

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

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

March 17, 2016

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

Members Present: Lili Crane (Acting Chair); Michael Gotzler, Ed Lump, Scott Manley, Michael Crivello, Sally Feistel, Shane Griesbach, Terry Hayden and Mark Reihl. Earl Gustafson appeared via telephone

Department Staff Present: Andy Rubsam, Tom McHugh, Pam James, Janet Sausen, Amy Banicki, Emily Savard, Mike Myszewski, Karen Schultz, Robin Gallagher, Becky Kikkert, Matthew Aslesen and BJ Dernbach

Members of the Public Present: Victor Forberger (UI Appeals Clinic), Brian Dake (Wisconsin Independent Businesses, Inc.), Jim Boullion (Associated General Contractors of Wisconsin), Ryan Horton (Wisconsin State Legislature), Rachael Inman (Legislative Audit Bureau), Mike Duchek (Legislative Reference Bureau), Aaron McKean (Legislative Reference Bureau), and Maria Gonzalez Knavel (Labor and Industry Review Commission, General Counsel)

1. Call to Order and Introductions

Ms. Crane called the Unemployment Insurance Advisory Council (Council) to order at 10:05 a.m. in accordance with the Wisconsin's Open Meetings law. Council members introduced themselves. Ms. Crane acknowledged the absence of Ms. Knutson due to illness and is acting chair for the Council meeting. Council members introduced themselves and Ms. Crane recognized Maria Gonzalez, the new General Counsel for the Labor and Industry Review Commission.

2. Approval of Minutes of the January 14, 2016 Council Meeting

Motion by Mr. Griesbach, second by Mr. Gotzler to approve the January 19, 2016 meeting minutes. The motion carried unanimously.

3. Report on the Unemployment Insurance Reserve Fund

Mr. McHugh reported on the December financial statements which reflect totals for the 2015 calendar year. Benefit expenditures declined in 2015 to \$535 million. This represents a 17% decrease from 2014 expenditures of \$642 million. Expenditures for 2016 are anticipated to be similar to 2015.

Tax receipts for 2015 were a little more than \$1 billion, down from 2014 receipts of \$1.1 billion. For 2016, it is anticipated that tax receipts will total approximately \$800 million. The lower amount reflects the change from Tax Schedule A to Tax Schedule B as well as reduced tax rates due to experience rating. The current Trust Fund balance is \$700 million.

The number of claimants drawing benefits in 2015 was just under 200,000. At the height of the recession in 2009, the number of claimants was approximately 560,000. Typically there are over 3 million people in the workforce, both employed and unemployed.

The Trust Fund balance at the end of 2015 was \$740 million and in 2014, was \$215 million. The Trust Fund earned \$11 million in interest in 2015 compared to \$2 million in interest in 2014. It is projected the Trust Fund will earn \$21 million in interest this year. The Trust Fund could have a balance of approximately \$1 billion by year end if benefit expenditures continue to remain low.

There are four tax rate schedules and currently we are in Tax Schedule B. The Trust Fund balance on June 30 is projected to be approximately \$900 million. The balance of the Trust Fund on June 30 determines which tax schedule is used for the following year. If the balance of the Trust Fund is at least \$900 million, the department will trigger from Tax Schedule B to Tax Schedule C. Tax Schedule C tax receipts are forecasted to be approximately \$37 million less than Tax Schedule B receipts.

4. Fraud Report

Mr. McHugh, Ms. Banicki and Mr. Myszewski presented the 2016 fraud report to the Council. Ms. Banicki reported that in 2015 initial unemployment insurance (UI) claims dropped to the lowest level since 1989 and weekly claims are at the lowest since 1999. Total UI payments decreased 17.3% from 2014 to 2015 and fraud overpayments declined 34.6%. In 2015, there were a total of 9,793 fraud cases detected. A total of 115 of detected fraud cases were referred for potential criminal prosecution (30 were criminally charged), a dramatic increase in referrals from 2014, and resulted in a total dollar amount of \$1.3 million in fraud overpayments.

Wisconsin won the 2015 full employment award from the American Institute for Full Employment. The department's online orientation and assessment for claimants is the reason the department won the award. Claimants can receive information on workshops and assistance with their resume.

As a result of 2013 Wisconsin Act 36, the department conducts random work search audits to ensure not only compliance, but also educate claimants on work search requirements. These audits are random and have been increased by Act 36.

The following types of integrity efforts are utilized by the department:

- Cross referencing Federal Social Security Administration records and Wisconsin Department of Transportation records to attempt to ensure that an individual is not fraudulently claiming benefits on behalf of another person.

- Identify suspect claims, place holds and investigate those claims, and prevent potential improper payments.
- Verify non-citizen work authorization with the U.S. Citizenship and Immigration Services when a claimant is not a U.S. citizen.
- Scan employer tax and benefit charge information to identify potential fictitious employers.
- Inform employers of UI benefit charges to their accounts by providing benefit payment notices.

The department also utilizes a number of detection tools to recover fraudulently including:

- Quarterly Wage Cross-Matching: The department cross-matches benefit payment records with the wage records submitted by employers.
- Wisconsin and National New Hire Cross-Match: The department cross-matches UI payment records with new hire information submitted by employers about employees who are newly hired, rehired or return to work after a separation.
- Incarceration Cross-Match: The department cross-matches with the Federal Social Security Administration database of incarcerated persons and employs the APPRISS-cross-match system to identify any claimant who is currently incarcerated both inside and outside of Wisconsin. In 2015, the department detected approximately \$177,000 in fraudulent UI claims using this cross-matching tool.

In 2015, the Legislature enacted additional penalties to deter overpayments from the UI Trust Fund. The administrative penalty for acts of concealment increased from 15% to 40% of the overpayment amount. The Council recommended the following changes, which are currently under consideration by the legislature:

- Clarifying the definition of employment.
- Creating an administrative penalty for construction employers who coerce individuals to improperly claim independent contractor status.
- Creating an administrative penalty for construction employers who knowingly and intentionally misclassify workers as independent contractors.

Employee education and assistance is a key component to prevent and deter fraud. The new Internet Weekly Claim system, scheduled for implementation this spring, will contain clearer questions and will offer more assistance in clarifying the questions for claimants who file online.

Mr. Myszewski reported on the Worker Misclassification Initiative. The Worker Misclassification Unit (Unit) is fully staff with one full-time and seven part-time investigators. In 2015, investigators conducted 162 field investigations, with approximately 100 of those referred to the field audit section of the department. Investigators are finding misclassified workers in one-third of all investigations. To date of the fraud report being released, \$450,000 in UI taxes, interest and penalties have been assessed as a result of the Unit's investigations. Currently there are audits being conducted from investigations conducted in 2015 and 2014 (there is difficulty locating and scheduling audits with employers).

The Worker Misclassification Initiative is adequately funded through September 2017. The department received four federal grants and a U.S. Department of Labor representative announced that additional money may be available this September through competitive grants.

The Unit has conducted numerous presentations to employers and labor groups, as well as to internal department staff. For 2016 and 2017, the Unit has committed to 300 investigations each year. As of yesterday, the Unit has conducted 246 investigations and anticipates conducting 500 investigations this year as well as next year. A majority of the investigations are conducted in the construction and service industries, including the drywall, roofing and siding professions and hair and nail salons.

5. Update on Legislation

Mr. Rubsam provided an update on the following legislation:

Agreed Bill – Assembly Bill 819/Senate Bill 684

The Agreed Bill passed the Assembly and on March 15, 2016, passed the Senate without amendment. The Agreed Bill is currently waiting for the Governor's signature.

Real Estate Exclusion - 2015 WI Act 258

A number of changes were made to the real estate law, with certain provisions to services performed by a real estate agent that pertain to UI. The amended exclusion more closely tracks the federal exclusion for real estate agents. The major difference between state and federal laws is that federal law provides substantially all pay must be commission-based for the services to be excluded. The Internal Revenue Service interprets "substantially all" to mean 90% or more, whereas Wisconsin's amended exclusion requires 75% or more of the remuneration to be commission-based.

Franchisor Exclusion – 2015 WI Act 203

Under 2015 Wis. Act 203, the department will apply current law for determining if an employee has an employment relationship with more than one employing entity. If the franchisor is determined to be the employer of a franchisee, or of an employee of the franchisee under Wis. Stat. §108.065 (1e), the franchisor will not be the employer of a franchisee or of an employee of a franchisee unless either of the following apply:

- The franchisor has agreed in writing to assume the role.
- The franchisor has been found by the department to have exercised a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Act 203 created a similar exclusion for other types of employment laws, such as the worker's compensation law.

Increased Penalties for Benefit Fraud - Assembly Bill 535

Assembly Bill 535 proposes to increase the criminal penalties for UI benefit fraud and provides those penalties are equal to that of a felony in certain cases. Assembly Bill 535 passed the Assembly, but did not pass the Senate. No further legislative action is expected on this Bill during this legislative session.

7-Year ban for collecting UI - Assembly Bill 212

Assembly Bill 212 proposes to provide a seven-year ban for collecting UI benefits for an individual that commits benefit fraud in two consecutive benefit years. Assembly Bill 212 passed the Assembly, but did not pass the Senate. No further legislative action is expected on this Bill during this legislative session.

Senate Bill 764

Senator Bewley addressed the Council at the December 17, 2015 Council meeting on a proposed bill that would provide a 26-week work search waiver for claimants who expect to be reemployed by their former employers within 26 weeks. Senate Bill 764 was introduced by Senator Bewley; however, it is not anticipated to pass this session.

The department is still working on gathering and analyzing statistical information regarding work search waivers under the new administrative rule provisions and will potentially have this information available at the next meeting. If this information is available prior to the next meeting, information will be emailed to the Council.

6. Pre-employment Drug Testing Rule

2015 Wis. Act 55 directed the department to promulgate rules that permit employers to submit the failed or refused pre-employment drug test results of an individual to the department. The department would then use that information to determine benefit eligibility and the individual may possibly be disqualified based on the individual's failure or refusal of the drug test. If the individual failed a drug test, an individual may maintain benefit eligibility by enrolling in and complying with a drug treatment program and job skills assessment. The rule is currently being drafted and will be ready for the Council to discuss in April. The pre-employment drug testing rule will be implemented as an emergency rule.

Act 55 also provided that the department must promulgate rules that identify occupations and drug test individuals whose only suitable work is in an occupation that regularly conducts drug testing. The federal government has not yet finalized the federal regulations that list the occupations; therefore, the department is not able to promulgate rules at this time.

7. STC (Workshare) Program Update

An update on the STC (Workshare) Program will be provided at the next meeting.

8. Correspondence

A copy of the correspondence from the Wisconsin Green Industry Federation on work search and registration waivers is in the Council materials.

9. Future Meeting Dates and Agenda Items

The Council is scheduled to meet on April 21, 2016 and any agenda items are welcome.

10. Adjournment

Motion by Ms. Feistel, and second by Mr. Gotzler to adjourn at 10:53 a.m. Motion carried unanimously.