

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

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

September 19, 2013

The meeting was preceded by public notice as required under s. 19.84, Stats.

Members Present: Janell Knutson (Chair), Michael Gotzler, Earl Gustafson, Edward Lump, Scott Manley, Sally Feistel, Mark Reihl and Terrance McGowan (via phone).

Department Staff Present: Jonathan Barry (Deputy Secretary), Connie Schulze (Legislative Liaison), Bob Rodriguez (UI Administrator), Ben Peirce (Deputy UI Administrator), Scott Sussman, Tom McHugh, Mary Jan Rosenak, Pam James, Janet Sausen, Rob Usarek, Jill Moksouphanh, Lutfi Shahrani, Amy Banicki, Jason Schunk, Bill Brueggeman, Emily Savard, Betsy Kenyon, Laurie Boehlke, Pin Tzu Klimm, Karen Schultz and Robin Gallagher.

State Legislators and Legislative Staff Present: Representative Michael Schraa (53rd Assembly District), Representative David Murphy (56th Assembly District) Representative Janis Ringhand (45th Assembly District), Brooke Froelich (Senator Sheila Harsdorf's Office) Lonna Morouney (Representative Amy Loudenbeck's Office), Stephen Hall (Representative Paul Tittl's Office) Jessica Kelly (Senator Julie Lassa's Office), Mary Beth George (Representative Christine Sinicki's Office), BJ Dernbach (Representative Dan Knodl's Office).

1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council ("Council") meeting to order at approximately 10:05 a.m. in accordance with Wisconsin's open meetings law. Council members introduced themselves and Representative Schraa, Representative Murphy and legislative aides were acknowledged.

2. Approval of Minutes

Motion by Mr. Lump, second by Mr. Gotzler to approve the June 20, 2013 Council minutes without corrections. Motion carried unanimously.

3. Proposed Legislation on Adverse Decisions (SB 273) from Senators Lassa, Miller, Taylor and Lehman

Jessica Kelly, on behalf of Senator Lassa, requested the Council to support Senate Bill 273 (SB 273). SB 273 will require the Department of Workforce Development (DWD) to offer claimants more information and guidance regarding appellant procedures when issuing an adverse determination about eligibility for benefits and when issuing a computation of UI benefits. Senator Lassa introduced this bill in response to concerns expressed by constituents relating to the appeals process when a claimant is denied unemployment insurance. SB 273 will work to ensure that citizens receive complete and accurate information regarding DWD's eligibility and calculation determinations and the applicable administrative appellate procedures. The bill also requires DWD to provide more information and guidance regarding administrative appellant procedures when DWD issues an adverse determination relating to any other law regulating employment that is administered by it. Senator Lassa believes this bill allows claimants to better understand their rights and may reduce administrative costs because claimants who were denied benefits may elect to not appeal.

After discussion of the bill, the Council tabled consideration of it until its October meeting.

4. Remarks from Jonathan Barry, DWD Deputy Secretary

Mr. Barry provided an update on how DWD was proceeding to implement policies with respect to mandatory registration for UI claimants with jobcenterofwisconsin.com. He noted that the online mandatory registration would be required for all new UI claimants as of October 13, 2013. DWD surveyed twenty-five states, including all the states in the Midwest, with respect to their requirements for UI claimants to register for work. The survey found that Wisconsin was the only state that did not have an enforcement component with respect to its requirement that UI claimants register for work. Mr. Barry emphasized that the reason to require mandatory registration was to enable claimants to be able to use the resources available through the job centers. He noted that there was a compliance component in that claimants would be denied benefits if they did not register within 14 days after they completed their initial claim, but that this would only happen after repeated notices that they needed to register. The goal of requiring mandatory registration was to get their work history or resume uploaded and then to have them be able to use the services of the job center. He also emphasized that none of the current waivers claimants may get from being required to register for work were being eliminated at this time. Further, he highlighted that DWD has put a lot of resources into its system to make the system more user friendly and intuitive for claimants using it. Some claimants may miss the multiple notifications that they must register with jobcenterofwisconsin.com, but DWD is doing everything possible to make the implementation of this policy run smoothly. Moreover, he stressed that mandatory registration was foundational to future improvements to DWD's online reemployment services and DWD needed to have mandatory online registration to effectively provide services to claimants. Finally, he highlighted that in preparing to implement the mandatory registration there had been a tremendous amount of interaction between staff of the UI Division and Division of Economic Training. This coordination has been a terrific change and will result in better service to UI claimants. An alternative registration process will be available for claimants with language, computer literacy, or disability issues.

5. Report on Unemployment Insurance Reserve Fund

Mr. McHugh reported on the July financial statements with respect to the Unemployment Insurance Trust Fund. The employer's reserve fund balance was positive \$934 million; however, the balancing account is negative approximately \$1.2 billion.

DWD has an outstanding loan from the Federal Unemployment Account to pay benefits. Mr. McHugh explained that on September 14, 2013, the loan balance was a \$380.8 million, which is approximately \$425.8 million less than last year at this time. DWD will pay \$18.9 million to the federal government on September 30, 2013, for interest associated with this loan. Due to law changes in 2013 Wisconsin Act 20 (the state budget) employers will not be required to pay the SAFI assessment and instead this money will come from general purpose revenue.

Mr. Usarek provided updated projections with respect to the Unemployment Insurance Trust Fund. The amount of tax revenue collected was expected to remain constant, but has declined over the past year which altered DWD's projection from February.

Mr. Usarek noted that even though there is projected to be a deficit of \$41 million in the Unemployment Insurance Trust Fund balance at the end of 2014, the balance on November 9, 2014 is expected to be positive. As a result, it may not be necessary to borrow any of the \$50 million that was made available by the Legislature in order for employers to avoid a Federal Unemployment Tax Account credit reduction in 2015. Yet, he emphasized that it is difficult to project the balance of the Unemployment Insurance Trust Fund on a specific date over a year prior to that date.

6. Update on the Trust Fund Solvency Subcommittee

Ms. Knutson provided an update with respect to the work of the Trust Fund Solvency Subcommittee. The Subcommittee has had three meetings so far and intends to have a meeting later this afternoon and another meeting following the next UIAC meeting on October 17. During one of the previous Subcommittee meetings, Mr. Usarek gave an in-depth presentation on how Wisconsin's and other state's tax systems work. Following this presentation, the Subcommittee requested additional research items which were provided by DWD staff. Ms. Knutson emphasized that the solution to Unemployment Insurance Trust Fund solvency will require a multi-faceted approach. The goal of the Subcommittee is to have a recommendation to the Council by the Council's November meeting.

7. Proposed Legislation - Repealing One Week Waiting Period (LRB 2401) from Representatives Kolste and Mason

Mr. Sussman explained that the 2011 budget bill had enacted a waiting week for UI benefits. The waiting week provides that when a claimant begins a new benefit year, no benefits are payable for the first week a claimant would otherwise be eligible for benefits. The waiting week does not reduce a claimant's maximum benefit amount.

This proposed legislation repeals the waiting week. According to the fiscal estimate prepared by DWD, this proposal would cost an additional \$45 million annually from the Unemployment Insurance Trust Fund.

Mr. Manley stated that as the Council went through each policy proposal it would be helpful for the Council to talk about them in caucus.

Ms. Knutson indicated that she would put this item on the agenda for the next Council meeting.

8. Correspondence Relating To Cottage Industries (SB 276, LRB 1192) from Senator Harsdorf and Representative Severson

Ms. Knutson advised that DWD staff had reviewed this proposal and wanted to make the Council aware of some of DWD's concerns about the proposal. DWD's concerns about the proposal are that it:

- (a) Fails to provide a definition of "cottage industry" and therefore the proposal potentially applies to a large majority of individuals who work from home;
- (b) Is potentially broad due to the fact that it covers not only workers who provide manufacturing services, but also people working in the service industry from home;
- (c) Fails to clarify who is required to provide the raw materials for the product;
- (d) Creates a broader basis to exclude someone from coverage due to fact there is no requirement to show that the worker has an independently established business; whereas, under the UI law, an individual to be classified as an independent contractor must establish that he or she operates an independently established business;
- (e) Expands the amount of direction and control that the business may provide to the "cottage industry" worker and still qualify for the exclusion when compared to what is allowed for a worker to be classified as an independent contractor;
- (f) Requires a written agreement between the employer and the "cottage industry" worker and every other exclusion within Wisconsin's UI law does not require a contract; and,
- (g) Exposes "cottage industry" employers to potential additional federal unemployment taxation, due to the fact there is no corresponding federal exclusion.

No other state has a similar exclusion with respect to UI and "cottage industry" workers. DWD's fiscal estimate is that the proposal would have at least an annual \$5 million negative impact on the Unemployment Insurance Trust Fund.

This proposal will be placed on the next UIAC meeting agenda.

9. Response to Correspondence from Representative Tittl, May 10, 2013, Related to Eligibility of Certain Employees who are Affected by Labor Disputes for Unemployment Insurance Benefits and Department Analysis

Mr. Schunk explained what had happened with respect to UI and the Manitowoc Crane labor dispute. Manitowoc Crane laid off about 150 workers because of a strike. Those workers were part of the boilermakers union and not the striking machinists union. Initially, DWD ruled that workers in the boilermakers union were not eligible for UI and this determination was upheld by the administrative law judge. Subsequently, the Labor and Industry Review Commission overturned this decision due to the fact that it ruled the workers' cause of unemployment was not the labor dispute and as a result the provisions of s. 108.04 (10), Stats., did not disqualify these workers from UI benefits.

Some businesses have multiple unions representing their workers. When one union goes on strike and the business lays off all or part of its workforce, members of other unions may be laid off, even if the union members are not involved in the dispute. If such workers are laid off in the state, they cannot receive unemployment benefits because their job loss was due to a strike. The legislation would provide unemployment benefits to Wisconsin workers who lose their jobs because of another union's labor dispute.

DWD had provided the Council a fiscal estimate for this legislation. Ms. Knutson noted that development of the fiscal estimate was difficult to develop since there have not been large scale labor disputes involving multiple unions for many years.

Mr. Manley stated that the management side of the Council would like to have the opportunity to discuss this legislation in closed caucus.

10. Department Update

- **Short -Time Compensation (Work Share)** – Ms. Knutson informed the Council that DWD applied for and was granted an extension by the Joint Committee on Finance for delayed implementation of the work share law until December 31, 2013. DWD is continuing to work on making the necessary computer changes to implement the work share program. The U.S. Department of Labor informed DWD that Wisconsin's work share law is in conformance with federal requirements for a state to operate a work share program. DWD has not received any inquiries from employers about operating a work share program, but DWD expected that the most likely time that employers may be interested in the program would be in the fall.
- **Technical Amendments (LRB 2855)** – Mr. Sussman informed the Council there were some minor technical corrections that are necessary with respect to the UI provisions contained in 2013 Wisconsin Act 20 and 2013 Wisconsin Act 36.

- **Administrative Rules** – Ms. Knutson informed the Council that DWD was in the process of amending chs. DWD 126 (work registration), 127 (work search), and 129 (benefit claiming procedures). The Council received a copy of the two scope statements with respect to amendments to these three chapters of the administrative code. Two scope statements were necessary because DWD was amending these chapters on both an emergency and permanent basis. Amendments to these rules provide clarity for claimants and implement a required change contained in 2013 Wisconsin Act 20 related to the increasing the number of weekly work search actions by a claimant from two to at least four. 2013 Wisconsin Act 20 required that if DWD was to mandate that a claimant conduct more than four work search actions in a week, DWD must promulgate rules to provide criteria for when it will require a claimant to conduct more than four work search actions in a given week. Ms. Knutson also informed the Council there was a third scope statement in their packet of material. This third scope statement is to promulgate the other administrative rules required as a result the last two laws that contained changes to UI law (2013 Wisconsin Act 20 and 2013 Wisconsin Act 36). For example, the proposed rule will create the administrative procedures to waive or decrease interest charged to an employer that submits a late payment for UI taxes; provide procedural protections to employers who are subject to a denial or revocation of a license based on delinquent UI contributions; or provide a standardized affidavit form for use in UI administrative appeal hearings.

Ms. Knutson explained that DWD intended to hold public hearings the week of October 29 through November 6 on the amendments with respect to chs. DWD 126, 127, and 129. She noted that DWD would appreciate Council members participating in the public hearings and making comments with respect to the amendments to these rules. The Council suggested DWD hold hearing in the Fox Valley area, Madison and Milwaukee.

11. Future Meetings

Ms. Knutson noted that the future Council meetings were scheduled for October 17 and November 21.

Motion by Mr. Manley, second by Mr. Gotzler 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 11:35 a.m.

The Council reconvened at approximately 1:05 p.m.

Ms. Knutson requested a report from the Council following caucus.

Mr. Manley informed Ms. Knutson that there was not consensus with respect to Representative Tittl's proposed legislation related to eligibility of certain employees who are affected by labor disputes for UI benefits. Ms. Knutson will provide written correspondence to Representative Tittl stating the Council was unable to come to a consensus on this issue.

12. Adjournment

Moved by Ms. Feistel second by Mr. Gotzler to adjourn at 1:10 p.m. Motion carried unanimously.