STATE OF WISCONSIN

DWD

Department of Workforce Development

Unemployment Insurance Advisory Council

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

MEETING

Date: April 18, 2019

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 March 21, 2019 Council Meeting
3. Department Update
4. Governor's Executive Order #20 Relating to the Creation of a Joint Enforcement Task Force on Payroll Fraud and Employee Misclassification
5. Financial Outlook Report – Rob Usarek
6. UI Fraud Prosecution – Deputy Attorney General, Eric Wilson
7. Senator Lena Taylor's Bill – Federal Worker Legislation
8. Research Request
9. Department Proposals for Agreed Bill
10. Labor and Management Proposals for Agreed Bill
11. Agreed Bill Timeline
12. Future Meeting Dates

13. Adjourn

Notice:

- ❖ The Council may not address all agenda items or follow the agenda order.
- ❖ The Council may take up action items at a time other than that listed.
- ❖ The Council may discuss other items, including those on any attached lists.
- ❖ 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 accessible to persons with disabilities. 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 https://dwd.wisconsin.gov/uibola/uiac/meetings.htm

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

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

March 21, 2019

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

Members Present: Janell Knutson (Chair), Scott Manley, Susan Quam, Mike Gotzler, John Mielke, Earl Gustafson, Dennis Delie, Di Ann Fechter, Sally Feistel, Shane Griesbach, and Terry Hayden.

Department Staff Present: Caleb Frostman (Secretary-designee DWD), Joanna Richard (Deputy Secretary), Danielle Williams (Assistant Deputy Secretary), Mark Reihl (UI Division Administrator), Amy Banicki, Andrew Rubsam, Jim Moe, Pamela McGillivray (DWD Chief Legal Counsel), Jennifer Wakerhauser (DWD Deputy Legal Counsel), Bridget Esser (DWD Legislative Liaison), Mike Myszewski, Patrick Lonergan, Tom McHugh, Mary Jan Rosenak, Jason Schunk, Karen Schultz, Tom Mund, Maureen McShane and Robin Gallagher.

Members of the Public Present: Senator Lena Taylor (Wisconsin State Senate, District 4), Brian Dake (Wis. Independent Businesses, Inc.), Chris Reader (Wisconsin Manufacturers & Commerce), Victor Forberger (Wisconsin UI Clinic), Anita Krasno (General Counsel, Labor & Industry Review Commission), Michael Gillick (Commissioner, Labor & Industry Review Commission), BJ Dernbach (office of Representative Warren Petryk), Tyler Longsine (office of Representative James Edming), Mike Duchek (Legislative Reference Bureau), Joe Handrick (office of Speaker Robin Vos), Matt Kittle (MacIver News Service – Free Market).

1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council meeting to order at 10:05 a.m. under Wisconsin's Open Meeting law. Ms. Knutson welcomed new Council member Di Ann Fechter of the International Association of Machinists and Aerospace Workers and Council members introduced themselves. Mr. Riehl is attending his first Council meeting since being appointed the Administrator of the Division of Unemployment Insurance. Mr. Riehl stated that he has a deep respect for the work of the Council. He was taught from an early age, because his father sat on the Council, how important the Council process is. Mr. Riehl thanked Secretary-designee Frostman for the appointment and looks forward to making Unemployment Insurance in Wisconsin the best in the country.

Ms. Knutson recognized Secretary-designee Frostman, Assistant Deputy Secretary Danielle Williams, DWD Legislative Liaison Bridget Esser, DWD Chief Legal Counsel Pamela McGillivray, LIRC's new Commissioner, Michael Gillick and General Counsel, Anita Krasno, Michael Duchek from Legislative Reference Bureau, BJ Dernbach of Rep. Warren Petryk's Office, Tyler Longsine of Rep. James Edming's Office, and DWD Deputy Legal Counsel Jennifer Wakerhauser.

2. Approval of Minutes of the January 17, 2019 Council Meeting

Mr. Gotzler requested a correction to the minutes on page 7, the reference to the statute in the last sentence should be changed to read s. 108.02 (12) (bm), Stats., rather than (dm).

Motion by Mr. Manley, second by Mr. Gotzler, to approve the meeting minutes as corrected. The motion carried unanimously.

3. Department Update

Mr. Riehl announced and congratulated Amy Banicki on her role as the new Deputy Administrator for the Division of Unemployment Insurance. Ms. Banicki had been the acting Deputy Administrator of UI, and before her current position, she was the Director of the Bureau of Benefits for over two years and has over 20 years of experience working in UI.

Ms. Knutson reported there are a variety of UI provisions in President Trump's FY2020 budget. The highlights of these provisions are:

- Paid Parental Leave - Beginning in 2022, new mothers, fathers and adoptive parents would be allowed six weeks of paid parental leave. Details are not set out in the budget but it appears it would be administered through the UI program.
- Minimum Solvency Standard - States that fail to maintain an Average High Cost Multiple of 0.5 for two consecutive January firsts would be subject to the same FUTA tax credit reductions applied to states that go below a zero Trust Fund balance. Employers in those states would pay higher FUTA taxes, which would be deposited in the Trust Fund to raise the Trust Fund balance in those states.
- UI Program Integrity - The recommendations included in President Trump's budget are similar to the Unemployment Compensation Program Integrity Act that the U.S. Department of Labor (USDOL) previously sent to Congress in response to the UI program's three consecutive years of high improper payment rates. Three major highlights include:

    - Allowing states to retain five percent of UI overpayment recoveries for program integrity use;
    - Requiring states to use penalty and interest collections solely for UI administration; and
    - Reducing entitlement to SSDI for UI recipients.

In addition, Ms. Knutson stated the department filed germane modifications with the Legislature relating to the minor and technical changes to Wis. Admin. Code DWD chs. 100 – 150. These changes were necessary due to work search and work registration waiver provisions contained in an Extraordinary Session bill (2017 Wis. Act 370).

4. Trust Fund Update

Mr. McHugh provided the following UI Reserve Fund Highlights through February 2019:

- Benefit payments declined $11.5 million (10.5%) in 2019 compared to benefits paid in 2018.

- Total year-to-date tax receipts declined $7.7 million (11.6%) from the same time last year. Changes in taxes are a result of lower employer tax rates due to improved employer experience rating and not the result of a schedule change.

- The UI Trust Fund balance is nearly $1.7 billion, an increase of 18.4% when compared to the same time last year.

- Interest earned on the Trust Fund is received quarterly and has not yet been paid for the first quarter of 2019. The U.S. Treasury annualized interest rate for the fourth quarter of 2018 was 2.3%, earning the Trust Fund over $110,000 daily. The interest earned in 2018 was $36.9 million compared to $29.7 million in 2017.

Mr. Manley inquired about the number of claims filed each week and each month. Mr. McHugh responded the department paid out approximately $12.3 million to 35,594 claimants last week, and compared to history, initial claims are very low. Mr. Manley asked how many claimants there are in a typical year. Mr. McHugh stated in 2009, there were 566,000 claimants, in 2014 there were 233,000 claimants, in 2015 there were 197,000 claimants and in 2016 there were 168,000 claimants. There are approximately three million workers in Wisconsin. Mr. Manley requested a comparison of the average duration of benefits claimed from prior years. This information will be provided at a future meeting.

Mr. Gustafson questioned whether reviewing UI statistics over a 5-7 year business cycle would still be useful, even though there have been significant economic changes. Ms. Knutson stated the 2019 Financial Outlook Report of the UI Trust Fund will be presented at the next Council meeting and those questions will likely be answered with that presentation.

In response to a request made by Mr. Manley at the last Council meeting, Mr. McHugh reported on the amount of benefit payouts for employers with certain employer tax rates. For the report, employers (regardless of industry or size) were grouped by employer tax rate. Contributions paid by employers are deposited in a reserve fund and any benefit payments are taken from those amounts. Rates are based on the employer's reserve fund balance. An employer's reserve fund balance is the net difference between the taxes the employer has contributed and the charged benefits to that employer's account over the entire employer's history. Employers with a positive reserve fund balance have lower tax rates and those with negative balances, have higher tax rates. The report provided a breakdown of the taxes paid and benefits charged based on employers' reserve fund balances (i.e., the employers' tax rates).

Over a three-year time period (July 1, 2015 to June 30, 2018), employers with a tax rate more than zero but less than 1% paid approximately $408.4 million in taxes to the reserve fund and had $118.6 million charged in benefit payments. There are 646 employers (37 are large employers) with a rate of at least 9% but less than 10% that paid $23 million over the three years, and during that time, had benefit charges of $27.6 million. There are 2,475 employers with the highest tax rates and 122 are large employers. The bulk of taxable payroll and taxes paid are from employers in the zero and less than 1%; and, 1% and less than 2% rates.

5. Annual Fraud Report

Ms. Knutson presented the 2019 Wisconsin Unemployment Insurance Fraud Report to the Council. In 2018, there was an overall decline in fraud and nonfraud overpayments, with fraud overpayments accounting for only 1.2% of total benefit payments.

The department now has a stand-alone application for claimants to enter their work search actions throughout the week, rather than the claimant having to wait until they file their weekly claims. The UI Division conducted 32,722 work search audits in 2018 and found work search requirements were not met in 6,392 decisions.

In 2018, UI auditors working with the Worker Classification Section identified approximately 8,700 misclassified workers, resulting in $1.5 million being generated in UI taxes, interest and penalties due to the UI Division's efforts to detect worker misclassification. The Council receives quarterly reports on worker misclassification efforts and 511 worker misclassifications field investigations were conducted by Worker Classification Section staff in 2018.

The UI program implemented a new cross-match system to prevent fraud in August 2018. The SSDI Crossmatch compares individuals currently listed as applying for or receiving SSDI with claimants filing initial claims.

The 2019 Fraud Report showed compliance and collection tools utilized by the department are very successful with the department collecting over 80% of overpayments. In 2018, the department recovered $20 million in overpayments which was deposited in the Trust Fund.

In 2018, the UI Division continued to partner with the Division of Worker's Compensation to jointly fund a full-time assistant attorney general (AAG) at the Department of Justice (DOJ). The AAG prosecutes UI cases primarily in Milwaukee County, and some in Brown County. In addition, the UI Division works with USDOL on complex fraud cases, including multi-state cases. There were 149 cases referred for potential state criminal prosecution in 2018 with a total dollar amount of $1.4 million.

As a follow-up to Mr. Manley's request at the last Council meeting, Ms. Knutson extended an invitation for a DOJ representative to speak at the April Council meeting and is waiting on a response.

6. Budget Bill

Mr. Riehl stated that Governor Evers' 2019-2021 budget is a statement of the Governor's priorities and what he wants addressed by the state. Some concerns have been expressed with the UI proposals in the budget and that this is an attempt to go around the Council process. Mr. Reihl assured everyone Governor Evers values the Council process and the UI provisions from the budget bill will be part of the department's proposals for the Council to consider for inclusion in the next Agreed Bill.

7. Administrative Rules

Mr. Rubsam reported that legislation passed during the Extraordinary Session, 2017 Wis. Act 370, provides certain work search and work registration waivers. Statute permits the department to repeal rules that are duplicative of statute, and the department may request to repeal these rules at a future meeting.

In addition, the department is requesting approval of a scope statement that is part of one of the department proposals (D19-10), for a rule that is highly technical in nature that is not expected to affect employers or claimants.

8. Department proposals

Mr. Rubsam presented the following department proposals to the Council:

<u>D19-01 Reimbursable Employer Debt Assessment Charging</u>
The 2015 – 2016 UIAC Agreed Bill (2015 Wis. Act 334) required that the department set aside $2 million, plus interest, in the balancing account to restore funds to employer accounts of reimbursable employers charged for benefits erroneously paid due to identity theft. To date, less than $1,500 of identity theft charges have been restored from these funds. Meanwhile, approximately $104,000 of interest has accrued on the initial $2 million.

Non-profit reimbursable employers may be subject to an annual reimbursable employer debt assessment (REDA) for payment of uncollectible benefit reimbursements due from other reimbursable employers no longer in business.

The REDA to recover uncollectible reimbursements must be at least $5,000 but no more than $200,000 and each non-profit employer assessed pays based on the employer's payroll. Employers for whom the assessment would be less than $10 are not assessed, which usually results in about half of non-profit reimbursable employers not being assessed the REDA.

The department is proposing that a limited amount of the reimbursable identify theft fraud funds set aside in the balancing account be made available to recover uncollectible reimbursements instead of assessing the REDA, but only if the use of those funds would not reduce the balance of the funds below $1.75 million. In addition, the department proposes to increase the minimum amount of REDA assessed from $10 to $20, which would reduce the associated administrative costs.

Mr. Manley inquired how many large, non-profit businesses like hospitals close and are not able to meet their obligation. Mr. McHugh responded that the last REDAs were in 2014-2015 and 2008-2010. Although the department is watching a few non-profits currently, the economy has been good for non-profits and there it not much concern.

Mr. Manley asked if a large non-profit went out of business, would they be relieved of paying those charges. Ms. Knutson responded that if the business could not pay the benefit charges, the department would go after the bond/surety. If the surety was exhausted and all other means for collection were exhausted and the department determines it is uncollectable, that is when the department would have discretion of using the set-aside money to pay for those charges or issue a REDA.

<u>D19-02 Assessment for Failure to Produce Records</u>

Similar versions of this proposal have been previously presented to the Council. Under current law, when the department intends to audit an employer, it sends a written notice to the employer requesting information regarding the employer's employment records. If the employer does not respond, the department issues a second written request to the employer. If the employer fails to respond to the second written request, the department issues a subpoena to the employer. If the employer fails to comply with the subpoena, the only recourse is for the department to enforce the subpoena in court and seek contempt charges, and the department has done so on a few occasions.

The department is proposing to assess an administrative penalty of $500 or 25% of the amount of additional UI tax due on any adjustment made by the department that results from an employer's failure to produce records. The proposed penalty would be rescinded if the employer fully complies with the subpoena within 20 calendar days of the issuance of the penalty. Funds collected from these penalties are deposited in the Program Integrity Fund. The intent is to ensure employer compliance with requests for wage data.

Ms. Knutson stated the proposed penalty should also assist with subpoena compliance in benefit fraud or employer aiding and abetting investigations.

Mr. Manley inquired about the timeline in which an employer has to respond when the department send written notice of an audit. Ms. Knutson stated the department will gather the timelines for each process and provide examples of the notices.

D19-03 Fiscal Agent Election of Employer Status

Individuals who receive long-term support services in their home through government-funded care programs are employers under Wisconsin's UI law. These "domestic employers" receive financial services from fiscal agents. The fiscal agent is responsible for filing UI tax reports and submitting payment to the department on behalf of the domestic employer.

The department is proposing a change related to fiscal agents that would permit private fiscal agents (not government units) to elect to be the employer of workers who provide care services under Wis. Stats. chs. 46, 47, and 51. This election already exists for home health services covered under Chapter 49. The fiscal agents would be required to inform the recipient of care of the election and would need to be treated as the employer for federal UI tax purposes. The election to have the fiscal agent be the employer of record for UI reporting requirements would be a voluntary process for employers.

Currently, if the worker is a certain class of family member of the person receiving care, the worker is ineligible for UI benefits when the employment relationship ends. Under this proposal, the worker would be an employee of the fiscal agent and could potentially be eligible for benefits if they meet other eligibility requirements. Benefits would be charged to the fiscal agent's account – which would affect its experience rating.

D19-04 Clarification of Employee Status Statute

Currently, it is presumed that an individual who performs services for pay for an employing unit is an employee for UI purposes and it is the burden of the employer to prove that the individual is an independent contractor.

The department is currently precluded from considering documents granting operating authority or licenses, or any state or federal laws or federal regulations grating such authority, when analyzing certain factors of the independent contractor test.

The proposal provides that all issues of UI employee status may only be determined under Wisconsin unemployment statutes and rules. The proposal will provide consistency for both employers and employees.

D19-05 Clarification of Exemption Laws

The department uses administrative remedies (like levies) to collect taxes and overpayments without having to go to court. Certain wages and assets are exempt from levy under current UI law, but there are additional exemptions under other state laws that could provide some exemptions for debtors that owe the department money.

The proposed change clarifies that debtor exemptions outside of the UI law do not apply to the department's administrative collection procedures for UI debts. This proposal would not change any current exemptions under Wis. Stat. ch. 108.

D19-06 SUTA Dumping Penalty

A transferee of a business transfer is a mandatory successor to the UI account of the transferor if certain conditions apply. Assessing mandatory successor status dissuades employers from closing down a business with a high tax rate and opening a "new" business to obtain a lower UI tax rate. Manipulation of business transfers to obtain an artificially low UI tax rate is known as "SUTA dumping." The federal SUTA Dumping Prevention Act requires states to enact "meaningful civil and criminal penalties" for SUTA dumpers. The Act also requires penalties for advising others to "dump" their UI experience. The current penalty for making a false statement to the department regarding a mandatory successor investigation or for advising others to do so is a forfeiture up to $5,000.

To ensure the department is complying with federal law, the department is proposing to create meaningful civil and criminal penalties for knowingly violating or attempt to violate mandatory successor requirements. The amount of the penalty will be the greater of $25,000 or an amount equal to the amount of UI tax owed by the predecessor entity, which would be deposited into the Program Integrity Fund. Criminal penalties will also be created.

The proposal also provides the forfeiture for making false statement or advising someone to make false statements will be deposited into the Program Integrity Fund.

Mr. Manley inquired about the frequency of SUTA dumping in Wisconsin and how the department determines an employer's intent. Mr. Rubsam referred to the fiscal analysis for this proposal which states that based on 2017 data, approximately seven employers could have been subjected to the $25,000 penalty during that timeframe. An employer's intent is determined by statements of the employer and having evidence to show it was intentional.

Mr. Gotzler asked what the basis is for the $25,000 figure. Mr. Rubsam responded that federal regulations require "meaningful penalty" which the department considers $25,000 to be; however, this figure can be changed based on Council discussions. Based on the department's research, other states typically will provide a penalty rate to those employers by giving them a higher unemployment tax rate. The department is seeking a monetary penalty because notification on the employer registration portal is a way of deterring employers from engaging in SUTA dumping.

D19-07 Departmental Error

There are instances where the department waives the recovery of benefits that were erroneously paid if the overpayment was the result of departmental error, such as a computation error, misapplication or misinterpretation of law, or mistake of evidentiary fact. But an amendment, modification, or reversal of a department determination by an appeal tribunal, LIRC, or a court is not departmental error for the purposes of waiving the overpayment. LIRC currently waives some overpayments if they find that an appeal tribunal allows benefits in error. LIRC considers appeal tribunals to be part of the department because the administrative law judges are DWD employees.

The department is proposing to amend the definition of "departmental error" to confirm the department's interpretation of statute and exclude errors by appeal tribunals.

D19-08 Appropriations Revisions and Technical Corrections

This proposal is technical in nature and clarifies appropriation references in Wis. Stat. ch. 108. Currently, the department has what is referred to as the "Administrative Account." The department proposes to eliminate the "Administrative Account" and clarify the UI appropriations references in Wis. Stat. ch. 108. The proposal also cleans up some typographical errors, cross references, and obsolete language. One proposed change would create an appropriation for LIRC to receive money for various purposes including transfer fees. The department is asking LIRC to specifically review this provision.

D19-09 Creation of Administrative Fund

This proposal would recreate a separate, nonlapsible fund for receiving employer interest and penalty monies collected under Wis. Stat. § 108.22(1) and any other amounts the department collects that are not designated for another fund. The purpose of this proposal is to provide consistent treatment for the amounts collected by the department and to better ensure that funds paid by employers remain within the UI program.

D19-10 Update Administrative Rules to Convert Standard Industry Classification (SIC) Codes to North American Industry Classification System (NAICS) Codes

This proposal would replace SIC codes with NAICS codes. SIC codes are no longer being modified to reflect changes in the economy. SIC and NAICS codes are used to classify businesses into industry groups. This proposal would require an administrative rule change. A scope statement has been prepared, which the department requests that the Council approves.

Ms. Knutson provided information on the following department proposals:

D19-11 Repeal UI Drug Testing

This proposal would repeal the statutes relating to pre-employment drug testing and occupational drug testing, and also repeal Wis. Admin. Code DWD ch. 131. The pre-employment drug testing program is a voluntary program for employers to report the results of a failed or refused pre-employment drug test to the department. If a reported individual is receiving UI benefits, the individual is presumed to have failed, without good cause, to accept suitable work and is ineligible for benefits. If the drug test was failed, the individual may maintain eligibility for UI benefits if the individual enrolls in and complies with a substance abuse treatment program and completes a job skills assessment. To date, no claimants have been determined ineligible for UI benefits as a result of employers' reports of a failed drug test, and no GPR funds have been expended for substance abuse treatment.

The Legislature appropriates $250,000 of GPR annually ($500,000 per biennium) to the department to fund and administer UI drug testing and treatment programs under Wis. Stat. § 108.133. This appropriation covers both occupational and pre-employment drug testing and treatment costs. The GPR funds have not been expended for substance abuse treatment programs as a result of pre-employment drug testing reports filed by employers. Unused appropriated GPR funds are transferred to the Program Integrity Fund at the end of the biennium.

This proposal will also repeal the requirement that the department establish a program to screen UI applicants whose only suitable work is in an occupation that regularly conducts drug testing to determine if there is a reasonable suspicion the applicant has engaged in the unlawful use of controlled substances, and if so, require the applicant to submit to a drug test. The occupational drug testing program is not yet in effect because the department is unable to promulgate rules to implement the program until the USDOL issues federal regulations.

The proposed changes will save GPR funding of $500,000 per biennium. The proposal would not have any impact on the UI Trust Fund.

D19-12 Repeal Substantial Fault

An employee who is discharged for misconduct or substantial fault is ineligible for UI benefits. An employee is ineligible for UI benefits until seven weeks have elapsed since the end of the week in which the discharge occurs, and the employee earns wages after the week in which the discharge occurs equal to at least 14 times the employee's weekly benefit rate.

Previously, Wis. Stat. § 108.04(5g) provided a disqualification for violations of an attendance policy if certain requirements were met. The 2013 Budget Act (2013 Wis. Act 20) repealed Wis. Stat. § 108.04(5g) and replaced it with the disqualification for substantial fault. 2013 Wis. Act 20 also created several enumerated types of misconduct regarding attendance.

This proposal would repeal Wis. Stat. § 108.04(5g), substantial fault.

D19-13 Define Suitable Work by Administrative Rule

The definition of "suitable work" in UI law provides a standard for determining whether a claimant has good cause for accepting work when offered. Prior to 2015, when a claimant refused an offer of work within the first six weeks of being unemployed, the department compared the skill level and rate of pay of the job refused to one or more of the claimant's recent jobs. Benefits were allowed if the skill level of the work being refused was lower than that of one or more recently-held jobs, or if the rate of pay offered was less than 80% of the pay of one or more recent jobs. The 80% threshold was set by department policy.

This proposal would repeal changes made to the definition of suitable work and require the department to define "suitable work" by administrative rule, specifying different levels of suitable work based on the number of weeks a claimant has received benefits in a benefit year.

D19-14 Quit Exception for Relocating Spouse

As a condition of Wisconsin receiving federal grant money (American Recovery and Reinvestment Act of 2009) during the recession, Wisconsin created a "quit to relocate" exception that permitted claimants to be eligible for UI benefits if they quit their job to move with a spouse who was required to relocate for employment. 2013 Wis. Act 20 amended and repealed several quit exceptions and modified the "quit to relocate" exception to cover only a claimant whose spouse is on active duty with the U.S. Armed Forces, is required to relocate by the U.S. Armed Forces, and it is impractical for the claimant to commute to work.

This proposal would broaden the quit to relocate exception to apply to claimants whose spouses are required by any employer to relocate, not just the U.S. Armed Forces.

Mr. Manley asked how the department would determine or verify a claimant's spouse was required to move in instances where the employer is requiring the employee to relocate. Ms. Knutson responded that verification from the employer would be required.

D19-15 Increase and Index Maximum Wage Cap for the Partial Benefit Formula
2011 Wis. Act 198 capped the amount of wages a claimant may earn and still receive partial benefits at $500. Before 2011 Wis. Act 198, there was no wage cap in the statute, but the claimant would not receive UI benefits if they earned more wages than the partial benefit formula allowed. Currently, a claimant is ineligible for benefits if he/she received from one or more employers wages earned for work performed in that week of more than $500 or holiday, vacation, termination or sick pay which, alone or combined with wages earned for work performed in that week equals more than $500. Claimants are also ineligible for partial benefits if they work 32 hours or more in a week.

This proposal would index the $500 weekly maximum earned income disqualification to an amount based on the U.S. consumer price index. The initial maximum disqualifying earned income is projected to be $510.

D19-16 Repeal Waiting Week.
In 1936, the first UI benefit claimant had a three-week waiting period before receiving the first UI check. In 1941, the waiting period was reduced to two weeks and in 1951 was further reduced to one week. In 1977, the one-week waiting period was repealed.

The 2011 Budget Act (2011 Wis. Act 32) recreated a one-week waiting period for UI benefits effective 2012. For every new benefit year, no benefits are payable for the first week a claimant would otherwise be eligible for benefits. The waiting week does not reduce a claimant's maximum benefit amount. This proposal will repeal the one-week waiting period.

Mr. Manley stated that the projected fiscal impact for this proposal expects an increase in UI benefit payments of approximately $27.2 million annually, however this estimate is based on current claim levels, which are historically low. Mr. Manley referenced a fiscal estimate the department prepared in October of 2013 for Assembly Bill 374 – a similar proposal to remove the one-week waiting period which the estimated fiscal impact expected an increase in benefit payments of $48 million. This comparison demonstrates that the fiscal impact of repealing the one-week waiting period is dependent on claim activity so basing projections off the current claim levels may cause the projected fiscal impact to be misleading.

D19-17 Repeal Work Search and Work Registration Waivers from Statute
This proposal would repeal the statutory changes to work search and work registration waivers created by 2017 Wis. Act 370.

D19-18 Increase Maximum Weekly Benefit Rate to $406
2013 Wis. Act 36 (Agreed Bill) increased the maximum weekly benefit rate (WBR) from $363 to $370 effective January 2014, the last time the maximum WBR was increased. The maximum WBR would increase to $406 under this proposal. The national average WBR is $355 and Wisconsin's average WBR is $319.

Mr. Manley requested department staff review the average claim activity over the past ten years and analyze the fiscal effect of an increase in maximum WBR amount and repealing the one-week waiting period if Wisconsin experienced claims at each year of a ten-year average level.

Mr. Gustafson suggested obtaining a copy of the comparison of state UI laws publication for the Council members to have as a resource when discussing various issues. Ms. Knutson responded that the department will look into the cost of obtaining copies.

Ms. Quam stated last fall there were discussions relating to summer camp employers paying in taxes for camp counselors that are ineligible to receive UI benefits. Ms. Quam was under the impression it was going to be brought forward as a department proposal, but does not see that is has been included. Ms. Knutson stated the department decided not to include it as a department proposal; however, the Council may include it as part of the Agreed Bill.

9. Senator Lena Taylor

Wisconsin State Senator Lena Taylor (Wisconsin State Senate, District 4) spoke to the Council and requested support of a bill that would protect federal employees classified as essential workers during a federal shutdown. A recent partial government shutdown was the largest and longest in U.S. history. It is estimated to have impacted 3,000 Wisconsin residents that were furloughed employees and employees that were classified as essential workers and required to work during the shutdown (for example, TSA employees). Neither the furloughed nor the essential workers were receiving paychecks during the shutdown. The furloughed employees were eligible to collect UI benefits and are required to pay these benefits back; however, essential employees were not eligible for UI benefits because of the way current law is written. Currently, anyone working at least 32 hours per week, regardless of when they are paid, is ineligible to claim UI benefits and the department is unable to provide a waiver to these workers.

Senator Taylor is requesting the Council support the new legislation and write a letter of support to the Legislature that would allow essential federal workers to collect UI benefits during a mandated government shutdown, which would be required to be paid back when the shutdown ends.

Ms. Knutson thanked Sen. Taylor for coming and bringing this legislation to the Council. The UI Bureau of Legal Affairs reviewed the bill draft and suggests certain modifications may be necessary in order to accomplish the true intent of the legislation. Currently, anyone working 32 hours, regardless if they are getting paid that week or later, is disqualified if the worker earns $500 or more. Suggested language has been provided and Ms. Knutson offered to work with Sen. Taylor's staff to make those changes. According to the fiscal analysis of the proposed legislation, depending on the definition of "essential worker," a change in law could impact 250-1,000 worker per shutdown. Most of these workers are full-time and earn enough to qualify for the maximum benefit rate of $370 weekly. The assumption of five weeks was used (the length of the last shutdown), which resulted in additional $370,000 to $1.5 million UI benefit payments, depending on the number of employees covered. These workers would be required to pay back those benefits once workers were paid by the employer. There is a small percentage of claimants that would no longer be working, or for other reasons collection of these benefits would be difficult. Those debts would be covered by the interest and penalty fund and there would be no impact to UI Trust Fund. Ms. Knutson stated a copy of the draft legislation would be provided to Sen. Taylor.

Senator Taylor also discussed the UI procedural requirements that furloughed employees were required to do during the shutdown to be eligible to receive UI benefits, such as the work search requirement even though those employees were expected to return to the same employer. These requirements were not addressed in the current bill draft but are something that should be reviewed. Ms. Knutson requested some time to discuss this issue within the department to determine the best possible solution, and then work with Sen. Taylor's staff when that is completed.

Mr. Manley thanked Sen. Taylor for coming before the Council. Mr. Manley pointed out that under Section 3 of the bill draft, a newly created section of statute directs the department to disregard an employee's hours worked. Mr. Manley asked if it would make sense to clarify in Section 3, very explicitly, that provision only applies to federal employees. Ms. Knutson stated there may be federal conformity issues if it is written to indicate the section only applies to federal employees. Additional language has been provided to Sen. Taylor and once she has reviewed that language, those changes will be sent out to the Council for consideration.

Mr. Hayden thanked Senator Taylor for highlighting this issue and bringing it before the Council.

10. Research Request

Ms. Knutson provided information requested by the Council at the last meeting regarding the Trust Fund balance amount equivalent to an Average High Cost Multiple (AHCM) of 1.0. The Trust Fund balance would need to be $1.9 billion (which is the equivalent of 1.81% of taxable covered wages) as of June 30, 2018 to have an AHCM of 1.0.

A requested 50-state comparison of average weekly benefit rates and minimum and maximum weekly benefit rates is included in the Council packet. The Council was also presented a comparison of the rates for just USDOL Region 5 states.

The Council requested a comparison of different laws between UI, Worker's Compensation and Equal Rights pertaining to misclassification. The department provided UI, Worker's Compensation and Labor Standards tests for employee versus independent contractor.

11. Correspondence

Ms. Knutson shared with the Council a copy of a letter received by Patrick Hyden. The Council was also provided a copy of the correspondence Mr. Hyden had sent former Council member Mike Crivello in January 2017 expressing concerns as a seasonal worker and work search requirements. A copy of the department's response was provided and states that his comments will be taken under consideration as the Council develops potential reforms to UI law.

12. Updated Agreed Bill Timeline

Ms. Knutson noted that an additional meeting has been added in May/June to discuss law change proposals for the next Agreed Bill.

13. Future Meeting Dates

Ms. Knutson reported that the next UIAC meeting is scheduled for April 18, 2019. A poll of Council members will be conducted to determine if there will be a quorum on that date.

Caucus

Motion by Mr. Hayden, second by Mr. Manley to go into closed caucus under Wis. Stat. § 19.85 (1)(ee) to deliberate items on the agenda at 12:24 p.m. The motion carried unanimously.

The Council was reconvened at 1:20 p.m. Motion by Ms. Feistel, second by Mr. Manley to approve the scope statement for the administrative rule changes in Department Proposal 19-10. The motion carried unanimously.

14. Adjournment

Motion by Ms. Feistel, second by Mr. Manley to adjourn the Council meeting. The motion carried unanimously at 1:24p.m.

Motion by Mr. Manley, second by Ms. Feistel to reconsider and withdraw the adjournment. The motion carried unanimously at 1:25p.m.

Motion by Mr. Hayden, second by Mr. Manley for the Council go into to closed caucus under Wis. Stat. § 19.85(1)(ee) and to adjourn from caucus. The motion carried unanimously and the Council adjourned to caucus at 1:26p.m.

The State of Wisconsin

EXECUTIVE DEPARTMENT

EXECUTIVE ORDER #20

Relating to the Creation of the Joint Enforcement Task Force on Payroll Fraud and Worker Misclassification

WHEREAS, a significant number of employers in Wisconsin and elsewhere are improperly classifying individuals they hire as "independent contractors" even when those workers should be classified as employees;

WHEREAS, in 2009 the Wisconsin Department of Workforce Development, Unemployment Insurance Division found that 44% of the workers investigated during employer audits had been misclassified as independent contractors;

WHEREAS, from January 2016 to April 2019, the Worker Misclassification Section of the Department of Workforce Development conducted 1,963 investigations, with 422 resulting in audits. The 422 audits found 5,841 workers misclassified, found under-reported gross wages of almost $70 million, and assessed approximately $1.8 million in unemployment insurance taxes, interest, and penalties;

WHEREAS, worker misclassification denies vulnerable workers legal protections and benefits;

WHEREAS, this fraudulent practice also results in millions of dollars of losses to state government and taxpayers due to underpayments of wages, unemployment insurance contributions, worker's compensation insurance, and payroll taxes;

WHEREAS, employers that misclassify workers as independent contractors gain an unlawful competitive advantage that allows them to under-bid and out-compete law-abiding employers;

WHEREAS, enforcement activities in this area have historically been divided among different agencies, which can reduce the efficiency and effectiveness of enforcement without intentional collaboration;

WHEREAS, research and experience in other states suggest that enforcement efforts to address the problem of misclassification can be enhanced and made more efficient through interagency cooperation, information-sharing, and joint enforcement efforts against serious violators; and

WHEREAS, research and experience in other states suggest that the creation of a joint task force has proven to be an effective mechanism for coordinating, enhancing, and streamlining enforcement in this area.

NOW, THEREFORE, I, TONY EVERS, Governor of the State of Wisconsin, by the authority vested in me by the Constitution and the Laws of the State, including Section 14.019 of the Wisconsin Statutes, do hereby create the Joint Enforcement Task Force on Worker Misclassification ("Task Force") and order the following:

1. The Task Force shall be staffed by the Department of Workforce Development with technical assistance provided by staff of other agencies as needed. The Task Force shall consist of:

    a. The Secretary of Workforce Development or a designee, who shall serve as the chair;
    b. The Attorney General or a designee;
    c. The Secretary of the Department of Revenue or a designee;
    d. The Commissioner of Insurance or a designee;
    e. The Administrator of the Worker's Compensation Division of the Department of Workforce Development;
    f. The Administrator of the Unemployment Insurance Division of the Department of Workforce Development;
    g. The Administrator of the Equal Rights Division of the Department of Workforce Development;
    h. Other individuals appointed by the Governor to serve at the pleasure of the Governor, including at least one individual representing workers and at least one individual from the business community in an industry affected by misclassification, such as construction.

2. The Task Force shall facilitate coordination of investigation and enforcement of worker misclassification matters by the Department of Workforce Development, Department of Revenue, Commissioner of Insurance, Department of Justice, and other relevant agencies. This includes, but is not limited to:

    a. Reviewing the work of the Worker Misclassification Task Force established by the Department of Workforce Development in October 2008, including its final report of June 2009, and the recommendations contained therein;
    b. Examining and evaluating existing misclassification enforcement by agencies and reviewing the subsequent work on this issue by the Department of Workforce Development Misclassification Section;
    c. Facilitating the sharing among the Task Force members of information relating to suspected worker misclassification violations, in a timely manner and to the maximum extent permitted by law;
    d. Developing recommendations for pooling, focusing, and targeting investigative and enforcement resources;
    e. Assessing existing methods, both within Wisconsin and in other jurisdictions, of preventing, investigating, and taking enforcement action against worker misclassification violations, and to develop best practices for participating agencies to improve their prevention and enforcement efforts;
    f. Facilitating the filing of complaints and identification of potential violators;
    g. Facilitating cooperation and participation of local district attorneys and other relevant state and federal agencies;
    h. Working cooperatively with business, labor, and community groups interested in reducing worker misclassification, including but not limited to:

        i. Seeking ways to prevent worker misclassifications, such as through the further dissemination of educational materials regarding the legal differences between independent contractors and employees; and
        ii. Enhancing mechanisms for identifying and reporting worker misclassification where it does occur;

    i. Increasing public awareness of the illegal nature of and harms inflicted by worker misclassification;
    j. Working cooperatively with federal, state, and local social services agencies to aid vulnerable populations that have been exploited by

worker misclassification, including but not limited to immigrant workers; and

k. Reviewing statutes and regulations related to worker misclassification and recommending any appropriate changes to relevant legislation or administrative rules.

3. The Task Force shall issue a report to the Governor on or before March of each year, which shall:

   a. Describe the accomplishments and recommendations of the Task Force;
   b. Include the amounts of wages, premiums, taxes, and other payments or penalties collected with coordinated agency activities, as well as the number of employers cited for legal violations related to misclassification and the approximate number of workers affected;
   c. Identify any administrative or legal barriers impeding the more effective agency coordination, including any barriers to information sharing or joint action;
   d. Propose, after consultation with representatives of business and organized labor, members of the legislature and other agencies, appropriate administrative, legislative, or regulatory changes to:

      i. Reduce or eliminate any barriers to coordinated agency investigations;
      ii. Prevent worker misclassification from occurring;
      iii. Investigate potential violations of the laws governing worker misclassification; and
      iv. Improve enforcement where such violations are found to have occurred; and

   e. Identify successful mechanisms for preventing worker misclassification, and thereby reducing the need for greater enforcement.

4. Every agency, department, office, division, or public authority of the State of Wisconsin shall cooperate with the Task Force and furnish such information and assistance as the Task Force determines is reasonably necessary to accomplish its purposes.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great seal of the State of Wisconsin to be affixed. Done in the City of Madison this fifteenth Day of April in the year of two thousand nineteen.

TONY EVERS
Governor

By the Governor:

Douglas La Follette
DOUGLAS LA FOLLETTE
Secretary of State

Financial Outlook

Wisconsin
Unemployment
Insurance
Program

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

Caleb Frostman, Secretary
Department of Workforce Development
April 2019
UCD-8967-P (R.04/2019)

Executive Summary

Due in large part to historically low Unemployment Insurance (UI) benefit payments, Wisconsin's UI Trust Fund ended 2018 with a balance of over $1.7 billion. UI benefit payments charged to the Trust Fund have continued to decline over the reporting period from $457 million in 2016 to $408 million in 2017 and $376 million in 2018.

These historically low benefit payments have caused the Trust Fund to grow quickly over the past two years. The economy is expected to grow slowly throughout the projection period of 2019 through 2022. If such growth occurs and benefit payments stay at historically low levels, the Trust Fund balance is expected to be sufficient to pay benefits without resorting to borrowing from the federal government. If, however, benefit payments return to more typical amounts, the Trust Fund will begin to shrink. If a mild recession were to occur in the next few years, the Trust Fund would likely remain solvent and pay expected benefits without needing to borrow; however, the UI financing system would have trouble rebuilding the Trust Fund after the recession.

The Secretary recommends the Unemployment Insurance Advisory Council review all relevant factors and provide to the Governor and the Legislature proposed solutions to further strengthen the Trust Fund. The Secretary believes a strong Trust Fund is vitally important to our state's economy and should be adequately funded and able to pay much needed benefit payments to workers out of work through no fault of their own without reliance on the federal government. UI benefit payments are vital to the ability of individuals to continue to provide for themselves and their families during an unfortunate and unforeseen employment separation and contribute to the health of our local and state economies during an economic slowdown. The Department of Workforce Development has significant information and research on the issues and alternative solutions and is prepared to support the Unemployment Insurance Advisory Council as it considers options to improve not only the Trust Fund, but the vitality and strength of the entire UI program and ensure that it is able to carry out its mission of supporting Wisconsin workers through an employment transition after losing work through no fault of their own.

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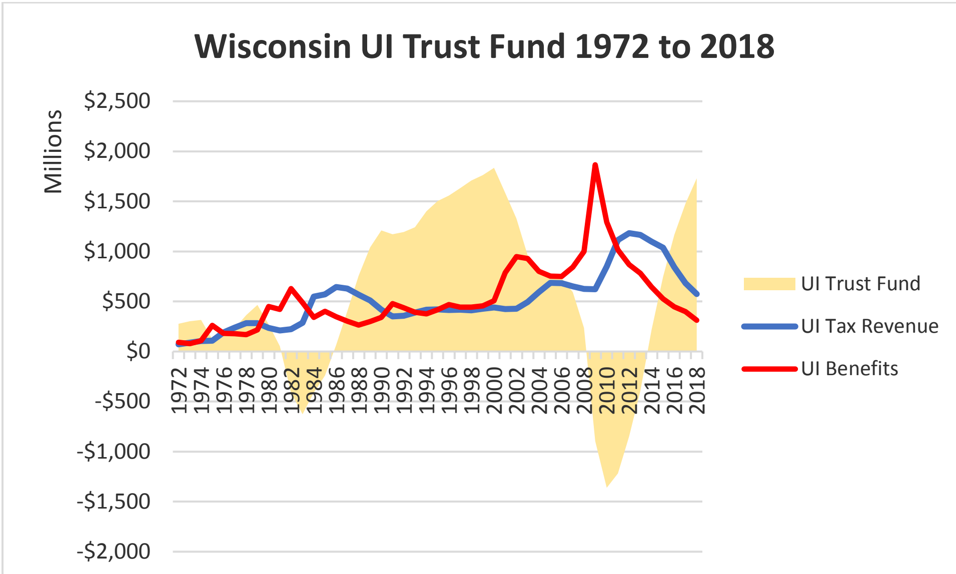
Introduction

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



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Due to multiple factors, UI benefit payments have been historically low the past two years since the last *Financial Outlook* which has led to substantial growth of the UI Trust Fund. At the end of 2018 the Trust Fund had a balance of $1.731 billion. This is an increase of $572 million over the 2016 ending balance of $1.159 billion. The decline in benefit payments combined with the increased Trust Fund balance resulted in a decrease in UI taxes paid by employers.

This *Financial Outlook* provides a basic summary of the UI program to measure the adequacy of the Trust Fund and the UI financing system. It provides background on UI financing as well as projections for the near-term future of the program.

Section 1 is an overview of the UI financing system and explains the basics of how the UI benefits and UI tax systems function.

Section 2 covers a brief history of the UI Trust Fund and UI financing system over the past few decades.

Section 3 provides forecasts for the UI Trust Fund under differing benefit payment scenarios. Using economic forecasts, the Department estimates benefit payments and taxes through the end of 2022. From these projections the Trust Fund balance is calculated over the period for each scenario.

Section 4 provides long run simulations of the UI Trust Fund through 2027 under scenarios presented in Section 3. These simulations provide a better demonstration of the underlying financial system of the Wisconsin Unemployment Insurance program.

Section 1: Unemployment Insurance Benefits and Financing System

Unemployment Insurance (UI) is funded by employer contributions to provide temporary economic assistance to Wisconsin's eligible workers during times of unemployment. This section provides a brief background on the Wisconsin UI financing system.

Unemployment Insurance Benefits

UI benefits are paid to claimants who have lost employment through no fault of their own and have a work history with one or more employers that participate in the UI program. To continue to qualify for UI benefit payments, a claimant must be able and available for full-time work and, unless granted an exception, must be actively searching for work. The amount of UI benefit payments a claimant may receive is based on the claimant's past earned wages, up to a maximum weekly benefit rate of $370, an amount below the national average of $446. Wisconsin is also below the average of $492 per week of bordering states. The maximum weekly benefit rate for all states is located in Appendix D. Under the regular UI program, a claimant may receive up to 26 weeks of benefits in Wisconsin, which is consistent with the maximum duration for the vast majority of states.

Covered Employers in the Unemployment Insurance System

Most employers in Wisconsin participate in the UI program and are considered "covered employers."

Covered employers fall into two groups:

Taxable Employers

Most employers in Wisconsin are taxable employers. Individual employers fund UI benefit payments and partially fund UI program operations through quarterly assessed taxes. Unemployment benefit risk is spread across all employers through taxes that are experience-rated, instead of employers self-financing unemployment benefits.

Reimbursable Employers

Reimbursable employers self-finance unemployment benefits for their workers. Local governmental entities, non-profit organizations, and Native American Tribes can elect to be reimbursable employers. UI administers payment to individuals who worked for reimbursable employers and bills those employers directly to reimburse the UI benefits paid.

Unemployment Insurance Taxes

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

State Taxes

State UI taxes are a payroll tax that finance Wisconsin UI benefits. Employers are assessed UI taxes on each employee's wages up to the taxable wage base. In 2017 and 2018 the taxable wage base was $14,000; therefore, an employer is assessed UI taxes on the first $14,000 in wages paid to each employee. The tax rate an employer pays on wages up to the wage base is determined by two separate factors. The first factor is the UI tax schedule in effect for a given rate year. The UI tax schedule in effect is determined by the UI Trust Fund balance on June 30th of the previous year. Schedule D, the lowest rate schedule, is currently in effect. As the Trust Fund balance changes, tax schedules with higher or lower rates automatically take effect. The higher the Trust Fund balance, the lower the tax rate schedule in effect.

The second factor that impacts the tax rate an employer pays is the employer's experience with the UI system. The more that current or former employees of an employer collect UI benefits, the higher the tax rate that employer will pay. New Wisconsin employers who do not have a previous history with the Wisconsin UI system are assigned a new employer tax rate for the first three years for which they make contributions. This rate varies depending on the industry and size of the employer. After three years, these employers' taxes are then based on their experience with the UI system.

There are two components of state UI taxes collected:

Basic Taxes

The basic tax is generally the larger portion of the state tax. The basic tax is the portion of the tax an employer pays that is credited to the employer's UI account. The amount an employer pays in basic taxes is heavily tied to the employer's experience with the UI system.

Solvency Taxes

The solvency tax is generally smaller than the basic tax amount. Solvency taxes are deposited in the Trust Fund and credited to the UI Balancing Account. Benefit payments not charged to specific employers are charged to the UI Balancing Account; it represents risk sharing among employers participating in the UI system.

Administrative Assessment

Occasionally, there will be a separate assessment collected along with the UI state tax that is used for specific UI administrative programs. An assessment was implemented for tax years 2017 and 2018 to fund UI program integrity activities. The assessment amount is a flat 0.01 percent rate with a corresponding reduction in the solvency tax rate for all employers subject to a solvency tax. The administrative assessment does not change the amount of tax any given employer is required to pay.

UI Employer Account

The employer account acts only as a measure to gauge a given employer's experience with the UI system. It is not a savings account for the employer to pay for future benefits. The net difference between all the taxes collected and the charged benefit payments over the entire employer's history constitutes the balance of the employer's account, also known as the Reserve

Fund Balance. If an employer's account falls below zero, benefits will still be paid to the employer's eligible former workers. The basic tax an employer pays is entered as a credit on the account. UI benefit payments paid to former (or in some cases current) workers are charged against the account.

An employer's account balance on June 30th determines the employer's tax bracket, and ultimately the tax rate an employer pays the next calendar year. The employer's account balance is compared to the employer's current taxable payroll[1]. The employer's reserve fund percentage is the ratio of the employer's account balance to the employer's payroll. This percentage is then compared to the current tax schedule in effect, and the employer's tax rate for the following calendar year is determined.

UI Balancing Account
The Balancing Account represents the social insurance aspect of the system for employers. Revenue credited to the Balancing Account typically comes from two sources[2]. The first source, and by far the largest, is the solvency tax paid by employers. The second source is any interest earned on the UI Trust Fund. The Trust Fund earned $36.9 million in interest revenue for 2018.

Some benefit payments are not charged to a specific employer's account but are instead charged to the Balancing Account. There are seven basic categories of benefit payments charged to the Balancing Account: 10 Percent Write-offs, Quits, Misconduct, Substantial Fault, Continued Employment, Approved Training, and Second Benefit Year. In the past there have been other benefit programs that have been charged to the Balancing Account. Full descriptions of these charges can be found in Appendix G.

The balance in the Balancing Account represents the lifetime revenues credited and benefits charged to the account. The current balance was -$583 million as of December 31, 2018. Therefore, the solvency taxes and interest are not sufficient to cover charges against the balancing account.

<u>Federal Unemployment Taxes (FUTA)</u>

Employers participating in the UI system also pay federal unemployment taxes. FUTA[3] taxes pay for the following:

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

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[1] While the payroll used is for the fiscal year ending June 30, employers' 2nd quarter contribution and wage reports and payments due July 31 are reflected in this calculation if made on a timely basis.

[2] Other federally distributed funds are also credited to the UI Balancing Account. One example is the FUTA credit reduction revenue which occurs when the UI system is borrowing.

[3] Federal Unemployment Tax Act, 26 U.S.C. § 3301.

2. **Extended Benefits (EB) and Extended Unemployment Compensation (EUC)**

Wisconsin qualified for the EB program from February 2009 until April 2012. Normally funding for the EB program is shared equally by both the state and the federal government. The state portion is funded through the state's UI Trust Fund and the federal portion is funded through FUTA tax revenue.

The U.S. Congress has the option of authorizing EUC payments, which has typically occurred during severe recessions. Funding for the additional benefits normally comes from FUTA tax revenues reserved over time for this purpose. Congress authorized general tax revenue to partially fund EUC during the Great Recession.

3. **Trust Fund Borrowing**

After the UI Trust Fund was exhausted in 2009, Wisconsin borrowed from the federal government to pay benefits. Wisconsin finished repaying all federal loans with interest in 2014.

Costs Involved with UI Trust Fund Borrowing

<u>FUTA Credit Reductions</u>

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

<u>Special Assessment for Interest (SAFI)</u>

Federal law prohibits using regular state UI taxes to pay interest on a federal loan to a state Trust Fund; therefore, a separate funding source is needed. Wisconsin initially paid the interest charges on its federal loans through a special assessment on employers (SAFI) in 2011 and 2012. Although liability for the interest payments remained, the SAFI was not assessed after 2012. Starting in 2013, the Wisconsin Legislature provided state General Purpose Revenue (GPR) to cover interest due on the UI loan. In total, $103 million in interest costs were assessed on Trust Fund loans due to the Great Recession, with employers paying $78 million through SAFI and the remaining $25 million paid with Wisconsin GPR funds.

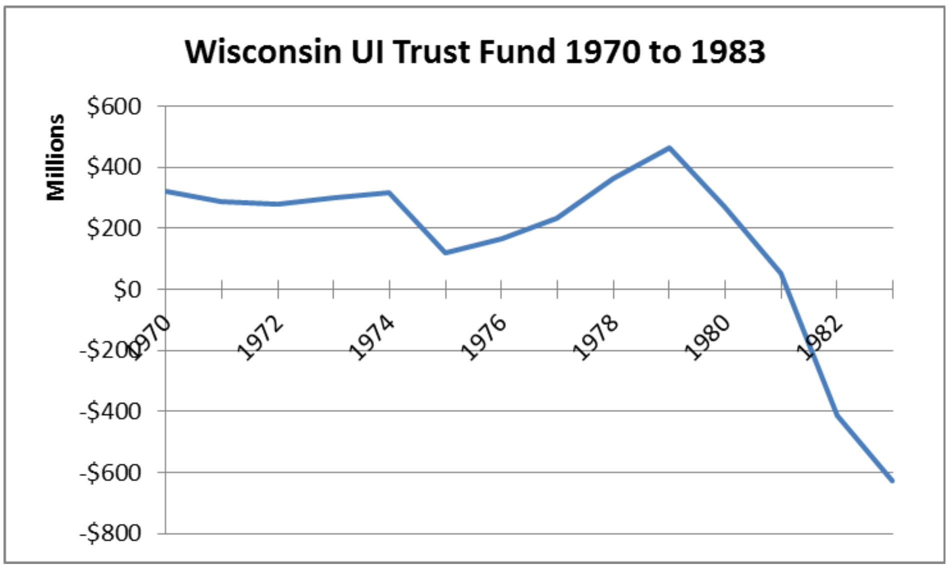
The cost to employers of borrowing from the federal government is significant. Ideally, the UI system builds a large Trust Fund that is drawn down during a recession and builds back up during periods of expansion. The UI Trust Fund should be large enough so taxes would not need to be raised until after the recovery is underway.

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

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

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

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



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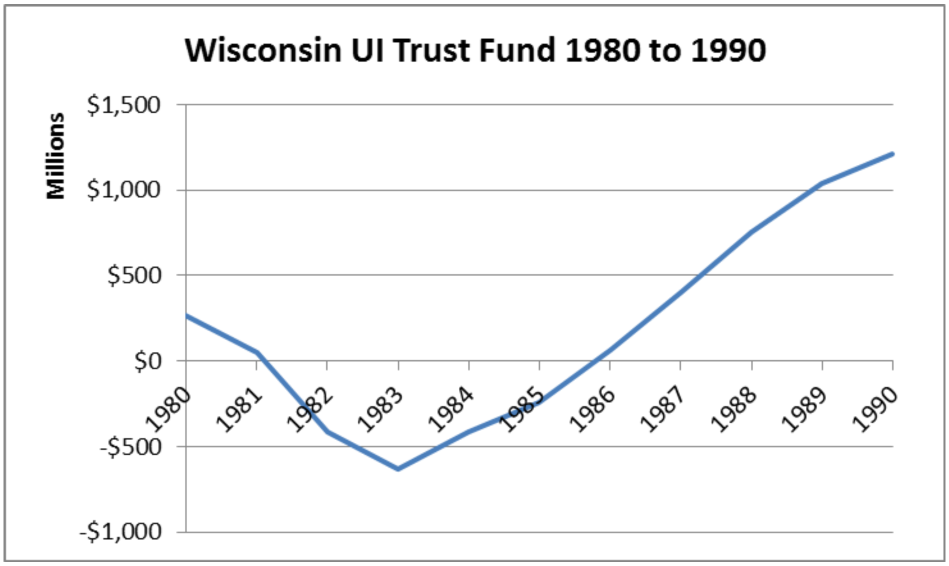
Wisconsin borrowed nearly $1 billion ($988 million) between 1982 and 1986. To provide context, this was about 4.1 percent of Total Covered Payroll in the mid-1980s. The same 4.1 percent of Total Covered Payroll of taxable employers in 2018 would be about $4.2 billion. Wisconsin's employers paid $124 million in interest as a result of borrowing in the mid-1980s.

To eliminate the large Trust Fund debt, Wisconsin enacted legislation that provided a number of major changes to the UI financing system. These changes included:

- Increasing the taxable wage base from $6,000 to $10,500;
- Creating new tax rate schedules that are dependent on the Trust Fund balance;
- Increasing the Rate Limiter to two percent;
- Temporarily discontinuing the 10 percent write-off;
- Limiting the effect of voluntary contributions;
- Charging the state's portion of Extended Benefits to employers instead of the Balancing Account;
- Reducing the maximum benefit duration from 34 weeks to 26 weeks;

- Increasing the requirements to qualify for benefits;
- Increasing the requalification requirements; and
- Eliminating the indexing of the weekly maximum benefit amount.

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



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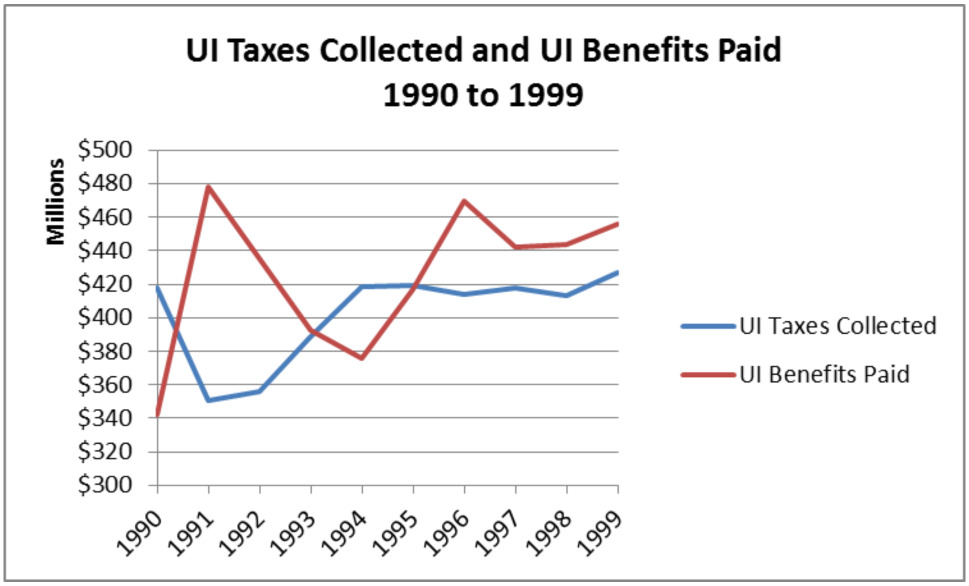
The Static UI Financing System in the 1990s

The Trust Fund accumulated a large balance before the onset of the 1991 recession. When the recession hit, total UI benefits paid exceeded UI tax revenue collected; however, the Trust Fund remained solvent. As the recession wound down, tax revenue rebounded, and benefit payments fell as expected.

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

Beginning in 1996, annual UI benefits paid began to exceed annual UI tax revenue collected. The mid-1990s were a high interest rate environment so the large interest returns allowed the Trust Fund to continue to grow despite the UI program running a yearly deficit.



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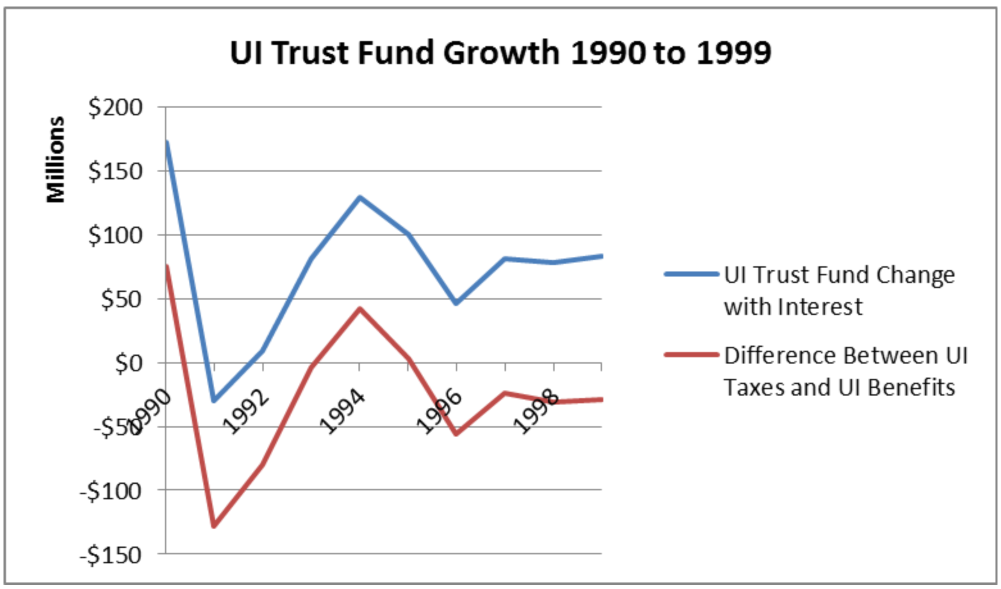

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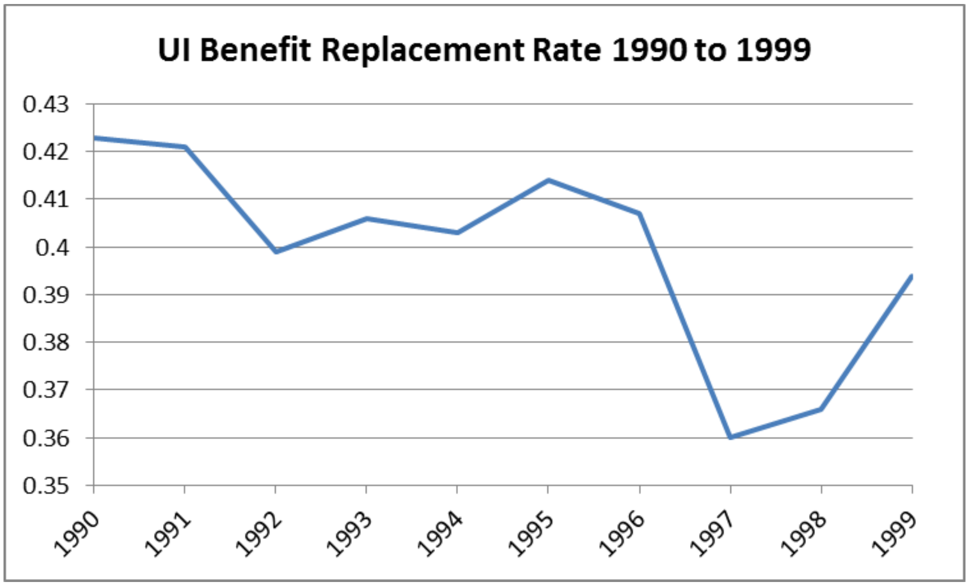
The yearly deficit between benefit payments and tax revenue in the 1990s was not due to increases in the UI benefit formula. In fact, the real value of UI benefits to the unemployed fell during this time. The UI benefit replacement rate (the ratio of the average weekly benefit amount to the average weekly wage) declined over the 1990s. The average weekly benefit amount was 42.3 percent of the average weekly wage in 1990 and fell to 39.4 percent in 1999. (The replacement rate has continued to decline over the past two decades to a current rate of 35 percent.) Although the benefit replacement rate was declining, benefits paid increased in the late 1990s due to the average wage increasing over the period. Increases in an individual's wages increases the amount of a person's benefit entitlement. Benefit payments are expected to increase over time due to increases in wages earned and increases in the number of people employed and eligible for benefits. The Trust Fund ended 1999 with a positive balance of $1.7 billion.



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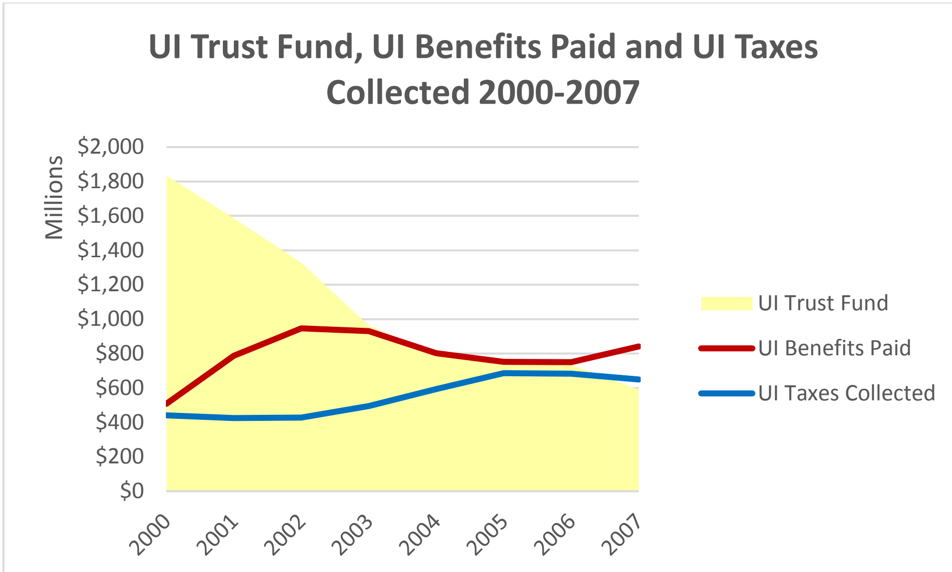
The Shrinking of the UI Trust Fund in the 2000s

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

The level of unemployment claims in the 2000s had increased over levels typical in the late 1990s. Interest earnings were no longer covering the gap between benefit payments and taxes. The system did not respond to either the recession or the shrinking Trust Fund. Taxes collected never exceeded benefits paid, and taxes started to fall, even though the Trust Fund continued to decline.



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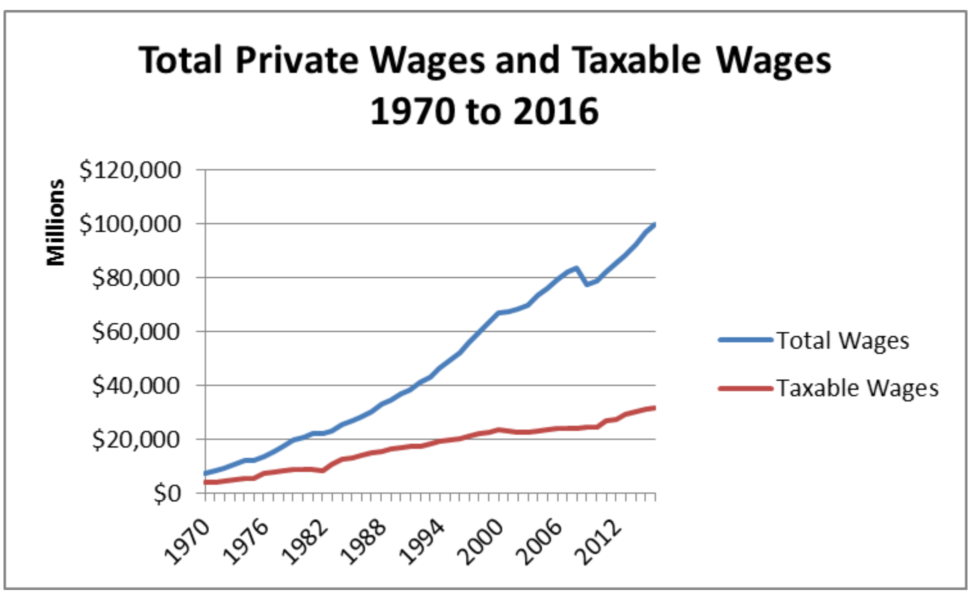
There are two main reasons why the financing system was non-responsive:

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

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



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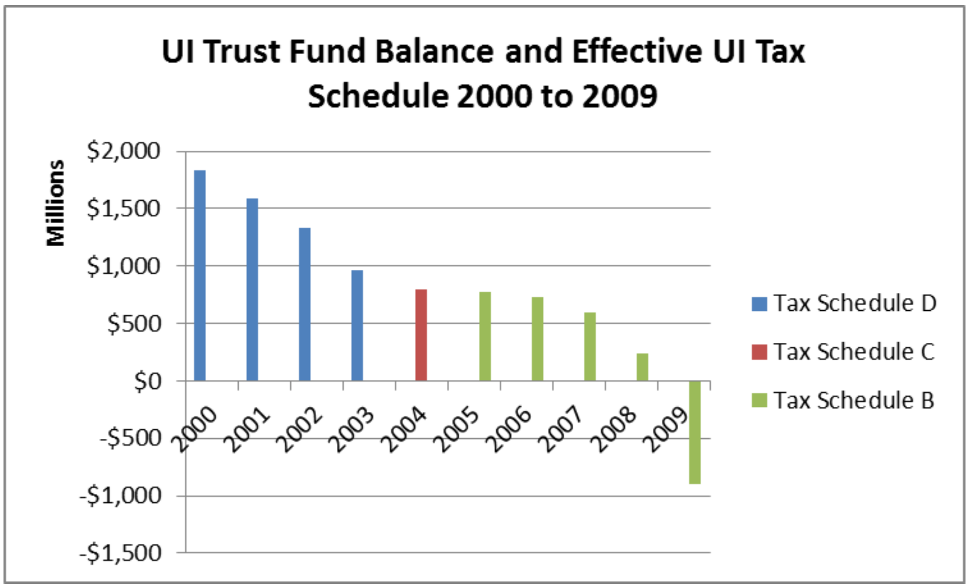
2. **The UI Tax Rate Schedule Change Triggers Reflect the 1980s Economy**
   The UI tax system is comprised of four tax rate schedules. The balance of the Trust Fund as of June 30th determines which schedule is in effect for the next tax year and the dollar amount will trigger a corresponding tax schedule. When the schedule triggers were first established, they reflected the Wisconsin economy of the late 1980s. However, as the Wisconsin economy grew the triggers did not. When the triggers were adjusted in 1997, the threshold values were not updated to reflect any economic growth between 1989 and 1997. Therefore, the fixed trigger amounts did not reflect the economy of the early 2000s. Even with the Trust Fund shrinking rapidly, the balance never fell below the $300 million balance threshold needed to trigger the highest tax rate schedule (Schedule A). Without the implementation of the higher rates in Schedule A, the Trust Fund continued to shrink.



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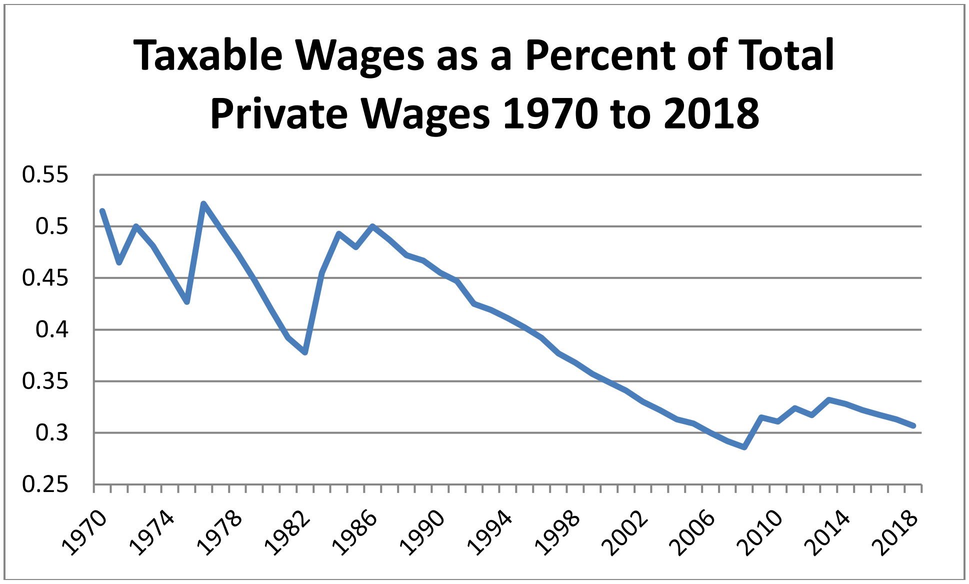
Between 2003 and the onset of the Great Recession, benefits paid remained above taxes collected. Unlike in the 1990s, interest earnings were not large enough to cover the gap and the Trust Fund continued to shrink. Any type of downturn would have inevitably caused the depletion of the Trust Fund.



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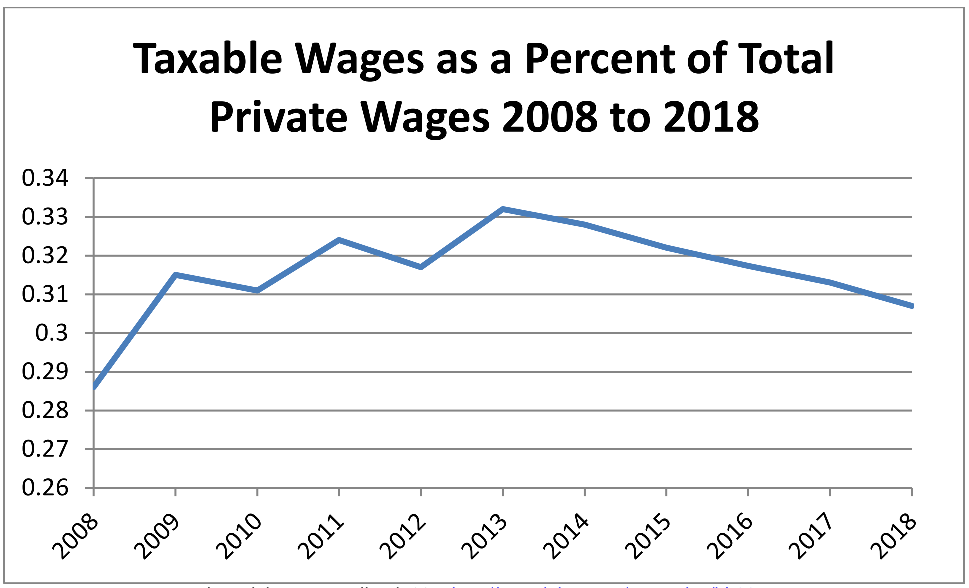
Legislation was enacted in 2008 that increased the taxable wage base to $12,000 in 2009, $13,000 in 2011, and $14,000 in 2013 where it was set to remain. This helped to reduce a portion of the decline of the ratio of the UI taxable wages to overall wages; however, by the time the wage base increased to $14,000 in 2013, the wage base again began to lose value relative to total wages and its value has continued to decline.



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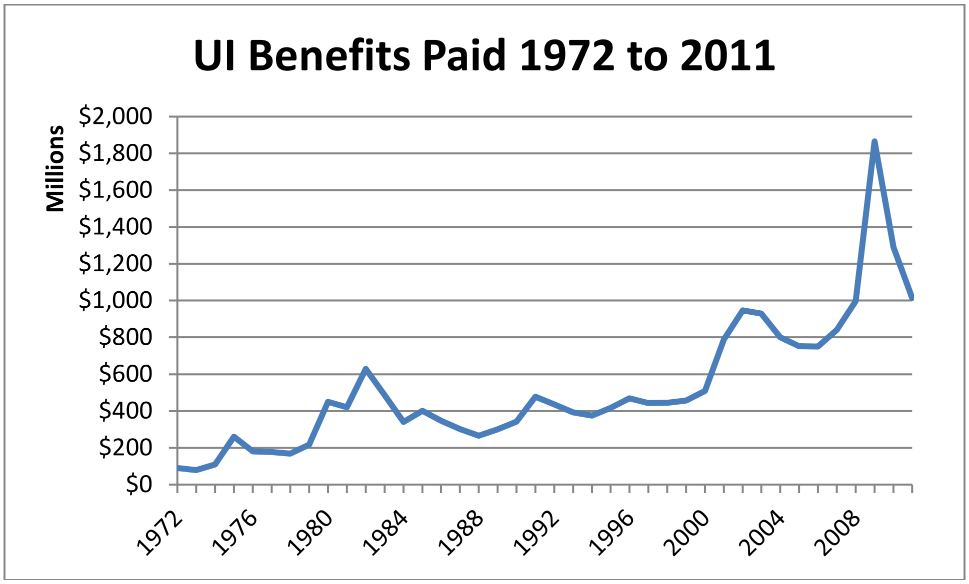
The Great Recession



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

5 Highest Benefit Years based on Benefits Paid as a Percent of Total Payroll 1972-2018

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

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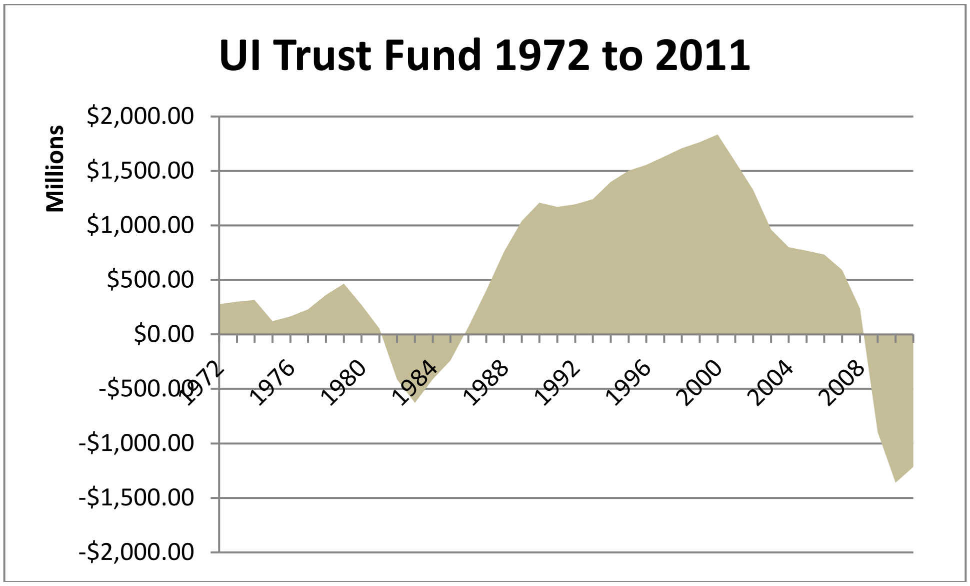
A better way to measure benefit expenditures is by comparing it to the amount of wages in the economy. Payroll can be viewed in terms of how many dollars are at risk. An analogy can be made to homeowners' insurance. The more expensive the home, the more money that needs to be paid out if there is a fire.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

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



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As illustrated above, the Wisconsin UI Trust Fund was shrinking throughout the 2000s; the Great Recession was the catalyst that caused the Trust Fund to become insolvent and the state to borrow from the federal government to pay UI benefits.

The decline of the Trust Fund and the need to borrow to pay benefits led to policy responses taking effect. Some of these policy responses were in place due to existing laws and regulations:

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

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

Schedule A was not in effect until the Trust Fund was already insolvent; a strong indicator that the dollar value assigned to the trigger amounts was too low to prevent the need to borrow from the federal government. To put it in perspective, quarterly benefit payments exceeded $300 million in eight of the 16 quarters between 2009 and 2012.

There were three Wisconsin legislative changes aimed to address the structural deficit in the UI Trust Fund during and following the Great Recession; all reduced benefit payments for claimants:

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

- Eliminating partial benefits for individuals earning over $500 per week; and

- Establishing a waiting week for UI claimants.

The waiting week caused the largest reduction in UI benefit payments, reducing payments by approximately 5 percent per year. Under the waiting week, the first week of benefits is withheld from eligible claimants. While the waiting week does not reduce the total amount of benefit payments a claimant is eligible to receive, the waiting week will reduce benefits paid for those claimants who do not exhaust their claim. The fewer weeks an individual claims, the larger the percentage reduction in benefit payments the waiting week represents. For example, a claimant claiming 6 weeks will see a 16.67 percent reduction in benefits under a waiting week versus no waiting week in place. In the current period with fewer claimants exhausting, many more claimants are having sizeable reductions in benefit payments due to the waiting week than was true when the law was enacted. At that time, more claimants exhausted their claim and still received payment for their maximum number of weeks.

During the Great Recession, UI benefit payments were reduced by approximately $50 million dollars per year. Because of the multiplier effect[4] of UI benefit payments during a recession, this reduced the economic activity in Wisconsin by $80 to $100 million per year. After the recession the waiting week has continued to reduce benefit payments; for 2018 this amounted to approximately $19.9 million.

Recovery and Paying Off the UI Trust Fund Loan

The nation experienced a slow growth recovery following the end of the Great Recession. This had an attendant slow employment recovery which had many people receiving UI benefits for long periods of time[5]. The low level of benefits paid was both a result of an improving economy and diminished base period wages for many people who were no longer qualified for UI benefits going forward due to a lack of employment.

Despite the lengthy period of above average paid benefits, the Trust Fund finished 2014 with a balance of $215 million and the Trust Fund loan paid. There are three significant factors that contributed to repaying the loan and obtaining a positive balance:

1. Low level of UI benefits paid due to a reduction in filing activity;

2. Increase in UI tax revenue as a result of the highest tax rate schedule being in effect and a decline in employer experience rating due to high benefit payments; and

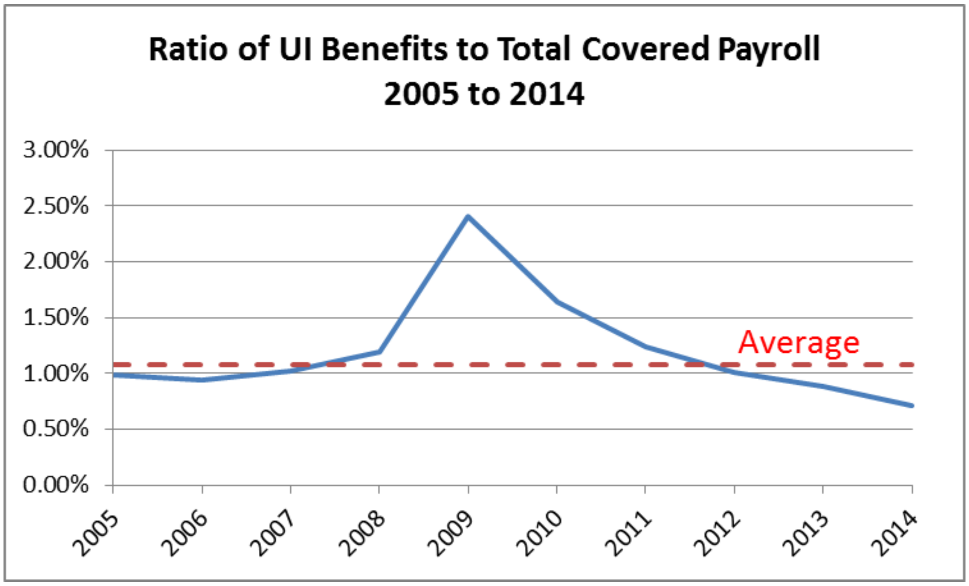
3. FUTA tax credit reduction.

[4] Estimates of the multiplier for UI benefits during the Great Recession range from 1.6 (The Testimony of Mark Zandi Chief Economist, Moody's Analytics Before the House Budget Committee "Perspectives on the Economy".) to 2.0 (IMPAQ International, The Role of Unemployment Insurance as an Automatic Stabilizer during a Recession by Wayne Vroman).

[5] Additional weeks of these benefits were paid under Emergency Unemployment Compensation (EUC) pursuant to federal legislation and were funded with federal taxes.

Wisconsin UI Benefit Payments

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



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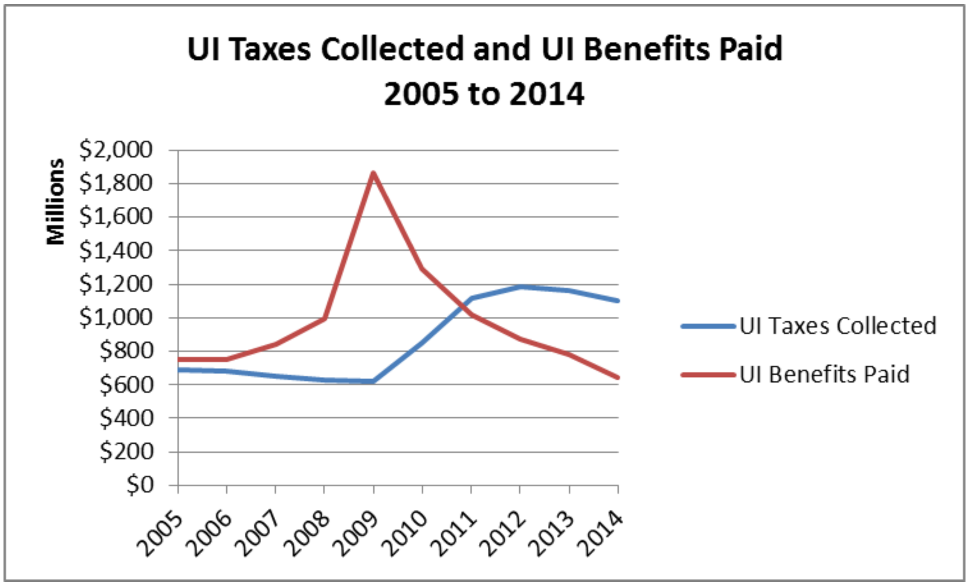
UI Tax Revenue

While UI benefit payments declined rapidly, UI tax revenue also declined but at a slower rate. The UI Trust Fund balance has increased as the net positive difference between taxes and benefits has grown. This is only a short-term trend as better experience ratings and a shift to lower tax schedules is set to reverse the positive trend in coming years. See Section 4 for a detailed outlook for the future of the Trust Fund.



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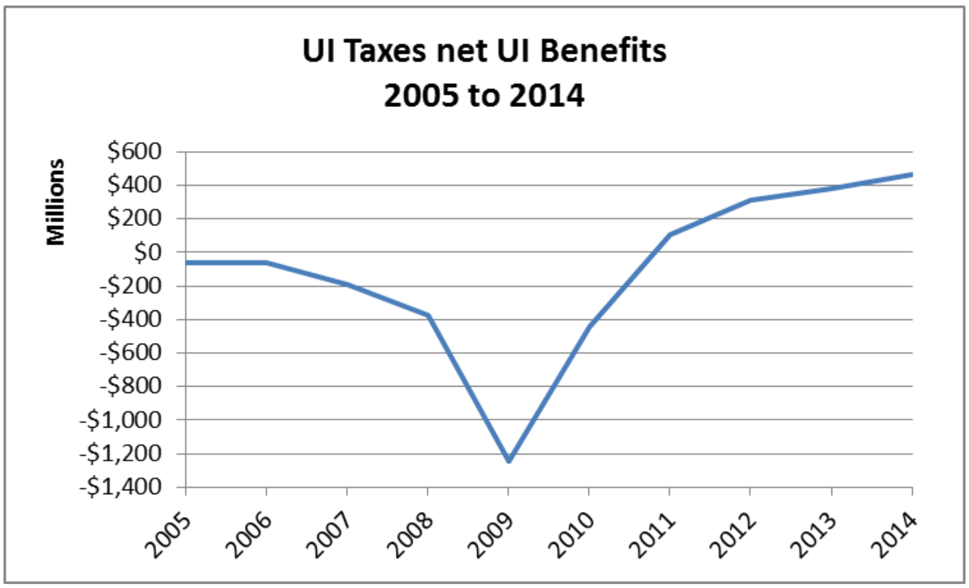

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FUTA Tax Credit Reduction

As described in Section 1, the Federal Unemployment Tax (FUTA) credit is reduced in states that borrow from the U.S. Treasury at a rate based on the number of years a state has borrowed. Employers in Wisconsin had credit for their FUTA reduced leading to higher federal unemployment tax bills. The funds the federal government collects are used to reduce the state's debt. The FUTA credit reduction experienced by Wisconsin employers added approximately $291 million to the Trust Fund. Without the revenue from the FUTA credit reduction the Trust Fund would have remained negative until first quarter receipts at the end of April 2015.

Cost of Wisconsin UI Borrowing during and after the Great Recession

Borrowing to pay UI benefits has costs associated with it that are borne by covered employers and other Wisconsin taxpayers. As mentioned above, the reduction in employers' FUTA credit increased federal UI taxes by $291 million from 2012 to 2014. There are two details about the FUTA tax increase that differentiates it from state UI taxes. First, it's a flat wage tax, meaning the tax rate is not experience rated. Employers are taxed at the same rate no matter how much or how little they have used the UI system in the past. Second is the FUTA tax does not affect future tax rates.

The other large borrowing cost was interest payments on the federal loans. In total, Trust Fund borrowing accumulated $103 million in interest costs. Of the interest costs, $78 million was paid by employers through the Special Assessment for Interest (SAFI). The remaining $25 million was paid with Wisconsin General Purpose Revenue (GPR) funds. Interest rates during this recession were low; however, low interest rates do not accompany every recession. The 1982 recession had very high interest rates. In the future it is possible the interest cost could be much higher if interest rates are higher.

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

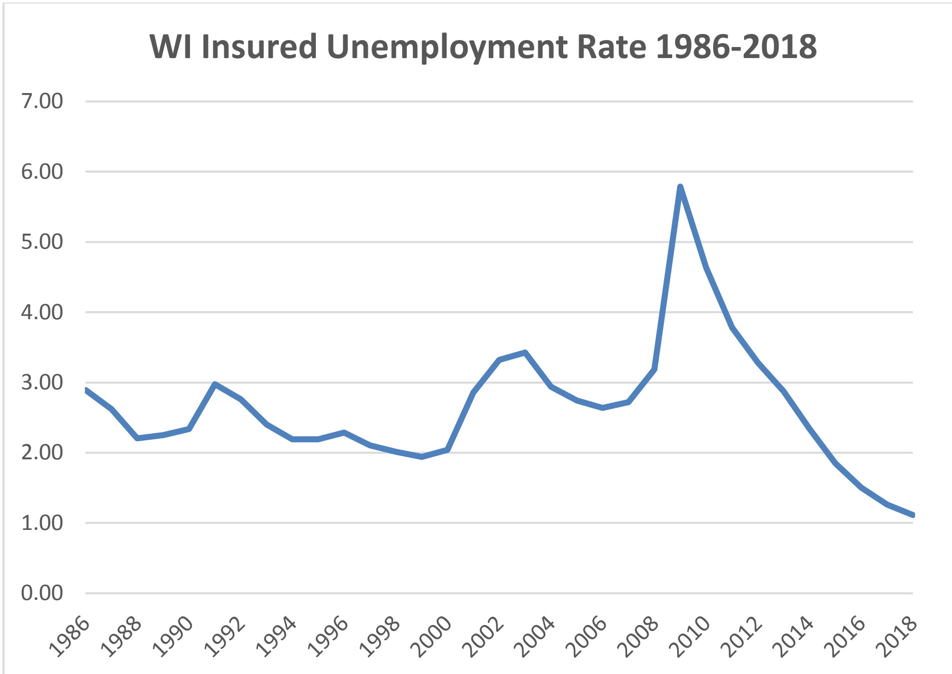
	2011	2012	2013	2014	**Total**
FUTA Credit Reduction		$47	$96	$148	**$291**
Trust Fund Loan Interest Paid Via SAFI	$42	$36			**$78**
Trust Fund Loan Interest Paid Via GPR			$19	$6	**$25**
Total Borrowing Costs					**$394**
Total Costs Paid by Employers					**$369**

Wisconsin UI Tax Data

Wisconsin UI Benefit Payments post Great Recession

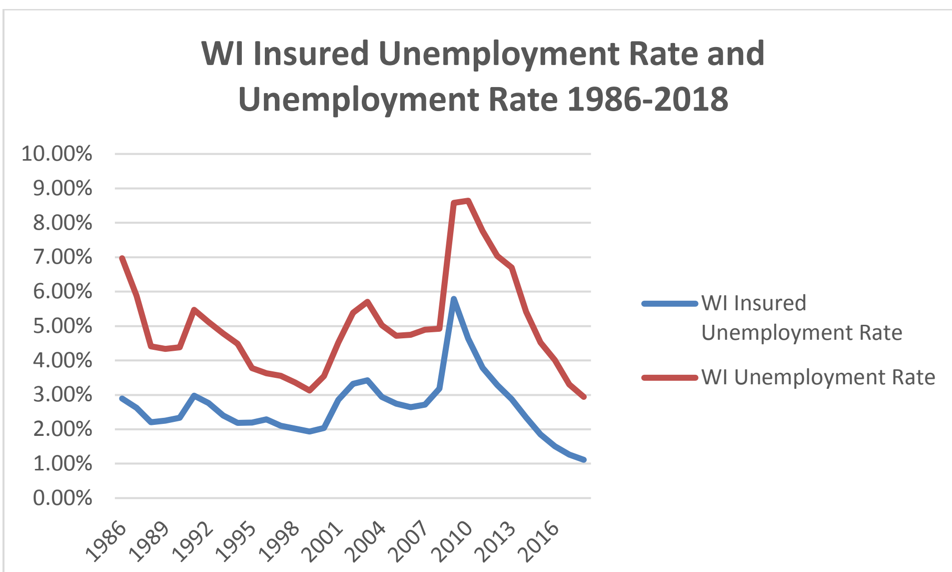
UI benefit payments have continued at historically low levels since the end of the Great Recession. There are two complementary reasons for this decline in benefit payments; a decline in unemployment claims, and the value of unemployment benefits relative to wages.

The decline in unemployment claims is illustrated by the insured unemployment rate declining to levels that have not been experienced in the modern UI system. The insured unemployment rate is the ratio of the UI claims to covered employment, so it represents the percent of covered employment that is collecting UI benefits.



U.S. Employment and Training Administration, Insured Unemployment Rate in Wisconsin [WIINSUREDUR], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/WIINSUREDUR

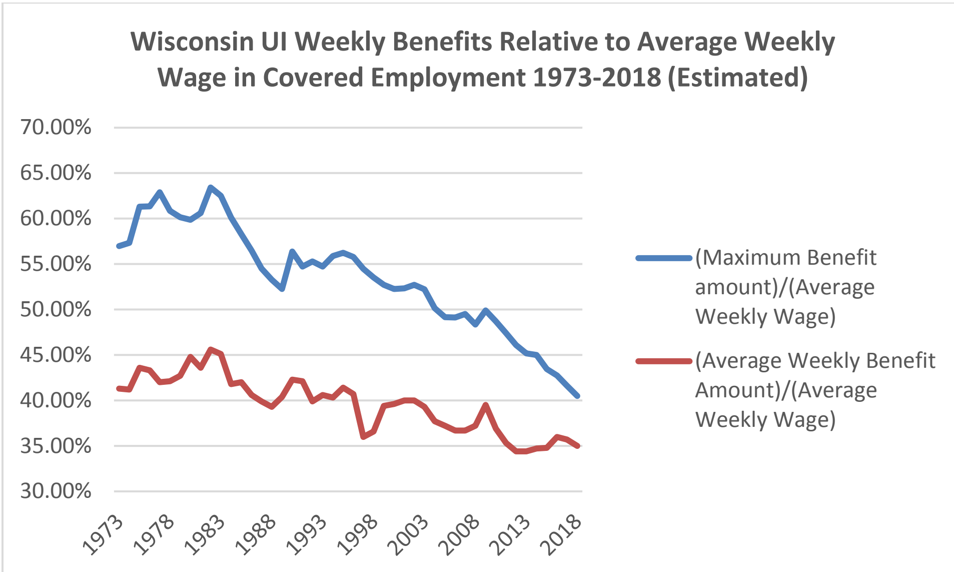
This decline in claim activity is even more pronounced when compared to the overall unemployment rate over the same period. Unemployment rates for the past few years are very similar to rates reported in the late 1990s, but the current rate of unemployment claims is approximately half of what occurred during that period.



U.S. Employment and Training Administration, Insured Unemployment Rate in Wisconsin [WIINSUREDUR], U.S. Bureau of Labor Statistics, Unemployment Rate in Wisconsin [WIUR], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/

Over the past years there has been a break in the historic relationship between unemployment and unemployment claims. If UI benefit claims following the Great Recession had been closer to historic normal claim levels, even with the lower unemployment rate, unemployment benefit payments would be expected to be $175 million to $250 million more per year. This equates to about $460 million to $675 million of the increase in the Trust Fund balance since 2015.

The second reason is less of a break in recent UI history and more of a result of a long-run pattern in UI benefits. Over the last few decades, the value of UI benefits has not kept pace with growth in wages.



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As the chart above illustrates, there has been a constant decrease in the maximum benefit rate relative to the average weekly wage. From the end of the Great Recession forward, there has been a sharp decline in the replacement rate of the UI weekly benefit rate. As this ratio falls the value of the UI benefit, both in supporting worker households and supporting the economy during downturns, falters.

From 1992 to 2003, the maximum weekly benefit rate increased each year. Starting in 2003, the rate of increase slowed but there were still regular increases until 2009. Starting in 2009, the maximum weekly benefit rate stalled at $363 for 5 years. In 2014 it increased to $370, where it again has stalled for 5 years. All maximum weekly benefit amounts since 1992 are listed in Appendix C.

If the UI benefit rate was closer to the long-term replacement rate of 40 percent of average wages, UI benefit payments would have averaged $100 million more per year in 2017 and 2018, with $94 million being charged to the UI Trust Fund. This likely would have led to increased UI tax revenue of approximately $31 million.

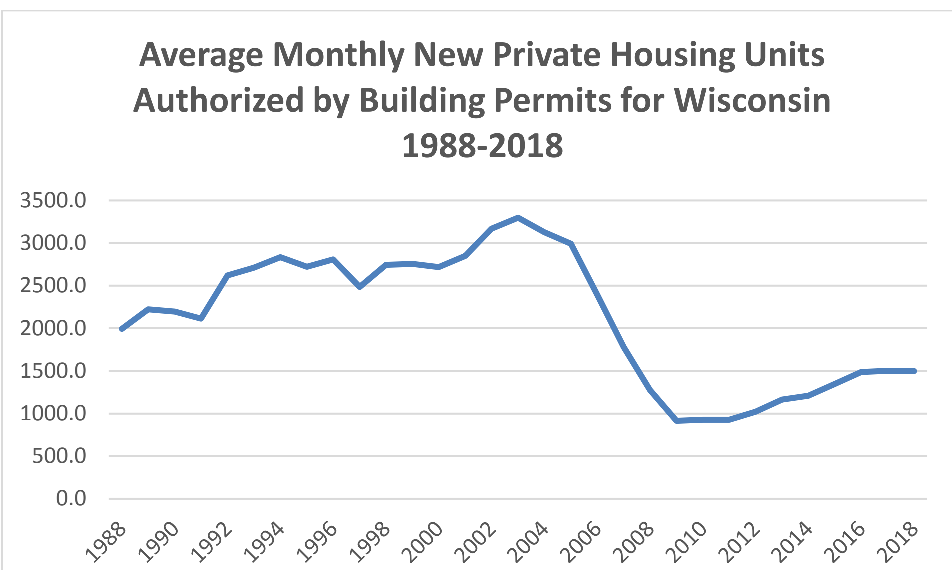
In summary, the rapid growth of the Trust Fund can be attributed to the historically low UI benefit payments over the last two years. Historically low benefit payments added approximately $525 to $600 million to the Trust Fund over the reporting period of 2017 to 2018.

There are multiple possible reasons for the current claim rate falling far below historic norms. One of these reasons may be the lack of employment growth in the manufacturing and construction industries since the end of the Great Recession. Employees engaged in manufacturing and construction represent the largest two industries that claim unemployment insurance in

Wisconsin. Over the period of July 1, 2015 through June 30, 2018 construction employees represented 28 percent of all charged benefits and manufacturing employees represented 20.7 percent of all charged benefits. The fact manufacturing employment still has not fully returned to pre-recession levels of employment and construction employment has just reached that level 10 years later may be reasons for the current low level of UI claims in Wisconsin.

Federal Reserve Bank of St. Louis and U.S. Bureau of Labor Statistics, All Employees: Manufacturing in Wisconsin [SMU55000003000000001A], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/SMU55000003000000001A

If there is an increase in employment in the manufacturing or construction sectors, such as through a boom in residential construction, UI benefit payments may return to their historic levels. Since the end of the construction boom in the mid-2000s, new private housing building permits have been substantially below the previous historic trend. If in the future there were a shift in demand to return housing starts to the long run level, construction employment would increase and could lead to higher UI claims even assuming economic growth.



U.S. Bureau of the Census, New Private Housing Units Authorized by Building Permits for Wisconsin [WIBPPRIVSA], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/WIBPPRIVSA

Section 3: UI Trust Fund Projection

Historically low levels of Wisconsin UI benefit payments present a challenge when trying to forecast future UI Trust Fund amounts. If benefit payments return to historically normal levels, projections of the Trust Fund would be significantly different than if benefit payments continue at the current, historically low levels. Note that the UI benefit payments listed below only include benefit payments that are charged to the Trust Fund. Reimbursable employer benefit charges are not included since those benefit payments do not impact the Trust Fund. Approximately six percent of benefits paid by Wisconsin UI are reimbursable benefits.

To account for the high variance associated with projecting in the current environment, this report provides three different projection scenarios. This *Financial Outlook* assumes for a baseline analysis that historically low UI benefits will continue for the projection period given that benefits are now in their fourth year of substantially reduced benefit levels. Next, there is a projection assuming benefits were to return to levels more in line with historic patterns. Finally, a projection that assumes a recession were to occur in 2020 is included.

The projections are based on IHS Global Insight macroeconomic projections for underlying economic variables such as labor force growth and the unemployment rate. These variables are then combined with other assumptions to project future UI benefit payment amounts. Both the UI benefit projections and IHS economic variables are then entered into the Wisconsin UI Tax Model to produce projections of UI tax revenue. The UI benefit payments and UI tax revenue projections are then combined to produce UI Trust Fund balance projections.

Scenario 1: UI Benefit Payments Remain at Historically Low Levels -- Using the Average Claim Ratio of the Last 3 Years

Unemployment Insurance Reserve Fund Activity and Condition					
(Millions $)					
	2018	2019	2020	2021	2022
Opening Unemployment Reserve Fund Balance	$1,472	$1,731	$1,905	$2,024	$2,064
Revenues:					
State Unemployment Revenues (employer taxes)	$598	$498	$462	$455	$467
Interest Income	$37	$45	$49	$51	$52
Total Revenue	$635	$543	$511	$506	$519
Expenses:					
Unemployment Benefits	$377	$369	$402	$454	$492
Ending Reserve Fund Balance	**$1,731**	**$1,905**	**$2,013**	**$2,064**	**$2,091**

Projections from Wisconsin Unemployment Insurance Division based upon Wisconsin Unemployment Insurance data and IHS Wisconsin projections January 2019.

The projection under scenario 1 uses IHS Global Insight projections and assumes that the Wisconsin economy continues to grow at the current modest rate. At the same time, it assumes that Wisconsin's unemployment rate will slowly return to long term historical levels near four percent. This reflects projections that assume the United States will return to the long-run unemployment equilibrium. While the unemployment rate is expected to return to a long run level, this projection still assumes that the historically low claim ratio continues. The claim ratio is the ratio of the insured unemployment rate to the overall unemployment rate and can be thought of as the proportion of people unemployed who are collecting unemployment insurance. The insured unemployment rate is the rate of weeks claimed to the number of workers in covered employment.

With UI benefit payments continuing below long-term levels, employer UI account reserve fund balances continue to increase, which in turn, causes employer tax rates to decline and UI tax revenue to fall over the projection period. Under this projection, the Trust Fund is expected to grow throughout the projection period. The UI tax schedule is expected remain in Schedule D.

Scenario 2: UI Benefit Payments Increasing to Historically Typical Level

Unemployment Insurance Reserve Fund Activity and Condition					
(Millions $)					
	2018	2019	2020	2021	2022
Opening Unemployment Reserve Fund Balance	$1,472	$1,731	$1,737	$1,688	$1,597
Revenues:					
State Unemployment Revenues (employer taxes)	$598	$498	$491	$526	$565
Interest Income	$37	$45	$43	$41	$39
Total Revenue	$635	$543	$534	$567	$604
Expenses:					
Unemployment Benefits	$377	$535	$582	$658	$712
Ending Reserve Fund Balance	**$1,731**	**$1,737**	**$1,688**	**$1,597**	**$1,488**

Projections from Wisconsin Unemployment Insurance Division based upon Wisconsin Unemployment Insurance data and IHS Wisconsin projection January 2019.

Wisconsin economic growth is the same under scenario 2 as it is under scenario 1. The only difference is that for scenario 2 the rate of unemployment claims increases to levels historically associated with the projected unemployment rate instead of current claim levels. Scenario 1 assumes a claim ratio over the past three years of 0.37. Scenario 2 adjusts the ratio to 0.55 to represent the average historic ratio that existed in Wisconsin prior to the Great Recession. This could occur for example, if construction and manufacturing employment return to pre-recession levels.

Compared to scenario 1, the larger rate causes UI benefit payments to be significantly higher in scenario 2; benefit payments are between $180 million and $220 million more per year. It is important to note that while UI benefit payments increased by a substantial amount, UI tax revenue only increases by $30 million to $100 million, indicating that the current Wisconsin UI financing system is not responsive to changes in benefit amounts. UI taxes are anticipated to remain in Schedule D throughout the projection period even though the Trust Fund balance is decreasing.

The Trust Fund under this scenario would begin to decline as UI benefit payments outpace new UI tax revenue. A similar decline occurred historically when the UI tax schedule was set at Schedule D, the lowest tax rate schedule.

Scenario 3: U.S. Enters Recession in 2020

Unemployment Insurance Reserve Fund Activity and Condition					
(Millions $)					
	2018	2019	2020	2021	2022
Opening Unemployment Reserve Fund Balance	$1,472	$1,731	$1,905	$1,441	$929
Revenues:					
State Unemployment Revenues (employer taxes)	$598	$498	$461	$586	$710
Interest Income	$37	$45	$42	$30	$18
Total Revenue	$635	$541	$503	$616	$728
Expenses:					
Unemployment Benefits	$377	$369	$967	$1,128	$1,174
Ending Reserve Fund Balance	**$1,731**	**$1,905**	**$1,441**	**$929**	**$483**

Projections from Wisconsin Unemployment Insurance Division based upon Wisconsin Unemployment Insurance data and IHS Wisconsin projection January 2019.

Scenario 3 assumes that the United States enters a moderate recession in 2020 similar to the 1991 or the 2001 recession. UI benefit payments are expected to increase to benefits levels similar to those observed in past recessions adjusted for the increase in the size of the Wisconsin economy. UI benefit payments under this scenario increase to $1.174 billion in 2022. In dollar terms, this is still more than $600 million below the taxable benefits paid in 2012 during the Great Recession. A recession similar to the Great Recession would lead to taxable UI benefit payments reaching more than $2 billion in a single year given economic growth over the past decade.

UI tax revenue is projected to increase slightly in 2021 due to the higher benefits paid in 2020. The higher benefits charged in 2020 would lead employers to face higher tax rates as their reserve ratios decrease. There is a much larger increase in tax revenue in 2022. This increase is due both to increased tax rates because of higher charged benefits as well as increases in UI tax revenue due to a projected UI tax schedule change.

As the Trust Fund balance is expected to quickly decrease in the face of a recession, the projected UI tax schedule is expected to change from Schedule D to Schedule C.

UI Tax Schedule Trigger Amounts

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

Wisconsin Unemployment Insurance Division (Wis. Stat. § 108.18(3m))

The tax rate assessed on an employer is based upon two separate factors. The first factor is the individual employer's experience with the UI system. This experience is measured by the employer's reserve ratio as described in Section 1. The other factor that determines a tax rate is the balance of the UI Trust Fund. The UI tax schedule in effect for the tax year is determined by the prior June 30th Trust Fund balance. As the Trust Fund balance increases, the tax schedule shifts and triggers to a tax schedule that consists of lower tax rates. When the Trust Fund balance declines, higher rate schedules become effective.

In this projection, the large increase in UI tax revenue ($124 million) from 2021 to 2022 is due to the change of UI tax schedules from Schedule D to Schedule C. The trigger amounts were first set as dollar values in 1989. The values were revised in 1997 to add Schedule D and lowered the amount required to trigger Schedule C from $ 1 billion to $900 million. However, these trigger values still reflect mid-1980's benefit payments and not the benefit payments of the current Wisconsin economy. In 1989, total covered wages were $34.6 billion. In 2018, total wages were approximately $105.5 billion. One billion dollars in 1989 was three percent of covered wages. Nine hundred million dollars in 2018 was 0.8 percent of covered wages.

These fixed values for tax schedules mean there will be abrupt large changes in tax schedule during a recession instead of a more deliberate, slower paced change. The fixed values also lead to a less responsive UI financing system.

UI Trust Fund Solvency

As demonstrated, the current UI Trust Fund balance could be nearly exhausted in the face of a moderate recession. However, under a moderate recession it appears the Trust Fund would likely avoid having to borrow to pay benefits. If there was a more serious recession as experienced in 1983 or 2008, it is likely that Wisconsin would need to borrow from the federal government to pay unemployment benefits.

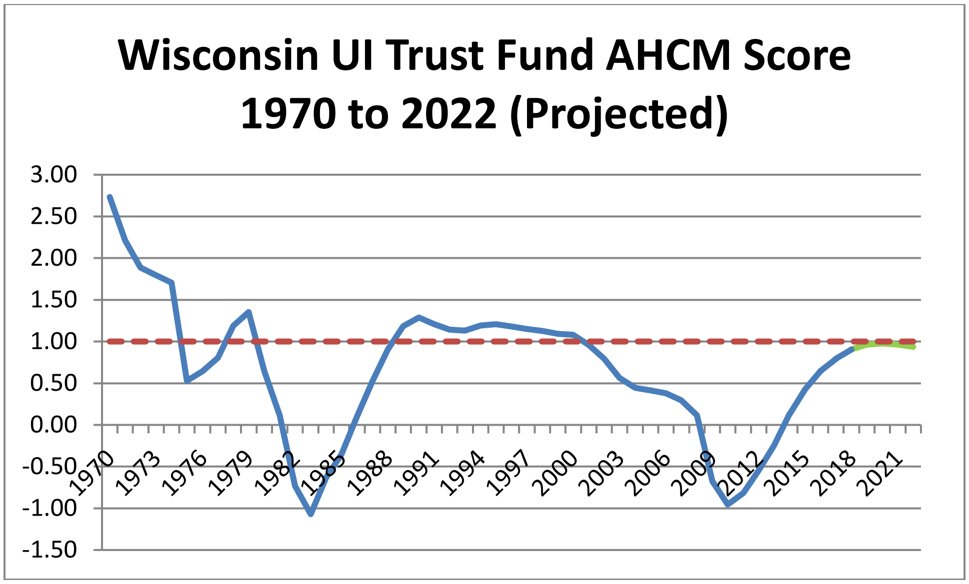
Average High Cost Multiple

Different measures have been developed to determine if a state UI Trust Fund is sufficient to pay UI benefits in the event of a recession. The strongest measures are those that determine the balance that should be held based on the historic amount of benefits paid during previous recessions, while at the same time accounting for growth in the economy. The measure known as the Average High Cost Multiple (AHCM) achieves both these goals. The AHCM looks at two ratios: The Trust Fund as a percentage of total payroll and the average high cost rate. The average high cost rate is the average of the highest three benefit ratios of the last twenty years or three recessions (whichever time period is longer). The AHCM accounts for economic growth while looking only at dollar outlays and ignores both growth and inflation.

The three highest benefit ratios are then averaged to provide a benchmark known as the average high cost rate. For Wisconsin, these three years are 2002, 2009, and 2010, with corresponding benefit ratios of 1.39, 2.41, and 1.64 respectively. For purposes of calculating the AHCM, the average high cost rate for Wisconsin currently is 1.81. If Wisconsin has a ratio of its Trust Fund balance to its total payroll of 1.81, it is assumed to have a large enough Trust Fund balance to pay 12 months of benefits during a recession without having to borrow. To achieve an AHCM of 1.0 in 2018, Wisconsin's Trust Fund balance would have needed to be approximately $1.9 billion. USDOL recommends states' Trust Fund balances support at least a 1.0 AHCM. The current

AHCM Trust Fund to total payroll ratio of 1.81 is relatively low for Wisconsin compared to past values required to achieve a 1.0 score. The current ACHM no longer includes any of the comparatively large benefit amounts from the early 1980's recession.

Under scenario 1, which shows the largest Trust Fund balances of the three scenarios, Wisconsin does not reach an AHCM of 1.0, but does come very close at 0.98 in 2020 before declining slightly to 0.96 in 2021 and declining further to 0.94 in 2022. Given the other scenarios have lower projected trust fund balances, they also would not reach an AHCM of 1.0.



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

Historically, Wisconsin has been able to achieve an AHCM of 1.0. This occurred despite the fact that the previous Trust Fund balances as a percentage of Total Covered Payroll required to meet 1.0 were higher than what is currently needed.

In 2007, if Wisconsin had maintained a Trust Fund balance that had an AHCM 1.0 or greater, it is less likely that Wisconsin would have had to borrow during the Great Recession. There would perhaps have been the need for federal interest-free short-term loans to pay benefits during peak usage periods, but no need for large, multiple year loans. This means that there would have been no SAFI assessment to employers. In addition, without needing to borrow, there would have been no FUTA credit reduction to employers. The total savings to employers over the Great Recession would have been $369 million.

Decline of the Average High Cost Multiple during the Early 2000s

During the decade preceding the Great Recession, the Wisconsin UI Trust Fund's AHCM was in decline. Wisconsin UI benefit payments began to slightly exceed UI tax revenue in 1996, even though the difference between benefit payments and UI tax revenue was less than interest income until 2001. Starting in 2001, UI benefit payments exceeded UI tax revenue and interest income for every year until 2011. UI tax revenue finally exceeded UI benefits paid when the Great Recession caused a shift in the UI tax schedule to Schedule A in 2010 and employers' tax rates increased based on their experience.

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

There has not been a significant change in the underlying UI financing system since the early 2000s. If UI benefit payments return to levels typically experienced during the 1990s and 2000s, the Trust Fund is expected to decline along with the AHCM.

Section 4: Long Run Simulations of the UI Trust Fund

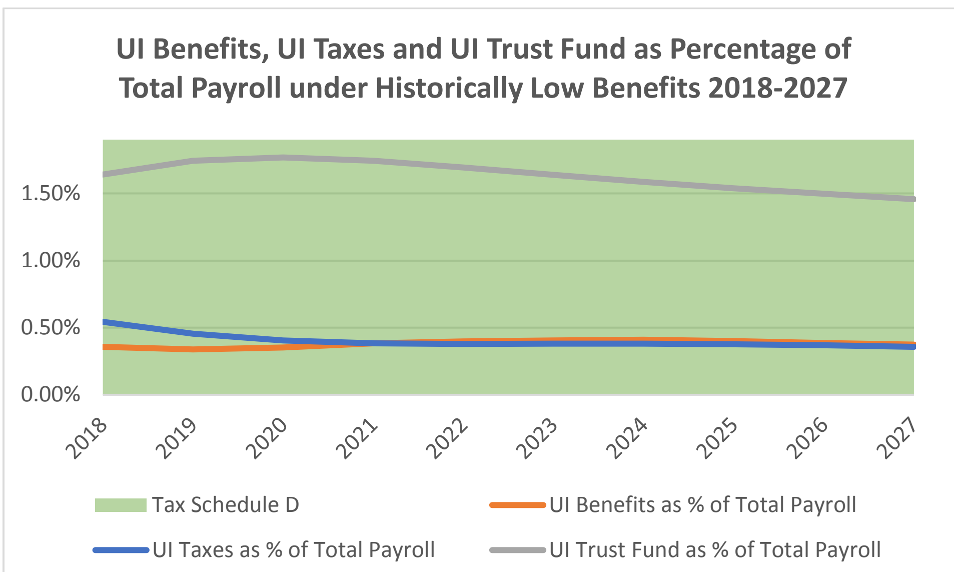
The projection period covered in Section 3 of the *Financial Outlook* runs until 2022. While this provides insight and knowledge about the short run condition of the Trust Fund, the period is not long enough to see the full dynamics of changes in the Trust Fund and the underlying financing system.

This section looks at the Trust Fund over the next decade under different scenarios to measure the long-term movement of the Trust Fund.

The measure used looks at benefit payments, taxes and the Trust Fund as a percentage of Wisconsin covered wages. This method allows for a better comparison of what occurs to these measures independent of the overall changes due to increases in wages and employment over the next ten years.

The three scenarios presented here have the same corresponding assumptions as the three in the previous section but are projected over the next ten years.

Scenario 1: UI Benefit Payments Remain at Historically Low Levels -- Using the Average Claim Ratio of the Last Three Years

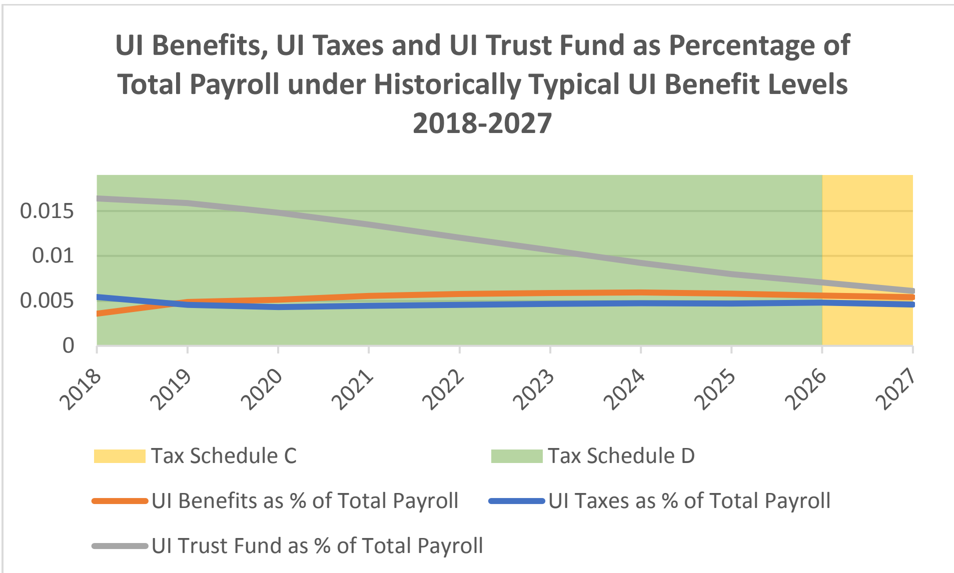


Projections from Wisconsin Unemployment Insurance Division based upon Wisconsin Unemployment Insurance data and IHS Wisconsin projections January 2019.

This projection assumes no recession over the next decade. Even with UI benefit payments continuing at historic lows over the next decade, it is expected that the Trust Fund will decline as a percentage of Total Covered Payroll. There are two main reasons this decline occurs. First, the unemployment rate is expected to approach the long-term rate in Wisconsin of near 4.5 percent over time. As the rate returns to its long-term rate, UI benefit payments are expected to increase as more claims are expected at higher rates of unemployment. Second, the economy increases at a faster rate than does tax revenue. In dollar terms, the Trust Fund is still expected to grow but not as fast as wages and employment.

Over the simulation period, even under historically low UI benefit payments, UI tax revenue falls below UI benefits paid. Over the period, interest from the Trust Fund covers the difference between benefit payments and tax revenue allowing the Trust Fund to continue to grow in dollar terms but shrink in terms of the percent of covered payroll. The Trust Fund balance stays high in dollar terms, resulting in UI taxes remaining in Schedule D for the simulation period.

Scenario 2: UI Benefit Payments Increasing to Historically Typical Level
This scenario has UI benefit payments return to long-term run historic values compared to the current levels of benefit payments. Like the previous scenario, this assumes that there is no recession over the next decade.

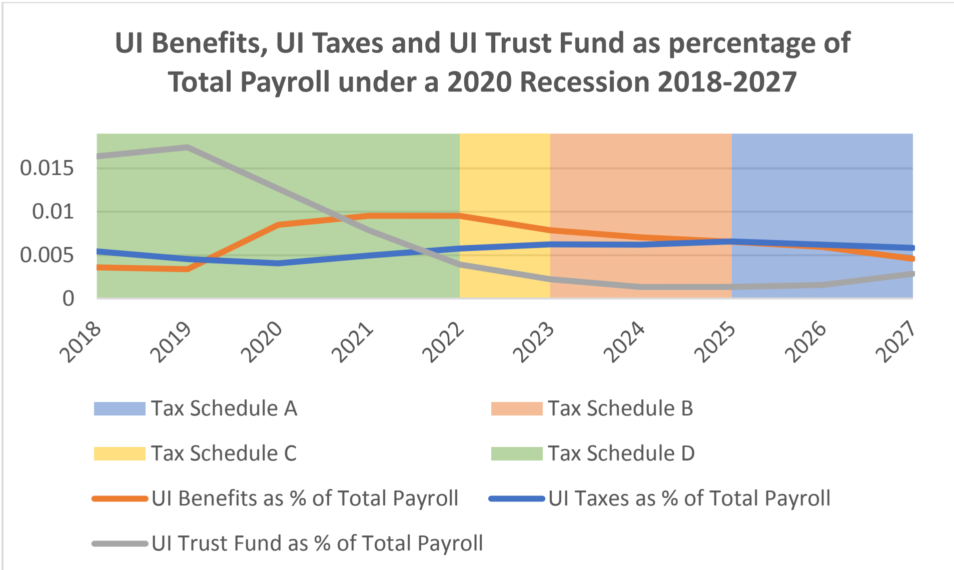


Projections from Wisconsin Unemployment Insurance Division based upon Wisconsin Unemployment Insurance data and IHS Wisconsin projections January 2019.

Under this scenario, the Trust Fund decreases consistently during the simulation period. UI benefit payments are greater than UI tax revenue and both amounts are much larger than under the previous scenario. Therefore, interest from the Trust Fund does not cover the difference between tax revenue and benefit payments. Again, this projection does not assume a recession. If a recession occurred with the higher rate of benefits and shrinking Trust Fund, Wisconsin would most likely need to borrow to pay benefits.

The large gap between benefit payments and tax revenue is an indication that if UI benefit payments do return to historically normal levels, the current UI financing system is inadequate. Under this simulation, UI tax rates do not shift into Schedule C until 2026 even though the Trust Fund declines over the entire period.

Scenario 3: U.S. Enters Recession in 2020



Projections from Wisconsin Unemployment Insurance Division based upon Wisconsin Unemployment Insurance data and IHS Wisconsin projections January 2019.

The recession starting in 2020 leads to three years of higher benefit payments. This draws down the Trust Fund; however, the Trust Fund remains solvent. The Trust Fund does not recover because UI tax revenue does not increase to exceed benefits paid until 2027. This occurs despite the UI tax schedule moving from D to C, from C to B, and finally from B to A.

Conclusion and Recommendations

If the United States and Wisconsin continue to experience modest growth and Wisconsin's UI benefit payments remain at historically low levels, the UI Trust Fund is projected to grow slightly over the projection period. However, if Wisconsin UI benefit payments were to return to more typical levels over the projection period, the Trust Fund balance would begin to decline. A mild to moderate recession in the near future would quickly shrink the Trust Fund.

The Secretary recommends the Unemployment Insurance Advisory Council review all relevant factors and provide to the Governor and the Legislature proposed solutions to further strengthen the Trust Fund. Such solutions could entail adjusting the UI tax schedule triggers to account for a substantially larger Wisconsin economy, adjusting the UI taxable wage base to reflect growth in wages since the last increase, or deeper changes in the underlying reserve balance system and tax schedules.

The Department has significant information and research on the issues and alternative solutions and is prepared to support the Unemployment Insurance Advisory Council as it considers options to improve Wisconsin's Unemployment Insurance program.

Appendix A: Wisconsin Unemployment Statistics 1992 to 2018
Wisconsin Unemployment Reserve Fund[6]

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

	Revenues						Expenses			
Year	Taxes	Interest and Other	Reed Act	ARRA	FUTA Credit Reduction	Total Receipts	Benefit Expenses	Reed Act Expenditures	Total Expenses	**Ending Balance**
1992	358	90				448	437		437	**1,185**
1993	391	85				476	394		394	**1,267**
1994	418	87				505	377		377	**1,395**
1995	421	98				519	418		418	**1,496**
1996	415	102				517	471		471	**1,542**
1997	419	105				524	445		445	**1,621**
1998	414	110				524	452		452	**1,693**
1999	431	113				544	466		466	**1,771**
2000	442	117				559	515		515	**1,815**
2001	432	110				542	791		791	**1,566**
2002	430	88	166			684	949		949	**1,301**
2003	497	65				562	932		932	**931**
2004	596	48				644	795	3	798	**777**
2005	687	42				729	752	4	756	**750**
2006	684	39				723	753	3	756	**717**
2007	649	37				686	845	4	849	**554**
2008	628	21				649	997	23	1,020	**183**
2009	634	1		144		779	1,873	3	1,876	**(915)**
2010	850					850	1,288	(5)	1,283	**(1,348)**
2011	1,115					1,115	1,012	(6)	1,006	**(1,239)**
2012	1,187				47	1,234	876	(5)	871	**(876)**
2013	1,172				96	1,268	793		793	**(401)**
2014	1,107	2			148	1,257	642		642	**214**
2015	1,048	13			1	1,062	536		536	**741**
2016	852	22			0	874	458		458	**1,157**
2017	691	30			0	721	408		408	**1,470**
2018	598	37			0	635	376		376	**1,729**

[6] Ending reserve fund balances exclude monies set aside under the American Recovery and Reinvestment Act (ARRA) and Short-Time Compensation (STC).

Appendix B: Wisconsin Unemployment Statistics 1992 to 2018 Usage of Wisconsin Unemployment Insurance

ET Financial Data Handbook 394

Year	First Payments	Weeks Compensated	Duration	Insured Unemployment Rate	Maximum Weekly Benefit Amount
1992	215,669	2,978,897	13.8	2.7	$240
1993	197,203	2,608,193	13.2	2.3	$243
1994	191,952	2,443,988	12.7	2.1	$256
1995	213,327	2,518,458	11.8	2.1	$266
1996	234,291	2,791,774	11.9	2.3	$274
1997	210,504	2,857,991	13.6	2.1	$282
1998	219,771	2,726,008	11.5	2.0	$290
1999	209,497	2,473,569	11.8	1.9	$297
2000	230,458	2,582,328	11.2	2.0	$305
2001	327,155	3,762,208	11.5	2.9	$313
2002	328,083	4,363,674	13.3	3.4	$324
2003	315,409	4,346,562	13.8	3.4	$329
2004	269,306	3,759,400	14.0	2.9	$329
2005	262,724	3,500,388	13.3	2.7	$329
2006	258,845	3,421,577	13.2	2.6	$341
2007	279,814	3,678,462	13.1	2.8	$355
2008	321,164	4,225,212	13.2	3.2	$355
2009	447,970	7,605,705	17.0	6.1	$363
2010	324,879	5,770,210	17.8	4.7	$363
2011	283,624	4,588,323	16.2	3.7	$363
2012	232,949	3,926,156	16.9	3.3	$363
2013	214,125	3,407,788	15.9	2.9	$363
2014	175,853	2,698,223	15.3	2.3	$370
2015	152,641	2,152,899	14.1	1.8	$370
2016	133,083	1,716,415	12.9	1.5	$370
2017	115,199	1,494,556	13.0	1.3	$370
2018	106,770	1,352,076	12.7	1.1	$370

Appendix C: Wisconsin Unemployment Statistics 1992 to 2018 Total Covered Employment, Average Weekly Wage, Average Weekly Benefit Amounts and Maximum Weekly Benefit Amount

ET Financial Data Handbook 394

Year	Covered Employment	Average Weekly Wage	Average Weekly Benefit	Maximum Weekly Benefit Amount
1992	2,253,976	$434	$175	$240
1993	2,308,361	$444	$183	$243
1994	2,384,509	$458	$188	$256
1995	2,449,029	$473	$199	$266
1996	2,493,484	$491	$202	$274
1997	2,550,955	$518	$188	$282
1998	2,602,559	$542	$215	$290
1999	2,661,710	$564	$223	$297
2000	2,703,542	$584	$233	$305
2001	2,686,548	$598	$242	$313
2002	2,660,922	$614	$248	$324
2003	2,657,571	$630	$252	$329
2004	2,684,896	$656	$251	$329
2005	2,714,477	$669	$253	$329
2006	2,737,431	$694	$259	$341
2007	2,751,715	$717	$267	$355
2008	2,743,267	$735	$273	$355
2009	2,614,062	$728	$288	$363
2010	2,600,207	$745	$275	$363
2011	2,634,447	$766	$270	$363
2012	2,664,284	$788	$271	$363
2013	2,691,719	$803	$276	$363
2014	2,728,833	$823	$285	$370
2015	2,765,376	$851	$296	$370
2016	2,772,828	$866	$312	$370
2017	2,234,432	$889	$317	$370
2018	2,792,000	$914	$320	$370

Appendix D: Maximum Weekly Benefit Rate by State

USDOL Comparison of State Unemployment Laws (2018)

State	Maximum Weekly Benefit Rate	Maximum Weekly Benefit Rate with Dependent Allowance	State	Maximum Weekly Benefit Rate	Maximum Weekly Benefit Rate with Dependent Allowance
AL	$265	$265	MT	$518	$518
AK	$370	$442	NE	$414	$414
AZ	$240	$240	NV	$439	$439
AR	$451	$451	NH	$427	$427
CA	$450	$450	NJ	$681	$681
CO	$573	$573	NM	$433	$483
CT	$613	$688	NY	$430	$430
DE	$330	$330	NC	$350	$350
DC	$432	$432	ND	$606	$606
FL	$275	$275	OH	$443	$598
GA	$330	$330	OK	$506	$506
HI	$619	$619	OR	$604	$604
ID	$414	$414	PA	$561	$569
IL	$458	$627	PR	$133	$133
IN	$390	$390	RI	$566	$707
IA	$455	$559	SC	$326	$326
KS	$474	$474	SD	$390	$390
KY	$448	$448	TN	$275	$275
LA	$284	$284	TX	$494	$494
ME	$418	$627	UT	$543	$543
MD	$430	$430	VT	$466	$466
MA	$769	$1,153	VI	$505	$505
MI	$362	$362	WA	$713	$713
MN	$693	$693	WV	$424	$424
MS	$235	$235	**WI**	**$370**	**$370**
MO	$320	$320	WY	$475	$475
National Average				**$446**	**$472**

Appendix E: Wisconsin Unemployment Statistics 1992 to 2018 Taxable UI Benefits and UI Taxes as a Percentage of Total Wages in Taxable Covered Employment

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

Year	Total Wages in Taxable Covered Employment	Taxable Benefits as a Percent of Total Wages	Taxes as a Percent of Total Wages
1992	$41,212	1.06%	0.86%
1993	$43,218	0.91%	0.90%
1994	$46,208	0.81%	0.90%
1995	$49,104	0.85%	0.85%
1996	$51,877	0.91%	0.80%
1997	$55,968	0.79%	0.75%
1998	$59,724	0.74%	0.69%
1999	$63,497	0.72%	0.67%
2000	$66,771	0.76%	0.66%
2001	$67,452	1.17%	0.63%
2002	$68,151	1.39%	0.63%
2003	$69,588	1.34%	0.71%
2004	$73,323	1.09%	0.81%
2005	$75,730	0.99%	0.91%
2006	$79,249	0.95%	0.86%
2007	$82,118	1.02%	0.79%
2008	$83,328	1.20%	0.75%
2009	$77,419	2.41%	0.80%
2010	$78,617	1.64%	1.08%
2011	$82,114	1.23%	1.36%
2012	$85,601	1.02%	1.38%
2013	$88,438	0.89%	1.32%
2014	$92,088	0.70%	1.19%
2015	$96,775	0.54%	1.07%
2016	$98,756	0.45%	0.85%
2017	$103,271	0.39%	0.66%
2018	$105,552	0.36%	0.54%

Appendix F: Wisconsin Unemployment Statistics 1992 to 2018 UI Benefits Directly Charged to the Balancing Account (Excludes Charges for the -10 percent Write-Off)

(Amounts in Millions of $)

Wisconsin Unemployment Insurance Division Data

Year	Quit	Misconduct	Substantial Fault	Suitable Work	Continued Employment	Waiver Agency Error	2nd Benefit Year	Temporary Supplemental Benefits	Training Benefits	Subtotal Bal Acct Direct Charges	Total UI Benefit Charges
1992	$51	$1	----	$0	$1	----	----	----	----	$53	$438
1993	$48	$1	----	$0	$1	----	----	----	----	$50	$394
1994	$50	$1	----	$0	$1	$0	----	----	----	$53	$377
1995	$61	$1	----	$0	$1	$0	----	----	----	$64	$418
1996	$69	$2	----	$0	$2	$0	$3	----	----	$77	$471
1997	$68	$2	----	$0	$4	$0	$12	----	----	$86	$445
1998	$69	$2	----	$0	$4	$0	$10	----	----	$85	$452
1999	$73	$2	----	$0	$4	$0	$10	----	----	$90	$466
2000	$81	$2	----	$0	$4	$0	$12	----	----	$99	$516
2001	$117	$3	----	$1	$5	$0	$17	----	----	$142	$791
2002	$112	$4	----	$1	$6	$1	$28	$11	----	$161	$949
2003	$99	$4	----	$1	$7	$0	$31	$0	----	$141	$932
2004	$85	$3	----	$1	$6	$0	$25	----	----	$119	$795
2005	$89	$3	----	$1	$5	$0	$20	----	----	$118	$752
2006	$94	$3	----	$0	$5	$0	$19	----	----	$122	$753
2007	$104	$4	----	$1	$5	$0	$19	----	----	$134	$845
2008	$112	$4	----	$0	$6	$0	$25	----	----	$148	$997
2009	$168	$7	----	$1	$11	$1	$50	----	----	$236	$1,874
2010	$86	$5	----	$0	$12	$1	$55	----	----	$158	$1,289
2011	$83	$4	----	$0	$9	$1	$33	----	$16	$146	$1,012
2012	$86	$3	----	$0	$7	$1	$24	----	$19	$140	$876
2013	$82	$3	----	$0	$5	$0	$22	----	$15	$128	$793
2014	$69	$3	$0	$0	$5	$0	$17	----	$8	$103	$642
2015	$64	$3	$1	$0	$4	$0	$12	----	$6	$91	$535
2016	$52	$2	$1	$0	$3	$0	$10	----	$5	$73	$457
2017	$47	$2	$1	$0	$3	$0	$8	----	$4	$65	$408
2018	$45	$2	$1	$0	$3	$0	$7	----	$3	$60	$376

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

Standard Charges to the Balancing Account

Write-Offs

These are different from other Balancing Account charges since these are first charged to an employer’s account. When the UI Division calculates the Reserve Fund Percentage for Basic Tax purposes, the Reserve Fund Percentage is limited to -10 percent and charged benefits that would decrease the Reserve Fund Percentage below that point are written off. These written-off benefit charges are re-charged to the Balancing Account. The largest charge to the Balancing Account comes from write-offs. In 2018 this accounted for $47 million in charges to the Balancing Account. All other charges to the Balancing Account in 2018 totaled $60 million. Thus, write-offs represent approximately 44 percent of all charges to the balancing account in 2018. During the Great Recession the were $1.6 billion in write-offs from 2008 to 2012.

Quits

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

Misconduct

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

Substantial Fault

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

Continued Employment

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

Second Benefit Year

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

Training Benefits

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

Non-standard Charges to the Balancing Account

Temporary Supplemental Benefits

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

Day 1 Audit is scheduled for a date approximately four weeks out.

Day 2 Audit notice is sent to the physical location of record.

Day 12 Auditor begins making phone contact to confirm time and location of audit if postcard is not received.

Day 13 Undelivered audit notices are usually returned by now.

Day 20 Auditor continues phone attempts if not previously successful.

Day 30 Audit date

Day 30 If employer is not present at scheduled audit location, a note is left in the door indicating a missed appointment with contact information.

Day 30 Follow up contact such as phone call and email by auditor.

Day 44 10-day letter generated.

Day 54 If no contact with employer, auditor will initiate subpoena. Subpoena must name date, time, and location for the records to be presented.

Day 66 Proof of service provided by the sheriff.

Day 75 Date of Scheduled Subpoena (date must be at a minimum of 15 days from date of subpoena request in SUITES).

Day 75+ Audit is closed out as a call if the employer doesn't show or the audit is completed.

Form Numbers	Correspondence Form Name
UCT-468-E	Audit Notice Letter
UCT-14264-E	Audit Notice - Contact Request
UCT-14273-E	Audit Notice - Specific Date
UCT-14271-E	Audit Confirmation Letter - Standard
UCT-13932-E	Ten Day Threat of Subpoena Letter
UCT-14265-E and UCT-6315-E	Subpoena to Testify Cover Letter and Audit Direct Delivery Subpoena

Department of Workforce Development
Division of Unemployment Insurance
Field Audit
PO Box 7942
Madison, Wisconsin 53707

AUDIT NOTICE
Computer Copy

Account Number [redacted]	Date Mailed 4/6/18	Date of Audit: 05/01/2018	Time of Audit
Audit Period: 01/01/2015 To Date	Auditor: [redacted]	Telephone: [redacted]	

[redacted]

Our unemployment insurance auditor is scheduled as shown above to examine your business records. Please have the following records (if maintained in your business) available for examination by our auditor:

- Earnings Records of Each Employee
- Payroll Registers/Payroll Journals
- Federal Forms W-2s & W-3 Transmittal
- Social Security Reports (941s)
- Federal Unemployment Tax Report (940)
- Federal Forms 1099s & 1096 Transmittal
- General Ledger Detail/Chart of Accounts
- Cash Disbursements Journal
- Accounts Payable Distribution Registers
- Check Stubs/Register or Cancelled Checks
- Master Vendor Listing/Vendor Files
- Financial Statements/Ownership Info
- Income Tax Returns
- Any records that may show payments to individuals for services performed

The above list is not all inclusive. Additional records and information may be requested.

If you use bookkeeping/accounting software, please call or e-mail before printing or copying the records. As an alternative, you may provide the records electronically to the auditor in advance and/or allow the auditor access to your records on-line during the audit visit.

This department regularly schedules examinations as required by sections 108.14 and 108.21, Wisconsin Statutes. If possible, have someone who is familiar with these records spend some time with our auditor, so the results of the audit can be discussed. Our auditor will be glad to help you understand the reporting requirements of the Wisconsin Unemployment Insurance (UI) Law.

Please arrange to have the records available as scheduled. Detach and RETURN the postcard (bottom portion) with appropriate information. If there is a conflict with the scheduled audit date, please contact the auditor at [redacted] or by email at [redacted]@dwd.wisconsin.gov.

UCT-468-E (R. 04/08/2015)

Records are available on the scheduled date (check one):

☐ Morning Only ☐ Afternoon Only ☐ Anytime

Account Number [redacted]
File Reference: 05/01/2018

Records are located at (give directions if no street address): ______________________

____

The auditor should ask for (print name and title): ______________________

Comments: ______________________

____

Authorized by (print name): ______________ Title: ______________

Signed by: ______________ Title: ______________ Phone: (   )   -

UCT-468-E (R. 04/08/2015) [redacted]

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DIVISION OF UNEMPLOYMENT INSURANCE
FIELD AUDIT - [redacted]
PO BOX 7942
MADISON WI 53791-9022

Department of Workforce Development
Division of Unemployment Insurance
Field Audit
PO Box 7942
Madison, Wisconsin 53707-7942

STATE OF WISCONSIN
DWD
Department of Workforce Development

Fax: (608) 267-1400
http://dwd.wisconsin.gov/ui

January 16, 2019

Account Number:
[redacted]

[redacted]

Computer Copy

Audit Notice - Contact Request

[redacted] has been selected for an Unemployment Insurance (UI) audit to ensure its compliance with State of Wisconsin UI Laws. This department regularly schedules examinations of records to comply with Section 108.14 and 108.21, Wisconsin Statutes. The audit period will be January 1, 2017 to date. Please call me at [redacted] or email me at [redacted]@dwd.wisconsin.gov to schedule an appointment.

We will want to examine the following records, if prepared:

- Earnings Records of Each Employee
- Payroll Registers / Journals / Time Sheets
- Federal Forms for Payroll Reporting:
  - FICA 941 - Quarterly Social Security Reports
  - FUTA 940 - Annual Federal Unemployment Tax Report
  - W-2s and W-3 Transmittal Form
- Federal Income Tax Returns / Financial Statements
- Federal 1099 Forms and 1096 Transmittal Form
- Cash Disbursements Journal, Check Register / Stubs, and Canceled Checks
- Accounts Payable Distribution Registers
- General Ledger Detail / Chart of Accounts
- Master Vendor Listing / Vendor Files
- Any Other Records of Payments to Individuals for Services Performed (including cash payments)
- If applicable, we will also need a list of principal stockholders, partners, members, and/or officers of the business.

Note that the above list is not all-inclusive. We may request additional records and information. We appreciate your cooperation and look forward to your response.

Sincerely,

[redacted]
Field Auditor - [redacted]

Department of Workforce Development
Division of Unemployment Insurance
Field Audit
PO Box 7942
Madison, Wisconsin 53707-7942

Fax: (608) 267-1400
http://dwd.wisconsin.gov/ui

State of Wisconsin
Department of Workforce Development
Scott Walker, Governor
Raymond Allen, Secretary
Joe Handrick, Division Administrator

October 9, 2018

[redacted]

Account Number:
[redacted]

Computer Copy

Audit Notice

[redacted] has been selected for an Unemployment Insurance (UI) audit to ensure its compliance with State of Wisconsin UI Laws. The department regularly schedules examinations of records as required by Sections 108.14 and 108.21, Wisconsin Statutes. The audit has been scheduled for **Monday, October 29, 2018 at 9:00 am**, at your place of business, and will cover the period **January 1, 2017 to date**.

Please have the following records available for the audit examination, if prepared:

- ▶ Earnings Records of Each Employee
- ▶ Federal Forms W-2s and W-3 Transmittal
- ▶ Federal Unemployment Tax Reports (940s)
- ▶ Cash Disbursements Journal
- ▶ General Ledger Detail / Chart of Accounts
- ▶ Master Vendor Listing / Vendor Files
- ▶ Payroll Registers / Journals / Time Sheets
- ▶ Social Security Reports (941s)
- ▶ Federal Forms 1099s and 1096 Transmittal
- ▶ Accounts Payable Distribution Registers
- ▶ Federal Income Tax Returns / Financial Statements
- ▶ Check Stubs, Check Register, and/or Cancelled Checks
- ▶ All Records of Payments to Individuals for Services Performed (including cash payments)
- ▶ (If applicable) List of Stockholders, Partners, Members, and/or Corporate Officers of the Business

Note that the above list is not all-inclusive. Additional records and information may be requested.

If possible, please have someone who is familiar with these records to be available for any questions and so that the results of the audit can be discussed. I will be glad to help you understand the reporting requirements of the Wisconsin UI Laws. If it is impossible to audit on the scheduled date, you must contact me at [redacted] so another appointment can be made. Also, if the business records needed for the audit are located at a different address, or with an outside party such as an accountant, please contact me with that information prior to the audit date.

Sincerely,

[redacted]
Field Auditor - [redacted]

Department of Workforce Development
Division of Unemployment Insurance
Field Audit
PO Box 7942
Madison, Wisconsin 53707-7942

Fax: (608) 267-1400
http://dwd.wisconsin.gov/ui

State of Wisconsin
Department of Workforce Development
Scott Walker, Governor
Raymond Allen, Secretary
Joe Handrick, Division Administrator

October 24, 2018

[redacted]

Account Number:
[redacted]

Computer Copy

Audit Confirmation

This letter confirms the audit of [redacted] that has been scheduled for **Tuesday, November 27, 2018 at 10:00 am.** The audit was selected to ensure the employer's compliance with State of Wisconsin Unemployment Insurance (UI) Laws. The department regularly schedules examinations of records as required by Sections 108.14 and 108.21, Wisconsin Statutes. The audit will be conducted at [redacted] in [redacted]

The audit will cover the period **January 1, 2017 to date.** Please have the following records available for audit, if prepared:

- Earnings Records of Each Employee
- Payroll Registers /Journals / Time Sheets
- Federal Forms for Payroll Reporting:
  - FICA 941 - Quarterly Social Security Reports
  - FUTA 940 - Annual Federal Unemployment Tax Report
  - W-2s and W-3 Transmittal Form
- Federal Income Tax Returns / Financial Statements
- Federal 1099 Forms and 1096 Transmittal Form
- Cash Disbursements Journal, Check Register / Stubs, and Canceled Checks
- Accounts Payable Distribution Registers
- General Ledger Detail / Chart of Accounts
- Master Vendor Listing / Vendor Files
- Any Other Records of Payments to Individuals for Services Performed (including cash payments)
- If applicable, we will also need a list of principal stockholders, partners, members, and/or officers of the business.

Note that the above list is not all-inclusive. Additional records and information may be requested.

If you have any questions, or if we should conduct the audit at another address, please feel free to contact me at [redacted]

Sincerely,

[redacted]

Field Auditor - [redacted]

Department of Workforce Development
Division of Unemployment Insurance
Field Audit
PO Box 7942
Madison, Wisconsin 53707-7942

Fax: (608) 267-1400
http://dwd.wisconsin.gov/ui

STATE OF WISCONSIN
DWD
Department of Workforce Development

June 13, 2017

[redacted]

Account Number:
[redacted]
Computer Copy

Dear Employer:

Our department has made previous attempts, including trying to schedule an audit of this business, to discuss your compliance under the Wisconsin Unemployment Insurance Law. However, to date we have either been unable to contact you or we have not received a satisfactory response from you. This department regularly schedules examinations as required by Sections 108.14 and 128.21, Wisconsin Statutes.

IT IS NOW A PRIORITY THAT YOU CONTACT ME WITHIN 10 DAYS OF THE DATE OF THIS LETTER TO DISCUSS RESOLUTION OF THIS ISSUE.

The records that will be needed for the audit period of January 1, 2015 to date are as follows:

1. Individual Employee Earnings Records and Payroll Registers
2. Federal Forms for Payroll Reporting:
   FICA 941 - Quarterly Social Security Reports
   FUTA 940 - Annual Federal Unemployment Tax Report
   W-2's and W-3 Transmittal Form
3. Federal Income Tax Return/Financial Statements
4. Federal 1099 Forms and 1096 Transmittal Form
5. Cash Disbursements Journal, Check Register, Check Stubs, Cancelled Checks, Accounts Payable Distribution Register
6. General Ledger Detail/Chart of Accounts
7. Vendor Files/Vendor Listing
8. Any Other Records of Payments to Individuals for Services Performed (including cash payments)

Note that the above list is not all-inclusive. Additional records and information may be requested. If applicable, we will also need a list of principal stockholders, partners, members, and/or officers of the business.

PLEASE BE ADVISED THAT IF WE RECEIVE NO RESPONSE FROM YOU WITHIN 10 DAYS, A SUBPOENA WILL BE ISSUED TO THE SHERIFF OF YOUR COUNTY.

Please call me at [redacted] or email me at [redacted].gov so that an audit can be scheduled.

Sincerely,

[redacted]

Field Auditor - [redacted]

STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT

SUBPOENA TO TESTIFY

Computer Copy

COUNTY OF DANE

THE STATE OF WISCONSIN TO: [redacted]
Account Number: [redacted]
Person to be served: [redacted]

In accordance with the provisions of Sections 885.01 and 108.14(2m) of the Wisconsin Statutes, you are required to appear before the Department of Workforce Development's Deputy listed below. This deputy is authorized to administer oaths and take testimony pursuant to section 108.14(2m) of the Wisconsin Statutes. **Appear before [redacted] UI Field Auditor, at his/her office located at 201 E WASHINGTON AVE, MADISON, WI, 53703 on Tuesday, January 30, 2018 at 1:00 pm**, to give evidence and provide information concerning the detail payroll and employment data of the above referenced business in order to verify this information and/or facilitate the preparation of required reports for unemployment insurance for the period **January 1, 2015 to date**.

Auditor [redacted] phone number: [redacted]

At the time and place stated above, **you are further required to produce all books and records** relating to and containing the actual payroll and number of employees (as defined in Chapter 108, Wisconsin Statutes) of the above referenced business for the period **January 1, 2015 to date**, including but not limited to the following:

- Earnings records of each employee
- Payroll registers / journals
- Federal forms W-2s and W-3 transmittal
- Social security reports (941s)
- Federal unemployment tax reports (940s)
- Federal forms 1099s and 1096 transmittal
- Cash disbursements journal
- Accounts payable distribution registers
- General ledger detail / chart of accounts
- Income tax returns / financial statements
- Master vendor listing / vendor files
- Check stubs, check register, and/or cancelled checks
- All records of payments to individuals for services performed
- List of stockholders, partners, members, and/or corporate officers of the business

You are legally obligated to comply with this subpoena duces tecum. It is enforceable under section 885.12 and 108.24 (2) of the Wisconsin Statutes. If you fail to appear with your records as directed, further legal action can be taken to compel you to comply, which may include requesting that a court enforce the penalty for contempt. See the reverse side of this subpoena for further information.
Signed on this date: December 26, 2017

DEPARTMENT OF WORKFORCE DEVELOPMENT

By: [redacted]

[redacted] Deputy, Audit Supervisor
Division of Unemployment Insurance
Field Audit Section
P.O. Box 7942
Madison, Wisconsin 53707-7942
[redacted]
[redacted]@dwd.wisconsin.gov

UCT-6315-E (R. 12/13/2017) [redacted]

PENALTIES

Section 885.12, Wisconsin Statutes:

Coercing witnesses before officers and boards

"If any person, without reasonable excuse, fails to attend as a witness, or to testify as lawfully required before any arbitrator, coroner, medical examiner, board, commission, commissioner, examiner, committee, or other officer or person authorized to take testimony, or to produce a book or paper which the person was lawfully directed to bring, or to subscribe the person's deposition when correctly reduced to writing, any judge of a court of record or a circuit court commissioner in the county where the person was obliged to attend may, upon sworn proof of the facts, issue an attachment for the person, and unless the person shall purge the contempt and go and testify or do such other act as required by law, may commit the person to close confinement in the county jail until the person shall so testify or do such act, or be discharged according to law. The sheriff of the county shall execute the commitment."

Section 108.24(2), Wisconsin Statutes:

"Any person who knowingly makes a false statement or representation in connection with any report or as to any information duly required by the department under this chapter, or who knowingly refuses or fails to keep any records or to furnish any reports or information duly required by the department under this chapter, shall be fined not less than $100 nor more than $500, or imprisoned not more than 90 days or both; and each such false statement or representation and every day of such refusal or failure constitutes a separate offense."

Section 108.14(2m), Wisconsin Statutes:

"In the discharge of their duties under this chapter an appeal tribunal, commissioner or other authorized representative of the department or commission may administer oaths to persons appearing before them, take depositions, certify to official acts, and by subpoenas, served in the manner in which circuit court subpoenas are served, compel attendance of witnesses and the production of books, papers, documents and records necessary or convenient to be used by them in connection with any investigation, hearing or other proceeding under this chapter. A party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07 (4) and must be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the appeal tribunal or other representative of the department responsible for conducting the proceeding. However, in any investigation, hearing or other proceeding involving the administration of oaths or the use of subpoenas under this subsection due notice shall be given to any interested party involved, who shall be given an opportunity to appear and be heard at any such proceeding and to examine witnesses and otherwise participate therein. Witness fees and travel expenses involved in proceedings under this chapter may be allowed by the appeal tribunal or representative of the department at rates specified by department rules, and shall be paid from the administrative account."

Department of Workforce Development
Division of Unemployment Insurance
Field Audit
PO Box 7942
Madison, Wisconsin 53707

Fax: (608) 267-1400
http://dwd.wisconsin.gov/ui

STATE OF WISCONSIN
DWD
Department of Workforce Development

December 27, 2017

Computer Copy

DANE COUNTY SHERIFFS DEPARTMENT
115 W DOTY ST
CIVIL PROCESSOR
MADISON WI 53703-3232

Re: SUBPOENA DUCES TECUM
Account Number: [redacted]
Person to be served: [redacted]

Subpoena Service Request

Please arrange to have the attached Subpoena Duces Tecum served on [redacted] to appear with the records of [redacted] at the following address: UI Field Audit Office , 201 E WASHINGTON AVE, MADISON, WI, 53703 at 1:00 pm on Tuesday, January 30, 2018.

Please contact the undersigned for further instructions after three unsuccessful attempts to serve the subpoena.

After service has been completed and before the date set for the individual's appearance, please mail a copy of the subpoena along with the certificate of service to: Department of Workforce Development, Unemployment Insurance Field Audit, P.O. Box 7942, Madison, WI 53707-7942. Any billings of the service fee should also be mailed to this same address.

Sincerely,

[redacted]

[redacted]
Audit Supervisor
[redacted]

enclosures

Research Request Department Proposals D19-16 and D19-18: Fiscal Impact – Based on 10-year Average Claim Level

Date: 4/18/2019
Prepared by: UI Technical Services Section

Request:
Supply the average claim level based on previous last 10 years (2009-2018)
Based on this 10-year average claim level, supply the updated annual fiscal impact of

- Repealing the Waiting Week
- Increasing the Maximum Weekly Benefit Rate to $406
- A combined estimate of repealing the waiting week and increasing the MWBA to $406

Notes:

Under the 2009-2018 average UI claim level, UI benefits paid would be $960 million annually. This compares to $397 million paid in 2018. Other comparisons:

- Under the 2009-2018 average UI claim level, there would be an expected 218,709 first pays (unique claimants) compared to 106,770 in 2018.
- The average annual duration (average weeks paid) for the period of 2009-2018 was 15.5 weeks compared to the average duration of 12.7 weeks in 2018.

Department Proposal D19-18: Increasing the Maximum Weekly Benefit Rate to $406

Annual Impact based on 2009-2018 average claim level - Increase MWBR to $406		**Percentage of UI Benefits**
$ **Millions**		
Total UI Benefit Impact (reimbursable and taxable)	**$62.44**	6.50%
UI Reimbursable Benefits	**$3.98**	0.41%
UI State Government Reimbursable Benefits	*$0.41*	0.04%
UI Local Government Reimbursable Benefits	*$1.20*	0.12%
Other Reimbursable Benefits	*$2.38*	0.25%
Taxable UI Benefits (non-reimbursable amount charged to employer accounts)	**$58.46**	6.09%
UI Tax Impact (revenue)	$19.49	---
UI Trust Fund Net Change	-$38.97	---

Methodology Notes: All qualifying claims established in 2018 were recalculated to determine a new weekly benefit rate under the higher new maximum benefit rate. To match average claim activity in the period 2009-2018, the number of claimants was increased to match the higher number unique claimants (first pays) and the duration of claiming was changed to 15.5 weeks.

Department Proposal D19-16: Repeal of the Waiting Week

Annual Impact based on 2009-2018 average claim level - Repeal Waiting Week		**Percentage of UI Benefits**
$ Millions		
Total UI Benefit Impact (reimbursable and taxable)	**$48.00**	5.00%
UI Reimbursable Benefits	**$3.06**	0.32%
UI State Government Reimbursable Benefits	*$0.31*	0.03%
UI Local Government Reimbursable Benefits	*$0.92*	0.10%
Other Reimbursable Benefits	*$1.83*	0.19%
Taxable UI Benefits (non-reimbursable amount charged to employer accounts)	**$44.94**	4.68%
UI Tax Impact (revenue)	$14.98	---
UI Trust Fund Net Change	-$29.96	---

Combining D19-16: Repeal of the Waiting Week and D19-18: Increase of the Maximum Weekly Benefit Rate to $406

Annual Impact based on 2009-2018 average claim level - Repeal Waiting Week and Increase MWBR to $406		**Percentage of UI Benefits**
$ **Millions**		
Total UI Benefit Impact (reimbursable and taxable)	**$113.56**	11.83%
UI Reimbursable Benefits	**$7.25**	0.75%
UI State Government Reimbursable Benefits	*$0.74*	0.08%
UI Local Government Reimbursable Benefits	*$2.18*	0.23%
Other Reimbursable Benefits	*$4.33*	0.45%
Taxable UI Benefits (non-reimbursable amount charged to employer accounts)	**$106.31**	11.07%
UI Tax Impact (revenue)	$35.44	---
UI Trust Fund Net Change	-$70.88	---

UIAC Proposal Tracking – 2019

No.	Proposal Title	Proposal Subject	Presented to UIAC	Action
D19-01	Reimbursable Employer Debt Assessment Charging	REDA access to imposter funds	3-21-19	
D19-02	Assessment for Failure to Produce Records	Subpoena Penalty	3-21-19	
D19-03	Fiscal Agent Election of Employer Status	Fiscal Agents	3-21-19	
D19-04	Clarification of Employee Status Statute	Employee Status	3-21-19	
D19-05	Clarification of Exemptions Laws	Levy Exemptions	3-21-19	
D19-06	SUTA Dumping Penalty	SUTA Dumping	3-21-19	
D19-07	Departmental Error	Department Error	3-21-19	
D19-08	Appropriation Revisions and Technical Corrections	Cross Reference & Technical Clean-Up and Appropriation Revisions	3-21-19	
D19-09	Creation of Administrative Fund	IP Lapse and Admin Fund	3-21-19	
D19-10	Update Administrative Rules to Convert SIC to NAICS	Amend SIC to NAICS Codes	3-21-19	Scope Approved on 3-21-19
D19-11	Repeal of UI Drug Testing	Drug Testing	3-21-19	
D19-12	Repeal of Substantial Fault	Substantial Fault	3-21-19	
D19-13	Define Suitable Work by Administrative Rule	Suitable Work	3-21-19	
D19-14	Quit Exception for Relocating Spouse	Quit Exception	3-21-19	
D19-15	Increase and Index Maximum Wage Cap for the Partial Benefits Formula	Wage Threshold	3-21-19	
D19-16	Repeal Waiting Week	Waiting Week	3-21-19	
D19-17	Repeal Work Search and Work Registration Requirements	Work Search & Work Registration	Tabled	
D19-18	Increase Maximum Weekly Benefit Rate to $406	Increase WBR to $406	3-21-19	

D19-02 (updated with fiscal estimate)
Assessment for Failure to Produce Records

Date: April 18, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Assessment for Failure to Produce Records

1. Description of Proposed Change

Under current law, employing units are required to maintain work records and must allow the Department to audit those records.[1] When the Department intends to audit an employer, it sends a written notice to the employer requesting information regarding the employer's employment records. If the employer does not respond, the Department issues a second written request to the employer. If the employer fails to respond to the second written request, the Department issues a subpoena to the employer.[2] When the Department issues a subpoena, the Department must pay a fee to have the subpoena served by a sheriff.

About 40% of employers served with audit subpoenas provide an inadequate response or fail to respond to the subpoena. When an employer fails to comply with a subpoena, the Department's remedy is to enforce the subpoena in Circuit Court requesting that the employer be held in contempt. This is a time-consuming process that the Department has started to use.

The Department proposes to change the law to assess an administrative penalty of the greater of $500.00 or 25 percent of the amount of additional UI tax on any adjustment made by the Department that results from a person's failure to produce subpoenaed records to the Department. The Department will rescind the penalty if the employer fully complies with the subpoena within 20 calendar days of the issuance of the penalty. The intent of this proposal is to ensure employer compliance with requests for wage data.

---

[1] Wis. Stat. § 108.21(1).
[2] Wis. Stat. § 108.14(2m).

The Wisconsin Department of Revenue may impose a similar assessment for a taxpayer's failure to produce requested records.[3]

The assessment for failing to produce records would be deposited into the program integrity fund.

2. **Proposed Statutory Change**

Section 108.19 (1s) (a) 7. of the statutes is created to read:

7. Assessments under s. 108.215.

Section 108.215 of the statutes is created to read:

Penalty for failure to produce records. (1) The department shall assess a penalty of the greater of $500.00 or 25 percent of the amount of additional amounts due under this chapter on any adjustments made by the department that results from any person who fails to comply with a department subpoena for records.

(2) The department may issue a penalty under this section only if the subpoena contains a warning that, if the requested records are not produced by the date specified on the subpoena, the department shall assess the penalty under this section.

(3) The penalty under this section shall be an appealable determination under s. 108.10.

(4) The department shall set aside an assessment issued under this section if the department determines that the person has fully complied with the subpoena within 20 days after the determination assessing the penalty is issued.

(5) Assessments under this section shall be deposited into the unemployment program integrity fund.

[3] Wis. Stat. § 71.80(9m): WI-DOR may impose a penalty of "the greater of $500 or 25 percent of the amount of the additional tax on any adjustment made by the department that results from the person's failure to produce the records."

3. Effects of Proposed Change

a. Policy. This proposal should result in the Department completing a higher percentage of audits of employer accounts and should reduce delays in the audit process.

b. Administrative. The audit staff will need to be trained on the changes resulting from this proposal. The Department must make technology changes to implement this proposal.

c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle and would apply to subpoenas issued after the effective date of the proposal.

D19-02
Assessment for Failure to Produce Records

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

UI Trust Fund Impact:

This proposal would incentivize compliance, thus would have a negligible but positive impact on the Trust Fund. Any penalty revenue would be deposited into the UI Program Integrity Fund.

IT and Administrative Impact:

This law change proposal will require approximately 250 hours of IT changes at a one-time cost of $22,000. The administrative cost is estimated at approximately 30% the IT cost or $6,600. The total one-time cost is estimated at $28,600.

Summary of the Proposal:

This law change proposal would create a new administrative penalty of the greater of $500.00 or 25 percent of the amount of additional amounts due on any adjustments made by the Department that results from any individual who fails to produce subpoenaed records. The individual must have warning of the penalty if subpoenaed records are not produced. The penalty will be rescinded if the individual fully complies with the subpoena within 20 calendar days of the issuance of the penalty. Any penalty revenue would be deposited into the UI Program Integrity Fund.

Trust Fund Methodology:

This proposal would incentivize compliance, thus would have a negligible but positive impact on the Trust Fund. Any penalty revenue would be deposited into the UI Program Integrity Fund.

Audit subject matter experts verified approximately 40 percent of audit subpoenas are not complied with, or approximately 40 subpoenas annually. 95 percent would be subject to the $500 penalty and 5 percent would be subject to the 25 percent of the amounts-due penalty.

Benefit payment subject matter experts verified approximately 15 percent of benefit subpoenas or approximately 54 subpoenas are not complied with annually and subject to the proposed $500 penalty.

A total of 94 subpoenas subject to this administrative penalty would result in up to $50,176 annually in penalty revenue that would be deposited into the UI Program Integrity Fund.

IT and Administrative Impact Methodology:

The IT hours and cost estimates are based on high level business requirements. It assumes 250 hours to make the necessary changes to SUITES at a one-time IT cost of $22,000. The administrative cost is 30 percent of the IT cost based on prior project estimates or $6,600. The total one-time IT and administrative impact is $28,600

Note: If the IT work for both SUTA Dumping Penalty and Assessment for Failure to Produce Records Penalty were done at the same time, the IT impact would be approximately 250 hours total for both.

Date: April 18, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Appropriations Revisions and Technical Corrections

1. Description of Proposed Change

The Department receives federal funds to operate the unemployment insurance program. It also collects interest and penalties from employers and penalties from claimants. The amounts that the Department receives are appropriated under state law for certain purposes. State law previously provided that amounts related to the administration of the unemployment insurance program were to be deposited into the "Unemployment Administration Fund." That fund was eliminated in 1985 Wisconsin Act 29 and the appropriations were transferred to the general fund. Chapter 108 was amended to repeal references to the Unemployment Administration Fund and to refer to the "Administrative Account."[1] The Department proposes to eliminate the "Administrative Account" and clarify the unemployment insurance appropriations references in Chapter 108. This will ensure that funds are deposited correctly and that payments are made from the correct appropriation.

The Department proposes various technical corrections, including those described above, as follows:

[1] Wis. Stat. § 108.20.

Section	**Change**	**Reason**
20.445(1)(gg)	Repeal	No longer used.
108.02(26)(c)9.	Repeal the exclusion from gross income for amounts received under qualified group legal services plans.	Corresponding federal exclusion in 26 USC § 120 has been repealed.
108.02(26)(c)14.	Repeal the exclusion from gross income for amounts received under the federal Medicare Catastrophic Coverage Act.	Corresponding federal Act has been repealed.
108.145	Amend	Correct cross-reference to federal law.
108.16(6m)(a)	Amend	Add additional references for balancing account charges.
108.19(3)	Repeal	No longer used.
108.19(4)	Amend	Clarify that the Department may use certain funds for program administration if federal law is changed.
108.195	Create	Move the special assessment for interest and the program integrity fund to this section for better organization.
108.20	Repeal	Delete references to the administrative account and replace with references to specific appropriations statutes for increased certainty.
108.223(2)(b)	Amend	Correct typo and clarify language.
Various	Amend references to the federal Social Security Act and Unemployment Tax Act to the specific statutes	This is preferred drafting style and ensures that cross-references are correct.
Various	Amend statutes to clarify language.	Current drafting conventions result in standardized statute language.

2. <u>Proposed Statutory Changes</u>

See attached.

3. <u>Effects of Proposed Change</u>

a. <u>Policy.</u> The proposed change will clarify the appropriations statutes related to the unemployment insurance program and correct typos and cross-references in the statutes.

b. <u>Administrative</u>. This proposal will require training of Department staff.

c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

D19-08
Appropriations Revisions and Technical Corrections

Prepared by Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Trust Fund Impact:

This law change proposal is not expected to have any Trust Fund impact.

IT and Administrative Impact:

This law change proposal is not expected to have an IT or administrative impact.

Summary of Proposal:

The Department proposes to eliminate the "Administrative Account" and clarify the unemployment insurance appropriations references in Chapter 108. This will ensure that the funds are deposited correctly and that payments are made from the correct appropriations.

The Department also proposes various technical corrections.

Trust Fund Methodology

This law change proposal is not expected to have any Trust Fund impact.

IT and Administrative Impact Methodology

This law change proposal is not expected to have an IT or administrative impact.

D19-09 (updated with fiscal estimate)
Creation of Administrative Fund

Date: April 18, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Creation of Administrative Fund

1. Description of Proposed Change

The Unemployment Administration Fund previously comprised funds that the Department used for administering the unemployment program. That fund was eliminated in 1985 Wis. Act 29, which created the Administrative Account.[1] The Administrative Account comprises both the federal administrative grant funds and the interest and penalties paid by employers. When employers fail to timely file unemployment quarterly tax and wage reports or fail to timely pay their unemployment contributions, the Department assesses penalties and interest. The penalties and interest incentivize timely reporting and payments by employers and provide an additional source of revenue for the Department to cover shortfalls in the federal administrative grant.

The Unemployment Program Integrity Fund comprises a variety of sources, including penalties assessed for claimant fraud as well as against employers for intentional worker misclassification.[2] The Unemployment Interest Payment Fund comprises funds collected from the special employer assessment to repay interest on federal loans if the trust fund balance is insufficient to pay benefits.[3] The amounts in these Funds are designated as "nonlapsible," which means that these amounts may not be transferred to the General Fund to balance the budget.

The Department proposes to eliminate the Administrative Account and recreate a fund for receiving the employer interest and penalties collected under section 108.22(1) and any other amounts the Department collects that are not designated for another fund. This new fund would,

[1] Wis. Stat. § 108.20.
[2] Wis. Stat. § 108.19(1s).
[3] Wis. Stat. §§ 108.19(1m) to (1q).

as the Unemployment Administration Fund was, be designated as "nonlapsible." The purpose of this proposal is to provide consistent treatment for the amounts collected by the Department and to better ensure that amounts paid by employers remain with the unemployment program.

2. Proposed Statutory Changes

If the Council approves this proposal, the Department would ask the Legislative Reference Bureau to draft proposed statutory language for the Council to review and approve.

3. Effects of Proposed Change

a. Policy. The proposed change will better ensure that employer interest and penalties remain with the unemployment insurance program.

b. Administrative. This proposal will require training of Department staff.

c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

D19-09
Creation of Administrative Fund

Prepared by Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Trust Fund Impact:

This law change proposal is not expected to have any Trust Fund impact.

IT and Administrative Impact:

This law change proposal is not expected to have an IT or administrative impact.

Summary of Proposal:

This law change proposal would recreate an Administrative Fund for receiving the employer interest and penalties collected under section 108.22(1) and any other amounts the UI Division collects that are not designated for another fund. Like other Funds related to the unemployment program, the amounts in the newly recreated fund would be designated as "nonlapsible." The purpose of this proposal is to provide consistent treatment for the amounts collected by the Department and to better ensure that amounts paid by employers remain with the unemployment program.

Trust Fund Methodology

This law change proposal is not expected to have any Trust Fund impact.

IT and Administrative Impact Methodology

This law change proposal is not expected to have an IT or administrative impact.

The most recent lapse expenditures of employer interest and penalties monies occurred in SFY16 and SFY17 of approximately $2.67 million and $2.23 million respectively. This proposal would result in an additional $2 - $3 million in funds remaining within the UI program during years where lapse is in effect.

Unemployment Insurance Advisory Council
Tentative Schedule
2019

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