

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

**Offices of the State of Wisconsin Investment Board
121 E. Wilson Street, Board Room
Madison, WI**

May 19, 2015

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

Members Present: Janell Knutson, Scott Manley, James LaCourt, Ed Lump, Mark Reihl, Shane Griesbach, Michael Gotzler (via teleconference), and Phillip Neuenfeldt (via teleconference).

Department Staff Present: Joe Handrick (Administrator), David Anderson (Assistant Deputy Secretary), BJ Dernbach (Legislative Liaison), Pam James, Andy Rubsam, Scott Sussman, Karen Schultz, Tyler Tichenor, Lutfi Shahrani, Tom McHugh, Amy Banicki and Patrick Lonergan.

Members of the Public Present: Mike Duchek (Legislative Reference Bureau), Rachael Inman (Legislative Audit Bureau), Victor Forberger (UI Appeals Clinic), Daniel Shaw (Daily Reporter), Chris Reader (WI Manufacturers & Commerce), Brian Dake (WI Independent Businesses, Inc.), and James Buchen.

1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council (Council) meeting to order at 10:05 a.m. in accordance with Wisconsin's Open Meetings law. Council members and department staff at the table introduced themselves. Ms. Knutson recognized Mr. Anderson and Mr. Dernbach and welcomed those in attendance.

2. Approval of Minutes of April 16, 2015

Motion by Mr. Manley, second by Mr. Griesbach to approve the April 16, 2015 minutes without corrections. Motion approved unanimously.

3. Legislation Proposed by State Legislature

2015 Senate Bill 140 and Assembly Bill 212

Mr. Rubsam provided a summary of Senate Bill 140 and Assembly Bill 212 relating to a seven-year period of unemployment insurance (UI) benefit ineligibility for a claimant who commits a second act of concealment. The seven-year period of ineligibility will be in addition to current penalties. Current penalties provide a claimant must repay all overpaid benefits received as result of the concealment, a 15% monetary penalty of the total amount of overpayment received, and the claimant is ineligible for UI benefits in an amount equivalent to 2, 4 or 8 times the

claimant's weekly benefit rate for each subsequent single act of concealment for a first, second and third or higher determination of concealment, respectively.

The seven-year ban is for a claimant who has committed a second act of fraud and will only apply to acts of fraud committed after passage of the bill. The department submitted the proposed language to the U.S. Department of Labor (USDOL) for conformity review. The department will provide the Council with the USDOL analysis when it is completed.

Under current law, a person who impersonates a claimant in order to receive UI benefits in the name of the claimant must repay the UI benefits and pay an administrative assessment equal to the amount of the UI benefits that the imposter received. This bill proposes that, in addition to repaying the UI benefits and paying the administrative assessment, a person who engages in a second act of impersonation will also be ineligible for UI benefits for seven years.

2015 Assembly Bill 192

Mr. Rubsam provided a summary of Assembly Bill 192 (AB 192), which has passed the Assembly as amended, relating to a drug testing program for UI claimants. AB 192 has not yet been messaged to the Senate.

This proposal is similar to the drug testing program for UI claimants within the budget bill. Both AB 192 and the budget bill provide for voluntary pre-employment drug testing reporting by employers and identifying occupations for which drug testing is regularly required.

Both AB 192 and the budget bill provide if a claimant tests positive on a drug test and elects to participate in a treatment program, the claimant will maintain UI eligibility while participating in treatment. However, AB 192 provides if the claimant fails a second drug test, while continuing to participate in a treatment program, the claimant will continue to maintain UI eligibility. In addition, AB 192 directs the department by administrative rule to identify occupations in specific categories for the purposes of screening and drug testing UI benefit claimants. These occupations include:

1. Those that regularly involve work with or around children.
2. Those that regularly require the operation of a motor vehicle.
3. Those in the construction field.
4. Those that require the operation of heavy machinery.
5. Those in which persons regularly carry a firearm as defined in Wis. Stat. § 167.31(1)(c) (This category is already included in USDOL proposed regulations).

2015 Assembly Bill 140

Mr. Sussman updated the Council on Assembly Bill 140 (AB140) relating to the Department of Administration (DOA) providing annual benefit statements to the individual or family. The annual benefit statements would be distributed by DOA and for each individual or family detail the total public assistance and unemployment insurance (UI) benefits received by the individual or family.

Federal law treats UI information collected and maintained by the department as confidential. As a result:

- In order for the department to share confidential UI benefit data with DOA, federal law requires DOA to sign a record disclosure agreement that would place limits on DOA's redisclosure of the UI information.
- Additionally the information could not be disclosed to the family of the individual, unless the individual authorizes the disclosure to the family by a written release that satisfies federal requirements.

The department recommends that AB 140 be sent to the USDOL for conformity review.

4. Budget Bill Provisions

One of the Council's statutory duties is to report its views on pending bills relating to UI to the proper legislative committee. Ms. Knutson suggested that the Council members discuss their positions on the budget bill during caucus and if consensus is reached, report their position to the Joint Finance Committee. If there is no consensus, the members can voice their opinions. Ms. Knutson also suggested that the Council provide input on the other pending legislative proposals in order to report back to the legislature and sponsors of each proposal.

5. Review and Discussion of Department Proposals

Ms. Knutson provided an update on the previously agreed to proposals. Language for the able and available proposal has been drafted and allows separation of determinations on able and available from other determinations issued. The effective date on the Social Security Disability Insurance agreed bill language reflects the original effective date of the current law to be consistent. The agreed bill proposal presented at today's meeting will be updated to correct a typographical error on page 12 referencing "LLC" to "LLP" in the final version.

Able and Available

Mr. Rubsam reviewed the summary of statutory changes regarding the able and available proposal. This proposal amends Wis. Stat. Ch. 108 in three sections to separate out able and available determinations issued from determinations based on quit exceptions, leave of absence, suspension or termination and good cause to accept suitable work or return to work. The intention of these amendments is not to change a claimant's eligibility for benefits, or the employer's liability for benefit charges, but change the way the department issues determinations.

Reimbursable Employer Fraud Charging Issue

Ms. Knutson provided an update to the Council on the reimbursable employer fraud charging issue. The department participated in a conference call with USDOL and discussed potential wording and identification of any potential conformity issues concerning the options presented to the Council. The department was advised that Option 2 (which was being considered by the Council) would pose a conformity issue due to an assessment on reimbursable employers being charged for benefit charges occurring in the past and the provision for accumulating revenue for future charges. Option 2 directed the department to set aside \$2 million in the Trust Fund and once the balance of the set aside funds reached \$1 million from charges paid, reimbursable employers would be assessed to pay the UI benefit charges due to identity theft and restore the balance of the funds set aside to \$2 million.

Option 1, which was the original proposal presented to the Council, directs the department to set aside \$2 million in the Trust Fund (plus interest), and once the account balance reached \$100,000, reimbursable employers would be assessed to pay the UI benefit charges.

Option 3, which was presented to the Council, directs the department to pay from the Balancing Account the first \$1 million of identity theft charges that are charged to reimbursable employers. The treasurer of the Trust Fund would inform the Secretary after reimbursable employers are credited for the \$1 million and the Secretary would consult with the Council regarding an assessment for repayment of future identify theft benefit charges. If after consultation the Secretary determines an assessment should be imposed for future identify theft charges, all reimbursable employers would be assessed an amount in order to pay annual benefit charges against reimbursable employers due to identity theft.

Mr. Manley asked if it were possible to create an option that combines Options 1 and 3. This option would create set aside funds, with the understanding that it is not anticipated the funds run out, but if they did, the Secretary would consult with the Council on how to assess reimbursable employers rather than automatically triggering an assessment.

Ms. Knutson relayed to the Council that USDOL suggested an option that the department combine the accumulated debt due to identify theft charges with the REDA assessments for reimbursable employers. This option would require a statute change as REDA assessments do not currently include governmental entities or Indian tribes.

Appeals Modernization and Concealment

The Council has not yet acted on the department's appeals modernization or concealment proposals. Ms. Knutson offered to provide additional information or answer questions.

6. Management and Labor Proposals

To date management and labor have not presented their proposals to the Council for discussion. Ms. Knutson suggested the Council submit two separate agreed bills to the legislature, one with the department proposals and one with management and labor proposals. If the Council agrees

to submitting the department proposals now, it is more likely they will be introduced during the fall session, and the Council could use the summer months to discuss management and labor proposals.

7. Quarterly Report on the Unemployment Insurance Reserve Fund

Mr. McHugh reported to the Council on the Unemployment Insurance (UI) Reserve Fund. As of April 30, 2015, the UI Reserve Fund cash balance was \$570.2 million compared to last year's balance of \$6.9 million.

Tax Schedule A has been in effect since 2010. The UI Reserve Fund cash balance for June 30, 2015 is expected to be \$500 million. When the UI Reserve Fund has a balance of at least \$300 million but less than \$900 million on June 30 of each year, tax Schedule B is triggered for the following year. Schedule B has lower tax rates in all brackets for employers with positive account balances and by triggering onto tax Schedule B, employers are estimated to save \$97 million, compared to Schedule A. The rates for employers with a negative account balance remain the same in Schedule B as they are in Schedule A.

Year-to-date tax receipts through April 30 totaled \$614.4 million compared to \$645.5 million for the same time period last year. Actual tax receipts are on track to reach forecasted 2015 receipts of \$1 billion. Year-to-date benefit payments through April 30 were \$267.7 million, which is \$49.7 million less than the \$317.4 million paid last year.

The UI Reserve Fund cash balance earned first quarter interest in the Federal Unemployment Trust Fund totaling \$1.1 million. The first quarter earnings rate was set at 2.3884%.

8. Motion to Caucus

Motion by Mr. Manley, second by Mr. Reihl to recess and go into closed caucus session pursuant to Wis. Stat. § 19.85 (1) (ee), to discuss department proposals, the budget bill and legislation at approximately 11:10 a.m. The motion carried unanimously.

Report out of Caucus

The Council reconvened from caucus at 12:25 p.m. Motion by Mr. Manley, second by Mr. Reihl, to all of the following:

- The Council has agreement on the proposed agreed bill draft.
- The Council approves Option 1 of the reimbursable employer's fraud charging issue proposal with one amendment. The department staff shall report to the Council annually the claims experience on imposter charges and the balance of the set aside funds.
- The Council needs more time to discuss the appeals modernization proposal.
- The Council has agreement on the concealment proposal with the following changes:
 - Unstrike "intentionally" under 108.04 (11) (g) to read: For purposes of this subsection, "conceal" means to intentionally mislead the department by withholding

or hiding information or making a false statement or misrepresentation. "Conceal" does not require an intent or design to receive benefits to which the claimant knows he or she is not entitled.

- Insert the word "intentionally" under 108.04 (11) (h) to read: As a condition of eligibility for benefits under this chapter, a claimant has a duty of care to provide an accurate and complete response to each department inquiry. In response to the department's questions in the benefit claims process, a claimant's false statement or representation creates a rebuttable presumption that the claimant intentionally misled the department. A claimant may rebut the presumption by competent evidence that the claimant did not intentionally mislead the department. Competent evidence does not include evidence that a claimant provided false or misleading answer due to any of the following:
 - The Council is in agreement on the able and available proposal.

The motion carried unanimously.

The Council is not taking a position on the proposed legislation discussed at today's meeting. Mr. Reihl expressed concern over the expansion of drug testing in occupations beyond the federal requirements and the budget bill provisions.

9. Other Business

Mr. Manley stated because of the additional work needed on the appeals modernization proposal, redrafting the language for the reimbursable employers and potentially discussing management and labor proposals at the next meeting, the Council would like to keep all proposals in the same agreed bill package and move that package forward as a single piece of legislation.

Mr. Neuenfeldt suggested that the department, on behalf of the Council, send a letter to the legislature reiterating the value of the Council in terms of the different perspectives both employers and participants bring to the process and discussions on UI. In addition, the letter should encourage Council input on proposals prior to the passage of the bill rather than after. The Council members agreed. The department will draft a letter reflecting these topics and circulate a draft for Council approval to be sent before the next meeting.

10. Future Meetings and Agenda Items

The next meeting is scheduled for June 18. A survey of Council member availability will be conducted to ensure a quorum.

11. Adjourn

Motion by Mr. Gotzler, second by Mr. Manley to adjourn at 12:40 p.m. Motion carried unanimously.