

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

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

January 17, 2013

Members Present: Mr. Buchen, Mr. Gotzler, Mr. Gustafson, Mr. Lump, Mr. LaCourt, Ms. Knutson (Chair), Mr. Neuenfeldt, 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, Ms. Rosenak, Ms. Sausen, Mr. Usarek, Ms. Moksouphanh, Mr. Shahrani, Ms. Banicki, Mr. Schunk, Mr. Brueggeman, Ms. Savard, Ms. Klewin and Ms. Gallagher.

1. Call to Order and Introductions: Ms. Knutson convened the Unemployment Insurance Advisory Council (UIAC) meeting at approximately 10:07 a.m. in accordance with Wisconsin's open meetings law. UIAC members and state legislators present introduced themselves. The state legislators and their aides present were Senator Julie Lassa (24th Senate District); Representative Amy Loudenberg (31st Assembly District); Representative David Murphy (56th Assembly District); Representative Chris Kapenga (99th Assembly District); Representative Daniel Knodl (24th Assembly District); Representative Debra Kolste (44th Assembly District); Representative Michael Schraa (53rd Assembly District); John Vanderleest (Senator Frank Lasee's Office); Lindsey Brabender, (Representative Chris Kapenga's Office); Mary Beth George (Representative Christine Sinicki's Office); and Diane Handrick (Representative Dave Murphy's Office).

Ms. Knutson welcomed Mr. LaCourt who is a new management representative on the Council.

2. Approval of Minutes: Mr. Lump moved to approve the minutes of the November 29, 2012 meeting; second by Mr. Gotzler. The minutes were unanimously approved.

3. Presentation by Senator Julie Lassa on Work Share Legislation: Senator Lassa reminded the Council that she had previously made a presentation to the UIAC on her work share legislation. She explained that work share programs preserve employees' jobs and employers' trained workforces when a business is experiencing an economic downturn by reducing hours of work for an entire group of affected employees rather than by laying off some employees while others continue to work full time. Work share program provides a portion of a weekly unemployment compensation (UC) payment to those individuals whose workweeks have been reduced. Senator Lassa went through an example of how a work share program would work from a handout she provided to the Council. She noted that work share programs are useful to employers who are able to retain their skilled work force and also beneficial to employees in that they do not lose their job or their benefits from their job. Senator Lassa highlighted that Congress has made \$1.9 million available to Wisconsin to cover administrative costs associated with implementing a state-wide work share program. Ms. Knutson stated that if the Council approved, the Department would send the draft bill to the Department of Labor (DOL) for its informal review to ensure that it complies with federal requirements and to

guarantee that if DOL had any issues the Department could address those issues prior to possible passage by the state legislature. Ms. Knutson noted that the Department estimates that there would be 6,000 hours of programming costs that would be necessary to implement the program, but that the grant money from the federal government would cover these costs. Mr. Gustafson noted that it is common knowledge that the more a person sits at home the more difficult it is for that individual to get back into the working world and this program keeps employees in the working world. Senator Lassa pointed out that work share programs have the support of both conservative and progressive think tanks.

Mr. Gustafson inquired whether we were aware of the experience of other states and if it would be possible to learn from their experiences. Senator Lassa responded that she would send Ms. Maxwell a link to a news story by public broadcasting that focused on the positive experience Rhode Island has had with work share programs. The story highlighted how the work share program had positively impacted one Rhode Island company that had used it three times and noted that the program decreased lay offs in Rhode Island in one year by 16,000.

Mr. Lump questioned how long it would take for the Department to approve a work share plan submitted by an employer who wished to participate in the program. Ms. Knutson responded that the goal of the Department would be to approve the plan as quickly as possible and the Department's role in approving the plan would be solely to ensure that the employer's plan complied with the state law for a work share program.

Ms. Knutson inquired as to what was the Council's position on the bill? Mr. Neuenfeldt stated that the labor side of the Council would want to submit the bill for legal analysis with respect to the bill's impact on bargaining agreements and what impact it would have on individuals. Mr. Buchen noted that many employers are already doing this with their work force in the current economic downturn.

Mr. McGowan moved to support the Department sending the draft legislation to DOL to get a preliminary read on whether it conforms to federal requirements; second by Mr. Lump. The motion carried unanimously.

4. 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 a six-page report entitled "The Department of Workforce Development, Division of Unemployment Insurance Financial Statements for the Month Ended December 30, 2012." As part of his presentation, Mr. McHugh went through and explained aspects of this report. Mr. McHugh discussed the loan balance that the Fund has taken from the federal government. He noted that the Department estimates that by the end of 2014 the loan balance is projected to be zero. Mr. Buchen inquired as to when it is determined that there should be an assessment against employers and FUTA credit reduction. Mr. McHugh responded that this determination is based on the loan balance as of November 9th of each year. Mr. Lump requested that the Department create a plain language summary for employers explaining the assessment and FUTA credit reduction. Ms. Knutson responded that the Department could do this.

5. Correspondence: Representative Ballweg received correspondence from Mr. Holmes of the UWC - Strategic Services on Unemployment & Workers' Compensation (UWC). Representative Ballweg sent the correspondence over to the Secretary's Office of the Department and the Department indicated to her that it would explain this communication to the UIAC. Mr. Sussman explained that the correspondence dealt with provisions of the Trade

Adjustment Assistance Extension Act of 2011 (TAAEA). The TAAEA contained three mandates that states were required to enact within their unemployment insurance law. UWC had developed model legislation for states to enact a law to comply with one of the mandates. Attorney Sussman explained that Wisconsin's law already satisfied the requirements with respect to this mandate prior to passage of the TAAEA and as a result the Department did not bring forward any new proposed legislation to address it. Ms. Knutson noted that the Department would inform Mr. Holmes that it made the UIAC aware of his letter, but that Wisconsin's law is already in compliance with the requirements that are addressed by his organization's proposed model legislation.

6. Presentation by Georgia Maxwell DWD Executive Assistant: Ms. Maxwell introduced herself and provided greetings from Secretary Reggie Newson. She wanted to speak on behalf of Secretary Newson and Governor Scott Walker to emphasize that they have the utmost respect for the Council and the process and the importance they place in both sides having a voice in the unemployment insurance program. The Office of the Secretary and the Governor have heard from employers across the State of Wisconsin in numerous formats that people are frustrated and desire reform of the unemployment insurance program. Ms. Maxwell noted that the eighteen Department proposals that the UIAC has in front of it represent hundred of hours of Department staff work and research. She highlighted that these proposals originated within the agency from the Department staff with the intent to improve the system and its delivery. Over the past two years, the Department has also had lots of input from legislators and members of the business community with respect to issues that they feel need to be addressed by the unemployment insurance program. The Legislature has expressed a very strong interest in the Council and that interest will continue for the next legislative session as can be seen today by the number of legislators present.

Ms. Maxwell highlighted that on the agenda it stated she would address the skills gap, but she wanted to express that unemployment insurance reform and the skills gap go hand in hand. The Governor has indicated that DWD is one of his top five priorities in the budget and this legislative session. The Secretary's Office takes that role and responsibility very seriously and the issue of addressing the skills gap and getting workers back to work is paramount to this administration.

Ms. Maxwell stated Wisconsin has a skills gap and the Department consistently hears about it. Businesses are clamoring for good talent and we have people who are unemployed and begging for work. Ms. Maxwell explained that we need to eliminate the barriers between these two. The Department proposals that the UIAC have before it will likely not be the only reforms brought forward by the Department. As the connection between unemployment insurance reform and the skills gap is delved into further, the Department will be bringing forward additional proposals.

Ms. Maxwell stated she was hopeful that the UIAC will make progress and provide direction to legislators. On behalf of the Department of Workforce Development she respectfully requested that the Council support the reforms put before them and she was happy to answer any questions of the Council. Mr. Neuenfeldt inquired as to what time-frame she would like to have a bill finalized by the Council? She responded that the Department would like to have an indication from the Council as quickly as possible as to their opinion on the proposals. It is important to move as expeditiously as possible because the Department is experiencing a lot of frustration from those who wanted to make improvements to the unemployment insurance program last session. Ms. Maxwell noted that the Department is trying to provide as much information about the proposals as possible and requested that the Council to work as quickly as possible.

7. Department Law Change Proposals: Ms. Knutson then stated that the next agenda item was to review the Department proposals that had been provided to the Council at its last meeting. Department staff was available to further explain the proposals and answer any questions. After that she noted that in presenting the proposals last time she had stated that some of the proposals would spark more discussion among the UIAC members, but that there were others that were just administrative in nature. Subsequently she reviewed the proposals that were deemed as administrative in nature. The proposals reviewed were:

(A) Codification of Responsibility of Claimants to Not Divulge Their PIN, Username and Password (Department Proposal D12 - 03)

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. Knutson noted that a reason the Department brought the proposal forward was that in the near future the Department will be moving towards use of a debit card system. She highlighted that the Department already has issues with claimants when they file on-line giving their username or password to their spouse or boyfriend. As a result, individuals who are ineligible for benefits are still receiving benefits and when the Department seeks to hold them accountable, they claim that it was not their fault and the excuse they use is that someone else filed the claim. Ms. Banicki mentioned that the proposed statutory language was nearly identical to Minnesota law, but expanded to cover password and internet security credentials.

Mr. Buchan questioned whether the proposal would help the Department to find out that someone improperly received benefits. Ms. Knutson responded that the proposal would enable the Department to hold the individual accountable if the Department discovers that someone received an improper payment. Mr. Buchen wondered what the proposal would accomplish if administrative law judges were currently already not finding these individuals liable. Ms. Knutson responded that the proposal includes the term "strict liability" and places more protections to find that individual liable. Ms. Feistel stated that she assumed that while the Department was talking about incarcerated individuals, the proposal would be applicable to other individuals. Ms. Banicki responded that it was correct that the proposal applied to everyone, but the Department most frequently saw this as a problem with incarcerated individuals. Mr. Buchen stated that he felt the proposal could be strengthened somewhat by making the individual whose account information was used have to prove that the information was completely stolen from them. Ms. Knutson stated that she thought based on Mr. Buchen's statements that the management side of the Council may have some amendments to the proposal to address his concerns. Mr. Buchen responded affirmatively to this suggestion.

(B) Enable Department to Recover Benefits Paid in Error Through Redefining Department Error for Purposes of Waiver of Recovery of Improperly Collected Benefits (Department Proposal D12 - 06)

The proposal strengthens the statutory language on departmental error. As an example, Ms. Knutson noted that the proposal would cover situations where there was a computer problem and checks are issued in an incorrect (higher) amount. The Department wants to make clear in the statute that the Department has the authority to recover that overpayment from the claimant. Ms. Knutson asked if there were any questions on the proposal or if there was any agreement or objection to the proposal. No Council Member raised any questions or objections to the proposal.

(C) Prevent Claimants from Simultaneously Collecting UI & SSDI (Department Proposal D12 - 05)

With one exception, the proposal would prevent claimants from simultaneously collecting unemployment insurance benefits and Social Security Disability Insurance benefits (SSDI). Ms. Knutson noted that this proposal was brought forward as a result of a report by the United States Government Accountability Office. She noted that this proposal addresses the situation where a claimant represents to the Department that he or she is able to work to collect unemployment insurance, but then at the same time represent to the federal government that he or she is not able to work to collect SSDI. Mr. Sussman noted that 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.

Mr. Sussman explained that the proposal was developed after review of the laws of a few different states and that his review of a number of states found that some states simply have a complete ban on the simultaneous collection of SSDI and unemployment insurance.

(D) With Good Cause Exception, Disqualify a Claimant who fails to Supply the Department with Demographic and/or Eligibility Information (Department Proposal D12 - 08)

Under the proposal benefits will be suspended if claimants do not provide requested information. Ms. Knutson highlighted that this addresses the situation where a claimant is collecting unemployment benefits and the Department receives a tip that the claimant is working. The Department then attempts to contact the claimant and employer but neither responds to its inquiry. The proposal would enable the Department to stop making payments to the claimant and prevent overpayments.

(E) Use of Financial Record Match Process to Identify Debts of Delinquent Debtors (Department Proposal D12 - 10)

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 on a quarterly basis. Mr. Buchen questioned whether the financial institutions would be obligated to enter into an agreement with the Department. Mr. McHugh responded that they would be obligated to enter into the agreements and the Department was simply using the same debt collection tool as is already being used by the Wisconsin Department of Revenue.

(F) Authorize the Department to Require License Holders to be Current on Their UI Taxes or Face Non-renewal, Discontinuation, Suspension or Revocation (Department Proposal D12 - 17)

The proposal authorizes the Department to mail a letter to debtors delinquent in paying taxes in order to inform them that as a result of their unpaid tax debt their various types of work licenses may be suspended. Ms. Knutson noted that the statutory authority already exists for the Department of Revenue to do this for its unpaid taxes and this proposal is simply granting the Department the same authority. She noted the Department only would use the tool if other

collection methods failed to work. The proposal would be used only for collection of unpaid taxes by employers and would not apply to claimants who have unpaid benefit overpayments.

(G) 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 (Department Proposal D12 - 23)

The proposal enables the Department to look up debtors by their Social Security numbers within the DOT/DMV database. Ms. Knutson noted that the proposal makes available a faster and more efficient means to obtain information from the DOT/DMV database.

(H) Discontinue Treating Separate Limited Liability Companies with the Same Members as a Single Employer (Department Proposal D12 - 28)

For reporting purposes, the proposal discontinues the ability to treat separate limited liability companies with the same members as a single employer. Ms. Knutson highlighted 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.

(I) Provide Department Flexibility with Respect to the Granting of Successorship Applications when an Employer is late in Filing its Application (Department Proposal D12 - 04)

The proposal provides a good cause exception to allow for a late successorship application to be treated as if it was timely. Ms. Knutson explained that for most of the unemployment insurance statutes if someone is late in a filing requirement there is a good cause exception to treat the application as having been filed timely. Yet, the statute does not have a good cause exception for an employer's late voluntary successorship application. Ms. Knutson highlighted an example of how recently this almost caused an unjust outcome for a business. The proposal would give the Department some latitude in granting an application if the successorship application is late due to a clerical error or some other good reason.

(J) Enable Department to Write-Off Interest when an Employer's Report or Payment was Late Due to Circumstances Beyond the Employer's Control (Department Proposal D12 - 15)

The proposal allows the Department to write-off interest charged to employers in limited circumstances. Ms. Knutson noted that currently when the Department conducts an audit and finds an employer subject to unemployment insurance taxes there is no ability for the Department to write down any interest penalty. The company needs to file an appeal and then only in limited circumstances may the Department waive the charging of a small amount of interest owed by the company that was incurred after filing the appeal. The proposal would give the Department the flexibility to waive a larger amount of interest owed by the company, but not the actual taxed owed by it. If deemed appropriate by the Department, this will enable it to waive the interest even if the employer does not file an appeal.

(K) Restrict Payments to Cafeteria Plans from Being Included in Base Period Wages for Determination of Amount of Benefits Paid to a Claimant (Department Proposal D12 - 16)

Ms. Knutson noted that there is currently an inequity in the law. For purposes of determining an employer's taxable wage base, Wisconsin law does not count contributions by the employer to an employee's cafeteria benefit plan; whereas, when a claimant receives benefits the employer's contribution to the former employee's cafeteria benefit plan can be counted to determine the amount of the employee's benefits. The proposal excludes cafeteria plan benefits paid by an employer from the calculation of the amount of a claimant's base period wages. The proposal results in the consistent treatment of cafeteria benefit plans by not paying benefits on wages that are not taxed.

(L) 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 (Department Proposal D12 - 20)

The proposal amends the administrative code to no longer backdate claims due to the telephone system being inoperable or unavailable. Ms. Knutson noted that the Department no longer has problems with the phone system being unavailable, claimants could file their claim online, and the system no longer calculates the statistics necessary to determine if the phone system is unavailable. Thus, this proposal is just a clean-up proposal to no longer make the administrative code provisions not correspond to the modern reality of how the system works.

(M) Increase the Tardy Filing Fee for Employers Late in Filing Quarterly Wage Reports (Department Proposal D12 - 27)

The proposal increases the tardy filing fee for employers who are late in filing their quarterly wage reports. Currently, if employers are tardy in filing their quarterly wage reports they are charged a \$50 penalty and there is no incentive to file the quarterly wage report because there is no additional penalty the Department may assess against the employers. Moreover, the Department may not decrease the amount of the original penalty. The proposal creates a significant penalty for employers for not filing their quarterly wage reports. The new tardy filing penalty would be \$20 per employee as reported on the employers' most recent filed tax report or \$100, whichever is greater. Yet, once the employers file the information the Department may reduce the penalty to the level it currently is at of \$50. This will create an incentive for employers even after being assessed the penalty to provide their quarterly wage report to the Department.

After reviewing thirteen of the eighteen Department proposals, Ms. Knutson stated she was looking for some guidance on at least part of this package of proposals and what the intention of the UIAC was on the rest of the proposals. Mr. Neuenfeldt responded that there were some things in the proposals that were easier for his side to support and he recommended that each side caucus so that they could talk about the proposals among themselves.

Motion by Mr. Buchen, second by Mr. Neuenfeldt to recess and to go into closed caucus session pursuant to section 19.85(1)(ee) of the Wisconsin statutes and reconvene later in the afternoon. The motion carried unanimously and the meeting was recessed at approximately 12:10 p.m.

The UIAC reconvened at approximately 1:45 p.m.

Mr. Buchen reported that both sides agreed on some of the Department proposals and were prepared to vote today on these proposals. He also noted that for the other Department proposals there would need to be further deliberation on them.

Motion by Mr. Buchen, second by Mr. Neuenfeldt to support Department Proposals D12-04 (successor ship applications), D12-15 (ability to write-off interest), D12-16 (cafeteria plans), D12-17 (suspension of work licenses), D12-23 (DOT/DMV database), D12-27 (increase tardy filing fees), and D12-28 (LLC's). The motion carried unanimously.

8. Future Meetings: Mr. Neuenfeldt stated that he believed it would be good to have more time to review the proposals and obtain additional information from the Department. Ms. Knutson also noted that the Department would need to have at least an hour of another meeting to go over the Department's financial outlook report. In addition to the already regularly scheduled UIAC meetings, it was agreed to hold special meetings on February 6, 2013 starting at 9:30 a.m. and on March 14, 2013 starting at 10:00 a.m.

9. Adjournment: Motion by Mr. Neuenfeldt, second by Ms. Buchen to adjourn. The motion carried unanimously and the meeting was adjourned at approximately 2:00 p.m.