin.

SECTION 3. DWD 100.02 (10) is renumbered DWD 113.001 (~~1~~2) (~~em~~bm) and as renumbered, is amended to read:

DWD 113.001 (~~1~~2) (~~e~~bm) "Compromise" means department agreement to accept payment of less than the full amount of contributions, payments in lieu of contributions, interest, penalties and costs, as applicable, owed by an employer, former employer, or by ~~an individual~~ a

person liable for ~~corporate~~ an employing unit's liabilities, in complete fulfillment of the outstanding liability.

SECTION 4. DWD 100.02 (16f) is created to read:

DWD 100.02 (16f) "Determination" means an initial determination issued under s. 108.09, 108.095, or 108.10 (1), Stats.

SECTION 5. DWD 100.02 (17) is renumbered DWD 140.001 (2) (f).

SECTION 6. DWD 100.02 (25) and (26) are repealed.

SECTION 7. DWD 100.02 (28) and (31) are renumbered DWD 128.001 (2) (a) and DWD 132.001 (2) (a).

SECTION 8. DWD 100.02 (32) is renumbered 140.001 (2) (g) and as renumbered, is amended to read:

DWD 140.001 (2) (g) "Hearing office" means an office of the ~~unemployment insurance~~ division ~~of the department of workforce development which~~ that is responsible for scheduling and conducting hearings arising under ch. 108, Stats., and s. 103.06 (6), Stats.

SECTION 9. DWD 100.02 (33) is renumbered DWD 101.001 (2) (b) and as renumbered is amended to read:

DWD 101.001 (2) (b) "~~Informer~~ Informant" means an individual who is receiving a reward or payment for information relating to or assisting in an investigation of a possible violation of law, but not an undercover agent or other individual who is paid for the performance of investigative services or who receives such payment regardless of whether information relating to or assisting in an investigation of a possible violation of law is actually provided.

SECTION 10. DWD 100.02 (43) is amended to read:

DWD 100.02 (43) "Payroll base" means the ~~first $10,500 of wages~~ applicable amount under s. 108.02 (21) (b) or (c), Stats., paid by an employer during a calendar year to an individual, including any wages paid for any work covered by the unemployment insurance law of any other state, which is payroll under s. 108.02 (21), Stats.

SECTION 11. DWD 100.02 (44m) is renumbered DWD 140.001 (2) (h).

SECTION 12. DWD 100.02 (46) is repealed.

SECTION 13. DWD 100.02 (51) is renumbered DWD 113.001 (2) (e) and as renumbered, is amended to read:

DWD 113.001 (2) (e) "Same business or operation" means operation under the same unemployment insurance employer account, including any account transferred under s. 108.16 (8), Stats., with no intervening final determination of account termination under s. 108.02 (13) (i), Stats., provided~~, however,~~ that 'same business or operation' shall not be deemed to extend beyond the date ~~as of which~~ the account would have been terminated under s. 108.02 (13) (i), Stats., and s. DWD 110.09 but for an unpaid liability, unless the account was reopened under s. DWD 110.10.

SECTION 14. DWD 100.02 (52) is renumbered DWD 113.001 (2) (f).

SECTION 15. DWD 100.02 (53) and (54) are renumbered DWD 132.001 (2) (b) and (c) and as renumbered, are amended to read:

DWD 132.001 (2) (b) "Sexual contact" has the meaning ~~designated~~ specified in s. 940.225 (5) (b), Stats.

(c) "Sexual intercourse" has the meaning ~~designated~~ specified in s. 940.225 (5) (c), Stats.

SECTION 16. DWD 100.02 (55) is renumbered DWD 128.001 (2) (b).

SECTION 17. DWD 100.02 (62) is renumbered DWD 128.001 (2) (c) and as renumbered, is amended to read:

DWD 128.001 (2) (c) "Total unemployment" ~~and "totally unemployed" have~~ has the meaning ~~designated~~ specified in s. 108.02 (25), Stats.

SECTION 18. DWD 100.02 (63) is renumbered DWD 115.001 (2) (a) and as renumbered, is amended to read:

DWD 115.001 (2) (a) "Transfer percentage" means the percent of the transferor's total payroll for a recent and representative period preceding the transfer date, which is properly assignable to the transferred business. The recent and representative period shall be the ~~four~~ 4 most recently completed calendar quarters preceding the transfer date, except that the period may be expanded to include the partial quarter immediately preceding the transfer if the transfer date did not fall on a quarter ending date and there was no payroll assignable to the transferred portion of the business in the ~~four~~ 4 most recently completed quarters.

SECTION 19. DWD 100.02 (64) and (65) are renumbered DWD 115.001 (2) (b) and (c).

SECTION 20. DWD 100.02 (66) is repealed.

SECTION 21. DWD 100.02 (68) is renumbered DWD 111.001 (2) (a) and as renumbered, is amended to read:

DWD 111.001 (2) (a) "Wage report" has the meaning ~~designated~~ specified in s. 108.205, Stats.

SECTION 22. DWD 100.02 (69) is renumbered DWD 111.001 (2) (b).

SECTION 23. DWD 100.02 (72) is renumbered DWD 128.001 (2) (d) and as renumbered, is amended to read:

DWD 128.001 (2) (d) "Weekly certification" means the method used by ~~which~~ a claimant ~~submits~~ to submit information regarding the claimant's employment status and availability for work and ~~which establishes~~ to establish a basis for the payment of unemployment benefits~~, including but not limited to voice recognition units and claim forms~~.

SECTION 24. DWD 101 (title) is amended to read:

DWD 101 (title) WAGES FOR CONTRIBUTION AND BENEFIT PURPOSES

SECTION 25. DWD 101.001 (2) is renumbered DWD 101.001 (2) (intro.) and as renumbered, is amended to read:

DWD 101.001 (2) (intro.) ~~Notwithstanding ch. DWD 100 and unless the context clearly indicates a different meaning, in~~ In this chapter ~~"employer"~~:

(a) "Employer" means any person who is or becomes subject to the reimbursement financing or contribution requirements of ch. 108, Stats., including multiemployer benefit plans and other third-party payors which become liable under s. DWD 110.06.

SECTION 26. DWD 101.01 and 101.02 are amended to read:

DWD 101.01 Purpose. The definition of wages in s. 108.02 (26), Stats., is patterned after the FUTA definition of wages found in 26 USC 3306(b). This chapter clarifies how the department shall apply the definition of wages in s. 108.02 (26), Stats., for benefit purposes and to assess employer contributions to the unemployment insurance reserve fund. This chapter also specifies changes to the definition of wages in s. 108.02 (26), Stats., and provides interpretations which may be inconsistent with those applied to 26 USC 3306(b), under the authority granted in s. 108.015, Stats.

101.02 Remuneration excluded from the definition of wages. Notwithstanding s. 108.02 (26), Stats., wages shall not include remuneration paid to an ~~informer~~ informant by any federal

law enforcement agency or law enforcement agency of the state or any of its political subdivisions for information provided by the individual to the agency

SECTION 27. DWD 101.05 (1) is amended to read:

DWD 101.05 (1) Lodging - $105.00 per week or $15.00 per day~~; and~~.

SECTION 28. DWD 102.02 (1), and (3) (a). are amended to read:

DWD 102.02 (1) Under s. 108.18 (2) (c), Stats., the department shall determine the contribution rate for the first 3 calendar years for an employer engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects ~~shall pay contributions for each of the first 3 calendar years at the average rate for construction industry employers as determined by the department~~.

(3) (a) If the employer's primary type of business activity is specified in Figure DWD 102.02 (2), the department may not consider the employer as being within the provisions of s. 108.18 (2) (c), Stats. ~~If the employer's~~

(am) The department shall determine that the provisions of s. 108.18 (2) (c), Stats., apply to an employer whose primary type of business activity in this state is listed in Major Group 15 - Building Construction - General Contractors and Operative Builders or in Major Group 16 - Heavy Construction Other Than Building Construction - Contractors in the Standard Industrial Classification (SIC) Manual or is listed in Major Group 17 but not in Figure DWD 102.02 (2), ~~the department shall consider~~ if any of the following factors ~~to determine whether the employer is an employer to which the provisions of s. 108.18 (2) (c), Stats.,~~ apply:

1. ~~Whether the~~ The primary business activity of the employer in this state involves the improvement of real property rather than improvement or refurbishing of personal property~~; and~~.

2. ~~Whether employers~~ Employers within the same listing in the Standard Industrial Classification (SIC) Manual as the employer customarily suspend or significantly curtail

business operations in this state for regularly recurring periods because of climatic conditions or because of the seasonal nature of the employment.

SECTION 29. DWD 102.02 (3) (b) is repealed.

SECTION 30. DWD 103.01 (intro.) and (1) are amended to read:

DWD 103.01 (intro.) **Certain excluded employments.** ~~The~~ All of the following provisions shall apply in interpreting ~~certain paragraphs of~~ s. 108.02 (15), Stats.:

(1) UNPAID CORPORATION OR ASSOCIATION OFFICERS AND MERE DIRECTORS EXCLUDED. ~~Pursuant to~~ Under s. 108.02 (15) (k) 8., Stats., service as an unpaid officer of a corporation or association is not "employment", but all paid officers of any association or corporation are in "employment" under ch. 108, Stats., subject to s. 108.02 (15) (L), Stats. Mere "directors", however, who perform no paid duties for a corporation or association other than attendance at directors' meetings shall not be deemed in an "employment" or be deemed the employer's "employees" for the purposes of ch. 108, Stats. Directors who perform multiple paid duties for a corporation or association, including attendance at ~~directors~~ directors' meetings, shall not be considered "employees" in "employment" when attending ~~directors~~ directors' meetings but shall be considered "employees" in "employment" when performing other paid duties.

SECTION 31. DWD 103.01 (2) is created to read:

DWD 103.01 (2) UNPAID MANAGERS OF A LIMITED LIABILITY COMPANY. Under s. 108.02 (15) (k) 8., Stats., service as an unpaid manager of a limited liability company is not "employment", but all paid managers of a limited liability company are in "employment" under ch. 108, Stats., subject to s. 108.02 (15) (L), Stats.

SECTION 32. DWD 110.02 (2) (intro.), (a) to (d), and (3) are amended to read:

DWD 110.02 (2) (intro.) The work record shall include all of the following:

(a) The full name, address and social security number of each individual who performs services for the employing unit~~;~~.

(b) The dates ~~on which~~ that each individual performed services~~;~~.

(c) The weekly wages earned by each individual who performed services~~; and~~.

(d) The dates ~~on which~~ that the wages were paid to each individual.

(3) ~~Pursuant to~~ Under s. 108.21, Stats., the department may, at any reasonable time, inspect the work records and any other records of an employing unit, or ~~of~~ any entity ~~which~~ the department ~~has reason to believe~~ believes may be an employing unit, which may show payments for personal services.

SECTION 33. DWD 110.05are amended to read:

DWD 110.05 Conditions for status as a nonprofit organization; reporting requirements. Except as further provided in this section, no employing unit may be considered to be a nonprofit organization eligible to apply for reimbursement financing until the date ~~on which~~ that the department receives a copy of the letter issued by the internal revenue service determining that the employing unit is exempt from taxation under section 501 (c) (3) of the internal revenue code. If an employing unit receives such a letter from the internal revenue service after the employing unit becomes an employer under s. 108.02 (13) (d) or (e), Stats., the department shall consider the employing unit to be a nonprofit organization beginning on January 1 of the year after the year in which the internal revenue service issues the letter. The department shall consider the employing unit to be a nonprofit organization as of the date specified by the internal revenue service if all of the following apply:

(1) The employing unit has filed a written notice with the department electing reimbursement financing under s. 108.151 (2), Stats.~~;~~

(2) The employing unit acted diligently in requesting ~~such~~ a determination from the internal revenue service~~;~~.

(3) Any delays concerning such a determination are attributable solely to the internal revenue service~~; and~~.

(4) There is no overpayment of benefits to any claimant due to the ~~department's~~ department adopting the date specified by the internal revenue service.

SECTION 34. DWD 110.06 (5) (a), (b) (intro.), 1., 2., (c), and (d) are amended to read:

DWD 110.06 (5) (a) ~~Pursuant to~~ Under s. 108.21, Stats., each payor of sickness or accident disability payments shall maintain a true and accurate payment record for every individual who receives such payments so that the department may determine the payor's status and contribution liability under ch. 108, Stats.

(b) The payment record shall include all of the following:

1. The full name, address and social security number of each individual who receives a sickness or accident disability payment~~;~~.

2. The date ~~on which~~ that the payment was made~~; and~~.

(c) ~~Pursuant to~~ Under s. 108.21, Stats., the department may, at any reasonable time, inspect the records of a payor, or ~~of~~ any entity ~~which~~ the department ~~has reason to believe~~ believes may be a payor, which may show sickness or accident disability payments so ~~that~~ the department may determine the payor's status and contribution liability under ch. 108, Stats.

(d) Each payor shall preserve the sickness or accident disability payment records for 6 years from the date ~~on which~~ the last payment was made.

SECTION 35. DWD 110.07 (3) (a) and (4) are amended to read:

DWD 110.07 (3) (a) Each employer, including ~~a nonprofit organization which has elected reimbursement financing or a government unit on~~ employers subject to reimbursement financing under s. 108.15, 108.151 or 108.152, Stats., shall file ~~an employer's~~ a contribution report with the department ~~whether or not any~~ for each quarter the employer is subject to ch. 108, Stats., whether or not any contributions or reimbursement payments are ~~currently~~ due for each quarter. Each employer shall pay any required contributions to the department ~~concurrent with the~~ when filing ~~of~~ the report, except that ~~each government unit and nonprofit organization which has elected~~ employers subject to reimbursement financing shall submit reimbursement payments when billed by the department. The department may exempt any employer whose account the department has placed on inactive status ~~with a view toward termination of the account~~ from the filing requirements of this subsection. The department may also exempt any employer whose business reflects a seasonal pattern from the filing requirements of this subsection for quarters in which the employer customarily has no payroll.

(4) DUE DATES FALLING ON WEEKENDS AND HOLIDAYS. Under s. 108.22 (1) (b) and (c), Stats., any contribution report or payment is delinquent unless the department receives the report or payment by its due date ~~except as further provided under sub. (5)~~. If the due date of the report or payment would otherwise be a Saturday, Sunday or legal holiday under state or federal law, the due date is the next following day which is not a Saturday, Sunday or legal holiday under state or federal law.

SECTION 36. DWD 110.07 (5) and (7) are repealed.

SECTION 37. DWD 110.07 (8) is amended to read:

DWD 110.07 (8) PAYMENTS. ~~The~~ An employer shall remit contributions and any other payments due under ~~this chapter to the address specified~~ ch. 108, Stats., as directed by the

department ~~in its correspondence with the employer in the form of a check, draft or money order payable to the department of workforce development~~.

SECTION 38. DWD 110.08 (2) is amended to read:

DWD 110.08 (2) ~~CLAIMING EXCLUSIONS. Each employer shall total the amount of wages paid to its employees which are in excess of $10,500 per employee for the calendar year. This sum~~ DEFINED TAXABLE PAYROLL. An employer's defined taxable payroll is the amount of covered wages of the payroll base and shall be ~~subtracted from the amount of covered wages and the remainder shall be~~ reported on the ~~employer's~~ contribution report ~~as "defined taxable payroll"~~.

SECTION 39. DWD 110.09 (1) is amended to read:

DWD 110.09 (1) PROCEDURE. Under ~~the provisions of~~ s. 108.02 (13) (i), Stats., the department may ~~terminate an employer's coverage,~~ on its own motion or on application by the employer~~. The department may,~~ terminate coverage and close the employer's account if any of the ~~employer~~ following apply:

(a) ~~Ceases~~ The employer ceases to exist~~;~~.

(b) ~~Transfers~~ The employer transfers its entire business~~; or~~.

(c) ~~Has~~ The employer has not met the minimum payroll or employment requirements or is not otherwise subject under s. 108.02 (13) (b) to (g), Stats., for a calendar year.

SECTION 40. DWD 110.10 (1) (intro.) and (a) are amended to read:

DWD 110.10 (1) (intro.) If the balance in the employer's account is to be or has been credited to the balancing account under s. 108.16 (6) (c), Stats., the department may reactivate the employer's account, on its own motion or at the employer's request, as of the date of coverage if any of the following apply:

(a) The employer had payroll within 6 months of the effective date of ~~an initial~~ a determination terminating coverage under s. 108.02 (13) (i), Stats~~; or~~.

SECTION 41. DWD 111.001 is renumbered DWD 111.001 (1).

SECTION 42. DWD 111.001 (2) (intro.) is created to read:

DWD 111.001 (2) (intro.) In this chapter:

SECTION 43. DWD 111.02 (1) (a) is renumbered DWD 111.02 (1) and as renumbered, is amended to read:

DWD 111.02 (1) Under s. 108.205, Stats., each employer shall submit a wage report to the department. The wage report shall contain the name, social security number, and the amount of covered wages paid or constructively paid to each employee who is employed by the employer during the quarter. Each employer shall ~~make certain~~ ensure that the amount specified as covered wages ~~on~~ in the contribution report equals the total wages reported for all employees ~~on~~ in the wage report.

SECTION 44. DWD 111.02 (1) (b) is repealed.

SECTION 45. DWD 111.02 (2) (intro.) and (a) to (c) are amended to read:

DWD 111.02 (2) (intro.) Under s. 108.205, Stats., the due ~~dates~~ date for each wage report ~~are~~ is as follows:

(a) The wage report covering the months of January, February and March is due on the following April 30th~~;~~.

(b) The wage report covering the months of April, May and June is due on the following July 31st~~;~~.

(c) The wage report covering the months of July, August and September is due on the following October 31st~~;~~.

SECTION 46. DWD 111.02 (4) and (Note) are repealed.

SECTION 47. DWD 111.03 (1) is renumbered DWD 111.03 and as renumbered is amended to read:

DWD 111.03 Processing of reports. Each employer shall submit ~~the~~ a wage ~~reports on forms provided by the department, on magnetic media in a format authorized by the department, or on other media authorized~~ report as prescribed by the department.

SECTION 48. DWD 111.03 (Note) is created to read:

Note: For assistance filing a wage report, contact the department by telephone at (608) 266-6877 or email WageNet@dwd.wisconsin.gov.

SECTION 49. DWD 111.03 (2) is repealed.

SECTION 50. DWD 111.04 is repealed.

SECTION 51. DWD 111.06 (1) and (2) are amended to read:

DWD 111.06 (1) Each employer shall notify the department of any corrections ~~which are necessary on~~ to wage reports. An employer ~~which desires to make a correction to a prior wage report should~~ may consult the departmental booklet, Unemployment Insurance Handbook for Employers, for guidance regarding wage report corrections.

(2) Employers with corrections to reports shall ~~mail~~ submit wage report corrections ~~to the Department of Workforce Development, Unemployment Insurance Division, Attention: Wage Record Unit, P.O. Box 7962, Madison, Wisconsin 53707~~ as directed by the department.

SECTION 52. DWD 111.06 (2) (Note) is created to read:

Note: For assistance filing a wage adjustment report, contact the department by telephone at (608) 266-6877 or email WageNet@dwd.wisconsin.gov.

SECTION 53. DWD 111.06 (3) is repealed.

SECTION 54. DWD 113.001 (1) and (2) (intro.) are amended to read:

DWD 113.001 (1) ~~IN GENERAL.~~ Except as provided in sub. (2), unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

(2) ~~IN THIS CHAPTER. Notwithstanding ch. DWD 100, the following words and phrases have the designated meanings unless the context clearly indicates a different meaning~~ In this chapter:

SECTION 55. DWD 113.001 (2) (b) is renumbered DWD 100.02 (15m) and as renumbered, is amended to read:

DWD 100.02 (15m) "Decision" means a written resolution by an ~~administrative law judge~~ appeal tribunal of an appeal from a determination or a written resolution of a petition for review by the commission or a written resolution of an action for judicial review by a court of competent jurisdiction.

SECTION 56. DWD 113.001 (2) (ar) is created to read:

DWD 113.001 (2) (ar) "Bureau of legal affairs" means legal counsel in the unemployment insurance division within the department.

SECTION 57. DWD 113.001 (2) (d) is amended to read:

DWD 113.001 (2) (d) "Employer", in addition to the meaning ~~contained~~ specified in s. 108.02 (13), Stats., includes an employing unit which was formerly an employer under s. 108.02 (13), Stats.

SECTION 58. DWD 113.02 (1) (a), (b), (2) (intro), (a) to (d), (f), and (3) are amended to read:

DWD 113.02 (1) (a) Any determination ~~which~~ that has been appealed, ~~which~~ has not become final and ~~which~~ has been referred from the bureau of tax and accounting to the bureau of legal affairs~~; and~~.

(b) Any decision or action ~~which~~ that has not become final.

(2) Settlement shall be based upon advice of ~~counsel for the unemployment compensation division,~~ the bureau of legal affairs, who shall certify that, after having fully investigated the matter, it is ~~his or her~~ the opinion of the bureau of legal affairs that one or more of the following conditions exists:

(a) The department has made an error of law or fact which, if corrected, would negate or change the ~~initial~~ determination issued in the case.

(b) Given the available evidence, there is significant doubt ~~as to the ability of~~ that the department ~~to~~ will prevail in the dispute ~~with respect to one or more~~ on specific issues and there is little or no likelihood of producing sufficient additional evidence in favor of the department regarding the issues ~~prior to~~ before or at a hearing under s. 108.10 (2), Stats.

(c) ~~Prior to~~ Before a hearing under s. 108.10 (2), Stats., the department has discovered additional relevant and material evidence ~~which~~ that would negate or change the ~~initial~~ determination in the case.

(d) Given the evidence in the record or the nature of a decision at a lower level, or both, there is significant doubt ~~as to the ability of~~ that the department ~~to~~ will prevail on appeal ~~with respect to~~ on one or more specific issues.

(f) There are valid legal defenses of estoppel or laches against the department as to all or part of the ~~initial determination(s)~~ determination.

(3) A settlement may be implemented by any ~~one or more~~ of the following methods:

(a) Under s. 108.10 (1), Stats., the department may amend any ~~initial~~ determination affected by the settlement ~~prior to~~ before a hearing on the ~~determination(s)~~ determination.

(b) Under s. 108.10 (1), Stats., the department may set aside the applicable ~~initial determination(s) prior to~~ determination before a hearing on the ~~determination(s)~~ determination and issue ~~whatever~~ a new ~~initial determination(s) are~~ determination as necessary to reflect the terms of the settlement.

(c) The department and the ~~opposing party~~ appellant may enter into a written stipulation which sets forth the terms of the settlement. The stipulation is subject to the ~~approval of the administrative law judge assigned to the case~~ requirements of s. DWD 140.12 (1).

(d) The ~~opposing party~~ appellant may withdraw all or part of the appeal of the ~~department's initial determination(s)~~ determination.

SECTION 59. DWD 113.025 (1) (c) to (f) are amended to read:

DWD 113.025 (1) (c) The employer has no other outstanding reports, contributions, interest, ~~penalty~~ penalties, or other fees due.

(d) The employer was determined within the last year to be subject to ~~Wisconsin unemployment insurance law~~ ch. 108, Stats., or has a history of timely filing required reports, including wage and ~~tax~~ contribution reports, and of making payments in a timely manner.

(e) The employer or a business for which the employer is a successor, ~~pursuant to~~ under the requirements of s. 108.16 (8), Stats., has never ~~previously~~ received a waiver or decrease in interest charged under s. 108.22 (1) (a) or 108.17 (2c) (c), Stats.

(f) There has not been a hearing ~~before an administrative law judge~~ on an appeal under s. 108.10, Stats., regarding the tax liability associated with the interest.

SECTION 60. DWD 113.03 (1), (3), (4) (intro.), and (a) and (b) are amended to read:

DWD 113.03 (1) Under s. 108.10 (8), Stats., the department may compromise the liability of any employer as established in any final determination, decision or action, together with any subsequent collection costs, if all of the following apply:

(a) The employer makes a sworn application for the compromise of the employer's liability to the department, including a financial statement if requested, in ~~such~~ a form ~~as~~ prescribed by the department ~~prescribes;~~.

(b) The employer is not a government unit~~;~~.

(c) The employer is not ~~the~~ a debtor in a case under title 11 of the United States ~~bankruptcy code~~ Code with respect to any liability under ch. 108, Stats., which is not dischargeable in bankruptcy unless any of the following apply:

1. In a case under chapter 7 of title 11 of the ~~bankruptcy code~~ United States Code, there are insufficient assets to pay the liability in full under ~~with~~ the statutory order of distribution~~; or~~.

2. In a case under chapter 11 or 12 of title 11 of the ~~bankruptcy code~~ United States Code, the confirmed plan of reorganization provides for the sale of or distribution to creditors of all of the property of the employer and there are insufficient assets to pay the liability.

(d) ~~With respect to an~~ If the employer ~~that~~ is a nonprofit organization ~~and whose liability or any part of whose liability was~~ that incurred ~~while~~ all or part of its liability when it was subject to reimbursement financing status under s. 108.151 (2), Stats., the employer's assurance of reimbursement has either been applied to the liability or the application for compromise provides for such assurance~~; and~~.

(e) The department finds that the employer is unable to pay the full amount of the contributions or payments in lieu of contributions, interest, penalties and costs~~, except, with~~

~~respect to an~~. If the employer is still in the same business or operation as when the liability sought to be compromised was incurred, and all of the following apply:

1. The employer's application for compromise ~~must offer~~ offers payment in an amount not less than the unpaid contributions or unpaid payments in lieu of contributions, including any contributions owed as a successor under s. 108.16 (8) (f), Stats.~~;~~

2. The required payment of all interest, penalties or costs would pose an immediate threat to the financial viability of the employer~~; and~~.

3. ~~Current~~ The employer is paying all current contributions or payments in lieu of contributions ~~are being paid~~.

(3) Notwithstanding ~~the exception in~~ sub. (1) (e), the department may compromise unpaid contributions on wages for domestic service arising under s. 108.02 (13) (d), Stats., for any time period ~~prior to~~ before the effective date of the existence of a fiscal agent or fiscal intermediary under s. 46.27 (5) (i), 46.272 (7) (e), or 47.035, Stats.

(4) Notwithstanding sub. (1) (e), in determining the amount of the accepted compromise, the department may consider ~~whether~~ the following:

(a) ~~Any part~~ A portion of any interest liability was incurred as a result of undue delay on the part of the department such that there is valid reason to compromise the interest liability.

(b) In the opinion of ~~counsel for the unemployment compensation division~~ the bureau of legal affairs, the employer could have raised valid legal defenses of estoppel or laches against the ~~initial determination(s)~~ department.

SECTION 61. DWD 113.04

DWD 113.04 (1) The department may compromise the personal liability of ~~any individual~~ a person whose liability for the unpaid contributions, interest, penalties and costs of ~~a~~

~~corporation~~ an employer has been finally established under s. 108.22 (9), Stats., if all of the following apply:

(a) The ~~individual makes~~ person submits a sworn application to the department for the compromise of the ~~individual's~~ person's liability, including a financial statement if requested, in ~~such~~ a form ~~as~~ prescribed by the department ~~prescribes;~~.

(b) The ~~individual~~ person is not the debtor in a case under ~~the~~ title 11 of the United States ~~bankruptcy code~~ Code with respect to any liability under ch. 108, Stats., which is not dischargeable in bankruptcy unless any of the following apply:

1. In a case under chapter 7 of title 11 of the ~~bankruptcy code~~ United States Code, there are insufficient assets to pay the liability in full under the statutory order of distribution~~; or~~.

2. In a case under chapter 11 or 12 of title 11 of the ~~bankruptcy code~~ United States Code, the confirmed plan of reorganization provides for the sale of or distribution to creditors of all of the property of the individual and there are insufficient assets to pay the liability~~; and~~.

(c) The department finds that the ~~individual~~ person is unable to pay the full amount of the liability.

(2) If the conditions of sub. (1) are satisfied, the department shall determine the amount that the ~~individual~~ person is able to pay and may issue an acceptance of the application for compromise in the determined amount.

(3) In making its finding that the ~~individual~~ person is unable to pay the full amount of the liability under sub. (1) (c) and its determination of the amount that the ~~individual~~ person is able to pay, the department shall consider the ~~individual's~~ person's present and prospective income.

(4) The department's acceptance of a compromise under this section shall not affect the liability of any other ~~entity~~ person against which the department may issue or has issued a determination of liability for the unpaid contributions of the same ~~corporation~~ employer.

(5) In an application for compromise under this section, ~~an individual~~ a person liable or potentially liable at the time of application for the liabilities of more than one ~~corporation~~ employer under s. 108.22 (9), Stats., shall disclose all such liabilities, including any liabilities which are not final. Failure to make such disclosure shall make the ~~individual~~ person ineligible for compromise of the undisclosed liability in any later application for compromise under this section.

(6) ~~An individual~~ A person granted a compromise under this section shall not be eligible for a compromise of any liabilities~~, of whatever nature,~~ incurred for tax periods ~~subsequent to~~ after the acceptance of the compromise.

SECTION 62. DWD 113.05 (1), (2), and (4) are amended to read:

DWD 113.05 (1) The department may request additional information and may also examine the employer and ~~such~~ any other ~~persons~~ person as it deems necessary, under oath, regarding the employer's or person's application.

(2) The department shall acknowledge in writing the receipt of an application for compromise within 30 days of such receipt. The department's acceptance of the application for compromise shall be in writing and be issued with the concurrence of the treasurer of the unemployment ~~compensation~~ insurance fund or ~~his or her~~ the treasurer's designee. The acceptance shall be effective only if the amount determined in the acceptance is paid to the department within 30 days from the date of the acceptance, except as otherwise provided under

an installment arrangement under sub. (3). ~~Payment must be in cash or by guaranteed instrument payable only to the department~~ The department shall prescribe the payment form.

(4) The submission of an application for compromise shall not operate to stay collection proceedings. ~~However, the~~ The department may defer collection during the pendency of an application if it is satisfied that the interests of the state will not be jeopardized.

SECTION 63. DWD 113.06 is amended to read:

DWD 113.06 Disposition of warrants. Upon timely payment of the amount set forth in the department's acceptance of compromise, the department shall issue a release of any outstanding warrant against the employer or ~~individual~~ person.

SECTION 64. DWD 113.07 is amended to read:

DWD 113.07 Reopening compromised liability. The department may declare a compromise void at any time if ~~it ascertains that~~ any of the following apply:

(1) The employer or ~~individual~~ person submitted a materially false application for compromise~~; or~~.

(2) ~~Prior to its acceptance of~~ Before the department accepted the application for compromise, the employer or ~~individual~~ person concealed or disposed of income or property which could have been used to pay any part of the original liability.

SECTION 65. DWD 114.20 (1) (intro.) and (a) are amended to read:

DWD 114.20 (1) (intro.) After the department has issued ~~an initial~~ a determination ~~as specified~~ under s. 108.10, Stats., finding a license holder or applicant for a license delinquent in making contributions ~~as specified~~ under s. 108.227 (1) (d), Stats., and after all potential appeals by the license holder or applicant for a license are exhausted, the department shall do any of the following:

(a) Issue a warrant ~~as specified~~ under s. 108.22 (2) and (3), Stats., unless the department previously issued a warrant.

SECTION 66. DWD 114.30 (1) is amended to read:

DWD 114.30 (1) Any license holder or applicant for a license who is unable to pay the full amount of the delinquent unemployment insurance contributions, costs, penalties, and interest may negotiate with the department to pay such contributions, costs, penalties, and interest in installments through a payment plan. The license holder or applicant for a license shall provide a statement of the reasons such contributions, costs, penalties, and interest cannot be paid in full and shall set forth the plan of installment payments proposed by the license holder or applicant for a license. Upon approval of such plan by the department and the timely payment of installments set forth in the plan, collection proceedings with respect to such contributions, costs, penalties, and interest shall be withheld. If the license holder or applicant for a license fails to make any installment payment as scheduled, the department may cancel the installment payment plan and proceed to collect the unpaid portion of such contributions, costs, penalties, and interest in the manner provided by law, and after providing 7 ~~days~~ days' notice to the license holder or applicant for a license, issue a certificate of delinquency. The department may require license holders or applicants for a license who make installment payments under this paragraph to do so by electronic funds transfer.

SECTION 67. DWD 114.50 is amended to read:

DWD 114.50 Other enforcement actions not prohibited. A financial institution doing business in this state shall enter into an agreement with the department to participate in the exchange of data on a quarterly basis. To the extent feasible, the information required under this agreement shall be submitted by electronic means as prescribed by the department. The financial

institution shall sign the agreement and return the agreement to the department within 20 business days of receipt of the agreement. The department shall review the agreement and, if all conditions under s. 108.223, Stats., have been met, shall sign the agreement and provide the financial institution with a copy of the signed agreement. Any changes to the conditions of the agreement shall be submitted by the financial institution or the department at least 60 days ~~prior to~~ before the effective date of the change.

SECTION 68. DWD 115.001 (2) is renumbered (2) (intro.) and as renumbered, is amended to read:

DWD 115.001 (2) (intro.) ~~Notwithstanding ch. DWD 100 and unless the context clearly indicates a different meaning, in~~ In this chapter ~~"employer" means any person who is or becomes subject to the reimbursement financing or contribution requirements of ch. 108, Stats.~~:

SECTION 69. DWD 115.01 (5) (intro.), (a) to (j), and (6) are amended to read:

DWD 115.01 (5) (intro.) TRANSFER OF A BUSINESS ACTIVITY. For a transfer of a business activity to be a business transfer under this section and s. 108.16 (8) (a), Stats., the business activity after the transfer shall be similar to the business activity before the transfer. In determining whether a business activity has been transferred, continued or resumed, the department shall consider factors which suggest a similarity in business activity including any of the following:

(a) The existence of the same customers or the same type of customer after the transfer~~;~~.

(b) The closeness of the transferee's business location to that of the transferor when location is important to the business~~;~~.

(c) The continued use of the transferor's trade name by the transferee~~;~~.

(d) A lapse in operation of 6 months or less unless extensive remodeling is involved or the business is seasonal in nature but in no event shall the lapse be considered if greater than 2 years~~;~~.

(e) Few if any changes in the product or in brand names after the transfer~~;~~.

(f) The similarity in days and hours of the business under both the transferor and transferee~~;~~.

(g) The transfer of inventory, expensive plant machinery, heavy equipment or unique assets as opposed to general office furniture and fixtures~~;~~.

(h) The transfer of key employees or employees with highly technical professional skills~~;~~.

(i) The transfer of goodwill~~;~~.

(j) The existence of a noncompetition clause in the contract prohibiting the transferor from engaging in the same kind of business activity in the area~~; and~~.

(6) TOTAL OR PARTIAL TRANSFER. The transfer of a business may be a total transfer or a partial transfer. If only a portion of a business is transferred, the department shall compute and apply the transfer percentage under s. DWD ~~115.08~~ 115.09.

SECTION 70. DWD 115.02 (intro.), (1) and (2) are amended to read:

DWD 115.02 (intro.) **Determining date of transfer.** The effective date of a transfer of business shall be the date on which the transferee first has actual operating control over business assets and business activities. In determining the effective date of a transfer of business, the department shall consider all of the following:

(1) Legal documents related to the transfer~~;~~.

(2) Any statements or documents tending to show that actual operating control was transferred on a date earlier than that reflected in legal documents related to the transfer~~; and~~.

SECTION 71. DWD 115.03 (2) and (4) are amended to read:

DWD 115.03 (2) The transferor and transferee shall submit in writing any information ~~which~~ requested by the department ~~may request~~ relating to the transfer, or to any transaction ~~which the department has reason to believe~~ that may be a transfer~~, to permit the~~. The department ~~to~~ shall determine if the transaction is a transfer of business and ~~whether~~ if the transaction is a total or partial transfer under this chapter and ch. 108, Stats.

(4) The department may issue determinations, computations, ~~re-computations~~ recomputations and appeal tribunal decisions as necessary under ss. 108.09, 108.095, and 108.10, Stats., in connection with any issue arising under this chapter.

SECTION 72. DWD 115.04 (1) (intro.), (a), and (b) are amended to read:

DWD 115.04 (1) (intro.) STANDARD FOR SUCCESSOR. The transferee becomes a successor under s. 108.16 (8), Stats., if all of the following apply:

(a) A transfer of business has occurred under s. DWD 115.01~~; and~~.

(b) The department ~~finds successorship status~~ determines that the transferee is a successor under ~~s.~~ ss. DWD 115.05 ~~or 115.06, or the transferee requests successorship status under s. DWD~~ to 115.07.

SECTION 73. DWD 115.05 (intro.) and (1) to (3) are amended to read:

DWD 115.05 (intro.) **Mandatory successor.** The department shall ~~find~~ determine that a transferee is a mandatory successor under s. 108.16 (8) (e), Stats., if the business transfer satisfies s. DWD 115.01 and ~~if~~ all of the following apply:

(1) At the time of business transfer, the transferor and the transferee are owned, managed, or controlled in whole or in substantial part under s. DWD 115.08, either directly or indirectly by legally enforceable means or otherwise, by the same interest or interests under s. DWD 115.08~~;~~.

(2) The transferee has continued or resumed the business of the transferor either in the same establishment or elsewhere, or the transferee has employed substantially the same employees under s. DWD 115.08 as those the transferor had employed in connection with the business transferred~~; and~~.

(3) The same financing provisions under s. 108.15, 108.151, 108.152, or 108.18, Stats., apply to the transferee as applied to the transferor on the date of the transfer.

SECTION 74. DWD 115.06 (1) is amended to read:

DWD 115.06 (1) TRANSFER TO A FIDUCIARY. The department shall find that a transferee is a mandatory successor under s. 108.16 (8) (c), Stats., if all of the following apply:

(a) The transferee is a legal representative, trustee in bankruptcy or a receiver or trustee of a person, partnership, limited liability company, association or corporation, or a guardian of the estate of a person, or legal representative of a deceased person~~;~~.

(b) The transferee has continued or resumed the business of the transferor, either in the same establishment or elsewhere, or the transferee has employed substantially the same employees under s. DWD 115.08 as those the transferor had employed in connection with the business transferred~~; and~~.

(c) The same financing provisions under s. 108.15, 108.151, 108.152 or 108.18, Stats., apply to the transferee as applied to the transferor on the date of the transfer.

SECTION 75. DWD 115.07 (1) and (2) (a) to (c) are amended to read:

DWD 115.07 (1) STANDARD. A transferee may elect to become a successor under s. 108.16 (8) (b), Stats., if the business transfer satisfies s. DWD 115.01 and ~~if~~ all of the following apply:

(a) The transfer included at least a transfer percentage of 25% of the transferor's total business as determined under s. DWD 115.09~~;~~.

(b) The same financing provisions under s. 108.15, 108.151, 108.152 or 108.18, Stats., apply to the transferee as applied to the transferor on the date of the transfer~~;~~.

(c) The transferee has continued or resumed the business of the transferor either in the same establishment or elsewhere, or the transferee has employed substantially the same employees under s. DWD 115.08 as those the transferor had employed in connection with the business transferred~~; and~~.

(d) The department ~~has~~ received a timely written application from the transferee requesting successorship status.

(2) (a) The department shall consider as timely under sub. (1) (d) any written application from the transferee or its representative ~~which is~~ received by the department on or before: July 31 of the year in which the transfer date is January 1 to March 31; October 31 of the year in which the transfer date is April 1 to June 30; January 31 of the year following the year in which the transfer date is July 1 to September 30; and April 30 of the year following the year in which the transfer date is October 1 to December 31, unless par. (b) applies. The department shall accept a late application received no more than 90 days after its due date if the transferee satisfies the department that the application was late as a result of excusable neglect.

(b) If the due date of the written application would otherwise be a Saturday, Sunday or legal holiday under state or federal law, the due date is the next following day which is not a

Saturday, Sunday or legal holiday under state or federal law. ~~The department shall also consider as timely any application which if mailed is either postmarked no later than the applicable due date or received by the department no later than 3 days after that due date.~~

(c) ~~The~~ A transferee may withdraw its application requesting ~~successorship~~ successor status if a written withdrawal is received by the department before the issuance of ~~an initial~~ a determination regarding its application or within 21 days after issuance.

SECTION 76. DWD 115.08 (title), (1) and (2) are amended to read:

DWD 115.08 (title) Owned, managed, or controlled in substantial part; the same interest or interests; employed substantially the same employees.

(1) OWNED, MANAGED, OR CONTROLLED IN SUBSTANTIAL PART. The conditions of s. DWD ~~115.04 (1)~~ 115.05 (1) are satisfied if 50% or more of both entities are owned, managed, or controlled, either directly or indirectly, by the same interest or interests.

(2) THE SAME INTEREST OR INTERESTS. The department shall presume, unless shown to the contrary, that the same interest or interests includes the spouse, child or parent of the individual who owned, managed, or controlled the business, or any combination of more than one of them. To overcome the presumption that these are the same interest or interests, ~~it must~~ all of the following shall be established ~~that~~:

(a) Usual and customary sales procedures were followed~~;~~.

(b) All transactions were at fair market value and similar to those available to unrelated parties under similar circumstances~~;~~.

(c) The spouse, child or parent of the individual who owned, managed, or controlled the business was not employed by the business in the 12-month period ~~prior to~~ before the transfer in

a position in which ~~he or she~~ the spouse, child or parent of the individual was able to make management decisions~~;~~.

(d) The individual who owned, managed, or controlled the business ~~prior to~~ before the transfer has no ownership interest, either directly or indirectly, in the transferee~~; and~~.

(e) The individual who owned, managed, or controlled the business ~~prior to~~ before the transfer is not employed by the transferee in a position in which ~~he or she~~ the individual is able to make management decisions.

SECTION 77. DWD 115.09 (1), (4) (intro.), and (a) and (b) are amended to read:

DWD 115.09 (1) DETERMINING TRANSFER PERCENTAGE. The transfer percentage is computed by dividing the payroll in the transferred portion of the transferor's business ~~prior to~~ before the transfer date by the transferor's total payroll. The transfer percentage is not based on the number of employees taken over by the transferee, but rather on the payroll incurred in the transferred portion ~~prior to~~ before the transfer date. The payroll for overhead and combined positions shall be allocated in the same proportion as the direct payrolls involved, or on such other reasonable basis as may better correspond with and reflect the facts of the transfer.

(4) APPLYING THE TRANSFER PERCENTAGE. For any partial transfer, whether optional or mandatory, the department shall do all of the following:

(a) Apply the transfer percentage to the positive or negative balance in the employer's account of the transferor as of the transfer date and to the appropriate June 30 balances of the transferor~~;~~.

(b) Apply the transfer percentage to the transferor's payroll ~~prior to~~ before the transfer date as needed to correctly calculate the transferee's contribution rates~~; and~~.

SECTION 78. DWD 115.10 (3) (a) and (b) are amended to read:

DWD 115.10 (3) (a) *Successor not an employer at time of transfer.* If the successor was not an employer at the time of transfer under ch. 108, Stats., the department shall assign to the successor, as of the date of transfer, the ~~basic~~ contribution rate assigned or assignable to the transferor on the date of transfer under s. 108.16 (8) (g), Stats. If ~~there are several transfers~~ more than one transfer of business occurs on the same date of transfer to a single successor, the ~~basic~~ contribution rate ~~which will be~~ assigned to the successor may not be higher than the highest ~~basic~~ contribution rate ~~which~~ that applied to any of the transferors ~~of which the transferee is a successor~~ for the year in which the transfer occurred.

(b) *Successor an employer at time of transfer.* If the successor was an employer at the time of transfer under ch. 108, Stats., the successor shall retain the assigned rate for the calendar year of the transfer. For subsequent years as required by s. 108.18, Stats., the department shall assign a contribution rate which reflects the combined experience of the transferor and successor. For the purposes of s. 108.18, Stats., the department shall determine the experience of the successor's account by allocating to that account the respective proportions of the transferor's payroll and benefits properly assignable to the business transferred.

SECTION 79. DWD 115.11 (1) (intro.), (a), (2) (b), and (c) are amended to read:

DWD 115.11 (1) (intro.) STANDARD. A transferee ~~which~~ that is not a successor under ch. 108, Stats., and this chapter becomes an employer as of the date of transfer under s. 108.16 (8) (j), Stats., when all of the following conditions are met:

(a) A transfer of business has occurred under s. DWD 115.01~~; and~~.

(2) (b) The transferee shall be assigned an initial ~~or new employer~~ rate as a new employer for the first ~~2~~ 3 years as prescribed under s. 108.18 (2), Stats.

(c) The first contribution report shall be due from the transferee on the due date ~~specified in~~ under s. DWD ~~110.06~~ 110.07 (3)~~,~~ and (4)~~ and (5)~~ for the quarter following the quarter ~~in which~~ the transfer occurred or January 31 for those becoming liable in the fourth quarter of the preceding year.

SECTION 80. DWD 120.01 (Note) is created to read:

Note: A copy of the notice to employees about applying for unemployment benefits is available online at https://dwd.wisconsin.gov/dwd/publications/ui/notice.htm and may be posted on an employer's work website that is accessible by all employees or distributed by electronic mail.

SECTION 81. DWD 120.03 (2) (Note) is created to read:

Note: A copy of the seasonal employer notice under this section is available online at https://dwd.wisconsin.gov/dwd/publications/ui/ucb_9381_p.pdf.

SECTION 82. DWD 127.01 (3) is amended to read:

DWD 127.01 (3) ~~Except if the work search requirement has been waived by~~ Unless the department waives the work search requirement, a claimant ~~shall be~~ is ineligible for unemployment benefits in any given week in which the department determines the claimant did not conduct at least 4 actions to search for suitable work within that week.

SECTION 83. DWD 127.02 (11) (intro.) is amended to read:

DWD 127.02 (11) (intro.) The claimant has been referred for reemployment services, is participating in such services, or is not participating in such services, but has ~~justifiable~~ good cause for failure to participate. ~~Justifiable~~ For purposes of this section, good cause includes that the claimant is unable to participate due to any of the following:

SECTION 84. DWD 127.06 (2) is amended to read:

DWD 127.06 (2) A claimant shall be ineligible for benefits in any given week in which the department determines that the claimant failed, without ~~justifiable~~ good cause, as described in s. DWD 127.02 (11), to comply with the requirements under sub. (1).

SECTION 85. DWD 127.07 (2) (intro.) is amended to read:

DWD 127.07 (2) (intro.) The department may find that a claimant has ~~justifiable~~ good cause for failure to participate in reemployment services in any given week. ~~Justifiable~~ For the purposes of this section, good cause for failure to participate in reemployment services includes that the claimant is unable to participate due to any of the following:

SECTION 86 . DWD 128.001 is renumbered DWD 128.001 (1).

SECTION 87. DWD 128.001 (2) (intro.) is created to read:

DWD 128.001 (2) (intro.) In this chapter:

SECTION 88. DWD 128.01 (1) is amended to read:

DWD 128.01 (1) APPLICABILITY. Under s. 108.04 (2), Stats., a claimant shall be eligible for unemployment benefits for any week of total unemployment only if the claimant is able to perform suitable work and available for suitable work. Under s. 108.04 (1) (b), (7) (c), and (8) ~~(c)~~, Stats., a claimant shall be eligible for unemployment benefits only if the claimant is able to perform suitable work and is available for suitable work. The department may determine the claimant's ability to perform suitable work and availability for suitable work at any time through questioning of the claimant and other procedures.

SECTION 89. DWD 129.01 (4) (intro.) and (a) are amended to read:

DWD 129.01 (4) (intro.) WAIVER; EXCEPTIONAL CIRCUMSTANCES. The department shall waive the requirements of this section if exceptional circumstances exist. Exceptional circumstances include ~~all~~ any of the following:

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

SECTION 90. DWD 129.01 (4) (e) (intro.), 1., and 2. are repealed.

SECTION 91. DWD 129.03 is amended to read:

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

SECTION 92. Chapter DWD 130 is repealed.

SECTION 93. DWD 131.001 (2) (intro.) and (b) are amended to read:

DWD 131.001 (2) (intro.) ~~Notwithstanding ch. DWD 100, all of the following definitions apply to~~ In this chapter:

(b) "Positive test results" means a test outcome that confirms the ~~presence~~ unlawful use of one or more controlled substances and which is conducted or confirmed by a laboratory certified by the substance abuse and mental health services administration of the United States department of health and human services.

SECTION 94. DWD 131.10 (title), (1) (intro.), (a), (2) (intro.), (b), (c) 4., (d), (e) (intro.), (g), (3) (intro.), (a), (4) (intro.), (b), (c) 4., (d), (e) (intro.), (f), (6) (b) (intro.), 1., 2.,4., (c) (intro), 1., 2., and (7) (a) to (c) are amended to read:

DWD 131.10 (title) Pre-employment testing for the ~~presence~~ unlawful use of controlled substances. (1) (intro.) POSITIVE TEST RESULTS ~~OF A TEST~~; APPLICABILITY. An employing unit may report to the department ~~the~~ an individual's positive test results ~~of a test for the presence of controlled substances conducted on an individual~~ if all of the following apply:

(a) The test for the ~~presence~~ unlawful use of controlled substances was conducted as a condition of an offer of employment and the employing unit informed the individual, before testing, that ~~the~~ positive test results may be submitted to the department.

(2) REPORTING POSITIVE TEST RESULTS ~~OF A TEST~~ TO THE DEPARTMENT. To report positive test results to the department, the employing unit shall provide all of the following information, on a form prescribed by the department, within 3 business days after the date on which the employing unit received the positive test results:

(b) The name, address, telephone number, and social security number of the individual that tests positive for the ~~presence~~ unlawful use of controlled substances.

(c) 4. The date and manner in which the employing unit informed the individual that, as a condition of the offer of employment, the individual must submit to a test for the ~~presence~~ unlawful use of controlled substances.

(d) The date and manner in which the employing unit informed the individual that ~~the~~ positive test results may be submitted to the department.

(e) The following information related to the administration of the test and the positive test results:

(g) The date and manner in which the employing unit withdrew the conditional offer of employment after the employing unit received the positive test results.

(3) INDIVIDUAL DECLINING TO SUBMIT TO A TEST FOR THE ~~PRESENCE~~ UNLAWFUL USE OF CONTROLLED SUBSTANCES. An employing unit may notify the department that an individual declined to submit to a test for the ~~presence~~ unlawful use of controlled substances if all of the following apply:

(a) The test for the ~~presence~~ unlawful use of controlled substances was required as a condition of an offer of employment and the employing unit informed the individual, before testing, that the employing unit may notify the department if the individual declines to submit to the test.

(4) NOTIFICATION TO DEPARTMENT OF INDIVIDUAL DECLINING TEST. To notify the department that an individual declined to submit to a test for the ~~presence~~ unlawful use of controlled substances, the employing unit shall provide all of the following information, on a form prescribed by the department, within 3 business days after the date on which the individual declined to submit to the test:

(b) The name, address, telephone number, and social security number of the individual that declined to submit to a test for the ~~presence~~ unlawful use of controlled substances.

(c) 4. The date and manner in which the employing unit informed the individual that, as a condition of the offer of employment, the individual must submit to a test for the ~~presence~~ unlawful use of controlled substances.

(d) The date and manner in which the employing unit informed the individual that the employing unit may notify the department if the individual declined to submit to a test for the ~~presence~~ unlawful use of controlled substances.

(e) The following information related to the individual declining to submit to a test for the ~~presence~~ unlawful use of controlled substances:

(f) The date and manner the employing unit withdrew the conditional offer of employment after the employing unit received notice that the individual declined to submit to a test for the ~~presence~~ unlawful use of controlled substances.

(6) (b) An individual may overcome the presumption that the individual failed, without good cause, to accept suitable work when offered under s. 108.04 (8) (b), Stats., if the individual tested positive for the ~~presence~~ unlawful use of one or more controlled substances, and the individual establishes by a preponderance of the evidence, any of the following:

1. The employing unit did not extend an offer of employment contingent on the individual submitting to a test for the ~~presence~~ unlawful use of controlled substances.

2. The employing unit withdrew the offer of employment before the employing unit received the positive test results ~~of the test~~.

4. The test for the ~~presence~~ unlawful use of controlled substances was not conducted or confirmed by a laboratory certified by the substance abuse and mental health services administration of the United States department of health and human services.

(c) The individual may overcome the presumption that the individual failed, without good cause, to accept suitable work when offered under s. 108.04 (8) (b), Stats., by declining to submit to a test for the ~~presence~~ unlawful use of controlled substances if the individual establishes by a preponderance of the evidence, any of the following:

1. The employing unit did not extend an offer of employment contingent on the individual submitting to a test for the ~~presence~~ unlawful use of controlled substances.

2. The individual was unable to complete a test for the ~~presence~~ unlawful use of controlled substances due to medical reasons.

(7) (a) An individual under this section who has failed, without good cause, to accept suitable work due to ~~the~~ positive test results ~~of a test~~ without presenting evidence of a valid prescription, is ineligible to receive 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.

(b) Notwithstanding par. (a), an individual under this section who has failed, without good cause, to accept suitable work due to ~~the~~ positive test results ~~of a test~~ without presenting evidence of a valid prescription, may maintain eligibility for benefits under ch. 108, Stats., by enrolling in and complying with a substance abuse treatment program under s. DWD 131.30 and completing a job skills assessment as prescribed under s. DWD 131.40.

(c) An individual under this section who has failed, without good cause, to accept suitable work by declining to submit to a test for the ~~presence~~ unlawful use of controlled substances, is ineligible to receive 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.

SECTION 95. DWD 131.30 (1) (a) (intro.) is amended to read:

DWD 131.30 (1) (a) (intro.) An individual whose positive test results are reported under s. DWD 131.10 (2) may enroll in a substance abuse treatment program if all of the following apply:

SECTION 96. DWD 131.40 (1) is amended to read:

DWD 131.40 (1) An individual whose positive test results are reported under s. DWD 131.10 (2) and who elects to enroll in and comply with a substance abuse treatment plan under s. DWD 131.30 shall complete a job skills assessment as directed by the department.

SECTION 97. DWD 132.001 is renumbered DWD 132.001 (1).

SECTION 98. DWD 132.001 (2) (intro.) is created to read:

DWD 132.001 (2) (intro.) In this chapter:

SECTION 99. DWD 132.04 (1), (2) (intro.), and (a) are amended to read:

DWD 132.04 (1) SCOPE. Under s. 108.04 (17) (a), (b) and (c), Stats., a claimant is ineligible for benefits based upon services provided to or on behalf of an educational institution for weeks of unemployment which occur between academic years or terms or during an established and customary vacation period or holiday recess if the claimant performed the services in the first such year or term or in the year or term immediately before the vacation period or holiday recess and if there is reasonable assurance that the claimant will perform such services for any educational institution in the year or term immediately following the academic year, term, vacation period or holiday recess. ~~The Wisconsin supreme court has ruled that reasonable assurance exists if the terms and conditions of the employment in the academic year or term immediately following the weeks of unemployment which occurred between academic years or terms or during an established and customary vacation period or holiday recess are reasonably similar to those terms and conditions of employment which existed in the year or term before such weeks.~~

(2) STANDARD. Except as provided under sub. (3), the terms and conditions of the employment for which the claimant receives assurance from an educational institution under s. 108.04 (17) (a), (b) and (c), Stats., for the academic year or term immediately following the

weeks of unemployment which occurred between academic years or terms or during an established and customary vacation period or holiday recess are reasonably similar if all of the following apply:

(a) The ~~gross weekly wage is more than 80% of the gross weekly wage~~ claimant will earn at least 90% of the amount the claimant earned in the academic year or term which preceded the weeks of unemployment~~;~~.

SECTION 100. DWD 132.04 (2) (b) is repealed.

SECTION 101. DWD 132.05 (1) (a), (b), and (2) are amended to read:

DWD 132.05 (1) (a) After an employee has been discharged by an employing unit for misconduct connected with ~~his or her~~ the employee's employment as defined under s. 108.04 (5), Stats., ~~he or she~~ the employee is not eligible to receive unemployment benefits under s. 108.04 (5), Stats. ~~The Wisconsin supreme court has defined misconduct for unemployment insurance purposes to mean *"conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has a right to expect of his [or her] employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his [or her] employer."* The intent of this section is to ensure that the statutory provision and the court decision are consistently interpreted and applied in cases involving alleged abuse of a patient in a health care facility.~~

(b) This section provides a standard by which to determine if misconduct exists under s. 108.04 (5), Stats., when an employee is discharged for alleged abuse of a patient of a health care

facility. This standard also applies to ~~disciplinary~~ suspensions for misconduct under s. 108.04 (6), Stats.

(2) STANDARD. Discharge of an employee by an employing unit for misconduct connected ~~with his or her~~ with the employee's employment under s. 108.04 (5), Stats., may include the discharge of an employee by a health care facility for abuse of a patient. Abuse of a patient ~~includes, but is not limited to~~ may include any of the following:

(a) Except when required for treatment, care or safety, any single or repeated intentional act or threat through contact or communication involving force, violence, harassment, deprivation, withholding care, sexual contact, sexual intercourse, or mental pressure, which causes physical pain or injury, or which reasonably could cause physical pain or injury, fear or severe emotional distress~~;~~.

(b) Any gross or repeated failure to provide treatment or care without good cause which reasonably could adversely affect a patient's health, comfort or well-being~~;~~.

(c) Any intentional act which subjects a patient to gross insult, ridicule or humiliation, or repeated failure to treat a patient with dignity and respect~~; and~~.

(d) Knowingly permitting another person to do any of the acts in par. (a)~~, (b) or~~ to (c) or knowingly failing to take reasonable steps to prevent another person from doing any of the acts in par. (a)~~, (b) or~~ to (c).

SECTION 102. DWD 133.02 (1) (a), (b) (intro.), and (c) are amended to read:

DWD 133.02 (1) (a) ~~Prior to~~ Before the end of the second full business day after the end of the assignment, the employee contacts the employer, or the employer contacts the employee, and informs the other that the assignment has ended or will end on a certain date. The department may waive the requirement for the deadline or notice, or both, if it determines that the

employee's failure to so contact the employer was for good cause and the employer and employee have otherwise acted in a manner consistent with the continuation of the employment relationship.

(b) ~~Prior to~~ Before the end of the second full business day after the end of the assignment, or prior to the end of the first full business day after the date notice was given under par. (a) if the deadline for the notice was waived, the employer informs the employee that the employer will provide a new assignment that will begin within 7 days and any of the following occur:

(c) The assignment offered by the employer meets the conditions under which the individual offered to work, including the type of work, rate of pay, days and hours of availability, distance willing to travel to work, and available modes of transportation, as set forth in the individual's written application for employment with the employer submitted ~~prior to~~ before the first assignment, or as subsequently amended by mutual agreement. The employer shall have the burden of proof to show that the assignment meets the requirements of this paragraph. If the employer offers an assignment that does not conform to the requirements of this paragraph, the employment relationship ends under sub. (2).

SECTION 103. DWD 135.04 (1) is amended to read:

DWD 135.04 (1) A claimant may request the department to waive the recovery of an overpayment which the department has assessed against the claimant. The claimant shall file the application for waiver on forms furnished by the department and may submit the application to a representative of the department at any time. The claimant may obtain an application for waiver by sending a request to: Department of Workforce Development, Unemployment Insurance Division, TRA Unit, P. O. Box ~~7965~~ 7905, Madison, Wisconsin, 53707.

SECTION 104. DWD 136.001 (2) (a) is amended to read:

DWD 136.001 (2) (a) "Disposable earnings" ~~means that part of the earnings of any individual after the deduction from those earnings of any amounts required by law to be withheld; any life, health, dental or similar type of insurance premiums; union dues; any amount necessary to comply with a court order to contribute to the support of minor children; and any levy, wage assignment or garnishment executed prior to a levy issued under s. 108.225~~ has the meaning specified in s. 108.225 (1) (d), Stats.

SECTION 105. DWD 136.001 (2) (a) (Note) is created to read:

Note: Under s. 108.225 (1) (d), Stats., "Disposable earnings" means that part of the earnings of any individual after the deduction from those earnings of any amounts required by law to be withheld, any life, health, dental or similar type of insurance premiums, union dues, any amount necessary to comply with a court order to contribute to the support of minor children, and any levy, wage assignment or garnishment executed prior to the date of a levy under ~~this section~~ s. 108.225, Stats.

SECTION 106. DWD 136.001 (2) (b) is amended to read:

DWD 136.001 (2) (b) "Federal minimum hourly wage" ~~means that wage prescribed by 29 USC 206 (a) (1) in effect at the time an exemption is calculated~~ has the meaning specified in s. 108.225 (1) (e), Stats.

SECTION 107. DWD 136.001 (2) (b) (Note) is created to read:

Note: Under s. 108.225 (1) (e), Stats., "Federal minimum hourly wage" means that wage prescribed by 29 USC 206 (a) (1).

SECTION 108. DWD 136.001 (2) (f) is amended to read:

DWD 136.001 (2) (f) "Levy" ~~means a procedure through which earnings of an individual are required to be withheld for payment of a debt, except a court order to contribute to the support of minor children~~ has the meaning specified in s. 108.225 (1) (f), Stats.

SECTION 109. DWD 136.001 (2) (f) (Note) is created to read:

Note: Under s. 108.225 (1) (f), Stats., "Levy" means all powers of distraint and seizure.

SECTION 110. DWD 136.02 (2) (b) (Note) is amended to read:

Note: Form UCT-8306-2-E is used to calculate the exemption. This form is available from the Unemployment Insurance Division, Department of Workforce Development, 201 East Washington Avenue, P.O. Box ~~7942~~ 7888, Madison, Wisconsin ~~53708-7942~~ 53707-7888.

SECTION 111. DWD 136.03 (1) (c) 3. (Note) is amended to read

Note: Form ~~UCT-8306-3-E~~ UCT-8306-E is used to calculate the exemption. This form is available from the Unemployment Insurance Division, Department of Workforce Development, 201 East Washington Avenue, P.O. Box ~~7942~~ 7888, Madison, Wisconsin ~~53708-7942~~ 53707-7888.

SECTION 112. DWD 140.001 (2) (ag) and (am) are renumbered DWD 140.001 (2) (a) and (bm).

SECTION 113. DWD 140.001 (2) (d) is created to read:

DWD 140.001 (2) (d) "Appeal tribunal" means an individual designated under s. 108.09 (3), Stats., to conduct hearings arising under ch. 108, Stats., and s. 103.06 (6), Stats.

SECTION 114. DWD 140.001 (2) (ar) is renumbered DWD 140.001 (2) (e).

SECTION 115. DWD 140.001 (2) (b) is renumbered DWD 140.001 (2) (i), and as renumbered DWD 140.001 (2) (i) is amended to read:

DWD 140.001 (2) (i) "Representative" means any attorney or agent who notifies the department ~~has notice is~~ they are authorized to represent any party.

SECTION 116. DWD 140.01 (1), (2), and (a) are amended to read:

DWD 140.01 (1) APPEAL RIGHTS. Any party to a determination issued under ~~ss.~~ s. 108.09, 108.095 or 108.10, Stats., has the right to an appeal. An appeal as to any matter in a determination is a request for hearing and shall be filed with ~~the department~~ an appeal tribunal by the appellant or its representative. An appeal is filed with an appeal tribunal when it is submitted to a hearing office or public employment office in an agent state under sub. (2) (b). Each

determination issued under ~~ss.~~ s. 108.09, 108.095 or 108.10, Stats., shall specify the time limit within which any appeal is required to be filed ~~with the department~~ under ch. 108, Stats.

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

SECTION 117. DWD 140.01 (2) (b) 1. and 3. are repealed.

SECTION 118. DWD 140.01 (2) (b) 4., (c) 1., and 5. to 7. are amended to read:

DWD 140.01 (2) (b) 4. An appeal by an interstate claimant may ~~also~~ be filed at a public employment office in the agent state under s. 108.14 (8), Stats., in the manner prescribed for timely filing with the department under this section.

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

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

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

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

SECTION 119. DWD 140.01 (2) (c) 7. (Note) is repealed.

SECTION 120. DWD 140.01 (2) (c) 8. is created to read:

DWD 140.01 (2) (c) 8. The date the department receives an electronically-filed appeal.

SECTION 121. DWD 140.04 (2) is amended to read:

DWD 140.04 (2) The ~~administrative law judge~~ appeal tribunal shall issue a decision which makes ultimate findings of fact and conclusions of law as to whether or not the appellant's late appeal was for a reason beyond the appellant's control. If the ~~administrative law judge~~ appeal tribunal decides this question in favor of the appellant, the same or another ~~administrative law judge~~ appeal tribunal shall then make ultimate findings of fact and conclusions of law on the merits of the case. If the ~~administrative law judge~~ appeal tribunal decides that the late appeal was late for a reason within the appellant's control, the ~~administrative law judge~~ appeal tribunal shall dismiss the appeal.

SECTION 122. DWD 140.05 (1) to (4) are amended to read:

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

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

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

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

SECTION 123. DWD 140.06 (1) to (3) are amended to read:

DWD 140.06 (1) The ~~department~~ hearing office shall schedule a hearing at the earliest feasible time after the appeal is received. ~~The hearing office shall mail a notice of hearing to each party.~~

(2) The notice of hearing shall state the time and place of the hearing, the department's statutory authority for convening the hearing and the issues to be heard. The hearing office shall

electronically deliver or mail the notice of hearing to the last-known address of each party not less than 6 calendar days before the hearing, unless all parties waive the notice requirement.

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

SECTION 124. DWD 140.07 (1) (intro.), (2), (3) (intro), and (4) are amended to read:

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

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

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

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

SECTION 125. DWD 140.08 is amended to read:

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

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

(a) Serious illness of a party or a necessary witness~~;~~.

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

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

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

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

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

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

SECTION 126. DWD 140.09 (1) (a) to (c), (2), (3) (intro.), and (b) are amended to read:

DWD 140.09 (1) (a) The hearing office shall compile a hearing file for every case in which a request for hearing has been received which shall contain the papers, documents and departmental records relating to the issue of the hearing. ~~Prior to~~ Before the scheduled date of the hearing, a party to a hearing may inspect the hearing file and procure copies of file contents during regular hearing office hours at the hearing office or other convenient location ~~as determined~~ approved by the hearing office. If requested, the hearing office may electronically deliver or mail copies of file contents to a party. The department may allow such inspection or release of file contents to a party's representative, union agent or legislator ~~only if that individual indicates by a written or verbal statement that the individual has authorization from the party~~, as prescribed under s. DWD 149.03 (2).

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

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

(2) HEARING STAGE. At the hearing, evidence and exhibits are open to inspection by any party or party's representative except that the ~~administrative law judge~~ appeal tribunal may conduct a closed inspection of evidence and exhibits if the interests of justice so require. The ~~judge~~ appeal tribunal may sequester from the hearing ~~room~~ any person, party or representative as part of the closed inspection. The ~~judge~~ appeal tribunal may also issue a protective order to

prohibit the parties ~~and their representatives~~ or the parties' representatives from disclosing any evidence and exhibits listed as confidential in the protective order if the interests of justice so require.

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

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

SECTION 127. DWD 140.09 (3) (f) (Note) is created to read:

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

SECTION 128. DWD 140.09 (4) (a) 1., and (b) to (d) are amended to read:

DWD 140.09 (4) (a) 1. The ~~worker's~~ individual's unemployment insurance record as that record relates to work for another employing unit unless ~~an administrative law judge~~ the appeal tribunal approves a request.

(b) Notwithstanding subs. (1) to (3), the ~~administrative law judge~~ appeal tribunal may declare all or parts of documents or other material ~~which~~ that contains records or preserves information ~~and which~~ that the ~~administrative law judge~~ appeal tribunal examined in a closed

inspection under sub. (2) to be, in whole or in part, confidential and closed to inspection by one or more parties, representatives or other persons.

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

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

SECTION 129. DWD 140.10 (1), (2) (intro.), (3), and (4) are amended to read:

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

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

(3) A party whose request for a subpoena has been denied may, at the hearing, request the ~~administrative law judge who conducts the hearing~~ presiding appeal tribunal to issue the subpoena. If the ~~administrative law judge~~ appeal tribunal grants the request for a subpoena, the

~~judge~~ appeal tribunal may adjourn the hearing to allow sufficient time for service of and compliance with the subpoena.

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

SECTION 130. DWD 140.11 is amended to read:

DWD 140.11 Telephone and videoconference hearings. (1) The ~~department~~ appeal tribunal may conduct hearings in whole or in part by telephone or videoconference when it is impractical for the ~~department~~ appeal tribunal to conduct an in-person hearing, when necessary to ensure a prompt hearing or when one or more of the parties would be required to travel an unreasonable distance to the hearing location. When 2 or more parties are involved, the evidence shall be presented during the same hearing unless the ~~department~~ appeal tribunal determines that it is impractical to do so. A party scheduled to appear by telephone or videoconference may appear in person at the ~~administrative law judge's~~ appeal tribunal's location. The ~~department~~ appeal tribunal may postpone or adjourn a hearing initially scheduled as a telephone or videoconference hearing and reschedule the hearing for an in-person appearance if circumstances make it impractical to conduct a telephone or videoconference hearing.

(2) If the appellant is scheduled to testify by telephone or videoconference and fails to provide the hearing office with the appellant's telephone number or the name and telephone number of the appellant's ~~authorized~~ representative or fails to connect to the videoconference within a reasonable time ~~prior to~~ before the hearing and if the ~~administrative law judge~~ appeal

tribunal has made reasonable attempts to contact the appellant, the ~~administrative law judge may~~ appeal tribunal shall dismiss the appeal. If the respondent fails to provide the hearing office with the telephone number or the name and telephone number of the respondent's ~~authorized~~ representative ~~prior to~~, or the representative fails to connect to the videoconference before the hearing, and if the ~~administrative law judge~~ appeal tribunal has made reasonable attempts to contact the respondent, the ~~administrative law judge may~~ appeal tribunal shall proceed with the hearing.

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

(4) If the respondent is scheduled to appear by telephone or videoconference, the ~~administrative law judge may~~ appeal tribunal shall proceed with the hearing if, within ~~5~~ 10 minutes after the starting time for the hearing, neither the respondent nor the respondent's ~~authorized~~ representative can be reached at the respondent's telephone number of record or the telephone number furnished to the hearing office. The ~~administrative law judge~~ appeal tribunal may refuse to allow a respondent to testify if the ~~administrative law judge~~ appeal tribunal is

unable to reach the respondent or the respondent's ~~authorized~~ representative and neither the respondent nor the respondent's ~~authorized~~ representative have contacted the hearing office within ~~15~~ 10 minutes after the starting time for the hearing. The respondent ~~shall be~~ is considered to have failed to appear for the hearing if the ~~administrative law judge~~ appeal tribunal so refuses. The respondent may ~~appeal~~ petition such a finding under ~~this chapter~~ s. 108.09 (6), Stats.

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

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

SECTION 131. DWD 140.12 is amended to read:

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

(a) The parties entered into the stipulation voluntarily~~;~~.

(b) The stipulation contains all the relevant and necessary facts to resolve the issues as determined by the ~~administrative law judge~~ appeal tribunal.

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

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

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

SECTION 132. DWD 140.13 is amended to read:

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

SECTION 133. DWD 140.15 is amended to read:

DWD 140.15 (1) All testimony shall be given under oath or affirmation. The ~~administrative law judge~~ appeal tribunal shall administer the oath or affirmation to each witness. No person who refuses to swear or affirm the veracity of ~~his or her~~ their testimony may testify. Each party shall be given an opportunity to examine and cross-examine witnesses. The ~~administrative law judge~~ appeal tribunal may limit ~~the~~ testimony to only those matters that are disputed. The appeal tribunal may not allow into the record, either on direct or cross-examination ~~of witnesses so as not to unduly burden the record~~, redundant, irrelevant or repetitive testimony.

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

(3) The ~~administrative law judge~~ appeal tribunal may, upon motion of a party or upon the ~~judge's~~ appeal tribunal's own motion, exclude witnesses from the hearing ~~room~~ until called to testify and may instruct the excluded witnesses not to discuss the matter being heard until the hearing has been concluded. The ~~administrative law judge~~ appeal tribunal may close the hearing to any person to the extent necessary to protect the interests and rights of either party to a fair hearing. This subsection does not authorize exclusion of a party who is a natural person; one

officer or employee of a party which is not a natural person; or a person whose presence is shown by a party to be essential to the presentation of the party's case.

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

SECTION 134. DWD 140.16 is amended to read:

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

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

SECTION 135. DWD 140.17 is amended to read:

DWD 140.17 (1) The ~~administrative law judge~~ appeal tribunal may issue an oral decision at the hearing on the matters at issue but the ~~judge~~ appeal tribunal shall confirm the oral

decision with a written decision. ~~The only~~ Only the written decision ~~which~~ is appealable ~~is the written decision~~.

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

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

SECTION 136. DWD 140.18 and (Note) are amended to read:

DWD 140.18 Fees for representation of parties. No representative ~~attorney~~ may charge or receive from a claimant for representation in a dispute concerning benefit eligibility or liability for overpayment of benefits, or in any administrative proceeding under ch. 108, Stats., concerning such a dispute, a fee which, in the aggregate, is more than 10% of the maximum benefits at issue unless the department has approved a specified higher fee before the claimant is charged. When a request for waiver of the 10% limitation is received, the department shall consider whether extended benefits or any other state or federal unemployment benefits are at issue. Any request for waiver of the 10% limitation on fees shall be submitted in writing to the central administrative office of the bureau of legal affairs~~, unemployment insurance~~ in the division~~, department of workforce development. The department is not authorized under~~. Under s. 108.13, Stats., ~~to~~ the department ~~shall~~ may not assign any past or future benefits for the collection of ~~attorney~~ representative fees.

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

SECTION 137. DWD 140.19 is amended to read:

DWD 140.19 (1) The department may, at its own expense, provide a person to assist a person with a hearing impairment in communicating at a hearing, if the person with a hearing impairment notifies the ~~department~~ hearing office within a reasonable time ~~prior to~~ before the date of the hearing and the ~~department~~ appeal tribunal determines that the impairment is of a type which may hinder or prevent the person from communicating.

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

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

SECTION 138. DWD 140.20 (1), (2), and (4) (c) are amended to read:

DWD 140.20 (1) The ~~administrative law judge~~ appeal tribunal may authorize reimbursement by the department to any witness subpoenaed by a party or any party who has already made reimbursement to such a witness for witness fees and travel expenses. The

~~administrative law judge~~ appeal tribunal may also require reimbursement for an interpreter who is necessary to interpret testimony of a witness offered at the hearing.

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

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

SECTION 139. DWD 140.21 is amended to read:

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

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

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

SECTION 140. DWD 140.22 (1) (c) is amended to read:

DWD 140.22 (1) (c) The department's standard affidavit form for appeals under ss. 108.09, 108.095 and 108.10, Stats., is available at the department's website or by requesting a copy from the hearing office.

SECTION 141. DWD 140.22 (1) (c) (Note) is repealed and recreated to read:

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

DWD 140.20 Witness and interpreter fees; travel expenses.

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

SECTION 142. DWD 140.22 (3) (a) and (b) are amended to read:

DWD 140.22 (3) (a) A party may submit an affidavit as a potential exhibit by simultaneously delivering the affidavit to the hearing office and electronically delivering or mailing a copy to ~~the other~~ each party. The ~~administrative law judge~~ appeal tribunal conducting the hearing may refuse to consider an affidavit not received by the hearing office and ~~the other~~ each party at least 3 days ~~prior to~~ before the hearing.

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

SECTION 143. DWD 142.02 (2) to (5) are amended to read:

DWD 142.02 (2) "Employee" means an individual who is an employee ~~within the meaning of chapter 24 of the internal revenue code of 1986 (~~under 26 USC 3401~~)~~ (c) but does not include an individual performing intelligence or counterintelligence functions for a federal or state agency if the head of the agency has determined that reporting ~~pursuant to~~ under s. DWD 142.01 with respect to the individual could endanger the individual's safety or compromise an ongoing investigation or intelligence mission.

(3) "Employer" means a person who is an employer ~~within the meaning of chapter 24 of the internal revenue code of 1986~~ under 26 USC 3401(d) and includes any governmental entity and any labor organization.

(4) "Federal employer identification number" means the identifying number assigned to the employer under ~~section 6109 of the internal revenue service code of 1986~~ 26 USC 6109.

(5) "Labor organization" ~~means an organization that is a labor organization within the meaning of 29 USC 152(5) and includes any hiring hall or other organization that is used by the labor organization and an employer to carry out requirements of an agreement described in 29~~

~~USC 159(f)(3) between the labor organization and the employer~~ has the meaning specified in 42 USC 653a(a)(2)(B)(ii).

SECTION 144. DWD 142.02 (5) (Note) is repealed and recreated to read:

Note: 42 USC 653a(a)(2)(B)(ii) provides: The term "labor organization" shall have the meaning given such term in section 152(5) of title 29, and includes any entity (also known as a "hiring hall") which is used by the organization and an employer to carry out requirements described in section 158(f)(3) of title 29 of an agreement between the organization and the employer.

SECTION 145. DWD 142.02 (7) (b) is amended to read:

DWD 142.02 (7) (b) An employee, other than a poll worker or a substitute teacher, who is rehired, recalled, or returns to work after an unpaid absence of more than ~~90~~ 60 days.

SECTION 146. DWD 147.01 (1) (intro.) is renumbered DWD 147.01 (1) and as renumbered, is amended to read:

DWD 147.01 (1) Under s. 108.066, Stats., an employer engaged in agricultural activities may apply to the department by May 31 for designation as a seasonal employer. ~~In response to such application the~~ The department shall issue an appealable determination regarding the application by June 30. The department shall grant seasonal employer designation if ~~it determines that:~~ all of the requirements under s. 108.066 (3), Stats., are met.

SECTION 147. DWD 147.01 (1) (a) to (c) are repealed.

SECTION 148. DWD 149.001 (2) (d) is amended to read:

DWD 149.001 (2) (d) "Public official" means an official, agency, or public entity within the executive branch of the federal, state, Indian tribal, or local government with responsibility for administering or enforcing a law, or an elected official in federal, state, Indian tribal, or local government and includes the meaning specified in 20 CFR 603.2 (d) (2) to (5).

SECTION 149. DWD 149.001 (2) (d) (Note) is created to read:

Note: Under "20 CFR 603.2 (d) (2) to (5)" "public official" means:

(2) Public postsecondary educational institutions established and governed under the laws of the State. These include the following:

(i) Institutions that are part of the State's executive branch. This means the head of the institution must derive his or her authority from the Governor, either directly or through a State WDB (Workforce Development Board), commission, or similar entity established in the executive branch under the laws of the State.

(ii) Institutions which are independent of the executive branch. This means the head of the institution derives his or her authority from the State's chief executive officer for the State education authority or agency when such officer is elected or appointed independently of the Governor.

(iii) Publicly governed, publicly funded community and technical colleges.

(3) Performance accountability and customer information agencies designated by the Governor of a State to be responsible for coordinating the assessment of State and local education or workforce training program performance and/or evaluating education or workforce training provider performance.

(4) The chief elected official of a local area as defined in WIOA (Workforce Innovation and Opportunity Act) sec. 3(9).

(5) A State educational authority, agency, or institution as those terms are used in the Family Educational Rights and Privacy Act, to the extent they are public entities.

SECTION 150. DWD 149.02 (2) (b) is amended to read:

DWD 149.02 (2) (b) Appeals records and decisions with ~~social security numbers~~ personally identifiable information, as defined in s. 19.62 (5), Stats., redacted as provided in s. DWD 140.09.

SECTION 151. DWD 149.05 (1) (intro.), (a), (c), (d) (intro.), and 5. are amended to read:

DWD 149.05 (1) (intro.) The department may disclose unemployment insurance records to any of the following persons or government units if the department approves the purposes for which the records are requested:

(a) The ~~U. S.~~ United States department of labor, including for purposes of the federal ~~Workforce Investment Act~~ workforce ~~investment~~ innovation and opportunity act, and the bureau of labor statistics.

(c) A local, state, Indian tribal, or federal government official, other than a clerk of court on behalf of a litigant, with authority to obtain the information pursuant to a subpoena or court order.

(d) A public official or its agent or contractor for use in the performance of official duties, including any of the following:

5. Any federal law enforcement agency or law enforcement agency of the state or any of its political subdivisions, if the ~~worker~~ individual or employing unit whose record is being sought is the subject of a criminal investigation.

SECTION 152. DWD 149.06 (4) is amended to read

DWD 149.06 (4) This section does not apply to disclosures of unemployment insurance records to a unit of the federal government that has safeguards in place that meet the confidentiality requirements of 42 USC ~~303~~ 503 (a) (1), as determined by the department of labor with notice published in the Federal Register.

SECTION 153. DWD 149.07 (6) is amended to read

DWD 149.07 (6) The requirements of this section do not apply to disclosures of unemployment insurance records to a federal agency that has in place safeguards adequate to satisfy the confidentiality requirements of 42 USC ~~303~~ 503 (a) (1), as determined by the department of labor and published in the Federal Register.

SECTION 154. DWD 150.03 (intro.) and (1) are repealed.

SECTION 155. DWD 150.05 is amended to read:

DWD 150.05 Forms. Copies of forms ~~used by the Unemployment Insurance Division may be obtained by writing the Unemployment Insurance Division, P.O. Box 7905, Madison, Wisconsin 53707~~ are provided by the department.

SECTION 156. DWD 150.05 (Note) is created to read:

Note: Copies of forms are available online at:
https://dwd.wisconsin.gov/dwd/forms_publications_search.htm

SECTION 157. DWD 150 (table) is amended to read:

TABLE DWD 150

Form Number			Title or Similar Description
(1) Coverage.			~~**Wisconsin Employer's Report**~~
(a)	UCT-1-E	—	~~Employer's~~ Wisconsin Employer Report ~~as to Wis. U.I. Coverage~~
(b)	RC-1	—	Election to Cover Multi-state Workers
(c)	UCT-115-E	—	Report of Business Transfer
(d)	UCT-117-E	—	Computation of Partial Transfer Percentage
(e)	UCT-119-E	—	Benefit Payment Allocation Report
(f)	UCT-43-E	—	Preliminary Report
(g)	UCT-673-E	—	Nonprofit Organization Employer's Report
(h)	UCT-5332-E	—	Domestic Employer's Report
(i)	UCT-5334-E	—	Agricultural Employer's Report
(j)	UCT-6491-E	—	Account Change Information
(2) Contributions.			
(a)	UCT-101-E	—	~~Employer's~~ Quarterly Contribution Report to be Filed with Quarterly Wage Report
~~(b)~~	~~UC-101a~~	~~—~~	~~Instructions for Completing Form UC-101~~
(c)	UCT-100B-E	—	~~Notice of Employer's Contribution~~ Annual Tax Rate Notice and Schedule-with Voluntary
(d)	UCT-100B1-E	—	Annual Tax Rate Notice and Schedule-Without Voluntary
(e)	UCT-100B2-E	—	UI Tax Rate Adjustment/Rate Schedule
(f)	UC-7823-E	—	Quarterly Wage Report
(g)	UCT-7842-E	—	Contribution Adjustment Report
(h)	UCT-7878-E	—	Wage Adjustment Report
(i)	UCT-7937	—	Election to Exclude Principal Officers
(j)	UCT-8055	—	Worksheet-Corporate Officer Exclusion
(k)	UCT-17927-E	—	Reelection of Coverage of Principal Officers
(3) Benefit notices and reports, required of employers.			
(a)	UCB-201-P	—	Wisconsin Unemployment Insurance Handbook for Employers
(b)	UCB-7-P	—	Notice ~~Poster, How to Claim~~ to Employees About Applying for Wisconsin Unemployment Benefits
~~(d)~~	~~RC-2~~	~~—~~	~~Special Notice, for Multi-State Employees~~
(e)	UCB-16	—	Separation Notice
(f)	UCB-23	—	Wage Verification Eligibility Report
~~(g)~~	~~UCB-23Q35~~	~~—~~	~~Wage Verification Eligibility Report~~
(h)	UCB-9381-P	—	Seasonal Employment Notice

(i)	UCB-719	—	Urgent Request for Wages
(4) Benefit claims and payments.			
(a)	UCB-10-P	—	~~Claiming Wisconsin~~ Unemployment ~~Benefits~~ Insurance Handbook for Claimants
~~(b)~~	~~UCB-17~~	~~—~~	~~Claim Card~~
(5) Settlement of contested benefit claims.			
~~(a)~~	~~UCB-18~~	~~—~~	~~Fact Finding Interview Notice~~
(b)	UCB-474	—	Physician's Report, for Determining Eligibility

SECTION 158. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin administrative register, as provided under s. 227.22 (2) (intro.), Stats.

Dated this _____ day of _____, 2018.

WISCONSIN DEPARTMENT OF
WORKFORCE DEVELOPMENT

By: _____
Raymond Allen, Secretary

Department of Workforce Development
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STATE OF WISCONSIN
DWD
Department of Workforce Development

Scott Walker, Governor
Raymond Allen, Secretary

September , 2018

To: The Honorable Roger Roth
President, Wisconsin State Senate
Room 220 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

The Honorable Robin Vos
Speaker, Wisconsin State Assembly
Room 217 West, State Capitol
PO Box 8953
Madison, WI 53708-8953

FROM: Raymond Allen, Secretary
Department of Workforce Development

SUBJECT: **Non-substantive or minor technical changes to various DWD rule chapters – Chs. DWD 100-150 (Clearinghouse Rules No. 18-033)**

Introduction

The Department of Workforce Development ("DWD") is transmitting this rule for legislative committee review, as provided in s. 227.19 (2) and (3), Stats. DWD will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19 (2), Stats.

Rule Content

The Wisconsin unemployment insurance program is administered under chs. DWD 100-150. The proposed rule is minor and technical in nature and is designed as a "clean-up." The proposed rule is promulgated to align current rules with federal laws and state statute. In addition, the rule updates obsolete or incorrect cross-references, informs the public of where to obtain information or how to contact the department, and clarifies language.

Chapter DWD 100 provides definitions for all terms that are applied to chs. DWD 100-150. The proposed rule made changes to ch. DWD 100, such as:

- Repeals the definitions "fax," "first shift," "profiling system," and "unemployment insurance office" because they are no longer used in chs. DWD 100-150.

- Renumbers the definition "decision" from ch. DWD 113 to ch. DWD 100, because the term is referenced in multiple chapters within chs. DWD 100-150.
- Amends the definition "payroll base" to specify the statutory amount.
- Amends the definition "total unemployment and totally unemployed" to only "total unemployment".
- Amends the definitions "disposable earnings," "federal minimum hourly wage," and "levy" to reference statute because they are already defined in statute.
- Amends the definition of "newly hired employee" under s. DWD 142.02 (7) (b) to reflect an unpaid absence of 60 days rather than 90 days as required by federal guidance.
- Amends the definition of "public official" in s. DWD 149.001 to reflect the new federal definition that was enacted to align with the Wisconsin Innovation and Opportunity Act.

The following definitions were renumbered from ch. DWD 100 because the terms are only used in specific chapters:

- "Wage report" and "wage reporting" are renumbered in ch. DWD 111.
- "Compromise," "same business or operation," and "settle" are renumbered in ch. DWD 113.
- "Transfer percentage," transferee," and "transferor" are renumbered in ch. DWD 115.
- "Full-time," "shift," "total unemployment," and "weekly certification" are renumbered in ch. DWD 128.
- "Health care facility," "sexual contact," and "sexual intercourse" are renumbered in ch. DWD 132
- "Agent state," "ease of access," and "hearing office" are renumbered in ch. DWD 140.

In addition, the proposed rule:

- Amends the title for ch. DWD 101 to include "benefit purposes" and s. DWD 101.01 to clarify how the department shall apply the definition of wages for benefit purposes.
- Creates s. DWD 103.01 (2) to include "unpaid managers of a limited liability company" as excluded "employment" to align with statute.
- Repeals ss. DWD 110.07 (5) and (7) because due dates for filing certain reports are already identified in statute.
- Amends DWD 110.07 (8) to clarify the requirement for an employer to remit contributions as prescribed by the department.
- Repeals the requirement that employers notify the department as to whether the employer provides health insurance for employees under ch. DWD 111 because the department no longer collects this information.
- Amends s. DWD 111.03 to require employers to submit a wage report to the department as prescribed.
- Repeals ss. DWD 111.04 and DWD 111.05 because the proposed changes under DWD 111.03 will make these sections obsolete.
- Amends "individual" with "person" under ch. DWD 113 to align with statute.
- Amends s. DWD 115.06 to include "limited liability company" as a transferee to align with statute for transfers involving fiduciaries.
- Repeals the requirement the department consider a mailed application timely if postmarked by the due date or received no more than 3 days after the due date under s. DWD 115.07 because this is not allowed by statute.
- Amends s. DWD 115.11 from 2 years to 3 years for new employers assigned an initial rate to align with statute.

- Amends references to "justifiable cause" and replaces with "good cause" for consistency under. Ch. DWD 127.
- Repeals 129.01 (4) (e) because the automated telephone claim system for filing benefit claims is no longer used.
- Repeals chapter DWD 130 because the proposed amendments to ch. DWD 101 make this chapter unnecessary.
- Amends language in ch. DWD 131 to align with statute by changing "presence" to "unlawful use."
- Amends language in s. DWD 132.04 (1) by striking language referencing a case of the Wisconsin Supreme Court because it is not necessary in the rule.
- Amends language in s. DWD 132.04 (2) (a) to conform to federal standards specified by the U.S. Department of Labor in UIPL (Unemployment Insurance Program Letter) 5-17.
- Repeals s. DWD 132.04 (2) (b) relating to the number of hours worked for educational employees, due to updated guidance by the U.S. Department of Labor in UIPL 5-17.
- Amends the language in s. DWD 132.05 (1) (a) by striking a reference to a Wisconsin Supreme Court interpretation of the definition of "misconduct" because s. 108.04 (5), Stats., supersedes the court case.
- Amends the table in ch. DWD 150 to reflect forms currently used.

Chapter DWD 140 outlines the unemployment insurance appeals process. Numerous updates and amendments were made to this chapter to conform to statute changes. The definition "appeal tribunal" was created to align with state statute and it replaced the term "administrative law judge," which was repealed in ch. DWD 100. The proposed rule specifies that appeals be filed with a hearing office or public employment office in an agent state rather than with the department. In addition, hearings may be conducted via videoconference. Current rule allows 15 minutes for an appellant to appear by telephone and 5 minutes for a respondent to appear after the start time of a hearing (in person or via telephone or videoconference). The proposed rule allows 10 minutes for both appellant or respondent to appear after the start time of a hearing.

Public Hearing

DWD held one public hearing in Madison on July 12, 2018. One person, Terry Hayden, representing the Unemployment Insurance Advisory Council, attended the hearing, but did not speak. No written comments were received.

DWD's Rule Changes in Response to Comments from the Rules Clearinghouse and Public Hearing

The department incorporated all changes suggested by the Rules Clearinghouse with the exception of the following:

> 4.e. Sections DWD 149.06 (4) and 149.07 (6) reference 42 USC 503 (a) (1), which requires state law to include "methods of administration … as are found by the Board [Secretary of Labor] to be reasonably calculated to insure full payment of unemployment compensation when due". The provision does not specifically refer to confidentiality requirements. Does the agency intend to refer to this provision?

The department intended to refer to this provision. Current sections DWD 149.06 (4) and 149.07 (6) reference 42 USC 303 (a) (1). The proposed change is to amend "303" to "503." Section 303 of the federal Social Security Act is 42 USC § 503. 42 USC § 503 (a) (1), not 42 USC § 303 (a) (1), is the statutory basis for US-DOL's federal regulations regarding confidentiality referenced in sections DWD 149.06 (4) and 149.07 (6). *See* 20 CFR § 603.4. The department is correcting the typo in the current rule to reflect the correct federal statute.

In addition, the department amended s. DWD 140.20 (4) (d) to remove a redundant phrase regarding the payment of mileage for witnesses and interpreters. The definition "Informer" is renumbered in ch. DWD 101 (from ch. DWD 100) and amended to "Informant."

At this time, we feel the rule proposals are necessary to reflect current policy and do not feel any additional changes are necessary.

Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not issue a report on this rule.

Environmental Impact

This rule will have no negative environmental impact.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

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

Comparison with Rules in Adjacent States

All adjacent states are required to conform to federal law requirements for unemployment insurance and the rules are similar to Wisconsin.

Summary of Factual Data and Analytical Methodologies

This rule does not depend on any complex analysis of data. The rule changes are minor and technical in nature.

Analysis and Supporting Document used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

The proposed rule will have no significant economic effect on small businesses as defined in s. 227.114 (1), Stats. and there is no economic impact created by this proposed rule because the changes are all minor or technical in nature. The department also consulted the Unemployment Insurance Advisory Council.

Effect on Small Business

The proposed rule will have no significant economic effect on small businesses as defined in s. 227.114 (1), Stats.

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STATE OF WISCONSIN
DWD
Department of Workforce Development

Scott Walker, Governor
Raymond Allen, Secretary

PUBLIC NOTICE

FINAL DRAFT RULE TO LEGISLATURE

The Wisconsin Department of Workforce Development announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

CLEARINGHOUSE RULE #: 18-033

SUBJECT: Non-substantive or minor technical changes to various DWD rule chapters

SCOPE STATEMENT Info: SS 046-17
Printed: June 5, 2017
Register No: 738A1

ADM. CODE REFERENCE: DWD 100-150

APPROVED BY GOVERNOR:

Dated this _____ day of September, 2018.

STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE
DEVELOPMENT

_____
Ernest K. Jones, Chief Legal Counsel

To: Unemployment Insurance Advisory Council
CC: Janell Knutson, Chair
From: Andy Rubsam
Date: September 20, 2018
Re: Wisconsin Supreme Court Decisions: *DWD v. LIRC (Beres)* and *Tetra Tech v. DOR*

The Wisconsin Supreme Court issued two decisions of interest this summer:

- *Wisconsin Dep't of Workforce Dev. v. Wisconsin Labor & Indus. Review Comm'n*, 2018 WI 77, 382 Wis. 2d 611, 914 N.W.2d 625.

- *Tetra Tech EC, Inc. v. Wisconsin Dep't of Revenue*, 2018 WI 75, 382 Wis. 2d 496, 914 N.W.2d 21.

Beres

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

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

The department appealed the decision to circuit court, which reversed LIRC and held that the plain language of sub. (5)(e) requires a finding of misconduct for attendance if the employer's policy is stricter than the statutory standard. LIRC appealed to the court of appeals,

which reversed the circuit court and affirmed LIRC's holding, granting due weight deference to LIRC.

The relevant statute provides:

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

The Wisconsin Supreme Court unanimously reversed the decision of the Court of Appeals that Beres was discharged but not for misconduct connected with her employment. The Supreme Court found that LIRC incorrectly interpreted s. 108.04(5)(e) because LIRC should have found misconduct even though the employer's absenteeism policy is "stricter" than the "default" standard in the misconduct statute. "Neither LIRC nor [the Supreme Court] can rewrite this statute to replace the word "unless" with the word "and."[1]

Tetra Tech

Tetra Tech is an appeal of Wisconsin Department of Revenue assessments of sales and use tax. The decision is noteworthy because it was decided on the same day as *DWD v. LIRC (Beres)* and changed the judicial standard of review of administrative agency decisions. Previously, courts would give no deference, due weight, or great weight to an administrative agency's legal conclusions when reviewing the agency's decision.

[1] *Wisconsin Dep't of Workforce Dev. v. Wisconsin Labor & Indus. Review Comm'n*, 2018 WI 77, ¶ 22.

The Supreme Court held that it will now "review an administrative agency's conclusions of law under the same standard we apply to a circuit court's conclusions of law—de novo. … As with judicial opinions, we will benefit from the administrative agency's analysis, particularly when they are supplemented by the "due weight" considerations discussed above. … And, as always, we review the administrative agency's decision, not that of the circuit court."[2]

Courts will now give, at most, "due weight" to an agency's conclusions of law. But "'[d]ue weight' is a matter of persuasion, not deference."[3] The Supreme Court provides four factors to "assess the persuasiveness of the agency's perspective," which are:

(1) "whether the legislature made the agency responsible for administering the statute in question;

(2) the length of time the administrative agency's interpretation has stood;

(3) the extent to which the agency used its expertise or specialized knowledge in developing its position; and

(4) whether the agency's perspective would enhance uniformity and consistency of the law."[4]

Tetra Tech involved a Department of Revenue case under chapter 227. Unemployment insurance cases are reviewed under chapter 108, not chapter 227.[5] Unlike s. 227.57(10), chapter 108 does not give "due weight" to LIRC's knowledge and experience. The only statutory bases to review a LIRC unemployment decision are found in s. 108.09(7)(c)6. In *Beres*, the Wisconsin Supreme Court references the *Tetra Tech* due weight standard derived from chapter 227:

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[2] *Tetra Tech EC, Inc. v. Wisconsin Dep't of Revenue*, 2018 WI 75, ¶ 84.
[3] *Id*, ¶ 78.
[4] *Id*, ¶ 79.
[5] Wis. Stat. § 108.09(7)(c)1. ("The order of the commission is subject to review only as provided in [Wis. Stat. § 108.09(7)] and not under ch. 227 or s. 801.02.").

> The *Tetra Tech* court decided to end the practice of deferring to administrative agencies' conclusions of law. However, the *Tetra Tech* court also said that, pursuant to Wis. Stat. § 227.57(10), courts will give "due weight" to an administrative agency's experience, technical competence, and specialized knowledge as the court considers the agency's arguments. The court's *Tetra Tech* opinion contains our analysis of the deference issue, which we incorporate and apply in the instant case.[6]

Beres ambiguously answers the question whether the due weight standard established in *Tetra Tech* applies in unemployment cases. It appears contrary to s. 108.09(7)(c)1. to determine that LIRC is entitled to *Tetra Tech* due weight in unemployment insurance cases.

The Court of Appeals recently decided a LIRC Worker's Compensation appeal under s. 102.23(1)(a)1., which also prohibits review under chapter 227. In that case, the Court of Appeals cited *Tetra Tech* as its basis for *de novo* review of LIRC's decision but did not analyze the due weight factors and did not opine whether due weight should be given to LIRC's conclusions of law in a chapter 102 appeal. *Harley-Davidson Motor Company Group, LLC v. LIRC*, No. 2017AP2284 at *3 ¶ 15 (Wis. Ct. App. July 24, 2018).

[6] *Beres* at n. 4.

SUPREME COURT OF WISCONSIN

CASE NO.:	2016AP1365
COMPLETE TITLE:	Wisconsin Department of Workforce Development, Plaintiff-Respondent-Petitioner, v. Wisconsin Labor and Industry Review Commission, Defendant-Appellant, Valarie Beres and Mequon Jewish Campus, Inc., Defendants.

REVIEW OF A DECISION OF THE COURT OF APPEALS
Reported at 375 Wis. 2d 183, 895 N.W.2d 77
PDC No: 2017 WI App 29 - Published

OPINION FILED:	June 26, 2018
SUBMITTED ON BRIEFS:	
ORAL ARGUMENT:	December 1, 2017

SOURCE OF APPEAL:	
COURT:	Circuit
COUNTY:	Ozaukee
JUDGE:	Sandy A. Williams

JUSTICES:	
CONCURRED:	
DISSENTED:	
NOT PARTICIPATING:	

ATTORNEYS:

For the plaintiff-respondent-petitioner, there were briefs filed by *Ryan J. Walsh*, chief deputy solicitor general, *Brad D. Schimel*, attorney general, *Misha Tseytlin*, solicitor general, and *Kevin M. LeRoy*, deputy solicitor general. There was an oral argument by *Ryan Walsh*.

For the defendant-appellant, there was a brief filed by *Jeffrey J. Shampo* and *Wisconsin Labor and Industry Review Commission*, Madison. There was an oral argument by *Jeffrey J. Shampo*.

There was an amicus curiae brief filed on behalf of Wisconsin Institute for Law & Liberty, Inc. by *Thomas C. Kamenick*, *Richard M. Esenberg*, and *Wisconsin Institute for Law & Liberty, Inc.*, Milwaukee.

2018 WI 77

No. 2016AP1365
(L.C. No. 2015CV358)

STATE OF WISCONSIN : IN SUPREME COURT

Wisconsin Department of Workforce Development,

Plaintiff-Respondent-Petitioner,

v.

Wisconsin Labor and Industry Review Commission,

Defendant-Appellant,

Valarie Beres and Mequon Jewish Campus, Inc.,

Defendants.

FILED

JUN 26, 2018

Sheila T. Reiff
Clerk of Supreme Court

REVIEW of a decision of the Court of Appeals. *Reversed.*

¶1 SHIRLEY S. ABRAHAMSON, J. Valerie Beres was denied unemployment compensation benefits on the ground that she was terminated for engaging in "misconduct" as an employee, namely absenteeism, as defined by Wis. Stat. § 108.04(5)(e) (2015-16).[1]

[1] All subsequent references to the Wisconsin Statutes are to the 2015-16 version unless otherwise indicated.

The governing statute, Wis. Stat. § 108.04(5)(e), reads as follows:

(continued)

The statute sets forth the circumstances in which absenteeism will constitute "misconduct" barring unemployment compensation benefits.

¶2 The Ozaukee County Circuit Court, Sandy A. Williams, Judge, adopted the position of the Department of Workforce Development that the plain language of Wis. Stat. § 108.04(5)(e) allows an employer to adopt its own rules regarding employee absenteeism; that the employer's absenteeism rules need not be consistent with the statute's definition of "misconduct" based on absenteeism; and that an employee's violation of the

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> Sec. 108.04. Eligibility for benefits.
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> . . . .
>
> (5) Discharge for misconduct. An employee whose work is terminated by an employing unit for misconduct by the employee . . . is ineligible to receive benefits . . . . "[M]isconduct" includes:
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> . . . .
>
> (e) Absenteeism by an employee on more than 2 occasions within the 120-day period before the date of the employee's termination, unless otherwise specified by his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature, or excessive tardiness by an employee in violation of a policy of the employer that has been communicated to the employee, if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness.

Wis. Stat. § 108.04(5)(e) (emphasis added).

employer's absenteeism rules constitutes "misconduct" under § 108.04(5)(e) barring unemployment compensation benefits.[2]

¶3 In contrast, the court of appeals concluded that an employee who is terminated for violating an employer's absenteeism rules is not barred from obtaining unemployment compensation benefits unless the employee's conduct violates the statutory definition of "misconduct" based on absenteeism.[3] The court of appeals also concluded that an employee cannot be denied unemployment compensation benefits for violating an employer's absenteeism policy that is "stricter" than the absenteeism policy set forth in the statute.

¶4 The single issue presented to the court is as follows: Does Wis. Stat. § 108.04(5)(e) allow an employer to adopt an attendance or absenteeism policy that differs from that set forth in § 108.04(5)(e) such that termination of an employee for violating the employer's policy results in disqualification for

[2] No one disputes that the employer's absenteeism policy in the instant case was contained in an employment manual of which the employee has acknowledged receipt with her signature as required by the statute.

[3] DWD v. LIRC, 2017 WI App 29, 375 Wis. 2d 183, 895 N.W.2d 77.

unemployment compensation benefits even if the employer's policy is more restrictive on the employee?[4]

¶5 We conclude that the plain language of Wis. Stat. § 108.04(5)(e) allows an employer to adopt its own absenteeism policy that differs from the policy set forth in § 108.04(5)(e), and that termination for the violation of the employer's absenteeism policy will result in disqualification from receiving unemployment compensation benefits even if the employer's policy is more restrictive than the absenteeism policy set forth in the statute. Beres was terminated for not complying with her employer's absenteeism policy. Accordingly, we conclude that Beres was properly denied benefits.

I

[4] Because resolving this issue implicates the authoritativeness of an administrative agency's interpretation and application of a statute, we asked the parties to address the following issue: "Does the practice of deferring to agency interpretations of statutes comport with Article VII, Section 2 of the Wisconsin Constitution, which vests the judicial power in the unified court system?"

We heard arguments in the instant case on the same day that we heard Tetra Tech EC, Inc. v. Department of Revenue, 2018 WI 75, ___ Wis. 2d ___, ___ N.W.2d ___. The Tetra Tech court decided to end the practice of deferring to administrative agencies' conclusions of law. However, the Tetra Tech court also said that, pursuant to Wis. Stat. § 227.57(10), courts will give "due weight" to an administrative agency's experience, technical competence, and specialized knowledge as the court considers the agency's arguments. The court's Tetra Tech opinion contains our analysis of the deference issue, which we incorporate and apply in the instant case.

¶6 For purposes of deciding the issue presented, the facts are brief and undisputed. Valerie Beres, a registered nurse, was employed by Mequon Jewish Campus. Beres had signed her employer's written attendance policy providing that an employee in his or her probationary period may have his or her employment terminated if, in a single instance, the employee does not give the employer advance notice of an absence. The employer's policy was that an employee must "call in 2 hours ahead of time" if the employee was unable to work his or her shift.

¶7 In the instant case, Beres was in her 90-day probationary period when she did not come to work due to "flu-like symptoms." She did not communicate with her employer two hours prior to the beginning of her shift to inform her employer that she was sick and that she was unable to work her shift. Beres's employer terminated her employment three days later because of her violation of the employer's absenteeism policy.

¶8 Beres filed for unemployment compensation benefits. The Department of Workforce Development (DWD) denied benefits on the ground that when Beres violated her employer's written "No Call No Show" attendance policy, she committed "misconduct" under Wis. Stat. § 108.04(5)(e). This statutory provision addresses when absenteeism constitutes "misconduct" disqualifying a terminated employee from obtaining unemployment compensation benefits.

¶9 Beres appealed DWD's decision to the Labor and Industry Review Commission (LIRC). LIRC reversed the decision

of DWD, concluding that an employee is not disqualified from obtaining unemployment compensation benefits when the employee is terminated for violating an employer's absenteeism policy if that policy is more restrictive than the "2 in 120" day standard provided by Wis. Stat. § 108.04(5)(e). LIRC determined that Beres did not commit "misconduct" because although she violated her employer's "stricter" absenteeism policy, she did not violate the "2 in 120" day statutory standard. Accordingly, LIRC held that Beres was entitled to unemployment compensation benefits. DWD appealed to the circuit court.

¶10 The circuit court reversed LIRC's decision, adopting DWD's interpretation of Wis. Stat. § 108.04(5)(e): An employer may, in a written employment manual signed by the employee, set forth its own policy regarding absenteeism, and a violation of the employer's policy constitutes "misconduct" under the statute resulting in a terminated employee's disqualification from obtaining unemployment compensation benefits. In the instant case, the employer's policy (of which Beres acknowledged receipt with her signature) was that during an employee's probationary period, a single instance of an employee's absence without notification to the employer would result in termination. In other words, the employer commanded that a single "No Call No Show" would result in termination. According to the circuit court, under § 108.04(5)(e), termination for violating the employer's absenteeism policy is termination for "misconduct" and renders the terminated employee ineligible for unemployment compensation benefits.

¶11 LIRC appealed to the court of appeals. The court of appeals adopted LIRC's interpretation of Wis. Stat. § 108.04(5)(e), holding that an employee is not disqualified from obtaining unemployment compensation benefits when the employee violates an employer's absenteeism policy if that policy is "stricter" than the "2 in 120" day standard provided by § 108.04(5)(e). The court of appeals concluded that Beres did not commit "misconduct" because although she violated her employer's "stricter" absenteeism policy, she did not violate the "2 in 120" day standard under the statute.

II

¶12 The instant case requires this court to determine the validity of LIRC's order interpreting and applying Wis. Stat. § 108.04(5)(e). The court may set aside an order of LIRC if LIRC acted "without or in excess of its powers." Wis. Stat. § 108.09(7)(c)6.a. It is the province and duty of the judiciary to say what the law is.[5] Because we determine that LIRC based its order on an incorrect interpretation of § 108.04(5)(e), we conclude that LIRC acted without or in excess of its powers.

¶13 In contrast to LIRC's interpretation of the statute, we conclude that the text of Wis. Stat. § 108.04(5)(e) plainly allows an employer to adopt its own attendance (or absenteeism) policy that differs from the policy set forth in § 108.04(5)(e), and termination for the violation of the employer's policy will

[5] State v. Williams, 2012 WI 59, ¶36, 341 Wis. 2d 191, 814 N.W.2d 460 (citing Marbury v. Madison, 5 U.S. 137, 177 (1803)).

result in disqualification from receiving unemployment compensation benefits even if the employer's policy is more restrictive than the policy set forth in the statute.

III

¶14 The governing statute is Wis. Stat. § 108.04(5)(e). It states that "misconduct" includes an employee's absenteeism if the employee is absent on more than 2 occasions within a described 120-day period "unless otherwise specified by his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature." Wis. Stat. § 108.04(5)(e). The governing statute reads as follows:

> Sec. 108.04. Eligibility for benefits.
>
> . . . .
>
> (5) Discharge for misconduct. An employee whose work is terminated by an employing unit for misconduct by the employee . . . is ineligible to receive benefits . . . . "[M]isconduct" includes:
>
> . . . .
>
> (e) Absenteeism by an employee on more than 2 occasions within the 120-day period before the date of the employee's termination, unless otherwise specified by his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature, or excessive tardiness by an employee in violation of a policy of the employer that has been communicated to the employee, if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness.

Wis. Stat. § 108.04(5)(e) (emphasis added). The key language, the meaning of which the parties dispute, is the "unless" clause emphasized above.

¶15 The statute is written in ordinary English and creates a simple framework. The text of Wis. Stat. § 108.04(5)(e) has three main clauses relating to absenteeism. Only the first two clauses are relevant in the instant case.

¶16 First, the statute defines "misconduct" as including absenteeism: "[M]isconduct includes: . . . [a]bsenteeism by an employee on more than 2 occasions within the 120-day period before the date of the employee's termination." Wis. Stat. § 108.04(5)(e).

¶17 Second, the statute sets forth an "unless" clause in defining "misconduct," including absenteeism.

¶18 The word "unless" is an ordinary word in everyday language. A helpful, but not dispositive, canon of statutory interpretation is that words in a statute that have a common meaning retain that common meaning in the statute. Wis. Stat. § 990.01(1); Bruno v. Milwaukee County, 2003 WI 28, ¶¶8, 20, 260 Wis. 2d 633, 660 N.W.2d 656 (cited with approval in State ex rel. Kalal v. Circuit Court, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110).

¶19 The word "unless" ordinarily means "except if." Replacing the word "unless" with the words "except if" where the word "unless" appears in the statute may run into grammatical issues, but it helps make the meaning of the statute clear: An employee commits statutory "misconduct" by absenteeism if he or she is absent on more than two occasions within the 120-day period before the date of the employee's termination, except if the employee violates his or her employer's absenteeism policy

that is specified "in an employment manual of which the employee has acknowledged receipt with his or her signature." This reading of the statute makes clear that an employer can opt out of the statutory definition of "misconduct" by absenteeism and set its own absenteeism policy, the violation of which will constitute statutory "misconduct."

¶20 We can further test whether the word "unless" in Wis. Stat. § 108.04(5)(e) means "except if" by replacing the word "unless" used elsewhere in the statute with the words "except if." A general rule of interpretation is that the same word used several times in a statute has the same meaning every time it is used. Bank Mut. v. S.J. Boyer Const., Inc., 2010 WI 74, ¶31, 326 Wis. 2d 521, 785 N.W.2d 462 ("When the same term is used throughout a chapter of the statutes, it is a reasonable deduction that the legislature intended that the term possess an identical meaning each time it appears.").

¶21 For example, under Wis. Stat. § 108.04(5)(f), an employee's falsifying business records of the employer is "misconduct" "[u]nless" the falsification is "directed by an employee's employer." This provision can be restated to say that an employee commits "misconduct" when he or she falsifies a business record "except if" the employee is directed to do so by his or her employer. The word "unless" can also be replaced by the words "except if" in § 108.04(5)(g). We therefore conclude that the word "unless" in § 108.04(5) means "except if." See Bank Mut., 326 Wis. 2d 521, ¶31.

¶22 As an alternative argument, LIRC contends that Wis. Stat. § 108.04(5)(e) disqualifies a former employee from obtaining unemployment compensation benefits only when the employee violates both the statutory "2 in 120" standard and an employer's absenteeism policy. This argument fails because it rewrites the statute by striking and replacing the word "unless" in the text of the statute with the word "and." These two words are not synonymous with one another. Neither LIRC nor this court can rewrite this statute to replace the word "unless" with the word "and."

* * * *

¶23 We conclude that the word "unless" in the "unless otherwise specified" clause of Wis. Stat. § 108.04(5)(e) means that an employee will be considered to have been terminated for "misconduct," and thus disqualified from obtaining unemployment compensation benefits, if the employee violates the statutory definition of absenteeism, except if the employee adheres to the employer's absenteeism policy specified in the employment manual of which the employee acknowledged receipt with his or her signature in accordance with the statute.

¶24 In the instant case, Beres's employer has an absenteeism policy specified in its employment manual. Beres acknowledged receipt of this policy in the employment manual with her signature. Beres violated the employer's policy when she missed an entire shift without providing her employer notice of the absenteeism. Under these circumstances, Beres's violation of her employer's written absenteeism policy

constituted "misconduct" by absenteeism under Wis. Stat. § 108.04(5)(e), and Beres was properly denied the benefits at issue.

¶25 For the reasons set forth, we reverse the decision of the court of appeals.

By the Court.—The decision of the court of appeals is reversed.

SUPREME COURT OF WISCONSIN

CASE NO.:	2015AP2019
COMPLETE TITLE:	Tetra Tech EC, Inc., and Lower Fox River Remediation LLC, Petitioners-Appellants-Petitioners, v. Wisconsin Department of Revenue, Respondent-Respondent.

REVIEW OF A DECISION OF THE COURT OF APPEALS
Reported at 373 Wis. 2d 287, 890 N.W.2d 598
PDC No: 2017 WI App 4 - Published

OPINION FILED:	June 26, 2018
SUBMITTED ON BRIEFS:	
ORAL ARGUMENT:	December 1, 2017
SOURCE OF APPEAL:	
COURT:	Circuit
COUNTY:	Brown
JUDGE:	Marc A. Hammer
JUSTICES:	
CONCURRED:	A.W. BRADLEY, J., concurs, joined by ABRAHAMSON, J. (opinion filed). ZIEGLER, J., concurs. ROGGENSACK, C.J., joins Part I (opinion filed). GABLEMAN, J., concurs, joined by ROGGENSACK, C.J. (opinion filed).
DISSENTED:	
NOT PARTICIPATING:	

ATTORNEYS:

For the petitioners-appellants-petitioners, there were briefs filed by *Barret V. Van Sicklen*, *Frederic J. Brouner*, *Donald Leo Bach*, and *DeWitt Ross & Stevens S.C.*, Madison. There was an oral argument by *Barret Van Sicklen*.

For the respondent-respondent, there was a brief filed by *Misha Tseytlin*, solicitor general, with whom on the brief were *Brad D. Schimel*, attorney general, and *Kevin M. LeRoy*, deputy

solicitor general. There was an oral argument by *Misha Tseytlin*.

An amicus curiae brief was filed on behalf of Wisconsin Institute for Law & Liberty, Inc. by *Richard M. Esenberg*, *Thomas C. Kamenick*, and *Wisconsin Institute for Law & Liberty*, Milwaukee.

An amicus curiae brief was filed on behalf of Wisconsin Utilities Association by *James E. Goldschmidt*, *Bradley Jackson*, and *Quarles & Brady LLP*, Madison and Milwaukee.

An amicus curiae brief was filed on behalf of Wisconsin Manufacturers and Commerce, Inc., Midwest Food Products Association, Metropolitan Milwaukee Association of Commerce, Wisconsin Bankers Association, Wisconsin Cheese Makers Association, Wisconsin Paper Council, Dairy Business Association, Inc., Associated Builders and Contractors, Inc. (Wisconsin Chapter), Wisconsin Potato and Vegetable Growers Association, Wisconsin Farm Bureau Federation, and Wisconsin Corn Growers Association by *Robert I. Fassbender* and *Great Lakes Legal Foundation*, Madison.

2018 WI 75

No. 2015AP2019
(L.C. No. 2015CV132)

STATE OF WISCONSIN : IN SUPREME COURT

Tetra Tech EC, Inc. and Lower Fox River Remediation LLC,

Petitioners-Appellants-Petitioners,

v.

Wisconsin Department of Revenue,

Respondent-Respondent.

FILED

JUN 26, 2018

Sheila T. Reiff
Clerk of Supreme Court

REVIEW of a decision of the Court of Appeals. *Affirmed.*

¶1 DANIEL KELLY, J. The Wisconsin Department of Revenue (the "Department") imposed a tax on the petitioners pursuant to Wis. Stat. § 77.52(2)(a)11. (2007-08) for the "processing" of river sediments into waste sludge, reusable sand, and water. The petitioners say the statutory term "processing" is not expansive enough to cover the separation of river sediment into

its component parts, and so they asked us to reject the Department's interpretation of that term.[1]

¶2 Because resolving this question implicates the authoritativeness of an administrative agency's interpretation and application of a statute, we asked the parties to also address this issue: "Does the practice of deferring to agency interpretations of statutes comport with Article VII, Section 2 of the Wisconsin Constitution, which vests the judicial power in the unified court system?"[2]

¶3 We conclude that the term "processing" in Wis. Stat. § 77.52(2)(a)11. includes the separation of river sediment into its component parts. Therefore, we affirm the court of appeals. We have also decided to end our practice of deferring to

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[1] This is a review of a published decision of the court of appeals, Tetra Tech EC, Inc. v. DOR, 2017 WI App 4, 373 Wis. 2d 287, 890 N.W.2d 598, which affirmed an order of the Brown County Circuit Court, the Honorable Marc A. Hammer presiding, that affirmed an order of the Wisconsin Tax Appeals Commission ("Commission").

[2] All references to the Wisconsin Statutes with respect to the question of whether we defer to an administrative agency's interpretation of a statute are to the 2015-16 version unless otherwise indicated.

All references to the Wisconsin Statutes with respect to the meaning of "processing," as that term is used in Wis. Stat. § 77.52(2)(a)11., are to the 2007-08 version unless otherwise indicated. We cite this version, as the court of appeals did, because the relevant tax years for the case are 2007-09 and because the 2005-06 version of the Wisconsin Statutes, which would govern the 2007 tax year, is not materially different from the 2007-08 version. See Tetra Tech EC, Inc., 373 Wis. 2d 287, ¶1 n.1.

administrative agencies' conclusions of law.[3] However, pursuant to Wis. Stat. § 227.57(10), we will give "due weight" to the experience, technical competence, and specialized knowledge of an administrative agency as we consider its arguments.[4]

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

¶4 On November 13, 2007, the United States Environmental Protection Agency ("EPA") ordered several paper companies to remediate the environmental impact of polychlorinated biphenyls ("PCBs") they had released into the Fox River as part of their manufacturing activities. The paper companies created Lower Fox River Remediation, LLC ("LFR Remediation") to carry out the EPA's order. LFR Remediation hired Tetra Tech EC, Inc. ("Tetra Tech") to perform the actual remediation activities. Tetra Tech subcontracted a portion of the work to Stuyvesant Dredging, Inc. ("Stuyvesant Dredging").[5] Stuyvesant Dredging's responsibilities

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[3] Although a majority of the court agrees we should no longer defer to administrative agencies' conclusions of law, there is disagreement with respect to why we should end the practice. This opinion describes one rationale; other opinions will contain alternative bases for our conclusion.

[4] Justice Rebecca Bradley joins the opinion in toto. Chief Justice Roggensack joins Sections I., II.A.1., II.A.2., II.B., and III. Justice Gableman joins Paragraphs 1-3, Sections I., II. (introduction), II.A. (introduction), II.A.1., II.A.2., II.A.6., II.B., and III., and the mandate, although he does not join Section II.A.6. to the extent that the first sentence of Paragraph 84 implies a holding on constitutional grounds. Therefore, this opinion announces the opinion of the court with respect to Sections I., II.A.1., II.A.2., II.B., and III.

[5] Stuyvesant Dredging is now known as Stuyvesant Projects Realization, Inc.

included receiving sediment dredged from the Fox River, and then using membrane filter presses to separate it into its component parts: water, sand, and PCB-containing sludge. Part of the purpose of Stuyvesant Dredging's work was to "provide a supply of relatively clean sand that could be sold for off-site use or used beneficially on site."

¶5 In 2010, the Department conducted a field audit of both Tetra Tech and LFR Remediation (collectively, "Taxpayers"). During that same year, the Department issued a Notice of Field Audit Action that assessed a use tax on LFR Remediation's purchase of the portion of Tetra Tech's remediation services that represented Stuyvesant Dredging's work. The Department also issued a Notice of Field Audit Action that assessed a sales tax on the portion of Tetra Tech's sale of remediation services to LFR Remediation (to the extent it reflected Stuyvesant Dredging's work). In both notices, the Department said Stuyvesant Dredging's activities constituted the "repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of tangible personal property," and so were taxable under Wis. Stat. § 77.52(2)(a)10.

¶6 Tetra Tech and LFR Remediation petitioned the Department for redetermination of the assessed taxes. The Department denied the petitions, concluding that Stuyvesant Dredging's "dewatering and desanding of dredged, contaminated sediment that is not returned to the river is a service to tangible personal property" that was taxable under Wis. Stat. § 77.52(2)(a)10. Tetra Tech and LFR Remediation then filed

petitions with the Wisconsin Tax Appeals Commission (the "Commission") requesting review of the Department's denial of their reassessment requests. In its presentation to the Commission, the Department argued that Stuyvesant Dredging's activities were taxable under § 77.52(2)(a)10., or alternatively, under § 77.52(2)(a)11. as "processing" of tangible personal property. The Commission issued a Ruling and Order in favor of the Department.[6] Upholding the sales and use taxes, the Commission concluded that "what SDI [Stuyvesant Dredging] does with the sediment is 'processing . . . for a consideration for consumers [Tetra Tech] who furnish directly or indirectly the materials [sediment] used in the . . . processing' under the meaning of Wis. Stat. § 77.52(2)(a)11." The Commission reasoned that "[t]he dictionary definition of 'processing' is 'to put through the steps of a prescribed procedure; or, to prepare, treat, or convert by subjecting to a special process.' SDI's activities certainly fall within that definition."[7]

¶7 Tetra Tech and LFR Remediation timely filed a petition for judicial review, pursuant to Wis. Stat. § 227.52, in the

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[6] Tetra Tech and LFR Remediation's petitions received separate docket numbers (12-S-192 and 12-S-193, respectively), but the Commission decided the cases together.

[7] See Processing, The American Heritage Dictionary 1444 (3d ed. 1992) (defining "processing" in relevant part: "1. To put through the steps of a prescribed procedure," and as "2. To prepare, treat, or convert by subjecting to a special process").

Brown County Circuit Court. The petition requested the circuit court to set aside the Commission's Ruling and Order that Stuyvesant Dredging's work subjected Tetra Tech and LFR Remediation to sales and use taxes. The circuit court affirmed, relying on the same definition of "processing" the Commission had used. LFR Remediation and Tetra Tech appealed. The court of appeals, using a dictionary definition of "processing" similar to the one used by the circuit court and the Commission, affirmed. Tetra Tech EC, Inc. v. DOR, 2017 WI App 4, ¶¶2, 17, 373 Wis. 2d 287, 890 N.W.2d 598. We granted Tetra Tech and LFR Remediation's petition for review, and now affirm.

II. DISCUSSION

¶8 The ultimate question we must answer in this case is whether the petitioners are subject to the tax levied on them by the Department of Revenue pursuant to Wis. Stat. § 77.52(2)(a)11. The Commission says they are, and urges us to agree with its interpretation and application of that statute.

¶9 Before we may answer that question, however, there is a predicate matter we must address: When we review an administrative agency's decision, are there circumstances in which we must defer to the agency's interpretation and application of the law? Our current jurisprudence says there are. And ever since Harnischfeger Corp. v. LIRC, 196 Wis. 2d 650, 659, 539 N.W.2d 98 (1995), we have treated that deference as a "standard of review." Therefore, because identifying the appropriate standard of review is an appellate court's first task, we will begin there. Once we resolve that

issue, we will address the interpretation of Wis. Stat. § 77.52(2)(a)11. and how it applies to Tetra Tech and LFR Remediation.

A. Deference to Administrative Agencies

¶10 Our assessment of the deference doctrine begins in the following section with a brief overview of its current contours. To truly understand its function, however, we need to search out its roots, the results of which we discuss in the second section. As preparation for our comparison of the deference doctrine to our constitutional responsibilities, we examine in the third section the nature of the judiciary's powers and how they relate to the other governmental branches. In the fourth and fifth sections, we separately assess "great weight" and "due weight" deference in light of the constitutional provisions and principles that govern our work.

1. Current Standard for Reviewing Administrative Agency Decisions

¶11 We generally review administrative agency decisions in accordance with chapter 227 of our statutes.[8] As relevant here, Wis. Stat. § 227.57 contains two specific directions regarding how we are to conduct those reviews. First, it instructs a court to "set aside or modify the agency action if it finds that

[8] This decision applies to judicial review of all administrative agency decisions. While chapter 227 applies to judicial review of most administrative decisions, it does not apply to all. See, e.g., Wis. Stat. § 102.23 (establishing procedures for judicial review of workers compensation orders).

the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law." § 227.57(5). And second, it instructs that, "[s]ubject to sub. (11), upon such review due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred upon it."[9] § 227.57(10).

¶12 We have developed, over time, a contextualized methodology of reviewing administrative agency decisions.[10] The provenance of this methodology lies partly with the preceding statute, and partly with our own doctrinal developments. In its modern iteration, this method begins with the principle that "statutory interpretation is a question of law which courts decide de novo." See Harnischfeger, 196 Wis. 2d at 659. And we recognize that "a court is not bound by an agency's interpretation of a statute." Id. But then we wrap those principles within another, one we have said is of equal gravity:

[9] Subsection 11 does not apply to the case before us today, but it will play a small part in our discussion below. This subsection provides that "[u]pon review of an agency action or decision affecting a property owner's use of the property owner's property, the court shall accord no deference to the agency's interpretation of law if the agency action or decision restricts the property owner's free use of the property owner's property." Wis. Stat. § 227.57(11).

[10] Whether, or how closely, our practice comports with the preceding statutory instructions will be addressed below.

"As important, however, is the principle that courts should defer to an administrative agency's interpretation of a statute in certain situations." Id.

¶13 Calibrating this "deference principle" to those "certain situations" resulted in our contextualized, three-tiered treatment of an administrative agency's conclusions regarding the interpretation and application of statutory provisions. When reviewing those conclusions, we give them (1) great weight deference; (2) due weight deference; or (3) no deference at all. See id. at 659-60 & n.4.

¶14 We have said the first of these—great weight deference—is appropriate upon concluding that:

> (1) the agency was charged by the legislature with the duty of administering the statute; (2) . . . the interpretation of the agency is one of long-standing; (3) . . . the agency employed its expertise or specialized knowledge in forming the interpretation; and (4) . . . the agency's interpretation will provide uniformity and consistency in the application of the statute.

Id. at 660. Giving "great weight" to an administrative agency's interpretation means the court must adopt it so long as it is reasonable. Id. at 661 ("[W]e have repeatedly held that an agency's interpretation must then merely be reasonable for it to be sustained."). An interpretation is reasonable if it does not "directly contravene[] the words of the statute," is not "clearly contrary to legislative intent," and is not "without

rational basis." See id. at 662.[11] Deference is required even when the court has a more reasonable interpretation of the law. Racine Harley-Davidson, Inc. v. Wis. Div. of Hearings & Appeals, 2006 WI 86, ¶17, 292 Wis. 2d 549, 717 N.W.2d 184 (stating that under great weight deference, a reviewing court must accept "an agency's reasonable statutory interpretation, even if the court concludes that another interpretation is equally reasonable, or even more reasonable, than that of the agency"); Crystal Lake Cheese Factory v. LIRC, 2003 WI 106, ¶24, 264 Wis. 2d 200, 664 N.W.2d 651 ("This [the need to defer] is true even if the court were to conclude that another interpretation was more reasonable."). These principles also apply to the agency's application of the statute to undisputed facts, which is itself a question of law.[12] See, e.g., Crystal Lake Cheese Factory, 264 Wis. 2d 200, ¶30 ("LIRC's interpretations, including its determination of reasonable accommodation in this case, should be given 'great weight' deference.").

¶15 The second tier of review, "due weight" deference, is appropriate when "the statute is one that the agency was charged

[11] In the context of an ambiguous statute, "an agency's interpretation cannot, by definition, be found to directly contravene it." Harnischfeger Corp. v. LIRC, 196 Wis. 2d 650, 662, 539 N.W.2d 98 (1995).

[12] See DOR v. Exxon Corp., 90 Wis. 2d 700, 713, 281 N.W.2d 94 (1979) ("The question of whether the facts fulfill a particular legal standard is itself a question of law.").

with administering,"[13] and "the agency has some experience in an area, but has not developed the expertise which necessarily places it in a better position to make judgments regarding the interpretation of the statute than a court."[14] Under this standard, "the fact that the agency's interpretation is reasonable does not mean that its interpretation will necessarily be upheld." UFE Inc. v. LIRC, 201 Wis. 2d 274, 287, 548 N.W.2d 57 (1996). Instead, "[i]f a court finds an alternative interpretation more reasonable, it need not adopt the agency's interpretation." Id. In effect, this creates a "tie goes to the agency" rule in which deference is required unless the court's interpretation is more reasonable than that of the agency. ABKA Ltd. P'ship v. DNR, 2002 WI 106, ¶116, 255 Wis. 2d 486, 648 N.W.2d 854 (Sykes, J., dissenting) ("[T]he agency's legal interpretation will be upheld even if there is a different, equally reasonable interpretation—in other words, a tie goes to the agency."); see also Daniel R. Suhr, Interpreting Wisconsin Administrative Law at 7 (August 23, 2017), https://ssrn.com/abstract=3025085 ("Due weight might be called 'tie goes to the agency' deference."). The agency's application of a statute to undisputed facts is also entitled to due weight

[13] Operton v. LIRC, 2017 WI 46, ¶20, 375 Wis. 2d 1, 894 N.W.2d 426 (quoting Racine Harley-Davidson, Inc. v. Wis. Div. of Hearings & Appeals, 2006 WI 86, ¶107, 292 Wis. 2d 549, 717 N.W.2d 184 (Roggensack, J., concurring)).

[14] UFE Inc. v. LIRC, 201 Wis. 2d 274, 286, 548 N.W.2d 57 (1996).

deference when it satisfies the Harnischfeger preconditions. See DOR v. A. O. Smith Harvestore Prods., Inc., 72 Wis. 2d 60, 65-66, 240 N.W.2d 357 (1976) ("Due deference must be accorded the agency's application of the law to the found facts when the agency has particular competence or expertise in the matter at hand." (citing Wis. Stat. § 227.20(2) (1973))).

¶16 When conditions support neither great weight nor due weight deference, we give the administrative agency's statutory interpretation no deference at all. See Racine Harley-Davidson, Inc., 292 Wis. 2d 549, ¶19. In those circumstances, "the reviewing court merely benefits from the agency's determination and may reverse the agency's interpretation even when an alternative statutory interpretation is equally reasonable to the interpretation of the agency." Id., ¶20. This is the same method we use in reviewing questions of law decided by our circuit courts and court of appeals. State v. Alger, 2015 WI 3, ¶21, 360 Wis. 2d 193, 858 N.W.2d 346 ("The interpretation and application of a statute present questions of law that this court reviews de novo while benefitting from the analyses of the court of appeals and circuit court.").

2. History of the Deference Doctrine

¶17 Although we often speak of the deference doctrine in a manner that suggests it started and developed as a cohesive whole, it did not. It is actually a portmanteau, derived from two different sources, the pieces of which developed over two different timelines, until they reached their fullest expression

in Harnischfeger. For purposes of clarity and ease of access, we will rehearse their histories separately.

i. A Brief History of "Great Weight" Deference

¶18 The road to Harnischfeger's "great weight deference" is a long one (it reaches as far back as Harrington v. Smith, 28 Wis. 43, 59-70 (1871)), but it is not an entirely clear one. As originally conceived, the doctrine did not contemplate deference at all, and it certainly did not purport to command the court's obedience. But with time it developed into a decision-avoidance doctrine that left to the administrative agencies the job of statutory interpretation and application when the doctrine's preconditions were satisfied. A dozen years ago, now-Chief Justice Patience Drake Roggensack did yeoman's work in tracing the development and effect of this doctrine. See The Honorable Patience Drake Roggensack, Elected to Decide: Is the Decision-Avoidance Doctrine of Great Weight Deference Appropriate in This Court of Last Resort?, 89 Marq. L. Rev. 541, 548-60 (2006). The following history relies heavily on that scholarship.

¶19 In Harrington, we discussed some of the canons of construction we used in discerning the proper meaning of an ambiguous statute. One of those canons says that an agency's understanding of the statute could be probative of its meaning: "Long and uninterrupted practice under a statute, especially by the officers whose duty it was to execute it, is good evidence of its construction, and such practical construction will be

adhered to, even though, were it res integra,[15] it might be difficult to maintain it." Harrington, 28 Wis. at 68. The practice of executive branch employees "extending through a period of so many years, ought, it would seem, to be some evidence of what the law is; and some persons might be disposed, perhaps, to think, evidence equal to a decision of this court." Id. at 69. "Great weight," we concluded, "is undoubtedly to be attached to a construction which has thus been given." Id.

¶20 This is not the language of deference, but of persuasion. In a search for the proper meaning of an ambiguous statute, we said we could properly have recourse to the views of others and treat them as pieces of evidence for use in the process of statutory construction in which we ourselves were engaged. In support of our statement about the evidentiary nature of the executive employees' views, we cited Edwards' Lessee v. Darby, 25 U.S. (12 Wheat.) 206, 210 (1827). There, the United States Supreme Court said that "[i]n the construction of a doubtful and ambiguous law, the contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is

[15] "Res integra" means, literally, "an entire thing." Res Integra, Black's Law Dictionary (10th ed. 2014) (citing Res Nova, id.). Typically, the phrase refers to a matter of first impression. See Res Integra, Black's Law Dictionary (10th ed. 2014); see also Res Nova, id. (stating that res nova is also termed res integra, and defining res nova as a "case of first impression").

entitled to very great respect." Id. One may respect an interpretation, even greatly, without deferring to it.

¶21 Nor was Harrington expressing deference to an administrative agency when it said we would adhere to the executive branch's long-standing interpretation of a statute. Instead, we were acknowledging that a change in an ancient practice could have unacceptably disruptive consequences. For this principle we cited Rogers v. Goodwin, in which the Supreme Judicial Court of Massachusetts said:

> Were the Court now to decide that this construction is not to be supported, very great mischief would follow. And although, if it were now res integra,[16] it might be very difficult to maintain such a construction, yet at this day the argumentum ab inconvenienti[17] applies with great weight. We cannot shake a principle which in practice has so long and so extensively prevailed. If the practice originated in error, yet the error is now so common that it must have the force of law.

2 Mass. (2 Tyng) 475, 477-78 (Mass. 1807).

¶22 Harrington cast a long shadow. The court was content for many years to repeat and apply its formulation without reading deference into its language. See, e.g., State ex rel. Owen v. Donald, 160 Wis. 21, 111, 151 N.W. 331 (1915) (quoting Harrington, and stating long practice is evidence of meaning); State ex rel. State Ass'n of Y.M.C.A. of Wis. v. Richardson, 197

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[16] See supra n.15.

[17] "Argumentum ab inconvenienti" means "[a]n argument from inconvenience; an argument that emphasizes the harmful consequences of failing to follow the position advocated." Argumentum, Black's Law Dictionary (10th ed. 2014).

Wis. 390, 393, 222 N.W. 222 (1928) ("If we were in doubt as to the proper construction to be placed upon the statute, we should have to give much weight to the practical construction which has been placed upon the statute ever since its enactment."); Wis. Axle Div. (Timken-Detroit Axle Co.) v. Indus. Comm'n, 263 Wis. 529, 537b, 60 N.W.2d 383 (1953) (per curiam) ("This court has held that where there is any obscurity in the meaning of a statute, practical construction given by the administrative agency charged with administering such law is entitled to great weight."); Trczyniewski v. City of Milwaukee, 15 Wis. 2d 236, 240, 112 N.W.2d 725 (1961) (same). As Justice Rebecca Bradley recently observed, "[b]y recognizing the value of executive interpretations without entirely ceding interpretive authority to the executive, these older cases reflect a more nuanced appreciation for judicial interaction with agency interpretation . . . ." Operton v. LIRC, 2017 WI 46, ¶78, 375 Wis. 2d 1, 894 N.W.2d 426 (R. Grassl Bradley, J., concurring).

¶23 But then came Pabst v. Wisconsin Department of Taxation, 19 Wis. 2d 313, 120 N.W.2d 77 (1963). There, we started our analysis of an agency's statutory interpretation with the proposition that "[e]rrors of law are always reviewable by the reviewing court." Id. at 322. But in our extended discussion of the nature of that review, we did something new. We imported the concept of deference. Federal courts, we noted, afforded deference to an administrative agency's application of a statute to undisputed facts under certain circumstances. See id. at 322-24. In determining "whether the administrative

agency has correctly applied a statute to certain facts," the federal courts would employ either the "analytical approach" or the "practical approach." See id. at 322.

¶24 Under the analytical approach, "the court decides which part of the agency's determination presents a question of fact and which part a question of law." Id. As Professor Kenneth Culp Davis described this methodology, the court upholds the agency's factual findings if they have a reasonable basis. 4 Kenneth Culp Davis, Administrative Law Treatise § 30.01 (1958). But with respect to questions of law, the court substitutes its judgment for that of the agency. Id. Essentially, this creates a de novo standard for reviewing questions of law.

¶25 The practical approach treats the agency's decision more like legislation than adjudication. It avoids any attempt to distinguish between facts and law, and instead holds that "[t]he judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body." Pabst, 19 Wis. 2d at 323 (quoting Rochester Tel. Corp. v. United States, 307 U.S. 125, 146 (1939)).[18]

[18] The practical approach is very similar to the "rational basis" standard of review we apply to legislation. See Blake v. Jossart, 2016 WI 57, ¶31, 370 Wis. 2d 1, 884 N.W.2d 484 (indicating that under rational basis review, "[i]n cases where a statutory classification does not involve a suspect class or a fundamental interest, the classification will be upheld if there is any rational basis to support it" (quoting State v. Burgess, 2003 WI 71, ¶10, 262 Wis. 2d 354, 665 N.W.2d 124)).

¶26 Pabst observed that the method of review chosen by the court would be outcome-determinative with respect to whose application of the statute would control the case: "[Professor Davis] concludes that the court applies the analytical approach when it does not wish to be bound by the agency's application of a statute to a set of facts, and the practical approach when it believes the agency's application of the law should be deferred to." Pabst, 19 Wis. 2d at 323. The primary factor driving the selection of the review method, Professor Davis believed, was the agency's expertise:

> Davis believes that one of the most-important factors which influences the court's choice of approach in this field is the comparative qualification of court and agency to decide the particular issue. The court often deems agencies and their staffs to be expert within their own specialized fields. In such situations, the practical approach is likely to be employed rather than the analytical in determining the scope of review to be applied.

Id. (citing Davis, supra ¶24, at § 30.01 et seq. (Professor Kenneth Culp Davis, University of Chicago School of Law and University of San Diego School of Law)). The "practical approach" bears a close resemblance to the "great weight deference" formulation. It also reaches the same result, to wit, preference for the agency's conclusion of law over that of the court.

¶27 We concluded in Pabst that the statutes as they existed at the time bound us to use the analytical approach.

"We believe that pars. (b) and (d) of sec. 227.20(1), Stats.,[19] require Wisconsin courts to employ the analytical approach when reviewing agency decisions." Pabst, 19 Wis. 2d at 323. But we also said that dividing the facts from the law would not necessarily prevent us from deferring to the agency's application of the statute (i.e., the practical approach):

> Nevertheless, in fields in which an agency has particular competence or expertise, the courts should not substitute their judgment for the agency's application of a particular statute to the found facts if a rational basis exists in law for the agency's interpretation and it does not conflict with the statute's legislative history, prior decisions of this court, or constitutional prohibitions.

Id. at 323-24.

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[19] At the time, Wis. Stat. § 227.20(1) (1961) provided, in part:

> The court may affirm the decision of the agency, or may reverse or modify it if the substantial rights of the appellant have been prejudiced as a result of the administrative findings, inferences, conclusions or decisions being:
>
> . . . .
>
> (b) In excess of the statutory authority or jurisdiction of the agency, or affected by other error of law; or
>
> . . . .
>
> (d) Unsupported by substantial evidence in view of the entire record as submitted; . . . .

§ 227.20(1)(b), (d) (1961).

¶28 We used the analytical approach in Pabst, in accordance with statutory requirements,[20] but only because we did not "deem the board more competent than this court to decide a question of law involving trust administration." See id. at 324. Subsequent cases confirm that our commitment to the analytical approach has always been more nominal than real. For example, in DOR v. Exxon Corp., we said:

> While this court has held that ch. 227, Stats. requires that courts employ the "analytical" approach when reviewing agency decisions, this court will give deference to agency determinations, where the agency has particular expertise, rational basis exists in law for the agency's interpretation, and it does not conflict with the statute's legislative history, prior decisions of this court, or constitutional prohibitions.

90 Wis. 2d 700, 713, 281 N.W.2d 94 (1979) (citing Pabst, 19 Wis. 2d at 323-24), aff'd, 447 U.S. 207 (1980). So although the statutes require a de novo review of questions of law (the analytical approach), we have deferred to an administrative agency (the practical approach) when circumstances satisfied our criteria.

¶29 Where we once treated an agency's interpretation of a statute as evidence of its meaning (Harrington), Pabst put us in a posture of deference to administrative agencies. The shift was not a comfortable one, as evidenced by a sporadic, but short-lived, return to a more Harrington-like understanding of "great weight." See Mednis v. Indus. Comm'n, 27 Wis. 2d 439,

[20] Wis. Stat. § 227.20(1)(b), (d) (1961).

444, 134 N.W.2d 416 (1965) ("The construction and interpretation adopted by the administrative agency charged with the duty of applying the law is entitled to great weight in the courts."); see also Cook v. Indus. Comm'n, 31 Wis. 2d 232, 240, 142 N.W.2d 827 (1966) (same). Each of these cases relied on pre-Pabst authorities, such as Wisconsin Axle Division and Trczyniewski,[21] in which the agencies' understanding of the law assisted, but did not supplant, our own application of the statutes.

¶30 When we eventually circled back to Pabst's understanding of "great weight," we granted administrative agencies even broader deference than they had enjoyed before. See Roggensack, supra ¶18, at 558-59. Whereas Pabst called for deference only to an agency's application of a statute to undisputed facts, we extended that deference to the construction of the statute itself in Bucyrus-Erie Co. v. DILHR, 90 Wis. 2d 408, 417, 280 N.W.2d 142 (1979). There, we acknowledged that "questions of law are always reviewable by the court," and that "[t]he construction of a statute or the application of a statute to a particular set of facts is such a question of law." Id. But when we applied the Pabst deference principle, we made no distinction between interpreting a statute and applying it.

[21] Trczyniewski v. City of Milwaukee, 15 Wis. 2d 236, 240, 112 N.W.2d 725 (1961); Wis. Axle Div. (Timken-Detroit Axle Co.) v. Indus. Comm'n, 263 Wis. 529, 537b, 60 N.W.2d 383 (1953) (per curiam).

We acknowledged the case "involve[d] the interpretation and application of certain statutory provisions," but then said:

> The court will hesitate to substitute its judgment for that of the agency on a question of law if " . . . a rational basis exists in law for the agency's interpretation and it does not conflict with the statute's legislative history, prior decisions of this court, or constitutional prohibitions."

Bucyrus-Erie Co., 90 Wis. 2d at 411, 417 (quoting Pabst, 19 Wis. 2d at 323-24). After Bucyrus-Erie Co., we never returned to Harrington's formulation that an administrative agency's application of a statute was evidence of its meaning that the court could accept or reject in the process of authoritatively resolving questions of law. By expanding the reach of the deference principle, "the court continued a trend of applying great weight deference more and more often, thereby construing statutes less and less frequently." Roggensack, supra ¶18, at 556.

¶31 Only one transformation remains before we reach the current expression of the deference doctrine. Prior to Harnischfeger, we treated deference to administrative agencies as a choice, something the courts could do in the process of interpreting and applying a statute, but were not required to do. Just a few years before we decided Harnischfeger, we said: "The interpretation of a statute presents a question of law, and the 'blackletter' rule is that a court is not bound by an agency's interpretation. Courts, however, frequently refrain from substituting their interpretation of a statute for that of the agency charged with the administration of a law." Lisney v.

LIRC, 171 Wis. 2d 499, 505, 493 N.W.2d 14 (1992). "Frequently refrain" describes something episodic, not a rule of uniform application. It implies the court will decide, on a case-by-case basis, whether to defer to the administrative agency as it resolves questions of law.

¶32 Harnischfeger, however, made the deference doctrine a systematic requirement upon satisfaction of its preconditions. See Roggensack, supra ¶18, at 553. It accomplished this feat by promoting deference from a canon of construction to a standard of review: "Whether or not a court agrees or disagrees with LIRC's methodology, however, is not the issue in this case. Instead, the central question is what standard of review the courts of this state should apply when called upon to evaluate an agency's interpretation of a statute." Harnischfeger, 196 Wis. 2d at 659.[22] We then identified "great weight" deference, "due weight" deference, and no deference as the available options. Id. at 659-60. Determining the correct standard of review, of course, is something an appellate court does at the

[22] "In setting the frame for broad deference to agencies, the court [in Harnischfeger] described the legal issue before the court as deciding what level of deference it should accord LIRC's decision. It did not characterize the legal issue as the interpretation of an ambiguous statute." The Honorable Patience Drake Roggensack, Elected to Decide: Is the Decision-Avoidance Doctrine of Great Weight Deference Appropriate in This Court of Last Resort?, 89 Marq. L. Rev. 541, 553 (2006).

very beginning of its work, and it definitively controls how we address questions of both fact and law.[23]

¶33 Enshrining this doctrine as a standard of review bakes deference into the structure of our analysis as a controlling principle. By the time we reach the questions of law we are supposed to review, that structure leaves us with no choice but to defer if the preconditions are met. Id. at 663 ("When, as in this case, great weight deference is appropriate and the agency's interpretation is not otherwise unreasonable, 'the court of appeals and this court should refrain from substituting their interpretation of [a] statute for the long-standing interpretation of the agency charged with its administration.'" (quoted source omitted) (emphasis omitted)). Harnischfeger made good on this premise by reversing the court of appeals for failing to defer to the administrative agency. Our subsequent cases make it clear we understand the mandatory nature of the deference doctrine. See, e.g., Crystal Lake Cheese Factory, 264 Wis. 2d 200, ¶52 ("As we have determined LIRC's interpretation to be reasonable, under the 'great weight' standard of review,

[23] Utah v. Thurman, 846 P.2d 1256, 1265-66 (Utah 1993) ("It is widely agreed that the primary function of a standard of review is to apportion power and, consequently, responsibility between trial and appellate courts for determining an issue or a class of issues. . . . In determining the appropriateness of a particular allocation of responsibility for deciding an issue or a class of issues, account should be taken of the relative capabilities of each level of the court system to take evidence and make findings of fact in the face of conflicting evidence, on the one hand, and to set binding jurisdiction-wide policy, on the other." (internal citations omitted)).

we must, therefore, defer to LIRC's conclusion." (emphasis added)).

ii. A Brief History of "Due Weight" Deference

¶34 "Due weight deference" is of a much younger vintage than "great weight deference." It also has a different source. Whereas the latter developed as a home-grown doctrine within the judiciary, the former has its roots in our statutes. In 1943, our legislature adopted Wis. Stat. § 227.20(2) (subsequently renumbered to § 227.57(10)), which read: "Upon such review due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred upon it."[24]

¶35 Our first opportunity to engage with that language came in Ray-O-Vac Co. v. Wisconsin Employment Relations Board, 249 Wis. 112, 119, 23 N.W.2d 489 (1946). There, the Wisconsin Employment Relations Board asserted:

> [O]n a review of the board's findings, the court has no jurisdiction to determine the factual issues anew if there is some evidence before the board reasonably tending to support a finding, and "the court may not weigh the evidence to ascertain whether it preponderates in favor of the finding" . . . ; or substitute its judgment for that of the board even though the court might have decided the question differently had it been before the court de novo.

Id. (internal citation omitted).

[24] Wis. Stat. § 227.20(2) (1943); see § 1, ch. 375, Laws of 1943 (creating § 227.20(2)); see also § 24, ch. 414, Laws of 1975 (renumbering); 1985 Wis. Act 182, § 41 (renumbering again).

¶36 We agreed with the Board, noting that "[i]n relation to a court review of the board's findings and orders it must be noted that there is applicable thereto" the terms of Wis. Stat. § 227.20(2) (1943). Ray-O-Vac Co., 249 Wis. at 119-20. The court's reference to the Board's orders (in addition to its findings) suggests the court gave "due weight . . . [to] the experience, technical competence, and specialized knowledge of the agency involved," see § 227.20(2) (1943), as it reviewed the Board's conclusions of law as well. This is probable because the court relied on a separate source of authority for the proposition that it must defer to the Board's findings of fact. It cited Wisconsin Labor Relations Board v. Fred Rueping Leather Co., which held:

> [I]f th[e] evidence supports the finding of the industrial commission, the finding must stand. The Wisconsin Labor Relations Act in sec. 111.10 (5), Wis. Stats., provides what is lacking in the Workmen's Compensation Act, namely, an implied authorization to the courts to review the facts, coupled with the express provision that the findings, "if supported by evidence in the record," shall be conclusive.

228 Wis. 473, 494, 279 N.W. 673 (1938).[25]

[25] We were, perhaps, even more enigmatic with respect to the doctrine's application to questions of law in Milwaukee Electric Railway & Transport Co. v. Public Service Commission, 261 Wis. 299, 302-03, 52 N.W.2d 876 (1952). There, we said "[t]he court must also recognize that the commission has expert knowledge, that such knowledge may be applied by it, and that even though we might differ with the commission, we are without power to substitute our views of what may be reasonable." Id. In the next sentence, however, we said only that "[w]e may not disturb the commission's findings," which is a reference only to the facts that the agency found. See id. at 303.

¶37 We were not any more specific about how "due weight" consideration affects conclusions of law when we decided Muskego-Norway Consolidated Schools Joint School District No. 9 v. Wisconsin Employment Relations Board, 35 Wis. 2d 540, 151 N.W.2d 617 (1967). But we did frame the statute's provision in terms of "deference":

> [I]n this court's judicial review we are not required to agree in every detail with the WERB as to its findings, conclusions and order. . . . Sec[tion] 227.20 (2), Stats., requires that upon such review due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved. In short, this means the court must make some deference to the expertise of the agency.

Muskego-Norway Consol. Sch. Joint Sch. Dist. No. 9, 35 Wis. 2d at 562. We applied the statute's "due weight" mandate to the Board's findings and conclusions of law without differentiation. "Some deference" was due, we said, but we did not say how that should be applied or quantified.

¶38 We were a little more direct on this topic in Vivian v. Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, in which we reviewed the Board's determination of whether the defendant's conduct could satisfy a "gross negligence" standard. 61 Wis. 2d 627, 638, 213 N.W.2d 359 (1974). We strongly implied that the Board was qualified not just to apply that standard, but to define it as well:

> The legislative command that due weight is to be given to "the experience, technical competence, and specialized knowledge of the agency involved," in determining what is gross negligence, indicates the

> determination of the grossness of the negligence is to be made by those knowledgeable as to the particular profession involved.

Id. (emphasis added) (quoting Wis. Stat. § 227.20(2) (1971)).

¶39 A few years later, we stated explicitly that Wis. Stat. § 227.20(2) (1973) applies to an administrative agency's legal conclusions. And we described deference as a requirement when its preconditions were met. In A. O. Smith Harvestore Products, Inc., we acknowledged that "[t]his court has uniformly held that whether or not the facts found fulfill a particular legal standard is a question of law, not a question of fact." 72 Wis. 2d at 65. And then we said that under § 227.20(2) (1973), "[d]ue deference must be accorded the agency's application of the law to the found facts when the agency has particular competence or expertise in the matter at hand." A. O. Smith Harvestore Prods., Inc., 72 Wis. 2d at 65-66 (emphasis added) (citing § 227.20(2) (1973)).

¶40 As we mentioned above, Harnischfeger elevated the deference doctrine from a canon of construction to a standard of review. "Whether or not a court agrees or disagrees with LIRC's methodology, however, is not the issue in this case. Instead, the central question is what standard of review the courts of this state should apply when called upon to evaluate an agency's interpretation of a statute." Harnischfeger, 196 Wis. 2d at 659. So, just like "great weight" deference, "due weight" deference has become an integral, and therefore unavoidable, part of the framework within which we review an administrative agency's conclusions of law.

¶41 Fortified by this history of our deference jurisprudence, we can now determine whether the doctrine is consistent with the judiciary's constitutional responsibility.[26]

3. The Judiciary's Constitutional Responsibilities

¶42 As the deference doctrine developed, we recognized that its operation allowed the executive branch of government to authoritatively decide questions of law in specific cases brought to our courts for resolution. But nowhere in the journey from Harrington to Harnischfeger did we determine whether this was consistent with the allocation of governmental power amongst the three branches. So, as a matter of first impression, we consider whether our deference doctrine is compatible with our constitution's grant of power to the judiciary:

> The judicial power of this state shall be vested in a unified court system consisting of one supreme court, a court of appeals, a circuit court, such trial courts of general uniform statewide jurisdiction as the legislature may create by law, and a municipal court if authorized by the legislature under section 14.

Wis. Const. art. VII, § 2. It is, perhaps, tautological to say that the judicial power should reside in the judiciary. But the

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[26] Roggensack, supra n.22, at 542 ("[B]ecause the Wisconsin Supreme Court's members were elected to decide what the law is, and because the court restricts its own docket in order to maintain its law-declaring status, it [is] appropriate for the court to re-examine whether decision-avoidance is too often replacing the court's full consideration of the issues raised on appeal, at least in regard to state agency decisions to which the highest level of deference, great weight deference, is accorded.").

constitution does not define what that term comprises, nor does it explicitly describe how that power relates to the other branches of government.[27]

¶43 Allowing an administrative agency to authoritatively interpret the law raises the possibility that our deference doctrine has allowed some part of the state's judicial power to take up residence in the executive branch of government. To discover whether it did, we must first get our bearings on the nature and extent of judicial power. We had occasion to dwell on this subject at some length just last term. See generally Gabler v. Crime Victims Rights Bd., 2017 WI 67, 376 Wis. 2d 147, 897 N.W.2d 384. There is no need to recreate Gabler's thorough analysis, so we will content ourselves with referencing only those parts that illuminate our work here.

¶44 The "separation of powers" doctrine informs our understanding of how the constitution allocates governmental power amongst its constituent branches.[28] This fundamental principle of American constitutional government was "established at the founding of our nation and enshrined in the structure of

[27] "This court has recognized, however, that the constitution does not define legislative, executive or judicial power . . . ." State v. Holmes, 106 Wis. 2d 31, 42-43, 315 N.W.2d 703 (1982).

[28] The executive and legislative branches have their own explicit grants of power under our constitution. Wis. Const. art. V, § 1 (providing that "[t]he executive power shall be vested in a governor"); Wis. Const. art. IV, § 1 (stating that "[t]he legislative power shall be vested in a senate and assembly").

the United States Constitution," and "inform[s] our understanding of the separation of powers under the Wisconsin Constitution." Gabler, 376 Wis. 2d 147, ¶11; Flynn v. DOA, 216 Wis. 2d 521, 545, 576 N.W.2d 245 (1998) ("The doctrine of separation of powers is implicitly found in the tripartite division of government [among] the judicial, legislative and executive branches."); Goodland v. Zimmerman, 243 Wis. 459, 466-67, 10 N.W.2d 180 (1943) ("It must always be remembered that one of the fundamental principles of the American constitutional system is that governmental powers are divided among the three departments of government, the legislative, the executive, and judicial, and that each of these departments is separate and independent from the others except as otherwise provided by the constitution."); Rules of Court Case, 204 Wis. 501, 503, 236 N.W. 717 (1931) ("It is, of course, elementary that we are committed by constitution to the doctrine of separation of powers.").

¶45 We must be assiduous in patrolling the borders between the branches. This is not just a practical matter of efficient and effective government. We maintain this separation because it provides structural protection against depredations on our liberties. The Framers of the United States Constitution understood that "[t]he accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, . . . may justly be pronounced the very definition of tyranny." The Federalist No. 47, at 324 (James Madison) (Jacob Cooke ed., 1961). Consequently, "[a]s Madison explained when

advocating for the Constitution's adoption, neither the legislature nor the executive nor the judiciary 'ought to possess, directly or indirectly, an overruling influence over the others in the administration of their respective powers.'" Gabler, 376 Wis. 2d 147, ¶4 (quoting The Federalist No. 48, at 305 (James Madison) (Clinton Rossiter ed., 1961)). "The purpose of the separation and equilibration of powers in general," said Justice Antonin Scalia, "was not merely to assure effective government but to preserve individual freedom."[29] Morrison v. Olson, 487 U.S. 654, 727 (1988) (Scalia, J., dissenting). To this day, "[a]fter more than two hundred years of constitutional governance, th[is] tripartite separation of independent governmental power remains the bedrock of the structure by which we secure liberty in both Wisconsin and the United States." Gabler, 376 Wis. 2d 147, ¶3. As United States Supreme Court Justice Joseph Story said, "the three great powers of government . . . should for ever be kept separate and distinct." Id. (quoting 2 Joseph Story, Commentaries on the Constitution of the United States § 519, at 2-3 (Boston: Hilliard, Gray, & Co., 1833)).

[29] See also Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635 (1952) (Jackson, J., concurring) (stating that "the Constitution diffuses power the better to secure liberty"). Centuries earlier, the French writer Montesquieu said "there is no liberty, if the judiciary power be not separated from the legislative and executive." Charles de Secondat Montesquieu, The Spirit of Laws bk. XI, at 152 (Thomas Nugent trans., The Colonial Press rev. ed. 1900) (1748).

¶46 The constitution does not, however, hermetically seal the branches from each other. The separation of powers doctrine "envisions a system of separate branches sharing many powers while jealously guarding certain others, a system of 'separateness but interdependence, autonomy but reciprocity.'" State ex rel. Friedrich v. Circuit Court for Dane Cty., 192 Wis. 2d 1, 14, 531 N.W.2d 32 (1995) (quoting Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635 (1952) (Jackson, J., concurring)). "The constitutional powers of each branch of government fall into two categories: exclusive powers and shared powers." State v. Horn, 226 Wis. 2d 637, 643, 594 N.W.2d 772 (1999). "Shared powers lie at the intersections of these exclusive core constitutional powers," and "[t]hese '[g]reat borderlands of power' are not exclusive to any one branch." Id. at 643-44 (quoting Friedrich, 192 Wis. 2d at 14); see also State v. Holmes, 106 Wis. 2d 31, 42-43, 315 N.W.2d 703 (1982). Although the "branches may exercise [shared] power within these borderlands," they "may [not] unduly burden or substantially interfere with another branch." Horn, 226 Wis. 2d at 644.

¶47 Core powers, however, are not for sharing. "Each branch has exclusive core constitutional powers, into which the other branches may not intrude." Flynn, 216 Wis. 2d at 545. "For more than a century, this court has been called upon to resist attempts by other branches of government to exercise authority in an exclusively judicial area." In re Complaint Against Grady, 118 Wis. 2d 762, 778, 348 N.W.2d 559 (1984).

These "[c]ore zones of authority are to be 'jealously guarded' by each branch of government, ..." Gabler, 376 Wis. 2d 147, ¶31 (quoting Barland v. Eau Claire Cty., 216 Wis. 2d 560, 573, 575 N.W.2d 691 (1998)). The importance of constitutional limitations, Chief Justice Marshall once said, is that they compel restraint when restraint is not desired: "To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained?" Marbury v. Madison, 5 U.S. (1 Cranch) 137, 176 (1803).

¶48 The separation of powers prevents us from abdicating core power just as much as it protects the judiciary from encroachment by other branches. "It is . . . fundamental and undeniable that no one of the three branches of government can effectively delegate any of the powers which peculiarly and intrinsically belong to that branch." Rules of Court Case, 204 Wis. at 503; see also id. (stating that "any attempt to abdicate [a core power] in any particular field, though valid in form, must, necessarily, be held void" (internal quotation mark omitted) (quoting State ex rel. Mueller v. Thompson, 149 Wis. 488, 491-92, 137 N.W. 20 (1912))). Even if we truly wished to abandon some aspect of our core power, no other branch may take it up and use it as its own. "As to these areas of authority, . . . any exercise of authority by another branch of government is unconstitutional." Gabler, 376 Wis. 2d 147, ¶31 (internal quotation mark omitted) (quoting State ex rel. Fiedler v. Wis. Senate, 155 Wis. 2d 94, 100, 454 N.W.2d 770 (1990))

(emphasis in original); see also Town of Holland v. Vill. of Cedar Grove, 230 Wis. 177, 190, 282 N.W. 111 (1938) ("This court has repeatedly held that the judicial power vested by the constitution in the courts cannot be exercised by administrative or executive agencies.").

¶49 The propriety of our deference doctrine, therefore, depends on whether it transfers to a coordinate branch of government a quantum of our core powers. To make that determination, we need to describe those powers well enough that, if they are present in our deference doctrine, we will recognize them.

¶50 From the earliest days of our country, we have understood that the judiciary's first and irreducible responsibility is to proclaim the law: "It is emphatically the province and duty of the judicial department to say what the law is." Marbury, 5 U.S. at 177. The process of interpreting the law in a specific case is part of that central duty: "Those who apply the rule to particular cases, must of necessity expound and interpret that rule." Id. We agreed with Marbury just a few years ago when we described our judicial power as "the ultimate adjudicative authority of courts to finally decide rights and responsibilities as between individuals." State v. Williams, 2012 WI 59, ¶36, 341 Wis. 2d 191, 814 N.W.2d 460.

¶51 It is fair to say that exercising judgment in the interpretation and application of the law in a particular case is the very thing that distinguishes the judiciary from the other branches:

> The judiciary . . . has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

The Federalist No. 78, at 523 (Alexander Hamilton) (Jacob Cooke ed., 1961). We, too, have said as much: "By vesting the judicial power in a unified court system, the Wisconsin Constitution entrusts the judiciary with the duty of interpreting and applying laws made and enforced by coordinate branches of state government." Gabler, 376 Wis. 2d 147, ¶37; see also State v. Van Brocklin, 194 Wis. 441, 443, 217 N.W. 277 (1927) ("Judicial power is that power which adjudicates and protects the rights and interests of individual citizens, and to that end construes and applies the laws." (quoted source omitted)).

¶52 Some would argue that the judiciary's law-declaring and law-applying power lies not at the core of what it means to be a court, but somewhere out on the periphery of our powers where we share it with the executive branch. Some of our older cases have spoken in terms that lend this proposition at least some superficial plausibility. For example, in State ex rel. Wisconsin Inspection Bureau v. Whitman we said:

> Every executive officer in the execution of the law must of necessity interpret it in order to find out what it is he is required to do. While his interpretation is not final, yet in the vast majority of cases it is the only interpretation placed upon it, and as long as it is acquiesced in it becomes the official interpretation which the courts heed and in

> which they oftentimes acquiesce as a practical construction.

196 Wis. 472, 497, 220 N.W. 929 (1928); see also Rules of Court Case, 204 Wis. at 504 (same) (quoting this portion of Whitman). And even earlier, we had noted the quasi-judicial nature of some administrative bodies:

> We do not consider the Industrial Commission a court, nor do we construe the act as vesting in the Commission judicial powers within the meaning of the constitution. It is an administrative body or arm of the government which in the course of its administration of a law is empowered to ascertain some questions of fact and apply the existing law thereto, and in so doing acts quasi-judicially, but it is not thereby vested with judicial power in the constitutional sense.

Borgnis v. Falk Co., 147 Wis. 327, 358, 133 N.W. 209 (1911) (emphasis in original).

¶53 But these cases cannot bear the weight their proponents assign them. The executive must certainly interpret and apply the law; it would be impossible to perform his duties if he did not. After all, he must determine for himself what the law requires (interpretation) so that he may carry it into effect (application). Our constitution not only does not forbid this, it requires it. Wis. Const. art. V, § 1 ("The executive power shall be vested in a governor, ..."); Perez v. Mortg. Bankers Ass'n, 135 S. Ct. 1199, 1217 (2015) (Thomas, J., concurring) ("It is undoubtedly true that the other branches of Government have the authority and obligation to interpret the law, ..."). But this comprises interpretation and application within the executive branch. We are here concerned

with the authoritative interpretation and application of the law as applied to a particular case within the judicial branch. "[O]nly the judicial interpretation [as opposed to interpretations offered by the other branches] would be considered authoritative in a judicial proceeding." Perez, 135 S. Ct. at 1217 (Thomas, J., concurring). Even Rules of Court Case and Whitman recognize that the executive's understanding of the law is provisional, and that it gains a measure of permanence only through habit and inertia. See Rules of Court Case, 204 Wis. at 504; Whitman, 196 Wis. at 497 ("While [the executive's] interpretation is not final, yet in the vast majority of cases it is the only interpretation placed upon it, . . . in which [the courts] oftentimes acquiesce as a practical construction."). We do not understand Borgnis to say anything different. There, we recognized that the work of some administrative agencies looks very similar to that of the courts. We described the power they exercised as "quasi judicial," but it was "quasi" rather than simply "judicial" because they had no power to impose their understanding of the law on the judiciary's resolution of a particular case.[30]

[30] Justice Ann Walsh Bradley suggests we have committed "legal error" and ignored "controlling precedent." Justice Ann Walsh Bradley's concurrence, ¶¶111, 115. Presumably, she is referring to the observation in Borgnis that "a board may lawfully be endowed with very broad powers, and its conclusions may be given great dignity and force, so that courts may not reverse them unless the proof be clear and satisfactory that they are wrong." See Borgnis v. Falk Co., 147 Wis. 327, 359, 133 N.W. 209 (1911). As an initial matter, it is not clear whether Borgnis was here referring to findings of fact or (continued)

¶54 When we distill our cases and two centuries of constitutional history to their essence, the result is a lodestar that leads us directly to the most central of our powers: "No aspect of the judicial power is more fundamental than the judiciary's exclusive responsibility to exercise judgment in cases and controversies arising under the law." Gabler, 376 Wis. 2d 147, ¶37; see also Operton, 375 Wis. 2d 1, ¶73 (R. Grassl Bradley, J., concurring) (indicating that "the court's duty to say what the law is" constitutes a "core judicial function"); In re Appointment of Revisor, 141 Wis. 592, 598, 124 N.W. 670 (1910) (stating that "it is the exclusive function of the courts to expound the laws"). Judgment, of course, encompasses interpreting and applying the law to the case sub judice. Marbury, 5 U.S. at 177 ("Those who apply the rule to particular cases, must of necessity expound and interpret that rule."); The Federalist No. 78, at 525 (Alexander Hamilton) (Jacob Cooke ed., 1961) ("The interpretation of the laws is the proper and peculiar province of the courts.");

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conclusions of law. If the former, this opinion does not tread on those grounds. If the latter, then Borgnis would be counted amongst those cases with which we treat today. If we choose to overrule it we risk aspersions on our wisdom, but not legal error. Nor would we be ignoring controlling precedent. The doctrine the case espouses is our own, and is, therefore, unquestionably within our remit to accept or reject without committing legal error. And because the case itself is our own, it is impossible for it to control our decision. Stare decisis is a critical rule that promotes stability by ensuring we do not abandon precedent for light or transient reasons. But it is not a limitation on our authority.

Roggensack, supra ¶18, at 547 (stating that "[d]eclaring what a statute means is a core function of the courts"). We conclude that only the judiciary may authoritatively interpret and apply the law in cases before our courts. The executive may not intrude on this duty, and the judiciary may not cede it. If our deference doctrine allows either, we must reject it.

4. "Great Weight" Deference Considered

¶55 We see our core judicial powers lying at the heart of "great weight" deference. When the doctrine's preconditions are satisfied, that is, when an administrative agency meets the four Harnischfeger criteria, we cede to the agency the power to authoritatively interpret the law ("an agency's interpretation must then merely be reasonable for it to be sustained," Harnischfeger, 196 Wis. 2d at 661), and apply the law to the case before us ("the courts should not substitute their judgment for the agency's application of a particular statute to the found facts," Pabst, 19 Wis. 2d at 323-24 (emphasis added)). Because Harnischfeger made this a structural piece of the standard by which we review an agency's decision, we arrive at the legal issues involved in the case with an a priori commitment to letting the agency decide them. But Marbury and Gabler say the power to interpret and apply the law in the case at bar is an exclusively judicial power. Therefore, because that power belongs to the judiciary—and the judiciary alone—we may not allow an administrative agency to exercise it.

¶56 We provide guardrails for an administrative agency's exercise of our power, to be sure, but they are minimal. Under

great weight deference, we simply require that the agency's judgment on the law not overrule our precedents, violate the constitution, contradict legislative history, or be unreasonable.[31] Within those expansive boundaries, however, the agency is the master of statutory construction and application, and it occupies the field to the exclusion of the judiciary.[32] We reserve a sufficient quantum of judicial power to set the guardrails, but that gives no good answer to the charge that this doctrine cedes something that belongs exclusively to the judiciary. We are concerned here with categories of power, not quantity. Regardless of the circumscriptions we put in place, when we defer we are allowing the agency to exercise what is unmistakably core judicial power.

¶57 Chief Justice Roggensack has been particularly incisive in describing the practical problems this deference causes. She has observed that "[w]hat decision-avoidance doctrines accomplish is to relieve the court of the real work of judicial review, what has been described as the 'burden of

[31] We will defer if "a rational basis exists in law for the agency's interpretation and it does not conflict with the statute's legislative history, prior decisions of this court, or constitutional prohibitions." Bucyrus-Erie Co. v. DILHR, 90 Wis. 2d 408, 417, 280 N.W.2d 142 (1979) (quoting Pabst v. Wis. Dep't of Taxation, 19 Wis. 2d 313, 324, 120 N.W.2d 77 (1963)).

[32] When great weight deference applies, a reviewing court must accept "an agency's reasonable statutory interpretation, even if the court concludes that another interpretation is equally reasonable, or even more reasonable, than that of the agency." Racine Harley-Davidson, Inc. v. Wis. Div. of Hearings & Appeals, 2006 WI 86, ¶17, 292 Wis. 2d 549, 717 N.W.2d 184.

reasoned decisionmaking.'" Roggensack, supra ¶18, at 546 (quoted source omitted). And it privileges unelected executive-branch employees over those the people of Wisconsin elected to resolve questions of law.

> When the court employs judicially created doctrines that limit the scope of its review instead of applying the collective knowledge that the seven justices were elected to exercise, it avoids the real work of appellate decision making: explaining to the public why the application of the law to the facts of the case resulted in the court's decision and why that result is fair under the law.

Roggensack, supra ¶18, at 560.

¶58 The abdication of core judicial power to the executive is a concern not just of our court, but of the federal judiciary as well. Wisconsin's separation of powers is a reflection of that found in the United States Constitution, which provides (in relevant part) that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." U.S. Const. art. III, § 1.[33] Whereas our decision in Harnischfeger made us structurally deferential to administrative agencies, Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc. accomplished something very similar for the federal courts. 467 U.S. 837, 843 (1984). In

[33] "The executive Power shall be vested in a President of the United States of America." U.S. Const. art. II, § 1, cl. 1. "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." U.S. Const. art. I, § 1.

reviewing an administrative agency's interpretation and application of a statute, the Supreme Court said:

> [T]he court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

Id. (footnote omitted). The Court, it observed, "ha[s] long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations has been consistently followed by this Court . . . ." Id. at 844 (footnote omitted) (internal mark and quoted source omitted).

¶59 Jurists in federal courts have expressed the same concern with Chevron deference as we have with Harnischfeger deference. Justice Clarence Thomas directly questioned the constitutionality of deferring to an administrative agency's interpretation of the law in Michigan v. Environmental Protection Agency, 135 S. Ct. 2699, 2712 (2015) (Thomas, J., concurring). The EPA's request for deference, he said, "raises serious questions about the constitutionality of our broader practice of deferring to agency interpretations of federal statutes." Id. He was concerned that this deference allowed the judiciary to escape its responsibility to independently resolve questions of law: "[T]he judicial power, as originally understood, requires a court to exercise its independent

judgment in interpreting and expounding upon the laws." Id. (quoting Perez, 135 S. Ct. at 1217 (Thomas, J., concurring)) (alteration in original). Yet, "Chevron deference precludes judges from exercising that judgment, forcing them to abandon what they believe is 'the best reading of an ambiguous statute' in favor of an agency's construction." Michigan, 135 S. Ct. at 2712 (Thomas, J., concurring) (quoting Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs., 545 U.S. 967, 983 (2005)). This "wrests from Courts the ultimate interpretative authority to 'say what the law is,' Marbury v. Madison, 1 Cranch 137, 177, 2 L.Ed. 60 (1803), and hands it over to the Executive." Michigan, 135 S. Ct. at 2712 (Thomas, J., concurring). Such a transfer of power, he concluded, "is in tension with Article III's Vesting Clause, which vests the judicial power exclusively in Article III courts, not administrative agencies." Id. (citing U.S. Const. art. III, § 1).

¶60 Justice Antonin Scalia was equally concerned with the possible abandonment of judicial power to the executive branch. Although he supported Chevron's imprimatur on the executive's authority to adopt policy-making regulations to fill up interstitial statutory silences, his approval did not extend to an agency's authority to make binding pronouncements on the law:

> I suppose it is harmless enough to speak about "giving deference to the views of the Executive" concerning the meaning of a statute, just as we speak of "giving deference to the views of the Congress" concerning the constitutionality of particular legislation—the mealy-mouthed word "deference" not necessarily meaning anything more than considering those views with

> attentiveness and profound respect, before we reject them. But to say that those views, if at least reasonable, will ever be binding—that is, seemingly, a striking abdication of judicial responsibility.

The Honorable Antonin Scalia, Judicial Deference to Administrative Interpretations of Law, 1989 Duke L.J. 511, 513-14 (1989). Chevron deference eventually spawned Auer deference, which requires federal courts to prefer an agency's interpretation of its regulations over the court's own interpretation.[34] This, Justice Scalia believed, was a mistake because of its effect on a court's authority to decide questions of law:

> I would therefore restore the balance originally struck by the APA with respect to an agency's interpretation of its own regulations, not by rewriting the Act in order to make up for Auer, but by abandoning Auer and applying the Act as written. The agency is free to interpret its own regulations with or without notice and comment; but courts will decide—with no deference to the agency—whether that interpretation is correct.

Perez, 135 S. Ct. at 1213 (Scalia, J., concurring). And he understood that Chevron was what made it possible: "The problem is bad enough, and perhaps insoluble if Chevron is not to be uprooted, with respect to interpretive rules setting forth agency interpretation of statutes." Perez, 135 S. Ct. at 1212.

¶61 Justice Neil Gorsuch, when he was on the Tenth Circuit Court of Appeals, elegantly summarized how deference to administrative agencies hollows out a court's judicial power:

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[34] See Auer v. Robbins, 519 U.S. 452 (1997).

> Yet, rather than completing the task expressly assigned to us, rather than "interpret[ing] . . . statutory provisions," [5 U.S.C. § 706] declaring what the law is, and overturning inconsistent agency action, Chevron step two tells us we must allow an executive agency to resolve the meaning of any ambiguous statutory provision. In this way, Chevron seems no less than a judge-made doctrine for the abdication of the judicial duty. Of course, some role remains for judges even under Chevron. At Chevron step one, judges decide whether the statute is "ambiguous," and at step two they decide whether the agency's view is "reasonable."

Gutierrez-Brizuela v. Lynch, 834 F.3d 1142, 1151-52 (10th Cir. 2016) (Gorsuch, J., concurring) (brackets in original). What he said of Chevron is equally true of Harnischfeger: "But where in all this does a court interpret the law and say what it is? When does a court independently decide what the statute means and whether it has or has not vested a legal right in a person? Where Chevron applies that job seems to have gone extinct." Gutierrez-Brizuela, 834 F.3d at 1152 (Gorsuch, J., concurring).[35]

[35] Justice Ann Walsh Bradley does not believe our deference doctrine cedes our core judicial power to administrative agencies: "[C]ontrary to the majority/lead opinion's assertion, agency deference does not remove from the court its interpretive role and cede it to the agency." Justice Ann Walsh Bradley's concurrence, ¶119. She says we still must engage in the exercise of statutory construction so that we may compare our interpretation to the agency's because "[o]nly reasonable interpretations are worthy of deference." See id. Yes, but that says nothing about whose "reasonable interpretation" controls the case. If we interpret a statute for ourselves, but then set it aside in favor of the agency's interpretation, we have ceded our authority. The point of the interpretive exercise is not to see if we are as good at it as an administrative agency; it is to apply the results of our efforts to the case before us. If we fail to do that, then we have failed to act as a court.

¶62 Indeed, it has. And that presents a related, and equally serious problem.

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¶63 Ceding judicial power to an administrative agency is, from a separation of powers perspective, unacceptably problematic; it is problematic along a different axis when that agency appears in our courts as a party. The non-agency party may reasonably ask whether our deference doctrine will deprive him of an impartial decisionmaker's exercise of independent judgment, and, thereby, the due process of law.[36]

¶64 The United States Supreme Court says that a "fair trial in a fair tribunal is a basic requirement of due process." In re Murchison, 349 U.S. 133, 136 (1955). We have remarked that this proposition is so plain as to be axiomatic. State v. Herrmann, 2015 WI 84, ¶25, 364 Wis. 2d 336, 867 N.W.2d 772. But there cannot be a fair trial without a constitutionally acceptable decisionmaker: "It is, of course, undisputable that a minimal rudiment of due process is a fair and impartial decisionmaker." Guthrie v. WERC, 111 Wis. 2d 447, 454, 331 N.W.2d 331 (1983). Our commitment to this principle is such that we do not accept even the appearance of bias: "[W]hen

[36] "Procedural due process under the Fourteenth Amendment to the United States Constitution and Article I, Section 1 of the Wisconsin Constitution protect against government actions that deprive an individual of life, liberty, or property without due process of the law." Adams v. Northland Equip. Co., 2014 WI 79, ¶64, 356 Wis. 2d 529, 850 N.W.2d 272.

determining whether a defendant's right to an objectively impartial decisionmaker has been violated we consider the appearance of bias in addition to actual bias. When the appearance of bias reveals a great risk of actual bias, the presumption of impartiality is rebutted, and a due process violation occurs." Herrmann, 364 Wis. 2d 336, ¶46. Therefore, a biased decisionmaker is "constitutionally unacceptable." Withrow v. Larkin, 421 U.S. 35, 47 (1975).[37]

¶65 We have already concluded that our deference doctrine cedes to administrative agencies some of our exclusive judicial powers. It necessarily follows that when that agency comes to us as a party in a case, it—not the court—controls some part of the litigation. When questions of law arise, the court serves as a gatekeeper to adjudge compliance with the Harnischfeger prerequisites. But once the court completes that task, it receives instruction from the governmental party on how to interpret and apply the rule of decision.

¶66 When a court defers to the governmental party, simply because it is the government, the opposing party is unlikely to

[37] Our Code of Judicial Conduct reflects the foundational importance of keeping core judicial power in the hands of an independent judiciary: "Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us." SCR ch. 60, Preamble. The comment to the first rule (SCR 60.02) says that our institutional legitimacy depends on this principle. "Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of the judges." SCR 60.02 cmt.

be mollified with assurances that the court bears him no personal animus as it does so.[38] The injury arises not from the reason the court favors one party over another, but from the fact that the court has a favorite at all.[39] As Professor Phillip Hamburger observed, "when judges defer to the executive's view of the law, they display systematic bias toward one of the parties." Philip Hamburger, Chevron Bias, 84 Geo. Wash. L. Rev. 1187, 1212 (2016). Harnischfeger deference, like Chevron deference, "is an institutionally declared and thus systematic precommitment in favor of the government." Cf. Hamburger, supra ¶66, at 1211.

¶67 This systematic favor deprives the non-governmental party of an independent and impartial tribunal. Justice David Prosser sounded the alarm on this issue in Hilton ex rel. Pages Homeowners' Association v. DNR, 2006 WI 84, ¶¶54-55, 293 Wis. 2d 1, 717 N.W.2d 166 (Prosser, J., concurring). When great weight deference applies, he said, "[t]he supreme court and other Wisconsin courts are expected to rationalize and rubberstamp the agency's decision unless the agency's legal

[38] "The danger to independent judgment arises whenever judges relinquish their judgment in any degree, and the danger of systematic bias arises whenever judges show greater respect for the legal position of one party than that of the other." Philip Hamburger, Chevron Bias, 84 Geo. Wash. L. Rev. 1187, 1202 (2016).

[39] "Of course, the bias arises from institutional precedent rather than individual prejudice, but this makes the bias especially systematic and the Fifth Amendment due process problem especially serious." Id. at 1189.

interpretation is plainly wrong. The result is that many litigants have lost their right to a decision by an independent judiciary." Id.; see also Gabler, 376 Wis. 2d 147, ¶39 (indicating that "[i]f the judiciary passively permits [the executive] branch to arrogate judicial power unto itself, however estimable the professed purpose for asserting this prerogative, the people inevitably suffer" because they lose "their independent arbiters of the law"); Roggensack, supra ¶18, at 546 ("Indeed, some writers who have examined judicially created decision-avoidance doctrines have stated that when 'the scope of review is too limited, the right to review itself becomes meaningless.'" (quoted source omitted)).

¶68 The situation appears no better when considered from the agency's perspective. When an administrative agency interprets and applies the law in a case to which it is a party, it is to that extent acting as judge of its own cause. By the time the Framers condemned such an arrangement, the rationale had already been a part of our wisdom literature for centuries:

> No man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men, are unfit to be both judges and parties, at the same time; . . . .

The Federalist No. 10, at 59 (James Madison) (Jacob Cooke ed., 1961).[40] Echoing Madison, the United States Supreme Court said that "no man can be a judge in his own case[,] and no man is permitted to try cases where he has an interest in the outcome." In re Murchison, 349 U.S. at 136.

¶69 An administrative agency has an obvious interest in the outcome of a case to which it is a party. Yet, our deference doctrine commits the rule of decision to its hands anyway. It is entirely unrealistic to expect the agency to function as a "fair and impartial decisionmaker" as it authoritatively tells the court how to interpret and apply the law that will decide its case. Because it cannot do so, deference threatens the most elemental aspect of a fair trial.[41] Guthrie, 111 Wis. 2d at 454 ("[A] minimal rudiment of due process is a fair and impartial decisionmaker."). This is not to question the agency's good faith, which we presume. It is

[40] Sir Edward Coke said "it is a maxime in law, aliquis non debet esse judex in propria causa." 1 Edward Coke, Institutes of the Laws of England § 212 (James & Luke G. Hansard & Sons 19th ed. 1832) (1628). He said so in English, too: "[I]t is against reason, that if wrong be done any man, that he thereof should be his own judge." Id.; see also Dr. Bonham's Case, 77 Eng. Rep. 646, 652, 8 Co. Rep. 113 (1610) (in which Sir Coke applied this maxim).

[41] This is not to say an administrative agency cannot satisfy the due process requirement of an impartial decisionmaker as it decides contested cases within the executive branch. And nothing in our opinion today should be understood to question that.

merely to join with the ancients in recognizing that no one can be impartial in his own cause.

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¶70 As a postscript to this issue, it is worth recalling that great weight deference is a creature of our own making—that is, nothing in our statutes called it into being. If anything, the relevant provision under which we normally review agency decisions militates against it. Subsection 227.57(5) says:

> The court shall set aside or modify the agency action if it finds that the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law.

Wis. Stat. § 227.57(5). This says nothing about comparing our interpretation of the law to that of the agency, or gatekeeping, or reasonableness. Instead, the statute says the court is to decide whether the agency has "erroneously interpreted a provision of law." Id. And the court is to determine the "correct interpretation of the provision of law." Id. This formulation recognizes the proper residence of our core judicial powers.

5. "Due Weight" Deference Considered

¶71 "Due weight," as a principle, entered our jurisprudence through a statute, but over time our cases grafted it into the administrative deference doctrine. The original statutory foundation, however, is still there, and is just as

viable as it was before. Today, we restore the principle of "due weight" to its original form by removing the patina of "deference" with which our cases have covered it.

¶72 It is true that due weight deference presents a threat to our core powers that is less extensive than that presented by great weight deference. It has been said that "in most situations, applying due weight deference will lead to the same result as would applying no deference at all." MercyCare Ins. Co. v. Wis. Comm'r of Ins., 2010 WI 87, ¶37, 328 Wis. 2d 110, 786 N.W.2d 785; see also Operton, 375 Wis. 2d 1, ¶22 ("We note here that there is little difference between due weight deference and no deference, since both situations require us to construe the statute ourselves." (internal quotation mark omitted) (quoting Cty. of Dane v. LIRC, 2009 WI 9, ¶19, 315 Wis. 2d 293, 759 N.W.2d 571)).

¶73 The threat presented by due weight deference is less, however, only in the sense that the preconditions that justify the agency's exercise of our exclusive power are fulfilled more rarely. When the "due weight" preconditions are satisfied,[42] we must defer to the agency when our respective views of the law,

[42] The preconditions are that: (1) "the statute is one that the agency was charged with administering"; and (2) "the agency has at least some expertise in the interpretation of the statute in question." Operton, 375 Wis. 2d 1, ¶20 (quoting Racine Harley-Davidson, Inc., 292 Wis. 2d 549, ¶107 (Roggensack, J., concurring) (internal quotation mark omitted)).

while different, are equally reasonable.[43] When there is equipoise, the court cedes its core judicial power just as surely as if great weight deference had applied. Infrequency does not make the cession appropriate.

¶74 Nor does cession become acceptable because the agency has less latitude in exercising our power under due weight deference than it does under great weight deference. In Racine Harley-Davidson, Inc., 292 Wis. 2d 549, ¶¶14-15, we suggested that granting deference did not abandon our judicial power because we retained the authority to establish the guardrails within which the agency exercised that power. See id. (emphasizing that the court decides "whether deference is due," "what level of deference is due," and "the reasonableness of the agency interpretation"). But providing the agency with even the most exacting tutelage on how to exercise our power does not change the fact that it is exercising our power. It is the fact of cession, not its frequency or latitude, that implicates separation of powers and due process concerns. The power within the guardrails is part of our core, and so we may not parcel it out in even the smallest of doses. Therefore, due weight deference and great weight deference are structurally unsound for the same reasons.

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[43] See UFE Inc., 201 Wis. 2d at 287 n.3 (stating that under due weight deference, "an equally reasonable interpretation of a statute should not be chosen over the agency's interpretation").

¶75 On the other hand, "due weight"—in its statutory form—presents no such concerns. There are five provisions in Wis. Stat. § 227.57 that address how we handle questions of law in reviewing an agency's decision:

> (3) The court shall separately treat disputed issues of agency procedure, interpretations of law, determinations of fact or policy within the agency's exercise of delegated discretion.
>
> . . . .
>
> (5) The court shall set aside or modify the agency action if it finds that the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law.
>
> . . . .
>
> (8) The court shall reverse or remand the case to the agency if it finds that the agency's exercise of discretion is . . . in violation of a constitutional or statutory provision; . . . .
>
> . . . .
>
> (10) Subject to sub. (11), upon such review due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred upon it.
>
> (11) Upon review of an agency action or decision affecting a property owner's use of the property owner's property, the court shall accord no deference to the agency's interpretation of law if the agency action or decision restricts the property owner's free use of the property owner's property.

Wis. Stat. § 227.57(3), (5), (8), (10)-(11).

¶76 None of these provisions direct us to defer to an agency's interpretation or application of the law. To the contrary, subsection (3) tells us to treat questions of law separately from all other matters in the case (reminiscent of the analytical approach mentioned in Pabst); subsection (5) recognizes the court, not the agency, as the law-declaring body; and subsection (8) calls for us to test an agency's exercise of discretion against relevant constitutional and statutory provisions (without any suggestion that the agency is to decide what those provisions mean).

¶77 We find the legislature's commendation of administrative agencies in subsection (10). There, we learn we are to give "due weight" (subject to subsection (11)—more about that later) to the "experience, technical competence, and specialized knowledge of the agency involved." From our earliest days we have recognized that the state's agencies develop a valuable perspective, unique to them, as they administer the laws within their portfolios. See Harrington, 28 Wis. at 69 (finding it significant that "the office of attorney general ha[d] been filled by nine different individuals, all of them gentlemen of learning and accomplishment in their profession"); see also Motor Transp. Co. v. Pub. Serv. Comm'n, 263 Wis. 31, 43, 56 N.W.2d 548 (1953) (recognizing that "the Public Service Commission possesses wide experience and much technical knowledge in the field of regulation of motor-carrier transportation of property"). It was, in fact, our appreciation for that collected wisdom that originally led to our deference

doctrine. See Roggensack, supra ¶18, at 557 (referring to the "oft-cited foundation for deferring to agency decisions, administrative expertise").

¶78 Recognizing that administrative agencies can sometimes bring unique insights to the matters for which they are responsible, however, does not mean we should defer to them. And there is nothing in Wis. Stat. § 227.57(10) that suggests we should. We believe the Department accurately described the meaning and effect of this provision. It acknowledged that giving "due weight" to an agency's experience, technical competence, and specialized knowledge will not "oust the court as the ultimate authority or final arbiter" of the law. Instead, it said, "due weight" means giving "respectful, appropriate consideration to the agency's views" while the court exercises its independent judgment in deciding questions of law. We agree. "Due weight" is a matter of persuasion, not deference.

¶79 But "due weight" is not a talisman that automatically grants its bearer additional rhetorical power. If an agency brings to court nothing but a rote recitation of its background with the subject matter, it should not expect the statutory directive to give its argument extra heft. The agency should be prepared to explain how its experience, technical competence, and specialized knowledge give its view of the law a significance or perspective unique amongst the parties, and why that background should make the agency's view of the law more persuasive than others. As we assess the persuasiveness of the

agency's perspective, we will consider the same types of factors that formerly informed our deference doctrine, to wit: (1) whether the legislature made the agency responsible for administering the statute in question; (2) the length of time the administrative agency's interpretation has stood; (3) the extent to which the agency used its expertise or specialized knowledge in developing its position; and (4) whether the agency's perspective would enhance uniformity and consistency of the law.

¶80 Before concluding our "due weight" analysis, we must still account for the effect of Wis. Stat. § 227.57(11). This provision says that "[u]pon review of an agency action or decision affecting a property owner's use of the property owner's property, the court shall accord no deference to the agency's interpretation of law if the agency action or decision restricts the property owner's free use of the property owner's property." § 227.57(11). The plain meaning of this subsection is that the court should forswear deference to an agency's interpretation of the law in the identified circumstances. The legislature added this subsection in 2015, and simultaneously made subsection (10) subject to its provisions. 2015 Wis. Act 391, §§ 30, 31. By doing so, the legislature necessarily implied that it understood subsection (10) as allowing the court to defer to an agency's interpretation of law. Even though the text of that subsection says nothing about deference, there was good reason to understand it that way. By the time subsection (11) entered the statutes, our treatment of both

"great weight" and "due weight" had long since matured into our current deference doctrine. Adding subsection (11), therefore, exempted the identified circumstances not from a statutory command, but from the decision-avoidance effects of our deference doctrine. Consequently, we understand subsection (11) as a partial dismantling of our deference doctrine. Our decision today completes the process.

¶81 By returning "due weight" to its statutory roots, and ending our erstwhile deference, we honor the requirements of Wis. Stat. § 227.57(10), the separation of powers, and the parties' due process interests. We agree with now-Justice Gorsuch's observations about the benefits of rejecting decision-avoidance doctrines like ours:

> [D]e novo judicial review of the law's meaning would limit the ability of any agency to alter and amend existing law. It would avoid the due process and equal protection problems of the kind documented in our decisions. It would promote reliance interests by allowing citizens to organize their affairs with some assurance that the rug will not be pulled from under them tomorrow, the next day, or after the next election.

Gutierrez-Brizuela, 834 F.3d at 1158 (Gorsuch, J., concurring).

6. Standard of Review

¶82 We are mindful that our decision today represents a significant break with the way we have reviewed agency decisions since at least Harnischfeger, and in some respects, since Pabst. The principle of stare decisis counsels that we depart from our precedents only when circumstances unavoidably superannuate our commitment to them. Typically, that occurs when:

> (1) [c]hanges or developments in the law have undermined the rationale behind a decision; (2) there is a need to make a decision correspond to newly ascertained facts; (3) there is a showing that the precedent has become detrimental to coherence and consistency in the law; (4) the prior decision is "unsound in principle;" or (5) the prior decision is "unworkable in practice."

Bartholomew v. Wis. Patients Comp. Fund, 2006 WI 91, ¶33, 293 Wis. 2d 38, 717 N.W.2d 216 (quoted source omitted).

¶83 We are leaving our deference doctrine behind because it is unsound in principle. It does not respect the separation of powers, gives insufficient consideration to the parties' due process interest in a neutral and independent judiciary, and "risks perpetuating erroneous declarations of the law." Operton, 375 Wis. 2d 1, ¶73 (R. Grassl Bradley, J., concurring). Although persistency of our precedents normally protects the rule of law, sometimes "[w]e do more damage to the rule of law by obstinately refusing to admit errors, thereby perpetuating injustice, than by overturning an erroneous decision." See Johnson Controls, Inc. v. Emp'rs Ins. of Wausau, 2003 WI 108, ¶¶97, 100, 264 Wis. 2d 60, 665 N.W.2d 257.

¶84 Today, the core judicial power ceded by our deference doctrine returns to its constitutionally-assigned residence. Henceforth, we will review an administrative agency's conclusions of law under the same standard we apply to a circuit court's conclusions of law—de novo. See Mitchell Bank v. Schanke, 2004 WI 13, ¶24, 268 Wis. 2d 571, 676 N.W.2d 849 ("We review legal conclusions of the circuit court de novo."). As with judicial opinions, we will benefit from the administrative agency's analysis, particularly when they are supplemented by the "due weight" considerations discussed above. Cf. Megal Dev. Corp. v. Shadof, 2005 WI 151, ¶8, 286 Wis. 2d 105, 705 N.W.2d 645 ("While the review is de novo, this court benefits from the analyses of the circuit court and the court of appeals."). And, as always, we review the administrative agency's decision, not that of the circuit court. Ho-Chunk Nation v. DOR, 2009 WI 48, ¶12, 317 Wis. 2d 553, 766 N.W.2d 738 ("In a case that involves a ruling by the Commission, we review the Commission's decision rather than the decision of the circuit court."). The facts in this case are undisputed, so we address only questions of law. See Vogel v. Grant-Lafayette Elec. Co-op., 201 Wis. 2d 416, 422, 548 N.W.2d 829 (1996) ("Whether the facts of a particular case fulfill a legal standard is a question of law we review de novo.").

7. Discontinuing Deference for Administrative Reasons

¶85 We created our deference doctrine ex nihilo, and so it is within our power to end it simply by declaring it at an end. Some members of the court prefer that option—discard the

doctrine not because the constitutional problems require its abandonment, but merely because we have chosen to drop it. However, just because we can do this does not make it wise. Indeed, stare decisis exists as a principle for the sole purpose of counseling against that option.

¶86 Justice Gableman provided a thoughtful account of why he would end the deference doctrine on non-constitutional grounds. Ultimately, however, his rationale still depends on the separation of powers—sotto voce, to be sure, but undeniably. Thus, for example, he says our deference doctrine is unsound in principle because "deference (especially great weight deference), if correctly and honestly applied, leads to the perverse outcome of courts often affirming inferior interpretations of statutes." Justice Gableman's concurrence, ¶166. That is indubitably true. But it is true only if one already subscribes to the proposition that our interpretation enjoys pride of place over that of the administrative agency. We should not be surprised to learn, however, that an administrative agency might believe its own interpretation is superior to ours. Indeed, we should expect no less from an agency engaged in a good faith effort to do its job. From the agency's perspective, therefore, our deference doctrine creates no perversity at all; instead, it gives the statute the best possible interpretation: Its own. So when Justice Gableman says that "[i]n our role as court of last resort, we should

ensure that erroneous-but-reasonable legal conclusions are corrected,"[44] he is making a separation of powers assertion—to wit, the court is the authoritative arbiter of the law in the case before us, and our opinion must prevail over that of the other branches. Without that constitutional impetus, there is no fuel for his "unsound in principle" analysis.

¶87 Justice Gableman also says newly-ascertained facts provide a non-constitutional basis for ending deference.[45] Specifically, he notes that part of the justification for the doctrine was the assumed subject-matter expertise of the agency decision-makers. He questions whether they really do have such expertise, and then concludes: "We may say that it is only a matter of speculation that agency decision-makers possess less expertise than courts when it comes to interpreting various statutes. Importantly, it is equally a matter of speculation that they possess more."[46] So as Justice Gableman acknowledges, these are not newly-ascertained facts, they are newly-ascertained speculations. Our deference doctrine has defined the relationship between administrative agencies and the judiciary for over two decades now. Speculation about a hearing

[44] Justice Gableman's concurrence, ¶166.

[45] Id., ¶167.

[46] Id.

examiner's expertise seems an especially diaphanous justification for upending this settled history.[47]

¶88 The members of the court who would end our deference doctrine for administrative reasons do so out of a desire to avoid a constitutional analysis. But as Justice Gableman's concurrence demonstrates, it is impossible to describe a substantive reason for ending the doctrine without at least an unspoken appeal to constitutional principles. We do no good service by avoiding an analysis that so obviously demands our attention.

*

¶89 Justice Ziegler would also prefer dispensing with our deference doctrine for administrative reasons because she is concerned about how our decision will affect the finality of past cases. The source of her concern is not entirely clear—this decision is incapable of reopening cases that have already been decided.[48] If they were final upon release of this opinion, their finality will go on undisturbed by our decision today. Relief from the judgment of a case is governed by Wis. Stat.

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[47] Justice Gableman also says our deference doctrine has not delivered on promised gains in judicial efficiency. Id., ¶165. But the court has not been made aware of any study performing a differential analysis of litigative effort before and after Harnischfeger. So this, too, is a matter of speculation.

[48] Justice Ann Walsh Bradley shares Justice Ziegler's concern about the effect of our decision on the finality of previously decided cases. See Justice Ann Walsh Bradley's concurrence, ¶131.

§ 806.07. Justice Ziegler thinks our rationale would allow a party to successfully reopen a case for several of the reasons mentioned in that statute, including "[m]istake" (para. (a)), or because "[t]he judgment is void" (para. (d)), or because "[a] prior judgment upon which the judgment is based has been reversed" (para. (f)), or for "[a]ny other reasons justifying relief from the operation of the judgment" (para. (h)). Justice Ziegler's concurrence, ¶139 n.3. She cites no authority for this proposition, nor could she.

¶90 Justice Ziegler's concern cannot be realized here for the same reason it has never been realized when we overrule one of our prior decisions. That has never occurred because overruling a case does not expose to collateral attack any of the intervening decisions that were based on the overruled case. "To the contrary," Justice Ziegler says, "overruling one of our prior decisions[] can quite obviously have significant impact on other cases." Id. But for over twenty years the impossibility of her concern has been black-letter law: "The statute [§ 806.07] does not authorize relief from a judgment on the ground that the law applied by the court in making its adjudication has been subsequently overruled in an unrelated proceeding." Schauer v. DeNeveu Homeowner's Ass'n, Inc., 194 Wis. 2d 62, 75, 533 N.W.2d 470 (1995).[49] True, as Justice Ziegler observed, Schauer specifically addressed the

[49] By "black-letter law," we mean that Schauer appears in the annotations for Wis. Stat. § 806.07.

circumstance in which "[a] prior judgment upon which the judgment is based has been reversed." See Wis. Stat. § 806.07(1)(f); Justice Ziegler's concurrence, ¶139 n.3. But that's why the case is so instructive. The whole point of Schauer's analysis was that when a court enters judgment in reliance on specific case precedent, the judgment's finality is entirely unaffected if the precedent is subsequently reversed. That's exactly the concern that Justice Ziegler expressed, and Schauer says "don't worry."

¶91 The other provisions of Wis. Stat. § 806.07 provide no cause for worry either. If a reversed precedent cannot stand in for a prior reversed judgment, there is no logical process—no matter how much it might resemble a Rube Goldberg machine—by which it could stand in for a "void judgment" under paragraph (d). And the catch-all "[a]ny other reasons justifying relief" is not worry-inducing because "[t]he general rule is that 'a change in the judicial view of an established rule of law is not an extraordinary circumstance which justifies relief from a final judgment under [Wis. Stat. § 806.07(1)(h)].'" Allstate Ins. Co. v. Brunswick Corp., 2007 WI App 221, ¶7, 305 Wis. 2d 400, 740 N.W.2d 888 (alteration in original) (quoted source omitted) (capitalization omitted); accord Schwochert v. Am. Family Mut. Ins. Co., 166 Wis. 2d 97, 103, 479 N.W.2d 190 (Ct. App. 1991), aff'd, 172 Wis. 2d 628, 494 N.W.2d 201 (1993) (same). Finally, the "[m]istake" provision of § 806.07(1)(a) can raise no alarm because it is never a mistake (within the meaning of this statute) for a court to rely on our

precedent. Subsequently overruling the precedent cannot, to a metaphysical certainty, make an intervening court's reliance on the precedent a "mistake"—unless, that is, we are to presume the intervening court's ability to look forward in time to espy our change before we make it.

¶92 Justice Ziegler's concern is unknown to the law. And she has identified no mechanism by which this unrealizable fear could possibly come to pass.

¶93 Justice Ann Walsh Bradley and Justice Ziegler are also concerned about whether our decision will adversely affect the precedential authority of cases decided pursuant to our now-discarded deference doctrine. To the extent a court favored an agency's conclusion of law over its own, that conclusion is now part of the judgment of the case and an inextricable part of the opinion. Consequently, its precedential and controlling effect will be the same as if the court had based the decision on its own interpretation. The only future effect of our decision is that courts, rather than administrative agencies, will decide questions of law. If that prospect is sufficient to raise an alarm against impending "tumult" (see Justice Ann Walsh Bradley's concurrence, ¶120), then we have more to worry about than a deference doctrine.

B. "Processing" River Sediments

¶94 Now that we have identified the proper standard of review, we can address the petitioners' argument that they are not subject to the tax imposed by Wis. Stat. § 77.52(2). This statute provides that:

> For the privilege of selling, performing or furnishing the services described under par. (a) at retail in this state to consumers or users, a tax is imposed upon all persons selling, performing or furnishing the services at the rate of 5% of the gross receipts from the sale, performance or furnishing of the services.

§ 77.52(2). The services to which this provision refers include the following:

> The producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting. This subdivision does not apply to the printing or imprinting of tangible personal property that results in printed material, catalogs, or envelopes that are exempt under s. 77.54(25) or (25m).

§ 77.52(2)(a)11.

¶95 The parties agree that, in this case, the petitioners are liable for the tax imposed by the Department only if Stuyvesant Dredging received compensation for "processing" tangible personal property it received (directly or indirectly) from the petitioners. The parties also agree that the river sediment comprised tangible personal property, that Stuyvesant Dredging received compensation for the work it performed on the river sediment, and that the river sediment was furnished by the

petitioners.[50] Therefore, the only question is whether Stuyvesant Dredging's work constituted "processing."

¶96 Because this case turns on the meaning of the term "processing" in Wis. Stat. § 77.52(2)(a)11., our task involves discerning the meaning of statutory text. We discover a statute's meaning in its text, context, and structure. "[S]tatutory interpretation begins with the language of the statute," and we give that language its "common, ordinary, and accepted meaning." State ex rel. Kalal v. Circuit Court for Dane Cty., 2004 WI 58, ¶¶45-46, 271 Wis. 2d 633, 681 N.W.2d 110 (internal mark and quoted source omitted) ("Context is important to meaning. So, too, is the structure of the statute in which the operative language appears. Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; . . . ."). In performing this analysis, we carefully avoid ascribing an unreasonable meaning to the text. See id., ¶46 ("[S]tatutory language is interpreted . . . reasonably, to avoid absurd or unreasonable results."). If we determine the statute's plain meaning through this methodology, we go no further. Id., ¶¶45-46 ("If the meaning of the statute is plain, we ordinarily stop the inquiry." (internal mark and quoted source omitted)). See

[50] Tetra Tech engaged J.F. Brennan Co., Inc. to dredge the contaminated sediments and deliver them to Stuyvesant Dredging for separation.

generally Daniel R. Suhr, Interpreting Wisconsin Statutes, 100 Marq. L. Rev. 969 (2017).

¶97 Our statutes do not define the term "processing." Consequently, the Commission turned to a dictionary to assist its analysis, stating "[t]he dictionary definition of 'processing' is 'to put through the steps of a prescribed procedure; or, to prepare, treat, or convert by subjecting to a special process.'" The petitioners reject this definition, arguing that it is so broad it transforms a narrow and selective tax statute into a general tax on all services related to tangible personal property. They would instead have us find the term's meaning in the Administrative Code. Specifically, they propose Wis. Admin. Code § Tax 11.38(2) (June 1993), which provides:

> Fabricating and processing services, where materials are furnished directly or indirectly by the customer, that are subject to Wisconsin sales or use tax include, except as provided in sub. (1)(a) through (c):
>
> (a) Application of coating to pipe.
>
> (b) Assembling kits to produce a completed product.
>
> (c) Bending glass tubing into neon signs.
>
> (d) Bookbinding.
>
> (e) Caterer's preparation of food for consumption on or off the caterer's premises.
>
> (f) Cleaning used oil.
>
> (g) Cutting lumber to specifications and producing cabinets, counter tops or other items from lumber for customers, often called "millending."

(h) Cutting or crushing stones, gravel or other construction materials.

(i) Drying, planing or ripping lumber.

(j) Dyeing or fireproofing fabric.

(k) Fabricating steel which may involve cutting the steel to length and size, bending and drilling holes in the steel to specifications of a particular construction job.

(L) Firing of ceramics or china.

(m) Heat treating or plating.

(n) Laminating identification cards.

(o) Making a fur coat from pelts, gloves or a jacket from a hide.

(p) Making curtains, drapes, slip covers or other household furnishings.

(q) Production of a sound recording or motion picture.

(r) Retreading tires.

(s) Tailoring a suit.

(t) Threading pipe or welding pipe.

Wis. Admin. Code § Tax 11.38(2)(a)-(t).

¶98 Although we conclude that Stuyvesant Dredging "processed" the river sediment into its constituent parts, we do not believe either party provided a satisfactory definition of the term. The petitioners rely on Wis. Admin. Code § Tax 11.38(2) as an exhaustive recitation of "processing" services subject to Wisconsin's sales and use tax. Because the separation of river sediment does not appear in this list, they conclude that the principle expressio unius est exclusio alterius excludes Stuyvesant Dredging's services from the

statute's reach. This canon of statutory construction would be helpful if the list of services were meant to be exhaustive, rather than illustrative. But this is a tool of elucidation only—it has no power to contradict the code's text. And by its own terms, § Tax 11.38(2) contains an illustrative list, not a comprehensive one. The operative language says: "Fabricating and processing services, . . . that are subject to Wisconsin sales or use tax include, ..." Id. (emphasis added). The term "include" tells us that what follows is not exhaustive. See State v. James P., 2005 WI 80, ¶26, 281 Wis. 2d 685, 698 N.W.2d 95 ("[G]enerally, the word 'includes' is to be given an expansive meaning, indicating that which follows is but a part of the whole." (quoting Wis. Citizens Concerned for Cranes & Doves v. DNR, 2004 WI 40, ¶17 n.11, 270 Wis. 2d 318, 677 N.W.2d 612)). Further, even if it wished to, it is doubtful that the Department could restrict the scope of Wis. Stat. § 77.52(2) through the promulgation of § Tax 11.38(2). The petitioners identify no authority giving the Department power to either broaden or constrict the types of services subject to sales and use taxes. So it does not appear there is any way in which we could read § Tax 11.38(2) as a complete definition of "processing."

¶99 As an illustrative list, Wis. Admin. Code § Tax 11.38(2) is similarly unhelpful to the petitioners' cause. The petitioners say they purchased services that involved nothing more than "separating" tangible personal property into its components. But this could be said of cleaning used oil, too,

which presumably involves separating contaminants from the oil. See § Tax 11.38(2)(f). The petitioners also say that Stuyvesant Dredging's work cannot be understood as "processing" because it neither added nor subtracted anything from the personal property on which it performed its services. This could be said with equal accuracy of those who crush stones, and yet that service is part of the Department's illustrative list. See § Tax 11.38(2)(h). So § Tax 11.38(2) does not advance the petitioners' argument because it is not an exclusive list of "processing" activities, and because, as an illustrative list, it describes activity analogous to Stuyvesant Dredging's work.

¶100 But the petitioners have a legitimate concern about the breadth of the Commission's definition of "processing." That term stands cheek by jowl with "producing," "fabricating," "printing," and "imprinting" in Wis. Stat. § 77.52(2)(a)11. If "processing" really comprehends everything that puts tangible physical property "through the steps of a prescribed procedure," or applies a "special process" to "prepare, treat, or convert" it, then the term swallows all of its sentence-mates. For example, "producing" means "to make or manufacture (a product or commodity) from components or raw materials." Producing, The Oxford English Dictionary (2d ed. 1989) (definition 3.e.). Manufacturing something would certainly involve putting tangible property through the steps of a prescribed procedure. Similarly, "fabricating" means "[t]o make anything that requires skill; to construct, manufacture." Fabricating, The Oxford English Dictionary (2d ed. 1989) (definition 1.a.).

Fabricating, like producing, puts property through a prescribed procedure. And "printing" means "[t]o make or produce (text, a book, a picture, etc.) by a mechanical process involving the transfer of characters or designs on to paper, vellum, etc." Printing, The Oxford English Dictionary (2d ed. 1989) (definition II.8.a.). And finally, "imprinting" means "[t]o mark by pressure; to impress, stamp," "[t]o impress (letters or characters) on paper or the like by means of type," and "[t]o make an impression or impressed figure upon; to stamp or impress (something) with a figure, etc." Imprinting, The Oxford English Dictionary (2d ed. 1989) (definitions 1.a., 2., and 4.a., respectively). Each of these companion terms could fairly be understood as specific examples of the Commission's definition of "processing." But ascribing such a broad meaning to that word would make surplusage of all the companion terms. Whenever possible, we avoid reading statutory language in a fashion that leaves some of it with no work to do. Kalal, 271 Wis. 2d 633, ¶46 ("Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage.").

¶101 Therefore, we must understand "processing" to bear a meaning that does not displace all of the other descriptors in Wis. Stat. § 77.52(2)(a)11. We begin with the purpose of subdivision 11., which is to identify categories of services performed on tangible personal property that are subject to Wisconsin's sales and use tax. As we pursue the proper meaning of "processing," its companion terms provide invaluable

assistance. The noscitur a sociis canon of construction (literally, "it is known from its associates") instructs that "[w]hen two or more words or phrases are listed together, the general terms . . . may be defined by the other words and understood in the same general sense." Schill v. Wis. Rapids Sch. Dist., 2010 WI 86, ¶66, 327 Wis. 2d 572, 786 N.W.2d 177; accord State v. Quintana, 2008 WI 33, ¶35, 308 Wis. 2d 615, 748 N.W.2d 447 ("[A]n unclear statutory term should be understood in the same sense as the words immediately surrounding or coupled with it." (quoted source omitted)). Because the structure of the text indicates that the terms are of equal dignity, we will not read any one of them to swallow the others. Although the types of services may share some (and even many) common characteristics, each will retain an independent meaning so long as it has at least one attribute distinct from the others. With these principles in mind, we can discern a meaning for "processing" that is informed by, and consistent with, its associates.

¶102 Based on the definitions above, we see that "fabricating" is distinct from its associates in that it requires skill in the construction or manufacture of a final product. "Producing" contemplates the creation of a final product from the combination of components or raw materials, a characteristic that is not necessarily encompassed by "fabricating," which could describe the manufacture of a product out of a single resource. "Printing" differs from the other categories in that it involves "the transfer of characters or

designs" onto a medium. And finally, "imprinting" is unique even from "printing" in that characters or designs are impressed on a medium through pressure (as, for example, metal stamping in which the medium is deformed to depict the character or design).[51]

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[51] Justice Ziegler's concurrence, to the extent it addresses whether "processing" encompasses the activity at issue here, is based in large part on a mistaken impression that the legislature defined "printing" and "imprinting." It did not. She refers to Wis. Stat. § 77.51(11), which says (in full): "'Printing' and 'imprinting' include lithography, photolithography, rotogravure, gravure, letterpress, silk screen printing, multilithing, multigraphing, mimeographing, photostating, steel die engraving and similar processes." This is not a definition. It is an incomplete list of examples. It is not a definition for the same reason we do not consider Wis. Admin. Code § Tax 11.38(2) a definition of "processing," which similarly contains an incomplete list of examples.

Nonetheless, Justice Ziegler finds significance in the title of section 77.51, "Definitions." But this means, quite literally, nothing: "The titles to subchapters, sections, subsections, paragraphs and subdivisions of the statutes and history notes are not part of the statutes." Wis. Stat. § 990.001(6).

And the fact that the legislature did not feel the need to say which category encompasses which activities does not mean printing and imprinting are the same thing (as Justice Ziegler suggests). See Justice Ziegler's, concurrence, ¶143. It means the legislature did not care to separate them into their proper categories, a fact from which no useful information can be drawn. It is theoretically possible to use this illustrative list to develop a definition of "printing" or "imprinting." But that would involve first defining each of the listed activities, and then extrapolating the constituent elements into a definition for the two terms. Even at that, the result would be uncertain because there is no way to identify the category to which each listed activity belongs. Consequently, recourse to Wis. Stat. § 77.51(11) simply isn't helpful in discovering a definition for "printing" or "imprinting."

¶103 Turning now to the proper meaning of "processing," we know it must contain at least one attribute that is distinct from those described above if it is not to displace its neighbors. The Oxford English Dictionary says "processing" means, in pertinent part, "[t]o subject to or treat by a special process; to operate on mechanically or chemically." Processing, The Oxford English Dictionary (2d ed. 1989) (definition 3.a.). It is poor form to use the defined word in its own definition, mostly because such a construct provides little to no information. Here, this infraction means the first clause tells us nothing but that processing is "special," which is entirely unhelpful. The second clause, however, is instructive. Applying that material to the term "processing" as it appears in Wis. Stat. § 77.52(2)(a)11. yields a meaning with a characteristic distinct from its companions. We conclude that "processing" encompasses the performance of a mechanical or chemical operation on tangible personal property, a task that can be completed without transforming the property into a new product, or adding anything to it that was not already there.[52] "Fabricating" and "producing" both necessarily contemplate the creation of a new product, which makes them distinct from

[52] Our opinion should not be interpreted as an attempt to comprehensively define "processing," "fabricating," "producing," "printing," or "imprinting." With respect to "processing," we conclude the term is at least as broad as we have described. Whether it is more extensive than this is a question we need not answer to resolve this case.

"processing." And both "printing" and "imprinting" require the addition of something to the property that was not there before, which is not a requirement of "processing." Therefore, because we are able to identify a characteristic of "processing" that is distinct from its companions, we have confirmed that it is capable of carrying a meaning that cannot subsume or be subsumed by the others.[53]

¶104 Understood in this fashion, "processing" encompasses Stuyvesant Dredging's separation of river sediment into its component parts. The Commission's Ruling and Order described how this was accomplished. After going through scalping screens, slurry holding tanks, and slurry thickener tanks, the

[53] Justice Ziegler would adopt a definition of "processing" without reference to the other terms in the statute, and apparently without much concern for whether this creates surplusage or results in an extraordinarily broad definition. See Justice Ziegler's concurrence, ¶¶146-53. This loose approach to statutory construction might be acceptable in other contexts, but it is entirely inappropriate when addressing a tax statute, especially this one. Section 77.52 of our statutes covers the sale of both goods and services. See Wis. Stat. § 77.52(1) (goods), (2) (services). With respect to the former, the statute is all-encompassing; in contrast, this statute taxes services only if they are listed. Compare § 77.52(1), with § 77.52(2)(a) ("The tax imposed herein applies to the following types of services: . . . ."). We must make our best effort at determining the specific meaning of the listed types of service because, as we have said before, "a tax cannot be imposed without clear and express language for that purpose, ..." DOR v. Milwaukee Ref. Corp., 80 Wis. 2d 44, 48, 257 N.W.2d 855 (1977). Justice Ziegler dispenses with those restrictions and safeguards by accepting any definition that might encompass Tetra Tech's activities. Perhaps the legislature will one day adopt that approach, but this is not that day.

sediment enters the coarse and fine sand separation operations. The coarse separation operation physically separates, washes, and dewaters sand particles larger than 150 microns from the sludge. The fine sand separation operation does the same for sand particles between 63 and 150 microns. The petitioners confirm that everything Stuyvesant Dredging receives from them is returned. The only difference is that the property is separated into its components. No new product has been created; no chemical transformation has occurred; and the property is still just as contaminated as when Stuyvesant Dredging received it. The work described by the Commission reflects the performance of a mechanical operation on the river sediments. Therefore, petitioners are subject to the sales and use tax of Wis. Stat. § 77.52(2) because Stuyvesant Dredging received compensation for "processing" river sediment received from the petitioners.

¶105 It is unlikely that our definition of "processing" will upset the petitioners' reasonable expectations. The Commission said that Tetra Tech's vice-president of project engineering testified that Stuyvesant Dredging "processed" the river sediment. Similarly, an operations manager who oversaw LFR Remediation's work on the Fox River testified that Stuyvesant Dredging "processed" the river sediment. And the Commission observed that, "[a]t various points in the affidavits and depositions of Petitioner's general manager and experts, they refer to what SDI [Stuyvesant Dredging] does as a 'process' or as 'processing.' That language is also used in many of the

contracts between Tetra Tech and SDI." Although we do not derive the meaning of a statutory term from a party's subjective understanding, we recount this history as confirmation that our analysis has not ventured outside the realm of what those subject to the statute might reasonably anticipate.

¶106 As is apparent from this analysis, we gave little weight to the Commission's understanding of the term "processing." We recognize the legislature charged the Commission with the duty to decide contested cases involving the application of Wis. Stat. § 77.52(2). However, there is no indication the Commission has a long-standing interpretation of what "processing" means for purposes of § 77.52(2)(a)11. Nor does the record intimate that it used any particular experience, technical competence, or specialized knowledge to develop an understanding of that term—it relied on a dictionary. It necessarily follows that the Commission did not bring a unique perspective or significance to the meaning of "processing." Consequently, the "due weight" calculus of Wis. Stat. § 227.57(10) did not increase the persuasiveness of the Commission's conclusion of law.

III. Conclusion

¶107 The petitioners paid Stuyvesant Dredging to process river sediment within the meaning of Wis. Stat. § 77.52(2)(a)11., so they are liable for the sales and use tax imposed by § 77.52(2). Therefore, we affirm the court of appeals.

¶108 We have also decided to end our practice of deferring to administrative agencies' conclusions of law. However, pursuant to Wis. Stat. § 227.57(10), we will give "due weight" to the experience, technical competence, and specialized knowledge of an administrative agency as we consider its arguments.

By the Court.—The decision of the court of appeals is affirmed.

¶109 ANN WALSH BRADLEY, J. *(concurring)*. I concur in the mandate of the court because I agree that the term "processing" as used in Wis. Stat. § 77.52(2)(a)11. encompasses the separation of river sediment into its component parts. See majority/lead op., ¶3.[1] Such a result is compelled whether we

[1] I refer to Justice Kelly's opinion as a "majority/lead" opinion to assist litigants and courts in understanding its precedential value. Justice Kelly's opinion is a majority opinion with regard to the statutory analysis of the term "processing" presented in Section II.B of the majority/lead opinion and the conclusions presented in Section III. See State v. Elam, 195 Wis. 2d 683, 685, 538 N.W.2d 249 (1995) (explaining that "a majority of the participating judges must have agreed on a particular point for it to be considered the opinion of the court."). As set forth in footnote 4 of the majority/lead opinion, it also constitutes a majority in:

- Section I, setting forth the facts (which are not in issue),
- Section II.A.1., providing a review of the current standard for review of agency decisions (which is not subject to reasonable dispute), and
- Section II.A.2., going through the history of the deference doctrine (which is, again, not in issue).

In contrast, "a lead opinion is one that states (and agrees with) the mandate of a majority of the justices, but represents the reasoning of less than a majority of the participating justices." State v. Lynch, 2016 WI 66, ¶143, 371 Wis. 2d 1, 885 N.W.2d 89 (Abrahamson & Ann Walsh Bradley, J.J., concurring in part, dissenting in part) (citing Hoffer Props., LLC v. State, Dep't of Transp., 2016 WI 5, 366 Wis. 2d 372, 874 N.W.2d 553); In re Disciplinary Proceedings Against Riley, 2016 WI 70, ¶¶92-95, 371 Wis. 2d 311, 882 N.W.2d 820 (Abrahamson, J., concurring).

(continued)

give the agency's interpretation great weight, due weight, or no weight at all.

¶110 Further, I agree with the concurrences of Justices Ziegler and Gableman that, consistent with our doctrine of constitutional avoidance, the court need not reach the issue of whether our deference framework violates the Wisconsin Constitution.

¶111 I write separately, however, for two reasons. First, the majority/lead opinion ignores controlling precedent to reach a result that upends decades of administrative law jurisprudence. Similarly, the concurrences of Justices Ziegler and Gableman, while not reaching the constitutional issue, would toss away a framework that has served courts well for decades. Second, the court's misguided wholesale changes create possible unintended consequences and a great deal of uncertainty.

¶112 The court should not so cavalierly discard our past practice. Additionally, its apparent lack of concern for what will become of the jurisprudence that has arisen through deference gives rise to more questions than it answers. Are cases in which courts afforded deference to an agency interpretation still good law? Or do some of these issues need to be relitigated under the new standard of review the court

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A majority of justices do not embrace the reasoning or constitutional analysis set forth in Sections II.A.3 through II.A.6 of the majority/lead opinion. See majority/lead op., ¶3 n.4. The reasoning the majority/lead opinion presents for dispatching with our deference doctrine represents the reasoning of Justices Rebecca Grassl Bradley and Daniel Kelly only.

announces today? The majority/lead opinion's assurances are of little comfort. See Justice Ziegler's concurrence, ¶139 n.3.

¶113 Because I would not jettison a past practice that has served us well, I respectfully concur.

I

¶114 At the outset, I observe that the impetus for dismantling years of administrative law jurisprudence did not come from any party, but from this court. The issue of whether our agency deference doctrine violates the Wisconsin Constitution was not raised by any party to this case before the circuit court, court of appeals, or in the petition for review here. It was this court, sua sponte, that asked that the issue be addressed in the first instance.

¶115 Having raised the issue, the majority/lead opinion fails to follow established precedent when addressing it. Had the majority/lead opinion adhered to our precedent, it would not have arrived at a result that creates such uncertainty. To the contrary, it would have reached the conclusion that our deference doctrine comports with the Wisconsin Constitution. By concluding that our deference doctrine removes the interpretive role of the judiciary, the majority/lead opinion commits legal error.

¶116 Indeed, this court previously examined a very similar question. In Borgnis v. Falk Co., 147 Wis. 327, 358, 133 N.W. 209 (1911), the court addressed an argument that the workers' compensation law "is unconstitutional because it vests judicial power in a body which is not a court and is not

composed of men elected by the people, in violation of those clauses of the state Constitution which vest the judicial power in certain courts and provide for the election of judges by the people . . . ."

¶117 Rejecting the argument, the Borgnis court stated that the commission is "an administrative body or arm of the government which in the course of its administration of a law is empowered to ascertain some questions of fact and apply the existing law thereto, and in so doing acts quasi-judicially, but it is not thereby vested with judicial power in the constitutional sense." Id. (second emphasis added). The court added:

> While acting within the scope of its duty, or its jurisdiction, as it is sometimes called, such a board may lawfully be endowed with very broad powers, and its conclusions may be given great dignity and force, so that courts may not reverse them unless the proof be clear and satisfactory that they are wrong.

Id. at 359.

¶118 Borgnis is on point here. In response to the argument made over a century ago, the Borgnis court suggested that only clear violations of law, i.e. unreasonable interpretations, are outside the jurisdiction of an agency. This is the same foundation underlying our deference framework. Although Borgnis addressed certiorari review, the same principle would apply to review of any administrative decision.

¶119 Further, contrary to the majority/lead opinion's assertion, agency deference does not remove from the court its interpretive role and cede it to the agency. In its

application, deference does not mean accepting an agency's interpretation without a critical eye. Racine Harley-Davidson, Inc. v. State, Div. of Hearings and Appeals, 2006 WI 86, ¶15, 292 Wis. 2d 549, 717 N.W.2d 184. Rather, "[t]he court itself must always interpret the statute to determine the reasonableness of the agency interpretation." Id. Only reasonable interpretations are worthy of deference. Id.

¶120 Not only does the majority/lead opinion throw tumult into a previously well-settled area of the law, but it does so based on a legal error. I would not upset the finality and consistency of our past decisions.

II

¶121 I write next to call attention to the unknown consequences of the court's decision. The court's result represents a tectonic shift in the administrative law landscape. See Operton v. LIRC, 2017 WI 46, ¶71, 375 Wis. 2d 1, 894 N.W.2d 426 (Ziegler, J., concurring) ("There is little doubt that ending the court's practice of according deference to agency interpretations of statutes would constitute a sea change in Wisconsin law[.]"). But on the topic of what this vast and sweeping change means for our prior cases, the majority/lead opinion provides precious little guidance.

¶122 Compounding its error, the majority/lead opinion unwinds our three-tiered system of deference by declaring it unconstitutional where, as Justices Ziegler and Gableman aptly observe, the use of the court's administrative powers would suffice. In doing so, the majority/lead opinion ignores our

usual practice of constitutional avoidance. See State v. Hale, 2005 WI 7, ¶42, 277 Wis. 2d 593, 691 N.W.2d 637 ("Normally this court will not address a constitutional issue if the case can be disposed of on other grounds."). Again, the majority/lead opinion is silent as to the ramifications of constitutionalizing the question. However, even making a decision on administrative grounds, we must consider the ramifications of such a decision.

¶123 The principle of stare decisis militates against the court's conclusion. Stare decisis is based in part on "the desirability that the law furnish a clear guide for conduct of individuals, to enable them to plan their affairs with assurance against untoward surprise[.]" Johnson Controls, Inc. v. Employers Ins. of Wausau, 2003 WI 108, ¶95, 264 Wis. 2d 60, 665 N.W.2d 257 (quoting Moragne v. States Marine Lines, Inc., 398 U.S. 375, 403 (1970)). Parties appearing before agencies and those appealing agency decisions now enter uncharted waters. With no guide, they could be subject to conflicting statutory interpretations that will make it nearly impossible to plan their affairs with any certainty.

¶124 This court, the court of appeals, and circuit courts throughout the state have applied great weight deference and due weight deference going back decades. What is the precedential value of these cases now? Are the principles they divine still good law even though they were reached through the application of a deference doctrine the court eschews today?

¶125 As an example, let's examine a case involving a question of statutory interpretation similar to that at issue

here. In Zip Sort, Inc. v. Wis. DOR, 2001 WI App 185, ¶1, 247 Wis. 2d 295, 634 N.W.2d 99, the court of appeals addressed an agency interpretation of the term "manufacturing property" as used in Wis. Stat. § 70.995.[2]

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[2] Wis. Stat. § 70.995 (1993-94) provides in relevant part:

> (1) APPLICABILITY. (a) In this section "manufacturing property" includes all lands, buildings, structures and other real property used in manufacturing, assembling, processing, fabricating, making or milling tangible personal property for profit . . .
>
> . . .
>
> (d) Except for the activities under sub. (2), activities not classified as manufacturing in the standard industrial classification manual, 1987 edition, published by the U.S. office of management and budget are not manufacturing for this section.
>
> (2) FURTHER CLASSIFICATION. In addition to the criteria set forth in sub. (1), property shall be deemed prima facie manufacturing property and eligible for assessment under this section if it is included in one of the following major group classifications set forth in the standard industrial classification manual, 1987 edition, published by the U.S. office of management and budget. . . . :
>
> . . .
>
> j) 27—Printing, publishing and allied industries.
>
> . . .
>
> (v) 39—Miscellaneous manufacturing industries.

¶126 The question presented was whether Zip Sort's activities entitled it to a "manufacturing property" designation for tax purposes. Zip Sort's primary business was to make mail machine-sortable through the addition of a bar code. Id., ¶3.

¶127 The Department of Revenue determined that such activity did not entitle Zip Sort to a manufacturing classification for its property, and the Tax Appeals Commission agreed. Id., ¶10. In examining this determination, the court of appeals initially set about to determine the proper level of deference to accord to the Department's interpretation of the term "manufacturing property." Id., ¶¶11-22. The court declined to "determine whether the proper standard of review is due weight deference or great weight deference because [it] conclude[d] that the commission's conclusions under § 70.995 at least met the due weight deference standard." Id., ¶22.

¶128 Pursuant to such a standard, the court of appeals determined that the commission's interpretation was reasonable, and that Zip Sort's interpretation was "no more reasonable." Id., ¶34. Accordingly, it affirmed the commission's decision. Id. Whether the commission's interpretation was correct did not enter the analysis.

¶129 If it applied a de novo standard of review, would the Zip Sort court reach the same result? I do not know. However, the Zip Sort decision was reached through the methodology that a majority of this court now disowns (and that several members suggest is contrary to the Wisconsin Constitution). Is what was a settled point of law since 2001 now unsettled? Can businesses

and agencies rely on our past decisions in planning their future activities? The majority/lead opinion's assurances that they can provide little comfort and are thinly supported. See Justice Ziegler's concurrence, ¶139 n.3.

¶130 Zip Sort is not the only case where an appellate court has applied our three-tiered deference methodology. It serves as but one example of the myriad cases where courts have faithfully applied the deference jurisprudence as set forth by this court.

¶131 The court has significantly upset the finality of our past cases. "[F]requent and careless departure from prior case precedent undermines confidence in the reliability of court decisions." Johnson Controls, 264 Wis. 2d 60, ¶95. "When legal standards 'are open to revision in every case, deciding cases becomes a mere exercise of judicial will, with arbitrary and unpredictable results.'" State v. City of Oak Creek, 2000 WI 9, ¶55 n.27, 232 Wis. 2d 612, 605 N.W.2d 526 (citations omitted).

¶132 Our three-tiered deference scheme has suited us well over the past decades. In unnecessarily disowning our well-developed jurisprudence, the court should at least provide guidance for the future. Litigants, circuit courts and the court of appeals should not be left adrift to redefine what has previously been well-settled.

¶133 For the above stated reasons, I respectfully concur.

¶134 I am authorized to state that Justice SHIRLEY S. ABRAHAMSON joins this concurrence.

¶135 ANNETTE KINGSLAND ZIEGLER, J. *(concurring)*. I agree with the result the court reaches. I concur and write separately because the analysis that the lead opinion employs to reach its conclusions is concerning. First, in my view, it is both unnecessary and inadvisable to rely on constitutional grounds for ending our practice of deferring to administrative agencies' conclusions of law. Deference to administrative agencies was a court-created doctrine and, thus, is one that can be court eliminated. We need not reach for the constitution to so act.

¶136 Second, in interpreting the statute here, the court[1] relies on ordinary meaning to define all of five terms, even though two of them have statutory definitions. Additionally, the court relies on the surplusage canon as grounds for selectively defining necessarily broad terms, even though the complete overlap between the two statutorily-defined terms indicates that the legislature may well have intended for overlap among the undefined terms as well.

¶137 Nevertheless, I agree that "'processing' encompasses Stuyvesant Dredging's separation of river sediment into its component parts." Majority op., ¶104. Accordingly, I respectfully concur.

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[1] We refer to the opinion as a lead opinion in Part I because its constitutional analysis has not garnered the support of a majority of the court. We refer to the opinion as that of "the court" or as the "majority opinion" in Part II because its statutory analysis does have the support of a majority of the court.

I. INTERPRETING AND APPLYING THE LAW

¶138 The lead opinion reaches for the constitution unnecessarily. It states as follows:

> As the deference doctrine developed . . . [we did not] determine whether this was consistent with the allocation of governmental power amongst the three branches. So, as a matter of first impression, we consider whether our deference doctrine is compatible with our constitution's grant of power to the judiciary . . . .

Lead op., ¶42. As the lead opinion acknowledges, our deference doctrine was a policy of judicial administration,[2] and, as such, it is not essential to draw on constitutional principles to overturn it. See State v. Castillo, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997) ("An appellate court should decide cases on the narrowest possible grounds."); Gabler v. Crime Victims Rights Bd., 2017 WI 67, ¶¶51-53, 376 Wis. 2d 147, 897 N.W.2d 384 ("This court does not normally decide constitutional questions if the case can be resolved on other grounds."). I depart with the lead opinion because the doctrine of constitutional avoidance requires that we act with restraint. In accordance with this principle, I would not rely on the constitution to overturn our judicially-created administrative deference doctrine.

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[2] See, e.g., lead op., ¶34 ("[Great weight deference] developed as a home-grown doctrine within the judiciary . . . ."); id., ¶70 ("[G]reat weight deference is a creature of our own making . . . ."); id., ¶40 ("[J]ust like 'great weight' deference, 'due weight' deference has become an integral, and therefore unavoidable, part of the framework within which we review an administrative agency's conclusions of law."); id., ¶3 ("We have [] decided to end our practice of deferring to administrative agencies' conclusions of law.").

¶139 Moreover, departing from deference on the basis of judicial administration would not call into question the continuing validity of the decades of cases that have relied on the deference doctrine. In this regard, I disagree with the lead opinion's assertions that "[i]f [a decision] [was] final upon release of this opinion, [its] finality will go on undisturbed by our decision today";[3] and that "[c]onsequently

[3] The lead opinion cites Wis. Stat. § 806.07 in support of this assertion, concluding that no paragraph of that statute would allow a party to reopen a final judgment based on this decision. Lead op., ¶¶89-91. To the contrary, the lead opinion's conclusion that deference is unconstitutional could support an argument for relief from a final judgment under § 806.07(1)(a), on the basis of "mistake"; under para. (1)(d), on the basis that "[t]he judgment is void"; under para. (1)(f), on the basis that "[a] prior judgment upon which the judgment is based has been reversed"; or under para. (1)(h), on the basis that "[a]ny other reasons justifying relief from the operation of the judgment." § 806.07(1)(a), (d), (f), (h).

The lead opinion attempts to bolster its interpretation of § 806.07 by quoting Schauer v. DeNeveu Homeowners Ass'n, Inc., 194 Wis. 2d 62, 75, 533 N.W.2d 470 (1995), for the proposition that "'[§ 806.07] does not authorize relief from a judgment on the ground that the law applied by the court in making its adjudication has been subsequently overruled in an unrelated proceeding.'" Lead op., ¶90 (alteration in original). To the contrary, the court in Schauer concluded that "sec. 806.07(1)(f) does not authorize relief from a judgment on the ground that the law applied by the court in making its adjudication has been subsequently overruled in an unrelated proceeding." Schauer, 194 Wis. 2d at 66. Thus, the lead opinion's implication-by-alteration that this case interpreted § 806.07 broadly is error. Moreover, Schauer was a case where the parties had reached a settlement regarding the scope of an easement wherein they allegedly relied on later-overruled case law in reaching the settlement. Thus, while arguably Schauer decided the application of § 806.07(1)(f) under those circumstances, it does not address other subsections of the statute, nor does it address every possible application of § 806.07(1)(f).

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[the] precedential and controlling effect [of past cases] will be the same as if the court had based the decision on its own interpretation." Lead op., ¶¶89, 93. The lead opinion provides no support for these assertions and the constitutional tenor of its analysis suggests exactly the opposite. Accordingly, I agree with Justice Ann Walsh Bradley's concurrence that the lead opinion fails to adequately account for the effect its analysis will have on prior decisions.

¶140 Additionally, it is inadvisable to turn to the constitution and address the "core powers" of the judiciary in this case. The lead opinion's "core powers" analysis proceeds as follows: judicial power is vested in the judiciary;[4] the doctrine of separation of powers is fundamental to government;[5] the powers of each branch of government fall into one of two categories—shared powers or exclusive/core powers;[6] the judiciary has the "'exclusive responsibility to exercise judgment in cases and controversies arising under the law'";[7]

Additionally, the lead opinion's assertion that "overruling a case does not expose to collateral attack any of the intervening decisions that were based on the overruled case" is subject to question. Lead op., ¶90. To the contrary, overruling one of our prior decisions, can quite obviously have significant impact on other cases.

[4] See lead op., ¶42 (citing Wis. Const. art. VII, § 2).

[5] See lead op., ¶44 (citing Gabler v. Crime Victims Rights Bd., 2017 WI 67, ¶11, 376 Wis. 2d 147, 897 N.W.2d 384).

[6] See lead op., ¶46 (citing State v. Horn, 226 Wis. 2d 637, 643, 594 N.W.2d 772 (1999)).

[7] Lead op., ¶54 (quoting Gabler, 376 Wis. 2d 147, ¶37).

exercising judgment "encompasses interpreting and applying the law to the case . . . ";[8] therefore, "only the judiciary may authoritatively interpret and apply the law in cases before our courts."[9] In other words, the judiciary has constitutionally-conveyed jurisdiction to interpret and apply the law in cases and controversies before the courts.

¶141 This conclusion is either quite remarkable or quite unremarkable; that is, if the lead opinion is breaking new ground in defining the power of the judiciary, that is remarkable, but if it is not, there is no need to remark on the court's role here because it is not disputed. Given that the lead opinion feels the need to so-remark, however, I feel compelled to caution that its comments should not be read more broadly for the proposition that the judiciary possesses exclusive authority to interpret and apply the law generally in all arenas. Although the lead opinion appears to agree that the power to interpret and apply the law more generally is shared among the branches,[10] its definition of the judiciary's "core

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[8] Lead op., ¶54.

[9] Id.

[10] For example, the lead opinion states as follows:

> The executive must certainly interpret and apply the law; it would be impossible to perform his duties if he did not. After all, he must determine for himself what the law requires (interpretation) so that he may carry it into effect (application). Our constitution not only does not forbid this, it requires it. Wis. Const. art. V, § 1 ("The executive power shall be vested in a governor . . . ."); Perez v. Mortg. Bankers Ass'n, 135 S. Ct. 1199, 1217 (2015) (Thomas,

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power," see supra ¶140, is applied more broadly at times such that it could be read to abrogate the shared nature of the power to interpret and apply the law.[11] This lead opinion is not to be read so broadly.

¶142 In sum, I would not reach the constitutional issue because reversal on judicial administration grounds is more appropriate: that which the court administratively gives, the court can administratively take away, and doing so on the basis of judicial administration would not require undermining the decades of cases that did rely on the deference doctrine because, at the time, it was our policy to do so. Additionally, the lead opinion's conclusions on constitutional grounds—regarding the judiciary's core powers—should be read as limited to the unremarkable reiteration of our responsibility to interpret and apply the law in cases and controversies before the courts.

J., concurring) ("It is undoubtedly true that the other branches of Government have the authority and obligation to interpret the law . . . .").

Lead op., ¶53.

[11] See, e.g., lead op., ¶54 (citing Operton v. LIRC, 2017 WI 46, ¶73, 375 Wis. 2d 1, 894 N.W.2d 426 (R. Grassl Bradley, J., concurring)) ("'[T]he court's duty to say what the law is' constitutes a 'core judicial function.'"); id., ¶70 (citing Wis. Stat. § 227.57(5)) ("[T]he statute says the court is to decide whether the agency has 'erroneously interpreted a provision of law.' And the court is to determine the 'correct interpretation of the provision of law.' This formulation recognizes the proper residence of our core judicial powers."); id., ¶¶73-74 (implying that an agency's interpretation and application of the law is an exercise of "our power.").

II. INTERPRETING AND APPLYING WIS. STAT. § 77.52(2)(a)11.

¶143 I also write because I do not agree with the court's redefining terms that the legislature has statutorily defined. Specifically, the legislature defines "printing" and "imprinting." See Wis. Stat. § 77.51(11). Without acknowledging or attempting to incorporate these two statutorily-defined terms into its analysis, the court first turns to ordinary meaning (i.e., dictionaries) in interpreting and applying Wis. Stat. § 77.52(2)(a)11. While it is not improper for the court to turn to the dictionary for the undefined terms, I take issue with the court turning to the dictionary to redefine "printing" and "imprinting"—the two statutory terms. In so doing, the court also overstates the necessity of avoiding surplusage because the legislature here has defined at least some terms—printing and imprinting—to entirely overlap. In the end, this is a taxation statute; it could very well be that the legislature wanted to leave little room for exclusion from taxation.

A. Specially-Defined Terms: Printing and Imprinting

¶144 The legislature provided definitions for two of the five terms at issue—printing and imprinting—and those two

statutorily-defined terms completely overlap.[12] However, in an effort to ensure that each term "retain[s] an independent meaning," that is, "has at least one attribute distinct from the others," majority op., ¶101, the court makes no mention of the legislatively-provided definitions, but instead selects dictionary definitions that support its analysis. Majority op., ¶100. I find that to be contrary to our prescribed method of statutory interpretation.

¶145 To start, Wis. Stat. § 990.01(1) provides: "All words and phrases shall be construed according to common and approved usage; but technical words and phrases and others that have a peculiar meaning in the law shall be construed according to such meaning." Similarly, State ex rel. Kalal v. Circuit Court for Dane County states: "Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110; see also Antonin Scalia & Bryan A.

[12] The five terms at issue are "processing," "producing," "fabricating," "printing," and "imprinting." "Printing" and "imprinting" are defined by statute, see Wis. Stat. § 77.51(11); "processing," "producing," and "fabricating" are not. The court argues that § 77.51(11), despite being a subsection of the "Definitions" section of the statute, does not provide a definition because it provides no "useful information." Majority op., ¶102 n.51. As noted below, see infra ¶145, note 14, the fact that the court finds the statutory definition unhelpful in conducting its preferred analysis is not a reason to ignore it. Moreover, to the contrary, § 77.51(11) does provide useful information, namely, a measure of the legislature's comfort with overlap. See infra ¶149.

Garner, Reading Law: The Interpretation of Legal Texts 69-77 (2012) ("Ordinary-Meaning Canon") ("Words are to be understood in their ordinary, everyday meanings—unless the context indicates that they bear a technical sense.").

¶146 Under the statute, "printing" and "imprinting" are specially defined: "'Printing' and 'imprinting' include lithography, photo-lithography, rotogravure, gravure, letterpress, silk screen printing, multilithing, multigraphing, mimeographing, photostating, steel die engraving and similar processes." Wis. Stat. 77.51(11) (2007-08).[13] Nevertheless, the court states as follows:

> "[P]rinting" means "[t]o make or produce (text, a book, a picture, etc.) by a mechanical process involving the transfer of characters or designs on to paper, vellum, etc." Printing, The Oxford English Dictionary (2d ed. 1989) (definition II.8.a.). . . . "[I]mprinting" means "[t]o mark by pressure; to impress, stamp," "[t]o impress (letters or characters) on paper or the like by means of type," and "[t]o make an impression or impressed figure upon; to stamp or impress (something) with a figure, etc." Imprinting, The Oxford English Dictionary (2d ed. 1989) (definitions 1.a., 2., and 4.a., respectively).

Majority op., ¶100. This reliance on ordinary meaning (i.e., dictionaries) is contrary to statute and to the common law because "printing" and "imprinting" are specially defined. See Wis. Stat. § 990.01(1); Kalal, 271 Wis. 2d 633, ¶45. But, despite the clarity of the law in this area, the court gives no consideration to the synonymous, statutory definition and

[13] "Printing" and "imprinting" are also specially defined in this manner in the 2005-06 version of the statute. See majority op., ¶2 n.2.

instead favors dual dictionary definitions. Doing so does aid its analysis in at least two ways,[14] but the legislatively defined terms cannot be ignored for the sake of convenience. Moreover, further analysis reveals that relying on the synonymous statutory definitions is not fatal to the court's result because such overlap is likely what the legislature intended.

B. Surplusage

¶147 The court understandably struggles with distinguishing "processing," "producing," and "fabricating." As an initial matter, these terms are not statutorily defined. And, although normally this would not present great difficulty—as resort to dictionaries for ordinary meaning is appropriate where terms are not statutorily defined—here, even the dictionary definitions have significant overlap. (How would one produce or fabricate something without putting it through a process?) But instead of acknowledging this overlap, the court reaches to distinguish these terms in order to avoid surplusage. Such artifice is unnecessary in my view. First, surplusage need not be avoided

[14] First, the statutory definition is illustrative rather than descriptive. Thus, reliance on the statutory definition would impair the court's analysis because it would not provide a useful comparison to the court's descriptive dictionary definitions of "producing" and "fabricating." See majority op., ¶100. Second, the statute defines "printing" and "imprinting" as synonyms, that is, their statutory definition overlaps in its entirety. Thus, reliance on the statutory definition would impair the court's analysis because it would contravene the court's conclusion that each term "retain[s] an independent meaning" because "it has at least one attribute distinct from the others." Majority op., ¶101.

at all costs. Second, not all overlap is surplusage, particularly where, as here, the plain meaning of the terms and the synonymous nature of coordinate, legislatively-defined terms invites overlapping interpretations. Third, regardless of the amount of overlap, Stuyvesant Dredging's actions fall within the definition of "processing." Again, in a taxation statute, where generally the legislature is trying to include, not exclude, those who will be subject to taxation, such a broad sweep is unsurprising.

¶148 While avoiding surplusage is generally favored, surplusage need not be avoided at all costs. Kalal states: "Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage." 271 Wis. 2d 633, ¶46 (emphasis added); see also Scalia & Garner, supra ¶144 at 174-79 ("Surplusage Canon") ("If possible, every word and every provision is to be given effect . . . .") (emphasis added). Thus, it is not true that "we must understand 'processing' to bear a meaning that does not displace all of the other descriptors . . . ." Majority op., ¶101 (emphasis added).[15]

¶149 Additionally, in my view, it may not be possible to avoid complete overlap among "processing," "producing," and

[15] In this regard, I do not disagree that "[w]e must make our best effort at determining the specific meaning," majority op., ¶103 n.51 (emphasis added); rather, in my view, no effort—other than one to rewrite the statute—can overcome the plain and broad meaning of the terms used by the legislature here. See infra ¶¶148, 150-153.

"fabricating," because the ordinary meaning of "processing" is so broad.[16] But the fact that an abstract definition of "processing" could encompass the abstract definitions of the other statutory terms does not necessarily displace them, as their use might be more appropriate in certain contexts. For example, on the one hand, we think of films as being "produced" and some stories as being "fabricated," even though no one would dispute that making a film or making up a story is a process. On the other hand, we think of some foods—American cheese slices, for example—as being "processed."

¶150 In other words, surplusage is not to be assumed merely because the legislature has used a broad term. See Pawlowski v. Am. Family Mut. Ins. Co., 2009 WI 105, ¶22, 322 Wis. 2d 21, 777 N.W.2d 67 ("The use of different words joined by the disjunctive connector 'or' normally broadens the coverage of the statute to reach distinct, although potentially overlapping sets.") This is perhaps particularly true where, as here, the legislature has invited such overlapping interpretations by specifically defining two of the terms as synonyms. See Georgina G. v. Terry M., 184 Wis. 2d 492, 540, 516 N.W.2d 678 (1994) (Bablitch, J., dissenting) ("The legislature at times, as here, deliberately

[16] In this regard, I note that the court's conclusion that "processing" is "a task that can be completed without transforming the property into a new product, or adding anything to it that was not already there" does not avoid displacing "producing" and "fabricating." Majority op., ¶103. Just because "processing" encompasses tasks that are not "producing" or "fabricating" does not mean that "producing" and "fabricating" are not subordinate forms of "processing."

paints with a very broad . . . brush."); see also Scalia & Garner, supra ¶144 at 174 ("[I]t is no more the court's function to revise by subtraction than by addition.").

¶151 Regardless of the amount of overlap, under a plain meaning analysis Stuyvesant Dredging's work constituted "processing," as that term is used in Wis. Stat. § 77.52(2)(a)11. We begin with the language of the statute. Kalal, 271 Wis. 2d 633, ¶45. The statute states in relevant part as follows:

> (2) For the privilege of selling, performing or furnishing the services described under par. (a) at retail in this state to consumers or users, a tax is imposed upon all persons selling, performing or furnishing the services at the rate of 5% of the gross receipts from the sale, performance or furnishing of the services.
>
> (a) The tax imposed herein applies to the following types of services: . . .
>
> 11. The producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting. This subdivision does not apply to the printing or imprinting of tangible personal property that results in printed material, catalogs, or envelopes that are exempt under s. 77.54 (25) or (25m).

§ 77.52(2)(a)11.

¶152 "Processing" is not defined in the statute, thus, resort to dictionary definitions is not inappropriate. See Kalal, 271 Wis. 2d 633, ¶45 ("Statutory language is given its common, ordinary, and accepted meaning . . . ."). "Processing" is defined in dictionaries as follows: (1) "to subject to a special process or treatment"; "to subject to or handle through

and established usually routine set of procedures";[17] (2) "to put through the steps of a prescribed procedure"; "to prepare, treat, or convert by subjecting to a special process";[18] (3) "[t]o subject to or treat by a special process; to operate on mechanically or chemically."[19]

¶153 In my view, Stuyvesant Dredging's separation of dredged materials plainly falls under any of these definitions of "processing." "If the meaning of the statute is plain, we ordinarily stop the inquiry." Kalal, 271 Wis. 2d 633, ¶45. And I would reiterate that the fact that the definition of "processing" is broad does not mean that it is ambiguous, nor does it render the statute meaningless. See Kernz v. J. L. French Corp., 2003 WI App 140, ¶16, 266 Wis. 2d 124, 667 N.W.2d 751 ("[A] phrase is not ambiguous simply because it is general or broad."); see also Zarnstorff v. Neenah Creek Custom Trucking, 2010 WI App 147, ¶21, 330 Wis. 2d 174, 792 N.W.2d 594 (quoting Lawver v. Boling, 71 Wis. 2d 408, 422, 238 N.W.2d 514 (1976)) ("[A]n otherwise unambiguous provision is not rendered ambiguous simply because it is difficult to apply to the facts of a particular case.").

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[17] Process merriam-webster.com, (search "processing") (verb) (last visited May 11, 2018).

[18] Process ahdictionary.com, (search "processing") (tr. v.) (last visited May 11, 2018).

[19] Majority op., ¶103 (quoting Processing The Oxford English Dictionary (2d ed. 1989) (definition 3.a.)).

¶154 In sum, the plain language of the statute compels the conclusion that, in the Venn diagram of definitions, "processing" is the paper on which overlapping circles for "producing" and "fabricating" are drawn. This, however, does not mean that Stuyvesant Dredging's work cannot be understood as falling within the plain meaning of "processing."

IV. CONCLUSION

¶155 I agree with the result the court reaches. I concur and write separately because the analysis that the lead opinion employs to reach its conclusions is concerning. First, in my view, it is both unnecessary and inadvisable to rely on constitutional grounds for ending our practice of deferring to administrative agencies' conclusions of law. Deference to administrative agencies was a court-created doctrine and, thus, is one that can be court eliminated. We need not reach for the constitution to so act.

¶156 Second, in interpreting the statute here, the court relies on ordinary meaning to define all of five terms, even though two of them have statutory definitions. Additionally, the court relies on the surplusage canon as grounds for selectively defining necessarily broad terms, even though the complete overlap between the two statutorily-defined terms indicates that the legislature may well have intended for overlap among the undefined terms as well.

¶157 Nevertheless, I agree that "'processing' encompasses Stuyvesant Dredging's separation of river sediment into its

component parts." Majority op., ¶104. Accordingly, I respectfully concur.

¶158 I am authorized to state that Chief Justice PATIENCE DRAKE ROGGENSACK joins Part I of this concurrence.

¶159 MICHAEL J. GABLEMAN, J. *(concurring)*. I agree that we should no longer give deference to administrative agency conclusions of law and that the services provided by Stuyvesant Dredging constitute "processing" under Wis. Stat. § 77.52(2). However, unlike the lead opinion, I would apply the doctrine of constitutional avoidance and eliminate deference by withdrawing the language in Harnischfeger Corp. v. LIRC, 196 Wis. 2d 650, 539 N.W.2d 98 (1995), that indicated deference is mandatory. Specifically, I would withdraw the following two sentences: (1) "courts should defer to an administrative agency's interpretation of a statute in certain situations," id. at 660; and (2) "[o]nce it is determined under Lisney that great weight deference is appropriate, we have repeatedly held that an agency's interpretation must then merely be reasonable for it to be sustained," id. at 661.[1] I would withdraw this language because the Harnischfeger court's use of the word "should" in the first sentence did not expose the mandatory nature of deference, which does not appear until the second sentence with its use of the word "must." In so doing, I would thereby avoid addressing the issue on constitutional grounds.[2]

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[1] By implication, which I now make express, my analysis and conclusion apply just as strongly to due weight deference.

[2] Accordingly, I join the following parts of the majority opinion: ¶¶1-3, I, II (intro), II.A. (intro), II.A.1., II.A.2., II.A.6., II.B., III, and the mandate. To the extent the first sentence of ¶84 implies a holding on constitutional grounds, I do not join it.

¶160 Constitutional avoidance is a subset of the axiom that "[a]n appellate court should decide cases on the narrowest possible grounds." State v. Castillo, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997). "Consistent with this rule is the recognition that a court will not reach constitutional issues where the resolution of other issues disposes of an appeal." Id. In the present case, we need not determine whether our constitution prohibits deference because deference is nothing more than a judicial construct based on our misreading of Wis. Stat. § 227.57(10). See lead op., ¶¶27-32.

¶161 As the lead opinion aptly explains, the deference doctrine is a beast of our creation—neither the legislature nor executive purported to require that we apply deference. See lead op., ¶¶18-33. Therefore, we are free to dispense with deference as simply as we adopted it. See Holytz v. Milwaukee, 17 Wis. 2d 26, 37, 115 N.W.2d 618 (1962), superseded by statute, Wis. Stat. § 893.80.

¶162 We created deference through a continued misreading of Wis. Stat. § 227.57(10), which culminated in our holding in Harnischfeger, 196 Wis. 2d at 661, that deference is required, not merely an aid in statutory interpretation. See lead op., ¶¶27-33. We can (and therefore should) remedy this misreading without invoking the constitution. Johnson Controls, Inc. v. Emplrs. Ins., 2003 WI 108, ¶99, 264 Wis. 2d 60, 665 N.W.2d 257; see also lead op., ¶¶82-83.

¶163 The lead opinion briefly states the five traditional factors we use when deciding whether to overrule one of our

prior decisions, lead op., ¶82, and then just as briefly concludes that our prior decisions regarding deference must be overruled based solely on their unconstitutional holdings, id., ¶83. Our authority to withdraw language from our prior decisions alone is sufficient to the task and the lead opinion's invocation of the constitution in this context is an unnecessary and imprudent addition to its substantive analysis.

I. THE TRADITIONAL FIVE CIRCUMSTANCES FOR OVERTURNING PRECEDENT

¶164 We are "more likely to overturn a prior decision when one or more of the following circumstances is present":

> (1) Changes or developments in the law have undermined the rationale behind a decision;
>
> (2) There is a need to make a decision correspond to newly ascertained facts;
>
> (3) There is a showing that the precedent has become detrimental to coherence and consistency in the law;
>
> (4) The prior decision is "unsound in principle;" or
>
> (5) The prior decision is "unworkable in practice."

Bartholomew v. Wis. Patients Comp. Fund, 2006 WI 91, ¶33, 293 Wis. 2d 38, 717 N.W.2d 216 (quoting Johnson Controls, 264 Wis. 2d 60, ¶¶98-99). I discuss these five "circumstances" in order of how strongly they apply to deference.

A. The Prior Decision is "Unsound in Principle"

¶165 The fourth circumstance is especially present with regard to deference and strongly supports our decision to eliminate it. Deference is simply unsound in principle. In theory, deference should make courts' decision-making easier and more efficient. See The Honorable Patience Drake Roggensack,

Elected to Decide: Is the Decision-Avoidance Doctrine of Great Weight Deference Appropriate in This Court of Last Resort?, 89 Marq. L. Rev. 541, 544 (2006). In practice, however, deference does not save significant court resources. Because the level of deference afforded is often outcome-determinative, id. at 559, parties and courts often expend just as much effort arguing and deciding the proper level of deference as they would the merits, see, e.g., Emmpak Foods, Inc. v. LIRC, 2007 WI App 164, ¶¶3-8, 303 Wis. 2d 771, 737 N.W.2d 60. Thus, deference often hinders rather than helps meaningful judicial review while providing no corresponding benefit. See generally Brown v. LIRC, 2003 WI 142, ¶¶10-19, 267 Wis. 2d 31, 671 N.W.2d 279 ("Our analysis in this case centers around the standard of review.").

¶166 Importantly, deference (especially great weight deference), if correctly and honestly applied, leads to the perverse outcome of courts often affirming inferior interpretations of statutes. See, e.g., id., ¶44 ("Were this court reviewing the order of LIRC de novo, the result might very well be different."). In our role as court of last resort, we should ensure that erroneous-but-reasonable legal conclusions are corrected. See Hilton v. DNR, 2006 WI 84, ¶54, 293 Wis. 2d 1, 717 N.W.2d 166 (Prosser, J., concurring). Any doctrine that allows erroneous legal conclusions to survive unscathed is unsound in principle.

B. The Need to Make a Decision Correspond to Newly Ascertained Facts

¶167 The second circumstance also applies in this case, though to a lesser extent. Deference is based on the theory

that administrative agencies develop expertise in their realm. Barron Elec. Coop. v. PSC, 212 Wis. 2d 752, 759, 569 N.W.2d 726 (Ct. App. 1997) ("[A]n . . . important principle of administrative law is that, in recognition of the expertise and experience possessed by agencies, courts will defer to their interpretation of statutes in certain situations."); see also DOR v. Menasha Corp., 2008 WI 8, ¶¶48-50, 311 Wis. 2d 579, 754 N.W.2d 95. However, we do not scrutinize whether agency decision-makers actually possess any expertise. For example, some agency decisions are made by a single hearing examiner—of unknown expertise or experience. Roggensack, supra ¶7, at 557. Further, under the erstwhile deference construct, it is possible for multi-member agency review boards to lack substantial experience or expertise. Id. at 558 (questioning whether LIRC commissioners who served, on average, 3.7 years each between 1979 and 2004 possessed more expertise in interpreting statutes than courts). We may say that it is only a matter of speculation that agency decision-makers possess less expertise than courts when it comes to interpreting various statutes. Importantly, it is equally a matter of speculation that they possess more. Such is not the kind of foundation upon which sound judicial doctrines are built.

C. The Other Circumstances

¶168 The first, third, and fifth circumstances do not substantially apply in this case. Though, for purposes of the first circumstance, we may be able to infer that the legislature disapproves of deference based on its enactment of Wis. Stat.

§ 227.57(11), such an inference is too weak to support overruling decades of prior decisions. As to the third circumstance, deference is intended to maintain consistency in the law, though it is a matter of reasonable debate as to whether it achieves that goal. Hilton, 293 Wis. 2d 1, ¶¶64-65 (Prosser, J., concurring). Finally, despite its many flaws, deference is certainly workable in practice for purposes of the fifth circumstance.

II. CONCLUSION

¶169 Clearly, "one or more of the [listed] circumstances is present" such that we can and should end our practice of deferring to administrative agency conclusions of law without invoking the constitution. Bartholomew, 293 Wis. 2d 38, ¶33. I would, therefore, follow the law and apply the doctrine of constitutional avoidance in order to decide this case on the narrowest possible grounds. For the foregoing reasons, I respectfully concur.

¶170 I am authorized to state that Chief Justice PATIENCE DRAKE ROGGENSACK joins this concurrence.

STATE OF WISCONSIN
DWD
Department of Workforce Development

Unemployment Insurance PUBLIC HEARING

The Unemployment Insurance Advisory Council is interested in hearing your comments on Wisconsin's Unemployment Insurance program and suggestions for changing the law and improving the program.

The Council represents employee and employer interests and recommends changes to the unemployment law to the Legislature.

Have you ever wanted to suggest a law change for the Unemployment Insurance program, but didn't know where to start?

Participate in the 2018 public hearing, conducted simultaneously at seven locations throughout the state using video conference technology.

Hearing Date/Time:

THURSDAY, NOVEMBER 15, 2018
3:00 p.m. – 6:00 p.m.

Hearing Locations:

Attend the public hearing video conference from one of the following locations:

Madison:
UW-Extension
The Pyle Center
702 Langdon Street
Madison, WI

Eau Claire:
UW-Eau Claire
Centennial Hall
Room 1804
1698 Park Avenue
Eau Claire, WI

La Crosse:
UW-La Crosse
Wing Technology Center
Room 102
1705 State Street
La Crosse, WI

Superior:
WITC-Superior Campus
Room 101D
600 North 21st Street
Superior, WI

Green Bay:
UW-Green Bay
Instructional Services
Room 1034
2420 Nicolet Drive
Green Bay, WI

Milwaukee:
UW-Milwaukee
Kenwood Interdisciplinary
Research Complex
Room 2175
3135 N. Maryland Avenue
Milwaukee, WI

Wausau:
Northcentral Technical College
Center for Business and Industry
Room 127
1000 West Campus Drive
Wausau, WI

Submit Comments:

The public is invited to provide comments. If you cannot attend the public hearing, you may submit your comments no later than **November 16, 2018**:

- Email: **UILawChange@dwd.wisconsin.gov**
- Written comments may be mailed to:

  Janell Knutson, Chair
  Unemployment Insurance Advisory Council
  P.O. Box 8942
  Madison, WI 53708

Questions?:

If you have any questions, contact Robin Gallagher at 608-267-1405 or visit the Unemployment Insurance Advisory Council website: **https://dwd.wisconsin.gov/uibola/uiac**.

Unemployment Insurance Advisory Council
Tentative Schedule
2018 – 2019

November 15, 2018	**Scheduled Meeting of the Advisory Council** **Public Hearing**
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)
September 19, 2019	**Scheduled Meeting of UIAC** **Review and Approval of Department Draft of Agreed Upon Bill**
October 17, 2019	Scheduled Meeting of UIAC Review and Approval of LRB Draft of Agreed Upon Bill
November 21, 2019	**Scheduled Meeting of UIAC** **Final Review and Approval of LRB Draft of Agreed Upon Bill**
Dec. 2019/Jan. 2020	**Agreed Upon Bill Sent to the Legislature for Introduction in the Spring 2020 Legislative Session**