



## **Unemployment Insurance Advisory Council**

### **Meeting Agenda**

August 25, 2025, 12:00 p.m. – 4:30 p.m.

Department of Workforce Development  
201 E. Washington Avenue  
Madison, Wisconsin  
GEF-1, Room B406

#### **The public may attend by teleconference.**

Phone: 415-655-0003 or 855-282-6330 (toll free) or [WebEx](#)  
Meeting number (access code): 2660 117 7376 Password: DWD2

Materials: <https://dwd.wisconsin.gov/uibola/uiac/meetings.htm>

1. Call to order and introductions
2. Approval of minutes of the July 22, 2025 UIAC meeting
3. Department proposals to amend the unemployment insurance law
  - D25-01 – Electronic Communication and Filing
  - D25-02 – Worker Misclassification Penalties
  - D25-03 – Repeal Waiting Week
  - D25-04 – Increase Maximum Weekly Benefit Amount
  - D25-05 – Increase and Index Maximum Wage Cap
  - D25-06 – Amend SSDI Disqualification
  - D25-07 – Repeal UI Drug Testing
  - D25-08 – Misconduct
  - D25-09 – Repeal Substantial Fault
  - D25-10 – Suitable Work
  - D25-11 – Quit Exception for Relocating Spouse
  - D25-12 – Repeal Work Search and Work Registration Waivers from Statute
4. Labor and Management proposals to amend the unemployment insurance law
5. Research requests

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

6. 2025-2026 UIAC timeline
7. Future meeting dates: September 18, October 16, November 20
8. 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 members may attend the meeting by teleconference or videoconference.
- ❖ 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**

**July 22, 2025**

### **Held In-Person and Via Teleconference**

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

**Members:** Janell Knutson (Chair), David Bohl, Sally Feistel, Corey Gall, Mike Gotzler, Shane Griesbach, Scott Manley, Crystal Martzall, Kent Miller, and Susan Quam.

**Department Staff:** Jim Chiolino (UI Division Administrator), Jason Schunk (UI Deputy Division Administrator), Andy Rubsam, Darren Magee, Mike Myszewski, Shashank Partha, Linda Hendrickson, Melissa Montey, Jeff Laesch, Pam Neumann, Robert Usarek, Ashley Gruttke, Lee Sensenbrenner (Assistant Deputy Secretary), Jennifer Wakerhauser (General Counsel), and Joe Brockman.

**Members of the Public:** Victor Forberger (Attorney, Wisconsin UI Clinic), and Brian Dake (Wisconsin Independent Businesses).

### **1. Call to Order and Introductions**

Ms. Knutson called the Unemployment Insurance Advisory Council to order at 10:04 a.m. under the Wisconsin Open Meetings Law. Attendees introduced themselves in turn. Ms. Knutson acknowledged the department staff in attendance.

### **2. Approval of Minutes of the June 19, 2025, UIAC Meeting**

Motion by Mr. Manley, second by Ms. Feistel, to approve the minutes of the June 19, 2025, meeting without correction. The voice vote passed unanimously.

### **3. Department Updates**

Mr. Chiolino reported a letter the department sent to the Joint Committee on Finance requesting state funds to supplement those terminated by the U.S. Department of Labor (US DOL) can be found in members' packets. The department has not received a response, and none of the requested funds were included in the budget.

### **4. Program Integrity Assessment**

Ms. Knutson advised a letter from Secretary Pechacek can be found in members' packets. Ms. Knutson summarized the content of the letter in which the Secretary recommended the Council authorize the 0.01% program integrity assessment to be invested in the Program Integrity Fund. The

letter cites the total amount generated by the assessment, the UI Trust Fund balance, the department's coordinated anti-fraud efforts, and US DOL's termination of UI modernization funds as reasons in support of continuing program integrity efforts.

Motion by Mr. Griesbach, second by Ms. Feistel, to invest the 0.01% program integrity assessment into the Program Integrity Fund. Vote was taken by voice vote and passed unanimously.

## **5. Trust Fund Update**

Mr. Partha reported the Trust Fund highlights based on the May 31, 2025, Financial Statements. Benefit payments through May 2025 declined by \$14.5 million or 7.7% (when compared to last year). Tax receipts through May 2025 declined by \$30.1 million or 8.4% (when compared to last year). The UI Trust Fund balance was over \$2 billion, which is an increase of 13% (when compared to last year). Interest earned on the UI Trust Fund is received quarterly.

Ms. Knutson asked if projections indicate the rate schedule will remain in Schedule D for 2026. Mr. Partha confirmed.

## **6. Legislation Update**

Mr. Rubsam advised there are two law changes included in members' packets.

2025 Wis. Act 15 (2025-2027 Budget Act) is the state budget bill that was recently signed. Section 316m of the Act creates Section 165.25 (22m) of the statutes and requires the Attorney General to meet with the Department of Workforce Development and the Department of Revenue at least quarterly and report annually in writing to those departments on its investigations and prosecutions of worker misclassification and payroll fraud. The reports are also sent to the appropriate standing committees of the legislature. The Attorney General must also report to the Council and the Worker's Compensation Advisory Council about the investigations and prosecutions upon request. Mr. Rubsam explained that this is a new statute and expects that the Attorney General will issue a report sometime in this first year, though there is no due date in the statute.

Ms. Knutson advised she can make a request if the Council would like the Attorney General's office to present at a future meeting. She recommended January or February as a good time for their presentation.

Mr. Rubsam explained 2025 HR 1 (Budget Reconciliation). Section 73001 of the Act requires denial of certain UI benefits to individuals with \$1 million or more in wages in their base period. He explained the bill only applies to certain programs, including Unemployment Compensation for Federal Employees (UCFE), Unemployment Compensation for Ex-Servicemembers (UCX), and federal extended benefit programs. US DOL has confirmed the bill does not apply to the regular UI program. Mr. Rubsam advised this is a new provision and the department is awaiting the Unemployment Insurance Program Letter (UIPL) from US DOL, which tells the states its view of the law. He explained that the department doesn't expect this law to have much of a fiscal impact.

Mr. Griesbach asked if this law applies to anybody. Mr. Rubsam explained the law would typically only apply to former federal employees or military members and those workers do not tend to earn \$1 million or more in a year. He advised some people with high earnings qualify for UI if they lose their job, but this law does not apply to the regular UI program. Mr. Rubsam explained this law

would only apply to a high-earning claimant receiving regular UI if they were also under a federal extension or add-on.

Mr. Manley asked if a federal civilian employee would include a defense contractor. Mr. Rubsam explained the law only applies to those directly employed by the federal government, typically in civil service or military positions, and that would not usually fit a defense contractor as they would be employed by a private defense contractor.

Ms. Knutson advised that the department will update the Council if it gets more information.

## **7. Department Proposals to Amend the Unemployment Insurance Law**

Ms. Knutson stated the department's 12 proposals are included in members' packets.

## **8. Labor and Management Proposals to Amend the Unemployment Insurance Law**

Ms. Knutson stated that this item was placed on the agenda as an opportunity for Labor and Management to caucus to discuss their proposals.

## **9. Research Requests**

There were no outstanding or new research requests.

## **10. 2025-2026 UIAC Timeline**

Ms. Knutson stated that the tentative schedule for the 2025-2026 agreed bill cycle remains unchanged and is included in members' packets. She acknowledged the Council's work and highlighted the goal of progressing towards an agreed bill.

## **11. Future Meeting Dates**

Ms. Knutson stated that the scheduled future meeting dates are:

- August 21, 2025
- September 18, 2025
- October 16, 2025
- November 20, 2025

## **12. Closed Caucus/Adjourn**

Motion by Mr. Griesbach, second by Mr. Gotzler, to convene in closed caucus session to deliberate the items on the agenda pursuant to Wis. Stat. § 19.85(1)(ee) and to have the opportunity to reconvene or adjourn from closed caucus. The voice vote passed unanimously.

The Council went into closed caucus at 10:18 a.m. and later adjourned from caucus.

**D25-01**  
**Electronic Communication and Filing**

Date: April 16, 2025  
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, but all employers may file electronically. Electronic filing is more efficient for employers, ensures that reports are not lost in the mail, and reduces administrative costs for the Department. Employers who make contribution payments of at least \$10,000 annually must make those payments by electronic funds transfer but any employer may do so. Currently, about 96% of employers file their tax and wage reports electronically and pay their contributions electronically. Current law also permits the Department to electronically communicate with those who opt for that form of communication—though not all Department communication can currently be sent electronically.

In 2024, the UI Advisory Council approved a Department proposal to make the electronic filing, electronic payment, and electronic communication provisions mandatory unless the person demonstrates good cause for being unable to use the electronic method. The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, includes a proposal identical to the one approved by the Council in 2024. In the Budget Bill, “good cause” is defined to include employers with limited or no internet connection, the filer having digital literacy concerns, the filer having communication barriers (such as a vision disability or other disability that prevents the ease of electronic filing, or being an individual with limited English proficiency), or other circumstances that make electronic filing unusually difficult, as determined by the Department. The Budget Bill also

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**Electronic Communication and Filing**

provides that the Department may use electronic records and electronic signatures. The provision related to electronic communication would be effective when the Department has the technological capability to fully implement it. The tax filing and payment provisions would be effective on January 1, 2027, so that employers have enough time to adjust to the new electronic filing and payment requirements.

The Department continues to modernize its unemployment insurance information technology systems with the expectation that a new system will result in administrative efficiencies for the Department and better customer service. This proposal will ensure the maximization of such efficiencies and service improvements while safeguarding the rights of those whose access to electronic means is severely limited or unavailable.

**2. Proposed Statutory Changes**

The proposed statutory changes would be identical to the UI Advisory Council-approved language from 2024 except that the effective date would be January 1, 2027 instead of February 1, 2025.

**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 and related federal programs 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 the person demonstrates good cause, as specified in s. 108.022, for being unable to use the secure means of electronic interchange. Subject to s. 137.25 (2) and any

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**Electronic Communication and Filing**

rules promulgated thereunder, the department may permit 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) of the statutes is amended to read:**

108.17 (2) (a) Except as provided in par. (b) and subject to sub. (2b) and s. 108.185, every employer that is subject to a contribution requirement shall file quarterly reports of contributions required under this chapter with the department, and pay contributions to the department, in such manner as the department prescribes. Each contribution report and payment is due at the close of the month next following the end of the applicable calendar quarter, except as authorized in sub. (2c) or as the department may assign a later due date pursuant to sub. (1m) or general department rules.

(b) The department may 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, in the manner prescribed by the department ~~for purposes of this paragraph under s. 108.205 (2),~~ 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).

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**Electronic Communication and Filing**

**Section 108.17 (2b) of the statutes is amended to read:**

108.17 (2b) 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~~ and 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. ~~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 unless the employer demonstrates good cause, as specified in s. 108.022, for being unable to file contribution reports electronically.~~

**Section 108.17 (2g) of the statutes is repealed.**

**Section 108.17 (7) of the statutes is repealed.**

**Section 108.185 of the statutes is created to read:**

108.185 Payment of contributions and reimbursements; good cause. Each employer, employer agent, person liable under s. 108.22 (9), and private agency liable under s. 108.22 (10) shall pay all contributions, reimbursements, interest, penalties, assessments, and other amounts due under this chapter by means of electronic funds transfer or another electronic method as approved by the department unless the employer, employer agent, person, or private agency demonstrates good cause, as specified in s. 108.022, for being unable to pay such amounts electronically.

**Section 108.205 (1m) of the statutes is repealed.**

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**Section 108.205 (2) of the statutes is amended to read:**

108.205 (2) 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 and employer agent~~ shall file the quarterly report under sub. (1) electronically in the manner and form prescribed by the department. ~~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 unless the employer demonstrates good cause, as specified in s. 108.022, for being unable to file reports electronically.~~

**Section 108.22 (1) (ac) of the statutes is amended to read:**

108.22 (1) (ac) In addition to any fee assessed under par. (a), the department may assess an employer or employer agent that is subject to the reporting requirement under s. 108.205 (2) and that fails to file its report in the manner and form prescribed under that subsection a penalty of \$20 for each employee whose information is not reported in the that manner and form ~~prescribed under s. 108.205 (1m) (b) or (2).~~

**Section 108.22 (1) (ad) 1. of the statutes is amended to read:**

108.22 (1) (ad) 1. An employer agent that is subject to the reporting requirements under s. 108.17 ~~(2g) (2b)~~ and that fails to file a contribution report in accordance with s. 108.17 ~~(2g) (2b)~~ may be assessed a penalty by the department in the amount of \$25 for each employer whose report is not filed electronically in the manner and form prescribed by the department.

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**Electronic Communication and Filing**

**Section 108.22 (1) (af) of the statutes is amended to read:**

108.22 (1) (af) In addition to the fee assessed under par. (a), the department may assess ~~an~~  
~~employer or employer agent~~ a person that is ~~subject to a requirement~~ required to make  
~~contributions~~ a payment to the department by means of an electronic ~~funds transfer~~ method under  
s. ~~108.17(7)~~ 108.185 and that ~~pays contributions~~ makes the payment by any method inconsistent  
with s. ~~108.17(7)~~ 108.185 a penalty of the greater of \$50 or an amount equal to one-half of ~~one~~ 1  
percent of the total ~~contributions~~ amount paid by the ~~employer or employer agent~~ person for the  
quarter in which the violation occurs

**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.
- 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**

The treatment of section 108.14 (2e) will take effect on the date specified in the notice published in the register. The other provisions will take effect on January 1, 2027.

**D25-01**  
**Electronic Communication and Filing**

**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

**Summary of Proposal:**

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

This proposal makes use of these electronic methods mandatory in all cases unless the employer or other person demonstrates good cause for being unable to use the electronic method. This proposal specifies what constitutes good cause for purposes of these provisions. This proposal also makes various corresponding changes to penalty provisions that apply in the case of nonuse of these required electronic methods. This proposal further provides that DWD may permit the use of electronic records and electronic signatures for any document specified by DWD that is related to the administration of the UI law.

**UI Trust Fund Impact:**

This proposal is not expected to have an impact on the UI Trust Fund.

**IT and Administrative Impact:**

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.

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.

**UI Trust Fund Methodology:**

There is not expected to be an impact on the UI Trust Fund. This proposal is expected to increase administrative efficiency.

**IT and Administrative Impact Methodology:**

Implementation is expected to be a part of a modernization effort.

**D25-02**  
**Worker Misclassification Penalties**

Date: April 17, 2025

Proposed by: DWD

Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Worker Misclassification Penalties**

**1. Description of Proposed Change**

Administrative 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 administrative 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 administrative penalty for misclassified workers.
3. \$1,000 administrative penalty for each individual coerced to adopt independent contractor status, up to \$10,000 per calendar year.

The administrative 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.<sup>1</sup> The Budget Bill (2025 AB 50 / 2025 SB 45) proposes to amend the administrative penalties statutes by having the penalties potentially apply to all employers. The Bill also eliminates the \$7,500 and \$10,000 caps on the administrative penalties and doubles the penalties for subsequent violations. The Bill amends the criminal penalties to potentially apply to any employer.

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<sup>1</sup> [Joint Task Force on Payroll Fraud and Worker Misclassification 2020 Report](#), p. 10.

**D25-02**  
**Worker Misclassification Penalties**

**2. Proposed Statutory Changes<sup>2</sup>**

**Section 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.

**Section 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.~~

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<sup>2</sup> Subject to revision to ensure cross-references are corrected.

**D25-02**  
**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.

**Section 108.24 (2m) of the statutes is 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, after having previously been assessed an administrative penalty by the department under s. 108.221 (1), 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 be fined \$1,000 for each employee who is misclassified, subject to a maximum fine of \$25,000 for each violation. The department may, regardless of whether an employer has been subject to any administrative assessment under s. 108.221 or any other penalty or assessment under this chapter, refer violations of this subsection for prosecution by the department of justice or the district attorney for the county in which the violation occurred.

**3. Effects of Proposed Change**

- a. **Policy:** The proposed change will permit the Department to assess administrative 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 attached.

**D25-02**  
**Worker Misclassification Penalties**

**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**

**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. In addition, current law provides for criminal fines of up to \$25,000 for employers who, after having previously been assessed such an administrative penalty, commit another violation. Current law additionally requires DWD to assess an administrative penalty against such an employer who, through coercion, requires an employee to adopt the status of a nonemployee; the penalty amount is \$1,000 for each employee so coerced, but not to exceed \$10,000 per calendar year. Penalties are deposited into the UI Program Integrity Fund.

The proposal does the following: 1) removes the \$7,500 and \$10,000 limitations on the administrative penalties and provides that the penalties double for each act occurring after the date of the first determination of a violation; 2) removes the limitations on the types of employers to whom the prohibitions apply, making them applicable to any type of employer; and 3) specifies that DWD may make referrals for criminal prosecution for alleged criminal misclassification violations regardless of whether an employer has been subject to any other penalty or assessment under the UI law.

**UI Trust Fund Impact:**

This proposal is expected to have a positive but indeterminate impact on the UI Trust Fund.

**IT and Administrative Impact:**

The ongoing administrative impact to the UI program is indeterminate. There is no anticipated IT impact.

**UI Trust Fund Methodology:**

Because of the incentive this proposal creates for employers to correctly register as an employer and correctly list employees to avoid penalties, it is expected to have a positive but indeterminate impact on the UI Trust Fund.

**IT and Administrative Impact Methodology:**

The ongoing administrative impact to the UI program is indeterminate. There is no anticipated IT impact.

**D25-03**  
**Repeal Waiting Week**

Date: April 17, 2025  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Repeal Waiting Week**

**1. Description of Proposed Change**

The 2011 Budget, 2011 Wis. Act 32, established a waiting week for unemployment insurance benefits, effective January 2012, which had not existed since 1977. During the pandemic, the waiting week was suspended because the federal government provided full funding of benefits for the first week of unemployment.

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. A waiting period delays payments to qualified UI claimants that would otherwise spend the funds in Wisconsin supporting our state's economy. USDOL's Comparison of State Unemployment Laws 2023 reports that eight states do not have a waiting week.

Several legislative attempts have been made to eliminate the one-week waiting period including 2013 Assembly Bill 374, 2015 Assembly Bill 318, and Governor's 2021-23 Executive Budget. The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, would repeal the waiting week.

Like the 2025 Budget Bill, this proposal would repeal the one-week waiting week for unemployment insurance benefits.

**D25-03**  
**Repeal Waiting Week**

**2. Proposed Statutory Changes<sup>1</sup>**

**Section 108.02 (26m) of the statutes is repealed.**

~~Waiting Period. “Waiting period” means any period of time under s. 108.04 (3) for which no benefits are payable to a claimant as a condition precedent to receipt of benefits.~~

**Section 108.04 (3) of the statutes is repealed.**

~~(a) Subject to par. (b), the first week of a claimant’s benefit year for which the claimant has timely applied and is otherwise eligible for regular benefits under this chapter is the claimant’s waiting period for that benefit year.~~

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

**Section 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.

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<sup>1</sup> Additional cross-references may be amended.

**D25-03**  
**Repeal Waiting Week**

**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 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 benefit years beginning on the effective date of the

**D25-03**  
**Repeal Waiting Week**

**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

**Summary of Proposal:**

Currently, a claimant does not receive weekly UI benefits until one week after becoming eligible, except for periods during which the waiting week is suspended. The one-week waiting period does not affect the maximum number of weeks a claimant is eligible for benefits.

This proposal repeals the one-week waiting period, thus permitting a claimant to receive UI benefits beginning with their first week of eligibility.

**UI Trust Fund Impact:**

This proposal is expected to reduce the UI Trust Fund by approximately \$12 million annually.

**IT and Administrative Impact:**

There is not expected to be any measurable IT or administrative impact.

**UI Trust Fund Methodology:**

The elimination of the waiting week is expected to increase UI benefits by approximately 5%. For 2024, this would lead to an additional \$18 million in benefits charged to the UI Trust Fund and an increase of \$6 million in UI tax contributions. This is estimated to result in an expected reduction in the UI Trust Fund of \$12 million annually.

**IT and Administrative Impact Methodology:**

Changes made during the COVID-19 pandemic allow the waiting period to be paused without any IT changes.

**D25-04**  
**Increase Maximum Weekly Benefit Rate**

Date: April 17, 2025

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. The maximum weekly benefit rate has not increased since then.

The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, would increase the maximum weekly benefit rate from \$370 to \$497 per week for 2026. In January 2027 and each year thereafter, the maximum weekly benefit rate would be increased based on the consumer price index. If the consumer price index does not increase, then the maximum weekly benefit rate would remain the same.

Unemployment benefits, funded by employer contributions, provide temporary economic assistance to Wisconsin's eligible workers during times of unemployment. By contributing to the UI system, Wisconsin employers protect the pool of highly skilled workers and reduce the likelihood that workers affected by a layoff or temporary downturn will take their skills and talents to other states. Wisconsin maximum weekly benefit rate at \$370 is significantly lower than neighboring states: Minnesota maximum weekly benefit rate \$914; Illinois, \$593; and Iowa, \$602. Michigan passed legislation to increase its maximum weekly benefit rate to \$614 over the next three years and then increase the rate by the Consumer Price Index annually thereafter.

This proposal mirrors the 2025 Budget Bill's proposal pertaining to maximum weekly benefit.

**D25-04**  
**Increase Maximum Weekly Benefit Rate**

**2. Proposed Statutory Changes<sup>1</sup>**

**Section 108.05 (1) (cm) of the statutes is created to read:**

108.05 (1) (cm) For purposes of par. (r), 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 4, 2026, \$370.
2. For benefits paid for a week of total unemployment that commences on or after January 4, 2026, but before January 3, 2027, \$497
3. For benefits paid for a week of total unemployment that commences on or after January 3, 2027, the department shall set the maximum weekly benefit amount as provided under sub. (2).

**Section 108.05 (1) (r) of the statutes is renumbered 108.05 (1) (r) (intro.) and amended to read:**

(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 except as follows:

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.

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<sup>1</sup> Subject to revision to ensure cross-references are corrected.

**D25-04**  
**Increase Maximum Weekly Benefit Rate**

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

**108.05 (2) of the statutes is created to read:**

INDEXING. (a) For benefits paid or payable for a week that commences on or after January 3, 2027, the department shall set the maximum weekly benefit amount under sub. (1) (cm) 3. and the wage limitation under sub. (3) (dm) 2. c. by doing the following:

1. Except as provided in subd. 2., calculating the percentage difference between the consumer price index for the 12-month period ending on July 31 of the prior year and the consumer price index for the 12-month period ending on July 31 of the year before the prior year, adjusting the prior year's amount or limitation by that percentage difference, and rounding that result to the nearest whole dollar.

2. If the consumer price index for the 12-month period ending on July 31 of the prior year has not increased over the consumer price index for the 12-month period ending on July 31 of the year before the prior year, setting the amount or limitation at the same amount or limitation that was in effect in the previous year.

**D25-04**  
**Increase Maximum Weekly Benefit Rate**

(b) An adjustment under this subsection of the maximum weekly benefit amount under sub. (1) (cm) 3. and the wage limitation under sub. (3) (dm) 2. c. shall take effect on the 1st Sunday in January of each calendar year.

**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 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 weeks of unemployment beginning January 4, 2026.

## **D25-04**

### **Increase Maximum Weekly Benefit Rate**

#### **FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

##### **Summary of Proposal:**

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

1. For benefits paid for weeks of unemployment beginning on or after January 4, 2026, but before January 3, 2027, the maximum weekly benefit rate is \$497.
2. For benefits paid for weeks of unemployment beginning on or after January 3, 2027, the maximum weekly benefit rate is increased based upon the change in the consumer price index; it is then increased on the same basis annually thereafter.

##### **UI Trust Fund Impact:**

This proposal is expected to reduce the UI Trust Fund by \$87.2 million annually.

##### **IT and Administrative Impact:**

This proposal is expected to have a one-time cost of \$130,560 for IT changes to implement the increase in the weekly benefit rate and allow for the annual increase following the consumer price index. There would be an administrative cost of \$39,168 for UI staff to implement the program. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

##### **UI Trust Fund Methodology:**

An increase in the maximum weekly benefit rate to \$497 per week would increase UI benefit payments by approximately \$131 million per year based upon recalculating 2023 benefit years at the \$497 maximum weekly benefit rate and 12.2 weeks of paid duration. Of the \$131 million, \$8.5 million would be charged to reimbursable employers. The remaining \$122.5 million would be charged to taxable employer accounts. In time, this would lead to an increase in UI taxes of \$41 million per year. The final calculation would reduce the UI Trust Fund by approximately \$81.5 million per year.

Using the recalculated benefit years and estimates for inflation for the price level in 2027, an increase of UI benefit payments by approximately \$9.1 million annually would occur. Of this amount, \$0.6 million would be charged to reimbursable employers with \$8.5 million charged to taxable employer accounts. UI taxes would increase by approximately \$2.8 million annually leaving a reduction to the UI Trust Fund of approximately \$5.7 million annually.

The total impact would then be a \$87.2 million reduction in the UI Trust Fund annually.

##### **IT and Administrative Impact Methodology:**

DWD estimates a cost of \$130,560 to implement the IT changes to the UI benefit system if implemented while the benefits system is on the mainframe before modernization, as well as an administrative cost to implement such programs of \$39,168.

**D25-05**

**Increase and Index Maximum Wage Cap for the Partial Benefit Formula**

Date: April 17, 2025

Proposed by: DWD

Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**

**Increase and Index Maximum Wage Cap for the Partial Benefit Formula**

**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 more wages than the partial benefit formula allowed. Section 108.05(3)(dm) currently provides that claimants are 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 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, would increase the \$500 weekly maximum earned income disqualification to \$672 for 2026. In January 2027 and each year thereafter, the cap would be increased based on the consumer price index. This proposal mirrors the Budget Bill provision.

**D25-05**  
**Increase and Index Maximum Wage Cap for the Partial Benefit Formula**

**2. Proposed Statutory Changes<sup>1</sup>**

**Section 108.05 (3) (dm) of the statutes is renumbered 108.05 (3) (dm) 1. and amended to read:**

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, ~~totaling~~ totaling more than \$500 the amount determined under subd. 2.

**Section 108.05 (3) (dm) 2. of the statutes is created to read:**

The department shall set the wage limitation under subd. 1. as follows:

- a. For a week of unemployment that commences before January 4, 2026, \$500.
- b. For a week of unemployment that commences on or after January 4, 2026, but before January 3, 2027, \$672.
- c. For a week of unemployment that commences on or after January 3, 2027, the department shall set the wage limitation as provided under sub. (2).

**[The indexing for future years would be calculated based on the consumer price index method proposed for the maximum weekly benefit rate increase.]**

**3. Effects of Proposed Change**

- a. Policy. The proposed change would result in a significant increase to the maximum wage cap for the partial benefit formula for 2026 followed by slight increases to the maximum wage cap for the partial benefit formula each year after 2026.
- b. Administrative. This proposal will require training of Department staff.

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<sup>1</sup> Additional cross-references may be amended.

**D25-05**  
**Increase and Index Maximum Wage Cap for the Partial Benefit Formula**

- 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 weeks of unemployment beginning January 4, 2026.

**D25-05**  
**Increase and Index Maximum Wage Cap for the Partial Benefit Formula**  
**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

**Summary of Proposal:**

Under current law, a person who qualifies for UI is ineligible to receive any UI benefits for a week if the person receives or will receive wages or certain other earnings totaling more than \$500 (wage cap) or if they work 32 hours or more per week. The proposal changes the wage cap in the following ways:

1. For weeks of unemployment beginning on or after January 4, 2026, but before January 3, 2027, the wage cap is increased to \$672.
2. For weeks of unemployment beginning on or after January 3, 2027, the wage cap is increased based upon the change in the consumer price index and is then increased on the same basis annually thereafter.

**UI Trust Fund Impact:**

Assuming the current \$370 maximum weekly benefit rate, this proposal is expected to reduce the UI Trust Fund by \$240,000 annually.

Assuming a \$497 maximum weekly benefit rate, this proposal is expected to reduce the UI Trust Fund by \$1.8 million annually.

**IT and Administrative Impact:**

This proposal is estimated to have a one-time IT cost of \$52,800. This proposal has an estimated one-time administrative cost of \$15,840. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

**UI Trust Fund Methodology:**

Previously it was estimated that removing the weekly wage cap while leaving the 32-hour limit in place would have no impact on the UI Trust Fund since the 32-hour limit was still constraining claimants from receiving payments. However, with recent increases in wages, this is no longer the case.

It is important to note that changing the statutory weekly wage cap does not change the maximum earnings allowable under the partial wage formula. If earnings reduce a payment below the minimum \$5 per week, no payment is made for that week. Assuming there is no earnings cap, for a \$370 maximum weekly benefit rate, a claimant may earn up to \$574.77 and still remain eligible for a \$5 payment if they were working fewer than 32 hours. Analyzing all weekly claims that reported wages and hours worked in 2024 and assuming all weeks qualified for the maximum weekly benefit rate, there were 11,574 weekly claims that would receive a payment at the higher weekly wage cap after considering the 32-hour limit. These weeks would receive, on average, a partial weekly benefit of \$33, leading to an increase in UI benefit payments of approximately \$385,000 annually. Of this amount, \$25,000 would be expected to be paid by reimbursable employers. UI tax contributions would be expected to increase by \$120,000 annually. This results in an expected reduction in the UI Trust Fund of \$240,000 annually.

## **D25-05**

### **Increase and Index Maximum Wage Cap for the Partial Benefit Formula**

Assuming a \$497 maximum weekly benefit rate, the proposed weekly wage cap is determinative, since at \$497, the partial wage formula maximum earnings amount is calculated to be \$764.32 (higher than the proposed wage cap of \$672). The higher maximum weekly benefit rate will also increase partial weekly payment amounts made. Analyzing 2024 claims that reported weekly earnings, considering the 32-hour limit, and assuming all claims qualify for the proposed \$497 maximum weekly benefit rate, there would be 21,697 weekly claims that would be payable. On average, such claims would have a weekly benefit amount of \$133 leading to an increase in UI benefits of \$2.9 million annually. Of this amount, \$200,000 would be expected to be paid by reimbursable employers. UI tax contributions would be expected to increase by \$900,000 annually. This results in an expected reduction in the UI Trust Fund of \$1.8 million annually.

#### **IT and Administrative Impact Methodology:**

DWD estimates a cost of \$52,800 including changes to the claimant portal, payment processing, and the UI benefit system in general if implemented before those systems are modernized, as well as an administrative cost of \$15,840.

**D25-06**  
**Amend Social Security Disability Insurance Disqualification**

Date: April 17, 2025  
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 under s. 108.04(12)(f). Recipients of pension payments are eligible for unemployment insurance benefits, but the unemployment benefit is reduced by the pension payment (s. 108.05(7)). Allowing SSDI recipients to be eligible for UI benefits would treat workers with disabilities similar to recipients of pension payments.

Further, in *Bemke, et al v. Pechacek*, W.D. Wis. Case No. Case 3:21-cv-00560-wmc, a federal district court recently found that the prohibition on SSDI recipients receiving UI benefits, while not motivated by discriminatory animus, has a disparate impact on disabled persons under Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973. While that litigation is not final, based on its decision on motions for summary judgment, it appears likely that the court will invalidate this provision of Wisconsin's UI law.

The Budget Bill (2025 AB 50 / 2025 SB 45) 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.<sup>1</sup>

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<sup>1</sup> This calculation is preliminary and subject to revision.

**Amend Social Security Disability Insurance Disqualification**

**2. Proposed Statutory Changes**

**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.

**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 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:**

(title) 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.

## **D25-06**

### **Amend Social Security Disability Insurance Disqualification**

(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.

#### **Section 108.05 (9) of the statutes is amended to read:**

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

#### **Section 108.05 (10) (intro.) of the statutes is amended to read:**

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

#### **3. Effects of Proposed Change**

- a. **Policy:** Under this proposed change, recipients of SSDI may receive UI benefits, but the benefits would be reduced due to the receipt of SSDI benefits.
- 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 take effect on the first Sunday of the 7<sup>th</sup> month beginning after publication.

**D25-06**  
**Amend Social Security Disability Insurance Disqualification**  
**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

**Summary of Proposal:**

Under current law, for each week in any month that a claimant is issued a benefit under the federal Social Security Disability Insurance program (SSDI payment), that claimant is ineligible for UI benefits. The proposal eliminates that prohibition and instead requires DWD to reduce a claimant's UI benefit payments by the amount of SSDI payments. This proposal requires DWD to allocate a monthly SSDI payment by allocating to each week the fraction of the payment attributable to that week.

**UI Trust Fund Impact:**

This proposal is expected to have a small negative impact on the UI Trust Fund, but the actual magnitude is indeterminate.

**IT and Administrative Impact:**

This proposal would have an estimated one-time IT impact of \$110,400 and a one-time administrative impact of \$33,120. There are no expected ongoing administrative costs to the UI program above the normal administration of benefits. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

**UI Trust Fund Methodology:**

In 2024, the average SSDI payment in Wisconsin was \$1,500 per month. The average weekly SSDI payment for UI purposes is calculated at \$346.20 per week. This weekly amount will in many cases fully reduce the UI benefit a SSDI recipient can receive.

There are strict federal limits on income a SSDI claimant can earn from employment (labeled Substantial Gainful Activity) while maintaining benefits. For disabled SSDI recipients, the maximum amount is \$1,620 per month and for blind SSDI recipients, it is \$2,700 per month.

If a disabled SSDI recipient earns the maximum amount of wages allowed by federal law each month, they would qualify for a \$259 weekly benefit rate. That benefit rate would likely lead to no UI weekly benefits payable, given an average \$1,500 monthly SSDI payment and a weekly reduction of \$346.20 per week.

If a blind SSDI recipient earns the maximum allowed each month, they would qualify for a \$370 weekly benefit rate under the current maximum. If the SSDI recipient receives the average federal benefit of \$1,500, then they may qualify for a \$23 weekly UI benefit amount.

SSDI offers a trial work period for SSDI recipients who wish to return to the workforce. This allows recipients to avoid any limits on earnings but will result in the person no longer receiving SSDI benefits after a period of time.

In summary, most SSDI claimants will not be able to receive UI benefits. While some may be able to receive UI benefits, it is expected that the weekly UI payment would be small. Given that many claimants would not qualify for any UI payment on a weekly basis and that those who do qualify

## **D25-06**

### **Amend Social Security Disability Insurance Disqualification**

would receive small payments, this proposal is expected to cause a small reduction in the UI Trust Fund of indeterminate size.

#### **IT and Administrative Impact Methodology:**

DWD estimates a cost of \$110,400 to update information in the portal application and implement the payment process and calculations in the UI benefit mainframe system if implemented before modernization, plus a one-time administrative cost of \$33,120.

**D25-07**  
**Repeal UI Drug Testing**

Date: April 17, 2025  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**AMENDED ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Repeal UI Drug Testing**

**1. Description of Proposed Change**

The 2015 Budget, 2015 Wis. Act 55,<sup>1</sup> 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, and a program for DWD to test certain UI applicants for unlawful use of controlled substances if their only suitable work is in an occupation that regularly conduct drug testing, as defined by the U.S. Department of Labor.<sup>2</sup>

Under the pre-employment drug testing program, if a reported individual is receiving UI benefits, the individual is presumed to have failed, without good cause, to accept suitable work and is ineligible for benefits.<sup>3</sup> If the drug test was failed, the individual may maintain eligibility for UI benefits if the individual enrolls in and complies with a substance abuse treatment program, completes a job skills assessment, and otherwise meets all program requirements.

Similarly, under the occupational drug testing program, an individual who is deemed ineligible for benefits could maintain eligibility by participating in a job skills assessment and substance abuse treatment program.

Under this law, DWD would pay the reasonable cost of drug treatment, however, the Legislature appropriated only \$250,000 annually for administration of the program, testing, and

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<sup>1</sup> 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.

<sup>2</sup> See [20 CFR § 620.3](#).

<sup>3</sup> However, the provisions of Wis. Stat. § 108.04(9) still apply.

**D25-07**  
**Repeal UI Drug Testing**

treatment.

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 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 assessment.

The Legislature appropriates \$250,000 of GPR funding 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.<sup>4</sup>

The Governor's 21-23 Executive Budget Bill proposed to repeal the UI pre-employment and UI occupational drug testing statutes and to provide that the GPR be used for administration of the UI program.

Similarly, the 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, would repeal the pre-employment and occupational drug testing statutes. Like the 2025 Budget Bill, this proposal would repeal the pre-employment and occupational drug testing statutes. Employees who are terminated for drug use may be found ineligible for benefits under the drug testing misconduct statute, section 108.04(5)(a), general misconduct, or substantial fault.

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<sup>4</sup> 2017 Wis. Act 157, effective April 1, 2018.

**D25-07**  
**Repeal UI Drug Testing**

**2. Proposed Statutory Changes<sup>5</sup>**

**Section 108.04(8)(b) of the statutes is repealed.**

**Section 108.133 of the statutes is repealed.**

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

**3. Effects of Proposed Change**

Fiscal: The proposed change will save GPR funding of \$500,000 per biennium. The proposal would not affect benefit payments or UI tax revenue. 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 first apply to initial claims filed on or after the effective date.

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<sup>5</sup> Additional cross-references may also need to be amended.

**D25-07**  
**Repeal UI Drug Testing**

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

Also under current law, an employer may voluntarily submit to DWD the results of a pre-employment 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 the test. If DWD then verifies that submission, the employee may be ineligible for UI 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 eliminates the pre-employment drug testing provisions.

**UI Trust Fund Impact:**

There is not expected to be any impact to the UI Trust Fund.

**IT and Administrative Impact:**

There is not expected to be any measurable IT or administrative impact.

**UI Trust Fund Methodology:**

The occupational drug testing and treatment program has not been established so its elimination would not impact UI benefit payments or tax contributions.

The pre-employment drug testing law has not resulted in any determinations denying benefits since 2016, so the elimination of pre-employment drug testing is not expected to impact UI benefit payments or tax contributions.

**IT and Administrative Impact Methodology:**

There are not expected to be any changes made outside normal business operations.

**D25-08**  
**Misconduct**

Date: April 17, 2025  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Misconduct**

**1. Description of Proposed Change**

Current law provides that an employee's termination for attendance violations may disqualify them from receiving unemployment insurance benefits if misconduct or substantial fault are found. Attendance cases are reviewed under a three-step approach. First, the employee's conduct is analyzed under section 108.04(5)(e), which provides that the discharge is for misconduct if the following criteria are met:

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

The Wisconsin Supreme Court, in the *Beres* case, held that section 108.04(5)(e) "allows an employer to adopt its own absenteeism policy that differs from the policy set forth in § 108.04(5)(e), and that termination for the violation of the employer's absenteeism policy will result in disqualification from receiving unemployment compensation benefits even if the employer's policy is more restrictive than the absenteeism policy set forth in the statute."<sup>1</sup>

A recent published Wisconsin Court of Appeals decision, *Bevco Precision Mfg. Co. v. Wisconsin Lab. & Indus. Rev. Comm'n*, 2024 WI App 54, interpreted the *Beres* decision to mean "that violation of an employer's attendance policy of which an employee is aware (as evidenced

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<sup>1</sup> *Wisconsin Dep't of Workforce Dev. v. Wisconsin Lab. & Indus. Rev. Comm'n*, 2018 WI 77, ¶ 5, 382 Wis. 2d 611, 616, 914 N.W.2d 625, 628.

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**Misconduct**

by a signed acknowledgement of receipt) constitutes 'misconduct' for the purpose of disqualification from unemployment benefits, full stop.”<sup>2</sup> This new decision means that the notice and reasons for absenteeism are not to be analyzed under the common law. Under *Bevco*, misconduct may now be found when an employer has a “no fault” attendance policy that results in termination regardless of the reasons for the absences and regardless of whether the employee gives notice of the absences.

If the employee’s attendance violations do not fall within the parameters of section 108.04(5)(e), then the employee’s conduct is analyzed under “general” misconduct, the standard in the current version of section 108.04(5)(intro). This definition of misconduct from the Supreme Court’s decision in the *Boynton Cab* case, limits “misconduct” to "conduct evincing such wilful or wanton disregard of an employer’s interests . . . .".<sup>3</sup>

The Federal Unemployment Tax Act permits states to totally reduce (deny) unemployment benefits to a worker only for “discharge for misconduct connected with his work, fraud in connection with a claim for compensation, or receipt of disqualifying income.”<sup>4</sup> The US Department of Labor interprets federal law to mean that states may only find misconduct where the worker’s conduct is “an intentional or controllable act or failure to take action, which shows a deliberate disregard of the employer’s interests.”<sup>5</sup> “Section 3304(a)(10) protects claimants’ right to compensation by preventing states from enacting overly-severe denial provisions except

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<sup>2</sup> *Bevco Precision Mfg. Co. v. Wisconsin Lab. & Indus. Rev. Comm’n*, 2024 WI App 54, ¶ 18, 413 Wis. 2d 668, 680, 12 N.W.3d 552, 558.

<sup>3</sup> *Boynton Cab Co. v. Neubeck*, 237 Wis. 249, 296 N.W. 636, 640 (1941).

<sup>4</sup> 26 USC § 3304(a)(10).

<sup>5</sup> *Benefit Denials*, UNITED STATES DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, <https://oui.doleta.gov/unemploy/content/denialinformation.asp>.

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for serious offenses.”<sup>6</sup> (See also the US Department of Labor’s Employment and Training Handbook).<sup>7</sup>

This proposal, which adopts the same proposal in the 2025 Budget Bill, reinstates the general misconduct standard in conformity with federal standards. It provides that when determining misconduct for attendance violations or excessive tardiness, if the employee's notice and reason for an attendance violation are valid and if their conduct does not violate the current general misconduct standard, then misconduct is not found.

Additionally, the 2025 Budget Bill also proposes to legalize marijuana possession. Section 1717 of the Budget Bill provides that misconduct and substantial fault do “not include the employee’s use of marijuana off the employer’s premises during nonworking hours or a violation of the employer’s policy concerning such use, unless termination of the employee because of that use is permitted under s. 111.35.” Under current law, an employment termination may also be found to be misconduct if it is the result of a “violation by an employee of an employer’s reasonable written policy concerning the use of alcohol beverages, or use of a controlled substance or a controlled substance analog, if the employee had knowledge of the” policy and admitted to using the alcohol or drugs or tested positive for the use of alcohol or drugs. (Wis. Stat. § 108.04(5)(a)). If the use is lawful and under nonworking hours, this proposal provides that it is not misconduct or substantial fault, except as provided under s. 111.35.

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<sup>6</sup> Total Reduction/Cancellation of Wage Credits, UNITED STATES DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, Benefit Standards of Conformity Requirements for State UC Laws, available at [https://oui.doleta.gov/unemploy/pdf/uilaws\\_wagecredits.pdf](https://oui.doleta.gov/unemploy/pdf/uilaws_wagecredits.pdf).

<sup>7</sup> The Legal Authority of Unemployment Insurance Program Letters and Similar Directives, UNITED STATES DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, Unemployment Insurance Program Letter No. 01-96 (Oct. 5, 1995) available at <https://wdr.doleta.gov/directives/attach/UIPL1-96.cfm> (explaining the legal effect of US-DOL directives, including that such directives “state or clarify the Department’s position, particularly with respect to the Department’s interpretation of the minimum Federal requirements for conformity or compliance, thereby assuring greater uniformity of application of such requirements by the States.”).

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**2. Proposed Statutory Changes**

**Section 108.04 (5) (intro.) of the statutes is renumbered 108.04 (5) (cm) and amended to**

**read:** (cm) An employee whose work is terminated by an employing unit for misconduct by the employee connected with the employee's work is ineligible to receive benefits until 7 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 under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be the rate that would have been paid had the discharge not occurred. 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 under s. 108.06 (1) for purposes of benefit entitlement. This ~~subsection~~ paragraph does not preclude an employee who has employment with an employer other than the employer which terminated the employee for misconduct from establishing a benefit year using the base period wages excluded under this ~~subsection~~ paragraph if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 from which base period wages are excluded under this ~~subsection~~ paragraph.

(am) For purposes of this subsection, "misconduct" means one or more actions or conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which an employer has a right to expect of his or her employees, or in carelessness or negligence of such degree or recurrence as to manifest

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culpability, wrongful intent, or evil design of equal severity to such disregard, or to show an intentional and substantial disregard of an employer's interests, or of an employee's duties and obligations to his or her employer.

(bm) In addition to the conduct described in par. (am), "misconduct" includes all of the following:

**Section 108.04 (5) (a) to (g) of the statutes are renumbered 108.04 (5) (bm) 1. to 7., and 108.04 (5) (bm) 5. and 7., as renumbered, are amended to read:**

108.04 (5) (bm) 5. Absenteeism by an employee on more than 2 occasions within the 120-day period before the date of the employee's termination, unless otherwise specified by his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature, ~~or excessive tardiness by an employee in violation of a policy of the employer that has been communicated to the employee,~~ if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism ~~or tardiness~~. For purposes of this subdivision, an employee's notice and reason for an occasion of absenteeism or tardiness shall be analyzed under the standard specified in par. (am).

7. Unless directed by the employer, a willful and deliberate violation of a written and uniformly applied standard or regulation of the federal government or a state or Indian tribal government by an employee of an employer that is licensed or certified by a governmental agency, which standard or regulation has been communicated by the employer to the employee and which violation would cause the employer to be sanctioned or to have its license or certification suspended or revoked by the agency.

**Section 108.04 (5m) of the statutes is created to read:**

DISCHARGE FOR USE OF MARIJUANA. (a) Notwithstanding sub. (5), "misconduct," for purposes of sub. (5), does not include the employee's use of marijuana off the employer's

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premises during nonworking hours or a violation of the employer's policy concerning such use, unless termination of the employee because of that use is permitted under s. 111.35.

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

**3. Effects of Proposed Change**

- a. Policy: The proposed change will clarify the circumstances where attendance violations and marijuana use result in a finding of misconduct or substantial fault.
- 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 will apply to determinations issued on or after the effective date of the agreed-upon bill.

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**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

**Summary of Proposal:**

Under current law, if a claimant for UI benefits is terminated by their employer for misconduct connected with their work, the claimant is ineligible to receive UI benefits until the claimant satisfies certain requalification criteria. And the claimant's wages paid by the employer that terminates the claimant for misconduct are excluded for purposes of calculating benefit entitlement. Current law defines "misconduct" using a general, common law standard derived from *Boynton Cab Co. v. Neubeck*, 237 Wis. 249 (1941), and enumerates several specific types of conduct that also constitute misconduct. Under one of these specific provisions, misconduct includes: 1) absenteeism on more than two occasions within the 120-day period before the date of the claimant's termination, unless otherwise specified by his or her employer in an employment manual of which the claimant has acknowledged receipt with his or her signature, or 2) excessive tardiness by a claimant in violation of a policy of the employer that has been communicated to the claimant. In *Department of Workforce Development v. Labor and Industry Review Commission (Beres)*, 2018 WI 77, the Wisconsin Supreme Court held that an employer could, under the language described above, institute an attendance policy more restrictive than two occasions within the 120-day period.

Current law also provides that an absence or tardiness occasion counts as misconduct only if the claimant did not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness. In *Bevco Precision Manufacturing v. Labor and Industry Review Commission*, 2024 WI App. 54, the Wisconsin Court of Appeals held that under *Beres*, this qualifying language did not apply if an employer had adopted its own standard on absenteeism and tardiness, as described above.

The proposal does all of the following:

1. Eliminates the language referencing "excessive tardiness."
2. Reverses the holding in *Bevco* by providing that a claimant's notice and reason for an occasion of absenteeism or tardiness are to be analyzed under the common law misconduct standard. Under the proposal, therefore, an employer may not establish its own policy for determining the reasonableness of absenteeism or tardiness. The proposal does not, however, affect the general ability of an employer to institute a standard for absenteeism and tardiness more restrictive than two occasions within the 120-day period before termination.
3. Clarifies, in another provision defining misconduct, that "tribal government" has the meaning given under state and federal law for what is considered an Indian tribe.

**UI Trust Fund Impact:**

This proposal is expected to reduce the UI Trust Fund by \$2.2 million annually.

**IT and Administrative Impact:**

There is not expected to be any measurable IT or administrative impact.

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**Misconduct**

**UI Trust Fund Methodology:**

Part 1 would remove excessive tardiness from being specifically investigated under the existing misconduct attendance provisions, but discharges due to tardiness would still be investigated under the standard misconduct provisions. It is likely that all or nearly all current misconduct findings for excessive tardiness would be found to be misconduct under the standard misconduct provisions.

Part 2 involves decisions UI has been making under *Bevco* since October 2, 2024. From that date through the end of 2024, there were 237 decisions denying benefits under the provisions specified in *Bevco*. Projecting out over the entire year, it is estimated that 846 decisions denying benefits would be issued each year. Using the 2024 average weekly benefit amount of \$347 and the average duration of 12.2 weeks in 2024, the expected amount of additional benefit payments is \$3.6 million annually. Considering an estimated \$230,000 of reimbursable benefit payments and \$1.1 million in additional tax revenue results in a reduction in the UI Trust Fund by \$2.2 million annually.

Part 3 is a technical correction that is not expected to impact benefits paid or UI tax contributions.

**IT and Administrative Impact Methodology:**

This proposal would include only minor changes to documents to update cited statutes. This work would be included under the normal review of documentation and there would be no additional costs.

**D25-09**  
**Repeal Substantial Fault**

Date: April 17, 2025  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Repeal Substantial Fault**

**1. Description of Proposed Change**

Under current law, a discharged employee is ineligible for unemployment insurance benefits if the discharge is for misconduct or substantial fault by the employee connected with their employment. 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 by an employer which terminates the employee for misconduct are excluded from the employee's base period wages for purposes of benefit entitlement. This is known as cancellation of wage credits.

The 2013 Budget, 2013 Wis. Act 20, repealed a disqualification for attendance failures in section 108.04(5g) and replaced it with the disqualification for substantial fault:

(a) An employee whose work is terminated by an employing unit for substantial fault by the employee connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the termination occurs and the employee earns wages after the week in which the termination occurs equal to at least 14 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's benefit rate shall be the rate that would have been paid had the discharge not occurred. For purposes of this paragraph, "substantial fault" includes those acts or omissions of an employee over which the employee exercised reasonable control and which violate reasonable requirements of the employee's employer but does not include any of the following:

1. One or more minor infractions of rules unless an infraction is repeated after the employer warns the employee about the infraction.

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**Repeal Substantial Fault**

2. One or more inadvertent errors made by the employee.
3. Any failure of the employee to perform work because of insufficient skill, ability, or equipment.

Act 20 also created a two-tiered approach for deciding certain absentee and tardiness issues. Under current law, absenteeism and tardiness cases are analyzed first under s. 108.04(5)(e), then under general misconduct (s. 108.04(5)(intro)). If disqualification does not result under s. 108.04(5)(e) or general misconduct, the next step is to analyze the reasons for discharge under substantial fault.

The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, would repeal substantial fault.

Like the 2025 Budget Bill, this proposal would repeal substantial fault. The substantial fault statute has been the subject of litigation to the courts, including the Supreme Court. Repealing substantial fault would result in more predictability for claimants and employers. The Department is unaware of any other state having an unemployment insurance benefit disqualification for substantial fault, but North Carolina previously had a substantial fault disqualification.

## **2. Proposed Statutory Changes<sup>1</sup>**

**Section 108.04(5g) of the statutes is repealed.**

### **3. Effects of Proposed Change**

- a. Policy. The proposed change would result in 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. The proposed change could result in less litigation on discharge issues.
- b. Administrative. This proposal will require training of Department staff.

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<sup>1</sup> Cross-references to the substantial fault statute would also be repealed.

**D25-09**  
**Repeal Substantial Fault**

- 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 determinations issued on the first Sunday after the effective date of the repealed statute.

**D25-09**  
**Repeal Substantial Fault**

**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 satisfies certain requalification criteria. 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 eliminates this provision on substantial fault.

**UI Trust Fund Impact:**

This proposal is expected to reduce the UI Trust Fund by \$3.8 million annually.

**IT and Administrative Impact:**

This proposal is expected to have a one-time IT cost of \$19,200. This proposal is expected to have a one-time administrative cost of \$5,760. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

**UI 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 the proposed 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 proposed change.

There was an annual average of 1,428 substantial fault decisions that denied benefits for the years 2022 to 2024. With the elimination of substantial fault decisions, these would now be situations where benefits were allowed. Using the 2024 average weekly benefit amount of \$347 per week and the average duration of 12.2 weeks in 2024, the expected additional benefit payments is \$6.0 million annually. Accounting for an estimated \$400,000 of reimbursable benefit payments and \$1.8 million in additional tax revenue leads to a reduction in the UI Trust Fund by \$3.8 million annually.

**IT and Administrative Impact Methodology:**

DWD estimates a cost of \$19,200 to make changes to forms and update information in the portal application, plus a one-time administrative cost of \$5,760 to support implementation.

**D25-10**  
**Suitable Work**

Date: April 17, 2025  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**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 accepting 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.”<sup>1</sup>

Under the 2015 Unemployment Insurance Advisory Council agreed bill, 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, the 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 percent of what the claimant earned in their highest paying most recent job.<sup>2</sup> Beginning in the seventh week after the claimant became unemployed, suitable work means any work that the claimant is capable of performing, as determined by the Department.

Also, under current law, if a claimant has accepted work that was not suitable under the UI law, which the claimant could have refused with good cause, and the claimant terminates the

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<sup>1</sup> Wis. Admin. Code DWD § 100.02(61).

<sup>2</sup> Wis. Stat. § 108.04(8)(d).

## **D25-10 Suitable Work**

work within 30 calendar days, a claimant is eligible to receive UI benefits (generally, an individual is not eligible for UI benefits if they quit a job).

The Governor's 2021-23 Executive Budget included a proposal to change UI suitable work law to allow a claimant four additional weeks to find work that matches their skill level and replaces the majority of their lost wages. The Governor's 2021-23 Executive Budget also proposed to extend the period a UI claimant has to try out a job from 30 days to 10 weeks and, if the individual determined the job was not suitable, retain eligibility for UI benefits.

A proposal extending the time available to find and try out suitable work helps an individual avoid a significant deterioration in job quality or wages. An individual with unique or specialized skills may need a longer period to find work in their field due to, for instance, a scarcity of jobs in their field or because work may become more available during certain times of the year. Extending the period to look for suitable work, gives an individual a better chance to stay in their field and maintain their skills. Similarly, upon taking a position, it may take an individual more than 30 days to determine if the accepted work utilizes their skills, or if a monthly or annual pay rate is within 75 percent of their prior pay.

The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, proposes again the following changes related to suitable work: (1) extends the period, from 6 weeks to 10 weeks, that claimants must find work that is comparable to the work lost; and (2) allows claimants up to 10 weeks (a change from 30 days) to determine if a job taken is suitable.

This proposal adopts the proposed changes in the 2025 Budget Bill related to suitable work.

**D25-10**  
**Suitable Work**

**2. Proposed Statutory Changes<sup>3</sup>**

**Section 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 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.

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<sup>3</sup> Subject to revision to ensure cross-references are corrected.

**D25-10**  
**Suitable Work**

**3. Effects of Proposed Change**

- a. Policy. The proposed change will provide claimants with more time to refuse work and continue to receive unemployment benefits.
- 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 first apply to determinations issued on or after the effective date of the proposal.

**D25-10**  
**Suitable Work**

**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

**Acceptance of Suitable Work**

**Summary of Proposal:**

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 the amount of time that has elapsed since the claimant became unemployed. If the job refusal occurs within the first six weeks (known as the canvassing period), the department compares the skill and rate of pay to the claimant's most recent jobs and determines if the hourly wage is at least 75% of what the claimant earned in their highest paying most recent job. After six weeks have elapsed since the claimant became unemployed, the claimant is required to accept any work they are capable of performing, even if the pay is significantly lower than their most recent job.

This proposal modifies these provisions described above extending the canvassing period so that the claimant is not required to accept less favorable work until more than 10 weeks have elapsed since the claimant became unemployed.

**UI Trust Fund Impact:**

This proposal is expected to reduce the UI Trust Fund by \$102,000 annually.

**IT and Administrative Impact:**

This proposal is expected to have a one-time IT cost of \$19,200. This proposal is expected to have a one-time administrative cost of \$5,760. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

**UI Trust Fund Methodology:**

Reviewing previous data from 2019, 40 cases that had UI benefits denied due to refusal of suitable work were investigated to see if making a change from six weeks to 10 weeks would have impacted the decision. In one case, the claimant would not have been found ineligible because they failed to accept work within ten weeks of being unemployed. An additional six decisions may have been reversed under this proposed law change. This implies up to 17.5% cases denied for suitable work may be allowed under this proposal. Over the years 2022 to 2024, there were on average 219 denials for refusing suitable work. Using the 2024 average weekly benefit amount of \$347 and the average duration of 12.2 weeks in 2024, the expected amount of additional benefits is up to \$162,000 annually. Accounting for an estimated \$10,000 of reimbursable benefits and \$50,000 in additional tax revenue leads to a reduction in the UI Trust Fund by \$102,000 annually.

**IT and Administrative Impact Methodology:**

DWD estimates a one-time cost of \$19,200 to update information in the portal application as well as a one-time administrative cost of \$5,760 to support implementation.

**D25-10**  
**Suitable Work**

**Quit Exception for Unsuitable Work**

**Summary of Proposal:**

Under current law, unless an exception applies, a person who quits their job is generally ineligible to receive UI benefits until they requalify through subsequent covered employment. Under one such exception, if a claimant 1) accepts work that they could have refused under UI law, and 2) terminated the new work within 30 days after starting the work, the claimant remains eligible for UI benefits. Under the proposal, this exemption applies if the claimant terminated that work within 10 weeks after starting the work.

**UI Trust Fund Impact:**

This proposal is expected to reduce the UI Trust Fund by \$1.495 million annually.

**IT and Administrative Impact:**

This proposal is expected to have a one-time IT cost of \$19,200. This proposal is expected to have a one-time administrative cost of \$5,760. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

**UI 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. There were, on average, 1,842 decisions annually for the period 2022 to 2024. Using the 31% expected increase, there would be an additional 571 allow decisions annually. This would lead to an increase in UI benefits of approximately \$2.4 million. There would be an expected annual increase of \$155,000 in reimbursable benefits and \$750,000 in additional tax revenue. Overall, this proposal is expected to lead to a reduction in the UI Trust Fund by \$1.495 million annually.

**IT and Administrative Impact Methodology:**

DWD estimates the cost to update information in the portal application is \$19,200, plus a one-time administrative cost of \$5,760.

**D25-11**  
**Quit Exception for Relocating Spouse**

Date: April 17, 2025  
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 was required to relocate for 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 2025 Budget Bill, 2025 AB 50 / 2019 SB 45, effectively repeals 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 adopts the Budget Bill changes related to the quit exception.

**D25-11**  
**Quit Exception for Relocating Spouse**

**2. Proposed Statutory Changes<sup>1</sup>**

**Section 108.04 (7) (t) 1. of the statutes is repealed.**

~~1. The employee's spouse is a member of the U.S. armed forces on active duty.~~

**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 may ensure that spouses of workers who relocate to take better jobs can receive unemployment insurance benefits after relocating if it is impractical for the spouse to commute, assuming that the spouse is otherwise eligible for unemployment insurance benefits.
- 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 the other provisions of the agreed bill.

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<sup>1</sup> Cross-references may be amended.

**Quit Exception for Relocating Spouse**

**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

**Summary of Proposal:**

Under current law, unless an exception applies, if an individual quits their job, the individual is generally ineligible to receive UI benefits until they requalify through subsequent employment.

Under one exception, if the employee's spouse is a member of the U.S. armed forces on active duty and is relocated, and the employee quits their job to relocate with their spouse, the employee remains eligible to collect UI benefits. This proposal expands this exception so that it applies to an employee who quits employment 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 expected to reduce the UI Trust Fund by \$390,000 annually.

**IT and Administrative Impact:**

This proposal is expected to have a one-time IT cost of \$28,800. This proposal is expected to have a one-time administrative cost of \$8,640. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

**UI Trust Fund Methodology:**

When this quit exception was in effect in 2011, benefits were allowed in 417 claims under this provision. Comparing the number of initial claims in 2011 to the average of initial claims for 2022 through 2024, it is expected that 147 claims would be allowed under this provision. Using the average weekly benefit payment in 2024 of \$347 and the average duration of 12.2 weeks in 2024, this would result in an expected increase in benefits of \$622,000 annually. Of this amount, \$40,000 would be expected to be reimbursable benefit payments. There would be an increase of \$192,000 in UI tax contributions; with an expected decrease in the UI Trust Fund of \$390,000 annually.

**IT and Administrative Impact Methodology:**

DWD estimates the cost to update information in the portal application to be \$28,800, plus a one-time administrative cost of \$8,640.

**Repeal Work Search and Work Registration Waivers from Statute**

Date: April 17, 2025

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**

Federal law requires claimants to be actively seeking work and to register for work. In Wisconsin, unemployment benefit claimants must conduct at least four work searches each week and register for work, unless a waiver relieves them of these requirements.

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 (2018). 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.” During the pandemic, the Department promulgated emergency rules to add waivers during the public health emergency. Those temporary waivers have expired.

The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, 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, including by emergency rule for temporary waivers. The Budget Bill proposal would permit the Department to promulgate the emergency rule without making a finding of emergency and would permit the emergency rule to be extended up to 60 days without the prior approval of the

**Repeal Work Search and Work Registration Waivers from Statute**

Joint Committee for Review of Administrative Rules and without a limit on the number of extensions. This proposal mirrors the 2025 Budget Bill proposal.

**2. Proposed Statutory Changes<sup>1</sup>**

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

Except as provided in ~~par. (b) to (bd)~~ par. (b), 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.

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<sup>1</sup> Subject to revision to ensure cross-references are corrected.

**D25-12**

**Repeal Work Search and Work Registration Waivers from Statute**

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

**Section 108.04 (2) (b) of the statutes is repealed and recreated to read:**

1. 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.

2. a. The department may promulgate rules under subd. 1. as emergency rules, using the procedure under s. 227.24, if the secretary of workforce development determines that the waiver is needed only on a temporary basis or that permanent rules are not warranted. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to provide evidence that promulgating a rule under this subd. 2. a. 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 subd. 2. a. Except as provided under subd. 2. b., a rule promulgated under this subd. 2. a. remains in effect only for 150 days.

b. Notwithstanding s. 227.24 (2), the secretary of workforce development may extend the effective period of an emergency rule promulgated under subd. 2. a. for a period specified by the secretary not to exceed 60 days. Any number of extensions may be granted under this subd. 2. b. Whenever the secretary extends an emergency rule under this subd. 2. b., it shall file a statement of its action with the legislative reference bureau. The statement shall identify the specific emergency rule to which it relates.

**Section 108.04 (2) (bb) of the statutes is repealed.**

**Section 108.04 (2) (bd) of the statutes is repealed.**

## **D25-12**

### **Repeal Work Search and Work Registration Waivers from Statute**

#### **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 and permit waivers to again be modified by rule.
- 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 the other provisions of the agreed bill.

**D25-12**  
**Repeal Work Search and Work Registration Waivers from Statute**  
**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

**Summary of Proposal:**

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

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. DWD may establish a waiver by emergency rule if the secretary of workforce development determines that the waiver is needed only on a temporary basis or that permanent rules are not warranted. This proposal allows the secretary to extend the emergency rule for up to 60 days at a time. Also, the proposal 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 by the same employer. If this proposal is enacted, then DWD will apply the waivers in the administrative code, including the 8 plus 4 week recall waiver.

**UI Trust Fund Impact:**

This proposal is estimated to have no impact on the UI Trust Fund.

**IT and Administrative Impact:**

This proposal is expected to have a one-time IT cost of \$19,200. This proposal is expected to have a one-time administrative cost of \$5,760. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

**UI 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:**

DWD estimates a one-time cost of \$19,200 to update information on the mainframe system forms and a one-time administrative cost of \$5,760 to support implementation.

### **NOTE REGARDING FISCAL ANALYSIS**

For ease of understanding, each fiscal analysis, with the exception of the change in the weekly earnings cap, is drafted with the assumption each proposal is a standalone change. There is possible interaction among the various proposals, but the interaction is not expected to be significant except in two cases – the end of the waiting period and increasing the maximum weekly benefit rate. When looking at the other estimates, the elimination of the waiting period would increase UI Trust Fund impacts by 5-8% and the increase in the maximum weekly benefit rate would increase UI Trust Fund impacts by approximately 23%.

# ***2025 Unemployment Advisory Council Labor Proposals***

## ***1.) Increasing maximum weekly benefits***

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

1. For benefits paid for weeks of unemployment beginning on or after January 4, 2026, but before January 3, 2027, the maximum weekly benefit rate is capped at \$497.
2. For benefits paid for weeks of unemployment beginning on or after January 3, 2027, the maximum weekly benefit rate is increased based upon the change in the consumer price index and is then increased on the same basis annually thereafter.

## ***2.) Waiting period***

Currently, a claimant must wait one week after becoming eligible to receive UI benefits before the claimant may receive benefits for a week of unemployment, except for periods during which the waiting period is suspended. The waiting period does not affect the maximum number of weeks of a claimant's benefit eligibility.

The proposal deletes the one-week waiting period, thus permitting a claimant to receive UI benefits beginning with his or her first week of eligibility.

## ***3.) Increasing benefit wage cap***

Under current law, a person who qualifies for UI is ineligible to receive any UI benefits for a week if the person receives or will receive wages or certain other earnings totaling more than \$500 (wage cap). The proposal changes the wage cap in the following ways:

1. For weeks of unemployment beginning on or after January 4, 2026, but before January 3, 2027, the wage cap is increased to \$672.
2. For weeks of unemployment beginning on or after January 3, 2027, the wage cap is increased based upon the change in the consumer price index and is then increased on the same basis annually thereafter.

## ***4.) Unemployment insurance; worker misclassification penalties***

Current law requires DWD to assess an administrative penalty against an employer engaged in construction projects or in the painting or drywall finishing of buildings or other structures who knowingly and intentionally provides false information to DWD for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee under the UI law. The penalty under current law is \$500 for each employee who is misclassified, not to exceed \$7,500 per incident. In addition, current law provides for criminal fines of up to \$25,000 for employers who, after having previously been assessed such an administrative penalty, commit another violation. Current law additionally requires DWD to assess an administrative penalty against such an employer who, through coercion, requires an employee to adopt the status of a nonemployee; the penalty amount is \$1,000 for each employee so coerced, but not to exceed \$10,000 per calendar year. Penalties are deposited into the unemployment program integrity fund.

The proposal does the following: 1) removes the \$7,500 and \$10,000 limitations on the administrative penalties and provides that the penalties double for each act occurring after the date of the first determination of a violation; 2) removes the limitations on the types of employers to whom the prohibitions apply, making them applicable to any type of employer; and 3) specifies that DWD may make referrals for criminal prosecution for alleged criminal misclassification violations regardless of whether an employer has been subject to any other penalty or assessment under the UI law.

### ***5.) Acceptance of suitable work***

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

The 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.

### ***6.) Quits due to relocations***

Under current law, unless an exception applies, if an individual quits his or her job, the individual is generally ineligible to receive UI benefits until he or she qualifies through subsequent employment.

Under one such exception, if the 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.

### ***7.) Substantial fault***

Under current law, a claimant for UI benefits whose work is terminated by his or her employer for substantial fault by the claimant connected with the claimant's work is ineligible to receive UI benefits until the claimant satisfies certain requalification criteria. 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 eliminates this provision on substantial fault.

### ***8.) Misconduct***

Under current law, a claimant for UI benefits whose work is terminated by his or her employer for misconduct by the claimant connected with the claimant's work is ineligible to receive UI benefits until the claimant satisfies certain requalification criteria, and the claimant's wages paid by the employer that terminates the claimant for misconduct are excluded for purposes of calculating benefit entitlement. Current law defines "misconduct" using a general, common law standard derived from *Boynton Cab Co. v. Neubeck*, 237 Wis. 249 (1941), and enumerates several specific types of conduct that also constitute misconduct. Under one of these specific

provisions, misconduct includes 1) absenteeism on more than two occasions within the 120-day period before the date of the claimant's termination, unless otherwise specified by his or her employer in an employment manual of which the claimant has acknowledged receipt with his or her signature, or 2) excessive tardiness by a claimant in violation of a policy of the employer that has been communicated to the claimant. In *Department of Workforce Development v. Labor and Industry Review Commission (Beres)*, 2018 WI 77, the supreme court held that an employer could, under the language described above, institute an attendance policy more restrictive than two occasions within the 120-day period.

Current law also provides that absenteeism or tardiness count as misconduct only if the claimant did not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness. In *Bevco Precision Manufacturing v. Labor and Industry Review Commission*, 2024 WI App. 54, the court of appeals held that under *Beres*, this qualifying language did not apply if an employer had adopted its own standard on absenteeism and tardiness, as described above.

The proposal does all of the following:

1. Eliminates the language referencing "excessive tardiness."
2. Reverses the holding in *Bevco* by providing that a claimant's notice and reason for an occasion of absenteeism or tardiness are to be analyzed under the common law misconduct standard. Under the proposal, therefore, an employer may not establish its own policy for determining the reasonableness of absenteeism or tardiness. The proposal does not, however, affect the general ability of an employer to institute a standard for absenteeism and tardiness more restrictive than two occasions within the 120-day period before termination.
3. Clarifies, in another provision defining misconduct, that "tribal government" has the meaning given under state and federal law for what is considered an Indian tribe.

## **9.) Drug testing**

Current state law requires DWD to establish a program to test certain claimants who apply for UI benefits for the presence of controlled substances in a manner 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 eliminates 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 UI 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 eliminates these preemployment drug testing provisions.

## **10.) Quits due to non suitable work**

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

starting the work, the claimant remains eligible to collect UI benefits. Under the proposal, this exemption applies if the claimant terminated that work within *10 weeks* after starting the work.

### **11.)      *Work search and registration***

Under current law, a claimant for UI benefits is generally required to register for work and to conduct a work search for each week in order to remain eligible. Current law requires DWD to waive these requirements under certain circumstances, for example, if a claimant who is laid off from work reasonably expects to be recalled to work within 12 weeks, will start a new job within four weeks, routinely obtains work through a labor union referral, or is participating in a training or work share program. Under current law, DWD may modify the statutory waivers or establish additional waivers by rule only if doing so is required or specifically allowed by federal law. The 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. DWD may establish a waiver by emergency rule if the secretary of workforce development determines that the waiver is needed only on a temporary basis or that permanent rules are not warranted, and the proposal allows the secretary to extend the emergency rule for up to 60 days at a time. Also, the proposal 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.

### **12.)      *Social security disability insurance payments***

Under current law, in any week in any month that a claimant is issued a benefit under the federal Social Security Disability Insurance program (SSDI payment), that claimant is ineligible for UI benefits. The proposal eliminates that prohibition and instead requires DWD to reduce a claimant's UI benefit payments by the amount of SSDI payments. The proposal requires DWD to allocate a monthly SSDI payment by allocating to each week the fraction of the payment attributable to that week.

### **13.)      *Electronic communications***

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

The proposal makes use of these electronic methods mandatory in all cases unless the employer or other person demonstrates good cause for being unable to use the electronic method. The proposal specifies what constitutes good cause for purposes of these provisions. The proposal also makes various corresponding changes to penalty provisions that apply in the case of nonuse of these required electronic methods. The proposal further provides that DWD may permit the use of electronic records and electronic signatures for any document specified by DWD that is related to the administration of the UI law.

**14.)        *Unknown Imposter Penalty***

Under current law, if any person makes a false statement or representation in order to obtain benefits in the same name of another person, the person may be required to repay the amount of the benefits obtained and to pay an additional amount equal to the amount of benefits obtained. Current law does not specify a penalty for when such a person makes a false statement or representation in order to obtain benefits in the name of another person but fails to obtain any benefits. The proposal provides that if a person makes a false statement or representation on an initial claim in order to intentionally obtain benefits in the name of another person, but fails to obtain benefits, the person is subject to a penalty of \$5,000.

**15.)        *Federal Administrative Financing Account; Reed Act Distributions***

The Proposal creates a segregated fund to receive various program revenue moneys received by DWD under the UI law that are not otherwise credited to other segregated funds, including various moneys collected by DWD as interest and penalties under the UI law and all other nonfederal moneys received for the administration of the UI law that are not otherwise appropriated. Current law provides for the depositing these revenues in appropriations in the general fund. In addition, the proposal makes various changes to reorganize, clarify, and update provisions relating to the financing of the UI law; and to address numerous out-of-date or erroneous cross-references in the UI law.

# Unemployment Reform Ideas for 2025-2026 Session

## Program Integrity Measures

- **Work Search Verification** - Require the Department to randomly verify work search information reported by at least 50% of claimants to ensure the work searches are legitimate.
- **Ghosting Portal for Employers** – Create an online portal that allows employers to report to the Department a job applicant’s refusal of work, a refusal of an offer to attend a job interview, a no-show for a scheduled job interview with an applicant, or a no-show for their first day of work. Provide that a claimant is ineligible for benefits for any week in which the claimant refused a job offer or interview offer, or failed to attend a scheduled job interview, without good cause.
- **Federal Unemployment Funds** – Require the Legislature and Governor to approve an increase in federally-funded unemployment benefits.
- **Identity Verification** – Require the Department to verify an applicant’s identity prior to awarding benefits. Require multi-factor identification to ensure validity of applicants. Match applicant data against death records, inmate records, employment records, immigration records, and current UI recipients to prevent fraudulent benefits. In addition, require department staff to flag benefit applications with duplicate, out-of-state, or foreign I.P. addresses for further review, as well as applicants who use the same bank account or mailing address.

## Other Items

- **Union Referral Service Reporting Requirement** – Require union hiring halls/referral services to report to the Department within 24 hours each instance where a worker refuses an offer of work.
- **Benefit Charge Liability** – Provide that an employer is not liable for benefit charges for an employee who quit to take another job (and then left the new employer), or who was fired for misconduct or substantial fault, then took another job (and then left the new job).
- **Quit Good Cause Revision** – Repeal the quit good cause exception under s. 108.04(7)(e).

Under current law if you quit a job within the first 30 days of hire and you could have refused the offer of work under the “suitable work” provisions you can collect benefits. This proposal would eliminate that quit exception.

- **Link Benefit Eligibility Weeks to Unemployment Rate** – Under current law individuals that are eligible for unemployment are generally entitled to 26 weeks of benefits. The average benefit duration has historically been about 14 weeks. This proposal would reduce the weeks of unemployment eligibility as follows, based upon the unemployment rate.

State Unemployment Rate	Weeks of Benefit Eligibility
Less than or equal to 3.5%	16
3.6% to 5.5%	20
Greater than 5.6%	26

Determine the applicable unemployment rate and corresponding benefit eligibility, by using the seasonally adjusted statewide unemployment rate published by the US Department of Labor for April and October. The benefit eligibility for January through June would be based on the prior October unemployment rate, while the benefit eligibility for July through December would be based on the April unemployment rate.

- **Clarify Definitions/Grounds for Misconduct and Substantial Fault** – Based upon a number of appellate court decisions and case-specific experiences of employers, make changes to these definitions to more accurately capture the intent and spirit of the 2013-2014 session reforms. Draft language attached.

#### **Misconduct & Substantial Fault Clarification – Draft Language**

**(5) DISCHARGE FOR MISCONDUCT.** An employee whose work is terminated by an employing unit for misconduct by the employee connected with the employee's work is ineligible to receive benefits until 7 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 under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be the rate that would have been paid had the discharge not occurred. 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 under s. 108.06 (1) for purposes of benefit entitlement. This subsection does not preclude an employee who has employment with an employer other than the employer which terminated the employee for

misconduct from establishing a benefit year using the base period wages excluded under this subsection if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 from which base period wages are excluded under this subsection. For purposes of this subsection, "misconduct" means one or more actions or conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which an employer has a right to expect of his or her employees, or in carelessness or negligence of such degree or recurrence as to manifest culpability, wrongful intent, or evil design of equal severity to such disregard, or to show an intentional and substantial disregard of an employer's interests, or of an employee's duties and obligations to his or her employer. In addition, "misconduct" includes:

- (a) A violation by an employee of an employer's reasonable written policy concerning the use of alcohol beverages, or use of a controlled substance or a controlled substance analog, if the employee:
  - 1. Had knowledge of the alcohol beverage or controlled substance policy; and
  - 2. Admitted to the use of alcohol beverages or a controlled substance or controlled substance analog or refused to take a test or tested positive for the use of alcohol beverages or a controlled substance or controlled substance analog in a test used by the employer in accordance with a testing methodology approved by the department.
- (b) Theft or unauthorized possession of an employer's property or services with intent to deprive the employer of the property or services permanently, theft or unauthorized distribution of an employer's confidential or proprietary information, use of an employer's credit card or other financial instrument for an unauthorized or non-business purpose without prior approval from the employer, theft of currency of any value, felonious conduct connected with an employee's employment with his or her employer, or intentional or negligent conduct by an employee that causes the destruction of an employer's records or substantial damage to his or her employer's property.
- (c) Conviction of an employee of a crime or other offense subject to civil forfeiture, while on or off duty, if the conviction makes it impossible for the employee to perform the duties that the employee performs for his or her employer.
- (d) One or more threats or acts of harassment, assault, or other physical violence instigated by an employee at the workplace of his or her employer.
- (e) Absenteeism or tardiness by an employee that constitutes any of the following, unless the employee provides his or her employer with both advance notice and one or more valid reasons for each instance of absenteeism or tardiness:
  - 1. More than 2 occasions-absences within the 120-180-day period before the date of the employee's termination; or
  - 2. One or more occasions-absences if prohibited by unless otherwise specified by his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature; or
  - 3. More than 3 instances of excessive tardiness by an employee in violation of the employer's normal business hours or a policy of the employer that has been communicated to the employee, if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness.
- (f) Unless directed by an employee's employer, falsifying business records of the employer.
- (g) Unless directed by the employer, a willful and deliberate violation of a written and uniformly applied standard or regulation of the federal government or a state or tribal government by an employee of an employer that is licensed or certified by a governmental agency, which standard or regulation has

been communicated by the employer to the employee and which violation would cause the employer to be sanctioned or to have its license or certification suspended by the agency.

- (h) A violation by an employee of an employer's written policy concerning the use of social media, if the employee had knowledge of the social media policy.

**(5g) DISCHARGE FOR SUBSTANTIAL FAULT.**

- (a)** An employee whose work is terminated by an employing unit for substantial fault by the employee connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the termination occurs and the employee earns wages after the week in which the termination occurs equal to at least 14 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's benefit rate shall be the rate that would have been paid had the discharge not occurred. For purposes of this paragraph, "substantial fault" includes those acts or omissions of an employee over which the employee exercised reasonable control and which violate reasonable requirements of the employee's employer but does not include any of the following:

1. One or more minor infractions of rules unless an infraction is repeated after the employer warns the employee about the infraction.
2. One or more inadvertent errors made by the employee, unless the error violates a written policy of the employer, endangers the safety of the employee or another person, causes bodily harm to the employee or another person, or the error is repeated after the employer warns the employee about the error.
3. Any failure of the employee to perform work because of insufficient skill, ability, or equipment.

- (b)** The department shall charge to the fund's balancing account the cost of any benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 if the employee is discharged by the employer and paragraph (a) applies.

## Unemployment Insurance Advisory Council Tentative Schedule for 2025-2026 Session

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January 16, 2025	Scheduled UIAC Meeting Discuss Public Hearing Comments
March 20, 2025	Scheduled UIAC Meeting Discuss Department Law Change Proposals <b>UI Fraud Report</b>
April 17, 2025	Scheduled UIAC Meeting Discuss Department Law Change Proposals Exchange of Labor & Management Law Change Proposals
May 15, 2025	Scheduled UIAC Meeting Discuss Department Law Change Proposals Discuss Labor & Management Proposals
June 19, 2025	Scheduled UIAC Meeting Discuss Department Law Change Proposals Discuss Labor & Management Proposals
July 17, 2025	Scheduled UIAC Meeting Discussion and Agreement on Law Changes for Agreed Upon Bill
August 21, 2025	Scheduled UIAC Meeting Review and approval of draft of Agreed Upon Bill
September 18, 2025	Scheduled UIAC Meeting Final review and approval of LRB draft of Agreed Upon Bill
<b>October 16, 2025</b>	<b>Scheduled UIAC Meeting</b> <b>Agreed Upon Bill Sent to the Legislature for Introduction</b> <b>UIAC Activities Report (due January 2026)</b>
November 20, 2025	Scheduled UIAC Meeting
December 18, 2025	Tentative UIAC Meeting
January 15, 2026	Tentative UIAC Meeting