**UNEMPLOYMENT INSURANCE ADVISORY COUNCIL**

**Meeting Minutes**

**Department of Workforce Development**
**GEF-1 Building Room F305**
**201 East Washington Avenue**
**Madison, Wisconsin**

**November 29, 2012**

**Members Present:** Mr. Buchen, Mr. Gotzler, Mr. Gustafson, Mr. Lump, Ms. Knutson (Chair), Ms. Feistel, Mr. Rainey, Mr. McGowan, and Mr. Reihl

**Department Staff:** Mr. Rodriguez (UI Administrator), Mr. Peirce (UI Deputy Administrator), Mr. Sussman, Ms. Maxwell (Executive Assistant to the Secretary), Ms. Schulze (Legislative Advisor for the Office of the Secretary), Mr. McHugh, Ms. James, Mr. Partha, Ms. Sausen, Mr. Usarek, Mr. Shahrani, Ms. Banicki, Mr. Schunk, Mr. Brueggeman, Mr. Alt, and Ms. Gallagher.

**1. Call to Order and Introductions:** Ms. Knutson convened the Unemployment Insurance Advisory Council (UIAC) meeting at approximately 10:00 a.m. in accordance with Wisconsin's open meetings law. UIAC members, Department staff, and members of the audience introduced themselves. Ms. Knutson welcomed Representative Mark Honadel.

**2. Approval of Minutes:**

a. Mr. Gustafson moved to approve the minutes of the February 2, 2012 meeting; second by Ms. Feistel. The minutes were unanimously approved.

b. Ms. Feistel moved to approve the minutes of the March 8, 2012 meeting; second by Mr. Buchen. The minutes were unanimously approved.

**3. Report on Unemployment Insurance Reserve Fund:** Mr. McHugh provided an update on the financial state of the Unemployment Insurance Reserve Fund (the Fund). Council Members were provided an eight-page report entitled "The Department of Workforce Development, Division of Unemployment Insurance Financial Statements for the Month Ended October 2012." Mr. McHugh discussed the loan balance that the Fund has taken from the federal government. He noted that as of October 31st of this year, the loan balance was $846 million and on October 31, 2011 it was $1.2 billion. Mr. McHugh estimated that by the end of the year the loan balance would be roughly $900 million. He also noted that as of October 31st the Department had received $785 million in federal loans, but had repaid $1.1 billion on previous federal loans.

**4. Report on Public Hearing:** Ms. Knutson reported that the Department provided two methods to obtain public input on suggested law changes and ways to improve the system. The first was through a public hearing held on October 30, 2012. Locations that participated through videoconferencing were Eau Claire, Green Bay, La Crosse, Madison, Milwaukee, Superior and Wausau. The Department also created an email system to solicit feedback from individuals. She highlighted that twenty-one individuals

spoke at the public hearing and seventy-seven individuals provided written comments. Ms. Knutson communicated that each Council member was provided a summary of the oral and written comments received by the Department. Ms. Knutson noted that each summary included a chart. If a particular topic received greater than two remarks, the chart lists the number of times that individuals commented on that particular topic. Ms. Knutson then reviewed each topic that received multiple comments and highlighted that the area that received the greatest number of suggestions for change was the misconduct standard.

5. **Department Law Change Proposals:** Eighteen new Department proposals were presented to the Council. Ms. Knutson stated the Department was looking for guidance and a vote on the proposals at the next meeting. Ms. Knutson highlighted some proposals were simply designed for administrative efficiency and clean-up proposals while others impact benefits and that the latter category will likely spark more discussion among the UIAC members. She also noted that the Department was presenting these proposals earlier than usual in the agreed bill cycle. While this may be a bit unusual, Ms. Knutson commented that people would agree these are not normal economic and political times.

The Department had the opportunity recently to research the legislative history of the UIAC and Ms. Knutson noted that the early 1980's were also unusual times. People probably recall the country was in the middle of a recession. The Council was struggling to deal with tough issues including the solvency of the Fund. Due to difficulties with the Council process, legislation was enacted in 1983 to overhaul the entire Council process including membership, terms, voting and other provisions. Howard Bellman was the Secretary of DILHR at that time; some of Secretary Bellman's comments still have relevance today. He emphasized that what made the Council work well in the past was the ability to reach consensus on major issues by negotiation, open-mindedness and compromise. He referenced deadlocking in the past which is not productive and probably led to the reorganizing of the Council. Mr. Bellman stated "Wisconsin has an important history with regard to U.C. policy, people on the Council itself can be proud of this history…for it is a history which reflects the best of Wisconsin government in action. Everyone with the Council is involved in this history." Certainly, those comments still apply today.

Ms. Knutson stated there are some legislators who offered bills last legislative session, but no action was taken on them by the Legislature. There are currently legislators who have ideas about UI reform and who seek to amend the statutes in response to specific concerns of constituents. The message here is that the Legislature wants to see the UIAC tackle the tough issues and try to reach consensus when possible.

Mr. Buchen indicated that in 1983 the agreed bill required unanimous approval of the Council and there was a Management member who was unwilling to support whatever package they came up with and the Council deadlocked. What the Council was facing at that time was something similar to what we face here, which was massive borrowing from the federal government. They were struggling with the steps they were going to take to resolve it. The Legislature respected the concept of what the Council does and it established a committee that was composed of equal numbers of Democrats and Republicans and it was, basically, two leaders from each house. The committee reached a consensus and even though it was a failure on the part of the Council, the basic concept was carried through in the way the Legislature dealt with it at that time.

Mr. Buchen highlighted that the tax schedule that was put into place at the time was roughly what we now have as tax schedule A. He also referenced the fact that the multiple tax schedules established by the Council were intended to respond to the fluctuation in benefit payments that results from an economic downturn. Yet, due to the severe recession just experienced by the economy, these multiple schedules were inadequate to keep the Fund solvent. Nonetheless, Mr. Buchen noted that the adoption of the multiple schedules was well-intentioned.

Department staff provided a brief description and answered any questions about the following eighteen Department proposals.

**(A) Increase Claimant's Weekly Work Search Requirements From Two to Four and Increase Flexibility of Administrative Code Provisions so that the Department may Require Future Actions by Claimants**

The proposal would make changes to the work registration and work search requirements that must be done by an unemployment insurance claimant. Ms. Knutson began discussion of the first proposal by noting that it had been reviewed at past Council meetings, but that the Department had reworked the language from what had been previously presented to the Council. The proposal includes a statutory change; however, most of proposal amended the administrative code. Mr. Sussman explained the statutory change increases the required number of work searches from two to at least four actions per week. He also mentioned that the changes to the administrative code provisions represented a modernization of the provisions and provides the Department with more flexibility. He further observed that the proposal addresses concerns raised during the public hearing and in the written comments received by the Department.

**(B) Creation of Two-Tier Standard to Determine if a Claimant's Actions that Resulted in Discharge from Employment Disqualify Him or Her from Unemployment Insurance Benefits**

The proposal amends the statute relating to misconduct and creates a two-tier standard to disqualify an individual from benefits based on his or her actions that resulted in unemployment. Mr. Schunk noted that under the new lower disqualification standard an employee would be disqualified from receiving unemployment benefits if his or her discharge resulted from substantial fault. The proposal provides protection for employees as to what constitutes substantial fault. A safeguard is provided to the employee by enumerating three types of actions that if the particular action caused the employee's discharge it would not be categorized as substantial fault that would disqualify the employee from benefits. The proposal defines misconduct as eight general acts that would disqualify a claimant for benefits. Mr. Schunk explained that this would level the field for both employers and employees by creating clear standards as to what constitutes misconduct. In addition, the proposal keeps the seven by fourteen requalification framework for the misconduct standard and incorporates it for the substantial fault threshold. Yet unlike the misconduct threshold, for the substantial fault threshold the wages earned as a result of work with the employer would be included in the wage base of the employee that is used to determine the employee's requalification benefit amount.

### (C) Reduce Number of Quit Exceptions from Eighteen to Seven and Change Requalification Framework from Four by Four to Ten Times the Weekly Benefit Rate

The proposal reduces the number of quit exceptions contained in the statutes from eighteen to seven. A quit exception makes an individual eligible for unemployment benefits even though he or she voluntarily left his or her job. Ms. Banicki observed that most midwestern states only have five to seven quit exceptions.

She also noted that the proposal makes modifications to two of the seven remaining quit exceptions. The first modification is with respect to the quit exception for an employee who accepts work with an employer which the employee could have refused with good cause and then the employee quits that work. The proposal changes the time-frame that the employee can terminate his or her work with the new employer and fall under the exception from ten weeks to thirty calendar days. It was noted that this time-frame is more consistent with other surrounding midwestern states that have the same quit exception within their statutes. The second modification changes the quit to follow a spouse exception. The quit exception would only be applicable when the quit is to follow a military spouse.

Moreover, Ms. Banicki highlighted that the proposal changes the requalification framework. Currently, if a claimant's reason for quitting is "not within the exceptions" specified in the law, the claimant is not eligible to receive benefits until the claimant satisfies two criteria. First, the length of time that must elapse since the quit must be at least four weeks. Second, the claimant must have earned wages in covered employment equal to at least four times the weekly benefit rate that would have been paid had the quit not occurred. The proposal changes the requalification framework to provide only one criterion that a claimant must satisfy to qualify again for benefits. The claimant would have to earn ten times his or her weekly benefit rate that would have been paid had the quit not occurred. The requalification framework would no longer factor in the length of time that it has been since the claimant quit his or her job. This was patterned after the requalification framework used by Iowa.

### (D) Codification of Responsibility of Claimants to Not Divulge Their PIN, Username and Password

The proposal ensures that claimants are held responsible for giving out personal information that enables another person to improperly file a claim on their behalf. Ms. Banicki noted that the proposal is patterned after Minnesota law and is simply a codification of already existing Department policy. Finally, she noted that this most commonly occurs when a claimant is in prison and the incarcerated person gives information to his or her spouse.

### (E) Enable Department to Recover Benefits Paid in Error Through Redefining Department Error for Purposes of Waiver of Recovery of Improperly Collected Benefits

The proposal clarifies and narrows the situations where actions by the Department would be classified as departmental error. The change will limit the circumstances under which a claimant can keep erroneous overpayments. Ms. Banicki noted that in 1993 the term "departmental error" was added to the statute, but that far too many situations are currently being classified as departmental error. She then highlighted three hypothetical situations contained in the written analysis that were provided to UIAC members that currently may be classified as departmental error. The proposal would make the erroneous payment of benefits cited in the examples not classified as departmental error and thereby enable the Department to recover the overpayment.

### (F) Prevent Claimants from Simultaneously Collecting UI & SSDI

With one exception, the proposal would prevent claimants from simultaneously collecting unemployment insurance benefits and Social Security Disability Insurance benefits (SSDI). Mr. Sussman explained that under the unemployment insurance program a claimant must state each week that he or she is able and available for work; whereas, under the SSDI program a claimant must state that he or she is not able to work due to a disability. Yet, a recent report by the United States Government Accountability Office found that nationwide roughly 117,000 Americans double-dipped by cashing unemployment and SSDI checks, costing taxpayers a combined $856 million in fiscal year 2010.

Under this proposal a claimant can only receive his or her full unemployment benefit while collecting or applying for SSDI if the claimant:

(1) Provides a statement from an appropriate licensed health care professional that the claimant can work; and,
(2) Earned based period wages while receiving or having filed for primary SSDI benefits.

### (G) With Good Cause Exception, Disqualify a Claimant who fails to Supply the Department with Demographic and/or Eligibility Information

Under the proposal benefits will be suspended if claimants do not provide requested information. Mr. Schunk advised that the proposal broadens the Department's ability to require claimants to provide necessary information. As a result, the Department will have more information to correctly determine eligibility and ensure proper payment of benefits. As an example, Mr. Schunk highlighted that sometimes claimants do not provide information regarding the reason for their discharge from work. Consequently improper decisions are made by the Department in either paying or denying benefits. It was also noted that the proposal would not apply during hearings, but during the investigation and adjudication stage of the benefit determination process. Mr. Schunk observed that the Department of Labor has set as a goal that state agencies should reduce the number of improper payments. Finally, it was highlighted that the proposal incorporates a good cause standard. If there is good cause for a claimant not providing the information, they would receive benefits back to their original claim date. The good

cause standard is used for other portions of the unemployment insurance process such as late filing or appeals by claimants.

### (H) Use of Financial Record Match Process to Identify Debts of Delinquent Debtors

The proposal authorizes the Department to match unemployment insurance tax and non-tax delinquent debtor files against accounts held at Wisconsin financial institutions. The matching would be used for debt collection purposes. Mr. McHugh noted that this proposal would enable the Department to send banks a file containing names of individuals who owe money to the Department. The banks would then cross-match the names on the file with names of individuals who have an account with the banks. If there is a match, this information could then be used for debt collection purposes. Mr. McHugh emphasized that the Department has shifted its collection resources toward collecting fraud debt on overpayments and on these overpayments the Department often does not become aware of the fraud until it becomes difficult to find the individual. The proposal gives the Department another tool to not only find an individual, but also a potential means to actually seize money to pay off the debt. Mr. McHugh noted that the Wisconsin Department of Revenue (DOR) already uses this collection tool. Officials from DOR speak highly of this method for locating individuals who are delinquent in making tax payments.

### (I) Authorize the Department to Require License Holders to be Current on Their UI Taxes or Face Non-renewal, Discontinuation, Suspension or Revocation

The proposal authorizes the Department to send delinquent debtors a letter to inform them that as a result of their unpaid debt their various types of work licenses may be suspended. Mr. McHugh explained that this proposal would create a tool of last resort to collect unpaid debts owed to the Department. The Department only would use the tool if other collection methods failed to work. DOR already uses this tool. DOR reports that most debtors upon receiving the letter either pay off the debt or set up a payment plan. Sometimes the individual still does not respond and the individual's license has been suspended. If an individual's license is actually suspended, DOR reports the individual either pays off the debt or sets up a payment plan.

### (J) Allows for a Faster Way to Search for a Newer Address for Claimants and Taxpayers Using Information from DOT/DMV Database of Driver's License Information

The proposal enables the Department to look up debtors by their Social Security numbers within the DOT/DMV database. The proposal makes available a faster and more efficient means to obtain information from the DOT/DMV database. Mr. McHugh explained that the Department of Transportation recently changed its system to make it more complicated to obtain driver's license information. The Department of Revenue and Department of Children and Families already may look up debtors by their Social Security numbers within the DOT/DMV database to collect unpaid debts.

### (K) Discontinue Treating Limited Liability Companies with the Same Members as a Single Employer

For reporting purposes, the proposal discontinues the ability to treat separate limited liability companies with the same members as a single employer. Ms. James highlighted that under current state law, limited liability companies with the same members may report as one employer or entity. Yet federal law treats limited liability companies as separate entities for federal employment tax purposes. As a result, each limited liability company must file and pay its FUTA tax as a separate employing entity. Ms. James explained that the proposal brings Wisconsin's law into conformity with the federal law. It also corresponds with the current practice of the Department and would simply codify already existing Department policy.

### (L) Increase Maximum Weekly Benefit Rate paid to Claimants to $370

The proposal increases both the maximum and minimum rates of benefits paid to claimants. Ms. Knutson explained it would raise the maximum benefit rate to $370 per week or an increase of $7 per week. Pursuant to the requirements of s. 108.05 (2) (c), Wis. Stats., the proposal then increases the minimum benefit rate from $54 to $55 per week. The proposal would not impact claimants who are not receiving either the minimum or maximum rates. Benefit rates have not been increased since 2009 and Ms. Knutson highlighted that even in tough fiscal times the Legislature has raised the rate and generally this has been done every two years. The fiscal impact on the Fund would be $12 million annually. Ms. Knutson reviewed the maximum rates paid by surrounding midwestern states. Except for Michigan, Wisconsin's maximum rates are the lowest of midwestern states and Michigan's rate is only one dollar lower than Wisconsin's rate.

### (M) Provide Department Flexibility with Respect to the Granting of Successorship Applications when an Employer is late in Filing its Application

The proposal provides a good cause exception for a late successorship application. Ms. Knutson explained that a transfer of a business's unemployment insurance account from one business to another may be optional or mandatory. If the transfer is optional, in seeking the transfer of a unemployment insurance account a business must satisfy four requirements. One requirement is that the transferee business must timely file a successorship application. The proposal enables the Department some limited flexibility to not penalize a business when there is good cause for its failure to timely file a successorship application. Ms. Knutson clarified that for other provisions within the statute if there is a timeliness standard for filing an application, there is a good cause exception for failing to timely submit the application. Ms. Knutson highlighted an example of how recently the lack of a good cause exception for a business that filed a late successorship application almost caused an unjust outcome for it.

### (N) Eliminate Consideration of Time and Increase Amount of Wages (From Four by Four to a Ten times the Weekly Benefit Rate) that Must be Earned for Claimants to Requalify for Benefits When They Fail to Accept Suitable Work

The proposal changes the requalification framework a claimant must satisfy when he or she fails to accept suitable work. Ms. Banicki explained that generally a claimant who does not accept suitable work is ineligible to receive benefits. There are two requirements for a claimant to again be eligible for benefits. First, four weeks needs to elapse from when the claimant did not accept the suitable work. Second, after not accepting the suitable work, the claimant must earn wages equal to at least four times his or her weekly benefit rate. This proposal would change the current four by four requalification frame work to solely require that the claimant earn wages equal to at least ten times his or her weekly benefit rate.

### (O) Enable Department to Write-Off Interest when an Employer's Report or Payment was Late Due to Circumstances Beyond the Employer's Control

The proposal allows the Department to write-off interest charged to employers in limited circumstances. In some cases, Ms. James noted that employers are not aware they were required to pay unemployment insurance taxes, but are found subject by the Department and are assessed interest from the due date of the late reports. This can result in the employer owing interest for up to four years. In these circumstances, the proposal would allow the Department to waive interest if the employer satisfies two circumstances. First the employer must file the required report or make the required payment. Second, the employer must satisfy the Department that the report or payment was tardy due to circumstances beyond the employer's control. Ms. James highlighted that many times employers impacted by the interest charging from years earlier is an agricultural or non-profit corporation. The companies would still owe the tax; however, the Department would possess the flexibility to waive the resulting unpaid interest.

### (P) Restrict Payments to Cafeteria Plans from Being Included in Base Period Wages for Determination of Amount of Benefits Paid to a Claimant

The proposal excludes cafeteria plan benefits paid by an employer from the calculation of the amount of a claimant's base period wages. Ms. James explained that when an employer contributes to cafeteria plan benefits the amount of the contribution is not included to determine the employer's taxable wage base. Thus, Wisconsin does not tax these amounts. The proposal results in the consistent treatment of cafeteria benefit plans by not paying benefits on wages that are not taxed.

### (Q) Eliminate Administrative Code Provision that Enables an Individual to Not File a Notice of a Claim Based on the Phone System Being Overloaded With Calls

The proposal amends the administrative code to no longer backdate claims due to the telephone system being inoperable or unavailable. Ms. Banicki explained that the administrative code requires that the Department backdate claims if the telephone initial claim system was inoperable or was unavailable for more than 40% of the time the system was scheduled to be staffed during the week. She highlighted that even if the phone system is overloaded claimants may file online. Moreover, a recent update to the initial claims telephone system and how it calculates available lines does not correlate with the language of this administrative rule.

### (R) Increase the Tardy Filing Fee for Employers Late in Filing Quarterly Wage Reports

The proposal increases the tardy filing fee for an employer who is late in filing his or her quarterly wage report. Ms. James explained that the new tardy filing penalty would be $20 per employee as reported on the employer's most recent filed tax report or $100, whichever is greater. The penalty can be reduced to $50 for each delinquent report if within 30 days after the date the Department assesses the tardy filing penalty the employer files the wage report.

Ms. James highlighted that under current law if an employer is late or does not file a quarterly wage report there is no distinction in the penalty assessed against the employer. As a result, once an employer is late in filing a wage report there is no incentive to actually submit the wage report. The proposal creates an incentive for an employer to timely file its quarterly wage report.

### (S) Clean-up Provisions from Last Legislative Sessions

Ms. Knutson explained that in the last legislative session the unemployment provisions were contained in two agreed bills, but there were inconsistent provisions in the two bills. As a result, there needed to be a blending of the two bills and there were some drafting oversights. Mr. Sussman highlighted that the Department is looking to get corrections to fix the oversights that impacted two provisions from last legislative session. Last legislative session the Legislature:

(1) Created a 15% penalty for acts of concealment by a claimant that result in improper benefit payments. The proposal corrects two drafting oversights with respect to the 15% penalty provision.
(2) Provided that a claimant who earns more than $500 in any given week is disqualified from receiving unemployment insurance benefits. The proposal will make whether or not a claimant reaches the $500 threshold consistent with other wage type decisions made by the Department.

Ms. Knutson indicated that the Department had received communication that Representative Joan Ballweg may be introducing legislation to correct these drafting oversights and Ms. Knutson was simply making the UIAC aware of the corrections to last year's unemployment insurance legislation.

6. **Correspondence:** Ms. Knutson explained that the public hearing comments included a summary of all correspondence received by the UIAC and, thus, there was no additional discussion of any correspondence received by the UIAC.

7. **Future Meetings:** The Department proposed holding a meeting in December. Ms. Knutson will email all UIAC members to determine whether December 14th or 20th works best on their calendars. The UIAC normally meets the third Thursday of the month and the Department will plan for monthly meetings accordingly.

8. **Other Business:** At the March 8, 2012 UIAC meeting Mr. Shahrani presented the highlights of the 2011 Fraud Report. UIAC Members were provided a copy of the final 2011 Fraud Report. The 2011 Fraud Report enumerates what the Department intended to pursue in 2012 with respect to fraud collection efforts. Mr. Shahrani provided a preview of how the Department has done with these fraud collection efforts. Mr. Shahrani stated that the Department has accomplished each and every collection effort that it had set out to do for 2012.

9. **Adjournment:** Motion by Mr. Buchen, second by Ms. Feistel to adjourn with the option for the Members to go into closed caucus session pursuant to section 19.85(1)(ee) of the Wisconsin statutes. The motion carried unanimously and the meeting was adjourned at approximately 12:45 p.m.