

Improving Wisconsin's UI laws

Reflecting Interests of Employers • Providing Effective and Efficient Services to UI Claimants

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL ACTIVITIES REPORT

2019-2020



Department of Workforce Development

May 15, 2021

To: The Honorable Tony Evers and Members of the Wisconsin State Legislature:

The Department of Workforce Development is pleased to present the following report on the activities of Wisconsin's Unemployment Insurance Advisory Council for the 2019-2020 period.

The Legislature created the Unemployment Insurance Advisory Council to advise the Legislature and the Department of Workforce Development on matters concerning Wisconsin's Unemployment Insurance (UI) program, and to recommend changes to improve the state's UI laws. Recommendations of the Council reflect interests of employers who pay contributions and workers who depend on unemployment benefits in times of economic hardship.

The Council's diverse opinions, perspectives, and knowledge of the program are key to ensuring a balanced representation of the interests of both workers and employers is maintained in Wisconsin's UI program.

The Council and the Department of Workforce Development look forward to continuing to work with the Governor and the Legislature to further enhance Wisconsin's UI program and continue providing effective and efficient services to both UI claimants and employers.

Sincerely,



Amy Pechacek, Secretary-designee
Department of Workforce Development

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INTRODUCTION

The following report summarizes the deliberations of the Unemployment Insurance Advisory Council and provides the position of the Council concerning each proposed change to Unemployment Insurance law during 2019-2020. The report is prepared by the Secretary of the Department of Workforce Development and provided to the Governor and Legislative Leadership as required by Wis. Stat. § 16.48(1)(b).



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ABOUT THE UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

The Legislature created the Council in 1932 to advise the Department of Workforce Development and the Legislature on policy matters concerning the development and administration of UI law. For over 89 years, the Council has acted as a catalyst for labor and management representatives to work together to ensure stability in the UI system and collaborate on positive changes to enhance the program.

The Council's primary responsibilities are to:¹

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

The Council studies potential law changes on an ongoing basis, providing a balanced forum where the interests of both employees and employers are considered. The Council's negotiated recommendations to change the UI law are presented to the Legislature as an "Agreed Bill" for the Legislature's consideration.

The Legislature has traditionally recognized the value of the Council process in bringing together the two groups most affected by the UI program, employees and employers. The Legislature's support of the Council process has helped to ensure Wisconsin's UI law continues to conform to federal requirements, which is required for Wisconsin to receive the federal funding necessary to administer the UI program and for employers to receive federal tax credits.

The Council regularly communicates with the Legislature regarding specific issues that affect the UI program. Members of the Legislature are encouraged to attend Council meetings and address the Council on their proposed changes to UI law before introduction.

¹ The Council responsibilities are specified in Wis. Stat. § 108.14(5)(a).

COUNCIL MEMBERSHIP

The Secretary of the Department of Workforce Development appoints Council members to six-year terms. The Council is composed of five management members representing the interests of employers and five labor members representing the interests of employees. One management representative is required by state law to be an owner of a small business or represent an association that is primarily composed of small businesses. In addition to these voting members, a permanent classified employee of the department serves as the nonvoting chairperson for the Council.²

Employer Representatives (Management Members)

Michael Gotzler – Shareholder, Littler Mendelson Director, Wisconsin Association of Staffing Services: term expires June 30, 2023

Theresa Hillis – CEO, YMCA of the Chippewa Valley: term expires February 28, 2027

Susan Quam (Small Business Representative) – Executive Vice President, Wisconsin Restaurant Association: term expires June 30, 2023

Scott M. Manley – Executive Vice President of Government Relations, Wisconsin Manufacturers & Commerce: term expires August 31, 2021

John Mielke – President, Associated Builders & Contractors of Wisconsin, Inc.: term expires August 31, 2021

Employee Representatives (Labor Members)

Sally Feistel – Sub-District Director, United Steel Workers, District 2: term expires May 31, 2026

Dennis Delie – Secretary-Treasurer, Wisconsin State AFL-CIO: term through August 31, 2021

Shane Griesbach – Business Representative, International Union of Operating Engineers Local 139: term expires June 30, 2023

Terry Hayden – President, Wisconsin Pipe Trades Association: term expires August 31, 2021

Di Ann Fechter – Business Representative, International Association of Machinists & Aerospace Workers: term expires November 13, 2024

Chairperson (non-voting)

Janell Knutson – Director, Bureau of Legal Affairs, UI Division, Department of Workforce Development

² Wis. Stat. § 15.227(3)

COUNCIL PROCEDURES

Business Meetings

Council members negotiate proposed changes to Wisconsin's UI law in biennial cycles, as well as review and approve administrative rules drafted by the department and unemployment-related legislation proposed by lawmakers throughout the biennium. Council meetings typically occur monthly and provide Labor and Management the opportunity to exchange ideas and opinions so the interests of both employers and employees are represented and considered. Council meetings are open to the public and are noticed in accordance with Wisconsin's open meetings law. Management and Labor members are permitted under state law to hold separate, closed caucus sessions to discuss potential law changes.³

The Council Chair leads the Council meetings and presents department proposals to change UI law to the Council for review. The department provides an analysis of each proposal that typically includes a description of the suggested law change, the rationale, the history and background of current law, potential federal conformity issues relevant to the proposal, the policy and fiscal effects, and the administrative feasibility and effect of the proposal. Council members deliberate proposals presented by the department, their own proposals, and any unemployment-related bills pending in the Legislature. A vote of seven of the ten Council members is required for the Council to act on any matter.⁴



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Public Hearing

The proposals brought forward for inclusion in the UIAC Agreed Bill are developed based on input from several sources including employer representatives, labor representatives, the Legislature, and the department. The Council also holds a statewide public hearing each biennium for members of the public to provide their recommendations on possible changes to the UI program.

Before the public hearing, the Council invites the public to submit written comments on suggested UI law changes to the department via letter or a dedicated email box. The department compiles all the written and verbal comments submitted during the comment period and at the public hearing and presents them to the Council. The Council considers the public comments as they develop potential reform ideas for the upcoming biennium. The Council held a public hearing in November 2018 and factored the input received from the public into many of the UI law changes included in the most recent UIAC Agreed Bill.

³Closed caucus sessions are permissible under Wis. Stat. § 19.85(1)(ee).

⁴Wis. Stat. § 108.14(5)(ag)

LAW CHANGES ENACTED DURING THE REPORTING PERIOD

Emergency Administrative Rules

Emergency administrative rules regarding related to the COVID-19 pandemic became effective in 2020:

- ▶ **Emergency Rule 2006, DWD Chs. 127 & 128 (Eff. 5/9/20 – 2/2/21)**
 - Work search actions, availability for work, and work available for people filing claims with the Unemployment Insurance program during the COVID-19 pandemic.
 - This rule relates to work search actions, availability for work and work available for people filing claims with the Unemployment Insurance program during the COVID-19 pandemic. Work searches are not required during the public health emergency. Also, there are provisions in the rule regarding availability for work while having COVID-19 symptoms or quarantined and provisions in the rule relating to work available.
- ▶ **Emergency Rule 2011, DWD Ch. 113 (Eff. 6/5/20 – 3/1/21)**
 - Waiving interest in limited circumstances for employers subject to reimbursement financing.
 - This rule relates to waiving interest in limited circumstances for employers subject to reimbursement financing when reimbursements are delinquent due to COVID-19. This rule gives the department latitude in certain circumstances to waive interest due by reimbursable employers.
- ▶ **Emergency Rule 2018, DWD Ch. 102 (Eff. 6/29/20 – 3/25/21)**
 - Employer contribution rates for 2021.
 - This emergency rule sets the contribution rates for employers for 2021. 2019 Wis. Act 185 requires charging benefits related to initial claims due to the public health emergency to the trust fund balancing account. The department will disregard an employer's benefit charges and adjustments between March 15 and June 30, 2020 in setting contribution rates for 2021.
- ▶ **Emergency Rule 2034, DWD Ch. 120 (Eff. 11/2/20 - 3/31/21)**
 - Providing notification of the availability of Unemployment Insurance to employees at the time of separation from employment.
 - This rule requires employers to provide notice to individual employees about their right to file for Unemployment Insurance benefits at the time of termination. USDOL has determined that individual notice is required in order to receive the additional federal administrative funding provided under the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA); the department's current rule requiring notice posters is insufficient.
- ▶ **Emergency Rule 2044, DWD Ch. 123 (Eff. 12/7/20 – 5/5/21)**
 - Benefit charges for initial claims related to the public health emergency declared by Executive Order 72.
 - This rule implements the non-charging statutory provisions in 2019 Wis. Act 185.

Proposed Law Changes Related to UI Contained in the UIAC Agreed Bill

- ▶ **UIAC Agreed Bills SB 671 (the “policy” bill) and SB 672 (the “appropriations” bill).** The bills were not introduced in the Assembly and no action was taken on the bills during the legislative session.

- **Senate Bill 671**

The provisions included in Senate Bill 671 were unanimously approved by the Council and make several changes to Wisconsin’s UI program that will improve collections and reduce administrative burdens. Some components of SB 671 are:

Tax Changes

Reimbursable Employer Debt Assessment Charging

When employers subject to reimbursement Unemployment Insurance financing (“self-insured”) are charged for benefits that are based on identity theft, the department restores those charges to the employers’ accounts from the balancing account. The 2015-2016 UIAC agreed bill (2015 Wis. Act 334) required that the department set aside \$2 million in the balancing account, plus interest, to pay identity theft charges to reimbursable employers’ accounts.

Non-profit reimbursable employers may be subject to an annual reimbursable employer debt assessment (REDA) for payment of uncollectible benefit reimbursements due from other reimbursable employers no longer in business. Under current law, the REDA to recover uncollectible reimbursements must be at least \$5,000 but no more than \$200,000 and each non-profit employer assessed pays based on the employer’s payroll. Employers for whom the assessment would be less than \$10 are not assessed, which usually results in about half of non-profit reimbursable employers being assessed the REDA.

This bill provides that a limited amount of the reimbursable employer identity theft fraud funds set aside in the balancing account will be made available to recover uncollectable reimbursements instead of assessing the REDA (or to reduce the amount of the REDA). This bill provides that the identity theft fraud funds may be used to pay the REDA only if the use of those funds would not reduce the balance of the funds below \$1.75 million. This bill also increases the minimum amount of the REDA per employer from \$10 to \$20.

Fiscal Agent Election of Employer Status

Individuals who receive long-term support services in their home through government-funded care programs are employers under Wisconsin’s Unemployment Insurance law. These employers receive financial services from fiscal agents, who directly receive and disperse government program funds. The fiscal agent is responsible for reporting employees who provide services for the employers to the department, and for paying unemployment tax liability on behalf of the employer. Under current law, if the worker is a certain class of family member of the person receiving care, the worker is ineligible for unemployment benefits when the employment relationship ends.

This bill permits private fiscal agents (not government units) to elect to be the employer of workers who provide care services under chapters 46, 47, and 51. The fiscal agent would be required to inform the recipient of care of the election and would need to be treated as the employer for federal unemployment tax purposes. If the fiscal agent elects to be the

employer and the worker is a certain class of family member of the person receiving care, that worker would be an employee of the fiscal agent and could now potentially be eligible for unemployment benefits. Benefits would be charged to the fiscal agent's account, which would affect its experience rating. This proposal is expected to simplify Unemployment Insurance reporting requirements for fiscal agents.

Benefits Changes

Effect of a Criminal Conviction

Typically, when the department refers matters for criminal prosecution, an administrative determination has been issued. Sometimes, a criminal prosecution may result in a court-ordered restitution order or judgment when the department has not issued an administrative determination that a debt is owed. This bill provides that final criminal conviction judgments are binding on criminal defendants for the purposes of related proceedings that arise under unemployment law.

Departmental Error

Under current law, the department waives the recovery of benefits that were erroneously paid if the overpayment was the result of departmental error, such as a computation error, misapplication or misinterpretation of law, or mistake of evidentiary fact. But an amendment, modification, or reversal of a department determination by an appeal tribunal, the Labor and Industry Review Commission, or a court is not departmental error for the purposes of waiving the overpayment. The Commission currently waives some overpayments if it finds that an appeal tribunal allows benefits in error, even if the appeal tribunal follows an erroneous decision of a higher authority. The Commission considers appeal tribunals to be part of the department because the administrative law judges are department employees. This bill amends the law to provide that an error made by an appeal tribunal is not "departmental error." This proposal is expected to increase recovery of benefits erroneously paid to claimants.

Eligibility for Certain Employees

The federal government is "shut down" when Congress has not appropriated funds to continue federal agency operations at some or all federal agencies. Some federal workers are required to work during a government shutdown but are not paid for their work until Congress appropriates the funds (known as "excepted" employees). Current state law provides that an employee who works 32 hours or more per week is considered full time and is not eligible for unemployment benefits, even if that employee is not getting paid for that work. Furloughed employees (federal employees neither working nor being paid) may claim unemployment benefits. If the furloughed employees receive backpay for the shutdown when they did not work, they are required to repay the unemployment benefits they received during that period of unemployment.

This bill would provide unemployment benefits to workers who are required to work without pay because the government has not appropriated funds to pay them. This bill would disregard an employee's hours worked and wages earned for an employer in a given week when determining the employee's benefit eligibility if certain conditions apply, including that the employer requires the employee to work during the week as a condition of continued employment and the employer is unable to pay wages because a government unit or the federal government fails to appropriate funds to the employer.

Administrative Changes

Changing the deadlines to submit certain statutorily-required reports to the Legislature

For the UI financial outlook report, the deadline will be changed from April 15 of each odd-numbered year to May 31 of each even-numbered year. For the report summarizing the deliberations of the Unemployment Insurance Advisory Council, the deadline will be changed from May 15 of each odd-numbered year to January 31 of each even-numbered year. These changes are designed to improve the usefulness of the reports to the Legislature, the Governor, and the Council.

Prohibiting DOR collection of UI debts

Current law requires state agencies and the Wisconsin Department of Revenue (DOR) to enter into an agreement to have DOR collect debts owed to agencies under certain conditions. This bill prohibits DOR from collecting debts on behalf of the UI Division. This change will ensure that employers and claimants are not assessed additional fees when repaying their debts and will ensure that state recoveries of debts owed to the UI Division continue to be maximized for the benefit of the UI Trust Fund.

- **Senate Bill 672**

The provisions included in Senate Bill 672 were also unanimously approved by the Council and make several minor and technical changes to Wisconsin's unemployment statutes. The changes in SB 672 include:

Eligibility for Certain Employees (Appropriations)

SB 672 allows benefits to be paid from the department's interest and penalty moneys if the federal government refuses to reimburse the department for the benefits paid to claimants who are currently working but not receiving pay due to a federal government shutdown. Workers must repay the benefits if they later receive backpay from their employer.

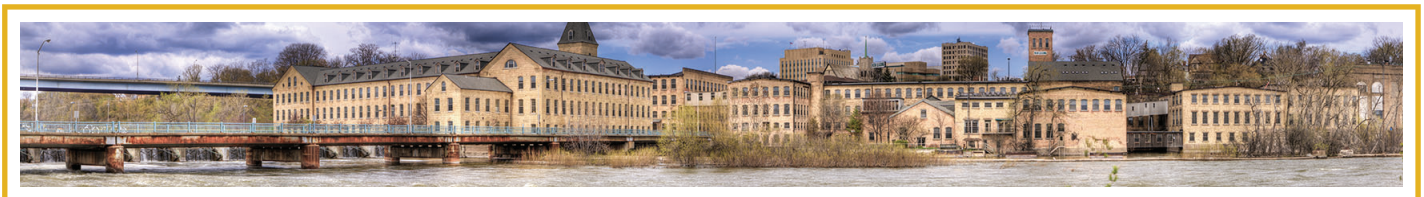
Creation of Administrative Fund

This bill would recreate a separate, non-lapsible fund for receiving the employer interest and penalties collected under Wis. Stat. § 108.22(1) and any other amounts the UI Division collects that are not designated for another fund. This law change is intended to provide consistent treatment for the amounts collected by the department and to better ensure that funds paid by employers remain within the UI program.

Technical Corrections and Appropriation Revisions

This bill will eliminate the "Administrative Account" and clarify the appropriations statutes related to the Unemployment Insurance program, and correct typographical errors and cross references in the statutes.

- **The UIAC also agreed to Update Administrative Rules to Convert SIC to NAICS (scope approved).**



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Law Changes Related to UI Not Contained in the UIAC Agreed Bill

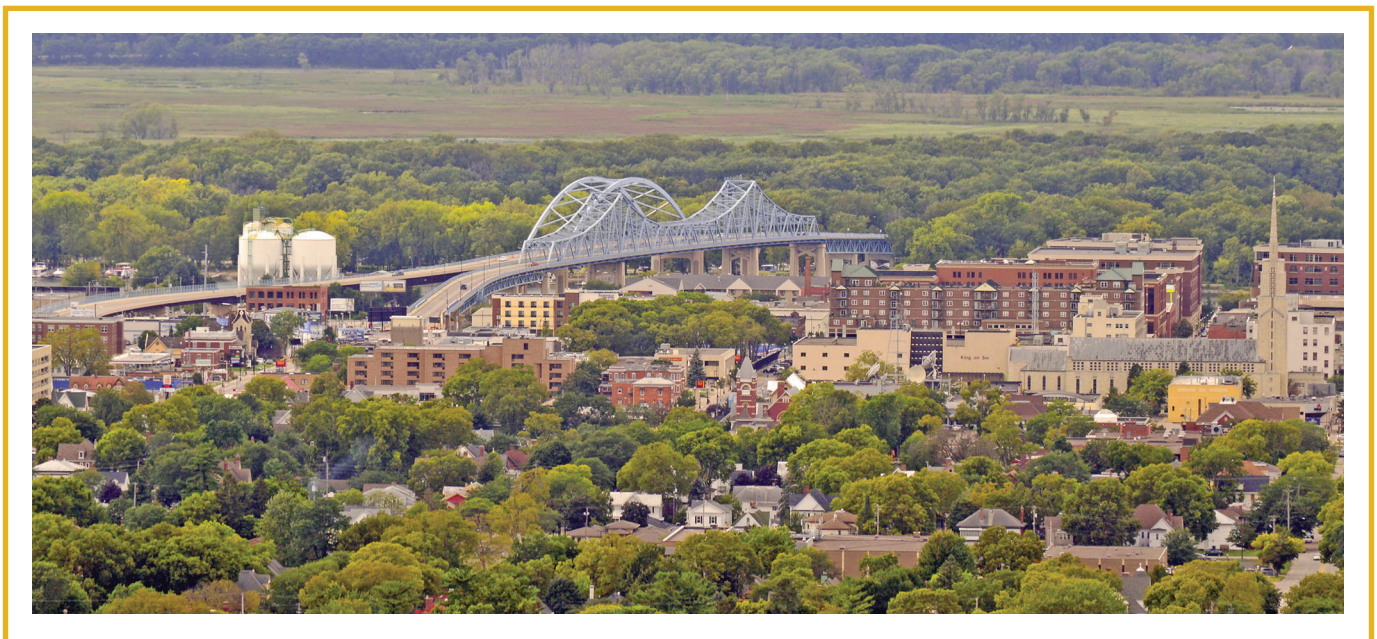
One bill that relates to the UI program was enacted into law during the 2019-2020 biennium. 2019 Wis. Act 185 contains various UI law changes related to the COVID-19 pandemic including:

- ▶ Temporary suspension of the waiting week for benefit years that began after March 12, 2020, and before February 7, 2021.
- ▶ For initial claims related to the public health emergency Executive Order #72, benefits charged after March 12, 2020, and before December 31, 2020 were charged to the balancing account for contribution employers and to the interest and penalty fund for reimbursable employers.
- ▶ Certain requirements for work-share plans submitted until the end of 2020 were temporarily suspended, such as reducing the minimum size of the work share plan from 20 employees to 2 employees and permitting employers to reduce up to 60% of working hours instead of 50% under current law.

Other Deliberations of the Council

2015 Wis. Act 334 created a new program integrity assessment of 0.01 percent and reduced employer taxes by a corresponding amount, resulting in no tax increase for Wisconsin employers. The proceeds of this assessment are deposited into the UI Program Integrity Fund to be used by the department for program integrity activities.

In September 2019, the Council approved the Secretary's request to implement the 0.01 percent program integrity assessment for 2020; and again, in September 2020 for 2021. The proceeds allow the department to continue anti-fraud and other program integrity efforts without raising taxes. The Council recognizes the value of the assessment as it relates to the department's program integrity efforts and has unanimously approved this request every year since the assessment was created.



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ISSUES PENDING WITH THE COUNCIL

UIAC Agreed Bill for 2021-2022 Session

The Council began the agreed-bill process for the upcoming biennium by holding public hearings via WebEx on November 9 and 10, 2020. The Council also accepted written comments from the public submitted to the department by mail or through a dedicated email box. Twenty-six people spoke at the public hearing and 62 written comments were received on a wide range of topics.

The input provided by the public during the comment period was presented to the Council at the first UIAC meeting following the public hearing. The Council will take these comments into account as they begin work on law change proposals for inclusion in the next UIAC Agreed Bill.



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CONCLUSION

Since its inception, the Council process has fostered collaboration among those most invested in the UI program and developed reforms that ensure the integrity of the program and the solvency of the UI Trust Fund. This collaboration has ensured that UI benefits remain available to workers who lose their job through no fault of their own.

The Council anticipates completing deliberations on the next UIAC Agreed Bill later this year and looks forward to continuing its positive working relationship with the Legislature and the Governor.



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