

Wisconsin Unemployment Insurance Program

Activities of the Unemployment Insurance Advisory Council 2009 - 2010

Report to
Governor Scott Walker and Legislature Leaders
by
Manny Perez, Secretary
Department of Workforce Development

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ACTIVITIES OF THE UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Statutory Requirement

This report is provided to the Governor and Legislative leaders by the Secretary of the Department of Workforce Development, as required by Wis. Stat. §16.48, to summarize the deliberations of the Unemployment Insurance Advisory Council and the position of the Council on the proposed changes in the unemployment insurance laws during the most recent two-year period, 2009 to 2010.

Membership of the Unemployment Insurance Advisory Council

By statute the Unemployment Insurance Advisory Council consists of five members representing employers, including one member who represents small businesses; five members representing employees; and a nonvoting chairperson who is a permanent classified employee of the Department. All members are appointed by the Secretary of the Department of Workforce Development. The Chair is Daniel J. LaRocque, Director of the Bureau of Legal Affairs, Unemployment Insurance Division. Voting Council members serve staggered 6-year terms. The current voting Council members, their affiliation and the dates on which their terms expire are noted below.

Employer Representatives

James Buchen, Vice President/Government Relations, Wisconsin Manufacturers and Commerce, Madison, WI: term expires July 1, 2015.

Earl Gustafson, Energy and Projects Manager, Wisconsin Paper Council, Neenah, WI: term expires July 1, 2013.

Daniel Peterson, Vice President of Finance, J.H. Findorff & Sons, Inc., Madison, WI: term expires July 1, 2015.

Edward Lump, President and CEO, Wisconsin Restaurant Association, Madison, WI: term expires July 1, 2011 (Small Business Representative).

Susan Haine, Owner, Susan Haine Business Consulting, LLC, Middleton, WI: term expires April 1, 2012.

Employee Representatives

Phillip Neuenfeldt, President, Wisconsin State AFL-CIO, Milwaukee, WI: term expires July 1, 2015.

Dennis Penkalski, Former Business Manager, Milwaukee & Southeast District Council of Carpenters (retired), Milwaukee, WI: term expires July 1, 2011.

Patricia Yunk, Director of Public Policy, Council 48 AFSCME, AFL-CIO, Milwaukee, WI: term expires April 1, 2012.

Sally Feistel, Sub-District Director, United Steel Workers District 2, Menasha, WI: term expires June 1, 2014.

Anthony Rainey, President, UAW Local 469, Oak Creek, WI: term expires November 1, 2014.

About the Unemployment Insurance Advisory Council

The statutory responsibility of the Unemployment Insurance Advisory Council is to: (1) advise the Department of Workforce Development in its administration of the unemployment law; (2) report its views on pending legislation affecting the unemployment program to Legislative committees; and (3) submit its recommended changes in the unemployment law to the Legislature. The Council has performed this role for the Legislature and the program's administration for more than 75 years.

The statutory composition of the Council reflects the fact that Wisconsin employers and employees share a stake in the development of policy for the unemployment program. Employers fund the program while the burdens of unemployment fall directly on unemployed workers and their families. Unemployment benefit payments stimulate economic activity, a feature of the program that is especially important to both employers and employees during periods of economic distress.

The statutory authority for the Council represents the Legislature's longstanding recognition that a competent and strong advisory body is valuable to the legislative process for the unemployment program. The Legislature has adopted the Council's recommended changes in unemployment law with a high degree of consistency.

The Council has stabilized legislative policy making for the unemployment program. Among the current members of the Council are several who have provided expertise and continuity for the program over many years, while 4 newly appointed members within the last 5 years have increased the range of experience and diversity of the Council. As in other states that have advisory councils, the Council's composition, process and effectiveness and the resulting legislative deference to its recommendations have assured a steady policy direction by tempering the tendency to engage in wide swings in legislative policy.

The tradition of legislative support for the Council process is long and, consequently, the Council is recognized as integral to the legislative process. This has strengthened the Council and Wisconsin's unemployment program. Employers, employees, their representatives, legislators and the general public seek and receive hearings, analysis and deliberation by the Council regarding their concerns and proposals and the legislative and operational options available to the program. The Council seeks and accepts broad input, develops sound policy and identifies support for legislative action. As a result, the Council negotiates and recommends carefully considered refinements in policy that tend to fairly balance the interests of the stakeholders.

Members of the Council negotiate and deliver changes to the unemployment law in biennial cycles and review and approve administrative rules as necessary throughout the biennium. The Council meets periodically each year, and communicates with Department staff and the public regarding potential law changes on a continuous basis. The Council sends its meeting agenda and minutes to all legislators and posts them publicly and welcomes legislators' attendance at its meetings and their views on the unemployment program. Council meetings are open, with notice to the public, consistent with the Open Meetings Law, which provides an exception for the Council that allows management and labor members to hold separate, closed caucuses to discuss potential law changes. In 2009 - 2010, the Council conducted twelve public meetings and received

correspondence and comments from the public, representatives of employers and employees and legislators and other elected officials.

The Council process encourages technical quality and continuous improvements in the program, and responsiveness to the public and lawmakers. When correspondence to the Council is received suggesting a change to the unemployment law, the Chair shares the letter with all Council members. The Council's response addresses the concerns about the program and advises of the Council's intended action regarding the proposal. The Council receives from Department staff detailed written analyses of proposals to change the law. The analysis of serious proposals typically includes a description of the suggested law change, the reasons for it, the history and background of current state law, federal law issues relevant to the proposal, the policy and fiscal effects, and administrative feasibility and impact of the proposal. Proposals ordinarily receive thorough discussion by Council members, Department staff, and other interested parties, and where necessary, further review and redrafting prior to a vote by the Council. By statute, the vote of seven (of 10) members is required for Council approval. The conformity of Wisconsin's unemployment law with the federal statutory requirements for state unemployment laws and the quality of the unemployment statute are the result of the orderly process of the Council and its regular engagement in the unemployment program.

Council Activities in 2009 - 2010

During the period of 2009 to 2010, the Council developed and recommended to the Legislature bills that resulted in enactment of various changes to the Wisconsin unemployment law in: 2009 Act 1; portions of 2009 Act 11; and 2009 Act 287. Each is summarized below.

Legislation Regarding Extended Benefit Programs and Special Federal Distributions

Background: Wisconsin's regular unemployment benefits are paid by the state out of the Unemployment Reserve Fund, which is funded by taxes on Wisconsin employers. Generally, since 1982, an eligible unemployed worker may receive up to 26 weeks of state-paid benefits. In 1970, the federal government enacted a program of unemployment benefit extensions to pay additional weeks of benefits to those who have exhausted state benefits ("Extended Benefits"). Only when unemployment rates in a state reach particularly high threshold levels are Extended Benefits triggered on for payment to that state's workers. Generally, Extended Benefits have been funded 50% by the federal government and 50% by the state.

As a result of a recession in the early 1980s, Wisconsin enacted the Wisconsin Supplemental Benefits (WSB) program in 1982. WSB provided state-paid benefits for unemployed workers who exhaust regular unemployment benefits when the state unemployment rate reaches high levels but levels too low to trigger Extended Benefits. WSB is funded entirely by Wisconsin employers.

The recession of 2008 - 2009 caused unemployment nationally and in Wisconsin to ultimately reach levels not seen since the early 1980s. Unemployment rates in Wisconsin were rising in 2008 but had not yet reached the threshold levels necessary to trigger on either Wisconsin's WSB program or the federal-state Extended Benefits. However, in July 2008, the federal government enacted a new program for benefit extensions, known as "Emergency Unemployment Compensation" ("EUC"), to provide up to 13 weeks of federally paid benefits to most workers who had exhausted their entitlements to the state's regular unemployment benefits, which are 26 weeks in Wisconsin. EUC enacted in July 2008 provided the 13-week

segment (commonly called “first tier”) of benefits to workers in all states, including those, such as Wisconsin, in which unemployment rates had not reached the levels required for Extended Benefits.

Legislation later in 2008 and 2009, most notably the American Recovery and Reinvestment Act (“Recovery Act”) in February 2009, created the opportunity for workers who had exhausted the first tier (13 weeks) of EUC benefits to receive additional weeks of EUC benefits. The Recovery Act included, among other significant provisions involving the nation’s unemployment program, extensions of the EUC benefits, full federal funding of the state’s 50% share of Extended Benefits and incentives to states to increase the total number of weeks of Extended Benefits.

As a result of federal extensions and legislation in Wisconsin which followed, a worker in Wisconsin was eventually allowed benefits, if otherwise eligible, in a series of tiers (some with conditions tied to the state’s unemployment rates) for up to 99 weeks. As of the date of this report a worker in Wisconsin receiving benefits, depending on individual circumstances, in most cases may receive no more than 86 weeks of benefits. Due in part to the structure and conditions of the federal programs and in part due to the legislation developed by the Council (described below), funding for these streams of benefits by Wisconsin generally has been limited to the first 26 weeks of an individual’s benefits.

Federal legislation in December 2010 again extended EUC benefits, from December 1, 2010 through January 2012; and continued full federal funding of Extended Benefits into 2011, provided the threshold rates of unemployment continue to be met.

In summary, as a result of the 1970 legislation and its amendments over many years, since 2008 workers who exhaust regular unemployment benefits provided by the state Fund (and are otherwise qualified) have received and will continue to receive EUC benefits; and workers who exhaust available EUC benefits may receive Extended Benefits while that program remains triggered on by high rates of unemployment in Wisconsin.

2009 Wisconsin Act 1 - Suspension of Wisconsin Supplemental Benefits

The Council recommended and in January of 2009 the state enacted 2009 Act 1. The purpose of Act 1 was to legislatively amend WSB so that it would not trigger on with the rapidly rising rates of unemployment, which would have otherwise triggered WSB and caused payments of WSB benefits to flow to eligible claimants. The eligibility requirements for EUC include the requirement that the claimant first exhaust all state-paid unemployment benefits. The suspension of WSB by Act 1 allowed Wisconsin claimants to avoid ineligibility for EUC benefits and to receive EUC without interruption or displacement by WSB. Because EUC was (and is) funded entirely by the federal government, Act 1 saved the Wisconsin Unemployment Reserve Fund from experiencing a draw on the Fund for WSB benefit payments.

2009 Wisconsin Act 11 - UI Modernization and Funding; and Amendments to Extended Benefits

The Recovery Act (described above) provided monetary incentives states to amend state unemployment laws. Among the state law changes resulting from the Recovery Act, were two sets of amendments to Wisconsin unemployment law that Wisconsin enacted in 2009 Wisconsin Act 11 on May 15, 2009:

1. UI Modernization: The Recovery Act provided federal funding to states that revised or added provisions expanding benefit eligibility (described as “Unemployment Insurance Modernization”). 2009 Wisconsin Act 11 amended its unemployment law to allow claimants to receive benefits during a period beyond the period of state-paid regular benefits during which the individual is enrolled in a program of approved training. Act 11 also modified certain provisions of the unemployment law to allow benefits under circumstances in which the worker separates from employment for “compelling family reasons” (quit to follow spouse; quit due to domestic abuse; quit for health of family member). For these modifications and others that pre-existed Act 11, Wisconsin received a one-time distribution of \$134 million dollars, which was deposited to the Unemployment Reserve Fund for payment of benefits. The state also qualified for and received \$9.6 million for administration of unemployment insurance and employment and training programs.

2. Extended Benefits: The Recovery Act provided federal funding for the state’s 50% share of state-federal Extended Benefits. The Recovery Act also provided 7 weeks of Extended Benefits, in addition to the 13 weeks of Extended Benefits, during periods of particularly high unemployment (“High Unemployment Period”), which were prevalent in many states, including Wisconsin in 2009. The additional 7 weeks of Extended Benefits (known commonly as “High EB”) were funded entirely by the federal government and available to states on certain conditions. One condition was that states enact lower trigger levels for Extended Benefits and enact conforming laws to enable High EB. In response the Council recommended and the Legislature enacted in Wisconsin Act 11 a trigger for paying up to 13 weeks of Extended Benefits when the 3-month total unemployment rate is greater than 6.5% and an additional 7 weeks (total of 20) of extended benefits when the 3-month total unemployment rate exceeds 8%. Act 11 was written such that the new trigger would expire with the expiration of federal funding of the state’s 50% share of Extended Benefits.

2009 Wisconsin Act 287 - biennial unemployment insurance bill

On May 12, 2010, Wisconsin enacted 2009 Act 287, which contained a set of law changes developed by the Council to address a variety of policy and administrative issues in the unemployment program:

- Streamlined administration and improved fairness and customer understanding and predictability of legal requirements for unemployment by:
 - Harmonizing “regular” approved training eligibility and extended training eligibility.
 - Allocating lump sum pension distributions to a single week for benefit purposes, limiting benefit reductions for claimants taking lump sum pensions.
 - Defining bonus payments as “earned” when paid for benefit purposes, limiting benefit reductions for claimants receiving bonuses.
 - Defining “full-time” work as thirty-two hours or more per week for certain benefit purposes relating to disqualifications and quit exceptions.
 - Clarifying that the department is an “adverse party” in employers’ circuit court actions to review tax decisions, reducing confusion and injustice in employer appeals.

- Authorized the department to intercept federal tax refunds for unemployment insurance fraud.
- Strengthened protection of claimants and witnesses in unemployment insurance cases from retaliation and threats.
- Modified limits on voluntary contributions to allow reduction of tax rate for employers sustaining catastrophic physical damage to business resulting in layoffs; and established a firm due date for voluntary contributions.
- Amended the special assessment for interest on federal loans to the reserve fund to cause unused balance to revert to the reserve fund.
- Repealed statutory provisions requiring Indian tribes to provide financial assurance.
- Required professional employer organizations to register with the Wisconsin Department of Regulation and Licensing for purposes of treatment of PEO as employer under Unemployment law.
- Excluded from unemployment coverage individuals providing personal care or companionship for an ill or disabled family member when the family member directly employs the individual providing the services.
- Improved the definition of “employee” by:
 - Restoring a balance between the two basic elements of the test for “employee”: freedom from control and direction and independently established business.
 - Eliminating and modifying several factors that have diluted the test, made it less effective, encouraged manipulation and confused the public and the agencies and courts administering the law.
 - Amending six factors to improve clarity, predictability and fairness, by using simpler and clearer language.
 - Importing four factors that have been sound indicators of proper employee classification in other statutes.
 - Retaining three factors that have worked well and are well understood.
 - Maintaining the flexibility and predictability of outcomes that application of the seven-of-ten design affords.

Administrative Rules

Wis. Admin. Code Chapter DWD128 - Able to Work and Available for Work

The Council recommended and the Legislature approved amendments to the rules for interpreting and administering rules regarding the statutory requirement that the claimant, as a condition of eligibility for benefits, be able to work and available for work. The amendment made various changes, including:

- Required that in order to be determined to be able to work the claimant must be able to perform some substantial gainful employment.

- Eliminated an exception to the “able to work” requirement that permitted eligibility if “the claimant could be qualified to perform other work within the claimant’s restrictions with additional training.”
- Permitted workers with disabilities who are able to work less than full-time to establish availability for work provided “the individual is available for suitable work for the number of hours the individual is able to work.”

Wis. Admin. Code Chapter DWD129 - Benefit Claiming Procedures

The Council recommended and the Legislature approved amendments to the rules for procedures by which claimants provide notice of claim and receive payment. The amendments responded to unintended interpretations of the rule in cases of late-filed weekly certifications. The rule clarified that a claim was not timely unless filed “no later than 14 days following the end of the week for which benefits are claimed.” The amendment also added provisions permitting the department to make payment of claims by debit card.

Each of the Rule amendments took effect on October 1, 2010.