



# Wisconsin Unemployment Insurance Program

## Activities of the Unemployment Insurance Advisory Council 2011 - 2012

Report to  
Governor Scott Walker and Legislature Leaders  
By Reggie Newson, Secretary  
Department of Workforce Development

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## **Statutory Requirement**

This report is provided to the Governor and Legislative leaders by the Secretary of the Department of Workforce Development (Department), as required by Wis. Stat. §16.48, to summarize the deliberations of the Unemployment Insurance Advisory Council (Council) and the position of the Council on the proposed changes in the unemployment insurance laws during the most recent two-year period, 2011 to 2012.

### **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 Janell Knutson, Director of the Bureau of Legal Affairs, Unemployment Insurance Division. Voting Council members serve staggered six-year terms. The current voting Council members, their affiliation and the dates on which their terms expire are noted below.

#### **Employer Representatives**

James Buchen, Buchen Public Affairs LLC, Madison, WI: term expires July 1, 2015 (Representing Wisconsin Manufacturers and Commerce).

Michael Gotzler, General Counsel, QTI Group, Madison, WI: term expires July 1, 2017.

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

James LaCourt, Chief Financial Officer/Owner, Helping Hands Caregivers, Green Bay, WI: term expires July 1, 2015.

Edward Lump, President and CEO, Wisconsin Restaurant Association, Madison, WI: term expires July 1, 2017 (Small Business Representative).

#### **Employee Representatives**

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

Terrance McGowan, Business Manager, International Union of Operating Engineers Local 139, Pewaukee, WI: term expires July 1, 2017.

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

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

Mark Reihl, Executive Director, Wisconsin State Council of Carpenters, Madison, WI: term expires November 15, 2018.

### **About the Unemployment Insurance Advisory Council**

The statutory responsibility of the Unemployment Insurance Advisory Council is to: (1) advise the Department in its administration of the unemployment law (UI); (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.

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. 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.

The Council always seeks input from a wide-range of individuals. The Council provided two specific methods to obtain public input on suggested law changes and ways to improve the system last year. The first was through a public hearing held on October 30, 2012. Locations that participated through videoconferencing were Eau Claire, Green Bay, La Crosse, Madison, Milwaukee, Superior and Wausau. The Council also provided an email system to solicit feedback from individuals. Twenty-one individuals spoke at the public hearing and seventy-seven individuals representing a wide-range of viewpoints provided written comments.

The Chair shares all correspondence received with the Council, including any from lawmakers, which gives members the opportunity to discuss concerns related to unemployment and respond when appropriate. The Council also receives from Department staff detailed written proposals to change the law and improve the state's administrative code provisions. The Department's analysis of 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 ten) members is required for Council approval.

## **Council Activities in 2011 - 2012**

There have been important changes in the laws governing Wisconsin's Unemployment Insurance system since the last report to the Governor and Leaders of the Legislature. During the period of 2011 to 2012, the Legislature enacted four pieces of legislation that significantly improved Wisconsin's unemployment insurance program. These pieces of legislation were: 2011 Wisconsin Act 42; 2011 Wisconsin Act 123; 2011 Wisconsin Act 198; and 2011 Wisconsin Act 236. Each of the provisions within these pieces of legislation were first reviewed and recommended by the Council in its traditional role to develop and advise the Legislature on proposals that encapsulate sound policy and possess both management and labor support. Each of these provisions is summarized below:

- ***Extension of receipt of extended unemployment benefits***

In December 2010, the federal *Tax Relief Act of 2010* extended federal funding of Extended Benefits (EB). The same federal law created a new statutory trigger for turning on and off EB. The new trigger is called the "three-year look back." Insertion of the new trigger provisions into the Wisconsin's EB statute allowed Wisconsin to continue paying eligible Wisconsin workers EB benefits and to have EB fully funded by the federal government. The Council supported adoption of the three-year look back.

- ***Wisconsin Workers Win Program***

The Council unanimously supported the legislative enactment of the Wisconsin Workers Win (W3) program. W3 is a pilot program for special occupational training for unemployment insurance claimants. For an employer to participate in the program, the employer must affirm that it has one job opening for each training participant. Each placement is for a period not to exceed six weeks, with training provided between 20 and 24 hours per week. The employees are paid a stipend of \$75 per week for their participation in the program. By statute the program ends June 30, 2013.

- ***Forfeiture for concealment***

The law provided for penalties to unemployment insurance claimants whose acts of concealment caused them to collect unemployment insurance benefits that they otherwise were not eligible to receive. A claimant who committed concealment forfeited an amount of benefits equal to a full week of future benefits payable at the weekly benefit rate (WBR), for each act of concealment of work, wages or a material fact related to benefit eligibility. After the Department issued a first determination of concealment, the forfeiture for subsequent acts of concealment escalated to three times WBR and, following a second determination, the forfeiture was five times the WBR. The Council supported modifying the escalating scale by increasing the respective forfeiture amounts to higher ineligibility amounts of two times, four times, and eight times the WBR.

The law also provided the employer's account was charged for "forfeited" benefits, even though the benefits remained in the Unemployment Reserve Fund and were not paid to a claimant. The Council also recommended the repeal of the charging of benefits to the employer and changed the "forfeiture" concept to "ineligibility" for benefits. As a result, benefit ineligibility under these circumstances will no longer result in an employer charge. In addition, the claimant is no longer liable for taxes as this "ineligibility" is no longer considered a benefit payment.

Finally, the claimant will not receive a waiting week credit for the period of ineligibility for concealment.

- ***Assess and collect a 15% penalty on benefit overpayments resulting from fraud***

In November 2011, the federal government enacted a mandate that states impose a 15% penalty on overpayments resulting from claimant fraud (i.e. "concealment") by October 21, 2013, to be placed in states' unemployment reserve funds. The Council supported legislation to require the Department to assess the 15% penalty and authorize the issuance of determinations, appeals, warrants and levies to enforce and collect the penalties. The penalty proceeds initially will be used to fund program integrity functions for the unemployment insurance program. The law provides for a separate, nonlapsible program integrity fund, to which recovered penalties will be credited beginning October 21, 2012. The Department will use these proceeds for payment of costs associated with program integrity activities. Penalty proceeds for overpayments established after October 21, 2013 will be payable to the Unemployment Reserve Fund.

- ***Ineligibility of claimants for benefit year earnings***

The Council greatly simplified and clarified the law concerning when a claimant is ineligible for benefits due to working a certain number of hours or earning a certain amount of wages in a given week.

Previously, the law provided extremely complex rules to determine if an individual was ineligible for benefits due to partial employment during a week. The Council supported legislation to simplify the framework for determining if partial employment disqualifies an individual for benefits and to lower the number of hours that a claimant could work each week to disqualify the claimant from being eligible for benefits. The change denies benefits for a claimant who, during a particular week, for 32 hours or more:

- Performs work
- Has wages ascribed to the claimant under Wis. Stat. §. 108.04(1)(bm) (i.e., could have performed work available to him or her), and/or
- Received holiday pay, vacation pay, termination pay, or sick pay under circumstances satisfying requirements for treating such compensation as "wages" for these purposes.

In the past, a claimant might qualify for a minimal benefit amount (\$5) notwithstanding wage earnings of as much as \$565. The Council supported changing the law to provide that a claimant is ineligible to receive benefits for a week if the claimant receives more than \$500 in wage earnings during a week or receives sick pay, holiday pay, vacation pay, or termination pay which by itself or in combination with wage earnings is equivalent to more than \$500.

- ***Repeal of suspension for failure or refusal to take a test for illegal drugs***

The Council supported the repeal of the benefit suspension enacted in 2011 for a claimant's failure of a pre-employment drug test or refusal to take such test. This also eliminated requirements on employers related to record keeping and the Department retention of such reports.

- ***Amend ineligibility for failure to perform work searches***

The Council supported legislation to override the provisions of Wis. Admin. Code §DWD 127.08, which prohibits disqualification in certain kinds of cases for claim weeks already paid prior to the eligibility determination, unless the claimant made a false statement or concealed or misrepresented information pertaining to his/her work search efforts. Under the change, a claimant is ineligible to receive benefits for any week in which there is a Department determination that the claimant failed to conduct a "reasonable work search," except when the work search requirement has been waived. Moreover, if the Department pays benefits to a claimant for any week the claimant did not meet the work search requirement, the Department may recover the overpayment.

- ***Overpayments resulting from failure to report earnings***

The Department recovers a claimant's liability for benefit overpayments resulting from fraud (e.g., the claimant's concealment of work and wages) from federal income tax refunds. The Council supported legislation to extend the offset to overpayments due to misreported wages that were not intentionally concealed.

- ***Create more explicit standards for determining "employer" and limited exception***

When more than one entity affects control of an employee, the law provided no clear standard as to which is the employer for purposes of UI tax obligations. This created unnecessary confusion from some employers. The Council supported establishing general standards for determining the employer in these cases. In response to concerns expressed to the Council, the Council proposed an exception for certain employers providing home health care and personal care services funded by medical assistance allowing them to elect to be the employer of employees providing such services. To qualify for an election, the provider must meet these requirements: the provider must notify the recipient, in writing, of the services of its election for purposes

of UI law, to be the employer of any worker providing services to the recipient; and must be treated as the employer by the IRS, for purposes of federal UI taxes, on the worker's services.

- ***Create a separate nonlapsible trust fund for employers' unemployment interest payments***

Currently, when the Wisconsin Unemployment Reserve Fund lacks sufficient money needed to fully pay claims the Department is authorized to borrow from the federal government. The Department then levies an annual interest assessment to cover interest due on federal advances. Interest earned on assessments received was held in the Interest and Penalty Account (I&P).

The Council supported creation of a separate, nonlapsible trust fund called the "Unemployment Interest Payment Fund" for deposit of all unencumbered monies collected as interest assessments previously made and to be made in the future. Interest earned on the proceeds of assessments pending transfer to the federal government and any interest or penalties collected from employers who are delinquent in paying their assessments are credited to the segregated Unemployment Interest Payment Fund. The Department shall use the monies in the Fund to make interest payments due to the federal government on advances made to the Unemployment Reserve Fund. It directs the Department to use excess monies in the Fund to pay interest due in future years, or if it determines that additional interest obligations are unlikely, to transfer the excess to the balancing account.

In addition, the Council supported making delinquent assessments subject to a simplified collection procedure under Wis. Stat. §108.22 (1m) that is currently used by the Department for collection of other UI tax liabilities.

- ***Simplify rating of contributions for successor employers***

Successor employers were required to report payrolls under two different tax contribution rates within the year of business transfer, causing confusion and resulting in late and incorrectly filed contribution reports, and Federal Unemployment Tax Act (FUTA) certification problems with the Internal Revenue Service (IRS).

The Council supported amending UI law to provide that for employers already subject to the UI law who are deemed successor employers, the tax contribution rates will be redetermined effective the first day of the calendar year following the business transfer. Prior law provided the redetermination of the tax rate was effective the first day of the calendar quarter following the date of the business transfer.

- ***Tighten benefit eligibility requirement of availability for work***

The Council unanimously supported the Legislature providing that a claimant does not satisfy the requirement of availability for work in any week in which he or she is located outside of the United States or Canada for more than forty-eight hours unless the claimant has authorization to work in that country, and there is a reciprocal agreement concerning the payment of unemployment benefits between that country and the United States.

- ***Reduce restrictions on Department's hiring of temporary administrative law judges***

The Council supported amending the law to give the Department flexibility to appoint any attorney licensed to practice in this state as a temporary employee (LTE) to serve as a temporary appeal tribunal. The statute provided that the Department was required to appoint only permanent employees as UI appeal tribunals (unemployment administrative law judges). However, the statute also provided that the Department may appoint a "temporary reserve appeal tribunal" if the individual appointed "formerly served as an appeal tribunal while employed by the Department and retired from state service as a permanent employee." The change will enable the Department to have additional means to hire qualified individuals to temporarily hear unemployment insurance appeals.

- ***Modify interest rate on delinquent tax payments***

Employers were charged interest on delinquent payments of state UI taxes at the rate of 1% per month, or 12% annually. The Council approved sending recommendations to the Legislature to change the interest rate to a monthly rate that annualized is equal to the greater of 9%, or 2% more than the prime rate as published in the Wall Street Journal as of September 30 of the preceding year, for each month or fraction of a month that the employer is delinquent. This will reduce interest recoveries from employers in the current (low interest rate) economy.

- ***Require that appeal tribunal decisions be consistent with federal and state law***

Appeal tribunals hear and decide disputed unemployment benefit and tax and other matters arising under the unemployment insurance law. The Council supported the adoption of legislation that the decisions of the administrative law judges (appeal tribunals) are to be consistent with relevant state and federal law.