

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Offices of the State of Wisconsin Department of Workforce Development
201 E. Washington Avenue, GEF 1, Room H306

January 14, 2016

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

Members Present: Janell Knutson (Chair), Michael Gotzler, Ed Lump, John Mielke, Scott Manley, Michael Crivello, Shane Griesbach, Terry Hayden, Sally Feistel and Mark Reihl. Earl Gustafson participated via teleconference.

Department Staff Present: Joe Handrick (Administrator), Ben Peirce (Deputy Administrator), Andy Rubsam, Tom McHugh, Pam James, Emily Savard, Karen Schultz, Robin Gallagher, Tyler Tichenor, Andrew Evenson, and Matthew Aslesen.

Members of the Public Present: Rachael Inman (Legislative Audit Bureau), Victor Forberger (UI Appeal Clinic), Brian Dake (Wisconsin Independent Businesses, Inc.), and Erika Strebel (Daily Reporter)

1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council (Council) to order at 9:00 a.m. in accordance with the Wisconsin's Open Meetings law. Council members introduced themselves and Ms. Knutson thanked those in attendance.

2. Approval of Minutes of the January 7, 2016 Council Meeting

Motion by Mr. Hayden, second by Mr. Lump to approve the January 7, 2016 meeting minutes. The motion carried unanimously.

3. Research Request

Ms. Knutson reported that at the last meeting, Labor members requested a written explanation and analysis of the department's interpretation of the definition of concealment contained in the agreed bill. The memo distributed to the Council includes the analysis and examples on how the law will be applied.

4. Review and Discussion of Labor and Management Proposals

Ms. Knutson stated that Council members are still considering Labor and Management proposals. Ms. Knutson was informed by the department's legislative liaison that in order for the

Council's agreed bill to be introduced and passed in the legislature, the agreed bill would need to be submitted by early next week.

5. Motion to Caucus

Motion by Mr. Manley, second by Mr. Reihl to recess and go into closed session pursuant to Wis. Stat. § 19.85 (1) (ee), to deliberate department proposal D15-06 and labor and management proposals at 9:10 a.m. All Council members voted "Aye" and the motion carried unanimously.

6. Report Out of Caucus

The following Council members reconvened at 6:50 p.m.:

Mr. Manley, Mr. Mielke, Ms. Feistel, Mr. Reihl, Mr. Hayden and Mr. Griesbach. Mr. Gotzler and Mr. Gustafson participated via teleconference.

Motion

Motion by Ms. Feistel, second by Mr. Manley to approve the LRB draft 4395/P3 of department proposal D15-06, relating to appeals modernization and efficiencies. The motion carried unanimously.

Labor and Management Proposals

Ms. Knutson stated that the agreed upon Labor and Management proposals were provided to the department to read into the record. Mr. Rubsam read the following agreed upon proposals:

- Good Cause – Amend s. 108.04 (8):

The department may not find good cause for refusal of an offer of suitable work unless the refusal relates to the claimant's personal safety, sincerely held religious beliefs, an unreasonable commuting distance, or another compelling reason that would make accepting the offer unreasonable.

- Suitable Work (First 6-week period provision) - Amend s. 108.04 (8) (d):

To define suitable work under s. 108.04 (8), during the first 6 weeks of unemployment, to be work that pays the claimant 75% or more of what they previously earned during the high quarter and does not involve a lower grade of skill relative to that of their most recent employment.

- Suitable Work (Post 6-week period provision) – Create s. 108.04 (8) (dm):

After 6 weeks of unemployment, suitable work would be defined as "any work that the individual is capable of performing, whether or not they have any experience or training, that pays wages that are above the lowest quartile of wages for similar work in the region."

Mr. Manley stated that s. 108.04 (8) (dm) is intended to capture the department's current practice.

- Worker's Compensation – Amend s. 108.04 (12) (e):

Include in each sentence of that section, the phrase "permanent total disability" as a type of workers compensation payment that would render an individual ineligible or would be used for partial benefit calculation.

- Misclassification of workers – Repeal ss. 102.07(8)(d) and 111.327 and repeal and recreate s. 108.24 (2m):

Section 108.24 (2m) as well as an administrative penalty under s. 108.22, would be limited to any employer described in s. 108.18 (2)(c) or engaged in the painting or drywall finishing of buildings or other structures.

The Council seeks to create an administrative penalty for knowingly and intentionally misclassifying workers. Factors to consider in determining whether an employing unit knowingly and intentionally misclassified a worker include:

1. Whether the employer was previously found to have misclassified an employee in the same or a substantially similar position.
2. Whether the employer received an opinion or decision from a federal or state court or agency that the subject position or a substantially similar position should be classified as an employee.

The administrative penalty for knowingly and intentionally misclassifying a worker is \$500 per employee, not to exceed \$7500 per incident, per employer. The administrative penalty for knowingly and intentionally misclassifying workers would be deposited into the Program Integrity Fund

The criminal penalty under s. 108.24 (2m), as recreated, for subsequent instances of knowingly and intentionally misclassifying one or more individuals, includes the option to refer to the Department of Justice (DOJ), is \$1,000 per employee, not to exceed \$25,000 per incident, per employer, as a fine imposed by a court.

Mr. Manley asked if it is clear that an employer is not subject to both an administrative penalty and referral to DOJ, and that it is either one or the other. Mr. Rubsam stated it will be clear in the statute and using the word "subsequent instances" clarifies it is different.

Under s. 108.22, a new subsection regarding coercion will provide that an employing unit that requires a worker to adopt non-employee status is subject to an administrative penalty of \$1,000 per worker, not to exceed \$10,000 per employing unit, per year. Penalty funds will be deposited into the Program Integrity Fund.

Mr. Reihl reiterated that for the definition of suitable work, after 6 weeks of unemployment, the definition and change is meant to reflect the current policy of the department.

Motion

Moved by Mr. Manley, second by Mr. Reihl to approve the Labor and Management proposals as read. The motion carried unanimously.

7. Next Steps

Ms. Knutson stated the department will draft and submit language agreed upon today to the Legislative Reference Bureau (LRB) for drafting and work with LRB to finalize the language to mirror the Councils intent. In order to get the agreed bill introduced in the Legislature, a vote from the Council approving the language from today's meeting is needed. Ms. Knutson requested a meeting be scheduled to vote on the agreed bill on Tuesday, January 19 via teleconference.

Mr. Manley requested that any deviation from the today's language made by LRB be explained in a note as to why the language was changed.

8. Future Meeting

The Council will meet via teleconference on January 19, 2016 at 1:30 p.m.

9. Adjournment

Motion by Ms. Feistel, second by Mr. Manley to adjourn at 7:10 p.m. The motion carried unanimously.