



## Unemployment Insurance Advisory Council

### Meeting

July 16, 2020, 10:00 a.m. – 2:00 p.m.

Location: Department of Workforce Development, by Teleconference

#### Public may attend by:

Phone: 415-655-0003 or 855-282-6330 (toll free) or [WebEx](#)  
Meeting Number (Access Code): 145 877 1294 Meeting Password: DWD1

### Agenda Items and Schedule

1. Call to Order and Introductions
2. Approval of Minutes of the May 7, 2020 Council Meeting
3. Department Update
4. Trust Fund Update – Tom McHugh
5. Industry Unemployment Data – John Westbury
6. Legislation Update
  - [Senate Bill 4209](#), Protecting Nonprofits from Catastrophic Cash Flow Strain Act
    - To amend title IX of the Social Security Act to improve emergency unemployment relief for governmental entities and nonprofit organizations.
7. Rulemaking
  - [Emergency Rule 2006](#), DWD Chs. 127 and 128
    - Work search actions, availability for work, and work available for people filing claims with the unemployment insurance program during the COVID-19 pandemic.
    - Effective May 9, 2020 – October 5, 2020

- [Emergency Rule 2011](#), DWD Ch. 113
  - Waiving interest in limited circumstances for employers subject to reimbursement financing when reimbursements are delinquent due to COVID-19.
  - Effective June 5, 2020 – November 1, 2020
- [Emergency Rule 2018](#), DWD Ch. 102
  - Employer contribution rates for 2021.
  - Effective June 29, 2020 – November 25, 2020
- Emergency and Permanent Rule, DWD Ch. 120
  - Providing notification of the availability of unemployment insurance to employees at the time of separation from employment.

8. Public Hearing Schedule
9. Research Requests
10. Future Meeting Dates
11. Adjourn

## Notice

- ❖ Due to the public health emergency, the meeting will be conducted by teleconference. The public may attend by teleconference or WebEx using the information provided under the meeting details above.
- ❖ The Council may take up action items at a time other than that listed.
- ❖ The Council may not address all agenda items or follow the agenda order. 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 the time the meeting is scheduled to begin at: <https://dwd.wisconsin.gov/uibola/uiac/meetings.htm>

# UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

## Meeting Minutes

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

May 7, 2020

Held Via Teleconference Due to Public Health Emergency

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

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

**Department Staff:** Secretary Caleb Frostman, Pam McGillivray (Chief Counsel), Mark Reihl, Amy Banicki, Andrew Rubsam, Jim Moe, Tom McHugh, Mike Myszewski, Pam James, Jason Schunk, Joe Brockman and Robin Gallagher.

**Members of the Public:** BJ Dernbach (office of Representative Warren Petryk), Anita Krasno (General Counsel, Labor & Industry Review Commission), Amanda Hilaire (Fox 6 News), Mike Duchek (Legislative Reference Bureau)

### 1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council meeting to order at 10:06 a.m. under the Wisconsin Open Meetings law. Attendance was taken by roll call and Ms. Knutson recognized the department staff in attendance.

### 2. Approval of Minutes of the March 19, 2020, Council Meeting

Motion by Mr. Mielke, second by Ms. Feistel, to approve the minutes of the March 19, 2020 meeting without correction. The motion passed unanimously.

### 3. Department Update

Secretary Frostman thanked Governor Evers for his leadership during this crisis. Secretary Frostman expressed his deep appreciation to the staff of DWD and UI. Secretary Frostman stated that hundreds of department staff are assisting in the face of difficult circumstances. Secretary Frostman expressed his thanks to UI Administrator Mark Riehl and Deputy Administrator Amy Banicki. Secretary Frostman expressed his appreciation to the entire DWD team.

Secretary Frostman stated that through all of 2019 UI received 290,000 applications for UI benefits. Since March 15<sup>th</sup> UI has received more than 500,000 applications. Before COVID-19,

UI was receiving 45,000 weekly claims. During each of the last three weeks, more than 300,000 claims have been filed. This week, UI may receive 400,000 claims for benefits. UI has had to adapt its antiquated benefit systems. UI has had to implement the new federal unemployment programs, FPUC and PUA. UI has taken more than 50,000 PUA applications. The Division is programming for the federal Pandemic Emergency Unemployment Compensation (PEUC) benefit program.

Updates have been made to the UI telecommunications system. As many as 5.8 million calls come into UI centers in a week. The benefit system needs to be updated desperately and has significantly impeded UI's ability to expedite the onboarding of the new federal programs. UI's online application system has held up admirably. UI has taken in as many as 25,000 new initial claims daily. More than 99% of claims are filed online.

The UI Division moved rapidly to address personnel resources. In March, DWD moved 100 employees into UI, 90 were from within DWD. UI is in the process of moving 100 more DWD employees into the UI Division. The Department is in the process of onboarding 65 state employees into UI, with the possibility that many more employees from state government will be moving into UI. UI is in the process of hiring more than 300 external staff. Dozens of employees from DWD and other state agencies have worked full time on resume review and interview panels.

The Department is in the process of obtaining external vendor-run service centers to help UI increase capacity, including a large call center to take claims over the telephone, to answer questions, and triage calls. DWD is setting up a call center to specifically handle PUA calls. DWD is also adding an external adjudication center and a claims processing center.

The Department has worked around the clock since March to expand capacity to resolve claims accurately and in a timely fashion.

Mr. Reihl provided information on the work share program. This program has grown during the Coronavirus pandemic period. There are now 186 active work share plans, involving 9,523 participants. Previously, there was typically just one active plan at a time.

Mr. Manley asked the percentage of online claims and how to deal with claims of people who do not have access to the internet.

Mr. Reihl responded that 97% to 98% of initial claims are filed online, and 98% to 99% of weekly claims are filed online.

Ms. Knutson stated that claimants who did not have access to the internet were previously able to file online claims at the library, a Job Center or use UI's mobile phone application. If applicants do not have access to the internet or a smartphone, applicants need to call the UI Help Center and receive assistance over the phone in filing their claim.

Mr. Reihl stated that he recognizes that there are some problems getting through to UI due to the huge number of calls coming in every day, but UI is allowing claimants to backdate claims. UI will recognize the backdated claims whenever the claimants get through.

Mr. Manley asked what the biggest bottleneck has been in processing claims.

Ms. Knutson stated that if a claimant answers the questions on the initial claim and there are no issues, that claim is processed and paid. The problem arises when a claimant answers questions on the initial claim that creates an issue that needs to be addressed by someone in Adjudication. UI is limited by the number of staff in Adjudication. USDOL requires UI to investigate any issue regarding eligibility, either monetarily or an eligibility issue. UI must investigate before paying a claim. UI cannot pay a claim and then investigate later. Paying a claim and then completing the investigation later is not an option under federal law.

Mr. Reihl stated that if all questions are answered correctly on a weekly claim and no issue arises, the claim is paid in two to three days. UI is hiring many people and that includes adjudicators, so that UI will be able to process those claims much quicker. UI needs more adjudicators and UI will hire and train those adjudicators. UI will also be bringing in an outside vendor to address adjudication issues.

Mr. Manley stated that everyone wants claims to be processed as fast as possible, but UI has an obligation to do program integrity. Mr. Manley is glad the Department is hiring an additional 300 people. Mr. Manley stated that he is unclear if the Department has already hired the 300 staff or hopes to hire those people. Mr. Manley stated that the hiring of 300 additional staff is a positive development in getting the claims adjudicated more quickly.

Mr. Reihl stated that UI is in the process of hiring more than 300 adjudicators. Altogether, from a variety of sources, UI will be bringing on more than 1,300 people. Before this crisis began, UI had 500 staff and UI will be bringing on 1,300 more. UI has never seen the volume of claims it is handling.

Ms. Knutson commented that the new employees being brought on need to be trained.

Mr. Reihl stated that UI cannot hire an adjudicator one day and have that person take care of claims the next day. There are three weeks of training involved in that process.

Ms. Feistel asked about the timeframe for completion of cases sent to adjudication.

Ms. Knutson stated that UI is working through the issues as fast as it can. UI is trying to triage the issues. Ms. Knutson stated that the Bureau of Benefits has been able to identify groups of issues as they were coming into UI. As the result of the triage process, FAQ lists were developed for the web site to assist claimants. As UI identified and triaged groups of holds by issues, UI was able to clear out some of those holds.

Mr. Reihl stated that he does not have an estimate of when a hold placed on a claim today will be cleared. UI tries to take the oldest claims first, but the Division is still triaging the claims as they

come in to take care of those issues that can be resolved quickly. The new adjudicators will be specializing in certain areas of a claim so that they will become accustomed to dealing with the same issue every day and be able to move quickly on those claims; having adjudicators specialize will result in a shorter training period.

Ms. Knutson stated that a preliminary analysis of claims has been done by NAICS code. This preliminary data provides information that may be useful to the Council. Because the data is preliminary, UI is unable to differentiate between large and small employers. Ms. Knutson explained the spreadsheet and used several industry groups such as construction, manufacturing, and healthcare as examples.

Ms. Quam found the spreadsheet to be helpful and stated information from her organization indicates that there are more people laid off and not working in accommodations and food service than there are applying for benefits. Ms. Quam stated that her organization has been receiving calls and questions from seasonal employers whose workers cannot return to work due to COVID-19, not because businesses are closed for seasonal purposes.

Ms. Feistel stated that she has received calls and emails from food service workers who have worked more than one job and question whether they are entitled to UI benefits because they are still working at a second job. The second job might be part of the reason those workers are not applying for benefits.

Mr. Reihl stated that employees in seasonal businesses should keep applying. They probably have not exhausted 26 weeks of benefits. An employee should apply if the employee thinks they are eligible for benefits. UI tells all claimants to file for benefits and UI will determine if the claimants are eligible for benefits. If the claimant is not eligible for regular UI benefits, there is still the new federal PUA program for independent contractors and self-employed people, along with others who would not be eligible for regular UI.

Ms. Knutson stated that the UI web site has a chart containing a decision tree for applicants for UI and PUA. If a claimant has exhausted their 26 weeks of benefits, that claimant may be eligible for one of the other federal programs. It is a complicated path.

Mr. Delie asked if applicants are automatically in the queue for PUA if they are ineligible for regular UI.

Ms. Knutson stated that those claimants would have to apply for PUA and would have to meet one of the COVID-19 related federal eligibility requirements.

Mr. Griesbach stated that he wanted to thank the Department for the web site Q & A section. The site is very informative and explanatory.

Ms. Fechter stated that those people who applied for UI benefits in the early stages of COVID-19 did not have the choices that are in place now. Ms. Fechter asked if it is the responsibility of the claimant to reapply for a different program if they are not eligible for regular UI. When should

the claimant apply for a different program? Ms. Fechter inquired specifically about the CARES Act.

Ms. Banicki responded that in order to determine eligibility for PUA benefits, the Department must first determine that the claimant is not eligible for regular UI. It's not an error to file for UI first because the Department must make the determination the claimant is not eligible for that program first. If the Department has determined that a claimant is not eligible for regular UI, the Department puts language in the determination stating that the claimant may be eligible for PUA and to file for that. If the claimant is not eligible for regular UI because the claimant works for a church or is an independent contractor, the claimant should immediately file for PUA.

#### **4. Trust Fund Update**

Mr. McHugh reported that the Trust Fund cash balance is \$1.8 billion.

Mr. McHugh stated through May 2, 2020, UI has paid \$394,559,163 in benefits. For the entire year of 2019 the program paid a total of \$372 million.

Mr. McHugh stated that tax receipts through May 2, 2020 are \$313 million. The first quarter usually represents a little less than 50% of the tax receipts for the year.

Mr. Gotzler asked what percentage of the payments are being reimbursed by the Federal government.

Ms. Knutson stated that UI is being reimbursed for the waiting week. UI will be reimbursed for STC or work share benefits paid also. The dollar amounts have not been totaled yet.

Mr. McHugh stated that in the long run, it is estimated that 94% of paid benefits will be charged to the UI Trust Fund and 6% will be reimbursed by the Federal government.

Ms. Knutson covered staff's analysis of the projected claims for the rest of this calendar year and the Trust Fund balance. Based on one projection, the Trust Fund will possibly be exhausted in October of this year. This projection does not include additional tax receipts.

Mr. Manley asked why the analysis does not contain additional tax receipts.

Mr. McHugh replied that it is too hard to predict tax receipts because it is not known who will be in business to pay UI taxes.

Mr. McHugh stated that 764 employers took deferred payments, with \$5.1 million in taxes deferred.

Ms. Knutson stated that if claims drop and stabilize at 85,000 payable claims per week, then the Trust Fund would not exhaust until September of 2021, exclusive of tax receipts.



Mr. Gotzler would like UI to keep track of payments that will not be reimbursed by the Federal government.

Ms. Knutson stated it is estimated only 6% of payments will be reimbursed by the Federal government.

Ms. James clarified that 94% of the 6% are reimbursable employers. FPUC and PUA are Federally funded. Staff's analysis was looking at the impact to the Trust Fund.

Ms. Knutson reiterated that FPUC payments do not affect the Trust Fund.

Mr. McHugh stated that approximately \$90 million has been paid through FPUC (the additional \$600 payment).

Mr. Gotzler asked if the FPUC payments are factored in the summary page.

Mr. McHugh stated that the \$394 million in payments are from the Trust Fund. Some may be refunded by the federal government.

Mr. Gotzler asked that the portion of payments being made by the federal government be tracked.

Mr. McHugh stated that it will be easy to track once the programming is completed.

Mr. Knutson stated that a staff person must manually charge back the federal portion of the payment.

## **5. Legislation Update**

Ms. Knutson stated that USDOL has informed the Department that it will not retroactively reimburse Wisconsin UI for the three weeks of benefits when the waiting week was retroactively suspended by 2019 Wisconsin Act 185. The net loss to the Trust Fund is over \$25 million.

Ms. Knutson stated that USDOL has interpreted Section 2103 of the CARES Act strictly so that reimbursable employers must pay their one-half of benefit charges in full before funds from the Federal government can be reimbursed and credited to their accounts.

Ms. Knutson stated that under Act 185 one-half of the reimbursable charges will be paid from the Interest and Penalty fund. The other half will need to be paid in full before funds from the Federal government can be reimbursed and credited to their accounts. USDOL stated this is based on the strict statutory language of the CARES Act. The Department is bound by USDOL guidance and interpretation of federal law. The Department recognizes that this is an issue for reimbursable employers. Other states have recognized this issue as well. This is something that Congress needs to address. There is a nationwide push for Congress to address this issue.

Mr. Gotzler asked if there is a way for the Division to communicate this new issue, perhaps with a FAQ or something along those lines.

Mr. Reihl stated that the Division will look at doing this.

Mr. Gotzler asked what the process will be for reimbursable employers.

Ms. Knutson stated that employers will first need to pay their 50% benefit charges in full. Then the Department can reimburse the employers with federal money and Department can credit their accounts.

Mr. Gotzler asked if Act 185 has a non-charging provision for non-contributory employers, the net effect being the reimbursable employer not paying any portion.

Ms. Knutson stated that Mr. Gotzler was correct. The Interest and Penalty fund will pay the balance for all charges related to the public health emergency

## **6. Rulemaking**

Mr. Rubsam stated that there is a Scope Statement for an emergency rule that would create a rule for work search, availability for work and for work available. Those provisions in the emergency rule are designed to supplant Emergency Order No. 7. This rule is like Emergency Order No. 7. The one major difference is that the public health emergency is defined in the rule to include not only a public health emergency, but also the stay at home order issued by the Department of Health Services as well as the federally declared emergency under the Stafford Act.

The emergency rule will last 150 days unless it is extended, and it will apply during that period until the federally declared emergency for Wisconsin ends, but the department does not know when that will be.

Ms. Fechtner asked about the work search waiver. Claimants are directed to the Job Center of Wisconsin and they have two weeks to register. Ms. Fechtner asked why that requirement is still in effect since the work search has been waived.

Mr. Rubsam stated that the CARES Act allowed the states to temporarily waive the work search. UI cannot relax the work registration requirement, which is federally mandated.

Ms. Knutson stated that claimants are told in the claim confirmation, the Claimant Handbook and the FAQs that they must register for work.

Mr. Rubsam requested that Council members send him an email if they had questions about the emergency rule.

Mr. Manley asked that if the underlying emergency that was the basis of the rule went away, could the Department shorten the duration of the emergency rule?

Mr. Rubsam stated that if the public health emergency ended, the Department could let the rule expire or possibly withdraw the rule.

Mr. Rubsam stated the Council was provided with the scope statement for DWD Rule 120. This proposed rule requires employers to inform employees of the availability of unemployment insurance at the time of separation. There was a hearing on the scope statement.

Ms. Knutson stated that one person appeared at the public hearing and provided comments. One comment was sent in by WMC. Work has not begun on the rule draft.

## **7. Research Requests**

There were no research requests.

## **8. Future Meeting Dates**

Ms. Knutson stated that the next regular meeting date is June 18<sup>th</sup>. Ms. Knutson asked the Council if they wanted to meet that day or another day.

Mr. Manley stated his desire was to not meet in June, July and August and to be updated by email instead of having a meeting in June.

Ms. Feistel would find a Council meeting useful and likes a first-hand update.

Mr. Delie concurred with Ms. Feistel.

Ms. Knutson suggested an email update in June and poll the Council for a late July meeting.

It was the consensus of the Council to be updated by email in June and be polled for a late July meeting.

Ms. Quam stated that a few employers have been trying to call employees back to work, and the employees are refusing to come back to work. Ms. Quam inquired if the Department tracks the employees who refuse to return.

Ms. Knutson stated that the employer needs to report the employee that is refusing an offer to return to work. The matter needs to be adjudicated.

Ms. Banicki stated that the employer should call the employer line and report the information. There is not a way to make the report electronically at the present time. The report must be made by phone.

Mr. Hayden asked about out-of-state residents who work in Wisconsin and apply for UI benefits. Would this cause adjudication and require the person to call in and confirm who they are?

Ms. Banicki stated an out-of-state applicant would have to call in and confirm their identity because they do not have a Wisconsin driver's license.

Mr. Delie asked if a claimant can contact the adjudicator directly.

Ms. Banicki stated that if the claimant has the adjudicator's telephone number, the claimant can contact the adjudicator directly on the case. If the claimant does not know who the adjudicator is, the claimant will have to call the general telephone number.

Mr. Gotzler asked about the work share program. How long does it take UI to review and approve a work share application?

Ms. Knutson stated that she receives emails every day, including weekends, on approved plans. It takes a few days to a week to approve a work share application.

Mr. Gotzler stated he appreciates all the work the UI Division is doing.

## **9. Adjourn**

Motion by Ms. Feistel, seconded by Mr. Delie to adjourn. The motion carried unanimously, and the Council meeting adjourned at 11:40 am.

## UI Reserve Fund Highlights

July 16, 2020

- Regular UI benefit payments through July 11, 2020 increased by \$612.7 million or 253.8% when compared to benefits paid through the same week in 2019.

<b>Benefits Paid</b>	<b>2020 YTD*</b> <i>(in millions)</i>	<b>2019 YTD*</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Change</b> <i>(in percent)</i>
Total Regular UI Paid	\$854.1	\$241.4	\$612.7	253.8%

Since the beginning of the year 447,876 claimants have been paid \$2.7 billion in a combination of federal and state programs. The new federal programs include *(in millions)*:

Federal Pandemic Unemployment Compensation (FPUC)	\$	1,744.9
Pandemic Unemployment Assistance (PUA)	\$	23.0
Pandemic Emergency Unemployment Compensation (PEUC)	\$	11.9

FPUC is the additional \$600 per week benefit which will expire the week ending July 25, 2020.

PUA provides up to 39 weeks of unemployment benefits to individuals who are not eligible for regular Unemployment Insurance (UI) such as:

- Individuals who are self-employed;
- Certain independent contractors;
- Individuals with limited recent work history;
- Other workers not covered by Regular UI.

PEUC is up to 13 additional weeks of payments to individuals who have exhausted their regular Unemployment Insurance (UI) benefits.

- Tax receipts through July 11, 2020 declined by \$15.7 million or 4.6% when compared to taxes paid through the same time period 2019. Since both tax years were rated in Schedule D, change was expected due to the improvement of individual employers' tax rates. Change may also reflect employer's ability to pay due to the pandemic.

<b>Tax Receipts</b>	<b>2020 YTD*</b> <i>(in millions)</i>	<b>2019 YTD*</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Change</b> <i>(in percent)</i>
Total Tax Receipts	\$324.2	\$339.9	(\$15.7)	(4.6%)

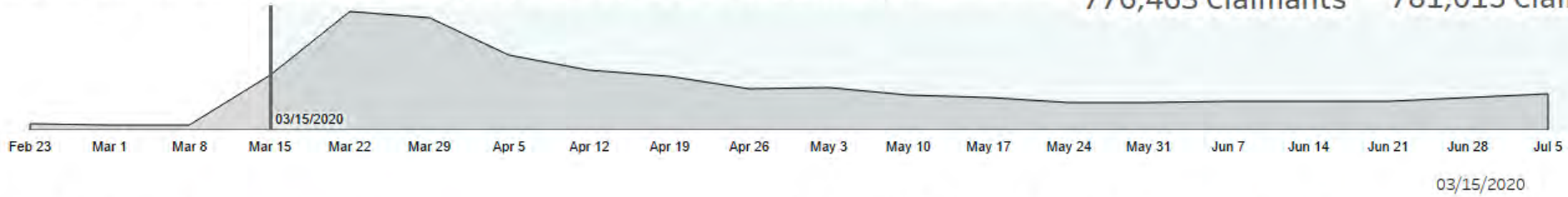
- Wisconsin has 4 separate tax rate schedules. They run from A through D, with A raising the largest amount of tax revenue and D the least.

Although the trust fund calculation is not final, the balance was approximately \$1.5 billion on June 30. Since it was greater than \$1.2 billion, Wisconsin will be in Schedule D for 2021.

*\*All year-to-date (YTD) numbers are through July 11, 2020 and a comparable 2019 period. The Financial Statements for June are not yet final as of this meeting date.*

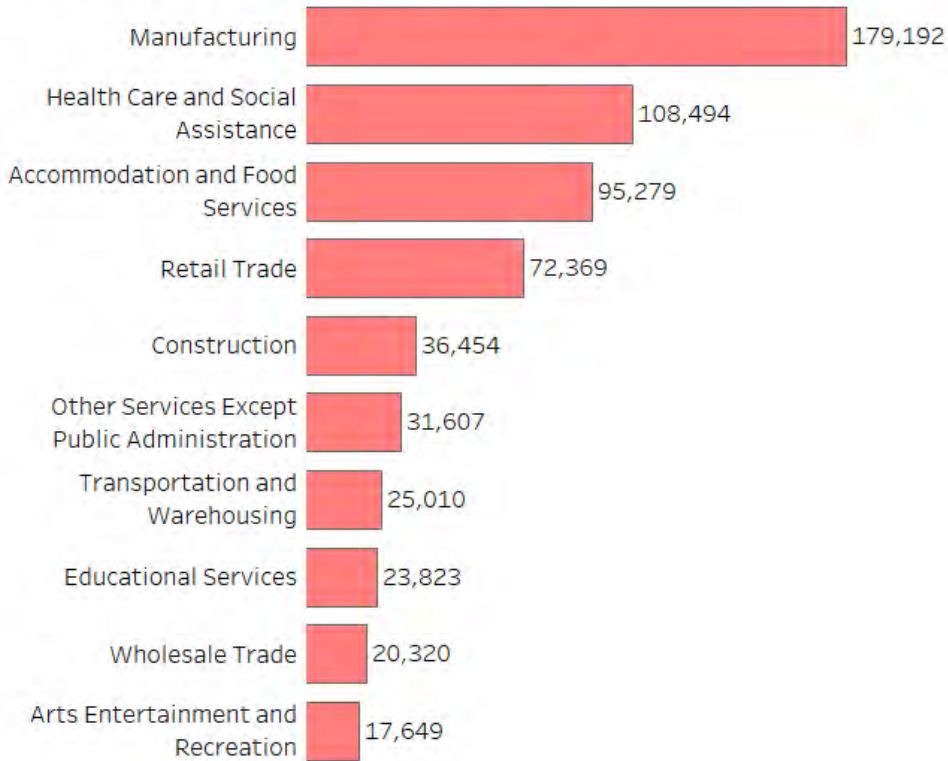
# Wisconsin Initial Claims during the COVID19 Pandemic (March 15, 2020 through July 5, 2020)

776,463 Claimants 781,015 Claims

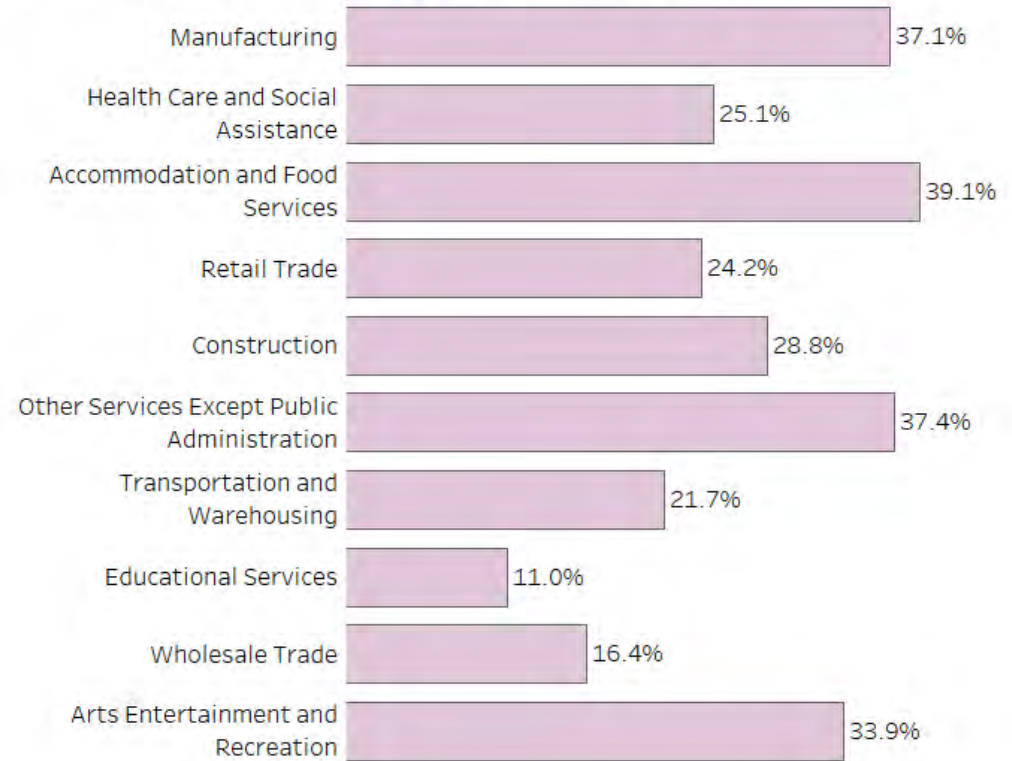


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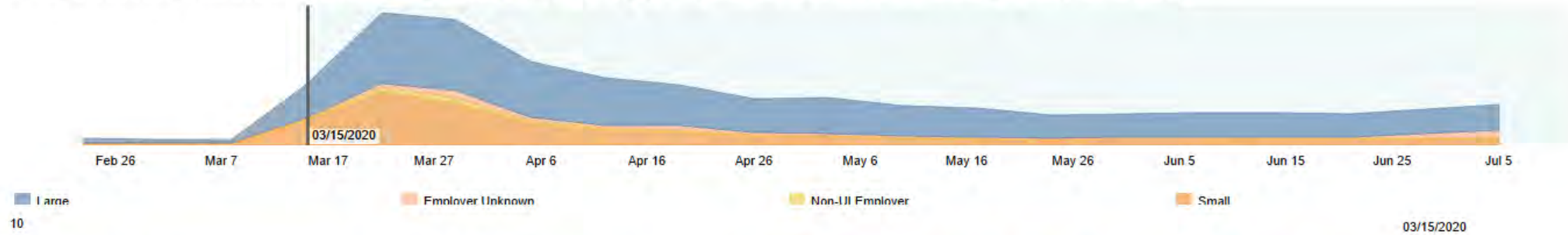
## Unique Claimants by Industry



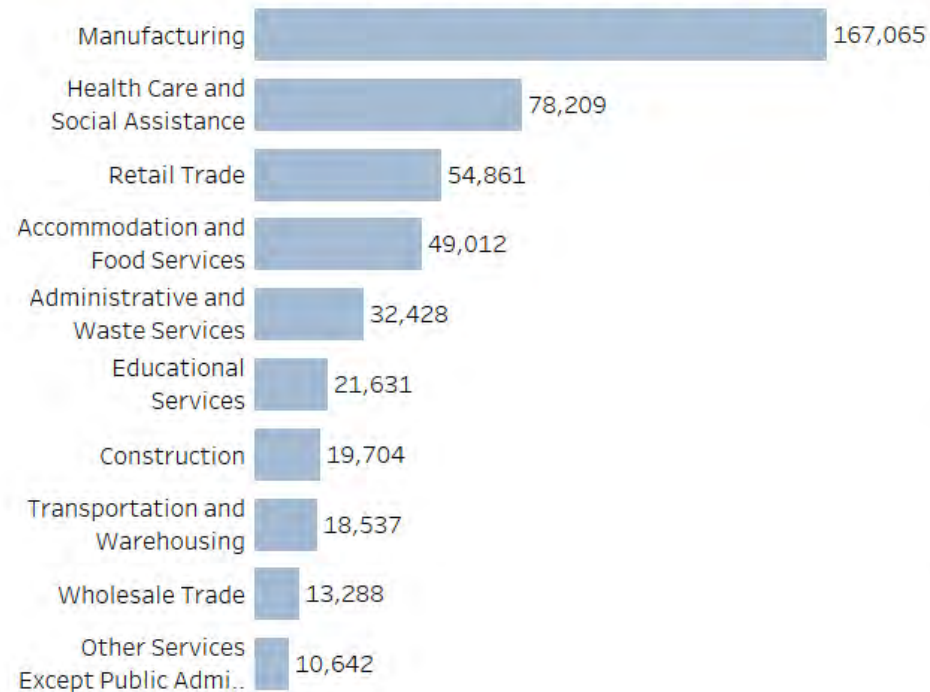
## Claimants / QCEW 2019 Avg. Monthly Emp



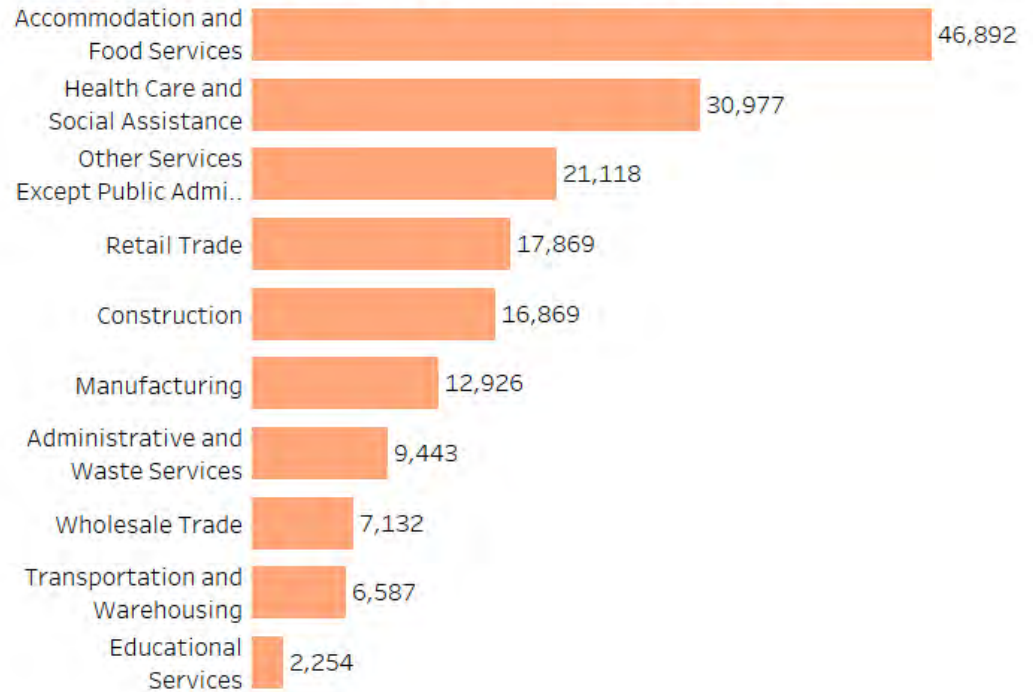
## Statewide Initial Claims by Employer Type (March 15, 2020 through July 5, 2020)



### Initial Claims by Industry Among Large Employers



### Initial Claims by Industry Among Small Employers



116TH CONGRESS  
2D SESSION

# S. 4209

To amend title IX of the Social Security Act to improve emergency unemployment relief for governmental entities and nonprofit organizations.

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## IN THE SENATE OF THE UNITED STATES

JULY 2, 2020

Mr. SCOTT of South Carolina (for himself, Mr. BROWN, Mr. GRASSLEY, Mr. WYDEN, Mr. CORNYN, Mr. CARPER, Mr. LANKFORD, Mr. CASEY, Mr. PERDUE, Ms. HASSAN, Mrs. LOEFFLER, Mr. CARDIN, Ms. ERNST, Mr. WHITEHOUSE, Mr. DAINES, Mr. KING, Mr. CRAMER, Mr. BOOKER, Mr. GRAHAM, Ms. SMITH, Mrs. HYDE-SMITH, Mr. BLUMENTHAL, Mr. ROMNEY, Mr. DURBIN, Mr. WARNER, Mr. REED, and Ms. KLOBUCHAR) introduced the following bill; which was read twice, considered, read the third time, and passed

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## A BILL

To amend title IX of the Social Security Act to improve emergency unemployment relief for governmental entities and nonprofit organizations.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Nonprofits  
5 from Catastrophic Cash Flow Strain Act of 2020”.



1 **SEC. 2. IMPROVING EMERGENCY UNEMPLOYMENT RELIEF**  
2 **FOR GOVERNMENTAL ENTITIES AND NON-**  
3 **PROFIT ORGANIZATIONS.**

4 (a) IN GENERAL.—Section 903(i)(1) of the Social Se-  
5 curity Act (42 U.S.C. 1103(i)(1)) is amended—

6 (1) in subparagraph (A), by striking “during”  
7 and inserting “with respect to”;

8 (2) in subparagraph (B), by striking  
9 “3309(a)(1)” and inserting “3309(a)”; and

10 (3) by striking subparagraph (C) and inserting  
11 the following new subparagraph:

12 “(C) Notwithstanding any other provision of law,  
13 funds transferred to the account of a State under subpara-  
14 graph (A) shall be used exclusively to reduce the amounts  
15 required to be paid in lieu of contributions into the State  
16 unemployment fund pursuant to such section by govern-  
17 mental entities and other organizations described in sec-  
18 tion 3309(a) of such Code.”.

19 (b) EFFECTIVE DATE.—

20 (1) IN GENERAL.—Subject to paragraph (2),  
21 the amendments made by subsection (a) shall take  
22 effect as if included in the enactment of section  
23 2103 of the Relief for Workers Affected by  
24 Coronavirus Act (contained in subtitle A of title II  
25 of division A of the CARES Act (Public Law 116–  
26 136)).

1           (2) APPLICATION TO WEEKS PRIOR TO ENACT-  
2           MENT.—For weeks of unemployment that occurred  
3           after March 12, 2020, and prior to the date of en-  
4           actment of this section, States may—

5                   (A) issue reimbursements in accordance  
6                   with section 903(i)(1)(C) of the Social Security  
7                   Act, as in effect prior to the date of enactment  
8                   of this section; or

9                   (B) reduce the amounts required to be  
10                  paid in accordance with such section  
11                  903(i)(1)(C), as amended by subsection (a).

○

**ORDER OF THE WISCONSIN  
DEPARTMENT OF WORKFORCE DEVELOPMENT  
EMERGENCY RULE**

The Wisconsin Department of Workforce Development adopts the following rule *to renumber* DWD 128.001 (2) (a); and *to create* DWD 127.01 (2m), 128.001 (2) (ag), 128.01 (7), 128.02, and 128.025, relating to work search actions, availability for work, and work available for people filing claims with the unemployment insurance program during the COVID-19 pandemic.

The Governor approved the scope statement for this rule, SS 013-20, on March 19, 2020. The scope statement was published in register No. 771A4, on March 23, 2020, and was approved by the Department on April 3, 2020. This rule was approved by the Governor on May 5, 2020.

**Analysis Prepared by the Department of Workforce Development**

***Finding of Emergency***

The Department seeks to create provisions in Chapters DWD 127 and 128 in order to implement federal guidance (see Unemployment Insurance Program Letter No., 10-20, dated March 12, 2020) related to administering unemployment insurance benefit claims during the pandemic period related to the SARS-CoV-2 novel coronavirus, which causes the coronavirus disease 2019 (in this Analysis, the virus and disease will be referred to as “COVID-19”).

Additionally, by Executive Order # 72 (dated March 12, 2020), the Governor declared a public health emergency in order to protect the health and well-being of the state’s residents and directed state agencies to assist as appropriate in the state’s on-going response to the public health emergency. Furthermore, on March 13, 2020, the President declared a national emergency concerning the COVID-19 outbreak. On April 4, 2020, the President issued a major disaster declaration for Wisconsin due to COVID-19, retroactively to January 20, 2020. On March 18, 2020, the Governor issued an emergency order in response to COVID-19 to assist individuals affected by the disease by temporarily easing eligibility requirements for unemployment benefits. (See Emergency Order # 7). The rule supplants the emergency order.

***Statutes Interpreted***

Section 108.04, Stats.

***Statutory Authority***

Sections 108.04(2)(a)3., 108.04(2)(bd), and 108.14 (2), Stats.

### ***Explanation of Statutory Authority***

The Department has specific and general authority to establish rules interpreting and clarifying provisions of ch. 108, Stats., unemployment insurance and reserves, and general authority for promulgating rules with respect to ch. 108, Stats., under section 108.14 (2), Stats.

Individuals who claim unemployment insurance benefits must perform four actions to search for suitable work in each week for which a claim is filed unless a waiver of that requirement applies. The Department may, under s. 108.04(2)(a)3., Stats., by rule, determine what actions “constitute a reasonable search [for suitable work].”

Work search waivers are statutory, but under s. 108.04(2)(bd), Stats., the “department may, by rule...if doing so is necessary to comply with a requirement under federal law or is specifically allowed under federal law: modify the availability of any [work search] waiver” or “[e]stablish additional [work search] waivers....” Under 42 U.S.C. § 1103(h)(3)(B), states may waive the work search requirement during the COVID-19 pandemic.

### ***Related Statutes or Rules***

Section 323.10, Stats., permits the Governor to issue an executive order declaring a public health emergency. On March 12, 2020, the Governor issued Executive Order # 72 declaring a public health emergency related to the COVID-19 pandemic.

### ***Plain Language Analysis***

This rule provides, on a temporary basis, that a public health emergency constitutes four work search actions for each week that a claimant files an unemployment insurance claim.

This rule provides criteria for determining when unemployment insurance claimants are available for work during the COVID-19 pandemic. The rule also states that no work is actually available for employees affected by COVID-19 for the purposes of determining whether unemployment insurance claimants missed work available under section 108.04 (1) (a) to (bm), Stats.

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

Federal law requires that state laws conform to and comply with federal requirements. 20 C.F.R. § 601.5.

Under Families First Coronavirus Response Act, Public Law 116-127, specifically Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), a state may receive a share of \$500 million of federal funding for administering the state’s unemployment insurance program if the “State has demonstrated steps it has taken or will take to ease eligibility requirements and access to unemployment compensation for claimants, including waiving work search requirements....” 42 U.S.C. § 1103(h)(3)(B). Wisconsin’s share of the \$500 million is about \$9.457 million.

The EUISAA also provides that states have emergency flexibility to amend work search provisions: “EMERGENCY FLEXIBILITY.—Notwithstanding any other law, if a State modifies its unemployment compensation law and policies with respect to work search, waiting week, good cause, or employer experience rating on an emergency temporary basis as needed to respond to the spread of COVID–19, such modifications shall be disregarded for the purposes of applying section 303 of the Social Security Act and section 3304 of the Internal Revenue Code of 1986 to such State law.” Public Law 116-127 § 4102(b).

Federal law generally requires unemployment benefit claimants to be available for work. *See* 42 U.S.C. § 503(a)(12); 20 C.F.R. §§ 604.3 and 604.5. According to the United States Department of Labor, “federal UC framework gives states significant flexibility to determine standards for ... availability to work ... in the context of COVID-19.” *Unemployment Compensation (UC) for Individuals Affected by the Coronavirus Disease 2019 (COVID-19)*, Unemployment Insurance Program Letter No. 10-20 (US-DOL, Mar. 12, 2020).

### ***Comparison with rules in adjacent states***

Other states have waived or relaxed requirements related to work search and have temporarily provided flexibility regarding availability for work by executive order, administrative rule, or statute in response to the COVID-19 pandemic.

Minnesota has waived work search during the COVID-19 by Minn. Emergency Executive Order 20-05.

Illinois has, by emergency rule, waived work search requirements for claimants who are temporarily laid off as a result of COVID-19. Illinois has also, by emergency rule, provided a clarifying example to find claimants available for work if they are required to be at home with a child but could telework.

Michigan has suspended work search and increased eligibility for benefits to quarantined workers under Mich. Executive Order 2020-10.

Iowa has waived work search requirements due to the COVID-19 pandemic.

### ***Summary of factual data and analytical methodologies***

The Department reviewed the current Wisconsin administrative rules, the Governor’s Emergency Orders, federal unemployment compensation law and United States Department of Labor guidance, and emergency rules and orders in other states to maximize Wisconsin’s receipt of federal funding and to clarify the law for claimants during the COVID-19 pandemic.

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

Under 2019 Wisconsin Act 185, unemployment insurance benefit claims related to the public health emergency declared on March 12, 2020 will be charged to the balancing account of the Trust Fund for employers subject to contribution financing. The benefits will be charged as follows: 50% of the benefits will be charged to the appropriation in s. 20.445 (1) (gd), Stats., for employers subject to reimbursement financing; the remaining 50% will be charged to the federal government under the federal Coronavirus Aid, Relief and Economic Security (CARES) Act. The charging relief for employers under state law is effective for state unemployment insurance benefits paid for the period of March 15, 2020 through December 26, 2020.

If a claim filed during the effective period of this rule is not related to the public health emergency declared on March 12, 2020, businesses, including small businesses, will incur charges to their account in the Trust Fund (for contribution employers) or will be required to reimburse the Trust Fund for the benefits (for reimbursable employers). Some of those claims might have been denied but for this rule if, for example, the claimants had not conducted four work search actions in each week (and if that requirement was not waived). Also, some of those claims might have been denied if the claimants missed work available. It is not possible to quantify the effect of this rule on small business due to this variety of factors.

***Fiscal Estimate and Economic Impact Analysis***

The Fiscal Estimate and Economic Impact Analysis is attached.

***Effect on small business***

The proposed rule may affect small businesses, as defined in s. 227.114 (1), Stats., if employees of small businesses are found to be eligible for unemployment benefits and if they would not have been previously eligible under the law in effect before this rule took effect. However, 2019 Wisconsin Act 185 provides that certain benefit charges related to the public health emergency declared on March 12, 2020 will not be charged to employers.

***Agency contact person***

Questions related to this rule may be directed to:

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

***Place where comments are to be submitted and deadline for submission***

Janell Knutson, Director, Bureau of Legal Affairs  
Division of Unemployment Insurance  
Department of Workforce Development  
P.O. Box 8942  
Madison, WI 53708  
E-Mail: DWAdminRules@dwd.wisconsin.gov

Comments will be accepted until a date to be determined.

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1           **SECTION 1.** DWD 127.01 (2m) is created to read:

2           **DWD 127.01 (2m)** (a) In this subsection, "public health emergency" means any week or  
3 part thereof during a public health emergency declared by Executive Order # 72 on March 12,  
4 2020, under s. 323.10, Stats., and any extension in response to the SARS-CoV-2 virus, including  
5 by the department of health services under ch. 252, Stats., or during a federally declared  
6 emergency in response to the SARS-CoV-2 virus, or during a period in which the state has been  
7 federally declared to be a major disaster due to the SARS-CoV-2 virus.

8           (b) A public health emergency constitutes four work search actions for each weekly  
9 claim filed by a claimant during the public health emergency, unless federal law requires the  
10 claimant to actively seek work to qualify for federally funded benefits.

11           (c) The secretary of the department may waive compliance with par. (b) if the secretary  
12 determines that the waiver is necessary to permit continued certification of state law for grants to  
13 this state under Title III of the federal Social Security Act or for maximum credit allowances to  
14 employers under the federal Unemployment Tax Act or to maximize claimant's eligibility for  
15 100% federally funded benefits to protect the balance of the Wisconsin Unemployment  
16 Insurance Trust Fund.

17           **SECTION 2.** DWD 128.001 (2) (a) is renumbered DWD 128.001 (2) (ar).

18           **SECTION 3.** DWD 128.001 (2) (ag) is created to read:

1           **DWD 128.001 (2)** (ag) “COVID-19” means the SARS-CoV-2 virus and any related  
2 disease.

3           **SECTION 4.** DWD 128.01 (7) is created to read:

4           **DWD 128.01 (7)** COVID-19. (a) Notwithstanding any other subsection in this section, the  
5 department shall consider a claimant to be available for suitable work if the claimant is perceived  
6 by an employer as exhibiting COVID-19 symptoms preventing a return to work, or the claimant  
7 is quarantined by a medical professional due to COVID-19 symptoms, or the claimant is  
8 instructed to stay home under local, state or federal government direction or guidance due to  
9 COVID-19, and one of the following applies:

10           1. The employer has instructed the claimant to return to work after the employee no  
11 longer exhibits symptoms, after a set amount of time to see if the disease is present, or after the  
12 quarantine is over.

13           2. The employer has not provided clear instruction for the claimant to return to work.

14           3. The claimant would be available for other work with another employer but for the  
15 perceived COVID-19 symptoms preventing a return to work or but for the quarantine.

16           (b) This subsection shall be good cause for not reporting for an eligibility review under s.  
17 DWD 128.03.

18           **SECTION 5.** DWD 128.02 is created to read:

19           **DWD 128.02 Work Available.** For the purposes of s. 108.04 (1) (a) to (bm), Stats.,:

20           (1) An employee is not considered absent from work or to have missed work available if  
21 the employee is perceived by an employer as exhibiting COVID-19 symptoms preventing a  
22 return to work or the employee is quarantined by a medical professional or under local, state or  
23 federal government direction or guidance due to COVID-19.



1 (2) There is no work available for employees during a public health emergency, as  
2 defined in s. DWD 127.01 (2m) (a).

3 **SECTION 6.** DWD 128.025 is created to read:

4 **DWD 128.025 Waiver.** The secretary of the department may waive compliance with all  
5 or any part of s. DWD 128.01 (7) or 128.02 if the secretary determines that the waiver is  
6 necessary to permit continued certification of state law for grants to this state under Title III of  
7 the federal Social Security Act or for maximum credit allowances to employers under the federal  
8 Unemployment Tax Act or to maximize a claimant's eligibility for 100% federally funded  
9 benefits to protect the balance of the Wisconsin Unemployment Insurance Trust Fund.

10 **SECTION 7. EFFECTIVE DATE.** This rule shall take effect upon publication in the official  
11 state newspaper as provided in s. 227.24 (1) (c).

Dated this \_\_\_\_\_ day of May, 2020.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

By: \_\_\_\_\_  
Caleb Frostman, Secretary

**ORDER OF THE WISCONSIN  
DEPARTMENT OF WORKFORCE DEVELOPMENT  
EMERGENCY RULE**

The Wisconsin Department of Workforce Development adopts the following emergency rule *to create* DWD 113.027, relating to waiving interest in limited circumstances for employers subject to reimbursement financing when reimbursements are delinquent due to COVID-19.

The Governor approved the scope statement for this rule, SS 038-20, on May 8, 2020. The scope statement was published in register No. 773A2, on May 11, 2020, and was approved by the Department on May 22, 2020. This rule was approved by the Governor on May 29, 2020.

**Analysis Prepared by the Department of Workforce Development**

***Finding of Emergency***

On March 12, 2020, by Executive Order 72, the Governor declared a public health emergency to protect the health and wellbeing of the state's residents and directed state agencies to assist as appropriate in the State's ongoing response to the public health emergency. On March 13, 2020, the President declared a national emergency concerning the COVID-19 pandemic. Due to the pandemic, many businesses have temporarily or permanently closed, resulting in significant business income reduction and layoffs.

Under 2019 Wisconsin Act 185, 50% of unemployment insurance benefit claims for initial claims related to the public health emergency declared on March 12, 2020 will be charged to the appropriation in s. 20.445 (1) (gd), Stats., for employers subject to reimbursement financing. The remaining 50% will be reimbursed by the federal government under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act.

The federal government interprets the CARES Act to require employers subject to reimbursement financing to first pay their reimbursements due to the state in full before the federal government will reimburse those amounts. *See* U.S. Department of Labor (US-DOL) Unemployment Insurance Program Letter (UIPL) 18-20 (April 27, 2020). But, the CARES Act provides that states have "flexibility to reimbursing employers as it relates to timely payment and assessment of penalties and interest...." CARES Act s. 2103(a). US-DOL encourages states to "interpret or amend their state unemployment compensation laws in a manner that provides maximum flexibility to reimbursing employers as it relates to timely payments in lieu of contributions and assessment of penalties and interest." UIPL 18-20, p. 2.

Because of the pandemic-related economic devastation, employers subject to reimbursement financing may be unable to pay their reimbursements for unemployment claims in full. And, the requirement to immediately pay their reimbursements to receive the federal funding could further jeopardize the viability of employers subject to reimbursement financing.

### ***Statutes Interpreted***

Section 108.22 (1) (cm), Stats.

### ***Statutory Authority***

Sections 108.14 (2) and 108.22 (1) (cm), Stats.

### ***Explanation of Statutory Authority***

The Department has specific and general authority to establish rules interpreting and clarifying provisions of ch. 108, Stats., unemployment insurance and reserves, and general authority for promulgating rules with respect to ch. 108, Stats., under s. 108.14 (2), Stats.

Interest is assessed monthly on delinquent employer contributions and reimbursements in lieu of contributions. Section 108.22 (1) (a), Stats. The Department may promulgate rules to, in limited circumstances, “waive or decrease the interest charged.” Section 108.22 (1) (cm), Stats.

### ***Related Statutes or Rules***

Current s. DWD 113.025 permits the Department to waive or decrease interest in limited circumstances.

### ***Plain Language Analysis***

This rule specifies the limited circumstances under which employers subject to reimbursement financing, who are unable to timely pay their reimbursements due to the COVID-19 pandemic, may receive a waiver of interest on their reimbursements. Under this rule interest is waived starting on June 1, 2020.

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

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

The CARES Act provides that states have “flexibility to reimbursing employers as it relates to timely payment and assessment of penalties and interest....” CARES Act s. 2103(a). US-DOL encourages states to “interpret or amend their state unemployment compensation laws in a manner that provides maximum flexibility to reimbursing employers as it relates to timely payments in lieu of contributions and assessment of penalties and interest.” UIPL 18-20, p. 2.

### ***Comparison with rules in adjacent states***

Michigan, Illinois, and Iowa do not appear to waive interest for employers subject to reimbursement financing. Minnesota law permits the compromise of reimbursements due by employers under Minnesota Statutes 2019, s. 268.067(b).

### ***Summary of factual data and analytical methodologies***

The Department reviewed Wisconsin statutes, administrative rules, the Governor's Emergency Orders, and recent changes to federal law to determine the options available to provide maximum flexibility to employers subject to reimbursement financing regarding assessment of interest.

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

Under 2019 Wisconsin Act 185, 50% of the unemployment insurance benefit claims related to the public health emergency declared on March 12, 2020 will be charged to the appropriation in s. 20.445 (1) (gd), Stats., for employers subject to reimbursement financing; the remaining 50% will be reimbursed by the federal government under the federal CARES Act. The charging relief for employers under state and federal law is effective for state unemployment insurance benefits paid for the period of March 15, 2020 through December 26, 2020.

The federal government interprets the CARES Act to require employers subject to reimbursement financing to first pay their reimbursements due to the state in full before the federal government will reimburse those amounts. Businesses may find it difficult to pay their reimbursements timely during the COVID-19 pandemic due to a reduction in business income. Under this rule, businesses subject to reimbursement financing will not be assessed interest for tardy reimbursements.

### ***Fiscal Estimate and Economic Impact Analysis***

The Fiscal Estimate and Economic Impact Analysis is attached.

### ***Effect on small business***

This rule may have a positive impact on small businesses, as defined in s. 227.114 (1), Stats., if a small business is subject to reimbursement financing. Those businesses would receive the benefit of a waiver of interest under this rule if they do not pay their reimbursements timely.

***Agency contact person***

Questions related to this rule may be directed to:

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

***Place where comments are to be submitted and deadline for submission***

Mark Kunkel, Rules and Records Coordinator  
Department of Workforce Development  
P.O. Box 7946  
Madison, WI 53707  
**E-Mail:** [DWDAAdminRules@dwd.wisconsin.gov](mailto:DWDAAdminRules@dwd.wisconsin.gov)

Comments will be accepted until a date to be determined.

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1           **SECTION 1.** DWD 113.027 is created to read:

2           **DWD 113.027 Waiver of Interest for Employers Subject to Reimbursement**

3           **Financing.** The department shall waive interest assessed under s. 108.22 (1) (a), Stats., if all the  
4 following conditions are met:

5           **(1)** The employer for which the interest is waived is a reimbursable employer, as defined  
6 in s. 108.155 (1) (b), Stats.

7           **(2)** The employer owes reimbursements in lieu of contributions.

8           **(3)** The interest was assessed on or after June 1, 2020.

9           **SECTION 2. EFFECTIVE DATE.** This rule shall take effect on June 5, 2020 or upon  
10 publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats., whichever is  
11 later.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

By:

\_\_\_\_\_  
Caleb Frostman, Secretary

**ORDER OF THE WISCONSIN  
DEPARTMENT OF WORKFORCE DEVELOPMENT  
EMERGENCY RULE**

The Wisconsin Department of Workforce Development adopts the following emergency rule *to amend* DWD 102.01 and *to create* DWD 102.04, relating to employer contribution rates for 2021.

The Governor approved the scope statement for this rule, SS 070-20, on June 5, 2020. The scope statement was published in register No. 774A2, on June 8, 2020. The notice of public hearing and comment period on the scope statement was published on June 15, 2020 in register No. 774A3. The public hearing on the scope statement was held on June 18, 2020. The scope statement was approved by the Department on June 19, 2020. This rule was approved by the Governor on June 23, 2020.

**Analysis Prepared by the Department of Workforce Development**

***Finding of Emergency***

By Executive Order 72, the Governor declared a public health emergency to protect the health and well-being of the state's residents and directed state agencies to assist as appropriate in the State's ongoing response to the public health emergency. On March 13, 2020, the President declared a national emergency concerning the COVID-19 pandemic. Due to the pandemic, many businesses have temporarily or permanently closed, resulting in significant business income reduction and layoffs.

Under 2019 Wisconsin Act 185, s. 50, which created s. 108.07 (5) (bm), Stats., the Department of Workforce Development is directed to charge unemployment benefits for initial claims that are related to the public health emergency declared by Executive Order 72, to the balancing account of the Trust Fund for contribution employers. This treatment of claims charging applies to weeks of benefits payable from the week of March 15, 2020 through December 26, 2020.

The Department's antiquated computer systems are ill-equipped to handle the changes in charges from the employers' accounts to the balancing account. Each weekly claim to be charged to the balancing account under new section 108.07 (5) (bm), Stats., requires Department personnel to manually change the benefit charges from the employer's account to the balancing account of the Trust Fund after any federal funds have been appropriately applied. The Department estimates that this manual process will take approximately 15 minutes for each weekly claim. Given the high volume of claims being filed during the pandemic, the Department expects that the thousands of hours of manual work to complete the charging changes will not be completed by June 30, 2020 — and likely will not be completed by the end of 2020.

Under s. 108.18 (4), Stats., "an employer's contribution rate on the employer's payroll for a given calendar year shall be based on the reserve percentage of the employer's account as of the applicable computation date," which is June 30 of each year, as specified in s. 108.02 (8), Stats.

Section 108.02 (22), Stats., requires the Department to determine the status of an employer's account when setting the reserve percentage for contribution purposes as of the computation date.

Because the Department will not be able to complete the manual charging changes required by 2019 Wisconsin Act 185 by June 30, 2020, most employers' contribution rates for 2021 will be based on benefit charges that should have been charged to the balancing account instead of the employers' accounts. This would result, for most employers subject to contribution financing, in contribution rates for 2021 that are higher than they should be.

If this rule is not promulgated, the Department would be required to halt programming changes related to new federal unemployment benefit programs and reassign and train staff currently processing those claims to assist with the manual benefit recharging efforts to attempt to meet the June 30, 2020 deadline for calculating 2021 tax rates. This rule will protect claimants who need benefit payments and protect employers from unnecessarily high contribution rates. Higher contribution rates for employers and unpaid benefit claims could impede Wisconsin's economic recovery from the pandemic.

#### ***Statutes Interpreted***

Sections 108.02 (8), 108.02 (22), 108.07 (5) (bm), and 108.18 (4), Stats., which are discussed in the above Finding of Emergency.

#### ***Statutory Authority***

Section 108.14 (2), Stats.

#### ***Explanation of Statutory Authority***

The Department has specific and general authority to establish rules interpreting and clarifying provisions of ch. 108, Stats., unemployment insurance and reserves, and general authority for promulgating rules with respect to ch. 108, Stats., under s. 108.14 (2), Stats.

#### ***Related Statutes or Rules***

Sections 108.02 (8), 108.02 (22), 108.07 (5) (bm), and 108.18 (4), Stats.

#### ***Plain Language Analysis***

This rule provides that the Department, in calculating an employer's net reserve as of the June 30, 2020 computation date, shall disregard all benefit charges and benefit adjustments for the period of March 15, 2020 through June 30, 2020.

The Department will, in effect, assume that all benefit charges and adjustments were related to the public health emergency declared by Executive Order 72. This assumption applies only for the purposes of setting the contribution rates for 2021. This rule will ensure that employers' contribution rates for 2021 are calculated based on reserve fund balances as of June 30, 2020 so that the policy goals of 2019 Wisconsin Act 185 are met. This rule will only affect calculation of



contribution rates for 2021. Contribution rates for 2022 will be calculated in 2021 after all recharging is complete.

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

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

Under the federal Families First Coronavirus Response Act, Public Law 116-127, specifically Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), a state may receive a share of \$500 million of federal funding for administering the state's unemployment insurance program if the "State has demonstrated steps it has taken or will take to ... non-charge[e] employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers." 42 USC 1103(h)(3)(B). Wisconsin's share of the \$500 million is about \$9.457 million.

***Comparison with rules in adjacent states***

Illinois does not charge employers for unemployment benefits "for a week of unemployment that begins on or after March 15, 2020, and before December 31, 2020, and is directly or indirectly attributable to COVID-19..." 820 ILCS 405/1502.4(A).

By Executive Order 2020-76, Michigan charges benefits to the unemployment insurance non-chargeable account, unless the employer was determined to have misclassified workers.

Iowa is currently not charging unemployment benefits related to COVID-19 to employer accounts.

By Emergency Executive Order 20-05, Minnesota will "not use unemployment benefits paid as a result of the COVID-19 pandemic in computing the future unemployment tax rate of a taxpaying employer."

***Summary of factual data and analytical methodologies***

The Department reviewed Wisconsin statutes, administrative rules, and recent changes to federal law to determine the options available to ensure that employer contribution rates are appropriately determined for 2021.

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

Currently, an employer's contribution rate on the employer's payroll for a given calendar year is based on the reserve percentage of the employer's account as of the applicable computation date, June 30 of each year. Ultimately, however, the employer's reserve fund balance takes into account all charges and credits on a rolling basis so that the employer's unemployment experience determines the contribution rate.

Under 2019 Wisconsin Act 185, s. 50, 100% of the unemployment insurance benefit claims related to the public health emergency declared on March 12, 2020 by Executive Order 72 will be charged to the balancing account of the Trust Fund for employers subject to contribution financing. The charging relief for employers under state law is effective for state unemployment insurance benefits paid for the period of March 15, 2020 through December 26, 2020. However, charges for the first week of unemployment and for benefits paid under work share plans will be charged to the federal government.

Because the Department will not be able to complete the manual charging changes required by 2019 Wisconsin Act 185 by June 30, 2020, most employers' contribution rates for 2021 will be based on benefit charges that should have been charged to the balancing account instead of the employers' accounts. This would result, for most employers subject to contribution financing, in contribution rates for 2021 that are higher than they should be.

This rule, in effect, directs the Department to assume that all benefit charges and benefit adjustments with a transaction date of March 15, 2020 through June 30, 2020 relate to the public health emergency declared by Executive Order 72. This will have the effect of aligning employer contribution rates for 2021 with the policy goals of 2019 Wisconsin Act 185.

#### ***Fiscal Estimate and Economic Impact Analysis***

The Fiscal Estimate and Economic Impact Analysis is attached.

#### ***Effect on small business***

The proposed rule is expected to have a positive economic impact on employers subject to contribution financing, which may include small businesses, to provide those employers with contribution rates that align with the policy goals of 2019 Wisconsin Act 185.

#### ***Agency contact person***

Questions related to this rule may be directed to:

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

***Place where comments are to be submitted and deadline for submission***

Mark Kunkel, Rules and Records Coordinator  
Department of Workforce Development  
P.O. Box 7946  
Madison, WI 53707  
E-Mail: DWDAdminRules@dwd.wisconsin.gov

Comments will be accepted until a date to be determined.

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1           **SECTION 1.** DWD 102.01 is amended to read:

2           **DWD 102.01 Purpose.** This chapter specifies the initial contribution rates for certain  
3 categories of employers. This chapter also interprets ch. 108, Stats., for determining employer  
4 contribution rates for 2021.

5           **SECTION 2.** DWD 102.04 is created to read:

6           **DWD 102.04 Employer Contribution Rates for 2021.** Solely for the purposes of ss.  
7 108.02 (8), 108.02 (22), and 108.18 (4), Stats., in calculating an employer's net reserve as of the  
8 June 30, 2020 computation date, the department shall disregard all benefit charges and benefit  
9 adjustments for the period of March 15, 2020 through June 30, 2020.

10           **SECTION 3. EFFECTIVE DATE.** This rule shall take effect on June 29, 2020.

Dated this 25th day of June, 2020.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

By: \_\_\_\_\_

Caleb Frostman, Secretary

**ORDER OF THE WISCONSIN  
DEPARTMENT OF WORKFORCE DEVELOPMENT  
EMERGENCY RULE**

The Wisconsin Department of Workforce Development adopts the following emergency rule *to create* DWD 120.02, relating to providing notification of the availability of unemployment insurance to employees at the time of separation from employment.

The Governor approved the scope statement for this rule, SS 018-20, on March 30, 2020. The scope statement was published in register no. 772A1 on April 6, 2020. The notice of preliminary hearing on the scope statement was published in register no. 772A3 on April 20, 2020. The Department held a preliminary hearing on the scope statement on April 23, 2020. The deadline to comment on the scope statement was April 24, 2020. The Department approved the scope statement on April 28, 2020. This rule was approved by the Governor on \_\_\_\_\_, 2020.

**Analysis Prepared by the Department of Workforce Development**

***Finding of Emergency***

On March 12, 2020, by Executive Order 72, the Governor declared a public health emergency to protect the health and well-being of the state’s residents and directed state agencies to assist as appropriate in the State’s ongoing response to the public health emergency. On March 13, 2020, the President declared a national emergency concerning the COVID-19 pandemic. Due to the pandemic, many businesses temporarily or permanently closed, resulting in significant business income reduction and layoffs.

On March 18, 2020, the federal Families First Coronavirus Response Act became law. Division D of the Families First Coronavirus Response Act is the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (“EUISAA”). EUISAA provides \$1 billion in emergency grants to states to administer unemployment insurance programs. A state must take required actions to be eligible to receive the EUISAA grants. One EUISAA grant requirement is that the “State requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment. Such notification may be based on model notification language issued by the Secretary of Labor.” 42 USC 1103 (h) (2) (A).

An emergency rule is necessary to implement EUISAA and corresponding U.S. Department of Labor guidance (Unemployment Insurance Program Letter No. 13-20, dated March 22, 2020, and Unemployment Insurance Program Letter No. 13-20, change 1, dated May 4, 2020) to ensure that claimants have timely notification of the availability of unemployment insurance.

***Statutes Interpreted***

Section 108.04 (2) (c), Stats.

### ***Statutory Authority***

Sections 108.04 (2) (c) and 108.14 (2), Stats.

### ***Explanation of Statutory Authority***

The Department has specific and general authority to establish rules interpreting and clarifying provisions of ch. 108, Stats., unemployment insurance and reserves, and general authority for promulgating rules with respect to ch. 108, Stats., under s. 108.14 (2), Stats.

The Department may promulgate rules to require an “employer [to] inform his or her employees of the requirements of [the general qualifying requirements for unemployment insurance] in such reasonable manner.” Section 108.04 (2) (c), Stats.

### ***Related Statutes or Rules***

Current s. DWD 120.01 requires employers to “keep employees informed about unemployment insurance under ch.108, Stats., by posting appropriate notice-posters supplied by the unemployment insurance division.” Posters must be posted “on bulletin boards, near time clocks, and other places where all employees will readily see them.”

### ***Plain Language Analysis***

This rule specifies how employers must provide notification of the availability of unemployment insurance to employees at the time of separation from employment. An employer’s failure to do so could result in an employee having additional time to file an initial claim for benefits. This is consistent with current law, which provides employees with additional time to file an initial claim if the employer fails to post required notices about unemployment insurance in the workplace.

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

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

EUISAA provides, as a requirement for additional federal funding for state unemployment insurance programs, that the “State requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment. Such notification may be based on model notification language issued by the Secretary of Labor.” 42 USC 1103 (h) (2) (A).

### ***Summary of comments on the statement of scope and description of how the comments were taken into account in drafting the rule***

At the public hearing on the scope statement, the Department received one comment on the rule, which was: Does the Department envision that an employer would have to provide notice in all

terminations including reductions, terminations and furloughs? The Department responded that it has not yet drafted the emergency rule; this is a public hearing on the scope of the rule. However, the U.S. Department of Labor has indicated that employers must notify individual employees of the availability of unemployment insurance at the time of separation from employment. The Department drafted this rule to require an employer to provide notice of the availability of unemployment insurance at the time of all separations, which is consistent with EUISAA.

The Department also received one written comment on the scope statement. The written comment indicated concern that the scope statement “does not delineate what, if any, penalties would apply if an employer is found to be in noncompliance” with this rule. The Department did not create a penalty for noncompliance with the new rule. However, if an employer does not comply with the new rule, an employee may be able to backdate their unemployment insurance benefit claim. But the employee would not be able to backdate their unemployment insurance benefit claim on this basis if the employee was aware of the availability of unemployment insurance.

The written comment also asked the Department, to the extent consistent with federal law, to exempt employers from the requirements of this rule for employees who separate for misconduct or “other benefit disqualifying actions.” The Department interprets EUISAA to require employers to provide notice of the availability of unemployment insurance to all employees at separation, regardless of the reasons for or circumstances surrounding the termination. This is because the relevant provision in EUISAA does not contain an exception for separations due to misconduct or other reasons that would make the employee ineligible. The notice provided by the employer is not a notice that the employee is eligible for benefits, only that they may apply.

### ***Comparison with rules in adjacent states***

Minnesota (Emergency Executive Order 20-29), Michigan (Mich. Admin. Code R 421.204), and Illinois (56 Ill. Adm. Code 2720.100(a)) each require employers to give employees notice of the availability of unemployment insurance at the time of separation from employment. Iowa does not currently have this requirement in law.

### ***Summary of factual data and analytical methodologies***

The Department reviewed Wisconsin statutes, administrative rules, the Governor’s Emergency Orders, recent changes to federal law, and recent federal guidance to determine what methods employers must use to give notice to their employees of the availability of unemployment insurance at the time of separation.

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

EUISAA provides, as a requirement for additional federal funding for state unemployment insurance programs, that the “State requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment. Such notification may be based on model notification language issued by the Secretary of Labor.” 42 USC 1103 (h) (2) (A).

Under current law, employers must keep employees informed about unemployment insurance by posting appropriate notice-posters supplied by the unemployment insurance division. An employer’s failure to do so may result in additional time for employees to file initial claims for unemployment insurance benefits.

Consistent with the new federal law, this rule adds a requirement that employers must also notify employees of the availability of unemployment insurance at the time of separation. Employers who fail to provide this notice may have additional benefits charged to their unemployment insurance account in the Trust Fund if the employee is given additional time to file an initial claim due to the employer’s failure to give notice. Additional time to file an initial claim is only given to claimants who were unaware of the requirement to file for unemployment insurance benefits, so it is expected that the fiscal effect on employer unemployment insurance accounts will be minimal.

Employers may incur an additional expense in providing notice under this rule if they elect to provide notice in paper form by, for example, mailing a letter to the employee. However, employers may provide electronic notice, such as e-mail or text message, to employees. Electronic notice is not expected to create new out-of-pocket costs for employers.

***Fiscal Estimate and Economic Impact Analysis***

The Fiscal Estimate and Economic Impact Analysis is attached.

***Effect on small business***

This rule may affect small businesses, as defined in s. 227.114 (1), Stats., if a small business has employees who separate from employment. Those employers would be required, under this rule, to provide notice to the employees of the availability of unemployment insurance to the employees at the time the employees separate from employment.

*Agency contact person*

Questions related to this rule may be directed to:

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

*Place where comments are to be submitted and deadline for submission*

Mark Kunkel, Rules and Records Coordinator  
Department of Workforce Development  
P.O. Box 7946  
Madison, WI 53707  
E-Mail: [DWDAdminRules@dwd.wisconsin.gov](mailto:DWDAdminRules@dwd.wisconsin.gov)

Comments will be accepted until a date to be determined.

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1           **SECTION 1.** DWD 120.02 is created to read:

2           **DWD 120.02 Notice at Separation.**

3           **(1)** Each employer shall provide notification of the availability of unemployment  
4 insurance to employees at the time of separation from employment by at least one of the  
5 following methods:

6                   **(a)** Letter.

7                   **(b)** E-mail.

8                   **(c)** Text message.

9                   **(d)** Flyer.

10                   **(e)** Any other department-approved method designed to give immediate notice to  
11 employees of the availability of unemployment insurance at the time of separation.



1           (2) If the circumstances of the separation make immediate notice under this section  
2 impossible, the employer shall provide notice to the employee as soon as possible.

3           (3) Notice under this section shall include content approved by the department.

4           **Note:** Approved content for the notice under this section is available online at  
5 <https://dwd.wisconsin.gov/dwd/publications/ui/notice.htm>.

6           (4) An employer’s failure to comply with this section constitutes exceptional  
7 circumstances over which the claimant has no control under s. DWD 129.01 (4) (f) unless the  
8 employee was aware of the availability of unemployment insurance.

9           **SECTION 2. EFFECTIVE DATE.** This rule shall take effect on November 2, 2020.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

By: \_\_\_\_\_  
Caleb Frostman, Secretary

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<b>1. Type of Estimate and Analysis</b> <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	<b>2. Date</b> July __, 2020
<b>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</b> Chapter DWD 120 - Notices as to Benefits	
<b>4. Subject</b> Providing notification of the availability of unemployment insurance to employees at the time of separation from employment	
<b>5. Fund Sources Affected</b> <input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>6. Chapter 20, Stats. Appropriations Affected</b> Wis. Stat. § 20.445(1)(n)
<b>7. Fiscal Effect of Implementing the Rule</b> <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	
<b>8. The Rule Will Impact the Following (Check All That Apply)</b> <input checked="" type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>	
<b>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).</b> <b>\$Indeterminate</b>	
<b>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>11. Policy Problem Addressed by the Rule</b> This emergency rule requires employers to give employees notice of the availability of unemployment insurance at the time of separation from employment. This rule is expected to make it more likely that employees will file timely applications for unemployment insurance and that fewer employees will seek to backdate their claims.	
<b>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.</b> The Department consulted with the Unemployment Insurance Advisory Council, which comprises representatives from a variety of business and labor organizations.	
<b>13. Identify the Local Governmental Units that Participated in the Development of this EIA.</b> None.	
<b>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)</b> The proposed rule is expected to have an economic impact on employees, who may be more likely to file timely claims for unemployment insurance. The proposed rule is expected to have an economic impact on employers because employers will need to provide notice of the availability of unemployment insurance at the time of separation of employment. However, employers may provide notice to employees electronically, so employers may be able to limit the fiscal impact of this rule to minimal staff time to send an e-mail or text message to the separating employee.	
<b>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule</b> The benefits of implementing this rule are that claimants who are separated from employment will have timely notice of the availability of unemployment insurance, so that they will be less likely to attempt to backdate their claim. The department may save staff time under this rule if more unemployment insurance claims are timely filed and fewer claimants seek to backdate claims.	

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

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**16. Long Range Implications of Implementing the Rule**

The long range implications of this rule are that more employees will have timely notice of the availability of unemployment insurance benefits so they will be more likely to file their claims timely and less likely to seek to backdate their claims.

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**17. Compare With Approaches Being Used by Federal Government**

The Emergency Unemployment Insurance Stabilization and Access Act of 2020 provides, as a requirement for additional federal funding for state unemployment insurance programs, that the “State requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment. Such notification may be based on model notification language issued by the Secretary of Labor.” 42 USC 1103 (h) (2) (A).

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**18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)**

Minnesota (Emergency Executive Order 20-29), Michigan (Mich. Admin. Code R 421.204), and Illinois (56 Ill. Adm. Code 2720.100(a)) each require employers to give employees notice of the availability of unemployment insurance at the time of separation from employment. Iowa does not currently appear to have this requirement in law.

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<b>19. Contact Name</b>	<b>20. Contact Phone Number</b>
Janell Knutson	608-266-1639

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This document can be made available in alternate formats to individuals with disabilities upon request.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

This rule may affect small businesses, as defined in s. 227.114 (1), Stats., if a small business has employees who separate from employment. Those employers would be required, under this rule, to provide notice to the employees of the availability of unemployment insurance to the employees at the time the employees separate from employment.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The Emergency Unemployment Insurance Stabilization and Access Act of 2020 provides, as a requirement for additional federal funding for state unemployment insurance programs, that the "State requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment. Such notification may be based on model notification language issued by the Secretary of Labor." 42 USC 1103 (h) (2) (A).

Under current law, employers must keep employees informed about unemployment insurance by posting appropriate notice-posters supplied by the unemployment insurance division. An employer's failure to do so may result in additional time for employees to file initial claims for unemployment insurance benefits.

Consistent with the new federal law, this rule adds a requirement that employers must also notify employees of the availability of unemployment insurance at the time of separation. Employers who fail to provide this notice may have additional benefits charged to their unemployment insurance account in the Trust Fund if the employee is given additional time to file an initial claim due to the employer's failure to give notice. Additional time to file an initial claim is only given to claimants who were unaware of the requirement to file for unemployment insurance benefits, so it is expected that the fiscal effect on employer unemployment insurance accounts will be minimal.

Employers may incur an additional expense in providing notice under this rule if they elect to provide notice in paper form by, for example, mailing a letter to the employee. However, employers may provide electronic notice, such as e-mail or text message, to employees. Electronic notice is not expected to create new out-of-pocket costs for employers.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

Delayed effective date to ensure that businesses have time to implement the new rule.

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The department will provide employers with forms that employers may use to comply with the new rule.

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5. Describe the Rule's Enforcement Provisions

The Department of Workforce Development administers the unemployment insurance program by requiring claimants to provide information on unemployment insurance benefit claims.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
-