



Unemployment Insurance Advisory Council

Meeting

May 7, 2020, 10:00 a.m. – 2:00 p.m.

Location: Department of Workforce Development by Teleconference

Public may attend by:

Phone: 415-655-0003 or 855-282-6330 (toll free) or [WebEx](#)
Meeting Number (Access Code): 929 105 907 Meeting Password: DWD1

Agenda Items and Schedule

1. Call to Order and Introductions
2. Approval of Minutes of the March 19, 2020 Council Meeting
3. Department Update
4. Trust Fund Update – Tom McHugh
5. Legislation Update
6. Rulemaking
 - Emergency Rule, DWD Chs. 127 & 128
 - Emergency and Permanent Rule, DWD Ch. 120
7. Research Requests
8. Future Meeting Dates
9. Adjourn

Notice

- ❖ Due to the public health emergency, the meeting will be conducted by teleconference. The public may attend by teleconference or WebEx using the information provided under the meeting details above.
- ❖ The Council may take up action items at a time other than that listed.
- ❖ The Council may not address all agenda items or follow the agenda order. The Council may discuss other items, including those on any attached lists.
- ❖ The Council members may attend the meeting by telephone.
- ❖ The employee or employer members of the Council may convene in closed session at any time during the meeting to deliberate any matter for potential action or items posted in this agenda, under sec. 19.85(1)(ee), Stats. The employee or employer members of the Council may thereafter reconvene again in open session after completion of the closed session.
- ❖ This location is accessible to persons with disabilities. If you have a disability and need assistance (such as an interpreter or information in an alternate format), please contact Robin Gallagher, Unemployment Insurance Division, at 608-267-1405 or dial 7-1-1 for Wisconsin Relay Service.
- ❖ Today's meeting materials will be available online at the time the meeting is scheduled to begin at: <https://dwd.wisconsin.gov/uibola/uiac/meetings.htm>

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Offices of the State of Wisconsin Department of Workforce Development
201 E. Washington Avenue, GEF 1, Room F305
Madison, WI

March 19, 2020

Held Via Teleconference Due to Public Health Emergency

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

Members: Janell Knutson (Chair), Scott Manley, Susan Quam, Mike Gotzler, John Mielke, Sally Feistel, Shane Griesbach, Terry Hayden, Di Ann Fechter and Dennis Delie.

Department Staff: Mark Reihl, Andrew Rubsam, Danielle Williams (Assistant Deputy Secretary), Jennifer Wakerhauser (Legal Counsel), Patrick Lonergan, Tom McHugh, Mary Jan Rosenak, Jason Schunk, Janet Sausen, Joe Brockman, and Robin Gallagher.

Members of the Public: BJ Dernbach (office of Representative Warren Petryk), Mary Beth George (office of Representative Christine Sinicki), Anita Krasno (General Counsel Labor & Industry Review Commission), Victor Forberger (Attorney Wisconsin UI Clinic), Ryan Horton (Legislative Fiscal Bureau), Chris Reader (Wisconsin Manufacturer's & Commerce), Jack Hanson (Milwaukee Area Service & Hospitality Workers Organization), Alex Moe, Travis Theisen, Brenda Ritter.

1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council meeting to order at 10:10 a.m. under Wisconsin's Open Meetings law. Attendance was taken by roll call and Ms. Knutson recognized the department staff in attendance.

2. Approval of Minutes of the January 16, 2020 Council Meeting

Motion by Ms. Fechter, second by Mr. Mielke, to approve the minutes of the January 16, 2020 meeting without correction. The motion carried unanimously.

3. Department Update

Mr. Reihl gave an update on Governor Evers' Emergency Order #7 that waives the work search requirements and modifies the availability requirements for unemployment insurance benefits for workers impacted by COVID-19. Mr. Reihl stated that the emergency order is necessary because of the gravity of the situation with the coronavirus. It is Governor Evers' goal with the emergency order to protect the health and safety of the Wisconsin's workforce and to address the

unique circumstances coronavirus has created for workers in the state who are unemployed and their employers. There are main two components of Emergency Order #7:

- Under Wis. Admin. Code DWD § 127.01, a public health emergency constitutes four work search actions each week, which effectively results in claimants not being required to conduct a work search to maintain eligibility for UI benefits for each week a public health emergency is declared, and
- Under Wis. Admin. Code DWD § 128.01, the department shall consider a claimant to be available for suitable work during a public health emergency if the claimant is perceived by an employer as exhibiting COVID-19 symptoms preventing a return to work or the claimant is quarantined by a medical professional or under local, state or federal government direction or guidance.

Both provisions are also necessary to bring Wisconsin's UI program in line with the Unemployment Insurance Program Letter issued by the U. S. Department of Labor on March 13, 2020 that provided new guidance for states during the pandemic. The emergency order will be effective until the department promulgates an emergency rule.

Mr. Reihl also informed the Council that Governor Evers is asking the Wisconsin State Legislature to suspend the one week waiting period for UI benefits so that UI funds can be distributed to affected workers quickly.

Mr. Reihl noted UI claims have gone up significantly that during this week, which has resulted in a drastic increase in UI call volumes. The department is issuing a press release later today instructing UI claimants and people with questions about UI to go to the department's website at dwd.wisconsin.gov to start their applications for UI benefits or find answers to their questions. The department has updated the COVID-19 Coronavirus and Unemployment Benefits FAQ on the website to coincide with the changes related to the emergency order. Those who are able should go to the website first, which will help alleviate the some of the increased wait times.

Ms. Fechter asked if there has been any extension granted to individuals who were previously claiming UI benefits or if there is anything anticipated to address individuals in that situation. Ms. Knutson responded that extensions must be granted by the federal government and no federal extension legislation has passed yet.

Mr. Griesbach inquired about the estimated timeframe when the Legislature will act on suspending the one week waiting period. Mr. Reihl responded that the Governor is coordinating with legislative leadership on developing a proposal and hopes the Legislature will come into session to approve that item and any others that are being proposed as soon as possible.

Mr. Manley asked if it is correct that the provisions included in the Governor's emergency order relating to a claimant's availability for suitable work and the changes to the work search requirements are very specific to employees impacted by COVID-19 but do not extend beyond those circumstances. Ms. Knutson responded that changes to the work search requirement apply to all claimants, but the availability for work changes are narrower and apply to individuals who are quarantined. Mr. Rubsam added that the emergency order does not provide a work search

waiver to claimants but instead provides that a public health emergency constitutes four work search actions for a claimant each week the emergency order is in effect. Ms. Knutson also added that the emergency order does not waive a claimant's requirement to register for work, so claimants still need to register on JobCenterofWisconsin.gov when they file their claim.

Ms. Quam mentioned that the majority of the individuals applying for unemployment benefits due to the impacts of COVID-19 are in the restaurant and hospitality industry, and these employers want to call these workers back when the crisis is over and the business operations resume. Ms. Knutson responded that those employees may qualify for the regular work search waiver to exclude those workers from the work search requirement for eight weeks plus an additional four weeks.

Ms. Fechter inquired about a situation regarding church daycares that do not pay into unemployment but are closed due to the public health emergency and if those church daycare workers who are now laid off are eligible for UI benefits. Ms. Knutson responded if the claimant's only employment is with a church that doesn't pay UI contributions than the answer is no, but if the claimant has other covered employment aside from the church then they might be eligible if they otherwise qualified. Ms. Fechter followed up asking if this issue could be addressed in potential future legislative changes. Ms. Knutson said that provision might be covered by the federal coronavirus response bill.

Mr. Reihl reiterated that if an individual is unsure whether they are eligible for UI benefits the individual should apply for benefits. Each situation is unique so if they are in doubt the best practice is to file a claim online.

4. Annual Fraud Report

Ms. Knutson shared highlights from the 2020 Wisconsin Unemployment Insurance Fraud Report with the Council. Those highlights include:

- The Fraud Report contains information on Governor Evers' Joint Enforcement Task Force on Payroll Fraud and Worker Misclassification and provides a link to the Task Force's report that was submitted to Governor Evers in March 2020.
- Due to the UI division's efforts to detect worker misclassification, \$1.6 million was generated in UI taxes and interest.
- Total fraud overpayments were down 4% and the number of fraud cases remained at about the same level from the previous year.
- In the spring of 2019, the UI division created and published a video for claimants titled "Work Search Requirements for Unemployment Benefits" to give claimants more information on the work search requirements, how to report work search actions, examples of valid work search actions, and best practices for documentation.
- As required by statute, the Fraud Report provided the number of work search audits conducted by the UI division. In 2019, the UI division conducted 31,263 work search audits.
- The Fraud Report also provides details on some of the department's fraud detection tools and additional statistics and data in the addendum.

5. Update on Legislation

Ms. Knutson reported that the UIAC agreed bills SB671 (the "policy" bill) and SB672 (the "appropriations" bill) were introduced in the Senate and scheduled for a hearing on January 28, 2020 before the Senate Committee on Labor and Regulatory Reform, but were removed from the calendar. The bills were not introduced in the Assembly and it is unlikely any action will be taken on the bills this legislative session. The substance of these bills can be added to the agenda for further discussion at future UIAC meetings.

6. UI Program and the Coronavirus Pandemic

Ms. Knutson provided highlights of H.R. 6201 the Families First Coronavirus Response Act that was signed by President Trump on March 17, 2020. The provisions of the Act that most directly relate to unemployment insurance are under Division E – Emergency Unemployment Insurance Stabilization and Access Act of 2020. Highlights of the Emergency Unemployment Insurance Stabilization and Access Act of 2020 include:

- The Act provides \$1 billion in 2020 for emergency grants to states for activities related to processing and paying UI benefits if states meet certain conditions.
- \$500 million would be used to provide immediate additional funding to all states for staffing, technology, systems, and other administrative costs, so long as they met basic requirements about ensuring access to earned benefits for eligible workers. The requirements a state must follow in order to be eligible to receive a portion of the \$500 million in administrative grant funding are:
 - The state requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment. Such notification may be based on model notification language issued by the Secretary of Labor. Wisconsin already has an enabling statute that allows DWD to make requirements of employers with respect to providing information to workers and the department currently has an administrative rule that requires employers to post notification to workers about applying for Wisconsin UI benefits.
 - The state ensures that applications for unemployment, and assistance with the application process, are accessible in at least two of the following: in-person, by phone, or online. Wisconsin currently has options for claimants to apply for UI benefits online or by phone for those who are unable to file online.
 - The state notifies applicants when an application is received and is being processed, and in any case in which an application is unable to be processed, provides information about steps the applicant can take to ensure the successful processing of the application.
- \$500 million would be reserved for emergency grants to states which experienced at least a 10 percent increase in unemployment. The requirements a state must follow in order to be eligible to receive a portion of the additional administrative grant funding are:

- The state has expressed its commitment to maintain and strengthen access to the unemployment compensation system, including through initial and continued claims
- The state has demonstrated steps it has taken or will take to ease eligibility requirements and access to unemployment compensation for claimants, including waiving work search requirements and the waiting week, and non-charging employers directly impacted by COVID–19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers.
- States would be required to report on the share of eligible individuals who received UI benefits and the state’s efforts to ensure access within one year of receiving the funding.
- Notwithstanding any other law, if a state modifies its UI law and policies with respect to work search, waiting week, good cause, or employer experience rating on an emergency temporary basis as needed to respond to the spread of COVID–19, such modifications shall be disregarded for potential conformity issues under the Federal Unemployment Tax Act.
- States that experience an increase of 10 percent or more in their UI rate over the previous year and comply with all the other requirements outlined in the Act may be eligible for 100 percent federal funding for extended benefits, which normally require a 50 percent matching by the state, and the federal government will fund the first week of extended benefits for states with no waiting week.

A copy for the Legislative Fiscal Bureau's analysis of H.R. 6201 - U.S. House of Representatives Legislation Passed in Response to Coronavirus Disease 2019 (COVID-19) was also included in the meeting materials.

Mr. Rubsam provided a summary of Scope Statement 008-20, relating to DWD chs. 127 & 128. Mr. Rubsam informed the Council that the scope statement was approved by Governor Evers and published on March 16, 2020. Mr. Rubsam reiterated to the Council that this Scope Statement 008-20 is for emergency rules, not permanent rules, that would affect work search waivers, work search actions, and available for work provisions similar to what is included in the emergency order but that could change based on the federal law that was signed by President Trump. Mr. Rubsam added that none of the recent changes modify the able to work requirement so if an individual is unable to work as a result being too ill to work the department cannot by emergency rule waive that requirement.

7. Research Requests

Ms. Knutson informed the Council that the department will try to respond to pending research requests from the previous meeting, but due to other priorities they did not get included in the materials for this meeting.

8. Future Meeting Dates

Ms. Knutson stated the next regularly scheduled UIAC meeting is for April 16, 2020. The department is unable to have the meeting in its usual format it will plan on having the next meeting through teleconference. If Council members have any items they would like to address at the next UIAC meeting they can email Ms. Knutson to have them added to the agenda.

9. Adjourn

Motion by Ms. Feistel, second by Mr. Hayden to adjourn. The motion carried unanimously, and the Council adjourned at 11:08 a.m.

Limitations of Industry Analysis using Preliminary Initial Claim Data

Wisconsin UI is conducting analysis to identify industries affected during the current pandemic. The limitations in our legacy system pose several challenges in providing this information. In an effort to make information available as soon as possible, Wisconsin UI is conducting both a preliminary analysis for near term results and a more complete analysis, including small and large employer classification. This classification is based upon total payroll for an employer. Payroll information is housed in a different system than claim data and the additional work to relate the two systems is part of the more complete industry analysis, available in 4 weeks.

While both analyses will utilize the industry associated with the initial claim, a primary difference is the use of pre-processed initial claims for the preliminary analysis versus post-processed initial claims for the more complete analysis. The use of pre-processed initial claims has several caveats for the results of the preliminary analysis, noted below, including that the pre-processed claim counts will not match totals reported to the Department of Labor.

The industry data presented will be limited as the pre-processed claims represent a partial accounting of initial claims for Wisconsin unemployment. The pre-processed claims are incomplete in several ways.

- They include only initial claims captured through the intake process, excluding system generated or manually processed initial claims. The corresponding industries will likewise be excluded from the analysis.
- They include out of state claimants filing for Wisconsin UI benefits. For some of these claimants, while the base period wages include a Wisconsin employer, the separating employer may be not located in Wisconsin.
- They will include extraneous claims (such as duplicates) which are removed upon processing.

Additionally, over the coming weeks the capacity of pre-processed initial claims to reflect new separations will become weaker.

- The pre-processed data does not identify the paying program, this occurs as the initial claim is processed. As claimants exhaust Regular UI and initial claims for additional benefit programs become more prevalent, these will look like new separations in the pre-processed data, skewing the industry results by mixing older separating industries with new separations.
- For recent data this should not be a large issue, but the problem will grow as we have more claimants being paid from additional benefit programs. Thus, the use of pre-processed claims for this analysis is not a long-term solution.

Wisconsin UI is currently working through the limitations in our legacy system to conduct this analysis based upon post-processed initial claims for the more complete analysis. This will further address the issues of incompleteness and better reflect new separations.

Preliminary New and Additional Initial Claims Filed between 3/12/2020 and 4/28/2020 by Industry of Separating Employer

NAICS Industry	Preliminary Initial Claim Count	Percentage of Preliminary Initial Claims	QCEW September 2019 Employment Count By Industry--- All Ownership	Initial Claims as a Percentage of Industry Employment
11 Agriculture, Forestry, Fishing and Hunting	742	0.17%	29,476	2.52%
21 Mining, Quarrying, and Oil and Gas Extraction	503	0.12%	3,560	14.13%
22 Utilities	172	0.04%	11,072	1.55%
23 Construction	21,406	5.00%	133,714	16.01%
31-33 Manufacturing	76,607	17.90%	482,783	15.87%
42 Wholesale Trade	11,086	2.59%	123,327	8.99%
44-45 Retail Trade	50,035	11.69%	292,969	17.08%
48-49 Transportation and Warehousing	14,828	3.47%	117,168	12.66%
51 Information	3,117	0.73%	48,835	6.38%
52 Finance and Insurance	2,203	0.51%	123,464	1.78%
53 Real Estate and Rental and Leasing	3,957	0.92%	28,193	14.04%
54 Professional, Scientific, and Technical Services	8,997	2.10%	114,921	7.83%
55 Management of Companies and Enterprises	2,905	0.68%	65,972	4.40%
56 Administrative and Support and Waste Management and Remediation Services	23,917	5.59%	147,739	16.19%
61 Educational Services	11,541	2.70%	216,712	5.33%
62 Health Care and Social Assistance	62,054	14.50%	432,701	14.34%
71 Arts, Entertainment, and Recreation	12,715	2.97%	54,210	23.46%
72 Accommodation and Food Services	69,058	16.14%	247,646	27.89%
81 Other Services (except Public Administration)	23,840	5.57%	84,320	28.27%
92 Public Administration	8,042	1.88%	134,279	5.99%
99 Unclassified	3,045	0.71%	800	380.63%
NA	17,104	4.00%		
Total	427,874	100.00%	2,893,861	14.79%

UI Reserve Fund Highlights

5/7/20

1. The Trust Fund bank balance on May 6, 2020, is \$1,862,656,170.
2. In 2020, year-to-date regular UI payments through May 2nd increased by \$205,418,070, or 108.6%, to a total of \$394,559,163 when compared to the same period one year ago.
3. Tax receipts through May 2nd are \$313,326,665.

*Preliminary numbers

**ORDER OF THE WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT
EMERGENCY RULE**

The Wisconsin Department of Workforce Development adopts the following rule *to renumber* DWD 128.001 (2) (a); and *to create* DWD 127.01 (2m), 128.001 (2) (ag), 128.01 (7), 128.02, and 128.025, relating to work search actions, availability for work, and work available for people filing claims with the unemployment insurance program during the COVID-19 pandemic.

The Governor approved the scope statement for this rule, SS 013-20, on March 19, 2020. The scope statement was published in register No. 771A4, on March 23, 2020, and was approved by the Department on April 3, 2020. This rule was approved by the Governor on May 5, 2020.

Analysis Prepared by the Department of Workforce Development

Finding of Emergency

The Department seeks to create provisions in Chapters DWD 127 and 128 in order to implement federal guidance (see Unemployment Insurance Program Letter No., 10-20, dated March 12, 2020) related to administering unemployment insurance benefit claims during the pandemic period related to the SARS-CoV-2 novel coronavirus, which causes the coronavirus disease 2019 (in this Analysis, the virus and disease will be referred to as “COVID-19”).

Additionally, by Executive Order # 72 (dated March 12, 2020), the Governor declared a public health emergency in order to protect the health and well-being of the state’s residents and directed state agencies to assist as appropriate in the state’s on-going response to the public health emergency. Furthermore, on March 13, 2020, the President declared a national emergency concerning the COVID-19 outbreak. On April 4, 2020, the President issued a major disaster declaration for Wisconsin due to COVID-19, retroactively to January 20, 2020. On March 18, 2020, the Governor issued an emergency order in response to COVID-19 to assist individuals affected by the disease by temporarily easing eligibility requirements for unemployment benefits. (See Emergency Order # 7). The rule supplants the emergency order.

Statutes Interpreted

Section 108.04, Stats.

Statutory Authority

Sections 108.04(2)(a)3., 108.04(2)(bd), and 108.14 (2), Stats.

Explanation of Statutory Authority

The Department has specific and general authority to establish rules interpreting and clarifying provisions of ch. 108, Stats., unemployment insurance and reserves, and general authority for promulgating rules with respect to ch. 108, Stats., under section 108.14 (2), Stats.

Individuals who claim unemployment insurance benefits must perform four actions to search for suitable work in each week for which a claim is filed unless a waiver of that requirement applies. The Department may, under s. 108.04(2)(a)3., Stats., by rule, determine what actions “constitute a reasonable search [for suitable work].”

Work search waivers are statutory, but under s. 108.04(2)(bd), Stats., the “department may, by rule...if doing so is necessary to comply with a requirement under federal law or is specifically allowed under federal law: modify the availability of any [work search] waiver” or “[e]stablish additional [work search] waivers....” Under 42 U.S.C. § 1103(h)(3)(B), states may waive the work search requirement during the COVID-19 pandemic.

Related Statutes or Rules

Section 323.10, Stats., permits the Governor to issue an executive order declaring a public health emergency. On March 12, 2020, the Governor issued Executive Order # 72 declaring a public health emergency related to the COVID-19 pandemic.

Plain Language Analysis

This rule provides, on a temporary basis, that a public health emergency constitutes four work search actions for each week that a claimant files an unemployment insurance claim.

This rule provides criteria for determining when unemployment insurance claimants are available for work during the COVID-19 pandemic. The rule also states that no work is actually available for employees affected by COVID-19 for the purposes of determining whether unemployment insurance claimants missed work available under section 108.04 (1) (a) to (bm), Stats.

Summary of, and comparison with, existing or proposed federal statutes and regulations

Federal law requires that state laws conform to and comply with federal requirements. 20 C.F.R. § 601.5.

Under Families First Coronavirus Response Act, Public Law 116-127, specifically Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), a state may receive a share of \$500 million of federal funding for administering the state’s unemployment insurance program if the “State has demonstrated steps it has taken or will take to ease eligibility requirements and access to unemployment compensation for claimants, including waiving work search requirements....” 42 U.S.C. § 1103(h)(3)(B). Wisconsin’s share of the \$500 million is about \$9.457 million.

The EUISAA also provides that states have emergency flexibility to amend work search provisions: “EMERGENCY FLEXIBILITY.—Notwithstanding any other law, if a State modifies its unemployment compensation law and policies with respect to work search, waiting week, good cause, or employer experience rating on an emergency temporary basis as needed to respond to the spread of COVID–19, such modifications shall be disregarded for the purposes of applying section 303 of the Social Security Act and section 3304 of the Internal Revenue Code of 1986 to such State law.” Public Law 116-127 § 4102(b).

Federal law generally requires unemployment benefit claimants to be available for work. *See* 42 U.S.C. § 503(a)(12); 20 C.F.R. §§ 604.3 and 604.5. According to the United States Department of Labor, “federal UC framework gives states significant flexibility to determine standards for ... availability to work ... in the context of COVID-19.” *Unemployment Compensation (UC) for Individuals Affected by the Coronavirus Disease 2019 (COVID-19)*, Unemployment Insurance Program Letter No. 10-20 (US-DOL, Mar. 12, 2020).

Comparison with rules in adjacent states

Other states have waived or relaxed requirements related to work search and have temporarily provided flexibility regarding availability for work by executive order, administrative rule, or statute in response to the COVID-19 pandemic.

Minnesota has waived work search during the COVID-19 by Minn. Emergency Executive Order 20-05.

Illinois has, by emergency rule, waived work search requirements for claimants who are temporarily laid off as a result of COVID-19. Illinois has also, by emergency rule, provided a clarifying example to find claimants available for work if they are required to be at home with a child but could telework.

Michigan has suspended work search and increased eligibility for benefits to quarantined workers under Mich. Executive Order 2020-10.

Iowa has waived work search requirements due to the COVID-19 pandemic.

Summary of factual data and analytical methodologies

The Department reviewed the current Wisconsin administrative rules, the Governor’s Emergency Orders, federal unemployment compensation law and United States Department of Labor guidance, and emergency rules and orders in other states to maximize Wisconsin’s receipt of federal funding and to clarify the law for claimants during the COVID-19 pandemic.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis

Under 2019 Wisconsin Act 185, unemployment insurance benefit claims related to the public health emergency declared on March 12, 2020 will be charged to the balancing account of the Trust Fund for employers subject to contribution financing. The benefits will be charged as follows: 50% of the benefits will be charged to the appropriation in s. 20.445 (1) (gd), Stats., for employers subject to reimbursement financing; the remaining 50% will be charged to the federal government under the federal Coronavirus Aid, Relief and Economic Security (CARES) Act. The charging relief for employers under state law is effective for state unemployment insurance benefits paid for the period of March 15, 2020 through December 26, 2020.

If a claim filed during the effective period of this rule is not related to the public health emergency declared on March 12, 2020, businesses, including small businesses, will incur charges to their account in the Trust Fund (for contribution employers) or will be required to reimburse the Trust Fund for the benefits (for reimbursable employers). Some of those claims might have been denied but for this rule if, for example, the claimants had not conducted four work search actions in each week (and if that requirement was not waived). Also, some of those claims might have been denied if the claimants missed work available. It is not possible to quantify the effect of this rule on small business due to this variety of factors.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business

The proposed rule may affect small businesses, as defined in s. 227.114 (1), Stats., if employees of small businesses are found to be eligible for unemployment benefits and if they would not have been previously eligible under the law in effect before this rule took effect. However, 2019 Wisconsin Act 185 provides that certain benefit charges related to the public health emergency declared on March 12, 2020 will not be charged to employers.

Agency contact person

Questions related to this rule may be directed to:

Janell Knutson, Director, Bureau of Legal Affairs
Division of Unemployment Insurance
Department of Workforce Development
P.O. Box 8942
Madison, WI 53708
Telephone: (608) 266-1639
E-Mail: Janell.Knutson@dwd.wisconsin.gov

Place where comments are to be submitted and deadline for submission

Janell Knutson, Director, Bureau of Legal Affairs
Division of Unemployment Insurance
Department of Workforce Development
P.O. Box 8942
Madison, WI 53708
E-Mail: DWDAdminRules@dwd.wisconsin.gov

Comments will be accepted until a date to be determined.

1 **SECTION 1.** DWD 127.01 (2m) is created to read:

2 **DWD 127.01 (2m)** (a) In this subsection, "public health emergency" means any week or
3 part thereof during a public health emergency declared by Executive Order # 72 on March 12,
4 2020, under s. 323.10, Stats., and any extension in response to the SARS-CoV-2 virus, including
5 by the department of health services under ch. 252, Stats., or during a federally declared
6 emergency in response to the SARS-CoV-2 virus, or during a period in which the state has been
7 federally declared to be a major disaster due to the SARS-CoV-2 virus.

8 (b) A public health emergency constitutes four work search actions for each weekly
9 claim filed by a claimant during the public health emergency, unless federal law requires the
10 claimant to actively seek work to qualify for federally funded benefits.

11 (c) The secretary of the department may waive compliance with par. (b) if the secretary
12 determines that the waiver is necessary to permit continued certification of state law for grants to
13 this state under Title III of the federal Social Security Act or for maximum credit allowances to
14 employers under the federal Unemployment Tax Act or to maximize claimant's eligibility for
15 100% federally funded benefits to protect the balance of the Wisconsin Unemployment
16 Insurance Trust Fund.

17 **SECTION 2.** DWD 128.001 (2) (a) is renumbered DWD 128.001 (2) (ar).

18 **SECTION 3.** DWD 128.001 (2) (ag) is created to read:

1 **DWD 128.001 (2)** (ag) “COVID-19” means the SARS-CoV-2 virus and any related
2 disease.

3 **SECTION 4.** DWD 128.01 (7) is created to read:

4 **DWD 128.01 (7)** COVID-19. (a) Notwithstanding any other subsection in this section, the
5 department shall consider a claimant to be available for suitable work if the claimant is perceived
6 by an employer as exhibiting COVID-19 symptoms preventing a return to work, or the claimant
7 is quarantined by a medical professional due to COVID-19 symptoms, or the claimant is
8 instructed to stay home under local, state or federal government direction or guidance due to
9 COVID-19, and one of the following applies:

10 1. The employer has instructed the claimant to return to work after the employee no
11 longer exhibits symptoms, after a set amount of time to see if the disease is present, or after the
12 quarantine is over.

13 2. The employer has not provided clear instruction for the claimant to return to work.

14 3. The claimant would be available for other work with another employer but for the
15 perceived COVID-19 symptoms preventing a return to work or but for the quarantine.

16 (b) This subsection shall be good cause for not reporting for an eligibility review under s.
17 DWD 128.03.

18 **SECTION 5.** DWD 128.02 is created to read:

19 **DWD 128.02 Work Available.** For the purposes of s. 108.04 (1) (a) to (bm), Stats.,:

20 (1) An employee is not considered absent from work or to have missed work available if
21 the employee is perceived by an employer as exhibiting COVID-19 symptoms preventing a
22 return to work or the employee is quarantined by a medical professional or under local, state or
23 federal government direction or guidance due to COVID-19.

1 (2) There is no work available for employees during a public health emergency, as
2 defined in s. DWD 127.01 (2m) (a).

3 **SECTION 6.** DWD 128.025 is created to read:

4 **DWD 128.025 Waiver.** The secretary of the department may waive compliance with all
5 or any part of s. DWD 128.01 (7) or 128.02 if the secretary determines that the waiver is
6 necessary to permit continued certification of state law for grants to this state under Title III of
7 the federal Social Security Act or for maximum credit allowances to employers under the federal
8 Unemployment Tax Act or to maximize a claimant's eligibility for 100% federally funded
9 benefits to protect the balance of the Wisconsin Unemployment Insurance Trust Fund.

10 **SECTION 7. EFFECTIVE DATE.** This rule shall take effect upon publication in the official
11 state newspaper as provided in s. 227.24 (1) (c).

Dated this 6th day of May, 2020.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT



By: _____
Caleb Frostman, Secretary

STATEMENT OF SCOPE
Department of Workforce Development

Rule No: DWD 120

Relating to: Providing notification of the availability of unemployment insurance to employees at the time of separation from employment.

Rule Type: Emergency and Permanent

Finding/nature of emergency:

By Executive Order 72, the Governor declared a public health emergency in order to protect the health and well-being of the state's residents and directed state agencies to assist as appropriate in the State's on-going response to the public health emergency. On March 13, 2020, the President declared a national emergency concerning the COVID-19 outbreak. An emergency rule is necessary to implement new federal law, the Families First Coronavirus Response Act, and corresponding U.S. Department of Labor guidance (Unemployment Insurance Program Letter No. 13-20, dated March 22, 2020) to ensure that claimants have timely notification of the availability of unemployment insurance.

Description of the objective of the proposed rule:

Currently, employers must keep employees informed of unemployment insurance by posting notice-posters in suitable locations in the workplace.

This rule will create a provision in ch. DWD 120, consistent with federal law, to require employers to notify employees of the availability of unemployment insurance at the time of separation from employment.

Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Currently, s. DWD 120.01 requires employers to post notice-posters in the workplace to notify employees of the availability of unemployment insurance.

The Department of Workforce Development proposes to create a provision to require employers to notify employees of the availability of unemployment insurance at the time of separation from employment.

The policy alternative is to do nothing.

Statutory authority for the rule, including the statutory citation and language:

The Department has statutory authority for the proposed rule.

“The department may adopt and enforce all rules which it finds necessary or suitable to carry out this chapter.” Wis. Stat. § 108.14(2).

“Each employer shall inform his or her employees of the requirements of this subsection in such reasonable manner as the department may prescribe by rule.” Wis. Stat. § 108.04(2)(c).

Estimate of the amount of time that state employees will spend developing the rule and other resources necessary to develop the rule:

The estimated time is 20 hours.

Description of all entities that may be affected by the proposed rule:

Employees who are separated from employment. Employers who terminate the employment of employees.

Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Federal law requires state law to conform to and comply with federal regulations. *See* 20 C.F.R. § 601.5.

Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):

The proposed rule is expected to have an economic impact on employees who may be more likely to file claims for unemployment insurance. The proposed rule is expected to have an economic impact on employers, including small businesses, because employers will need to provide additional notice of the availability of unemployment insurance.

Contact Person: Janell Knutson, Director, Bureau of Legal Affairs, Unemployment Insurance Division, at (608) 266-1639 or janell.knutson@dwd.wisconsin.gov.

Approval of the agency head or authorized individual:

Pamela R. McGillivray, Chief Legal Counsel **Date Submitted**