

STATE OF WISCONSIN



Department of Workforce Development

Wisconsin Unemployment Insurance Program

**Activities of the
Unemployment Insurance
Advisory Council
2013 – 2014**

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

Department of Workforce Development
Secretary's Office
201 E. Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
Telephone: (608) 266-3131
Fax: (608) 266-1784
Email: sec@dwd.wisconsin.gov



Scott Walker, Governor
Reginald J. Newson, Secretary

May 15, 2015

To: The Honorable Scott Walker and the Wisconsin State Legislature:

The attached Unemployment Insurance Advisory Council (Council) Activities Report includes a detailed description of the Council's activities during the 2013-2014 biennium, as required by Wis. Stat. §16.48 (1) (b).

A plain language summary of the reforms enacted since the last activities report is included. As you know, the reforms enacted in the past four years by the Legislature and Governor have greatly improved both the integrity and financial footing of Wisconsin's Unemployment Insurance (UI) program. This includes the fact that the UI Trust Fund ended 2014 with a positive balance exceeding \$215 million. In January of 2011 the fund had a negative balance of \$1.4 billion. A financially stable and growing UI Trust Fund helps to support the pro-business climate that Wisconsin's job creators need to expand and create more opportunities for working families.

The reforms also repealed several voluntary work termination provisions from UI eligibility to bring Wisconsin in line with neighboring states; established a common-sense standard for misconduct and substantial fault that would disqualify claimants from collecting UI; and, with certain exceptions, required a claimant who was last employed by a temporary help company to contact that temporary help company weekly as part of their work search.

A list of the Council's current membership is also included, along with a summary of activities of the Council's Trust Fund Solvency Subcommittee, which formed in 2013.

Sincerely,

A handwritten signature in black ink that reads "Reggie Newson".

Reggie Newson, Secretary
Department of Workforce Development

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PURPOSE OF THE UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

The Council's statutory responsibilities under Wis. Stat. § 108.14 (5) (a) are to:

- (1) Advise the Department of Workforce Development (department) in its administration of the Unemployment Insurance (UI) law;
- (2) Report its views on pending legislation affecting the UI program to legislative committees, and;
- (3) Submit its recommended changes to Wisconsin's UI law to the Wisconsin State Legislature.

Members of the Council negotiate and deliver proposed changes to Wisconsin's UI law in biennial cycles and review and approve administrative rules and UI related legislation throughout the biennium. The Council typically meets monthly and communicates with department staff and the public regarding potential law changes on a continual basis. Council meetings are open to the public and are noticed consistent with Wisconsin open meetings law, but an exception is provided for the Council which allows management and labor members to hold separate, closed caucus sessions to discuss potential law changes.

The Council 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 UI program in 2014. The first method was a statewide videoconference held in Eau Claire, Green Bay, La Crosse, Madison, Milwaukee, Superior and Wausau. In addition to the statewide videoconference, the Council also provided an email system to solicit feedback from individuals. Thirteen individuals spoke at the public hearing and 72 individuals representing a wide range of viewpoints provided written comments.

The Council Chair, a non-voting member, shares all correspondence received with the Council, including correspondence from lawmakers, providing members the opportunity to discuss concerns related to the UI program and respond when appropriate. The Council also receives from department staff detailed written proposals to change UI law and amend the state's administrative code provisions.

The department's analysis of proposals typically includes a description of the suggested law change, the rationale, the history and background of current state law, federal conformity issues relevant to the proposal, the policy and fiscal effects, and the administrative feasibility and impact of the proposal. Proposals ordinarily receive thorough discussion by Council members, department staff, and other interested parties, and where necessary, a further review and redraft is conducted prior to a vote by the Council. By statute, a vote of seven (of ten) members is required for Council approval.

MEMBERSHIP CRITERIA FOR THE UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Created under Wis. Stat. § 15.227 (3), the Council advises the department and the Wisconsin State Legislature on policy matters concerning the development and administration of the UI program and related Wisconsin laws. The Council is comprised of five management and five labor representatives appointed by the Secretary of the Department of Workforce Development as well as a permanent classified department employee who serves as a non-voting chairperson. One management representative must be an owner of a small business or a representative of an association that is primarily composed of small businesses.

Member nominations are submitted to the Secretary of the Department of Workforce Development. Nominations usually come from labor and management leaders, legislators, and the Governor. Members are appointed to serve six-year terms. A member vacates their appointment if the member loses the status upon which their appointment is based.

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL MEMBERS

Sally Feistel – United Steel Workers, District 2
Michael Gotzler – QTI Group
Shane Griesbach – International Union of Operating Engineers Local 139
Earl Gustafson, Wisconsin Paper Council
James LaCourt – Helping Hands Caregivers
Edward J. Lump – Wisconsin Restaurant Association
Scott M. Manley – Wisconsin Manufacturers and Commerce
Phillip Neuenfeldt – Wisconsin AFL-CIO
Mark Reihl – Wisconsin State Council of Carpenters
Janell Knutson – DWD, Non-voting, Bureau of Legal Affairs (Director)

TRUST FUND SOLVENCY SUBCOMMITTEE

In June of 2013 the Council formed a sub-committee dedicated to studying the current and projected future state of Wisconsin's UI Trust Fund (Trust Fund). This sub-committee was formed in response to Wisconsin's Trust Fund being forced to borrow from the federal government in order to pay benefits to eligible claimants during and after the Great Recession.

As required under federal law, the UI Trust Fund is used solely for the purposes of paying UI benefits to eligible claimants and is funded by quarterly tax payments made by covered Wisconsin employers. The intent of the Trust Fund is to achieve an adequate, positive balance during times of economic growth and low unemployment in an effort to cover benefit payments to eligible claimants during economic downturns or periods of unemployment that occur where the claimant was not at fault.

In 2009, the Trust Fund was forced to borrow money from the federal government to pay benefits to eligible claimants due to the national recession. This borrowing caused a considerable rise in the cost of operation for Wisconsin businesses in the form of higher federal UI taxes (an additional \$291 million was paid by Wisconsin employers over the period of borrowing) which are mandated by the federal government when a state must rely on federal loans to fund benefit payments. The additional federal UI taxes are used to pay down a state's balance on any federal loan. In addition to the higher federal taxes, Wisconsin employers experienced annual assessments to pay the interest on the federal loan totaling \$78 million with an additional \$25 million paid with state general purpose revenue as authorized by the Wisconsin State Legislature.

The work of the subcommittee concluded in April of 2014 with the unanimous approval and adoption of an educational power point presentation by the full Unemployment Insurance Advisory Council which is attached as an appendix to this report.

Members of the Sub-Committee on Trust Fund Solvency included:

- Janell Knutson, Department Staff
- Scott Manley, Wisconsin Manufacturers and Commerce
- Michael Gotzler, QTI Group
- Mark Reihl, Wisconsin State Council of Carpenters

SUMMARY OF AMENDMENTS TO WISCONSIN'S UNEMPLOYMENT INSURANCE LAW
(Wis. Stat. ch. 108)

There have been important changes in the laws governing Wisconsin's Unemployment Insurance system since the last report to the Governor and Legislative Leaders. During the period of 2013-2014, the Legislature passed and Governor Walker signed four pieces of legislation into law that contained substantial amendments to the UI program. 2013 Wisconsin Act 20 (the state's 2013-15 budget) contained amendments to seven aspects of the UI program. 2013 Wisconsin Act 36 contained 27 amendments to portions of the UI program.

Below is a brief summary of these Acts categorized based on the changes made to UI benefits, UI taxes, and other changes to UI law. Following those sections is a summary of the provisions of the work share law, 2013 Wisconsin Act 11, and a summary of the changes made to Wisconsin's direct seller exclusion, 2013 Wisconsin Act 104.

BENEFIT CHANGES

Quit Exceptions

2013 Wisconsin Act 20 made a number of changes with respect to a claimant's eligibility for benefits when he or she voluntarily terminates his or her work. If an employee quits a job and the employee's reason for leaving the job is covered by a statutory quit exception, he or she is still eligible for benefits if he or she otherwise qualifies for benefits. If an employee quits a job and the reason is not covered by one of the statutory quit exceptions, the employee is ineligible for benefits until he or she requalifies for benefits. Highlights include:

1. Eliminated eight of seventeen previous quit exceptions:

- a. The employee terminated his or her work to accept a recall to work for a former employer within 52 weeks after having last worked for that employer.
- b. The employee maintained a temporary residence near the terminated work; the employee maintained a permanent residence in another locality; and the employee terminated the work and returned to his or her permanent residence because the work available to the employee had been reduced to less than 20 hours per week in at least two consecutive weeks.
- c. The employee left or lost his or her work because the employee reached the employer's compulsory retirement age.
- d. The employee terminated part-time work because a loss of other, full-time employment made it economically unfeasible for the employee to continue the part-time work.
- e. The employee terminated his or her work with a labor organization if the termination caused the employee to lose seniority rights granted under a collective bargaining agreement and resulted in the loss of the employee's employment with the employer that is a party to that collective bargaining agreement.
- f. The employee terminated his or her work in a position serving as a part-time elected or appointed member of a governmental body or representative of employees; the employee was engaged in work for an employer other than the employer in which the employee served as the member or representative; and the employee was paid wages in the terminated work constituting not more than 5 percent of the employee's base period wages for purposes of eligibility for benefits.
- g. The employee terminated his or her work in one of two or more concurrently held positions, at least one of which was full-time work, and if the employee terminated his or her work before receiving notice of the termination from the full-time work position.
- h. The employee owns or controls an ownership interest in a family corporation and the employee's employment was terminated because of an involuntary business cessation of the corporation under certain specified conditions.

2. Modified the quit exception that allows benefits when an employee quits a new job within the first ten weeks.

This exception is only available if the employee could have originally refused to accept employment at the new job and still have collected UI benefits as a result of the new job not being deemed suitable work. The modification provides that the claimant will only have 30 calendar days after starting the new job to quit and still be eligible for benefits rather than ten weeks. Wis. Stat. §108.04 (7) (e).

3. Modified the quit to follow spouse exception.

Prior to this change, an employee could quit a job and still be eligible for benefits if the reason for quitting was to accompany a spouse who relocated for employment. The bill narrowed the exception so that it only applies if the employee's spouse is an active duty member of the U.S. Armed Forces who is required to relocate by the Armed Forces to a location that it is impracticable for the employee to commute to work. Wis. Stat. §108.04 (7) (t).

4. Consolidated two quit exceptions into one.

The first exception consolidated is commonly referred to as the quit-to-take exception. It provides that an employee is eligible for benefits if he or she quits one job to accept a new job under certain circumstances:

- (a) The new job must be employment covered by the UI program;
- (b) The employee needs to have been offered the new job before quitting the old job;
- (c) The new job must have certain, more favorable conditions, and;
- (d) The employee must have earned wages of four times his or her weekly benefit rate with the new employer before four weeks have elapsed after the week of the quit.

The second exception consolidated is commonly referred to as the "quit part-time." It provides that an employee who quits a part-time job is eligible for benefits if the reason for quitting the part-time job is the loss of full-time employment and it is economically unfeasible for the employee to continue the part-time work. Two other conditions must be satisfied with respect to this quit exception. First, the employee must work less than 32 hours at the part-time job. Second, the employee must be otherwise eligible for benefits as a result of the loss of full-time employment.

2013 Wisconsin Act 20 combined these two exceptions into one. If an employee terminates work to accept covered employment and the new employment satisfies any one of the following four conditions when comparing the new employment to the employment that the employee quit:

- (a) The weekly wages were at least equal;
- (b) The number of hours of work were equal or greater;
- (c) There was an opportunity for significantly longer term work, or;
- (d) The employment is closer to the employee's home.

It will also apply regardless of whether or not the employee is working at a part-time job or whether the claimant earns a certain amount of wages in the subsequent work. Wis. Stat. §108.04 (7) (L).

5. Amended the requalification requirements.

If a claimant quits a job and the reason for quitting is not covered by one of the statutory quit exceptions, the law provides certain criteria a claimant must satisfy to again be eligible for UI benefits. Prior to the law change, a claimant must have earned four times his or her weekly benefit rate (WBR) and four weeks from the week of the quit must elapsed in order to requalify for UI benefits. The new law provides that a claimant must earn six times his or her WBR from the week of the quit. Wis. Stat. §108.04 (7) (a).

Primary Statute Amended: Wis. Stat. §108.04 (7).

- ✓ **The changes associated with quit exceptions had a positive operational impact by clarifying the law and helping to concentrate and refocus adjudication activities on a narrower set of variables, resulting in improved efficiency and accountability.**

Misconduct and Substantial Fault

2013 Wisconsin Act 20 creates a two-tier standard for disqualifying claimants from receiving UI benefits. The new law first provides a definition for misconduct and then enumerates that misconduct specifically includes, but is not limited to, seven general actions by an employee. The seven examples provide that a claimant will be ineligible for benefits if the claimant's discharge resulted from:

1. A violation of an employer's reasonable written drug and alcohol policy, if the claimant had knowledge of the policy and either admitted to the use of alcohol or drug or refused to take a test or tested positive in a test administered by the employer in accordance with a testing methodology approved by the department;
2. Theft of an employer's property or services, theft of currency of any value, felonious conduct connected with the claimant's employment, or intentional or negligent conduct by a claimant that causes substantial damage to his or her employer's property;
3. A conviction of a crime or other offense subject to civil forfeiture, while on or off duty, if the conviction makes it impossible for the claimant to perform the duties that the claimant performs for the employer;
4. One or more threats or acts of harassment, assault, or other physical violence instigated by a claimant at the employer's workplace;
5. Under certain circumstances, absenteeism or excessive tardiness;
6. Unless directed by a claimant's employer, falsifying the employer's business records, and;
7. Unless directed by the employer, a willful and deliberate violation of a written and uniformly applied standard by a claimant for an employer that is licensed or certified by a governmental agency, which standard has been communicated by the employer to the claimant and which violation would cause the employer to be sanctioned or to have its license or certification suspended by the agency.

In addition, the new law provides that if the claimant's discharge is due to substantial fault a claimant may be disqualified from receiving benefits. "Substantial fault" includes those acts or omissions of an employee over which the employee exercised reasonable control and which violate reasonable requirements of the employee's employer.

Substantial fault essentially means that if an employer establishes a reasonable job policy to which an employee can conform, failure to conform is grounds for dismissal and no UI benefits are payable. Substantial fault does not include:

1. Minor violations of the employer's rules unless the employee repeats the violation after receiving a warning;
2. Unintentional mistakes made by the employee, and;
3. Not performing work because the employee lacks skill, ability, or was not supplied equipment.

The new law also:

1. Removes the statutory language regarding disqualification for absenteeism or tardiness, and;
2. Provides that both the discharge for misconduct and discharge for substantial fault provisions have the same seven by fourteen frame work for requalification for benefits. However, if the claimant is disqualified from benefits under the substantial fault criteria, the wages earned at the job may be used in determining the claimant's eligibility for and amount of benefits should the claimant requalify for benefits. If the claimant requalifies the employer is not charged for any benefit payments, but instead these benefits will be charged to the UI balancing account.

Primary Statute Amended: Wis. Stat. §§108.04 (5) and (5g).

- ✓ **Application of new "substantial fault" criteria resulted in 4,654 denied cases in 2014, reflecting improved accountability, enhanced UI program integrity and hundreds of thousands of dollars saved for the UI Trust Fund.**

Work Search -- Temporary Help Companies

2013 Wisconsin Act 20 provides if a claimant's last employer was a "temporary help company," the claimant must contact that employer weekly for an assignment or the claimant is considered to not have conducted a reasonable search for suitable work.

The temporary help company must provide written notice of the fact that the claimant did not contact the temporary help company to the department within 10 business days after the end of that week. There are three exceptions to this requirement:

1. The claimant has been waived from work search actions by the department;
2. The temporary help company did not require the claimant to contact it or failed to give the claimant written notice of the requirement that the claimant must conduct weekly contacts with the temporary help company seeking assignments, or;
3. There is good cause for the failure of the claimant to contact the temporary help company.

If the claimant does contact the temporary help company, the claimant will have satisfied one of the required weekly work search actions.

Primary Statute Created: Wis. Stat. §108.04 (2) (i).

- ✓ **The new work search requirement for temporary help companies resulted in 138 disqualifications due to failure to contact the company, protecting UI program integrity and saving thousands of dollars for the UI Trust Fund.**

Increasing Claimants' Weekly Work Search Actions

2013 Wisconsin Act 20 increases the required number of weekly work search actions from two to at least four. The department promulgated rules for the circumstances when a claimant may be required to perform more than four job search actions in a given week.

Primary Statute Amended: Wis. Stat. §108.04 (2) (a) 3.

SSDI and UI Payments

2013 Wisconsin Act 36 provides a claimant cannot simultaneously collect both Social Security Disability Insurance (SSDI) benefits and UI benefits.

Primary Statute Created: Wis. Stat. §§108.04 (2) (h) and 108.04 (12) (f).

- ✓ **The ban on simultaneously collecting both Social Security Disability Insurance (SSDI) benefits and UI benefits saved hundreds of thousands of dollars for the UI Trust Fund as close to 3,500 UI claims have been denied through early May 2015.**

Requiring Claimant to Create and Protect Security Credentials

2013 Wisconsin Act 36 explicitly provides that a claimant must create security credentials to file a claim and ensures that a claimant is held responsible for giving out UI security credentials that enable another person to improperly file for benefits on the claimant's behalf.

Primary Statute Created: Wis. Stat. §108.04 (2) (g).

- ✓ **Requiring a claimant to create and protect security credentials helped in the adjudication of cases involving potential identity theft, resulting in operational efficiencies.**

Claimant Fails to Provide Information to the Department

2013 Wisconsin Act 36 enables a claimant to receive benefits back to the date the department suspended benefits without a need to show good cause for failing to provide the information. There are two limitations on the claimant receiving benefits back to the date the department originally suspended the benefits as a result of not providing requested information:

- (1) The claimant needs to be otherwise eligible for benefits, and;
- (2) A claimant only has two years from the time the department requests the information for the claimant to provide it in order to still be eligible to receive the suspended benefits.

The change does not apply to a claimant if he or she fails to provide social security numbers or provides a false social security number to the department in filing a claim. If a claimant fails to provide his or her social security number he or she will receive benefits back to the date that the department suspended benefits, if the claimant has good cause for failing to provide his or her social security number.

Primary Statute Amended: Wis. Stat. §108.04 (1) (hm).

Increase Weekly Benefit Amount

2013 Wisconsin Act 36 increased the maximum amount of weekly benefits a UI claimant may receive from \$363 to \$370.

Primary Statutes Amended and Created: Wis. Stat. §§108.05 (1) (q), 108.05 (1) (r), and 108.05 (2) (c).

Amending the Suitable Work Requirement Re-eligibility

In order to be eligible for benefits a claimant must:

- (1) Accept suitable work when it is offered, and;
- (2) Return to work if a former employer recalls the employee within 52 weeks after the employee last worked for that employer, unless there is good cause for not accepting the work.

Prior law provided that if a claimant fails to accept suitable work or the recalled position, he or she is ineligible for benefits unless he or she qualifies again for benefits. If a claimant was disqualified for failure to accept suitable work or the recalled position, the claimant must have satisfied two requirements before being eligible again for benefits. The claimant must have earned wages that are equal to at least four times the employee's weekly benefit rate (WBR) and four weeks needed to elapse from when the claimant did not accept the suitable work.

2013 Wisconsin Act 36 changed the requalification requirements to increase the weekly benefit rate (WBR) the claimant must earn to six times the claimant's WBR, but removes the requirement that four weeks need to elapse from when the claimant did not accept the suitable work.

Primary Statute Amended: Wis. Stat. §108.04 (8) (a) and (c).

Cafeteria Benefit Plans

Under prior law, the value of a cafeteria plan was included in the employee's wage base but it was not taxed as wages. 2013 Wisconsin Act 36 provides consistency to the treatment of cafeteria benefit plan payments by not calculating benefit payment amounts using untaxed wages.

Primary Statute Amended: Wis. Stat. §108.02 (4m).

Prisoners Collecting UI as a Result of Work Release

Some private employers hire prison inmates on work release for work performed outside of the prison. 2013 Wisconsin Act 36 classifies prisoners' work release employment as non-covered employment for purposes of the UI program. As a result, these private employers will not pay unemployment taxes on the wages paid to the inmates and the inmates will be unable to use these wages to collect UI benefits if they are later released from prison and unemployed. This amendment does not impact inmates with Huber privileges being held in county jails.

Primary Statute Created: Wis. Stat. §108.02 (15) (kt).

Random UI Work Search Audits

2013 Wisconsin Act 36 requires the department to conduct random audits of claimants' weekly work search efforts.

Primary Statute Created: Wis. Stat. §108.14 (20)

- ✓ **Random UI work search audits resulted in 2,417 denied weeks in 2014 increasing UI program integrity and saving the UI Trust Fund hundreds of thousands of dollars.**

Extended Training Benefits

Prior to the law change, a claimant may have qualified to receive benefits while participating in an extended training program under certain conditions including, but not limited to, when he or she has exhausted all other UI benefits. 2013 Wisconsin Act 36 repeals the payment of extended training benefits.

Primary Statute Repealed: Wis. Stat. §108.06 (7).

Facilitate Claimant's Reemployment

2013 Wisconsin Act 36 requires UI claimants to provide additional information to the department in order to enhance the department's ability to assist claimants quickly re-enter the workforce.

Primary Statute Created: Wis. Stat. §§108.04 (2) (a) 4. and 108.04 (15).

TAX CHANGES

Payment of Interest to the Federal Government

The Federal Unemployment Account loans money for state unemployment programs to ensure a continued flow of benefits during economic downturns. State law provides that businesses pay the interest on federal loans through a Special Assessment for Interest (SAFI). 2013 Wisconsin Act 20 provides up to \$30 million of general purpose revenue (GPR) to pay the interest owed by Wisconsin employers on the federal loan relieving businesses from the SAFI assessment.

Primary Statute Created: Wis. Stat. §20.445 (1) (fx).

Interfund Borrowing

Wisconsin employers were not eligible to claim the maximum amount of unemployment tax credits on their federal unemployment (FUTA) tax return because Wisconsin had an outstanding federal UI loan for at least two years. 2013 Wisconsin Act 20 authorized the Department of Administration to loan general purpose revenue in an amount up to \$50 million to the UI Trust Fund. The interest-free loan was not needed due to Wisconsin's positive and improving UI Trust Fund balance.

Primary Statute Created: Wis. Stat. §§20.002 (11)(b)3m. and 108.16 (13)

Contribution Financing Tax Rates

2013 Wisconsin Act 20 amends each of the four tax schedules contained in Wis. Stats. § 108.18 (4), so that overdrawn employers with reserve percentages lower than negative 7.0 percent have higher

contribution rates. The highest contribution rate would increase from 8.5 to 10.7 percent of taxable payroll. 2013 Wisconsin Act 20 also amends each of the four schedules of solvency so that in each of the added contribution rates in each of the four schedules the solvency rate is 1.30 percent of taxable payroll.

Primary Statute Amended: Wis. Stat. §108.18 (4).

Online Employer Complaint System

2013 Wisconsin Act 36 requires the department to request funding from the federal government for the department to develop and maintain an online portal for employers to log in and file complaints about the UI program.

Primary Statute Created: Wis. Stat. §108.14 (21).

Reporting of Individual Business Reserve Fund Balance

2013 Wisconsin Act 36 requires the department to clarify and provide definitions to explain the financing of the UI system and the operation of an employer's reserve fund balance. The department shall provide this information to subject employers, post it on the Internet, and provide this same information to any employer who becomes subject to UI law.

Primary Statute Created: Wis. Stat. §108.14 (24).

Lost Licenses

Typically, if a claimant's employment is suspended or terminated due to losing a license required to perform the job, the claimant is ineligible for benefits. If the claimant's license is reinstated and the employer does not rehire the claimant, the claimant becomes eligible for benefits and any benefits paid are charged to the employer's UI account. 2013 Wisconsin Act 36 provides that any resulting benefits will instead be charged to the UI balancing account.

Primary Statute Amended: Wis. Stat. §108.04 (1) (f)

OTHER CHANGES

Standardized Handbook for Employers

2013 Wisconsin Act 36 provides the department shall create and periodically update a handbook for employers. The purpose of the handbook is to inform employers who are or may be subject to UI law about the provisions and requirements of the law. The department updated and enhanced its existing employer handbook to ensure it adequately addresses the topics required by the new law.

Primary Statute Created: Wis. Stat. §108.14 (23)

Department Overpayments

2013 Wisconsin Act 36 clarifies and narrows the situations where the law would classify actions as department error, thereby limiting circumstances when claimants can retain erroneous overpayments. It also authorizes the department to initiate a legal action to recover erroneous overpayments from any person if the overpayment to that person did not result from department error. Prior to the department

initiating a legal action for recovery of erroneous overpayments the claimant must have exhausted all administrative appeal rights.

Primary Statute Amended and Created: Wis. Stat. §§108.02 (10e) and 108.04 (2) (g)

Financial Record Matching

2013 Wisconsin Act 36 enables the department to enter into agreements with financial institutions to match UI delinquent debtor files against accounts held at Wisconsin financial institutions. The law provides a more efficient method for the department to determine if someone delinquent in making payments has a bank account that has sufficient assets to pay the debt. 2013 Wisconsin Act 36 provides two protections for UI debtors. The department may only:

- (1) Use the collection tool when the employer or claimant has exhausted all appeal rights to contest the debt.
- (2) Release the information to financial institutions if a warrant has been issued, and the debt is public information.

Primary Statute Created: Wis. Stat. §108.223

Data Sharing with DOT/DMV

2013 Wisconsin Act 36 provides the department collection tools that are used by other state agencies. The department may enter into a data sharing agreement with the Department of Transportation – Division of Motor Vehicles, to facilitate the sharing of information in order to enhance collection of unpaid debts.

Primary Statute Amended: Wis. Stat §218.31 (1m)

License Suspension for Failure to Pay Taxes

2013 Wisconsin Act 36 provides the authority to suspend licenses of employers who have failed to pay their UI taxes.

Primary Statute Amended: Wis. Stat §108.227 and various sections of laws that grant individual's licenses.

Department Acceptance of the Filing of a Late Successorship Application

2013 Wisconsin Act 36 allows the department to accept a late optional successorship application, if the business application being late resulted from excusable neglect. Successorship occurs when all or a portion of the former owner's UI account is transferred to the new owner due to a transfer of all or a portion of the business. If a former business has a positive unemployment insurance account, a new owner of the business may elect to file an optional successorship application with the department. The change permits the department to accept a late optional successorship application no more than 90 days after its due date for reasons of excusable neglect.

Primary Statute Amended: Wis. Stat §108.16 (8) (b) 4.

Interest Owed by Employers

2013 Wisconsin Act 36 grants the department some flexibility to waive or decrease interest owed by employers in limited circumstances.

Primary Statute Created: Wis. Stat §108.22 (1) (cm).

Fees Imposed for Employers that are Tardy Filing Quarterly Wage Reports

2013 Wisconsin Act 36 amended the amount of tardy filing fees imposed on employers that are delinquent in filing their quarterly wage reports.

Primary Statute Created: Wis. Stat §108.22 (1) (a).

Limited Liability Companies

2013 Wisconsin Act 36 discontinues the treatment of limited liability companies with the same members as a single employer. This change in law is a federal conformity issue.

Primary Statute Created: Wis. Stat §§108.02 (13) (a) and 108.16 (2).

Technical Corrections to Law Changes from the Previous Legislative Session

2013 Wisconsin Act 36 made technical corrections to provisions contained in previous UI Acts, 2011 Wisconsin Act 198 and 2011 Wisconsin Act 236. These corrections included:

- (1) The legislature clarified the language with respect to concealment of wages. The amendment to Wis. Stat. §§108.04 (11) (b) and 108.05 (3) (d) provides that claimants who conceal hours worked when filing a claim would be treated similarly to those who conceal wages and first applies with respect to weeks of unemployment beginning on July 7, 2013.
- (2) The amendment corrects terminology (i.e. ineligibility versus penalty) within Wis. Stat. §108.04 (11) (bh) and first applies with respect to weeks of unemployment beginning on July 7, 2013.
- (3) The legislature provided that a claimant who earns \$500 or more in a particular week is ineligible for benefits. The list of items enumerated within the statute determined if a claimant exceeded the \$500 threshold failed to include a number of items that the law typically uses in making monetary determinations with respect to a claimant's eligibility for benefits. The amendment corrects this error by amending Wis. Stat. §108.05 (3) (dm) and first applies with respect to weeks of unemployment beginning on January 5, 2014.
- (4) The legislature created the penalty and interest fund for the Department to deposit penalties collected from claimants, but the fund was scheduled to lapse before the Department would be able to collect and use the money. The amendment provides that the repeal of the penalty and interest fund created by Wis. Stat. §§ 20.445 (1)(v), 25.17 (1) (xf), and 108.19 (1s) will not lapse until 2034.

Administrative Law Judge (ALJ) Training

2013 Wisconsin Act 36 requires the Labor and Industry Review Commission (LIRC) to maintain and enhance its searchable database of UI cases. It also requires the department to provide training and continuing education for all ALJs.

Primary Statute Created: Wis. Stat §108.14 (22) and (25).

Timing of Required Department Reports

2013 Wisconsin Act 36 alters the dates to submit three reports to the Legislature and the Unemployment Insurance Advisory Council.

The reports are:

- (1) Summary of the department's activities related to detection and prosecution of UI fraud in the preceding year and is due annually by March 15;
- (2) Provide a statement of the UI financial outlook and is due by April 15 of each odd numbered year, and;
- (3) Summary of the deliberations of the Council and is next due by May 15 of each odd numbered year.

Primary Statute Amended: Wis. Stat §§16.48 (1) (a) and (b); 108.14 (19).

Standardized Witness Forms

2013 Wisconsin Act 36 requires the department to create a standardized sworn affidavit witness form for employers and claimants.

Primary Statute Created: Wis. Stat §108.14 (26).

Increase Number of Fraud Workers

2013 Wisconsin Act 36 requires the department to request funding from the federal government to hire additional workers to conduct fraud investigations.

Primary Statute Created: Non-statutory Provision

Work Share

2013 Wisconsin Act 11 authorizes a work share program in Wisconsin. Work share, also called short-time compensation, is a special UI program that reduces the impact of a business downturn on workers, employers and the government. An employer reduces the hours of work for all workers in an affected unit instead of laying-off a portion of the workforce. Workers then receive partial UI benefits to help compensate for the lost hours of work. Currently, at least twenty-six states are operating a work share program.

Primary Statute Created: Wis. Stat §108.062.

Direct Sellers

Wisconsin's UI law presumes any individual who performs services for pay is an employee. As a result, the employer must pay taxes for that work and the individual is covered by the unemployment insurance program. Nonetheless, the law grants exclusions when an individual performs certain types of services. Wisconsin law has provided an exclusion for individuals who work in the direct selling industry. 2013 Wisconsin Act 104 (Act 104) amends the direct seller exclusion to expand when sales are covered by this

exclusion. Act 104 accomplishes this by increasing when the following items are covered by the exclusion:

- (1) Direct Sale Locations -- Previously to be covered by Wisconsin's direct seller exclusion the sale must have occurred primarily in a home. Act 104 enlarges the exclusion to also cover sales made in a location other than a permanent retail establishment.
- (2) Who Is Ultimate Consumer of the Sales -- Previously the sales to be covered by Wisconsin's exclusion must have been made to the ultimate consumer. Act 104 provides that to be covered by the exclusion the sales may be made "for use, sale, or resale by the buyer."
- (3) Forms of Pay Received by Seller -- Previously the salary earned by the seller to be covered by the exclusion must have consisted solely of four items. The pay to the seller could consist of commissions, overrides, bonuses or differentials. Act 104 provides the salary earned by the seller to be covered by the exclusion only needs to be substantially derived from the sales or other output rather than to hours worked.
- (4) How Sales May Be Made -- Previously sales needed to be done in-person. Act 104 does not contain a similar restriction to be covered by the exclusion. Thus, sales could be conducted over the Internet or phone.

These amendments now more closely align Wisconsin's direct seller exclusion with a similar exclusion contained in the federal unemployment tax.

Primary Statute Amended: Wis. Stat §108.02 (15) (k) 16.

Appendix

UIAC FINANCE REPORT

Outlook on the Wisconsin Unemployment
Insurance Financing System

April 30, 2014

Outline

1. Basic Mechanics of the Wisconsin UI System
2. UI Trust Fund: Present and Future

BASIC MECHANICS OF THE WISCONSIN UI SYSTEM

UI Benefits

- ▶ UI benefits are paid to employees who lose employment through no fault of their own and are otherwise eligible
 - To receive benefits, claimants must have a proven work history with an UI employer
- ▶ Under the WI UI program, workers can receive up to 26 weeks of unemployment payments at their maximum benefit rate
 - 26 weeks is the maximum in the vast majority of states (44 out of the 53 UI programs)

UI Taxes and Financing the Wisconsin UI System

- ▶ UI taxes are levied on employers by both the state (SUTA) and federal government (FUTA)
- ▶ Taxes are assessed on employers for each employee's wage up to the wage base
 - For 2014 the wage base is \$14,000, approximately 35% of the average annual wage
- ▶ State UI tax revenues are paid to the Wisconsin UI Trust Fund and are only used to pay Wisconsin UI benefits
- ▶ The UI Trust Fund is designed to build up over periods of economic growth in order to be able to pay benefits during economic downturns

UI Taxes and Financing the Wisconsin UI System

- ▶ The Wisconsin employer State UI tax rate is based on two things:
 1. The employer's experience with UI as measured by the employer's reserve percentage
 - The system records UI taxes an employer pays and benefit payments charged against the employer's UI account. The employer's account exists only for the purposes of calculating the tax rate.
 2. The balance of the UI Trust Fund
 - When the UI Trust Fund balance is large, the tax schedule in effect has lower rates than when the UI Trust Fund balance is small. Currently Wisconsin is in the highest of the four tax schedules, Schedule A.

UI Taxes and Financing the Wisconsin UI System

Two parts of the Wisconsin State UI Tax:

- Basic Tax
 - This is the proportion of an employer's tax used in determining an employer's experience with UI for the purposes of determining an employer's future tax rate
- Solvency Tax
 - Tax used to pay benefits not charged to a specific employer
 - Represents risk sharing among UI employers

UI Taxes and Financing the Wisconsin UI System

Federal UI Taxes (FUTA):

- ▶ A payroll tax on the federal wage base of \$7,000
- ▶ Collected by the U.S. government and separate from state UI taxes
- ▶ Revenue collected through FUTA taxes are used for three purposes
 1. UI Administration
 2. Special Programs
 3. Providing loans to state UI agencies

UI Taxes and Financing the Wisconsin UI System

▶ FUTA Tax Credit to Employers

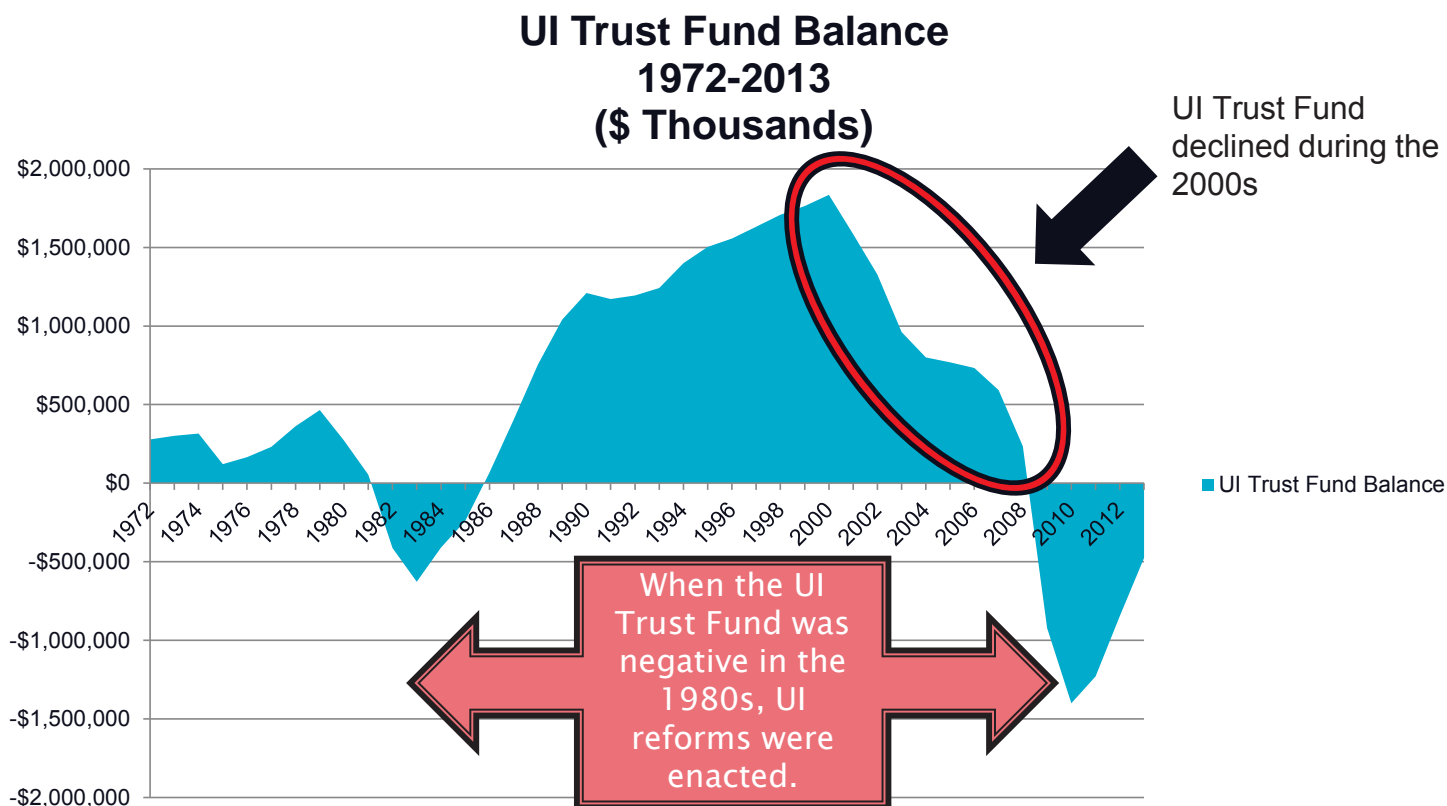
- The FUTA rate is 6.0% for the first \$7,000 of wages
 - Normally 5.4% is credited back to employers who pay state UI taxes for an effective rate of 0.6%
- If a state is forced to borrow from the federal government, this credit can be reduced by 0.3% each year that a state's Trust Fund is negative (increasing the tax rate)
- Wisconsin employers are expected to have FUTA credit reductions through tax year 2013 (which is paid in 2014 for a total tax rate of 1.5%)
- Taxes collected due to the FUTA credit reduction are used to pay down Trust Fund loan balances

UI Taxes and Financing the Wisconsin UI System

- ▶ Special Assessment for Interest (SAFI)
 - If the UI Trust Fund is negative and the state is forced to borrow from the federal government, interest must be paid on the loan
 - Federal law forbids using regular state UI taxes to pay this interest
 - Under Wisconsin law, employers are assessed for the interest owed on loans
 - For 2013 and 2014, state general purpose revenue (GPR) in an amount up to \$26m has been authorized to pay the interest from the loan

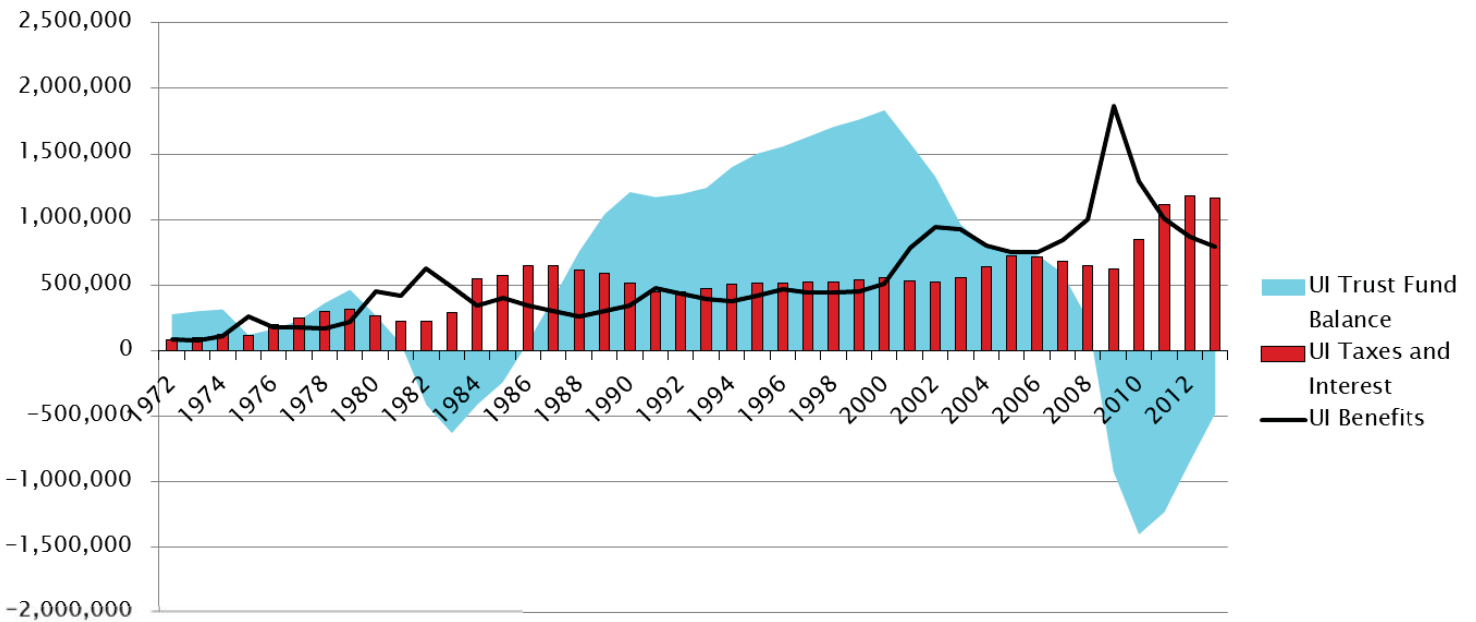
UI TRUST FUND: PRESENT AND FUTURE

The UI Trust Fund is Currently Negative



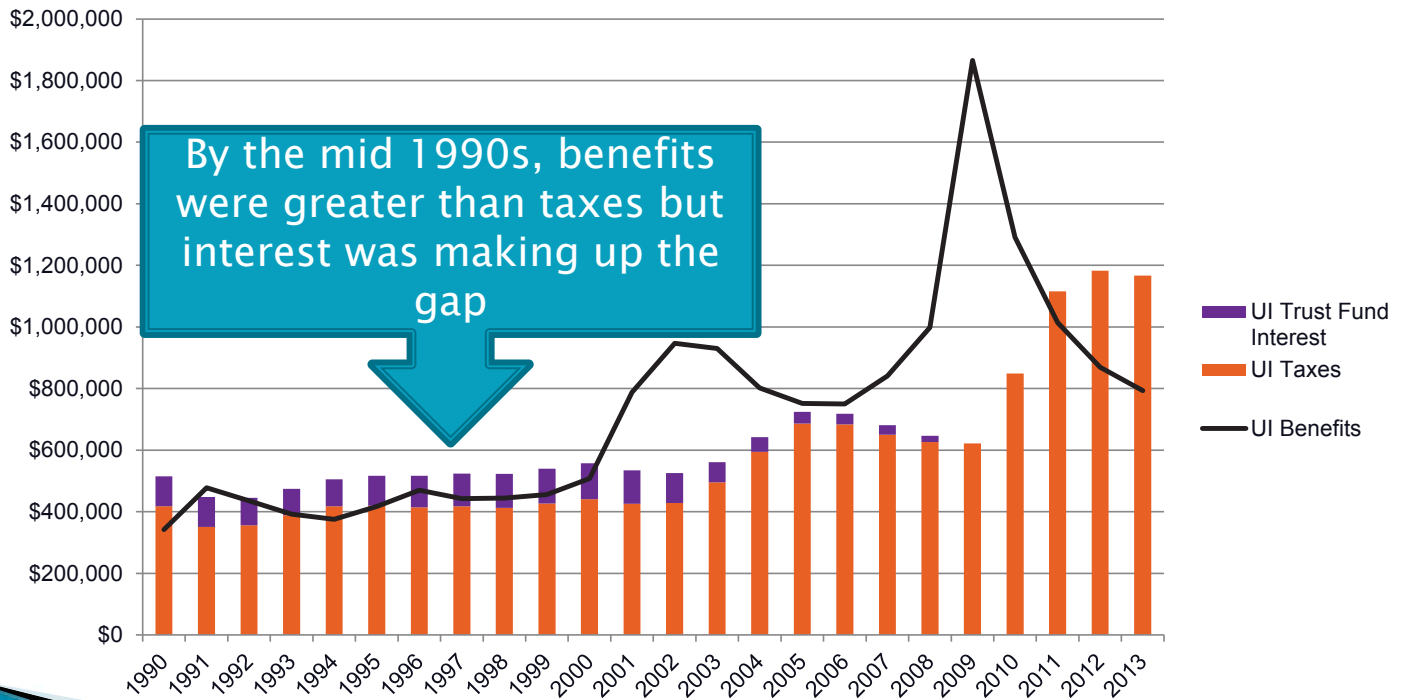
The UI Trust Fund Balance Increased Because of 1980s Reforms

UI Taxes, UI Trust Fund Interest and UI Benefits
1972-2013
(\$ Thousands)



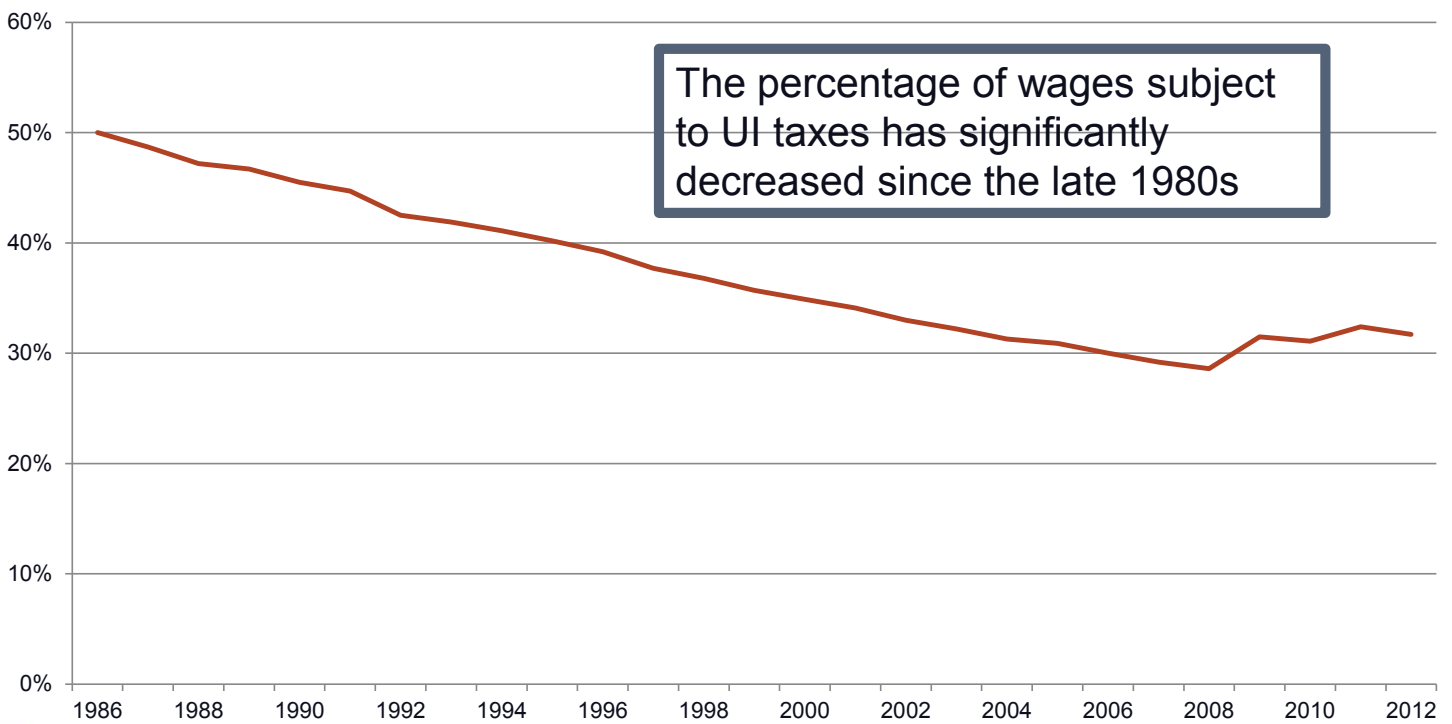
UI Revenues Not Keeping Pace With Economy Tax Structure Based On 1980s Economy

**UI Taxes, UI Trust Fund Interest and UI Benefits
1990-2013
(\$ Thousands)**



UI Revenues Not Keeping Pace With Economy Tax Structure Based On 1980s Economy

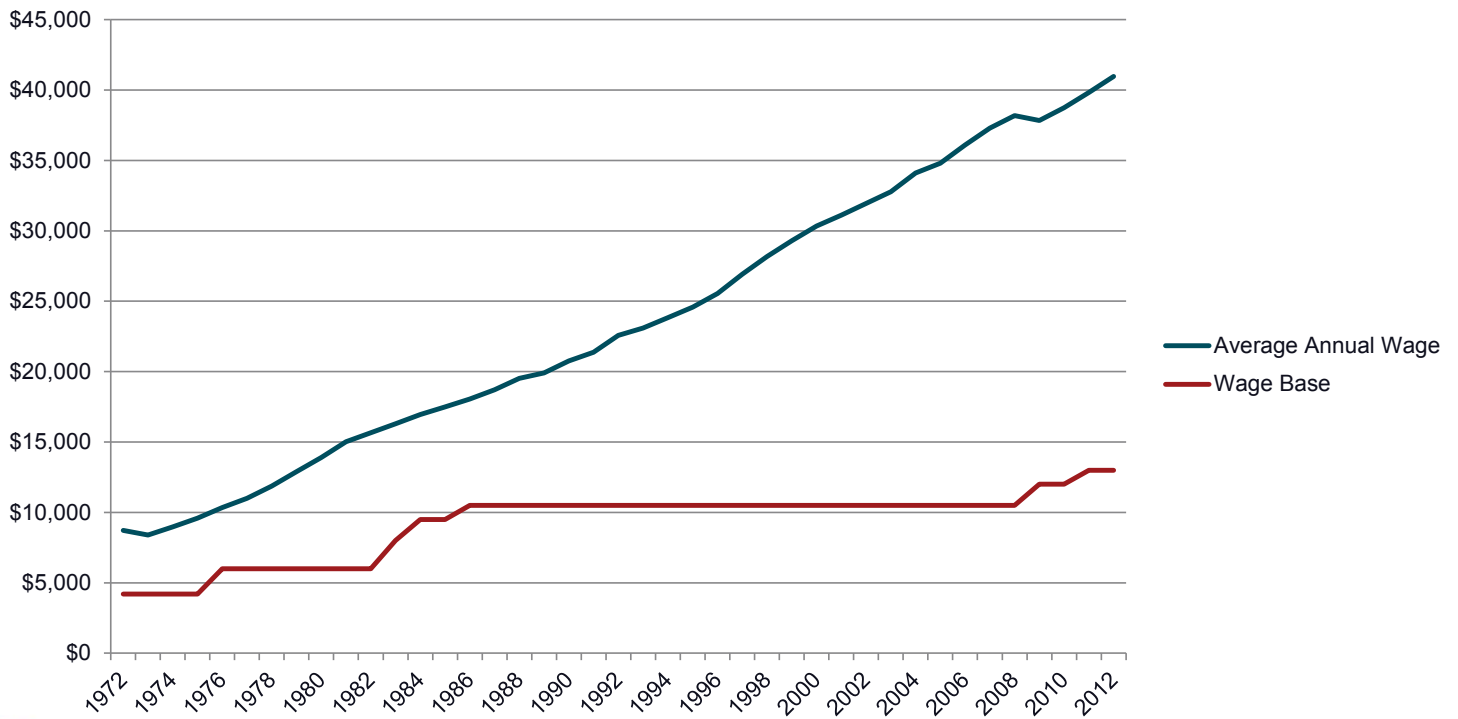
Taxable Wages as a Percent of Total Covered Wages



UI Revenues Not Keeping Pace With Economy

Tax Structure based on 1980s Economy

Growth in Annual Wage and Taxable Wage Base



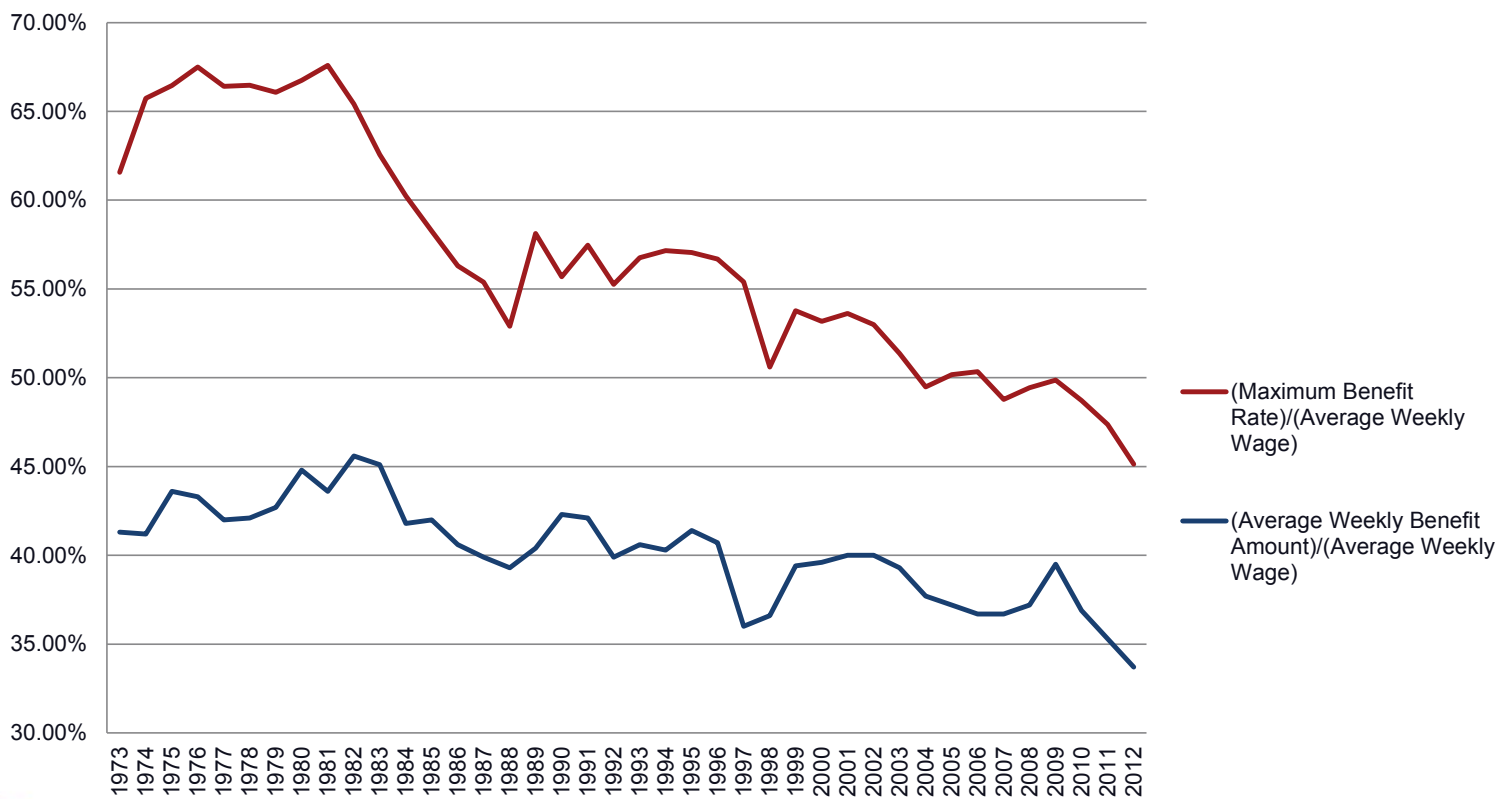
UI Revenues Not Keeping Pace With Economy Tax Structure based on 1980s Economy

The balance of the UI Trust Fund (trigger) determines which tax schedule is in effect. The triggers were set to reflect the economy of the late 1980s and are not reflective of current economic activity

		Trigger A to B	Trigger B to C	Trigger C to D (Schedule D went into effect in 1998)
Trigger Dollar Amount		\$300 M	\$900 M	\$1.2 B
% of 1986 Covered Wages		1.06%	3.19%	4.26%
% of 2012 Covered Wages		0.35%	1.05%	1.4%
Ratio of 2012 to 1986		33%	33%	33%

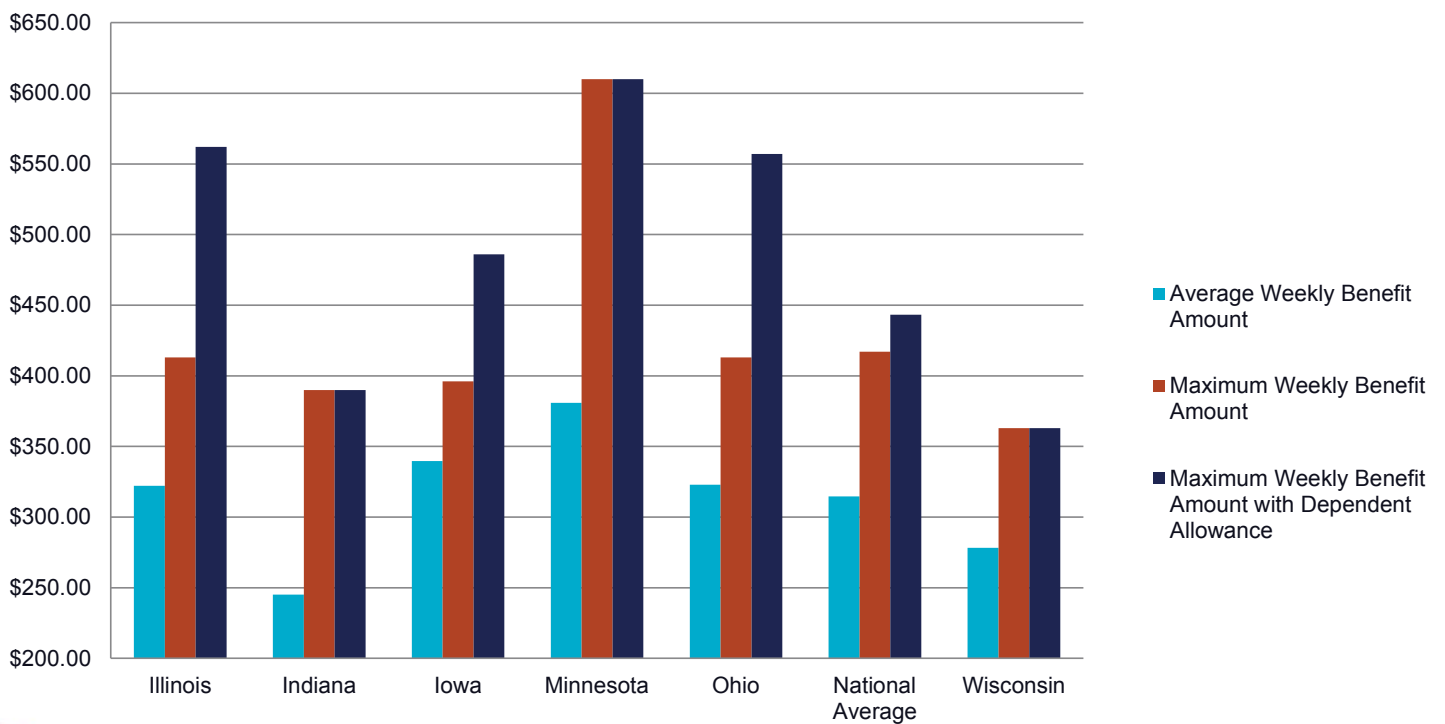
What About UI Benefits?

Benefits have Fallen Relative to Wages



Wisconsin Weekly Benefit Compared to Neighboring States

Weekly Benefit Amounts for 2013



Recent Improvement in UI Trust Fund Balance Due to Various Factors

The balance in the UI Trust Fund has improved fairly rapidly from -\$1.4 billion at the end of 2010 to a slightly positive balance (projected) at the end of 2014 due to:

- ❑ Increased FUTA taxes that were applied to the outstanding loan balance
- ❑ Legislative changes to increase the taxable wage base
 - Wage base changes tend to have an immediate jump in UI revenue, which then declines as employer reserve balances increase thereby reducing UI tax rates
- ❑ Increased WI UI taxes due to:
 - A low UI Trust Fund balance (Schedule A)
 - The amount of benefits paid during the recent recession causing employers' reserve percentages to fall and tax rates to rise
- ❑ Reduction in paid UI benefits with the adoption of the one week waiting period

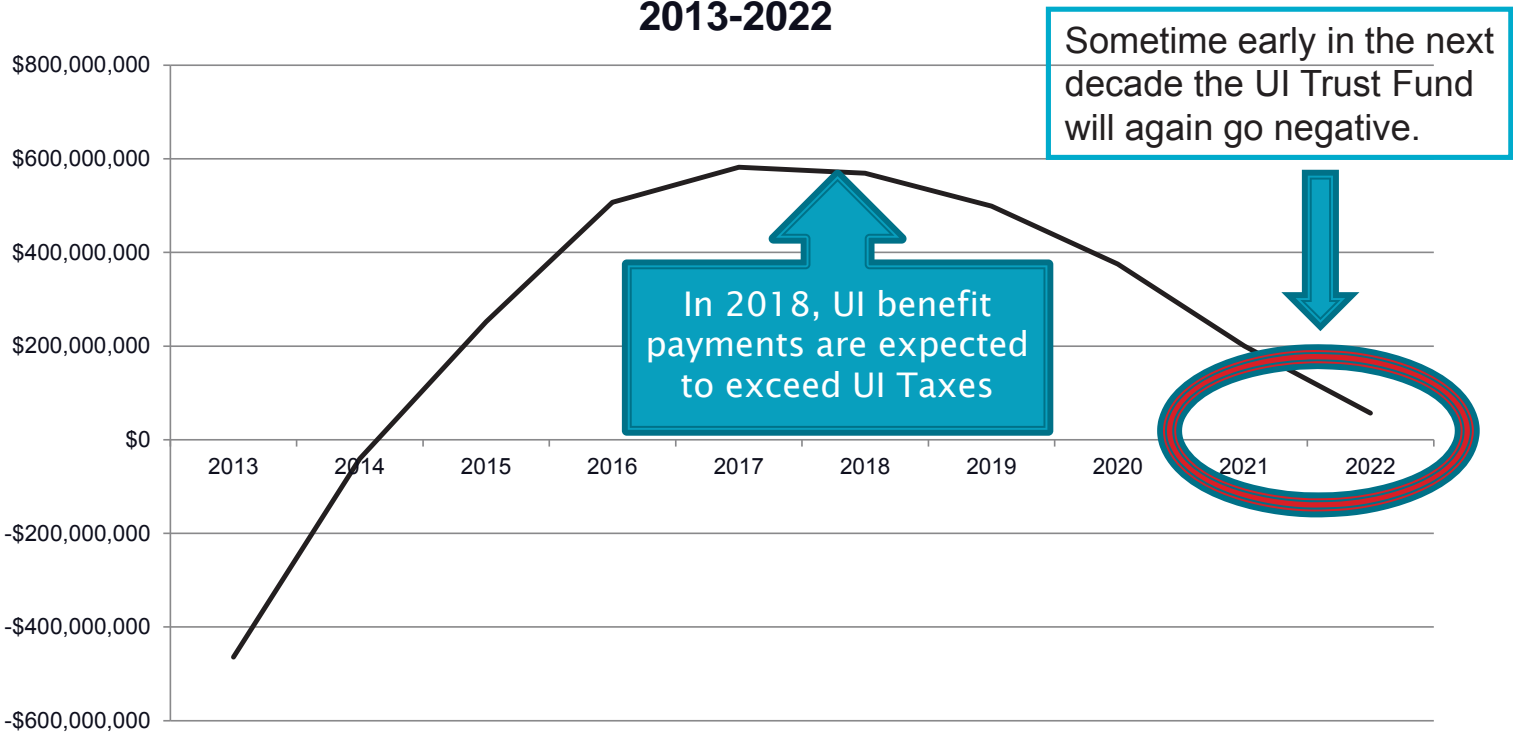
The UI Trust Fund will not continue to grow at the same rate it has over the past few years

Some of the factors accelerating the reduction in the UI Trust Fund loan are short-term and will not continue:

- There are no future scheduled increases in the wage base
- The highest tax schedule may trigger to a lower schedule in 2 to 3 tax years
- UI benefit payments have been declining, resulting in lower UI tax receipts
- Federal UI taxes are expected to return to normal this year

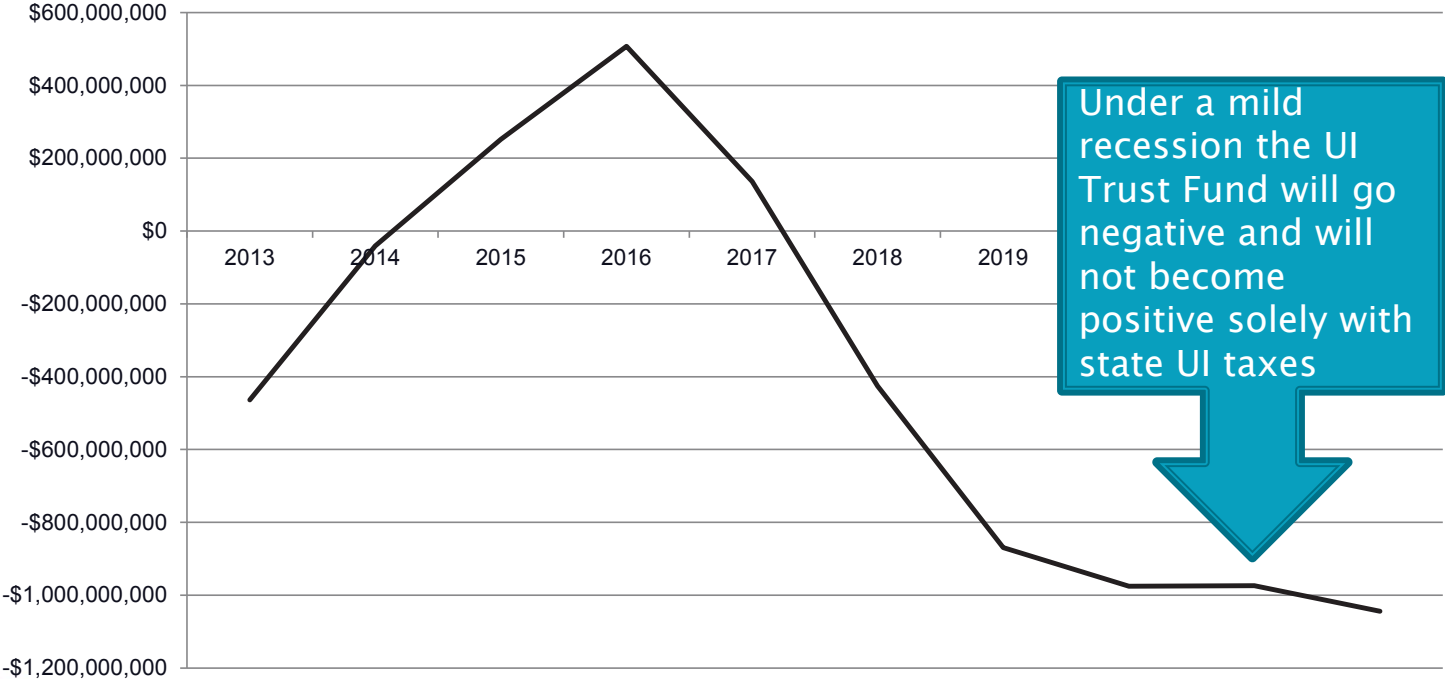
Projection of UI Trust Fund Balance: Continued Economic Growth

Estimated Wisconsin UI Trust Fund
2013-2022



Projection of UI Trust Fund Balance: Mild Recession in 2017-2018

Estimated Wisconsin UI Trust Fund Under a Mild Recession
in 2017 -2018



Problems with Borrowing from the Federal Government to Pay UI Benefits

- ▶ Taxes for all employers are increased to cover the benefits paid to employees of companies no longer in business
- ▶ Federal and state UI taxes are higher during recessions when employers are already strained.
- ▶ Interest needs to be paid on loans used to pay benefits
- ▶ The costs of borrowing (Federal UI taxes, SAFI assessments) are not experience rated; instead those costs are shared among all employers
- ▶ Federal UI taxes are automatically increased due to federal borrowing

Recent Costs of UI Borrowing to Wisconsin Employers

Year	Additional FUTA Taxes (\$ millions)	Interest Paid (\$ millions)
2011		42.3
2012	46.7	35.8
2013	95.5	18.9†
2014	143*	6.7*†
2015		0.7*
Total	285.2	104.4
	*estimated	†Paid via GPR Funds

Wisconsin started borrowing in 2009, but interest payments were waived by the federal government for all states that borrowed to pay benefits for the years 2009 and 2010

How Large Should the UI Trust Fund Be?

- ▶ The U.S. Department of Labor recommends that UI Trust Funds have an Average High Cost Multiple (AHCM) of 1.0
- ▶ What is an Average High Cost Multiple?
 - The average of the highest 3 years of benefit payments (measured as a percentage of total covered wages) over the last 20 years or past three recessions, whichever is longer
 - A value of 1.0 means the UI Trust Fund contains 12 months of benefits at this average high rate
 - For WI this measure is currently 1.81% of total covered wages or approximately \$1.6 billion

How Large Should the UI Trust Fund Be?

- ▶ The Average High Cost Multiple is designed to account for both UI history in the state and growth in wages
 - The measure is based on an individual state's history of benefit payments to determine an adequate amount considering that state's unique economic environment
 - The measure uses total covered wages which is important for two reasons:
 1. Total covered wages represent the risk to the UI system (wages determine the amount of benefits that may need to be paid)
 2. It allows the measure to grow with the economy (total covered wages increase over time)

How Large Should the UI Trust Fund Be?

An AHCM above or below 1.0 was an indicator of how likely a state was to borrow during the recent recession

2007	AHCM >1	AHCM <1
Number of States	19	34
Number who Borrowed	6	30
Percentage	32%	88%

QUESTIONS?