



Unemployment Insurance Advisory Council

Meeting Agenda

June 17, 2021, 10:00 a.m.

The public may attend by teleconference:

Phone: 415-655-0003 or 855-282-6330 (toll free) or [WebEx](#)
Meeting Number (Access Code): 1459 33 0987 Meeting Password: DWD1
Meeting Materials: <https://dwd.wisconsin.gov/uibola/uiac/meetings.htm>

1. Call to Order and Introductions
2. Approval of Minutes of the May 20, 2021 Council Meeting
3. Department Update
4. Trust Fund Update – Tom McHugh
5. Legislation Update
 - Participation in federal unemployment benefit programs and work search requirements for unemployment insurance ([AB 336](#) / [SB 354](#))
 - Recovery of unemployment insurance benefit overpayments ([AB 394](#))
 - National Signing Bonus Act of 2021 ([HR 3495](#) / [S 1557](#))
6. Rulemaking Update
 - [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.
 - Secretary-designee's letter to the Council regarding request for extension of Emergency Rule 2108.
 - [Emergency Rule 2112](#), DWD Ch. 123 (Eff. 5/6/21 – 10/2/21)
 - Benefit charges for initial claims related to the public health emergency declared by Executive Order 72.
 - Emergency Rule, DWD Ch. 102 (Eff. 6/29/21)
 - Employer contribution rates for 2022.

7. Department proposals for the Wisconsin Unemployment Insurance Law
 - D21-01: Creation of Unemployment Administration Fund
 - D21-02: Minor and technical changes
 - D21-03: Reimbursable Employer Debt Assessment
 - D21-04: DWD Reports to Legislature
 - D21-05: Prohibit DOR Collection
 - D21-06: Department Error
 - D21-07: Effect of Criminal Conviction
 - D21-08: Fiscal Agent Election
 - D21-09: Employee Status Clarification
 - D21-10: SUTA Dumping Penalties
 - D21-11: Work Share Revisions
 - D21-12: Department Flexibility for Federal Funding
 - D21-13: Construction Employer Initial Contribution Rates
 - D21-14: DWD 140 - Permanent Rule Scope
 - D21-15: Camp Counselor Exclusion
 - D21-16: Repeal Pre-employment & Occupational Drug Testing
 - D21-17: Repeal Substantial Fault
 - D21-18: Amend Quit Exception for Relocating Spouses
 - D21-19: Repeal the Waiting Week
 - D21-20: Repeal Statutory Work Search & Registration Waivers
 - D21-21: Repeal Wage Threshold for Receipt of Benefits
 - D21-22: Increase Maximum Weekly Benefit Rate
 - D21-23: Flexibility for Finding Suitable Work
 - D21-24: Amend SSDI Disqualification
 - D21-25: Electronic Communications and Filing
 - D21-26: Amend Worker Classification Penalties
8. Labor and Management Proposals for the Unemployment Insurance Law
9. Research Requests
10. Future Meeting Dates: July 15, 2021; **August 17, 2021**; Sept. 16, 2021
11. 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 listed 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 people with disabilities. If you need an accommodation, including an interpreter or information in an alternate format, please contact the UI Division Bureau of Legal Affairs at 608-266-0399 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

May 20, 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, Susan Quam, Theresa Hillis, Sally Feistel, Shane Griesbach, Terry Hayden, Dennis Delie and Di Ann Fechter.

Department Staff: Mark Reihl, Andrew Rubsam, Jim Moe, Danielle Williams (Assistant Deputy Secretary), Pamela McGillivray (Chief Legal Counsel), Jennifer Wakerhauser (Deputy Legal Counsel), Tom McHugh, Mary Jan Rosenak, Pam James, Janet Sausen, Robert Usarek, Jason Schunk, Linda Hendrickson, Joe Brockman, and Robin Gallagher.

Members of the Public: Anita Krasno (General Counsel, Labor & Industry Review Commission), BJ Dernbach (office of Representative Warren Petryk), Matt Terpstra (Legislative Audit Bureau), Ryan Horton (Legislative Fiscal Bureau), Mike Duchek (Legislative Reference Bureau), Chris Reader (Wisconsin Manufacturers & Commerce), Victor Forberger (Attorney, Wisconsin UI Clinic) and Erik Gunn (Wisconsin Examiner).

1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council to order at 10:00 am under the Wisconsin Open Meetings Law. Attendance was taken by roll call, and Ms. Knutson acknowledged the department UI leadership staff in attendance.

2. Approval of Minutes

Motion by Ms. Feistel, second by Mr. Delie, to approve the minutes of the April 15, 2021, meeting without correction. The vote was taken by roll call and passed unanimously.

3. Department Update

Ms. Knutson stated that Robin Gallagher is retiring after 43 years of state service and has provided staff services for the Council since 2008. Ms. Knutson stated that she wants to recognize Ms. Gallagher and thank her for her service. Council members congratulated Ms. Gallagher and expressed their appreciation for her exceptional service to the UIAC.

Mr. Reihl recognized Ms. Gallagher's contributions to the Council and the State of Wisconsin.

Mr. Reihl stated that, as of May 14, 2021, \$1.9 billion in regular UI benefits and \$4.3 billion in federal benefits have been paid to claimants. The MEUC program has been implemented. This

program provides \$100 per week in additional benefits to qualified claimants who also had self-employment income.

Mr. Reihl reported that the UI modernization project continues in conjunction with our partners.

Mr. Reihl stated that the work search requirement is reinstated as of next week.

Mr. Reihl stated that calls to Job Service are double pre-pandemic levels. Worker quantity was a problem before the pandemic and will continue to be an issue in the future. Receiving UI benefits is not the disincentive for getting people back to work as some may believe. Wisconsin has been leading the nation in unemployment rate recovery, with our unemployment rate nearing pre-pandemic levels.

Mr. Reihl stated that the average weekly state UI benefit has declined to \$295.20 plus the FPUC payment.

Mr. Reihl stated it is the other barriers that workers and employers face that are flattening our workforce. Some examples include an increase in older workers retiring and leaving the workforce, a mismatch between the skills workers have and the skills employers require, a shortage of VISA workers, and those lacking access to transportation, child, dependent, or elder care and health care. DWD is committed to addressing these issues and supporting our state's long-term economic recovery.

4. Trust Fund Update

Mr. McHugh reported that \$328.2 million has been paid in benefits from the Trust Fund so far this year, down \$53.2 million from last year at the same time.

Mr. McHugh stated that calendar year tax receipts through April are \$273.3 million, which is a decline of \$41.9 million from last year.

Mr. McHugh stated that the April 2021 Trust Fund balance is \$1.1 billion, down \$822.3 million from last year at the same time. The Trust Fund has earned \$6.0 million in interest this year, which is a decline of \$5.9 million from last year at the same time.

Mr. Gotzler asked what tax schedule will be used next year. Mr. McHugh responded that either Schedule B or C will be in effect next year.

5. 2021 Financial Outlook

Mr. Usarek provided a presentation on the 2021 Financial Outlook. The 2021 Financial Outlook Report was submitted to Governor Evers on April 15, 2021.

There was a substantial increase in UI payments in 2020 due to the pandemic. UI tax revenue is in a slight downward trajectory.

The Trust Fund balance has declined from approximately \$2.0 billion to approximately \$1.0 billion. A combination of state and federal funds amounting to \$4.68 billion was paid to 590,095

individuals between March 15 and December 26, 2020. Most of the benefits paid were federally funded.

Wisconsin did not have to borrow money from the federal government to pay benefits. The near 1.0 Average high Cost Multiple Trust Fund balance had Wisconsin in a good position to weather the pandemic.

Mr. Usarek stated that UI tax revenue is expected to increase to \$540 million in 2022 and \$553 million in 2023. The estimated Trust Fund balance will be \$836 million in 2022 and \$898 million in 2023. UI payments are estimated at \$801 million in 2021, \$475 million in 2022, and \$512 million in 2023. Total revenue will decrease in 2021 but will increase in 2022 and 2023.

Mr. Usarek stated that Secretary-Designee Pechacek urges the Council to prioritize funding the Trust Fund at rates sufficient to provide workers the financial assistance to withstand temporary periods of unemployment.

6. 2019-2020 UIAC Activities Report

Ms. Knutson reported that the 2019-2020 UIAC Activities report is included in the members' packets. This year's report is unusual because the agreed-upon bill was not passed by the Legislature.

7. Legislative Update

Mr. Rubsam reported there are two new pieces of legislation since the last meeting:

Unemployment insurance work-share programs (AB 307 / SB 320)

This bill is related to the current work-share program. This bill will extend flexibility for employers having work-share plans from July until September 2021, which is when federal funding for work-share is expected to expire.

Unemployment insurance contribution rates (AB 328 / SB 338)

This bill would cause Wisconsin to remain in tax schedule D for 2022 and 2023 regardless of the Trust Fund balance. The fiscal estimate will be circulated when completed.

8. Rulemaking Update

Emergency Rule 2106, DWD Chs. 127 & 128 (Eff. 2/11/21 – 7/10/21)

Ms. Knutson stated this emergency rule was suspended by the JCRAR and claimants will have to begin searching for work starting the week of May 23, 2021.

Emergency Rule 2108, DWD Ch. 113 (Eff. 3/1/21 – 7/28/21)

Ms. Knutson stated that this emergency rule expires on July 28, 2021.

Emergency Rule 2112, DWD Ch. 123 (Eff. 5/6/21 – 10/2/21)

Ms. Knutson stated that a hearing is scheduled for this emergency rule on June 15, 2021.

Scope Statement 046-21, Emergency Rule Related to Employer Contribution Rates for 2022 (DWD 1012)

Ms. Knutson stated that a hearing is scheduled for scope statement on this emergency rule on May 27, 2021.

Mr. Gotzler asked about Emergency Rule 2112 and the timing of the calculation regarding employer rates for 2022 and a timeline for implementing the 2022 rates.

Mr. Rubsam responded that, according to 2019 Wis. Act 185, if an initial claim for UI benefits is related to the Public Health Emergency, all benefits for that claim are not charged to the employer but to the balancing account. The department has interpreted the statute to require that employers and claimants demonstrate that the claims were related to the Public Health Emergency.

Mr. Rubsam stated that 2021 Wis. Act 4 broadened and extended charging relief to March 13, 2021. In addition to twelve months of non-charging, the law change created a presumption that benefit charges were related to the Public Health Emergency.

Mr. Rubsam stated that certain benefits related to a discharge for misconduct or substantial fault and quits were already not being charged to the employer.

Mr. Rubsam explained that Emergency Rule 2112 provides there are some circumstances where an employer will have to submit a formal request for relief from charging; for example, an employee quitting for good cause attributable to the employer due to the Public Health Emergency. Mr. Rubsam stated that this rule benefits employers because it applies to all base period employers in a claim.

Mr. Rubsam stated that there is a provision in Emergency Rule 2112 applying non-charging to all new initial claims filed during the pandemic, an example being a person who files multiple initial claims during a benefit year.

Mr. Rubsam stated that the rule promulgated for Scope Statement 046-21 will have the effect of ignoring benefit charges for March 15, 2020-March 13, 2021 to set the employer contribution rates for 2022.

Mr. Gotzler asked when the non-charging relief will be completed and where he could refer employers for further information.

Mr. Rubsam stated that employers can refer to the Scope Statement for the proposed new Emergency Rule found on pages 106-109 of the members' handout.

9. Department Proposals for the Wisconsin Unemployment Insurance Law

Ms. Knutson stated that the fiscal estimates for department proposals D21-11 through D21-26 have been completed and are included in the members' packets.

Ms. Knutson stated that the bill draft of department proposal D21-02 from last year, consisting of minor and technical changes to the UI law, are included in members' packets. The Legislative Reference Bureau will update the draft to account for minor cross-reference changes if the Council approves the proposal.

Ms. Knutson stated that department proposal D21-14, Permanent Rule Scope, is in draft form and the department will have a revised scope draft for Council review at the next meeting.

10. Labor and Management Proposals for the Unemployment Insurance Law

There were no proposals.

11. Research Requests

There were no research requests.

12. Future Meeting Dates

Ms. Knutson stated the Council is scheduled to meet on the following dates:

June 17, 2021

July 15, 2021

August 19, 2021

Mr. Hayden moved convene in closed caucus session to deliberate the items on the agenda. The motion was seconded by Mr. Manley. The vote was taken by roll call and the motion passed unanimously.

The Council convened in closed caucus session at 11:08 am.

The Council reconvened in open session at 1:10 pm

Mr. Manley stated that Management continues to discuss department and management proposals and hopes to be able to exchange proposals with Labor at the June meeting and discuss the 26 department proposals with Labor.

Mr. Hayden stated that Labor continues to develop its proposals. Mr. Hayden stated Labor wants to return to closed caucus session and adjourn from caucus.

Mr. Manley stated that the July and August meeting dates will not work for some members of Management. Mr. Manley stated that Management wants to return to closed caucus session and adjourn from closed caucus.

Ms. Knutson stated that staff will poll the members regarding July and August meeting dates.

13. Adjourn

Ms. Feistel moved to reconvene in closed caucus session to continue to deliberate the department proposals and other items on the agenda and to have the Council adjourn from closed caucus. The motion was seconded by Ms. Fechter. The vote was taken by roll call and the motion passed unanimously.

The Council convened in closed caucus at 1:17 pm and adjourned from caucus.

UI Reserve Fund Highlights

June 17, 2021

- Benefit payments through May 2021 declined by \$233.2 million or 37.9% when compared to benefits paid through May 2020.

Benefits Paid	2021 YTD <i>(in millions)</i>	2020 YTD <i>(in millions)</i>	Change <i>(in millions)</i>	Change <i>(percent)</i>
Total Regular UI Paid	\$382.0	\$615.2	(\$233.2)	(37.9%)

- Tax receipts through May 2021 declined by \$42.6 million or 13.4% when compared to tax receipts through May 2020.

Tax Receipts	2021 YTD <i>(in millions)</i>	2020 YTD <i>(in millions)</i>	Change <i>(in millions)</i>	Change <i>(percent)</i>
Total Tax Receipts	\$276.4	\$319.0	(\$42.6)	(13.4%)

- The May 2021 adjusted Trust Fund Balance is \$940.3 million.

UI Trust Fund Balance	May 2021 <i>(in millions)</i>	May 2020 <i>(in millions)</i>	Change <i>(in millions)</i>	Change <i>(percent)</i>
Trust Fund	\$940.3	\$1,678.0	(\$737.7)	(44.0%)



2021 ASSEMBLY BILL 336

May 21, 2021 - Introduced by Representatives VOS, CALLAHAN, ALLEN, ARMSTRONG, AUGUST, BORN, BRANDTJEN, CABRAL-GUEVARA, DALLMAN, DITTRICH, DUCHOW, EDMING, GUNDRUM, HORLACHER, JAMES, KATZMA, KNODL, KUGLITSCH, KURTZ, LOUDENBECK, MACCO, MAGNAFICI, MOSES, MURPHY, NEYLON, PETERSEN, PETRYK, PLUMER, ROZAR, SCHRAA, SPIROS, STEINEKE, SUMMERFIELD, SWEARINGEN, TAUCHEN, THIESFELDT, TITTL, TRANEL, VANDERMEER, WICHGERS, WITTKER and ZIMMERMAN, cosponsored by Senators MARKLEIN, FEYEN, BALLWEG, BERNIER, BRADLEY, DARLING, FELZKOWSKI, JAGLER, KAPENGA, LEMAHIEU, NASS, STAFSHOLT, STROEBEL, TESTIN, WANGGAARD and WIMBERGER. Referred to Committee on Workforce Development.

1 **AN ACT to amend** 108.04 (2) (bb) (intro.) and 108.04 (2) (bd) (intro.); and **to create**
2 108.04 (2) (be) of the statutes; **relating to:** participation in federal
3 unemployment benefit programs and work search requirements for
4 unemployment insurance.

Analysis by the Legislative Reference Bureau

This bill does all of the following:

1. Requires the governor and the secretary of workforce development to terminate this state's participation in federal programs that provide or supplement unemployment benefits to workers in this state. These programs include a) the Pandemic Unemployment Assistance (PUA) program, which provides a benefit to certain workers not otherwise eligible for regular unemployment insurance (UI) benefits, b) the Pandemic Emergency Unemployment Compensation (PEUC) program, which provides additional weeks of UI benefit payments beyond the normal 26 weeks available under state law, and c) the Federal Pandemic Unemployment Compensation (FPUC) and Mixed Earner Unemployment Compensation (MEUC) programs, which provide an additional dollar benefit on top of regular UI benefits, PEUC benefits, PUA benefits, and work-share benefits. The bill requires that the termination be effective beginning with the earliest week that the agreements can be terminated.

2. Prohibits DWD from waiving the work search requirement for any reason that is related to COVID-19 or the the COVID-19 pandemic or a public health emergency that is in response to or otherwise related to COVID-19.

ASSEMBLY BILL 336

Under current law, a claimant for UI benefits is generally required to search for work each week in order to remain eligible, but the Department of Workforce Development is required to waive these requirements under certain circumstances. Under current law, DWD has limited rule-making authority to modify the availability of waivers or establish additional waivers if necessary to comply with a requirement under federal law or if specifically allowed under federal law.

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:

1 **SECTION 1.** 108.04 (2) (bb) (intro.) of the statutes is amended to read:

2 108.04 (2) (bb) (intro.) The department shall, except as provided under par.
3 pars. (bd) and (be), waive the work search requirement under par. (a) 3. if any of the
4 following applies:

5 **SECTION 2.** 108.04 (2) (bd) (intro.) of the statutes is amended to read:

6 108.04 (2) (bd) (intro.) The Except as provided in par. (be), the department may,
7 by rule, do any of the following if doing so is necessary to comply with a requirement
8 under federal law or is specifically allowed under federal law:

9 **SECTION 3.** 108.04 (2) (be) of the statutes is created to read:

10 108.04 (2) (be) 1. In this paragraph:

11 a. "COVID-19" means the SARS-CoV-2 virus and any related disease.

12 b. "Public health emergency" includes any public health emergency declared
13 under s. 323.10, including any extension, any action by the department of health
14 services under ch. 252, any federally declared emergency, or any period in which this
15 state has been the subject of a major disaster declaration.

16 2. The department may not waive the work search requirement under par. (a)

17 3. for any reason that is related to COVID-19 or the COVID-19 pandemic or a public

ASSEMBLY BILL 336

1 health emergency that is in response to or otherwise related to COVID-19 or the
2 COVID-19 pandemic.

3 **SECTION 4. Nonstatutory provisions.**

4 (1) TERMINATION OF PARTICIPATION IN FEDERAL UNEMPLOYMENT ASSISTANCE
5 PROGRAMS.

6 (a) The governor and the secretary of workforce development shall act to
7 terminate all of the following:

8 1. The agreement under 15 USC 9021 (f) governing this state's participation
9 in the pandemic unemployment assistance program under 15 USC 9021.

10 2. The agreement under 15 USC 9023 (a) governing this state's participation
11 in the federal pandemic unemployment compensation and mixed earner
12 unemployment compensation programs under 15 USC 9023.

13 3. The agreement under 15 USC 9025 (a) governing this state's participation
14 in the pandemic emergency unemployment compensation program under 15 USC
15 9025.

16 (b) The termination of the agreements under par. (a) shall be effective for weeks
17 of unemployment beginning with the earliest week after the effective date of this
18 paragraph that the agreements can be terminated.

19 **SECTION 5. Initial applicability.**

20 (1) The treatment of s. 108.04 (2) (bb) (intro.), (bd) (intro.), and (be) first applies
21 to weeks of unemployment beginning on the Sunday after publication.

22 (END)

Fiscal Estimate Narratives

DWD 6/2/2021

LRB Number	21-3521/1	Introduction Number	AB-0336	Estimate Type	Original
Description participation in federal unemployment benefit programs and work search requirements for unemployment insurance					

Assumptions Used in Arriving at Fiscal Estimate

This bill requires the governor and the DWD secretary to terminate participation in federal unemployment assistance programs. These programs include the Pandemic Unemployment Assistance (PUA) program, which provides a benefit to certain workers not otherwise eligible for regular unemployment insurance (UI) benefits, the Pandemic Emergency Unemployment Compensation (PEUC) program, which provides additional weeks of UI benefit payments beyond the normal 26 weeks available under state law, and the Federal Pandemic Unemployment Compensation (FPUC) and Mixed Earner Unemployment Compensation (MEUC) programs, which provide an additional dollar benefit on top of regular UI benefits, PEUC benefits, PUA benefits, and work-share benefits. The bill requires that the termination be effective beginning with the earliest week that the agreements can be terminated. These provisions are set to expire September 6, 2021, under the American Rescue Plan Act (ARPA) and are 100% federally funded.

There is an expected 60 hours of one-time IT work, at a cost of \$5,340, to modify the UI benefit systems and revise the end date for the affected programs. This work includes database changes and system form changes. There are also associated one-time costs of \$1,763 for system testing and revisions to documents that display the affected programs' end dates. These costs can be absorbed by the department.

The department may also incur increased costs from ending pandemic related contracted resources earlier than currently scheduled, but increased costs are indeterminate at this time.

Described below is an estimate of net reduction to the UI Trust Fund. This cost is not part of DWD's legislatively funded appropriations.

This bill is expected to reduce benefits paid for PEUC by \$136 million, PUA by \$34 million, and FPUC by \$439 million (a total of \$609 million). There will also be a reduction in MEUC benefits of a small amount that is difficult to estimate because MEUC has just been implemented in Wisconsin. These benefits are 100% federally funded and ending them will not directly impact the UI Trust Fund balance.

Ending these benefits early is anticipated to result in a reduction of taxable income. DWD is not able to provide a projection of the amount of an associated reduction in state tax revenues, but DWD is able to provide information related to the potential scope of the change: 1) When UI claimants select to have state tax withholding set up for their weekly UI benefit payments, DWD's standard practice is to withhold 5% of the weekly amount payable, which if applied to the total \$609 million equates to \$30,450,000, and 2) The federal UI benefit reduction estimated at \$609 million dollars is approximately 1.5 times the annual amount of regular UI benefits in the pre-pandemic years of 2017 and 2018.

DWD is not able to project what the economic impact to Wisconsin is from a loss of \$609 million in federal benefit payments.

The UI Trust Fund will be affected as certain regular UI benefits will no longer be deferred and paid under PEUC. The Continued Assistance Act allows for claimants to remain on a previous benefit year receiving PEUC under certain circumstances. If a claimant receiving PEUC qualifies for a subsequent benefit year in 2021 under regular UI, but the subsequent weekly benefit rate under regular UI is more than \$25 less than the previous benefit rate received under PEUC, the claimant may remain on PEUC with the higher benefit rate. It is estimated that there are 10,000 claimants in this category. These claimants will now receive regular UI which will be charged to the UI Trust Fund instead of remaining on the federally paid PEUC benefits. The estimated paid regular UI benefits replacing PEUC would be \$35.2 million. Approximately \$2.1 million of these benefits would be reimbursable benefits which normally would cause there to be a state and local impact. However, with the federal government reimbursing 75% of these benefits currently, the impact would be very small. There will be an expected increase in UI taxes of \$10.9 million. The net reduction of the UI Trust Fund is \$22.2 million.

Under this bill, the department would be prohibited from waiving the work search requirement for any reason that is related to COVID-19, the COVID-19 pandemic, or a public health emergency that is in response to or otherwise related to COVID-19 or the COVID-19 pandemic. There is no fiscal effect for this provision as the work search requirement has been re-instated.

Local governments would have no local fiscal effect as these programs are federally funded.

Long-Range Fiscal Implications



Legislative Fiscal Bureau

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May 24, 2021

TO: Senator Howard Marklein
Room 316 East, State Capitol

FROM: Ryan Horton, Fiscal Analyst

SUBJECT: Senate Bill 354: Participation in Federal Unemployment Insurance Benefit Programs and Work Search Waivers

This memorandum responds to your inquiry regarding the fiscal effect for ending the state's participation in certain federal unemployment insurance (UI) benefit programs and prohibiting the Department of Workforce Development (DWD) from being able to waive work search requirements during the COVID-19 pandemic, as specified in Senate Bill 354 (SB 354).

Senate Bill 354

SB 354 would require the Governor and the DWD Secretary to terminate all agreements governing the state's participation in the following extended UI federal benefit programs related to the COVID-19 pandemic: (a) Pandemic Unemployment Assistance (PUA); (b) Federal Pandemic Unemployment Compensation (FPUC); (c) Mixed Earner Unemployment Compensation (MEUC); and (d) Pandemic Emergency Unemployment Compensation (PEUC). The bill specifies that the termination of the agreements would be effective for weeks of unemployment beginning with the earliest week that the agreements can be terminated after the effective date of the bill.

SB 354 would also prohibit the Department from waiving the current law requirement to complete a certain number of work search actions as a condition of receiving UI benefits for any reason that is related to COVID-19 or the COVID-19 pandemic or a public health emergency that is in response to or otherwise related to COVID-19 or the COVID-19 pandemic. Under the bill, public health emergency would be defined to include any public health emergency declared by the Governor under s. 323.10 of the statutes, including any extension, any action by the Department of Health Services under Chapter 252 ("Communicable Diseases") of the statutes, any federally declared emergency, or any period in which this state has been the subject of a major disaster declaration.

Federal Extended UI Benefit Programs

Wisconsin's participation in the following federal UI programs would be terminated under the bill.

Federal Pandemic Unemployment Compensation (FPUC) Payments. The FPUC program provides \$300 weekly payments to eligible UI claimants through the week ending September 4, 2021. FPUC supplemental payments are provided to individuals who are collecting regular state UI benefit payments as well as those individuals that receive payments under the PUA, PEUC, extended benefits, work-share, and other federal UI programs.

Pandemic Unemployment Assistance (PUA) Benefits. The PUA program provides 79 weeks of 100% federally funded UI benefits through the week ending September 4, 2021, to individuals who are not eligible for regular UI and who are able and available to work, but unemployed or otherwise unable or unavailable to work because of a COVID-19-related reason. These reasons generally include: (a) a person needing to isolate as a result of a COVID-19 diagnosis or COVID-19 symptoms, or for reasons of a household member or family member receiving a COVID-19 diagnosis; (b) being the primary caregiver for a child whose school or daycare provider has closed due to COVID-19; and (c) being unable to reach their place of employment due to an imposed quarantine or other direct result of COVID-19.

Pandemic Emergency Unemployment Compensation (PEUC) Benefits. The PEUC program provides 53 weeks of 100% federally funded UI benefits through the week ending September 4, 2021, to individuals that have exhausted regular state UI benefits.

Mixed Earner Unemployment Compensation (MEUC) Program. The MEUC program provides a \$100-per-week payment for individuals who received at least \$5,000 in self-employment income in the most recent taxable year ending prior to the individual's application for UI. MEUC payments are authorized through the week ending September 4, 2021, and not available for those individuals receiving PUA benefit payments.

Fiscal Effect

Ending Participation in Federal UI Programs

Assuming that SB 354 is enacted and is first effective for UI benefit weeks ending July 3, 2021, terminating the state's participation in the PUA, FPUC, MEUC and PEUC programs would reduce individual income tax revenues to the state by an estimated \$17.5 million in 2021-22. This estimate assumes a marginal effective rate of tax paid by individuals receiving expanded UI compensation of 3.76%, and that \$465 million less in benefits would be paid to individuals from the week ending July 3, 2021, through the week ending September 4, 2021, when the federal programs would expire. The \$465 million estimate is derived from actual weekly benefit payment data as reported by DWD through the week ending May 15, 2021, and decreasing the amount of benefits paid by 2% every week through the week ending September 4, 2021, to reflect improving economic

conditions. The \$17.5 million estimate assumes, however, that none of these individuals will find gainful employment.

The amount of the income tax revenue reduction could be offset by income tax revenue collected from individuals that would have otherwise received federal expanded UI benefits and that secure employment and collect wage income during the period between July 3, 2021, and September 4, 2021. Similarly, ending the state's participation in the PUA, FPUC, MEUC and PEUC federally-funded extended benefit programs prior to September 4, 2021, would decrease payments of regular UI benefits from the state's UI trust fund to the extent that individuals secure employment and collect wage income during the period between July 3, 2021, and September 4, 2021, when these persons would otherwise receive federal expanded UI benefits.

Prohibiting the Waiver of Work Search Requirements

Federal law requires a state's UI law to conform to and comply with federal requirements. The Families First Coronavirus Response Act (FFCRA) allows states to waive work search provisions to respond to COVID-19 without violating federal conformity provisions, which otherwise impose work search requirements. Further, under the FFCRA, states are required to "to ease eligibility requirements and access to unemployment compensation for claimants, including waiving work search requirements," as a condition of receiving the state's share of \$500 million of federal funding to administer the states' unemployment insurance programs. (DWD received \$9.46 million under this provision.) Emergency rule EmR2106 implemented the FFCRA work search waiver requirement until the rule was suspended by executive action of the Joint Committee for Review of Administrative Rules on May 19, 2021, thereby reinstating the work search requirement effective May 23, 2021. No period of time was specified within the FFCRA or in subsequent federal guidance related to a minimum period or length of time that a state must waive work search requirements. As such, it is estimated that there would be no fiscal effect related to the FFCRA grant from the reinstatement of work search requirements.

SB 354 would prohibit the Department from waiving work search requirements as a condition of receiving UI benefits for any reason that is related to COVID-19 or the COVID-19 pandemic or a public health emergency that is in response to or otherwise related to COVID-19 or the COVID-19 pandemic. Assuming that the receipt of future COVID-19 related federal funding is not contingent on waiving search requirements, there would be no estimated fiscal effect as a result of this provision.

RH/lb



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-2213/1
MED:skw

2021 ASSEMBLY BILL 394

June 10, 2021 - Introduced by Representatives DOYLE, B. MEYERS, ANDRACA, SHANKLAND, SINICKI, EMERSON, CONLEY, SNODGRASS, VRUWINK, SUBECK, CABRERA, SPREITZER, HONG, S. RODRIGUEZ, DRAKE, BALDEH, RIEMER and STUBBS, cosponsored by Senators PFAFF, RINGHAND, SMITH, ROYS, LARSON and CARPENTER. Referred to Committee on Workforce Development.

1 **AN ACT** *to create* 108.22 (8) (c) 3. of the statutes; **relating to:** recovery of
2 unemployment insurance benefit overpayments.

Analysis by the Legislative Reference Bureau

Under current law, if unemployment insurance benefits are erroneously paid to an individual, that payment constitutes a benefit overpayment. The Department of Workforce Development may recover benefit overpayments by various means, but is required to waive recovery of a benefit overpayment if 1) the overpayment was the result of a departmental error; and 2) the overpayment did not result from the fault of the claimant, or because of a claimant's false statement or misrepresentation.

This bill requires DWD, in addition to and notwithstanding the standard described above, to waive recovery of a benefit overpayment made to an individual without fault on the part of that individual if such recovery would be against equity and good conscience, as further specified in the bill.

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.** 108.22 (8) (c) 3. of the statutes is created to read:
4 108.22 (8) (c) 3. Notwithstanding subd. 1., the department shall waive recovery
5 of benefits that were paid to an individual without fault on the part of that individual

ASSEMBLY BILL 394**SECTION 1**

1 if recovery would be against equity and good conscience. For purposes of this
2 subdivision, recovery of the overpayment shall be considered to be against equity and
3 good conscience if any of the following applies:

4 a. Recovery would cause financial hardship to the individual from whom it is
5 sought.

6 b. Regardless of the individual's financial circumstances, the individual can
7 show that, based on the overpayment or notice that a benefit payment would be
8 made, the individual has relinquished a valuable right or changed positions for the
9 worse.

10 c. Recovery could be unconscionable under the circumstances.

11 **SECTION 2. Initial applicability.**

12 (1) This act first applies to determinations issued under s. 108.09 on the
13 effective date of this subsection.

14 (END)

117TH CONGRESS
1ST SESSION

S. 1557

To support both workers and recovery by converting expanded Federal unemployment payments into signing bonuses.

IN THE SENATE OF THE UNITED STATES

MAY 11, 2021

Mr. SASSE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To support both workers and recovery by converting expanded Federal unemployment payments into signing bonuses.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Signing
5 Bonus Act of 2021”.

6 **SEC. 2. NATIONAL SIGNING BONUSES.**

7 (a) IN GENERAL.—Section 2104(b) of the CARES
8 Act (15 U.S.C. 9023(b)) is amended—

9 (1) by redesignating paragraph (4) as para-
10 graph (5); and

1 (2) by inserting after paragraph (3) the fol-
2 lowing:

3 “(4) BACK-TO-WORK BONUSES.—

4 “(A) IN GENERAL.—Any agreement under
5 this section may also provide that the State
6 agency of the State may make up to 2 lump-
7 sum payments (in this paragraph referred to as
8 the ‘first lump-sum payment’ and the ‘second
9 lump-sum payment’) to each individual who—

10 “(i) was eligible for Federal Pandemic
11 Unemployment Compensation under para-
12 graph (1) for—

13 “(I) any week beginning after the
14 date of enactment of the National
15 Signing Bonus Act of 2021; and

16 “(II) at least the 8 weeks imme-
17 diately preceding the week under sub-
18 clause (I);

19 “(ii) is no longer eligible for Federal
20 Pandemic Unemployment Compensation
21 under paragraph (1) (as determined by the
22 State), as a result of earnings due to com-
23 mencing employment with an employer by
24 whom the individual has not been em-
25 ployed during the preceding 6 months; and

1 “(iii) as verified by the individual’s
2 employer pursuant to subparagraph (E)—

3 “(I) has been employed by a non-
4 governmental employer throughout—

5 “(aa) in the case of the first
6 lump-sum payment, the individ-
7 ual’s first qualifying period; and

8 “(bb) in the case of the sec-
9 ond lump-sum payment, the indi-
10 vidual’s second qualifying period;
11 and

12 “(II) remains employed with an
13 intent to continue such employment.

14 “(B) AMOUNT.—

15 “(i) FIRST LUMP-SUM PAYMENT.—

16 With respect to the first qualifying period,
17 a payment made to an individual under
18 this paragraph shall be paid in a lump sum
19 amount of \$1,212.

20 “(ii) SECOND LUMP-SUM PAYMENT.—

21 With respect to the second qualifying pe-
22 riod, a payment made to an individual
23 under this paragraph shall be paid in a
24 lump sum amount of \$1,212.

25 “(C) QUALIFYING PERIODS.—

1 “(i) FIRST QUALIFYING PERIOD.—For
2 purposes of this paragraph, the term ‘first
3 qualifying period’ means, with respect to
4 an individual, a period—

5 “(I) beginning on the date the in-
6 dividual commenced employment as
7 described in subparagraph (A)(ii); and

8 “(II) extending at least 4 con-
9 secutive weeks from such date.

10 “(ii) SECOND QUALIFYING PERIOD.—
11 For purposes of this paragraph, the term
12 ‘second qualifying period’ means, with re-
13 spect to an individual, a period—

14 “(I) beginning on the date the in-
15 dividual commenced employment as
16 described in subparagraph (A)(ii)
17 (with the same employer with whom
18 the individual qualified for the first
19 lump-sum payment under this para-
20 graph); and

21 “(II) extending at least 8 con-
22 secutive weeks from such date.

23 “(D) DURATION.—A first or second lump-
24 sum payment may not be made to any indi-
25 vidual under this paragraph with respect to a

1 first or second qualifying period beginning on
2 or after July 4, 2021.

3 “(E) EMPLOYER VERIFICATION REQUIRED
4 FOR BOTH LUMP-SUM PAYMENTS.—Before
5 making the first and second lump-sum payment
6 to an individual pursuant to this paragraph, a
7 State agency shall require verification from the
8 individual’s employer—

9 “(i) of the individual’s employment
10 status;

11 “(ii) of the wages paid to the indi-
12 vidual during the applicable qualifying pe-
13 riod; and

14 “(iii) of the hours worked by the indi-
15 vidual during the applicable qualifying pe-
16 riod.

17 “(F) LIMITATION.—A State may not pro-
18 vide more than one first lump-sum payment
19 and one second lump-sum payment under this
20 paragraph to an individual.

21 “(G) SPECIAL RULE.—Payments made
22 pursuant to an agreement under this paragraph
23 shall not be considered to violate the withdrawal
24 requirements of section 303(a)(5) of the Social
25 Security Act (42 U.S.C. 503(a)(5)) or section

1 3304(a)(4) of the Internal Revenue Code of
2 1986.”.

3 (b) CONFORMING AMENDMENTS.—Section 2104 of
4 the CARES Act (15 U.S.C. 9023) is amended—

5 (1) in subsections (d) and (f), by inserting “,
6 payments under subsection (b)(4),” after “Federal
7 Pandemic Unemployment Compensation” each place
8 it appears; and

9 (2) in subsection (g)—

10 (A) in paragraph (1), by striking “and” at
11 the end;

12 (B) in paragraph (2), by striking the pe-
13 riod at the end and inserting “; and”; and

14 (C) by adding at the end the following:

15 “(3) the purposes of the preceding provisions of
16 this section, as such provisions apply with respect to
17 payments under subsection (b)(4), shall be applied
18 with respect to unemployment benefits described in
19 subsection (i)(2) to the same extent and in the same
20 manner as if those benefits were regular compensa-
21 tion.”.

○

June 17, 2021

Dear Members of the Unemployment Insurance Advisory Council:

The Department promulgated an emergency rule in response to the COVID-19 pandemic to reduce the unprecedented economic burden on Wisconsin employers. Emergency Rule 2108, DWD ch. 113, relates to waiving interest in limited circumstances for employers subject to reimbursement financing when reimbursements are delinquent due to COVID-19. This rule is effective until July 28, 2021.

This emergency rule implements the 2020 changes to federal law to that gives states “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.

And, this emergency rule ensures that the Legislature’s policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4 are met by minimizing the economic effect of the COVID-19 pandemic on Wisconsin employers. Acts 4 and 185 provide for unemployment benefit charging relief for employers. However, due to the Department’s antiquated computer system and the complexities of relieving employers of benefit charges, the charging relief will not be completed until after this Emergency Rule is scheduled to expire. Without an extension of Emergency Rule 2108, interest charges will be assessed to reimbursable employers who may not actually owe reimbursements, which could cause an unnecessary economic burden on those employers as they recover from the pandemic-induced recession.

The Department will request a 60-day extension of this emergency rule from the Joint Committee for the Review of Administrative Rules and I ask the Council to support this request. The extension will ensure that DWD’s administration of the unemployment insurance program does not create an unnecessary burden for employers. Please direct any questions about the emergency rule to Bureau of Legal Affairs Director Janell Knutson.

Thank you for your continued support of the Unemployment Insurance program.

Sincerely,



Amy Pechacek, Secretary-designee

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

The Wisconsin Department of Workforce Development adopts the following emergency rule *to amend* DWD 102.01 and *to create* DWD 102.04, relating to employer contribution rates for 2022.

The Governor approved the scope statement for this rule, SS 046-21, on May 14, 2021. The scope statement was published in register No. 785A3, on May 17, 2021. The notice of public hearing and comment period on the scope statement was published on May 24, 2021 in register No. 785B. The public hearing on the scope statement was held on May 27, 2021. The scope statement was approved by the Department on May 28, 2021. This rule was approved by the Governor on June 10, 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 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.

Under 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4, which created and then amended s. 108.07 (5) (bm), the Department of Workforce Development is directed to charge unemployment benefits for initial claims that are related to the public health emergency declared by Executive Order 72 to the balancing account of the Trust Fund for contribution employers. This treatment of claims charging applies to weeks of benefits payable beginning the week of March 15, 2020 through March 13, 2021.

The Department's antiquated computer systems are ill-equipped to handle the changes in charges from the employers' accounts to the balancing account. Each weekly claim to be charged to the balancing account under s. 108.07 (5) (bm), Stats., requires the Department to change the benefit charges from the employer's account to the balancing account of the Trust Fund after any federal funds have been appropriately applied. Given the high volume of claims filed during the pandemic, the work to complete the charging changes will not be completed by June 30, 2021.

Under sections 108.02(8), 108.02(22), and 108.18(4), Stats., "an employer's contribution rate on the employer's payroll for a given calendar year shall be based on the reserve percentage of the employer's account as of the applicable computation date," s. 108.18(4), Stats., which is June 30 of each year. Section 108.02(22), Stats., requires the Department to determine the status of an employer's account when setting the reserve percentage for contribution purposes as of the computation date.

Because the Department is not able to complete the benefit charging changes required by 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4 by June 30, employers' contribution rates for 2022 may be based, in part, on benefit charges that should have been charged to the balancing account instead of the employers' accounts. If contribution rates are set before recharging is completed, the result for most employers subject to contribution financing would be higher contribution rates for 2022 than they should be.

An emergency rule is needed to prevent employers from being subject to 2022 rates that are higher than they should be under 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4. Without a rule, employers may not see the benefit of charging relief under Acts 185 and 4 until rates are set for 2023 after recharging is completed.

The Department does not contemplate promulgating a permanent rule because the recharging will be accomplished to set appropriate rates that only apply for a limited time. This emergency rule will meet the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4 to address the public health emergency and protect the welfare of the economy through charging relief for contribution employers.

Statutes Interpreted

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

Statutory Authority

Section 108.14 (2), Stats.

Explanation of Statutory Authority

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

Related Statutes or Rules

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

The Department previously promulgated emergency rule EmR2018, relating to employer contribution rates for 2021.

Plain Language Analysis

This rule provides that the Department, in calculating an employer's net reserve as of the June 30, 2021 computation date, shall disregard all benefit charges and benefit adjustments for the period of March 15, 2020 through March 13, 2021.

The Department will, in effect, assume that all benefit charges and adjustments were related to the public health emergency declared by Executive Order 72. This assumption applies only for the purposes of setting the contribution rates for 2022. This rule will ensure that employers' contribution rates for 2022 are calculated based on reserve fund balances as of June 30, 2021 without taking charges related to the public health emergency into account so that the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4 are met. This rule will only affect calculation of contribution rates for 2022. Contribution rates for 2023 will be calculated in 2022 after all recharging is complete.

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

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

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

Comparison with rules in adjacent states

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

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

Iowa did not charge unemployment benefits related to COVID-19 to employer accounts until June 12, 2021.

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

Summary of factual data and analytical methodologies

The Department reviewed Wisconsin statutes, administrative rules, and recent changes to federal law to determine the options available to ensure that employer contribution rates are appropriately determined for 2022.

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

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

Under 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4, the unemployment insurance benefits related to the public health emergency declared on March 12, 2020 by Executive Order 72 will be charged to the balancing account of the Trust Fund for employers subject to contribution financing. The charging relief for employers under state law is effective for state unemployment insurance benefits paid for the period of March 15, 2020 through March 13, 2021. However, some charges for the first week of unemployment and for benefits paid under work share plans will be charged to the federal government.

Because the Department will not be able to complete the charging changes required by 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4 by June 30, 2021, most employers' contribution rates for 2022 will be based on benefit charges that should have been charged to the balancing account instead of the employers' accounts. This would result, for most employers subject to contribution financing, in contribution rates for 2022 that are higher than they should be.

This rule, in effect, directs the Department to assume that all benefit charges and benefit adjustments for the period of March 15, 2020 through March 13, 2021 relate to the public health emergency declared by Executive Order 72. This will have the effect of aligning employer contribution rates for 2022 with the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business

The proposed rule is expected to have a positive economic impact on employers subject to contribution financing, which may include small businesses, to provide those employers with contribution rates that align with the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4.

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 102.01 is amended to read:

2 **DWD 102.01 Purpose.** This chapter specifies the initial contribution rates for certain
3 categories of employers. This chapter also interprets ch. 108, Stats., for determining employer
4 contribution rates for 2022.

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

6 **DWD 102.04 Employer Contribution Rates for 2022.** When calculating an employer's
7 reserve percentage for the June 30, 2021, computation date for purposes of determining employer
8 contribution rates under s. 108.18 (4), Stats., the department shall disregard all benefit charges for
9 weeks of unemployment for the period of March 15, 2020 through March 13, 2021 and all benefit
10 adjustments processed during the period of March 15, 2020 through March 13, 2021, unless the
11 department has applied s. 108.07 (5) (bm) to the benefit charge or benefit adjustment. This section
12 only applies to the June 30, 2021, computation date.

13

1

SECTION 3. EFFECTIVE DATE. This rule shall take effect on June 29, 2021.

Dated this 14th day of June, 2021.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

A handwritten signature in black ink, appearing to read "Amy Pechacek", written in a cursive style.

By:

Amy Pechacek, Secretary-designee

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date June 4, 2021
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chapter DWD 102 - Contribution Rates	
4. Subject Contribution rates for 2022	
5. Fund Sources Affected <input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected None
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input checked="" type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$ none expected	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule: Currently, an employer's contribution rate on the employer's payroll for a given calendar year is based on the reserve percentage of the employer's account as of the applicable computation date, which is June 30 of each year. Ultimately, however, the employer's reserve fund balance takes into account all charges and credits on a rolling basis so that the employer's unemployment experience determines the contribution rate. To correctly set contribution rates, recharging work must consider applicability of federal programs that reduce the benefit charges to employers in addition to the recharging relief provided by 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4. Federal law changes provide federal funding (in whole or in part) that affects recharging in the following programs: waiver of waiting week; work share; and regular unemployment for reimbursable employers. The new policy to be included in this rule will ensure that employers' contribution rates for 2022 are calculated based on reserve fund balances as of June 30, 2021 without taking charges related to the public health emergency into account so that the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4 are met. This rule will only affect calculation of contribution rates for 2022. The policy alternative is to do nothing, which would negatively impact most employers subject to contribution financing because their contribution rates will be higher for 2022 than they should be. For most employers subject to contribution financing, this would result in higher contribution rates for 2022, which would not be in accordance with the legislative intent of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. Employers subject to the contribution financing provisions of Wisconsin unemployment insurance law may be impacted by the proposed rule. The Department held a preliminary public hearing and comment period on the scope statement but	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

no comments were submitted.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.
None.

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule may affect small businesses, as defined in s. 227.114 (1), Stats., if the small business is subject to contribution financing. Those businesses may receive a benefit under this rule if their employees filed claims for unemployment insurance benefits during the period of March 15, 2020 through March 13, 2021 because charges associated with those claims will not be included in the employers' contribution rate calculations for 2022.

The effect on the State's economy as a whole is that employers subject to contribution financing may have lower tax rates for 2022, which may make funds that would be used to pay contributions available for other uses in the economy.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The benefits of implementing this rule are that employers subject to contribution financing will have contribution rates for 2022 that will more accurately reflect the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4, resulting in lower contribution rates.

The alternative to implementing the rule is to do nothing, which would result in contribution rates for 2022 that would be incorrectly high for most employers subject to contribution financing.

16. Long Range Implications of Implementing the Rule

There are no long range implications of implementing this emergency rule.

17. Compare With Approaches Being Used by Federal Government

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

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

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

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

Iowa did not charge unemployment benefits related to COVID-19 to employer accounts until June 12, 2021.

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

19. Contact Name

Janell Knutson

20. Contact Phone Number

608-266-1639

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

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

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

The proposed rule may affect small businesses, as defined in s. 227.114 (1), Stats., if the small businesses are subject to contribution financing. Under this rule, most small businesses subject to contribution financing will have contribution rates for 2022 that more accurately reflect the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4. Contribution rates will be calculated for 2022 by disregarding the benefit charges and adjustments from March 15, 2020 through March 13, 2021.

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

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

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

Under 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4, the unemployment insurance benefits related to the public health emergency declared on March 12, 2020 by Executive Order 72 will be charged to the balancing account of the Trust Fund for employers subject to contribution financing. The charging relief for employers under state law is effective for state unemployment insurance benefits paid for the period of March 15, 2020 through March 13, 2021. However, some charges for the first week of unemployment and for benefits paid under work share plans will be charged to the federal government.

Because the Department will not be able to complete the charging changes required by 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4 by June 30, 2021, most employers' contribution rates for 2022 will be based on benefit charges that should have been charged to the balancing account instead of the employers' accounts. This would result, for most employers subject to contribution financing, in contribution rates for 2022 that are higher than they should be.

This rule, in effect, directs the Department to assume that all benefit charges and benefit adjustments for the period of March 15, 2020 through March 13, 2021 relate to the public health emergency declared by Executive Order 72. This will have the effect of aligning employer contribution rates for 2022 with the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4.

Incorrectly high contribution rates for employers could impede Wisconsin's economic recovery from the pandemic.

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

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

None.

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

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

The rule is an emergency rule, so it is only effective for a limited time.

5. Describe the Rule's Enforcement Provisions

The Department administers the unemployment insurance program by, among other things, determining contribution rates for employers.

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

Yes No

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).

D21-01
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.

D21-01
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.

D21-02
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.

D21-02
Appropriations Revisions and Technical Corrections

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.

D21-02
Appropriations Revisions and Technical Corrections

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.

D21-02
Appropriations Revisions and Technical Corrections

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.

D21-02
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.



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-3683/P1
MED:cjs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 108.02 (26) (c) 9., 108.02 (26) (c) 14. and 108.19 (3); **to**
2 **renumber** 108.04 (7) (h); **to renumber and amend** 108.14 (12) (e), 108.14 (18),
3 108.19 (1), 108.19 (1m), 108.19 (1n), 108.19 (1p), 108.19 (1q), 108.19 (1s), 108.19
4 (2) and 108.19 (2m); **to consolidate, renumber and amend** 108.14 (12) (a) to
5 (d), 108.161 (1) and (1m) and 108.161 (5) and (6); **to amend** 20.445 (1) (gc),
6 20.445 (1) (gd), 20.445 (1) (gh), 20.445 (1) (n), 20.445 (1) (nb), 20.445 (1) (nd),
7 20.445 (1) (ne), 20.445 (1) (u), 20.445 (1) (v), 25.17 (1) (xe), 25.17 (1) (xf), 108.02
8 (2) (c), 108.02 (13) (c) 2. a., 108.02 (14), 108.02 (15) (j) 5., 108.02 (15) (k) 5., 108.02
9 (17m), 108.02 (19), 108.04 (12) (b), 108.04 (16) (d) 1., 108.04 (18) (a), 108.04 (18)
10 (b), 108.07 (5) (intro.), 108.07 (5) (c), 108.10 (intro.), 108.13 (4) (a) 2., 108.14
11 (3m), 108.14 (8n) (a), 108.14 (8n) (e), 108.14 (26), 108.141 (1) (h), 108.141 (3g)
12 (a) 3. b., 108.141 (7) (a), 108.141 (7) (b), 108.145, 108.15 (3) (d), 108.151 (2) (d),
13 108.152 (1) (d), 108.155 (2) (a) and (d), 108.16 (6) (m), 108.16 (6m) (a), 108.16
14 (6x), 108.16 (9) (a), 108.161 (title), 108.161 (2), 108.161 (3), 108.161 (3e),
15 108.161 (4), 108.161 (7), 108.161 (8), 108.161 (9), 108.17 (2m), 108.18 (3) (c),

1 108.18 (7) (a) 1., 108.18 (7) (h), 108.19 (1f) (a), 108.19 (1f) (c), 108.19 (4), 108.20
2 (2m), 108.22 (1m), 108.22 (8e), 108.223 (2) (b), 108.23, 108.24 (3) (a) 3. a. and
3 108.24 (3) (a) 4.; **to repeal and recreate** 108.19 (title); and **to create** 108.19
4 (1) (d), 108.19 (1e) (cm), 108.19 (1m) (e), 108.195 (title) and 108.195 (2) (title)
5 of the statutes; **relating to:** correcting and updating cross-references and
6 making organizational changes in the unemployment insurance law.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the **state** 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:

7 **SECTION 1.** 20.445 (1) (gc) of the statutes is amended to read:
8 20.445 (1) (gc) *Unemployment administration.* All moneys received by the
9 department under s. 108.19 ~~not otherwise appropriated under this subsection (1)~~ for
10 the administration of ch. 108.

****NOTE: See the note under SECTION 66.

11 **SECTION 2.** 20.445 (1) (gd) of the statutes is amended to read:
12 20.445 (1) (gd) *Unemployment interest and penalty payments.* All moneys
13 received as interest and penalties collected under ss. 108.04 (11) (c) and (cm) ~~and (13)~~
14 ~~(e)~~ and 108.22 except interest and penalties deposited under s. ~~108.19 (1q)~~, and
15 ~~forfeitures under s. 103.05 (5)~~ 108.195 (1), all moneys not appropriated under par.
16 (gg) ~~and~~, all moneys received as forfeitures under s. 103.05 (5), and all moneys
17 transferred to this appropriation account from the appropriation account under par.
18 (gh), for the payment of benefits specified in s. 108.07 (5) ~~and 1987 Wisconsin Act 38,~~

1 ~~section 132 (1) (e)~~, for the payment of interest to employers under s. 108.17 (3m), for
2 research relating to the condition of the unemployment reserve fund under s. 108.14
3 (6), for administration of the unemployment insurance program and federal or state
4 unemployment insurance programs authorized by the governor under s. 16.54, for
5 satisfaction of any federal audit exception concerning a payment from the
6 unemployment reserve fund or any federal aid disallowance concerning the
7 unemployment insurance program, for assistance to the department of justice in the
8 enforcement of ch. 108, for the payment of interest due on advances from the federal
9 unemployment account under ~~title XII of the social security act~~ 42 USC 1321 to 1324
10 to the unemployment reserve fund, and for payments made to the unemployment
11 reserve fund to obtain a lower interest rate or deferral of interest payments on these
12 advances, except as otherwise provided in s. 108.20.

****NOTE: This is the so-called "I&P fund." However, it is not a separate segregated fund, but rather an appropriation account in the general fund. Except as described below, the changes in this SECTION constitute clarifications or correspond to other changes in the bill, including cross-reference changes.

****NOTE: Section 108.04 (13) (c) 2., 1985 stats., required \$15 tardy filing fees to be paid in certain circumstances. 1987 Act 38 renumbered s. 108.04 (13) (c) to s. 108.04 (13) (b) and changed existing cross-references accordingly. However, due to the passage of 1987 Act 27 that same session that created a *new* reference to the (old) s. 108.04 (13) (c) in s. 20.445 (1) (gf) but that was not taken into account by Act 38 and the fact that Act 38 reused the numbering for (13) (c) for something else, references to "(13) (c)" appear to have perpetuated to this day. As such, the reference to (13) (c) is struck, as it has not referenced any amounts collected since the 1985 statutes.

****NOTE: 1987 Act 38, SECTION 132 (1), was a nonstatutory transitional provision that provided how certain benefits were to be charged for periods in 1989 and 1990. The reference to this provision is struck, as this transitional period has long since passed.

13 **SECTION 3.** 20.445 (1) (gh) of the statutes is amended to read:

14 20.445 (1) (gh) *Unemployment information technology systems; assessments.*

15 All moneys received from assessments levied under s. 108.19 (1e) (a) ~~and 1997~~

16 ~~Wisconsin Act 39, section 164 (2)~~, for the purpose specified in s. 108.19 (1e) (d). The

1 treasurer of the unemployment reserve fund may transfer moneys from this
2 appropriation account to the appropriation account under par. (gd).

***NOTE: This deletes a reference to a temporary provision from 1997 Act 39.

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

4 20.445 (1) (n) *Employment assistance and unemployment insurance*
5 *administration; federal moneys.* All federal moneys received, as authorized by the
6 governor under s. 16.54, for the administration of employment assistance and
7 unemployment insurance programs of the department, for the performance of the
8 department's other functions under subch. I of ch. 106 and ch. 108, and to pay the
9 compensation and expenses of appeal tribunals and of employment councils
10 appointed under s. 108.14, to be used for such purposes, except as provided in s.
11 108.161 (3e), and, from the moneys received by this state under ~~section 903~~ 42 USC
12 1103 (d) of the federal Social Security Act, as amended, to transfer to the
13 appropriation account under par. (nb) an amount determined by the treasurer of the
14 unemployment reserve fund not exceeding the lesser of the amount specified in s.
15 108.161 (4) (d) or the amounts in the schedule under par. (nb), to transfer to the
16 appropriation account under par. (nd) an amount determined by the treasurer of the
17 unemployment reserve fund not exceeding the lesser of the amount specified in s.
18 108.161 (4) (d) or the amounts in the schedule under par. (nd), to transfer to the
19 appropriation account under par. (ne) an amount not exceeding the lesser of the
20 amount specified in s. 108.161 (4) (d) or the sum of the amounts in the schedule under
21 par. (ne) and the amount determined by the treasurer of the unemployment reserve
22 fund that is required to pay for the cost of banking services incurred by the
23 unemployment reserve fund, and to transfer to the appropriation account under s.

1 20.427 (1) (k) an amount determined by the treasurer of the unemployment reserve
2 fund.

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

4 20.445 (1) (nb) *Unemployment administration; information technology*
5 *systems.* From the moneys received from the federal government under ~~section 903~~
6 42 USC 1103 (d) of the federal Social Security Act, as amended, as a continuing
7 appropriation, the amounts in the schedule, as authorized by the governor under s.
8 16.54, for the purpose specified in s. 108.19 (1e) (d). All moneys transferred from par.
9 (n) for this purpose shall be credited to this appropriation account. No moneys may
10 be expended from this appropriation unless the treasurer of the unemployment
11 reserve fund determines that such expenditure is currently needed for the purpose
12 specified in s. 108.19 (1e) (d).

13 **SECTION 6.** 20.445 (1) (nd) of the statutes is amended to read:

14 20.445 (1) (nd) *Unemployment administration; apprenticeship and other*
15 *employment services.* From the moneys received from the federal government under
16 ~~section 903~~ 42 USC 1103 (d) of the federal Social Security Act, as amended, the
17 amounts in the schedule, as authorized by the governor under s. 16.54, to be used for
18 administration by the department of apprenticeship programs under subch. I of ch.
19 106 and for administration and service delivery of employment and workforce
20 information services, including the delivery of reemployment assistance services to
21 unemployment insurance claimants. All moneys transferred from par. (n) for this
22 purpose shall be credited to this appropriation account. No moneys may be expended
23 from this appropriation unless the treasurer of the unemployment reserve fund
24 determines that such expenditure is currently needed for the purposes specified in
25 this paragraph.

1 **SECTION 7.** 20.445 (1) (ne) of the statutes is amended to read:

2 20.445 (1) (ne) *Unemployment insurance administration and bank service*
3 *costs.* From the moneys received by this state under ~~section 903 of the federal Social~~
4 ~~Security Act, as amended~~ 42 USC 1103, all moneys transferred from the
5 appropriation account under par. (n) to be used for the administration of
6 unemployment insurance and for the payment of the cost of banking services
7 incurred by the unemployment reserve fund. No moneys may be expended from this
8 appropriation unless the treasurer of the unemployment reserve fund determines
9 that such expenditure is currently needed for the purpose specified in this
10 paragraph.

11 **SECTION 8.** 20.445 (1) (u) of the statutes is amended to read:

12 20.445 (1) (u) *Unemployment interest payments and transfers.* From the
13 unemployment interest payment fund, all moneys received from assessments under
14 s. 108.19 (1m) (a) for the purpose of making the payments and transfers authorized
15 under s. 108.19 (1m) (f).

****NOTE: Reflects changes in SECTION 70.

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

17 20.445 (1) (v) *Unemployment program integrity.* From the unemployment
18 program integrity fund, all moneys received from sources identified under s. ~~108.19~~
19 ~~(1s)~~ 108.195 (2) (a) for the purpose of making the payments authorized under s.
20 ~~108.19 (1s)~~ 108.195 (2) (b).

****NOTE: Reflects changes in SECTION 75.

21 **SECTION 10.** 25.17 (1) (xe) of the statutes is amended to read:

22 25.17 (1) (xe) Unemployment interest payment fund (s. ~~108.19 (1q)~~ 108.195
23 (1));

***NOTE: Reflects changes in SECTION 74.

1 **SECTION 11.** 25.17 (1) (xf) of the statutes is amended to read:
2 25.17 (1) (xf) Unemployment program integrity fund (s. 108.19 ~~(1s)~~ 108.195
3 (2));

***NOTE: Reflects changes in SECTION 75.

4 **SECTION 12.** 108.02 (2) (c) of the statutes is amended to read:
5 108.02 (2) (c) In connection with the production or harvesting of any commodity
6 defined as an agricultural commodity in s. 15 (g) of the federal agricultural marketing
7 act, as amended (46 Stat. 1550, s. 3; under 12 USC 1141j) or (f), in connection with the
8 ginning of cotton, or in connection with the operation or maintenance of ditches, canals,
9 reservoirs, or waterways, not owned or operated for profit, used exclusively for
10 supplying and storing water for farming purposes.

***NOTE: This updates a cross-reference to federal law to reflect the correct provision. (Note that the U.S. Code still has it as “(g)” but notes that “Section 1141j(g) of title 12, referred to in subsec. (f)(3), was redesignated section 1141j(f) by Pub. L. 110-246.”)

11 **SECTION 13.** 108.02 (13) (c) 2. a. of the statutes is amended to read:
12 108.02 (13) (c) 2. a. Such crew leader holds a valid certificate of registration
13 under ~~the federal farm labor contractor registration act of 1963~~ 29 USC 1801 to 1872;
14 or substantially all the members of such crew operate or maintain tractors,
15 mechanized harvesting or cropdusting equipment, or any other mechanized
16 equipment which is provided by such crew leader; and

***NOTE: The Farm Labor Contractor Registration Act of 1963 was repealed by P.L. 97-470, the Migrant and Seasonal Agricultural Worker Protection Act. This substitutes in the correct cross-references in current federal law.

17 **SECTION 14.** 108.02 (14) of the statutes is amended to read:
18 108.02 (14) EMPLOYER'S ACCOUNT. “Employer’s account” means ~~a~~ an employer’s
19 separate account in the fund, ~~reflecting the employer’s experience with respect to~~

1 ~~contribution credits and benefit charges under this chapter~~ maintained as required
2 under s. 108.16 (2) (a).

***NOTE: This adds a cross-reference to this definition, in place of the current generic description, for additional clarity.

3 **SECTION 15.** 108.02 (15) (j) 5. of the statutes is amended to read:

4 108.02 (15) (j) 5. In any quarter in the employ of any organization exempt from
5 federal income tax under section 26 USC 501 (a) of the internal revenue code, other
6 than an organization described in section 26 USC 401 (a) or 501 (c) (3) of such code,
7 or under section 26 USC 521 of the internal revenue code, if the remuneration for
8 such service is less than \$50;

9 **SECTION 16.** 108.02 (15) (k) 5. of the statutes is amended to read:

10 108.02 (15) (k) 5. With respect to which unemployment insurance is payable
11 ~~under the federal railroad unemployment insurance act (52 Stat. 1094)~~ 45 USC 351
12 to 369;

13 **SECTION 17.** 108.02 (17m) of the statutes is amended to read:

14 108.02 (17m) INDIAN TRIBE. "Indian tribe" has the meaning given in 25 USC
15 ~~450b~~ 5304 (e), and includes any subdivision, subsidiary, or business enterprise that
16 is wholly owned by such an entity.

***NOTE: 25 USC 450b was editorially reclassified in the U.S. Code as 25 USC 5304.

17 **SECTION 18.** 108.02 (19) of the statutes is amended to read:

18 108.02 (19) NONPROFIT ORGANIZATIONS. "Nonprofit organization" means an
19 organization described in section 26 USC 501 (c) (3) of the Internal Revenue Code
20 that is exempt from federal income tax under section 26 USC 501 (a) of the Internal
21 Revenue Code.

22 **SECTION 19.** 108.02 (26) (c) 9. of the statutes is repealed.

***NOTE: This repeals a provision that referenced a federal law provision concerning qualified group legal services plans. The provision in federal law had been terminated for taxable years beginning after June 30, 1992, and has since been repealed outright by P.L. 113-295.

1 **SECTION 20.** 108.02 (26) (c) 14. of the statutes is repealed.

***NOTE: This repeals a reference to the federal Medicare Catastrophic Coverage Act of 1988, which was subsequently repealed by P.L. 101-234, the Medicare Catastrophic Coverage Repeal Act of 1989.

2 **SECTION 21.** 108.04 (7) (h) of the statutes is renumbered 108.04 (7) (u).

***NOTE: This provision, relating to charging benefits when a quit exception applies, is moved so that it appears after all of the quit exceptions, not in the middle of them.

3 **SECTION 22.** 108.04 (12) (b) of the statutes is amended to read:

4 108.04 (12) (b) Any individual who receives, through the department, any other
5 type of unemployment benefit or allowance for a given week is ineligible for benefits
6 for that same week under this chapter, except as specifically required for conformity
7 with ~~the federal trade act of 1974 (P.L. 93-618)~~ 19 USC 2101 to 2497b.

8 **SECTION 23.** 108.04 (16) (d) 1. of the statutes is amended to read:

9 108.04 (16) (d) 1. The department shall not deny benefits under sub. (7) as a
10 result of the individual's leaving unsuitable work to enter or continue such training,
11 as a result of the individual's leaving work that the individual engaged in on a
12 temporary basis during a break in the training or a delay in the commencement of
13 the training, or because the individual left on-the-job training not later than 30 days
14 after commencing that training because the individual did not meet the
15 requirements ~~of the federal trade act~~ under 19 USC 2296 (c) (1) (B); and

16 **SECTION 24.** 108.04 (18) (a) of the statutes is amended to read:

17 108.04 (18) (a) The wages paid to an employee who performed services while
18 the employee was an alien shall, if based on such services, be excluded from the
19 employee's base period wages for purposes of sub. (4) (a) and ss. 108.05 (1) and 108.06

1 (1) unless the employee is an alien who was lawfully admitted for permanent
2 residence at the time such services were performed, was lawfully present for the
3 purpose of performing such services, or was permanently residing in the United
4 States under color of law at the time such services were performed, including an alien
5 who was lawfully present in the United States as a result of the application of the
6 provisions of ~~section 212 (d) (5) of the federal immigration and nationality act~~ (8 USC
7 1182 (d) (5)). All claimants shall be uniformly required to provide information as to
8 whether they are citizens and, if they are not, any determination denying benefits
9 under this subsection shall not be made except upon a preponderance of the evidence.

10 **SECTION 25.** 108.04 (18) (b) of the statutes is amended to read:

11 108.04 (18) (b) Any amendment of s. 26 USC 3304 (a) (14) of the federal
12 ~~unemployment tax act~~ specifying conditions other than as stated in par. (a) for denial
13 of benefits based on services performed by aliens, or changing the effective date for
14 required implementation of par. (a) or such other conditions, ~~which~~ that is a condition
15 of approval of this chapter for full tax credit against the tax imposed by the federal
16 unemployment tax act, shall be applicable to this subsection.

17 **SECTION 26.** 108.07 (5) (intro.) of the statutes is amended to read:

18 108.07 (5) (intro.) Except as provided in sub. (7), whenever benefits ~~which~~
19 that would otherwise be chargeable to the fund's balancing account are paid based
20 on wages paid by an employer that is not subject to the contribution requirements
21 of ss. 108.17 and 108.18, and the benefits are so chargeable under sub. (3) or s.
22 108.04 (1) (f) ~~or~~, (5), or (5g) or 108.14 (8n) (e), or under s. 108.16 (6m) (e) for benefits
23 specified in s. 108.16 (3) (b), the department shall charge the benefits as follows:

***NOTE: This subsection governs the charging of benefits that would otherwise be chargeable to the balancing account in certain situations where one employer is a reimbursable employer. This provision originated in 1987 Act 38, and the drafting file

indicates that it was intentionally written to omit certain cases where benefits are charged to the balancing account (i.e., s. 108.04 (7) and (8)). However, s. 108.04 (5g) did not exist at that time, and when it was created, it appears that it should have been added here.

1 **SECTION 27.** 108.07 (5) (c) of the statutes is amended to read:

2 108.07 (5) (c) If 2 or more employers from which the claimant has base period
3 wages are not subject to the contribution requirements of ss. 108.17 and 108.18, and
4 one or more employers from which the claimant has base period wages are subject
5 to the contribution requirements of ss. 108.17 and 108.18, that percentage of the
6 employee's benefits which would otherwise be chargeable to the fund's balancing
7 account under sub. (3) or s. 108.04 (1) (f) ~~or~~, (5), or (5g), or under s. 108.16 (6m) (e)
8 for benefits specified in s. 108.16 (3) (b), shall be charged to the administrative
9 account and paid from the appropriation under s. 20.445 (1) (gd).

***NOTE: See the note under SECTION 26.

10 **SECTION 28.** 108.10 (intro.) of the statutes is amended to read:

11 **108.10 Settlement of issues other than benefit claims.** (intro.) Except as
12 provided in s. 108.245 (3), in connection with any issue arising under this chapter as
13 to the status or liability of an employing unit ~~in this state~~, for which no review is
14 provided under s. 108.09, 108.095, or 108.227 (5) and whether or not a penalty is
15 provided in s. 108.24, the following procedure shall apply:

***NOTE: This adds a cross-reference to s. 108.095, which provides a separate procedure from s. 108.09 for certain cases involving an alleged false statement or representation of a person to obtain UI benefits payable to another person.

***NOTE: This deletes "in this state" to clarify that the procedures in this section apply to issues involving the status or liability of any employing unit, not only an employing unit located in this state.

16 **SECTION 29.** 108.13 (4) (a) 2. of the statutes is amended to read:

17 108.13 (4) (a) 2. "Legal process" has the meaning given under 42 USC ~~662 (e)~~
18 659 (i) (5).

***NOTE: The definition referenced here was moved by P.L. 104-193 from 42 USC 662 to 42 USC 659.

1 **SECTION 30.** 108.14 (3m) of the statutes is amended to read:

2 108.14 **(3m)** In any court action to enforce this chapter the department, the
3 commission, and the state may be represented by any licensed attorney who is an
4 employee of the department or the commission and is designated by either of them
5 for this purpose or at the request of either of them by the department of justice. If
6 the governor designates special counsel to defend, in behalf of the state, the validity
7 of this chapter or of any provision of ~~Title IX of the social security act~~ 42 USC 1101
8 to 1110, the expenses and compensation of the special counsel and of any experts
9 employed by the department in connection with that proceeding may be charged to
10 the administrative account. If the compensation is being determined on a contingent
11 fee basis, the contract is subject to s. 20.9305.

12 **SECTION 31.** 108.14 (8n) (a) of the statutes is amended to read:

13 108.14 **(8n)** (a) The department shall enter into a reciprocal arrangement
14 ~~which is approved by the U.S. secretary of labor pursuant to section under 26 USC~~
15 ~~3304 (a) (9) (B) of the internal revenue code~~, to provide more equitable benefit
16 coverage for individuals whose recent work has been covered by the unemployment
17 insurance laws of 2 or more jurisdictions.

18 **SECTION 32.** 108.14 (8n) (e) of the statutes is amended to read:

19 108.14 **(8n)** (e) The department shall charge this state's share of any benefits
20 paid under this subsection to the account of each employer by which the employee
21 claiming benefits was employed in the applicable base period, in proportion to the
22 total amount of wages he or she earned from each employer in the base period, except
23 that if s. 108.04 (1) (f), (5), ~~(5g)~~, (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m) or (8) (a)

1 ~~or (b) to (c)~~, 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) would have applied to
2 employment by such an employer who is subject to the contribution requirements of
3 ss. 108.17 and 108.18, the department shall charge the share of benefits based on
4 employment with that employer to the fund's balancing account, or, if s. 108.04 (1)
5 (f) ~~or (5)~~, or (5g) or 108.07 (3) would have applied to an employer that is not subject
6 to the contribution requirements of ss. 108.17 and 108.18, the department shall
7 charge the share of benefits based on that employment in accordance with s. 108.07
8 (5) (a) and (b). The department shall also charge the fund's balancing account with
9 any other state's share of such benefits pending reimbursement by that state.

***NOTE: In the first string of cross-references, missing cross-references are added to provisions that provide for charging to the balancing account.

***NOTE: A reference to s. 108.04 (5g) is added in the second-to-last sentence to correspond to the changes in SECTIONS 26 and 27. See the note under SECTION 26.

10 **SECTION 33.** 108.14 (12) (a) to (d) of the statutes are consolidated, renumbered
11 108.14 (12) (am) and amended to read:

12 108.14 (12) (am) Consistently Consistent with the provisions of pars. (8) and
13 ~~(9) of section 303 (a) of Title III of the federal social security act, 42 USC 503 (a) (8)~~
14 and (9), the department shall expend all moneys received in the federal
15 administrative financing account from any federal agency under said Title III shall
16 ~~be expended 42 USC ch. 7 subch. III~~ solely for the purposes and in the amounts found
17 necessary by said that agency for the ~~proper and efficient~~ administration of this
18 chapter. ~~(b) Consistently with said provisions of said Title III, any~~ The department
19 shall replace, within a reasonable time, any such moneys, that were received prior
20 to before July 1, 1941, and remaining remained unencumbered on said that date, or
21 that were received on or after said that date, which, because of any action or
22 contingency, have been if the moneys are lost or have been expended for purposes

1 other than, or in amounts in excess of, those found necessary by said the federal
2 agency for the proper administration of this chapter, ~~shall be replaced within a~~
3 ~~reasonable time. This paragraph is the declared policy of this state, as enunciated~~
4 ~~by the 1941 legislature, and shall be implemented as further provided in this~~
5 ~~subsection.~~ (c) If it is believed that any amount of money thus received has been
6 ~~thus is~~ lost or improperly expended, the department, on its own motion or on notice
7 from said the federal agency, shall promptly investigate and determine the matter
8 and shall, depending on the nature of its determination, take such steps as it may
9 deem considers necessary to protect the interests of the state. (d) If it is finally
10 determined that moneys ~~thus received~~ have been ~~thus~~ lost or improperly expended,
11 ~~then~~ the department shall either make the necessary replacement from those
12 moneys in the administrative account specified in s. 108.20 (2m) or shall submit, at
13 the next budget hearings conducted by the governor and at the budget hearings
14 conducted by the next legislature convened in regular session, a request that the
15 necessary replacement be made by an appropriation from the general fund.

****NOTE: Modernizes and streamlines language that was written to fulfill the
conformity requirement under 42 USC 503 (a) (8) and (9).

16 **SECTION 34.** 108.14 (12) (e) of the statutes is renumbered 108.14 (12) (bm) and
17 amended to read:

18 108.14 (12) (bm) This subsection shall not be construed to relieve this state of
19 any obligation existing ~~prior to its enactment~~ before July 1, 1941, with respect to
20 moneys received ~~prior to~~ before July 1, 1941, pursuant to said Title III under 42 USC
21 ch. 7 subch. III.

****NOTE: See the note under the previous SECTION.

22 **SECTION 35.** 108.14 (18) of the statutes is renumbered 108.19 (1e) (e) and
23 amended to read:

1 108.19 **(1e)** (e) No later than the end of the month following each quarter in
2 which the department expends moneys derived from assessments levied under s.
3 ~~108.19 (1e)~~ this subsection, the department shall submit a report to the council on
4 unemployment insurance describing the use of the moneys expended and the status
5 at the end of the quarter of any project for which moneys were expended.

 ***NOTE: Moves this requirement to the provision to which it closely relates.

6 **SECTION 36.** 108.14 (26) of the statutes is amended to read:

7 108.14 **(26)** The department shall prescribe by rule a standard affidavit form
8 that may be used by parties to appeals under ss. 108.09, 108.095, and 108.10 and
9 shall make the form available to employers and claimants. The form shall be
10 sufficient to qualify as admissible evidence in a hearing under this chapter if the
11 authentication is sufficient and the information set forth by the affiant is admissible,
12 but its use by a party does not eliminate the right of an opposing party to cross
13 examine the affiant concerning the facts asserted in the affidavit.

 ***NOTE: This adds a cross-reference to s. 108.095, which provides a separate
 procedure from ss. 108.09 and 108.10 for certain cases involving an alleged false
 statement or representation of a person to obtain UI benefits payable to another person.

14 **SECTION 37.** 108.141 (1) (h) of the statutes is amended to read:

15 108.141 **(1)** (h) "State law" means the unemployment insurance law of any
16 state, that has been approved by the U.S. secretary of labor under section 26 USC
17 3304 of the internal revenue code.

18 **SECTION 38.** 108.141 (3g) (a) 3. b. of the statutes is amended to read:

19 108.141 **(3g)** (a) 3. b. The gross average weekly remuneration for the work
20 exceeds the claimant's weekly benefit rate plus any supplemental unemployment
21 benefits, as defined in section 26 USC 501 (c) (17) (D) of the internal revenue code,
22 then payable to the claimant;

1 **SECTION 39.** 108.141 (7) (a) of the statutes is amended to read:

2 108.141 (7) (a) The department shall charge the state's share of each week of
3 extended benefits to each employer's account in proportion to the employer's share
4 of the total wages of the employee receiving the benefits in the employee's base
5 period, except that if the employer is subject to the contribution requirements of ss.
6 108.17 and 108.18 the department shall charge the share of extended benefits to
7 which s. 108.04 (1) (f), (5), (5g), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m) or (8) (a)
8 ~~or (b) to (c)~~, 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) applies to the fund's balancing
9 account.

 ****NOTE: As in SECTION 32, this adds a reference to substantial fault in the extended benefits provision.

10 **SECTION 40.** 108.141 (7) (b) of the statutes is amended to read:

11 108.141 (7) (b) The department shall charge the full amount of extended
12 benefits based on employment for a government unit to the account of the
13 government unit, except that if s. 108.04 (5), (5g), or (7) applies and the government
14 unit has elected contribution financing the department shall charge one-half of the
15 government unit's share of the benefits to the fund's balancing account.

 ****NOTE: This adds a reference to substantial fault in the extended benefits provision.

16 **SECTION 41.** 108.145 of the statutes is amended to read:

17 **108.145 Disaster unemployment assistance.** The department shall
18 administer under s. 108.14 (9m) the distribution of disaster unemployment
19 assistance to workers in this state who are not eligible for benefits whenever such
20 assistance is made available by the president of the United States under ~~26~~ 42 USC
21 5177 (a). In determining eligibility for assistance and the amount of assistance
22 payable to any worker who was totally self-employed during the first 4 of the last 5

1 most recently completed quarters preceding the date on which the worker claims
2 assistance, the department shall not reduce the assistance otherwise payable to the
3 worker because the worker receives one or more payments under the social security
4 act (~~42 USC 301 et seq.~~) ch. 7, for the same week that the worker qualifies for such
5 assistance.

****NOTE: The cross-reference to "26 USC 5177 (a)" appears to have been an error from when this provision was enacted. It is corrected to the proper cross-reference, "42 USC 5177 (a)."

6 **SECTION 42.** 108.15 (3) (d) of the statutes is amended to read:

7 108.15 (3) (d) If a government unit elects contribution financing for any
8 calendar year after the first calendar year it becomes newly subject to this chapter,
9 it shall be liable to reimburse the fund for any benefits based on prior employment.
10 If a government unit terminates its election of contribution financing, ss. 108.17 and
11 108.18 shall apply to employment in the prior calendar year, but after all benefits
12 based on such prior employment have been charged to its contribution account any
13 balance remaining in such account shall be transferred to the fund's balancing
14 account.

****NOTE: This adds the word "fund's" before "balancing account," consistent with the rest of ch. 108.

15 **SECTION 43.** 108.151 (2) (d) of the statutes is amended to read:

16 108.151 (2) (d) Sections 108.17 and 108.18 shall apply to all prior employment,
17 but after all benefits based on prior employment have been charged to any account
18 it has had under s. 108.16 (2) any balance remaining therein shall be transferred to
19 the fund's balancing account as if s. 108.16 (6) (c) or (6m) (d) applied.

****NOTE: This adds the word "fund's" before "balancing account," consistent with the rest of ch. 108.

20 **SECTION 44.** 108.152 (1) (d) of the statutes is amended to read:

1 108.152 (1) (d) If the Indian tribe or tribal unit is an employer ~~prior to~~ before
2 the effective date of an election, ss. 108.17 and 108.18 shall apply to all employment
3 ~~prior to~~ before the effective date of the election, but after all benefits based on prior
4 employment have been charged to any account that it has had under s. 108.16 (2),
5 the department shall transfer any positive balance or charge any negative balance
6 remaining therein to the fund's balancing account as if s. 108.16 (6) (c) and (6m) (d)
7 applied.

 ***NOTE: This adds the word "fund's" before "balancing account," consistent with
the rest of ch. 108.

8 **SECTION 45.** 108.155 (2) (a) and (d) of the statutes are amended to read:

9 108.155 (2) (a) On October 2, 2016, the fund's treasurer shall set aside
10 \$2,000,000 in the fund's balancing account for accounting purposes. On an ongoing
11 basis, the fund's treasurer shall tally the amounts allocated to reimbursable
12 employers' accounts under s. 108.04 (13) (d) 4. c. and deduct those amounts from the
13 amount set aside plus any interest calculated thereon.

14 (d) If the department assesses reimbursable employers under par. (c), the
15 department shall determine the amount of assessments to be levied as provided in
16 sub. (3), and the fund's treasurer shall notify reimbursable employers that the
17 assessment will be imposed. Except as provided in sub. (3) (c), the assessment shall
18 be payable by each reimbursable employer that is subject to this chapter as of the
19 date the assessment is imposed. Assessments imposed under this section shall be
20 credited to the fund's balancing account.

 ***NOTE: This adds the word "fund's" before "balancing account," consistent with
the rest of ch. 108.

21 **SECTION 46.** 108.16 (6) (m) of the statutes is amended to read:

1 108.16 **(6)** (m) Any amounts transferred to the balancing account from the
2 unemployment interest payment fund under s. 108.19 (1m) (f).

 ***NOTE: This adds a cross-reference to the provision that provides for the transfers that are referenced.

3 **SECTION 47.** 108.16 (6m) (a) of the statutes is amended to read:

4 108.16 **(6m)** (a) The benefits thus chargeable under sub. (7) (a) or (b) or s.
5 108.04 (1) (f), (5), (5g), (7) ~~(h)~~ (u), (7m), (8) (a) ~~or (b) to (c)~~, (13) (c) or (d) or (16) (e),
6 108.07 (3), (3r), (5) (b), (5m), or (6), 108.133 (3) (f), 108.14 (8n) (e), 108.141, 108.15,
7 108.151, or 108.152 ~~or sub. (6) (e) or (7) (a) and (b)~~.

 ***NOTE: See the note under SECTION 21 regarding the change of “(7) (h)” to “(7) (u).”

 ***NOTE: This adds a missing cross reference to s. 108.04 (7m).

 ***NOTE: This adds a cross-reference to s. 108.15. Sections 108.15, 108.151, and 108.152 all call for benefits to be paid from a reimbursement account for an employer that is a subaccount of the balancing account.

 ***NOTE: Material that was formerly in s. 108.16 (6) (e) was relocated to s. 108.16 (6m) (f) and (11). See 1999 Wisconsin Acts 15 and 83. The reference to (6) (e) here appears to be a vestige of the former law and it is therefore deleted.

 ***NOTE: This extends a cross-reference to s. 108.04 (8) (c), which also provides for charging to the balancing account.

8 **SECTION 48.** 108.16 (6x) of the statutes is amended to read:

9 108.16 **(6x)** The department shall charge to the uncollectible reimbursable
10 benefits account the amount of any benefits paid from the fund's balancing account
11 that are reimbursable under s. 108.151 but for which the department does not receive
12 reimbursement after the department exhausts all reasonable remedies for collection
13 of the amount.

 ***NOTE: This adds the word “fund’s” before “balancing account,” consistent with the rest of ch. 108.

14 **SECTION 49.** 108.16 (9) (a) of the statutes is amended to read:

15 108.16 **(9)** (a) Consistently with section 26 USC 3305 of the internal revenue
16 code, relating to federal instrumentalities ~~which~~ that are neither wholly nor

1 partially owned by the United States nor otherwise specifically exempt from the tax
2 imposed by ~~section~~ under 26 USC 3301 of the internal revenue code:

3 1. Any contributions required and paid under this chapter for ~~1939 or any~~
4 ~~subsequent~~ year by any such instrumentality, including any national bank, shall be
5 refunded to such ~~that~~ instrumentality in case this chapter is not certified with
6 respect to such year under ~~s. 26 USC 3304 of said code.~~

7 2. No national banking association ~~which is subject to this chapter shall be~~
8 required to comply with any of its provisions or requirements under this chapter, to
9 the extent that such compliance would be contrary to ~~s. 26 USC 3305 of said code.~~

10 **SECTION 50.** 108.161 (title) of the statutes is amended to read:

11 **108.161 (title) Federal administrative financing account; Reed Act**
12 **distributions.**

****NOTE: This section was created by 1957 Act 235 following the enactment of the Federal Employment Security Administrative Financing Act of 1954, the relevant portion of which is known as the "Reed Act" and provides for periodic distributions of money to states, the last of which occurred in 2002. This amends the title here to make it more apparent what this section is about. The treatments below aim to eliminate antiquated language (i.e., "hereunder") and use U.S. Code cross-references instead of references to the Social Security Act.

13 **SECTION 51.** 108.161 (1) and (1m) of the statutes are consolidated, renumbered
14 108.161 (1) and amended to read:

15 108.161 (1) The fund's treasurer shall maintain within the fund an
16 employment security "federal administrative financing account",² and shall credit
17 ~~thereto~~ to that account all amounts credited to the fund pursuant to the federal
18 ~~employment security administrative financing act (of 1954) and section 903 of the~~
19 ~~federal social security act, as amended. (1m) The treasurer of the fund shall also~~
20 ~~credit to said account~~ under 42 USC 1101 to 1103 and all federal moneys credited to
21 the fund pursuant to under sub. (8).

1 **SECTION 52.** 108.161 (2) of the statutes is amended to read:

2 108.161 (2) The requirements of ~~said section 903~~ 42 USC 1103 shall control any
3 appropriation, withdrawal, and use of any moneys in said the federal administrative
4 financing account.

5 **SECTION 53.** 108.161 (3) of the statutes is amended to read:

6 108.161 (3) ~~Consistently~~ Consistent with this chapter and ~~said section 903,~~
7 ~~such~~ 42 USC 1103, moneys in the federal administrative financing account shall be
8 used solely for benefits or employment security administration by the department,
9 including unemployment insurance, employment service, apprenticeship programs,
10 and related statistical operations.

11 **SECTION 54.** 108.161 (3e) of the statutes is amended to read:

12 108.161 (3e) Notwithstanding sub. (3), any moneys allocated under ~~section 903~~
13 ~~of the federal Social Security Act, as amended,~~ 42 USC 1103 for federal fiscal years
14 2000 and 2001 and the first \$2,389,107 of any distribution received by this state
15 under ~~section 903 of that act~~ 42 USC 1103 in federal fiscal year 2002 shall be used
16 solely for unemployment insurance administration.

17 **SECTION 55.** 108.161 (4) of the statutes is amended to read:

18 108.161 (4) ~~Such moneys~~ Moneys in the federal administrative financing
19 account shall be encumbered and spent for employment security administrative
20 purposes only pursuant to, and after the effective date of, a specific legislative
21 appropriation enactment that does all of the following:

22 (a) ~~Stating~~ States for which such purposes and in what amounts the
23 appropriation is being made to the administrative account created by s. 108.20.

24 (b) ~~Directing~~ Directs the fund's treasurer to transfer the appropriated amounts
25 to the administrative account only as and to the extent that they are currently

1 needed for such expenditures, and ~~directing~~ directs that there shall be restored to the
2 federal administrative financing account created by sub. (1) any amount thus
3 transferred ~~which~~ that has ceased to be needed or available for such expenditures.

4 (c) ~~Specifying~~ Specifies that the appropriated amounts are available for
5 obligation solely within the 2 years beginning on the appropriation law's date of
6 enactment. This paragraph does not apply to the appropriations under s. 20.445 (1)
7 (nd) and (ne) or to any amounts expended from the appropriation under s. 20.445 (1)
8 (nb) from moneys transferred to this state on March 13, 2002, pursuant to ~~section 903~~
9 ~~(d) of the federal Social Security Act~~ 42 USC 1103 (d).

10 (d) ~~Limiting~~ Limits the total amount ~~which~~ that may be obligated during any
11 fiscal year to the aggregate of all amounts credited under sub. (1), including amounts
12 credited pursuant to under sub. (8), reduced at the time of any obligation by the sum
13 of the moneys obligated and charged against any of the amounts credited.

14 **SECTION 56.** 108.161 (5) and (6) of the statutes are consolidated, renumbered
15 108.161 (5m) and amended to read:

16 108.161 **(5m)** The total of the amounts ~~thus~~ appropriated under sub. (4) for use
17 in any fiscal year shall in no event exceed the moneys available for such use
18 ~~hereunder~~ under this section, considering the timing of credits ~~hereunder~~ under this
19 section and the sums already spent or appropriated or transferred or otherwise
20 encumbered ~~hereunder~~. ~~(6)~~ under this section. The fund's treasurer shall keep a
21 record of all such ~~times and amounts; shall charge~~ transactions and shall do all of the
22 following:

23 (a) Charge each sum against the earliest credits ~~duly~~ available therefor; ~~shall~~
24 include.

1 **(b)** Include any sum ~~thus that has been~~ appropriated but not yet spent
2 hereunder under this section in computing the fund's net balance as of the close of
3 any month, in line with the federal requirement that any such sum shall, until spent,
4 be considered part of the fund; ~~and shall certify.~~

5 **(c)** Certify the relevant facts whenever necessary hereunder.

6 **SECTION 57.** 108.161 (7) of the statutes is amended to read:

7 108.161 (7) If any moneys appropriated hereunder under this section are used
8 to buy and hold suitable land, ~~with a view to the future construction of an~~ and to build
9 a suitable employment security building thereon, and if such land is later sold or
10 transferred to other use, the proceeds of such sale (, or the value of such land when
11 transferred), shall be credited to the federal administrative financing account
12 ~~created by sub. (1)~~ except as otherwise provided in ss. 13.48 (14) and 16.848.

13 **SECTION 58.** 108.161 (8) of the statutes is amended to read:

14 108.161 (8) If any sums are appropriated and spent hereunder under this
15 section to buy land and to build a suitable employment security building thereon, or
16 to purchase information technology hardware and software, ~~then~~ any federal
17 moneys thereafter credited to the fund or paid to the department by way of gradual
18 reimbursement of such employment security capital expenditures, or in lieu of the
19 estimated periodic amounts ~~which that~~ would otherwise (, in the absence of such
20 expenditures), be federally granted for the rental of substantially equivalent
21 quarters, shall be credited to the federal administrative financing account ~~created~~
22 ~~by sub. (1)~~, consistently with any federal requirements applicable to the handling
23 and crediting of such moneys.

24 **SECTION 59.** 108.161 (9) of the statutes is amended to read:

1 108.161 **(9)** Any land and building or office quarters acquired under this section
2 shall continue to be used for employment security purposes. Realty or quarters may
3 not be sold or transferred to other use if prior action is taken under s. 13.48 (14) (am)
4 or 16.848 (1) and may not be sold or transferred without the governor's approval. The
5 proceeds from the sale, or the value of realty or quarters upon transfer, shall be
6 credited to the federal administrative financing account ~~established in sub. (1) or~~
7 ~~credited to the fund established in s. 108.20~~ administrative account, or both as
8 determined by the department in accordance with federal requirements. Equivalent
9 substitute rent-free quarters may be provided, as federally approved. Amounts
10 credited under this subsection shall be used solely to finance employment security
11 quarters according to federal requirements.

 ***NOTE: There is no longer a fund established under s. 108.20, which instead
refers to an "administrative account."

12 **SECTION 60.** 108.17 (2m) of the statutes is amended to read:

13 108.17 **(2m)** When a written statement of account is issued to an employer by
14 the department, ~~showing as duly credited that shows~~ a specified amount received
15 from the employer under this chapter as having been credited, no other form of state
16 receipt ~~therefor~~ is required.

17 **SECTION 61.** 108.18 (3) (c) of the statutes is amended to read:

18 108.18 **(3)** (c) Permitting the employer to pay such lower rate is consistent with
19 the relevant conditions then applicable to additional credit allowance for such year
20 under section 26 USC 3303 (a) ~~of the federal unemployment tax act~~, any other
21 provision to the contrary notwithstanding.

22 **SECTION 62.** 108.18 (7) (a) 1. of the statutes is amended to read:

1 108.18 (7) (a) 1. Except as provided in pars. (b) to (i), any employer may make
2 payments to the fund during the month of November in excess of those required by
3 this section and s. 108.19 (1), (1e), and (1f). Each payment shall be credited to the
4 employer's account for the purpose of computing the employer's reserve percentage
5 as of the immediately preceding computation date.

 ***NOTE: This cross-reference range omitted s. 108.19 (1m), so this is amended to refer to s. 108.19 generally so as to include s. 108.19 (1m).

6 **SECTION 63.** 108.18 (7) (h) of the statutes is amended to read:

7 108.18 (7) (h) The department shall establish contributions, other than those
8 contributions required by this section and assessments required under s. 108.19 (1),
9 (1e), and (1f) and contributions other than those submitted during the month of
10 November or authorized under par. (f) or (i) 2., as a credit, without interest, against
11 future contributions payable by the employer or shall refund the contributions at the
12 employer's option.

 ***NOTE: See the previous SECTION'S note.

13 **SECTION 64.** 108.19 (title) of the statutes is repealed and recreated to read:

14 **108.19 (title) Special assessments.**

 ***NOTE: This section is modified so as to have it deal primarily with assessments. Provisions establishing segregated funds are moved to s. 108.195, and remaining material is renumbered to improve organization and readability.

15 **SECTION 65.** 108.19 (1) of the statutes is renumbered 108.19 (1) (a) and
16 amended to read:

17 108.19 (1) (a) Each employer subject to this chapter shall regularly ~~contribute~~
18 ~~to the administrative account at the rate of two-tenths of one~~ pay an assessment
19 equal to 0.2 percent per year on its payroll, except that the department may prescribe
20 at the close of any fiscal year such lower rates of ~~contribution~~ under this section
21 subsection, to apply to classes of employers throughout the ensuing fiscal year, as will

1 in the department's judgment adequately finance the administration of this chapter,
2 and as will in the department's judgment fairly represent the relative cost of the
3 services rendered by the department to each such class.

****NOTE: Changes reference to "this section" to acknowledge other assessments in
s. 108.19.

4 **SECTION 66.** 108.19 (1) (d) of the statutes is created to read:

5 108.19 (1) (d) Assessments under this subsection shall be credited to the
6 appropriation account under s. 20.445 (1) (gc).

****NOTE: If DWD ever were to assess employers under s. 108.19 (1), the
contributions would probably have to be deposited in the appropriation account under s.
20.445 (1) (gc) given how the relevant statutes are currently worded, so this change
provides as such. (Because assessments under s. 108.19 (1e) and (1m) are directed
elsewhere, assessments under this subsection appear to be the only moneys that would
conceivably ever go to the appropriation under s. 20.445 (1) (gc).)

7 **SECTION 67.** 108.19 (1e) (cm) of the statutes is created to read:

8 108.19 (1e) (cm) Assessments under this subsection shall be credited to the
9 appropriation under s. 20.445 (1) (gh).

****NOTE: Adds a reference to the receiving appropriation for consistency within
this section.

10 **SECTION 68.** 108.19 (1f) (a) of the statutes is amended to read:

11 108.19 (1f) (a) Except as provided in par. (b), each employer, other than an
12 employer that finances benefits by reimbursement in lieu of contributions under s.
13 108.15, 108.151, or 108.152 shall, in addition to other ~~contributions~~ amounts payable
14 under s. 108.18 and this section, pay an assessment for each year equal to the lesser
15 of 0.01 percent of its payroll for that year or the solvency contribution that would
16 otherwise be payable by the employer under s. 108.18 (9) for that year.

17 (d) Assessments under this ~~paragraph~~ subsection shall be deposited in the
18 unemployment program integrity fund.

****NOTE: Makes slight organizational changes for consistency within this section.

19 **SECTION 69.** 108.19 (1f) (c) of the statutes is amended to read:

1 108.19 **(1f)** (c) Notwithstanding par. (a), the department may, if it finds that the
2 full amount of the levy is not required to effect the purposes specified in ~~sub. (1s) s.~~
3 108.195 (2) (b) for any year, prescribe a reduced levy for that year and in such case
4 shall publish in the notice under par. (b) the rate of the reduced levy.

****NOTE: Changes made due to the renumbering in SECTION 75.

5 **SECTION 70.** 108.19 (1m) of the statutes is renumbered 108.19 (1m) (a) and
6 amended to read:

7 108.19 **(1m)** (a) Each employer subject to this chapter as of the date a rate is
8 established under this subsection shall pay an assessment ~~to the unemployment~~
9 ~~interest payment fund~~ at a rate established by the department sufficient to pay
10 interest due on advances from the federal unemployment account under ~~Title XII of~~
11 ~~the federal social security act~~, 42 USC 1321 to 1324. The rate established by the
12 department for employers who finance benefits under s. 108.15 (2), 108.151 (2), or
13 108.152 (1) shall be 75 percent of the rate established for other employers. The
14 amount of any employer's assessment shall be the product of the rate established for
15 that employer multiplied by the employer's payroll of the previous calendar year as
16 taken from quarterly employment and wage reports filed by the employer under s.
17 108.205 (1) or, in the absence of the filing of such reports, estimates made by the
18 department.

19 (d) Each assessment made under this subsection is due within 30 days after the
20 date the department issues the assessment. ~~If the~~

21 (f) The department shall use amounts collected from employers under this
22 subsection ~~exceed the amounts needed to pay interest due on advances from the~~
23 federal unemployment account under 42 USC 1321 to 1324. ~~If the amounts collected~~
24 exceed the amounts needed to pay that interest for a given year, the department shall

1 use any the excess to pay interest owed in subsequent years on advances from the
2 federal unemployment account. If the department determines that additional
3 interest obligations are unlikely, the department shall transfer the excess to the
4 fund's balancing account of ~~the fund~~, the unemployment program integrity fund, or
5 both in amounts determined by the department.

6 **SECTION 71.** 108.19 (1m) (e) of the statutes is created to read:

7 108.19 (1m) (e) Assessments under this subsection shall be deposited in the
8 unemployment interest payment fund.

****NOTE: Adds a reference to the receiving fund for consistency within this section.

9 **SECTION 72.** 108.19 (1n) of the statutes is renumbered 108.19 (1m) (b) and
10 amended to read:

11 108.19 (1m) (b) The department shall publish as a class 1 notice under ch. 985
12 any rate established under ~~sub. (1m) par. (a)~~ within 10 days of after the date that the
13 rate is established.

14 **SECTION 73.** 108.19 (1p) of the statutes is renumbered 108.19 (1m) (c) and
15 amended to read:

16 108.19 (1m) (c) Notwithstanding ~~sub. (1m) par. (a)~~, an employer having a
17 payroll of \$25,000 or less for the preceding calendar year is exempt from any
18 assessment under ~~sub. (1m) this subsection~~.

19 **SECTION 74.** 108.19 (1q) of the statutes is renumbered 108.195 (1) and amended
20 to read:

21 108.195 (1) UNEMPLOYMENT INTEREST PAYMENT FUND. There is created a
22 separate, nonlapsible trust fund designated as the unemployment interest payment
23 fund consisting of all amounts collected under ~~sub. s. 108.19 (1m) (a)~~ and all interest
24 and penalties on those amounts collected under s. 108.22.

1 **SECTION 75.** 108.19 (1s) of the statutes is renumbered 108.195 (2), and 108.195
2 (2) (a) 3., as renumbered, is amended to read:

3 108.195 (2) (a) 3. Amounts transferred under ~~sub. (1m) s. 108.19 (1m) (f).~~

4 **SECTION 76.** 108.19 (2) of the statutes is renumbered 108.19 (1) (b) and
5 amended to read:

6 108.19 (1) (b) If the department finds, at any time within a fiscal year for which
7 it has prescribed lower contribution rates to the administrative account than the
8 maximum rate permitted under ~~sub. (1) par. (a),~~ that such lower rates will not
9 adequately finance the administration of this chapter or are excessive for that
10 purpose, the department may by ~~general~~ rule prescribe a new schedule of rates in no
11 case exceeding the specified maximum to apply under this ~~section~~ subsection for the
12 balance of the fiscal year.

13 **SECTION 77.** 108.19 (2m) of the statutes is renumbered 108.19 (1) (c) and
14 amended to read:

15 108.19 (1) (c) Within the limit specified by ~~sub. (1) under par. (a),~~ the
16 department may by rule prescribe at any time as to any period any such rate or rates
17 or schedule as it deems necessary and proper ~~hereunder~~ under this subsection.
18 Unless thus prescribed, no such rate or rates or schedule shall apply under ~~sub. (1)~~
19 ~~or (2) par. (a) or (b).~~

20 **SECTION 78.** 108.19 (3) of the statutes is repealed.

 ***NOTE: This provision is repealed as it appears to have been rendered
out-of-date.

21 **SECTION 79.** 108.19 (4) of the statutes is amended to read:

22 108.19 (4) If ~~section 303~~ 42 USC 503 (a) (5) of title III of the social security act
23 and ~~section 26 USC 3304~~ (a) (4) of the internal revenue code are amended to permit

1 a state agency to use, in financing administrative expenditures incurred in carrying
2 out its employment security functions, some part of the moneys collected or to be
3 collected under the state unemployment insurance law, in partial or complete
4 substitution for grants under ~~title III~~ 42 USC 501 to 506, then this chapter shall, by
5 rule of the department, be modified in the manner and to the extent and within the
6 limits necessary to permit such use by the department under this chapter; and the
7 modifications shall become effective on the same date as such use becomes
8 permissible under the federal amendments.

9 **SECTION 80.** 108.195 (title) of the statutes is created to read:

10 **108.195 (title) Segregated funds.**

****NOTE: This puts put the creation of the funds in a separate section for better organization.

11 **SECTION 81.** 108.195 (2) (title) of the statutes is created to read:

12 108.195 (2) (title) UNEMPLOYMENT PROGRAM INTEGRITY FUND.

13 **SECTION 82.** 108.20 (2m) of the statutes is amended to read:

14 108.20 (2m) From the moneys not appropriated under s. 20.445 (1) (gg) that
15 are received by the administrative account as interest and penalties under this
16 chapter, the department shall pay the benefits chargeable to the administrative
17 account under s. 108.07 (5) and the interest payable to employers under s. 108.17
18 (3m), and may expend the remainder to pay interest due on advances to the
19 unemployment reserve fund from the federal unemployment account under ~~title XII~~
20 ~~of the social security act~~, 42 USC 1321 to 1324, to conduct research relating to the
21 condition of the unemployment reserve fund under s. 108.14 (6), to administer the
22 unemployment insurance program and federal or state unemployment insurance
23 programs authorized by the governor under s. 16.54, to assist the department of

1 justice in the enforcement of this chapter, to make payments to satisfy a federal audit
2 exception concerning a payment from the fund or any federal aid disallowance
3 involving the unemployment insurance program, or to make payments to the fund
4 if such action is necessary to obtain a lower interest rate or deferral of interest
5 payments on advances from the federal unemployment account under ~~title XII of the~~
6 ~~social security act~~ 42 USC 1321 to 1324, except that any interest earned pending
7 disbursement of federal employment security grants under s. 20.445 (1) (n) shall be
8 credited to the general fund.

9 **SECTION 83.** 108.22 (1m) of the statutes is amended to read:

10 108.22 **(1m)** If any person owes any contributions, reimbursements or
11 assessments under s. 108.15, 108.151, 108.152, 108.155, or 108.19 ~~(1m)~~, benefit
12 overpayments, interest, fees, payments for forfeitures, other penalties, or any other
13 amount to the department under this chapter and fails to pay the amount owed, the
14 department has a perfected lien upon the right, title, and interest in all of the
15 person's real and personal property located in this state in the amount finally
16 determined to be owed, plus costs. Except where creation of a lien is barred or stayed
17 by bankruptcy or other insolvency law, the lien is effective upon the earlier of the date
18 on which the amount is first due or the date on which the department issues a
19 determination of the amount owed under this chapter and shall continue until the
20 amount owed, plus costs and interest to the date of payment, is paid, except as
21 provided in sub. (8) (d). If a lien is initially barred or stayed by bankruptcy or other
22 insolvency law, it shall become effective immediately upon expiration or removal of
23 such bar or stay. The perfected lien does not give the department priority over
24 lienholders, mortgagees, purchasers for value, judgment creditors, and pledges
25 whose interests have been recorded before the department's lien is recorded.

***NOTE: This adds a missing cross-reference to s. 108.152, which provides for reimbursement financing by Indian tribes.

***NOTE: This broadens a reference to s. 108.19 to make it clear it applies to all assessments under s. 108.19, not just those under s. 108.19 (1m).

1 **SECTION 84.** 108.22 (8e) of the statutes is amended to read:

2 108.22 (8e) If the department determines a payment has been made to an
3 unintended recipient erroneously without fault on the part of the intended payee or
4 payee's authorized agent, the department may issue the correct payment to the
5 intended payee if necessary, and may recover the amount of the erroneous payment
6 from the recipient under this section or s. 108.225 or 108.245. Any amount so
7 recovered shall be credited to the fund's balancing account.

***NOTE: This adds a reference to the balancing account, consistent with s. 108.16
(6) (o).

8 **SECTION 85.** 108.223 (2) (b) of the statutes is amended to read:

9 108.223 (2) (b) The department shall enter into agreements with financial
10 institutions doing business in this state to operate the financial record matching
11 program under this section. An agreement shall require the financial institution to
12 participate in the financial record matching program by electing either the financial
13 institution matching option under sub. (3) or the state matching option under sub.
14 (4). The financial institution and the department may by mutual agreement ~~make~~
15 ~~changes to~~ amend the agreement. A financial institution that wishes to choose a
16 different matching option shall provide the department with at least 60 days' notice.
17 The department shall furnish the financial institution with a signed copy of the
18 agreement.

19 **SECTION 86.** 108.23 of the statutes is amended to read:

20 **108.23 Preference of required payments.** In the event of an employer's
21 dissolution, reorganization, bankruptcy, receivership, assignment for benefit of

1 creditors, judicially confirmed extension proposal or composition, or any analogous
2 situation including the administration of estates in circuit courts, the payments
3 required of the employer under this chapter shall have preference over all claims of
4 general creditors and shall be paid next after the payment of preferred claims for
5 wages. If the employer is indebted to the federal government for taxes due under the
6 federal unemployment tax act and a claim for the taxes has been duly filed, the
7 amount of contributions which should be paid to allow the employer the maximum
8 offset against the taxes shall have preference over preferred claims for wages and
9 shall be on a par with debts due the United States, if by establishing the preference
10 the offset against the federal tax can be secured under s. 26 USC 3302 (a) (3) of the
11 ~~federal unemployment tax act.~~

12 **SECTION 87.** 108.24 (3) (a) 3. a. of the statutes is amended to read:

13 108.24 (3) (a) 3. a. Refrain from claiming or accepting benefits, participating
14 in an audit or investigation by the department, or testifying in a hearing held under
15 s. 108.09, 108.095, or 108.10.

****NOTE: This adds a cross-reference to s. 108.095, which provides a separate procedure from ss. 108.09 and 108.10 for certain cases involving an alleged false statement or representation of a person to obtain UI benefits payable to another person.

16 **SECTION 88.** 108.24 (3) (a) 4. of the statutes is amended to read:

17 108.24 (3) (a) 4. Discriminates or retaliates against an individual because the
18 individual claims benefits, participates in an audit or investigation by the
19 department under this chapter, testifies in a hearing under s. 108.09, 108.095, or
20 108.10, or exercises any other right under this chapter.

****NOTE: This adds a cross-reference to s. 108.095, which provides a separate procedure from ss. 108.09 and 108.10 for certain cases involving an alleged false statement or representation of a person to obtain UI benefits payable to another person.



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-3684/P1
MED:cjs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 20.445 (1) (gg), 20.445 (1) (gm), 25.17 (1) (x), 108.02 (1), 108.14
2 (7) (c), 108.14 (23) (d) and 108.20; **to renumber and amend** 108.19 (4); **to**
3 **amend** 20.445 (1) (gc), 20.445 (1) (gd), 108.04 (11) (f), 108.07 (5) (a), 108.07 (5)
4 (c), 108.07 (6), 108.09 (5) (b), 108.14 (2m), 108.14 (3m), 108.14 (12) (d), 108.14
5 (16), 108.16 (5) (c), 108.16 (6) (k), 108.16 (8) (f), 108.161 (4) (a) and (b), 108.161
6 (9), 108.162 (7), 108.17 (3), 108.17 (3m), 108.19 (1), 108.19 (1e) (a), 108.19 (2)
7 and 108.22 (1) (am); and **to create** 20.427 (1) (g) of the statutes; **relating to:**
8 various changes relating to financing of and appropriations for the
9 unemployment insurance program.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the **state** 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:

1 **SECTION 1.** 20.427 (1) (g) of the statutes is created to read:

2 20.427 (1) (g) *Agency collections.* All moneys received from fees or other
3 charges for copying of documents, generation of copies of documents from optical disc
4 or electronic storage, publication of books, and other services provided in carrying
5 out the functions of the commission.

 ****NOTE: This creates an appropriation for LIRC to receive moneys for various
purposes, including transcript fees under s. 108.09 (5) (b).

6 **SECTION 2.** 20.445 (1) (gc) of the statutes is amended to read:

7 20.445 (1) (gc) *Unemployment administration.* All moneys received by the
8 department under s. 108.19 ~~not otherwise appropriated under this subsection (1)~~ for
9 the administration of ch. 108.

 ****NOTE: If DWD ever were to assess employers under s. 108.19 (1), the
contributions would probably have to be deposited in the appropriation account under s.
20.445 (1) (gc) given how the relevant statutes are currently worded, so this change
provides as such.

10 **SECTION 3.** 20.445 (1) (gd) of the statutes is amended to read:

11 20.445 (1) (gd) *Unemployment interest and penalty payments.* All moneys
12 received as interest and penalties collected under ss. 108.04 (11) (c) and (cm) and (13)
13 (c) and 108.22 except interest and penalties deposited under s. 108.19 (1q), and
14 forfeitures under s. 103.05 (5), ~~all moneys not appropriated under par. (gg) and all~~
15 moneys received under s. 108.09 (5) (c), all moneys received under s. 108.14 (16), all
16 moneys received under s. 108.18 (1) (c), all moneys transferred to this appropriation
17 account from the appropriation account under par. (gh), and all other nonfederal
18 moneys received for the employment service or for the administration of ch. 108 that
19 are not otherwise appropriated under this subsection, for the payment of benefits
20 specified in s. 108.07 (5) and 1987 Wisconsin Act 38, section 132 (1) (c), for the
21 payment of interest to employers under s. 108.17 (3m), for research relating to the

1 condition of the unemployment reserve fund under s. 108.14 (6), for administration
2 of the unemployment insurance program and federal or state unemployment
3 insurance programs authorized by the governor under s. 16.54, for satisfaction of any
4 federal audit exception concerning a payment from the unemployment reserve fund
5 or any federal aid disallowance concerning the unemployment insurance program,
6 for assistance to the department of justice in the enforcement of ch. 108, for the
7 payment of interest due on advances from the federal unemployment account under
8 title XII of the social security act to the unemployment reserve fund, and for
9 payments made to the unemployment reserve fund to obtain a lower interest rate or
10 deferral of interest payments on these advances, ~~except as otherwise provided in s.~~
11 ~~108.20.~~

****NOTE: This is the so-called "I&P fund." However, it is not a separate segregated fund, but rather an appropriation account in the general fund. The changes in this SECTION direct certain moneys to this account, as further explained in other SECTIONS of the bill.

12 **SECTION 4.** 20.445 (1) (gg) of the statutes is repealed.

****NOTE: As currently written, this is a separate appropriation used to dedicate some I&P money to DWD for IT upgrades, etc. It is repealed due to the fact that it is no longer being used.

13 **SECTION 5.** 20.445 (1) (gm) of the statutes is repealed.

****NOTE: This repeals an appropriation that receives moneys paid for printed copies of a UI Handbook for employers. This money is instead directed to the appropriation under s. 20.445 (1) (gd) along with fees charged for other printed materials.

14 **SECTION 6.** 25.17 (1) (x) of the statutes is repealed.

****NOTE: See the note under SECTION 31 regarding the former unemployment administration fund. Section 25.17 (1), which gives the SWIB authority to manage the various segregated funds, was apparently erroneously not amended to remove the reference to the fund. This repeals that obsolete reference.

15 **SECTION 7.** 108.02 (1) of the statutes is repealed.

****NOTE: See the note under SECTION 31 regarding the former unemployment administration fund.

16 **SECTION 8.** 108.04 (11) (f) of the statutes is amended to read:

1 108.04 (11) (f) All amounts forfeited under par. (c) and all collections from
2 administrative assessments under par. (cm) shall be credited to the administrative
3 ~~account~~ appropriation under s. 20.445 (1) (gd).

 ****NOTE: This is amended to simply reference s. 20.445 (1) (gd), which provides
that this money goes into that account.

4 **SECTION 9.** 108.07 (5) (a) of the statutes is amended to read:

5 108.07 (5) (a) If no employer from which the claimant has base period wages
6 is subject to the contribution requirements of ss. 108.17 and 108.18, the benefits shall
7 be ~~charged to the administrative account and~~ paid from the appropriation under s.
8 20.445 (1) (gd).

 ****NOTE: See the note under SECTION 31.

9 **SECTION 10.** 108.07 (5) (c) of the statutes is amended to read:

10 108.07 (5) (c) If 2 or more employers from which the claimant has base period
11 wages are not subject to the contribution requirements of ss. 108.17 and 108.18, and
12 one or more employers from which the claimant has base period wages are subject
13 to the contribution requirements of ss. 108.17 and 108.18, that percentage of the
14 employee's benefits which would otherwise be chargeable to the fund's balancing
15 account under sub. (3) or s. 108.04 (1) (f) or (5), or under s. 108.16 (6m) (e) for benefits
16 specified in s. 108.16 (3) (b), shall be ~~charged to the administrative account and~~ paid
17 from the appropriation under s. 20.445 (1) (gd).

 ****NOTE: See the note under SECTION 31.

18 **SECTION 11.** 108.07 (6) of the statutes is amended to read:

19 108.07 (6) The department may initially charge benefits otherwise chargeable
20 ~~to the administrative account~~ payable from the appropriation under s. 20.445 (1) (gd)
21 as provided under this section to the fund's balancing account, and periodically

1 reimburse the charges to the balancing account from the ~~administrative account~~
2 appropriation under s. 20.445 (1) (gd).

***NOTE: See the note under SECTION 31.

3 **SECTION 12.** 108.09 (5) (b) of the statutes is amended to read:

4 108.09 (5) (b) All testimony at any hearing under this section shall be recorded
5 by electronic means, but need not be transcribed unless either of the parties requests
6 a transcript before expiration of that party's right to further appeal under this
7 section and pays a fee to the commission in advance, the amount of which shall be
8 established by rule of the commission. When the commission provides a transcript
9 to one of the parties upon request, the commission shall also provide a copy of the
10 transcript to all other parties free of charge. The transcript fee collected shall be paid
11 ~~to the administrative account~~ credited to the appropriation account under s. 20.427
12 (1) (g).

***NOTE: See the note under SECTION 1.

13 **SECTION 13.** 108.14 (2m) of the statutes is amended to read:

14 108.14 (2m) In the discharge of their duties under this chapter an appeal
15 tribunal, commissioner, or other authorized representative of the department or
16 commission may administer oaths to persons appearing before them, take
17 depositions, certify to official acts, and by subpoenas, served in the manner in which
18 circuit court subpoenas are served, compel attendance of witnesses and the
19 production of books, papers, documents, and records necessary or convenient to be
20 used by them in connection with any investigation, hearing, or other proceeding
21 under this chapter. A party's attorney of record may issue a subpoena to compel the
22 attendance of a witness or the production of evidence. A subpoena issued by an
23 attorney must be in substantially the same form as provided in s. 805.07 (4) and must

1 be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of
2 issuance, send a copy of the subpoena to the appeal tribunal or other representative
3 of the department responsible for conducting the proceeding. However, in any
4 investigation, hearing, or other proceeding involving the administration of oaths or
5 the use of subpoenas under this subsection due notice shall be given to any interested
6 party involved, who shall be given an opportunity to appear and be heard at any such
7 proceeding and to examine witnesses and otherwise participate therein. Witness
8 fees and travel expenses involved in proceedings under this chapter may be allowed
9 by the appeal tribunal or representative of the department at rates specified by
10 department rules, and shall be paid from the ~~administrative account~~ appropriation
11 under s. 20.445 (1) (n).

****NOTE: This specifies for witness and travel fees to be paid from the federal appropriation.

12 **SECTION 14.** 108.14 (3m) of the statutes is amended to read:

13 108.14 (3m) In any court action to enforce this chapter the department, the
14 commission, and the state may be represented by any licensed attorney who is an
15 employee of the department or the commission and is designated by either of them
16 for this purpose or at the request of either of them by the department of justice. If
17 the governor designates special counsel to defend, in behalf of the state, the validity
18 of this chapter or of any provision of Title IX of the social security act, the expenses
19 and compensation of the special counsel and of any experts employed by the
20 department in connection with that proceeding may be charged to the ~~administrative~~
21 ~~account~~ appropriation under s. 20.445 (1) (gd). If the compensation is being
22 determined on a contingent fee basis, the contract is subject to s. 20.9305.

****NOTE: This provides for the charging of these costs to the I&P account.

23 **SECTION 15.** 108.14 (7) (c) of the statutes is repealed.

***NOTE: This provision about printing of various types of documents is repealed, with the language incorporated into s. 108.14 (16) instead.

1 **SECTION 16.** 108.14 (12) (d) of the statutes is amended to read:

2 108.14 **(12)** (d) If it is finally determined that moneys thus received have been
3 thus lost or improperly expended, ~~then~~ the department shall either make the
4 necessary replacement from those moneys in the administrative account specified in
5 ~~s. 108.20 (2m)~~ the appropriation under s. 20.445 (1) (gd) or shall submit, at the next
6 budget hearings conducted by the governor and at the budget hearings conducted by
7 the next legislature convened in regular session, a request that the necessary
8 replacement be made by an appropriation from the general fund.

***NOTE: See the note under SECTION 31.

9 **SECTION 17.** 108.14 (16) of the statutes is amended to read:

10 108.14 **(16)** The department shall have duplicated or printed, ~~and shall~~
11 ~~distribute without charge, such employment security~~ any reports, studies and,
12 forms, records, decisions, regulations, rules, or other materials, including the text of
13 this chapter ~~and, the handbook under sub. (23), and other~~ instructional or
14 explanatory pamphlets for employers or workers, as that it deems necessary for
15 public information or for the proper administration of this chapter; ~~but the.~~ The
16 department may collect a reasonable charge, which shall be credited to the
17 ~~administrative~~ appropriation account under s. 20.445 (1) (gd), for any such item the
18 cost of which is not fully covered by federal administrative grants.

***NOTE: This directs moneys received for printed materials to the I&P account.
See SECTION 31.

***NOTE: See also the notes under SECTIONS 15 and 18.

19 **SECTION 18.** 108.14 (23) (d) of the statutes is repealed.

***NOTE: This repeals a provision specifically governing charges for printed copies of a UI Handbook for employers. This would instead be governed by s. 108.14 (16), and the handbook is referenced there instead. (This does not repeal the requirement that DWD create the handbook.) See the note under SECTION 17.

1 **SECTION 19.** 108.16 (5) (c) of the statutes is amended to read:

2 108.16 **(5)** (c) While the state has an account in the “Unemployment Trust
3 Fund”, public deposit insurance charges, on the fund’s balances held in banks,
4 savings banks, savings and loan associations, and credit unions in this state, the
5 premiums on surety bonds required of the fund’s treasurer under this section, and
6 any other expense of administration otherwise payable from the fund’s interest
7 earnings, shall be paid from the ~~administrative account~~ appropriation under s.
8 20.445 (1) (n) or (ne).

 ****NOTE: This adds cross-references to s. 20.445 (1) (n) and (ne), both of which
could be used to pay banking costs.

9 **SECTION 20.** 108.16 (6) (k) of the statutes is amended to read:

10 108.16 **(6)** (k) All payments to the fund from the ~~administrative account~~ as
11 ~~authorized under s. 108.20 (2m)~~ appropriation under s. 20.445 (1) (gd).

 ****NOTE: Sections 20.445 (1) (gd) and 108.20 (2m) allow for “payments to the fund
if such action is necessary to obtain a lower interest rate or deferral of interest payments
on advances from the federal unemployment account under title XII of the social security
act.” This therefore replaces this language with a reference to s. 20.445 (1) (gd), the I&P
account.

12 **SECTION 21.** 108.16 (8) (f) of the statutes is amended to read:

13 108.16 **(8)** (f) The successor shall take over and continue the transferor’s
14 account, including its positive or negative balance and all other aspects of its
15 experience under this chapter in proportion to the payroll assignable to the
16 transferred business and the liability of the successor shall be proportioned to the
17 extent of the transferred business. The transferor and the successor shall be jointly
18 and severally liable for any amounts owed by the transferor ~~to the fund and to the~~
19 ~~administrative account~~ under this chapter at the time of the transfer, but a successor
20 under par. (c) is not liable for the debts of the transferor except in the case of fraud
21 or malfeasance.

***NOTE: Deletes a reference to the administrative account (see SECTION 31) in favor of a more general reference to ch. 108.

1 **SECTION 22.** 108.161 (4) (a) and (b) of the statutes are amended to read:

2 108.161 (4) (a) Stating for which such purposes and in what amounts the
3 appropriation is being made ~~to the administrative account created by s. 108.20.~~

4 (b) Directing the fund's treasurer to transfer the appropriated amounts to the
5 ~~administrative account~~ the appropriation account under s. 20.445 (1) (n) only as and
6 to the extent that they are currently needed for such expenditures, and directing that
7 there shall be restored to the account created by sub. (1) any amount thus transferred
8 ~~which~~ that has ceased to be needed or available for such expenditures.

***NOTE: See the note under SECTION 31.

9 **SECTION 23.** 108.161 (9) of the statutes is amended to read:

10 108.161 (9) Any land and building or office quarters acquired under this section
11 shall continue to be used for employment security purposes. Realty or quarters may
12 not be sold or transferred to other use if prior action is taken under s. 13.48 (14) (am)
13 or 16.848 (1) and may not be sold or transferred without the governor's approval. The
14 proceeds from the sale, or the value of realty or quarters upon transfer, shall be
15 credited to the account established in sub. (1) or credited to the ~~fund established in~~
16 ~~s. 108.20~~ appropriate appropriation account under s. 20.445, or both as determined
17 by the department in accordance with federal requirements. Equivalent substitute
18 rent-free quarters may be provided, as federally approved. Amounts credited under
19 this subsection shall be used solely to finance employment security quarters
20 according to federal requirements.

***NOTE: As described in the note under SECTION 31, there is no longer a fund established under s. 108.20.

21 **SECTION 24.** 108.162 (7) of the statutes is amended to read:

1 108.162 (7) Any amount appropriated under s. 20.445 (1) (na) ~~which~~ that has
2 not been obligated shall be available for employment security local office building
3 projects, consistent with this section and ~~ss. s. 108.161 and 108.20.~~

****NOTE: See the note under SECTION 31.

4 **SECTION 25.** 108.17 (3) of the statutes is amended to read:

5 108.17 (3) If an employing unit ~~makes application~~ applies to the department
6 to adjust an alleged overpayment by the employer of contributions or interest under
7 this chapter, and files such an application within 3 years after the close of the
8 calendar year in which such payment was made, the department shall ~~make a~~
9 ~~determination~~ determine under s. 108.10 ~~as to the existence and whether and to~~
10 ~~what~~ extent of any such an overpayment, and ~~said section shall apply to such~~
11 ~~determination~~ exists. Except as provided in sub. (3m), the department shall allow
12 an employer a credit for any amount determined under s. 108.10 to have been
13 erroneously paid by the employer, without interest, against its future contribution
14 payments; or, if the department finds it impracticable to allow the employer such a
15 credit, it shall refund ~~such~~ the overpayment to the employer, without interest, from
16 the fund or the ~~administrative account, as the case may be~~ appropriate appropriation
17 under s. 20.445.

****NOTE: This substitutes a reference to “the appropriate appropriation,” though
it would most likely be the s. 20.445 (1) (gd) account in the case of a refund of any interest
or penalties.

18 **SECTION 26.** 108.17 (3m) of the statutes is amended to read:

19 108.17 (3m) If an appeal tribunal or the commission issues a decision under
20 s. 108.10 (2), or a court issues a decision on review under s. 108.10 (4), in which it is
21 determined that an amount has been erroneously paid by an employer, the
22 department shall, from the ~~administrative account~~ appropriation under s. 20.445 (1)

1 (gd), credit the employer with interest at the rate of 0.75 percent per month or
2 fraction thereof on the amount of the erroneous payment. Interest shall accrue from
3 the month which the erroneous payment was made until the month in which it is
4 either used as a credit against future contributions or refunded to the employer.

***NOTE: This substitutes a reference to the I&P account for these payments. See
SECTION 31.

5 **SECTION 27.** 108.19 (1) of the statutes is amended to read:

6 108.19 (1) Each employer subject to this chapter shall regularly contribute to
7 ~~the administrative account at the rate of two-tenths of one~~ pay an assessment equal
8 to 0.2 percent per year on its payroll, except that the department may prescribe at
9 the close of any fiscal year such lower rates of contribution under this section
10 subsection, to apply to classes of employers throughout the ensuing fiscal year, as will
11 in the department's judgment adequately finance the administration of this chapter,
12 and as will in the department's judgment fairly represent the relative cost of the
13 services rendered by the department to each such class.

***NOTE: Deletes reference to the administrative account. See the note under
SECTION 31.

14 **SECTION 28.** 108.19 (1e) (a) of the statutes is amended to read:

15 108.19 (1e) (a) Except as provided in par. (b), each employer, other than an
16 employer that finances benefits by reimbursement in lieu of contributions under s.
17 108.15, 108.151, or 108.152 shall, in addition to other ~~contributions~~ amounts payable
18 under s. 108.18 and this section, pay an assessment ~~to the administrative account~~
19 for each year ~~prior to~~ before the year 2010 equal to the lesser of 0.01 percent of its
20 payroll for that year or the solvency contribution that would otherwise be payable
21 by the employer under s. 108.18 (9) for that year.

***NOTE: Deletes a reference to the administrative account. See SECTION 31.

22 **SECTION 29.** 108.19 (2) of the statutes is amended to read:

1 108.19 (2) If the department finds, at any time within a fiscal year for which
2 it has prescribed lower contribution rates to the administrative account than the
3 maximum rate permitted under sub. (1), that such lower rates will not adequately
4 finance the administration of this chapter or are excessive for that purpose, the
5 department may by general rule prescribe a new schedule of rates in no case
6 exceeding the specified maximum to apply under this section for the balance of the
7 fiscal year.

****NOTE: Deletes a reference to the administrative account. See SECTION 31.

8 **SECTION 30.** 108.19 (4) of the statutes is renumbered 108.18 (1) (c) and
9 amended to read:

10 108.18 (1) (c) If Notwithstanding par. (b), if section 303 (a) (5) of title III of the
11 social security act and section 3304 (a) (4) of the internal revenue code are amended
12 to permit a state agency to use, in financing administrative expenditures incurred
13 in carrying out its employment security functions, some any part of the moneys
14 collected or to be collected under the state unemployment insurance law, an
15 employer's contributions in partial or complete substitution for grants under
16 title III, then this chapter shall, by rule of the department, be modified in the manner
17 and to the extent and within the limits necessary to permit such use by the
18 department under this chapter; and the modifications shall become effective on the
19 same date as such use becomes permissible under the federal amendments the
20 department may credit any portion of that part of an employer's contributions to the
21 appropriation under s. 20.445 (1) (gd).

****NOTE: This provision dates to Chapter (Act) 181, Laws of 1943, and reads essentially the same today as it did then. The changes here move the provision to s. 108.18, where it is more relevant, and specifically provide that, in the event that federal law is changed so as to allow a portion of contributions to be used for administrative purposes, those moneys would be directed to the I&P account.

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).

D21-03
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).

D21-03
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

D21-03
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.

D21-03
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.

D21-03
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).

D21-04
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.

D21-04
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

D21-04
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).

D21-04
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

D21-04
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.

D21-09
Clarification of Employee Status Statute

Date: April 15, 2021
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Clarification of Employee Status Statute

1. Description of Proposed Change

When an individual performs services for pay for an employing unit, it is presumed the individual is an employee for purposes of Wisconsin Unemployment Insurance law.¹ The employing unit must prove that the individual meets the conditions of a two-part test to overcome that presumption and be excluded from the definition of employee.²

In 1982, the Wisconsin Supreme Court decided *Star Line Trucking Corp. v. Dep't of Indus., Labor & Human Relations*, 109 Wis. 2d 266, 325 N.W.2d 872 (1982). *Star Line* held that the mere inclusion of required Public Service Commission Administrative Code language regarding the “exclusive possession, control, and use of the motor vehicle” in a trucking lease contract was insufficient to show that the carrier has direction and control over the driver. The Public Service Commission rule required motor vehicle leases to include the possession, control, and use language.

Under current law, in deciding whether an individual meets the conditions of the two-part test the Department and appeal tribunals are prohibited from considering “documents granting operating authority or licenses, or any state or federal laws or federal regulations granting such authority or licenses” when analyzing certain factors of the test.³ This provision was included in

¹ Wis. Stat. § 108.02(12)(a).

² Wis. Stat. §§ 108.02(12)(bm) and (c).

³ Wis. Stat. §§ 108.09(2)(bm) and 108.09(4s). *See also* Wis. Admin. Code DWD §§ 105.02 and 107.02 (“The department believes it is unreasonable to consider mandates of law as evidence because they have not been imposed on the relationship between the parties of their own volition.”)

D21-09
Clarification of Employee Status Statute

the unemployment law in 1995, when the Worker's Compensation employee status test was adopted.⁴

The Department proposes to amend sections 108.09(2)(bm) and 108.09(4s) to provide that all issues of unemployment insurance employee status may only be determined under Wisconsin unemployment statutes and rules. This proposal will provide consistency in determining individuals' eligibility for unemployment benefits and employers' unemployment insurance tax liability by limiting the employee status inquiry to the provisions of the unemployment insurance law.

Under this law change, for example, it would be clear that the Department would not rely on the fact that a salon requires its cosmetologists to have a cosmetology license when analyzing the cosmetologists' services under the employee status test because cosmetologists are required by law to have a license to perform those services in Wisconsin.

2. Proposed Statutory Changes

Section 108.09(2)(bm) of the statutes is renumbered 108.02 (12) (cm) and amended to read:

(cm) In determining whether an individual meets the conditions specified in ~~s. 108.02 (12) (bm)~~ 2. b. or c. or (e) 1., the department shall not consider paragraphs (a), (bm), and (c), only this chapter and the rules promulgated by the department under the authority granted to the department by this chapter shall apply. Any other state or federal law, rule, regulation, or guidance shall not apply. ~~documents~~ Documents granting operating authority or licenses shall not be considered ~~or any other state or federal laws or federal regulations granting such authority or licenses.~~

⁴ 1995 WI Act 118.

D21-09
Clarification of Employee Status Statute

Section 108.09(4s) of the statutes is repealed:

~~Employee status. In determining whether an individual meets the conditions specified in s. 108.02 (12) (bm) 2. b. or c. or (c) 1., the appeal tribunal shall not take administrative notice of or admit into evidence documents granting operating authority or licenses, or any state or federal laws or federal regulations granting such authority or licenses.~~

3. Effects of Proposed Change

- a. **Policy:** The proposed change will prevent confusion and provide consistency when determining whether an individual's services meet the conditions for the individual to be classified as an employee under unemployment insurance law.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is attached, based on 2017 cases.

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 for services performed on and after January 1, 2022.

D21-09
Clarification of Employee Status Statute
FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Prepared by: Technical Services Section

Trust Fund Impact:

This law change proposal would have a positive but negligible impact on the Trust Fund.

IT Impact and Administrative Impact:

This law change proposal would have no IT impact and a negligible one-time administrative impact.

Summary of Proposal:

This proposal amends sections 108.09(2)(bm) and 108.09(4s) to provide that all issues of unemployment insurance employee status may only be determined under Wisconsin unemployment statutes and rules. This proposal will provide consistency in determining individuals' eligibility for unemployment benefits and employers' unemployment insurance tax liability by limiting the employee status inquiry to the provisions of the unemployment insurance law.

Trust Fund Methodology:

Cases from 2017 dealing with employee status that may be affected by this law change proposal that were appealed to the ALJ level were reviewed for this estimate. In these cases, the claimants were consistently ruled as employees on the adjudication level, but that classification may have been overturned at the ALJ level and the claimants ruled as independent contractors. This may be because employee status was not determined exclusively under Wisconsin unemployment statutes and rules. This law change proposal intends to bring consistency to the employee status ruling by limiting the employee status inquiry to the provisions of the unemployment insurance law. However, based on the quantity of cases appealed, it would not have a significant impact on the Trust Fund.

IT and Administrative Impact Methodology:

Per subject matter experts, this proposal is codifying current practice and would not have any IT or administrative impact on the adjudication level. This is expected to have a negligible one-time administrative impact on the ALJ level due to staff training.

D21-10
SUTA Dumping Penalty

Date: April 15, 2021
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
SUTA Dumping Penalty

1. Description of Proposed Change

A transferee of a business transfer is a mandatory successor to the unemployment insurance account of a transferor if: (1) the transferor and transferee are owned, managed, or controlled by the same interests; (2) the transferee continues the transferor's business or employs the same employees; and (3) the same unemployment financing provisions apply to the transferor and transferee.¹ Assessing mandatory successor status to a transferee dissuades employers from closing down a business with a high unemployment insurance tax rate and opening a "new" business to obtain a lower tax rate. This is known as "SUTA dumping."

If a substantial purpose of a business transfer is to obtain a reduced contribution rate, the transferee will not receive the lower contribution rate.²

The federal SUTA Dumping Prevention Act³ requires states to enact "meaningful civil and criminal penalties" for knowingly violating or attempting to violate state laws regarding mandatory successor requirements. The Act also requires penalties for advising others to "dump" their unemployment insurance experience.

Current law penalizes for making false statements to the Department regarding a mandatory successor investigation and for advising others to do so.⁴ If the person making the false

¹ Wis. Stat. § 108.16(8)(e).

² Wis. Stat. §§ 108.16(8)(em) and (im).

³ 42 U.S.C. § 503(k).

⁴ Wis. Stat. § 108.16(8)(m).

D21-10
SUTA Dumping Penalty

statement or the person who advised the person to make the false statement are not employers, the person forfeits up to \$5,000.

The Department recommends a \$10,000 civil penalty and a class A misdemeanor criminal penalty for knowingly violating or attempting to violate mandatory successor requirements in amounts that the Council chooses.

The Department also proposes to modify the \$5,000 forfeiture for making false statements or advising someone to make false statements to be a penalty of \$5,000 that will be deposited into the program integrity fund. This will make the treatment of the existing forfeiture provision consistent with the new proposed penalty.

2. Proposed Statutory Changes

Section 108.16 (8) (m) 2. of the statutes is amended to read:

2. If the person is not an employer, ~~the person may be required to forfeit not more than the~~ department shall assess the person a penalty of \$5,000 in a determination under s. 108.10, which shall be deposited in the unemployment program integrity fund.

Section 108.16 (8) (mm) of the statutes is created to read:

1. Any person identified under pars. (em) or (im), or any person that knowingly advises another person to transfer a business asset or activity solely or primarily for the purpose of obtaining a lower contribution rate, including by willful evasion, nondisclosure, or misrepresentation, is subject to the following penalties:

a. If the person is an employer, the department shall assess the employer a penalty in the amount of \$10,000.

b. If the person is not an employer, the department shall assess the person a penalty of \$10,000 in a determination under s. 108.10.

D21-10
SUTA Dumping Penalty

c. The person is guilty of a class A misdemeanor.

2. Assessments under a. and b. shall be deposited in the unemployment program integrity fund.

3. For the purposes of this paragraph and par. (m), “knowingly” means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the statute violated.

Section 108.16 (8) (o) of the statutes is amended to read:

Paragraphs (e) 1., (em), (h), (im), ~~and (m)~~, and (mm) shall be interpreted and applied; ~~insofar as possible~~, to meet the minimum requirements of any guidance issued by or regulations promulgated by the U.S. department of labor.

Section 108.18 (1) (a) of the statutes is amended to read:

Unless a penalty applies under s. 108.16 (8) (m), each employer shall pay contributions to the fund for each calendar year at whatever rate on the employer’s payroll for that year ~~duly~~ applies to the employer ~~pursuant to~~ under this section.

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

Assessments under ss. 108.16 (8) (m) 2. and (mm).

3. Effects of Proposed Change

- a. **Policy:** The proposed is expected to deter employers from attempting to “dump” their unemployment insurance experience rating and delinquent taxes.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is attached based on 2017 data.

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

D21-10
SUTA Dumping Penalty

review. The SUTA Dumping Prevention Act requires states to enact “meaningful civil and criminal penalties” for knowingly violating or attempting to violate state laws regarding mandatory successor requirements. The Act also requires penalties for advising others to “dump” their unemployment insurance experience.

5. Proposed Effective/Applicability Date

This proposal would be effective for transfers of business occurring on or after the effective date of the law change.

D21-10
SUTA Dumping Penalty

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Prepared by: Technical Services Section

Trust Fund Impact:

This law change proposal would save the Trust Fund up to \$7,000 annually in increased taxes, which is considered a positive but negligible impact on the Trust Fund.

IT and Administrative Impact:

The one-time IT impact would be approximately 250 hours or \$22,000. The one-time administrative impact would be approximately 30% of the IT impact or \$6,600. The total one-time impact is estimated at \$28,600.

Any penalties would flow to the UI Program Integrity Fund.

Summary of Proposal:

This law change proposal would create meaningful civil and criminal penalties for knowingly violating or attempting to violate mandatory successor requirements. The penalty will be deposited into the UI Program Integrity Fund. Criminal penalties will be created. This law change proposal would also modify the forfeiture for making false statements or advising someone to make false statements to be a penalty of \$5,000 that will be deposited into the UI Program Integrity Fund.

Trust Fund Methodology:

Based on 2017 data, the Trust Fund impact would be up to \$7,000 annually in increased tax revenue, if SUTA dumping is eliminated based on incentivized compliance.

IT and Administrative Impact Methodology:

Based on subject matter expert assessment, the one-time IT impact would be approximately 250 hours or \$22,000. This estimate is based on changes required to SUITES. The one-time administrative impact would be approximately 30% of the IT impact or \$6,600. The total one-time impact is estimated at \$28,600.

Any penalties would flow to the UI Program Integrity Fund. Based on 2017 data, approximately 7 employers during that timeframe could have been subject to the civil penalty, none of which included false statements that would be subject to the \$5,000 penalty. This penalty is intended to enforce tax compliance.

D21-11
Work Share Revisions

Date: April 15, 2021
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Work Share Revisions

1. Description of Proposed Change

The work share program permits employers to reduce employees' hours under a plan that permits employees to receive a work share benefit. Under pre-pandemic law, employers could reduce employees' hours by 10-50% and employees would receive a work share benefit that is a pro-rated amount of unemployment insurance based on the reduction in hours. For example, an employee who usually works 40 hours per week could work 20 hours per week in a work share plan and receive a work share benefit of 50% of their maximum UI weekly benefit amount.

Work share plans also require employers to maintain existing health insurance and defined benefit or defined contribution retirement plans. Employees in work share plans are not required to complete four work search actions or register for work. Work share plans are designed to prevent layoffs but are not intended to become a permanent part of the employer's business model. During the pandemic, employees who participated in work share plans also received the \$300 or \$600 weekly Federal Pandemic Unemployment Compensation.

Federal legislation enacted during the pandemic encouraged increased employer participation in work share because the federal government currently pays the work share benefit costs. State legislation, 2019 Wis. Act 185 and 2021 Wis. Act 4, provided greater flexibility for work share plans as follows:

1. Reducing the minimum number of employees in work share from 20 to 2, which especially benefited small businesses.

D21-11
Work Share Revisions

2. Increasing the maximum reduction in employees' hours from 50% to 60%, which is the maximum allowed under federal law.
3. Permits work share plans to cover any employees, not just employees in a particular work unit.
4. Eliminates the requirement that hours be apportioned equitably among employees in the work share plan.
5. Provides that work share plans become effective on the later of the Sunday of or after approval of the work-share plan, instead of the second Sunday after approval of the plan, unless a later Sunday is specified.

State law allows the Department's Secretary to waive provisions of the work share statutes if doing so is necessary for state law to conform to federal requirements or if a waiver would result in increased federal funding of work share benefits. During the pandemic, the Secretary waived the requirement that a work share plan may only extend for a period of up to six months in a 5-year period, permitting plans to last up to 12 months in a 5-year period, as long as federal funding for work share benefits exists.

The Department proposes that the temporary changes to the work share statutes during the pandemic should be made permanent, as well as a permanent law change to permit plans to extend up to 12 months in a 5-year period. These changes will give employers greater flexibility when creating work share plans and may encourage more employers to use work share, which would reduce layoffs while preserving employee work benefits.

D21-11
Work Share Revisions

2. Proposed Statutory Changes

Section 108.062 (1) (c) is repealed.

~~(c) “Work unit” means an operational unit of employees designated by an employer for purposes of a work share program, which may include more than one work site.~~

Section 108.062 (2) (b) and (e) are repealed.

~~(b) Provide for inclusion of at least 10 percent of the employees in the affected work unit on the date of submittal.~~

~~(e) Provide for apportionment of reduced working hours equitably among employees in the work share program.~~

Section 108.062 (2) (a) (c), (d), (h), and (m) are amended to read:

(a) Specify the ~~work unit in which the plan will be implemented,~~ the affected positions, and the names of the employees filling those positions on the date of submittal.

(c) Provide for initial coverage under the plan of at least ~~20~~ 2 positions that are filled on the effective date of the work-share program.

(d) Specify the period or periods when the plan will be in effect, which may not exceed a total of ~~6~~ 12 months in any 5-year period ~~within the same work unit.~~

(h) Specify the normal average hours per week worked by each employee ~~in the work unit~~ and the percentage reduction in the average hours of work per week worked by that employee, exclusive of overtime hours, which shall be applied in a uniform manner and which shall be at least 10 percent but not more than ~~50~~ 60 percent of the normal hours per week of that employee.

(m) Indicate whether the plan includes employer-sponsored training to enhance job skills and acknowledge that the employees in the ~~work unit~~ work-share program may participate in training funded under the federal Workforce Innovation and Opportunity Act, 29 USC 3101 to 3361, or

D21-11
Work Share Revisions

another federal law that enhances job skills without affecting availability for work, subject to department approval.

Section 108.062 (3) is amended to read:

(3) Approval of plans. The department shall approve a plan if the plan includes all of the elements specified in sub. (2) ~~or (20), whichever is applicable~~. The approval is effective for the effective period of the plan unless modified under sub. (3m).

Section 108.062 (3r) is amended to read:

(3r) Applicability of laws. A work-share program shall be governed by the law that was in effect when the plan or modification was last approved under sub. (3) or (3m), until the program ends as provided in sub. (4), but an employer with a work-share program governed ~~by sub. (2)~~ by a previous version of this section may, ~~while sub. (20) is in effect~~, apply for a modification under sub. (3m), and that modification application shall be governed by ~~sub. (20)~~ the law in effect when the modification is approved.

Section 108.062 (4) is amended to read:

(4) Effective period.

(a)

~~1. Except as provided in subd. 2., a~~ A work-share program becomes effective on the later of the Sunday of ~~the 2nd week beginning~~ or after approval of a work-share plan under sub. (3) or any Sunday after that day specified in the plan.

~~2. With respect to a work share plan approved during a period described under sub. (20), the work share program becomes effective on the later of the Sunday of or after approval of a work share plan under sub. (3) or any Sunday after that day specified in the plan.~~

D21-11
Work Share Revisions

(b) A work-share program ends on the earlier of the last Sunday that precedes the end of the ~~6-~~
~~month~~ 12-month period beginning on the effective date of the program or any Sunday before that
day specified in the plan unless the program terminates on an earlier date under sub. (5), (14), or
(15).

Section 108.062 (6) (b) is amended to read:

(b) No employee who is included in a ~~work-unit~~ work-share program is eligible to receive any
benefits for a week in which the plan is in effect in which the employee is engaged in work for the
employer that sponsors the plan which, when combined with work performed by the employee for
any other employer for the same week, exceed 90 percent of the employee's average hours of work
per week for the employer that creates the plan, as identified in the plan.

Section 108.062 (15) is amended to read:

(15) Involuntary termination. If in any week there are fewer than ~~20~~ 2 employees who are included
in a work-share program of any employer, the program terminates on the 2nd Sunday following
the end of that week. ~~This subsection does not apply to a work-share program to which sub. (20)~~
~~applies.~~

Section 108.062 (19) is amended to read:

(19) Secretary may waive compliance. The secretary may ~~do any of the following~~ waive
compliance with any requirement under this section if the secretary determines that doing so is
necessary to permit continued certification of this chapter for grants to this state under Title III of
the federal Social Security Act, for maximum credit allowances to employers under the federal
Unemployment Tax Act, or for this state to qualify for full federal financial participation in the
cost of administration of this section and financing of benefits to employees participating in work-
share programs under this section.

D21-11
Work Share Revisions

~~(a) Waive compliance with any requirement under this section.~~

~~(b) Waive the application of sub. (20), in whole or in part, to the extent necessary for any of the purposes specified in this subsection or, to the extent necessary for any of those purposes, require the continued application of any requirement under sub. (2).~~

Section 108.062 (20) of the statutes is repealed.

3. Effects of Proposed Change

- a. **Policy:** The proposed change may encourage more employers to set up work share plans, thereby potentially reducing layoffs and ensuring that employees' benefits are uninterrupted.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is not yet available.

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 for work share plans submitted on or after the effective date of the law changes.

Date: 05/13/21
Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

This proposal would amend Wisconsin law to make the temporary changes to the work share statutes, during the pandemic, permanent, as well as a permanent law change to permit plans to extend up to 12 months in a 5-year period. These changes will give employers greater flexibility when creating work share plans and may encourage more employers to use work share, which would reduce layoffs while preserving employee work benefits.

UI Trust Fund Impact:

This proposal is not expected to have a measurable impact on the UI Trust Fund

IT and Administrative Impact:

This proposal would require 180 hours of IT work at a cost of approximately \$16,000. There is expected to be a one-time \$5,287 administrative impact.

Trust Fund Methodology:

Prior to the Pandemic, work-share was a lightly used program. As the economy exits the pandemic, it is expected that work-share usage will return to pre-pandemic levels. As such, changes in work-share will not have a measurable impact on UI benefits or the UI Trust Fund.

D21-12
Department Flexibility for Federal Funding

Date: April 15, 2021
Proposed by: DWD
Drafted by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Department Flexibility for Federal Funding

1. Description of Proposed Change

Current law sets forth three separate provisions that allow the department to suspend provisions of the UI law in specific circumstances: a general savings clause, provisions concerning the work share statutes and occupational drug testing.

The savings clause provides: “The department may, with the advice of the council on unemployment insurance, by general rule modify or suspend any provision of this chapter if and to the extent necessary to permit continued certification of this chapter for [federal administrative] grants...and for maximum credit allowances to employers under the federal unemployment tax act.”¹ Likewise, the Department’s Secretary may waive compliance with any part of the work share statute to ensure that the statute conforms to federal requirements and for Wisconsin to “qualify for full federal financial participation in the cost of administration of [the work share program] and financing of benefits to employees participating in work-share programs.”² The Department’s Secretary may also waive compliance with the occupational drug testing statutes to ensure federal conformity.³

The flexibility in current law ensures that the Department will maintain its primary source of funding for the unemployment program and can maximize the federal funding for work share benefits. Indeed, during the past year the Department has ensured that employers may maintain work share plans longer than six months in a 5-year period so that Wisconsin could

¹ Wis. Stat. § 108.14(13).

² Wis. Stat. § 108.062(19).

³ Wis. Stat. § 108.133(5)(d).

D21-12
Department Flexibility for Federal Funding

receive an increased amount of federally-funded work share benefits by waiving the 6-month requirement.

On March 27, 2020, the federal CARES Act was enacted. It provided full federal funding for the first week of unemployment insurance benefits for states that did not have a waiting week. Wisconsin has a waiting week, but the Legislature temporarily suspended the waiting week under 2019 Wis. Act 185, retroactive to March 15, 2020. However, because Act 185 was not enacted until April 15, 2020, the US Department of Labor determined that no federal funding for the first week of unemployment was payable for the 3-week period of March 29, 2020-April 18, 2020. This resulted in a loss of an estimated **\$43.5 million** in total federal reimbursement of benefits for the Trust Fund and reimbursable employers.⁴

The Department proposes a law change that would permit the Department's Secretary to issue an order (which is not a rule), published in the register, waiving or suspending any part of chapter 108 to facilitate full federal funding of unemployment benefits. This proposal would also permit the Department's Secretary to issue an emergency rule without the requirement of showing an emergency to waive, suspend, or amend any part of chapter 108 to facilitate full or partial federal funding of benefits or to receive additional program administration funding.

These changes would ensure that Wisconsin maximizes its receipt of federal funding.

2. Proposed Statutory Change

Section 108.14 (13) of the statutes is renumbered to section 108.14 (13) (a).

Section 108.14 (13) (b) and (c) of the statutes is created to read:

(b) The secretary may waive compliance with any requirement under this chapter if the secretary determines that doing so will permit full federal financing of benefits. A waiver under this

⁴ This amount is subject to revision as the Department completes the benefit recharging under section 108.07(5)(bm).

D21-12
Department Flexibility for Federal Funding

paragraph is not a rule under s. 227.01(13) and shall be effective upon publication in the Wisconsin administrative register.

(c) The department may, with the advice of the council on unemployment insurance, by rule, modify or suspend any provision of this chapter if and to the extent necessary to receive additional federal program administration funding or financing of benefits to employees. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.

3. Effects of Proposed Change

- a. **Policy:** This proposal will ensure that the Department has the flexibility to secure maximum federal funding of unemployment benefits and administrative costs.
- b. **Administrative:** The Department will need to train staff on the changes in this proposal.
- c. **Fiscal:** A fiscal estimate is not yet available.

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 the other changes in the agreed bill.

Date: 05/13/2021

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

This proposal would amend Wisconsin law to permit the Department's Secretary to issue an order (which is not a rule), published in the register, waiving or suspending any part of chapter 108 to facilitate full federal funding of unemployment benefits.

This proposal would also permit the Department's Secretary to issue an emergency rule without the requirement of showing an emergency to waive, suspend, or amend any part of chapter 108 to facilitate full or partial federal funding of benefits or to receive additional program administration funding.

These changes would ensure that Wisconsin maximizes its receipt of federal funding.

UI Trust Fund Impact:

The UI Trust Fund impact is indeterminate but is expected to be positive or neutral.

IT and Administrative Impact:

The IT costs and administrative impacts are indeterminate. Typically, the federal government provides grant money to implement programs and changes that are created by the federal law.

Trust Fund Methodology:

Since the exact situation is not known, the impact cannot be calculated..

D21-13

Construction Employer Initial Contribution Rates

Date: April 15, 2021

Proposed by: DWD

Drafted by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE

Construction Employer Initial Contribution Rates

1. Description of Proposed Change

New businesses with employees must register as employers with the Department. The Department then assigns a tax rate to the employer. If the new employer is a non-construction employer, the employer’s contribution rate is 2.5% for the first three years.¹ But, if the new employer is a construction employer, the employer’s initial contribution rate is “the average rate for construction industry employers as determined by the department on each computation date, rounded up to the next highest rate” for the first three calendar years.² All employers are also assigned a solvency rate, which, when combined with the contribution rate, provides for a total tax rate.³

Construction employers are given an initial contribution rate that is the average of all construction employers because, historically, construction employers have had higher contribution rates due to seasonal layoffs. This has resulted in construction employers having initial contribution rates higher than 2.5%. The higher initial contribution rates resulted in employers building up their reserve fund balances.

In 2021, the total tax rates for new employers are as follows:

	Non-construction	Construction
Payroll<\$500,000	3.05%	2.90%
Payroll>\$500,000	3.25%	3.10%

¹ Wis. Stat. § 108.18(2)(a).

² Wis. Stat. § 108.18(2)(c).

³ Wis. Stat. § 108.18(9).

D21-13
Construction Employer Initial Contribution Rates

So, for 2021, the initial rate for new construction employers is **lower** than non-construction employers. The Department proposes amending the initial tax rate for construction employers to be the greater of the initial rate for non-construction employers or the average rate for construction industry employers as determined by the department on each computation date, rounded up to the next highest rate.

2. Proposed Statutory Change

Section 108.18 (2)(c) of the statutes is amended to read:

An employer engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects shall pay contributions for each of the first 3 calendar years at either the average rate for construction industry employers as determined by the department on each computation date, rounded up to the next highest rate, or the rate specified in par. (a), whichever is greater. This rate may in no case be more than the maximum rate specified in the schedule in effect for the year of the computation under sub. (4).

3. Effects of Proposed Change

- a. **Policy:** This proposal will ensure that new construction employers do not have a lower initial contribution rate than other new employers.
- b. **Administrative:** The Department will need to train staff on the changes in this proposal.
- c. **Fiscal:** A fiscal estimate is not yet available.

D21-13

Construction Employer Initial Contribution Rates

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 January 1, 2022.

Date: 05/17/21
Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

This proposal would amend the Unemployment Insurance (UI) initial tax rate for construction employers to be the greater of the initial rate for non-construction employers or the average rate for construction industry employers as determined by the department on each computation date, rounded up to the next highest rate.

UI Trust Fund Impact:

This proposal is expected to have no measurable effect on the UI Trust Fund in most circumstances.

IT and Administrative Impact:

This proposal would have an approximate \$6,408 one-time IT and \$2,115 administrative impact. There would be no ongoing costs.

Trust Fund Methodology:

This is only expected to occur in unique circumstances, so it is not expected to have an annual impact on the UI Trust Fund. When applicable, it is expected to have a small but positive impact on the UI Trust Fund through higher UI tax revenue.

D21-14
Amend Administrative Rules Regarding UI Hearings

Date: June 17, 2021
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Amend Administrative Rules Regarding UI Hearings

1. Description of Proposed Change

Current law provides that unemployment insurance hearings may be held in-person, by telephone, or by videoconference. Under current DWD § 140.11, an appeal tribunal may conduct a telephone or videoconference hearing “when it is impractical for the appeal tribunal to conduct an in-person hearing, when necessary to ensure a prompt hearing or when one or more of the parties would be required to travel an unreasonable distance to the hearing location.” That section also provides that a party may appear in person at the appeal tribunal’s location if the hearing is scheduled by telephone or videoconference. However, the Department has limited hearing office space.

Between November 2019-March 2020, about 99.6% of Wisconsin unemployment insurance benefit appeal hearings were held by telephone. During the pandemic, nearly all UI benefit hearings were held by telephone with limited use of videoconference. Other states hold nearly all their unemployment hearings by telephone:

State	Percent of UI hearings by phone (2019)
Illinois	99.9%
Minnesota	99.9%
Michigan	94%
Iowa	98%
Indiana	96%
Nebraska	99% (2 in-person/year)
Ohio	98%
Kansas	99%

D21-14
Amend Administrative Rules Regarding UI Hearings

The Department proposes to amend chapter DWD 140 to provide that, while parties may continue to request in-person hearings, it is the hearing office's discretion whether to grant that request. The Department also proposes to clarify language in DWD chapter 140 regarding hearing records, Department assistance for people with disabilities at hearings, and to correct minor and technical language in DWD chapter 140.

2. Proposed Rule Changes

If the attached draft scope statement is approved, the Department will draft amendments to DWD chapter 140 to provide the guidelines under which parties may request in-person unemployment insurance hearings, as well as other changes to DWD chapter 140. The Department will present that draft to the Council for review before the rule is finalized.

3. Effects of Proposed Change

- a. **Policy:** The proposed change will amend Wisconsin's unemployment insurance administrative rules to ensure that the hearing office has discretion to grant or deny a request for an in-person hearing.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** This proposal is expected to reduce travel costs for parties and witnesses attending unemployment insurance hearings.

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 when the Legislature approves the amended rule.

STATEMENT OF SCOPE

Department of Workforce Development

Rule No: DWD 140

Relating to: Unemployment insurance hearings.

Rule Type: Permanent

Detailed description of the objective of the proposed rule.

The proposed rule will amend sections of ch. DWD 140, Wis. Admin. Code, related to hearing notices; in-person, telephone, and videoconference unemployment insurance hearings procedures; hearing records; and accessibility for attending hearings. The rule will specify the conditions by which a party or witness may request to attend a hearing in-person. The rule will also permit postponement of a hearing if the Department does not send the proposed hearing exhibits in advance of a benefit hearing. The rule will also clarify what unemployment insurance records may be released to a person who is not a party or a party's representative.

Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.

Currently, ch. DWD 140 (Unemployment Insurance Appeals) specifies the requirements for unemployment insurance hearing notices, the procedures for conducting telephone or videoconference hearings, the treatment of hearing records, and the requirements for the Department to provide assistance to people with disabilities at hearings. Chapter DWD 140 also provides for postponement of hearings in certain circumstances. Furthermore, ch. DWD 140 outlines when parties, parties' representatives, and other persons may access and inspect enumerated types of hearing records.

The Department proposes to amend ch. DWD 140 to require that the hearing notice provide the method of the hearing (in person, telephone, or videoconference). Also, the Department proposes to amend ch. DWD140 to provide that it is within the discretion of the hearing office whether to hold an in-person hearing or to require the parties to appear by telephone or videoconference and to provide the guidelines under which the hearing office shall make such determinations, such as technological constraints and the need to accommodate individuals with disabilities. Further, the rule will allow parties to request an in-person hearing, subject to the guidelines. Chapter DWD 140 will also be amended to ensure that individuals with disabilities are able to timely and efficiently request an accommodation and to describe the process by which the Department will respond to such requests.

The Department also proposes to amend ch. DWD 140 to permit for postponement of benefit hearings when the Department does not timely send the proposed exhibits to a party.

Finally, the rule will update ch. DWD 140 to provide that certain hearing records are confidential unemployment information and not subject to release to individuals who are not parties or

representatives of the parties. The rule will also provide those records that may be released to non-parties, subject to redaction, for which disclosure is in the interest of the unemployment insurance program to comply with federal law.

The policy alternative is to do nothing. If the Department does not promulgate the proposed rule, the unemployment insurance appeals process may not be as clear and efficient as it could be.

Detailed explanation of statutory authority for the rule, including the statutory citation and language.

The Department has statutory authority for the proposed rule.

“The department may adopt and enforce all rules which it finds necessary or suitable to carry out this chapter.” Wis. Stat. § 108.14(2).

“Except as provided in s. 901.05, the manner in which claims shall be presented, the reports thereon required from the employee and from employers, and the conduct of hearings and appeals shall be governed by general department rules, whether or not they conform to common law or statutory rules of evidence and other technical rules of procedure, for determining the rights of the parties.” Wis. Stat. § 108.09(5)(a).

Estimate of amount of time that state employees will spend developing the rule and other resources necessary to develop the rule.

The estimated time is 80 hours.

List with description of all entities that may be affected by the proposed rule.

Currently, all employees and employers who appear at unemployment insurance appeal hearings appear by telephone due to the COVID-19 pandemic. Before the pandemic, nearly all unemployment insurance appeal hearings were held by telephone. The proposed rule will affect employees and employers who attend unemployment insurance appeal hearings. Employees and employers who previously appeared at unemployment insurance appeal hearings in person will save travel time and costs by appearing by telephone or videoconference. The proposed rule will also standardize the process for requesting an accommodation for hearings for individuals with disabilities who are parties or witnesses for the hearing. The rule changes will better allow parties to prepare for hearing. Finally, the proposed rule will clarify which hearing records, subject to redaction, may be released to non-parties.

Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.

Federal law requires that state law conform to and comply with federal regulations. *See* 20 C.F.R. § 601.5.

Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses).

The proposed rule is not expected to have an adverse economic impact on any business or small business.

Contact Person: Janell Knutson, Director, Bureau of Legal Affairs, Unemployment Insurance Division, at (608) 266-1639 or janell.knutson@dwd.wisconsin.gov.

Approval of the agency head or authorized individual:

Pamela R. McGillivray, Chief Legal Counsel

Date Submitted

D21-15
Exclusion for Certain Camp Counselors

Date: April 15, 2021
Proposed by: DWD
Drafted by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Exclusion for Certain Camp Counselors

1. Description of Proposed Change

Federal unemployment law excludes the services of camp counselors from the definition of “employment” if the following criteria are met:

1. The worker is a full-time student. This means that the worker is currently enrolled in an educational institution **or** is between academic years/terms, was enrolled in the preceding year/term, and will be enrolled in the succeeding year/term.
2. The worker worked for the camp for less than 13 calendar weeks in a year.
3. The camp operates in less than seven months in a year **or** had average gross receipts for any 6 months in the preceding calendar year which were not more than 33 $\frac{1}{3}$ percent of its average gross receipts for the other 6 months in the preceding calendar year.¹

This proposal would add a similar exclusion for the services of camp counselors to Wisconsin’s unemployment law. Employees whose services are excluded under this proposal would not qualify for unemployment benefits based on their wages from the camps but may qualify for benefits based on services performed for other employers. Employers would not be taxed on the wages paid to camp counselors whose services are excluded. The wages of camp employees whose services are **not excluded** under this proposal would continue to be taxable for state and federal unemployment tax purposes.

¹ 26 USC § 3306(c)(20).

D21-15
Exclusion for Certain Camp Counselors

2. Proposed Statutory Changes

Section 108.02 (15) (k) 21. of the statutes is created to read:

“Employment” as applied to work for a given employer other than a government unit or nonprofit organization, except as the employer elects otherwise with the department’s approval, does not include service:

Performed by a full-time student, as defined in 26 USC 3306(q), for less than 13 calendar weeks in a calendar year in the employ of an organized camp, if either of the following apply:

- a. The organized camp did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year.
- b. The organized camp had average gross receipts for any 6 months in the preceding calendar year which were not more than 33½ percent of its average gross receipts for the other 6 months in the preceding calendar year.

3. Effects of Proposed Change

- a. **Policy:** The proposed change will align state law with federal law to exclude the services of certain camp counselors for unemployment tax and benefits purposes.
- 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 for services performed on and after January 1, 2022.

D21-15
Exclusion for Certain Camp Counselors

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Prepared by: Technical Services Section

Summary of Proposal:

This proposal would amend Wisconsin law to include an exclusion that would mirror the federal exclusion for seasonal full-time student camp counselors.

UI Trust Fund Impact:

This proposal would reduce the Trust Fund by approximately \$76,000 or less annually due to decreased tax revenue. It would have a negligible impact on reducing UI benefit payments.

IT and Administrative Impact:

This proposal would have an approximate \$6408 one-time IT and \$2115 administrative impact.

Trust Fund Methodology:

Seasonal full-time student camp counselors could fall into several employer NAICS code categories, which also include employment types that would not qualify under this exclusion. For the purposes of a high-level fiscal, NAICS code 721214 or recreational and vacation camps (except campgrounds) was the employer category identified as most impacted by this exclusion. Reimbursable non-profit employers were removed from this impact analysis as their wages are not taxable and have no fiscal impact on the Trust Fund. For this exclusion to be applied the employee must work less than 13 calendar weeks in a year, and in general the camp must operate in less than 7 months of the year. Based on these criteria, employees that had wages with the employer outside third quarter (summer months) were removed. Estimated wages that met these criteria were then multiplied by those employer's tax rates. This resulted in approximately \$76,000 in tax revenue in 2019 for 3034 employees (an additional 304 employees were employed by non-profit reimbursable employers). However, an additional requirement is that the employee must be a full-time student (currently enrolled or is between academic years). It is unknown how much of this tax revenue would be based on excluded wages due to being earned by full-time students only.

It is difficult to determine the reduction in UI benefit payments based on this exclusion. However, since a requirement of this exclusion is that the employee is a full-time student, these employees may already be ineligible for UI benefits based on their school enrollment status. In 2019, there were 82 claimants that met the wage criteria above that used those wages to qualify for an unemployment claim. Based on the number of potentially affected employees, school enrollment status, and the need for additional wages from other employers, it is estimated that this proposal would have a negligible impact on reducing benefit payments.

IT and Administrative Impact Methodology:

This proposal would have an approximate \$6408 one-time IT and \$2115 administrative impact.

D21-15
Exclusion for Certain Camp Counselors

Relevant federal statutes:

26 USC § 3306(c)(20):

(c) **Employment** For purposes of this chapter, the term “employment” means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and (A) any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, and (B) any service, of whatever nature, performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation) by a citizen of the United States as an employee of an American employer (as defined in subsection (j)(3)), except—

(20) service performed by a full time student (as defined in subsection (q)) in the employ of an organized camp—

(A) if such camp—

(i) did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or

(ii) had average gross receipts for any 6 months in the preceding calendar year which were not more than 33 $\frac{1}{3}$ percent of its average gross receipts for the other 6 months in the preceding calendar year; and

(B) if such full time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year; or

26 USC § 3306(q):

(q) **Full time student** For purposes of subsection (c)(20), an individual shall be treated as a full time student for any period—

(1) during which the individual is enrolled as a full time student at an educational institution, or

(2) which is between academic years or terms if—

(A) the individual was enrolled as a full time student at an educational institution for the immediately preceding academic year or term, and

(B) there is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in subparagraph (A).

Seasonal Full-Time Student Camp Counselor Exclusion

Date: 04/14/2021

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE**Summary of Proposal:**

This proposal would amend Wisconsin law to include an exclusion that would mirror the federal exclusion for seasonal full-time student camp counselors.

UI Trust Fund Impact:

This proposal would reduce the Trust Fund by approximately \$76,000 or less annually due to decreased tax revenue. It would have a negligible impact on reducing UI benefit payments.

IT and Administrative Impact:

This proposal would have an approximate \$6408 one-time IT and \$2115 administrative impact.

Trust Fund Methodology:

Seasonal full-time student camp counselors could fall into several employer NAICS code categories, which also include employment types that would not qualify under this exclusion. For the purposes of a high-level fiscal, NAICS code 721214 or recreational and vacation camps (except campgrounds) was the employer category identified as most impacted by this exclusion. Reimbursable non-profit employers were removed from this impact analysis as their wages are not taxable and have no fiscal impact on the Trust Fund. For this exclusion to be applied the employee must work less than 13 calendar weeks in a year, and in general the camp must operate in less than 7 months of the year. Based on these criteria, employees that had wages with the employer outside third quarter (summer months) were removed. Estimated wages that met these criteria were then multiplied by those employer's tax rates. This resulted in approximately \$76,000 in tax revenue in 2019 for 3034 employees (an additional 304 employees were employed by non-profit reimbursable employers). However, an additional requirement is that the employee must be a full-time student (currently enrolled or is between academic years). It is unknown how much of this tax revenue would be based on excluded wages due to being earned by full-time students only.

It is difficult to determine the reduction in UI benefit payments based on this exclusion. However, since a requirement of this exclusion is that the employee is a full-time student, these employees may already be ineligible for UI benefits based on their school enrollment status. In 2019, there were 82 claimants that met the wage criteria above that used those wages to qualify for an unemployment claim. Based on the number of potentially affected employees, school enrollment status, and the need for additional wages from other employers, it is estimated that this proposal would have a negligible impact on reducing benefit payments.

IT and Administrative Impact Methodology:

This proposal would have an approximate \$6408 one-time IT and \$2115 administrative impact.

D21-16

Repeal Pre-employment & Occupational Drug Testing

Date: April 15, 2021

Proposed by: DWD

Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE Repeal Pre-employment & Occupational Drug Testing

1. Description of Proposed Change

Pre-Employment Drug Testing and Drug Treatment

The 2015 Budget, 2015 Wis. Act 55,¹ created Wis. Stat. §§ 108.04(8)(b) and 108.133, requiring the Department, by administrative rule, to create a voluntary program for employers to report the results of a failed or refused pre-employment drug test to DWD. If a reported person is receiving UI benefits, the person is presumed to have failed, without good cause, to accept suitable work and is ineligible for benefits.² If the person failed the drug test, they may maintain UI benefit eligibility if they enroll in and comply with a substance abuse treatment program, complete a job skills assessment and otherwise meet all program requirements. Under this law, DWD will pay the reasonable costs for drug treatment.

The emergency rule for the Pre-Employment Drug Testing Program became effective on May 6, 2016 and became effective as a permanent rule on May 1, 2017. As of March 31, 2021, DWD has received about 171 reports from employing units regarding individuals' failures of pre-employment drug tests or refusals to take pre-employment drug tests. No claimants have been determined to be ineligible for UI benefits under the pre-employment drug testing statutes and rules and denied benefits because of the employers' reports of a failed or refused drug test as a condition of an offer of employment. Because no claimants have been determined to be ineligible for UI benefits under the pre-employment drug testing statutes and rules, no claimants have maintained benefit eligibility by enrolling in and complying with a substance abuse treatment program and completing a job skills

¹ The provisions in the Budget Bill for pre-employment and occupational drug testing were not presented to the UIAC for approval and were not included in the agreed bill.

² However, the provisions of Wis. Stat. § 108.04(9) still apply.

D21-16
Repeal Pre-employment & Occupational Drug Testing

assessment.

2017 Wis. Act 157 (the UIAC agreed bill) amended the pre-employment drug testing law effective April 1, 2018 to limit employers' civil liability under state law for submission of pre-employment drug testing information to the Department. Even with the amendment, there has been very limited use of the Pre-Employment Drug Testing Program by employers.

Occupational Drug Testing and Drug Treatment

The Middle Class Tax Relief and Job Creation Act of 2012³ permits states to test a UI applicant for unlawful use of controlled substances as an eligibility condition if the applicant is an individual for whom suitable work (as defined under state law) is only available in an occupation that regularly conducts drug testing (as determined under regulations issued by the Secretary of US-DOL). DWD is aware of only two other states, Texas and Mississippi, that have enacted statutes that permit drug testing of UI claimants. However, it appears that neither state has begun to test UI claimants for drugs as a condition for UI eligibility.

Under 2015 Wis. Act 55, the Department must, by administrative rule, create a program for drug testing certain UI applicants. The Department will determine whether an applicant's only suitable work is in an occupation that regularly conducts drug testing. If an applicant's only suitable work is in an occupation that regularly conducts drug testing, the Department will screen the applicant to determine whether there is a reasonable suspicion the applicant engaged in the unlawful use of controlled substances. An applicant with a positive screening result must submit to a drug test to remain eligible for UI benefits. An applicant who fails a drug test under Wis. Stat. § 108.133 without evidence of a valid prescription may remain eligible for UI benefits if the applicant enrolls in and complies with a drug treatment program, completes a job skills assessment, and otherwise meets all program requirements. The UIAC approved a scope statement for DWD to promulgate an

³ Section 303(l)(l)(A)(ii), SSA.

D21-16

Repeal Pre-employment & Occupational Drug Testing

administrative rule in early 2020, but DWD has not yet promulgated rules to implement occupational drug testing.

The Legislature appropriates \$250,000 of GPR annually (\$500,000 per biennium) to DWD to fund and administer UI drug testing and treatment programs for both pre-employment and occupational drug testing programs. No GPR funds have been expended for substance abuse treatment programs as a result of pre-employment drug testing reports filed by employers. Unused appropriated GPR funds are transferred to the Program Integrity Fund at the end of the biennium.⁴

The Governor's Budget Bill (AB 68 / SB 111) proposes to repeal the UI pre-employment and UI occupational drug testing statutes and to provide that the GPR funding for drug testing and treatment be used for DWD's administration of the UI program instead of drug testing and treatment.⁵

2. Proposed Statutory Change

Section 108.04(8)(b) of the statutes, as affected by 2017 Wisconsin Act 157, is repealed.

Section 108.133 of the statutes, as affected by 2017 Wisconsin Act 157, sections 26 to 37, is repealed.

Wis. Admin. Code Chapter DWD 131, "Pre-Employment Drug Testing, Substance Abuse Treatment Program and Job Skills Assessment," is repealed.

(Additional cross-references may also need to be amended.)

3. Effects of Proposed Change

a. Policy: This proposal would reduce the likelihood that a person would be denied UI benefits for failing a pre-employment drug test.

b. Administrative: This proposal would provide state funds for administration of the UI program.

⁴ 2017 Wis. Act 157, effective April 1, 2018.

⁵ The Budget Bill also proposes to legalize recreational marijuana.

D21-16

Repeal Pre-employment & Occupational Drug Testing

- c. Fiscal:** A fiscal estimate is not yet available.

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.

Drug Testing Program and Pre-Employment Drug Testing

Date: 05/05/21

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

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 proposal 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 proposal repeals these preemployment drug testing provisions.

UI Trust Fund Impact:

UI drug testing of claimants has not been implemented. Therefore, this portion of the proposal will have no Trust Fund impact.

UI has received information from employers on individuals who have positive pre-employment drug tests results and refused pre-employment drug tests; however, no claimant has been denied benefits due to failing a test, nor has any claimant enrolled in a substance abuse treatment program. There is no expected impact to benefit payments as a result of this proposal

IT and Administrative Impact:

IT impact to the Unemployment Insurance program is estimated at \$7,120.

One-time administrative impact to the UI program is estimated at \$2,136.

There is no ongoing administrative impact to the UI program.

D21-17
Repeal Substantial Fault

Date: April 15, 2021
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Repeal Substantial Fault

1. Description of Proposed Change

Currently, an employee who is discharged is ineligible for unemployment insurance benefits if the discharge is for misconduct by the employee connected with their employment or if the discharge is for substantial fault by the employee connected with the employee's work. In either case, the employee is ineligible for unemployment benefits until seven weeks have elapsed since the end of the week in which the discharge occurs, and the employee earns wages after the week in which the discharge occurs equal to at least 14 times the employee's weekly benefit rate.

For misconduct discharges (but not for substantial fault), the wages paid to an employee by an employer which terminates employment of the employee for misconduct connected with the employee's employment shall be excluded from the employee's base period wages for purposes of benefit entitlement. This is known as cancellation of wage credits.

Previously, section 108.04(5g) was created as a provision of the 2005 agreed bill by the Unemployment Insurance Advisory Council. That statute provided a disqualification for certain violations of an attendance policy if certain requirements were met. The employee would be disqualified for unemployment insurance benefits until six weeks have elapsed since the end of the week in which the discharge occurs, and the employee earned wages after the week in which the discharge occurs equal to at least 6 times the employee's weekly benefit rate.

The 2013 Budget, 2013 Wis. Act 20, repealed section 108.04(5g) and replaced it with the disqualification for substantial fault. Wisconsin appears to be the only state that has a

D21-17
Repeal Substantial Fault

disqualification for substantial fault. Act 20 also created several enumerated types of misconduct under section 108.04(5)(a)-(g).

The Governor's Budget Bill (AB 68 / SB 111) proposes to repeal the substantial fault disqualification. The substantial fault statute has been the subject of litigation to the courts, including the Supreme Court. Repealing that provision would result in more predictability for claimants and employers.

2. Proposed Statutory Changes¹

Section 108.04(5g) of the statutes is repealed.

3. Effects of Proposed Change

- a. **Policy:** The proposed change would result in increased payment of unemployment insurance benefits to claimants who would currently be denied on substantial fault grounds. The proposed change would result in more predictability for claimants and employers and could result in less litigation on discharge issues.
- 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 apply to initial determinations issued on or after the effective date.

¹ Subject to revision to ensure cross-references are corrected.

D21-17
Repeal Substantial Fault
FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Prepared by: Technical Services Section

Summary of Proposal:

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.

UI Trust Fund Impact:

This proposal is estimated to cost the UI Trust Fund approximately \$5.0 million annually based on increased benefit payments.

IT and Administrative Impact:

This proposal is expected to have a negligible one-time IT impact, and negligible one-time and ongoing administrative impact to the UI program.

Trust Fund Methodology:

Substantial fault is the last step when considering a denial when someone is discharged:

- (1) check for statutory misconduct (under a-g); if no denial then
- (2) check for general misconduct; if no denial then
- (3) check for substantial fault.

Under this change, if the case doesn't meet the first two denial reasons, the determination would be an allow. So, any determination that is currently substantial fault would be an allow under this change.

There were 1,953 substantial fault decisions that denied benefits in 2019. With the elimination of substantial fault decisions, these would now be situations where benefits were allowed. Using the Quarter 4 2019 average weekly benefit amount of \$328 per week and the Quarter 4 2019 duration of 12.1 weeks of UI this would be an additional \$7.7 million in UI benefits. Taking into consideration an increase in UI taxes of \$2.5 million annually, and a decrease of \$200,000 in benefits charges to reimbursable employers the total impact would be an annual reduction of the UI Trust Fund of \$5.0 million.

****Caveat:** In 2019 there were record low benefit claims. In a year with higher claim numbers, we would expect to see a greater UI Trust Fund impact.

IT and Administrative Impact Methodology:

Minor system and policy changes would need to be put in place.

Date: 04/14/2021
Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

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 proposal repeals this provision on substantial fault.

UI Trust Fund Impact:

This proposal is estimated to cost the UI Trust Fund approximately \$5.0 million annually based on increased benefit payments.

IT and Administrative Impact:

This proposal is expected to have a negligible one-time IT impact, and negligible one-time and ongoing administrative impact to the UI program.

Trust Fund Methodology:

Substantial fault is the last step when considering a denial when someone is discharged:

- (1) check for statutory misconduct (under a-g); if no denial then
- (2) check for general misconduct; if no denial then
- (3) check for substantial fault.

Under this change, if the case doesn't meet the first two denial reasons, the determination would be an allow. So, any determination that is currently substantial fault would be an allow under this change.

There were 1,953 substantial fault decisions that denied benefits in 2019. With the elimination of substantial fault decisions, these would now be situations where benefits were allowed. Using the Quarter 4 2019 average weekly benefit amount of \$328 per week and the Quarter 4 2019 duration of 12.1 weeks of UI this would be an additional \$7.7 million in UI benefits. Taking into consideration an increase in UI taxes of \$2.5 million annually, and a decrease of \$200,000 in benefits charges to reimbursable employers the total impact would be an annual reduction of the UI Trust Fund of \$5.0 million.

**Caveat: In 2019 there were record low benefit claims. In a year with higher claim numbers, we would expect to see a greater UI Trust Fund impact.

IT and Administrative Impact Methodology:

Minor system and policy changes would need to be put in place.

D21-18
Quit Exception for Relocating Spouse

Date: April 15, 2021
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Quit Exception for Relocating Spouse

1. Description of Proposed Change

Employees who quit a job are generally ineligible for unemployment insurance benefits unless an exception applies.

As a condition of Wisconsin receiving federal grant money (American Recovery and Reinvestment Act of 2009 Funds), 2009 Wis. Act 11 created a quit exception. The exception permitted claimants to be eligible for unemployment insurance benefits (assuming they were otherwise qualified) if they quit their job to move with a spouse who changed their place of employment, and it would have been impractical for the claimant to commute from the new location.

The 2013 Budget Act, 2013 Wis. Act 20, amended and repealed several quit exceptions, including amending the “quit to relocate” exception in Wis. Stat. § 108.04(7)(t). The amended quit exception, effective January 2014, was narrowed to cover only a claimant whose spouse is on active duty with the U.S. Armed Forces, is required to relocate by the U.S. Armed Forces and it is impractical for the claimant to commute to work.

The Governor’s Budget Bill (AB 68 / SB 111) modifies the changes to this quit exception made by 2013 Wis. Act 20 and provides that the quit exception covers all spouses who move with a relocating spouse, not just those serving in the U.S. Armed Forces. This proposal broadens this quit exception to apply to claimants whose spouses are required by any employer to relocate, not just the U.S. Armed Forces.

D21-18
Quit Exception for Relocating Spouse

2. Proposed Statutory Changes¹

Section 108.04 (7) (t) 1. of the statutes is repealed.

Section 108.04 (7) (t) 2. of the statutes is amended to read:

The employee's spouse was required by ~~the U.S. armed forces~~ his or her employing unit to relocate to a place to which it is impractical for the employee to commute.

3. Effects of Proposed Change

- a. **Policy:** The proposed change may encourage workers to relocate to take better jobs. This proposal would ensure that spouses of workers who relocate to take better jobs are able to receive unemployment insurance benefits after relocating if it is impractical for the spouse to commute.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is not yet available.

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 apply to determinations issued on or after the effective date.

¹ Subject to revision to ensure cross-references are corrected.

Date: 05/13/2021
Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

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 proposal 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.

UI Trust Fund Impact:

This proposal is estimated to cost the UI Trust Fund approximately \$462,000 annually based on increased benefit payments.

IT and Administrative Impact:

IT impact to the Unemployment Insurance program is a one-time impact estimated at \$890.
One-time administrative impact to the UI program is estimated at \$267.
There is no ongoing administrative impact.

Trust Fund Methodology:

Under prior law, there was a similar, but broader relocation exception. In 2011, there were 417 instances where benefits were allowed due to this quit exception. Averaging initial claims from the years between 2016 and 2019 and comparing that value to the initial claims in 2011, we expect there to now be 187 cases where benefits would be allowed under this exception. Initial claims for 2020 were not included because we do not expect 2020 to be representative of initial claims going forward. Using an average weekly benefit amount of \$300 and an average duration over the period of 2016 to 2019 of 12.8 weeks this would increase benefits by an expected \$718,000 annually. After deducting reimbursable benefits of \$29,000 and accounting for an expected increased UI taxes of \$227,000, the UI Trust Fund is expected to decrease by \$462,000 annually.

D21-19
Repeal Waiting Week

Date: April 15, 2021
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Repeal Waiting Week

1. Description of Proposed Change

The first Wisconsin unemployment benefit claimant had a three-week waiting period before receiving the first unemployment check in 1936. In 1941, the waiting period was reduced to two weeks. In 1951, the waiting period was further reduced to one week. In 1969, the waiting period was still one week, but a claimant could receive benefits for that week if they obtained employment within 10 weeks of the start of their benefit year. The waiting week was repealed in 1977.

The 2011 Budget, 2011 Wis. Act 32, recreated a waiting week for unemployment insurance benefits, effective January 2012. For every new benefit year, no benefits are payable for the first week a claimant would otherwise be eligible for benefits. The waiting week may be a week in which full or partial benefits are payable. The waiting week does not reduce a claimant's maximum benefit amount. About 42 states have a waiting week during non-pandemic times.

The one-week delay in benefit payments does not reduce a claimant's total amount of benefits that they are eligible for.

During the 2020-2021 COVID-19 pandemic, Wisconsin suspended the waiting week for the period of March 15, 2020-March 13, 2021 because the federal government funded benefits for the first week of unemployment for states that did not have a waiting week.

The Governor's Budget Bill (AB 68 / SB 111) would permanently repeal the waiting week.

D21-19
Repeal Waiting Week

2. Proposed Statutory Changes¹

Section 108.02 (26m) of the statutes is repealed.

Section 108.04 (3) of the statutes is repealed.

108.04 (11) (bm) of the statutes is amended to read:

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

3. Effects of Proposed Change

- a. **Policy:** The proposed change would result in increased payment of unemployment insurance benefits to claimants who do not exhaust their benefit duration limit.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is not yet available.

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 the other provisions of the agreed bill.

¹ Subject to revision to ensure cross-references are corrected.

Date: 05/17/2021
Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

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 proposal deletes the one-week waiting period, thus permitting a claimant to receive UI benefits beginning with his or her first week of eligibility.

UI Trust Fund Impact:

This proposal is estimated to cost the UI Trust Fund approximately \$26.1 million annually based on increased benefit payments.

IT and Administrative Impact:

IT impact to the Unemployment Insurance program is expected to be nominal unless the change is made retroactive. A retroactive change would require \$1,157 of IT cost and a one-time administrative impact of \$381 for a total one-time cost of \$1,538. There should be no ongoing administrative impact to the UI program.

Trust Fund Methodology:

Eliminating the waiting week will increase UI benefits by 5% annually. Using benefits charged to taxable employers for the period of 2009 to 2019, the average increase in UI benefits would be \$39 million annually. This would lead to an increase of UI taxes of \$12.9 million for a net expected average change of \$26.1 million annually.

Under federal law, states that do not have a waiting week are fully responsible for the first week of extended benefits instead of the typical fifty percent of cost under the Extended Benefits program. However, during the past two recessions this charge was waived.

D21-20

Repeal Work Search and Work Registration Waivers from Statute

Date: April 15, 2021

Proposed by: DWD

Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE

Repeal Work Search and Work Registration Waivers from Statute

1. Description of Proposed Change

Unemployment benefit claimants must conduct at least four work searches each week and register for work, unless a waiver relieves them of these requirements. Federal law also requires claimants to be actively seeking work and to register for work. Before 2017 Wis. Act 370 (enacted during the 2018 extraordinary session), the unemployment work search waivers were set forth in Wis. Admin. Code DWD § 127.02. The unemployment work registration waivers were in Wis. Admin. Code DWD § 126.03.

Act 370 codified in statute the work search and work registration waivers that existed in Administrative Code chapters DWD 126 and 127. Act 370 also created statutory language to permit the Department to promulgate administrative rules that modify the statutory work search and work registration waivers or create additional work search or work registration waivers “to comply with a requirement under federal law or is specifically allowed under federal law.” The Department has not yet repealed the prior Administrative Code waivers. The Department promulgated an emergency rule during the COVID-19 pandemic to waive work search during the pandemic, consistent with federal law.

The Governor’s Budget Bill (AB 68 / SB 111) would repeal the work search waiver provisions in statute as created by Act 370, restore the applicable statutes to their pre-Act 370 language, and direct the Department to establish work search waivers by administrative rule.

D21-20

Repeal Work Search and Work Registration Waivers from Statute

2. Proposed Statutory Changes¹

Section 108.04 (2) (a) (intro.) of the statutes is amended to read:

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

Section 108.04 (2) (a) 3. of the statutes is repealed and recreated to read:

The claimant conducts a reasonable search for suitable work during that week and provides verification of that search to the department. The search for suitable work must include at least 4 actions per week that constitute a reasonable search as prescribed by rule of the department. In addition, the department may, by rule, require a claimant to take more than 4 reasonable work search actions in any week. The department shall require a uniform number of reasonable work search actions for similar types of claimants. This subdivision does not apply to a claimant if the department determines that the claimant is currently laid off from employment with an employer but there is a reasonable expectation of reemployment of the individual by that employer. In determining whether the claimant has a reasonable expectation of reemployment by an employer, the department shall request the employer to verify the claimant's employment status and shall consider all of the following:

- a. The history of layoffs and reemployments by the employer.
- b. Any information that the employer furnished to the claimant or the department concerning the claimant's anticipated reemployment date.
- c. Whether the claimant has recall rights with the employer under the terms of any applicable collective bargaining agreement.

¹ Subject to revision to ensure cross-references are corrected.

D21-20

Repeal Work Search and Work Registration Waivers from Statute

Section 108.04 (2) (b) of the statutes is repealed and recreated to read:

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

Section 108.04 (2) (bb) of the statutes is repealed.

Section 108.04 (2) (bd) of the statutes is repealed.

Section 108.04 (2) (bm) of the statutes is amended to read:

A claimant is ineligible to receive benefits for any week for which there is a determination that the claimant failed to comply with the registration for work and work search requirements under par. (a) 2. or 3. or failed to provide verification to the department that the claimant complied with those requirements, unless the department has waived those requirements under par. (b), ~~(bb)~~, or ~~(bd)~~ or s. 108.062 (10m). If the department has paid benefits to a claimant for any such week, the department may recover the overpayment under s. 108.22.

3. Effects of Proposed Change

- a. **Policy:** The proposed change would restore the law on work search and work registration waivers to the status quo before Act 370.
- 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.

D21-20

Repeal Work Search and Work Registration Waivers from Statute

5. Proposed Effective/Applicability Date

This proposal would be effective with the other provisions of the agreed bill.

D21-20
Repeal Work Search and Work Registration Waivers from Statute
FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Date: 3/21/19

Prepared by: UI Technical Services Section

Work Search Waiver Provisions by Rule in Lieu of Statute

Issue: This proposal deletes work search waiver provisions in current law and instead allow DWD to establish such waivers by rule.

Annual and Biennial Impacts:

Effective date is dependent on the promulgation of rules

The proposal, as written, would not have any impact on benefit payments or UI tax revenue. It would not impact reimbursable employers, nor the UI Trust Fund. Any impacts would be determined based on DWD administrative rule.

Repeal Work Search and Work Registration Waivers from Statute

Date: 05/05/2021

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

This proposal 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 proposal 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.

UI Trust Fund Impact:

This proposal is estimated to have no impact on the UI Trust.

IT and Administrative Impact:

There is no IT or administrative impact to the Unemployment Insurance program.

Trust Fund Methodology:

This proposal would revert statute to rule and policy matching the current statute, so there would be no impact.

IT and Administrative Impact Methodology:

This proposal would revert statute to rule and policy matching the current statute, so there would be no impact.

D21-21
Wage threshold for receipt of benefits

Date: April 15, 2021
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Wage threshold for receipt of benefits

1. Description of Proposed Change

The 2011 Unemployment Insurance Advisory Council agreed bill, 2011 Wis. Act 198, capped the amount of wages that a claimant may earn and still receive partial benefits at \$500. Before Act 198, there was no wage cap in the statute, but a claimant would not receive unemployment benefits if they earned enough wages to receive nothing under the partial UI benefit formula. Section 108.05(3)(dm) currently provides that a claimant is ineligible for benefits if they receive from one or more employers:

- Wages earned for work performed in that week of more than \$500, or
- Holiday, vacation, termination or sick pay which, alone or combined with wages earned for work performed in that week, equals more than \$500.

Claimants are also ineligible for partial benefits if they work 32 hours or more in a week.

The Governor's Budget Bill (AB 68 / SB 111) would repeal the \$500 weekly maximum earned income disqualification but would not amend the partial benefit formula. Under this proposal and the current partial UI benefit formula, a claimant with a \$370 weekly UI benefit rate could receive a partial UI benefit of \$5 if they earn \$574 per week or less in wages.¹ Claimants who earn \$575 per week or more in wages would continue to be ineligible for benefits based on the partial benefit formula and current maximum weekly benefit rate of \$370 weekly.

¹ This is a preliminary estimated calculation, subject to revision.

D21-21
Wage threshold for receipt of benefits

2. Proposed Statutory Changes²

Section 108.05 (3) (dm) of the statutes is repealed.

~~Except when otherwise authorized in an approved work share program under s. 108.062, a claimant is ineligible to receive any benefits for a week if the claimant receives or will receive from one or more employers wages earned for work performed in that week, amounts treated as wages under s. 108.04 (1) (bm) for that week, sick pay, holiday pay, vacation pay, termination pay, bonus pay, back pay, or payments treated as wages under s. 108.04 (12) (e), or any combination thereof, totalling more than \$500.~~

3. Effects of Proposed Change

- a. **Policy:** The proposed change would result in claimants receiving a small partial UI benefit if they earn \$500 to \$574 in wages, sick, holiday, vacation, termination, bonus, or back pay in a week.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is not yet available.

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 for weeks of unemployment beginning in 2022.

² Subject to revision to ensure cross-references are corrected.

Date: 05/17/2021

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

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 proposal repeals this ineligibility provision. However, the proposal 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.

UI Trust Fund Impact:

This is expected to have a nominal impact of the UI Trust Fund.

IT and Administrative Impact:

This proposal would have an approximate \$13,350 IT and \$4,450 administrative impact for a total one-time cost of \$17,800. There are no ongoing administrative impacts to the UI program.

Trust Fund Methodology:

Removing the \$500 limit still leaves two binding constraints on what a claimant may earn and still be allowed UI benefits in a week. The definition of full-time work of 32 hours or more eliminates most claimants who earn over \$500 per week. The partial benefit formula will also constrain the amount a person may earn in a week. At the current maximum weekly benefit amount of \$370, there would still be an additional earnings limit of \$573 per week. Given the two constraints the increase in UI benefits is expected to be minimal.

D21-22
Increase Maximum Weekly Benefit Rate

Date: April 15, 2021
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Increase Maximum Weekly Benefit Rate

1. Description of Proposed Change

2013 Wis. Act 36 increased the maximum weekly benefit rate for unemployment insurance benefits from \$363 to \$370 starting January 2014, which was the last time Wisconsin increased the maximum weekly benefit rate. Charts showing historical data and data from other states are attached.

The Governor's Budget Bill (AB 68 / SB 111) would increase the maximum weekly benefit rate from \$370 to \$409 per week to reflect increases in the average weekly wage since 2014. This change would be effective for payments made for weeks of unemployment beginning January 2, 2022. For weeks of unemployment beginning January 1, 2023, the maximum would be 50% of Wisconsin's average weekly wage. For weeks of unemployment beginning on December 31, 2023, the maximum would be the greater of the maximum for the prior year or 75% of Wisconsin's average weekly wage.

In 2019, the state's average weekly wage was \$951. Under this proposal **but using 2019 data for reference**, the maximum UI benefit rate for 2023 would be \$475.50 weekly; for 2024, it would be \$713.25 weekly.

D21-22
Increase Maximum Weekly Benefit Rate

2. Proposed Statutory Changes¹

Section 108.05 (1) (am) of the statutes is created to read:

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

Section 108.05 (1) (cm) of the statutes is created to read:

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

1. For benefits paid for a week of total unemployment that commences on or after January 5, 2014, but before January 2, 2022, \$370.
2. For benefits paid for a week of total unemployment that commences on or after January 2, 2022, but before January 1, 2023, \$409.
3. For benefits paid for a week of total unemployment that commences on or after January 1, 2023, but before January 7, 2024, \$409 or 50 percent of the state's annual average weekly wage, rounded up to the nearest dollar, whichever is greater.
4. For benefits paid for a week of total unemployment that commences on or after January 7, 2024, the department shall set an annual maximum weekly benefit amount that takes effect on the 1st Sunday in January of each calendar year and that is equal to the greater of the following:
 - a. Seventy-five percent of the state's annual average weekly wage, rounded up to the nearest dollar.
 - b. The maximum benefit amount in effect in the previous calendar year.

¹ Subject to revision to ensure cross-references are corrected.

D21-22
Increase Maximum Weekly Benefit Rate

Section 108.05 (1) (r) of the statutes is renumbered 108.05 (1) (r) (intro.) and amended to read:

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

1. If the employee's weekly benefit rate calculated under this paragraph is less than \$54, no benefits are payable to the employee and, if that amount.
2. If the employee's weekly benefit rate is more than \$370 the maximum weekly benefit amount under par. (cm), the employee's weekly benefit rate shall be \$370 and except that, if the maximum weekly benefit amount under par. (cm).
3. If the employee's benefits are exhausted during any week under s. 108.06 (1), the employee shall be paid the remaining amount of benefits payable to the employee under s. 108.06 (1).

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

D21-22
Increase Maximum Weekly Benefit Rate

3. Effects of Proposed Change

- a. **Policy:** The proposed change would increase the maximum weekly benefit rate to reflect increases in the average weekly wage.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is not yet available.

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 for weeks of unemployment beginning January 2, 2022.

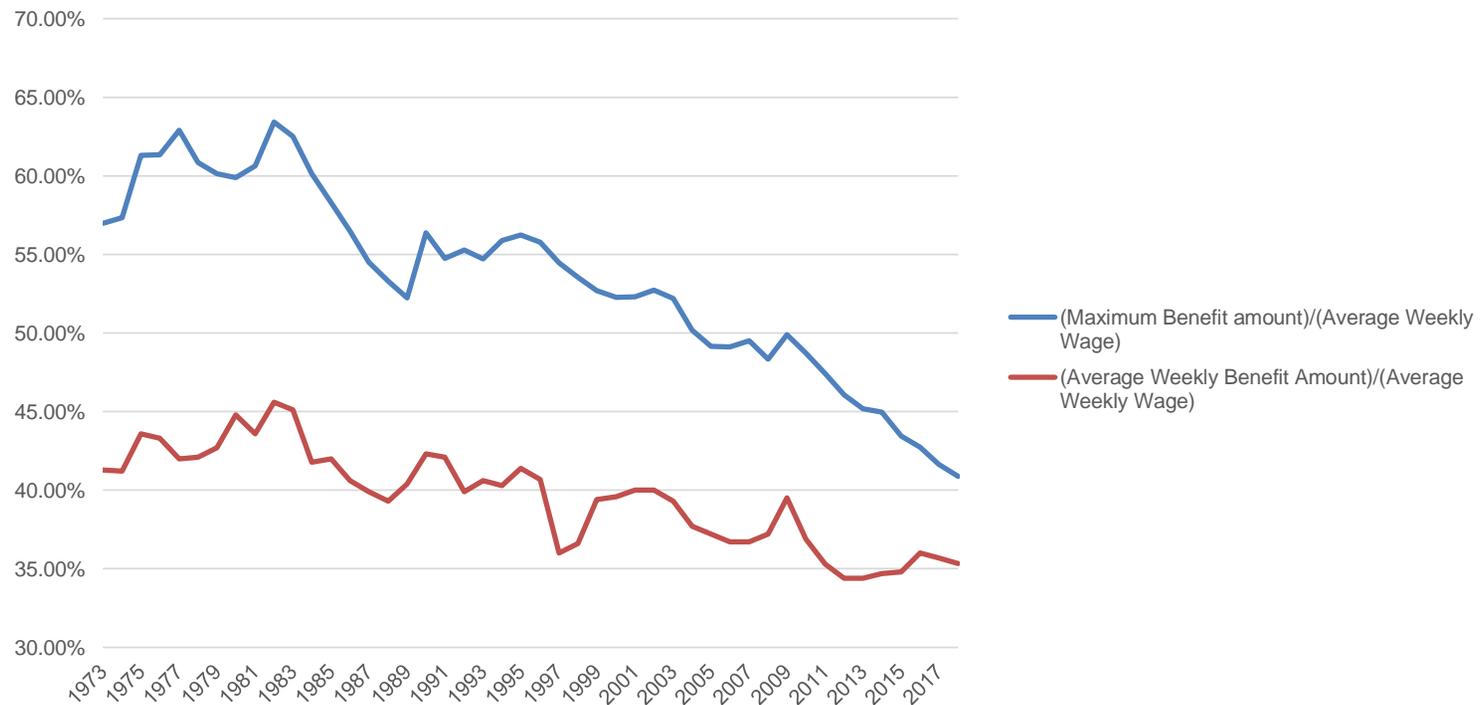
D21-22
Increase Maximum Weekly Benefit Rate

Effective Week/Year	Minimum	Maximum
02/14	\$54	\$370
02/09	\$54	\$363
02/07	\$53	\$355
01/06	\$51	\$341
01/03	\$49	\$329
01/02	\$48	\$324
41/00	\$46	\$313
15/00	\$45	\$305
02/99	\$44	\$297
02/98	\$43	\$290
02/97	\$53	\$282
02/96	\$52	\$274
01/95	\$50	\$266
20/94	\$48	\$256
02/93	\$46	\$243
28/92	\$45	\$240
02/92	\$43	\$230
01/90	\$42	\$225
02/88	\$38	\$200
02/83	\$37	\$196
28/82	\$36	\$191
02/82	\$34	\$179
28/81	\$33	\$175
02/81	\$31	\$166
28/80	\$30	\$160
02/80	\$29	\$155
27/79	\$28	\$149
02/79	\$27	\$145
27/78	\$36	\$139
01/78	\$25	\$135
28/77	\$25	\$133
02/77	\$24	\$128
28/76	\$23	\$122
02/76	\$22	\$117
28/75	\$21	\$113
02/75	\$20	\$108

D21-22
Increase Maximum Weekly Benefit Rate

UI Benefits Have Fallen Relative to Covered Wages

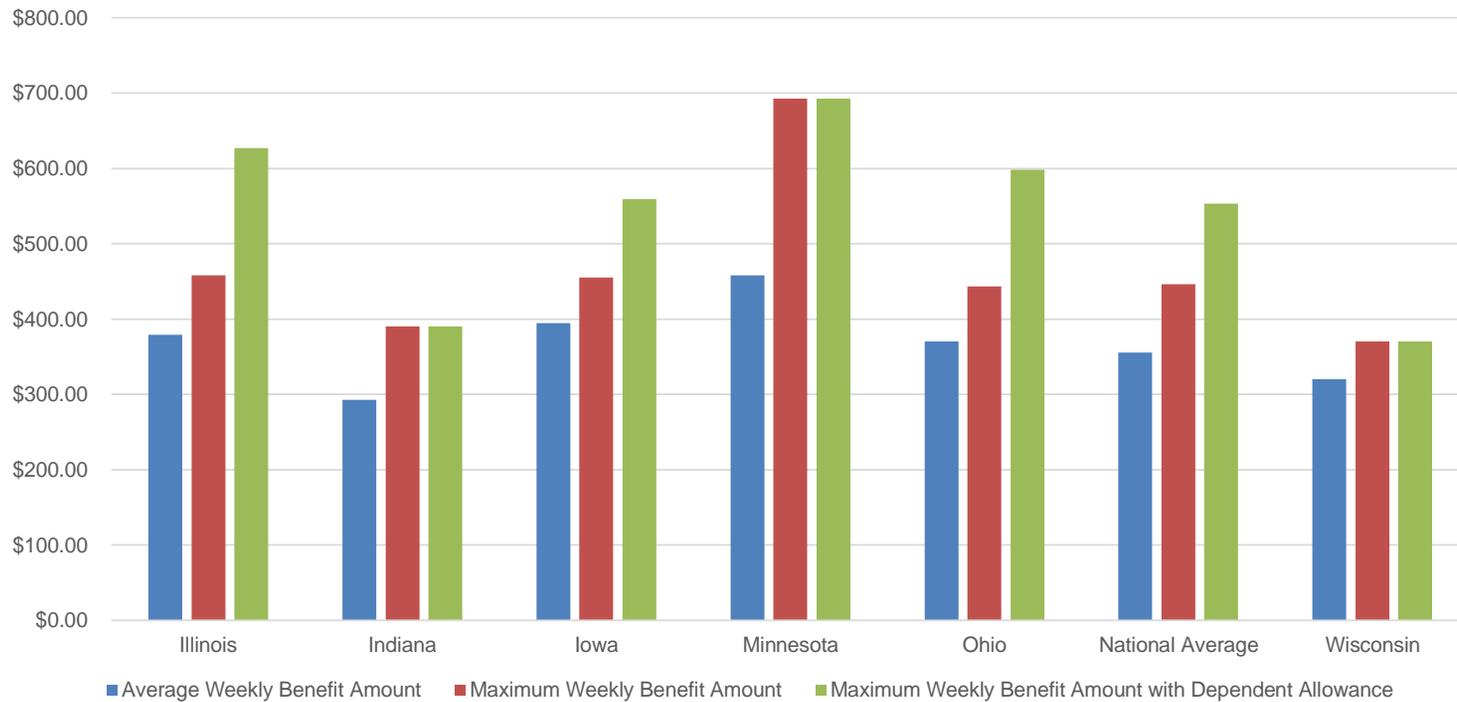
Wisconsin UI Weekly Benefits Relative to Average Weekly Wage in Covered Employment 1973-2018.Q2



D21-22
Increase Maximum Weekly Benefit Rate

WI UI Weekly Benefits Compared to Other Midwest States

Wisconsin Weekly UI Benefit Compared to Neighboring States and National Average Q2 2018



D21-22
Increase Maximum Weekly Benefit Rate

Wisconsin UI Weekly Benefits Compared to Neighboring States

State	Average Weekly Benefit Amount	Maximum Weekly Benefit Amount	Maximum Weekly Benefit Amount with Dependent Allowance
Illinois	\$379.30	\$458.00	\$627.00
Indiana	\$292.77	\$390.00	\$390.00
Iowa	\$394.26	\$455.00	\$559.00
Minnesota	\$458.15	\$693.00	\$693.00
Ohio	\$370.15	\$443.00	\$598.00
National Average	\$355.42	\$445.96	\$553.02
Wisconsin	\$319.91	\$370.00	\$370.00

Date: 05/19/2021

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

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 proposal 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 proposal, 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.

UI Trust Fund Impact:

This proposal is expected to cost the UI Trust fund \$23.9 million in 2022, \$94.5 million in 2023, and \$167.5 million in 2024. Every year after 2024, it is expected to cost an additional \$4.4 million annually.

IT and Administrative Impact:

The annual IT impact to the program is estimated at \$22,250 and an annual administrative impact program is estimated at \$7,417, for a total annual cost of \$29,667.

Trust Fund Methodology:

In order to account for differing economic situations, claimants with benefit years in the period of 2016 to 2019 were examined. To account for wage growth, each individual's wages were adjusted by the IHS projected annual wage growth of 3.4%. Using these wages, new benefit years were calculated at the higher weekly benefit rates. The benefit years were then verified to still qualify for UI benefits. The total changes were then summed and multiplied by the average duration over the period of 12.8 weeks. The amounts were then averaged across benefit years to arrive at the new benefit amounts.

For the \$409 weekly benefit rate, the expected increase in UI benefits is \$38.0 million. Reimbursable employers are expected to be charged with \$2.3 million in benefits. This is also expected to lead to an increase in UI taxes of \$11.8 million annually leading to a net UI Trust Fund decrease of \$23.9 million.

When the weekly benefit rate changes to 50% of the annual wage in 2023, the weekly benefit rate is estimated to be \$552 based on IHS Markit estimates (IHS Markit is a leading economic forecaster.) This is expected to increase UI benefits paid by \$150 million compared to a \$370 weekly benefit rate. Reimbursable employers are expected to be charged \$9 million in benefits. An expected increase of UI taxes by \$46.5 million results in a net change in the UI Trust Fund of \$94.5 million.

Starting in January 2024, 75% of the average weekly wage is expected to raise the weekly benefit rate to \$854 per week. This is expected to increase UI benefits paid by \$266 million compared to the current \$370 weekly

benefit rate. Reimbursable employers are expected to be charged \$16 million in benefits. An expected increase of UI taxes by \$82.5 million results in a net change in the UI Trust Fund of \$167.5 million.

To address the index moving forward, the estimated change for 2025 was calculated. Indexing the weekly benefit rate going forward is expected to increase UI benefits by \$7 million annually. \$0.4 million of benefits is expected to be charged to reimbursable employers and an expected \$2.2 million increase in UI taxes. This expected to decrease the UI Trust Fund by \$4.4 million annually.

The estimated cost to the Trust Fund in 2025 is the sum of \$167.5 million and \$4.4 million for a total cost of \$171.9 million, with an expected additional \$4.4 million each year following.

D21-23
Flexibility for Finding Suitable Work

Date: April 15, 2021
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Flexibility for Finding Suitable Work

1. Description of Proposed Change

The definition of “suitable work” in the Unemployment Insurance law provides a standard for determining whether an unemployment benefit claimant has good cause for refusing work when offered. The Unemployment Insurance administrative rules currently define “suitable work” as “work that is reasonable considering the claimant’s training, experience, and duration of unemployment as well as the availability of jobs in the labor market.”¹

Before 2015, when a claimant refused an offer of work within the first six weeks of becoming unemployed, the Department compared the skill level and rate of pay of the job refused to one or more of the claimant’s recent jobs. Benefits were allowed if the skill level of the work being refused was lower than that of one or more recently-held jobs or if the rate of pay offered was less than 80% of the pay of one or more recent jobs. The 80% threshold was set by Department policy.

As part of the 2015 Unemployment Insurance Advisory Council agreed bill, 2015 Wis. Act 334, the Council agreed to the current statutory definition of suitable work found in sections 108.04(8)(d) and (dm). The suitable work provisions of 2015 Wis. Act 334 effectively codified Department policy but reduced the pay threshold from 80% to 75%.

Under the 2015 Wis. Act 334 suitable work changes, a two-tiered approach is used to determine whether work refused is suitable based on when the job is refused. For claimants who refuse a job within the first six weeks of unemployment (known as the “canvassing period”), the

¹ Wis. Admin. Code DWD § 100.02(61).

D21-23
Flexibility for Finding Suitable Work

Department will compare the skill level and rate of pay to the claimant's most recent jobs and determine whether the hourly wage is at least 75% of what the claimant earned in their highest paying most recent job.²

For jobs refused after the sixth week of becoming unemployed, suitable work is defined as “any work that the employee is capable of performing, regardless of whether the employee has any relevant experience or training, that pays wages that are above the lowest quartile of wages for similar work in the labor market area in which the work is located, as determined by the department.”³ The work must still meet labor standards.

The Governor's Budget Bill (AB 68 / SB 111) amends the suitable work statutes so that claimants are not required to accept less favorable work until the 11th week of unemployment.

Under current Wis. Stat. § 108.04(7)(e), an employee is eligible for UI if they quit a job within the first 30 days based on “the same grounds for voluntarily terminating work [within the first 30 days] if the employee could have failed to accept the work under [the statutory suitable work definition] when it was offered, regardless of the reason articulated by the employee for the termination.”

The Governor's Budget Bill (AB 68 / SB 111) amends the quit exception so that claimants may quit a job within 10 weeks of starting it if they could have refused the job as unsuitable. This change to the quit exception may make unemployment claimants more likely to try jobs that they might otherwise refuse; it may also encourage them to try the jobs for more time before quitting.

² Wis. Stat. § 108.04(8)(d).

³ Wis. Stat. § 108.04(8)(dm).

D21-23
Flexibility for Finding Suitable Work

2. Proposed Statutory Changes⁴

108.04 (7) (e) of the statutes is amended to read:

Paragraph (a) does not apply if the department determines that the employee accepted work that the employee could have failed to accept under sub. (8) and terminated the work on the same grounds and within the first ~~30 calendar days~~ 10 weeks after starting the work, or that the employee accepted work that the employee could have refused under sub. (9) and terminated the work within the first ~~30 calendar days~~ 10 weeks after starting the work. For purposes of this paragraph, an employee has the same grounds for voluntarily terminating work if the employee could have failed to accept the work under sub. (8) (d) to (em) when it was offered, regardless of the reason articulated by the employee for the termination.

Section 108.04 (8) (d) (intro.) of the statutes is amended to read:

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

Section 108.04 (8) (dm) of the statutes is amended to read:

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

⁴ Subject to revision to ensure cross-references are corrected.

D21-23
Flexibility for Finding Suitable Work

3. Effects of Proposed Change

- a. **Policy:** The proposed change will give claimants more time to find suitable work after becoming unemployed. This proposal may incentivize claimants to take less favorable jobs, which may result in fewer benefits paid to claimants.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is not yet available.

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 apply to determinations issued after the effective date of the bill.

Date: 05/17/21
Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

This proposal changes how UI adjudicates suitable work issues in two ways. The first is to extend the period of time a claimant may refuse less than suitable work. The second is to extend the amount of time a claimant may quit a job that would have been deemed unsuitable work when the claimant accepted employment.

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 proposal 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.

This proposal also would amend the quit exception so that claimants may quit a job within 10 weeks of starting the job if they could have refused the job as unsuitable. This change to the quit exception may make unemployment claimants more likely to try jobs that they might otherwise refuse; it may also encourage them to try the jobs for more time before quitting.

UI Trust Fund Impact:

This proposal is estimated to cost the UI Trust Fund approximately \$2.78 million annually based on increased benefit payments.

IT and Administrative Impact:

There are no expected measurable ongoing IT or administrative costs.

Trust Fund Methodology:

Using past data analysis under prior law, when Wisconsin allowed quits for up to 10 weeks, it is estimated that approximately 31% of allowed decisions were past the 30-day threshold. Applying that increase to benefits allowed for this reason in 2019, there is an estimated 948 additional individuals who would have received benefits in 2019. This would lead to an increase in UI benefits of approximately \$3.8 million. After accounting for reimbursable employers and an increase of UI taxes of approximately \$1.2 million, the net decrease to the UI Trust Fund would be \$2.6 million annually.

Using data from 2019, 40 cases that had UI benefits denied due to refusal of suitable work were reviewed. Looking at the case data, it was investigated if making a change from 6 weeks to 10 weeks would have impacted the decision. It was only definite for one decision to be reversed but an additional 6 decisions may have been affected. This implies up to 17.5% of the 398 cases denied for suitable work in 2019 may have been allowed under this proposal. Using the 2019 average weekly benefit amount of \$320 and the average duration for the period 2016 to 2019 the expected amount of additional benefits is up to \$285,000 annually. Accounting for an estimated \$17,000 of reimbursable benefits and \$88,000 in additional tax revenue leads to a reduction in the UI Trust Fund by \$180,000 annually.

The total expected decrease in the UI Trust Fund is \$2.78 million annually.

D21-24

Amend Social Security Disability Insurance Disqualification

Date: April 15, 2021

Proposed by: DWD

Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE
Amend Social Security Disability Insurance Disqualification**

1. Description of Proposed Change

Currently, recipients of federal Social Security Disability Insurance (“SSDI”) payments are ineligible for unemployment insurance benefits. Recipients of pension payments are eligible for unemployment insurance benefits, but the unemployment benefit is reduced by the pension payment.

The Governor’s Budget Bill (AB 68 / SB 111) proposes to amend the prohibition on receipt of UI for SSDI recipients by reducing the amount of weekly UI benefits by the proportionate amount of the claimant’s SSDI payment.

Under this proposal, a claimant who receives \$1,000 monthly in SSDI and would otherwise be eligible for \$300 weekly in UI would receive a weekly UI payment of \$69.¹

2. Proposed Statutory Changes²

Section 108.04 (2) (h) of the statutes is amended to read:

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

¹ This calculation is preliminary and subject to revision.

² Subject to revision to ensure cross-references are corrected.

D21-24

Amend Social Security Disability Insurance Disqualification

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

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

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

Section 108.04 (12) (f) 3. of the statutes is repealed.

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

Section 108.05 (7m) (title), (c) and (d) of the statutes are created to read:

SOCIAL SECURITY DISABILITY INSURANCE PAYMENTS. (c) If a monthly social security disability insurance payment is issued to a claimant, the department shall reduce benefits otherwise payable to the claimant for a given week in accordance with par. (d). This subsection does not apply to a lump sum social security disability insurance payment in the nature of a retroactive payment or back pay.

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

3. Effects of Proposed Change

- a. **Policy:** Under this proposed change, recipients of SSDI may receive UI benefits.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is not yet available.

D21-24

Amend Social Security Disability Insurance Disqualification

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 for weeks of unemployment after the proposal is enacted.

Date: 05/17/21

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

The proposal repeals the prohibition that allows an otherwise eligible claimant to receive both federal social security disability benefits (SSDI) and Unemployment Insurance (UI) benefits for the same period, and instead requires DWD to reduce a claimant's UI benefit payments by the amount of SSDI payments. Under the proposal, DWD will reduce the amount of weekly UI benefits by the proportionate amount of the claimant's SSDI payment.

UI Trust Fund Impact:

There is not expected to be any measurable impact to the UI Trust Fund.

IT and Administrative Impact:

This proposal would have an estimated one-time IT impact of \$27,946 and a one-time administrative impact of \$8,384. There are no ongoing administrative impacts to the UI program.

Trust Fund Methodology:

SSDI recipients in general have strict limits on the amount of income they may earn and continue to receive SSDI. This maximum amount ranges from \$1,260 per month for disabled individuals to \$2,110 per month for blind individuals. Assuming the individuals meet the other qualifying requirements, this would lead to a weekly benefit rate of either \$151 or \$253 per week. The average SSDI payment in Wisconsin was \$1,443 per month in 2020. Treating SSDI payments as employer contributed pension payments, each weekly benefit payment would be reduced on average by \$166 per week. For most SSDI claimants, this likely would completely offset any UI benefit available. While certain individuals would be eligible for UI, most SSDI recipients would not qualify for any UI payments. There is not expected to be a measurable impact on UI benefits or the UI Trust Fund.

D21-25
Electronic Communication and Filing

Date: April 15, 2021
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Electronic Communication and Filing

1. Description of Proposed Change

Employers must file quarterly tax and wage reports showing the names, Social Security numbers, and wages paid to their employees. Employers with at least 25 employees must file those reports electronically. Electronic filing ensures that reports are not lost in the mail and reduce administrative costs for the Department. Employers who make contribution payments of at least \$10,000 annually must make those payments by electronic funds transfer; any employer may do so. Current law also permits the Department to electronically communicate with employers and claimants who opt for that form of communication—though not all communication with the Department can currently be electronic.

The Governor’s Budget Bill (AB 68 / SB 111) proposes that the electronic filing, electronic communication, and electronic payment provisions be mandatory for employers and claimants unless the employer or claimant demonstrates good cause for being unable to use the electronic method. The Department would determine good cause by rule. The Bill also provides that the Department may use electronic records and electronic signatures. The provision related to electronic communication will be effective when the Department has the technological capability to fully implement it.

The Department has begun the process of modernizing its unemployment insurance information technology systems with the expectation that a new system will result in administrative efficiencies for the Department and better service for employers and claimants. This proposal will ensure the maximization of such efficiencies and service improvements while

D21-25

Electronic Communication and Filing

safeguarding the rights of those whose access to electronic means is severely limited or unavailable.

2. Proposed Statutory Changes¹

Section 108.14 (2e) of the statutes is amended to read: 108.14 (2e)

The department ~~may~~ shall 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 the department, may~~ shall be used for departmental transmission or receipt of any document specified by the department that is related to the administration of this chapter in lieu of any other means of submission or receipt specified in this chapter. The secure means of electronic interchange shall be used by employing units, claimants, and other persons unless a person demonstrates good cause for not being able to use the secure means of electronic interchange. The department shall determine by rule what constitutes good cause, for purposes of this subsection. Subject to s. 137.25 (2) and any rules promulgated thereunder, the department may permit the use of the use of electronic records and electronic signatures for any document specified by the department that is related to the administration of this chapter. If a due date is established by statute for the receipt of any document that is submitted electronically to the department under this subsection, then that submission is timely only if the document is submitted by midnight of the statutory due date.

Section 108.17 (2) (b) of the statutes is amended to read:

The department ~~may~~ shall electronically provide a means whereby an employer that files its employment and wage reports electronically may determine the amount of contributions due for payment by the employer under s. 108.18 for each quarter. If an employer that is subject to a contribution requirement files its employment and wage reports under s. 108.205 (1) electronically,

¹ Subject to revision to ensure cross-references are corrected.

D21-25

Electronic Communication and Filing

in the manner prescribed by the department for purposes of this paragraph, the department may require the employer to determine electronically the amount of contributions due for payment by the employer under s. 108.18 for each quarter. In such case, the employer is excused from filing contribution reports under par. (a). The employer shall pay the amount due for each quarter by the due date specified in par. (a).

Section 108.17 (2b) of the statutes is amended to read:

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

The department shall determine by rule what constitutes good cause, for purposes of this subsection. Each employer that becomes subject to an electronic reporting requirement under this subsection shall file its initial report under this subsection for the quarter during which the employer becomes subject to the reporting requirement. Once an employer becomes subject to a reporting requirement under this subsection, it shall continue to file its reports under this subsection unless that requirement is waived by the department.

Section 108.17 (7) (a) of the statutes is amended to read:

Each employer ~~whose net total contributions paid or payable under this section for any 12-month period ending on June 30 are at least \$10,000~~ shall pay all contributions under this section by means of electronic funds transfer beginning with the next calendar year, unless the employer demonstrates good cause for not being able to pay contributions by electronic funds transfer. The department shall determine by rule what constitutes good cause, for purposes of this subsection.

D21-25
Electronic Communication and Filing

Once an employer becomes subject to an electronic payment requirement under this paragraph, the employer shall continue to make payment of all contributions by means of electronic funds transfer unless that requirement is waived by the department.

108.205 (2) of the statutes is amended to read:

Each employer ~~of 25 or more employees, as determined under s. 108.22 (1) (ae),~~ that does not use an employer agent to file its reports under this section shall file the quarterly report under sub. (1) electronically in the manner and form prescribed by the department, unless the employer demonstrates good cause for not being able to file reports electronically. The department shall determine by rule what constitutes good cause, for purposes of this subsection. An employer that becomes subject to an electronic reporting requirement under this subsection shall file its initial report under this subsection for the quarter during which the employer becomes subject to the reporting requirement. Once an employer becomes subject to the reporting requirement under this subsection, the employer shall continue to file its quarterly reports under this subsection unless that requirement is waived by the department.

Non-statutory provision:

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

3. Effects of Proposed Change

- a. **Policy:** The proposed change will result in increased efficiencies and improved experiences for claimants and employers.
- b. **Administrative:** This proposal will require training of Department staff.

D21-25
Electronic Communication and Filing

c. **Fiscal:** A fiscal estimate is not yet available.

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 the other provisions of the agreed bill. The treatment of section 108.14 (2e) will take effect on the date specified in the notice published in the register. The provisions related to good cause would be effective after the Department promulgates a rule defining “good cause.”

Date: 05/12/2021

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

Employers must file quarterly tax and wage reports showing the names, Social Security numbers, and wages paid to their employees. Employers with at least 25 employees must file those reports electronically. Electronic filing ensures that reports are not lost in the mail and reduce administrative costs for the Department. Employers who make contribution payments of at least \$10,000 annually must make those payments by electronic funds transfer, although any employer may do so. Current law also permits the Department to electronically communicate with employers and claimants who opt for that form of communication—though not all communication with the Department can currently be electronic.

This proposal makes the electronic filing, electronic communication, and electronic payment provisions be mandatory for employers and claimants unless the employer or claimant demonstrates good cause for being unable to use the electronic method. The Department would determine good cause by rule. The proposal also provides that the Department may use electronic records and electronic signatures. The provision related to electronic communication will be effective when the Department has the technological capability to fully implement it.

The Department has begun the process of modernizing its unemployment insurance information technology systems with the expectation that a new system will result in administrative efficiencies for the Department and better service for employers and claimants. This proposal will ensure the maximization of such efficiencies and service improvements.

The implementation of this proposal is delayed until the Department promulgates rules when the Department has the technological capability to fully implement.

UI Trust Fund Impact:

This proposal is not expected to have a Trust Fund impact.

IT and Administrative Impact:

If this proposal is implemented as a part of a new system then the IT costs and administrative impacts will be attributed to that modernization effort.

If this proposal is implemented before the modernization effort then the cost would be \$49,840 for IT and \$16,447 for administration for a total of \$66,287.

Trust Fund Methodology:

Any Trust Fund impacts resulting from modern technology and ease of reporting will be attributed to the technology proposal.

IT and Administrative Impact Methodology:

Implementation is expected to be a part of a modernization effort. If implemented separately, the majority of the cost is changing hard-coded correspondence.

D21-26
Worker Misclassification Penalties

Date: April 15, 2021
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Worker Misclassification Penalties

1. Description of Proposed Change

Civil and criminal penalties were created, as part of the 2015-2016 UIAC Agreed Bill, for employers who intentionally misclassify their workers as independent contractors. The current penalties only apply to construction employers and are:

1. \$500 civil penalty for each employee who is misclassified, but not to exceed \$7,500 per incident.
2. \$1,000 criminal fine for each employee who is misclassified, subject to a maximum fine of \$25,000 for each violation, but only if the employer has previously been assessed a civil penalty for misclassified workers.
3. \$1,000 civil penalty for each individual coerced to adopt independent contractor status, up to \$10,000 per calendar year.

The civil penalties are deposited into the Department's program integrity fund, which is used, in part, to fund the costs of staff who investigate employee classification.

The Joint Task Force on Payroll Fraud and Worker Misclassification recommended that the penalties for intentional worker misclassification be structured to deter repeat violations.¹ The Governor's Budget Bill (AB 68 / SB 111) proposes to amend the civil penalties statutes by having the penalties potentially apply to all employers. The Bill also eliminates the \$7,500 and \$10,000 caps on the civil penalties and doubles the penalties for subsequent violations. The Bill makes no changes to the criminal penalties.

¹ [Joint Task Force on Payroll Fraud and Worker Misclassification 2020 Report](#), p. 10.

D21-26
Worker Misclassification Penalties

2. Proposed Statutory Changes²

108.221 (1) (a) of the statutes is renumbered 108.221 (1) (a) (intro.) and amended to read:

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

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

Section 108.221 (1) (a) 2. of the statutes is created to read:

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

108.221 (2) of the statutes is renumbered 108.221 (2) (intro.) and amended to read:

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

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

² Subject to revision to ensure cross-references are corrected.

D21-26
Worker Misclassification Penalties

Section 108.221 (2) (b) of the statutes is created to read:

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

3. Effects of Proposed Change

- a. **Policy:** The proposed change will permit the Department to assess civil penalties against any employer that intentionally misclassifies workers as independent contractors and will increase the amount of the penalties for subsequent violations.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is not yet available.

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 for employees misclassified after the law change is enacted.

Worker Misclassification Penalties

Date: 05/052021

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

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 proposal 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 proposal 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.

UI Trust Fund Impact:

This proposal is expected to have a positive but indeterminate impact on the Trust Fund because of the incentive for employers to correctly register as an employer and correctly list employees to avoid penalties.

IT and Administrative Impact:

Ongoing administrative impact to the UI program is indeterminate.

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	
D21-09	Employee Status Clarification	4/15/21	
D21-10	SUTA Dumping Penalties	4/15/21	
D21-11	Work Share Revisions	4/15/21	
D21-12	Department Flexibility for Federal Funding	4/15/21	
D21-13	Construction Employer Initial Contribution Rates	4/15/21	
D21-14	DWD 140 - Permanent Rule Scope	4/15/21	
D21-15	Camp Counselor Exclusion	4/15/21	
D21-16	Repeal Pre-employment & Occupational Drug Testing	4/15/21	
D21-17	Repeal Substantial Fault	4/15/21	
D21-18	Amend Quit Exception for Relocating Spouses	4/15/21	
D21-19	Repeal the Waiting Week	4/15/21	
D21-20	Repeal Statutory Work Search & Registration Waivers	4/15/21	
D21-21	Repeal Wage Threshold for Receipt of Benefits	4/15/21	
D21-22	Increase Maximum Weekly Benefit Rate	4/15/21	
D21-23	Flexibility for Finding Suitable Work	4/15/21	
D21-24	Amend SSDI Disqualification	4/15/21	
D21-25	Electronic Communications and Filing	4/15/21	
D21-26	Amend Worker Classification Penalties	4/15/21	



**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