



Unemployment Insurance Advisory Council

Meeting

March 18, 2021, 10:00 a.m. – 2:00 p.m.

The public may attend by teleconference:

Phone: 415-655-0003 or 855-282-6330 (toll free) or [WebEx](#)
Meeting Number (Access Code): 145 938 8967 Meeting Password: DWD1
Meeting Materials: <https://dwd.wisconsin.gov/uibola/uiac/meetings.htm>

Agenda

1. Call to Order and Introductions
2. Approval of Minutes of the January 21, 2021 Council Meeting
3. Department Update
4. Trust Fund Update – Tom McHugh
5. [Joint Enforcement Task Force on Payroll Fraud and Worker Misclassification Report 2021](#)
6. [Unemployment Insurance Fraud Report](#)
7. State Legislation Update
 - Special Session on Unemployment Insurance Information Technology Modernization ([2021 WI Act 4](#))
 - Governor's Biennial Budget Bill ([AB 68](#) / [SB 111](#))
 - The Unemployment Insurance Waiting Period ([SB 224](#))
8. Federal Legislation Update: [American Rescue Plan Act of 2021](#)
 - NASWA Summary
9. Rulemaking Update
 - [Emergency Rule 2018](#), DWD Ch. 102 (Eff. 6/29/20 – 3/25/21)
 - Employer contribution rates for 2021.

<https://dwd.wisconsin.gov/uibola/uiac/>

- [Emergency Rule 2034](#), DWD Ch. 120 (Eff. 11/2/20 - 3/31/21)
 - Providing notification of the availability of unemployment insurance to employees at the time of separation from employment.
 - [JCRAR hearing](#) on 60-day extension request 3/18/21 at 2pm.
- [Emergency Rule 2044](#), DWD Ch. 123 (Eff. 12/7/20 – 5/5/21)
 - Benefit charges for initial claims related to the public health emergency declared by Executive Order 72.
- [Emergency Rule 2106](#), DWD Chs. 127 & 128 (Eff 2/11/21–7/10/21)
 - Work search waivers, availability for work, and work available for people filing claims with the unemployment insurance program during the COVID-19 pandemic.
 - [Public Hearing](#): March 24, 2021 at 10:00 am by [WebEx](#)
- [Emergency Rule 2108](#), DWD Ch. 113 (Eff. 3/1/21 – 7/28/21)
 - Waiving interest in limited circumstances for employers subject to reimbursement financing when reimbursements are delinquent due to COVID-19.
 - [Public Hearing](#): March 24, 2021 at 11:00 am by [WebEx](#)

10. Department proposals for the Wisconsin Unemployment Insurance Law
11. Research Requests
12. Future Meeting Dates: April 15, 2021; May 20, 2021, June 17, 2021
13. Adjourn

Notice

- ❖ 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 teleconference.
- ❖ The employee or employer representative 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 Wis. Stat. § 19.85(1)(ee). The Council may then reconvene again in open session after the closed session.
- ❖ This location is accessible to persons with disabilities. If you 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.

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

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

January 21, 2021

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, Mike Gotzler, John Mielke, Susan Quam, Shane Griesbach, Terry Hayden, Dennis Delie and Diann Fechter.

Department Staff: Mark Reihl, Andrew Rubsam, Jim Moe, Amy Pechacek (Secretary - Designee), Danielle Williams (Assistant Deputy Secretary) Pamela McGillivray (Chief Legal Counsel), Jennifer Wakerhauser (Legal Counsel), Tom McHugh, Mary Jan Rosenak, Pam James, Emily Savard, Jason Schunk, Janet Sausen, Emily Savard, Robert Usarek, Pintzu Klimm, Mike Myszewski, Joe Brockman, and Robin Gallagher.

Members of the Public: Anita Krasno (General Counsel, Labor & Industry Review Commission), BJ Dernbach (office of Representative Warren Petryk), Chris Reader (Wisconsin Manufacturers & Commerce), Ryan Horton (Legislative Fiscal Bureau), Victor Forberger (Attorney, Wisconsin UI Clinic), Tyler Longsine (office of Representative James Edming), Barb Santiago, and Bram Sable-Smith.

1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council to order at 10:03 am, under the Wisconsin Open Meetings Law. Attendance was taken by roll call, and Ms. Knutson acknowledged the department staff in attendance.

2. Approval of Minutes

Motion by Mr. Terry Hayden, second by Ms. Quam, to approve the minutes of the November 19, 2020, meeting without correction. The vote was taken by roll call and passed unanimously.

3. Department Update

Secretary-designee Amy Pechacek introduced herself to the Council and discussed her background and professional experience.

Ms. Pechacek stated that what happened to the UI Division in 2020 was unprecedented. Ms. Pechacek stated that, between March and December of 2020, the UI Division processed nine million claims. Between 2016 and 2019, the UI Division processed 7.2 million claims. The UI

Division processed the equivalent of four years' worth of claims in nine months, while using 50-year-old main frame technology. The UI Division expanded from 500 to 1,800 employees during that nine-month period.

Ms. Pechacek stated that she has held listening sessions with employees and other stakeholders and did information gathering.

Ms. Pechacek stated that through a combination of adding staff and contractors, mandating overtime, and using Google Analytics, pending claims older than 21 days have either been resolved or assigned, and the UI Division is ahead of where it was at the same time in December of 2019 for timeliness of claims resolution.

Ms. Pechacek stated that the UI Division will need a full computer system modernization.

Ms. Pechacek thanked the Council for its service.

Mr. Reihl stated that the 1099-G forms are available as of January 19, 2021.

Mr. Reihl stated that the help centers are at full strength. The call wait times are down to a few seconds. The wait time on the PUA Hotline is three minutes.

Mr. Reihl stated that as of January 19, 2021, there were 105 active Work Share programs, with 3,220 participants. Work Share plans have been extended from 6 months to 12 months. Extended Benefits were paid starting in December 2, 2020.

Mr. Reihl stated that the Continued Assistance Act was signed by the President on December 27, 2020. The UI Division is working review the Act for program requirements and to determine what additional computer programming will need to be done. The Division implemented the additional \$300 weekly FPUC benefit on January 14, 2020

Mr. Reihl stated that the plain language revisions continue for the initial and weekly claims. The Division has conducted focus groups and solicited feedback from the public on this project.

4. Trust Fund Update

Mr. McHugh stated that \$1.4 billion was paid in UI benefits from the trust fund in 2020.

Mr. McHugh stated that the following federal payments were made in 2020:

- FPUC \$2.6 billion
- PUA \$195.6 million
- PEUC \$165.6 million
- LWA \$217.4 million

Mr. McHugh stated that tax receipts totaled \$499.9 million in 2020, a decrease of 9.7% from 2019.

Mr. McHugh stated that the trust fund balance as of December 31, 2020, was \$1.1 billion, down 42% from 2019 and that interest earned in 2020 was \$37.9 million, down 15.5% from 2019.

Mr. McHugh stated that a total of \$4.8 billion was paid to 603,459 claimants in 2020. The previous high was in 2009, when 566,353 claimants were paid. In 2018, 130,710 claimants were paid. In 2019, 129,888 claimants were paid.

5. Public Hearing Report

Ms. Knutson stated that the department received many comments regarding claimants not being paid on a timely basis and the UI Division not having enough employees. Ms. Knutson stated that copies of the written public comments are included in Council members' packets.

6. Federal Continued Assistance for Unemployed Workers Act of 2020

Mr. Rubsam stated that copies of the Act and federal guidance for the Act are included in Council members' packets.

Mr. Rubsam stated that highlights of the Act include:

- Extends state staffing flexibility: Allows the Department to continue to use non-merit staff during the pandemic,
- Extends federal UI programs through March 13, 2021, with a phaseout by April 10, 2021.
- Requires claimants to provide documentation for their PUA claims.
- Requires states to verify the identities of new PUA claimants.
- Extends 50% charging relief for nonprofit employers.
- Extends FPUC at \$300 per week through March 13, 2021.
- Creates a mixed earner (MEUC) program that pays an additional \$100 per week for people having \$5,000 in self-employment income
- Extends 50% federal funding for the first week of UI benefits through March 13, 2021.
- Extends PEUC through March 13, 2021, with a phaseout by April 10, 2021.
- Extends Work Share funding through March 13, 2021.
- Requires states to allow employers to report refusals to return to work.
- Creates technical provision changes to sections of the CARES Act.

7. 2021 AB 1, relating to a state government actions to address the COVID-19 pandemic

Mr. Knutson stated that the Assembly passed AB 1 and that the Senate passed the bill with amendments. The Assembly has not acted on the version that the Senate amended.

Ms. Knutson stated that the bill will require DWD to:

- Reduce the number of pending claims to 2019 levels.
- Staff the UI Call Centers 12 hours a day, seven days a week.
- Suspend the one week waiting period through March 13, 2021.

- Extend the benefit non-charging period for employers through March 13, 2021.
- Extend the Work Share Program modifications in Act 185 through July 4, 2021.

8. Executive Order 103, Relating to a Special Session of the Legislature on Unemployment Insurance Modernization

Ms. Knutson stated that the Special Session held this week was gaveled in and out without action. A copy of the bill is included in members' packets

BMIS Director Pam James gave a presentation to the Council on UI Modernization. Ms. James' presentation is summarized as follows:

The core benefits and appeals systems went into use in the 1970's. The wage and tax programs went into production in 2007 and 2008. Suites went into production in 2008. The customer interface was developed and modernized between 2009 and 2018. Suites was developed in the early 2000's and is almost 20 years old.

Ms. James stated that the UI computer system is complex and outdated. There is separate customer information in both the tax and benefit systems. The implementation of special benefit programs is difficult. Kick-outs from claims goes to a manual claims process.

The recharging process is a significant effort.

Training of staff will be made easier with a fully integrated system.

Why UI needs to modernize its system:

- The current system is inflexible.
- The system is not integrated,
- The system is complex and is a multi-platform system.
- Not all services are available online.
- There is a lack of electronic exchange of documents

Risks and Costs:

- Continued iterative approach is costing millions of dollars
- Support costs are high
- Current system causes delays in implementing new programs

UI System Inefficiencies:

- UI spends \$2.6 million in postage and mailing costs
- Customer service levels have declined
- Benefits are not getting into claimants' hands as quickly as the Department would like

Recent Modernizations

- Initial claims rewrites
- Internet Weekly claims
- Worker Portal
- Elimination of IVR
- Initiation of online appeals for claimants

Modernization to Date 2019-2020

- Reassessed incremental approach
- Reassessed the appeals process
- Researched fully integrated vendor solutions
- Conducted high-level demonstrations with five vendors

Modernizes and Integrated System:

- Electronic communications for claimants and employers
- 24/7 customer self service
- Law and policy changes implemented at a low level
- Technology updates are up to date, flexible and easy to use
- Data is standardized to improve efficiency
- Rules engine in place to configure system changes
- Standard support functions used across all UI services

Ms. James discussed UI's vision for the future by describing what a day in the life of a UI customer would look like.

Ms. James stated that the proposed scope of the project is the full integration of the following UI business functions:

- Benefit claims
- Adjudication' process
- Appeals
- Tax processes
- Program Integration
- US DOL program performance measures

Full integration will also include:

- Rules Engines
- E-Services
- Easy creation and maintenance of fact finding
- Common and configurable correspondence engines
- Configurable workflow

Funding Options:

- Request a loan or grant of state GPR monies
- Leverage a master lease to pay back a GPR loan
- Reinstigate the technology fee
- Separate assessment for reimbursable employees
- Allow UI to assess a .2% administrative fee

Estimated Cost:

- \$48 million to \$70 million
- Cost rises to \$90 million, when including interest and the cost of a master lease
- DWD's annual cost will also be dependent on the length of the master lease.

Mr. Delie asked if other states have successfully modernized their systems. Ms. James stated that many states have modernized their systems and those systems are now in use.

Mr. Gotzler asked whether other states are using the five vendor packages. Ms. James stated that multiple states are using these packages and Wisconsin UI is seeing those states in action. Ms. James discussed the systems that Mississippi, Maine, Rhode Island, Missouri, Michigan, Montana, New Mexico, and Colorado are using.

Mr. Gotzler asked how the cost estimates were made. Ms. James stated that the estimates were made based on information from NASWA ITSC and specific contracts between vendors and other states.

Mr. Delie asked if projected cost savings would offset the cost of the new system. Ms. James stated that there would be cost savings, but those savings would be difficult to quantify at this time. There will be savings in postage and savings in staff costs during events like the Pandemic. Cloud computing could also reduce costs, but there are no estimates of potential savings at this time.

Ms. Knutson stated that the Council may want to weigh in on the funding issue.

9. Rulemaking Update

Emergency rule related to SS 013-20, DWD Chs. 127 & 128

Ms. Knutson stated that the current rule expires on February 2, 2021. Work searches would need to begin on February 7, 2021. Staff is drafting a new emergency rule for work search waivers because unemployment levels are still high, and between 2,000 and 3,000 claims may be held each week due to the work available issue.

Mr. Manley asked what the statutory authority is for the Department to have successive emergency rules. Ms. Knutson stated that the Department issued successive emergency rules

before for pre-employment drug screening in the UI program. Ms. Knutson stated that this issue had been researched by Department legal counsel.

Mr. Manley stated that he would like a written explanation of the Department's legal authority to have successive emergency rules using the same scope statement.

Ms. Knutson stated that the Department would be able to use the same scope statement.

Mr. Manley stated that he wants an explanation in writing.

Mr. Mielke stated that he has visited locations that have laid off staff. Mr. Mielke stated that it does not make sense to send people out on work searches during a pandemic.

Emergency Rule 2011, DWD Ch. 113 (Eff. 6/5/20 – 03/01/21)

Mr. Rubsam stated that the Department may need to seek an additional waiver of interest for reimbursable employers.

Emergency Rule 2018, DWD Ch. 102 (Eff. 06/29/20 – 03/31/21)

Mr. Rubsam stated that the Department will not need an extension of this rule.

Emergency Rule 2034, DWD Ch. 120 (Eff. 11/02/2020 – 03/31/21)

Mr. Rubsam stated that this rule will expire at the end of March unless it is extended.

Emergency Rule 2044, Ch. 123 (Eff. 12/7/20 – 5/5/21)

Mr. Rubsam stated that the Department may need to seek an extension of this rule.

10. Research Requests

No research requests were made.

11. Future Meeting Dates

Ms. Knutson stated that the meeting dates for the next two meetings are:

February 18, 2021

March 18, 2021

Ms. Knutson stated that the timeline for the agreed upon bill is included in Council members' packets. Department proposals will be presented at the February meeting. The agreed upon bill could be introduced in Fall of 2021 or January of 2022.

Ms. Knutson asked if the Council wanted to caucus about the modernization project and funding sources.

Mr. Manley stated that he needs information to review in writing regarding the modernization project. Mr. Manley requested, at a minimum, that he be provided with Ms. James' PowerPoint before the next meeting.

Ms. Knutson stated that the council will be provided information on the modernization project and possible funding sources before the next meeting.

Mr. Gotzler asked if the Department is looking for input on the funding mechanisms or the cost of the modernization project.

Ms. Knutson stated the Department is asking for input on how to fund the modernization project.

Mr. Reihl stated that there is no debate about the need to modernize the antiquated, 50-year-old system. Mr. Reihl stated that possible funding sources for the modernization project include, assessments on employers, GPR funding, or a combination of employer assessments and GPR funds. Mr. Reihl stated that he would like the Council to weigh in on funding sources.

Mr. Hayden stated that it was important for the Council to confirm its support for the modernization, in light of what occurred during the pandemic.

Mr. Manley stated that there is a need to modernize the system. The funding question is trickier. There is a public benefit to modernization. Employers, employees, the Department, and taxpayers will all benefit. The funding sources should reflect that the project benefits everyone and that employers should not bear the entire cost. Mr. Manley recommended a combination of GPR and federal funding.

Mr. Gotzler also requested additional information on the modernization project and potential funding sources.

Ms. Knutson stated that she would send Ms. James' PowerPoint to the Council members today and take modernization up at the next meeting.

Mr. Mielke recommended a two-step process for the Council: (1) support modernization; and (2) identify funding sources.

Mr. Hayden moved that the Council go on record to support the modernization of the Department's Unemployment Insurance IT system.

The motion was seconded by Mr. Delie.

The vote was taken by roll call and passed unanimously.

12. Adjourn

Motion to adjourn by Mr. Gotzler, second by Mr. Delie. The vote was taken by roll call and passed unanimously.

UI Reserve Fund Highlights

March 18, 2021

- Regular UI benefit payments through February 28 total \$185.3 million, an increase of \$91.0 million or nearly double benefits paid through the same time in 2020, just before the pandemic.

Benefits Paid	2021 YTD* <i>(in millions)</i>	2020 YTD* <i>(in millions)</i>	Change <i>(in millions)</i>	Change <i>(in percent)</i>
Total Regular UI Paid**	\$185.3	\$94.3	\$91.0	96.5%

***Total Regular UI Paid includes payments funded by employers through the UI Trust Fund. It excludes benefits funded and reimbursed to the state by the federal government and reimbursable employers.*

Claimants have been paid over \$5.5 billion in a combination of federal and state programs since the start of the pandemic in March 2020. In addition to \$1.7 billion in regular Unemployment paid, the following federal programs include:

Program	Benefits Paid <i>3/15/20 to 3/13/21</i>
Federal Pandemic Unemployment Compensation (FPUC)	\$3.0 billion
Pandemic Unemployment Assistance (PUA)	\$222.1 million
Pandemic Emergency Unemployment Compensation (PEUC)	\$284.9 million
Lost Wage Assistance (LWA)	\$223.5 million
Extended Benefits (EB)	\$7.5 million

FPUC was the additional \$600 per week benefit initially, which has been reduced to \$300.

PUA provides unemployment benefits to individuals who are not eligible for regular UI such as:

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

PEUC provides additional weeks of payments to individuals who have exhausted their regular UI benefits.

LWA was the Federal Emergency Management Agency (FEMA) program that provided an additional \$300 per week to eligible claimants unemployed or partially unemployed due to disruptions caused by COVID-19 for up to six weeks funded from July 26 to September 5, 2020.

EB is the Extended Benefits program which provides additional weeks to claimants who had exhausted their regular unemployment or PEUC. EB was triggered "on" from May 17 to November 7, 2020. Under the Cares Act most of the benefits were paid by the federal government.

* All Year-to-date (YTD) numbers are based on the February 28, 2021 Financial Statements.

2. Tax receipts through February 2021, declined by \$2.0 million or (3.9%) when compared to tax receipts through the same period in 2020. Fourth quarter 2020 taxes were due January 31, so would be included in the February statement.

Tax Receipts	2021 YTD* <i>(in millions)</i>	2020 YTD* <i>(in millions)</i>	Change <i>(in millions)</i>	Change <i>(in percent)</i>
Total Tax Receipts	\$50.4	\$52.4	(\$2.0)	(3.9%)

3. The trust fund balance on February 28 was \$1.0 billion.

UI Trust Fund Balance	2021 YTD* <i>(in millions)</i>	2020 YTD* <i>(in millions)</i>	Change <i>(in millions)</i>	Change <i>(in percent)</i>
Cash Analysis Statement	\$1,008.2	\$1,919.2	(\$911.0)	(47.5%)

* All Year-to-date (YTD) numbers are based on the February 28, 2021 Financial Statements.

FINANCIAL STATEMENTS

For the Month Ended December 31, 2020



Unemployment Insurance Division

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCE SHEET
FOR THE MONTH ENDED December 31, 2020

<u>ASSETS</u>	<u>CURRENT YEAR</u>	<u>PRIOR YEAR</u>
CASH:		
U.I. CONTRIBUTION ACCOUNT	(213,283.10)	694,378.33
U.I. BENEFIT ACCOUNTS	(8,368.06)	(75,473.51)
U.I. TRUST FUND ACCOUNTS (1) (2) (3)	<u>1,132,490,430.13</u>	<u>1,971,405,286.58</u>
TOTAL CASH	<u>1,132,268,778.97</u>	<u>1,972,024,191.40</u>
ACCOUNTS RECEIVABLE:		
BENEFIT OVERPAYMENT RECEIVABLES	92,946,799.93	69,472,671.26
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(29,325,687.50)</u>	<u>(33,030,029.84)</u>
NET BENEFIT OVERPAYMENT RECEIVABLES	63,621,112.43	36,442,641.42
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (5) (6)	27,923,151.56	27,566,592.70
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(16,028,871.47)</u>	<u>(15,574,316.24)</u>
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	11,894,280.09	11,992,276.46
OTHER EMPLOYER RECEIVABLES	62,726,747.78	22,258,689.27
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	<u>(8,864,372.83)</u>	<u>(7,715,937.86)</u>
NET OTHER EMPLOYER RECEIVABLES	53,862,374.95	14,542,751.41
TOTAL ACCOUNTS RECEIVABLE	<u>129,377,767.47</u>	<u>62,977,669.29</u>
TOTAL ASSETS	<u>1,261,646,546.44</u>	<u>2,035,001,860.69</u>
<u>LIABILITIES AND EQUITY</u>		
LIABILITIES:		
CONTINGENT LIABILITIES (7)	50,850,028.98	27,015,631.07
OTHER LIABILITIES	14,588,058.76	11,697,582.72
FEDERAL BENEFIT PROGRAMS	205,684.92	200,576.27
CHILD SUPPORT HOLDING ACCOUNT	36,633.00	78,333.00
FEDERAL WITHHOLDING TAXES DUE	358,146.00	157,277.94
STATE WITHHOLDING TAXES DUE	23,766,442.48	1,741,623.25
DUE TO OTHER GOVERNMENTS (8)	<u>349,118.77</u>	<u>406,408.39</u>
TOTAL LIABILITIES	90,154,112.91	41,297,432.64
EQUITY:		
RESERVE FUND BALANCE	1,621,371,969.13	2,464,041,842.14
BALANCING ACCOUNT	<u>(449,879,535.60)</u>	<u>(470,337,414.09)</u>
TOTAL EQUITY	<u>1,171,492,433.53</u>	<u>1,993,704,428.05</u>
TOTAL LIABILITIES AND EQUITY	<u>1,261,646,546.44</u>	<u>2,035,001,860.69</u>

1. \$20,806,685 of this balance is for administration purposes and is not available to pay benefits.
2. \$1,978,862 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.
3. \$68,776,989 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-11/21 per 2103 of the CARES Act and the Continued Assistance Act.
4. The allowance for uncollectible benefit overpayments is 50.2%. The allowance for uncollectible delinquent employer taxes is 46.3%. This is based on the historical collectibility of our receivables. This method of recognizing receivable balances is in accordance with generally accepted accounting principles.
5. The remaining tax due at the end of the current month for employers utilizing the 1st quarter deferral plan is \$347,618. Deferrals for the prior year were \$186,485.
6. \$10,272,089, or 36.8%, of this balance is estimated.
7. \$36,869,964 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. \$13,980,065 of this balance is net interest, penalties, SAFI, and other fees assessed to employers and penalties and other fees assessed to claimants which, when collected, will be credited to the state fund.
8. This balance includes SAFI Payable of \$5,222. The 12/31/2020 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is \$33,040. Total Life-to-date transfers from DWD Fund 214 to the Unemployment Program Integrity Fund (DWD Fund 298) were \$9,501,460.

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
RESERVE FUND ANALYSIS
FOR THE MONTH ENDED December 31, 2020

	<u>CURRENT ACTIVITY</u>	<u>YTD ACTIVITY</u>	<u>PRIOR YTD</u>
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	2,158,530,449.82	2,909,863,506.12	2,794,896,813.36
BALANCING ACCOUNT	<u>(878,160,448.34)</u>	<u>(916,159,078.07)</u>	<u>(1,030,187,761.19)</u>
TOTAL BALANCE	1,280,370,001.48	1,993,704,428.05	1,764,709,052.17
INCREASES:			
TAX RECEIPTS/RFB PAID	1,041,417.31	360,088,162.88	402,909,719.21
ACCRUED REVENUES	(1,014,400.88)	832,959.29	(1,435,180.97)
SOLVENCY PAID	555,589.04	139,784,444.46	150,721,213.75
FORFEITURES	7,901.00	103,553.72	34,434.00
BENEFIT CONCEALMENT INCOME	17,217.99	473,552.68	679,471.92
INTEREST EARNED ON TRUST FUND	7,194,636.04	37,924,093.24	44,861,619.00
FUTA TAX CREDITS	0.00	5,484.10	19,240.03
OTHER CHANGES	4,380,520.17	88,700,297.85	386,977.45
TOTAL INCREASES	<u>12,182,880.67</u>	<u>627,912,548.22</u>	<u>598,177,494.39</u>
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	90,737,929.76	1,206,322,491.65	310,248,957.63
QUIT NONCHARGE BENEFITS	23,606,870.80	202,406,464.21	45,537,442.59
OTHER DECREASES	(373,586.11)	925,134.03	(2,164,445.15)
OTHER NONCHARGE BENEFITS	7,089,234.17	40,470,452.85	15,560,163.44
TOTAL DECREASES	<u>121,060,448.62</u>	<u>1,450,124,542.74</u>	<u>369,182,118.51</u>
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	1,621,371,969.13	1,621,371,969.13	2,464,041,842.14
BALANCING ACCOUNT	<u>(449,879,535.60)</u>	<u>(449,879,535.60)</u>	<u>(470,337,414.09)</u>
TOTAL BALANCE (9) (10) (11) (12)	<u><u>1,171,492,433.53</u></u>	<u><u>1,171,492,433.53</u></u>	<u><u>1,993,704,428.05</u></u>

9. This balance differs from the cash balance related to taxable employers of \$1,137,108,896 because of non-cash accrual items.

10. \$20,806,685 of this balance is set up in the Trust Fund in three subaccounts to be used for administration purposes and is not available to pay benefits.

11. \$1,978,862 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

12. \$68,776,989 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-11/21 per 2103 of the CARES Act and the Continued Assistance Act.

**DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
RECEIPTS AND DISBURSEMENTS STATEMENT
FOR THE MONTH ENDED 12/31/20**

RECEIPTS	CURRENT ACTIVITY	YEAR TO DATE	PRIOR YEAR TO DATE
TAX RECEIPTS/RFB	\$1,041,417.31	\$360,088,162.88	\$402,909,719.21
SOLVENCY	555,589.04	139,784,444.46	150,721,213.75
ADMINISTRATIVE FEE	44.52	551.45	1,195.81
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	17,963.59	3,204,106.56	3,337,702.46
UNUSED CREDITS	176,751.54	1,317,713.68	3,962,605.92
GOVERNMENTAL UNITS	2,951,461.58	60,614,887.81	9,967,557.56
NONPROFITS	2,025,868.55	64,292,005.96	10,414,875.47
INTERSTATE CLAIMS (CWC)	2,068,497.22	10,563,958.20	4,399,304.15
ERROR SUSPENSE	(7,432.76)	8,279.15	1,459.61
FEDERAL PROGRAMS RECEIPTS	134,101,089.35	3,186,710,169.44	(231,338.20)
OVERPAYMENT COLLECTIONS	3,613,956.96	32,429,860.10	17,720,302.65
FORFEITURES	7,901.00	103,553.72	34,434.00
BENEFIT CONCEALMENT INCOME	17,217.99	473,552.68	679,471.92
EMPLOYER REFUNDS	(1,202,994.33)	(5,114,236.95)	(5,605,921.07)
COURT COSTS	23,614.85	331,772.27	476,855.97
INTEREST & PENALTY	219,208.49	3,507,964.80	3,655,854.80
CARD PAYMENT SERVICE FEE	2,152.96	20,156.29	7,313.18
BENEFIT CONCEALMENT PENALTY-PROGRAM INTEGRITY	25,021.44	745,861.75	1,007,013.25
MISCLASSIFIED EMPLOYEE PENALTY-PROG INTEGRITY	579.26	6,964.07	27,260.06
LEVY NONCOMPLIANCE PENALTY-PROGRAM INTEGRITY	0.00	16,620.27	0.00
SPECIAL ASSESSMENT FOR INTEREST	2,562.69	22,727.01	23,569.76
EMERGENCY ADMIN GRANT-EUISAA 2020	0.00	18,914,772.00	0.00
EMERGENCY UC RELIEF (EUR)	4,147,992.00	68,861,234.00	0.00
INTEREST EARNED ON U.I. TRUST FUND BALANCE	7,194,636.04	37,924,093.24	44,861,619.00
MISCELLANEOUS	77,805.36	297,684.39	77,895.38
TOTAL RECEIPTS	\$157,060,904.65	\$3,985,126,859.23	\$648,449,964.64
DISBURSEMENTS			
CHARGES TO TAXABLE EMPLOYERS	\$95,639,074.95	\$1,241,014,838.61	\$325,664,423.92
NONPROFIT CLAIMANTS	5,477,039.40	84,150,160.97	9,598,545.93
GOVERNMENTAL CLAIMANTS	5,188,032.68	71,961,247.77	9,147,263.05
INTERSTATE CLAIMS (CWC)	1,161,611.43	13,914,753.47	3,787,194.50
QUITS	23,606,870.80	202,406,464.21	45,537,442.59
OTHER NON-CHARGE BENEFITS	7,037,801.00	39,220,048.73	15,962,817.22
CLOSED EMPLOYERS	1,274.68	(209,189.64)	(19,816.69)
ERROR CLEARING ACCOUNT	(200.00)	0.00	0.00
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	663,168.00	2,892,936.00	1,255,644.36
EX-MILITARY (UCX)	278,210.01	1,805,829.06	400,110.15
TRADE ALLOWANCE (TRA/TRA-NAFTA)	12,802.00	828,146.24	1,181,561.82
DISASTER UNEMPLOYMENT (DUA)	0.00	0.00	19,310.00
FEDERAL PANDEMIC UC \$600 ADD-ON (FPUC)	38,889,210.36	2,599,907,302.77	0.00
LOST WAGES ASSISTANCE \$300 ADD-ON (LWA)	18,748,645.95	217,358,690.95	0.00
PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)	21,711,110.00	194,771,210.56	0.00
PANDEMIC EMERGENCY UC (PEUC)	42,137,884.02	165,675,656.50	0.00
EMER UC RELIEF REIMB EMPL (EUR)	84,245.20	84,245.20	0.00
2003 TEMPORARY EMERGENCY UI (TEUC)	(179.83)	(20,432.93)	(20,719.08)
FEDERAL ADD'L COMPENSATION \$25 ADD-ON (FAC)	(9,480.67)	(187,296.33)	(280,517.33)
FEDERAL EMERGENCY UI (EUC)	(80,291.50)	(1,789,426.11)	(2,571,062.16)
FEDERAL EXTENDED BENEFITS (EB)	5,526,767.13	5,353,090.34	(196,987.05)
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	7,455.87	7,455.87	(1,331.67)
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	1,896.23	(1,022.13)	(8,530.59)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	9,524.48	4,890.93	(1,495.12)
INTEREST & PENALTY	360,887.89	3,564,597.87	3,628,523.76
CARD PAYMENT SERVICE FEE TRANSFER	2,288.56	18,981.04	6,335.47
PROGRAM INTEGRITY	28,481.96	4,007,130.61	4,367,699.15
SPECIAL ASSESSMENT FOR INTEREST	0.00	24,409.12	19,946.95
COURT COSTS	14,585.39	348,807.77	473,191.92
ADMINISTRATIVE FEE TRANSFER	16.55	635.60	1,162.25
FEDERAL WITHHOLDING	1,164,126.00	(201,348.06)	19,318.06
STATE WITHHOLDING	(7,067,391.48)	(22,025,059.23)	(154,135.45)
STC IMPLEMENT/IMPROVE & PROMOTE/ENROLL EXP	0.00	0.00	114,151.84
EMERGENCY ADMIN GRANT-EUISAA 2020 EXP	(582,373.82)	0.00	0.00
FEDERAL LOAN REPAYMENTS	0.00	(5,484.10)	(19,240.03)
TOTAL DISBURSEMENTS	\$260,013,093.24	\$4,824,882,271.66	\$417,910,807.77
NET INCREASE(DECREASE)	(102,952,188.59)	(839,755,412.43)	230,539,156.87
BALANCE AT BEGINNING OF MONTH/YEAR	\$1,235,220,967.56	\$1,972,024,191.40	\$1,741,485,034.53
BALANCE AT END OF MONTH/YEAR	\$1,132,268,778.97	\$1,132,268,778.97	\$1,972,024,191.40

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
CASH ANALYSIS
FOR THE MONTH ENDED December 31, 2020

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BEGINNING U.I. CASH BALANCE	\$1,245,950,227.53	\$1,960,524,402.01	\$1,730,835,304.79
INCREASES:			
TAX RECEIPTS/RFB PAID	1,041,417.31	360,088,162.88	402,909,719.21
U.I. PAYMENTS CREDITED TO SURPLUS	3,983,064.22	228,701,248.45	154,321,293.43
INTEREST EARNED ON TRUST FUND	7,194,636.04	37,924,093.24	44,861,619.00
FUTA TAX CREDITS	0.00	5,484.10	19,240.03
TOTAL INCREASE IN CASH	<u>12,219,117.57</u>	<u>626,718,988.67</u>	<u>602,111,871.67</u>
TOTAL CASH AVAILABLE	<u>1,258,169,345.10</u>	<u>2,587,243,390.68</u>	<u>2,332,947,176.46</u>
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	90,737,929.76	1,206,322,491.65	310,248,957.63
BENEFITS CHARGED TO SURPLUS	30,820,647.48	243,727,757.35	62,059,664.98
TOTAL BENEFITS PAID DURING PERIOD	<u>121,558,577.24</u>	<u>1,450,050,249.00</u>	<u>372,308,622.61</u>
SHORT-TIME COMPENSATION EXPENDITURES	0.00	0.00	114,151.84
EMERGENCY ADMIN GRANT-EUISAA 2020 EXP	(582,373.82)	0.00	0.00
EMER UC RELIEF REIMB EMPL EXPENDITURES	84,245.20	84,245.20	0.00
ENDING U.I. CASH BALANCE (13) (14) (15) (16) (17)	<u><u>1,137,108,896.48</u></u>	<u><u>1,137,108,896.48</u></u>	<u><u>1,960,524,402.01</u></u>

13. \$1,607,328 of this balance was set up in 2009 in the Trust Fund as a subaccount per the ARRA UI Modernization Provisions and is not available to pay benefits.

14. \$284,585 of this balance was set up in 2015 in the Trust Fund as a Short-Time Compensation (STC) subaccount to be used for Implementation and Improvement of the STC program and is not available to pay benefits.

15. \$18,914,772 of this balance was set up in 2020 in the Trust Fund as an Emergency Admin Grant (EUISAA) subaccount to be used for administration of the Unemployment Compensation Program and is not available to pay benefits.

16. \$1,978,862 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

17. \$68,776,989 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-11/21 per 2103 of the CARES Act and the Continued Assistance Act.

BUREAU OF TAX AND ACCOUNTING
U.I. TREASURER'S REPORT
BALANCING ACCT SUMMARY
FOR THE MONTH ENDED December 31, 2020

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	(\$465,114,165.60)	(\$503,517,440.13)	(\$617,016,324.88)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	555,589.04	139,784,444.46	150,721,213.75
FORFEITURES	7,901.00	103,553.72	34,434.00
OTHER INCREASES	3,419,574.18	88,813,250.27	3,565,645.68
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	<u>3,983,064.22</u>	<u>228,701,248.45</u>	<u>154,321,293.43</u>
TRANSFERS BETWEEN SURPLUS ACCTS (18)	(4,088.45)	(3,564,455.76)	(23,529,450.89)
INTEREST EARNED ON TRUST FUND	7,194,636.04	37,924,093.24	44,861,619.00
FUTA TAX CREDITS	0.00	5,484.10	19,240.03
TOTAL INCREASES	<u>11,173,611.81</u>	<u>263,066,370.03</u>	<u>175,672,701.57</u>
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	23,606,870.80	202,406,464.21	45,537,442.59
OTHER NON-CHARGE BENEFITS	7,213,776.68	41,321,293.14	16,522,219.39
MISCELLANEOUS EXPENSE	0.00	0.00	3.00
BENEFITS CHARGED TO SURPLUS SUBTOTAL	<u>30,820,647.48</u>	<u>243,727,757.35</u>	<u>62,059,664.98</u>
SHORT-TIME COMPENSATION EXPENDITURES	0.00	0.00	114,151.84
EMERGENCY ADMIN GRANT-EUISAA 2020 EXP	(582,373.82)	0.00	0.00
EMER UC RELIEF REIMB EMPL EXPENDITURES	84,245.20	84,245.20	0.00
BALANCE AT THE END OF THE MONTH/YEAR	<u>(484,263,072.65)</u>	<u>(484,263,072.65)</u>	<u>(503,517,440.13)</u>

18. The 10% writeoff for 2020 was \$21.4 million and is included in this balance. The 10% writeoff shifts employer benefit charges to the balancing account. The 10% writeoff has no effect on receivable balances.

FINANCIAL STATEMENTS

For the Month Ended February 28, 2021



Unemployment Insurance Division

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCE SHEET
FOR THE MONTH ENDED February 28, 2021

<u>ASSETS</u>	<u>CURRENT YEAR</u>	<u>PRIOR YEAR</u>
CASH:		
U.I. CONTRIBUTION ACCOUNT	70,267.34	(166,392.97)
U.I. BENEFIT ACCOUNTS	(26,351,263.56)	(165,564.79)
U.I. TRUST FUND ACCOUNTS (1) (2) (3)	<u>1,007,383,805.54</u>	<u>1,930,349,797.80</u>
TOTAL CASH	981,102,809.32	1,930,017,840.04
ACCOUNTS RECEIVABLE:		
BENEFIT OVERPAYMENT RECEIVABLES	99,961,127.89	68,620,893.23
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(28,956,443.88)</u>	<u>(32,938,854.51)</u>
NET BENEFIT OVERPAYMENT RECEIVABLES	71,004,684.01	35,682,038.72
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (5) (6)	28,014,792.68	26,138,780.00
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(15,851,091.62)</u>	<u>(15,556,708.51)</u>
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	12,163,701.06	10,582,071.49
OTHER EMPLOYER RECEIVABLES	59,972,338.40	23,517,836.26
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	<u>(8,585,897.73)</u>	<u>(7,602,896.06)</u>
NET OTHER EMPLOYER RECEIVABLES	51,386,440.67	15,914,940.20
TOTAL ACCOUNTS RECEIVABLE	<u>134,554,825.74</u>	<u>62,179,050.41</u>
TOTAL ASSETS	<u><u>1,115,657,635.06</u></u>	<u><u>1,992,196,890.45</u></u>
<u>LIABILITIES AND EQUITY</u>		
LIABILITIES:		
CONTINGENT LIABILITIES (7)	55,570,444.49	27,445,591.04
OTHER LIABILITIES	14,688,371.47	11,615,787.96
FEDERAL BENEFIT PROGRAMS	(18,515,792.49)	202,436.99
CHILD SUPPORT HOLDING ACCOUNT	441,623.00	21,140.00
FEDERAL WITHHOLDING TAXES DUE	1,802,844.00	134,227.00
STATE WITHHOLDING TAXES DUE	14,976,169.19	1,799,305.00
DUE TO OTHER GOVERNMENTS (8)	<u>370,793.15</u>	<u>415,353.99</u>
TOTAL LIABILITIES	69,334,452.81	41,633,841.98
EQUITY:		
RESERVE FUND BALANCE	1,512,100,901.99	2,423,154,129.68
BALANCING ACCOUNT	<u>(465,777,719.74)</u>	<u>(472,591,081.21)</u>
TOTAL EQUITY	<u>1,046,323,182.25</u>	<u>1,950,563,048.47</u>
TOTAL LIABILITIES AND EQUITY	<u><u>1,115,657,635.06</u></u>	<u><u>1,992,196,890.45</u></u>

1. \$20,806,685 of this balance is for administration purposes and is not available to pay benefits.
2. \$1,918,597 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.
3. \$77,458,974 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-11/21 per 2103 of the CARES Act and the Continued Assistance Act.
4. The allowance for uncollectible benefit overpayments is 50.2%. The allowance for uncollectible delinquent employer taxes is 46.3%. This is based on the historical collectibility of our receivables. This method of recognizing receivable balances is in accordance with generally accepted accounting principles.
5. The remaining tax due at the end of the current month for employers utilizing the 1st quarter deferral plan is \$0. Deferrals for the prior year were \$0.
6. \$11,539,937, or 41.2%, of this balance is estimated.
7. \$40,850,238 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. \$14,720,206 of this balance is net interest, penalties, SAFI, and other fees assessed to employers and penalties and other fees assessed to claimants which, when collected, will be credited to the state fund.
8. This balance includes SAFI Payable of \$1,202. The 02/28/2021 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is \$38,268. Total Life-to-date transfers from DWD Fund 214 to the Unemployment Program Integrity Fund (DWD Fund 298) were \$9,501,460.

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
RESERVE FUND ANALYSIS
FOR THE MONTH ENDED February 28, 2021

	<u>CURRENT ACTIVITY</u>	<u>YTD ACTIVITY</u>	<u>PRIOR YTD</u>
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	2,027,008,706.61	2,067,917,022.31	2,909,863,506.12
BALANCING ACCOUNT	<u>(901,483,520.17)</u>	<u>(896,424,588.78)</u>	<u>(916,159,078.07)</u>
TOTAL BALANCE	1,125,525,186.44	1,171,492,433.53	1,993,704,428.05
<u>INCREASES:</u>			
TAX RECEIPTS/RFB PAID	1,071,577.57	36,927,882.10	38,764,097.83
ACCRUED REVENUES	1,757,035.79	350,144.33	(1,420,296.38)
SOLVENCY PAID	337,548.82	13,438,129.61	13,627,934.71
FORFEITURES	1,321.00	2,709.00	3,995.00
BENEFIT CONCEALMENT INCOME	13,526.36	31,431.34	112,718.71
FUTA TAX CREDITS	0.00	0.00	1,881.44
OTHER CHANGES	<u>5,669,568.25</u>	<u>9,437,366.90</u>	<u>91,361.36</u>
TOTAL INCREASES	8,850,577.79	60,187,663.28	51,181,692.67
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	70,692,764.57	146,206,113.78	79,642,416.97
QUIT NONCHARGE BENEFITS	13,431,900.94	29,804,094.77	11,159,663.63
OTHER DECREASES	58,896.97	92,644.21	(121,098.58)
OTHER NONCHARGE BENEFITS	<u>3,869,019.50</u>	<u>9,254,061.80</u>	<u>3,642,090.23</u>
TOTAL DECREASES	88,052,581.98	185,356,914.56	94,323,072.25
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	1,512,100,901.99	1,512,100,901.99	2,423,154,129.68
BALANCING ACCOUNT	<u>(465,777,719.74)</u>	<u>(465,777,719.74)</u>	<u>(472,591,081.21)</u>
TOTAL BALANCE (9) (10) (11) (12)	<u><u>1,046,323,182.25</u></u>	<u><u>1,046,323,182.25</u></u>	<u><u>1,950,563,048.47</u></u>

9. This balance differs from the cash balance related to taxable employers of \$1,008,213,864 because of non-cash accrual items.

10. \$20,806,685 of this balance is set up in the Trust Fund in three subaccounts to be used for administration purposes and is not available to pay benefits.

11. \$1,918,597 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

12. \$77,458,974 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-11/21 per 2103 of the CARES Act and the Continued Assistance Act.

**DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
RECEIPTS AND DISBURSEMENTS STATEMENT
FOR THE MONTH ENDED 02/28/21**

<u>RECEIPTS</u>	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE</u>	<u>PRIOR YEAR TO DATE</u>
TAX RECEIPTS/RFB	\$1,071,577.57	\$36,927,882.10	\$38,764,097.83
SOLVENCY	337,548.82	13,438,129.61	13,627,934.71
ADMINISTRATIVE FEE	15.04	106.64	107.76
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	7,404.64	306,523.94	303,971.68
UNUSED CREDITS	(171,648.78)	603,582.20	404,052.15
GOVERNMENTAL UNITS	3,969,604.71	7,635,802.24	1,752,148.75
NONPROFITS	3,262,973.49	6,401,198.13	1,667,194.48
INTERSTATE CLAIMS (CWC)	2,567,301.98	2,696,141.23	405,359.88
ERROR SUSPENSE	(36,590.97)	653.98	14,628.48
FEDERAL PROGRAMS RECEIPTS	176,323,159.86	349,835,152.44	215,142.40
OVERPAYMENT COLLECTIONS	2,872,548.04	6,257,069.55	2,659,178.17
FORFEITURES	1,321.00	2,709.00	3,995.00
BENEFIT CONCEALMENT INCOME	13,526.36	31,431.34	112,718.71
EMPLOYER REFUNDS	(854,356.94)	(1,111,074.84)	(679,020.72)
COURT COSTS	19,416.93	43,172.94	70,850.77
INTEREST & PENALTY	281,407.74	594,172.42	543,149.24
CARD PAYMENT SERVICE FEE	1,742.07	4,890.04	2,438.08
BENEFIT CONCEALMENT PENALTY-PROGRAM INTEGRITY	22,626.24	53,754.75	157,915.52
MISCLASSIFIED EMPLOYEE PENALTY-PROG INTEGRITY	559.09	6,159.09	485.35
SPECIAL ASSESSMENT FOR INTEREST	456.20	1,202.46	1,289.46
LOST WAGES ASSISTANCE (LWA) ADMIN	350,579.89	350,579.89	0.00
EMERGENCY UC RELIEF (EUR)	5,333,854.00	8,705,333.00	0.00
INTEREST EARNED ON U.I. TRUST FUND BALANCE	0.00	0.00	0.00
MISCELLANEOUS	30,625.94	30,656.56	6,830.78
TOTAL RECEIPTS	\$195,405,652.92	\$432,815,228.71	\$60,034,468.48
 <u>DISBURSEMENTS</u>			
CHARGES TO TAXABLE EMPLOYERS	\$74,185,046.53	\$155,052,531.52	\$81,905,119.29
NONPROFIT CLAIMANTS	2,405,485.15	5,358,704.17	1,510,322.09
GOVERNMENTAL CLAIMANTS	2,596,020.23	5,615,473.34	1,819,020.64
INTERSTATE CLAIMS (CWC)	907,399.35	1,909,424.07	871,862.19
QUITS	13,431,900.94	29,804,094.77	11,159,663.63
OTHER NON-CHARGE BENEFITS	3,698,884.72	8,957,203.30	3,738,275.78
CLOSED EMPLOYERS	370.11	950.41	(224,177.00)
ERROR CLEARING ACCOUNT	0.00	0.00	274.00
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	512,967.96	1,005,180.29	325,887.90
EX-MILITARY (UCX)	154,694.89	403,868.58	107,366.08
TRADE ALLOWANCE (TRA/TRA-NAFTA)	4,041.00	(267,525.00)	168,478.37
DISASTER UNEMPLOYMENT (DUA)	0.00	0.00	0.00
WORK-SHARE (STC)	11,868.58	11,868.58	0.00
FEDERAL PANDEMIC UC (FPUC)	138,355,976.22	281,796,522.84	0.00
LOST WAGES ASSISTANCE \$300 ADD-ON (LWA)	1,897,770.00	5,456,621.61	0.00
PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)	9,510,259.64	22,392,683.31	0.00
PANDEMIC EMERGENCY UC (PEUC)	24,249,315.90	55,823,764.78	0.00
EMER UC RELIEF REIMB EMPL (EUR)	9,349.08	25,342.82	0.00
2003 TEMPORARY EMERGENCY UI (TEUC)	(59.04)	(1,373.97)	(2,237.27)
FEDERAL ADD'L COMPENSATION \$25 ADD-ON (FAC)	(7,171.33)	(17,342.19)	(34,482.55)
FEDERAL EMERGENCY UI (EUC)	(68,777.90)	(145,731.74)	(319,018.22)
FEDERAL EXTENDED BENEFITS (EB)	776,369.42	2,093,687.37	(31,956.63)
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	1,593.60	4,907.88	0.00
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	(256.38)	(752.49)	(756.00)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	10,139.81	35,621.00	(936.42)
INTEREST & PENALTY	312,764.68	531,973.17	572,429.25
CARD PAYMENT SERVICE FEE TRANSFER	3,147.97	5,300.93	2,528.39
PROGRAM INTEGRITY	335,847.81	379,412.10	429,064.84
SPECIAL ASSESSMENT FOR INTEREST	0.00	5,221.75	6,903.86
COURT COSTS	23,756.01	47,370.86	73,530.96
ADMINISTRATIVE FEE TRANSFER	91.60	136.12	168.91
LOST WAGES ASSISTANCE (LWA) ADMIN TRANSFER	350,579.89	350,579.89	0.00
FEDERAL WITHHOLDING	70,838.93	(1,444,698.00)	23,050.94
STATE WITHHOLDING	(7,188,192.19)	8,790,176.29	(57,681.75)
FEDERAL LOAN REPAYMENTS	0.00	0.00	(1,881.44)
TOTAL DISBURSEMENTS	\$266,552,023.18	\$583,981,198.36	\$102,040,819.84
NET INCREASE(DECREASE)	(71,146,370.26)	(151,165,969.65)	(42,006,351.36)
BALANCE AT BEGINNING OF MONTH/YEAR	\$1,052,249,179.58	\$1,132,268,778.97	\$1,972,024,191.40
BALANCE AT END OF MONTH/YEAR	\$981,102,809.32	\$981,102,809.32	\$1,930,017,840.04

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
CASH ANALYSIS
FOR THE MONTH ENDED February 28, 2021

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BEGINNING U.I. CASH BALANCE	\$1,089,890,378.24	\$1,137,108,896.48	\$1,960,524,402.01
INCREASES:			
TAX RECEIPTS/RFB PAID	1,071,577.57	36,927,882.10	38,764,097.83
U.I. PAYMENTS CREDITED TO SURPLUS	5,304,490.46	19,534,000.27	14,207,837.78
FUTA TAX CREDITS	0.00	0.00	1,881.44
TOTAL INCREASE IN CASH	<u>6,376,068.03</u>	<u>56,461,882.37</u>	<u>52,973,817.05</u>
TOTAL CASH AVAILABLE	<u>1,096,266,446.27</u>	<u>1,193,570,778.85</u>	<u>2,013,498,219.06</u>
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	70,692,764.57	146,206,113.78	79,642,416.97
BENEFITS CHARGED TO SURPLUS	17,350,468.33	39,125,457.96	14,680,655.28
TOTAL BENEFITS PAID DURING PERIOD	<u>88,043,232.90</u>	<u>185,331,571.74</u>	<u>94,323,072.25</u>
EMER UC RELIEF REIMB EMPL EXPENDITURES	9,349.08	25,342.82	0.00
ENDING U.I. CASH BALANCE (13) (14) (15) (16) (17)	<u><u>1,008,213,864.29</u></u>	<u><u>1,008,213,864.29</u></u>	<u><u>1,919,175,146.81</u></u>

13. \$1,607,328 of this balance was set up in 2009 in the Trust Fund as a subaccount per the ARRA UI Modernization Provisions and is not available to pay benefits.

14. \$284,585 of this balance was set up in 2015 in the Trust Fund as a Short-Time Compensation (STC) subaccount to be used for Implementation and Improvement of the STC program and is not available to pay benefits.

15. \$18,914,772 of this balance was set up in 2020 in the Trust Fund as an Emergency Admin Grant (EUISAA) subaccount to be used for administration of the Unemployment Compensation Program and is not available to pay benefits.

16. \$1,918,597 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

17. \$77,458,974 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-11/21 per 2103 of the CARES Act and the Continued Assistance Act.

BUREAU OF TAX AND ACCOUNTING
U.I. TREASURER'S REPORT
BALANCING ACCT SUMMARY
FOR THE MONTH ENDED February 28, 2021

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	(\$491,833,166.16)	(\$484,263,072.65)	(\$503,517,440.13)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	337,548.82	13,438,129.61	13,627,934.71
FORFEITURES	1,321.00	2,709.00	3,995.00
OTHER INCREASES	4,965,620.64	6,093,161.66	575,908.07
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	<u>5,304,490.46</u>	<u>19,534,000.27</u>	<u>14,207,837.78</u>
TRANSFERS BETWEEN SURPLUS ACCTS			
FUTA TAX CREDITS	1,455.41	(7,164.54)	9,393.32
TOTAL INCREASES	<u>0.00</u>	<u>0.00</u>	<u>1,881.44</u>
TOTAL INCREASES	<u>5,305,945.87</u>	<u>19,526,835.73</u>	<u>14,219,112.54</u>
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	13,431,900.94	29,804,094.77	11,159,663.63
OTHER NON-CHARGE BENEFITS	3,918,567.39	9,321,363.19	3,520,991.65
BENEFITS CHARGED TO SURPLUS SUBTOTAL	<u>17,350,468.33</u>	<u>39,125,457.96</u>	<u>14,680,655.28</u>
EMER UC RELIEF REIMB EMPL EXPENDITURES			
BALANCE AT THE END OF THE MONTH/YEAR	<u>9,349.08</u>	<u>25,342.82</u>	<u>0.00</u>
BALANCE AT THE END OF THE MONTH/YEAR	<u>(503,887,037.70)</u>	<u>(503,887,037.70)</u>	<u>(503,978,982.87)</u>

JOINT ENFORCEMENT TASK FORCE ON
**PAYROLL FRAUD AND
WORKER MISCLASSIFICATION
REPORT**

2021



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

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When a business cheats,
Wisconsin loses.

*Worker misclassification is cheating,
and cheaters shouldn't win.*

INTRODUCTION AND BACKGROUND SUMMARY

On April 15, 2019, Governor Tony Evers signed 2019 Executive Order # 20 (attached as Appendix 1), creating the Joint Enforcement Task Force on Payroll Fraud and Worker Misclassification. Governor Evers recognized that worker misclassification not only denies vulnerable workers various labor protections, worker's compensation, and unemployment benefits, but results in millions of dollars in losses to state government and taxpayers due to the underpayment of wages, unemployment insurance contributions, worker's compensation insurance premiums, and payroll taxes. Executive Order # 20 created the Task Force and charged the members with evaluating existing laws and practices to determine ways to enhance enforcement mechanisms currently used to combat worker misclassification; facilitate information sharing and investigative resources between agencies; and work cooperatively with business, labor, and community groups to raise public awareness and prevent worker misclassification through the further dissemination of educational materials and other resources.

Task Force Membership

The Task Force consists of the following members:

- ▶ Danielle Williams (Task Force Chair), Assistant Deputy Secretary, Department of Workforce Development (DWD)
- ▶ Michael Morris, Assistant Attorney General, Department of Justice
- ▶ Maria Guerra Lapacek, Assistant Deputy Secretary, Department of Revenue
- ▶ Nathan Houdek, Deputy Commissioner of Insurance, Office of the Commissioner of Insurance
- ▶ Steve Peters, Administrator, DWD, Worker's Compensation Division
- ▶ Mark Reihl, Administrator, DWD, Unemployment Insurance Division
- ▶ Jesús Villa, Administrator, DWD, Equal Rights Division
- ▶ Dale Kooyenga, Wisconsin State Senator, District 5
- ▶ Dave Hansen, Wisconsin State Senator, District 30 (Resigned December 2020)
- ▶ Robert Wirch, Wisconsin State Senator, District 22 (Effective December 2020)
- ▶ Representative Rob Brooks, Wisconsin State Representative, District 60
- ▶ Christine Sinicki, Wisconsin State Representative, District 20
- ▶ Pete Braun, Founder, President and CEO, Wall-Tech
- ▶ Cynthia Buchko, General Counsel, Construction Business Group
- ▶ Andy Buck, Government Affairs Director, Painters and Allied Trades District Council 7
- ▶ Tim DeMinter, Business Manager, Financial Secretary/Treasurer, Ironworkers Local 383
- ▶ Gary Rockweiler, Vice President and CEO, Rockweiler Insulation Inc.
- ▶ Jerry Shea, President, Market and Johnson
- ▶ Steuart Wilson, Business Representative, Local Union #18 Of the International Association of The Sheet Metal Air Rail and Transportation Workers

ACTIVITIES OF THE JOINT ENFORCEMENT TASK FORCE ON PAYROLL FRAUD AND WORKER MISCLASSIFICATION

The Task Force issued its 2019-2020 report in March 2020 just days before a state and national public health emergency was declared due to the COVID-19 pandemic. The Report included five recommendations, as well as several potential topics for further discussion and study by the Task Force in 2020.

Governor Evers offered his support for the recommendations. He directed the Department of Workforce Development and Department of Revenue to lead efforts to implement the recommendations regarding education and outreach and interagency investigations within the confines of existing statutory and budget authority. (More information on these efforts are described later in this report.) He also included the following relevant provisions in his 2021-23 Executive Biennial Budget, which he released on February 16, 2021:

1. Three new unemployment insurance field auditors to investigate misclassification.
2. Re-creation of the Construction Contractor Registration program at the Department of Safety and Professional Service to require individuals and businesses, listed as contractors, to be registered before performing services for customers.
3. Creation of an escalating penalty structure for repeat violations of worker's compensation and unemployment insurance laws around worker classification, an escalating administrative penalty for repeat offenders, and continued referral for criminal prosecution for subsequent violations.
4. Requirement that the Department of Workforce Development develop and make available to employers and on its website information regarding worker classification laws, requirements, and penalties for noncompliance.
5. Requirement that outreach and education regarding worker misclassification be provided to certain entities as follows: (a) the Department of Administration must coordinate with state agencies to conduct outreach to entities that serve vulnerable populations; (b) the Office of the Commissioner of Insurance must conduct outreach and provide education, at least annually, to insurers and other relevant entities; and (c) the Department of Financial Institutions must provide informational materials and resources on worker misclassification with new business registrations. Such outreach must include information regarding the rules, requirements, reporting procedures and penalties surrounding worker misclassification.

The Task Force re-convened in October 2020 for its first meeting since issuing its report and recommendations. Governor Evers kicked off the meeting by thanking the members of the Task Force for their work and the recommendations they developed the previous year, and charged the group to continue its efforts to examine and develop approaches to combat payroll fraud and worker misclassification. To that end, the Task Force identified two priorities to focus on when developing their recommendations for the 2020-2021 report. One priority the Task Force identified was the need to address worker's compensation premium fraud and avoidance. The other priority was developing methods to hold higher tier contractors accountable if their subcontractors misclassify workers, which is an enforcement tactic utilized by other states referred to as upstream contractor liability.

Members of the Task Force created work groups to examine those issues and enlisted other subject matter experts to participate in the work groups, share their experience, and provide additional input. The work groups met several times to develop recommendations for their respective areas and reached agreements on multiple recommended actions to present to the Task Force for consideration. While the work groups researched their specific issues, the Task Force met again in December 2020, and in January and February 2021. At each Task Force meeting, members heard status reports regarding activities related to the recommendations included in the 2019-2020 report, as well as the progress of the new work groups.

At the December 10, 2020 meeting, Task Force members discussed how state government could help educate employers on the rules, requirements, and penalties associated with worker misclassification. To enhance the discussion, Patti Epstein, Division of Corporate and Consumer Services Administrator at the Department of Financial Institutions (DFI), presented on DFI's role in registering new business entities so the Task Force could consider how DFI may help distribute informational materials to stakeholders to help prevent potential violations. In addition, Cindy Buchko, General Counsel at the Construction Business Group (CBG), led a discussion of how CBG's insurance fraud investigators often uncover instances of illegal labor trafficking by labor brokers. These labor brokers take advantage of vulnerable workers by taking or withholding paychecks, paying unfair wages, paying in cash, instructing workers to lie about on-the-job injuries, and other illegal and unsavory practices that victimize hard working people and cost the taxpayers by lost payroll taxes and increased medical expenses.

To gain additional insight on how the practice of worker misclassification is directly affecting individuals in Wisconsin, the Task Force invited the public to comment at the January 25, 2021 meeting and to share how worker classification issues have impacted their job, business, or workplace. Members of the public were also invited to submit written comments to DWD prior to the meeting through a dedicated email box. Three people provided verbal comments at the meeting and two additional people provided written comments, which were compiled and presented to the Task Force members at the February 11, 2021 meeting. The information from these public comments highlighted the need for a fair, equitable, and enforceable system of worker classification. The comments provide examples of companies and contractors who are put at a competitive disadvantage when they follow the rules designed to provide worker protections and those who do not follow the rules are neither stopped nor held accountable. Most of the comments were related to worker misclassification in general but one of the public comments highlighted the concerns that were unique to aspects of the trucking industry.

Following the public comment portion of the meeting, Frank Manzo of the Midwest Economic Policy Institute presented the Institute's research of the economic impact of worker misclassification, payroll fraud, and wage theft in the construction industries on workers and taxpayers in Wisconsin, Illinois and Minnesota. Additional discussion of this report is provided in the next section.

Following months of research, analysis, and consideration, the two work groups presented their recommended action items to the Task Force at the February 11, 2021 meeting for inclusion in the 2021 report. After lengthy discussion and debate, the Task Force agreed upon the recommendations contained in this report.

THE EXTENT AND COSTS OF MISCLASSIFICATION AND RECOVERY EFFORTS

The world-wide pandemic provided a stark and focused picture of the importance of the Task Force's work over the previous year. An unprecedented number of workers were forced to rely on the unemployment insurance safety net and other worker protections regardless of whether they were an employee or an independent contractor. Hundreds of thousands of workers had to claim unemployment benefits when they were laid off, while others had to claim family medical leave protections in order to stay home to care for family members. Short-term solutions were offered through state and federal aid programs; however, the importance of proper employee classification is clearer now than ever before.

In 2020, Wisconsin Unemployment Insurance (UI) Division auditors conducted 1,269 audits and identified 8,925 misclassified workers. Due to the Division of Unemployment Insurance's efforts to detect worker misclassification, \$2.34 million was generated in UI taxes and interest. This was an increase over 2019, despite the unique challenges of the pandemic. Worksite investigations were conducted by experienced division investigators, many of whom have law enforcement backgrounds in white collar and economic crime investigations. Although hampered by the effects of the pandemic, the division conducted 244 worker classification field investigations in 2020. In addition, investigative team members continue to present at construction industry events and meetings with organizations representing workers, labor union meetings, community organizations representing workers, and other public forums on worker classification.

The importance of proper employee classification was demonstrated further in a research study released by the Midwest Economic Policy Institute (MEPI) in January 2021 that addressed the costs of worker misclassification, payroll fraud and wage theft. In the research study, MEPI acknowledged that "quantifying worker misclassification is difficult because unscrupulous employers attempt to conceal their fraud, employees may not know they are being considered independent contractors, and state governments have limited resources to monitor, investigate, and take punitive action against offenders. Despite these limitations, academic researchers have found that payroll fraud and wage theft are rampant in construction markets across the United States."

Using a variety of economic, wage, and employment data, including unemployment wage data and other data from the Bureau of Labor Statistics, and applying a generally accepted comprehensive research methodology, the MEPI found that over 14,500 construction workers in Wisconsin are paid off the books or misclassified annually, accounting for 10 percent of the workforce. MEPI also found that misclassified workers lose access to basic labor protections, including minimum wage, overtime pay, unemployment insurance, and worker's compensation insurance.

As a result, in Wisconsin, illegally employed construction workers earn 31 percent less (\$23,500 annually) in combined wages and fringe benefits. The study also found that unscrupulous contractors who misclassify workers or illegally pay their employees in cash commit payroll fraud that costs taxpayers millions of dollars per year. According to the study, Wisconsin annually loses \$40 million in state tax revenues due to construction payroll fraud— including \$8 million in income taxes, \$6 million in unemployment insurance contributions, and \$26 million in worker's compensation premiums.¹

¹ The Costs of Wage Theft and Payroll Fraud in the Construction Industries of Wisconsin, Minnesota, and Illinois Impacts on Workers and Taxpayers, January 14, 2021, Midwest Economic Policy Institute.

<https://midwestepi.files.wordpress.com/2020/10/mepi-ilepi-costs-of-payroll-fraud-in-wi-mn-il-final.pdf>

SUMMARY OF NEW EDUCATION AND OUTREACH ACTIVITIES

Jesús Villa, Administrator of DWD's Equal Rights Division, leads the Department's efforts to implement the Task Force's recommendation to "undertake an aggressive campaign to educate employers, employees, independent contractors, and the general public about misclassification issues." While the launch of the education campaign was delayed due to shifting priorities caused by the COVID-19 health emergency, the education and outreach committee was able to achieve the following:

- ▶ Identified key messaging points for more aggressively highlighting the harms of misclassification and Wisconsin's commitment to end the practice and hold violators accountable,
- ▶ Updated the Employee Misclassification website with the new messaging,
- ▶ Developed a one page "flyer" with the new messaging that could be used by state agencies and other stakeholders for communication; and
- ▶ Developed an informational poster that can be displayed physically at worksites or accessed virtually on DWD's eWorkBoard.

The plan for the education campaign in 2021 includes the following activities:

- ▶ Work with the Department of Financial Institutions (DFI) to include informational materials and resources on worker misclassification with new business registrations.
- ▶ Support the Office of the Commissioner of Insurance (OCI) efforts to educate insurance professionals on misclassification issues so they can identify potential violations and report them to the appropriate agency.
- ▶ Develop a communication plan that engages key State agencies and stakeholders in disseminating educational information on the harms of worker misclassification and how the State is addressing it (including coordinated messaging around the Labor Day holiday).
- ▶ Drive efforts to require the display of the misclassification worksite poster.
- ▶ Translate the poster and other informational materials into Spanish and other key languages to maximize outreach to vulnerable populations.
- ▶ Investigate the ability to produce and buy media time for public service announcements around the Labor Day education campaign to reach additional workers.
- ▶ Conduct a survey to better understand public attitudes toward worker misclassification and understanding of what state resources are available to help combat misclassification. The data from the survey will be used to help shape the educational campaign and evaluate its effectiveness.

Why is misclassification bad?

Misclassified employees are often denied access to critical benefits and protections they are entitled to by law.



SUMMARY OF THE INTERAGENCY COORDINATED ENFORCEMENT EFFORTS

Maria Guerra Lapacek, Assistant Deputy Secretary, Department of Revenue leads the team working to enact the Task Force's recommendation to "create an Interagency Coordinated Enforcement Team" (IACET) consisting of the Departments of Workforce Development (DWD), Revenue (DOR), Justice (DOJ) and Financial Institutions and the Office of the Commissioner of Insurance to address interagency coordination and data sharing improvements to the extent permitted by law."

The IACET has met regularly to discuss ways to collaborate more fully on payroll fraud and misclassification issues. The initial meetings provided an opportunity for each department to describe their role and bounds of authority in enforcement of payroll fraud and misclassification, including examples, the reports they create, and the data that is kept regarding their enforcement activities. Future conversations will explore areas where more collaboration would assist in enforcement efforts.

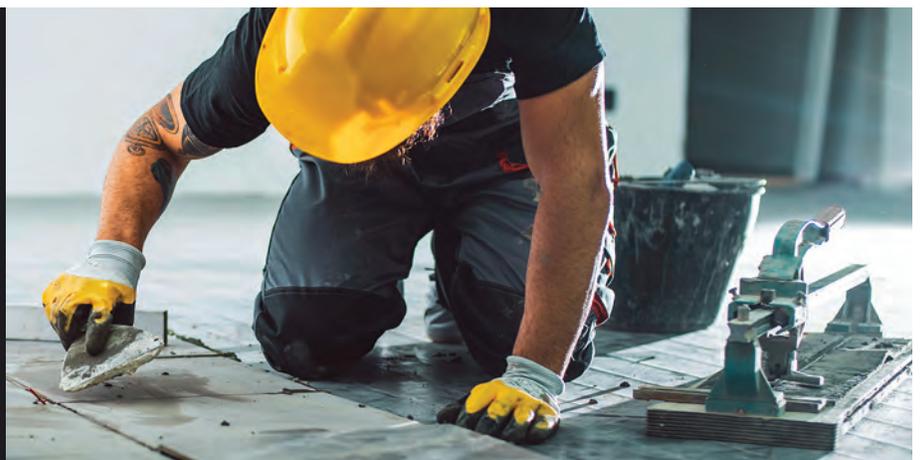
Additionally, there are a few areas where statutory changes could assist in either more strongly deterring the illegal behavior, heightening penalties, or more quickly shutting it down.

The IACET plans for 2021 include the following:

- ▶ Explore opportunities and methods to transfer data electronically between DOR and DWD to allow data analytics to assist in making audit selections. DWD and DOR strengthened data-sharing agreements to share data on businesses engaged in misclassifying workers to allow for data transfers from DWD to DOR. In the immediate term, data sharing will be a manual transfer of information, but the goal is to transfer data electronically for purposes of audit selections using data analytics.
- ▶ Make recommendations on process and law changes to strengthen our ability to identify and prosecute bad actors.
- ▶ Explore opportunities to bring the DOJ prosecutors in at an earlier stage in investigations in order to allow them to be more involved in the investigation and process.
- ▶ Look more closely at insurance fraud, and further explore how to work with DWD's Worker's Compensation Division, and have data shared by insurance providers to allow the results of insurance company audits to be reported to DWD.

What is Worker Misclassification?

It is the unlawful practice of labeling employees as independent contractors. Misclassification is cheating because it allows employers to avoid paying benefits (health and retirement), liability insurance, unemployment insurance, and withhold taxes.



RECOMMENDATIONS

Worker misclassification is a nation-wide problem and each state's approach to solving it may be different based on what methods are best suited for that state. The Task Force created two sub-work groups that heard from subject matter experts and stakeholders regarding the efforts of other states to combat worker misclassification and payroll fraud.

The Worker's Compensation Premium Fraud and Avoidance Work Group focused on ensuring that workers had adequate coverage in the case of a workplace injury and that all employers were held to the standard of appropriate classification and categorization, thus leveling the playing field with employers who follow the law. This work group included a representative of the National Insurance Crime Bureau (NICB), a nationwide organization that has collaboration and cooperation with more than 40 states; however, Wisconsin is one of a handful of states that do not currently report to the NICB. The NICB provides an electronic means for the reporting, tracking, and investigation of insurance fraud. The January 2021 MEPI study provided a quantifiable dollar amount lost due to worker misclassification and payroll fraud and the work group recognized that employers who properly classify or categorize workers pay more in premiums than those that skirt the law through fraud or avoidance. This unscrupulous practice places the law-abiding, responsible employers at a disadvantage and potentially leaves workers uninsured and unprotected.

To combat this unlawful behavior, the work group came up with four recommendations designed to collect information, protect workers, increase compliance, and level the playing field, and brought these recommendations to the Task Force. The Task Force adopted those four recommendations without any dissent. They are included in this report below as Recommendations 1-4.

The Upstream Liability Work Group's goal was to make sure all the stakeholders (e.g., contractors, general contractors, construction managers, and developers) are educated on the importance of properly classifying workers and are held accountable when workers are being misclassified. One option discussed by the work group was creating a mechanism to serve as a financial incentive for contractors to ensure their subcontractors are properly classifying employees, and providing those employees with access to unemployment insurance, worker's compensation insurance, and the appropriate employment rights and labor standards.

The group examined a law in Pennsylvania that requires contractors to comply with classification and labor standards laws, authorizes and provides resources to a state agency to investigate compliance without the need to receive a complaint first, and requires public reporting of all employers fined under this law.² In 2019 alone, the state of Pennsylvania investigated 192 cases, conducted 370 on-site investigations, and 229 administrative penalties that totaled \$531,874.³

The work group also examined laws that require upstream liability for contractors. One such law passed in California, effective January 1, 2018, provides that a direct contractor, as defined, making or taking a contract in the state for the erection, construction, alteration, or repair of a building, structure, or other work, to assume, and be liable for, specified debt owed to a wage claimant that is incurred by a subcontractor, at any tier, acting under, by, or for the direct contractor for the wage claimant's performance of labor included in the subject of the original contract. In addition, the law requires a subcontractor, upon request from the direct contractor, to provide

² The Construction Workplace Misclassification Act, 43 P.S. §§ 933.1– 933.17 (Act 72 or Act), went into effect on February 10, 2011.

³ Administration and Enforcement of the Construction Workplace Misclassification Act, March 1, 2020 Annual Report.

<https://www.dli.pa.gov/Individuals/Labor-Management-Relations/lc/act72/Documents/2019%20Act%2072%20Report-final.pdf>

specified information regarding the subcontractor's and third party's work on the project and would provide that the direct contractor could withhold disputed sums upon the subcontractor's failure to provide the requested information.⁴

Based upon this research and extensive discussion among subject matter experts and stakeholder, the group made three recommendations to the Task Force. The Task Force adopted two recommendations (#5 and #7 below) without dissent and modified one recommendation (#6 below), with one dissenting vote (Jerry Shea), to allow for more investigation into the options for contractor upstream liability and joint liability.

The Task Force makes the following recommendations:

- 1. Amend Wis. Stat. § 102.125 to clarify that application and premium fraud is covered. Amend the criminal code, Wis. Stat. Chapter 943 to specifically include premium fraud as part of the insurance fraud definition.**

Explanation:

Currently, Wis. Stat. § 102.125(1) requires that worker's compensation (WC) claimant fraud be reported to the Department of Workforce Development (DWD), but the subsection makes no reference to premium or application fraud. While Wis. Stat. §§ 102.125(2) and (3) appear to allow for WC application and premium fraud investigations by DWD and DOJ, and prosecution by DOJ or a District Attorney upon referral by DWD, there have been no premium or application fraud referrals or prosecutions to date. This is in large part because such fraud is not generally reported to DWD. The recommendation is to amend Wis. Stat. §102.125 and any applicable criminal statutes in Wis. Stat. Ch. 943 to make it clear that premium and application fraud—not just claimant fraud—should be reported, investigated, and prosecuted.

- 2. Amend Wis. Stat. § 102.125 to create a statutory requirement for insurers and self-insured employers to report worker's compensation premium and application fraud to the Department of Workforce Development. Encourage the Task Force to explore mandatory reporting of all insurance fraud and collaboration with NICB.**

Explanation:

Currently, only WC claimant fraud must be reported to DWD under Wis. Stat. § 102.125(1). Amending Wis. Stat. § 102.125 to apply to WC premium and application fraud, as set forth in the preceding recommendation, should also require mandatory reporting of premium and application fraud to DWD.

While this work group's focus was narrowly defined to WC insurance, the work group necessarily discussed the broader impact of misclassification and payroll fraud on the insurance industry as a whole. Other states have mandatory insurer reporting of all suspected insurance fraud which allows state agencies to analyze data, define and quantify the illegal behavior patterns by industry, and focus education and enforcement resources where they are most needed. NICB has been the repository for reporting in other states and has the capability to collect and report the data to all affected state agencies. Such data could also be aggregated and made public for the education of all stakeholders.

⁴ Assembly Bill 2701, Chapter 804, creating sec. 218.7.

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1701

- 3. Create a statutory Insurance Fraud Bureau of Investigations, targeting not only claim fraud but also premium and application fraud, with adequate resources to investigate and prosecute fraud. The bureau would be accountable for reporting its activities with other relevant agencies, the legislature, and the governor.**

Explanation:

Curbing insurance fraud through investigation and prosecution is critically important to stopping misclassification and payroll fraud in Wisconsin. Currently, DWD's WC and UI Divisions jointly fund 1.0 FTE (Full-Time Equivalent) of an assistant attorney general and 0.50 FTE of an investigator (position currently vacant) at the DOJ. Despite DWD funding, there have been very few UI or WC fraud prosecutions, and no premium fraud prosecutions. While local district attorneys have jurisdiction to prosecute insurance fraud, few have the resources or expertise to do so. Most states, including our neighboring states of Minnesota, Illinois, and Iowa, have dedicated fraud bureaus/divisions with the necessary resources and expertise to investigate and prosecute insurance fraud. Without dedicated, state-level staff, investigation and prosecution of insurance fraud will continue to be minimal.

- 4. Request the Worker's Comp Ratings Bureau (WCRB) to modify its basic manual to revise its definition of remuneration to identify types of cash and noncash payments and make it consistent across various entities.**

Explanation:

Remuneration generally means anything an employee receives for performing a service or for being employed by a company or organization including but not limited to salary, cash payments, commission, wages, and room and board. The WCRB's basic manual is used by insurers throughout the state to perform audits. By making certain that the manual instructs the industry to look for cash and noncash payments in their audits, the likelihood that premium fraud is detected and stopped in industries that pay their employees off the books is increased.

- 5. Require DOJ and DWD to review Wis. Stat. § 108.24(2) and (2m) to determine whether the statute should be amended to better enable worker misclassification prosecutions.**

Explanation:

It is suspected that the low number of worker misclassification prosecutions under Wis. Stat. §108.24 is due to unreasonably stringent legal requirements contained in the statute. DWD and DOJ should review the laws to determine where it could be amended to better enable these prosecutions, thus holding the employers who break the law accountable and creating a level playing field for the thousands of employers who follow the law.

What happens when an employer misclassifies?

DWD vigorously investigates misclassification, and when it's found, DWD imposes:

- ▶ TAX,
- ▶ INTEREST,
- ▶ PENALTIES, and/or
- ▶ CRIMINAL PROSECUTION when warranted.



- 6. Engage relevant stakeholders to develop a statutory requirement of upstream liability, including upstream liability for wage theft, modeled after similar laws in other states. Explicitly address joint liability that is sometimes used by DWD's Equal Rights Division (ERD) in wage claim cases.**

Explanation:

After a long discussion among the Task Force members, it was agreed that a statutory requirement of upstream liability may be helpful to curb worker misclassification and unfair practices. This would be a significant change to current law and therefore needs additional stakeholder discussions to determine if a statutory change is needed. Stakeholders will include, among others, representatives of general contractors and subcontractors.

- 7. Create a law that requires ERD to investigate and adjudicate misclassification within the concept of labor standards. Do it in a way that still allows the Unemployment Insurance Division to enforce their laws, avoid confusion due to inconsistency in the law, and maximize investigatory and enforcement resources. Create a requirement in the law to require ERD to publish an annual report that includes all findings of misclassification by employer name and amount, modeled after [Pennsylvania Construction Workplace Misclassification Act](#).**

Explanation:

After creation of a statutory investigative bureau with broad authority over labor law enforcement including administrative findings and criminal penalties, Pennsylvania was able to increase its investigations and enforcement actions, resulting in administrative penalties exceeding \$2 million between 2014 and 2019. This recommendation seeks to create a Wisconsin structure that will better enable the compliance, investigation and enforcement of worker misclassification laws and payroll fraud.

CONCLUSION

Over the past year, the Task Force continued its investigation of policies and practices that are successfully reducing worker misclassification and payroll fraud. The recommendations presented in this report were the items the Task Force members agreed should be the primary focus for addressing those key issues but encourage continued study of additional measures that could be taken to combat worker misclassification.

The Task Force looks forward to working with the Governor's Office, the Legislature, state agencies, the Unemployment Insurance Advisory Council, the Worker's Compensation Advisory Council, and other interested stakeholders to implement these recommendations and develop solutions to further combat worker misclassification.

APPENDIX

Appendix 1 – Executive Order



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

 TONY EVERS
 Governor

By the Governor:

Douglas La Follette

 DOUGLAS LA FOLLETTE
 Secretary of State



Department of Workforce Development

201 E. Washington Ave.

Madison, WI 53707

608-266-3131 | dwd.wisconsin.gov

STATE OF WISCONSIN



Department of Workforce Development



WISCONSIN UNEMPLOYMENT INSURANCE

✓ Integrity

✓ Customer Service

✓ Accountability

2021



FRAUD REPORT TO THE UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

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

UCD-17392-P (R. 03/2021)

March 15, 2021

Dear Members of the Unemployment Insurance Advisory Council:

On behalf of the Department of Workforce Development (DWD), Administrator Mark Reihl and I are pleased to present the 2021 Unemployment Insurance (UI) Fraud Report, outlining the UI Division's efforts to combat waste, fraud, and abuse in 2020.

It was an unprecedented year, both in terms of the number of claims filed and the sophisticated, coordinated attempts of criminals to target Wisconsin's UI system and push through fraudulent claims. States across the country faced an onslaught of scams and fraud, often perpetrated by international crime rings. Much of DWD's fraud prevention work in 2020 was focused on preventing criminals from using stolen information to access our claims system and on protecting the identities of people who have filed legitimate claims.

Some states were forced to temporarily suspend all benefit payments because their systems had become overrun with fraudulent activity. While Wisconsin has not experienced a level of activity requiring such drastic measures, the battle against scams and fraud continues to be a focus, and we have committed many resources to this effort. Since last March, DWD has implemented a variety of claims system enhancements aimed at preventing and detecting fraud. For instance, preventive controls such as website geo-blocking and Google reCaptcha were put in place and improved scans of access activity to detect fraudulent access are being performed. DWD has upgraded our servers with additional firewall capabilities, added new login security measures, and required additional authentication when individuals create new accounts. We also perform advanced fraud data analytics on claims after they are filed and before releasing payments. DWD is constantly reviewing, analyzing, and modifying our approach to stop bad actors, and we place high value on the security of our system.

Preventing fraud is also about outreach and education. DWD collaborates with other states on best practices for blocking and detecting bots and other imposter activity. We continually update our website (dwd.wisconsin.gov/ui/fraud) with information about known fraud and identity theft scams, such as mimicked Facebook pages, phishing emails, credential stuffing hacking schemes, and spoofed emails. The site also directs people to agencies where they can report potential identity theft and supplies resources for victims.

Maintaining the integrity of Wisconsin's Unemployment Insurance program is critical in order to ensure benefits are paid only to those who qualify under the law and employers are assessed the proper tax rate. Our focus in 2020 was paying the many individuals in need the benefits they were due.

Sincerely,



Amy Pechacek, Secretary-designee
Department of Workforce Development



Mark Reihl, Administrator
Unemployment Insurance Division

DETECTION TOOLS

Dedicated UI Workers

Staff vigilance is one of the division's best tools for detection. The Integrity and Quality Section within the Benefit Operations Bureau provides training to staff on methods for detecting and reporting fraud. The Integrity and Quality Section consists of experienced investigators who investigate the most complex and organized efforts to defraud the system.

Wage Verification

The division sends wage verification notices to employers when claimants report wages in a week as well as when claimants, who had been reporting wages weekly, report no wages in a week. This allows employers the opportunity to timely report wages and other eligibility issues.

Cross-Matches

The division uses numerous cross-matches that assist in detecting UI fraud:

Quarterly Wage Cross-Match – This cross-match compares benefit payment records with quarterly wage records submitted by employers covered under Wisconsin's UI program. This helps to verify wages are properly reported on unemployment claims.

Interstate Wage Record Cross-Match – This cross-match compares benefit payment records with quarterly wage records submitted by employers from other states. This helps to verify wages are properly reported on unemployment claims.

Inmate Cross-Match – Claimants may be ineligible for UI benefits if incarcerated. This tool consists of two cross-match programs: one that compares benefit payment records to incarceration records for all of Wisconsin's county jails and prisons, and a second that compares benefit payment records to incarceration records for facilities nationwide.

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

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

SSDI Cross-match – This cross-match compares individuals currently listed as receiving Social Security Disability Insurance with claimants filing initial and weekly unemployment claims.

Other Detection Approaches

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

- ▶ Audits of employers - resulting in employer contribution assessments totaling approximately \$1.9 million in 2020;
- ▶ Employer complaints and tips from the public concerning suspected fraudulent claims;

- ▶ Using 1099 information from the Internal Revenue Service to investigate employers who may be misclassifying employees as independent contractors;
- ▶ Contacts from local, state, and federal law enforcement officers regarding suspicious activities;
- ▶ U.S. Bank's sophisticated fraud monitoring tools, which allow the department to monitor, predict, and respond quickly to suspected fraudulent activity; and
- ▶ Meetings with several other state agencies on a quarterly basis to discuss fraud trends and cases of mutual interest. The agencies share fraud tips to ensure fraud occurring across agencies is thoroughly investigated and stopped.

WORKER CLASSIFICATION

Worker misclassification contributes to waste and fraud in the UI program through the loss of UI tax revenue from employers who misclassify workers, and the creation of an unfair business climate that places businesses that follow the law at a competitive disadvantage. It also denies workers, who are out of work through no fault of their own, access to the UI benefits they may have been eligible for if they were properly classified.

The historic number of claims related to the COVID-19 pandemic required the division to prioritize claims processing over audit and worker classification investigations. Nevertheless, Wisconsin UI auditors conducted 1,269 audits and identified 8,925 misclassified workers. Due to the division's efforts to detect worker misclassification, \$2.34 million was generated in UI taxes and interest.

Worksite investigations are conducted by experienced division investigators, many of whom have law enforcement backgrounds in white collar and economic crime investigations. The division conducted 244 worker classification field investigations in 2020.

FRAUD OVERPAYMENTS

The division remains committed to ensuring the integrity of the UI program as evidenced by the continued decline of fraud against the Wisconsin UI program. UI fraud overpayments declined by 4 percent from 2019 to 2020.

	2020 Amount	2019 Amount	Dollar Change	Percent Change
Total UI Payments	\$4,839,149,601	\$409,453,854	\$4,429,695,747	1,082%
Fraud Overpayment¹	\$4,534,899	\$4,727,300	-\$192,401	-4%
As Percent of Total Payments	0.1%	1%		

	2020 Number of Cases	2019 Number of Cases	Case Change	Percent Reduction
Fraud Cases	3,561	4,734	-1,173	-25%

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

The pandemic caused the large increase in total UI payments in 2020. There was a significant increase in the number of claimants filing for benefits. The federal CARES Act programs, including Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC), Lost Wages Assistance, and Federal Pandemic Unemployment Compensation increased the amount of benefits paid by the division. The division also paid Extended Benefits in 2020.

FRAUD OVERPAYMENT DETECTION AMOUNTS AND DECISIONS BY SOURCE FOR 2018-2019

Detection Method	2020		2019	
	Amount	Decisions	Amount	Decisions
Wage Record Cross-Match	\$570,578	400	\$1,434,984	1,035
Agency Detection - Not Covered by Other Codes	\$1,238,941	702	\$1,293,071	1,074
State New Hire Cross-Match	\$613,868	774	\$569,194	1,051
Liable Employer Protests Benefit Charges	\$1,247,693	862	\$408,614	513
Post Verification of Wages	\$118,893	80	\$201,623	149
Tips and Leads from Other than Liable Employer	\$191,023	161	\$192,635	185
Audit of Work Search	\$270	1	\$154,377	107
Post Verification - No Wages Reported	\$120,312	225	\$122,599	293
Claimant Initiated	\$129,440	76	\$70,856	64
SSDI Cross-Match	\$102,419	46	\$66,497	37
National New Hire Cross-Match	\$40,566	26	\$49,624	54
Field Audit Discoveries	\$0	0	\$46,333	9
Appriss Inmate Cross-Match	\$94,996	172	\$42,212	100
Inmate Cross-Match	\$5,324	6	\$28,297	37
Quality Control	\$47,432	25	\$26,993	19
Fictitious Employer Cases	\$0	0	\$9,075	1
Interstate Cross-Match	\$10,924	4	\$6,249	3
Reversals	\$0	0	\$2,261	1
Deceased Citizen Cross-Match	\$2,220	1	\$910	1
Federal Wage Cross-match	\$0	0	\$896	1
Total	\$4,534,899	3,561	\$4,727,300	4,734

FORFEITURE ASSESSMENT, BENEFIT AMOUNT REDUCTION AND PENALTY ASSESSMENT 2016-2020

Other Fraud-Related Activity	2020	2019	2018	2017	2016
Forfeitures Assessed	\$0	\$21,788	\$137,705	\$114,996	\$295,848
Benefit Amount Reduction	\$8,384,948	\$13,221,457	\$13,183,450	\$13,912,308	\$22,480,473
Penalties Assessed	\$1,088,758	\$1,883,649	\$1,899,471	\$1,961,063	\$3,368,650

2011 WI Act 198 ended forfeiture assessment and created the Benefit Amount Reduction.

CRIMINAL PROSECUTION FOR UI FRAUD

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

Division staff investigate complex fraud cases. Many of these professionals have law enforcement experience.

All criminal investigations completed by benefit fraud investigators are referred to our Bureau of Legal Affairs (BOLA) for review by legal and investigative staff to ensure the investigations meet division standards for prosecution referral. After review, BOLA staff refer the cases to either a county district attorney or DOJ.

DWD works collaboratively with DOJ and the county district attorneys to determine which cases should be referred for prosecution. Eight cases were referred for prosecution in 2020.

Ultimately, it is DOJ and the district attorneys who make the decision to file criminal charges. DOJ evaluates several factors in determining whether a case will be prosecuted, including:

- ◆ Whether evidence exists to prove intent to defraud;
- ◆ An individual's criminal history/history of defrauding government programs; and
- ◆ In cases involving employers, the employer's enforcement and compliance history.

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

WORK SEARCH

The division has a well-established work search auditing program. UI claimants who are required to search for work must submit their work search record each week a claim is filed. These records are subject to random audits for program integrity purposes. These audits uncover mistakes made by claimants, instances of intentional fraud, and provide an opportunity for the division to educate claimants on what constitutes a valid work search action and what information is needed for the division to verify the action.

On March 18, 2020, Governor Tony Evers issued an Emergency Order that effectively suspended the work search requirement to respond to the spread of COVID-19. The Department later promulgated Emergency Rules that effectively suspended the work search requirement to assist in the state's on-going response to the public health emergency. While claimants could still enter their work search actions into the system, it was not required for UI benefit eligibility. The division has not conducted work search audits since the Emergency Order and Emergency Rules were issued. Before March 18, 2020, the division conducted 766 work search audits. Those audits resulted in 208 decisions finding work search requirements were not met.



Department of Workforce Development

201 E. Washington Ave.

Madison, WI 53707

608-266-3131 | dwd.wisconsin.gov

State of Wisconsin



January 2021 Special Session
Senate Bill 1

Date of enactment: **February 25, 2021**
Date of publication*: **February 26, 2021**

2021 WISCONSIN ACT 4

AN ACT *to amend* 108.04 (3) (b), 108.062 (20) (intro.), 108.07 (5) (bm) 1. and 108.07 (5) (bm) 2. a.; and *to create* 16.75 (6) (em), 108.07 (5) (bm) 1m., 108.14 (27) and 895.476 of the statutes; **relating to:** the unemployment insurance program and immunity from liability related to COVID-19 exposure.

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

SECTION 1. 16.75 (6) (em) of the statutes is created to read:

16.75 (6) (em) The governor may waive any requirement of this subchapter, except s. 16.705 (1r), for the purpose of expediting the information technology systems project under s. 108.14 (27) if the governor finds the waiver is necessary to timely complete the project. The governor shall require the award of each contract under this paragraph to be made with such competition as is practicable under the circumstances. The governor shall file with the department a statement of facts constituting the necessity for each waiver issued under this paragraph and a statement of the basis for selection of each contractor under this procedure. This paragraph does not apply to the requirement specified in sub. (7).

SECTION 2. 108.04 (3) (b) of the statutes is amended to read:

108.04 (3) (b) Paragraph (a) does not apply with respect to benefit years that begin after March 12, 2020, and before ~~February 7~~ March 14, 2021. The department shall seek the maximum amount of federal reimbursement for benefits that are, during the time period specified in this paragraph, payable for the first week of a

claimant's benefit year as a result of the application of this paragraph.

SECTION 3. 108.062 (20) (intro.) of the statutes is amended to read:

108.062 (20) SUSPENSIONS OF CERTAIN PROVISIONS. (intro.) Notwithstanding sub. (2), this subsection, and not sub. (2), applies to work-share plans submitted on or after April 17, 2020, and before ~~December 31, 2020~~ the conclusion of a national emergency declared by the U.S. president under 50 USC 1621 in response to the 2019 novel coronavirus or July 4, 2021, whichever is earlier, subject to sub. (19). During that period, prior to implementing a work-share program, an employer shall submit a work-share plan for the approval of the department. In its submittal, the employer shall certify that its plan is in compliance with all requirements under this section. Each plan shall:

SECTION 4. 108.07 (5) (bm) 1. of the statutes is amended to read:

108.07 (5) (bm) 1. ~~The~~ Subject to subd. 1m., the department shall, when processing initial claims for regular benefits, determine whether a claim or plan is related to the public health emergency declared on March 12, 2020, by executive order 72. If a claim is so related, the

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

2021 Wisconsin Act 4

regular benefits for that claim shall, except as provided in subd. 2., be paid as provided in subd. 3.

SECTION 5. 108.07 (5) (bm) 1m. of the statutes is created to read:

108.07 (5) (bm) 1m. For purposes of this paragraph, the department shall presume that an initial claim for benefit years beginning on or after March 15, 2020, through March 13, 2021, relates to the public health emergency declared on March 12, 2020, by Executive Order 72 unless the claimant's most recent separation from employment is due to a labor dispute, voluntary termination of work, discharge for misconduct, or discharge for substantial fault. An employer is not required to submit a request for charging relief under this paragraph for initial claims described in this subdivision.

SECTION 6. 108.07 (5) (bm) 2. a. of the statutes is amended to read:

108.07 (5) (bm) 2. a. Subdivision 1. applies only with respect to benefits payable for weeks beginning after March 12, 2020, and beginning before ~~December 31, 2020~~ March 14, 2021.

SECTION 7. 108.14 (27) of the statutes is created to read:

108.14 (27) (a) 1. The department of workforce development shall, in cooperation with the department of administration as required under subch. VII of ch. 16, undertake a project to update its information technology systems used for processing and paying claims for benefits. The department shall seek and exhaust any federal funding available to use for the project, including any funding made available by federal COVID-19 relief legislation.

2. The project under this paragraph shall be undertaken no later than June 30, 2021, except that if the departments are unable to undertake the project by that date, the department may request from the joint committee on finance an extension not to exceed 90 days in a written submission that includes a report on the progress on the project and the reason an extension is needed. If the cochairpersons of the joint committee on finance do not notify the department within 14 working days after the date of the request for an extension under this subdivision that the committee has scheduled a meeting for the purpose of reviewing the extension request, the extension is considered granted. If, within 14 working days after the date of the request for an extension under this subdivision, the cochairpersons of the committee notify the department that the committee has scheduled a meeting for the purpose of reviewing the extension request, the department may consider the extension granted only upon approval by the committee.

(b) A request for proposals for the project under par. (a) shall be issued no later than the 30th day after the effective date of this paragraph [LRB inserts date]. The department of workforce development and the department of administration shall report to the joint

committee on finance and the joint committee on information policy and technology on the results of the request for proposals.

(c) The department may submit to the joint committee on finance one or more requests to make supplementations or transfers under s. 13.101 (3) or (4) for the purpose of obtaining funding for the project under par. (a). If the joint committee on finance approves a request in whole or in part, the committee may transfer moneys without making any of the findings required under s. 13.101 (3) or (4).

(d) The department may finance the project under par. (a) under a master lease entered into as provided in s. 16.76 (4).

(e) 1. The department of workforce development and the department of administration shall report to the joint committee on finance and the joint committee on information policy and technology on the project under par. (a) as provided in subd. 2. Each report prepared under this paragraph shall include all of the following:

a. An overview of the project.

b. The status of the project, including targeted implementation dates.

c. An analysis of the cost of the project, how the project is being funded, and all resources being used to implement the project.

2. The department shall submit an initial report under subd. 1. no later than the 60th day after the effective date of this subdivision [LRB inserts date]. The department shall make additional reports each quarter, which shall be submitted no later than the end of the month following each such quarter, for each succeeding quarter ending after the date of the initial report.

3. Subdivision 1. does not apply beginning on the date that the project is considered complete, as determined by the joint committee on finance.

SECTION 8. 895.476 of the statutes is created to read:

895.476 Civil liability exemption; exposure to the novel coronavirus SARS-CoV-2 or COVID-19. (1) In this section:

(a) "COVID-19" means the infection caused by the novel coronavirus SARS-CoV-2 or by any viral strain originating from SARS-CoV-2, and conditions associated with the infection.

(b) "Entity" means a partnership, corporation, association, governmental entity, tribal government, tribal entity, or other legal entity, including a school, institution of higher education, or nonprofit organization. "Entity" includes an employer or business owner, employee, agent, or independent contractor of the entity, regardless of whether the person is paid or an unpaid volunteer. "Entity" includes an employer covered under ch. 108.

(2) Beginning March 1, 2020, an entity is immune from civil liability for the death of or injury to any individual or damages caused by an act or omission resulting in or relating to exposure, directly or indirectly, to the

novel coronavirus identified as SARS-CoV-2 or COVID-19 in the course of or through the performance or provision of the entity's functions or services.

(3) Subsection (2) does not apply if the act or omission involves reckless or wanton conduct or intentional misconduct.

(4) Immunity under this section is in addition to, not in lieu of, other immunity granted by law, and nothing in this section limits immunity granted under any other provision of law, including immunity granted under s. 893.80 (4).

SECTION 9. Nonstatutory provisions.

(1) CIVIL LIABILITY EXEMPTION FOR CERTAIN ENTITIES. The immunity and limitation on recovery of damages under s. 895.476 applies retroactively to all claims,

except that it does not apply to actions filed before the effective date of this subsection.

(2) FEDERAL EXTENDED UNEMPLOYMENT BENEFITS.

(a) *Definitions.* In this subsection, the definitions in s. 108.141 (1) apply.

(b) *Secretary may waive compliance.* Notwithstanding s. 108.141 (1) (c) 1. b., the secretary of workforce development may waive the prohibition under s. 108.141 (1) (c) 1. b. that no extended benefit period may begin by reason of a Wisconsin "on" indicator before the 14th week following the end of a prior extended benefit period that was in effect with respect to Wisconsin.

(c) *Effective period.* This subsection does not apply after June 30, 2021.



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-2066/1
ALL:all

2021 ASSEMBLY BILL 68

February 16, 2021 - Introduced by JOINT COMMITTEE ON FINANCE, by request of Governor Tony Evers. Referred to Joint Committee on Finance. Referred to Joint Survey Committee on Tax Exemptions.

1 **AN ACT relating to:** state finances and appropriations, constituting the
2 executive budget act of the 2021 legislature.

Analysis by the Legislative Reference Bureau

INTRODUCTION

This bill is the executive budget bill under section 16.47 (1) of the statutes. It contains the governor's recommendations for appropriations for the 2021-23 fiscal biennium.

The bill sets the appropriation levels in chapter 20 of the statutes for the 2021-23 fiscal biennium. The descriptions that follow in this analysis relate to the most significant changes in the law that are proposed in the bill.

For additional information concerning the bill, see the Department of Administration's publication *Budget in Brief* and the executive budget books, the Legislative Fiscal Bureau's summary document, and the Legislative Reference Bureau's drafting files, which contain separate drafts on each policy item.

GUIDE TO THE BILL

The budget bill is organized like other bills. First, treatments of statutes appear in ascending numerical order of the statute affected. Next, any treatments of prior session laws appear ordered by the year of original enactment and then by act number (for instance, a treatment of 2017 Wisconsin Act 15 would precede a treatment of 2019 Wisconsin Act 6).

The remaining sections of the budget bill are organized by type of provision and, within each type, alphabetically by state agency. The first two digits of the four-digit

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or a public utility project, the employer have in place a written employee substance abuse program.

The bill specifically allows DWD to enforce these provisions and requires employers subject to these provisions to register with DWD. The bill allocates registration fees to DWD's substance abuse prevention administration and enforcement activities.

UNEMPLOYMENT INSURANCE***Drug testing***

Current state law requires DWD to establish a program to test certain claimants who apply for unemployment insurance (UI) benefits for the presence of controlled substances that is consistent with federal law. A claimant who tests positive for a controlled substance for which the claimant does not have a prescription is ineligible for UI benefits until certain requalification criteria are satisfied or unless he or she enrolls in a substance abuse treatment program and undergoes a job skills assessment, and a claimant who declines to submit to a test is simply ineligible for benefits until he or she requalifies. The bill repeals the requirement to establish the drug testing program.

Also under current law, an employer may voluntarily submit to DWD the results of a preemployment test for the presence of controlled substances that was conducted on an individual as a condition of an offer of employment or notify DWD that an individual declined to submit to such a test. If DWD then verifies that submission, the employee may be ineligible for benefits until he or she requalifies. However, a claimant who tested positive may maintain eligibility by enrolling in a substance abuse treatment program and undergoing a job skills assessment. The bill repeals these preemployment drug testing provisions.

Benefit rates

Under current law, a person who qualifies for UI receives a weekly benefit equal to a percentage of that person's past earnings, but the weekly benefit is capped at \$370. The bill changes the maximum weekly benefit in the following ways:

1. For benefits paid for weeks of unemployment beginning on or after January 2, 2022, but before January 1, 2023, the maximum weekly benefit is capped at \$409.
2. For benefits paid for weeks of unemployment beginning on or after January 1, 2023, but before December 31, 2023, the maximum weekly benefit is capped at 50 percent of the state's annual average weekly wages.
3. For benefits paid for weeks of unemployment beginning on or after December 31, 2023, the maximum weekly benefit is capped at 75 percent of the state's annual average weekly wages, or the maximum weekly benefit amount from the previous year, whichever is greater.

Under the bill, DWD is required to calculate the state's annual average weekly wage for each year based on quarterly wage reports that are submitted to DWD. The state's annual average weekly wage is calculated by June 30 of each year and is used to calculate the following year's maximum weekly benefit amount.

ASSEMBLY BILL 68***Waiting period***

Currently, a claimant must wait one week after becoming eligible to receive UI benefits before the claimant may receive benefits for a week of unemployment, except for periods during which the waiting period is suspended. The waiting period does not affect the maximum number of weeks of a claimant's benefit eligibility. The bill deletes the one-week waiting period, thus permitting a claimant to receive UI benefits beginning with his or her first week of eligibility.

Social security disability insurance payments

Under current law, in any week in any month that a claimant is issued a benefit under the federal social security disability insurance program (SSDI benefits), that claimant is ineligible for UI benefits. The bill repeals that prohibition and instead requires DWD to reduce a claimant's UI benefit payments by the amount of SSDI payments. The bill requires DWD to allocate a monthly SSDI payment by allocating to each week the fraction of the payment attributable to that week.

Work search and registration

Under current law, a claimant for UI benefits is generally required to register for work and to conduct a work search for each week in order to remain eligible. Current law requires DWD to waive these requirements under certain circumstances, for example, if a claimant who is laid off from work reasonably expects to be recalled to work within 12 weeks, will start a new job within four weeks, routinely obtains work through a labor union referral, or is participating in a training or work-share program. Under current law, DWD may modify the statutory waivers or establish additional waivers by rule only if doing so is required or specifically allowed by federal law.

The bill removes the waiver requirements from statute and instead allows DWD to establish waivers for the registration for work and work search requirements by rule. The bill also specifies that the work search requirement does not apply to a claimant who has been laid off but DWD determines that the claimant has a reasonable expectation to be recalled to work.

Acceptance of suitable work

Under current law, if a claimant for UI benefits fails, without good cause, to accept suitable work when offered, the claimant is ineligible to receive benefits until he or she earns wages after the week in which the failure occurs equal to at least six times the claimant's weekly UI benefit rate in covered employment. Current law specifies what is considered "suitable work" for purposes of these provisions, with different standards applying depending on whether six weeks have elapsed since the claimant became unemployed. Once six weeks have elapsed since the claimant became unemployed, the claimant is required to accept work that pays lower and involves a lower grade of skill.

The bill modifies these provisions described above so that the claimant is not required to accept less favorable work until *10 weeks* have elapsed since the claimant became unemployed.

ASSEMBLY BILL 68***Termination due to substantial fault***

Under current law, a claimant for UI benefits whose work is terminated by his or her employer for substantial fault by the claimant connected with the claimant's work is ineligible to receive UI benefits until the claimant qualifies through subsequent employment. With certain exceptions, current law defines "substantial fault" to include those acts or omissions of a claimant over which the claimant exercised reasonable control and that violate reasonable requirements of the claimant's employer. The bill repeals this provision on substantial fault.

Quits due to nonsuitable work

Under current law, unless an exception applies, if a claimant for UI benefits quits his or her job, the claimant is generally ineligible to receive unemployment insurance benefits until he or she qualifies through subsequent employment. Under one such exception, if a claimant quits his or her job and 1) the claimant accepted work that was not suitable work under the UI law or work that the claimant could have refused; and 2) the claimant terminated the work within 30 calendar days after starting the work, the claimant remains eligible to collect UI benefits. Under the bill, this exemption applies if the claimant terminated that work within *10 weeks* after starting the work.

Quits due to relocations

Under current law, if an employee's spouse is a member of the U.S. armed forces on active duty and is relocated, and the employee quits his or her job in order to relocate with his or her spouse, the employee remains eligible to collect UI benefits. The bill expands this exception so that it applies to an employee who quits employment in order to relocate with a spouse who is required by any employer, not just the U.S. armed forces, to relocate.

Worker misclassification penalties

Current law requires DWD to assess an administrative penalty against an employer engaged in construction projects or in the painting or drywall finishing of buildings or other structures who knowingly and intentionally provides false information to DWD for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee under the UI law. The penalty under current law is \$500 for each employee who is misclassified, not to exceed \$7,500 per incident. Current law additionally requires DWD to assess an administrative penalty against such an employer who, through coercion, requires an individual to adopt the status of a nonemployee in the amount of \$1,000 for each individual so coerced, but not to exceed \$10,000 per calendar year. Penalties are deposited in the unemployment program integrity fund.

The bill removes the \$7,500 and \$10,000 limitations on these penalties and provides that the penalties double for each act occurring after the date of the first determination of a violation. The bill also removes the limitations on the types of employers to which the penalties apply, allowing them to be assessed against any type of employer that violates the above prohibitions.

ASSEMBLY BILL 68***Wage threshold for receipt of benefits***

Under current law, a claimant for UI benefits is generally ineligible to receive any benefits for a week if the claimant receives or is considered to have received wages or other amounts from employment totaling more than \$500. The bill repeals this ineligibility provision. However, the bill does not affect the partial benefits formula, which reduces a claimant's weekly UI benefit payment by a certain percentage of wages earned in a week by the claimant.

Electronic transactions with DWD

Currently, with certain exceptions, each employer that has employees who are engaged in employment covered by the UI law must file quarterly contribution (tax) and employment and wage reports and make quarterly payment of its contributions to DWD. An employer of 25 or more employees or an employer agent that files reports on behalf of any employer must file its reports electronically. Current law also requires each employer that makes contributions for any 12-month period ending on June 30 equal to a total of at least \$10,000 to make all contribution payments electronically in the following year. Finally, current law allows DWD to provide a secure means of electronic interchange between itself and employing units, claimants, and other persons that, upon request to and with prior approval by DWD, may be used for transmission or receipt of any document specified by DWD that is related to the administration of the UI law in lieu of any other means of submission or receipt.

The bill makes use of these electronic methods mandatory in all cases, unless the employer or other person demonstrates good cause for being unable to use the electronic method, as determined by DWD by rule. The bill also provides that DWD may permit the use of electronic records and electronic signatures for any document specified by DWD that is related to the administration of the UI law.

STATE EMPLOYMENT***Paid sick leave for limited term employees***

Under current law, permanent and project state employees receive the following paid leave: vacation; personal holidays; sick leave; and legal holidays. The bill requires the state to provide paid sick leave to limited term employees of the state at the same rate as to permanent and project state employees.

Paid parental leave

The bill requires the administrator of the Division of Personnel Management in DOA to develop a program for paid parental leave for most state employees. The bill requires the administrator to submit the plan for approval as a change to the state compensation plan to the Joint Committee on Employment Relations. If JCOER approves the plan, the plan becomes effective immediately.

The bill also requires the Board of Regents of the UW System to develop a plan for a program for paid parental leave for employees of the system and requires the board to submit the plan to the administrator of the Division of Personnel Management in DOA with its compensation plan changes for the 2021-23 biennium.

ASSEMBLY BILL 68***Worker's compensation uninsured employers fund***

DWD administers the worker's compensation program in this state. Employers are required to have worker's compensation insurance or to self-insure. The program includes an uninsured employers fund (UEF), which is used to pay worker's compensation benefits on claims filed by employees who are injured while working for uninsured employers in this state. The money for the UEF comes from, among various sources, penalties assessed against uninsured employers. The bill changes the appropriation for the UEF from a sum sufficient appropriation to a continuing appropriation.

Reimbursements for supplemental worker's compensation benefits

Under current law, worker's compensation insurers are required to pay supplemental benefits to certain employees who were permanently disabled by an injury that is compensable under worker's compensation.

DWD is authorized to collect up to \$5,000,000 from insurers that provide worker's compensation insurance to provide those supplemental benefits. This money must be used exclusively to provide reimbursements to insurers that pay those supplemental benefits and that request reimbursements. The bill creates a new, separate appropriation in the worker's compensation operations fund, to be used exclusively to provide these reimbursements. The bill does not increase revenue to DWD or collections from insurers.

Unemployment insurance; appropriation for administration

The bill creates an appropriation that provides general purpose revenue funding to DWD for administration of the unemployment insurance program.

Unemployment insurance; appropriations for renovation and modernization

The bill creates appropriations to provide general purpose revenue and federal funding to DWD for the renovation and modernization of unemployment insurance information technology systems.

ENVIRONMENT**WATER QUALITY*****PFAS standards***

The bill requires DNR to establish and enforce various standards for per- and poly-fluoroalkyl substances (PFAS). The PFAS group of substances includes several thousand chemicals; two of the most well known are perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS).

The bill requires DNR to establish, by rule, acceptable levels and standards, monitoring requirements, and required response actions for any PFAS in drinking water, groundwater, surface water, air, solid waste, beds of navigable waters, and soil and sediment, if the department determines that the substance may be harmful to human health or the environment. These rules must cover, at a minimum, PFOA and PFOS, as well as perfluorohexane sulfonic acid (PFHxS), perfluorononanoic acid (PFNA), and perfluorobutane sulfonic acid (PFBS).

The bill also requires DNR to establish air emission standards for PFAS to provide adequate protection for public health and welfare, taking into account

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a permit from DOR to sell marijuana sells, distributes, or transfers marijuana to a minor, and the person is at least three years older than the minor, the person is guilty of a Class H felony.

Under the bill, a minor who does any of the following is subject to a forfeiture of not less than \$250 nor more than \$500: procures or attempts to procure marijuana from a permittee; falsely represents his or her age to receive marijuana from a permittee; knowingly possesses marijuana for recreational use; or knowingly enters any premises for which a permit has been issued without being accompanied by his or her parent, guardian, or spouse who is at least 21 years of age or at least 18 years of age if a qualifying patient.

Medical marijuana registry

The bill requires DOR to create and maintain a medical marijuana registry program whereby a person who is a qualifying patient may obtain a registry identification card and purchase marijuana from a licensed retail establishment without having to pay the sales or excise taxes imposed on that sale.

Registration for testing labs

The bill also requires DATCP to register entities as tetrahydrocannabinols (THC)-testing laboratories. The laboratories must test marijuana for contaminants; research findings on the use of medical marijuana; and provide training on safe and efficient cultivation, harvesting, packaging, labeling, and distribution of marijuana, security and inventory accountability, and research on medical marijuana.

Employment discrimination

Under the fair employment law, no employer or other person may engage in any act of employment discrimination against any individual on the basis of the individual's use or nonuse of lawful products off the employer's premises during nonworking hours, subject to certain exceptions, one of which is if the use impairs the individual's ability to undertake adequately the job-related responsibilities of that individual's employment. The bill specifically defines marijuana as a lawful product for purposes of the fair employment law, such that no person may engage in any act of employment discrimination against an individual because of the individual's use of marijuana off the employer's premises during nonworking hours, subject to those exceptions.

Unemployment benefits

Under current law, an individual may be disqualified from receiving unemployment insurance benefits if he or she is terminated because of misconduct or substantial fault. The bill specifically provides that an employee's use of marijuana off the employer's premises during nonworking hours does not constitute misconduct or substantial fault unless termination for that use is permitted under one of the exceptions under the fair employment law. Also under current law, DWD must establish a program to test claimants who apply for UI benefits for the presence of controlled substances, as defined under federal law. If a claimant tests positive for a controlled substance, the claimant may be denied UI benefits, subject to certain exceptions and limitations. The bill excludes THC for purposes of this testing

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requirement. As such, under the bill, an individual who tests positive for THC may not be denied UI benefits.

Drug testing for public assistance programs

The bill exempts THC, including marijuana, from drug testing for certain public assistance programs. Currently, a participant in a community service job or transitional placement under the Wisconsin Works program (W-2) or a recipient of the FoodShare program, also known as the food stamp program, who is convicted of possession, use, or distribution of a controlled substance must submit to a test for controlled substances as a condition of continued eligibility. DHS is currently required to request a waiver of federal Medicaid law to require drug screening and testing as a condition of eligibility for the childless adult demonstration project in the Medical Assistance program. Current law also requires DHS to promulgate rules to develop and implement a drug screening, testing, and treatment policy for able-bodied adults without dependents in the FoodShare employment and training program. The bill exempts THC from all of those drug-testing requirements and programs. In addition, because THC is not a controlled substance under state law under the bill, the requirement under current law that DCF promulgate rules to create a controlled substance abuse screening and testing requirement for applicants for the work experience program for noncustodial parents under W-2 and the Transform Milwaukee Jobs and Transitional Jobs programs does not include THC.

Anatomical gifts

Unless federal law requires otherwise, the bill prohibits a hospital, physician, organ procurement organization, or other person from determining the ultimate recipient of an anatomical gift on the sole basis of a positive test for the use of marijuana by a potential recipient.

MILITARY AFFAIRS***Urban search and rescue task force***

Under current law, a regional structural collapse team contracted with the Division of Emergency Management in the DMA is required to respond to structural collapse incidents that meet criteria established by the division. Under current law, a team may respond only to incidents of structural collapse. The bill changes the team's designation from being a structural collapse team to an urban search and rescue task force, as designated by the National Fire Protection Association and Emergency Management Accreditation program standards. This change allows an urban search and rescue task force to respond to a wider variety of incidents.

Under current law, when a regional structural collapse team responds to an incident, the team must make a good faith effort to identify the party who is responsible for the structural collapse and provide that information to the Division of Emergency Management to seek reimbursement from that party. Any reimbursement to a regional structural collapse team is limited to the amounts collected by the Division of Emergency Management. Under the bill, this limitation on reimbursement is removed, and DMA must reimburse within 60 days local agencies that provided services as part of an urban search and rescue task force if

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	STATUTE, AGENCY AND PURPOSE	SOURCE	TYPE	2021-2022	2022-2023	
	SERVICE			(769,200)	(769,200)	
	SEGREGATED REVENUE			-0-	-0-	
	OTHER			(-0-)	(-0-)	
	TOTAL-ALL SOURCES			78,132,900	62,599,600	
1		20.410 DEPARTMENT TOTALS				
	GENERAL PURPOSE REVENUE			1,313,912,800	1,302,217,300	
	PROGRAM REVENUE			125,673,700	125,994,400	
	FEDERAL			(2,664,800)	(2,664,800)	
	OTHER			(68,029,000)	(68,328,800)	
	SERVICE			(54,979,900)	(55,000,800)	
	SEGREGATED REVENUE			-0-	-0-	
	OTHER			(-0-)	(-0-)	
	TOTAL-ALL SOURCES			1,439,586,500	1,428,211,700	
2	20.425 Employment Relations Commission					
3	(1)	LABOR RELATIONS				
4	(a)	General program operations	GPR	A	1,266,300	1,369,200
5	(i)	Fees, collective bargaining				
6		training, publications, and				
7		appeals	PR	A	145,600	145,600
8		(1) PROGRAM TOTALS				
	GENERAL PURPOSE REVENUE			1,266,300	1,369,200	
	PROGRAM REVENUE			145,600	145,600	
	OTHER			(145,600)	(145,600)	
	TOTAL-ALL SOURCES			1,411,900	1,514,800	
9		20.425 DEPARTMENT TOTALS				
	GENERAL PURPOSE REVENUE			1,266,300	1,369,200	
	PROGRAM REVENUE			145,600	145,600	
	OTHER			(145,600)	(145,600)	
	TOTAL-ALL SOURCES			1,411,900	1,514,800	
10	20.427 Labor and Industry Review Commission					
11	(1)	REVIEW COMMISSION				
12	(a)	General program operations,				
13		review commission	GPR	A	149,500	149,500

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	STATUTE, AGENCY AND PURPOSE	SOURCE	TYPE	2021-2022	2022-2023
1	(k) Unemployment administration	PR-S	C	1,773,900	1,773,900
2	(km) Equal rights; other moneys	PR-S	C	207,500	207,500
3	(m) Federal moneys	PR-F	C	-0-	-0-
4	(ra) Worker's compensation				
5	operations fund; worker's				
6	compensation activities	SEG	A	665,900	665,900
7		(1) PROGRAM TOTALS			
	GENERAL PURPOSE REVENUE			149,500	149,500
	PROGRAM REVENUE			1,981,400	1,981,400
	FEDERAL			(-0-)	(-0-)
	SERVICE			(1,981,400)	(1,981,400)
	SEGREGATED REVENUE			665,900	665,900
	OTHER			(665,900)	(665,900)
	TOTAL-ALL SOURCES			2,796,800	2,796,800
8		20.427 DEPARTMENT TOTALS			
	GENERAL PURPOSE REVENUE			149,500	149,500
	PROGRAM REVENUE			1,981,400	1,981,400
	FEDERAL			(-0-)	(-0-)
	SERVICE			(1,981,400)	(1,981,400)
	SEGREGATED REVENUE			665,900	665,900
	OTHER			(665,900)	(665,900)
	TOTAL-ALL SOURCES			2,796,800	2,796,800
9	20.432 Board on Aging and Long-Term Care				
10	(1) IDENTIFICATION OF THE NEEDS OF THE AGED AND DISABLED				
11	(a) General program operations	GPR	A	1,727,100	1,748,600
12	(i) Gifts and grants	PR	C	-0-	-0-
13	(k) Contracts with other state				
14	agencies	PR-S	C	1,561,900	1,573,900
15	(kb) Insurance and other information,				
16	counseling and assistance	PR-S	A	524,900	525,400

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	STATUTE, AGENCY AND PURPOSE	SOURCE	TYPE	2021-2022	2022-2023
1	20.440 Health and Educational Facilities Authority				
2	(1) CONSTRUCTION OF HEALTH AND EDUCATIONAL FACILITIES				
3	(a) General program operations	GPR	C	-0-	-0-
4	(1) PROGRAM TOTALS				
	GENERAL PURPOSE REVENUE			-0-	-0-
	TOTAL-ALL SOURCES			-0-	-0-
5	(2) RURAL HOSPITAL LOAN GUARANTEE				
6	(a) Rural assistance loan fund	GPR	C	-0-	-0-
7	(2) PROGRAM TOTALS				
	GENERAL PURPOSE REVENUE			-0-	-0-
	TOTAL-ALL SOURCES			-0-	-0-
8	20.440 DEPARTMENT TOTALS				
	GENERAL PURPOSE REVENUE			-0-	-0-
	TOTAL-ALL SOURCES			-0-	-0-
9	20.445 Workforce Development, Department of				
10	(1) WORKFORCE DEVELOPMENT				
11	(a) General program operations	GPR	A	10,240,000	9,323,300
12	(aa) Special death benefit	GPR	S	525,000	525,000
13	(am) Unemployment insurance;				
14	general administration	GPR	C	250,000	15,250,000
15	(ar) Unemployment insurance;				
16	information technology systems;				
17	general purpose revenue	GPR	C	79,486,000	-0-
18	(b) Workforce training; programs,				
19	grants	GPR	A	6,000,000	6,000,000

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	STATUTE, AGENCY AND PURPOSE	SOURCE	TYPE	2021-2022	2022-2023
1	(d) Reimbursement for tuition				
2	payments	GPR	A	1,478,500	1,478,500
3	(dg) Teacher development program				
4	grants	GPR	A	-0-	-0-
5	(dr) Apprenticeship programs	GPR	A	500,000	500,000
6	(e) Local youth apprenticeship				
7	grants	GPR	A	5,250,000	5,250,000
8	(f) Death and disability benefit				
9	payments; public insurrections	GPR	S	-0-	-0-
10	(fg) Employment transit assistance				
11	grants	GPR	A	464,800	464,800
12	(fm) Youth summer jobs program	GPR	A	422,400	422,400
13	(g) Gifts and grants	PR	C	-0-	-0-
14	(ga) Auxiliary services	PR	C	377,100	377,100
15	(gb) Local agreements	PR	C	264,500	264,500
16	(gc) Unemployment administration	PR	C	-0-	-0-
17	(gd) Unemployment interest and				
18	penalty payments	PR	C	1,916,200	1,916,200
19	(gg) Unemployment information				
20	technology systems; interest and				
21	penalties	PR	C	-0-	-0-
22	(gh) Unemployment information				
23	technology systems; assessments	PR	C	-0-	-0-

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	STATUTE, AGENCY AND PURPOSE	SOURCE	TYPE	2021-2022	2022-2023
1	(gk) Permit system for employment of				
2	minors; fees	PR	A	344,400	344,400
3	(gm) Unemployment insurance				
4	handbook	PR	C	-0-	-0-
5	(gr) Agricultural education and				
6	workforce development council,				
7	gifts and grants	PR	C	-0-	-0-
8	(h) Substance abuse prevention on				
9	public works and public utility				
10	projects	PR	C	58,100	77,500
11	(ka) Interagency and intra-agency				
12	agreements	PR-S	C	36,900,900	36,900,900
13	(kc) Administrative services	PR-S	A	37,464,300	37,464,300
14	(km) Nursing workforce survey and				
15	grants	PR-S	C	155,600	155,600
16	(m) Workforce investment and				
17	assistance; federal moneys	PR-F	C	67,965,300	67,620,900
18	(n) Employment assistance and				
19	unemployment insurance				
20	administration; federal moneys	PR-F	C	71,157,500	63,210,000
21	(na) Employment security buildings				
22	and equipment	PR-F	C	-0-	-0-
23	(nb) Unemployment administration;				
24	information technology systems;				
25	other federal moneys	PR-F	C	-0-	-0-

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	STATUTE, AGENCY AND PURPOSE	SOURCE	TYPE	2021-2022	2022-2023
1	(nc) Unemployment administration;				
2	information technology systems;				
3	other moneys	PR-F	C	-0-	-0-
4	(nd) Unemployment administration;				
5	apprenticeship and other				
6	employment services	PR-F	A	523,000	523,000
7	(ne) Unemployment insurance				
8	administration and bank service				
9	costs	PR-F	C	-0-	-0-
10	(o) Equal rights; federal moneys	PR-F	C	1,011,700	1,011,700
11	(p) Worker's compensation; federal				
12	moneys	PR-F	C	-0-	-0-
13	(pz) Indirect cost reimbursements	PR-F	C	25,300	25,300
14	(ra) Worker's compensation				
15	operations fund; administration	SEG	A	13,498,200	13,498,200
16	(rb) Worker's compensation				
17	operations fund; contracts	SEG	C	93,900	93,900
18	(rp) Worker's compensation				
19	operations fund; uninsured				
20	employers program;				
21	administration	SEG	A	1,199,400	1,199,400
22	(rr) Worker's compensation				
23	operations fund; special				
24	assessment insurer				
25	reimbursements	SEG	A	5,000,000	5,000,000

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	STATUTE, AGENCY AND PURPOSE	SOURCE	TYPE	2021-2022	2022-2023
1	(s) Self-insured employers liability				
2	fund	SEG	C	-0-	-0-
3	(sm) Uninsured employers fund;				
4	payments	SEG	C	5,500,000	5,500,000
5	(t) Work injury supplemental benefit				
6	fund	SEG	C	5,360,000	5,360,000
7	(u) Unemployment interest payments				
8	and transfers	SEG	C	-0-	-0-
9	(v) Unemployment program integrity	SEG	C	515,000	515,000
10		(1) PROGRAM TOTALS			
	GENERAL PURPOSE REVENUE			137,448,300	59,101,900
	PROGRAM REVENUE			218,163,900	209,891,400
	FEDERAL			(140,682,800)	(132,390,900)
	OTHER			(2,960,300)	(2,979,700)
	SERVICE			(74,520,800)	(74,520,800)
	SEGREGATED REVENUE			31,166,500	31,166,500
	OTHER			(31,166,500)	(31,166,500)
	TOTAL-ALL SOURCES			386,778,700	300,159,800
11	(5) VOCATIONAL REHABILITATION SERVICES				
12	(a) General program operations;				
13	purchased services for clients	GPR	C	18,433,100	19,329,600
14	(b) Project SEARCH	GPR	C	250,000	250,000
15	(gg) Contractual services	PR	C	-0-	-0-
16	(gp) Contractual aids	PR	C	-0-	-0-
17	(h) Enterprises and services for blind				
18	and visually impaired	PR	C	149,100	149,100
19	(he) Supervised business enterprise	PR	C	125,000	125,000

ASSEMBLY BILL 68**SECTION 408**

1 federal funds received under par. (md). Notwithstanding ss. 20.001 (3) (a) and 20.002
2 (1), the department may transfer funds between fiscal years under this paragraph.
3 Notwithstanding ss. 20.001 (3) and 20.002 (1), the department of health services
4 shall credit to this appropriation account funds for the purposes of this appropriation
5 that the department transfers from the appropriation account under s. 20.435 (5)
6 (bc). All funds allocated by the department but not encumbered by December 31 of
7 each year lapse to the general fund on the next January 1 unless transferred to the
8 next calendar year by the joint committee on finance.

9 **SECTION 409.** 20.437 (2) (eg) of the statutes is created to read:

10 20.437 (2) (eg) *Internet assistance program.* The amounts in the schedule for
11 the Internet assistance program under s. 49.168.

12 **SECTION 410.** 20.437 (3) (f) of the statutes is created to read:

13 20.437 (3) (f) *Diversity, equity, and inclusion grants.* The amounts in the
14 schedule for awarding grants under s. 48.47 (30).

15 **SECTION 411.** 20.437 (3) (r) of the statutes is created to read:

16 20.437 (3) (r) *Diversity, equity, and inclusion grants; community reinvestment*
17 *fund supplement.* From the community reinvestment fund, the amounts in the
18 schedule for diversity, equity, and inclusion grants under s. 48.47 (20).

19 **SECTION 412.** 20.445 (1) (aL) of the statutes is repealed.

20 **SECTION 413.** 20.445 (1) (am) of the statutes is created to read:

21 20.445 (1) (am) *Unemployment insurance; general administration.* As a
22 continuing appropriation, the amounts in the schedule for administration of ch. 108.

23 **SECTION 414.** 20.445 (1) (ar) of the statutes is created to read:

ASSEMBLY BILL 68**SECTION 414**

1 20.445 (1) (ar) *Unemployment insurance; information technology systems;*
2 *general purpose revenue.* As a continuing appropriation, the amounts in the schedule
3 for the purpose specified in s. 108.19 (1e) (d).

4 **SECTION 415.** 20.445 (1) (b) of the statutes is amended to read:

5 20.445 (1) (b) *Workforce training; programs, grants, and services,—and*
6 *contracts.* The amounts in the schedule for the workforce training programs, grants,
7 and services under s. 106.27 (1), (1g), (1j), (1r), and (1u) ~~and for the costs associated~~
8 ~~with contracts entered into under s. 47.07.~~

9 **SECTION 416.** 20.445 (1) (bm) of the statutes is amended to read:

10 20.445 (1) (bm) *Workforce training; administration.* Biennially, the amounts
11 in the schedule for the administration of the local youth apprenticeship grant
12 program under s. 106.13 (3m), the youth summer jobs program under s. 106.18, the
13 employment transit assistance grant program under s. 106.26, the workforce
14 training ~~program~~ programs under s. 106.27, the teacher development program
15 grants under s. 106.272, the career and technical education incentive grant program
16 under s. 106.273, the technical education equipment grant program under s.
17 106.275, and the apprentice programs under subch. I of ch. 106.

18 **SECTION 417.** 20.445 (1) (bp) of the statutes is created to read:

19 20.445 (1) (bp) *Green jobs training program; grants.* As a continuing
20 appropriation, the amounts in the schedule for green jobs training program grants
21 under s. 106.27 (1p).

22 **SECTION 418.** 20.445 (1) (bq) of the statutes is created to read:

23 20.445 (1) (bq) *Pandemic workforce training program; grants.* As a continuing
24 appropriation, the amounts in the schedule for pandemic workforce training
25 program grants under s. 106.27 (1q).

ASSEMBLY BILL 68**SECTION 419**

1 **SECTION 419.** 20.445 (1) (bv) of the statutes is created to read:

2 20.445 (1) (bv) *Health care recruitment initiative.* Biennially, the amounts in
3 the schedule for the health care recruitment initiative under s. 106.28.

4 **SECTION 420.** 20.445 (1) (bw) of the statutes is created to read:

5 20.445 (1) (bw) *Pandemic recovery grants.* As a continuing appropriation, the
6 amounts in the schedule for pandemic recovery grants under s. 106.29.

7 **SECTION 421.** 20.445 (1) (cm) of the statutes is created to read:

8 20.445 (1) (cm) *Worker connection program.* As a continuing appropriation, the
9 amounts in the schedule for worker connection program administration, grants, and
10 contracts under s. 106.274.

11 **SECTION 422.** 20.445 (1) (d) of the statutes is amended to read:

12 20.445 (1) (d) *Reimbursement for tuition payments.* The amounts in the
13 schedule to reimburse school districts, charter schools under s. 118.40 (2r) or (2x),
14 and private schools for payments under s. 118.55 (5) (e) 2.

15 **SECTION 423.** 20.445 (1) (e) of the statutes is amended to read:

16 20.445 (1) (e) *Local youth apprenticeship grants.* The As a continuing
17 appropriation, the amounts in the schedule for local youth apprenticeship grants
18 under s. 106.13 (3m).

19 **SECTION 424.** 20.445 (1) (h) of the statutes is created to read:

20 20.445 (1) (h) *Substance abuse prevention on public works and public utility*
21 *projects.* All moneys received from fees collected under s. 103.503 (2m) (b) for costs
22 associated with the administration and enforcement of s. 103.503.

23 **SECTION 425.** 20.445 (1) (n) of the statutes is amended to read:

24 20.445 (1) (n) *Employment assistance and unemployment insurance*
25 *administration; federal moneys.* All federal moneys received, as authorized by the

ASSEMBLY BILL 68**SECTION 425**

1 governor under s. 16.54, for the administration of employment assistance and
2 unemployment insurance programs of the department, for the performance of the
3 department's other functions under subch. I of ch. 106 and ch. 108, and to pay the
4 compensation and expenses of appeal tribunals and of employment councils
5 appointed under s. 108.14, to be used for such purposes, except as provided in s.
6 108.161 (3e), and, from the moneys received by this state under section 903 (d) of the
7 federal Social Security Act, as amended, to transfer to the appropriation account
8 under par. (nb) an amount determined by the treasurer of the unemployment reserve
9 fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the
10 amounts in the schedule under par. (nb), to transfer to the appropriation account
11 under par. (nd) an amount determined by the treasurer of the unemployment reserve
12 fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the
13 amounts in the schedule under par. (nd), to transfer to the appropriation account
14 under par. (ne) an amount not exceeding the lesser of the amount specified in s.
15 108.161 (4) (d) or the sum of the amounts in the schedule under par. (ne) and the
16 amount determined by the treasurer of the unemployment reserve fund that is
17 required to pay for the cost of banking services incurred by the unemployment
18 reserve fund, and, from any other federal moneys received by this state for the
19 purpose specified in s. 108.19 (1e) (d), to transfer to the appropriation account under
20 par. (nc) an amount determined by the treasurer of the unemployment reserve fund,
21 and to transfer to the appropriation account under s. 20.427 (1) (k) an amount
22 determined by the treasurer of the unemployment reserve fund.

23 **SECTION 426.** 20.445 (1) (nb) (title) of the statutes is amended to read:

24 20.445 (1) (nb) (title) *Unemployment administration; information technology*
25 *systems; other federal moneys.*

ASSEMBLY BILL 68**SECTION 427**

1 **SECTION 427.** 20.445 (1) (nc) of the statutes is created to read:

2 20.445 (1) (nc) *Unemployment administration; information technology*
3 *systems; federal moneys.* All moneys transferred from par. (n), for the purpose
4 specified in s. 108.19 (1e) (d).

5 **SECTION 428.** 20.445 (1) (ra) of the statutes is amended to read:

6 20.445 (1) (ra) *Worker's compensation operations fund; administration.* From
7 the worker's compensation operations fund, the amounts in the schedule for the
8 administration of the worker's compensation program by the department, for
9 assistance to the department of justice in investigating and prosecuting fraudulent
10 activity related to worker's compensation, for transfer to the uninsured employers
11 fund under s. 102.81 (1) (c), and for transfer to the appropriation accounts under par.
12 (rp) and s. 20.427 (1) (ra). All moneys received under ss. 102.28 (2) (b) and 102.75
13 (1) shall be credited to this appropriation account. From this appropriation, an
14 amount not to exceed \$5,000 may be expended each fiscal year for payment of
15 expenses for travel and research by the council on worker's compensation, an amount
16 not to exceed \$500,000 may be transferred in each fiscal year to the uninsured
17 employers fund under s. 102.81 (1) (c), the amount in the schedule under par. (rp)
18 shall be transferred to the appropriation account under par. (rp), and the amount in
19 the schedule under s. 20.427 (1) (ra) shall be transferred to the appropriation account
20 under s. 20.427 (1) (ra).

21 **SECTION 429.** 20.445 (1) (rr) of the statutes is created to read:

22 20.445 (1) (rr) *Worker's Compensation operations fund; special assessment*
23 *insurer reimbursements.* From the worker's compensation operations fund, the
24 amounts in the schedule for providing reimbursement to insurance carriers paying

ASSEMBLY BILL 68**SECTION 1731**

1 subsection and sub. (3). The department shall serve a certified copy of the examiner's
2 findings and order on the respondent and complainant. The order shall have the
3 same force as other orders of the department and shall be enforced as provided in this
4 subsection, except that the enforcement of the order is automatically stayed upon the
5 filing of a petition for review with the commission. If the examiner finds that the
6 respondent has not engaged in an act prohibited under sub. (3) as alleged in the
7 complaint, the department shall serve a certified copy of the examiner's findings on
8 the complainant and the respondent together with an order dismissing the
9 complaint. If the complaint is dismissed, costs in an amount not to exceed \$100 plus
10 actual disbursements for the attendance of witnesses may be assessed against the
11 department in the discretion of the department.

12 **SECTION 1732.** 108.02 (18r) of the statutes is created to read:

13 108.02 (18r) MARIJUANA. "Marijuana" has the meaning given in s. 111.32 (11m).

14 **SECTION 1733.** 108.02 (26m) of the statutes is repealed.

15 **SECTION 1734.** 108.04 (2) (a) (intro.) of the statutes is amended to read:

16 108.04 (2) (a) (intro.) Except as provided in ~~pars. par.~~ par. (b) to (bd), sub. (16) (am)
17 and (b), and s. 108.062 (10) and (10m) and as otherwise expressly provided, a
18 claimant is eligible for benefits as to any given week only if all of the following apply:

19 **SECTION 1735.** 108.04 (2) (a) 3. of the statutes is repealed and recreated to read:

20 108.04 (2) (a) 3. The claimant conducts a reasonable search for suitable work
21 during that week and provides verification of that search to the department. The
22 search for suitable work must include at least 4 actions per week that constitute a
23 reasonable search as prescribed by rule of the department. In addition, the
24 department may, by rule, require a claimant to take more than 4 reasonable work
25 search actions in any week. The department shall require a uniform number of

ASSEMBLY BILL 68**SECTION 1735**

1 reasonable work search actions for similar types of claimants. This subdivision does
2 not apply to a claimant if the department determines that the claimant is currently
3 laid off from employment with an employer but there is a reasonable expectation of
4 reemployment of the individual by that employer. In determining whether the
5 claimant has a reasonable expectation of reemployment by an employer, the
6 department shall request the employer to verify the claimant's employment status
7 and shall consider all of the following:

8 a. The history of layoffs and reemployments by the employer.

9 b. Any information that the employer furnished to the claimant or the
10 department concerning the claimant's anticipated reemployment date.

11 c. Whether the claimant has recall rights with the employer under the terms
12 of any applicable collective bargaining agreement.

13 **SECTION 1736.** 108.04 (2) (b) of the statutes is repealed and recreated to read:

14 108.04 (2) (b) The department may, by rule, establish waivers from the
15 registration for work requirement under par. (a) 2. and the work search requirement
16 under par. (a) 3.

17 **SECTION 1737.** 108.04 (2) (bb) of the statutes is repealed.

18 **SECTION 1738.** 108.04 (2) (bd) of the statutes is repealed.

19 **SECTION 1739.** 108.04 (2) (bm) of the statutes is amended to read:

20 108.04 (2) (bm) A claimant is ineligible to receive benefits for any week for
21 which there is a determination that the claimant failed to comply with the
22 registration for work and work search requirements under par. (a) 2. or 3. or failed
23 to provide verification to the department that the claimant complied with those
24 requirements, unless the department has waived those requirements under par. (b),

ASSEMBLY BILL 68**SECTION 1739**

1 ~~(bb), or (bd)~~ or s. 108.062 (10m). If the department has paid benefits to a claimant
2 for any such week, the department may recover the overpayment under s. 108.22.

3 **SECTION 1740.** 108.04 (2) (h) of the statutes is amended to read:

4 108.04 (2) (h) A claimant shall, when the claimant first files a claim for benefits
5 under this chapter and during each subsequent week the claimant files for benefits
6 under this chapter, inform the department whether he or she is receiving social
7 security disability insurance payments, as defined in ~~sub. (12) (f) 2m~~ s. 108.05 (7m)
8 (b). If the claimant is receiving social security disability insurance payments, the
9 claimant shall, in the manner prescribed by the department, report to the
10 department the amount of the social security disability insurance payments.

11 **SECTION 1741.** 108.04 (3) of the statutes is repealed.

12 **SECTION 1742.** 108.04 (5g) of the statutes is repealed.

13 **SECTION 1743.** 108.04 (5m) of the statutes is created to read:

14 108.04 (5m) DISCHARGE FOR USE OF MARIJUANA. (a) Notwithstanding sub. (5),
15 “misconduct,” for purposes of sub. (5), does not include the employee’s use of
16 marijuana off the employer’s premises during nonworking hours or a violation of the
17 employer’s policy concerning such use, unless termination of the employee because
18 of that use is permitted under s. 111.35.

19 (b) Notwithstanding sub. (5g), “substantial fault,” for purposes of sub. (5g), does
20 not include the employee’s use of marijuana off the employer’s premises during
21 nonworking hours or a violation of the employer’s policy concerning such use, unless
22 termination of the employee because of that use is permitted under s. 111.35.

23 **SECTION 1744.** 108.04 (7) (e) of the statutes is amended to read:

24 108.04 (7) (e) Paragraph (a) does not apply if the department determines that
25 the employee accepted work that the employee could have failed to accept under sub.

ASSEMBLY BILL 68**SECTION 1744**

1 (8) and terminated the work on the same grounds and within the first ~~30 calendar~~
2 ~~days~~ 10 weeks after starting the work, or that the employee accepted work that the
3 employee could have refused under sub. (9) and terminated the work within the first
4 ~~30 calendar days~~ 10 weeks after starting the work. For purposes of this paragraph,
5 an employee has the same grounds for voluntarily terminating work if the employee
6 could have failed to accept the work under sub. (8) (d) to (em) when it was offered,
7 regardless of the reason articulated by the employee for the termination.

8 **SECTION 1745.** 108.04 (7) (t) 1. of the statutes is repealed.

9 **SECTION 1746.** 108.04 (7) (t) 2. of the statutes is amended to read:

10 108.04 (7) (t) 2. The employee's spouse was required by ~~the U.S. armed forces~~
11 his or her employing unit to relocate to a place to which it is impractical for the
12 employee to commute.

13 **SECTION 1747.** 108.04 (8) (a) of the statutes is amended to read:

14 108.04 (8) (a) ~~Except as provided in par. (b), if~~ If an employee fails, without good
15 cause, to accept suitable work when offered, the employee is ineligible to receive
16 benefits until the employee earns wages after the week in which the failure occurs
17 equal to at least 6 times the employee's weekly benefit rate under s. 108.05 (1) in
18 employment or other work covered by the unemployment insurance law of any state
19 or the federal government. For purposes of requalification, the employee's weekly
20 benefit rate shall be that rate which would have been paid had the failure not
21 occurred. This paragraph does not preclude an employee from establishing a benefit
22 year during a period in which the employee is ineligible to receive benefits under this
23 paragraph if the employee qualifies to establish a benefit year under s. 108.06 (2) (a).
24 ~~Except as provided in par. (b), the~~ The department shall charge to the fund's
25 balancing account any benefits otherwise chargeable to the account of an employer

ASSEMBLY BILL 68**SECTION 1747**

1 that is subject to the contribution requirements under ss. 108.17 and 108.18
2 whenever an employee of that employer fails, without good cause, to accept suitable
3 work offered by that employer.

4 **SECTION 1748.** 108.04 (8) (b) of the statutes is repealed.

5 **SECTION 1749.** 108.04 (8) (d) (intro.) of the statutes is amended to read:

6 108.04 (8) (d) (intro.) With respect to the first ~~6~~ 10 weeks after the employee
7 became unemployed, "suitable work," for purposes of par. (a), means work to which
8 all of the following apply:

9 **SECTION 1750.** 108.04 (8) (dm) of the statutes is amended to read:

10 108.04 (8) (dm) With respect to the ~~7th~~ 11th week after the employee became
11 unemployed and any week thereafter, "suitable work," for purposes of par. (a), means
12 any work that the employee is capable of performing, regardless of whether the
13 employee has any relevant experience or training, that pays wages that are above
14 the lowest quartile of wages for similar work in the labor market area in which the
15 work is located, as determined by the department.

16 **SECTION 1751.** 108.04 (11) (bm) of the statutes is amended to read:

17 108.04 (11) (bm) The department shall apply any ineligibility under par. (be)
18 against benefits and weeks of eligibility for which the claimant would otherwise be
19 eligible after the week of concealment and within 6 years after the date of an initial
20 determination issued under s. 108.09 finding that a concealment occurred. ~~The~~
21 ~~claimant shall not receive waiting period credit under s. 108.04 (3) for the period of~~
22 ~~ineligibility applied under par. (be).~~ If no benefit rate applies to the week for which
23 the claim is made, the department shall use the claimant's benefit rate for the
24 claimant's next benefit year beginning after the week of concealment to determine
25 the amount of the benefit reduction.

ASSEMBLY BILL 68**SECTION 1752**

1 **SECTION 1752.** 108.04 (12) (f) 1m. and 2m. of the statutes are renumbered
2 108.05 (7m) (a) and (b) and amended to read:

3 108.05 **(7m)** (a) The intent of the legislature in enacting this ~~paragraph~~
4 subsection is to prevent the payment of duplicative government benefits for the
5 replacement of lost earnings or income, regardless of an individual's ability to work.

6 (b) In this ~~paragraph~~ subsection, "social security disability insurance payment"
7 means a payment of social security disability insurance benefits under 42 USC ch.
8 7 subch. II.

9 **SECTION 1753.** 108.04 (12) (f) 3. of the statutes is repealed.

10 **SECTION 1754.** 108.04 (12) (f) 4. of the statutes is renumbered 108.05 (7m) (e).

11 **SECTION 1755.** 108.05 (1) (am) of the statutes is created to read:

12 108.05 **(1)** (am) On or before June 30 of each year, the department shall
13 calculate, from quarterly wage reports under s. 108.205 for the prior calendar year,
14 the state's annual average weekly wage in employment covered under this chapter.

15 **SECTION 1756.** 108.05 (1) (cm) of the statutes is created to read:

16 108.05 **(1)** (cm) The department shall set the maximum weekly benefit amount
17 as follows:

18 1. For benefits paid for a week of total unemployment that commences on or
19 after January 5, 2014, but before January 2, 2022, \$370.

20 2. For benefits paid for a week of total unemployment that commences on or
21 after January 2, 2022, but before January 1, 2023, \$409.

22 3. For benefits paid for a week of total unemployment that commences on or
23 after January 1, 2023, but before January 7, 2024, \$409 or 50 percent of the state's
24 annual average weekly wage, rounded up to the nearest dollar, whichever is greater.

ASSEMBLY BILL 68**SECTION 1756**

1 4. For benefits paid for a week of total unemployment that commences on or
2 after January 7, 2024, the department shall set an annual maximum weekly benefit
3 amount that takes effect on the 1st Sunday in January of each calendar year and that
4 is equal to the greater of the following:

5 a. Seventy-five percent of the state's annual average weekly wage, rounded up
6 to the nearest dollar.

7 b. The maximum benefit amount in effect in the previous calendar year.

8 **SECTION 1757.** 108.05 (1) (r) of the statutes is renumbered 108.05 (1) (r) (intro.)
9 and amended to read:

10 108.05 (1) (r) (intro.) Except as provided in s. 108.062 (6) (a), each eligible
11 employee shall be paid benefits for each week of total unemployment that
12 commences on or after January 5, 2014, at the a weekly benefit rate specified in this
13 paragraph. ~~Unless sub. (1m) applies, the weekly benefit rate shall equal to 4 percent~~
14 of the employee's base period wages that were paid during that quarter of the
15 employee's base period in which the employee was paid the highest total wages,
16 rounded down to the nearest whole dollar, ~~except that, if that amount as provided~~
17 under sub. (1m), and unless one of the following applies:

18 1. If the employee's weekly benefit rate calculated under this paragraph is less
19 than \$54, no benefits are payable to the employee and, if that amount,

20 2. If the employee's weekly benefit rate is more than \$370 the maximum weekly
21 benefit amount under par. (cm), the employee's weekly benefit rate shall be \$370 and
22 except that, if the maximum weekly benefit amount under par. (cm).

23 3. If the employee's benefits are exhausted during any week under s. 108.06 (1),
24 the employee shall be paid the remaining amount of benefits payable to the employee
25 under s. 108.06 (1).

ASSEMBLY BILL 68**SECTION 1757**

1 (s) The department shall publish on its Internet site a weekly benefit rate
2 schedule of quarterly wages and the corresponding weekly benefit rates as
3 calculated in accordance with this ~~paragraph~~ subsection.

4 **SECTION 1758.** 108.05 (3) (a) of the statutes is amended to read:

5 108.05 **(3)** (a) Except as provided in pars. (c); and (d) ~~and (dm)~~ and s. 108.062,
6 if an eligible employee earns wages in a given week, the first \$30 of the wages shall
7 be disregarded and the employee's applicable weekly benefit payment shall be
8 reduced by 67 percent of the remaining amount, except that no such employee is
9 eligible for benefits if the employee's benefit payment would be less than \$5 for any
10 week. For purposes of this paragraph, "wages" includes any salary reduction
11 amounts earned that are not wages and that are deducted from the salary of a
12 claimant by an employer pursuant to a salary reduction agreement under a cafeteria
13 plan, within the meaning of 26 USC 125, and any amount that a claimant would have
14 earned in available work under s. 108.04 (1) (a) which is treated as wages under s.
15 108.04 (1) (bm), but excludes any amount that a claimant earns for services
16 performed as a volunteer fire fighter, volunteer emergency medical services
17 practitioner, or volunteer emergency medical responder. In applying this paragraph,
18 the department shall disregard discrepancies of less than \$2 between wages reported
19 by employees and employers.

20 **SECTION 1759.** 108.05 (3) (dm) of the statutes is repealed.

21 **SECTION 1760.** 108.05 (7m) (title), (c) and (d) of the statutes are created to read:

22 108.05 **(7m)** (title) SOCIAL SECURITY DISABILITY INSURANCE PAYMENTS.

23 (c) If a monthly social security disability insurance payment is issued to a
24 claimant, the department shall reduce benefits otherwise payable to the claimant for
25 a given week in accordance with par. (d). This subsection does not apply to a lump

ASSEMBLY BILL 68**SECTION 1760**

1 sum social security disability insurance payment in the nature of a retroactive
2 payment or back pay.

3 (d) The department shall allocate a monthly social security disability insurance
4 payment by allocating to each week the fraction of the payment attributable to that
5 week.

6 **SECTION 1761.** 108.05 (9) of the statutes is amended to read:

7 108.05 (9) ROUNDING OF BENEFIT AMOUNTS. Notwithstanding sub. (1), benefits
8 payable for a week of unemployment as a result of applying sub. (1m), (3) ~~or~~, (7), or
9 (7m) or s. 108.04 (11) or (12), 108.06 (1), 108.13 (4) or (5) or 108.135 shall be rounded
10 down to the next lowest dollar.

11 **SECTION 1762.** 108.05 (10) (intro.) of the statutes is amended to read:

12 108.05 (10) DEDUCTIONS FROM BENEFIT PAYMENTS. (intro.) After calculating the
13 benefit payment due to be paid for a week under subs. (1) to ~~(7)~~ (7m), the department
14 shall make deductions from that payment to the extent that the payment is sufficient
15 to make the following payments in the following order:

16 **SECTION 1763.** 108.133 of the statutes is repealed.

17 **SECTION 1764.** 108.14 (2e) of the statutes is amended to read:

18 108.14 (2e) The department ~~may~~ shall provide a secure means of electronic
19 interchange between itself and employing units, claimants, and other persons that,
20 ~~upon request to and with prior approval by the department, may~~ shall be used for
21 departmental transmission or receipt of any document specified by the department
22 that is related to the administration of this chapter in lieu of any other means of
23 submission or receipt specified in this chapter. The secure means of electronic
24 interchange shall be used by employing units, claimants, and other persons unless
25 a person demonstrates good cause for not being able to use the secure means of

ASSEMBLY BILL 68**SECTION 1764**

1 electronic interchange. The department shall determine by rule what constitutes
2 good cause, for purposes of this subsection. Subject to s. 137.25 (2) and any rules
3 promulgated thereunder, the department may permit the use of the use of electronic
4 records and electronic signatures for any document specified by the department that
5 is related to the administration of this chapter. If a due date is established by statute
6 for the receipt of any document that is submitted electronically to the department
7 under this subsection, then that submission is timely only if the document is
8 submitted by midnight of the statutory due date.

9 **SECTION 1765.** 108.14 (8n) (e) of the statutes is amended to read:

10 108.14 (8n) (e) The department shall charge this state's share of any benefits
11 paid under this subsection to the account of each employer by which the employee
12 claiming benefits was employed in the applicable base period, in proportion to the
13 total amount of wages he or she earned from each employer in the base period, except
14 that if s. 108.04 (1) (f), (5), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m), or (8) (a) ~~or (b)~~,
15 or 108.07 (3), (3r), or (5) (am) 2., or 108.133 (3) (f) would have applied to employment
16 by such an employer who is subject to the contribution requirements of ss. 108.17 and
17 108.18, the department shall charge the share of benefits based on employment with
18 that employer to the fund's balancing account, or, if s. 108.04 (1) (f) or (5) or 108.07
19 (3) would have applied to an employer that is not subject to the contribution
20 requirements of ss. 108.17 and 108.18, the department shall charge the share of
21 benefits based on that employment in accordance with s. 108.07 (5) (am) 1. and 2.
22 The department shall also charge the fund's balancing account with any other state's
23 share of such benefits pending reimbursement by that state.

24 **SECTION 1766.** 108.14 (26m) of the statutes is created to read:

ASSEMBLY BILL 68**SECTION 1766**

1 108.14 **(26m)** (a) The department shall allocate all available federal funding
2 for the purpose specified in s. 108.19 (1e) (d) before allocating any general purpose
3 revenue for that purpose.

4 (b) If federal funding is received for the purpose specified in s. 108.19 (1e) (d)
5 prior to July 1, 2023, the secretary of administration may, to the extent permitted
6 under federal law, lapse from the appropriation under s. 20.445 (1) (nc) to the general
7 fund an amount not to exceed the amounts in the schedule under s. 20.445 (1) (ar)
8 or the amount of federal funding received, whichever is less. This paragraph does
9 not apply with respect to amounts received as administrative grants by the state
10 under 42 USC 502 or to amounts received by this state under section 903 (d) of the
11 federal Social Security Act, as amended, 42 USC 1103.

12 **SECTION 1767.** 108.141 (7) (a) of the statutes is amended to read:

13 108.141 **(7)** (a) The department shall charge the state's share of each week of
14 extended benefits to each employer's account in proportion to the employer's share
15 of the total wages of the employee receiving the benefits in the employee's base
16 period, except that if the employer is subject to the contribution requirements of ss.
17 108.17 and 108.18 the department shall charge the share of extended benefits to
18 which s. 108.04 (1) (f), (5), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m), or (8) (a) ~~or (b)~~,
19 or 108.07 (3), (3r), or (5) (am) 2., ~~or 108.133 (3) (f)~~ applies to the fund's balancing
20 account.

21 **SECTION 1768.** 108.16 (6m) (a) of the statutes is amended to read:

22 108.16 **(6m)** (a) The benefits thus chargeable under s. 108.04 (1) (f), (5), (5g),
23 (7) (h), (8) (a) ~~or (b)~~, (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) (am) 2. and (bm) 3.
24 a., (5m), and (6), ~~108.133 (3) (f)~~, 108.14 (8n) (e), 108.141, 108.151, or 108.152 or sub.
25 (6) (e) or (7) (a) and (b).

ASSEMBLY BILL 68**SECTION 1769**

1 **SECTION 1769.** 108.16 (6m) (a) of the statutes, as affected by 2021 Wisconsin
2 Act (this act), is amended to read:

3 108.16 **(6m)** (a) The benefits thus chargeable under s. 108.04 (1) (f), (5), ~~(5g)~~,
4 (7) (h), (8) (a), (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) (am) 2. and (bm) 3. a., (5m),
5 and (6), 108.14 (8n) (e), 108.141, 108.151, or 108.152 or sub. (6) (e) or (7) (a) and (b).

6 **SECTION 1770.** 108.17 (2) (b) of the statutes is amended to read:

7 108.17 **(2)** (b) The department ~~may~~ shall electronically provide a means
8 whereby an employer that files its employment and wage reports electronically may
9 determine the amount of contributions due for payment by the employer under s.
10 108.18 for each quarter. If an employer that is subject to a contribution requirement
11 files its employment and wage reports under s. 108.205 (1) electronically, in the
12 manner prescribed by the department for purposes of this paragraph, the
13 department may require the employer to determine electronically the amount of
14 contributions due for payment by the employer under s. 108.18 for each quarter. In
15 such case, the employer is excused from filing contribution reports under par. (a).
16 The employer shall pay the amount due for each quarter by the due date specified
17 in par. (a).

18 **SECTION 1771.** 108.17 (2b) of the statutes is amended to read:

19 108.17 **(2b)** The department shall prescribe a form and methodology for filing
20 contribution reports under sub. (2) electronically. Each employer of ~~25 or more~~
21 ~~employees, as determined under s. 108.22 (1) (ae)~~, that does not use an employer
22 agent to file its contribution reports under this section shall file its contribution
23 reports electronically in the manner and form prescribed by the department, unless
24 the employer demonstrates good cause for not being able to file contribution reports
25 electronically. The department shall determine by rule what constitutes good cause,

ASSEMBLY BILL 68**SECTION 1771**

1 for purposes of this subsection. Each employer that becomes subject to an electronic
2 reporting requirement under this subsection shall file its initial report under this
3 subsection for the quarter during which the employer becomes subject to the
4 reporting requirement. Once an employer becomes subject to a reporting
5 requirement under this subsection, it shall continue to file its reports under this
6 subsection unless that requirement is waived by the department.

7 **SECTION 1772.** 108.17 (7) (a) of the statutes is amended to read:

8 108.17 (7) (a) Each employer ~~whose net total contributions paid or payable~~
9 ~~under this section for any 12-month period ending on June 30 are at least \$10,000~~
10 shall pay all contributions under this section by means of electronic funds transfer
11 beginning with the next calendar year, unless the employer demonstrates good cause
12 for not being able to pay contributions by electronic funds transfer. The department
13 shall determine by rule what constitutes good cause, for purposes of this subsection.
14 Once an employer becomes subject to an electronic payment requirement under this
15 paragraph, the employer shall continue to make payment of all contributions by
16 means of electronic funds transfer unless that requirement is waived by the
17 department.

18 **SECTION 1773.** 108.19 (1s) (a) 5. of the statutes is repealed.

19 **SECTION 1774.** 108.205 (2) of the statutes is amended to read:

20 108.205 (2) Each employer of ~~25 or more employees, as determined under s.~~
21 ~~108.22 (1) (ae)~~, that does not use an employer agent to file its reports under this
22 section shall file the quarterly report under sub. (1) electronically in the manner and
23 form prescribed by the department, unless the employer demonstrates good cause for
24 not being able to file reports electronically. The department shall determine by rule
25 what constitutes good cause, for purposes of this subsection. An employer that

ASSEMBLY BILL 68**SECTION 1774**

1 becomes subject to an electronic reporting requirement under this subsection shall
2 file its initial report under this subsection for the quarter during which the employer
3 becomes subject to the reporting requirement. Once an employer becomes subject
4 to the reporting requirement under this subsection, the employer shall continue to
5 file its quarterly reports under this subsection unless that requirement is waived by
6 the department.

7 **SECTION 1775.** 108.221 (1) (a) of the statutes is renumbered 108.221 (1) (a)
8 (intro.) and amended to read:

9 108.221 (1) (a) (intro.) Any employer described in s. 108.18 (2) (c) or engaged
10 ~~in the painting or drywall finishing of buildings or other structures~~ who knowingly
11 and intentionally provides false information to the department for the purpose of
12 misclassifying or attempting to misclassify an individual who is an employee of the
13 employer as a nonemployee shall, for each incident, be assessed a penalty by the
14 department as follows:

15 1. For each act occurring before the date of the first determination of a violation
16 of this subsection, the employer shall be assessed a penalty in the amount of \$500
17 for each employee who is misclassified, but not to exceed \$7,500 per incident.

18 **SECTION 1776.** 108.221 (1) (a) 2. of the statutes is created to read:

19 108.221 (1) (a) 2. For each act occurring after the date of the first determination
20 of a violation of this subsection, the employer shall be assessed a penalty in the
21 amount of \$1,000 for each employee who is misclassified.

22 **SECTION 1777.** 108.221 (2) of the statutes is renumbered 108.221 (2) (intro.)
23 and amended to read:

ASSEMBLY BILL 68**SECTION 1777**

1 108.221 (2) (intro.) Any employer ~~described in s. 108.18 (2) (c) or engaged in the~~
2 ~~painting or drywall finishing of buildings or other structures~~ who, through coercion,
3 requires an individual to adopt the status of a nonemployee shall be assessed a
4 penalty by the department as follows:

5 (a) For each act occurring before the date of the first determination of a
6 violation of this subsection, the employer shall be assessed a penalty in the amount
7 of \$1,000 for each individual so coerced, ~~but not to exceed \$10,000 per calendar year.~~

8 **SECTION 1778.** 108.221 (2) (b) of the statutes is created to read:

9 108.221 (2) (b) For each act occurring after the date of the first determination
10 of a violation of this subsection, the employer shall be assessed a penalty in the
11 amount of \$2,000 for each individual so coerced.

12 **SECTION 1779.** 109.03 (1) (b) of the statutes is amended to read:

13 109.03 (1) (b) School district and private school employees who voluntarily
14 request payment over a 12-month period for personal services performed during the
15 school year, unless, ~~with respect to private school employees,~~ the employees are
16 covered under a valid collective bargaining agreement which precludes this method
17 of payment.

18 **SECTION 1780.** 109.09 (1) of the statutes is amended to read:

19 109.09 (1) The department shall investigate and attempt equitably to adjust
20 controversies between employers and employees ~~as to~~ regarding alleged wage
21 claims. The department may receive and investigate any wage claim that is filed
22 with the department, or received by the department under s. 109.10 (4), no later than
23 2 years after the date the wages are due. The department may, after receiving a wage
24 claim, investigate any wages due from the employer against whom the claim is filed
25 to any employee during the period commencing 2 years before the date the claim is

ASSEMBLY BILL 68**SECTION 9150****1 SECTION 9150. Nonstatutory provisions; Workforce Development.****2 (1) MINIMUM WAGE STUDY COMMITTEE.**

3 (a) The secretary of workforce development shall establish a minimum wage
4 study committee under s. 15.04 (1) (c). The committee shall consist of the following:

- 5** 1. Five members appointed by the governor.
- 6** 2. One member appointed by the speaker of the assembly.
- 7** 3. One member appointed by the minority leader of the assembly.
- 8** 4. One member appointed by the majority leader of the senate.
- 9** 5. One member appointed by the minority leader of the senate.

10 (b) The committee created under par. (a) shall study options to achieve a \$15
11 per hour minimum wage and other options to increase compensation for workers in
12 this state.

13 (c) No later than October 1, 2022, the committee created under par. (a) shall
14 submit to the governor and the appropriate standing committees of the legislature
15 in the manner provided under s. 13.172 (3) a report that includes recommendations
16 regarding the options for achieving a \$15 per hour minimum wage and other means
17 of increasing worker compensation in this state.

18 (d) The minimum wage study committee terminates upon submission of the
19 report under par. (c).

20 (2) UNEMPLOYMENT INSURANCE; ELECTRONIC INTERCHANGE. The department of
21 workforce development shall submit a notice to the legislative reference bureau for
22 publication in the Wisconsin administrative register indicating the date upon which
23 the department is able to implement the treatment of s. 108.14 (2e).

24 (3) SUBSTANCE ABUSE PREVENTION ON PUBLIC WORKS AND PUBLIC UTILITY PROJECTS.
25 Using the procedure under s. 227.24, the department of workforce development may

ASSEMBLY BILL 68**SECTION 9241**

1 **SECTION 9241. Fiscal changes; Supreme Court.**

2 **SECTION 9242. Fiscal changes; Technical College System.**

3 **SECTION 9243. Fiscal changes; Tourism.**

4 **SECTION 9244. Fiscal changes; Transportation.**

5 **SECTION 9245. Fiscal changes; Treasurer.**

6 **SECTION 9246. Fiscal changes; University of Wisconsin Hospitals and**
7 **Clinics Authority; Medical College of Wisconsin.**

8 **SECTION 9247. Fiscal changes; University of Wisconsin System.**

9 **SECTION 9248. Fiscal changes; Veterans Affairs.**

10 **SECTION 9249. Fiscal changes; Wisconsin Economic Development**
11 **Corporation.**

12 **SECTION 9250. Fiscal changes; Workforce Development.**

13 (1) WORK INJURY SUPPLEMENTAL BENEFITS FUND. On the effective date of this
14 subsection, there is transferred from the appropriation account under s. 20.445 (1)
15 (t) to the appropriation account under s. 20.445 (1) (rr) the unencumbered balance
16 of the amount collected under s. 102.75 (1g).

17 (2) UNEMPLOYMENT INSURANCE; FEDERAL FUNDING. If federal funding is received
18 for the purpose specified in s. 20.445 (1) (am) prior to July 1, 2022, the secretary of
19 administration may, to the extent permitted under federal law, lapse from the
20 appropriation under s. 20.445 (1) (n) to the general fund an amount not to exceed the
21 amounts in the schedule under s. 20.445 (1) (am) or the amount of federal funding
22 received, whichever is less. This subsection does not apply with respect to amounts
23 received as administrative grants by the state under 42 USC 502.

24 **SECTION 9251. Fiscal changes; Other.**

25 **SECTION 9301. Initial applicability; Administration.**

ASSEMBLY BILL 68**SECTION 9350****1 SECTION 9350. Initial applicability; Workforce Development.**

2 (1) UNEMPLOYMENT INSURANCE; DRUG TESTING. The treatment of ss. 108.04 (8) (b)
3 and 108.133 (4) (a) first applies to initial claims for benefits filed on the effective date
4 of this subsection.

5 (2) UNEMPLOYMENT INSURANCE; QUILTS DUE TO RELOCATIONS. The treatment of s.
6 108.04 (7) (t) 1. and 2. first applies to determinations issued under s. 108.09 on the
7 effective date of this subsection.

8 (3) UNEMPLOYMENT INSURANCE; WORK SEARCH AND REGISTRATION WAIVERS. The
9 treatment of s. 108.04 (2) (a) (intro.) and 3., (b), (bb), (bd), and (bm) first applies to
10 initial claims for benefits filed on the effective date of this subsection.

11 (4) UNEMPLOYMENT INSURANCE; DELETION OF WAITING PERIOD. The treatment of
12 ss. 108.02 (26m) and 108.04 (3) and (11) (bm) first applies to benefit years beginning
13 on the effective date of this subsection.

14 (5) UNEMPLOYMENT INSURANCE; SUBSTANTIAL FAULT. The treatment of ss. 108.04
15 (5g) and 108.16 (6m) (a) (by SECTION 1769) first applies with respect to
16 determinations issued under s. 108.09 on the effective date of this subsection.

17 (6) UNEMPLOYMENT INSURANCE; WAGE DISQUALIFICATION THRESHOLD. The
18 treatment of s. 108.05 (3) (a) and (dm) first applies to weeks of unemployment
19 beginning on the effective date of this subsection.

20 (7) PREVAILING WAGE. The appropriate provisions regarding prevailing wage
21 first apply, with respect to a project of public works that is subject to bidding, to a
22 project for which the request for bids is issued on the effective date of this subsection
23 and, with respect to a project of public works that is not subject to bidding, to a project
24 the contract for which is entered into on the effective date of this subsection.

ASSEMBLY BILL 68**SECTION 9350**

1 (8) DISCRIMINATION. The treatment of ss. 66.0903 (10) (d), 111.322 (2m) (c), and
2 229.8275 first applies to acts of discrimination that occur on the effective date of this
3 subsection.

4 (9) EMPLOYMENT DISCRIMINATION; CONSIDERATION OF CONVICTION RECORD. The
5 treatment of s. 111.335 (3) (ag) first applies to an application for employment
6 submitted to an employer on the effective date of this subsection.

7 (10) EMPLOYMENT DISCRIMINATION DAMAGES. The treatment of ss. 111.39 (4) (d)
8 and (5) (b) and (d), 111.397, and 814.04 (intro.) first applies to acts of employment
9 discrimination, unfair honesty testing, or unfair genetic testing committed on the
10 effective date of this subsection.

11 (11) UNEMPLOYMENT INSURANCE; QUILTS FOR CERTAIN WORK. The treatment of s.
12 108.04 (7) (e) first applies to determinations issued under s. 108.09 on the effective
13 date of this subsection.

14 (12) UNEMPLOYMENT INSURANCE; SUITABLE WORK. The treatment of s. 108.04 (8)
15 (d) (intro.) and (dm) first applies to determinations issued under s. 108.09 on the
16 effective date of this subsection.

17 (13) FAMILY AND MEDICAL LEAVE. The treatment of s. 103.10 (12) (b) first applies
18 to a violation that occurs, or that an employee should reasonably have known
19 occurred, on the effective date of this subsection.

20 **SECTION 9351. Initial applicability; Other.**

21 (1) EXPUNGEMENT OF CRIMINAL RECORDS. The treatment of s. 973.015 (1m) (a) 3.
22 c. and d. and 4., (b), and (c), the renumbering and amendment of s. 973.015 (1m) (a)
23 1., and the creation of s. 973.015 (1m) (a) 1. a. and b. first apply to any conviction for
24 which sentencing has occurred but for which the record has not been ordered
25 expunged on the effective date of this subsection.

ASSEMBLY BILL 68**SECTION 9446**

1 **SECTION 9446. Effective dates; University of Wisconsin Hospitals and**
2 **Clinics Authority; Medical College of Wisconsin.**

3 **SECTION 9447. Effective dates; University of Wisconsin System.**

4 **SECTION 9448. Effective dates; Veterans Affairs.**

5 **SECTION 9449. Effective dates; Wisconsin Economic Development**
6 **Corporation.**

7 **SECTION 9450. Effective dates; Workforce Development.**

8 (1) UNEMPLOYMENT INSURANCE; DRUG TESTING. The treatment of ss. 108.04 (8) (a)
9 and (b), 108.133, 108.14 (8n) (e), 108.141 (7) (a), 108.16 (6m) (a) (by SECTION 1768),
10 and 108.19 (1s) (a) 5. and SECTION 9350 (1) of this act take effect on July 4, 2021, or
11 the first Sunday after publication, whichever is later.

12 (2) UNEMPLOYMENT INSURANCE; QUILTS DUE TO RELOCATIONS. The treatment of s.
13 108.04 (7) (t) 1. and 2. and SECTION 9350 (2) of this act take effect on the first Sunday
14 of the 2nd month beginning after publication.

15 (3) UNEMPLOYMENT INSURANCE; WORK SEARCH AND REGISTRATION WAIVERS. The
16 treatment of s. 108.04 (2) (a) (intro.) and 3., (b), (bb), (bd), and (bm) and SECTION 9350
17 (3) of this act take effect on the Sunday after publication.

18 (4) UNEMPLOYMENT INSURANCE; DELETION OF WAITING PERIOD. The treatment of
19 ss. 108.02 (26m) and 108.04 (3) and (11) (bm) and SECTION 9350 (4) of this act take
20 effect on the Sunday after publication.

21 (5) UNEMPLOYMENT INSURANCE AND WORKER'S COMPENSATION; SUBSTANTIAL FAULT.
22 The treatment of ss. 102.43 (9) (e), 108.04 (5g), and 108.16 (6m) (a) (by SECTION 1769)
23 and SECTION 9350 (5) of this act take effect on January 2, 2022.

ASSEMBLY BILL 68**SECTION 9450**

1 (6) UNEMPLOYMENT INSURANCE; WAGE DISQUALIFICATION THRESHOLD. The
2 treatment of s. 108.05 (3) (a) and (dm) and SECTION 9350 (6) of this act take effect on
3 the first Sunday that follows the 180th day after publication.

4 (7) EMPLOYMENT DISCRIMINATION; CONSIDERATION OF CONVICTION RECORD. The
5 treatment of s. 111.335 (3) (ag) and SECTION 9350 (9) of this act take effect on the first
6 day of the 6th month beginning after publication.

7 (8) UNEMPLOYMENT INSURANCE; ELECTRONIC TRANSACTIONS. The treatment of ss.
8 108.17 (2) (b), (2b), and (7) (a) and 108.205 (2) takes effect on the first Sunday after
9 publication.

10 (9) UNEMPLOYMENT INSURANCE; ELECTRONIC INTERCHANGE. The treatment of s.
11 108.14 (2e) takes effect on the date specified in the notice published in the Wisconsin
12 administrative register under SECTION 9150 (2) of this act.

13 (10) SUBSTANCE ABUSE PREVENTION ON PUBLIC WORKS AND PUBLIC UTILITY PROJECTS.
14 The treatment of s. 103.503 (title), (2m), and (6) takes effect on the 90th day after
15 publication.

16 (11) UNEMPLOYMENT INSURANCE; QUIT EXCEPTION. The treatment of s. 108.04 (7)
17 (e) and SECTION 9350 (2) of this act take effect on the first Sunday of the 2nd month
18 beginning after publication.

19 (12) UNEMPLOYMENT INSURANCE; SUITABLE WORK. The treatment of s. 108.04 (8)
20 (d) (intro.) and (dm) and SECTION 9350 (12) of this act take effect on the first Sunday
21 of the 2nd month beginning after publication.

SECTION 9451. Effective dates; Other.

22
23 (1) EXTENDED CLOSING HOURS DURING SPECIAL EVENTS. The treatment of ss. 125.32
24 (3) (a), (c), and (e) and 125.68 (4) (c) 1., 4., and 7. takes effect on January 1, 2022.

25 (END)



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-2486/1
MED:cdc

2021 SENATE BILL 224

March 16, 2021 - Introduced by Senators SMITH, BEWLEY, JOHNSON, CARPENTER, ERPENBACH, AGARD, L. TAYLOR, ROYS, WIRCH, RINGHAND, LARSON and PFAFF, cosponsored by Representatives B. MEYERS, DOYLE, SHANKLAND, VINING, S. RODRIGUEZ, MILROY, SINICKI, ANDRACA, CABRERA, BALDEH, SPREITZER, CONLEY, EMERSON, SUBECK, HEBL, HINTZ, HESSELBEIN, SNODGRASS, OHNSTAD, ANDERSON, DRAKE, VRUWINK, BILLINGS, GOYKE, BOWEN, STUBBS, MCGUIRE, NEUBAUER, HONG, POPE, ORTIZ-VELEZ, BROSTOFF and CONSIDINE. Referred to Committee on Labor and Regulatory Reform.

1 **AN ACT** *to amend* 108.04 (3) (b) of the statutes; **relating to:** the unemployment
2 insurance waiting period.

Analysis by the Legislative Reference Bureau

Currently, a claimant must generally wait one week after becoming eligible to receive unemployment insurance benefits before the claimant may receive benefits for a week of unemployment, but the application of the one-week waiting period is temporarily suspended for benefit years that began after March 12, 2020, and before March 14, 2021. This bill extends the end date for suspending the one-week waiting period to September 5, 2021.

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

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

3 **SECTION 1.** 108.04 (3) (b) of the statutes, as affected by 2021 Wisconsin Act 4,
4 is amended to read:

5 108.04 (3) (b) Paragraph (a) does not apply with respect to benefit years that
6 begin after March 12, 2020, and before ~~March 14~~ September 5, 2021. The

SENATE BILL 224

SECTION 1

1 department shall seek the maximum amount of federal reimbursement for benefits
2 that are, during the time period specified in this paragraph, payable for the first
3 week of a claimant's benefit year as a result of the application of this paragraph.

4 (END)



Summary of the UI Provisions in the [American Rescue Plan Act of 2021](#)

(H.R. 1319 signed by President Biden on March 11, 2021)

Secs. 2305 and 9663 – Affordable Care Act Amendments for Individuals Receiving UI in 2021

- Provides Affordable Care Act (ACA) eligibility for one year for individuals receiving unemployment insurance in 2021 with premium subsidies as a tax credit equivalent to a person earning up to 133% federal poverty level. Under section 9663, the Secretary of the Treasury will determine required documentation of receipt of “unemployment compensation” for the ACA tax credit subsidy.

Sec. 9011 - Pandemic Unemployment Assistance (PUA)

- Extends PUA through September 6, 2021.
- Increases the maximum duration of PUA benefits from 50 to 79 weeks.
- Adds hold harmless provision for PUA payments made to individuals that become eligible for PEUC by the amendments in this Act on the date of enactment.
- Adds effective date: “No amount shall be payable by virtue of such amendments with respect to any week of unemployment ending on or before March 14, 2021.”

Sec. 9012 - Emergency Unemployment Relief for Governmental Entities and Nonprofit Organizations

- Extends federal funding for reimbursers until September 6, 2021.
- Increases the reimbursement rate from 50% to 75% for the amounts of compensation paid for weeks of unemployment beginning after March 31, 2021, and ending on or before September 6, 2021.

Sec. 9013 - Federal Pandemic Unemployment Compensation (FPUC)

- Extends the FPUC benefit of \$300 per week until September 6, 2021.
- **This extension includes Mixed Earner Unemployment Compensation (MEUC).**

Sec. 9014 – Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week.

- Extends full federal funding of the first week of compensable regular unemployment for States with no waiting week until September 6, 2021.

- Repeals the partial reimbursement section enacted in the Continued Assistance for Unemployed Workers Act of 2020.
- Reinstates temporary full federal funding of the first week of compensable regular unemployment for States with no waiting week.
- Allows States to “reenter the agreement with the Secretary and retroactively pay for the first week of regular compensation without a waiting week consistent with State law (including a waiver of State law) and receive full reimbursement for weeks of unemployment that ended after December 31, 2020.”

Sec. 9015 - Emergency State Staffing Flexibility

- Extends emergency state staffing flexibility to September 6, 2021.
- Includes new language: “If a State modifies its unemployment compensation law and policies, subject to the succeeding sentence, with respect to personnel standards on a merit basis 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. Such modifications shall only apply through September 6, 2021, and shall be limited to engaging of temporary staff, rehiring of retirees or former employees on a non-competitive basis, and other temporary actions to quickly process applications and claims.”

Sec. 9016 - Pandemic Emergency Unemployment Compensation (PEUC)

- Extends PEUC through September 6, 2021.
- Increases the maximum duration of PEUC benefits from 24 to 53 weeks.
- Extends the special rule that provides a state with the option to have eligibility period for EB begin after exhaustion of PEUC, assuming there is an “on” for EB period, for weeks of unemployment following the date of enactment until September 6, 2021.
- Adds effective date: “No amount shall be payable by virtue of such amendments with respect to any week of unemployment ending on or before March 14, 2021.”

Sec. 9017/9018 - Temporary Financing of Short-Time Compensation Payments in States

- Extends temporary financing of short-time compensation payments to September 6, 2021.

Sec. 9021 – Temporary Assistance for States with Advances.

- Extends temporary waiver of interest for states with trust fund loans to September 6, 2021.

Sec. 9022 – Full Federal Funding of Extended Unemployment Compensation.

- Extends full federal funding of Extended Benefits to September 6, 2021.

Sec. 9031 – \$8 Million in Funding for USDOL ETA UI Administration.

- Appropriates an additional \$8 million to USDOL ETA for fiscal year 2021 for “necessary expenses to carry out Federal activities relating to the administration of unemployment compensation programs.”

Sec. 9032 – \$2 Billion in Funding for Fraud Prevention, Equitable Access, and Timely Payment to Eligible Workers.

- Appropriates \$2 billion to the Department of Labor for fiscal year 2021 “to detect and prevent fraud, promote equitable access, and ensure the timely payment of benefits with respect to unemployment programs....”
 - Funds may be used for:
 - Federal administrative costs;
 - “Systemwide infrastructure investment and development”;
 - To make grants to States or territories for UI programs including “the establishment of procedures or the building of infrastructure to verify or validate identity, implement Federal guidance regarding fraud detection and prevention, and accelerate claims processing or process claims backlogs due to the pandemic.”
 - Secretary of Labor may require that states receiving grants use specific “program integrity tools” and conduct user testing on new systems developed by USDOL.

Sec. 9042 – Suspension of Tax on Portion of Unemployment Compensation

- Creates a \$10,200 federal tax exclusion for unemployment compensation income for tax year 2020 for households with incomes under \$150,000.

Sec. 9901 – Coronavirus State and Local Fiscal Recovery Funds

- New assistance of \$350 billion for state and local recovery.

March 1, 2021

The Honorable Stephen L. Nass
Senate Co-Chair, Joint Committee for the
Review of Administrative Rules
Room 10 South, State Capitol
Madison, WI 53707

The Honorable Adam Neylon
Assembly Co-Chair, Joint Committee for the
Review of Administrative Rules
Room 204 North, State Capitol
Madison, WI 53708

RE: Request for Extension of Ch. DWD 120 EmR2034: Providing notification of the availability of unemployment insurance to employees at the time of separation from employment

Dear Senator Nass and Representative Neylon:

By this letter, the Department of Workforce Development (Department) requests the Joint Committee for Review of Administrative Rules (JCRAR) to extend emergency rule EmR2034, which is scheduled to expire on March 31, 2021. Pursuant to s. 227.24 (2), Stats., the Department asks JCRAR to extend the emergency rule for 60 days, until May 30, 2021. This is the Department's first request for an extension.

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).

The Department promulgated the emergency rule to implement the EUISAA and corresponding U.S. Department of Labor (DOL) guidance (Unemployment Insurance Program Letter (UIPL) No. 13-20, dated March 22, 2020, and UIPL No. 13-20, Change 1, dated May 4, 2020) to ensure that claimants have timely notification of the availability of unemployment insurance. The emergency rule comports to the model language for employer notification to employees at the time of separation of employment provided by DOL in its guidance. (UIPL 13-20, Attach. III). Under the emergency rule, employers must provide individual notice to employees by letter, email, text, flyer, or other method. An employer's failure to do so could result in an employee having additional time to file an initial claim for benefits, but only if the employer did not provide a posted notice of the availability of unemployment insurance under the Department's permanent rule, Wis. Admin. Code s. DWD 120.01.

The Department does not seek to amend the permanent rule to provide individual notice to employees of their rights at separation. However, the pandemic continues and providing individual notice, rather than a posting in

a central location at the place of employment, will reduce the risk of transmission of the virus. Because the Department is not promulgating a permanent rule, the requirement under s. 227.24 (2) (b) 2., Stats., does not apply to this extension request.

Please note that the Unemployment Insurance Advisory Council voted to approve the Department's promulgation of the emergency rule at its meeting on August 20, 2020. In addition, the Department received no comments opposing the emergency rule at the public hearing held on November 10, 2020, although one commenter thought the notification requirements should be expanded.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Pechacek". The signature is fluid and cursive, with the first name "Amy" being more prominent than the last name "Pechacek".

Amy Pechacek
Secretary-designee

PUBLIC HEARING

Joint Committee for Review of Administrative Rules

The committee will hold a public hearing on the following items at the time specified below:

Thursday, March 18, 2021
2:00 PM
411 South

EmR 2034 [60-Day Extension Request]

Relating to: Providing notification of the availability of unemployment insurance to employees at the time of separation from employment (DWD).

EmR 2036 [60-Day Extension Request]

Relating to: Education requirements for licensure and continuing education requirements (Funeral Directors Examining Board).

EmR 2040 [60-Day Extension Request]

Relating to: Requirements for adult long-term care (DHS).

EmR 2041 [60-Day Extension Request]

Relating to: Medicaid benefits management (DHS).

Due to compliance with social distancing guidelines, seating in Room 411 South will be limited. Additional public access will be provided in the State Capitol Rotunda. At the discretion of WisconsinEye, the meeting may also be streamed by WisconsinEye at wiseye.org/live/.

Senator Stephen Nass
Senate Chair

Representative Adam Neylon
Assembly Chair

EXECUTIVE SESSION

Joint Committee for Review of Administrative Rules

The committee will hold an executive session on the following items at the time specified below:

Thursday, March 18, 2021
2:01 PM
411 South

The executive session will begin upon completion of the public hearing.

EmR 2032 [2nd 60-Day Extension Request]

Relating to: financial responsibility for engineering controls for contaminated sediment remediation, and insurance and financial responsibility for Voluntary Party Liability Exemption projects with contaminated sediments; Chapters NR 700, 725, 726, 727, 750, 754, 756, 758, Wis Adm. Code (DNR).

EmR 2034 [60-Day Extension Request]

Relating to: Providing notification of the availability of unemployment insurance to employees at the time of separation from employment (DWD).

EmR 2036 [60-Day Extension Request]

Relating to: Education requirements for licensure and continuing education requirements (Funeral Directors Examining Board).

EmR 2040 [60-Day Extension Request]

Relating to: Requirements for adult long-term care (DHS).

EmR 2041 [60-Day Extension Request]

Relating to: Medicaid benefits management (DHS).

Due to compliance with social distancing guidelines, seating in Room 411 South will be limited. Additional public access will be provided in the State Capitol Rotunda. At the discretion of WisconsinEye, the meeting may also be streamed by WisconsinEye at wiseye.org/live/.

Senator Stephen Nass
Senate Chair

Representative Adam Neylon
Assembly Chair

**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); *to amend* DWD 127.01 (1) and *to create* DWD 127.01 (3m), 128.001 (2) (ag) and (aw), 128.01 (7), 128.02, and 128.025, relating to work search waivers, 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 February 1, 2021.

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 law and guidance related to administering unemployment insurance benefit claims during the pandemic period the SARS-CoV-2 virus pandemic, which causes the coronavirus disease 2019 (in this Scope Statement, the virus and disease will be referred to as “COVID-19”). In particular, to address COVID-19, the Families First Coronavirus Response Act (FFCRA) (P.L. 116-127), Division D, Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) did the following: 1) section 4102(a) required states to modify or suspend work search requirements to receive Allotment II of the emergency administration grant and 2) section 4102(b) relaxed federal conformity requirements for work search, including by specifically allowing waiver of work search. Additionally, federal guidance from the U.S. Department of Labor (DOL) advised states to exercise flexibility in administering the unemployment compensation program to address the impacts of COVID-19. *See, e.g.*, Unemployment Insurance Program Letter (UIPL) No. 10-20, dated March 12, 2020).

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 Emergency Order # 7 in response to COVID-19 to assist individuals affected by the disease by temporarily easing eligibility requirements for unemployment benefits.

On May 9, 2020, the Department promulgated EmR2006 to supplant Emergency Order #7. The Joint Committee for Review of Administrative Rules (JCRAR) has extended EmR2006 for the maximum period allowed under s. 227.24 (2) (a), Stats. As a result, EmR2006 expires on February 2, 2021. However, as evidenced by Executive Order # 104 (dated January 19, 2021),

the COVID-19 pandemic continues to threaten public peace, health, safety, and welfare. The Department never contemplated promulgating these rule changes into permanent rules. A permanent rule is not appropriate or allowed under federal law, as this rule will no longer be necessary after the threats to public peace, health, safety, and welfare caused by the COVID-19 pandemic have abated.

This emergency rule will allow the Department to respond to the spread of COVID-19 by waiving work searches for potentially thousands of claimants. For the week ending January 2, 2021, the Department received 25,005 weekly claims for federal Pandemic Unemployment Assistance, 31,936 weekly claims for federal Pandemic Emergency Unemployment Compensation, and 117,123 claims for regular state unemployment insurance. All of those claimants would be required to conduct four work searches each week unless a waiver applies.

Additionally, the rule will ease eligibility for those claimants who would work but for COVID-related reasons, such as being quarantined or subject to any stay-at-home orders.

Statutes Interpreted

Section 108.04, Stats.

Statutory Authority

Sections 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.

Work search actions 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...” Federal law specifically allows waiver of work search to address COVID-19. EUISAA, P.L. 116-127, section 4102.

Related Statutes or Rules

This rule succeeds EmR2006, which is effective for claims filed through the week ending February 6, 2020, and will ease unemployment eligibility requirements during the COVID-19 pandemic. EmR2006 effectively waives work search due to the existence of the public health emergency by providing that a declared public health emergency constitutes the required four work search actions each week. This rule accomplishes the same result by temporarily waiving the requirement to complete four work search actions for each weekly claim.

Plain Language Analysis

This rule temporarily waives the requirement for claimants to complete 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.

The Department will repeal this emergency rule if it determines that the rule is no longer necessary to respond to the threat of COVID-19.

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.

The emergency rule implements federal law regarding the requirements for work search. Under EUISAA, section 4102(a), the state was required to ease requirements to receive unemployment insurance, including waiving work search requirements, to address the impact of COVID-19 as a condition of receiving the state's share of about \$9.457 million of the \$500 million of federal funding to administer the states' unemployment insurance programs. Thus, the emergency rule, and its predecessors Emergency Order # 7 and EmR2006, demonstrate the steps that the state '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).

EUISAA also specifically allows states to waive work search provisions to respond to COVID-19 without violating federal conformity requirements, which otherwise require work search requirements in a state's unemployment laws: "Notwithstanding any other law, if a State modifies its unemployment compensation law and policies with respect to work search . . . 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." P.L. 116-127, s. 4102(b).

Further, the Department proposes to amend ch. DWD 128 to provide for eligibility provisions related to the availability for work and work available requirements for claimants who are quarantined or otherwise affected by COVID-19.

In administering the unemployment compensation program, federal conformity requirements generally require state law to mandate that 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. However, to address the

pandemic, the DOL advised states that “federal [unemployment compensation] framework gives states significant flexibility to determine standards for . . .availability to work . . . in the context of COVID-19.” UIPL10-20 (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 EmR2006, other 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

2019 Wisconsin Act 185 provided charging relief for employers for claims that are related to the public health emergency, but that relief ended for claims payable on or after December 27, 2020. Absent subsequent legislative action to provide further recharging relief under state law, employers may be impacted by this emergency rule.

Under the Coronavirus Aid, Relief and Economic Security (CARES) Act, P.L. 116-136, section 2103, for employers subject to reimbursement financing, 50% of the benefits were to be charged to the federal government for claims between March 15, 2020 through December 26, 2020. That provision was extended for claims through March 14, 2020 by the Consolidated Appropriations Act, 2021, P.L. 116-133, Division N, Title II, Subtitle A, the Continued Assistance for Unemployed Workers Act of 2020. Reimbursement employers, therefore, continued to have

partial relief from full charging for unemployment insurance benefits through the week ending March 13, 2021.

Employers, including small businesses, may be charged for claims that 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 otherwise waived). Likewise, claimants deemed to meet able to work and available to work requirements for COVID-related reasons might have been denied absent the rule. 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 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.

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

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.

1 **SECTION 1.** DWD 127.01 (1) is amended to read:

2 **DWD 127.01 (1)** ~~A~~ Except as provided in sub. (3m), a claimant shall be eligible for
3 unemployment benefits for any given week when the department finds that the claimant has
4 completed at least 4 actions to search for suitable work within that week. Upon request of the
5 department, a claimant shall provide verification of conducting at least 4 work search actions that
6 are reasonably designed to secure work. Registration for work under ch. DWD 126 does not
7 establish that the claimant is making a reasonable search for suitable work. It is essential that the
8 claimant personally and diligently search for suitable work. The reasonableness of a search for
9 work will, in part, depend on the employment opportunities in the claimant's labor market area.
10 A work search which may be appropriate in a labor market area with limited opportunities may
11 be totally unacceptable in an area with greater opportunities. Unreasonable limitations by a
12 claimant as to salary, hours, or conditions of work indicate that a claimant is not making a
13 reasonable search for suitable work. The department expects claimants to conduct themselves as
14 would a prudent person who is out of work and seeking work.

15 **SECTION 2.** DWD 127.01 (3m) is created to read:

16 **DWD 127.01 (3m)** The department shall waive work search requirements under sub. (1)
17 for all claimants to respond to the spread of COVID-19, as defined in s. 128.001 (2) (ag). The
18 waiver shall apply to each week during which this rule is in effect for any part of a week.

19 **SECTION 3.** DWD 128.001 (2) (a) is renumbered DWD 128.001 (2) (ar).

20 **SECTION 4.** DWD 128.001 (2) (ag) is created to read:

21 **DWD 128.001 (2) (ag)** "COVID-19" means the SARS-CoV-2 virus and any related
22 disease.

23 **SECTION 5.** DWD 128.001 (2) (aw) is created to read:

1 **DWD 128.001 (2)** (aw) "Public health emergency" means any week or part thereof
2 during a public health emergency declared by Executive Order # 72 on March 12, 2020, under s.
3 323.10, Stats., and any extension in response to the SARS-CoV-2 virus, including by the
4 department of health services under ch. 252, Stats., or during a federally declared emergency in
5 response to the SARS-CoV-2 virus, or during a period in which the state has been federally
6 declared to be a major disaster due to the SARS-CoV-2 virus.

7 **SECTION 6.** DWD 128.01 (7) is created to read:

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

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

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

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

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

22 **SECTION 7.** DWD 128.02 is created to read:

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

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

5 (2) There is no work available for employees during a public health emergency.

6 **SECTION 8.** DWD 128.025 is created to read:

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

13 **SECTION 9. INITIAL APPLICABILITY.** This rule first applies to claims filed on or after
14 February 2, 2021.

15 **SECTION 10. EFFECTIVE DATE.** This rule shall take effect on February 2, 2021, or upon
16 publication in the official state newspaper as provided in s. 227.24 (1) (c), whichever occurs
17 later.

Dated this 2nd day of February, 2021.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

By:

Amy Pechacek, Secretary-designee

**State of Wisconsin
Department of Workforce Development**

NOTICE OF PUBLIC HEARING

**Chapters DWD 127 and 128
COVID-19 Unemployment Insurance Claims
Emergency Rule [EmR2106](#)**

The Wisconsin Department of Workforce Development (DWD) announces that it will hold a public hearing on emergency rule EmR2106 relating to work search waivers, availability for work, and work available for people filing claims with the unemployment insurance program during the COVID-19 pandemic.

Hearing Information

Date: March 24, 2021
Time: 10:00 am – 11:00 am
Location: Webex meeting at the following link:

<https://dwdwi.webex.com/dwdwi/onstage/g.php?MTID=ea9876326d727403158c6cfdd413dcd7>

Meeting number: 145 138 5822
Password: DWD1

The hearing can also be accessed with the following telephone numbers and access code:

+1-855-282-6330 US TOLL FREE
+1-415-655-0003 US TOLL
Access code: 145 138 5822

Accessibility

If you have special needs or circumstances regarding communication or accessibility at the hearing, please contact Mark Kunkel, DWD Rules and Records Coordinator, at (608) 267-7713 or markd.kunkel@dwd.wisconsin.gov no later than 5:00 pm, March 22, 2021. Accommodations or language interpretation will be made available on request to the extent possible.

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions.

Written comments may be submitted by email to DWDAdminRules@dwd.wisconsin.gov or through DWD's website: <https://dwd.wisconsin.gov/dwd/admin-rules/>. Written comments must

be received on or before March 24, 2021, to be included in the record of rulemaking proceedings.

The analysis and text of the emergency rule may be accessed at the following link:

https://docs.legis.wisconsin.gov/code/emergency_rules/all/emr2106

Agency Contact Person

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

Agency Small Business Regulatory Coordinator

Jennifer Wakerhauser, Deputy Legal Counsel
Department of Workforce Development
Telephone: (608) 266-2140
E-Mail: JenniferL.Wakerhauser@dwd.wisconsin.gov

**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 February 23, 2021.

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 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 February 4, 2021, the Governor issued Executive Order 105, declaring another state of emergency and public health emergency. On March 13, 2020, the President declared a national emergency concerning the COVID-19 pandemic. On April 4, 2020, the President declared a major disaster under the federal Stafford Act in Wisconsin due to 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 WI 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 and the federal Continued Assistance Act of 2020. Due to the Department's antiquated computer systems, it will take many months to complete the recharging of benefits from employer accounts. Until the recharging is complete, interest will continue to accrue on reimbursable employer accounts if employers do not pay their unemployment reimbursements timely. The Department previously promulgated emergency rule EmR2011, which waived interest for reimbursable employers. The Joint Committee for Review of Administrative Rules has extended EmR2011 for the maximum period allowed under s. 227.24 (2) (a), Stats. As a result, that rule expires on March 1, 2021. The Department still has not completed the recharging work because it has been required to program new federal unemployment benefit programs that paid additional benefits to unemployed Wisconsinites.

Because of the pandemic-related economic devastation, employers subject to reimbursement financing may be unable to pay their reimbursements for unemployment claims in full. Under new state and federal laws that provide for the recharging of benefits, those employers may not actually owe the reimbursements. The requirement to immediately pay their reimbursements could further jeopardize the viability of employers subject to reimbursement financing. A waiver

of interest for reimbursable employers is therefore necessary. The Department never contemplated promulgating the waiver as a permanent rule. A permanent rule is not appropriate, as the waiver will no longer be necessary after the threats to public peace, health, safety, and welfare caused by the COVID-19 pandemic have abated.

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.

Emergency rule EmR2011, which expires March 1, 2021, waives interest for reimbursable employers due to the COVID-19 pandemic.

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 March 1, 2021 for reimbursable employers until the Act 185 recharging is finished.

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 federal 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 law is effective for state unemployment insurance benefits paid for the period of March 15, 2020 through December 26, 2020. The charging relief for Wisconsin employers under the CARES Act and the Continued Assistance Act is effective for the period March 15, 2020 through March 13, 2021.

Businesses that do not receive charging relief 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

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.

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 on or after March 1, 2021 for
4 delinquent reimbursements due in lieu of contributions if the department has not completed the
5 charging of benefits under the requirements of s. 108.07 (5) (bm), Stats. for all reimbursable
6 employers, as defined in s. 108.155 (1) (b), Stats.
7 **SECTION 2. EFFECTIVE DATE.** This rule shall take effect on March 1, 2021 or upon
8 publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats., whichever is
9 later.
10

Dated this 24th day of February, 2021.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

By:

Amy Pechacek, Secretary-Designee

**State of Wisconsin
Department of Workforce Development**

NOTICE OF PUBLIC HEARING

**Chapter DWD 113
Waiving interest for employers subject to reimbursement financing
Emergency Rule [EmR2108](#)**

The Wisconsin Department of Workforce Development (DWD) announces that it will hold a public hearing on emergency rule EmR2108 relating to waiving interest in limited circumstances for employers subject to reimbursement financing when reimbursements are delinquent due to COVID-19.

Hearing Information

Date: March 24, 2021
Time: 11:00 am – 12:00 pm
Location: Webex meeting at the following link:

<https://dwdwi.webex.com/dwdwi/onstage/g.php?MTID=ea667f3942ca0cab558854636a9a531da>

Meeting number: 145 754 7010
Password: DWD1

The hearing can also be accessed with the following telephone numbers and access code:

+1-855-282-6330 US TOLL FREE
+1-415-655-0003 US TOLL
Access code: 145 138 5822

Accessibility

If you have special needs or circumstances regarding communication or accessibility at the hearing, please contact Mark Kunkel, DWD Rules and Records Coordinator, at (608) 267-7713 or markd.kunkel@dwd.wisconsin.gov no later than 5:00 pm, March 22, 2021. Accommodations or language interpretation will be made available on request to the extent possible.

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions.

Written comments may be submitted by email to DWDAdminRules@dwd.wisconsin.gov or through DWD's website: <https://dwd.wisconsin.gov/dwd/admin-rules/>. Written comments must

be received on or before March 24, 2021, to be included in the record of rulemaking proceedings.

The analysis and text of the emergency rule may be accessed at the following link:

https://docs.legis.wisconsin.gov/code/emergency_rules/all/emr2108

Agency Contact Person

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

Agency Small Business Regulatory Coordinator

Jennifer Wakerhauser, Deputy Legal Counsel
Department of Workforce Development
Telephone: (608) 266-2140
E-Mail: JenniferL.Wakerhauser@dwd.wisconsin.gov

D21-01
Creation of Administrative Fund

Date: March 18, 2021
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).

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Creation of Administrative Fund

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, based on the 2019 UIAC Agreed Bill.

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.

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Creation of Administrative Fund

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Prepared by Technical Services Section

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.

D21-02
Appropriations Revisions and Technical Corrections

Date: March 18, 2021
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, on the following pages. These changes are the same as the Department proposed in the 2019-2020 Council session.

¹ Wis. Stat. § 108.20.

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Appropriations Revisions and Technical Corrections

Changes in LRB-3683/P1:

Section	Change	Reason
1, 66	Specifies the appropriation for assessments under s. 108.19(1).	Clarifies appropriation language if the assessment were ever assessed.
2	Amends the “employer interest and penalty” appropriation in s. 20.445(1)(gd) to repeal references to repealed laws and to update cross-references.	For clarification of statutes.
2, 4, 5, 6, 7, 12, 13, 15, 16, 17, 18, 22, 23, 24, 25, 29, 30, 31, 33, 34, 37, 38, 41, 49, 50, 51, 52, 53, 54, 55, 57, 58, 61, 70, 79, 82, 86	Amends references to federal laws in ch. 108 to the specific federal statute.	For clarification and ease of checking cross-references. Corrects some outdated and incorrect references to federal laws.
3	Repeal reference to 1997 WI Act 39 from s. 20.445(1)(gh).	Delete a reference to a temporary provision that is no longer in effect.
8-11, 46, 62, 63, 69-75	Restructure the statutes regarding the unemployment interest payment fund, which relates to the special assessments for interest.	To ensure that the statutes are properly organized based on current drafting conventions and to better organize these sections.
14	Amend definition of “employer’s account.”	Clarifies statute by incorporating cross-reference to s. 108.16(2)(a).
19	Repeal the exclusion from gross income for amounts received under qualified group legal services plans in s. 108.02(26)(c)9.	Corresponding federal exclusion in 26 USC § 120 has been repealed.
20	Repeal the exclusion from gross income for amounts received under the federal Medicare Catastrophic Coverage Act in 108.02(26)(c)14..	Corresponding federal Act has been repealed.

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21	Move s. 108.04(7)(h) to s. 108.04(7)(u).	Moves statute related to charging benefits so that it appears after the quit exceptions.
26-27, 32, 39-40	Amend various statutes related to charging of benefits related to substantial fault.	Updates statutes regarding charging of benefits related to substantial fault to ensure proper charging.
28	Repeals “in this state” from s. 108.10.	Clarifies that the procedures for appeals of tax matters apply to all employing units, not just those in Wisconsin.
28, 36, 87, 88	Adds cross-reference to s. 108.095.	These changes should have been made when s. 108.095 was created.
33-34	Amend s. 108.14(a) to (d).	Modernize language related to federal conformity requirement.
35	Re-number s. 108.14(18).	Move the provision to be near the related statute.
42, 43, 44, 45, 48	Add “fund’s” before “balancing account” in various statutes.	To be consistent with the rest of ch. 108.
47	Amend s. 108.16(6m).	Correct cross-references.
56	Amend and consolidate sections of 108.161.	For clarification.
64-68, 76-77	Reorganization of statutes related to assessments.	For clarification and simplification.
78	Repeal s. 108.19(3).	Repeal outdated section.
80-81	Creates s. 108.195	Better organization of the various funds.
83	Amend s. 108.22(1m).	To include amounts due by Indian Tribes. This reference should have been added when s. 108.22(1m) was created.
84	Amend s. 108.22(8e).	Add reference to the balancing account for consistency.
85	Amend s. 108.223(2)(b).	Improve style of statute.

Changes in LRB-3684/P1:

Section	Change	Reason
1 & 12	Create an appropriation for LIRC to receive transcript and copying fees.	Originally requested by LIRC in the 2015 State Budget process. Provides an appropriation for receiving fees currently collected by LIRC.
2	Clarifies location for deposit of assessment for program administration.	Department may assess employers an assessment to ensure funding for the UI program. This clarifies which appropriation would handle the funds.

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3	Amendment to the appropriation that primarily receives employer interest and penalties to receive additional sources of funds.	Consolidates certain appropriations and clarifies language.
4	Repeals the appropriation in s. 20.445(1)(gg).	Repeals an appropriation that is no longer used, related to technology assessments.
5	Repeals the appropriation in s. 20.445(1)(gm).	Repeals an appropriation related to the employer handbook because those funds are redirected to the (gd) appropriation (employer interest and penalties).
6 & 31	Repeals SWIB authority to manage the unemployment administration fund.	The unemployment administration fund no longer exists, so this should have been repealed when the fund ceased to exist.
7 & 31	Repeal “administrative account.”	The “administrative account” replaced the unemployment administrative fund. State moneys are supposed to be handled by appropriations and funds, not accounts. This removes the references to the account in favor of citation to the specific appropriation for the moneys.
8, 9, 10, 11, 12, 13, 14, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32	Repeals references to the “administrative account” and replaces those references with the specific appropriation in s. 20.445(1).	This change ensures that the unemployment appropriations are drafted consistent with current State budget practices and removes ambiguity regarding the appropriate appropriation applicable to certain moneys.
15, 17, 18	Repeals and amends references regarding costs of printing certain materials.	Consolidates language regarding printing forms and handbooks. Replaces references to the “administrative account” with a specific appropriation for consistency. <i>See</i> Section 5.
30	Amends and moves statute regarding use of contributions for administrative purposes.	If federal law is changed to permit this purpose, the Department prefers the proposed language in Section 30. This statutory language has apparently not been updated since 1943.
33	Transfers funds to the appropriation in s. 20.445(1)(gd).	It is necessary to transfer any remaining funds in these appropriations, which are being repealed. <i>See</i> Sections 4 and 5.

2. Proposed Statutory Changes

See attached LRB drafts.

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3. Effects of Proposed Change

- a. **Policy:** The proposed change will clarify the appropriations statutes related to the unemployment insurance program and correct typos and cross-references in the statutes.
- 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.

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Appropriations Revisions and Technical Corrections
FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Prepared by Technical Services Section

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.

D21-03
Reimbursable Employer Debt Assessment Charging

Date: March 18, 2021
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Reimbursable Employer Debt Assessment Charging

1. Description of Proposed Change

When employers subject to reimbursement unemployment insurance financing (“self-insured”) are charged for benefits that are based on identity theft, the Department restores those charges to the employers’ accounts from the balancing account.¹ The 2015 – 2016 UIAC agreed bill (2015 Wis. Act 334) required that the Department set aside \$2 million in the balancing account, plus interest, to pay identity theft charges to reimbursable employers’ accounts. Through February 2021, about \$289,000 of identity theft charges have been restored from these funds and about \$208,000 of interest has accrued on the funds, leaving a balance of about \$1.918 million.

When non-profit reimbursable employers fail to pay for the benefits charged, the Department may apply payments from those employers’ assurances.² Government units and Indian tribes are not required to submit an assurance to qualify for reimbursable financing. Currently, a non-profit reimbursable employer’s assurance must be a surety bond, letter of credit, certificate of deposit, or another nonnegotiable instrument of fixed value.³

If a non-profit reimbursable employer closes but its assurance is insufficient to cover all benefit charges to that employer, the Department may attempt to collect the remaining charges. If a non-profit reimbursable employer’s benefit charges are uncollectible, the Department assesses

¹ Wis. Stat. § 108.155.

² Wis. Stat. § 108.151(4).

³ Wis. Stat. § 108.151(4)(a).

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Reimbursable Employer Debt Assessment Charging

other non-profit reimbursable employers for the uncollectible amounts.⁴ This is known as the reimbursable employer debt assessment or “REDA.”

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 the assessment 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 REDA process has administrative costs for the Department and employers, such as the issuance of small bills to employers, answering employers’ questions about the assessment, and collecting the assessment.

The Department proposes that a limited amount of the reimbursable employer identity theft fraud funds set aside in the balancing account be made available to recover uncollectible reimbursements instead of assessing the REDA (or to reduce the amount of the REDA). This would greatly reduce administrative costs to the Department and non-profit reimbursable employers and relieve those employers of having to pay the REDA. The Department proposes that the identity theft fraud funds be used to pay the REDA only if the use of those funds would not reduce the balance of the funds below \$1.75 million. This would ensure that the bulk of the identity theft fraud funds are available for restoring identity theft charges.

The Department also proposes to increase the minimum amount of the REDA from \$10 to \$20, which would reduce the administrative costs of assessing the REDA.

⁴ Wis. Stat. § 108.151(7).

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Reimbursable Employer Debt Assessment Charging

2. Proposed Statutory Changes

Section 108.151 (7) (c) of the statutes is amended to read:

The fund's treasurer shall determine the total amount due from employers electing reimbursement financing under this section that is uncollectible as of June 30 of each year, but not including any amount that the department determined to be uncollectible ~~prior to~~ before January 1, 2004. No amount may be treated as uncollectible under this paragraph unless the department has exhausted all reasonable remedies for collection of the amount, including liquidation of the assurance required under sub. (4). The department shall charge the total amounts so determined to the uncollectible reimbursable benefits account under s. 108.16 (6w). Whenever, as of June 30 of any year, ~~this~~ that account has a negative balance of \$5,000 or more, the treasurer shall, except as provided in par. (i), determine the rate of an assessment to be levied under par. (b) for that year, which shall then become payable by all employers that have elected reimbursement financing under this section as of that date.

Section 108.151 (7) (f) of the statutes is amended to read:

If any employer would otherwise be assessed an amount less than ~~\$10~~ \$20 for a calendar year, the department shall, in lieu of requiring that employer to pay an assessment for that calendar year, apply the amount that the employer would have been required to pay to the other employers on a pro rata basis.

Section 108.151 (7) (i) of the statutes is created to read:

In lieu of or in addition to assessing employers as provided in par. (c), the fund's treasurer may apply amounts set aside in the fund's balancing account under s. 108.155 (2) (a) to amounts determined to be uncollectible under par. (c) by transferring those amounts to the account under s. 108.16 (6w). The fund's treasurer may not act under this paragraph whenever the balance

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Reimbursable Employer Debt Assessment Charging

remaining of the amount set aside under s. 108.155 (2) (a) is less than \$1,750,000 and may not act to reduce the amount set aside below that amount.

Section 108.155 (2) (a) of the statutes is amended to read:

On October 2, 2016, the fund’s treasurer shall set aside \$2,000,000 in the balancing account for accounting purposes. On an ongoing basis, the fund’s treasurer shall tally the amounts allocated to reimbursable employers’ accounts under s. 108.04 (13) (d) 4. c. and all amounts transferred to the account under s. 106.16 (6w) as provided in s. 108.151 (7) (i) and shall deduct those amounts from the amount set aside plus any interest calculated thereon.

Section 108.16 (6m) (j) of the statutes is created to read:

Any amount transferred to the account under sub. (6w) as provided in s. 108.151 (7) (i).

Section 108.16 (6w) of the statutes is amended to read:

The department shall maintain within the fund an uncollectible reimbursable benefits account to which the department shall credit all amounts received from employers under s. 108.151 (7) and all amounts transferred from the fund's balancing account as provided in s. 108.151 (7) (i).

3. Effects of Proposed Change

- a. **Policy:** The proposal will reduce administrative burdens and increase the efficiency of recovering uncollectible reimbursements.
- 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.

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Reimbursable Employer Debt Assessment Charging

5. Proposed Effective/Applicability Date

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

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Reimbursable Employer Debt Assessment Charging
FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Prepared by: Technical Services Section

Trust Fund Impact:

This law change proposal could have a negative Trust Fund impact of up to \$330,000 in a given year. This impact could be greater, significantly less, or none depending on the year.

IT and Administrative Impact:

This law change proposal has no IT impact. One-time administrative impact is negligible.

This law change proposal will result in minimal ongoing administrative savings depending on the year. However, most of this savings comes from staff hours that would now be spent doing other higher-value added work.

Summary of Law Change Proposal:

This law change proposes that a limited amount of the reimbursable employer identity theft fraud (REITF) funds set aside in the balancing account be made available to recover uncollectible reimbursements instead of assessing the Reimbursable Employer Debt Assessment (REDA), or to reduce the amount of the REDA. The REITF funds will be used to pay REDA only if the use of those funds would not reduce the balance of the funds below \$1,750,000. This proposal also increases the minimum amount of the REDA from \$10 to \$20.

Trust Fund Methodology:

This law change proposal could have a negative Trust Fund impact of up to \$330,000 based the current amount of REITF funds available (\$2 million plus \$104,000 in interest). This impact would be due to writing off reimbursable debt in lieu of billing and is at the fund's treasurer's discretion. This Trust Fund impact could become greater if the amount of REITF funds increases; or, the impact could be significantly less, or none, if less REDA or no REDA is written off in a given year.

IT and Administrative Impact Methodology:

This law change proposal has no IT impact and negligible one-time administrative costs for staff training purposes.

The ongoing administrative savings is estimated as \$3,169. This impact could be significantly less or none depending on the year. This is based on printing and mailing cost savings of approximately \$700 when REDA is not assessed. It is also based on administrative staff time savings of approximately 40 hours or about \$2,469 when REDA is not assessed. However, these hours would now be spent doing other higher-value added work. If REDA is assessed, increasing the minimum amount of REDA from \$10 to \$20 reduces the ongoing administrative burden by eliminating several accounts requiring the assessment.

D21-04
Department Reports to Legislature

Date: March 18, 2021
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Department Reports to Legislature

1. Description of Proposed Change

Currently, the Department must submit a statement regarding the unemployment insurance financial outlook to the Governor and the Legislature by April 15 of every odd-numbered year.¹ The statement includes financial projections of the unemployment insurance trust fund, such as benefit payments and tax collections. The statement must also project whether the Department will need to borrow federal funds to pay benefits. The statement must include the proposed changes to the unemployment insurance law as well as projections regarding the effect of those changes on the trust fund.

By May 15 of each odd-numbered year, the Department must submit a report “summarizing the deliberations of the council on unemployment insurance and the position of the council, if any, concerning each proposed change in the unemployment insurance laws submitted under [section 16.48(1)(a)].”² This report is sometimes referred to as the “UIAC Activities Report.” When the Governor receives the Department’s report and statement, the Governor may convene a committee to review the report and statement.³ The committee then recommends a course of action on the proposals.

In 1983, in response to a severe recession in the early 1980s, Governor Anthony Earl appointed a “Special Unemployment Compensation Study Committee” tasked with conducting a thorough review of the process for UI policy development in Wisconsin and methods to keep the

¹ Wis. Stat. § 16.48(1)(a).

² Wis. Stat. § 16.48(1)(b).

³ Wis. Stat. § 16.48(2).

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Department Reports to Legislature

Legislature informed of the status of the UI Trust Fund.⁴ The changes recommended by the committee were adopted in 1983 Wis. Act 388 and enacted May 1, 1984.

1983 Wis. Act 388 created a statutory requirement that the Department submit a statement of unemployment insurance financial outlook to the Governor and Legislative Leadership every two years. 1983 Wis. Act 388 also contained a provision that required the Secretary to submit, along with the financial outlook statement, a report summarizing the deliberations of the council on unemployment insurance and the position of the Council, if any, concerning each proposed change in unemployment insurance law included in the financial outlook.

Early versions of the UIAC Activities Report included Council meeting agendas and minutes; summarized the public hearing comments received by the Council; and documented all matters on which the Council voted during the reporting period. Later versions of the UIAC Activities Report shifted to summarizing proposed law changes to the UI program that were approved by the Council for recommendation to the Legislature, as well as documenting the Council's current position on legislative provisions pending with the Council at the time the report was submitted (regardless of whether the pending item originated from the Council, the Governor, the Legislature, or the Department).

The early versions of the financial outlook statement and the UIAC Activities Report, and the recommended law changes included in the reports, served in many ways as supporting documents for the UIAC agreed bill by detailing the analysis and rationale behind the recommended law changes. The legislative recommendations in the financial outlook were endorsed by the Council; however, both sides of the Council could express their stance on areas of the legislative package they felt could have been improved.

⁴ One of the committee members was future Gov. Thompson.

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Department Reports to Legislature

2013 Wis. Act 36 modified the due dates of the financial outlook and UIAC activities reports, resulting in staggered deadlines of April 15 and May 15 respectively (as opposed to concurrently as had been required previously).

The Governor typically introduces the budget bill to the Legislature in February of each odd-numbered year, while the Council typically introduces its law change proposals to the Legislature in the fall of odd-numbered years or no later than January of the even-numbered year. Based on this schedule, the Department proposes to change the date for the submission of the financial outlook report to May 31 of every even-numbered year, beginning in 2020. The Department proposes to submit this report to the UIAC and the Governor. This will provide the Governor and UIAC time to review the health of the unemployment insurance Trust Fund before the biennial budget bill is submitted to the Legislature and for the UIAC to consider any recommendations contained in the financial outlook report for inclusion in the UIAC agreed bill.

The UIAC Public Hearing is typically held in the autumn of even-numbered years. Completing the financial outlook by May 31 of the even-numbered years provides the public with an understanding of the health of the Trust Fund before the public hearing, and an opportunity to suggest changes to the unemployment law regarding the Trust Fund at the public hearing. So, the Department also proposes to codify the existing practice of posting the financial outlook report on its website.

The Department proposes to repeal section 16.48(1)(a)5., which requires the Department to explain why significant cash reserves should be retained in the unemployment trust fund, if those reserves exist. Federal unemployment law includes the “withdrawal standard,” which permits, with few exceptions, the withdrawal of funds from the Trust Fund only for the payment

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Department Reports to Legislature

of unemployment benefits.⁵ Because the Trust Fund may only be used for the payment of unemployment benefits, the cash reserves in the Trust Fund must always be retained for that purpose. And, maintaining a large Trust Fund balance results in lower taxes for employers and ensures that funds are available to pay benefits.

The Department proposes to amend section 16.48(1)(a)6., which requires the Department to explain why it is not proposing to liquidate any unemployment insurance program debt. The amended statute would instead require the Department to propose methods to liquidate the debt. The purpose of this change is to provide options to reduce or eliminate any unemployment insurance program debt.

The Department further proposes to repeal section 16.48(2), which permits the Governor to convene a special committee to review the financial outlook report and attempt to reach a consensus regarding proposed changes to the unemployment insurance law. It appears that a special committee described in this section has not been convened since the 1980s. The Governor could, at any time, convene a special committee described in this section by executive order.

The Department also recommends that the deadline for the UIAC Activities Report be changed to January 31 of every even-numbered year. The intent of this change is that the UIAC Activities Report (together with the financial outlook report) would be submitted to the Governor and the Legislature contemporaneously with the Council's Agreed Bill. This report would, in most biennia, be submitted earlier than January 31 of the even-numbered year because the Agreed Bill is typically introduced before January 31 of the even-numbered year.

⁵ 26 USC § 3304(a)(4); 42 USC § 503(a)(5).

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Department Reports to Legislature

2. Proposed Statutory Change

Section 16.48 (1) (a) (intro.) of the statutes is renumbered 16.48 (1) (intro.) and amended to read:

No later than ~~April 15~~ May 31 of each ~~odd-numbered~~ even-numbered year, the secretary of workforce development shall prepare and furnish to the governor, the speaker of the assembly, the minority leader of the assembly, ~~and~~ the majority and minority leaders of the senate, and the council on unemployment insurance, a statement of unemployment insurance financial outlook, which shall contain all of the following, together with the secretary's recommendations and an explanation for such recommendations:

Section 16.48 (1) (a) 1., 2., 3., 4., 5. and 6. of the statutes are renumbered 16.48 (1) (am), (bm), (c), (d), (e) and (f), and 16.48 (1) (bm), (c) and (f), as renumbered, are amended to read:

16.48 (1) (bm) Specific proposed changes, if any, in the laws relating to unemployment insurance financing, benefits, and administration.

(c) Projections specified in ~~subd. 4.~~ par. (am) under the proposed laws.

(f) If unemployment insurance program debt is projected at the end of the forecast period, ~~the reasons why it is not~~ methods proposed to liquidate the debt.

Section 16.48 (1) (b) of the statutes is repealed.

Section 16.48 (2) of the statutes is repealed.

Section 16.48 (3) of the statutes is amended to read:

~~No~~ Biennially, no later than ~~June 15~~ January 31 of each ~~odd-numbered~~ even-numbered year, the secretary of workforce development, ~~under the direction of~~ shall submit to the governor, ~~shall submit to each member of the legislature an updated~~ speaker of the assembly, the

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Department Reports to Legislature

minority leader of the assembly, the majority and minority leaders of the senate, and the council on unemployment insurance the statement of unemployment insurance financial outlook which shall contain the information specified in prepared under sub. (1) (a), together with the governor's recommendations and an explanation for such recommendations, and a copy of the a report required that summarizes the deliberations of the council and the position of the council regarding any proposed change to the unemployment insurance laws submitted under sub. (1) (b).

Section 16.48 (4) of the statutes is created to read:

The department shall post the most recent version of the statement prepared under sub. (1) and the most recent version of the report prepared under sub. (3) on the department's Internet site.

3. Effects of Proposed Change

- a. **Policy.** The proposed change will result in changes to the dates by which certain reports must be submitted to the Governor and Legislature, to better facilitate the legislative process.
- b. **Administrative.** None expected.
- c. **Fiscal.** No fiscal effect is expected.

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 **February 1, 2022.**

D21-04
Department Reports to Legislature
FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Prepared by: Technical Services Section

UI Trust Fund Impact:

This proposal would not impact the UI Trust Fund.

IT and Administrative Impact:

This proposal does not have any one-time IT or administrative impacts.

Summary of Proposal:

Currently, the Department must submit the Financial Outlook to the Governor and Legislature by April 15 of every odd-numbered year and the UIAC Activities Report by May 15 of every odd-numbered year. This law change proposes changing the submission date of the Financial Outlook to May 31 of every even-numbered year, and the submission date of the UIAC Activities Report to January 31 of every even-numbered year to better facilitate the legislative process. This proposal also makes changes to the report requirements to better support the functions of these reports.

UI Trust Fund Methodology:

This proposal would not impact the UI Trust Fund.

The proposed change will result in changes to the dates by which certain reports must be submitted to the Governor and Legislature to better facilitate the legislative process.

IT and Administrative Impact Methodology:

This proposal does not have any one-time IT or administrative impacts.

Current Timeline



Proposed Timeline



D21-05
Collection of DWD-UI Debts

Date: March 18, 2021
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Collection of DWD-UI Debts

1. Description of Proposed Change

Section 71.93(8)(b) requires State agencies and DOR to enter into an agreement to have DOR collect debts owed to agencies. The debts are only referred to DOR if: (1) they are 90+ days delinquent; (2) the agency is not actively negotiating payment terms with the debtor; (3) the debt is not under appeal; (4) the debtor is not making acceptable payments to the agency. Before referring a debt to DOR, the agency must give the debtor 30 days' notice of the referral. The DOR Secretary may waive the referral of certain debts.

When a debt is referred to DOR, DOR must charge the debtor a collection fee, which is added to the debt. The fee is used to pay DOR's administrative costs of collection; any excess amount of fees lapses to the general fund. DOR apparently collects this fee before applying payments to the underlying debt. The expected amount of the fee is 15% of the total debt.

If DOR were to assume collection of debts owed to the Unemployment Insurance Division, DWD estimates that it will take about 5,000 to 7,000 hours of work by information technology staff to cease DWD's automated collections actions, which would cost DWD between \$445,000 to \$623,000 in technology costs alone to refer DWD-UI debts to DOR. This sum does not include DWD collections staff time to handle the referral of debts at the beginning of the referral process or on an ongoing basis.

The assessment of the collection fee and the application of payments to the collection fee before the underlying debt raise two important issues for DWD. First, the fee will increase the total amount owed by debtors—employers who owe delinquent taxes and claimants who owe benefit overpayments—to DWD.

D21-05
Collection of DWD-UI Debts

Second, DOR’s application of amounts collected to the collection fee before the underlying debt will have a negative effect on the balance of the Unemployment Reserve Fund, the Unemployment Interest Payment Fund, the Interest and Penalty appropriation, and the Unemployment Program Integrity Fund. The collection on the underlying debts will necessarily be reduced by the amount of the collection fee—15%—which will result in delayed satisfaction of debts. DWD collected about \$428 million during the period of 2011 through March 2018. If the 15% fee applied to that entire amount, DOR would have charged \$64.2 million in fees during that period.

A higher Reserve Fund balance typically results in lower contribution rates for most employers. If DWD is unable to recover delinquent contributions and benefit overpayments, which are deposited into the Trust Fund, as it currently does due to the imposition of the collection fee, the Reserve Fund balance will decrease. This could result in a change to a schedule with higher tax rates. When compared to other debts, unemployment debts are therefore unique because *the increased collection of unemployment debts directly results in reduced unemployment taxes for Wisconsin employers.*

DWD charges interest on delinquent contributions at a rate of 0.75% per month, which is 9.00% annually. DWD does not assess interest on interest, penalties, or benefit overpayments.¹ When a debt is referred to DOR for collection, it “may assess interest” on the debt as it does with taxes owed to DOR.² DOR charges 12% annual interest on unpaid taxes that are not delinquent but charges 18% annual interest on delinquent taxes.³

¹ Wis. Stat. § 108.16(10m) (DWD may not charge interest on benefit overpayments.).

² Wis. Stat. § 71.93(8)(b)5.

³ Wis. Stat. §§ 71.82(2)(a) and (b); Wis. Admin. Code §§ Tax 2.88(1) and (2).

D21-05
Collection of DWD-UI Debts

It is unclear whether the DOR 12% interest rate is charged on the interest that accrued before the debt is referred to DOR. If so, it would result in interest being charged on interest, which DWD does not currently do.

After debts are referred to DOR for collection, DOR must apply payments to debts according to a statutory priority list.⁴ Amounts owed to DOR are paid first. Then, delinquent child support is paid. Third, criminal restitution debts are satisfied. Debts referred to DOR collection are paid fourth. As discussed above, DWD expects a reduced collection rate due to the collection fee, which will likely cause an increase in employer taxes. DWD should also expect the subordinate treatment of its debts to have a similar effect on the Trust Fund and employer taxes.

The Department proposes a law change to prohibit DOR from collecting debts on behalf of the Unemployment Insurance Division. This change will ensure that employers and claimants are not assessed additional fees when repaying their debts. And, this law change will ensure that state recoveries of debts owed to the Unemployment Insurance Division continue to be maximized for the benefit of the Trust Fund. DWD has just as many, if not more, collection tools available to it as DOR. DWD should not expect to increase its debt recovery rate if it refers its debts to DOR. As discussed above, *the imposition of the collection fee will reduce DWD's recoveries.*

2. Proposed Statutory Changes

Section 71.93(8)(b)2. of the statutes is amended to read:

The department may enter into agreements described under subd. 1. with the courts, the legislature, authorities, as defined in s. 16.41 (4), and local units of government. The department may not enter into an agreement described under subd. 1 to collect amounts owed under ch. 108.

⁴ Wis. Stat. § 71.93(3).

D21-05
Collection of DWD-UI Debts

3. Effects of Proposed Change

- a. **Policy:** The proposed change is expected to ensure that debtors who owe debts to the Unemployment Insurance Division are not subjected to unnecessary surcharges.
- b. **Administrative:** None expected.
- c. **Fiscal:** None expected.

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.

Based on DWD's reading of DOR's debt referral contract, DWD must remit any amounts it recovers for a referred debt to DOR. US-DOL may consider this to be a violation of the immediate deposit standard, which would cause Wisconsin to not substantially comply with federal law. And, US-DOL may consider this type of remittance to be a violation of the withdrawal standard, which permits, with few exceptions, the withdrawal of funds from the Trust Fund only for the payment of unemployment benefits.⁵

5. Proposed Effective/Applicability Date

This proposal would be effective with the proposed changes in the UIAC Agreed Bill.

⁵ 26 USC § 3304(a)(4); 42 USC § 503(a)(5).

D21-06
Departmental Error

Date: March 18, 2021
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Departmental Error

1. Description of Proposed Change

Current law provides that the Department “shall waive recovery of benefits that were erroneously paid if the overpayment was the result of a departmental error...”¹ “Departmental error” includes errors that the Department made “in computing or paying benefits which results exclusively from...a mathematical mistake, miscalculation, misapplication or misinterpretation of law or mistake of evidentiary fact, whether by commission or omission...”² But an amendment, modification, or reversal of a Department determination by an appeal tribunal, the commission, or a court is not departmental error for the purposes of waiving the overpayment.³

The Department disagrees with the Labor and Industry Review Commission’s interpretation of these statutes in determining when to waive benefit overpayments. To guard against erroneous interpretations of law the Department proposes to amend the definition of “departmental error” to confirm the Department’s interpretation of the statute. Under the proposed changes, a departmental error would include only certain errors made by the Department in issuing initial determinations, not appeal tribunals.

The Commission currently waives some overpayments if the Commission finds that an appeal tribunal allows benefits in error. The Commission considers appeal tribunals to be part of the Department because the administrative law judges are Department employees. Based on the Department’s review of the legislative history of the departmental error and overpayment waiver

¹ Wis. Stat. § 108.22(8)(c)1.a.

² Wis. Stat. § 108.02(10e)(am)1.

³ Wis. Stat. § 108.22(8)(c)2. (created by 1993 Act 373.)

D21-06
Departmental Error

statutes, the Department believes that the intent of these statutes was originally to limit the finding of department error to errors made by Department staff, not appeal tribunals, the Commission, or the courts. So, the Department proposes a law change to clarify that an error by an appeal tribunal is not “departmental error.”

2. Proposed Statutory Change

Section 108.02 (10e) (c) of the statutes is created to read:

“Departmental error” does not include an error made by an appeal tribunal appointed under s. 108.09 (3).

3. Effects of Proposed Change

- a. **Policy:** The proposed change will result in the increased recovery of benefits that were erroneously paid to claimants.
- b. **Administrative:** This proposal will require training for benefits staff.
- 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.

D21-06
Departmental Error

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Prepared by: Technical Services Section

UI Trust Fund Impact:

This law change proposal would save the UI Trust Fund approximately \$5,200 annually. The Trust Fund savings may be less going forward. This would be considered a positive but negligible impact on the Trust Fund.

IT and Administrative Impact:

This law change proposal would have no IT impact and a negligible one-time administrative impact.

Summary of Proposal:

This law change proposal is intended to clarify that an error by an appeal tribunal is not “departmental error.”

Trust Fund Methodology:

To determine the impact of the proposed change, 2015-2017 data was reviewed for LIRC determinations that found departmental error based on appeal tribunal determinations. There were no LIRC decisions that found departmental error in 2016 or 2017 and in 2015, there were approximately 10 determinations. The total overpayment for all affected determinations was approximately \$6,560, which claimants would now be required to pay back if departmental error could not be found on appeal tribunal determinations. At an 80% collection rate, this results in an average savings to the Trust Fund of \$5,200 annually. Since there were no LIRC decisions that found departmental error in 2016 or 2017, the Trust Fund savings may be less going forward.

IT and Administrative Impact Methodology:

This law change proposal would not have an IT impact. It may have a negligible administrative impact to train staff on these changes.

D21-07
Effect of a Criminal Conviction

Date: March 18, 2021
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Effect of a Criminal Conviction

1. Description of Proposed Change

When the Department refers matters for criminal prosecution, it has usually already issued an administrative determination that the individual concealed information with the amount of the overpayment and penalty owed to the Department. The Department may use its statutory administrative collections powers, such as issuing warrants or levies, the Treasury Offset Program, interception of state income tax refunds, etc., to collect debts assessed by administrative determinations under the unemployment law. At the end of the criminal case, the Department may continue to collect the debt as assessed under the administrative determination. Or, the Department of Corrections may collect restitution, which would be credited toward the administratively determined debt.

In some circumstances, however, criminal prosecution may result in a court-ordered restitution order or judgment when the Department has not issued an administrative determination that a debt is owed. Examples could include submitting forged documents to the Department with the expectation that the forger would receive a benefit; submitting false unemployment benefit claims by using a fictitious employer scheme; or filing benefit claims using stolen identities. In certain circumstances, these acts could be federal crimes, such as mail or wire fraud. These serious crimes may result in convictions and court-ordered restitution without the Department having first issued an administrative determination.

The Department proposes a law change to make criminal conviction judgments binding on criminal defendants for the purposes of proceedings that arise under the unemployment law.

D21-07
Effect of a Criminal Conviction

This is consistent with federal law.¹ The standard of proof in criminal cases is beyond a reasonable doubt, which is a greater burden than in civil unemployment cases. It is not the intent of this proposal to change the Department's practice with respect to nearly all cases referred for criminal prosecution. The Department intends to continue to refer most cases for prosecution after its administrative determination is final.

2. Proposed Statutory Changes

Section 108.101(5) of the statutes is created to read:

Notwithstanding sub. (4), a final order or judgment of conviction for a crime entered by a court is binding on the convicted person in an action or proceeding under this chapter that relates to the criminal conviction. A person convicted of a crime is precluded from denying the essential allegations of the criminal offense that is the basis for the conviction in an action or proceeding under this chapter.

3. Effects of Proposed Change

- a. **Policy:** The proposed change is expected to result in improved collection of debts owed to the Department.
- b. **Administrative:** None expected.
- c. **Fiscal:** This proposal is expected to have a positive effect on the UI Trust Fund.

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.

¹ "A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim." 18 USC § 3664(l).

D21-07
Effect of a Criminal Conviction

5. Proposed Effective/Applicability Date

This proposal would be effective with the proposed changes in the UIAC Agreed Bill.

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Prepared by: Technical Services Section

UI Trust Fund Impact:

This proposal may have a positive but negligible impact to the UI Trust Fund based on increased overpayment collections.

IT and Administrative Impact:

This proposal is not expected to have any one-time IT or administrative impacts.

Summary of Proposal:

This law change proposes making criminal conviction judgments binding on criminal defendants for the purposes of civil proceedings that arise under Wisconsin unemployment law.

UI Trust Fund Methodology:

Without an unemployment administrative determination, the collection of unemployment debt based on the criminal conviction relies solely on court ordered restitution collection methods. This proposal will allow the Department to issue an administrative determination after the criminal conviction, which would then allow UI collections to use all mechanisms available to collect the debt. Though an uncommon scenario, this could result in faster unemployment debt recovery and a higher percentage of unemployment debt collection, resulting in a negligible but positive impact on the Trust Fund.

IT and Administrative Impact Methodology:

This proposal would not change the current practice with respect to nearly all cases determined and then referred for prosecution. This proposal is not expected to have any one-time IT or administrative impacts.

D21-08
Fiscal Agent Election of Employer Status

Date: March 18, 2021
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Fiscal Agent Election of Employer Status

1. Description of Proposed Change

Individuals who receive long-term support services in their home through government-funded care programs are employers under Wisconsin's unemployment insurance law. These employers receive financial services from fiscal agents, who directly receive and disperse government program funds. The fiscal agent is responsible for reporting employees who provide services for the employers to the Department, and for paying unemployment tax liability on behalf of the employer.¹ Currently, approximately 16,000 employers in Wisconsin receive government-funded care and use a fiscal agent.

During the previous legislative session, the Legislature enacted the Department's proposal to permit the Department to assess fiscal agents with joint and several liability for the unemployment tax of employers who use fiscal agents.²

2011 WI Act 198 created a provision that permits home health care providers to elect to be the employer of workers who provide home health care services under chapter 49.³ A home health care provider electing coverage as the employer must notify the recipient of the election and must be treated as the employer for federal unemployment tax purposes.

The Department proposes another law 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 chapters 46, 47, and 51. The fiscal agents would be required to inform the

¹ Wis. Stat. § 46.27(5)(i).

² Wis. Stat. § 108.22(10).

³ Wis. Stat. § 108.065(3).

D21-08
Fiscal Agent Election of Employer Status

recipient of care of the election and would need to be treated as the employer for federal unemployment tax purposes. This proposal is expected to simplify unemployment insurance reporting requirements for fiscal agents.

If the worker is one of a certain class of family members of the person receiving care, the worker is currently ineligible for unemployment benefits when the employment relationship ends.⁴ Under this proposal, a worker who is a family member of the person receiving care would be an employee of the fiscal agent and would be eligible for unemployment benefits. Benefits would be charged to the fiscal agent's account, which would affect its experience rating.

2. Proposed Statutory Changes

Section 108.02 (13) (k) of the statutes is amended to read:

~~“Employer”~~ Except as provided in s. 108.065 (3m), “employer” does not include a county department, an aging unit, or, under s. 46.2785, a private agency that serves as a fiscal agent or contracts with a fiscal intermediary to serve as a fiscal agent under s. ~~46.27 (5) (i)~~, 46.272 (7) (e); or 47.035 as to any individual performing services for a person receiving long-term support services under s. 46.272 (7) (b), 46.275, 46.277, 46.278, 46.2785, 46.286, 46.495, 51.42, or 51.437 or personal assistance services under s. 47.02 (6) (c).

Section 108.065 (1e) (intro.) of the statutes is amended to read: 1

Except as provided in subs. (2) ~~and (3)~~ to (3m), if there is more than one employing unit that has a relationship to an employee, the department shall determine which of the employing units is the employer of the employee by doing the following:

⁴ Wis. Stat. § 108.02(15)(km) (“‘Employment,’ as applied to work for a given employer other than a government unit or a nonprofit organization, except as the employer elects otherwise with the department’s approval, does not include service provided by an individual to an ill or disabled family member who is the employing unit for such service, if the service is personal care or companionship. For purposes of this paragraph, ‘family member’ means a spouse, parent, child, grandparent, or grandchild of an individual, by blood or adoption, or an individual’s step parent, step child, or domestic partner. In this paragraph, ‘domestic partner’ has the meaning given in s. 770.01 (1).”)

D21-08
Fiscal Agent Election of Employer Status

Section 108.065 (3m) of the statutes is created to read:

A private agency that serves as a fiscal agent or contracts with a fiscal intermediary to serve as a fiscal agent to recipients of services under ch. 46, 47, or 51 may elect to be the employer of one or more employees providing those services. As a condition of eligibility for election to be the employer of one or more employees providing those services, the private agency shall notify in writing the recipient of any such services of its election, for purposes of the unemployment insurance law, to be the employer of any worker providing such services to the recipient, and must be treated as the employer under 26 USC 3301 to 3311 for purposes of federal unemployment taxes on the worker's services.

Section 108.22 (10) of the statutes is amended to read:

A private agency that serves as a fiscal agent under s. 46.2785 or contracts with a fiscal intermediary to serve as a fiscal agent under s. 46.272 (7) (e) or 47.035 as to any individual performing services for a person receiving long-term support services under s. 46.272 (7) (b), 46.275, 46.277, 46.278, 46.2785, 46.286, 46.495, 51.42, or 51.437 or personal assistance services under s. 47.02 (6) (c) may be found jointly and severally liable for the amounts owed by the person under this chapter, if, at the time the person's quarterly report is due under this chapter, the private agency served as a fiscal agent for the person. The liability of the agency as provided in this subsection survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the person and shall be set forth in a determination or decision issued under s. 108.10. An appeal or review of a determination under this subsection shall not include an appeal or review of determinations of amounts owed by the person. This subsection does not apply with respect to a private agency that has made an election under s. 108.065 (3m).

D21-08
Fiscal Agent Election of Employer Status

3. Effects of Proposed Change

- a. **Policy:** This proposal will simplify reporting requirements for fiscal agents.
- 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 **January 1, 2023**.

D21-08
Fiscal Agent Election of Employer Status
FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Prepared by: Technical Services Section

Trust Fund Impact:

The immediate Trust Fund impact of this law change proposal cannot be determined. It may result in additional tax revenue as well as additional benefit payments. The assumption is that over time this proposal would have a net-zero impact on the Trust Fund.

IT and Administrative Impact:

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

The one-time administrative *cost* is estimated at 80 hours or \$3,830. The ongoing administrative *savings* is estimated at 3 FTE positions or a savings of \$300,000 annually; however, these staff savings would be absorbed through other higher value-added work.

Summary of Proposal:

This law change proposal would permit private fiscal agents (not government units) to elect to be the employer of workers who provide care services to individuals who receive long-term support services in their home through government-funded care programs. 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 unemployment tax purposes.

Trust Fund Methodology:

Though this law change proposal would result in the employer accounts of individuals who receive long-term care to be converted and condensed into the employer accounts of fiscal agents, it is assumed that the overall amount of tax revenue and benefits paid would remain neutral. However, this does not take into account the 108.02(15)(km) exclusion (*the exclusion of personal care services performed by an individual to an ill or disabled family member who directly employs individual*). The fiscal agent, now the employer in lieu of the family member receiving care, would be required to report such caregivers' wages and pay unemployment taxes on these employees, which could potentially affect the fiscal agents experience rating.

Excluded wages are not reported to the Unemployment Insurance Division, thus the amount of employee wages currently excluded that would now become reportable cannot be determined.

In 2018, there were approximately 93 determinations excluding wages from benefit claims under 108.02(15)(km). Assuming the individual had no other base period wages this would result in approximately \$354,330 in additional benefits paid annually (assuming an average weekly benefit amount of \$300 and average weeks paid of 12.7). Adjusting for taxes, this would result in an approximately \$233,857 cost to the Trust Fund. However, this does not take into account the additional tax revenue on employee whose wages would no longer be excluded from UI coverage.

D21-08
Fiscal Agent Election of Employer Status

In summary, this proposal could result in:

- More tax revenue received and more benefits paid based on previously excluded wages under 108.02(15)(km); however, this amount cannot be established.
- Fewer benefit overpayments based on the 108.02(15)(km) exclusion estimated at \$100,000 annually. This is because under this proposal these benefits would now be payable. However, most overpayments are collected (at least 80%) thus this would not have a significant impact on the Trust Fund.

The Trust Fund impact of this law change proposal cannot be determined. It may result in additional tax revenue as well as additional benefit payments as more workers now become covered employees. The assumption is that over time taxes will balance to offset benefit payments so that the net effect to the Trust Fund will be approximately zero.

IT and Administrative Impact Methodology:

Per subject matter experts, this law change proposal is not expected to have an IT impact. There would be minimal changes needed within SUITES.

Per subject matter experts, this law change proposal is estimated to have a one-time administrative cost of approximately 80 hours or about \$3,830 to collapse 14,400 employer accounts into approximately 18 fiscal agent accounts, assuming the majority (per subject matter expert) would take the election.

This proposal would significantly reduce the ongoing administrative burden and decrease confusion about employer identities. Subject matter experts estimate the ongoing administrative staff savings of approximately 3 FTE positions or about \$300,000 annually. However, these staff savings would be absorbed through other higher value-added work.

2021 UIAC Proposals

No.	Title	Presented	Action
D21-01	Creation of Unemployment Administration Fund	3/18/21	
D21-02	Minor and Technical Corrections	3/18/21	
D21-03	Reimbursable Employer Debt Assessment	3/18/21	
D21-04	DWD Reports to Legislature	3/18/21	
D21-05	Prohibit DOR Collection	3/18/21	
D21-06	Department Error	3/18/21	
D21-07	Effect of Criminal Conviction	3/18/21	
D21-08	Fiscal Agent Election	3/18/21	



**Unemployment Insurance
Advisory Council**

2021 Unemployment Insurance Advisory Council Schedule

January 21, 2021	Scheduled Meeting of UIAC Discuss Public Hearing November 2020 Comments
March 18, 2021	Scheduled Meeting of UIAC Department Proposals Introduced
April 15, 2021	Scheduled Meeting of UIAC Additional Department Proposals Introduced
May 20, 2021	Scheduled Meeting of UIAC Discuss Department Proposals Exchange of Labor & Management Law Change Proposals
May/June 2021	Tentative Meeting of UIAC Discuss Department Proposals and Labor & Management Proposals
June 17, 2021	Scheduled Meeting of UIAC Discuss Department Proposals and Labor & Management Proposals
July 15, 2021	Scheduled Meeting of UIAC Discussion and Agreement on Law Changes for Agreed Upon Bill
August 19, 2021	Scheduled Meeting of UIAC Review and Approval of Department Draft of Agreed Upon Bill
September 16, 2021	Scheduled Meeting of UIAC Review and Approval of LRB Draft of Agreed Upon Bill
October 21, 2021	Scheduled Meeting of UIAC Final Review and Approval of LRB Draft of Agreed Upon Bill
November 18, 2021	Scheduled Meeting of UIAC Agreed Upon Bill Sent to the Legislature for Introduction
December 2021	Tentative Meeting of UIAC
January 2022	Tentative Agreed Upon Bill Sent to the Legislature for Introduction in the Spring 2022 Legislative Session